



Received: 28 May 2019
Accepted: 24 September 2019
First Published: 01 October 2019

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POLITICS & INTERNATIONAL RELATIONS | RESEARCH ARTICLE

Bi-polar development: A theoretical discursive commentary on land titling and cultural destruction in Kenya

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Abstract: Development economist Hernando de Soto Polar has effectively advocated for property rights in the Third World, as his ideas have influenced the policies of the World Bank, International Monetary Fund and United Nations Development Programme. He envisions land titling as a means of lifting the poor out of poverty. I argue that his classical liberal interpretations of property and the good life are dangerously naive. One can see the dangers of de Soto's imperialist and one-dimensional vision after considering the cultural destruction that results from his brand of development in pastoral Kenya. Also, this article demands a reframing of standardized development approaches. It argues that the conventional view is prone to creating unstable, culturally hegemonic relationships between the government and entrepreneurs, and the people of the land. Asymmetrical lawfare is another nondemocratic feature of de Soto's development. This article emphasizes that Kenyan pastoralists are not inherently vulnerable people but that they have been rendered vulnerable by society. Lastly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the basis for an alternative to de Soto's development design. UNDRIP was a hard-fought legal protection for the world's indigenous peoples that makes human dignity central to development. The Global North and Global South produce differing visions of development. This article points

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PUBLIC INTEREST STATEMENT

Development is a relatively new branch of economics and it already has a celebrity theorist. His name is Hernando de Soto Polar. His universal theory is that implementing property rights for the Third World poor will bring them out of poverty. The idea is simple, but also dangerously naive because when implemented it may overlook and destroy Indigenous cultures and livelihoods such as pastoralism. This article addresses Maasailand, Kenya as a case study of modern cultural imperialism of Western development theories, like de Soto's, and makes a case for development rooted in the United Nations Sustainable Development Goals. This article also argues that the two respective development utopias, conceived of by the Global North and of the Global South, differ strongly, as the Northern institutions embrace and promote property for the poor of the Third World, while the South largely aspires to their conception of the elusive rights to development.

to Kenya as an example of how the Global North's vision has fundamentally failed because it disenfranchises pastoralists—the very people policymakers and policy supporters claim it is intended to benefit.

Subjects: Africa - Regional Development; Cultural Studies

Keywords: Maasai; Kenya; land titling; development; pastoralism; indigenous peoples' rights; cultural destruction; cultural imperialism; Third World

1. Introduction

Celebrated economist Hernando de Soto Polar advocates a cause unique to neoliberal economics: property rights for the poor. De Soto has become a darling of the neoliberal establishment because of his concern for the poor. Like philosopher Adam Smith (e.g. author of *The Wealth of Nations*) before him, de Soto has unwittingly put a human face on capitalism—one of humankind's most inhumane, wasteful and destructive creations.

Both Smith and de Soto use the language of discovery when investigating free-market economics. Smith wrote austerely about what he saw as the market's potential for individuals and the greater society. In De Soto's writings, he sees the market as a tool for enabling economic liberation from extreme poverty, which can only be achieved through the implementation of property rights.

The central problem with de Soto's thinking is that he has become a rhetorical tool and face of the neoliberal/neocolonial globalization movement. By its very nature, neocolonialism wears a mask. De Soto has become that mask. Awarded the Milton Friedman Prize, the Peruvian economist is now the benevolent-looking persona of markets in the Global South. De Soto's Smithian book *The Mystery of Capital* finds that societies without property rights do not prosper, whereas those that implement property rights prosper. Naturally, de Soto endorses land titling in the Third World to—in many cases—replace pastoral communities. Promoting the one-dimensional ideology of “property rights” makes de Soto's evangelism dangerous.

De Soto's economic theology has become especially effective in destroying pastoralism because his remedies are embraced by consulting institutions such as the World Bank and International Monetary Fund (IMF) who have paid lip service to free market solutions. Poor, “undeveloped” Third World nations depend on the World Bank, IMF, and United Nations Development Programme (UNDP). In his book, de Soto paints a beautiful picture of people liberated from the bondage of lawlessness but ignores the cultural destruction his work inspires. His rhetoric has started a movement that embodies a fascistic reification of poverty.

Poverty is not just material. There is also the poverty of the spirit. Many Third World nations have persisted without formal property rights because they have engaged in pastoralism for centuries. For the people who live on those lands, the land means more to them than capital. For them, there is no mystery: land is a spiritual asset not to be traded away or cultivated for short-term gain. In pastoral communities it is not only practiced as such, but believed, that no one inherently owns the land. Instead of seeing themselves as owners of the land, pastoralists see themselves as stewards of the land. The capitalist sees land as a means of production, or asset. Development projects are where capitalist and pastoral ideas collide.

Third World capitalism is a human construct that counters the glowing review Smith left us. Instead of the Invisible Hand creating *order*, Third World capitalism has created disorder among pastoralists in the form of widespread poverty. Third World governments modify *dexterity* by implementing development projects, that consequently squander skills passed down from generation to generation until they are lost. *Efficiency* is gained only through the eyes of a long-sighted economist who is fixated on “production”, as Gross Domestic Product (GDP) is its

development metric. And, of course, from a material perspective, development programs (as I will show in the case of Kenya) have failed to work for indigenous populations. These policies also clearly ignore the cultural destruction they cause. Poverty of the spirit is a significant development issue pastoralists face after losing their land once it is divvied up.

De Soto's work, notwithstanding its good intentions, has made him in actuality less of an economic hero and more of an unwitting "economic hitman". Tragically ironic, economic theologian de Soto is the epitome of humanitarianism and poverty elevation that became what Friedman warned against when he said, "The road to Hell is paved with good intentions." I refer to Kenya as a case study.

2. Maasailand, Kenya

The story begins in 1890 with the arrival of Europeans in Maasailand, Kenya—where the indigenous Maasai live. It was then that the British colonizers introduced land tenure. Traditional pastoralist land rights were overturned and violated "in every respect, and, as a result, Maasai pastoralists lost their best grazing areas, something that is still being challenged today" (Rutten, 2009) despite the fact that under UNDRIP of 2007, it is considered a human rights violation. As one knows, pastoralists have a sense of collective ownership, which is essential for the dignity of the indigenous people who inhabit the land. In such cases, self-determination of the Maasai was also compromised (UN General Assembly, 2007).

The era between 1921 and 1944 marked the "period of neglect" for Maasailand (Rutten, 2009). The Native Lands Trust Ordinance of 1930 stated, that "non-natives could only obtain leases or one-year licenses for land in the reserves if they were not occupied or required by Africans" (Rutten, 2009). This further disenfranchised pastoralists. The Maasai reacted by protesting the loss of their land to the Kenya Land Commission. The Commission, which was set up in 1932 to review African land grievances, "reaffirmed the administration's policy towards pastoralists by opposing any extension of their land" (Rutten, 2009).

After the report came a term marked by grazing scheme experiments. Between 1945 and 1963 the concept of mutual land ownership was unofficially dropped by the Department of Agriculture, creating a landless class. Colonial progressives considered this "a normal step in a country's evolution" (Rutten, 2009). The result was clear: a loss in knowledge of the land (previously held by pastoralists) led to drought deaths. A reactionary policy was enacted to "divide the district into ranch units" (Rutten, 2009).

Local Maasai politicians started to divvy up illegally acquired 2,000-acre individual ranches. Young politicians set up a system of handing out title deeds to supporters and reducing the social and economic dominance used by elders who opposed this development (Rutten, 2009). This event shows a rift emerging between generations of Maasai. The youth had suspended their ties to the land and ancestry in return for material sustenance by supporting the grazing scheme experiment. More importantly, they compromised their pastoralist lifestyle.

Support for the elders came from the 1965 Lawrance Mission, which criticized the government's approach to Maasai land that granted the illegal approval for individual ranches. The Maasai all accepted a new group ranch concept in 1969, which was introduced by the World Bank and applied as the Kenya Livestock Development Project.

The group ranch scheme also included setting aside land for communal ownership. These group members would become registered, while non-members were barred from grazing their animals on these areas. "Through the provision of loans for infrastructural development and steer fattening, an attempt was made to radically transform the nomadic subsistence-oriented milk economy into a sedentary, market-oriented meat production system (Rutten, 2009)." The goal here was to transform from subsistence (pastoral) milk to market meat production. Cattle would be slaughtered—destocking the Maasai pastures—and the meat was put on the international market.

The intention was to generate more capital—through imperialist method—and (again) the loss was the self-determination of the indigenous people of Maasailand, Kenya. “The good life” is undermined in the process. Pastoralists have longstanding cultural ties to the land. Group ranching was again a violation of the right to self-determination. Consequently, Maasai developed a longing to subdivide the group ranch into individual shares that resemble a pastoral tendency.

The 1980s brought about policies à la de Soto: the disbanding of group ranches and the beginning of individualization of land ownership. The argument was that by turning to private ownership, living standards would rise. What de Soto calls “dead capital” (de Soto, 2000) is then calculated by lenders, thus opening the door for loans to poor Maasai landholders. These short-sighted policies led to significant problems for the indigenous Maasai.

Individualized land ownership benefited speculators and new immigrants (Rutten, 2008). Research shows that immigrants often found a job on “one of the new flower or tree farms or at an educational institution” (Rutten, 2009). As a result, severe structural poverty crept into Maasai society in where the pastoralists were dispossessed of their mainstay, while others cashed in. Indigenous rights were violated here, too, as the environment was spoiled further (Rutten, 2008). The indigenous Maasai have a spiritual relation to the environment, making this issue of rights an issue of cultural survival.

De Soto’s theory only leads to the disenfranchisement of the poor and creates options for the more powerful outsiders that are now not only seen as African carpetbaggers, but as culture-destroyers, too, as culture is defined by UNESCO as the “set of distinctive spiritual, material, intellectual, and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs” (UN Educational, Scientific and Cultural Organisation [UNESCO], 2001). Property rights can benefit people, but mainly because property rights are theoretically and applicably foreign to indigenous peoples like the Maasai who are excluded from the benefits thereof. Instead, property rights benefit the informed, wealthy, foreign, immigrants, local elites, and politicians (Rutten, 2009).

Development law disenfranchised “the Maasai people, their children, the district’s ecology, the livestock economy, wildlife and tourism” (Rutten, 2009). With the help of UNDRIP, development programs are now much more sensitive to the plight they cause indigenous groups like the Maasai. As subalterns, these groups have been thrust into a globalized world without a voice. The UNDRIP has empowered these pastoralists to stand against these de Soto-esque development plans. The political element of human rights is being enacted to save not only the Maasai livestock but also the very culture of the Maasai.

Today, Kenya’s pastoralists are “estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000” (Kenyan National Bureau of Statistics, 2009). Pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others (Tiampati, 2016).

3. Reading de Soto

Property is not entirely foreign to indigenous peoples. Demarcation lines exist in nations that have no property laws. In some sense, these demarcations are bound to the social contract. “Communal property” and “individual property” are different. Pastoralists use community as the answer to their continual needs. The community cares for itself, but there is a limit to where the community exists. This demarcation frames their world. Modern late-capitalists use individual property to solve their problem of continual needs. Their societies operate under extreme individualism, not community. Late-capitalist societies maintain order by maintaining that everyone has a vested interest in a successful market. They work according to dexterity and skills are taught from one generation of workers to the next.

De Soto argues that every society has a sense of property. That is, when you cross onto a neighbor’s yard, the neighbor’s dog barks at you and the neighbor feels threatened. Everyone in a community—

however communal—has a sense of space. And it is in that sense that de Soto claims every society has a sense of property, when his thesis should conclude that sanctity of privacy is an essential hallmark of every society. But what about those areas where formal property rights to land (land titles) are lacking? De Soto argues that these societies are closed off from credit.

Without credit, development remains very slow. Because Western society has embraced the interest banking system model, development has flourished. When one has assets, one is much more likely to be loaned money, since the lender can see that there is something to the loaner's name, the lender can infer that the loaner has a higher possibility of paying off the loan with interest. And, one can imagine, the interest rate goes much lower for those interested in getting a loan once these property rights are established as clearly as possible.

Despite globalization and cosmopolitanism, one cannot escape culture today. The world is not, in fact, flat (i.e. the playing field is not level). There are ambiguities that affect cultures, such as imperfect information. What happened to the Maasai could have happened anywhere. One must see that, historically speaking, the implementation of defined property rights has not as only been a haphazard method of building economic growth, but is has also been used as a tool for imperialism.

4. Living well: Indigenous life

Earth's indigenous populations, the Maasai for example, did not understand land rights because they were either never explained to the elders in their mother tongue, or the elders failed to understand or accept the role of titleholder. In either case, cultural rights have been violated. One may not discriminate against these people (Rutten, 2008). They must have free, prior, and informed consent before anything is done to their land or property. Additionally, one ought to consider the culture of the indigenous people, because it may not be in their cultural purview to conduct such a practice as land titling. Forced land titling is a breach of indigenous peoples' right to self-determination, meaning, that if there is going to be any development for indigenous peoples, it ought to be "self-determined development" based on the fact that culture is a way of life (Cunningham, 2010, p. 89).

Pastoralists have their way of life adversely affected by these violations, not just in a monetary sense, but also in a spiritual sense. Indigenous people believe, like all other peoples, in "living well" (Cunningham, 2010, p. 89). For them, "harmony between human beings and mother Earth" is the emotional, spiritual and bodily recipe for good living (Cunningham, 2010, p. 89). Indigenous people think of the human being as "part of the cosmic fabric" (Cunningham, 2010, p. 94). Giving priority to life means putting money last and life first.

Another important feature to understand is that the economic subject in indigenous society is the collective. Indigenous spirituality teaches that all natural things have souls. A spirit is present in all things, to which they owe their particular form. Natural objects are sacred. So, one can imagine that environmental degradation becomes something worse than a water shortage, or dead livestock; it is Mother Earth crying out in pain.

In the indigenous belief system, nature is considered sacred. The land is such a major part of who and where the people come from, that it is inevitably the greatest feature of their culture. The land provides meaning and therefore cannot be sold nor personally appropriated. This makes them primarily stewards to the land. The people of the land preserve and use enough to survive—forgoing cyclical economic profits and avoiding any speculative downturn. And this form of living has served pastoralists well; as they have successfully passed down knowledge of the land from generation to generation, live off the land sustainably, and in peace. Ironically, these are the three things (order, dexterity and efficiency) Adam Smith credited early capitalism for when he wrote *The Wealth of Nations*.

5. Pastoralism

In postcolonial Africa, local pastoralists have walked a difficult path. African states operate under coloniality. In Homi Bhabha's words, "Between the Western sign and its colonial signification there emerges a map of misreading that embarrasses the righteousness of recordation and its certainty of good government" (Bhabha, 1994, p. 95). And as a result, mimicry "inaugurates the process of anti-colonial self-differentiation through the logic of inappropriate appropriation" (Gandhi, 1998, p. 150). In other words, the British are gone, but their way of running Kenya remains firmly in place. Nothing has changed besides the color of the suppressors' skin.

Pastoralists now face a neocolonial, anti-pastoral attitude in their nations that says: "pastoralism is not conducive to development and growth that [and] it needs to be transformed into a farming community" (Tegegn, 2010, p. 332). The pastoral land is now being converted into farmland. The vision is clearly shortsighted. Utilitarian development approaches—where GDP and other quantifiable achievements—dominate the thinking of development programs. They ignore the social development of pastoralism.

Pastoralism has its merits and should not be subjected to the evolutionary historical narrative of development. Instead, one should recognize what has been evident all along—that "unlike the small peasant landholding system, [pastoralism] generates a sustainable way of life nurtured by a rich indigenous knowledge system" (Tegegn, 2010, p. 335). Protecting the environment constitutes a major part of the indigenous knowledge system.

The process of converting pastoral land to farmland has four parts. First, a plan needs to be made to divide the land. This should include considering the wellbeing and function of newly minted "farmers". Second, how the land is distributed to a communal population needs to be made clear. Third, the pastoral land has to be examined to see if it is fit for peasant farming. Lastly, the transition must be made smoothly (Tegegn, 2010, p. 336). Unfortunately, this rarely happens.

Consequently, "pastoral livestock production system and way of life [are] much more sustainable" than peasantry farming (Tegegn, 2010, p. 337). Pastoral farming provides higher quality and higher yield. Classical and neoliberal economists and thinkers have overlooked pastoralism because it defies their model and historical narrative of development. The political and intellectual elites dismiss the pastoral way of life as primitive because of their own ignorant projection of their own histories onto those of the pastoralists (Tegegn, 2010, p. 335). Contrary to what de Soto has theorized and espoused for years now, historically pastoralism requires less investment and entails less risk than peasant farming (Tegegn, 2010, p. 334). The secret is in indigenous knowledge, which researchers are beginning to recognize as essential in the Anthropocene.

Sometimes the difference between pastoralism and farming is not just indigenous knowledge so much as it is the indigenous structure to pastoralism. Pastoral communities are set up to follow rules in ways that are simply designed better than farming. One example from Carolyn Lesorogol states that in Kenyan pastoral communities:

Rules exist regarding access to and use of pasture and forest, including limits on use of key resource areas such as dry season pastures and wells. Community members, particularly herders who are well positioned to notice violations of grazing restrictions, monitor the rules and councils of elders sanction violators (Lesorogol, 2005, p. 1960).

Time has proven that these ancient pastoral methods work. As highlighted by Lesorogol, Kenyan pastoralists using "this system has functioned to provide a basic livelihood to the Samburu, even in the face of rapid population growth and significant interference from colonial and postindependence governments" (Lesorogol, 2005, p. 1961).

6. Conclusions

Despite its tremendous failures in the Global South, the right to development (UN General Assembly, 1986) movement remains a Third World endeavor. The movement led by the world's poorest nations for the right to development has always been about access and anti-imperialism. But unfortunately, when it comes to land titling, the UNDP, and Third World governments have failed the poor by limiting their access and allowing for cultural imperialism. Land titling does not always allow for populations to prosper. In fact, pastoralists in Kenya have their rights violated by land titling through having their land taken away by foreigners or by being forced into peasant farming. All they ask for is access to the world market so that they can sell their superior beef. But pastoralists are denied this. Instead, they live with more imperialism and less access, as more powerful players enter their lands and take or degrade their resources. Forced to play by the laws imposed on them, formally extralegal pastoralist communities can do nothing in such an asymmetrical case of lawfare.

When confronted on these issues, de Soto has managed to save face by saying the benefits outweigh the costs. This is true, but not for pastoralists who have lived on their own land for centuries. Wealthy investors have come in and squandered the land. It is my opinion that the term “development” ought to be reassessed as “access for the poor and not access for the rich”. By taking Kenya as a case study, we see that pastoralists are not vulnerable people, but have been rendered vulnerable by society.

De Soto and Kenya represents a clash between two utopias: “the last utopia” (the human rights utopia created by the West) (Moyn, 2012, p. 4) and the “utopia of development” (yearned for by the Third World) (Anghie, 2013). Antony Anghie describes the latter as, “the yearning of the peoples of those countries for a better standard of living, basic necessities, sufficient food” (Anghie, 2013). This is not what de Soto’s policies aim to solve; his policies are purely theoretical and insofar only look at land as a numerical asset with a Western fiction surrounding its nature (e. g., the tragedy of the commons). Properly understood, de Soto’s thinking becomes ideology and produces the opposite of development. That is the ultimate downfall of de Soto’s economic theology.

Unfortunately, the poor suffer first and most from imperialism, but the 2007 UNDRIP can be an instrument to empower the poor. It aims to level the playing field and protect the rights of the world’s indigenous peoples—those who have received the brunt of Western imperialism and access deprivation. This crucial measure will hopefully lay the groundwork for the UN to instill its core values of dignity, peace, and equality. But more importantly, if Kenya teaches us anything about development, the UN and other bodies will come to look at development as a people issue, where culture is central, and not a nation-state concern.

Funding

The author received no direct funding for this research.

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Citation information

Cite this article as: Bi-polar development: A theoretical discursive commentary on land titling and cultural destruction in Kenya, Alexander Sieber, *Cogent Social Sciences* (2019), 5: 1674054.

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