
Exclusive Private Property is Indispensable to Brazil's Economic Development

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According to Nobel economist Douglass North, all the world was poor five-hundred years ago. Famines regularly swept through Europe, and when Europeans arrived in the New World, the Native Americans had a standard of living equal to or superior to the average European's. Yet today, throughout much of Europe, North America, and the Pacific Rim, people enjoy per capita income in many multiples of incomes in the rest of the world.

Peruvian economist Hernando De Soto used to ask the financial ministers and treasury officials of wealthy nations why their countries were so rich while his was so poor. Invariably, he was met with silence. De Soto now worries that wealthy nations may have forgotten what they did in generating conditions necessary for prosperous, modern economies.

Neither technology, education, infrastructure, natural resources, and temperate climate nor securities exchanges, banks, and the private market account most

fundamentally for the dramatic economic development of certain nations in recent centuries. Instead, growing numbers of analysts point to the legal institution of private property as *the* primary catalyst of economic development. Only when an adequately enforced legal system secures private resources can education, natural resources, technology, infrastructure, and financial institutions unleash through the private market sustained per capita income growth. In an infelicitous yet apt metaphor, private property is the goose that lays the golden wealth of nations.

As used here, “property” refers not to something owned but to ownership itself. Most clearly, it is the legal right to keep others from interfering with an object or resource. Property implies lawful boundaries that protect the object, good against all others. Importantly, the object protected within property boundaries can have both tangible and intangible aspects to it. Within protected boundaries can be included not only physical objects like land and intangible objects like market exclusivity but uses of these resources as well. The uses of the resources are themselves resources and are part of the protected object.

By this definition, property is absolute. Inasmuch and only inasmuch as a person can keep others from interfering with a resource, does the person have property. If a person cannot keep others— including the state— from interfering with a resource, to that precise extent the person lacks property. However, *absolute* resource boundaries do not mean *infinite* resource boundaries and an owner’s property, especially in the use of a physical object, is always limited by the property of others. An adequate legal system of property law includes formal ways of determining the extent of property boundaries and of providing enforcement against and compensation for their harmful crossing. Criminal law, tort law, and government

regulations provide that function, just as contract law and commercial codes specify the rules by which owners exchange objects in a private property-based legal system.

Private property provides the certainty and incentive necessary to free people from having to protect their possessions and to make them willing to invest resources in fixed locations for production. That the institution of private property generates the maximum human effort and ingenuity in the production of what society needs and wants comes from a deeply ingrained human characteristic which brings people to work harder for themselves and their families than for needy humanity in general, what economists refer to as “self interest.” Consequently, nations should enforce private property in whatever tangible or intangible resources they wish people to produce in greater quantities. It is entirely proper to teach and encourage the compassionate sharing of resources, but the development of national wealth in the last several centuries is almost entirely associated with the development of strong private property systems. No nations with such systems are poor, and no nations lacking them have diversified, prosperous economies.

First in the Netherlands, then in England, private property in land and the productive use of resources we today call “business” took hold. Also during this period, the American colonies were beginning a period of ferment over private resources that led eventually to a new nation. Historians of the colonial era are virtually unanimous in concluding that the American Revolution was fought over private property and the English refusal to apply to their own colonists the great constitutional principle of England: legitimate taxation of privately owned resources can derive only from the people’s elected representatives. Said John Wilkes, Lord Mayor of London, during this time, “If we

can tax the Americans without their consent, they have no property, nothing they can call their own.”

The Constitution of the United States itself arose to protect the concept of what was frequently called in the 18th century “sacred property.” Without any opposition whatsoever, no fewer than five members of the Constitutional Convention observed that the purpose for which the political state comes into being is the protection of property. James Madison, who recorded these statements in his minutes of the Convention, himself held this belief, and in 1792 wrote a famous essay in which he extended the established constitutional cachet of private property to such objects as speech and the practice of religion. Madison said that even as people have a “right to property” so also do they have a “property in their rights,” thus representing individual liberty as nothing less than self-ownership. Thomas Jefferson’s “pursuit of happiness” phrase from the Declaration of Independence is likewise property based, deriving from John Locke’s belief that one’s privately directed acquisition of the means of life is the highest political happiness.

The path dependence or societal inertia of this kind of constitutional, legal, and social tradition brings us to the carefully analyzed, yet impassioned, article *Rediscovering the Value of Intellectual Property Rights*. Like Hernando De Soto, Lawrence Kogan recognizes the importance of private property to nations, but he extends this recognition to the increasing globalization of trade in the vital area of IP rights. He fully embraces Article 1, Section 8, of the U.S. Constitution, which acknowledges that the purpose of patent and copyright protection is “to promote [give incentive to] the Progress of Science and useful Arts [business],” all done to serve the nation’s general welfare

or common good. He vigorously promotes this justification for private IP in global trade as well.

Rediscovering the Value of Intellectual Property Rights focuses principal concern on Brazil's continuing abridgment of IP rights and that nation's efforts in international fora— assisted by certain European views— to justify the abridgment of trade secrets and patents and of the limited, exclusive markets that are the objects of IP boundaries. Although the opportunistic appropriation of valuable resources others have worked to create may have temporary, situation-specific economic and human advantages to Brazil, it fosters only long-term poverty in the development of new pharmaceuticals, quick growing, disease-resistant crops, energy efficient invention, and other information technology-based goods and services. From the perspective of private companies that spend billions to create the “Progress of Science and useful Arts,” actions to deprive them of the fruits of their research differ little from the predations of the Barbary Coast pirates, who plundered trade routes until the early 19th century. To eliminate or substantially reduce private property in new ways of generating what the world's people need and want can only stifle incentive to create these resources in the first instance and lead companies to avoid dealing with nations who take IP resources without permission.

With a meticulously documented case, Lawrence Kogan shows that Brazil itself will benefit in the long-run from curbing its efforts to impair private property in what is currently protected by trade secret and patent law. From increasing foreign direct investment and providing incentive to its own private investors, Brazil will ultimately benefit more under— rather than out of— the private property regime. Lawrence Kogan provides an important

service in reminding us why some nations are rich and others are poor.