Security of Property Rights, Ownership, and Development:

A Misguided Paradigm

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Summary

Security of property rights is central to the theory and practice of economic development, especially since the emergence of the neo-institutionalist paradigm, following D. C. North's seminal work. In practice, it has meant mainly the extension of *ownership* rights, primarily to land, to increasing numbers of the population in developing countries, with extensive titling programs attempted. Against the expectations of property rights advocates, however, such programs have failed to generate expected results, often creating deep social dislocations instead. This is typically viewed as an empirical, local failure, a divergence from the Western trajectory of development.

However, this entire approach is based on a flawed premise: land ownership was not part of either North's accounts of the Rise of the West or the historical record itself. If ownership was not the key growth mechanism in Europe, it cannot necessarily be expected to be elsewhere either. Instead, *tenancy*, not ownership, provided the incentives for growth and gains in efficiency in the European West. Moreover, given the role of communal agriculture and enclosures in English development, parallels with continuing problems in the developing world are striking and potentially illuminating. This revision has important implications for the preconditions of development. However, they are not necessarily comforting as far securing better living conditions for *producers* is concerned. The assumption that economic growth means greater "security" of property rights for individual actors is deeply flawed: in fact, it has always meant the greater exposure of producers to systemic risk, with the expectation of economic benefits accruing in the aggregate.

Security of property rights is probably one of the most elementary principles in development economics. Especially since the neo-institutionalist breakthrough of Douglass North, their importance in creating incentives that "channel individual effort into activities that bring the private rate of return close to the social rate of return" (North and Thomas 1973, 1) has been widely recognized. As wide as this recognition, however, is the assumption that such security must ultimately be identified with absolute *ownership* over the critical factors of production, whether land, capital, intellectual property or any other factor. North's account of the evolution of the Western economy suggests a similar transition as crucial for the productivity growth in Europe of the eighteenth century and beyond: he posits a development from a feudal system, which recognized no absolute rights of ownership (North and Thomas 1973, 63), to a market-based system. A crucial step in this trajectory was the development of the right of alienability of land, which followed the emergence of "fee-simple absolute ownership" (North and Thomas 1973, 18). The critical case here is England. The theoretical and empirical implications of these insights have been amongst the most influential in social science, generating a large body of literature at the same time as shaping the policies of international organizations like the World Bank. It has encouraged extensive programs of land titling that have affected communities around the developing world, most commonly with disappointing, and seriously dislocating, effects.

However, I argue, the prevailing conceptualization of property rights, and the resulting emphasis on security and ownership, is both logically inadequate and historically flawed. First, it is never explained why security of ownership would lead to increased investment in high-risk environments with low levels of institutionalization. Such expectations project demanding assumptions on the economic calculus of producers in any context, let alone the highly uncertain one of the developing world, as I argue further below. The flaws in this logic are further borne out by examining more carefully the trajectory of Western economies, especially the English one, on which prescriptive theories of development have been based. The historical record shows that in England it was not owners but *tenants* who were mostly responsible for efficiency and productivity gains in the period of the "Agricultural Revolution," variously dated between the sixteenth and the eighteenth century.[1] The period of greatest growth in the English economy was thus also one that saw the dispossession of large number of peasants and their subjection to strict tenancy contracts, as I show below. Ownership was not the key mechanism in this process. This was not an accident, I argue. Subjecting producers to the relentless pressures of contractual obligations, non-observance of which would mean eviction from the land, was key to providing the incentives necessary for growth above the levels of subsistence. The mechanisms are provided therefore from the condition of conditional dependence, not security of ownership over land. Direct ownership, on the other hand, does not necessarily or consistently provide such incentives, as the empirical record from the developing world has shown.

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[1] The dating of the English Agricultural Revolution has been the subject of much controversy, some scholars finding evidence for a steep rise in productivity already from the second half of the fifteenth century Allen (1992), or at least before 1800 Clark (2007), whilst others hold that the major leap occurred after 1750 Overton (1996a), Turner, et al. (1997). For the purposes of this analysis, it is not necessary to adjudicate between these alternative views, since whenever the rise occurred, the critical question is whether it was ownership or tenancy that provided the necessary incentives.

In what follows, I first examine the work of Douglass North to show both how the emphasis on ownership emerges from his historical account and how his underlying definition of property rights does not privilege ownership per se. Then, I look at the historical record to show what the English Agricultural Revolution can contribute to this debate. Finally, I examine the record of the land policies in the developing world, especially Africa, of the last few decades, as these initially applied the principle of land ownership as a mechanism of growth, only to be faced with contradictory outcomes. The literature is of course more than extensive, so only an overview will be attempted here.

The implication of the analysis is that the fixation on ownership and, thus, redistribution of land in much of the development literature is misguided. Given that it claims to be predicated on the Western experience, it is important to note that the record does not support the prescription. As will be seen further down, this correction can help explain the recurrent finding from empirical cases, namely that the land ownership has not brought the efficiencies expected. This means that the goal of land redistribution, one that remains an active one in both policy and academic scholarship, may also be misguided. This is encouraging, because policies aiming at redistribution have either failed or taken decades to post minimal results.

Despite almost a century of major land reform efforts in Latin America, for instance, only about half of all arable land (14% of total land) has been either redistributed or expropriated between 1930 and 2008.[2] Redistribution, as a radical change in ownership structures, is socially, politically, and economically costly. This hard way is, however, neither necessary nor optimal, according to the analysis proposed here. Tenancy should not be reconsidered a second-best strategy, resorted to in the developing world because it is somehow "lacking" or "backwards" compared to the West. Rather, it should be understood as having provided the main mechanism for growth in the West as well—requiring ownership to take center stage in the developing world is thus erecting an unfair standard for those countries to meet.

At the same time, however, shifting the focus from security of ownership to the conditional insecurity of tenancy uncovers a dimension of reform that is far from comforting. Subjection to the constant pressures of market forces, not security, is the main mechanism spurring efficiency gains. Although of course tenure must also be legally secure to allow any gains to materialize, that legal security is always predicated on market viability: inability to pay rent risks leaving tenants without their vital economic resource. In models promoting ownership as a means for obtaining credit, which can be used for growth, mortgage dues also impose market pressures to remain profitable. But again, it is not security per se that is the driver of improvement, but the pressure to grow with the market. As will be seen in the empirical section, different kinds of market failures have prevented credit via ownership from generating systematically better returns. Furthermore, the institutional and distributional requirements for ownership are much more demanding than those of simple tenure. In short, tenure is both the historical precedent in much of European growth and the type of property right that is more conducive to growth under conditions of low institutionalization.

[2] Albertus (2015, 12).

A. The Neo-Institutionalist Foundations of the Property Rights Paradigm

As suggested above, support for ownership of land may come from many different perspectives, with varying motivations. Ownership is believed to serve both redistributive and efficiency goals. So the prevalence of the paradigm cannot be attributed to one theoretical source alone. Nonetheless, it is clear that much of the mainstream thinking on the topic has been influenced by the offshoot from neo-classical economic thought that brought transaction costs to the forefront of the critique of equilibrium models. Originally neo-institutionalism was intended as a radical critique of neo-classical laissez-faire models, not least by its direct incorporation of politics in the economic calculus. Yet it soon came to be identified with a pro-market approach that, in the developing world, was seen to exacerbate existing inequalities, not to rectify them. Central in this debate is the writing of Douglass North. Initially he provided a conventional economic history of the West to show how transaction costs impeded development and how property rights, once established and secure, could minimize these costs and bring private and social returns to parity—this being the necessary condition for growth and greater goods provision (North 1981, 1990; North and Thomas 1973).

North's account has received extensive criticism, both on theoretical and historical grounds, and it is not necessary to go through these in any detail (Field 1981). In what follows I will simply establish two points. First, that although his historical account did lay a lot of emphasis on the emergence of "absolute" property rights in the Early Modern period, he never showed that such rights underlay the agricultural revolution that occurred in England; as I show in the final section, the historical record would in any case not support such a point. At the same time, his own definition of property rights was elsewhere much more nuanced, and in fact in line with the historical realities he was describing. Ironically, as the final section will make clear, his one "poster-child" of economic development, England, throughout the period he outlines, had no history of "absolute" property rights: absolute rights were only a feature of *continental* European law. If there is one feature that characterizes English law and practice about property rights is that far from absolute, they were instead limited and tenurial. The implications of this will be articulated in the final section.

(a) North's history. In *The Rise of the Western World*, North and Thomas trace the development of the West in the medieval and early modern periods. The critical dynamic is between rulers and producers: rulers, faced with increased military pressures that required larger units of government, are forced to gradually concede rights to producers in exchange for resources (North and Thomas 1973). The bargaining powers of the latter were a function of demographic change: population declines led to labor scarcity, which increased wages. Labor scarcity also increased, in North and Thomas' account, the privileges that landed social groups were able to extract from princes in exchange for tax money.[3] A consequential set of property

[3] Of course, these land rights were accorded to the landed classes, not to the wage laborers whose bargaining powers North and Thomas tie to demographic change. This means that there is little logical connection between part two of the book, covering the period between 900-1500 that is dominated by major demographic shifts such as were caused by the plagues and the third part, covering the critical period of 1500-1700, when property rights are assumed to have emerged, reducing transaction costs and, according to the theory, accounting for the spectacular economic growth that followed.

rights in land were gradually conceded, from the right to alienate land to the right to inheritance (North and Thomas 1973, 100). These do, on first sight, *appear* to confirm the story of greater absolute rights.

However, when North and Thomas come to explicitly address what conditions affected the development of property rights and their "application to innovation," the factors they refer to are predicated not on secure property rights *in land*, but on the extensive centralizing powers of the state (North and Thomas 1973, 153). Even the granting of monopolies, traditionally considered an arbitrary infringement of royal prerogative on private property rights and freedom of the market, is here admitted as a "crucial part of the internalization of externalities, which by raising the potential rate of return upon activities made them worthwhile." Similar benefits were attributed to the provision of royal protection to fledgling industries, even if that meant protecting foreigners introducing innovative technology to local industry (North and Thomas 1973, 153). Moreover, the seventeenth century innovations they highlight in explaining the precocious growth of England consists mostly of financial mechanisms encouraging cooperation, such the joint stock company or insurance markets or the creation of a central bank.

Further, when the authors are analyzing the transformations of the fourteenth and fifteenth centuries, they clearly acknowledge the major trait of English land relations in this period: feudal leases came to be replaced by tenurial arrangements paid with money, not service. This was the result of the rise of the money economy. "The manorial economy thus met its death: labor service were now irrevocably replaced by *money rent payments*; land was now tilled by *free tenants and/or by workers* receiving money wages, who were free to seek their best employment" (North and Thomas 1973, 80, italics added). It was tenants, not owners, who provided the backbone of the English productive class—or at least the authors have said nothing in their book to contradict this point, which happens to accord with most historical thinking on the topic.[4]

Other than a general statement in the opening chapter of the book that lists "fee-simple absolute ownership in land" as one of many conditions that led to sustained economic growth in England and the Netherlands (North and Weingast 1989, 18), there is no theoretically or empirically supported claim that shows how such ownership, if indeed it had existed, led to greater productivity. If mainstream thinking on development has focused on ownership as a key mechanism, North cannot be considered the source of that assumption in any sustained way.[5]

A similar indifference to ownership rights to land permeates the later work, *Structure and Change in Economic History*. To explain the changes that led to the Industrial Revolution, North focuses on the "*prior* development of a set of property rights, which raised the private rate of return on invention and innovation" (North 1981, 147). But in none of the case studies he examines, France, Spain, the Low Countries, and England, was private, absolute ownership of land key. Rather, the focus was political-institutional (North 1981, 147-157): where representative assemblies were coopted by private interests and traded taxes in exchange for

[4] Some economic historians, have in different ways taken issue with this position, but their conclusions are not widely accepted; I discuss this below.

[5] It is otherwise of course with North's assumption about *financial* development, where protection of property rights from arbitrary state confiscation and encroachment is a key condition; North and Weingast (1989).

monopoly rights, growth was inhibited. Where, as in England and the Low Countries, representative assemblies were sovereign and were controlled by merchants and other groups concerned with growth, conditions were ripe for the Industrial Revolution to take place.

Agriculture is only mentioned in connection to the Netherlands, where efficiency was improved through protection of property rights, the spread of markets and the discouragement of restrictive practices (North 1981, 153-4). Again, no mention of private property in land is made. *

(b) North's empirical definition of property rights. The same confusion emerges in how North and Thomas articulate what property rights meant in the historical context they examine. A theoretical emphasis on *private, absolute ownership* emerges alongside historical examples that run in the opposite direction, towards joint, conditional, overlapping rights. For instance, "exclusiveness" in property rights emerges as an important factor (North and Thomas 1973, 4). However, when the authors provide a list of the institutional arrangements of property rights that allow units to minimize transaction costs, the examples they provide are quite ambiguous (North and Thomas 1973, 5).

Joint stock companies, for instance, were, as Adam Smith famously analyzed, cases of reduced individual responsibility due to joint ownership. At the same time, they are typical of the "bundles of rights" approach to property, that is opposed to the absolute, Roman-derived concept of full ownership over a thing (Gray and Gray 2009, 91). Patent laws implied the intervention of the state to privilege some producers and protect them from the debilitating effects of early competition; they are thus temporary and artificial. Enclosures, on the other hand, implied the forcible ejection of some individuals from the land, in favor of major landowners who now depended on tenanted labor to produce output. The latter was hardly a vindication of "absolute property rights," as large sections of the population were deprived of theirs, even if the latters' rights were communal.

In any case, as above, the theoretical or empirical claim about the efficiency benefits of *land ownership* is absent. As a I argue below, this is not a coincidence, as no such claim was there to be found in the historical literature on European agricultural development that North had at his disposal; and although some powerful dissenting voices to the theoretical primacy of ownership have arisen since that time, they have not carried the day, and the scholarly focus remains there.

B. "The Historical Record"

On a topic such as the Agricultural Revolution in England it should be stated upfront that no single account of "the historical record" can exist. There is hardly a claim in this literature that has not been the topic of extensive debate, motivated both by the ambiguity and lack of primary sources and data and by the varying political predispositions towards the underlying questions. Sometime between 1500 and 1800, changes in English agriculture were so momentous that a revolution can be seen to have occurred in productive capability. This change was observed not only in comparative terms, but in absolute ones as well. Already by 1797 output per worker was 50 per cent above the next highest European country (Allen 1992, 1), which also meant that England managed to accommodate the consumption needs of a population that rose

fourfold between 1500 and 1800 (from about four to about sixteen million) simply through efficiency gains in agricultural output.[6]

A major issue of debate has been to specify when exactly this drastic rise in output took place, a debate that has important theoretical implications: the critical issue is whether small landowners, tenants, or open fields were the prime source of innovation and productivity growth. These debates offer important historical parallels to the contemporary debate on communal land farming in the developing world and it is not a coincidence that both bodies of scholarship, the English historical one and the modern one, have been moving in the same direction—towards a greater appreciation of the potential returns of communally owned and tenanted land.

The conventional historical narrative situates the change in agricultural productivity after 1700, i.e. as part of the great movement of Parliamentary Enclosures (Overton 1996a, 1996b; Beckett 1984, 1990; Turner et al. 1997; Mingay 1977).[7] Farmers were forcibly evicted, with an extensive reallocation and concentration of land rights witnessed from the early 1700s. If that is so, the agricultural revolution and radical progress depended not on private ownership per se, but on the suppression of property rights of large numbers of the population and on a concentration of economic resources in the hands of a few landlords.[8]

Moreover, and of greater relevance to this analysis, it means that the agricultural revolution occurred at a time when most producers in England were *tenants*; in other words, that the gains in efficiency have to be attributed mostly to tenanted workers, however much one is willing to concede active management of estates by landlords (which was limited, according to many accounts). By the 1700s, the mythical days of Shakespeare's and Chaucer's yeoman farmer were long gone; consequently, this independent owner farmer could not be considered as the engine of agricultural growth.

A contrary position, claiming growth predates 1700 and was predicated on the independent farmer-owner, has been articulated by Robert C. Allen in *Enclosure and the Yeoman* (Allen 1992). Addressing it is therefore critical to establishing the claims advanced in this article. Allen wishes to argue, first, that the yeoman, as an independent owner farmer, was critical to the efficiency gains of English agriculture; he adduces impressive empirical evidence from the South Midlands to support his case. Moreover, he attempts to show that open fields (communal lands) were not less productive than private plots.

His comparison between open and closed fields has raised questions as it rests on cross sectional comparison, and not on comparisons of the same plots before and after enclosure

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[6] As with every claim, here too there have been objections, the results of which have not however met with acceptance. See the unpublished paper by Gregory Clark, Clark (2002).

[7] One should not be deceived that because the Enclosures post 1700 were processed through Parliament they were more "democratic." On the contrary; unlike the enclosures that had been gradually taking place since the 1400s, and which were negotiated between landowners and tenants resulting in some form of buy-out by the former agreed to by the latter locally, post 1700 enclosures were state-imposed and non-negotiable at the local level.

[8] That liberal outcomes have depended on illiberal means in history is of course the major point in Moore's *Social Origins of Dictatorship and Democracy;* Moore (1967).

(Overton 1995). Yet it confirms what some other scholars have argued, for instance McCloskey (McCloskey 1972, 1991). Nonetheless, if indeed open fields were as productive as new thinking encourages us to believe, most of the productive work was not carried out by property-holders. Moreover, yeomen were "men differing little" from the better tenants of the manor, "farming, as some of them did, freeholds smaller than the holdings of the larger tenants. Other freeholders owned a few acres of land, insufficient to support them" and thus either rented land from other freeholders or worked as labourers (Orwin and Orwin 1967).

To prove the centrality of the yeoman, i.e. the property-holder, however, to the agricultural revolution, Allen needed to prove that most of the efficiency gains in agriculture occurred during what he calls the first agricultural revolution, the "Yeoman's Revolution," before 1700. By contrast, he ascribes no real productivity gains to the "Landlord's Revolution," the second stage that comes after 1700, where production was controlled by great estates owned by landlords and worked by tenants. However, the conclusions he draws from his data have not found wide acceptance (among many, see Turner 1996). For the purposes of my analysis, however, it is not important to adjudicate between the two contending sides of the timing of the agricultural revolution, prior or after 1700. It is only necessary to interrogate Allen's understanding of the term "yeoman," to show that he is far from proving that it is to the independent farmer-owner we should attribute the revolution to, even if we do accept his claims for an early date for the major innovations.

To question Allen's attempt to present the enterprising producer of his first agricultural revolution as an independent owner, it is necessary to explain, briefly, the peculiar land system that emerged in England in the medieval period, core elements of which still remain today (Brodrick 1968).[9] As a result of the Norman Conquest, the English crown became the owner of all the land of England. No powerful member of the nobility held land absolutely—all land was held conditionally from the crown, with the major landholders called "tenants-in-chief" (Megarry and Wade 1975). This condition extended all the way down the social ladder, with the poorest peasant holding land from some local lord. This meant that property rights were enmeshed in complex webs of interlocking obligations that originally emanated from feudal relationships but which, with the advent of the money economy, became monetized. Though some steps were made towards consolidating tenant's rights over the land they were allotted, as North and Thomas explained, the fundamental reality did not change, except for some cyclical movement in different periods (Ginter 1991).

Allen identifies yeomen as copyholders and grantees of beneficial leases (Allen 1992, 72), yet both of these forms of rights over land were versions of some form of tenancy. Certainly, the rights had gradually become more secure: a copyholder held the right to exploit land, normally for life, with a covenant a copy of which was held in the manor court. But claiming that the

[9] To this day, the de jure ultimate owner of English land is the Crown. Property is never owned absolutely, but always "leased" from the crown or from some other landlord who holds from the Crown. This condition may have become to all intents and purposes a formality in the present day, but even a freehold is still held from the crown, albeit in perpetuity. At the same time, purchasing property with a stipulated lease (20 years, or often 99 years) may also be a formality, as a freehold can now be easily purchased for a small fee, yet these are revisions to the land code of the last century and a half.

fourteenth and fifteenth century had seen "an enormous democratization" of their rights (ibid) is simply an exaggeration, or at least a statement comparing with earlier conditions, which were much more limited.

Beneficial leases were ancient tenures which "gave considerable power over the land to the tenants, and were only slowly eradicated" into the nineteenth century (Turner et al. 1997, 25). They were based on an entry fine, and annual rent payment and often a service obligation to the lord. The rent was below market value, so the main income to the landlord was the fine. Yet, "beneficial leasing was conducive neither to efficient management nor to rack renting, but it was not until the mid-nineteenth century that the corporate estates began to wake up to the consequences" (Turner et al. 1997, 29). Allen does not provide detailed micro-evidence from his data that the economic actors he ascribes innovatory attributes to were in fact owners of the land. Nor that the freeholders he also includes were numerous enough to generate the aggregate results he discusses, nor does he show that they weren't themselves renting out to tenants the parts of their estates they were unable to exploit through family or hired labor alone.

In short, the most sophisticated effort to place the independent owner at the center of the English agricultural revolution does not bear scrutiny as far as this particular point is concerned. Scholars today have not substantially revised the assessment of nineteenth century observers that "The great bulk of the land in the United Kingdom is not cultivated by the owner, but by tenant occupiers" (Brodrick 1968, citing James Caird from the 1850s). The most distinctive aspect of the English land property system was its limited nature, a feature that was further exacerbated by a multitude of inheritance restrictions that were simply impossible in continental Roman law. This assessment of the role of tenure in the property regime of England has stood up to studies of earlier periods (Beckett 1984, 1991).

C. Mechanisms

But why would English tenants be more prone to innovate and improve efficiency and output? Why would owners not have greater incentives? Contemporaries, using the harsh language that was customary at the time, had no doubts about where the incentives lay. In 1796, Thomas Robertson, reporting to the Board of Agriculture, wrote: "He who pays a small rent, and much more the owner, who pays none, having no sufficient spur to industry and ingenuity, cannot be expected to be good farmers; while on the other hand, a more than adequate rent renders a farmer's profession, which at the best is not lucrative, one of the worst in civil society…Both too high rented, and too low rented farms agree in not giving proper employment to the cultivator, the one too much; the other too little" (Robertson 1796, 56-7).

Arthur Young (1741-1820), a major observer and collector of data on the agricultural question similarly argued, "high rents are an undoubted spur to industry; the farmer who pays much for his land, knows that he must be diligent, or starve…landlords, who, through a false pride, will not raise [rents], when they easily might, do an inconceivable prejudice to their country. I will venture to assert, that the man who doubles his rental, benefits the state more than

himself" (Young 1772, vol. IV, 343-5). These were hardly neutral observations about current economic realities: they were politicized statements. But as we will see in the final section, important empirical research today is leaning in the same (unpleasant) direction, that tenancy is a greater enhancer of productivity than ownership.

The logic contemporaries are capturing is, as has been mentioned, being re-assessed in contemporary literature (Johnson 1950; Dutta et al. 1989; Garrido 2011). It is also gaining ground in mainstream policy literature on the developing world. The implications may be both negative and positive in terms of the immediate welfare of the landless poor or the small farmer in the developing countries. But the well-documented effects of agricultural change on tenant farmers in England may offer some important insights on the management of negative externalities in the new allocation of rights over land that is slowly being implemented.

D. The Evolution Of The Paradigm On Property Rights, Land, And Development

International thinking on the land question has moved, over the last half century, through a number of phases. The 1960s and 70s saw a categorical defense of absolute property rights as mechanisms of growth, resulting in widespread programs around the developing world to extend land ownership. In the following two decades, it gradually came to be realized that pervasive obstacles emerged in the implementation of property rights regimes, as well as that, where applied, the programs invariably failed to generate the anticipated growth results. Furthermore, the policies imposed heavy burdens on local communities, disrupted local traditions and structures leaving little institutional framework in its place, and eventually aggravated the problem of poverty and inadequate agriculture it was intended to solve. Inequalities and disenfranchisement of sectors of the population emerged increasingly during the 1980s and 90s as a result of international and state policies.

This failure brought about a return to community and customary traditions in land holding in the 1990s and 2000s and a search for more "flexible" approaches to the problem of development. Yet, in the last decade, even the latter approach has emerged as vulnerable to the threat of elite cooptation and corruption, reproducing similar inequalities and inefficiencies as the original "modernizing" reforms of the 1970s. Current thinking has therefore lost much of its focus, as alternatives, compromises, qualifications and adjustments are presented and considered, even within the World Bank itself.

Ironically, one of the areas of growing interest is tenancy and the rental market in land. Originally side-stepped on both efficiency and redistributive grounds, as both lacking the necessary incentives to generate efficiency gains on the part of producers and as perpetuating social structures of economic inequality, it is now receiving renewed attention. This is likely to grow, the more alternatives are found wanting and the more the real incentive structure of the rental contract is explored, both in its theoretical structure and its empirical applications. Yet, it is commonly treated as a last resort and a surprising deviation from expected outcomes. The precedent offered by the English agricultural revolution of the late early modern period allows us

to re-examine both the dynamic under consideration through a broader historical perspective and the full force of its frequently harmful consequences on vulnerable sectors of the population.

Below I provide an overview of the different phases in property rights thinking, in each section providing some of the major criticisms and problems that have emerged from implementation. As the analysis shows, many theoretical and empirical puzzles in this literature appear under a radically different light once we abandon the premise that ownership is the optimal form of property right.

(i) Property Rights as Ownership

Supporting property rights to promote growth and the alleviation of poverty has been a mainstay of international thinking since at least the 1960s. In Africa, around sixty percent of the population still depends on agriculture for survival, so the land question is central to the resolution of the endemic problems of the continent. Unequal access to land, with local elites, outsiders or states controlling rights at the expense of the public good and disenfranchised groups, has long been a pervasive problem in cases like South Africa and Zimbabwe; in others, uncertain property rights were the main assumed obstacle to growth. In this context, the policy advocated by international organizations, and primarily the World Bank, of land titling and securing rights to land on a widespread basis, appeared to attempt to address the lagging productivity of the early post-colonial period.

The policy of the World Bank was laid out in the 1975 Land Reform Sector Policy Paper (1975, 38). The major recommendations in the paper included formal land titling as a precondition for modern agricultural development; abandoning communal tenure systems in favor of free-hold title and parceling of the commons; creating land markets for more efficient allocation of resources and supporting land redistribution for both efficiency and equity in more developed regions. To support this policy the World Bank implemented extensive funding programs for agriculture, land reform and rural development projects in the developing world. In the Philippines alone, lending increased from US$ 51.5 million to US$ 814.4 million between 1965 to 1979 (Borras et al. 2009, 3).

Land titling programs were adopted, targeted ones in Africa, but also extensive ones in Latin America and East Asia. Their failure to meet expectations can be measured along the main dimensions of expected improvement. Secure ownership rights were primarily expected to (a) generate significant improvements in the levels of investment by producers in the exploitation of the land, (b) to facilitate access to credit through the use of land as collateral, thus increasing available resources for investment, and (c) to increase gains from trade (Place 2009; Fenske 2011). In most accounts reviewing the impact of land titling programs, these three factors provide the main focus, especially investment and credit. A number of studies have found a modest but positive effect (Besley 1995; Deininger and Ali 2008; Platteau and Baland 2008; Gershon and Onchan 1987; Goldstein and Udry 2008; Prosterman et al. 2009).

Yet, as with every other dimension of this problem, many studies have failed to show an impact of more secure ownership rights (Schweigert and Strochlic 1994; Schweigert 2006; Jacoby et al. 2002; Holden and Yohannes 2002; Place and Hazell 1993). Some have even plausibly argued that the relation is inverted, and that the acquisition of property rights is endogenous to

investment: farmers will invest in the land they do not own, through the cultivation of trees or labor intensive crops, so as to lay a claim on the land (Brasselle et al. 2002; Wannasai and Shrestha 2008).

Less ambiguity has emerged in the study on the effects of land title on credit: most studies concur that the effects are low or non-existent (Field and Torero 2006). Besley and Ghatak (2009) find only modest effects on access to credit markets as a result of entitlement, and no improvement in labor market performance. In a study of poor suburban squatters, (Galiani and Schargrodsky 2010) find that titling does contribute to investment but not to access to credit. Similar results have been found in other parts of the world, such as Cambodia (Markussen 2008). Efforts to address this disparity focus on the volatile and punishing environment faced by farmers in the developing world, generating insurance needs that are often met through an informal market (Udry 1995). Resorting to credit with land as collateral is a high risk strategy under such conditions and one not likely to be adopted by actors operating close to subsistence levels.

But the problem is not simply one of demand; credit supply is also likely to be constrained in such environments. Deininger and Feder (2009, 246) point out a structural feature of such environments, namely "covariance of risk," the joint dependence of outcomes on weather and natural phenomena that co-occur. This means that credit default, when it occurs, will be generalized, possibly leading to multiple simultaneous foreclosures and the reduction of value of land as collateral. Local actors, both on the supply and the demand side, showed clear appreciation of the risks of credit long before external observers were forced to admit them.

The most interesting failure in the scholarship on the effects of land titling and ownership, however, lies not in overestimating their effects. Rather, most studies focus primarily on the two indicators of greater security, greater credit and greater investment. Lost in the detail of evaluating this question[10] is the fact that security itself was meant to be an intervening variable, not the ultimate dependent variable of interest. The central question is whether these policy measures result in greater *productivity*.[11]

It is surprising how few studies focus on determining whether tenure security results in greater productivity gains. And though a number of them do (Banerjee et al. 2002; Chadha and Bhaumik 1992; Markussen 2008), usually studies side-step productivity results to pay more attention to investment. Klaus Deininger, for instance, the lead economist in the Development Research Group of the World Bank, conducted a study to determine whether overlapping land rights reduce agricultural investment in Uganda, showing significant investment differences between owner-cultivated and occupant-cultivated plots, measured in terms of trees planted, use of fertilizer and other indicators (Deininger and Ali 2008).

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[10] An increasing number of studies has come to point out the difficulty in separating the effects of tenure from unobservable characteristics of plots and cultivators, a difficulty that is especially acute when comparing observations across disparate regions or times Fenske (2011). The use of fixed effects methods, whether spatial, cultivator or other, has begun to be applied in some studies Goldstein and Udry (2008), but is constrained by multiple limitations in the empirical data.

[11] In some regions, such as Sub-Saharan Africa, reform is also meant to improve transactability and bring more land under cultivation; I owe this insight to Catherine Boone.

But the measures are questionable: it is natural that fewer trees will be planted per acre on occupied (rented) land than on owned land, since fruit trees are more expensive and continue to produce for years after cultivation. All this says is that farmers are making a rational allocation of their resources between the plots they own and the plots they rent, applying long-term cultivations in the former and annuals in the latter.[12] The real question is whether one type of plot is less productive than the other, whether final output is different. Deininger himself provides the critical statistic when he reports that "crop output per acre is not significantly different between pure occupants and pure owners (US$95.3 vs. US$96.7/acre)," although the farmers who were rich enough to be both owners of some plots and to rent additional plots were the ones better off overall with crop output per acre a US$110.8/acre (Deininger and Ali 2008, 874). Yet he bypasses this fact to focus rather on investment.

It is as if the attainment of security, originally simply a means to ensure the greater productivity gains, has become an end in itself. To the degree that we observe farmers planting more trees, which means they feel more secure they will be in possession of the plot over the many number of years the tree will be bearing fruit, thus justifying the higher investment, we can conclude that the policies have been successful. But the original goal of land reform was to increase productivity to such levels as to address poverty at an aggregate level, not simply to allow those lucky enough to possess a plot of land to feel more secure. And on this dimension, an increasing number of studies has concluded that we should expect few effects from higher rates of secure land-ownership by some.

Rozelle and Swinnen conclude that "another important lesson is that full privatization of land is not needed to induce efficiency gains" (Rozelle and Swinnen 2004, 445). Instead, "allocating clear and well-identified land use and income rights can by themselves enhance efficiency, investment, and growth" (Rozelle and Swinnen 2004, 446). Place and Hazell, using household survey data from Ghana, Kenya, and Rwanda, find that land rights are not found to be a significant factor in determining investments in land improvements, use of inputs, access to credit, or the productivity of land (Place and Hazell 1993). Similar results have come from the study of the production efficiency of alternative land tenure contracts in a mixed crop–livestock system in Ethiopia (Gavian and Ehui 1999).

The results are not specific to Africa; similar conclusions emerge from studies of different regions, such as the ejidos in Mexico (Johnson 2001), China (Jacoby et al. 2002), Madagascar (Jacoby and Minten 2007), and the Honduras (Jansen and Roquas 1998) among others. As the Jansen and Roquas study in particular emphasizes, these failures are not the result simply of bureaucratic inefficiency, but of mistaken assumptions about the logical consequences of policy reforms within the particular socio-economic settings, and especially about the role of the state. Most of these policies are formulated with the intention of removing the state from the economic sphere, yet absent a strong and effective authority to enforce decisions and new laws, land titling programs often lead to more social conflict, uncertainty, and legal complications, all of which end up dampening investment incentives and productive outcomes (Jansen and Roquas 1998).

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[12] Moreover, as mentioned elsewhere, in other regions such measures are seriously compromised by the fact that insecure landholders adopt perennial crops in order to acquire basic land use rights and entitlement to subsequent legal registration Wannasai and Shrestha (2008).

In sum, a multitude of empirical problems on precisely the dimensions the World Bank embarked to tackle has profoundly affected current thinking about the land question. The track record is such that these programs cannot even be justified to have sacrificed social justice, as they did throughout their area of application, for the sake of efficiency, since the efficiency gains have not materialized on a systematic basis.[13] This has allowed a number of alternative voices to emerge. I will touch on these briefly, before highlighting the turn towards rental markets as an alternative strategy.

(ii) Community structures and Customary tenures

For reform to work, local community elites had to cooperate, a point that became quickly apparent; without co-optation and without some adjustment to local customs, reforms simply lapsed or were mired in legal complications that undermined any change. This led to a movement to re-evaluate the contribution of neocustomary land rights to productivity (Alden Wily 2008; Boone 2003). Customary rights took a great number of different forms.[14] A widely prevalent form, that of communal land rights, has received a re-assessment. Normative arguments, such as the need to respect local traditions, do not have much sway in the mainstream of development literature, but efficiency-based claims in their favor have been cogently advanced. In theory, under zero transaction costs, communal property rights allow rights-holders to internalize transaction costs as efficiently as under private property (Platteau, 2000, chapter 3*).

In practice, studies have also shown that communal arrangements have no significant disadvantages in encouraging investment or securing rights of use. Some scholars have concluded that "a 'bundle of rights' approach, allowing formalisation of multiple rights among multiple users, may be more appropriate in marginal areas where mobility and flexibility is necessary to utilize seasonal variations and to cope with risk" (Benjaminsen et al. 2009, 34). They can, under some circumstances, be superior to private rights (Besley and Ghatak 2009; Woodhouse 2003). Again, this is not an Africa-specific feature: communal rights are showing great resilience in other parts of the world as well, especially Latin America. For instance, in Mexico, over half (52%) of the land area is held under community-based tenure, principally, the ejidos (Barnes 2009). Similar conclusions have been seen with respect to customary tenures, individualized tenures that follow traditional custom, not market norms. Some scholars have shown that customary tenure provides sufficient security to stimulate investment (Brasselle et al. 2002).

Though the findings of this literature have been robust enough to be acknowledged even within the mainstream of development thinking (see footnote 13 above), they increasingly run across a further obstacle: that of elite, local corruption (Ubink and Quan 2008). This was the same problem that underlay the failure of the title registration problem (Benjaminsen et al. 2009),

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[13] Most remarkable is the cautious and limited scope of claims in recent articles by the chief economist for development at the World Bank, Klaus Deininger; see Deininger and Ali (2008), Deininger, et al. (2008a), Deininger and Feder (2009), Deininger, et al. (2008b).

[14] Alden Wily (2008) provides a careful distinction between communal rights, customary rights, common property, communal tenure and other terms. All state-backed "neocustomary" tenure regimes were created in the 20th century and are not "traditional" in the everyday sense of this word. See Boone (2003) for an extensive discussion and literature review.

undermining earlier neo-liberal reforms. The obstacle of corruption is widely acknowledged also in the context of reforms aiming to be more participatory, democratic and bottom-up (Peters 2004). These dynamics are pervasive in most developed societies, so it is not surprising they are besetting developing countries as well, in the absence of public authority with enforcing capabilities. The more such evidence accrues, the more this alternative will come into question, leaving few alternatives behind.

This is especially so given the uneasy relation between community traditions and the powerful movement of women's rights in the developing world, widely seen as a key route towards progress and development. Since local traditions tended to be patriarchal, an escape from such traditions had offered at least the theoretical promise of greater empowerment: land titling on an individual, not a family or communal basis, could have been the best means for women to acquire property rights, yet it was not long before it became clear that land titling programs could marginalize vulnerable groups even more (Lastarria-Cornhiel 1997; Kalabamu 2006; Henrysson and Joireman 2009). These dynamics highlighted the need to address women's property rights for any efficient and successful land reform (Meinzen-Dick and Mwangi 2009; Joireman 2008). The imperative is all the more clear in the turn towards community and customary traditions, where women were traditionally disadvantaged. The empirical record in both approaches has suggested to some scholars that neither state-led nor community-based programs can address the negative impact on women without some affirmative action (Varley 2007).

(iii) Tenancy and the Rental Market

One alternative that is slowly gaining ground in the mainstream of development thinking is the emphasis on the rental market and tenancy (Deininger and Feder 2009; Deininger et al. 2008b). Tenancy was originally rejected on both efficiency and redistributive grounds: tenants were seen to lack the incentives to invest in their land, and thus achieve efficiency gains; at the same time, tenancy is generally thought of as insecure and leaves individual producers exposed to the arbitrary actions of landlords who have little concern for their welfare. It is thought to perpetuate social inequality, keeping substantial sectors of the population both at subsistence levels and at an insecure existence. In many parts of the world, it has exemplified the worst aspects of poverty and distributive injustice (Borras et al. 2009; Borras et al. 2007; Payer 1979).

These concerns are fully justified, but there are many reasons why this alternative will need to be carefully examined: first, as mentioned, it is gaining ground at the core of mainstream thinking on development, which means that it is likely to be applied at increasing rates, regardless of objections on the grounds of justice; second, there are encouraging signs that under certain conditions, tenancy may leave small producers both better off and more efficient, so it is important to specify what those conditions are; thirdly, it cannot be a coincidence that the European agricultural revolution was mostly predicated on tenured productivity, so it will be fruitful to examine historical precedent so as to better determine possible outcomes, implications, and undesirable consequences.
However, as Polanyi (1944) and others have shown the social dimensions of the European economic transformation were dire. It should not be assumed that simply because one ill-

begotten idea with often deeply damaging consequences on local conditions, that of private ownership, has been eventually shown to be less than adequate to its task, that its latest replacement is an improvement as far as immediate social welfare is concerned. Whereas the old paradigm at least offered security as the ultimate outcome of these transformations, however misleadingly, the latest paradigm clearly subjects producers to the relentless insecurity of the market. Even when long-term contracts are involved, they are still predicated upon sufficient gains to cover rent and costs. More efficient it may be; more just or more secure it cannot be assumed for the majority of the farming population, certainly not in the short term. The less this fact is directly confronted, the less likely it is that corrective measures will be applied in tandem with the policies to mitigate their worst effects.

Compared to the assumed benefits of landownership, tenancy was considered a backward step and was thus actively discouraged in the early stages of development policies after the 1960s, except where no alternative was possible. Increasingly however, evidence has been emerging that showed that tenants, under certain conditions, generated outputs equivalent to those under pure ownership (Deininger and Feder 2009). Moreover, careful local studies have shown that not all tenants are immiserated and that strong gradations of wealth exist within the tenanted class, with some tenants exhibiting wealth superior to that of many small owner-farmers (Rigg 1988). Evidence from West Bengal has shown positive effects on productivity (Chadha and Bhaumik 1992; Banerjee et al. 2002; "Left Gets It Right: India" 1993). Again similar results are emerging in other parts of the world (Jin and Deininger 2009; Otsuka 2007).

The logic here is mainly that a tenant is forced to be productive and efficient in order to retain control over his rental, which provides his livelihood. This means incentives are there to produce in excess of subsistence amounts, which is all that an owner is *forced* to procure for himself. The emphasis on force is crucial, as the mechanism depends on such compulsion.[15] In any case, if surplus is not produced, aggregate output is not changed; the unit is simply self-sustained, without contributing to aggregate supply of goods. Productivity is thus not raised. This principle was understood clearly in eighteenth century debates, as discussed, and has received theoretical confirmation in modern economics as well, as increasingly recognized (Johnson 1950; Dutta et al. 1989).

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I have given a necessarily cursory overview of a large literature on the land question, highlighting the main phases through which it has passed. I have tried to show that the original emphasis on property rights understood as ownership has run aground serious empirical difficulties, leading to a retreat of the paradigm in both thinking and practice, and to the emergence of a new set of ideas, some adjusting to existing structures and traditions on the ground, and some seeking an alternative within the market model, that of tenancy.

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[15] This is why the assumption of credit, i.e. the use of land as collateral for a bank loan, could not substitute for this dynamic: it can only be voluntary. And it cannot be assumed that under developing conditions rational economic actors would choose to put themselves into debt, since once a mortgage is assumed, failure to pay means not only loss of the land but, most probably, a lifelong debt to the issuing institution.

The emphasis on ownership appealed to disparate constituencies—economists holding to the apparently sound economic logic regarding efficiency gains, economists and activists concerned with the deeply inegalitarian property conditions in the developing world and seeking widespread ownership as key to any redistributive program, and Jeffersonian democrats who hold ownership, especially of land, as a prerequisite for social and political empowerment. All these constituencies have been mostly disappointed with the outcome of applied programs over many decades, and the more careful and detailed the studies become, the more it becomes apparent that it is not simply bureaucratic, administrative or state inefficiencies that are to blame, but market and environmental conditions in tandem with assumptions about preference structures of local actors.

Nonetheless, I argue that a more adequate understanding of the historical record—on which, after all, neo-institutionalist and development theory claimed to be based—would have pre-empted this unfortunate experiment at the expense of some of the most vulnerable populations. Moreover, it now appears that tenancy is likely to be increasingly the policy of choice, given local limitations, as is suggested by some of the most recent writings on the topic. The historical record of England has striking similarities to key conditions in the developing world, but especially Africa: low market development and co-existence of fledgling ownership structures with communal and customary tenures. A clearer conception of the historical record might have prevented failed experiments and may offer better guidance for more successful ones.

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