

Book Review

The Invisible Line: Land Reform, Land Tenure Security and Land Registration, *by* Henri A.L. Dekker

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Reviewed by: Joseph Blocher

Land makes up three quarters of the wealth of most developing nations and plays crucial social, customary, and religious roles. Land reform is thus a major focus of economic development and human rights programs. Recent popular works by writers such as Hernando de Soto extol the virtues and apparent benefits of increased land tenure security and suggest that the Third World can expect explosive economic growth if property rights can be established, formalized, and protected.

The focus on formal property rights as an antecedent to economic growth is not a recent development. In the past fifty years, citizens of developing countries have been subjected to a flurry of land tenure reform projects, most of them involving Western-style title registration. Though some of these programs have apparently helped spark economic growth—Gershon Feder's oft-cited study of Thailand is perhaps the best-known example—many more have been disappointing at best, and counter-productive at worst. To help explain these successes and failures, economic and legal theorists have put forth a number of competing theories for why land rights—"invisible," socially-constructed lines—evolve in the first place, and why their existence can and should contribute to economic growth and social stability.

Henri A.L. Dekker's *The Invisible Line*, a broad study of land policy and theory, is a welcome addition to this critical debate. Though its breadth and analysis make it valuable to anyone interested in property, it should be of particular interest to development theorists, as it provides a comprehensive, thought-provoking, and practical introduction to property and development generally. Land policy makers around the world would be well-served by using it as a reference.

Dekker conceives of land rights as "invisible lines" that exist independent of topographical features. After briefly surveying the very

visible issues of poverty, hunger, and distribution that inevitably accompany discussions of property, Dekker devotes the bulk of his important work to a wide-ranging but well-grounded exploration of property, ownership, and the relationships between land, state, and society.

The Invisible Line charts a long-overdue course between arguments favoring formal land registration and proponents of local, customary control. Dekker recognizes that custom is not always the problem, but also argues that legal pluralism is not always the answer. His approach is above all pragmatic, recognizing that land reform—whether title registration, deed registration, or the introduction of title insurance—is a polycentric, complex process which cannot succeed without broad participation and wide-ranging policy reforms. Dekker stresses the need for incremental change that takes account of existing traditional landholding. Like De Soto, whose work has popularized the commitment to formal property rights as a precursor to development, Dekker recognizes that political commitment is necessary for the success of any land reform program. Land tenure reform is no panacea. It is nonetheless an essential part of any development program.

Moreover, Dekker rightly focuses on the *perception* of tenure security as the most important factor in measuring the effects of tenure reform, rather than the technological accuracy or advancement of the system. Many property rights theorists err by imagining property rights as being entirely imposed by the state and created by computerized maps, rather than being manifested in customs and socio-economic relations. Dekker sees both sides of the equation: that the state has a vital role and interest in land tenure, but that wholesale, top-down property reform is unlikely to change actual property practices. Tradition does not easily yield to new property regimes, as the difficulties of legal reforms in Russia and throughout Africa demonstrate. Though Dekker does not mention it specifically, the failure of the early Law and Development movement in the United States tells a similar cautionary tale to those who would export property solutions from the West. The United States Agency for International Development (USAID) attempted to apply Law and Development theory in the 1960s and 1970s by grafting American business and property forms onto development economies. The results were disappointing.

The Invisible Line's pragmatism rightfully avoids easy answers to land reform. However, on the specific issue of deed and title registration, Dekker seems to display an optimism that has not always proven justified in practice. He cites Feder's study on title registration in Thailand, which found a positive correlation between registration and economic development, and says that registration is "highly recommendable."¹ Indeed, this was the party line of the World Bank for at least three decades. Dekker does not, however, explore the many economic and legal studies

¹ HENRI A. L. DEKKER, *THE INVISIBLE LINE: LAND REFORM, LAND TENURE SECURITY AND LAND REGISTRATION* 116 (2003).

showing exactly the opposite effects in places such as Kenya, where a fifty-year title registration program has resulted in disempowerment of tribal groups, economic stagnation, and fragmentation of ownership. Empirical studies attempting to establish a connection between land formalization (drawing and recording "invisible lines") and economic growth have had distinctly mixed results. Increasingly, development agencies—including the World Bank—are emphasizing what Dekker himself acknowledges: that land registration is not a silver bullet solution, and that there are a number of prerequisites to successful registration.

Similarly, Dekker places too much emphasis on the importance of standardization in land title registration, at the expense of local control and variation. Land rights vary locally, not just in form, but also in content, particularly in the many areas where land relations are still governed by custom. Attempts to standardize are bound to fail when they do not take into account these local variations, because landowners will continue to follow the customary law they know. The current trend in land reform in Africa, for example, is to focus on *discovering* invisible lines, rather than on drawing them. Development agencies such as Britain's Department for International Development (DFID), and even the World Bank (reversing its earlier policy approach), have increasingly focused on local and even customary control of registration. Dekker is right to say that "simplicity is the key,"² but simplicity and standardization are not always the same thing.

Though Dekker recognizes that land has social value, he does not give much attention to the specific impact that land registration and land markets can have on certain at-risk groups. Given the breadth of his book, this would be a near-impossible task. From a human rights perspective, however, some people's rights to land are more "invisible" than others. In developing countries moving from a customary method of land tenure to a more Western method of statutory recording, for example, holders of customary land rights often find their land rights threatened or extinguished by well-intentioned land reform. This is especially true for women and other 'secondary' users of land, because title registration programs generally vest title in a single owner—often a man—who, as a result, might have more powers of exclusion or alienation than he had under the customary regime. Customary social sanctions, which title registration distorts without always effectively replacing, are often the only safety net protecting these secondary users, whose importance in both a social and economic sense cannot be underestimated. In much of Africa, 'secondary' use, such as small-scale family farming, makes up the backbone of the agricultural economy. Rights can be "invisible" in the way that Dekker describes—because they exist as legal creations, and not as topographical features—but they can also *become* invisible when they are threatened or eliminated by misguided land reform. Secondary users throughout Africa, for example, have had grazing and other access rights

² *Id.* at 148.

extinguished by title registration schemes. Economies, tribes, and nations have suffered as a result.

Though Dekker covers an impressive amount of theoretical ground in just 200 pages, a number of important frameworks for studying property and development would have served as helpful foils to his discussion. Despite introducing the concept of "institutions" on page one, Dekker does not explore New Institutional Economics (NIE), which is currently the dominant mode of analysis for property in a development context and which specifically addresses the rise of property rights as a social and economic institution. For all of its wide-ranging historical and political analysis, *The Invisible Line* leaves out such fundamentally important property rights theorists as Harold Demsetz, Douglass North, and Ronald Coase. This exclusion might have been a necessary concession for clarity's sake, but a brief explanation of NIE would give more structure to Dekker's discussion of the rise of property rights.

The Invisible Line is an invaluable introduction to the theory and practice of land tenure policy and land reform. It explains with superb clarity the concepts and debates surrounding land, and in so doing frames the larger debate about property and development. But from the more unique perspective of rights and development, the reality in much of the developing world is that land rights are not so much invisible as disappearing.