

When Is Legal Titling An Economic Answer to Political Violence?

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Abstract: Legal titling, because it promises to reduce participation in insurgency and terrorism by creating economic opportunities, represents an economic approach to soft power—winning “hearts and minds” of civilians during conflict. Despite its widespread use in state-building, this paper argues that legal titling is unlikely to reduce political violence in fragile states. We use insights from the public choice and self-governance literatures to clarify under what conditions legal titling improves economic opportunities. Generally speaking, these conditions are unlikely to be met in fragile states. We illustrate the argument using evidence from Afghanistan. Legal titling is conceptually inappropriate and the programs to date have been unsuccessful in improving household land tenure security. The strength of self-governing property arrangements suggests that community-based land reforms that eschew a role for the state in the land registration process are more likely to undermine support for insurgents than legal titling.

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Introduction

Legal titling, which refers to registration of land ownership through a formal legal process, is often prescribed in developing and fragile states in order to improve prospects for economic development. However, the consequences of legal titling are not limited to improving prosperity. Hernando de Soto (2002, p. xxxix) suggests that market-based reforms such as legal titling also serve as a counterterrorism and counterinsurgency strategy:

If governments create the legal property tools that they require for their enterprises to prosper, they will become part of the legal expanded market. If governments do not take them seriously as economic agents, if governments see them only as a nuisance or passive recipients of charity, the resentment among the poor against the status quo will only increase. Enter the terrorists, eager to exploit the hostility against the state, encouraging the poor to focus on their exclusion rather than on their aspirations to resemble the affluent citizens of the market democracies of the West.

De Soto's argument is based on the familiar opportunity costs explanation for political violence. According to this perspective, the participation in political violence is a rational calculation that depends in part on economic opportunities, such as whether people have jobs (Berman et al., 2011; Fearon and Laitin, 2003). The question is which economic institutions are necessary for enterprise to prosper. De Soto's (2000) answer is private property rights. This view is based in part on the finding of economic historians that private ownership is the fundamental explanation for economic growth and political order (North, 1990; North et al., 2009; North and Thomas, 1973).

The argument that property insecurity breeds political conflict is neither new nor particularly controversial. Indeed, land conflicts often lie at the root of political conflict (Boone, 2013). However, the extent to which legal titling will reduce the return to political violence, in particular in fragile states, is questionable. The reason is that for legal titling to improve economic opportunities, it must be implemented in the "right" political context, in particular ones in which the government has sufficient administrative capacity to specify and enforce

property rights, politicians are constrained from breaking their promises to respect private property rights, political institutions are inclusive, and the government embeds legal titling in a coherent set of policy and institutional reforms that reduce the costs of participating in markets. In addition, it is important to identify that those whose land rights are unrecognized by the state actually suffer from property insecurity. The reason why we are less optimistic about legal titling as an economic answer to political violence is because self-governance often works well in many developing contexts and these political institutional prerequisites are not met in most fragile states. In many persistently weak states, wracked by civil conflict individuals often devise or revive informal rules for land management.

We illustrate our argument using evidence from Afghanistan, where the Taliban insurgency continues to undermine the state-building process, which commenced in 2001. A number of scholarly and journalistic accounts find that property insecurity contributes to the ongoing conflict in Afghanistan. In some communities, conflict between nomads and agricultural communities creates a space for the Taliban to operate (Alden Wily, 2009; Foschini, 2012, 2013a; Stanfield et al., 2010; Stanfield et al., 2013). There are also accounts that find the Taliban has increased its legitimacy by resolving land conflicts (Giustozzi et al., 2012; Malkasian, 2013). During his election campaign, President Ashraf Ghani made combatting land grabbing and formally registering land ownership a major component of his political agenda (Ghani, 2014).

To some extent, these findings comported with evidence from fieldwork we collected in rural Afghanistan. For example, a district governor in Bamiyan, in central Afghanistan, mentioned a fear of conflict between Afghan nomads as a source not only of economic underdevelopment, but also political violence: “If hundreds of kuchis [Pasthun nomads] come to

this area, they will destroy the agriculture of our district....The second problem is that if the kuchis return, then terrorists will accompany them—like Al Qaeda and the Taliban.”¹

In light of these accounts, it is unsurprising that there have been several legal titling projects completed in the country since 2001. Yet our reading of the major legal titling projects that have been implemented to date suggests that they have done little to improve household land tenure security. Our conceptual framework helps to understand why legal titling has not lived up to its promise. Perhaps most importantly, our fieldwork in rural Afghanistan found that self-governance works surprisingly well, including in resolving land conflicts. This suggests that the underlying source of conflict is not property insecurity, but something else entirely—and why legal titling is unlikely to change the return to insurgency. In addition, the Afghan state lacks the capacity or political constraints to implement a legal titling project effectively. Thus, policymakers should not expect legal titling to “flip” or to turn people away from the Taliban. However, we find that community-based land reforms that eschew a role for the state have been more effective in improving household land tenure security and therefore represent a more compelling economic answer to terrorism.

One of the contributions of this paper is to illustrate a point of intersection between the international relations literature on soft power and the institutional economics literature on the role of property rights in political and economic development. Hard power, or coercion, is the conventional method used to combating terrorism and insurgency. Soft power, in contrast, refers to policies that seek to accomplish objectives by persuading others to adopt goals and contrasts with the carrots and sticks of economic and military power (Nye, 1990). Both hard and soft

¹ Interview, district governor, Panjab District, Bamiyan Province, 2007. Many Afghans refer to Pashtun nomads as Kuchis. There are nomads besides Pashtuns (Barfield, 1981). However, Pashtuns are the largest ethnic group in Afghanistan and Kuchis have often allied with the ruling class in efforts to subjugate areas in Pashtun-minority areas.

power are important in combating terrorism and insurgency, although soft power is cheaper than coercion (Nye, 2004). Soft power perspectives also acknowledges the finding in the terrorism literature that economic vulnerability is an important explanation for political violence (Abadie, 2006; Berrebi and Ostwald, 2011). In addition, soft power presumes that information campaigns can change people's minds about participation in and support for terrorists and insurgents.

The tactics of soft power include efforts to counter terrorism and insurgency with development assistance funded through foreign aid. Development projects promise to improve political order because of the perceived relationship between economic opportunities and incentives to participate in rebellion (Berman et al., 2011; Kilcullen, 2010). Such perspectives presume that people trade off productive economic activities with violent ones and that when people have meaningful jobs they are less likely to participate in violence because they have more to give up (Fearon and Laitin, 2003). State failure appears to lead to terrorism, which suggests that aid-driven provision of public goods could reduce terrorism by performing functions that the state once performed (Coggins, 2014). For example, the USAID Peace Through Development project, which has been implemented in several sub-Saharan African countries, hopes to increase community resilience to violent extremism through provision of training on civic education, vocational and entrepreneurial skills and leadership, fostering moderate voices and attitudes through radio and social media, and strengthening civil society (Aldrich, 2014). The project promises to reduce political violence through persuasion.

The institutional economics literature is also implicitly interested in soft power, albeit from the perspective of establishing institutions that encourage economic opportunities to improve both economic and political outcomes. Institutions are the rules of the game in society that structure the incentives and opportunities of individuals and groups (North, 1990; Ostrom,

1990). Institutional theories suggest that changing the behavior of individuals and organizations is largely a question of getting the institutions right (Williamson, 2000). Designing institutions that provide people with better economic opportunities, rather than relying exclusively on coercive tactics, such as military and intelligence operations, is an important economic way to reduce violence—that is, an economic approach to soft power. Although Coyne (2008) has argued that soft power includes free trade and non-intervention in foreign policy, our paper shows why the economics of soft power can also include building liberal market institutions. These interventions contrast with coercion while recognizing that trade and markets depend on establishing the appropriate institutional framework.

Another contribution is to extend the literature on “winning hearts and minds” beyond foreign aid. Currently, the literature on winning hearts and minds emphasizes foreign aid (Berman et al., 2011; Fearon and Laitin, 2003). To date, this literature has not explicitly considered legal titling as a counterterrorism or counterinsurgency strategy.

This paper also complements a large literature that investigates the link between landholding inequality and political violence. The literature in this area finds that in some cases land expropriation and redistribution contributes to political order (Albertus and Kaplan, 2013; Gwenhamo et al., 2012; Huntington, 1968; Steele, 2011). We contribute to this literature by considering the extent to which legal titling, as opposed to land expropriation and redistribution, promises to reduce political violence.

Finally, we find support for an economic approach to soft power, but not necessarily for legal titling. Community-based land registration—an approach often neglected by those seeking to extend states after or during conflict—recognizes that improving economic institutions can increase prospects for peace. In this regard, it is an example how reform of property institutions

matters. Yet we are also clear that in many fragile states, legal titling is unlikely to improve prospects for political order.

Legal titling and political violence

Property rights are the fundamental economic institutions because they determine ownership relations (Barzel, 2002, 1989; Libecap, 1989). One of the reasons why economists focus on private property rights is because they associated with long-run economic growth (Acemoglu et al., 2005; Mokyr, 1990; Sokoloff and Engerman, 2000). In the absence of property rights, people have incentives to engage in predation. The creation of private property rights creates incentives to turn swords into ploughshares (Grossman, 1994; Grossman and Kim, 1995; Hafer, 2006).

The structure of property rights also has important implications for political order (Acemoglu and Robinson, 2012; Albertus, 2015; De Soto, 2000; Huntington, 1968; Moore, 1966; North, 1981; Stasavage, 2014, 2011). North and Thomas' (1973) economic history of Western Europe made a compelling case that variation in the quality of private property rights contributed to the decline of Spanish hegemony and the rise of England as Europe's dominant power by the seventeenth century. Spain was more powerful than England during the fifteenth and sixteenth centuries, both in military strength and in its resource endowments. Property rights to agricultural land began to evolve in England in more or less spontaneous fashion because the English Crown was too weak to prevent the emergence of freehold estates in the countryside but was strong enough to defeat feudal lords competing for authority (North and Weingast, 1989). One of the consequences of the spread of freehold estates was a steady rise in agricultural production. The Crown's willingness to use land to compensate its soldiers further increased agricultural productivity but also contributed to a nation of armed landholders with military skills that could resist transgressions against property by the state (North et al., 2009). Spain, in

contrast, had to rely on its colonial possessions for agricultural goods because the political regime privileged the Mesta, a group of politically powerful nomads. Spanish agricultural production declined because nomads preferred weak property rights to agricultural land. Eventually, Spain was forced to divert naval resources from production to protecting supply routes, thereby allowing England to focus its naval power on war-making and defense because stronger property rights domestically encouraged agricultural production.

A more recent example of the property-political order link is de Soto's work on insurgency in Peru. De Soto suggests that the Shining Path movement was in part a result of the unwillingness of the government to recognize peasants as economic actors. One path is communism, which people turn to because they had few economic opportunities. The other path is capitalism, which promises political stability by providing people with economic opportunities, thereby making it more costly to participate in political violence.

There are few reasons to doubt that improved opportunities to participate in markets would reduce support for an insurgency. However, it is not always clear that legal titling will actually improve economic opportunities. The reason is that the consequences of legal titling are expected to depend heavily on the governance context where such policies are implemented.

First, in order for legal titling to improve economic opportunities, it is necessary to show that people who lack legal recognition of their ownership actually suffer from property insecurity. It is often assumed that anarchy—the absence of state involvement in community affairs—leads to disorder. However, self-governance often works well in organizing economic, political, and social activities, including in situations when the state is predatory (Anderson and Hill, 2004; Leeson, 2014, 2007a, 2007b, 2006; Murtazashvili, 2013; Ostrom et al., 1992; Scott, 2012, 2009, Skarbek, 2014, 2011).

One of the areas where self-governance has been studied extensively is in land governance. Much of the work in this area is informed by Elinor Ostrom's (1990) *Governing the Commons*, which showed that self-governance is often effective in encouraging resource conservation. A central theme in this tradition is that land ownership is often secure in many contexts even when people's ownership is not formally recognized (Bromley, 2009; Sjaastad and Bromley, 1997; Toulmin, 2009). In fact, one of the important findings in this literature is that the law—rather than property security—is often to blame for property insecurity in the African context (Alden Wily, 2011).

The self-governance perspective has important implications for what we ought to expect from legal titling. Much of the legal titling literature is based on the presumption that self-governing arrangements are ineffective or inefficient. However, when self-governing arrangements work well, it is unclear that legal titling will reduce the economic return to violence. Rather, in such situations, the reasons for violence are likely to have origins in something other than property insecurity and we should not expect a titling project to change the economic return to political violence.

A second contextual factor to consider is the extent to which legal titling—or private ownership—is even appropriate for a given context. Another central finding in the literature on land governance in the developing world is that there are a diversity of property arrangements besides private property that can be effective in internalizing the externalities associated with use of common-pool resources (Ostrom, 2005, 1990). In some contexts, communal ownership is appropriate, while in other situations, state ownership may be more likely to improve economic outcomes (Bromley, 1991; Liu et al., 1998). In situations when private ownership is inappropriate, efforts to impose legal titles can lead to conflict as legal titling leads to distributive

conflict over the gains associated from private ownership (Boone, 2012; Tripp, 1997). Legal titling may also destabilize informal property relations in ways that make reestablishing cooperation quite challenging (Ostrom and Gardner, 1993).

Even when those without legal recognition suffer property insecurity, it is far from clear that the state is able to formally record ownership in a way that meaningfully changes the economic constraints facing the actors. A third factor to consider is whether or not the government has the capacity to implement land registration in order to rectify this situation. Land registration is costly and requires providing repositories of information about landholding (Arruñada, 2014, 2012; Arruñada and Garoupa, 2005). Unfortunately, most developing contexts—in particular fragile states—have very weak administrative capacity (Andrews, 2013). In such contexts, legal titling may not offer individuals a reliable alternative to customary and informal land governance.

Fourth, it is important that legal titling projects are implemented in a context in which politicians face constraints from renegeing on their promises to respect private property rights. Private property rights vary in credibility of persistence, which refers to the expectation that the government will respect property rights in the future (Riker and Weimer, 1993). The structure of political institutions, such as separation of powers, is important to determining credibility of persistence of private property rights (North and Weingast, 1989). In some autocracies, strong political parties or ties between parties and powerful groups can serve to commit politicians to respect for property rights (Gehlbach et al., 2010; Gehlbach and Keefer, 2011; Haber et al., 2003).

The institutionalization of constraints on government will generally improve credibility of persistence of property rights. However, in many developing contexts, governments cannot

commit credibly to institutional reforms that promise to strengthen the state and markets (Coyne and Boettke, 2009; Flores and Nooruddin, 2012). In many contexts, people will have few incentives to invest in their land even if the government issues legal titles because they do not expect the government to honor these promises.

It is also important to consider the extent to which political institutions are locally inclusive, mainly because such institutions increase the chances that the government chooses land policies that are appropriate to a given context. In addition, local democracy can constrain the state so that it respects the rights of citizens (Myerson, 2014; Weingast, 1995). Locally inclusive political institutions can also provide better opportunities for citizens to provide feedback on policies. Such feedback is especially important during development processes because there is a great deal of uncertainty about what sorts of development policies actually work in facilitating economic development (Ostrom, 2011; Pritchett et al., 2013). Thus, one expects legal titling to succeed when implemented in a context in which there are opportunities to participate in policymaking at the local level.

Finally, legal titling should be embedded in broader investments that increase the ability of people to participate in markets. A legal title is but one small part of a market economy. To improve livelihoods, people with secure land tenure also require roads, schools, and opportunities for work (Bromley, 2009; Bromley and Anderson, 2012). For example, a legal title is not much use when individuals do not have paved roads to transport their goods to markets or when they have to pay numerous bribes along the way to markets.

We can summarize the discussion by stating six contextual conditions that increase the chances that legal titling will improve property security and hence reduce the economic return to violence:

- 1) People whose tenure is irregular or undocumented suffer from land tenure insecurity.
- 2) Private property rights, rather than common property or state ownership, are appropriate institutional solutions in that particular context.
- 3) The state has administrative capacity to document ownership, provide land registries, and to adjudicate disputes over land.
- 4) Institutional constraints impose costs upon politicians for renegeing on their promises to respect property rights.
- 5) Political institutions are locally inclusive, in particular in allowing people to participate in collective deliberations regarding land governance.
- 6) The government invests in public goods that allow people with legal titles to participate in markets, such as investments in roads, schools, security, and good governance (e.g., fighting corruption).

Land, insurgency, and legal titling in Afghanistan

This section applies the framework to Afghanistan. The country has had several rounds of elections since the US military forced the Taliban government from power in 2001. Despite tremendous investment, state-building has not lived up to its promise of improving security and economic development (Murtazashvili, 2015; Suhrke, 2011). The country has also faced an ongoing insurgency throughout the state-building process (Giustozzi, 2009, 2008). Corruption has also undermined the substantial efforts to promote democracy at the national level (Coburn and Larson, 2014; Weidmann and Callen, 2013). Legal titling has been proposed as a solution to some of the challenges confronting the country. We consider the extent to which such projects are appropriate for the context, as well as the consequences of the legal titling projects to date.

After considering legal titling, we consider the community-based alternatives to legal titling that have been implemented in the country.

Land conflict in Afghanistan

There are a number of ways in which land issues contribute to conflict in Afghanistan. Many of these conflicts have their origins in old policies that continue to reverberate in many parts of the country. Many of the conflicts over pasture, which are have turned violent in several parts of the country recently, can be attributed to the land policies of Abdur Rahman, who earned a reputation as the Iron Amir for his violent state-building campaign from 1880 to 1901. His tactics of state consolidation included instrumental use of land redistribution and imposition of state ownership of land to accomplish political objectives (Murtazashvili and Murtazashvili, 2016a). For example, he granted Pashtun nomads access to pasture lands in central Afghanistan in order to subjugate ethnic Hazaras, one of the largest non-Pashtun ethnic groups in the country (Barfield, 2010; Rahman, 1900). The reason for providing Pashtun nomads with these access rights was to assist in the internal colonization of the lands of central Afghanistan, populated by ethnic Hazaras (Dupree, 1973). Today, there remains substantial confusion over ownership of pasture, much of it resulting from competition over land (Alden Wily, 2009; Stanfield et al., 2010; Stanfield et al., 2013). In this context, land reform promises to improve prospects for peace on the pasture (Schütte, 2015).

Land expropriation and repopulation campaigns from the past also contribute to conflict in the current context. Some of the land grievances date back to the Khalq government, which was in power from April 1978 to December 1979. The Khalq (lit. “people”) were the more

radical faction of the People's Democratic Party of Afghanistan.² In late 1978, the Khalq announced plans for land redistribution published in the local papers. These plans presumed that land relations in Afghanistan were “quasi-feudal” and exploitative (Kabul Times, 1978a, 1978b). The government soon declared land redistribution was a success (Kabul Times, 1979).

Despite government propaganda saying otherwise, land redistribution was a failure (Dupree, 1989). The government was unable to implement land redistribution in many areas. Where the government attempted land redistribution, it was met with resistance. Part of the problem was that the Khalq did not anticipate the support of rural Afghans for private property rights (Edwards, 2002). Redistribution of land from one Muslim to another also coordinated the mujahedeen on the belief in jihad against the Communist government (Zaeff, 2013). Land issues became a persistent bargaining issue between various alliances during the Afghan civil war (Christia, 2012).

The Taliban government attempted to resolve land grievances arising from land expropriation. The Land Management Law of 2000 declared that land taken by the communist government would be returned to the rightful owners.³ However, it is unclear to what extent this law influenced land grievances because the Taliban government was generally unable to implement its policies.

Garmser, which is a district in the southern province of Helmand, is one of the areas of the country that has been particularly unstable. One of the most important sources of conflict are land grievances from decades-old government policies, in particular forced relocation of many people. Afghan leaders have often used repopulation campaigns in efforts to solidify political

² The more moderate faction, the Parcham (lit. “flag” or “banner”), was purged of leadership positions shortly after the Khalqis took control of the government. The reckless pace of reform led the Soviets to invade Afghanistan in early 1979 in an effort to impose some semblance of order on the country (Dorransoro, 2013).

³ Land Management Law of 2000. Taliban government.

control, and while many of these campaigns were conducted in the 1880s and 1890s, they continued well into the 1950s (Murtazashvili and Murtazashvili, 2016b). These forced relocations to unproductive land provide an opportunity for the Taliban to enter the region in the hopes of addressing land grievances (Malkasian, 2013).⁴

After 2001, the Taliban have also been using land disputes as a way to provide public goods in some regions of the country. The Taliban have in some regions established courts in order to increase ability of people to resolve land disputes (Giustozzi et al., 2012). The potential that the Taliban improves its reputation among the public suggests that the government of Afghanistan could win hearts and minds of Afghans in these regions by clarifying property relations and providing more competent land courts.

Many in the development community and also key Afghan policymakers perceive informality as a specific source of economic underdevelopment and political instability. In urban contexts, there are many unplanned sectors. In Kabul, up to 70% of land is not formally registered (UN-Habitat, 2015a). Informality in urban areas is associated with conflict over land and low levels of public and private investment.

To better understand land governance throughout Afghanistan, we included a number of land-related questions in a nationally-representative survey of the Afghan population. The survey was implemented in 2011 and includes 8,620 respondents. One of the important findings of the survey was that very few people have legal titles to the land they own, in particular in rural areas. According to our survey, only around 19% of rural Afghans have legal documentation of their land.⁵

⁴ These identity-based conflicts often are described as ethnic, but the more fundamental concept of identity in the country is *qawm* which refers to one's place in the world (Barfield, 2010; Roy, 1990).

⁵ There are 6,240 observations in the rural subsample.

President Ashraf Ghani, prior to his election, emphasized how informality contributes to conflict and violence. In his campaign manifesto, he offered two reasons why government and privately owned land are not usually protected from land grabbing: that legality of land has never been consolidated and that an effective legal system to resolve disputes does not exist. The result is that disputes over land are one of the most pressing challenges confronting Afghan society. He then proposes national land registration so that all documents and ownership certificates could be available and accessible (Ghani, 2014, p. 196).

There have been a few projects that sought to formally register ownership. One was a United States Institute for Peace (USIP) project that sought to formally record land ownership (Gaston and Dang, 2015). The Land Conflict project from the Afghanistan Research and Evaluation Unit (AREU) also sought to register ownership through a formal process (Deschamps and Roe, 2009). Each of the projects presumed that registration of land ownership by the state could improve land tenure security and in the process increase prospects for peace and economic development.

Is legal titling an economic answer to conflict in Afghanistan?

Before assessing legal titling projects, it is necessary to characterize the context within which these policies have been implemented, beginning with the extent to which land tenure is insecure in the country. Our evaluation of self-governance is based in part on our survey and fieldwork in rural Afghanistan. This fieldwork, which was completed from 2006 to 2008, included visits to over 30 villages in rural Afghanistan in six different provinces of the country. Over 300 interviews were completed with ordinary Afghans of all ethnicities, including an equal number of men and women, as well as interviews with local representatives, religious authorities,

government bureaucrats, and appointed political representatives at the district and provincial levels.⁶

Our evidence suggests that the extent of disorder arising from informality is overstated. The village has never in Afghan history been represented in the government. Rather, government has always stopped at the district level (Murtazashvili, 2014). Despite lack of formal representation, the customary system of governance is often successful in governing, in particular at the local level. The contribution of fieldwork was not to offer a new finding of village governance, but rather to show that customary governance persisted after decades of conflict and even persists despite a massive state-building effort.⁷

The center of village decision-making is the shura (which is also referred to as a jirga in some parts of the country). The shura meets on an ad hoc basis on matters of collective importance. The shura is broadly participatory and in theory includes all men who have attained the relevant status in a community. In most villages, the regular members are referred to as “elders,” although this connotes their experience and respect among community members, rather than their age (for example, many men in their thirties were referred to as elders in their community). Villages also typically have a malik, who is a local representative that is typically appointed by citizens.⁸

Governance of land is one of the functions of customary governance. According to our survey, around 94% of rural Afghans have customary deeds to their land. These customary deeds

⁶ The interviews with government officials mainly included district governors, which is the lowest administrative level in Afghanistan. Other studies tend to focus on provincial governors, especially past warlords (Mukhopadhyay, 2013).

⁷ In this regard, it complements Roy’s (1990) study of governance in Afghanistan, which showed the importance of customary governance. It also suggests that Rubin (2002) overstates the fragmentation of Afghanistan because of his focus on the decline of tribal governance. Customary governance in many areas remains even where the bonds of tribe have broken down to an extent.

⁸ There are many names for these village administrators, including arbab and wakil. During fieldwork, it became clear that these different names referred to individuals who performed the same functions.

derive significance within the community but have not formal legal status. In many instances, the malik holds these deeds. The shura and malik are often available to resolve conflicts over land. According to studies of customary land governance, these are especially effective in rural parts of the country in resolving land conflicts (Murtazashvili and Murtazashvili, 2016c). Part of the reason, which we can discern from the fieldwork, is the perception among villagers that customary institutions are inclusive and responsive, especially in contrast to formal government organizations.

Our survey reinforced these findings. We found that the vast majority of rural Afghans have access to a shura and most villages have a malik. The results from village fieldwork would appear to generalize to the country. In addition, we found in the survey that people are generally more trusting of customary governance than their district governors or the police.

The evidence above suggests that self-governance works well, which implies there is less to gain from legal titling. However, it is also unclear if legal titling is even appropriate in many parts of the country. This is especially the case in areas experiencing conflict between nomads and settled communities. Although legal titling may promise to strengthen the ownership claims of settled communities, it is also clear that much land could be governed through a system of co-ownership, as many pastures are often governed. The attempt to impose private ownership over the pastoral commons would fly in the face of decades of research on effective self-governance of the commons (Ostrom, 1990). This literature suggest that the pastoral commons is often better managed through a system of co-ownership.

Even if legal titles were desired by communities and appropriate for a given context, the state does not have the capacity to document ownership, provide land registries, and to adjudicate disputes over land. Land registration through legal titling requires cadastral surveys.

This is a formidable challenge in Afghanistan, where the last attempt at a cadastral survey was cut short by the Afghan civil war (Batson, 2013). In addition, many deeds to land were destroyed by war and conflict (Safar and Stanfield, 2007). The result is that very few Afghans have legal deeds. Rather, most have customary deeds to land, which are often signed by local customary representatives (Murtazashvili and Murtazashvili, 2016c). In light of these administrative weaknesses, it is unlikely that legal titling would actually change the economic opportunities facing individuals.

The challenge of administrative weakness is compounded by the absence of meaningful political constraints on Afghan politicians. The Afghan government remains highly centralized even after 2001 and policymakers in Kabul continue face few constraints on their activities (Murtazashvili, 2014). Further evidence is that the state cannot be trusted to respect property rights is that it is often is implicated in land grabbing (Foschini, 2013b, 2012).

Issues of land grabbing have captured public attention in Afghanistan, but the source of this land insecurity frequently emanates from the government itself. The most egregious cases of seizures of land involve government officials who frequently work in tandem with local commanders and private business interests to evict residents from places where they have long resided. In 2014, the Independent Joint Anti-Corruption Monitoring and Evaluation Committee issued a report stating that nearly a quarter of a million hectares of land had been taken by powerful figures in the past decade pointing blame at, “those who have, or have had, a significant presence in the government” (RFE/RL, 2014). Citizens have accused governors of several provinces as being complicit in land grabbing, leading some observers to argue that conflict over land presents a more serious threat to the stability of Afghanistan than the Taliban (Peter, 2011).

The government has promised land to refugees seeking to return to the country. According to a 2015 report by the United Nations on land grabbing, government officials often used their position to distribute land intended for refugees to those who were not eligible, frequently for personal gain. In some cases governors have sold land intended for internally displaced people and returnees for personal profit. As a result, aid funds intended for the Ministry of Refugees and Repatriation were suspended in 2015 (Bjelica, 2016). Since coming to power in 2014, the administration of President Ashraf Ghani sought to continue this policy and lure the return of hundreds of thousands of Afghans who have migrated to Europe in recent years through promises of free housing and land. The problem is that much of the land promised by the state is also claimed by families who have been living in these areas for decades thus fueling anti-state sentiments (Olivo, 2016). Given the role the state plays in land grabbing, it is not surprising that citizens are unlikely to turn to the state to resolve land disputes that arise.

There are also few formal mechanisms providing villagers with a voice in land policies. Elections have been promised at the village level. However, they have yet to be implemented, and it is unclear whether formal elections are even appropriate in the current context in which much of village politics is decided through consensus (Jochem et al., 2016). A result is that the district continues to be the lowest level of government in the country.

Finally, it is clear that there are many additional investments that must be made in order to increase the ability of a typical Afghan to participate in markets. Roads, security, and governance are all major problems despite a massive state-building investment (Suhrke, 2011). There have been some important attempts to build capacity, such as the National Solidarity Program, which promises to improve governance and provide public goods at the village level. Some of the accomplishments include increasing diversity of representation (Beath et al., 2013).

However, the projects may also come into conflict with customary governance, and in some instances, undermine governance at the local level (Beath et al., 2015; Murtazashvili, 2016).

Evidence from land registration projects

Legal titling is unlikely to work in Afghanistan for the reasons mentioned above. Nonetheless, there have been a number of pilot projects implemented. Afghanistan has a formal process to register land ownership at the national level. It is called tasfiya, but it has rarely been attempted (Alden Wily, 2013). Rather, the legal titling projects have been smaller scale. The donor reports discussed below have almost uniformly discussed the failure of legal titling to promote the aims of the project, which we view as informative evidence in light of our experience that donors are often reluctant to discuss the failures of projects.

The donor reports provide insight into the operation of these projects. The USIP project referenced earlier did not have the intended effect as very few people actually took advantage of opportunities to register land ownership through a formal process. Part of the challenge was that people did not trust the government (Gaston and Dang, 2015). The AREU project also had limited success even though it sought to register ownership through a formal process (Deschamps and Roe, 2009). More generally, legal titling in Afghanistan has not been successful in improving household land tenure security (Murtazashvili and Murtazashvili, 2016d). The titling projects cannot reasonably be viewed as having much, if any, impact on the return to political violence, mainly because there is no evidence we could find that they improved household land tenure security.

Legal titling is not, however, the most preferred approach to land registration by the donor community. Rather, the more successful projects have eschewed a role for the state (Alden Wily, 2013; Murtazashvili and Murtazashvili, 2016d). These community-based initiatives

recognizes that people do not want as much of a role for the state in land governance. They also recognize that self-governance works quite well in many parts of the country.

One example is the UN-Habitat Municipal Governance Support Program, which shows that a project can register ownership through a low-cost and transparent method. This urban upgrading program views legal titling as only a long-term goal. Rather, its focus is on recording ownership through a community process and issuing a safayi certificate, which is not a legal title but rather, a document that can be used by the municipality to collect taxes. The cost of the project is only about 8 USD to register a parcel and issue a certificate (UN-Habitat, 2015a). Importantly, the state is not involved in the process of recoding land ownership; there is no official recording or judicial adjudication, and no reliance on courts. The registration occurs with consultation of community councils and community leaders, including through the recently established Community Development Councils (UN-Habitat, 2015b). A review of over a dozen such projects indicates that community-based registration is a better way to improve household land tenure security than legal titling (Murtazashvili and Murtazashvili, 2016d).

Discussion

Our analysis illustrates why it is important to conceptualize of soft power beyond persuasion to also include establishing new and better institutions. Aldrich's (2014) recent work suggests that USAID information campaigns are a potentially important way to use soft power to persuade people to forgo violence. Our research suggests that programs to register property ownership may complement such policies. Yet more fundamentally, it suggests that campaigns that persuade should be implemented alongside policies to establish coherent institutions. People with radios may get a better message and may therefore be less apt to participate in violence but

unless they also have better institutions, the path offered by terrorists and insurgents may still be appealing because of the lack of additional options.

Despite our insistence on consideration of institutional reform as a means of flexing soft power, we have also shown that the typical economic solution to underdevelopment—legal titling—is not necessarily the most appropriate solution in fragile states. Our findings in no way deny the evidence that in some contexts, legal titling in some instances improves livelihoods (Field, 2007, 2005; Galiani and Schargrodsky, 2010). However, the consequences of legal titling are expected to depend heavily on the context where such policies are implemented. It is not clear why the findings from a legal titling project in a country such as Argentina or Brazil (where a great many studies of legal titling have been conducted) would generalize to a fragile state such as Afghanistan or Somalia. Part of the issue is that fragile states have come to rely much more on self-governance (Leeson, 2007b; Menkhaus, 2007). Nonetheless, legal titling is often promoted in fragile states as a way to increase peace. In such contexts, self-governance often works well, and the state is often incompetent or unconstrained (or both). Hence, it is unlikely that legal titling will have a major impact on economic incentives to participate in political violence.

Our study also resonates with the contention that there are no panaceas with institutional reform in the developing world (Ostrom, 2009, 2007; Ostrom et al., 2007). Rather than legal titling, we found that land reforms that explicitly recognize a role for self-governance is appropriate in fragile states. In particular, recording ownership at the community level, without relying on the state, may be a better way to win hearts and minds through land reform.

Another of the implications of our work is that the sequence of political and land reform is important in developing contexts. In post-conflict states, it often is more sensible to invest in improving state administrative and legal capacity, as well as establishing a monopoly on military

force, prior to legal titling (Murtazashvili and Murtazashvili, 2016e). Our findings here suggest improvement in state capacity are also necessary before land reform, including legal titling, is likely to reduce political violence.

Conclusion

The implementation of legal titling in fragile states should be guided by a calculation of the benefits and costs of such projects (Murtazashvili and Murtazashvili, 2014). Part of the net benefits include the consequences of such projects for political violence. This paper has shown that there are few reasons to view legal titling as a counterterrorism or counterinsurgency strategy in the typical context of a fragile state. These results do not deny the importance of reform. Rather, in such contexts, it is particularly important to identify and work with self-governing community organizations, provided they are responsive to the needs of citizens and administratively competent.

The importance of building on self-governing institutions is emphasized in the literature on institutional transplantation and institutional stickiness. According to this perspective, institutions are more likely to stick when they build on informal institutions or when they are implemented in a legal context with the capacity to implement the new institutions (Berkowitz et al., 2003; Boettke et al., 2008). This is especially the case with land registration, which requires a thorough understanding of the informal context of governance, along with an honest appraisal of the administrative capacity of the state.

In conclusion, we note that legal titling is a means to an end and is only one component of the emergence of a market. Reducing vulnerability, rather than registration of ownership, is the end that development policy must seek (Bromley and Anderson, 2012). It is also critical to

recognize that establishing markets is far more challenging than registration of ownership. The Taliban established an economy based largely on corruption and smuggling (Rashid, 2010). Issuing legal titling says nothing about whether markets function. Nor does legal titling solve the problem of low-quality roads, lack of access to schools, and the lack of opportunities to secure loans from banks. In this regard, our research on legal titling supports those criticisms of Afghan state building that view it as focusing disproportionately on military capacity at the expense of policies to promote economic development (Sedra, 2013, 2006). We have also narrowed the range of possible policies to focus less on legal titling and more on community-based projects as a means to improve development prospects.

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