

2003

Argentina's Mystery of Capital: Why the International Monetary Fund Needs Hernando de Socto

David Asp

Follow this and additional works at: <https://scholarship.law.umn.edu/mjil>



Part of the [Law Commons](#)

Recommended Citation

Asp, David, "Argentina's Mystery of Capital: Why the International Monetary Fund Needs Hernando de Socto" (2003). *Minnesota Journal of International Law*. 207.
<https://scholarship.law.umn.edu/mjil/207>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Journal of International Law collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Notes

Argentina's Mystery of Capital: Why the International Monetary Fund Needs Hernando de Soto

David Asp*

INTRODUCTION

In 1998, Argentina's economy was the model for successful economic reform in a global economy.¹ The hyperinflation and economic chaos that plagued the nation throughout the twentieth century was effectively addressed by a plan reducing debt and creating sustainable economic growth.² Argentine President Carlos Menem attributed his nation's success to a political will to reform that allowed Argentina to work with international lenders and to restructure the country's debt payments.³ Only three years later, in December 2001, Argentina's economy collapsed. The country went through three presidents in ten days,⁴

* J.D. candidate 2004, University of Minnesota Law School; B.A. 2001, Augsburg College.

1. MICHAEL MUSSA, INST. FOR INT'L ECON., POLICY ANALYSES IN INTERNATIONAL ECONOMICS 67: ARGENTINA AND THE FUND: FROM TRIUMPH TO TRAGEDY 1 (2002), available at http://www.iie.com/publications/files/chapters_preview/343/1iie339x.pdf ("[F]rom mid-1997 to early 1998, Argentina became the darling of emerging market finance . . .").

2. *Id.* at 1-2.

3. President Carlos Saul Menem, Address at the 1998 Joint Annual Meeting of the Board of Governors of the International Monetary Fund and the World Bank Group (Oct. 6-8, 1998), in INT'L MONETARY FUND, SUMMARY PROCEEDINGS OF THE FIFTY-THIRD ANNUAL MEETING OF THE BOARD OF GOVERNORS 10 (1998) ("In the 1990's we succeeded in transforming an economy ravaged by hyperinflation, speculation, and systemic corruption. The keys to achieving this absolute economic miracle were the political will to undertake the reforms . . . and the coordination with international institutions, which provided us with technical and financial support.").

4. MUSSA, *supra* note 1, at 53.

its banks closed,⁵ and citizens rioted in the streets.⁶

The International Monetary Fund (IMF), which had worked closely with Argentina, attempted to help the country with additional loans in 2000 and 2001.⁷ The IMF's efforts failed, however, and Argentina's economy soon fell into greater disarray.⁸ The IMF endeavor failed largely because Argentina could not control its government spending, leading to an unsustainable level of public debt.⁹ Now, as Argentina deals with its worst recession since the 1930s, the IMF again looks to help the country develop a long-term plan for sustainable economic growth.¹⁰

Peruvian economist Hernando de Soto offers one model that could help Argentina reform its economy. De Soto argues that developing countries are not poor due to a lack of wealth; instead, they lack a system for recognizing and managing capital.¹¹ He points out that the poorest countries in the world are sitting on economies worth at least \$9.3 trillion, more than twenty times the amount of direct foreign investment in developing countries worldwide.¹² According to De Soto, developing

5. *Id.* at 2 (noting also that while the banks re-opened, they are still under severe restrictions that have rendered the nation's banking system practically defunct since December 2001).

6. Hector Trobar, *Argentina Declares Emergency Unrest*, L.A. TIMES, Dec. 20, 2001, at A1, available at 2001 WL 28938267.

7. MUSSA, *supra* note 1, at 4-5.

8. *See id.* at 45, 49-50.

9. *Id.* at 10, 51 (finding the fundamental cause of Argentina's economic collapse was "the large and persistent excess of public spending over recurring revenues that led to unsustainable accumulation of public debt"). *But see* ALAN B. CIBILS ET AL., CTR. FOR ECON. POLICY AND RESEARCH, BRIEFING PAPER: ARGENTINA SINCE DEFAULT: THE IMF AND THE DEPRESSION 10-11 (Sept. 3, 2002), available at <http://www.cepr.net/Argentina.%20PDF.PDF> (arguing that the IMF played a prominent role in mandating the policies that led to Argentina's economic collapse and political turmoil).

10. James Tyson, *Argentina Has 'Good Discussions' on IMF Aid Package*, BLOOMBERG NEWS SERVICE, Oct. 10, 2002 ("Argentina . . . needs to secure political support for budget cuts and other conditions for new aid, according to the IMF. Argentina can't count on greater government revenue to bankroll its debt payments because its economy in 2002 will shrink 20 percent, according to IMF estimates. Unemployment stands at a record 22 percent, and half the population lives in poverty."); *see also* IMF Says New Argentina Program Still Needs a "Lot of Work," AGENCE FRANCE PRESSE, Oct. 24, 2002, available at 2002 WL 23633256 (quoting IMF spokesman Tom Dawson that any new development plan would have to be sustainable).

11. HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE 4-7 (2000).

12. *Id.* at 35; *see also* Dania Saadi, *Property Laws 'Key to Development'*, DAILY STAR ONLINE, May 5, 2001, at http://www.dailystar.com.lb/business/23_05_02_b.htm (noting that the informal sector is the size of the world's twenty largest stock ex-

nations do not have a property law system that adequately represents that wealth in a national or global marketplace.¹³ Moreover, governments of developing and formerly communist nations usually have strictly regulated economies that keep many entrepreneurs operating in an informal economy that is outside of a national legal system.¹⁴ According to De Soto, one important step toward reform is the reduction of legal barriers that keep entrepreneurs "extralegal," or outside of a country's formal economic system.¹⁵

This Note explores the relationship between the IMF and Argentina and suggests that the IMF should put into practice De Soto's theory in order to create sustainable development in Argentina and other emerging market countries throughout the world. Part I examines the role of the IMF in providing assistance to nation-states and considers the restraints that state sovereignty concerns place on IMF policymaking. Part II presents De Soto's theory that the economic troubles of developing countries result from the fact that wealth in those countries exist in the informal sector separate from the legal protections offered by the state. Part III suggests ways that De Soto's theory could help the IMF as it deals with countries like Argentina.¹⁶ Finally, Part IV considers the potential effects of implementing such policies on state sovereignty and how this might restrain IMF reforms in the future. This Note concludes that future reforms should be based on De Soto's theory, but that the these types of reforms cannot be implemented by the IMF.

I. THE IMF AND ARGENTINA

A. THE IMF'S ROLE

The IMF is an international organization that makes finan-

changes).

13. DE SOTO, *supra* note 11, at 6-7.

14. *Id.* at 154-55.

15. *Id.*

16. This Note does not argue that Argentina is an example of a poor or developing country. In fact, Argentina consistently ranks highly in economic measurements of quality of life. Instead, this Note uses Argentina as an example of a country that needs economic assistance to create sustainable economic development, but that would also benefit from De Soto's theory. See THE ECONOMIST, POCKET WORLD IN FIGURES 28 (2003) (ranking Argentina thirty-fourth in the world for quality of life on the human development index).

cial resources available to member countries with debt problems in order to prevent those nations from implementing economic policies that could be destructive to long-term national or international prosperity.¹⁷ The IMF's purposes include promoting the expansion of balanced international trade and assisting in the establishment of loan payments between member nation-states.¹⁸

The IMF is funded by quota subscriptions, which are paid by member countries.¹⁹ The amount of the quota determines a country's voting power on the IMF board of directors.²⁰ The United States, for example, has a high quota subscription and therefore significant voting power on the board.²¹ A member country can turn to the IMF for official borrowing to make external loan payments to any international lender.²² Lending countries benefit from the IMF's work when borrowers develop sustainable economies and are less likely to default on loans or resort to measures that might damage long-term prosperity.²³

17. Articles of Agreement of the International Monetary Fund, art. 1(i)-(iii), July 22, 1944 (amended Apr. 1, 1978), 29 U.S.T. 2203, T.I.A.S. No. 8937, available at <http://www.imf.org/external/pubs/ft/aa/aa01.htm> [hereinafter IMF Articles of Agreement].

18. See *id.*

19. See INT'L MONETARY FUND, WHAT IS THE INTERNATIONAL MONETARY FUND? (2002), at <http://www.imf.org/external/pubs/ft/exrp/what.htm> [hereinafter WHAT IS THE IMF?] ("The IMF's resources come mainly from the quota (or capital) subscriptions that countries pay when they join the IMF, or following periodic reviews in which quotas are increased.").

20. See *id.* ("Quotas determine not only a country's subscription payments, but also its voting power, the amount of financing it can receive from the IMF, and its share in SDR allocations."). Quotas are also intended to reflect the country's size in the world economy. See *id.*

21. JOINT ECON. COMM., SEPT. 9, 1999 JEC STATEMENTS BEFORE THE INTERNATIONAL FINANCIAL INSTITUTION ADVISORY COMMISSION 5 (1999) (Statement of Christopher Frenze) ("The official line is that the U.S. provides 18 percent of the quotas, but the U.S. share of usable contribution is actually 26 percent. This relatively large U.S. position is reflected in the strong influence of the U.S. Treasury in IMF decision making."); see also JOHN H. JACKSON ET AL., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 205 (4th ed. 2002) (showing the relative voting power of IMF members).

22. See WHAT IS THE IMF?, *supra* note 19 (noting that this is true if a country needs official borrowing to be able to make external payments and maintain an appropriate level of reserves without taking "measures destructive of national or international prosperity").

23. Naomi Klein, 'IMF Go to Hell': The People of Argentina Have Tried the IMF Approach; Now They Want It Their Way, TORONTO GLOBE AND MAIL, Mar. 16, 2002, at A19; see also Maisa Mendonca, A Question of Sovereignty: Brazilian Governors Fight Back Against the IMF, GLOBAL EXCHANGE CAMPAIGNS (Mar. 25, 1999), at <http://www.globalexchange.org/campaigns/brazil/economy/sovereignty.html>.

Along with the World Bank, the IMF was created to alleviate worldwide poverty and create stable economies.²⁴ The IMF's role has traditionally been to help states develop sensible macroeconomic policies and enact structural reforms;²⁵ while the World Bank has focused on loans and programs that seek to encourage poverty reduction measures, mostly through social services.²⁶ In recent years, the two organizations have committed to working more closely together to achieve common goals.²⁷ This commitment comes after research showing that poverty reduction programs are only effective when they bring about reforms that create economic growth.²⁸ However, such reforms require that the borrowing countries commit themselves to policies that will lead to sustainable economic growth.²⁹

As a result, the IMF seeks to do more than just recommend sound macroeconomic policies; it also concerns itself with aid to organizations and a borrowing country's willingness to reform. In lending money, the IMF supports reforms that will correct underlying problems with domestic economic policies.³⁰ As such, loans to borrowing countries are made contingent upon agreement to a plan for moving toward a sustainable economic sys-

24. JACKSON ET AL., *supra* note 21, at 200-01 (quoting Gerald M. Meier, *The Bretton Woods Agreement — 25 Years After*, 39 STAN. L. REV. 235, 237, 245-46 (1971) ("In combination, the Fund, the Bank, and GATT were designed to help the advanced industrial countries achieve the multiple objectives of full employment, freer and expanding trade and stable exchange rates.")).

25. *Development Finance - Old Battle, New Strategy*, ECONOMIST, Jan. 8, 2000, available at <http://wbln0018.worldbank.org/essd/essd.nsf/d3f59aa3a570f67a852567cf00695688/801016e9cd807ccc8525689b0053fb47?OpenDocument> (last visited Mar. 8, 2003) ("The traditional — and correct — assumption underlying 'adjustment' programmes was that faster economic growth is the best way to reduce poverty. So IMF lending concentrated on pushing sensible macroeconomic and structural reforms (such as tight fiscal and monetary policies, trade liberalisation, deregulation and privatisation). There was little analysis of the effect of these reforms on poverty . . .").

26. *See id.* ("[There was] little analysis of what overall impact the World Bank's portfolio of loans — that might cover areas ranging from banking to the environment — would actually have on a borrowing country's poor people.").

27. *Id.* *See generally* INT'L MONETARY FUND & THE WORLD BANK, STRENGTHENING IMF WORLD BANK COLLABORATION ON COUNTRY PROGRAMS AND CONDITIONALITY (2001), available at <http://www.imf.org/external/np/pdr/cond/2001/leng/collab/coll.htm> (last visited Mar. 5, 2003).

28. *Development Finance - Old Battle, New Strategy*, *supra* note 25 ("Recent research on the history of foreign aid by David Dollar, an economist at the World Bank, offers two simple lessons: aid works when a country follows sensible economic policies; but the aid itself does little actually to influence policies. It will work only if countries are truly committed to economic reform.").

29. *Id.*

30. WHAT IS THE IMF?, *supra* note 19.

tem.³¹ Thus, the IMF has an interest in the soundness of a member country's government structure and in its domestic policies.³²

B. CONCERNS ABOUT IMF INFRINGEMENT ON NATION-STATE SOVEREIGNTY

While the notion of state sovereignty is difficult to define, Louis Henkin suggests that it means that no state should be subject to any external decision-making power unless it has "voluntarily consented to such authority."³³ Henkin argues further that only states can make laws for themselves.³⁴ Therefore, the idea of state sovereignty includes, at least partially, the idea that a state has a right to self-determination.³⁵

Critics argue that the IMF intrudes on state sovereignty, specifically the ability of states to set their own domestic policy.³⁶ Especially in developing countries, the IMF is seen as a threat to a state's self-determination through democratic processes.³⁷ In the recent debate over the IMF's role in Argentina, concerns over state sovereignty come from two different points of view, each concluding that the IMF should give borrowing governments greater decision-making authority.³⁸

31. *Id.* ("IMF lending is conditional on policies: the borrowing country must adopt policies that promise to correct its balance of payments problem.").

32. INT'L MONETARY FUND, 1998 IMF SURVEY SUPPLEMENT ON THE FUND: CONDITIONALITY (1998), at <http://www.imf.org/external/pubs/ft/survey/sup0998/07.htm>.

33. Anthony Galano III, Comment, *International Monetary Fund Response to the Brazilian Debt Crisis: Whether the Effects of Conditionality Have Undermined Brazil's National Sovereignty?*, 6 PACE INT'L L. REV. 323, 342 (1994) (quoting Louis Henkin in LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 15-16 (3d ed. 1993)).

34. *Id.* at 342-43.

35. *See id.* at 343 (questioning if the IMF has violated Brazil's sovereignty through conditionality requirements on monetary aid).

36. L. Jacobo Rodriguez, *Argentina's Addition to IMF Money*, CATO DAILY BRIEFING, Jan. 27, 2001, available at <http://www.cato.org/dailys/01-27-01.html>.

37. Some authors have suggested that intrusions on state sovereignty should be limited for countries dealing with the effects of globalization. They suggest that countries are best able to work with organizations like the IMF when conditionality restrictions on funding are used sparingly. *See, e.g.,* Herbert V. Morais, *The Quest for International Standards: Global Governance v. Sovereignty*, 50 KAN. L. REV. 779, 815-16 (2002) ("[T]he conditionality approach should be used sparingly and with careful consideration only in exceptional situations.").

38. Mendonca, *supra* note 23 ("And once again the question that must be asked is whether the IMF—unaccountable, undemocratic and frighteningly opaque as it is—should be permitted to boss around democratically elected officials and in the process harm the citizens those politicians are supposed to serve."). In addition to

The first criticism posits that complying with IMF policy forces a nation-state to reduce government services and accept whatever negative consequences occur as a result.³⁹ To create economic stability, the IMF often requires borrowing countries to reduce government spending.⁴⁰ For countries that are accustomed to operating as a sizable welfare state, this can result in a drastic reduction in the amount and quality of social services.⁴¹ This has led some commentators to argue that the IMF has restricted the government's role to serve its constituents, who have no recourse through the democratic process.⁴² These critics conclude that the IMF should fund countries, but not require strict reforms, especially reforms that reduce social spending.⁴³

The IMF is unlikely to adopt this suggestion because of its commitment to maintaining the conditionality of its aid as part of its mission.⁴⁴ The IMF's Articles of Agreement define the organization's role as an agent for structural reform in member nations.⁴⁵ This duty arguably includes working with member

simply being bad policy, there is an issue whether the IMF violates international law by infringing on a state's sovereignty. The IMF, however, has never been found in violation and the arguments against it do not seem to have much support. See Galano, *supra* note 33, at 349.

39. See Eduardo Galeano, *The Spectators Take the Field*, THE PROGRESSIVE, Feb. 2002, at 12-13.

40. See, e.g., David Plumb, *IMF Demands Argentina Cut Spending to Get Loans*, *Clarín Says*, BLOOMBERG NEWS SERVICE, Oct. 13, 2002, available at LEXIS, News & Business, News, By Individual Publication, B, Bloomberg – All Bloomberg News (“The International Monetary Fund demanded Argentina cut planned spending next year as the latest condition of aid that the recession-choked country has sought for the past nine months, *Clarín* reported, citing unidentified Economy Ministry Officials.”).

41. See Klein, *supra* note 23 (“[I]n a country where half the population now lives below the poverty line, it's hard to find a single sector of society whose fate does not somehow hinge on the decisions made by the international lender.”).

42. See *id.* Klein argues that the people of Latin America in general and Argentina in particular are tired of the IMF's requirements that welfare and health-care services be reduced. *Id.* With no political control over the IMF, the people have taken to the streets in protest of the Fund's policies. *Id.*

43. See *id.*

44. INT'L MONETARY FUND, MANAGING DIRECTOR'S REPORT TO THE INTERNATIONAL MONETARY AND FINANCIAL COMMITTEE — STREAMLINING CONDITIONALITY AND ENHANCING OWNERSHIP (2001), available at <http://www.imf.org/external/np/omd/2001/110601.htm> [hereinafter DIRECTOR'S REPORT] (“In streamlining and refocusing conditionality, a key principle is that policy measures that are critical for a program to achieve its macroeconomic objectives should continue to be covered under conditionality; however, conditionality should be applied more sparingly to structural measures that are relevant but not critical, particularly when they are not clearly within the Fund's core areas of responsibility and expertise.”).

45. See IMF Articles of Agreement, *supra* note 17, at art. 1(v).

countries to make changes that will result in long-term fiscal stability.⁴⁶

Critics also note that IMF policy damages government accountability. It begins with the idea that the IMF can support a country financially, but cannot implement the domestic policy decisions necessary for reforms.⁴⁷ The accountability of a nation-state's government is muddled when the IMF mandates economic solutions that do not work as planned.⁴⁸ This is particularly the case when local politicians are required to enact politically unpopular policies. Politicians, rightly or wrongly, blame the IMF for any problems resulting from mandated actions.⁴⁹

Alternatively, member-country politicians could refuse to implement IMF mandates.⁵⁰ In this case, the IMF has two choices: cut off aid or accommodate the member country's agenda for reform.⁵¹ The IMF has been criticized for too often choosing the latter.⁵² Critics argue that necessary reforms require painful choices for member countries and that if the IMF continually props up a country, it has no incentive to make these choices.⁵³ With no change in destructive economic policies, the countries continue to need IMF aid.⁵⁴ The situation becomes a vicious cycle where the IMF makes decisions for a country but will not insist on the needed reforms.⁵⁵ This distorts the state's ability to govern itself. These critics conclude that the IMF should end monetary aid to countries in noncompliance and let

46. See DIRECTOR'S REPORT, *supra* note 44.

47. STEVE H. HANKE & KURT SCHULER, CATO INST., A MANIFESTO FOR ECONOMIC REFORM IN ARGENTINA (2002), at <http://www.cato.org/current/argentina/pubs/hanke-020611.html>; see also Rodríguez, *supra* note 36.

48. See Robert O. Keohane, *Global Governance and Democratic Accountability*, in DAVID HELD & MATHIAS KOENIG-ARCHIBUGI, MILIBAND LECTURES (Spring 2002) (manuscript at 18-19), available at www.poli.duke.edu/people/Faculty/docs/millpaper.pdf ("Traditional international organizations are internally accountable to states on the basis of authorization and support . . . Externally, there are significant accountability gaps. Indeed, many poor people affected by the policies of the IMF, World Bank and the WTO have no direct ability to hold these organizations accountable.").

49. Argentine politicians now blame the IMF for its economic turmoil. See Joachim Bamrud, *Cry, Argentina, Cry*, LATIN BUS. CHRON., Jan. 7, 2002, available at <http://www.latinbusinesschronicle.com/reports/commentary/argentina.htm>.

50. *Id.*

51. HANKE & SCHULER, *supra* note 47.

52. *Id.*

53. See Rodríguez, *supra* note 36.

54. See *id.*

55. See *id.* (arguing that the Argentina's problems are domestic in nature, but the IMF is not willing to require the changes).

struggling governments manage their own economic problems.⁵⁶

The IMF is unlikely to completely accept this approach, since part of the IMF's mission is providing members "with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity."⁵⁷ The IMF believes that continuing to provide this opportunity requires working with a member country to develop sound economic policies after its debt has become unsustainable.⁵⁸ Although this response does not address the accountability problems, it does provide a compelling reason for the IMF to stay involved.

In spite of these criticisms, the IMF believes it can continue to place conditions on the receipt of aid while respecting state sovereignty. The IMF allows borrowing countries to determine their own policies for meeting some IMF standards, while others require very specific changes.⁵⁹ However, the IMF ignores sovereignty issues at its own peril.⁶⁰ As some commentators suggest, some IMF intrusion is inevitable, but too much infringement may make cooperative reform with national governments impossible.⁶¹ Consequently, the IMF finds itself in a balancing act between enforcing its standards and leaving most of the decision-making to the countries themselves.⁶²

C. THE CASE OF ARGENTINA

1. *Argentina's Debt Problems*

Argentina's chronic debt problems and recent economic turmoil make it one of the most visible countries with IMF problems. As in many borrowing countries, Argentine politicians are often irate over IMF mandates.⁶³ Domestic political and policy

56. *See id.*

57. IMF Articles of Agreement, *supra* note 17, at art. 1(v).

58. Anne Krueger, The Evolution of Emerging Market Capital Flows: Why We Need to Look Again at Sovereign Debt Restructuring, Speech at the International Monetary Fund Economics Society Dinner (Jan. 21, 2002), available at <http://www.imf.org/external/np/speeches/2002/012102.htm>.

59. *See* WHAT IS THE IMF?, *supra* note 19.

60. *See* Galano, *supra* note 33, at 346.

61. *Id.* at 348-49.

62. *Id.* at 349.

63. *See* Martin Gambarotta, *It's a (Grumble) Deal*, BUENOS AIRES HERALD, available at <http://www.buenosairesherald.com/columnist/note.jsp?idContent=3687> (last visited Mar. 11, 2003).

concerns often pressure the government to implement decisions that are not, in the IMF's view, part of a sustainable economy.⁶⁴ The result is a continuous struggle between Argentina and the IMF over loan conditions.

Over the last fifteen years, Argentina's economy has experienced drastic changes, moving rapidly from economic instability to growth and just as quickly back to instability.⁶⁵ In the late 1980s and early 1990s, Argentina was plagued by hyperinflation.⁶⁶ By 1998, however, its political and economic policies were heralded as a model for emerging-market nations around the world.⁶⁷ But Argentina's rise only preceded a tumultuous fall that culminated in political instability and economic disaster in 2001.⁶⁸

There are divergent views over which international and domestic policies led Argentina to this point. Some observers blame mandates from the IMF for forcing Argentina to adjust its domestic policies beyond what the country's economy could bear.⁶⁹ Most of those involved in the IMF's dealings with Argentina, however, place blame on the Argentine government for making poor economic choices.⁷⁰ This criticism is not a new one for the Argentine government, which has a history of deficit spending.⁷¹ The government has historically dealt with its deficit problems through borrowing or printing currency rather than reducing government spending.⁷² These policies led Argentina down a path of hyperinflation and large international debts.⁷³ Even during Argentina's exceptional economic development of the 1990s, the country never reduced its deficit spending.⁷⁴

64. See Anne Krueger, *Transcript of an IMF Briefing on Latin America*, (Sept. 23, 2002), at <http://www.imf.org/external/np/tr/2002/tr020923.htm> (last accessed Jan. 17, 2003).

65. MUSSA, *supra* note 1, at 1-2.

66. *Id.* at 1.

67. *Id.* at 1-2.

68. *Id.* at 2.

69. *Doubts Inside the Barricades*, THE ECONOMIST, Sept. 28, 2002, at 64 ("[T]he Fund pushed countries into opening up their economies to foreign capital prematurely, and that this openness lies at the heart of the current turmoil.").

70. *Id.* ("One line of argument blames the current turmoil on Latin America's failure to adopt the Washington Consensus with sufficient rigor.").

71. One commentator likened Argentina's spending patterns to "a chronic alcoholic—once it starts to imbibe the political pleasures of deficit spending, it keeps on going until it [it] reaches the economic equivalent of falling down drunk." MUSSA, *supra* note 1, at 10.

72. *Id.*

73. *Id.*

74. *Id.* at 15-16 ("In sum, during the period from 1993-98 when the Argentine

The disastrous economic situation can be attributed, at least in part, to Argentina's political situation. After President Menem was term-limited in 1999, lower tax revenues and increased social spending made it difficult for any candidate in the 1999 election to make debt reduction a priority.⁷⁵ Moreover, much of the government's spending is attributable to the country's provinces, which retain the authority to increase social spending that is then transferred to federal debt.⁷⁶ With the economy struggling, President de la Rúa, along with a majority of Argentine politicians, rejected a plan for fiscal consolidation and sharp reductions in government spending.⁷⁷

Argentina also suffers from corruption within its government's institutions. The Global Competitiveness Report ranked Argentina near the bottom of the world for business conditions, independence of judiciary, reliability of police protection, and corruption in the legal system.⁷⁸ Crime resulting from corrupt institutions has long been a problem in Argentina, and it has recently become worse.⁷⁹ Violent crime has more than doubled in Buenos Aires since 1991.⁸⁰ In fact, many crimes occur with the tacit approval of police forces.⁸¹

2. *The IMF's Role in Argentina*

The IMF, at the very least, was a tacit partner in Argentina's collapse.⁸² When the country's deficits repeatedly grew

economy was generally performing very well and the Argentine government was receiving substantial nonrecurring revenues from privatization and enjoyed other temporary fiscal benefits, the public sector debt-to-GDP ratio nevertheless rose by 12 percentage points. This clearly was not an adequately disciplined or sustainable fiscal policy." (emphasis omitted); see also *supra* note 9 and accompanying text.

75. MUSSA, *supra* note 1, at 26 ("[E]lection year concerns further depressed the normally low level that most Argentine politicians, at all levels of government, attached to measures of fiscal prudence.").

76. Brink Lindsey, *How Argentina Got Into This Mess*, WALL ST. J., Jan. 9, 2002, at A14 (finding that "[o]perating expenses at the provincial level rose 25% from 1995 to 2000 even though inflation was nonexistent. The spending binge was financed by an unsustainable run up of external debt—the reckoning for which has now arrived.").

77. MUSSA, *supra* note 1, at 37.

78. Lindsey, *supra* note 76.

79. *Delinquent*, THE ECONOMIST, Oct. 5, 2002, at 34.

80. *Id.*

81. *Id.*

82. Editorial, *Who Lost Argentina?*, SAN FRANCISCO CHRON., Jan. 5, 2002, at A20.

Much of this debate follows well-worn ideological lines. Analysts from the

beyond its target projections, the IMF simply revised estimates and sent more assistance.⁸³ Rather than force Argentina to exercise stricter fiscal control, the IMF consistently changed its own debt predictions to accommodate Argentina's growing deficit.⁸⁴ For example, by the summer of 2001, it was clear that Argentina would be unable to meet the IMF's economic goals, and there was no serious hope for economic recovery.⁸⁵ Nonetheless, the IMF approved a large augmentation package as a last chance initiative.⁸⁶ This disbursement of additional funds delayed Argentina's collapse by only a few months.⁸⁷

Unfortunately, Argentina's problems have resulted in the deepest recession in fifty years,⁸⁸ and led to deteriorating living conditions for Argentina's population. Seventy two percent of Argentine children live in poverty, on less than fifty dollars a month.⁸⁹ During 2002, unemployment in the greater Buenos Aires region was estimated as high as twenty-six percent, which is five times what it was ten years ago.⁹⁰

3. *The Future of Argentina's Relationship With the IMF*

Now well into its worst recession since the 1930s,⁹¹ Argentina continues to seek financial help. In January 2003, the IMF and Argentina agreed to a stand-by credit arrangement that will allow the nation to make debt payments to the IMF through

left say the IMF and the U.S. Treasury Department wrecked Argentina's economy with conservative, free-market policies. Analysts on the right blame irresponsible deficit spending by governments in Buenos Aires. In fact, both sides are right. And there are plenty of lessons that the United States should learn.

Id.

83. MUSSA, *supra* note 1, at 18-19. Mussa argues that revising estimates was sometimes the correct approach. Not requiring Argentina to come in below its debt reduction targets when its economy was strong was the IMF's mistake. *Id.*

84. *Id.* at 19.

85. *Id.* at 45.

86. The bailout plan was approved in the summer of 2001, and disbursed in September. *See id.* at 43-44, 47 (The plan included "\$6 billion [in aid] . . . with a pledge of \$3 billion more to support an unspecified debt restructuring—was extraordinary both in its size and in the lack of any reasonable justification.").

87. *Id.* at 47-48.

88. Helen Murphy, *Argentina Survey Finds 4.5 MLN Children in Poverty, Clarin Says*, BLOOMBERG NEWS SERVICE, Oct. 3, 2002, available at LEXIS, News & Business, News, By Individual Publication, B, Bloomberg – All Bloomberg News.

89. *Id.*

90. *See* Ismael Bermúdez, *Conurbano: el Desempleo Más Alto*, CLARIN, Aug. 23, 2002, available at <http://old.clarin.com/diario/2002/08/23/e-01901.htm>.

91. *Doubts Inside the Barricades*, *supra* note 69.

August 2003.⁹² The agreement also grants Argentina an extension in paying additional loans that were initially due in 2003.⁹³ The stand-by credit arrangement is intended as a transitional measure, leading Argentina to another long-term agreement that will include comprehensive economic reforms.⁹⁴ Explaining that the new arrangements were approved as the beginning of long-term reforms in Argentina, IMF Managing Director Horst Kohler stated that the IMF intended to preserve macroeconomic stability and a social safety net during Argentina's current crisis.⁹⁵ After Argentina's 2003 elections, however, the country is expected to enact ambitious reforms, in part, focusing on areas of fiscal discipline, legal reforms, and tax reform.⁹⁶

Meanwhile, the IMF continues to struggle with a plan to help countries like Argentina balance their debt payments and create sustainable economic growth.⁹⁷ The IMF's proposed plan treats defaulting countries like bankrupt corporations, thereby reducing the need to completely cut off aid or continue with unwarranted lending.⁹⁸ The Sovereign Debt Restructuring Mechanism (SDRM) would restructure a country's debt in order to resume regular loan payments.⁹⁹ The IMF argues that this system will be a valuable tool in moving towards reform.¹⁰⁰ Its goal is to "allow countries with clearly unsustainable burdens to restructure their debts in a fashion that preserves economic activity and asset values, while protecting creditors' rights."¹⁰¹ Toward this end, SDRM creates a legal basis within which debtor coun-

92. Press Release, Int'l Monetary Fund, *IMF Approves Transitional Stand-By Credit Support for Argentina* (Jan. 24, 2003), at <http://www.imf.org/external/np/sec/pr/2003/pr0309.htm>.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Bankruptcies or Bailouts*, BUS. LINE, June 7, 2002, available at LEXIS, News & Business, News, News Group File, All.

98. *Id.* (The IMF is working on sovereign debt restructuring under the rationale that "private corporations get protection under bankruptcy laws, why not have similar arrangements to shield states facing bankruptcy?").

99. Krueger, *supra* note 64.

100. Horst Köhler, Promoting Sustained Growth and International Financial Stability, Address Before the National Press Club (Apr. 17, 2002), at <http://www.imf.org/external/np/speeches/2002/041702.htm>.

101. Anne O. Krueger, Crisis Prevention and Resolution: The Role of Sovereign Debt Restructuring, Remarks at the American Enterprise Institute Symposium in Washington D.C. (Oct. 7, 2002), at <http://www.imf.org/external/np/speeches/2002/100702a.htm>.

tries can work to restructure debt payments.¹⁰² But even with the new debt restructuring plans, a country must have sound structural institutions in order to maintain sustainable economic development.¹⁰³ Keeping this goal in mind, the IMF hopes to enact reforms with its upcoming comprehensive agreement with Argentina.¹⁰⁴

II. THE MYSTERY OF CAPITAL

Peruvian economist Hernando de Soto offers one possible solution to problems in countries like Argentina. De Soto argues that the problem in developing countries is not that they lack wealth, but that they lack the institutional framework to recognize and trade capital.¹⁰⁵ De Soto calls wealth in these countries "dead capital," meaning that it is not recognized by a formal legal system and can only be traded or sold within a narrow community.¹⁰⁶ These informal, or extralegal, sectors comprise much of the wealth in the developing world.¹⁰⁷ This sector consists of legitimate commercial activity that operates outside of established judicial, regulatory, and institutional frameworks.¹⁰⁸ This activity is only illegal because the barriers for joining or operating in the formal economy are too cumbersome or expensive for most individuals to comply.¹⁰⁹

De Soto argues that wealthy countries and strong economies depend on legal structures that convert general wealth into

102. *Id.*

103. See NEVIN SHAW, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, THE FUTURE ROLE OF BRETTON WOODS INSTITUTIONS IN PROMOTING GLOBAL SUSTAINABLE DEVELOPMENT, at <http://www.iisd.org/trade/bretton.htm#why> slow (last visited Mar. 4, 2003).

104. See *supra* notes 92-96 and accompanying text.

105. DE SOTO, *supra* note 11, at 6-7.

106. *Id.*

107. *Id.* at 35 ("By our calculations, the total value of the real estate held but not legally owned by the poor of the Third World and former communist nations is at least \$9.3 trillion.").

108. CATHERINE KUCHTA-HELBLING, CENTER FOR INT'L PRIVATE ENTERPRISE, BACKGROUND PAPER: BARRIERS TO PARTICIPATION: THE INFORMAL SECTOR IN EMERGING DEMOCRACIES 4 (2000), available at <http://www.cipe.org/pdf/informalsector/informalEnglish.pdf>; see also THE INFORMAL ECONOMY: STUDIES IN ADVANCED AND LESS DEVELOPED COUNTRIES (Alejandro Portes et al. eds., 1989); Edgar L. Feige, *Defining and Estimating Underground and Informal Economies: The New Institutional Economics Approach*, 18 WORLD DEV. 989 (1990); Jaime Saavedra & Alberto Chong, *Structural Reform, Institutions and Earnings: Evidence from the Formal and Informal Sectors in Urban Peru*, 35 J. DEV. ST. 95 (1999).

109. KUCHTA-HELBLING, *supra* note 108, at 4.

capital.¹¹⁰ In essence, this means that the government provides and enforces titles or other proofs of ownership that are universally transferable.¹¹¹ Such systems are so established that they become inherent in the daily economic lives of people in developed countries, especially in western countries.¹¹²

There are two primary barriers to converting wealth into capital. The first is government bureaucracy.¹¹³ The longer it takes to create a business, acquire a title, or receive a permit, the less likely it is that individuals will enter the formal economy.¹¹⁴ Instead, entrepreneurs will operate informally through illegal titles and land ownership.¹¹⁵ De Soto documents this phenomenon through studies of countries like Mexico, where it takes an average of two years of full-time work to create a new business.¹¹⁶ Moreover, once the business is created, most entrepreneurs cannot afford the costs associated with following the regulations and acquiring permits.¹¹⁷ Economic activity becomes and remains informal because of the cost of legality.¹¹⁸ As a result, Mexico's informal economy is estimated between twenty-eight and thirty-nine percent of the country's GDP.¹¹⁹

The second barrier to converting wealth into capital is a disconnect between the existence of formal property rights systems and public benefit from those systems.¹²⁰ One factor contributing to this barrier is the fact that formal law has often been created by and for a country's upper class.¹²¹ There is little consideration of how it might better reflect the economic realities of the general public.¹²² Another problem is that those who do not formally hold wealth rarely hold political power.¹²³ As a result, "poorly designed institutions bar entrepreneurs from or discourage their participation in the political and economic sys-

110. DE SOTO, *supra* note 11, at 11.

111. *Id.* at 6.

112. KUCHTA-HELBLING, *supra* note 108, at 1-3.

113. *Id.* at 4.

114. *See* DE SOTO, *supra* note 11, at 18-21.

115. *Id.*

116. Hernando de Soto, Latin America's Future in an Interdependent World, Remarks at the Milken Institute 2002 Global Conference Panel Discussion (Apr. 23, 2002), at http://www.milkeninstitute.org/gc2002/prog_detail.cfm?ID=39.

117. KUCHTA-HELBLING, *supra* note 108, at 2.

118. Enrique Ghersi, *The Informal Economy in Latin America*, 17 CATO J. 99 (1997), available at <http://www.cato.org/pubs/journal/cj17n1-8.html>.

119. DE SOTO, *supra* note 11, at 135.

120. *Id.* at 154-55.

121. KUCHTA-HELBLING, *supra* note 108, at 2.

122. *Id.*

123. *Id.* at 3.

tem.”¹²⁴ This creates a cycle where entrepreneurs cannot gain access to the formal sector because of onerous regulations and cannot change the regulations because they do not have the type of capital that brings influence in the political system.¹²⁵

De Soto uses his explanation of the informal sector to conclude that reforms in a changing economy must not forget the “origins of capital”:

After the fall of communism, the rest of the world turned to the West for help and was advised to imitate its conditions: stable currencies, open markets, and private business, the objectives of so-called macroeconomic and structural adjustment reforms. Everyone forgot the foundation on which these conditions could grow.

This is one principle reason macroeconomic reforms are not working. Imitating capitalism. . . by importing McDonald’s and Blockbuster franchises, is not enough to create wealth. What is needed is capital, and this requires a complex and mighty system of legal property that we have all taken for granted.¹²⁶

De Soto recommends focusing reforms on structural economic and governmental systems that trap wealth in a country’s informal economy.¹²⁷ By concentrating on this “capitalization” process, more people can operate in the global economy.¹²⁸ Once property ownership is recognized economic actors can operate on a much broader scale.¹²⁹ For example, consider a house or piece of real estate. If an owner has no legal system for recognizing that he or she owns the home, it can only be dealt with inside of a small community of those willing to recognize the ownership. However, if that ownership is represented by a title that is universally accepted, the owner will be able to trade the property on a national or global scale.¹³⁰

When it comes to reform, De Soto criticizes policymakers for assuming that adjustments on a macro level are sufficient for sustainable economic growth.¹³¹ When policymakers at any level seek only to open markets to foreign investment and place orthodox economists in charge of treasury departments, they forget about a formal system of property recognition that makes

124. *Id.*

125. *See id.* at 9-17 (describing in-depth the economic and political implications of the informal sector).

126. DE SOTO, *supra* note 11, at 66.

127. *Id.*

128. *Id.* at 67.

129. *Id.*

130. *Id.* at 47.

131. *Id.* at 211.

investment and sustainable development possible.¹³² Problems in reforming developing countries result because “[e]conomic reformers have left the issue of property for the poor in the hands of conservative legal establishments uninterested in changing the status quo.”¹³³ The result, despite reforms, is a large informal economy and the problems that come along with it.¹³⁴

Argentina’s reformers are now presented with the challenge of addressing the country’s fundamental problems. They must decide whether to default on loan payments, whether to restructure Argentina’s debt, and how to deal with the need for additional domestic spending. The government’s choices will determine its future relationship with the IMF and the rest of the world. International reformers at the IMF must also decide what policies Argentina must implement before reform can begin. So far, the IMF’s attempts to help solve Argentina’s problems have focused on refinancing debt to create a stable system of payments.¹³⁵ As the next section argues, more of Argentina’s informal economy must be drawn into the formal sector if the country is to truly address its structural problems.

III. THE IMF AND ARGENTINA’S INFORMAL ECONOMY: A NEW APPROACH TO REFORM

While Argentina has cycled through numerous reforms, it has failed to effectively address some of the fundamental problems posed by a sizable informal economy. These problems include public debt and corrupt government institutions.¹³⁶ Not addressing these problems results in difficulty in creating sustainable economic development,¹³⁷ one goal of the IMF’s work.¹³⁸ De Soto criticizes the failure of policymakers who, like the IMF, attempt to implement reform without addressing the problem of informal capital.¹³⁹ De Soto’s argument shows that future economic reforms in Argentina must include a formalization proc-

132. DE SOTO, *supra* note 11, at 211-12 (“Because [contemporary policymakers] concentrated only on policies dealing with the aggregates, they did not inquire whether people had the means to participate in expanded market systems.”).

133. *Id.*

134. *Id.*

135. *See supra* notes 98-103 and accompanying text.

136. *See supra* notes 70-73, 78-80 and accompanying text.

137. *See supra* notes 70-74 and 78-81 and accompanying text.

138. *See supra* note 24 and accompanying text.

139. *See supra* notes 126-27, 131 and accompanying text.

ess that brings hidden capital into the formal economy.¹⁴⁰ Both Argentina's government structure and critics' valid concerns over state sovereignty limit the IMF's ability to require formalization, however.¹⁴¹ The inability of the IMF to implement the necessary policies for reform casts doubt on the likelihood of future IMF success in Argentina.¹⁴²

A. ARGENTINA'S INFORMAL SECTOR

Argentina's economic instability comes partially from barriers that keep capital in the informal sector and partially from not having the political will to reform.¹⁴³ These two characteristics indicate that citizens who operate extralegally do not have a voice in current government reform efforts.¹⁴⁴ To engage these citizens, Argentina should first deal with the institutional corruption that keeps the entrepreneurial class operating in the informal sector.¹⁴⁵ This will increase the ability of Argentine citizens to operate in a national and global marketplace, as well as provide the smoothest transition toward the broader reforms that the IMF requests.¹⁴⁶

Future reforms should require the reduction of barriers that keep hidden capital outside of the formal marketplace.¹⁴⁷ When it comes to drawing capital into the formal marketplace, Argentina has done a better job than many other Latin American countries.¹⁴⁸ Yet, the fact that one third of Argentine capital remains in the informal sector reflects barriers that prevent capital from coming into the legal system.¹⁴⁹ Argentina's infor-

140. See *supra* notes 126-27 and accompanying text.

141. See *infra* Part IV.B.

142. See *supra* notes 126-27, 131 and accompanying text.

143. See *supra* notes 71-77 and accompanying text; see also *infra* notes 240-46 and accompanying text.

144. See *supra* notes 123-25 and accompanying text.

145. See *supra* notes 123-25, 126-27 and accompanying text.

146. See *supra* note 130 and accompanying text.

147. De Soto has contrasted this simple paradigm for reform to the "Olympian" view used by international policymakers. See DE SOTO, *supra* note 11, at 211.

148. It is estimated that six out of every ten jobs in Latin America were created in the informal sector during the 1990s. See INT'L LABOR ORG., SKILLS DEVELOPMENT FOR THE INFORMAL ECONOMY, at <http://www.ilo.org/public/english/employment/skills/informal/who.htm> (last modified Nov. 16, 2000). In Argentina, the figure is between three and four out of ten. *Id.*

149. See DE SOTO, *supra* note 11, at 28, 76, 252. De Soto writes that "if capitalism is the body, then a legal property system is the brain." *Id.* It is the institutional barriers to the legal property system that prevent the entrance of extralegal capital. *Id.* at 62.

mal economy also results in weakened public institutions.¹⁵⁰ This weakness contributes to economic barriers that keep entrepreneurs out of the formal economy and is one of the factors that played a part in Argentina's economic collapse.¹⁵¹ Therefore, finding a way to remove these barriers to the formal marketplace should be the center of additional reform.

The growth of Argentina's informal sector can be directly tied to increasingly burdensome economic regulations¹⁵² and higher government expenditures.¹⁵³ The nationalized marketplace results in restrictions on labor markets, trade, and financial activity.¹⁵⁴ An Argentine entrepreneur needs forty-eight days and must go through fourteen different procedural steps to start a new business.¹⁵⁵ With limited prospects in the over-regulated formal economy, Argentina's economic agents opt into the extralegal sector.¹⁵⁶ The size of Argentina's informal sector alone indicates how the country could benefit from integrating its hidden capital.¹⁵⁷ Tellingly, when informal sector data is included in economic models, the size and annual growth rate of Argentina's economy increase dramatically.¹⁵⁸ One can conclude that the country's problems lie not in the fact that it is poor, but

150. De Soto discusses several ways that poorly structured government institutions can result in a greater informal sector and a slower economy. See *id.* at 154-55.

151. See *supra* notes 75-81 and accompanying text.

152. See John Zemko, *Políticas para Reducir el Sector Informal y Promover la Inversión*, CTR. FOR INT'L PRIVATE ENTER., at 4, at <http://www.cipe.org/pdf/publications/fs/miami.pdf> (last visited Mar. 28, 2003).

153. Adrian Guissari, *Driven to Informality*, INFORMAL SECTOR NEWSL. (Ctr. for Int'l Private Enter., Washington, D.C.), 1991, available at <http://www.cipe.org/publications/fs/ert/e02/5argent.htm> ("A rigorous review of six decades of Argentine economic performance—and the changes in the state's role during those years—reveals just how avoidable informality was. It occurred not by accident, but rather as a logical consequence of uncontrolled public expenditures that grew . . . to 51.2 percent [of the GDP] in 1985.").

154. *Id.*

155. See generally SIMEON DJANKOV ET AL., HARVARD INST. OF ECON. RESEARCH, *THE REGULATION OF ENTRY* (2000), at <http://post.economics.harvard.edu/hier/2000/papers/HIER1905.pdf>.

156. Guissari, *supra* note 153 ("Once this economic monster was in place, its progress was distorted by over-regulation, price controls and market restrictions. These led, inevitably, to a skewed labor market, overblown social security system, and protectionist restrictions on foreign trade and financial activity. Faced with these hurdles, Argentines had one choice: stagnation or informality. They chose informality, and they chose it in droves!").

157. See *supra* note 149 and accompanying text.

158. See Guissari, *supra* note 153 (finding that the GDP in Argentina grew at an annual rate of 2.63 percent between 1931 and 1985, while factoring in the estimated size of the informal sector shows growth at 3.72 percent).

in that Argentina does not have the institutions to recognize that wealth as capital, which can be traded in a broader marketplace.¹⁵⁹

Integrating hidden capital into the formal marketplace requires creating a system of property recognition and reforming corrupt and inefficient government structures.¹⁶⁰ Macroeconomic reform in Argentina has failed because it cannot successfully change government structures in order to include extralegal capital in the formal economy.¹⁶¹ Therefore, a more effective IMF policy would move toward encouraging Argentina to include a formalization process in necessary legal reforms.¹⁶²

The IMF's current attempt at reform, the temporary agreement with Argentina and the SDRM plan, do not go far enough in addressing the basic barriers to reform.¹⁶³ The current transitional plan bails out Argentina without requiring specific reforms.¹⁶⁴ The IMF claims that Argentina has agreed to enact reforms in the future, but such measures would surely result in short-term pain for the Argentine people.¹⁶⁵ While the IMF sounds optimistic about enacting future reforms in Argentina, it is not clear that doing so is politically feasible for the Argentine government.¹⁶⁶

The IMF's SDRM program attempts to find a balance between ending aid completely and continuing lending without requiring reforms.¹⁶⁷ Former Treasury Secretary Paul O'Neill characterized the balance as either "unwarranted lending or sending the troubled nation off a cliff and into a catastrophic default."¹⁶⁸ This illustrates the IMF's predicament when working with a country that has fallen into economic catastrophe: it needs to hold the country accountable for failed reforms, but

159. See *supra* note 130 and accompanying text.

160. See DE SOTO, *supra* note 11, at 20-22 (describing government barriers to the formal economy in Peru and the Philippines).

161. See *id.* at 66, 211-12 (noting that macroeconomic reform policies cannot address the fundamental problems in a nation's economy).

162. See *id.*

163. See *supra* notes 92-103 and accompanying text.

164. See *supra* notes 91-96 and accompanying text.

165. See Klein, *supra* note 23 (explaining the possible impact of reforms in graphic detail).

166. For example, the political pressure not to reduce government spending, one of the IMF's stated goals, has historically been very difficult for Argentina to withstand. See *supra* notes 72-77 and accompanying text.

167. Krueger, *supra* note 58.

168. See *Doubts Inside the Barricades*, *supra* note 69.

also work with the country to bring about economic stability.¹⁶⁹

However, addressing only this balance ignores other impediments to reform. If a country has fundamental flaws in its government institutions, then no loan repayment plan will lead to long-term sustainability.¹⁷⁰ Instead of continuing to support a government structure that is not going to work, the IMF must advocate structural reforms that recognize property ownership, create more accountable and transparent public institutions, and reduce bureaucratic barriers to entrepreneurs.¹⁷¹ Future reforms should include steps ensuring that every land owner has a title to his or her property and is able to trade and borrow with that title;¹⁷² making it easier to start a business by reducing regulations on new entrepreneurs;¹⁷³ and beginning a process of reform to end corruption in government legal institutions.¹⁷⁴

Imposing such fundamental reforms on Argentina would be an unprecedented step into the country's domestic policies. Yet, the IMF already requires Argentina to either agree with its policies, regardless of the domestic effects, or forego IMF assistance.¹⁷⁵ In the past, Argentina has complied with, and even exceeded, the IMF's requirements for free market reform.¹⁷⁶ President Menem's reform agenda throughout the 1990s followed the IMF's policy recommendations for sustainable economic growth.¹⁷⁷ Menem believed that his government "definitively eradicated" government corruption, state-funded

169. *Id.*

170. Lindsey, *supra* note 76.

171. These are the essential issues of De Soto's reforms. See *infra* note 172.

172. Dani Saadi, *Property Laws 'Key to Development' Economist Outlines Recipe for Growth*, THE DAILY STAR ONLINE, May 23, 2002, at http://www.dailystar.com.lb/business/23_05_02_b.htm (showing how De Soto's plan increases the value of property through the "paperization" of legal security in property); see also THE WORLD BANK, TOOLS AND PRACTICES: LEGAL AND JUDICIAL REFORMS 217-21, available at <http://www.worldbank.org/poverty/empowerment/toolsprac/tool14.pdf> (last visited Feb. 12, 2003) (discussing the success of property rights reforms in Peru); Marcia Villanueva, *GMA: Poor Can Be Wealth Generators*, PHILIPPINE STAR, July 27, 2001, available at http://www.philstar.com/philstar/show_content.asp?article=45085 (describing how a plan to give every land owner a title worked in the Philippines).

173. De Soto, *supra* note 116 (arguing that excessive government bureaucracy inhibits the growth in prosperity in the region).

174. KUCHTA-HELBLING, *supra* note 108, at 9-17.

175. Galano, *supra* note 33, at 347.

176. See Menem, *supra* note 3.

177. *Id.* ("[W]e have worked side by side with the IMF, the World Bank, and the IDB to achieve macroeconomic stability, deepen structural reforms, and adopt policies aimed at improving the economic fortunes of the poorest members of society.")

programs, and deficits with the IMF's encouragement.¹⁷⁸ Even while the government implemented some of the IMF's policy recommendations, however, problems like government debt, corrupt institutions, and bureaucratic obstacles remained in place.¹⁷⁹

In its approach to Argentina's most recent problems, the IMF is again calling for domestic policy reforms.¹⁸⁰ The IMF's policy is to ask specifically for broader macroeconomic reforms while leaving the specifics of structural domestic reforms for Argentina to take care of on its own.¹⁸¹ Added to this is the new SDRM plan that seeks to reform a country's economy on a broad balance of payments level without addressing the domestic barriers to sustainable economic growth.¹⁸²

B. THE INFORMAL ECONOMY AND GOVERNMENT CORRUPTION

One benefit of the formal economy is that it provides security in property ownership. This is a primary incentive for entrepreneurs to enter the formal sector because it makes it cheaper for entrepreneurs to operate legally than to remain extra-legal.¹⁸³ The entrepreneur nearly always wants to be able to operate legally, and De Soto's research indicates that most entrepreneurs will join the formal economy if provided with legal and structural security.¹⁸⁴ However, if structural institutions like police forces, the judiciary, and political representatives are unreliable, then the benefits of entering the formal economy are lost.¹⁸⁵ Thus, the process of drawing hidden capital into the for-

178. *Id.*

179. Peter Hudson, *Menem's Argentina: Economic Miracle or Quick Fix?*, 22 WASH. Q. 175, 178 (1999) (finding that Argentina's public debt rose and corruption remained a problem, albeit under the surface, during Menem's administration).

180. Plumb, *supra* note 40 ("The International Monetary Fund demanded Argentina cut planned spending months, Clarin reported, citing unidentified Economy Ministry officials.").

181. Emad McKay, *Finance: New IMF Lending Terms Will Change Nothing, Critics Say*, INTER PRESS SERVICE, Oct. 25, 2002, available at 2002 WL 4915995 (finding that the IMF's "conditionalities now focus on core areas of expertise at the fund, such as macroeconomic advice on items like exchange rates, monetary and fiscal policies and financial-sector and capital-market issues").

182. See *supra* notes 97-103 and accompanying text.

183. DE SOTO, *supra* note 11, at 154-55.

184. *Id.* at 154 (showing that the benefits of operating legitimately, which include police protection and greater opportunities to gain investments and trade on a broader marketplace, outweigh the expense of having to pay taxes and following the law).

185. This is because there is no benefit from joining a formal sector if an individual cannot rely on it protecting his or her property title. *Id.* at 155 (showing the

mal economy requires reliable defenses for individual property rights.¹⁸⁶

Just as corruption drives individuals into Argentina's informal sector, the informal sector encourages government corruption. Barriers to the formal economy force entrepreneurs to operate outside of its rule in the extralegal sector.¹⁸⁷ The problem works the other way as well. Since the extralegal actors operate outside of legal rules, they also must discover a way to operate outside of legal protection.¹⁸⁸ They must find a way to work around government institutions, especially legal institutions, that stand in their way. Individuals are already operating illegally; dodging law enforcement through bribery or other illegal means are necessary steps to survive.¹⁸⁹ Thus, the rise of informality in the economy correlates with the rise of corruption among law enforcement and in the judicial system.¹⁹⁰

Corruption among Argentina's legal institutions also causes further growth in the informal economy and extralegal activity of all kinds. In a corrupt system, the laws themselves are irrelevant since enforcement is unreliable. While the protection of assets and ability to operate on a larger scale provide incentive for economic actors to join the formal economy,¹⁹¹ corruption takes these incentives away since there is no sense in joining a legal system of rules that are routinely ignored.¹⁹² Since corruption and the informal economy seem to feed off each other, efforts to end the corruption of Argentine institutions and draw

institutional benefits in Peru's formal sector).

186. *Id.*

187. ZEMKO, *supra* note 152, at 4 ("But when these institutions are not well-designed, the industrialists must face difficult and complicated regulations and laws, and corrupt governments and few benefits if they decide to participate in the formal economy. The bad or weak institutions increase the cost of the commercial transactions and prevent economic growth.").

188. *Id.* at 7.

189. See DE SOTO, *supra* note 11, at 155.

190. It is probably not possible to find a direct link between the informal sector and corruption since both have been around for a very long time. However, it is possible to say that the two contribute to each other. As this Note argues in the next paragraph, corrupt institutions contribute to extralegal activity. See *id.* ("Extralegal businesses are taxed by . . . continually having to hide their operations The only 'insurance' available to them is that provided by their neighbors and the protection that local bullies or mafias are willing to sell them.").

191. See *supra* notes 127-30.

192. Simon Johnson et al., Public Finances and the Unofficial Economy, Presentation Before the Economic Commission for Latin American and Chile Conference 2-3 (Jan. 26-28, 1998), available at <http://www.worldbank.org/wbi/governance/pdf/wps2169.pdf> (last visited Mar. 5, 2003).

actors into the formal economy must be done at the same time.¹⁹³ In order to give people assurance that their capital will be protected in the formal marketplace, they must believe that the law is reliable and enforceable.

C. THE INFORMAL SECTOR, PUBLIC DEBT, AND SUSTAINABLE ECONOMIC GROWTH

De Soto's work in Peru shows how his theory can be implemented in practice. After researching the nature of property ownership and entrepreneurship in Peru, De Soto found that a typical entrepreneur in Lima would have to spend six hours a day for three hundred days to start a new business.¹⁹⁴ The cost of doing so was thirty two times the monthly minimum wage.¹⁹⁵ De Soto also found that sixty five percent of the population did not have a formal property title for their home or land.¹⁹⁶ Notably, the problem of hidden capital existed almost exclusively for the poorest members of Peru's population,¹⁹⁷ who also had the most difficult time gaining recourse from the political process.¹⁹⁸ In 1988 and 1990, the Peruvian Congress accepted De Soto's proposals for simplifying the process of receiving a formal property title and starting new businesses.¹⁹⁹ Only a few years later, formerly extralegal businesses paid \$1.2 billion in tax revenues.²⁰⁰

Argentina can learn from Peru's example. The IMF's problems with Argentina are partly due to the nation's large public deficits²⁰¹ and political unwillingness to end deficit spending.²⁰² Integrating extralegal capital into the formal economy will help solve this problem in a number of ways. First, businesses and individuals that operate in the informal economy do not pay

193. Research on corruption and the informal sector has found that entrepreneurs who cannot afford to operate formally as a result of government regulation or corruption often choose to opt out and operate informally. *Id.* at 3.

194. DE SOTO, *supra* note 11, at 190.

195. *Id.*

196. *Id.* at 252.

197. *Id.* at 190.

198. *Id.* at 198-206 (noting that it is principally law makers and custodians of a country's bureaucracy that prevent reform). However, once De Soto and his group began releasing information on the bureaucratic problems that existed, his formalization policies became politically popular. *See id.* at 191.

199. *Id.* at 191.

200. DE SOTO, *supra* note 11, at 154.

201. Lindsey, *supra* note 76.

202. Rodriquez, *supra* note 36.

taxes.²⁰³ Peru's case shows the revenue possibilities in the informal economy.²⁰⁴ Argentina's measurements of how much extralegal capital exists are unclear, but it is estimated that at least thirty-seven percent of Argentina's GDP exists outside of the formal economy.²⁰⁵ Incorporating this capital would increase tax revenue and result in economic growth in the formerly extralegal sector.²⁰⁶ Since formerly extralegal actors could invest in other markets and borrow and trade with their own capital, capital would increase in the Argentine economy.²⁰⁷ Reducing the size of the informal sector will also bring people under the rule of law and reduce crime and government corruption.²⁰⁸ Consequently, the government could begin to reduce its deficit, the level of corruption, and the resulting problems that have plagued Argentina.

This section has outlined three of Argentina's problems that can be addressed by reducing size of the country's informal sector. Beyond these three specific areas, bringing informal capital into the formal marketplace will make it easier for Argentine entrepreneurs to operate legally, encourage innovation, and assure the security of property ownership and private sector investment.²⁰⁹ Encouraging innovation and investment in Argentina's private sector is the ultimate goal of efforts to offer Argentina additional loans, require looser restrictions on banks, and allow for freer trade.²¹⁰

203. The informal sector has its own kind of taxation. The need to bribe police and mafias is one example. DE SOTO, *supra* note 11, at 155.

204. See *supra* note 200 and accompanying text.

205. Estimates of the amount of capital in the informal sector are nearly always too low. De Soto's research underestimated the amount of informal capital in economies in Latin America. See DE SOTO, *supra* note 11, at 76.

206. *Id.* at 154. While De Soto stresses that the poor will benefit most from formalizing capital, he also notes that creating an orderly market that makes property owners accountable will generate an expanding market, encourage law and order, and "put money into the pockets of the elite." *Id.* at 198.

207. *Id.* at 194.

208. *Id.* at 196 ("The right to property also engenders respect for the law.").

209. See *supra* notes 105-30 and accompanying text.

210. See *supra* note 17 and accompanying text.

IV. OBSTACLES TO IMPLEMENTATION: CRITICISMS OF DE SOTO AND LIMITATIONS OF THE IMF IN SHAPING DOMESTIC POLICY

Any fundamental reform will face opposition from Argentina's political factions and international critics.²¹¹ While De Soto's theory has been generally hailed as a positive model for developing and formerly communist nations, it is subject to at least two general critiques. As such, while De Soto claims to transcend typical political debate, his efforts will also undergo scrutiny.

Also, the IMF confronts additional problems if it requires De Soto's formalization process for Argentina's government. While De Soto's recommendations have been implemented by national governments,²¹² such policy recommendations have never been attempted by an international organization without the full cooperation of the national government. Moreover, state sovereignty concerns create particular barriers for the IMF in reforming Argentina's informal economy.²¹³

A. CRITICISMS OF DE SOTO

One criticism targets De Soto's premise that increased involvement in globalization is good for the poor in developing countries.²¹⁴ Critics might argue that if De Soto has his way, those in the extralegal sector will not increase their wealth since they may be pushed off the market by larger and wealthier foreign investors.²¹⁵ For example, imagine one of the hundreds of fruit and vegetable retailers operating extralegally on street corners in Latin America. If their activity were suddenly on the same playing field as larger retailers and the larger produce re-

211. See Lindsey, *supra* note 76.

212. See *supra* notes 194-200 and accompanying text.

213. See *infra* Part IV.B.

214. DE SOTO, *supra* note 11, at 210 (arguing that opening developing countries is good, but that they must also include a developing country's ability to use its capital in the open market).

215. Generally, this argument holds that reducing regulations for the informal economy would also result in easier regulations on the formal economy and multinational corporations that might want to take advantage of new markets. As large investors expand into new markets, they might push out smaller, formerly extralegal entrepreneurs. See Alicia Morris Groos, *International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law*, 34 TEX. INT'L L.J. 379, 384 (1999) (arguing that traditional notions of "free trade" had hindered the ability of informal sector workers to participate in a globalized marketplace).

tailers suddenly received an influx in capital, the larger producers could buy out or force out the smaller entrepreneurs. Thus, De Soto confronts one of the constant criticisms of globalization - it produces greater inequality by benefiting the wealthy at the expense of the poor.²¹⁶

De Soto, however, is aware of the dangers that arise from inequality.²¹⁷ He fears that reformers who ignore the informal sector are blocking access to expanded markets for a majority of people in many developing countries, and thereby setting the stage for class confrontations.²¹⁸ But De Soto believes the class divide is a result of the laws and bureaucracy that keep poorer citizens in the informal economy.²¹⁹ He argues that the failure of globalization is not a market failure, but the government's failure to allow its citizens to take advantage of their existing capital.²²⁰

Formalization's benefits outweigh the costs to the poor. The highly regulated economic systems in some countries breed highly inefficient formal economies.²²¹ Nevertheless, entrepreneurs in the informal sector have shown their ingenuity by creating wealth without the benefits of legal protection and recognition.²²² Bringing these entrepreneurs into the formal economy will increase competition and make larger businesses more efficient.²²³ It is possible that the larger multinational corporations will buy or force out smaller operators. But at least under De Soto's plan, the poor can decide how to use their capital and they would no longer be trapped in the informal sector.²²⁴ For this reason alone, it is not convincing to argue that extralegal entrepreneurs are somehow safe from outside encroachment in the informal economy.

216. DE SOTO, *supra* note 11, at 210.

217. *Id.* at 210-14.

218. *Id.* De Soto recognizes this as the same trap that Karl Marx foresaw; therefore, addressing legal inequalities is "facing up to Marx's ghost." *Id.* ("The great contradiction of the capitalist system is that it creates its own demise because it cannot avoid concentrating capital in a few hands.").

219. *Id.* at 212.

220. *Id.* at 207.

221. See Lisa Trei, *Experts Seek Out Root Causes of Latin America's Economic Inefficiencies*, STANFORD REPORT, Jan. 23, 2002, at <http://www.stanford.edu/dept/news/report/news/january23/socsciconf-123.html> (quoting political science Professor Steven Haber that political systems in Latin America have given rise to economic rules and regulations that produce inefficient economies by design).

222. DE SOTO, *supra* note 11, at 35.

223. *Id.* at 194.

224. See *supra* note 172 (showing how capitalization empowers the poorest sector of Peru's economy).

Critics may note that reducing regulations could also mean a reduction in desirable results like benefits to employees, safety standards, and environmental protections. Bringing businesses into the formal economy, however, would allow the government to more accurately understand the extent of these problems in their society and perhaps address them within a regulatory framework with fewer regulations.²²⁵ For example, Argentine businesses that operate extralegally do not contribute to a state-mandated social security fund for employees.²²⁶ Reducing regulations to bring more people into the formal economy would result in a net gain for the number of Argentines in these types of programs.²²⁷

B. CONCERNS ABOUT THE IMF'S IMPLEMENTATION OF DE SOTO'S REFORMS

While De Soto's theory has shown itself to be useful when individual nation-state governments choose to reform, the IMF's imposition of these reforms raises concerns about Argentina's sovereign decision-making authority.²²⁸ Usually the IMF deals with very specific macroeconomic reforms.²²⁹ The IMF has focused intently on Argentine politicians' willingness to control government spending.²³⁰ The IMF hoped that Argentina would accept the need to control the spending and find a solution like De Soto's on its own.²³¹ But this is not how it has worked out. For instance, Argentina has cut social services, exacerbating the short-term pain of complying with the IMF's requirements.²³² This usually results in calls for Argentina to refuse IMF man-

225. *Id.*

226. Press Release, Global Employer, Employee Registration And Social Security Contributions (Jan. 2001), at <http://www.shrmglobal.org/publications/baker/0101glob/Jan%202001%20docs/argentina.htm>.

227. This is because the employers would be required to fund social security programs for employees in the formal sector.

228. Governments of countries such as Peru and the Philippines have used De Soto's work to successfully increase the value of the formal economy in their countries. See Saadi, *supra* note 12.

229. For example, in previous agreements the IMF has required a stable currency and banking regulations. *Development Finance – Old Battle, New Strategy*, *supra* note 25.

230. See Plumb, *supra* note 40.

231. See Rodríguez, *supra* note 36.

232. See Klein, *supra* note 23 (“And if deeper cuts are made to the public sector, as the IMF also is insisting, unemployed workers who account for between 20 and 30 per cent of the population, will have even less protection from the homelessness and hunger that has led tens of thousands to storm supermarkets demanding food.”).

dates.²³³ The most recent rounds of discussions have not been much different. The IMF has called on Argentina to reign in government spending, and Argentina has refused.²³⁴ Many observers speculate that this is the cause of Argentina's failure to come to a long-term agreement with the IMF.²³⁵

The concerns over state sovereignty are especially relevant here because by mandating these reforms the IMF would be taking a new step into matters that are completely domestic.²³⁶ However, reaching these policies is crucial to long-term sustainability; integrating extralegal capital cannot be ignored.²³⁷ Thus, not requiring these structural reforms is the equivalent to continually putting money into a bad investment. Without considering the structural problems, the SDRM is only rearranging a payment system that is ultimately destined to fail.²³⁸ If the IMF is going to mandate Argentina out of its current crisis it should go beyond macroeconomic changes, and require reforms to the fundamental structural problems in Argentina's political and economic system.²³⁹

Some critics claim that Argentina's failure to comply with the IMF is due to a lack of political willpower.²⁴⁰ More than most countries, interest groups that oppose the IMF's reforms mark Argentina's political landscape.²⁴¹ Argentina's provinces also control much of the government's spending.²⁴² This makes it difficult for the IMF to implement any reform on government

233. See *id.*

234. See Rodríguez, *supra* note 36.

235. See *G7 Ready to Back Argentina If IMF Permits*, CHANNEL NEWSASIA, Sept. 28, 2002 ("The IMF says the Argentine government has yet to come up with an economic plan it can back with money, stressing the need to unravel a freeze on bank deposits, and to win provincial government backing for restrained spending.").

236. In the current stand-by agreement with Argentina, the IMF has indicated that it will require Argentina to enact fundamental structural reform. There is little difference between conditioning aid on these reforms and conditioning aid on De Soto's reforms. See *supra* notes 92-96 and accompanying text.

237. See DE SOTO, *supra* note 11, at 149-50.

238. See *supra* notes 99-103 and accompanying text.

239. See *supra* notes 201-10 and accompanying text.

240. See Lindsey, *supra* note 76.

241. See LATIN FOCUS, POLITICAL POWERS AND INTEREST GROUPS, at http://www.latin-focus.com/factsheets/argentina/argfact_pol_groups.htm (last visited Feb. 12, 2003).

242. Andrew Walker, *International Feud Threatens Argentina Deal*, BBC NEWS BUSINESS, Nov. 18, 2002, at <http://news.bbc.co.uk/1/hi/business/2489947.stm> (The IMF has trouble dealing with the provinces "because some of them have been funding their spending by issuing what are in effect separate currencies. That in turn makes it impossible for Argentina's central bank to control the amount of cash in circulation.").

spending, and these entities would likely oppose widespread changes to property law and government institutions.²⁴³ Moreover, even when the country's political leaders were able to implement some IMF reforms, the government could not control lawmaking functions in areas like state spending, which has been Argentina's problem all along.²⁴⁴ The power of Argentina's provincial governments exacerbates this problem. The provinces can broadly commit to new spending, but have never bound themselves to restrict the rate of spending.²⁴⁵ The difficulty in controlling provinces is another challenge to Argentina's political will.²⁴⁶

However, as the long as the IMF is working with Argentina it must address the problems that result from the country's unwillingness to reform. The SDRM program can deal with some of the problems, but some incentive for structural reform to the informal sector must be included.²⁴⁷ The IMF should put reforms similar to De Soto's on the table and require Argentina to either begin a process of formalization and rooting out corruption or lose aid.²⁴⁸ It is then up to Argentina to decide whether or not it will accept the IMF's assistance and mandates.²⁴⁹ Just as a bank requires borrowing countries to agree to requirements before it receives funding, Argentina would either have to agree to the IMF's rules or go somewhere else.²⁵⁰

Yet the IMF has an obligation to help its member countries,²⁵¹ and it is therefore in a different situation than a private bank or an aid organization.²⁵² As a matter of its own purpose, then, the IMF is obligated to work to find a solution with which the Argentine government could politically agree. Nonetheless, the IMF's ability to meet its obligation is still limited by the willingness of national governments to follow its lead.²⁵³ The IMF must define essential policy changes and then end mone-

243. *Id.*

244. *See supra* notes 70-72 and accompanying text.

245. *See supra* note 76 and accompanying text.

246. *See Walker, supra* note 242.

247. *See supra* notes 99-103 and accompanying text.

248. Argentina's process could be similar to that of Peru and the Philippines. *See THE WORLD BANK, supra* note 172; Villanueva, *supra* note 172; *see also supra* notes 194-200 and accompanying text.

249. This is the kind of choice that some commentators feel that Argentina should confront and refuse IMF aid. *See HANKE & SCHULER, supra* note 47.

250. *See Lindsey, supra* note 76.

251. *See supra* note 45 and accompanying text.

252. *See supra* note 44 and accompanying text.

253. *See supra* note 244 and accompanying text.

tary aid when a country fails to implement those changes.²⁵⁴ Not doing this has only exacerbated Argentina's current depression.²⁵⁵

One difficult choice for the IMF is how far it will extend into the domestic affairs of a member country. Currently, the IMF appears to be asking for incremental macro changes with hope that Argentina will eventually adopt broader structural reforms, perhaps implementing reforms similar to De Soto's recommendations.²⁵⁶ However, because sustainable development is impossible without a system to formalize property, Argentina will continue to experience problems while the informal sector remains in place.²⁵⁷ Any reform must address fundamental issues like large public deficits, institutional corruption, and barriers to enterprise.²⁵⁸ Yet such reforms will be difficult if the national government does not have the political will to put them in place.²⁵⁹

Additionally, there are concerns about whether the IMF could effectively implement De Soto's reforms, even if it wanted to. De Soto views property ownership as rooted in a social contract.²⁶⁰ The proper role for legal systems is recognizing existing contracts.²⁶¹ The informal sector results from a government's failure to acknowledge the social contracts that define relationships for a large part of its economy.²⁶² In this sense, reforms must reflect how people actually live and interact.²⁶³ It seems unlikely that the IMF could ever understand the social contracts in the same manner national or local governments can.

C. WHAT CAN THE IMF DO?

The problems addressed here arise partly from the inherent conflict in the IMF's role. The IMF "is expected to serve the interests of its members, individually and collectively, by acting

254. See *supra* notes 30-32 and 51-58 and accompanying text.

255. See *supra* Part I.C.

256. The IMF either needs to do a better job of holding a country accountable for not making agreed upon domestic reforms or end aid to non-complying countries. See *supra* notes 53-57 and accompanying text.

257. See *supra* Part II.

258. See *supra* note 126 and accompanying quote.

259. See *supra* notes 131-34 and accompanying text.

260. See DE SOTO, *supra* note 11, at 172.

261. *Id.*

262. *Id.*

263. *Id.* at 187. De Soto criticizes reformers for being too tied to Western sources of law. Bringing extralegal capital into a country's formal economy requires changing ownership laws to reflect how people actually live. *Id.*

both as a sympathetic social worker and as a tough cop.²⁶⁴ The IMF is expected to provide encouragement and monetary aid at the same time it points out deficiencies in a country's economic policies.²⁶⁵ For the IMF to help Argentina achieve De Soto's reforms, it must require that Argentina implement the policies, and then enforce its agreement.²⁶⁶

Argentina's economic, political, and social structures need De Soto's reforms, but the IMF can only go so far. If Argentina will not implement De Soto's reforms, the IMF cannot do so with measures short of establishing itself as the country's de facto government.²⁶⁷ As the IMF pushes increasingly specific reforms on Argentina, the more it erodes Argentina's sovereignty and democracy.

Respecting state sovereignty, however, does not mean the IMF should do nothing. Most commentators, as well as some former IMF officials, have argued that the centerpiece of any new reforms must be conditioned on policies that lead toward a consistent economic policy for sustainable development.²⁶⁸ Therefore, the IMF should work with Argentina to begin a formalization process, similar to De Soto's policies in Peru.²⁶⁹ The IMF currently requires Argentina to agree to certain reforms while new aid is extended.²⁷⁰ An additional requirement for formalization, however Argentina sees fit to implement it, would begin the process of De Soto's reforms and not further infringe on Argentina's sovereignty.²⁷¹ Making a loose requirement to begin a formalization process will offer Argentina a more significant choice than ever before - either start the process of reform or lose IMF aid.²⁷² The democratically elected government of Argentina will again make its choice with respect to IMF requirements and De Soto's reforms. It will live with the consequences one way or the other.

264. MUSSA, *supra* note 1, at 67.

265. *Id.* at 67-68.

266. See *supra* notes 50-56 and accompanying text.

267. See *supra* note 38 and accompanying text.

268. MUSSA, *supra* note 1, at 54.

269. See DE SOTO, *supra* note 11, at 160-61 (outlining De Soto's "capitalization" process).

270. See *supra* notes 30-31, 92-96 and accompanying text.

271. This is not to say that the current infringements on sovereignty are not significant. They are; however, the IMF is accountable for producing results through its work with member countries. It is difficult to see how it can produce results by never requiring any changes in the countries themselves. See *supra* notes 44-46 and accompanying text.

272. See Rodriguez, *supra* note 36.

CONCLUSION

There are no easy answers to Argentina's economic problems. However, any future solutions will probably involve additional loans from the IMF and require reforms from Argentina's government. So far, the IMF's policy toward Argentina has not resulted in sustainable economic growth because it has not addressed the root cause of the problem. The IMF's current solutions will not be effective until they also require fundamental reform in Argentina's legal and governmental institutions. The state sovereignty concerns in this area are legitimate, but the IMF has shown sensitivity to these issues in the past. It could continue to do so now. De Soto's theory shows why a capitalization process is needed, and how it should be implemented. Many individual governments have been successful in drawing extralegal capital into the formal economy. To truly help developing countries like Argentina take advantage of the wealth that exists in its own informal sector, the IMF should require De Soto's reforms.

