Property Rights in Post-Soviet Russia. Violence, Corruption, and the Demand for Law

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also the source of conflicts that began to show among former oppositionist brothers-in-arms when the common enemy was gone.

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IN RUSSIA, AS IN MANY COUNTRIES OF THE FORMER SOVIET UNION, the absence of predictable and enforceable property rights acts as a deterrent to potential foreign investors and places a burden on domestic firms, limiting economic growth and diversification. In examining how the protection of property rights in the post-Soviet context has developed, scholars and policymakers have often focused their attention on the strength of the regulatory environment and the integrity of the institutions that uphold it, or what Jordan Gans-Morse in his *Property Rights in Post-Soviet Russia* refers to as the ‘institutional supply’ of law (p. 16).

The prevalence of an institutional and statist focus is understandable. Following the collapse of the Soviet Union, the newly independent successor states inherited legal architectures and institutions that were, and to varying degrees remain, incompatible with the demands of market economies. Amongst the various challenges facing businesses in the 1990s and policymakers wishing to attract them were: contradictory and regionalised tax regulation, the absence of legislation permitting the ownership and transfer of land, the dearth of financial sector regulation, and judiciaries that lacked the skills and capacities to adjudicate economic disputes. The prevailing logic has been that, if a government is to develop a healthy business environment for both domestic and international economic actors, then it must first create a healthy legal environment in which property rights are predictable and enforced. Yet, as Gans-Morse argues, echoing earlier work on Russia by scholars such as Kathryn Hendley, the amelioration of the ‘institutional supply’ of law is an insufficient explanation for understanding how and under what conditions businesses turn to legal channels—effective or otherwise—to protect their property rights. Drawing on extensive survey, interview and court data, Gans-Morse challenges the depiction of a sidelined judiciary and demonstrates that the private sector in Russia has increasingly turned to the courts to protect its rights and resolve its disputes despite businesses retaining low levels of trust in the integrity of the country’s institutions. By reversing the traditional approach to the study of property rights and focusing on firm-level dynamics rather than state capacity, Gans-Morse argues that the change in ‘institutional demand’ is better understood through two other variables.

The first of these are the ‘demand-side barriers’ (p. 17) that inhibit the engagement of the private sector with the legal institutions of a country. Of these barriers, Gans-Morse identifies two culprits—tax compliance and the level of economic informality, and firms’ expectations about their competitors and the concomitant challenge of collective action. Both are illustrative, however Gans-Morse is most persuasive when discussing the impact of tax compliance on the ‘property security strategies’ preferred by firms (p. 17). In the years following the collapse and the ensuing rush to liberalise and privatise, Russia’s tax administration received relatively little attention: under-resourced and lacking the necessary skills, the government ended up with an uneven and roughshod approach to taxation, complicated further by President Boris Yeltsin’s decision to allow regional governments the autonomy to impose certain new taxes. The result was a system so complicated—and punitive—that...
even the best intentioned firms could not navigate it without error, leading, unsurprisingly, to high levels of tax evasion and perpetuating informality. One of the results of this informality was that firms declined to turn to the courts for fear that their infractions would be discovered. An increase in state legal capacity was insufficient to alter this disincentive; however, the simplification of the tax code at a time of hydrocarbon-driven economic growth appears to have had sufficient pulling power to drag many firms out of the shadows and into the formal economy. There, unencumbered by the fear of finding themselves in the crosshairs of the tax administration, firms grew more litigious and increasingly turned to the courts to enforce their rights, against each other and, tellingly, against the state.

The second variable that affects the demand for legal property security strategies, contends Gans-Morse, is the effectiveness of illegal alternatives. He argues that the domestic consolidation of ownership, coupled with the development of a modern financial sector and the internationalisation of Russian firms, has increased transaction costs and, therefore, the effectiveness of resorting to illegal property security strategies, causing a shift in firms’ behaviour. The impact of the development of the financial sector in Russia is a particularly illustrative example of how factors other than state legal capacity can influence how firms secure their property rights. The economic boom that followed the Russian financial crash, driven by high hydrocarbon prices and windfalls from import-substitution manufacturing, led to a spurt of development in the Russian banking sector. At the same time, the government introduced a plan to transition to the International Accounting System and, hoping to curb tax evasion, mandated that all Russian firms open bank accounts, with all large transactions required to be processed through the banking system. This made it harder for firms to continue their use of cash transactions, a widespread practice, and made it easier for them to be caught if they did so. Similarly, echoing the democratising linkage effects described by Steven Levitsky and Lucan Way in 2007, inflows of foreign direct investment exposed firms to new business standards and, with the stakes higher, raised the transaction costs of illegal property security strategies. The trend that Gans-Morse describes is one where, as a result of the developing complexity of the Russian economy, the cost of illegal property security strategies has risen, incentivising firms to pursue legal strategies to enforce their rights, quite independently of improvements in state capacity.

Gans-Morse’s well written, researched and argued book makes an important contribution to the study of the political economy of property rights in post-Soviet economies and to the broader question of reform prioritisation in states transitioning from command-driven economies towards market ones. If economic development and the improvement of the business climate are to be informed by the health of the operational legal and regulatory environment, then scholars and policymakers must not approach the question of institutional strength as the determinant variable. Doing so, if we are to believe the arguments put forward by Gans-Morse, is to ignore, or minimise, the significant demand-side barriers faced by the private sector to the engagement of formal institutions. Importantly, the insights provided by Gans-Morse are so effective and illustrative because they are derived from firm-level dynamics and expectations, which highlights the need for legal scholarship in the post-Soviet space to dive deeper than de jure protections if one is to understand the de facto reality for economic actors. This challenge remains salient in Russia and perhaps even more so in a number of other post-Soviet states. Despite copious legal amendments and donor-backed judicial reform initiatives, the tax administrations of cash-strapped governments continue to have incentives to search aggressively for infractions while low levels of international economic linkage perpetuate bad—or at least unhealthy—business practices. This book, therefore, is a welcome addition to a field where strategic prioritisation—in academia, by development donors and by governments—remains a challenge.

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