Russian Culture, Property Rights, and the Market Economy

The Russian Federation is struggling, since Perestroika and the Glasnost, in a futile attempt to become a "normal" member in the occidental family of market economies. The attempt largely fails because corporations do not live up to Western standards of behavior, and private contracts are often not respected. What is the cause of Russia's observed difficulties? It is commonly believed that these difficulties are an expected outcome of a rocky transition from a Marxist centrally planned system to a market-based economy. This book challenges the accepted wisdom. In tracing the history of contract and corporation in the West, it shows that the cultural infrastructure that gave rise to these patterns of economic behavior have never taken root in Russian soil. This deep divide between Russian and Western cultures is hundreds of years old and has little, if anything, to do with the brief seventy-year-long experimentation with overtly Marxist ideology. The transformation of Russia into a veritable market economy requires much more than an expensive and difficult transition period: It mandates a radical change in Russia's cultural underpinnings. The book's main thesis is supported by an in-depth comparison of Western and Russian theology, philosophy, literary and artistic achievements, musical and architectural idioms, and folk culture.

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Contents

Preface

The last three decades of the twentieth century and the first few years of our own witnessed a profound change in the face of legal scholarship. A largely scholastic, rule-oriented discipline was transformed almost overnight into an inductive, policy-oriented science informed by a variety of insights liberally borrowed from other disciplines. This transformation was occasioned by a sudden realization that *legal* rules are designed to regulate *nonlegal* aspects of life (commerce and industry, family relationships, morals, or the public domain). This perennial interplay between the regulating discipline (law) and the various regulated states of the world (everything else) imposed a new challenge for lawyers, especially academic lawyers. To be proficient in their job, they had to thoroughly familiarize themselves not only with the crafting of rules or with technical skills of interpretation, but also with the various aspects of human existence that are regulated by law but are, by the same token, largely informed by a variety of other forces (love or envy, economic incentives, social pressures, religious convictions, age, prejudice, fear, or scientific discovery).

Perhaps the most sweeping of these reformist movements was an enormous tide of scholarship in the interface of law and economics. Broadly speaking, this new branch of learning seeks to apply economic insights to patterns of behavior regulated by law. It is designed to guide legislators, judges, and interpreters of the law to seek solutions that take into account not only the initial formal injunctions of the legal system, but also their final incidence, given the expected economic behavior of the affected players. Side by side with the law and economics movement, a variety of other interdisciplinary methods came to the fore including, *inter alia*, law and psychology, law and the humanities (literature, theater, music), law and sociology, law and linguistics, and in short, as this plethora of new learning is often referred to, "Law and."

The "Law and" revolution liberated the legal system from its puerile dream of self-sufficiency, of the once canonic illusion that optimal rules could be generated by their own internal manipulation, by "pure" law or lawyering, or by the system's own "principled" consistency. Now we all know better. We realize,

for example, that antitrust laws are about imperfect competition, or that the sentencing of offenders is about the sociology of deviant behavior or about some formulation of moral philosophy. This is, without a doubt, a gigantic step forward. Nonetheless, a truly radical transformation of the concept of law is still in the embryonic stage. The world is a complex nexus of phenomena. The regulated extra-legal sphere cannot easily be pigeonholed; law rarely interacts "only" with economic behavior, or exclusively with deviant or criminal impulses, or with the internal governance of civic institutions to the exclusion of everything else. It often concerns all of these and many other things to boot. The "Law and" movement still falls short of fulfilling its mission because most of its practitioners are normally content to see the law through the prism of a single nonlegal discipline (e.g., economics, psychology, music), rather than in a multidisciplinary configuration that brings into focus insights from as many relevant bodies of knowledge as possible. There is a clear need to move in that direction. This book is a humble attempt to rise to that challenge.

I am painfully aware that any attempt to combine numerous disciplines in a single academic thrust is a very tall order. Nevertheless, daring attempts must be contemplated on occasion and insisted on when they are crucial for the validity of the results. This volume was crafted with this objective in mind, because I sensed that a single-pronged interdisciplinary inquiry of contract, its history, and the numerous formative factors that fashion its ultimate configuration within any given culture would almost surely miss the mark. The practical question that quickened the whole project was whether an appropriate set of incentives (and a large monetary investment) could transform Russia from a centrally planned society to a "Western" market economy with privatized industry, civic institutions of a Western democratic ilk, secure property rights, and routinely enforceable contracts. Since the question thus formulated has to do with "incentives," it was often considered from a Western economic perspective by a formidable army of (Western) theoreticians. The Russian government, in turn, was eager to hire them for advice and assistance. Large amounts of money were then invested to ease existing budgetary constraints, and enormous payoffs were made available to lure enterprise and entrepreneurship. Policy makers were content to delegate to the relevant players the role of maximizing their utility. They trusted the "invisible hand" to transform their individual self-regarding strategies into an aggregate Social Good. Superficially, the players did what was expected of them, but the final outcome turned out to be a far cry from the anticipated result. More than a decade after *Perestroika* and *Glasnost*, the Russian economy is still faltering; democracy is shaky; the securities markets are still a farce; privatization turned itself into a kleptocracy; and contract, the major foundation of all private law and all capitalistic institutions, is still unfathomable to the large bulk of the Russian nation. To understand what went wrong one need not try to find fault with the principles of Western neo-classical economics as such that were posited at the base of the reform. Rather, one should inquire why it was difficult to implement these principles on Russian soil. Clearly, the reaction of the Russian people to "Western"

incentives was heavily conditioned by the history, culture, and life experiences of the relevant players, which were radically different from the history, culture, and life experiences of Westerners.

In some important sense, then, this book is about law. It tries to explain why law in Russia is different from law in the West. Due to the huge economic effort that was invested in transforming Russia into a market economy, the book focuses on the choice of incentives that were designed to accomplish that goal. In that sense, the book is also about law and economics. But the main thrust of the book's thesis is to demonstrate the inadequacy of these incentives, given the very different social norms that animate Russian men and women in their quest to fulfill their deeper aspirations. In that respect, the book is about law *and* economics *and* culture, with a strong emphasis on the third and last element of this inseparable *troika*. I am firmly convinced that there is no other way.

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