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Events over the past few decades have revolutionized how we interact with one another, whether as individuals, corporations, or countries. The source of these changes is a combination of technological innovation and political transformation. The sheer speed at which information travels and the comprehensive global reach of the Internet has had a profound impact on economic relationships (e.g., Helleiner, 2001; Gilpin and Gilpin, 2000). In seeking trading partners, businesspeople now routinely look beyond their national borders. Absent personal knowledge of one another, or even a shared history in which their expectations could be grounded, law has emerged as a means of protecting themselves. Ideally, law provides a common language that is impersonal and universal that helps to even the stakes between more and less economically powerful actors (e.g., Coase, 1988; North, 1990; Olson, 2000). As state socialism has been rejected by more and more countries in favor of the market, domestic policy makers in these countries have come to appreciate the extent to which a functional legal system can facilitate mundane business transactions and the development of capitalism over the long haul. Likewise, the increasingly interconnected nature of the global economy has provided a strong incentive for Western governments and multilateral funding agencies to encourage transition countries to embrace legal development as part of broader programs aimed at facilitating transitions to the market.

The end of the Cold War and the collapse of state socialism as a feasible alternative to neoliberal market democracy as a model for organizing states has also contributed to the renewal of interest in law as a way of spurring economic development. No other viable options exist for countries that want to participate in the global economy. As the countries of the former Soviet bloc cast off the machinery of state planning, they have uniformly looked to a variety of market institutions as a means of rebuilding their economies. China's leadership has taken a different and less precipitous path away from state socialism. While opening the door to some types of market transactions, the Communist Party in China has tried to maintain
The Context of the Contemporary Transition

What distinguishes the current effort at legal development from previous efforts? With its focus on countries making the transition from state socialism to some form of market economy in the wake of the Cold War, the current effort might seem to be a complete departure from anything witnessed in the past. Yet the basic goal differs little from that of previous efforts dating back centuries. Stated simply, the goal is to move away from a concept of law as a pliable tool used by the powerful to exert their will over the powerless to one of law as a relatively stable set of rules that can be used by all to protect or advance their interests vis-à-vis other private actors or the state.

Notwithstanding the common goal, this iteration of legal development has several distinctive characteristics in addition to its unprecedented geopolitical context. First, it focuses on countries with highly developed formal legal systems, distinguishing it from earlier efforts which often focused on countries emerging from colonialism (e.g., Merry, 1996). These former colonies typically had a rich tradition of customary law that had been suppressed, and the debate centered on how (or whether) to integrate this customary law with the formal institutions imposed by the colonizer. Although the Soviet Union’s imposition of its legal system on its vast territory of the former Russian Empire following the 1917 Revolution and on Eastern Europe and the Baltic states in the 1940s might suggest certain parallels, most of these countries had formal legal systems that were “Sovietized” and which could be “de-Sovietized.” Second, the current round of legal development arises in countries that for much of the twentieth century marginalized law, especially in economic transactions. Third, it is taking place in concert with profound political and economic reforms and, as a result, legal reform is often seen as a means to an end rather than as the end itself. Finally, it coincides with (and perhaps has played a role in triggering) the increased interest of multilateral funding organizations and development agencies of individual Western democracies in the outcome of the legal development process and an unwillingness on the part of these groups to sit by silently.

Like other authoritarian countries that came before and after them, the Soviet Union and the Soviet bloc countries have often been described as “lawless” in the popular media. Taken literally, they were not. As scholars have documented, these countries had all the accouterments of a legal system: courts, legislation, regulations (e.g., Barry, Ginsburgs, and Maggs, 1977–9; Lasok, 1973–5). But how meaningful were they? Was the law on the books enforced? The familiar stereotype of judges willfully ignoring law at the behest of their political patrons turns out to be only part of the story. To be sure, when Communist Party officials took an interest in a case, they were likely to try to influence the outcome by putting pressure on the judge (e.g., Shelley, 1986). This happened not only in the so-called “show trials” (Livinov, 1972; Kato, 1969) but also in less high-profile cases that came to the attention of those with political influence (Kaminskaya, 1982). This “telephone law” rarely mirrored the written law. As the utopian goals of socialism faded and material interests replaced ideal interests, corruption became a problem (e.g., Feofanov and Barry, 1996; Simis, 1982). Yet the vast majority of cases passed with little fanfare and were decided in accordance with the written law (Solomon, 1996; Hendley,
1996; Ulc, 1972; Feifer, 1964). The result has been described as a “dual system of law and terror” in which there was a “surprising degree of compartmentalization of the legal and extralegal” (Sharlet, 1977: 155, with reference to Fraenkel, 1941; see also Markovits, 1995). This ability on the part of the political elite to penetrate the legal system and to use law in a crudely instrumental fashion to achieve their short-term goals was a persistent feature of legal systems under state socialism. Over time, the chilling effect of self-censorship motivated by self-preservation can be observed as judges striving to please their political patrons by anticipating their desires and ruling accordingly (Markovits, 1995; Kaminskaya, 1982; Ulc, 1972).

Thus, while the formal structures built up during the years of state socialism could, with some reworking, serve as a foundation for market-driven transactions, the uneven enforcement of law constituted a more substantial obstacle. A successful transition toward market capitalism requires some degree of acceptance of universality in the application of legal norms. Indeed, predictability provides law with much of its value among economic actors. Absent predictability, the efficiency of law is undermined in that there can be no assurance that the relevant law will be applied as written or even as it was to others in analogous circumstances. As a result, law does not have the desired effect of reducing transaction costs.

The dual nature of the legal tradition under state socialism left an equivocal legacy. On the one hand, formal legal systems existed and, to a considerable extent, were functional. On the other hand, the political elite were able to orchestrate outcomes of specific cases or rule changes when their interests were threatened. Equally problematic was the predilection of these regimes for mounting campaigns to address social problems through the use of law (e.g., Smith, 1979). Typically a flurry of new laws (often a combination of executive decrees and legislation) would be announced with great fanfare, only to recede into the background when the regime’s attention turned elsewhere. This illustrates a tendency not only to churn out new laws rather than figure out how to make those already on the books work more effectively, but also to create the appearance of activity with these new laws. As a result, ordinary citizens understood law as a tool available to the state and the political elite, but not to them. For them, law was something to be gotten around, not something that could be relied upon. The idea of law as a set of fixed rules that bound both state and society would have been regarded as absurd. This skepticism toward law is not necessarily a permanent feature and may gradually diminish of its own accord under market democracy, but was a reality that ought to have been taken into account by those bent on reforming the legal system. Legal development programs that focused on institutional reforms at the expense of attitudinal factors were seen by ordinary citizens as a continuation of the old campaign approach. Due to the historical legacy, such reforms have enjoyed only limited success in encouraging people to use (rather than avoid) law in ordering their economic transactions.

Further complicating legal reform in the post-socialist world is the fact that it is occurring simultaneously with an unprecedented transformation of the political and economic systems. At least initially, policy makers focused primarily on these other aspects. Changes in the legal system were made in order to facilitate the transition toward democracy and/or the market. This reinforced the technocratic approach to legal development that international lenders have traditionally favored. The emphasis on finding just the right legislative and institutional infrastructure to accommodate the broader transition pushed concerns with societal attitudes toward law off the agenda. The assumption of the reformers—both domestic policy makers and their international advisors—was that when the “right” institutions and laws were put into place, people would respond. In the realm of the economy, this often boiled down to initiatives to introduce private property rights. Making assumptions about how people will react to legal reform is hazardous at best, but was particularly problematic in light of the legacy of distrust that came in the wake of state socialism. As the first round of reforms floundered, often as a result of well-intentioned laws lying dormant, policy makers began to pay more attention to legal reform as an independent goal (rather than merely as a means of achieving the desired end of establishing a market democracy). But the devotion to the technocratic approach rarely waned.

The enhanced role of international actors in this most recent effort at legal development no doubt contributed to the appeal of this approach. In prior efforts, international agencies had concentrated more on building democratic political orders, but the transition from state socialism brought the economy to the forefront. The perceived need to introduce market institutions attracted the attention of the World Bank and similar institutions that are interested in ensuring a stable and efficient economic order throughout the world. These institutions have a fairly rigid template for how reform is supposed to work, and for what the final outcome should look like (e.g., World Bank, 1996, 1997, 2001). The expectation is that countries desirous of assistance will adapt themselves to the standard format, rather than adapting the format to the specific conditions of a given country. Law has only gradually become part of the story. As the former general counsel of the World Bank wrote, “until recently, few outside the legal profession saw the direct relevance of law to development or appreciated its importance” (Shihata, 1995: 127). Now that legal reform is on the agenda, the task is seen as reordering incentives in order to encourage greater reliance on law. There is little recognition of the importance of societal attitudes toward law or legal culture more generally. The timing of the transition gave international actors unprecedented influence. It came at a moment in world history at which the market had effectively displaced all other theories for how to organize economic systems, and at which the countries seeking to make the transition had few resources, either financial or intellectual. Decades of state socialism (along with the arms race) had drained the coffers and had left them with cadres well-versed in Marxism-Leninism, but woefully unversed in the theory of the market. Into this void came armies of experts brimming over with confidence as to how to reinvent the now-discredited planned economies as markets (e.g., Privatization, 1992; Komai, 1990).

**Legal Reform – Moving From Plan to Market**

The effort at reforming the legal systems of formerly socialist countries to facilitate market transactions has been underway for more than a decade. Assessing the results is tricky. If institutional snapshots of each of the legal systems were taken at the outset of the transition and then again in 2003, the occurrence of profound changes would be indisputable. Across the region, the stranglehold of the state planning agencies on the economy has been broken. Indeed, these agencies have been disbanded (though many of their top officials successfully translated their connections into wealth during the transition). In place of the dismantled machinery of the planned economy are the institutions generally regarded as necessary for the market
to operate. Private property has been legalized and, at least on paper, ownership of the means of production has been shifted from the state to private hands. Certain pre-existing institutions have been reinvented and others have been constructed from scratch. In the former category, the now democratically elected legislatures have enacted a plethora of legislation, some of which is completely new but much of which reworks pre-existing codes, stripping them of their socialist veneer. These statutes have effectively eliminated the state controls on enterprise management and have freed them to engage in profit-driven market-based transactions. Along similar lines, changes have been made to the judicial systems that eradicate the formal mechanisms used by Communist Party officials to exert control over case outcomes.

These reforms, while undoubtedly a necessary first step, have not been sufficient on their own to revitalize law in postcommunist societies. The lesson of the legal development movement of the 1960s that legal reform takes hold only when both well-designed and appropriate given the institutional and cultural heritage of the country in question has been disregarded or perhaps was never known by this new generation of reformers. The technocratic approach to reform places great weight on getting the design right, guided by the belief that economic actors will embrace law if motivated by the proper incentives (e.g., Braginsky and Yavlinsky, 2000). It is an argument that is almost impossible to disproise. If the new laws and institutions fail to produce the desired outcome, then its adherents can always claim that they are not yet quite perfected or that some other piece of the institutional puzzle is still missing (e.g., Hay and Skleifer, 1998). But no legal system operates in an idealized form; they all exist in the real world and are populated by flawed actors who respond to domestic political pressure and/or act in accordance with historical tradition. Such behavior can appear to the outsider to be unpredictable or even irrational, but could easily have been predicted had the empirical reality of the legal system been investigated and factored into the reforms.

Privatization is a good example. It is aimed at accomplishing a basic economic goal, yet requires fundamental legal modifications as a prerequisite and, therefore, stands at the crossroads of economic and legal reform. All agreed that getting industrial capital out of the hands of the state was essential. The details of the privatization programs differed (see Frydman, Rapaczynski, and Earle, 1993a; 1993b; Stark and Bruszt, 1998: 80–105), but the goal was uniform as were the intended consequences. Putting the means of production into private hands was intended to engender capitalism. More specifically, it was intended to create a class of new owners that would be committed to the enforcement of property rights. Along with the shift in ownership typically came a legislative package that included a reworked set of rules for businesses that encompassed both intrafirm and interfirm matters. The rules endeavored to scale back, if not entirely eliminate, the role of the state in the economy. When these new owners took advantage of the absence of the state to exert dominance over both their competitors and their shareholders, the reformers professed great surprise and laid much of the blame at the door of the law. The culprit was the inadequacy of the rules for corporate governance or their enforcement or other violations of the newly established regime for property rights (e.g., Coffee, 1999; Estrin and Wright, 1999; Lemelsky, 1997; Black, Kraakman, and Hay, 1996; Kuznetsov and Kuznetsova, 1996) or the absence of the much-vaulted "rule of law" (e.g., Miller and Petranov, 2000; Banaian, 1999; Åslund, 1993). No doubt the laws on the books were imperfect and the legal institutions were flawed, but perfection is rarely encounetered in the realm of law. What was noticeably missing from the discussion was an exploration of why the prevailing informal norms within the nascent business community in postcommunist countries allowed and even rewarded blatantly predatory behavior (e.g., Black, Kraakman, and Tarassova, 2000). For the most part, the now-disparaged laws had been drafted with the assistance of foreign experts without much interaction with local businesspeople. This sort of technocratic approach produced laws that appeared on the surface to meet the coming needs, but missed the mark because the empirical reality of how law works was never explored. Interestingly, in the parts of Eastern Europe where economic growth has taken off, commentators attribute the success to other incentives, making little mention of law (e.g., Stephan, 1999, on success in Hungary due to monetary stabilization; Johnson and Loveman, 1995, on success in Poland due to start-up small businesses).

So long as legal development remains mired in the search for the "silver bullet," that is, the ideal set of institutional incentives that will produce entrepreneurs who respect the behavioral boundaries established by law, the process seems doomed to repeated failure. A variant on the same pattern can be seen as the Soviet bloc countries work to gain entry to assorted regional economic, political, and military alliances (e.g., Broadent and McMillian, 1998; Alexandrov and Perkov, 1998; Fox, 1997; Sewerynski, 1997; Steinberg, 1997). The prerequisites for membership typically include the harmonization of certain laws that are of particular interest to the members of the alliance. For the most part, changing the letter of the law has proven to be a fairly low hurdle. Had more attention been paid to demonstrating that the new laws had actually been put into effect, the outcome of these application processes might have been dramatically different.

The upshot of the legal reform efforts has been tremendous progress in expunging the institutional manifestations of state socialism. Without minimizing the significance of this accomplishment, it is not necessarily accompanied by the increase in trust for law on the part of economic actors that is essential for the "rule of law" to become embedded in these postcommunist societies. Indeed, the rigid assumptions about cause and effect that are inherent in the present-day technocratic approach harken back to the Soviet-era legal campaigns, in which new laws or decrees were marketed as having transformative effects on society. Both claim to be able to recognize and solve problems in the legal system without any empirical investigation. The arrogance and determinism at the core of both approaches carry with them a danger of misdiagnosis and of making things worse, especially in terms of people's attitudes toward law.

The technocratic approach to legal development adopted by domestic policy makers in countries making the transition from state socialism can be explained in terms of learned behavior. Although the nature of the political economy is changing, the methods of problem solving learned in earlier life persist. Under state socialism, asking too many questions about how things actually worked was perilous. Policy makers became accustomed to making decisions based on their perceptions rather than empirical data (whether quantitative or qualitative). Whether this will change as social scientists begin to fill in the gaps in knowledge with gritty details of how law works in these countries remains to be seen.

The rigidity exhibited by their counterparts in multinational lending organizations and development agencies of foreign governments provides little reason for optimism. In spite of the documented futility of the "fix now - ask questions later" approach, it endures. The reasons can be traced back to a combination of ideological
and practical factors. Although not in the sway of Marxism–Leninism, the reformers retained by these international organizations come with their own set of beliefs about what a legal system that facilitates the market ought to look like, and how to achieve it. These beliefs are naturally shaped by their educational training and experiences in their home countries. In the current transition, this amounts to a commitment to principles of free market capitalism. The predominance of economists in the legal reform efforts aimed at the economy makes efficiency the most prized quality to be achieved in the reformed systems. This desire for efficiency is not limited to outcomes, but permeates the entire process. The pressure to move quickly is overwhelming. Often funding is contingent on quick turnarounds. Speed can be a double-edged sword in this context. On the positive side, it discourages malingerering and minimizes the danger that a specific reform project will become anyone’s life work. In a part of the world where the practice of dragging out construction projects for decades was a notorious tactic for squeezing funds out of the state into perpetuity, it is perhaps wise to send a signal that reform is a time-bounded process. But this may give too much credit to the reformers in that the emphasis on speed is not specific to the transition from state socialism, but has long been a way of life in the legal development world. The negative side is that it encourages (sometimes forces) reform projects into the field before they are ready. The intense time pressure results in a de-emphasis on the sort of thorough research required to diagnose the problem and propose appropriate solutions. As a result, much as armies seem always to be fighting the last war, development agencies tend to solve old problems rather than those currently plaguing the legal system being reformed.

**Studying Legal Reform**

The process of reforming legal systems in order to make them amenable to market transactions has attracted a considerable amount of scholarly attention in recent years. In contrast to earlier large-scale legal development efforts, interest is not limited to a narrow group of legal researchers. This flows from a combination of the resurgence of interest in the operation of institutions among social scientists and the unprecedented geopolitical significance of the region under transition. Scholars from other disciplines, notably economics and political science, have entered the field and have brought new theoretical insights and methodologies to the enterprise. The questions posed and the methods employed in studying the legal transition reflect broader trends within the respective disciplines. Interdisciplinary work has also flourished. The result is a richer and more diverse body of literature than was produced in response to earlier efforts at legal development. At the same time, certain aspects of the process remain stubbornly enigmatic.

The interest of legal scholars in the operation and evolution of foreign legal systems is not new, though it remains peripheral to their concern with domestic law. Research on the countries emerging from state socialism as conducted by legal scholars tends to be narrowly drawn, often taking the form of single-country case studies of a set of laws or institutions (e.g., Solomon and Foglesong, 2000; Los and Zybertowicz, 2000; Cole, 1993). The body of work produced by legal scholars can be further separated into a few basic categories. Whether or not the author participated in the reform process is a useful dividing line, as is the extent to which the analysis is limited to the law on the books.

Studies written by participants – typically foreign advisors – can provide information that is elsewhere unavailable. At their best, they untangle the rationale behind reform programs and provide a glimpse into a process that usually eludes uninvolved researchers due to problems with access, trust, and memory (e.g., Palvolgyi and Herbai, 1997). This sort of insight is particularly valuable in the context of postsocialist states where the positivism prevailing among domestic policy makers leads them to believe that law becomes interesting and worthy of study only in its final form. Merely opening up the process as a legitimate arena for investigation is an accomplishment. Unfortunately, a review of the writings of participant-advisors reveals it to be the exception rather than the rule. More often these studies amount to little more than translations of the law with a thin gloss of commentary (e.g., Jersild, 2001; Bush, 1999; Boner and Kovacic, 1997; Brown, 1995). Rarely is the approach critical. The reluctance of advisors to criticize their former colleagues or to contemplate what might have happened if a different road had been taken is understandable. But it limits the scholarly value of the work. For those not fluent in the relevant language and unable to read the text or the scholarly commentary in its original form, such articles may be helpful. They provide information to the Western scholarly and policy-making community about the formal structure of foreign legal systems. But because they stop short of analyzing the actual day-to-day operations of the law or of specific institutions, they do little to advance the understanding of how these legal systems work.

Much of the legal scholarship by nonparticipants – by both Western and local scholars – reflects a similar approach. Relying on textual analyses of the law on the books, the authors are content with description and/or formalistic comparisons between the system in transition and other legal systems (usually the US legal system). This represents a continuation of the type of research undertaken in the past. The objectivity of the nonparticipant scholars brings greater rigor to this work and their deep knowledge of how the legislation and legal institutions within a country have changed over time bring a historical depth to the analysis. The luxury of political and ideological neutrality marks a shift for regional scholars. Under state socialism, scholars were expected to toe the line in both their underlying assumptions and their findings. The broader spectrum of opinion now found in regional law journals is like a breath of fresh air. Yet certain predictions endure. While religiously documenting the outcomes of the legal development process, such as changes in the substance of basic codes, regional legal scholars have shown almost no interest in the process itself. In this, they are joined by most of their Western colleagues. The sorts of questions deemed worthy of analysis by most Western and regional scholars rarely take them out of the library (e.g., Blumenfeld, 1996; Rudnick, 1993; Biernat, 1994; Maggs, 1992). The results are edifying for specialists, but rarely advance the understanding of the reform process and its consequences.

A smaller body of work by legal scholars digs into the reality of how specific laws have evolved and the extent to which they work in a given society. The collapse of state socialism and the attendant controls on social science have opened up avenues of research that were previously closed. Based on this research, scholars have begun to question the prevailing common wisdom about the role of law in these societies and to fill in the gaping holes in knowledge about how law is understood and used. Some of these studies seek to establish base lines in terms of attitudes and usage rates that will facilitate ongoing comparisons. The methods used are not groundbreaking, but are novel for the region. There is a mix of case studies (e.g., Hendley, 2001;
Hayden, 1990), analysis grounded in official statistical data (e.g., Hendley, 2002; Raiser, 1994), and survey-based studies (e.g., Frye, 2001; Earle and Estrin, 2001; Koczalska-Bobinska, 1994). The access needed to carry out this research made it impracticable, even unthinkable, under state socialism. At the outset of the transition, studying “law in action” was mostly the province of foreign scholars. The tradition of using sociological methods to study law had stronger roots in Eastern Europe than in the territory of the former Soviet Union. Even under state socialism, some East European scholars preserved this tradition (e.g., Kurczewski and Frieske, 1977), and it has reclaimed a more central role with the loosening of state controls on the academy (e.g., Alexander and Skapska, 1994). But the collapse of state socialism to the east, in the former Soviet Union, has not produced similar changes. Although legal scholarship in this region has lost much of the ideological fervor that previously pervaded it, the attachment to doctrinal analysis persists. Whether this will change in the near future is unclear. As sociological methods became better known through exchanges with Western universities and interactions with Western scholars, legal scholars in the former Soviet Union have begun to ask different questions. Rather than limiting themselves to textual analysis, they have begun to probe how law works and why.

The deep involvement of foreign advisors of all stripes with reforms across the region resulted in a considerable amount of borrowing from other countries’ legislation. But the sort of borrowing that went on was different than what went on in earlier transitions. This time, because of the pre-existing legal structure, the wholesale adoption of codes rarely occurred. Instead, bits and pieces of legal machinery from other countries were incorporated into the codes of the transition countries as they were reworked in pursuit of the market. Sometimes the results were schizophrenic as the caging of what was perceived as potentially helpful from divergent foreign systems failed to gel coherently but produced mishmashes. Perhaps for this reason, those who have reflected on the legal aspects of the transition from state socialism have not been much attracted to “transplant theory” (Ewald, 1995; Watson, 1991), with certain exceptions (e.g., Nichols, 1997; Ajani, 1995).

The study of the legal aspects of the transition from state socialism is not the exclusive province of legal scholars. This distinguishes it from most previous efforts at legal development. At the same time, the interest of nonlegal scholars should not be overstated. The vast majority of political science scholarship on the transition either ignores the legal dimension or treats it merely as one of a number of technical problems to be solved in service of the bigger goals of creating a democracy and/or building a market. For example, the primers on the transition from authoritarianism to democracy relegated legal reform to secondary status, limiting their discussions of law to constitutions and electoral laws (e.g., Diamond and Plattner, 1996; O’Donnell and Schmitter, 1986). Missing was a recognition of the potential importance of law in building legitimacy for the system as a whole and otherwise facilitating democracy. More recently, political scientists have begun to include the “rule of law” in their short list of prerequisites for democracy, but precisely what they mean by this term remains obscure (e.g., Linz and Stepan, 1996; Lijphart and Waisman, 1996). The literature focusing on the transition from the state socialist variant of authoritarianism to some form of democracy follows this same pattern (e.g., Bunce, 2000; Eckstein, Fleron, Hoffmann, and Reisinger, 1998). Oddly enough the studies of the economic transition by political scientists have been slower to integrate legal variables into the analysis (e.g., Johnson, 2001; Appel, 2000). Along similar lines, assessments of the linkages between the political and economic transition have become popular, but rarely integrate the legal transition (e.g., Roland, 2002; Melich, 2000; Przeworski, 1991). For political scientists, the dualistic (rather than triadic) nature of the transition from state socialism seems immutable (e.g., Kubicek, 1999; Bartlett, 1997).

Spurred by the growing disciplinary fascination with institutions, economists have been quicker to embrace the study of law as a means of understanding the transition. But like political scientists, legal reform is not their primary concern (e.g., Kornai, 2000). Law is deemed worthy of study because it has the potential to lower transaction costs and thereby facilitate the transition to capitalism. The initial optimism that legalizing private property would lead economic actors to embrace law has been tempered by the postprivatization reality in the postsocialist world. But the search for the institutional change or constellation of changes that will trigger the desired result continues. Economists have tested a wide range of hypotheses in an effort to find the key to the puzzle. Recognizing that having property rights on the books is not enough, they have explored the potential role of corporate governance regimes (e.g., Pistor 2001; LaPorta, Lopez-de-Silanes, and Shleifer, 1999; LaPorta, Lopez-de-Silanes, and Vishny, 1997) and cadastres (Sotero, 2000), the level of corruption (e.g., Treisman, 2000; Kaufmann and Siegelbaum, 1997), and the impact of centuries-old choices of legal structure (i.e., the division between civil law and common law traditions). For the most part, they eschew cultural explanations and seek answers in the structure of institutions and the content of laws. Their desire to compare large numbers of cases and to explore a variety of explanatory variables mandates the use of statistical methods. Even causal variables that have traditionally resisted quantification, such as legal custom and levels of equality under the law, have been subjected to this method (e.g., Berkowitz, Pistor, and Richard, 2003; Glaeser and Shleifer, 2002; World Bank, 2001). By coding the experiences of a large number of countries and using statistical methods to analyze the results, these scholars have generated a series of intriguing models of how legal systems work and what sorts of small changes might give rise to profound alterations in behavior. What has unfortunately been lost in the mix is the descriptive detail of individual countries. This approach leaves no room for idiosyncracies within legal systems that can arise as the result of factors such as political pressure and/or ethnic conflict.

Indexes that attempt to measure the level of such elusive qualities in the legal system as the “rule of law,” “judicial independence,” and “transparency” have blossomed and are regularly integrated into analyses of the transition. The use of indexes is most prevalent among economists (e.g., World Bank, 2001: 117–32; Johnson, Kaufmann, and Shleifer, 1997), but has also grown popular among political scientists (e.g., Fish, 1998; Hellman, 1997) and legal scholars (e.g., Pistor, 2001; Buscaglia and Dakolias, 1999). Nongovernmental organizations have been instrumental in the creation of several of them, albeit with heavy funding from institutional and/or country-based development agencies (e.g., Freedom House, 2002; Transparency International, 2001; American Bar Association, 2001). The penchant for quantitative indicators of success (or at least demonstrable progress) is not new. Indeed, it is driven by the need of domestic governments and international funding agencies to justify their expenditures. Prior efforts at standardized measures, such as the number of laws passed or the number of lawyers or judges trained, were crude and unsatisfying. The current generation of scales is a major step forward in their use.
of econometric methods that allow for the inclusion of many contributory factors in assigning a single grade. As with any scale of this sort, their value depends on the accuracy of the country-specific information and the validity of the choices made when coding this information.

Economists have also made good use of surveys. Typically, their surveys are targeted at the behavior and attitudes of economic actors, rather than at general public opinion. There is, of course, nothing inherently innovative in this methodology. The originality lies in its application to settings that had previously been off-limits due to the fear on the part of the regimes in question of exposing the dysfunctional side of state socialism. Under state socialism, the access of Western social scientists to industrial enterprises was almost nonexistent. An effort was made to piece together a picture of how they operated through surveys of emigrés (e.g., Berliner, 1957; Granick, 1954). This path-breaking work allowed for some understanding of how the official economy (as laid out by the national economic plan) operated in an uneasy partnership with the so-called “second” economy, and how these unofficial and illegal transactions actually lubricated the system (e.g., Grossman, 1977). Probing more deeply and systematically into the relational side of state socialism was simply impossible as long as the system itself endured. Its collapse opened up the opportunity to study the role of law in the economy in new ways and a number of economists have risen to the challenge. Some have focused on specific countries (e.g., Hendley, Murrell, and Ryterman, 2000; Gray and Holle, 1998), while others have fielded surveys across Eastern Europe and the former Soviet Union (e.g., Johnson, McMillan, and Woodruff, 2000). These snapshots of behavior and attitudes at a given point in time provide valuable information, yet there are certain sacrifices of depth in the pursuit of breadth. Designers of multicountry surveys often have to raise the level of generality of their questions in order to make them work across a set of diverse legal systems and, as a result, forego the detail that single-country surveys generate (e.g., Lee and Meagher, 2001; Hellman, Jones, Kaitzmann, and Shankerman, 2000). Thanks to this survey work, a more complete and in-focus picture has emerged of the extent to which law meets the needs of, and is used by, economic actors. It suggests that law is not nearly as marginalized as had previously been believed. Some resistance to this view is apparent within the scholarly community. The reasons why are less apparent. Perhaps they stem from a reluctance to abandon long-held beliefs and to abandon a convenient scapegoat for economic failures.

The creation of, and increased reliance on, quantitative indicators of legal development by social scientists of all stripes allows hypotheses to be generated and tested in the abstract. Although appealing in terms of speed, the validity of these rapid responses deserve to be questioned. Transition is an inherently unstable process and would seem ill-suited to being captured in one or two statistically generated scores. At a minimum, the conclusions ought to be verified (at least occasionally) through ethnographic methods. But the disenchantment with “area studies” within the academy has devalued this style of research and has discouraged young scholars from gaining the skills and knowledge necessary to carry it out. The time required and the lack of appreciation of the value added has led policy makers and funders to spurn qualitative approaches. Yet the price paid for this disdain may be high. Policy makers rely on the diagnoses produced in reliance on the indexes and similar indicators in designing legislative and institutional change. If the assessment is not on target, then the solution may end up doing more harm than good or, at best, lying dormant.

**Next Steps?**

The logic of the argument that policy solutions should be preceded by careful research to establish the existence and parameters of the problems seems compelling. Yet time and time again, this simple prescription is ignored. The need to investigate how economic actors actually used (or ignored) law was particularly pressing in this latest iteration of legal development. Thanks to the penchant for secrecy and the incentives to sugarcoat the truth that were embedded into state socialism, the level of knowledge about law in action was low and unreliable. These gaps deserve to be filled. Research is needed that looks back to the era of state socialism and tries to make sense of the conflicting versions of the role of law. Likewise, the present-day status of law and the extent to which that is changing in transition countries are questions that could easily occupy a small army of researchers for many years. Particularly lacking are studies of the process of change.

Such empirical work could serve as the foundation for theory building. The question of how and why societies embrace or reject law as a mechanism of ordering economic life is one that has vexed legal scholars for centuries. Much of the theoretical work is grounded in the experience of the Middle Ages, during which a transition to the market was experienced in many parts of the world (e.g., Greif, 1992; Milgrom, North, and Weingast, 1990; Weber, 1967). Some of the insights gleaned from this earlier sea change can be put to good use in making sense of present-day changes. But the profound differences between the two periods complicate matters. A rich body of empirical studies from across the region would allow scholars to isolate the similarities and, by raising the level of abstraction, to put forward hypotheses as to the catalysts for making law meaningful for economic actors in the aftermath of state socialism. Ideally, once proven, this theory could then be tested in other postauthoritarian settings.

The first decade of legal reform efforts on the part of foreign governments and multilateral agencies aimed at the former communist world cries out for a sober assessment. Why were the tactics that had been shown to be ineffective decades earlier brought out of mothballs? Why were the agencies pushing legal reform so insistent on doing it at breakneck speed? The critiques that have been written do not address these fundamental questions. Instead, they rarely rise above finger-pointing (e.g., Cohen, 2000; Weidel, 1998). They tend to focus more on personalities and scandal than on whether the basic approach was misguided. Scholars of international organizations have begun to explore whether the culture of multilateral lending agencies dictates a repetition of past patterns of behavior. But these studies remain mostly at the level of theory, rarely venturing into detailed examinations of how reforms were carried out and whether they have had any positive impact (e.g., Barnett and Finnemore, 1999).

**References**


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