

Review Essay

Property, Predation, and Protection

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Stanislav Markus. *Property, Predation, and Protection: Piranha Capitalism in Russia and Ukraine*. New York: Cambridge UP, 2015. xii, 244 pp. Illustrations. Tables. Bibliography. Index. \$95.00, cloth.

What is property? It is neither what it may first appear nor what we are first told it might be. Let me explain. What property first appears to be is a means of allocating goods and resources. Typically, philosophers and other social and legal theorists begin by saying that property is a system whereby scarce resources—usually everything that people can either see or imagine—are allocated amongst individuals (individuals can be natural—you and me; and legal—corporations). It is often difficult to work out how a system of property achieves the initial allocation of a particular good or resource. For that reason, those who acquire a good or resource on that initial allocation are sometimes said to have won the lottery of enjoying the resource. Joseph William Singer calls this initial allocation of a resource a “magic moment” (Singer 172; drawing on Nozick 151-64), aptly capturing the mystical and mystifying way in which the law allows some to end up as “haves” while others, usually a large majority, end up as “have nots.”

Having allocated a resource, a system of property also provides a secure means of using it, allowing the holder to prevent others from using it or from interfering with the holder’s use and disposal of it. And all of this, in liberal terms, is to allow the holder to exercise those rights so as to suit one’s own preferences. These rights and their preference-satisfying exercise are supported by justifications offered for why the magic moment of allocation is just and ought to be that way—these usually include first possession, just deserts, efficiency, justified expectations, and other leading arguments of the liberal pantheon of justifications for why the world ought to be divided up the way that it is.

From these justifications emerge some oft-rehearsed assertions about what property will be or, more accurately, what it will do for a state. It is usually said by those driving the global neo-liberal and rule-of-law agendas that property and, more specifically, *private* property (that form which is

held by liberal individuals, both persons and corporations) is necessary for the operation of an economy and for the secure allocation of use rights over resources. In the specific case of the postsocialist states, it is often said that property and the rule of law will solve the problems of laziness, apathy, and economic sluggishness that tend to be associated with the failed socialisms of the twentieth century. In short, it is usually, and often in the past has been, offered as a panacea for whatever political and economic woes ail you. That is certainly what happened in Ukraine in the early 1990s when it was throwing off the mantle of state socialism and seeking to become a capitalist economy (on this background, see Babie 3).

Stanislav Markus's impressive *Property, Predation, and Protection: Piranha Capitalism in Russia and Ukraine* assesses the failure to establish a working system of private property as a replacement for socialist property in post-Soviet Russia and Ukraine, and it offers an erudite and much needed intervention in the ongoing debate about how best to remedy the consequences that have resulted. It is no secret that Ukraine bears out the disastrous consequences of introducing private property in the absence of any regulatory framework or structure. Significant negative outcomes of that failure continue to plague Ukraine; it is rife with poverty and corporate raiding, to name but two of the more serious consequences, not to mention rampant environmental degradation (Babie 24-32).

Markus provides a novel and fresh assessment of the problem. Of course, he argues, there is no room for the well-worn solution to such problems: less and smaller government in the market. That is an old argument, one often made by Markus's colleague on the south side of the Midway, at the University of Chicago Law School, Richard A. Epstein (see, for example, Epstein 53-70). And the argument that property ought to be entirely free of government intervention is, simply, wrong.

In fact, Ukraine's problems stem from the very *absence* of a strong state exerting its control through a regulatory framework; indeed, it is the problem for any of the postsocialist states (including Russia, where the introduction of private property has failed), which is pretty much all of them. Joseph William Singer, hypothesizing about how one would go about advising the prime minister of the new government of a hypothetical "Eastern European country that has just emerged from communism and is seeking to institute a private property regime," writes:

Your goal is to create a free and democratic society characterized by individual liberty and a market economy. Imagine your reaction if the prime minister proudly announced to you that the government had privatized all its properties in one day by handing out all the land, buildings, and industry in the country to the ten families who had formed the crux of the aristocracy in the nineteenth century. Those owners were chosen because their families had

historic roles of leadership and could be trusted to guide the country out of the darkness of dictatorship and into the bright future of freedom. These new owners are free to do what they want with their property. Everyone is free to make a living without government interference—no more government ownership, no more communism, no more welfare, no more regulation. All the state will do is enforce property and contract rights and protect individuals from personal harm. ... Of course, some kind of court system and police force will be necessary to protect these new rights and to enforce their attendant obligations, but that is a minor detail ... You would think the prime minister had a screw loose. (Singer 140-41)

Singer could not have been telling the story of post-independence Ukraine more closely if he had tried (and perhaps he was!).

But as between Epstein and Singer, the debate about the solution to the operation of private property in a capitalist market economy is about the use of either more or less government control of the exercise of the rights conferred by private property. In the case of Ukraine, for instance, its Constitution contains an abundance of provisions intended to control and regulate the operation of private property so as to eliminate the very sort of problems now common (see Babie 17-24). But why should that be so? Markus shows that it is not for lack of the sorts of provisions found in the *Constitution of Ukraine* that Ukraine faces its current problems. Instead, it is the failure of the Ukrainian and Russian states to provide for and to control a bureaucratic apparatus designed to implement these controls that causes the problem:

These two stories capture a common—but only partly correct—view of what jeopardizes the security of property. On the one hand, *state absence* allows private thugs to rob citizens and business owners. On the other hand, *state dominance* raises the specter of sovereign threats to tycoons' property rights. The conventional story of Russia's post-communist (d)evolution, accordingly, views the 1990s as the reign of private mafias and the post-2000 period as one defined by the Kremlin's threats of expropriation. As the two anecdotes here suggest, there is much truth to the "absence-dominance" view of the state's role in undermining property rights. (2; emphasis in the original)

For Markus, the focus on a state position along a continuum, with Epstein's position at one end and Singer's at the other—what he refers to as the "absence-dominance" view of the state's role—is misguided. The problem is not the absence or dominance of government control of the exercise of private property rights, but the locus, and adequate control, of its deployment. Markus

argues that in the new millennium, it is state *weakness*, conceived as the inadequate control of the sovereign over his bureaucratic apparatus, that constitutes the main threat to property rights (PR) in countries such as Russia

and Ukraine. The conceptual shift from state absence or dominance to state weakness in PR theorizing generates profound implications for available paths to secure property. (2; emphasis in the original)

This is a subtle yet powerful theoretical shift, and one which seemingly has been long overlooked. It moves the debate away from the Epstein-Singer/absence-dominance continuum to a recognition that the state is necessary for *both* the existence *and* the operation of private property; but what is seldom understood, and even more infrequently attained, is the exertion of a state's power in order to ensure that private property achieves its desired social, economic, and political objectives once it is established by the state. For Markus, and for property theory, that shift has profound implications, and these are advanced in the book in three logically connected arguments: the conventional diagnosis, the conventional solution, and a novel solution.

For Markus, under the conventional diagnosis, "the most pervasive threats to PR arise less from the unchecked strength of the state ruler and more from state weakness: less from the executive center and more from the bureaucratic periphery. Importantly, [the] argument is that the low-level bureaucrats jeopardize not only the income rights of entrepreneurs, as per the literature on corruption, but the ownership itself; ...It is not the bully in the penthouse but the termites in the basement that often undermine the edifice of secure property" (2). In other words, there is predation by small "thugs," or piranha capitalism, happening at the bottom of the economic hierarchy, which the state, due to a lack of a strong regulatory bureaucracy, is powerless to control. The conventional solution to this problem—greater institutional constraints—are unworkable because "the ruler cannot 'commit' on behalf of his staff" (201). In other words, there is no way for the state to control this because it cannot back its either non-existent, weak, or both, bureaucracy.

The failure of the state to provide a secure system of private property comes about through low-level bureaucratic corruption as well as agent predation (actors operating within the system to expropriate property, which the bureaucracy is unable to prevent due to corruption) (see chaps. 3 and 4). So, the question arises: How can one overcome the failure of regulation to operate in the correct spaces? Markus offers an ingenious solution. Rather than the usual suggestion of removing state control, allowing the market/private sector to decide, Markus suggests a synergy between the two, or "stakeholder alliances" between "small capitalists" and the state (2-17). Thus, the conventional diagnosis and solution give way to regulation that

involves firm-level strategies rather than macro-institutional design. In particular, alliances with stakeholders such as labor, adjacent communities, and foreign actors can be employed by firms facing weak states to secure property rights.... [T]hese bottom-up, non-state solutions may facilitate the development of rule of law; this argument complements the existing narratives of “political will” and “legal reform” as the main paths toward rule of law. (2-3; see also 201)

In support of this solution, Markus draws together the existing theoretical literature concerning the reasons for failure of private property in postsocialist or developing states with original empirical data that interrogates that literature (chaps. 2 and 5). From this, Markus proposes three specific mechanisms through which stakeholder alliances might be conducive to the security of private property: (i) restraining oligarchs; (ii) institutionalising transparency; and (iii) counteracting the political apathy of small business owners (17; and chaps. 6 and 7). These mechanisms, through the role played by “small capitalists” in alliance with the state, will produce as well, Markus argues, benefits for the adoption of rule of law in postsocialist and developing states (207-15).

Markus’s book is a welcome contribution not only to the controversy surrounding how to “fix” the problems of Russian and Ukrainian market capitalism, but also to our very understanding of the concept of property and its introduction as a vehicle for the allocation of resources within a democratic capitalist economy.

Perhaps the only question that one might ask about Markus’s analysis is whether we ought to rely, uncritically, solely on property rights alone as a justifiable means of structuring an economy. That seems a fair question, but it is one that Markus never addresses. Still, *Property, Predation, and Protection: Piranha Capitalism in Russia and Ukraine* serves as an invaluable resource not only for those who seek a better understanding of what happened in postsocialist states in their attempts to establish market economies based upon private property, but also for those interested in property theory.

Works Cited

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