THE PROPERTY RIGHTS HURDLE
Reconciling EU and Russian Traditions

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Ever since the European Union began its deliberations on a major eastward enlargement, there has been one issue that trumps all others, namely what to do with Russia. The name of the game has been major confusion. If the purpose of expansion is indeed to be sold as that of a “peace project,” which appears to be the politically correct way to go, should not Russia then be included? Would not an enlargement that stops at Russia’s borders effectively serve to draw new lines of division on the continent, which would produce the very opposite of enhanced peace and security?

While most would probably balk at the suggestion of admitting Russia on such fluffy grounds alone, there is another option available, which holds that keeping an open door for possible future membership would serve as an effective external policy anchor. Much as the prospect of becoming members served to focus and support reform policy in Central Europe and in the Baltics, that very same purpose would be served in the Russian case. Or so, at least, it is claimed.

However laudable the latter ambition may seem, it also reflects a serious asymmetry in perceptions of the purpose of the relation between Russia and the EU. On the Russian side, the whole point of the exercise is clearly linked to trade and investment. Hoping to achieve a much-needed reduction in dependence on hydrocarbons, Moscow’s negotiators focus in any way possible on facilitating Russian non-energy exports to the EU. Meanwhile, Brussels appears bent on achieving an extreme makeover of the institutional matrix of the Russian Federation, ranging from improvement in corporate governance and the rule of law, to democratic institution building and respect for human rights.

Exactly how these two approaches may be reconciled is far from clear, as is the role of “peace” in continued negotiations. What is clear, however, is that if the two sides do not succeed in coming to some form of agreement on what they are and should be doing together, then we may expect to encounter further aggravation down the road.

* This paper was written during a stay at George Washington University’s Institute for European, Russian and Eurasian Studies. All the usual expressions of gratitude apply.
Some seek to assume the problem out of existence, by making a case that presents Russian membership in the EU as mutually beneficial: “This co-development path is of mutual interest. For Russia it offers a way to diversify an economic system based mainly on exploitation of natural resources and permanently exposed to Dutch disease, and to organize a diversified competitive economy based on relevant investment.” The specific benefit to the EU would lie in capitalizing on economic strengths through increased complementarities, and both sides would gain in increased security.¹

Others choose to point at matters that divide rather than unite. Commenting, for example, on the outcome of a trilateral German-French-Russian conference in June 2004, Alexander Rahr highlights what surely must be the real crux of the matter: “Russia offers the EU a community based on interest, instead of values, economic pragmatism instead of civil dialogue, a modernization partnership instead of democratic partnership.”²

With such widely different goals and ambitions, it must be the case not only that the prospects for real success are slim indeed. Far worse, there is an obvious risk that a growing sense of mutual frustration may eventually lead to a serious deterioration in the relation as such. As one commentator puts it, “When one side talks about the rules of behavior and the other thinks they are talking about trade, it is inevitable that misunderstandings and clashes will occur.”³

Given that the partnership between Moscow and Brussels was begun under a set of seriously warped initial conditions, marked by a distinct lack of agreement on what the final outcome was to be, it should perhaps not come as a surprise that negotiations between the two sides have been fraught with ever-increasing difficulties. Following the Big Bang enlargement of the EU that was implemented in the spring of 2004, the relation presently appears to have tumbled to a post-Soviet low.

In one sense, this reflects a general deterioration in relations between Russia and the West, a deterioration that is due to what is generally perceived as “democratic backsliding” under President Vladimir Putin. At the annual World Bank and IMF meetings in Washington, in April 2005, Russian minister of finance Alexei Kudrin was informed, in no unclear terms, that while his country would continue being invited to the courtesy sessions of the G8, it could forget about being privy also to financial discussions within the original G7, which is

where the real action is. The reason should by now be pretty obvious. As one Russian commentator puts it, “To all appearances, the West has stopped pretending it believes in Russian reforms.”

On the more specifically European scene, continued unease over the ongoing war in Chechnya is causing an increasing number of commentators to argue that further discussion should be focused not on admission to the EU but on expelling Russia from the Council of Europe. After all, when Russia was admitted to the Council, back in 1996, Moscow did accept to adhere to the principles of respect for human rights that form the very rationale for this exclusive club of nations. Given that this commitment was made while the first war in Chechnya was still being prosecuted, it did cause many to protest against the decision. Today, such protesters would argue that their criticism has been vindicated. In a recent report, the Council’s Commissioner for Human Rights, Alvaro Gil-Robles, calls on Russia to do more to protect the freedom of the press, to deal with serious crimes in Chechnya, and to stem a rising tide of anti-Semitism and racist attacks.

On the Russian side, there is also discontent brewing, albeit for different reasons. It is on the one hand both understandable and somehow healthy that an increasing number of Russians are becoming fed up with what they see – quite rightly – as a Western obsession with knowing what is best for Russia, and with offering unsolicited advice that has often proven to be purely self-serving. What on the other hand must be seen as perhaps equally understandable but far less healthy is the fact that an increasing number of Russians are also beginning to view the West as being bent on excluding and/or isolating Russia: “The latest opinion polls show that a new fear is emerging among the Russian population that, more than 15 years after the fall of the Soviet Union and the Iron Curtain, a new wall is appearing between Russia and Europe.”

Summing it all up, it should be clear that the relation between Russia and the EU is headed not for grandiose success but rather for heavy weather, and that we have here the makings of a problem that could have serious implications. The main ambition of this paper is to show that the root cause of the ongoing deterioration is found on a much deeper level than democratic backsliding, the war in Chechnya, or even Russian superpower hangover. What

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4 Kommersant, April 18, 2005 (cited from Johnson’s Russia List).
5 Vremya Novostei, April 18, 2005 (cited from Johnson’s Russia List).
6 The report was released on April 20, and may be found on www.coe.int.
8 Erochkine, op. cit.
we are witnessing is a true clash of cultures, not in the Huntingtonian sense of a pending clash between civilizations, but in the deeper sense of institutional incompatibility that produces different approaches to and understanding of the most basic of the rules of the game.

As the policy of the EU is based on achieving a successful Russian transition to liberal democracy, and to a market economy that is rooted in the rule of law, the brunt of the burden of called-for adjustment falls on the Russian side. During most of the 1990s there were wildly diverging accounts on whether or not real progress was being made. Following the August-98 crash on Russia’s financial markets, there has, however, been a growing realization that obstacles are of a fundamental nature and will not be easily overcome.

Speaking well before this traumatic event, Alan Greenspan underscored what many economic advisors had apparently failed to realize, namely that “Much of what we took for granted in our free market system and assumed to be human nature was not nature at all, but culture.” The failure of Russian reform, in his view, had a very simple explanation: “The essential infrastructure of the market is missing.”

At the core of what Greenspan refers to as “culture,” we may find some of the most basic features of a functioning market economy, namely a willingness to honor contracts and respect property rights, and to accept the state as a legitimate and credible enforcer of rules. If such rule obedience has been internalized, to become an important norm guiding the behavior of economic actors, then we may expect economic activity to be guided in a Smithian rather than a Hobbesian direction. If this is not the case, then the social sciences are at a loss suggesting what to do. If and how social norms may be influenced by deliberate policy remains something of a terra incognita.

While it is clear that relations between Moscow and Brussels will have to be formulated with such factors taken into account, it remains unclear what the more specific implications are. Should Euro-politicians remain insistent on a partnership that is founded on common values, and continue searching for ways in which Russia may be enticed to Westernize? Or should they simply accept that Russia will never graciously accept status as just another rank-and-file rule obedient member of the EU, and conclude that special rules will have to apply?

The choice between these options goes to the very heart of what EU enlargement is all about. The challenge lies in coming to agreement on whether Russia really is both ready and able to implement the required institutional transformation. Beyond the need to abstain from

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political posturing and sloganeering, this calls for a serious assessment of the prospects for Russia to finally overcome what we have referred to in the title of this paper as the property rights hurdle. Given the heavy burden of Russian history, this must be seen as a task of quite some magnitude. Yet, now that the Boston Red Sox have finally won the World Series, it would seem that anything is possible. If pigs can fly, and Hell is frozen over, then perhaps Russia can introduce enforceable and clearly defined rights to property?

**A Fundamental Line of Division**

In a more general sense, most would probably agree that the right to property forms a *sine qua non* not only for functioning market economy but also for democratic politics. If economic actors do not feel that they have secure rights to the fruits of their own labor, then we may expect effort to be geared into redistributive rather than productive undertakings, and if political actors do not feel that they have a sphere of their own, into which the state can penetrate only according to strict rules, then they will succumb to an unhealthy feeling of dependence that undermines any form of government commitment to accountability. While some may choose to place more emphasis on one than on the other, few would probably deny that these are indeed vital matters.

To the extent that this really is a consensus opinion, it is, however, a fairly recent one. Up until the end of the Cold War, the sheer volume of work that went into writing and lecturing about alternative economic systems reflected an implicit belief that command economy did represent an alternative to the market economy. Since the command economy by definition rests on a suppression of all rights to property in the means of production, the implied understanding was that even non-market systems without enforceable rights to property could be viable.

As time wore on, the initial belief, held especially by enthusiasts on the left, that central planning was actually *superior* to the market,\(^\text{10}\) began to give way to more general disillusionment. In the Soviet Union, faith in the merits of central planning did go through something of a renaissance during the 1960s and early 1970s, when enthusiasm over the cybernetic revolution provided a temporary boost in confidence. Then it fizzled. Both Western and (tacitly) Soviet experts began professing belief in “muddling through.”

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\(^{10}\) See e.g. Lange, Oskar and Fred M. Taylor (1938), *On the Economic Theory of Socialism*, Minneapolis: University of Minnesota Press.
Although the impression of Soviet economic performance was thus being cut down to size, most Western observers remained convinced that the command economy, with its emphasis on forced resource mobilization, did remain a viable economic system capable of at least staying within sight of the Western market economies. Warped statistics helped reinforce such beliefs. Up until 1992, both Goskomstat and the CIA placed Soviet GDP at two-thirds the size of that of the United States. The implication was that the USSR was “the world’s second largest economy, with a first-tier per capita income just shy of the Western European mean, making Russia a military and consumer great power.”

For those who did believe in such numbers, it would become hard indeed to explain how reported Russian GDP only a year later could be on par not with the US but with Sweden, and that Russian GDP per capita was approaching third world standards. Perceptions of Soviet performance quite obviously had been far off the mark.

Given the copious amount of work that has been devoted by professional economists to writing about property rights, it is somehow strange that the complete absence of rights to property in the Soviet-type economies was taken so lightly. Perhaps even more striking is the fact that so few conclusions were drawn from János Kornai’s widely acclaimed work about the political economy of communism, which places much emphasis on the consequences of suppressing all rights to private property.

Kornai’s argument, very briefly summarized, is presented in biological terms, where the taking of one step leads to another, then a third, etc. More specifically, what sets the chain of events in motion is the introduction of a monopoly on power, which leads to the suppression of private property, which in turn eliminates market exchange, which produces a distinct “quantity drive,” etc.

The main point lies in the emphasis that is placed here on the parallel introduction of a powerful totalitarian ideology, which in a sense provided the system with a purpose and a will of its own. Without this system of norms, the formal introduction of new rules regarding power and property relations would not have resulted in the very special case that was the socialist economic system. In order to drive the point home, Kornai refers to this combination of rules and norms as that of “body and soul.”

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13 Ibid., p. 361.
What makes this so relevant to our perspective concerns the fact that a suppression of property rights will impact on economic performance not only directly, by altering economic strategies, but also indirectly, by causing collateral damage to other dimensions of the institutional matrix. The main victim on this list will be the ability of the state to act in the capacity as an impartial third-party enforcer of the rules of the game. If this function is lost, or seriously degraded, it will have a substantial impact on the long-term performance of the economy.

Without straying too far into the realm of debates around the merits and/or viability of the socialist economic system, we may draw two important conclusions here. The first is that if we do accept the main conclusion from Kornai’s presentation, namely that the socialist economy forms something of a *sui generis*, where the “economics of shortage”\(^{14}\) renders much of the traditional neoclassical approach inapplicable, then we have said something important also about convergence, and perhaps even about transition. The relevance of this observation to the question of possible Russian membership in the EU relates to the fact that without successful institutional change, in the directions indicated above, the whole issue collapses.

Our second conclusion concerns what was said above about the link between democracy and market economy. Since it would be hard indeed to identify a democratic system that is not also a market economy, and since market economy without secure rights to property is a bird that just won’t fly, it follows logically that there is indeed a link between the two. What does not follow quite as obviously is the problem of possible collateral damage that is reflected in Kornai’s metaphor of “body and soul.”

In order to disentangle the matters at hand, we shall have to make a distinction here between an undemocratic system that has a totalitarian bent, in the ideological sense indicated by Kornai, and one that is a more traditional autocracy. While both are assumed to be similar in the sense of failing to guarantee the sanctity of property rights, they will differ in the dimension of supporting norms. In the former case, norms will have evolved to support and rationalize servitude and the absence of enforceable rights. In the latter, the autocrat will preserve his power by force alone. If that force collapses, there will be no remaining obstacles to “transition.” As Russia clearly falls into the former category, its attempt to undertake transition would be all that more complicated.

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In the following, we shall argue that the real key to understanding what some have referred to as *The Rise of the Western World*,\(^{15}\) rests in the introduction of secure rights to property combined with a state that is ready and able to act as a credible and legitimate enforcer of such rights. This not only points us in the direction of neo-institutional theory, which derives much of its rationale from studying the interplay between formal rules and informal norms.\(^ {16}\) More specifically, it also underscores the above-mentioned role of the state as a guarantor of the rules of the game.

As the great pioneer of theories on collective action, Mancur Olson surely should be listened to when he emphasizes that the prospects for the rule of law to emerge as a result of *laissez faire* are slim indeed: “So logic tells us that the collective good of law and order, like other collective goods, can never be obtained through voluntary collective action in really large groups.”\(^ {17}\) The implication is that the attempt by Russia’s young reform economists to place the “grabbing hand of the state” safely into the “velvet glove of privatization” was seriously off the mark.\(^ {18}\)

Reflecting on how the Russian economic reform program could end in such failure, Olson rightly places much of the blame on the naïve belief in deregulation: “Some enthusiasts for markets suppose that the only problem is that governments get in the way of the market and that private property is a natural and spontaneous creation.” This view he brands as “unquestionably and drastically wrong.” The reason given goes to the very heart of the matters at hand:

> Though individuals may have possessions without government, the way a dog possesses a bone, there is no private property without government. Property is a socially protected claim on an asset – a bundle of rights enforceable in courts backed by the coercive power of government.\(^ {19}\)

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\(^{16}\) In a highly condensed form, the central message of North’s theory of institutional change is that the institutional matrix of a society consists of three different components. There are the formal rules, which may be changed overnight by political intervention. There are the informal norm systems, which change only gradually, and there are various mechanisms of enforcement, which make sure that the formal rules are upheld. It is the interplay between these three components that determines social change. See further North, Douglass C. (1990), *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.


These statements indicate where the real roots of the Russian predicament lie, namely in the absence in Russian tradition of a state that is ready, willing and able to shoulder the role as a legitimate guarantor of the rules of the game, and in the evolution of organizational responses and mental models that help economic actors exploit the opportunities for gain that are offered by such a weak state. Recalling what was said above, about the need to make a distinction between traditional autocracies and those that have succeeded also in endogenizing norms that support autocracy, we shall argue that the institutional matrix that has been associated with Russian tradition has proven over time to be path dependent and highly resistant to even the most ambitious of reforms.\(^{20}\)

In order to capture the full complexity of these matters, we shall take the argument on property rights a step further, by arguing that the right to private property forms part of a broader notion of rights that determines fundamental aspects of statehood, such as setting and enforcing the rules of the game. We shall thus be referring not only to rights to property in the means of production, but to rights in the more general sense that may be captured in the crucially important notion of *pacta sunt servanda*, i.e. that rules are there to be obeyed by rulers and the ruled alike.

Under the rule of law, a wronged party will be confident in the right to get redress in a court of law, which is presided over by a magistrate who would not even consider selling verdicts to the highest bidder. Under the rule of men, there will be a constant need to engage in games of influence, which by necessity will be opaque and geared into maximizing the value of relations to those in positions of power. In the latter case, the state itself is dissolved into a maze of bonds of allegiance. Path dependence arises via investment in skills that are needed to play the influence games, and via the evolution of norms that support and rationalize such activity.

Thus defined, the institution of property rights also makes up the mainstay of the argument that views “culture” as an important line of division. While there can be little if any doubt the that role of property has indeed served, over the centuries, to place Russia in a category of its own, this is far from the same as also arguing that it will have to remain in this way. Indeed, both previous theories of convergence and current theories of transition are rooted in a belief that Russia’s institutional matrix is amenable to change by deliberate action, known as “reform.”

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\(^{20}\) This argument is presented in great detail in Hedlund, Stefan (2005), *Russian Path Dependence*, London: Routledge.
In Russian historiography, there have emerged two different schools on this matter. The first, to which we shall subscribe, is associated with Richard Pipes, and maintains that Russia evolved into a *sui generis*, with an institutional makeup that cannot be usefully compared to any other country.\(^2\) (The reasons for this will be explained below.) The other school, following Martin Malia, holds that Russia is backward only in a relative sense. Due to a set of unfavorable initial conditions, the country got off to a slow start but then proceeded along the same track of development as the West. As the only real deviation from that track was the introduction of communism, it follows that the process of post-socialist transition would not be marred by problems with any deeper historical roots.\(^2\)

The distinction between these two schools is of fundamental importance, and may be said to reflect a difference of opinion on whether Russia has succeeded over the centuries in modernizing with or without also Westernizing. It is one thing to note that the social and economic infrastructure has become increasingly similar to that of other European countries, and that formal rules may have come closer to those that characterize the West. It is something completely different to also argue that the games that are being played are played according to, rather in contravention of, those very rules, and that economic outcomes of similar policies may be realistically assumed to be similar in nature.

What Steven Rosefielde refers to as a “countervision of Russia as a modernizing state heading toward its European home” may, to his mind, be conceptualized in what Samuel Huntington has referred to as the “idea of the West.” The definition embraces the institutional matrix as a whole:

For a nation to be classified as Western, its people must be rational, individualist utility seekers who possess or embrace consumer sovereign markets, democratic government, social justice, and pluralism responsive to the people’s will – in other words something approximating either the American free enterprise of the European Union social democratic ideal.\(^3\)

While this can surely never be more than an “aspirational ideal,” it will have to remain a fact that some nations group closer to this ideal than others. What is of particular relevance is that the “social contract, the Golden Rule, the rule of law, and rationality foster fairness by

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\(^3\) Rosefielde, op. cit., p. 13.
eradicating market power, privilege, and discrimination.”24 The real core of this argument, if viewed from an institutional perspective, must concern to what degree the rule of law, and the associated belief in first principles such as pacta sunt servanda, has been internalized and may be seen as an essential part of a nation’s system of values and norms.

Having identified these dimensions as the core elements of the institutional matrix of a successful market economy, we must be wary of being misled by casual observation of periods of high growth. It is surely that case both that the USSR did for a time achieve impressive rates of growth, and that the same can be said about certain periods under the Russian Empire. There is, however, nothing really remarkable in this.

Returning again to Olson, we may learn that “from the time of Hammurabi if not of Sargon, and in China, Europe, and Mesopotamia as well as in the Middle East and South Asia, there have been innumerable periods of economic progress under strong autocrats.” Of far greater importance is the fact that “many of the most remarkable periods of economic progress over the course of recorded history appear to have occurred in relatively nonautocratic, or somewhat democratic, jurisdictions that have soared ahead of the absolutist regimes around them.”25

Summing up the argument, we have here something of a litmus test for the long-term performance and perhaps even viability of an economic system. The point is that the quality indicator will rest more in the dimension of informal norms and mechanisms of enforcement, than in the quality of formal rules that seek to guarantee the sanctity of property rights. It is in precisely this sense that the notion of “culture” may serve to capture and define the line of division between high and low performance economies.

The very simple fact that autocratic regimes can and do generate periods of economic growth must be viewed in the context of what type of means are being deployed in order to secure growth. To take a relevant example, Russian economic development under the Putin presidency has indeed been marked by impressive rates of growth. If we look beyond the ongoing controversy on whether this has been caused solely by devaluation and high oil prices, we may arrive at the real crux of the matter. Putin has placed much emphasis on the building of a strong state, and he has cashed in on high growth. Are the two causally connected, or simply coincidental?

24 Ibid.

The answer will suggest that both Putin and Western believers in the new-found stability of Russian markets in a sense are barking up the wrong tree. A truly strong state will be one where institutions are sufficiently robust to function smoothly even in times of serious leadership malfunction, and a truly strong state will be one that offers sufficient guarantees for the sanctity of contracts and of private property for entrepreneurs and investors to feel good about undertaking long-term structural investment. On both counts, Putin’s Russia surely must be viewed not as a success but as a rather tragic farce.

Since our argument on whether Russia can or even should be integrated into Europe rests so heavily on the role of property in determining the quality of the institutional matrix as a whole, encompassing political, economic and legal systems, we shall proceed here to undertake a rather lengthy foray into the realm of cultural tradition. We shall see that the respective paths of Russia and Europe began to diverge at a very early stage, and that since then there has been precious little in the way of sustainable convergence. While this does not predetermine that the two will remain forever apart, it does suggest that we must take a rather dim view of some of the more simplistic beliefs in rapid transition.

The Roots of Rights

From Antiquity onwards, Western cultural tradition has been marked by at times heated debates regarding the role of private property. At the heart of such debates lies the question of whether the right to property forms part of man’s natural rights, or if it is determined by convention. Morally, as well as politically, we may see root causes here for strong emotions to branch out in various directions.

Is the right to property a birthright, to be protected by the state, or is it perhaps the case, as the French 19th century socialist Pierre-Joseph Proudhon used to argue, that property in itself represents theft? If initial property rights in land are vested in those who take first possession, then what about the late comers? And which are the moral consequences of the striving for material possessions? The questions are legion, and the answers to a large degree dependent on ideological outlook.

There is, however, one important dividing line that runs through all of these debates, namely that which sets ethical apart from pragmatic arguments. In modern-day economic

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26 The bulk of the following section has been pilfered, and adapted, from Hedlund, Stefan (2001), “Property without Rights: Dimensions of Russian Privatization,” *Europe-Asia Studies*, vol. 53, no. 2.
thinking it is exclusively the latter that matter. Economists have put a great deal of effort into theorizing around the technical aspects of property rights, but in so doing they have lost sight of the ethical dimension, i.e. of the existence of the very notion of property rights as a social norm in the institutional matrix of a society.

In order to highlight the implications of this essentially ethnocentric bias in traditional neoclassical economic policy analysis, we shall begin by looking at the development of the normative Western tradition and then turn to compare with the Russian counterpart. The contrast will reveal a world of difference, which will help us understand why the relation between Russia and the EU is fraught with such complications.

**The Western Track**

Perhaps the earliest debate about the role of private property was that which raged in Classical Athens. The context was marked by the bitter Peloponnesian war, which ended by victory for Sparta over Athens. Having witnessed how greed and ambition tore his own city-state apart, it was natural for an Athenian like Plato to hold up the absence of private property in Sparta as an important reason behind its ability to mobilize for war.

In his writings Plato would extol a utopian vision of the past, a Golden Age where all property was held in common and where there could hence be no struggles over what is yours and what is mine. This vision of a golden past would subsequently be taken over by socialist thinkers, predicting a future utopian order without private property.

Against Plato’s basically moral visions, his disciple and Athenian compatriot Aristotle argued on purely practical grounds that the institution of private property solved a number of problems in relation to what we would call efficiency and incentives. The owner of property will have a clear interest in maintaining and enhancing the value of that property.

In the footsteps of Plato and Aristotle the Stoic school of thinkers added a further dimension, which would come to be known as “Natural Law.” The background here was that in the fourth century BC the small Greek city states that had marked the times of Plato and Aristotle were being overpowered by a multinational Macedonian empire under Alexander the Great.

This expansion implied serious legal problems. With every new nation that was added followed a new set of local laws, and soon enough major complications of jurisprudence

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began to emerge. While it was realized that there was a need for comprehensive legislation to cover all subjects, it was also clear that all could not be judged according to Macedonian law.

The Stoic contribution was to develop a notion of universal rights that would apply equally to all. This body of “natural rights” was seen to be separate from local rules, which were based on local conventions. (In 16th and 17th century Western Europe, precisely these distinctions would come to play an important role in the separation of jurisprudence and political theorizing from the world of theology.)

In the world of Rome there was a parallel development, which eventually would come to form the basis for all modern jurisprudence. To say that the Romans simply took over a Greek heritage would not be correct. There is general agreement that Roman legal science emerged in the second century BC, at a time when Roman jurisprudence had a sufficiently long history to retain its own essence. The influence from Greek philosophers on its form, though, was pervasive: “The Romans became the founders of legal science because they were able to combine their organizing talent and their legal talent with the tenets of Greek philosophy.”

In contrast to the idealistic Greeks, the Romans were indeed highly pragmatic. During the millennium that passed between the “Law of the Twelve Tables”, enacted in 449 BC, and the Codex Justinianus, adopted under Emperor Justinian in 529 AD, they devoted a great deal of time and energy to precision and codification. It is, for example, in Roman law that we may find the fundamental and still applicable definitions of what constitutes property, known as dominium. It must be lawfully obtained, exclusive, absolute and permanent.

As the Roman Empire expanded, Roman jurists were faced with the same problem as the earlier Greeks under Alexander the Great. In the Roman case there was an original set of laws, known as ius civile, which applied to all citizens according to the conventions of old Rome proper. With the increasing contacts between Romans and foreigners (peregrini) needs arose for separate jurisdiction.

An important step was taken in 242 BC when a new magistrate was introduced to supervise civil litigation between Roman citizens and foreigners, and between foreigners. He was known as praetor qui inter peregrinos ius dicit, later shortened to praetor peregrinus, and he would complement the praetor urbanus who had iurisdiction between Roman citizens.

As new territories were successively added to the expanding empire, a whole new category of laws was developed, a law of nations that was known as ius gentium and was

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29 Ibid., p. 41.
applicable to all non-citizens. In addition, Roman jurisprudence also recognized *ius naturale*, the old Stoic natural law, which was being gradually merged with *ius gentium*. Towards the beginning of the third century AD, when Roman citizenship was extended to all subjects of the empire, the law of nature was beginning to take precedence before the *ius civile*.

This was also the time when Roman thinkers began establishing those universal principles that would make up the foundations for the subsequent growth of Western democracy: equality before the law, human rights and the right to private property.

It is of particular importance in this context to note that the Roman right to property would be specifically included in the famous “*_Déclaration des droits de l’homme et de citoyen*_” of the French revolution. In the subsequent Napoleonic Code of 1804, French law removed all feudal limitations on ownership and returned almost verbatim to the old Roman definitions:

> Property is the right to enjoy and dispose of objects in the most absolute manner, provided that one does not make use of it in a manner prohibited by laws or regulations. No one can be forced to give up his property unless it is for the public good and by means of a fair and previous indemnity.

Summing up the progression of Roman thinking on this matter, we may say that the notion of private property develops from having been part of *ius civile*, and thus determined by convention, to becoming part of *ius naturale*, and thus attaining status as a natural right, or a birthright.

This train of thought also had important consequences for the role of the state. Around the turn of the millennium, the great Cicero would argue that since the state had been created to protect the private property of its citizens, it had no right to infringe in any way on that property. The philosopher Seneca, who was the leading Stoic in Rome, also drew an important line between the power that is held by kings (*imperium* or *potestas*) and the property that is held by individuals (*dominium* or *proprietas*).

In subsequent centuries the role of private property would give rise to a series of disputes, not the least of which was that which raged within the Christian Church. To some,

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the wealth of the monastic orders was hard to reconcile with the poverty of Christ and in consequence there emerged orders advocating abstention from property. The Vatican was troubled but certainly not threatened by the ensuing debates.

Perhaps the most important feature of the Middle Ages was the near obsession that was developed with claiming one’s rights. Under the slogan of “Dieu et mon droit,” people would enter into endless litigation and modern-day observers may find it hard to believe in accounts of how even animals were taken to court for having misbehaved.

Western feudalism as a whole was built on strong contractual foundations. When Lord and Vassal entered into a relation it was understood that both rights and obligations were mutual, and if the Lord failed to uphold his end of the contract the vassal not only had a right but also an implicit duty to rebel. There are numerous cases of such rebellions, which served to reinforce the contractual aspect of the arrangement.

It was also the notion of rights and of privileges that gave rise to the great trading cities of Western Europe. Throughout the 11th century, towns that for centuries had been little more than fortifications were beginning to demand concessions from local feudal lords. With Magdeburg in Saxony being one of the first examples, the old German expression Stadtluft macht frei reflected the fact that cities were beginning to secure for themselves the rights to self-government, to administer their own justice and to be exempt from feudal obligations. This was the birth of a commercial urban middle class.32

Moving on to mid-17th century England, we may find Thomas Hobbes presenting a powerful case for the role of the state in protecting property rights. To Hobbes, property was determined by convention and thus very far from being a birthright. The main gist of his argument was that goods available in the natural state belonged to no one, and that the drive by men to acquire property was so strong that it risked leading to a “war of all against all,” where economic actors behave according to the principle of homo, homini lupus, and where the life of man becomes “solitary, poor, nasty, brutish, and short.” The latter is the reason why individuals, motivated by self-preservation, abandon to a strong state the right to control their mutual relations.

In this frame of thinking state comes before society. The freedom of the individual is not a birthright, but something that is guaranteed by the state, and the same goes for property. As there can be no property without a strong state, it follows that the authority of the sovereign must be absolute. While it is thus hardly surprising that Hobbes often has been used

32 Ibid., pp. 107-11.
as a pretext for introducing authoritarian government, as we shall see in a moment the issue is a bit more complicated than that.

With John Locke, writing towards the end of the same century, we may find the opposite position, namely that property predates sovereignty. In his view of the world, the natural state is a happy one of freedom and equality. The reason for people to abandon these rights is, however, again linked to the rise of property, and the resulting greed and discord. By giving up freedom and equality and accepting a state they may gain both material and personal security.

In sharp contrast to Hobbes, though, Locke argues that the state stands and falls with its ability to uphold that security. If the people feel that the King fails in his supreme responsibilities, they have the right to rebel and it is given that the sovereign under no conditions must violate the rights to property.

Leaving the world of Hobbes and Locke, we may move on to the latter part of the 18th century and the great Scottish economist Adam Smith, whose classic work, *The Wealth of Nations*, was published in 1776. His main teaching is that “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.” If all producers strive to maximize their own gain, says Smith, they will be led, as if by an “invisible hand”, to promote the interests of society.

Like Aristotle, Smith thus placed emphasis on the functions rather than the morality of private property. Ever since, the logical conclusion that private markets should be liberated and interference by government limited to a minimum has been the creed of liberal economics and a standard component in undergraduate economics teaching.

By now we have taken a long step away from the Hobbesian jungle. In the world of Adam Smith we have a communality of values and a respect for the rules of the game that make it possible for the invisible hand to operate. From the notion of self-regulating markets, always moving in the direction of a general equilibrium, it follows that the main task of the government must be non-interference in the market. Precisely this also becomes the guiding principle of economic liberalism: deregulation and a hands-off approach for the state.

In modern institutional theory, a number of writers, inspired by Douglass North, have added to our understanding of how the evolution of market-conforming rules and norms served to produce what we now know as a rules-based market economy. Throughout these writings, we may also find strong emphasis on the role of the state in acting as a third party enforcer, as a guarantor of the common rules and a credible upholder of enforcement mechanisms against those who seek private gain by breaking the rules.
The fundamental difference between Hobbes and Smith lies in the fact that in the intervening century the economy had come to be supported by such pervasive systems of norms – ranging from basic business ethics to trust in the role of the state – that the metaphor of the invisible hand could be used to illustrate a reality where the majority of all economic actors realized that abiding by the rules really was a common interest.

In the following two centuries, different states and different polity would find different ways of integrating that market economy into society, but the basic construction as such was finished already by the time when Smith published his magnum opus. As the norms of a rules-based society had been successfully integrated into the institutional matrix, the crucial role of the state in achieving and sustaining that integration could be assumed out of existence.

Turning now to look at the Russian tradition, we shall find a conspicuous absence of common grounds with the story that has just been told. Most importantly, in sharp contrast to the old Roman distinction between imperium and dominium, we shall find here a tradition that is marked by features that seriously degrade the ability of the state to act as a credible and legitimate third party enforcer of contracts.

**Russian Tradition and the Soviet Order**

Following Max Weber, Richard Pipes defines old Russia as a “patrimonial” state. Comparing with the case of a primitive family that is run by a paterfamilias, he presents as the true hallmark of this type of state its complete fusion of sovereignty and property rights. This, moreover, he views as a sui generis, as a regime in its own right, rather than a corruption of something else. Where a despot, for example, will violate the property rights of his subjects, a patrimonial ruler will not even acknowledge their existence.

The core conclusion is that “under a patrimonial system there can be no clear distinction between state and society in so far as such a distinction postulates the right of persons other than the sovereign to exercise control over things and (where there is slavery) over persons. In a patrimonial state there exist no formal limitations on political authority, nor rule of law, nor individual liberties.”

Where Western feudalism was marked by a strong sense of mutual rights and obligations, Russian rulers followed the Mongol example of insisting on absolute obedience from below, with no accompanying sense of reciprocity.

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33 Pipes, 1974, op. cit., p. 23.
Pipes places particular emphasis on this contrast: “This mutual obligation [in feudalism], formalized in the ceremony of commendation, was taken very seriously by the parties concerned and by society at large. Violation of its terms by either party nullified the contract. ... What do we find in Russia? Of vassalage, in its proper sense, nothing.”

While Western feudalism went through a process of gradual strengthening of the rights of vassals and subjects, which eventually led to the end of feudalism, Russia went through a process of retrogression, where the power of the tsar was gradually strengthened, to the point where the system as a whole degenerated into complete submission of the whole population. By the early seventeenth century, as Robert Crummey puts it, “the Russian nobility wore the harness of service like a well-trained horse.” And so it would remain.

The overriding ambition by a series of Russian rulers to eradicate all sense of rights or contractual obligations was manifested above all in the process of removing private property in land, which was roughly completed in the 16th century. The next step was that of fixing the peasantry to the soil, a process that was accomplished in a series of laws on the capture of run-away serfs. With the Russian law code of 1649, the Ulozhenie, the patrimonial system was completed – and codified.

These observations point at some fundamental features of the role of law in Russian tradition. While in the Western – Roman – case, law developed on contractual foundations, i.e. rules were made by the elected representatives of the people in order to regulate both relations amongst themselves and relations to their government, in the Russian case law has always been an instrument of power in the hands of the ruler. The Russian jurist Aleksandr Yakovlev explains this distinction by using the mirror of language.

The English word “truth” may, for example, be given two different Russian translations. One is pravda, which represents a moral, subjective or spiritual truth. The other is istina, which represents a factual, scientific or objective truth. Putting it briefly, the latter represents something that does exist, the former something that must exist. Hence the name of the main daily paper of the communist party was “Pravda.” Using this background, Yakovlev makes a crucial point:

The basic cultural fact of Russian history is that in the people’s consciousness, the law never was associated with the moral truth. Of course it existed “out there,” in reality,

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34 Ibid., pp. 50-51.
but reality for the majority of the people was harsh and oppressive, unjust and cruel. The law was presented to the peasantry – the predominant part of the population – as the law of serfdom. It was reality, it was *istina* (factual truth), but obviously it was not *pravda* (moral truth).³⁶

With legislation being used as an instrument of power, with no sense of contract or mutual obligation, it was understandable that many Russians came to view both the state and the law “as sinful because these institutions justified the enslavement of the mind and the people.” Such impressions were fortified by the experience of a consequently chronic Russian problem – the lack of any kind of legal order. This was not the rule of law; it was rule *by* law.³⁷ The importance of this distinction can hardly be exaggerated.

In the words of Thomas Owen, “the various codes of laws issued from 1497 onward, indicated the vigor with which tsarist bureaucrats sought to regiment society by means of statutory compulsion and restriction. The law functioned as an administrative device, not as a set of rules to be obeyed by state officials.”³⁸

From this development followed a virtual eradication of the very notion of rights, understood here in the broader sense indicated above. The ruler would make laws that were pointed at the subjects and that would thus never acquire any form of legitimacy, as fair and generally accepted rules of the game. It would not be until in the reign of German-born Catherine the Great, towards the end of the 18th century, that the Russian autocracy could take the first steps on the road towards rights to property and due process, and then only for the nobility.

By far the most important component of Catherine’s reforms was her decision, in 1767, to call a legislative commission to provide advice on the compilation of a new code of laws. The “Instruction” (*nakaz*) that she provided for this commission drew heavily on works like Montesquieu’s *L’Ésprit des Lois* and Beccaria’s *Crime and Punishment*. For an emerging corps of young Russian jurists, this document would serve as something of a beacon of enlightenment. In 1785, the tsarina followed up by introducing a Charter of the Nobility, in

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³⁷ For further discussion on the difference between these concepts, see Maravall, José María and Adam Przeworski (2003), *Democracy and the Rule of Law*, Cambridge: Cambridge University Press.

which it was clearly stated that a “noble will not be deprived of his property without due process of law.”

Throughout the 19th century, the seeds that she had sown would begin to develop roots, and perhaps it was the case that Russia at the beginning of the 20th century was on the verge of undergoing a truly fundamental transformation, in the direction of a rules-based system. That issue, however, is highly controversial and we shall not pursue it further here.

The fact of the matter is that when the Bolsheviks came to power, following their coup in October 1917, all movement in the direction of a potential separation of power from property was abruptly halted. Masked behind talk of “people’s property” and “socialist legality” the real core of Lenin’s program was that of a resurrection of the patrimonial and essentially rights-free system of old Muscovy. The party reserved for itself all power and full control over the country’s productive assets. Up until 1991, the Soviet system would be marked by an absence of private property, market-based pricing and a role of the state as a guarantor of generally accepted rules.

Boris Yeltsin’s rule would provide a great number of illustrations of the lingering power of this heritage, but nowhere would it be more prominent than in the question of power and property. Against the notion that there can be no property without government, which has been detailed above, Russia’s reformers pitted their own neoliberal convictions of the needs for deregulation and a minimal state.

The fundamental problem that no one really seems to have been willing to recognize was that Russia at the time of the collapse of the Soviet order still had not reached the point in development where deregulation might be relied upon to free up constructive forces. There appears to have been instead a warped belief that rules-based market economy forms something of a societal default position, to which all societies will revert if they can only be sufficiently deregulated.

The risks that were involved in acting upon such beliefs had been perceived by insightful commentators long before the collapse of the Soviet order. Already in 1952, for example, Lord Lionel Robbins noted that “The pursuit of self-interest unrestrained by suitable institutions, carries no guarantee of anything but chaos.” In 1982, Douglass North noted

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40 For a detailed account, see Hedlund, 2005, op. cit., ch. 9.
very much the same: “Indeed, a neoclassical world would be like a jungle and no society would be possible.”

The consequences of launching a reform program that failed to take such insights into account would be frightful. It was not simply that asset-grabbing oligarchs would wreak serious havoc by devastating the country’s industrial base, and by reducing a large part of the population to stark poverty. They would add further and perhaps even more serious long-term damage by creating a system of power that was geared into facilitating corruption, plunder and capital flight. Under this new form of predatory regime, stealing from the state was to be encouraged rather than prevented.

One of the most important keys to understanding the failure of building a rules-based system of market economy lies in a deeply rooted Russian pattern of rule aversion, which over time acquired a strongly path dependent nature. Over the centuries, economic actors viewed tsarist legislation as weapons that were pointed at them, and consequently sought ways of evasion. In that endeavor, they invested in networks and human capital that was marked by increasing returns, and they evolved mental models rationalizing such behavior.

Though the Bolsheviks did succeed in transforming the external décor of the system, its inner workings remained geared into operating highly personalized networks that were aimed at “beating the system.” As Soviet anecdotal humor would have it, he who did not steal from the state in actual fact stole from his family.

Given the predominance of such individually rational strategies, it was logical that in the eyes of its subjects the Russian state (or tsardom) never did win much legitimacy for itself as a maker and guarantor of rules, and when the Bolsheviks came to power they immediately made it clear that a rules-based society was not on the agenda.

In declaring the principle of “socialist legality”, they said that tsarist legislation would be applicable only so far as it did not contravene revolutionary morality. By thus placing their own interpretation of morality before the law, the Bolsheviks effectively voided all prospects for the Soviet state of becoming a legitimate rule maker and a guarantor of contracts. (The traditional veneration of the Tsar as an icon, which was continued in the Soviet cult of Lenin, is something altogether different.)

The development of the Soviet system as a whole would be marked by this path dependent triumph of rule aversion and evasion. In such a system, as it had been in old

Russia, there can be no claiming of rights, only appeals for mercy. As the right to productive assets in particular can never be but conditional, the very notion of property again was rendered void of meaning. All efforts that had been made from Catherine the Great and onwards to move in the direction of a rules-based society were thus eradicated. From an economic point of view, a notion such as “people’s property” has no content. What is owned by everyone is in actual practice owned by no one.

The main lubricant that made the Soviet economy turn over, if ever so poorly, was the system of personal relations that is known in Russian as blat. In Western writings it is sometimes referred to as bribes or corruption, but in the Russian context blat was so much more.\(^{45}\) While it could include bribes, it was more of a social phenomenon, an obligation to help your friends (svoim). The outcome was an effective dissolution of the state, and the national economy, into a vast number of poorly interconnected networking groups, each of which would have its primary loyalty to the group. Self-evidently, this type of economy also has its rules and norms, but they will be very different from the universal and transparent rules normally associated with a market economy.

Based on extensive surveys on households’ adaptation to the rules of post-Soviet Russia, Richard Rose and Ian McAllister identify a survival strategy that they refer to as “household privatization,” and which they find to be strikingly persistent: “The absence of any influence by income or other variables on sustaining welfare suggests that the capacity of Russian households to get by depends on idiosyncratic characteristics of families best identified by anthropological studies rather than categorical attributes relied upon by bureaucratic officials and social scientists.”\(^ {46}\) In a subsequent paper, Rose presents Russia as an “anti-modern” society, resting on highly specific social capital networks.\(^ {47}\)

With these final impressions, we have arrived at a point where it may be time to return to what was said above about a clash of cultures, or of a fundamental institutional incompatibility between Russia and the EU. Are the features that have served to divide Russia from Europe possible to overcome, or should we simply learn to live with them? And what might the consequences be if Russia is indeed to be integrated, based on the ostrich strategy of simply refusing to see what does not agree with the preset agenda?

Rules versus Influence

The main conclusion to be drawn from our rather lengthy digressions into Russian and European traditions is that from a fundamental institutional perspective, we are encountering two distinctly different worlds. One rests on a set of common values that emphasize rule obedience, embodied in the rule of law and principles such as *pacta sunt servanda*. The other features norms and values that are based on rule aversion, and in consequence promote and legitimate rule evasion. In the former case, the state emerges as a legitimate enforcer of rules and rights. In the latter, the state is viewed as an alien force, which in practice dissolves into a maze of relations of protection and dependence. The former is transparent and accountable; the latter is opaque and unaccountable.

Since the real world will never be entirely black or white, we must recall here what was said above about full Westernization as an “aspirational ideal.” Much as true consumer sovereignty and genuinely free markets will never be encountered in real life, it should be recognized that the ideal of a market economy that is perfectly rooted in the rule of law will have to remain an ideal. This said, it will also have to remain a fact that countries in the real world will be spread out towards one or the other of the two contrasting model worlds.

In the case at hand, Russia and the EU have proven over the years to fall into two distinctly different categories. While Brussels is bent on rule obedience, and on promoting the values that underlie such norms, Moscow is geared into hard bargaining and tough compromises with little if any interest in discussing universal norms and values. Can these two approaches be aligned with each other? From a policy point of view, this really is the pivotal question. Let us begin with the issue of external policy anchors that was touched upon briefly above.

Looking merely at the Central European and Baltic states, it is quite clear that the prospects of eventually winning membership in the EU – and in NATO – did serve to provide a focal point for domestic politics, and thus to facilitate changes that might otherwise have been blocked by a host of special interests. The former chairman of the European Commission, Romani Prodi, puts it as follows: “By holding up the goal of membership we enabled these governments to implement the necessary reforms. Only this prospect sustained the reformers in their efforts to overcome nationalist and other resistance and fears of change
and modernization.” What remains to be asked, is whether this example can be successfully transferred to the Russian case.

Since wishful thinking and political posturing have been such prominent features in the Russia-EU relation, it may be useful here to be quite specific. Let us look at two examples, which point at somewhat surprising conclusions. The first concerns Chechnya and the second the IMF, both representing clear cases of conditionality aiming to transform Russian behavior.

As we may recall from above, when Russia was admitted to the Council of Europe, the first war in Chechnya was still ongoing. As it entailed gross violations of human rights, including the notorious “filtration camps,” Russian membership based on Council rules alone would have been out of the question. The argument that carried the day was based on the logic of an external policy anchor. If Moscow were to be admitted into the club, that would set such a high standard for behavior that Russian respect for human rights would be greatly improved.

Today we know that this clearly was the wrong way to go. The Kremlin cashed in on the benefits, and proceeded to renege on all implied obligations. With ever-louder voices calling for Russia to be expelled from the Council of Europe, we surely must conclude that it would have been better from the outset to abide by rather than bend the rules. All countries that live up to the standards of the Council should have a right to become members, and to enjoy the associated prestige. No exceptions.

The case of the IMF is just as clear. Up until the time when the Fund got involved with Russia, it had a clear and credible policy. Countries were given credit based on performance, including fulfillment of all obligations assumed as part of an agreement. When Russia became a member, back in 1992, and discussions on credits began, the IMF at first appeared reluctant to get involved. Soon enough, however, it caved in to political pressure and embarked on a program of frivolous lending that ended with the financial meltdown in 1998.

The crucial mistake was that of proceeding to lend on promises rather than on performance. As would be the case with the Council of Europe, the Kremlin cashed in on the benefits and then proceeded to renege on its obligations. When the Fund decided in March 1996 to come up with $10 billion, representing the second largest commitment in its own history, even seasoned spin doctors had a hard time concealing that the money was provided

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in support of Boris Yeltsin’s campaign for re-election. The Fund had thus been reduced to a player in Russian domestic politics, which was clearly against all rules. Seen as a whole, the story of IMF involvement in Russia forms a sordid tale of moral hazard, with a predictably unhappy ending.\(^4^9\)

The morale of both of these illustrations concerns the policy implications of being forced to deal with actors that have a long history of rule evasion, and of reneging on obligations. The easy way out will always be to assume the problem out of existence, to take promises at face value and proceed to ignore all evidence of growing malfeasance. While it offers tangible political rewards in the short term, in the sense of keeping a good ambiance at summit meetings, it also constitutes a recipe for major trouble down the road. In a sense, it may be compared to starting therapy for an alcoholic by pouring a stiff drink – just to make sure that we are both happy.

The fundamental distinction between the two stylized worlds that have been presented above lies in the fact that in the absence of enforceable rules and rights, actors will have no choice but to engage in influence games, and to make sure that they hone their skills in playing such games. The games become path dependent not the least due to a process of negative selection, whereby those who are most skilled at bending or avoiding the rules will move closest to the top. Trying to abide by the rules will in such a context be a sure way to lose. One is easily reminded here of a famous quip from W. C. Fields: “Never give a sucker an even break.”

During the initial stages of cooperation between Russia and the EU, the name of the game was to find areas of common interest, mainly in the realm of trade and investment. As it became more and more convinced of its own importance, however, the European Union also began to assume what the French would refer to as a *mission civiliçatrice*. Instead of exploiting common interests, the relation would now be geared into formulating common values. Since the latter really is shorthand for transforming Russia into a Western society, it was a tall order indeed.

If we do believe in such universal values that are associated with enlightenment ideals, then it must surely be the case that this represents a laudable ambition. It does, however, also place a great deal of responsibility not only on the Russian side but perhaps even more so on Brussels. If Russian value systems are indeed to be changed, by some form of moral shock therapy, then it becomes of paramount importance that the doctor does not succumb to

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emulating the behavioral patterns of the patient; i.e. the doctor should preferably not seek to
cure alcoholics by engaging in binge drinking. There is great potential here for moral hazard
of the kinds illustrated above.

As further illustration, we may recall February 2002, when the EU produced two
policy papers that included sharp criticism against Russia for its veering from democratic
principles. As such, it was clearly in line with publicly declared policy that Brussels would
aim its searchlight in that direction. But to what purpose? Was the criticism idle chatter, or
were there potential consequences attached? As reality would show, short-term political
priorities would again take precedence. Instead of presenting a united front that was
committed to upholding the rules that are associated with the notion of common values,
leading EU member states would play their own games on the side, thus assuring Moscow
that rules may indeed be safely bent and/or ignored.

Overall, the Kremlin’s strategy has been a logical and rational adaptation to that of the
EU. When there is a problem in the relation, President Putin will deliberately avoid Brussels
and prefer instead to seek out his “friends,” who are mainly to be found in Rome, Berlin, and
Paris. A class act along these lines was played out at a famed televised press conference,
where German Chancellor Gerhard Schröder responded to a question about Russian
democracy by assuring his German and international viewers that Putin is indeed a “dyed-in-
the-wool democrat.”

As one commentator puts it, while “the uninitiated chuckled” insiders knew fine well
that “the chancellor was simply indicating that he is not prepared to bite the hand that controls
the valves of the pipelines that warm his country. Germany already gets 35 percent of its oil
and 40 percent of its gas from Russia, figures that will steadily increase as Germany pursues
its policy of winding down its nuclear power industry.” While it may have been politically
expedient in the short term, it also meant serious moral hazard. As the head of a German
government-affiliated think tank explained to the press, speaking on conditions of anonymity:
“Given Moscow’s history of strong-arming neighbors, we might want to think whether we
really want to be in such a relationship.”

The moral hazard again lies in the obvious risk of allowing the Kremlin to cash in on
benefits and then renege on assumed obligations. Let us assume that Schröder vouched his
honor on Putin being a genuine democrat, and that those listening would take his word at face
value. Assume further that German industrial giant Siemens came away from the conference

believing either that Russia was now under the rule of law, or at the very least that Schröder had engaged in horse-trading that would help German interests in Russia. In any case, the assumption would have to be that Putin was a man of his word and that the road ahead was clear for business.

Presumably, it would then have come as a big surprise to the company when Russia’s anti-trust commission recently announced that it was blocking what the *Wall Street Journal* referred to as a “landmark investment,” namely a bid by Siemens for Russian engineering giant OAO Power Machines (*Silovye mashiny*). The reason given was that it would compromise national security. The counter-argument was that the company’s defense-related business constitutes a mere one percent of total sales, which could have been easily spun off before the acquisition. But then again, the given reason surely was not the real reason.

The outcome again reflects the dangers of moral hazard that have been referred to above. The WSJ sums it all up rather nicely: “The blocking of the Siemens deal is bad news for German Chancellor Gerhard Schröder, who has aggressively courted President Putin despite concerns within his own Social Democrat Party over continued fighting in the breakaway region of Chechnya and several moves by Mr. Putin that roll back democracy.”

From the Kremlin’s point of view, it is a winning game that is being played. By first dangling promises of favorable business deals, it gets key Western governments to play down all criticism of “democratic backsliding” and to join in the chorus praising a steadily improving Russian investment climate. Then it simply turns around and reneges on all promises, open or tacit. As a case in point, we may recall how Putin repeatedly promised that Yukos would not be destroyed, and that all would proceed according to the law. That was not quite the way in which it all ended, now was it? And has anyone complained?

The bottom line of the argument is that the games that are being played between Moscow and Brussels seem to be headed in a rather surprising direction. While the European Commission is publicly committed to universal values such as the rule of law and *pacta sunt servanda*, individual member states are busy emulating Russian-style rule evasion. This not only applies to playing footsie with the Kremlin. Far more threatening for the European Union as such is the way in which crucially important rules on common economic policy are being broken.

One illustration may be found in the way in which some member states cooked their books in order to bypass the seemingly strict criteria that had been established for joining the

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euro. Another is the way in which both France and Germany remain in open and arrogant
defiance of the once famed Stability Pact, which was created to provide credibility for the
euro.

Perhaps it is in moves of this kind that we see the real key to future Russian
membership in the European Union. As major players in Brussels become more and more
involved in games of deceit and rule evasion, and as the democratic legitimacy of the
European Union as a whole becomes increasingly wobbly, the harder it will be for Brussels to
lecture Moscow on transparency, accountability and – indeed – on what the Italians would
call *mani puliti*. One Commission has already been brought down on charges of massive
corruption, and it is not quite clear that the Augean stables have been properly cleaned.

Perhaps most amusingly of all, the Kremlin’s current policy is playing straight into a
deply rooted European path dependence. If there is one pattern that has been strikingly
consistent over time, it is that of eternal infighting and of alliance building where two actors
seek to gang up on a third. If Europeans had only been able to agree on a common policy, it
must, for example, surely be the case that war in the Balkans in the 1990s could have been
avoided. By reverting instead to their old ways of intrigue, they help unleash a disaster.

The Marshall Plan was specifically designed to break this pattern, by forcing the
Europeans to cooperate. For a time it was highly successful. Presently, however, Brussels
shows all signs of reverting to proven old ways. The very thought of rescuing or renegotiating
a European Constitution that might provide a framework of enforceable rules for further
expansion must today be seen as a very unlikely outcome.

It is into this world of rule evasion and personalized influence games that Russia is
seeking entry. If it is admitted, the Kremlin will arrive with superior skills. Viewed from this
perspective, it may thus be via Brussels that Russia will find it way back to superpower status.
Would not that be a rather unexpected outcome of the glorious project of European
integration?