“Virtual” Property and Post-Communist Globalization

MARIA ŁOŚ

The thesis of my article is twofold. First, I argue that the nature of the so-called transition period in former Communist countries can be grasped only in the context of a broader global transition. In other words, the specific shape the post-Communist societies are taking is conditioned by the historical moment in which the collapse of communism has occurred. Second, I suggest that our understanding of the process of privatization and economic transformation in post-Communist countries can be enhanced by recognizing the “virtuality” and transnationalization of their newly emerging property rights.

Global Transition
Before explaining the peculiar nature of post-Communist property relations, I would like to place them in a broader context. I believe that a conjunction of four interrelated forms (or layers) of contemporary capitalism can provide a useful framework for such an explanation.

Globalized Postindustrial Capitalism
This refers to the stage of capitalism that involves economic transnationalization and weakening the state’s capacity to regulate the market, high capital mobility because of the liberalization of international financial rules, deregulation, the “global free-market” rhetoric, the erasing of the line between “legitimate” and “illegitimate” economies, a rapid shift to new, postindustrial digital technologies, multiplication of forms of capital (for example, access to information as capital), and the emergence of new forms of property (for example, intellectual, suprajurisdictional). It also involves the process of transnationalization of capital accumulation that can be witnessed in the increasingly dominant role of both multinational corporations and their illicit counterparts, which, however, are moving rapidly into the world of “legitimate” business.

Globalization should not be equated with the modernist pattern of homogenization, uniformization, or unification (de Sousa Santos 1994, 253, 270). Linked

Maria Łoś is a professor of criminology at the University of Ottawa.
as it is with a simultaneous process of regionalization, it is far more complex, ambiguous, and contradictory.

**Supranational Regional Capitalism**
This refers to the tendency to create and consolidate regional markets and to limit the autonomy and relevance of the nation-state. It also implies a pressure on lesser countries to adopt regional rules even before a guarantee of entry has been issued. Furthermore, it leads to the creation of a new hierarchy of states within new regional blocs. For the East/Central European states, it may mean that they become a new periphery within the new regional power, the European Union. It also means entering another super-bureaucracy with all of its drawbacks and familiar opportunities for corruption, fraud, and skillful appropriation of public funds and subsidies. “Europe” has already become a convenient reference, evoked to justify all kinds of changes or policies or to score points in internal power struggles. General ignorance about the specific requirements of potential European membership allows them to be used as a shield for powerful local and foreign interests.

**Globalized Mafia Capitalism**
This refers to a growing tendency of hierarchical criminal organizations that are specialized in certain illicit markets (drugs, arms, sex trade, gambling, and so forth) to diversify and form international business links among themselves. This, in turn, enhances their efficiency at raising and laundering huge amounts of capital for strategic investments in foreign or transnational markets. The size of this readily deployable capital may easily exceed the GDP of at least some of the post-Communist states.

**Post-Communist Capitalism (or “red-web capitalism”)**
This refers to the formation that emerged from the gradual transformation of the Communist ruling (or nomenklatura) class into the new capitalist class without leaving behind its heritage. It is a formation founded, on the one hand, on the removal of ideological and political obstacles to the full economic endowment of that class, and on the other hand, on a platform of integration with world/regional capitalism.

The East/Central European states’ withdrawal from the Soviet bloc and the subsequent disintegration and anarchization of the Soviet Union have led to a rapid privatization of economic and security relations within that region. Particularly well positioned to steer and exploit this process has been the web of secret services that formerly linked these states into one police edifice. Moreover, these countries’ military/industrial complex—the symbol and legacy of the cold war—has become the driving force in the post-Communist economies’ integration into worldwide arms smuggling and illicit trading.

As a result of the Soviet bloc’s collapse, the East/Central European countries underwent rapid redefinition of their national and territorial identity, but their long-awaited sovereignty came at a time when the modern concept of the independent nation-state is no longer perceived as a viable or even justifiable entity.
Thus, the weakness and vulnerability of the new states cannot be meaningfully addressed within the new framework of an open-ended and ambivalent process of globalization/regionalization.

This twin process of simultaneous globalization and regionalization appears to be mediated by a third trend that could be called networkization. One of the consequences of globalization is a normative vacuum. International legal space is a contested area in which many interests, cultures, and pressures—of course, some more dominant than others—converge. It is an immense field where the urgent need for regulation coexists with a profound skepticism about its totalitarian or imperialistic potential and its practical viability. The sense of global, paradigmatic change and a disillusion with modern concepts underlying the idea of law (rationality, formality, objectivity, closure, specialization, hierarchy, instrumentalism, and possibility of planning) open this vast space to multiple competing quasi-normative orders used instrumentally by various international networks. They are of paramount importance for doing business in the lawless international arena. Informal network rules replace and substitute for legal regulation, while digital technology and fast transport facilitate rapid internationalization of networking. It may be claimed that this international social capital becomes one of the key features of the global post-industrial economy.

All of these processes occur in a time of profound cultural change, whereby turbulent interactions between modernity, post-modernity, and their as yet unnamed successor result in paradigmatic chaos and multiple unsynchronized shifts in our mental landscape.

**Virtual Property and the Global Environment**

The multiple processes that I have sketched constitute the context in which the former Communist state property is being transformed into transnational property. The emerging pattern of ownership in the fledgling post-Communist capitalism is a type of property that is ephemeral, diffuse, flexible, network-based, web-like, neither state nor private, and neither local nor foreign. The new type of property rights can best be described in terms of “virtual” property because it promises pleasure and profit without pain and liability.

Just as “virtual reality” allows for training pilots while sheltering them from the physical effects of a navigational error, or for the experience of a risk-free sexual adventure, virtual property opens the door to re-creating the gains involved in laying claim to something while avoiding the corresponding hazards and responsibilities. The “something” to which the claim is made may be used, for example, as a security against new credit. While it may not in fact exist, it may be “virtually” there in terms of its desired effects. Alternatively, it may exist but only ephemerally (destined for immediate bankruptcy or dissolution) as a means of legitimating, transmitting, or laundering something else that, in turn, may be only a stage in an endless money-making virtual property chain.

The space in which virtual property thrives (technology-based, network-based, information-driven, long-distance) is characterized by speed, extraterritoriality, and frailty of regulation. Yet it has deep roots in the past, both in the systemic fea-
tures of Communist regimes and in the corresponding qualities and mentalities of their elites.

There is enough empirical evidence to conclude that transformations in East/Central Europe brought relatively little change in the composition of these countries’ elites. The process of the “endowment of the nomenklatura”—launched well before the official collapse of the Communist order—has been continued under the new, quasi-capitalist conditions. A large-scale, comparative study of elite recruitment conducted in 1993–94 in Russia and five East/Central European countries demonstrates convincingly that, cross-national variations notwithstanding, most members of the new economic elites originate from the old nomenklatura (Szelenyi and Szelenyi 1995; Wasilewski 1995; Wasilewski and Wnuk-Lipinski 1995).

This and other research have pointed primarily to the process of reproduction of the former Communist managerial elite (or the economic nomenklatura) as the new owner/shareholder/manager stratum. This has been described as an almost unavoidable process, given not only their hands-on managerial experience—inaccessible to non-party members, who had been barred from these positions—but above all, their “inherited political assets, which granted them easy access to information, decisionmaking, powerful networks, low-interest loans, etc.” (Wasilewski and Wnuk-Lipinski 1995, 689). They were also best positioned to restructure the assets and liabilities of the state economy so they could freely exploit the former while leaving the latter to the state (Loś, 1992, 125–28; Staniszkis 1994–95 and 1995; Stark 1996). To achieve this result, they have been prepared to go to great lengths to complicate and muddle the new property rights arrangements. Based on his research in Hungary, David Stark characterized one common form of such arrangements when he talks about “a limited liability company owned by private person, by private ventures, and by other limited liability companies owned by joint stock companies, banks, and large public enterprises owned by the state” (Stark 1996, 1007). Stark calls it a “corporate satellite.” Various corporate satellites are likely to be linked to each other within peculiar “metamorphic networks.”

While thorough surveys can reconstruct the economic careers of many members of the former economic nomenklatura, it is much more difficult to trace the career paths of the former political nomenklatura (members of the party and security service apparatus). It is my contention, however, that by appreciating the “virtual” nature of property rights in post-Communist countries it is possible to get at least some insight into the complicated webs of profit-making schemes by these seemingly propertyless individuals and networks.

Full ownership or other predefined forms of property rights or managerial authority may not offer the same flexibility and profit opportunities as do more inventive strategies based on a subtle understanding of the new logic of business. This new logic is related to the following factors: emergence of new, inexperienced financial markets; inherent weakness of the reforming states; foreign trade liberalization (both domestically and globally); a multifaceted process of transnationalization of markets; and, finally, the opening of the borders between East and
West as well as within the two new regional entities, the European Union and the multistate territory formerly occupied by the Soviet Union.

Considerable published evidence—available to anyone interested in piecing together the scattered investigative reports on large-scale economic scandals, dazzling fortunes, and internationally connected financial operations—points invariably to the involvement of former party and secret service officials (Grajewski 1996, 14; Handelman 1994; Knight 1996; Łoś and Zybertowicz 1996; Raport 1992; Shelley 1994, 347; Sterling 1994; Zybertowicz 1993). They may have few visible domestic property entitlements, but their fleeting property arrangements allow them to draw enormous untaxed profits. These are made possible by their old networks of connections; insider information; preferential credits and subsidies; possession of sensitive/compromising material useful for blackmail/extortion/political pressure schemes; control over many domestic financial institutions; openness to cooperation with foreign partners, including intelligence services and organized crime syndicates; and receptiveness to unconventional lines of international business, including money-laundering, drugs- and arms-trade facilitation, smuggling, forging of import-export licenses, and so forth.

Countless examples of spectacular cross-national networking include a gigantic scheme, launched at the beginning of the 1990s, to buy up at artificially low prices a large proportion of the Soviet currency in exchange for unencumbered access to and export of that country’s immense natural resources on the eve of its imminent demise (for the best description of this, see Sterling 1994, Part IV; also Sinuraja 1995, 38–41). The losses incurred by the Soviet (and, later, Russian) treasury amounted to many billions of dollars.

In another scheme, a special fund for external debt management (the notorious FOZZ) was established in Poland in the last months of Communist rule. While it was designed to buy up surreptitiously the Polish debt at the secondary market, the fund, run by people connected to the Communist Party and the intelligence and security services, became involved in complicated national and international banking and business operations, using several international intermediaries (Bikont 1991; Dakowski and Przystawa 1992; Raport 1992; Zybertowicz 1993). The scam, which continued after the collapse of communism, involved the deliberate misuse of state funds in the range of one billion dollars.

The frantic patterns of constant reconstitution of their property rights by these former Communist officials may be explained at least partly by their efforts to detach themselves from their Communist past, forestall possible expropriation or prosecution, and build sound financial foundations for their refurbished political party and their own political careers.

While a flexible and fuzzy merger of state and private property might have been a sufficient strategy for the economic nomenklatura, the fears and aspirations of
the political nomenklatura (party and security apparatus) seem to have led them to
search for an even more open-ended concept of property. They have been looking
for profit-producing entitlements unencumbered by registration, taxation, materi-
ality, or durability—in short, virtual property. This kind of property is a perfect
enrichment mechanism for those who need to hide their economic pursuits, who
are afraid their past may catch up with them, who need to generate secret funds to
sponsor political activities, and who are used to operating surreptitiously.

A good illustration is provided by the efforts of some representatives of the
Polish Social Democratic Party to secure a financial base for their organization
and provide for its elite. This party (which is currently the senior partner in the
ruling coalition) is the direct successor of the Communist Party and had taken
over its numerous assets. Those assets included Western bank accounts in which
the Communist Party had stashed considerable amounts of money. Additionally,
the nascent Social Democratic Party received a special loan from the KGB to
invest in profitable ventures and to finance its founding congress and the publi-
cation of a newspaper. Private businesses were to be set up to attract foreign
capital and to distance the ownership from the party itself, while making sure that
the profits could be used to finance its agenda (Hugo-Bader 1996; Janecki 1996a,
b; Janecki and Szoszkiewicz 1996). A whole host of joint ventures, foundations,
joint-stock companies, partnerships, and financial organizations were then
launched, dissolved, converted, and multiplied, with amazing speed. The pattern
adopted made it almost impossible to track down any abuses of trust, appropria-
tion of public money, the use of “paper” companies or assets as securities, or the
actual involvement of the Social Democratic Party or the KGB.

Driven by their unique combination of insecurity, greed, and power designs,
many former Communist officials and agents have skillfully meshed into the broad-
er process of simultaneous transnationalization of organized crime and the world
economy. They seem to have both precipitated and capitalized on the growing
fusion of the two. It can be argued that the global tendency toward blurring the line
between the criminal and legitimate economies has a peculiar appeal for people
whose earlier experience within the secretive political structures of a monopolistic
party/police state has equipped them with unique operational skills and intelligence,
a network mentality and organization, and profound axiological nihilism.

It also appears that the post-Communist economies have a special appeal for
international organized crime and “mafia capitalism.” The many reasons for this
include: normative chaos, a well-established culture of corruption and clien-
telism, poorly defined property rights, currency and foreign exchange fluctua-
tions, preferential tax treatment offered to foreign investors, abundant opportuni-
ties for safe money laundering, the absence of extradition treaties, easy access
to cheap military equipment (including nuclear material), and cheap natural
resources (at least in some of these countries).

In sum, while the uncertainty of the domestic economic scene has probably
played a role in the preference of former Communist power networks for locating
their capital abroad, their background and the personal/group uncertainty related
to their political past and future are vital to understanding their style of operation
and preferred forms of property rights arrangements. The absence of international property rules makes it relatively easy for the post-Communist networks to invest their dubious funds abroad and maintain their anonymity. The rules of operation they employ are not so different from those used by organized crime syndicates. But the line between the “legitimate” and “illegitimate” is blurring, and from their vantage point, the new post-Communist capitalists, accustomed to the same phenomenon under communism, do not find it problematic. Not surprisingly, the post-modern questioning of the validity of conventional (or any other) standards of legitimacy or legality becomes embodied and enthusiastically exploited in the practices of these new arrivals on the international scene.

Indeed, the new property rights that are typical of post-Communist transformations can best be described by reference to the postmodern vocabulary. Is this simply a coincidence? It is important to realize that the actors who are shaping the post-Communist economy from within (mostly the ruling elite/organized underworld of the past regime) have had no direct experience of the democratic nation-state, industrial capitalism, or the ethos of modernity. These are empty concepts, of little value in the pursuit of their goals. What they have witnessed through their frequent travels and international contacts, especially in the final, decadent years of their former political lives, was the world of international business unconstrained by any fixed rules. It is a world dominated by transnational corporations and organizations skilled in passing costs to taxpayers, or less-developed countries hospitable to international criminal consortia because of their huge financial power, discreet in providing banking services, rapidly embracing new technologies, new markets, and new “friends” from the East. They saw the world at the brink of the twenty-first century and they decided to join it.

The virtual property that became their choice vehicle for enrichment, both within their countries and transnationally, is a type of property that is fluid, easily disposable, convertible, invisible, or hidden behind false names or short-lived fronts. Whereas traditional property is well entrenched in space and time, virtual property is freed from both of these dimensions. It is here, there, and nowhere; one moment it exists, in another it is no more, or it has become something else. It knows no borders, respects no laws, and is easily transferable by wire or other means of speedy communication. It escapes the law by virtue of the speed with which it transforms itself, its cross-jurisdictional reach, its weblike, network-based nature, and its fundamental disconnectedness that renders modern, rational law powerless.

A wide range of versatile virtual property transactions has been facilitated by the unclear and shifting ownership status of much of the national wealth of post-Communist countries and the inherently problematic conceptualization of cross-national ownership and property rights transfers (see de Sousa Santos 1994, 291). Moreover, and ironically, although born from the shock of totalitarianism, the postmodern climate, with its rejection of any form of normativism, objectivism, formalism, and historical (or biographical) responsibility, has also helped legitimize the nihilistic, posttotalitarian mentality epitomized in the proliferation of the elite network-based virtual property chains.
NOTES

1. Or, rather, its more dynamic elements. The final period of communism was marked by intense competition within the ruling party class, resulting in the advancement of those individuals and networks that were the most viable candidates for class conversion. They were generally younger, better educated, and had military or security connections and managerial skills.

2. Including the military special services.

3. See, for example, Cotterrell 1984, 22-4.

4. My conceptualization of this type of property constitutes a further elaboration of Stark's (1996) concept of "recombinant property." My interpretation accounts, however, for the transnationalization of post-Communist property rights, the specificity of the class of actors involved and the post-industrial/post-modern environment that makes such arrangements possible. These vital elements are missing in Stark's elaboration of property rights in Hungary.

5. In a sense, this perpetuates, albeit in a radically revised version, the earlier situation when the Communist Party elites became accustomed to treating the state economy as their own, enjoying virtually all of the privileges of private ownership without the obligations and responsibilities that normally come with it (Loš 1990, 8).

6. This includes compromising information that may be used against other players, but also introduces a common bond of complicity and interdependency.


9. Handelman’s investigation led him to believe that “the KGB was . . . perhaps the most important [player] in bridging the criminality of the old regime with the criminality of the postcommunist era” (1994, 92; see also Waller 1994).

10. The criminal case against those involved in the Moscow loan scandal was eventually dropped when one prosecutor refused to sign the request to strip one of the main figures of his parliamentary immunity and another prosecutor discontinued the proceedings (in 1993) due to “the minimal social harm involved” (Janecki 1996a; Parchimowicz 1991). On both occasions, the prosecutor general was a former Communist official.

11. This process has been facilitated by deregulation of financial markets, liberalization of international comers, increased mobility of capital, information, and people, and regional supra-state bureaucratization (for the latter, see Passas and Nelken 1993 and Fiorentini and Peltzman 1995; see also Sinuraja 1995 and Taylor 1992 on internalization of criminal activities).

12. I borrow this term from Paoli (1996) who used it in the Italian context.

13. According to Fiorentini and Peltzman, existing studies indicate that criminal organizations prefer allocating their resources in “regions where there are problems in the definition of the property rights” (1995, 25)

14. According to a Russian estimate, about $16 billion was brought to Russia for money-laundering over a two-year period in the early 1990s (Sinuraja 1995, 46).

15. For elaboration of some of these aspects, see Shelley 1996 and Sterling 1994.

16. Margaret S. Beare explains how the latter use a strategy of “layering” whereby “a series of otherwise legitimate transactions are carried out which due to the frequency, volume or complexity of the transactions create a paper-trail that is hard or impossible to follow” (1995, 172).

17. It may be suggested, using the current sociological lingo, that what is happening here is a process of internationalization of social capital.

18. Of course, they also invest in very solid and traditional property, for example, expensive real estate in Western capitals.
REFERENCES


