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# ON ECONOMIC AND LEGAL ASPECTS OF PROPERTY

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**Abstract.** The article deals with the issues of property as a fundamental economic category of the system of economic relations of societies. From the point of view of the methodology of analysis of property relations, economic and legal aspects are differentiated. In particular, in the first case, relations between subjects are implied in the process of production, distribution, exchange, and consumption of material goods (de facto), and in the second case, ownership (who owns what) (de jure). The economy (its functioning) is based on the actions of **objective** economic laws, while the law is based on **subjective** judgments and decisions. The privatization of property should not be an end in itself, but a way to effectively use the factors of production, which ultimately ensures economic growth. No form of ownership leads to an automatic increase in efficiency (the experience of post-Soviet reality has confirmed this). An analysis of the economics of crime and punishment is given.

**KEYWORDS:** PROPERTY, ECONOMIC AND LEGAL ASPECTS OF PROPERTY, CRIME AND PUNISHMENT.

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## INTRODUCTION

Property, as a social phenomenon and property relationship, always occupied the minds of people and defined their actions for centuries (its analysis at the level of category, i.e. relation, began as early as the seventeenth century: Francois Quesnay (Quesnay, 1766) - The theory of the sacred product, Victor Riqueti de Mirabeau (Mirabeau, 1901) - The role of nature factor in the economy, Ann Robert Jacques Turgot (Turgot, 1793) - How does the administrative system affect the economy? Property as an interdisciplinary phenomenon (the intersection of economics and law) received special attention in the 1930s (Coase, R.H. (1937), The Nature of the Firm. *Economica*. 4 (16) 386-405. DOI: 10.1111 /j.1468-0335.1937.tb00002.x).

What is the difference between these two social sciences in respect of property?

From the point of view of economic science - property means the relations that result in the creation of material wealth, its production, distribution, exchange, and consumption.

From the point of view of legal science, the following construction takes place - appropriation, possession, disposal, use. In other words, who owns what (legally registered, documentary).

Another feature that helps to understand the difference between the legal and economic aspects of the property is **its realization**, that is, **earning income** from its use.

Law and Economics interact in many ways. Whereas private Law assists individuals and groups who are willing to enter into agreements in a free market, public law seeks to correct the outcomes of a free market system, using economic and social regulation. Law and Economics mesh together two of society's fundamental social constructs into one subject, allowing a multi-faceted study of significant problems which exist in each subject.

Law and Economics began its synthesis as a discipline through the theories of the Chicago School and received guidance and influence from such pioneers as Guido Calabresi (The Future of ..., 2016) and Nobel Prize winners Ronald Coase and Gary Becker. Richard Posner's book "Economic Analysis of Law" became one of the classic disciplines (Posner, 2011). Recently, other methods have moved to the fore, including the Property rights approach, the Austrian School, and the Neo-Institutionalist approach. Finally, the Public Choice School with Nobel Prize winner James Buchanan as an outstanding author focuses more specifically on the political context of the Law-making process.

The essential features of the economic analysis of law in

modern perception include a system for evaluating law and its institutions through the categories of efficiency, rationality, and expediency (Cooter, Ulen, 2012). At the same time, in modern science, the economic analysis of law has two different meanings: on the one hand, it is defined as a method of research and evaluation of legal activity, and on the other hand, as a means of normative transformation. In general, the economic analysis of law is aimed at modifying the legal worldview, departing from the letter of the law, and is most often positioned by its supporters as “the key to a better law” in all legal systems.

The importance of the analysis of the above problems is multiplied in the “transition period” in the economy. Today, after three decades since the beginning of the so-called “transition period” from a centrally controlled economy to a market economy, in the societies of countries that have made such a transition (and there are 27 such countries with a population of almost 300 million people), the questions about the correctness and effectiveness of the taken steps legitimately arise. Therefore, there is a need for an objective assessment of what we have received as a result of this socio-economic transformation in the post-socialist states. It should be recognized that there is **an objective need to develop a “theory of the transition economy”, moreover, today we can already talk about the “post-transition economy”**. Today, the development of such a theory in its significance can be compared with the development of the main theories in its time, both economic science and legal science (especially ownership rights). In the article, the terms “transitional economy” and “transformational economy” are used as synonyms, although there is a certain difference between them - the “transitional economy” refers to the movement from a centralized economy to a market economy, and “transformational” generally means significant shifts in any societies and economies, which took place in pre-capitalist formations as well.

One of the first capital studies on the transformational economy is the work by Karl Polanyi (Karl Polanyi, 1944) in which he studies the issues of Societies and Economic Systems, Evolution of the Market, Government and Market Economy, Social Change. The collective monographs (Islam & Mandelbaum, 1993) and Edward Lazear (Lazear, 1995) should also be noted. The first of them examines the transition from a planned economy to a market economy in Central and Eastern Europe, as well as in the former USSR, and the second one studies more specific issues (macroeconomics, privatization, interstate and fiscal relations, foreign trade, institutional reforms, employment, and unemployment).

The economy of the “transition period” has several specific characteristics that distinguish it from economies that are in a stationary state and develop **on their basis**. In particular, in a transition economy, new economic relations and new institutions are emerging that replace the old ones. As a result, new macro- and microeconomic patterns and trends, social and political changes, and new content of economic policy emerge. The search for intersection points and the identification of the basics of constructive interaction between the institutions of economics and law is an urgent task of economic and legal research. In general, it is correctly not-

ed that the participants in social production act not only as carriers of property relations, and production relations but also as legal subjects.

The economy (its functioning) is based on the actions of objective economic laws, while the law is based on subjective judgments and decisions. In other words, in the first case, we have a positive approach to the analysis of socio-economic realities, and in the second, a normative one.

### **The economic and legal aspects of ownership: unity and difference**

Property is, firstly, an economic category that reflects the relations between people regarding things, and secondly, a certain relationship that is subject to legal regulation. Accordingly, the following contents of ownership are distinguished: economic and legal.

Economic theory tends to take the functioning of the system of property and contract for granted and focuses on the operation of the price mechanism (microeconomics).

The economic essence of property is built on the relationship between the subject (owner) and the object (property). As a rule, the property is a property on which the production process depends - economic resources, factors of production. From the economic point of view, only such objects can be called property that is capable of either generating income for their owners or directly satisfying their needs. The main forms of realization of property are **possession, disposal, and use**.

**The possession** is understood as the actual possession of the property, which implies the right to sell, grant, or bequeath, as well as to destroy or dispose of this property.

**The disposal** implies the right to change a thing, rent it out, or use it as collateral.

**The use** means the extraction of useful properties of the object of property in the process of consumption or earning of income.

All these three forms of realization of the property clearly show how the economic and legal content of property are interconnected and turn into each other.

The legal essence of property presupposes the rules of property regulation generally accepted at the legislative level. Legal relations are the formally attached rights and obligations concerning the property, while economic relations are the actual relations to the object of property (for example, the costs of its maintenance, or the benefit from its use).

If the legal aspect corresponds to the categories of “appropriation - disposal” or “possession”, then the economic aspect of the relationship corresponds to the creation of material wealth and its use (effectiveness). In the first case, the main content is that the object of property belongs to the subject (**what to whom**), **de jure** - to the state, a group of persons, an individual (here we recall the postulate in the well-known Coase Theorem: it is not so important how the property is distributed, it is important that property rights were recorded), in the second case - the economic one - the main thing is the efficiency of using this object (**what and**

how), **de facto**. In other words, **for a lawyer, the form of belonging is important; belonging is more important for the legal aspect than for the economic one, and for an economist - it's content (getting benefits, income)**. Property in the economy is social relations within the framework of ownership, separation, and redistribution of property objects. The economic content of property is revealed through ownership, management, and control. The right of ownership is a set of legal norms that fix the appropriation of things to individuals and groups. Ownership is the actual possession of the property. Use is the extraction of useful properties from the property, such as income. That is why privatization, which is the main means and form of ownership change, should not become an end in itself during the transition to the market, but only be its tool in creating an effective owner.

Property rights are the constructs in economics for determining how a resource or economic good is used and owned (Alchian, 2008). Resources can be owned by (and hence be the property of) individuals, associations, collectives, or governments (Alchian, 2008).

An important feature of property relations is the diversity of its forms. Such an approach to the analysis of property relations was characteristic of the so-called "perestroika period" of the late USSR. At the same time, all forms of ownership were recognized as equivalent, and this seemed almost an achievement in the theory of economic thought?! Meanwhile, following the logic of the obligatory allocation of a core in property relations, it must be recognized that the **dominant** form of property relations in a transitional economy (as well as in a "post-transitional" one, by the way) are private-property relations (in various forms of their manifestation - joint-stock, group, individual) that lay the foundations for future economies.

An important aspect of ownership is its connection to the efficiency of production. None of the forms of ownership automatically leads to an increase in the efficiency of the economy (the results of post-Soviet privatization have convinced us of this. It is necessary to have appropriate institutions (a formal – the state institutions and an informal – the social background, mentality, thinking, culture, religion, etc.), which will promote the full realization of the potential of this or that form of ownership.

Here we want to make a retrospective journey into the history of the Georgian economy: along with economic growth in Georgia, the replacement of the form of ownership (public to private) had several specific aspects to consider in assessing the place of private property, its scale of effectiveness and dynamics.

First, the economic theory did not develop a unified theoretical-conceptual model of such a transition in the early 1990s, when the process of systemic transformation into a market economy began, with the criteria of fairness applicable to the mass privatization of the means of production. Everything was based on the weight of the local political forces, the views, the opportunistic approaches to the current situation, and the use of the method of "trial and error".

Second, in contrast to Central and Eastern European countries, the situation in Georgia, as in most post-Soviet

countries, was much worse and more dramatic. The countries of Central and Eastern Europe needed only a change of ownership, the denationalization in the conditions of maintaining a unified economic organism, and the internal transformation of property relations in it. In Georgia, the transformation of property relations took place in the qualitatively new conditions of a total breakdown of old, traditional economic ties and the formation of a new systemic unity. To take an honest look, during the Soviet era the Georgian economy did not exist as a united mechanism - it was a set of N enterprises located on the territory of Georgia, cooperating with enterprises from other regions of the USSR outside Georgia. According to the 1987 interbranch balance of production and distribution of Georgian products, the total value of imports and exports of products exceeded 130 percent of gross domestic product (GDP). The cost of products exported abroad by Georgian machine-building enterprises reached  $\frac{3}{4}$  of the total output of these enterprises; almost  $\frac{3}{5}$  of Georgia's imports and export came to the Russian Federation.

The instantaneous breakdown of such connections caused enormous damage to the economy, which in the early 1990s alone had more than 100 enterprises and industries. Under the directive rule, Georgia was guaranteed to receive raw materials and key markets, so diversifying production under such conditions was even considered a priority. But it was the breakdown of such binding ties that showed the fragility of such an "advantage." Georgia faced the world economy head-to-head and it turned out that the country had no high-demand assets, in fact, liquid goods (for example, energy carriers such as Turkmenistan and Azerbaijan). Georgian tea and citrus, which accounted for 9/10 of the total consumption of the USSR in the conditions of the Soviet economic system, were swiftly substituted on the Russian market. By 1994, the country's gross domestic product had fallen 3.9 times compared to 1988 (the best year in terms of economic performance before the reform), industry output had fallen six times or more, and the number of hired workers had fallen by 1.7 million people in the same period, in the conditions of the reduction of the total population of the country "only" by 400 thousand people; the well-being of the population has been thrown back by several decades.

Indeed, the duration of the economic downturn in Georgia during the transition to a market economy was quite long (about 71 months, from the fourth quarter of 1988 to August 1994), while in the Baltic states, for example, it lasted only 25-27 months and the cumulative economic decline was 23 percent. But we repeat: if not for private property-based market relations, the Georgian economy would be in a much more difficult, backward, unfavorable situation. It is the private property economy of Georgia, thanks to the smooth and efficient work of state institutions, that despite the global economic crisis and the war with Russia (August 2008), the country's gross domestic product (GDP) in 2009 decreased only by 3.9 percent compared to the previous year, while in 2010 it exceeded the level of 2008 (by 2.1 percent) (data based on data from the National Statistics Office of Georgia).

In general, the form of ownership, the private property should be considered as a necessary but insufficient condi-

tion for economic growth. The following factors are also to be taken into account:

- a) high motivation of the social forces of the society in the economic results;
- b) balancing all factors of production according to their potential;
- c) existence of relevant key markets, i.e. growth of demand (competitiveness of the economy). Therefore, the economic collapse in Georgia in the first half of the 1990s was largely caused by the fact that the production profile adjusted to the old paradigm was inconsistent with the free market relations and economic ties; however surmounting the crisis by the country in the shortest period has been stipulated by the liberty of business and the liberal policy, which started and is being implemented by the Georgian government following the recommendations of international economic and financial institutions (IMF, World Bank).

### **The crime and punishment: an economic approach**

In this part of the article, we want to pay attention to the economic aspect of crime and punishment, in other words, to conduct some economic analysis of law. Note, insofar as they are connected specifically with property, property relations (we do not touch on intellectual property - this is a separate subject of study).

In general, the disclosure of the economic approach to crime and punishment once again confirms the relationship between jurisprudence and economic disciplines, and only in the interaction points of these two disciplines can one achieve significant scientific and practical results, both in one and another branch of science. In the words of the Nobel laureate in economics Gary Becker, "the economic approach is all-encompassing; it applies to all behavior". Here, in our opinion, one can also mean the behavioral logic of criminals, although almost not studied by economists.

What do we understand by the economic content of crime and punishment? This is, of course, first of all, the statistics of crimes recorded by the statistical divisions of government structures; behind the figures, there is a wide variety of crimes – from small ones to large criminal cases. So, it is early to cherish hopes for the law-abiding population

Let us start with the crimes. First, it is well-known, crimes are committed for several reasons: a pathological addiction to perpetrate a crime (psychopathy); the second; the second is kleptomania (a special disease for thieving); third – economic malfeasance in office (corruption); and finally, the fourth – economic caused by unemployment, lack of income, low standard of living (incomes should at least be equal to the subsistence minimum per person on average). For example, in Georgia: the subsistence minimum for a man able to work in November 2021 was 223.7 GEL, and the average

monthly nominal salary was – 1328 GEL).

As for the expenditure, significant public and private funds are spent on preventing and catching criminals. The optimal cost of law enforcement depends, among other things, on the cost of catching violators and establishing their guilt, on the type of punishment – for example, whether fines or imprisonment are applied – and on the reaction of criminals to changes in the law enforcement system. Thus, the conversation inevitably touches on issues related to penology (the science of punishment) and other theories of criminal behavior.

Five types of relationships can be distinguished that give an idea of the costs: 1) the number of offenses and the costs associated with them; 2) the number of crimes and the severity of punishment; 3) the number of crimes that ended in the capture of criminals and the establishment of their guilt, on the one hand, and budget expenditures for the maintenance of the police and the judicial system, on the other; 4) the number of crimes that ended in the capture of criminals and the establishment of their guilt, and the costs of keeping criminals in places of deprivation of liberty and for the implementation of punishment in other forms; 5) the number of offenses and the costs of the private sector to ensure their security and to detain criminals.

As for the punishment (economic aspect) – the costs of maintaining the policy of criminal courts and lawyers in criminal cases for the maintenance of correctional labor institutions at the expense of the budgets of all levels of prisons. The costs of a criminal associated with various types of punishments can be brought to a comparable form by converting them into a monetary equivalent, where only fines are directly-measured from all punishments. For example, incarceration for a criminal is the discounted amount of lost earnings plus how much he estimates his damage from imprisonment and life on a meager action.

Punishments affect not only criminals but also other members of society: first of all, the family members of the offender – after all, they lose part of their income due to the absence of the guilty one of the family members.

The total cost of punishment for the whole society is the sum of the cost of punishment for criminals and the gain or loss associated with this punishment for the rest of society. Fines are levied on offenders from the income of the rest of society, which is equal to the loss of the offender minus the cost of imposing a fine, so the cost of society in connection with the fines is approximately zero, as it should be in the case of a social transfer (Becker, 2003).

Generally, improvements in economic conditions, such as lower unemployment and higher wages, play an important role in reducing crime.

Finally, we emphasize that since societies develop dynamically, the economic and legal systems develop along with them, and it is too early to make a final study of this issue, so this issue will never be closed.

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