Legalized Rent-Seeking:
Local Government, Law, and Land Rights in Kazakhstan

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Abstract

Kazakhstan has ranked consistently poorly on measures of property rights protection, and rule of law more generally (Heritage Foundation, 2015). Echoing these evaluations, existing literature emphasizes the degree to which informal institutions shape property relations in personalist, authoritarian regimes, including Kazakhstan; the expectation is that formal institutions like law and courts fail to restrain or otherwise influence state agents’ rent-seeking behavior. In effect, they serve primarily as ornamentation. But these explanations fail to explain why we see Kazakhstan investing heavily in civil law and courts. Moreover, both citizens and the state regularly turn to these institutions to settle property disputes. Among the most common involve land, namely, expropriation for state needs. This article finds that in citizen-state disputes over land rights, law provides lower and upper bounds for officials’ rent-seeking behavior. Within these bounds, law combines with informal, personal ties to determine legal outcomes. While usually these decisions favor officials, law and courts sometimes provide citizens with opportunities for limited redress — not an equal opportunity, but an opportunity nonetheless.

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Introduction

Does law matter for property rights security in Kazakhstan, and if so, how? There are good reasons to expect it does not. Kazakhstan persistently fares poorly in cross-national evaluations of property rights: in the Heritage Foundation’s (2015) Rule of Law index, which is derived from scores for property rights security and corruption, it ranks just 140th of 177 countries. Civil courts see numerous property disputes, especially over land rights; these predominately involve state officials. As one respondent noted, “they try to steal as much as they can before they leave [their post]” (Ethnographic Site 2, South Kazakhstan, 2/2015). Faced with losing her land for minimal compensation, one woman repeatedly protested that, “We’re people, too!” (“Biz adammyz”, Ethnographic Notes, Astana, 11/2015). Others lambasted the “injustice” (nespravedlivost) they endured, railing against a state that “didn’t respect its citizens” (“Gosudarstvo ne uvazhaet grazhdan,” Landholder Interviews 9, 12, Astana, 10, 12/2015). At first blush, then, we see little evidence that law or courts matter for property rights security in Kazakhstan.

Indeed, it is widely accepted that property rights are less secure in authoritarian regimes like Kazakhstan. We tend to think of this in terms of breaking the rules: dictators develop laws that look good on paper, but fail to abide by them. These formal rules exist solely for show. Laws therefore lack meaning, and courts serve as mere rubber stamps for the autocrat’s wishes, even when those wishes run counter to legal statutes. Dictators are well-known for fabricating criminal cases and developing laws to punish or deter opposition (for a review, see Moustafa, 2014). In civil matters like property disputes, Hendley argues courts may serve as relatively neutral arbitrators between private parties, but that where cases are political (read: involve government officials), citizens will strive to avoid going to court (Hendley, 2012). Should officials take them to court, “telephone justice,” or “the practice of making an informal command, request, or signal in order to influence formal procedures or decision-making” (Ledeneva, 2008) will trump the law.

Such informal institutions certainly matter in Kazakhstan and other, similar regimes. However, a myopic focus on informality or avoidance provides little insight into why Kazakhstan has invested heavily in civil courts and complex legal codes, or why citizens purposefully engage state officials in civil courts over property disputes. If law and courts are merely ornaments, why do we see both officials and citizens use them regularly? I argue that to understand how law and courts impact
property rights security in Kazakhstan, we need a more nuanced approach: we need to examine how they interact with informal institutions like patron-client relationships. Neither can be studied in isolation, because at their core, property rights hinge on relationships. While this encompasses both relationships among citizens and between citizens and the state, the latter is especially crucial in non-democracies, where officials are not directly accountable to constituents (Flores, 2008). In these environments, we often equate rule of law with the degree to which formal property rights are followed and enforced.

However, a crucial assumption often lurks forgotten in the background of these evaluations: the idea that property laws are fair or impartial to begin with. Consequently, we conflate consistent application of the rules with the impartiality of the rules themselves. In doing so, we overlook how blatantly biased or intentionally contradictory laws regulate property rights. These laws deliberately accommodate multiple logics, legal and informal (i.e., based on personal ties), that are combined in dynamic ways to shape property rights security. Property law provides lower and upper bounds within which the central government permits rent-seeking. In conflicts between state officials and citizens, courts ensure these bounds are enforced. Thus, law and courts matter, but not necessarily for citizens' greater benefit. Since they do matter, however, they sometimes provide citizens with opportunities for limited redress from state officials — not an equal opportunity, but an opportunity nonetheless.

Because property law varies depending on property type – as do the transaction costs involved in implementing these laws - this paper uses one kind of property, land, to develop this argument in depth. In particular, I focus on eminent domain, or seizure for gosnuzhd (state needs); respondents consistently listed expropriation by state officials as their top concern related to land rights. Indeed, this fear appears well-founded. Newspaper reports, interviews, and court records confirm local officials have engaged in widespread expropriation over the past decade. Surprisingly, however, they rely on broadly legal means. Even more unexpectedly, this widespread insecurity does not appear to have slowed land development. The same areas plagued by expropriation have consequently experienced sustained real estate booms and economic growth. This phenomenon runs counter to widely accepted findings in the social sciences that without secure property rights, economic development will be stymied; because people lack confidence they will receive a return on their
investment, they will not invest in the first place (Haggard et al., 2008: 207). Yet, we have not seen this occur in Kazakhstan. This suggests one of two things: in a complete reversal of prevailing understandings, property rights security does not impact development; or, property security exists, but is not equally distributed among the population. In short, to understand this relationship between property rights, law, and development in Kazakhstan, we need to understand what drives the distribution of security. What explains these unequal threats to property? What form does insecurity take, when, and for whom? What role do Kazakhstani law and courts play in shaping these threats, and responses to them?

A Few Definitions

Before turning to these questions, let’s address some conceptual issues: what do we mean by ‘rule of law’ and ‘property rights security’? At its most broad, rule of law refers to just, fair constraints on both state and society; it emphasizes a particular normative outcome, that of an inherently level playing field. The World Justice Project’s (2015) four-part definition provides a good example of this approach:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

Political scientists and legal scholars often conceptualize rule of law more narrowly, by focusing on the degree to which laws are actively applied, including to state officials or agents. In other words, it matters not so much what kinds of rules exist, but rather that those rules are adequately and equitably enforced as they are written; formal, “parchment” institutions should consistently trump their informal counterparts (Carey, 2000). This view is often implied in work that advocates greater attention to informal institutions (e.g., Helmke and Levitsky, 2003). Law need not be designed to
encourage the level playing field; it simply requires “teeth.” Scholars of authoritarianism have drawn on this conceptualization in studies of “rule by law,” in which consistent application of laws stifles opposition (Ginsburg and Moustafa, 2008; Rajah, 2012). However, they tend to focus on criminal laws designed to target acts of resistance to the regime or its policies. Disputes between officials and non-politically involved citizens, especially in more ‘mundane’ areas of law, such as contracts, property rights, and taxes, have largely escaped notice.

The above two approaches appear relatively clear-cut in their distinctions, but that clarity begins to fade when we examine rule of law in the specific context of property rights security. There, the emphasis has been on adequate enforcement of formal law, but has equated this with the broader definition of rule of law – seemingly forgetting that many regimes have an inherent interest in maintaining an uneven playing field for property-holders, especially vis-a-vis the state. It is, for example, perhaps no accident that many of the world’s most repressive states, including Turkmenistan, Eritrea, and of course, North Korea, circumscribe private property rights, and explicitly forbid private ownership of land; doing so allows the regime enormous latitude in shaping broader social and economic relations. Thus, when scholars define property rights insecurity as “illegal interference with any part of the PR [property rights] bundle by governmental or private actors” Markus (2012: 243), they risk overlooking how regimes can embed insecurity within the law. The underlying assumption that they will not presumably stems from economics, and our understanding that secure property rights facilitate economic growth; since all regimes strive for economic growth, why would any codify insecurity? However, it is not necessarily in regimes’ interest to facilitate economic growth for all; instead, they have every reason to direct it toward supporters (Flores, 2008). Lawson-Reimer (2012) adds to this, finding that that it fundamentally matters whose property rights are secure; violations of ethnic minorities’ property rights do not appear to stymie economic development. Legalizing insecurity effectively links the type of rights property owners enjoy to their informal ties with regime insiders.

I refer to the specific type of insecurity outlined above as “bundle security.” It refers to violations of laws governing property rights, and is a very useful, concise characterization of what is implied in most work on property rights security. In both contemporary law and economics, “property is an abstraction. It refers not to things, material or otherwise, but to rights or relationships among
people with respect to things. Moreover, the abstraction we call property is not monolithic. As suggested by the choice of terms above, it consists of a number of disparate rights, a ‘bundle’ of them: the right to possess, the right to use, the right to exclude, the right to transfer, and so on’ (Banner, 2011: 45). This bundle provides guidelines as to who may claim exclusive rights to use and retain benefits (or losses) from a particular good, and how; it thus creates conditions of excludability (Allina-Pisano 2008, 175). This emphasis stems in large part from Demsetz’s (1967: 354) seminal work on property rights. He states that property rights “specify how persons may be benefited and harmed” and provide “guiding incentives to achieve a greater internalization of externalities” (Ibid, 348). Thus, property rights security refers to the idea that in a given society, the laws specifying these relationships matter concretely for determining how externalities are proportioned.

However, this “bundle security” provides only half the story. Shifts in the allocation of property rights can also reduce security. Technically, these are perfectly ‘legal’, because the state itself defines what it is legal through formal rules and legislation. These changes in allocation can be sweeping, as when a new land code is introduced or a country redistributes land on a broad scale, but more commonly, they occur within the context of existing legislation, at the micro (individual or firm) level. An often myopic focus on private property rights has contributed to these changes frequently escaping notice in political economy literature. Lease or use rights to land are a key example. Many states not only define and enforce land rights, but also act as landlords, granting temporary use rights to land. During the lease period, lessees may enjoy bundle security. Yet, if lessees are not confident of conditions surrounding continuation of those rights, they still face considerable uncertainty. Similarly, the right of eminent domain, if widely exercised, can generate insecurity that is again, technically legal. Both this kind of ‘allocation insecurity’ and bundle insecurity shorten time horizons and increase the risk associated with investment. In other words, they can have a similar impact on economic development as the more-commonly-thought-of bundle insecurity.

This distinction is critical when evaluating state strength and rule of law in non-democracies, and helps highlight the role that civil law plays in authoritarian governance. Regimes have an inherent interest in securing property for supporters, not for everyone; because property rights are defined by the sovereign, this can be perfectly ‘legal.’ In Kazakhstan, this has meant that local government officials enjoy enormous latitude in allocating land rights while remaining technically
within the law. The resulting allocation insecurity is largely absent from existing literature on property rights security, which emphasizes bundle insecurity. I find that local officials in Kazakhstan prefer to operate within the law when engaging in expropriation, because doing so allows them to legitimate their actions to constituents and superiors, and in the latter case, mitigates the risk of censure. That same law establishes guidelines for rent-seeking. As long as officials remain within these boundaries, courts, which operate as a faithful agent of the executive, will support them — in effect institutionalizing rent-seeking. Which legal interpretation applies depends on additional, informal factors, such as personal ties to the local government, but law still sets the terms. Backed by informal, patron-client relationships, law therefore influences whose rights are threatened and how. This can also have unintended but important consequences for governance: the very basis of these threats in law means sometimes, law can be used to against them in court.

Why Law Shouldn’t Matter

That law applies and can sometimes be used against state officials runs counter to how we tend to think of its role in an authoritarian regime like Kazakhstan. Autocracies depend on informal, subjective application of power to survive. In personalist dictatorships, their rule generally rests on vertically-organized patronage network and does not stem from any clear, procedural means of selection, such as fair elections. Without electoral accountability, state officials are thought to have little reason to avoid blatantly violating citizens’ legal rights, including their rights to property (for discussion, see the edited volume by Przeworski, Stokes, and Manin, 1999). For secure property rights to exist, the state must be restrained from acting impetuously and requisitioning resources from constituents: North and Weingast (1989, 808) argue that, “the development of free markets must be accompanied by some credible restrictions on the state’s ability to manipulate economic rules to the advantage of itself and its constituents...” They find that it was the existence of a “credible threat” – the successful dethroning of two kings – that led the monarchy in Great Britain to tie its own hands and stop “future irresponsible behavior” regarding property. This required a direct threat enforced by new institutions that facilitated monitoring (i.e., regular meetings of Parliament) to ensure the Crown’s restraint. Authoritarian regimes, and especially personalist ones, lack these ‘hand-tying’ institutions.
Kazakhstan certain falls into this category. Over the past 25 years, President Nursultan Nazarbayev has steadily consolidated his rule over a power vertical. He has led the country since it emerged as an independent country in 1991, and under his leadership, opposition has been systematically marginalized through use of restrictive electoral laws and criminal prosecution (Transparency International, 2014). In short, the label ‘rule by law’ certainly applies, and the results are predictable. Nazarbayev received well over ninety percent of the popular vote in the last two presidential elections, and his ruling Nur Otan party dominates national and local legislatures (Ibid). The president appoints the powerful regional governors; they in turn appoint district executives. Executive control over Kazakhstan’s judicial system is even stronger, with the president directly appointing all judges, even in district courts (Konstitutsionnyj Zakon, 2000). These factors have contributed to Kazakhstan’s stable ranking as “Not Free” since independence (Freedom House, 2014); among scholars, there a similar lack of debate over its authoritarian status. Central control is pervasive, stable, and highly visible.

Kazakhstan, then, lacks the checks on state authority theorized to create secure property rights. At the same time, approaches like the above, which emphasize strategic interaction between rulers and their constituents, draw directly from Olson’s (1993) account of “roving” versus “stationary” bandits. Olson argues that, in contrast to roving bandits, stationary bandits – who “monopolize and rationalize theft in the form of taxes” – will limit their predation to ensure subjects have an incentive to engage in future production, thus improving their ‘take’ over the long haul. In short, the decision to stay put leads autocrats to limit their extraction in the present so that they can take more over the long term. A secure, stable autocrat like Nazarbayev arguably approaches this ideal, and suggests some rationale for property rights protection in the Kazakhstani context.

Of course, there are two primary issues with applying Olson’s theory to the Kazakhstani case. First, where autocrats derive most of their income from natural resources – as is the case in Kazakhstan, where oil revenues comprise close to 40% of GDP (Natural Resources Governance Institute) – this impetus to become a ‘good’ stationary bandit is limited. Instead, what really matters is satisfying the narrow selectorate, or group of supporters who ensure the autocrat’s continued rule (Bueno de Mesquita et al., 2002); this only stands to exacerbate the issue of a lack of credible restrictions. Second, the theory accounts only for an autocrat’s actions, and says little
about those of his subordinates; one of the key tasks that any dictator faces is controlling his agents. That said, Olson’s argument translates relatively neatly to local-level politics. Citizens regularly complain that appointed local executives seek only to maximize their personal wealth; one cited a discussion with a minor official’s housecleaner, who described “gold, fancy china, everything — that should be ours, it’s our [citizens’] money” (Landholder Interview 12, Astana, 12/2015). These officials are beholden only to those central or regional officials who appoint them, they often do so at the expense of their constituents. Where central officials frequently shuffle their underlings to ensure loyalty to the autocrat, as is common in Kazakhstan, limited time horizons increase incentives for ‘roving banditry.’ In addition, these local officials also lack ties to local populations, formal or informal; the result, predictably, is widespread expropriation. Indeed, a growing body of literature shows that most state threats to property come not from the autocrat, but rather from local officials (Markus, 2015, 2012; Gans-Morse, 2015, 2012).

We should therefore not expect that in Kazakhstan, local officials have any motivation to obey the law or refrain from stealing as much property as possible during their tenure. What really matters is their loyalty to their political patron. This line of reasoning has troubling implications for the country’s overall economic development. Political science, economic, and legal scholars widely agree that without a state that upholds private property rights, incentives to innovate and invest are undermined; individuals or firms cannot be sure they will retain any payoffs that come from taking that risk (Haggard et al., 2008: 207). North (1990) forcefully advanced the importance of property rights in reducing transaction costs and thus, in facilitating growth, and subsequent studies (Knack & Keefer, 1995; Acemoglu & Johnson, 2005) have provided support for his thesis. Dixit goes so far as to argue that states’ ability to provide secure property rights “underpins the whole Smithian process whereby individuals specialize in different tasks and then transact with one another to achieve the full economic potential of the society” (Dixit, 2009, 6), making them both an essential component of economic governance and a core function of the modern state.

The reasoning outlined above implies three outcomes. First, property rights should be inherently insecure in Kazakhstan, which is both a personalist dictatorship and a resource-rich regime. Second, because what really matters are informal loyalties, Kazakhstan has no reason to invest more than superficially in developing civil laws and courts to deal with property disputes; insecurity should
therefore stem from ‘breaking’ or failing to enforce property laws that serve as window-dressing for an international audience keen to promote democracy and rule of law, especially in the former Soviet space. Finally (consequently), we should see negative economic fallout in the form of low investment in the property under threat. These economic consequences should be tied to the specific property that is insecure: if land rights are insecure, land investments will plummet.

Property rights to land in Kazakhstan reflect some of these expectations, but defy others. While qualitative evidence and civil court caseloads point to widespread insecurity surrounding land rights, the form that insecurity takes tends to reflect prevailing legal statutes. Even more puzzling is the fact that we see extensive investment in legal codes, reforms, and courthouses – and that these are used, by both citizens and regime officials. Moreover, we have not seen the tepid real estate market that we would expect under conditions of insecurity.

Institutional and Other Investments

This section explores investment in two distinct arenas: regime investment in law and courts, and investment in land in the three regions of Kazakhstan which, according to official evaluations, have seen the most conflict over land rights (General'nnoj prokuratury, 2013): the capital, Astana, the “commercial capital,” Almaty, and the densely-populated region in the country’s south. We begin with the difficult task of assessing Kazakhstan’s investment in formal institutions. Quantifying exactly how much money and effort has been dedicated to developing, implementing, and enforcing laws – much less property laws, specifically – poses enormous methodological challenges, and is not the central aim of this paper. However, a wealth of publicly-available budget information, court statistics, and qualitative evidence together paint a clear picture of formal institutions that have received substantial backing from Kazakhstan’s central government. These investments call into question the idea that law’s utility is limited to ornamentation.

One such measure is government spending: in 2014, the budget for courts reportedly totaled 40 billion tenge, or about USD$200 million (Mami, 2014). Several hundred million more tenge were dedicated to centrally-mandated initiatives designed to boost records-keeping, provision of information, and legal services (Razdel Grazhdanskij Budzhet). Kazakhstan’s oft-cited corruption
means that claims that “100% of the budget was fulfilled/carried out” (Ibid) should not be taken purely at face value, but nonetheless, informal discussions with major international organizations suggest real support for initiatives like these at high levels of the Ministry of Justice (Personal Correspondence, International Organization, 7/2015). Doubtlessly, some proportion of these funds will end up lining officials’ pockets, but many of these programs have generated visible products. A key example is the degree to which court schedules, decisions, statutes, and other legal information are available online; these are regularly updated and maintained. The Supreme Court has even published an app that provides a wealth of information each day.

Of course, these efforts could be nothing more than particularly expensive, elaborate “window-dressing”, but there are additional reasons to believe something else is afoot. First, they extend to a level of complexity and depth that suggests they serve another purpose; second (and more critically), they are actually utilized, and what’s more, utilized on a consistent basis. The former encompasses not only funds spent, but also time, manpower, and expertise. Kazakhstan’s Land Code alone spans over a hundred pages, and has been updated numerous since its introduction in 2003. Moreover, the Code’s introduction was highly controversial. In a highly unusual occurrence for authoritarian Kazakhstan, Parliament dissolved due to intense disagreement over certain provisions (Yermukhanov, 2003; Organization Interview 9, 6/2015). Other laws involving property, such as the controversial 2011 Zakon o Gos Imushestve (Law on State Property), provide extensive guidelines regarding how property should be appraised, registered, and the like. Before the introduction of these laws, working groups that include officials from affected ministries, key stakeholders (e.g., leaders of professional associations, leading academics), and the president’s administration spend substantial time and effort to develop these laws (Appraiser Interview 7, Almaty, 12/2015; Attorney Interview 25, Almaty, 12/2015; Academic Interview 10, Astana, 12/2015). This level of detail and attention to revision is puzzling if laws do not matter for governance: why bother with hundreds upon hundreds of pages of detailed documentation and the man power required to create them – or risk your political career to oppose laws (in the case of the Land Code) – if they are empty and meaningless?

Interviews with attorneys and those involved in court cases further suggest that we should hesitate before discounting legislation on property rights. They have not only become an occasional
focal point for opposition from deputies, but also among citizens and professionals. Landholders (especially those who’d been involved in litigation) repeatedly complained about specific provisions in the Law on State Property, and that law has generated vocal opposition among prominent members of Kazakhstan’s legal and appraisal professional associations (Appraiser Interviews 1-5, 7, Astana and Almaty, 5-6/2015 and 10/2015). A recent article in the Almaty law journal on the topic (Almaty has, by far, the largest attorney’s association in the country), called for courts “to be more independent in considering petitions of lawyers to apply to the Constitutional Council of the Republic of Kazakhstan in recognizing certain legal norms unconstitutional” (Zhajlauov, 2015). If laws are designed to be low-cost decoration, it seems puzzling that the regime would choose to retain ones that have generated such dissatisfaction.

But an even bigger cue as to civil law and courts’ import for property relations can be summed up by court schedules like that pictured below, which features just a few of a full day’s worth of property-related cases in the Astana City Court (Gorodskoi Sud, Appeals Court). Civil court dockets like these show that civil courts at all levels – from district courts to the Supreme Court (Verkhovnui Sud) – regularly hear disputes over property, and land in particular. Though data are still being coded, current estimates of the proportion of, specifically, land-related disputes among citizens and state officials approach 10% of total civil court caseloads in some districts. These district-level data likely underestimate the true frequency, as visits to those courts demonstrated that they were not always vigilant when it came to entering cases into the online scheduling system; at times, a relatively empty court docket contrasted with a packed courtroom waiting area and several cases not listed on the schedule (Ethnographic Site 5, 11/2015). In the Astana City Court, land and housing/property disputes are so common that two days of the week, two judges focus specifically on these cases. Multiple visits confirmed that the majority of these cases are between citizens and state officials; moreover, all parties are usually present for the hearing. In short, the formal institutions tasked with addressing legal conflicts over land rights see regular use, both by the state and citizens.

Generally speaking, attorneys tend to characterize these cases in line with what the literature suggests should occur in Kazakhstan: land-related cases against the government are proigraushiiie, or losing cases (Attorney Interview 23.2, Astana, 12/2015). Especially in the case of seizure for
state needs, citizens very rarely find themselves able to retain their land and homes once they’re requisitioned by state officials. Data for exact court rulings in these cases are not available, but numerous interviews with attorneys repeatedly yielded nearly universal, identical responses along the lines of that above. I explore less straightforward ‘wins’ in a subsequent section, but this combination of hopelessness with high usage suggests that at a systemic level, we do indeed see insecurity of some variety; seizures are common, as are other varieties of land disputes with public officials, and citizens rarely find themselves with a clear victory over state actors. Landholders and attorneys consistently cited this threat from officials as their or their clients’ greatest worry related to land rights.

This widespread perception that land rights are not free from the whims of local officials suggests that we should not see a willingness to invest in land, especially in the areas where seizure is common. Yet, in the same neighborhoods that have been characterized by large-scale seizure, we see enormous growth and development. Multi-million dollar housing and commercial developments have sprung up each year, and construction cranes are ubiquitous throughout Astana, Almaty, and Shymkent. Often, land seized for state needs is only partially needed for public use, and remaining, so-called ‘leftover’ lands are resold by the local executive government; crucially, these lands are being bought. Demand has not been arrested by the omnipresent threat of seizure. Along the same lines, land prices in these areas have trended upwards over the past decade (chronologically, they correlate not with reported spikes in seizures, but rather with larger global and regional economic crises in 2008 and 2015-6, respectively; “Analitichesij obzor rynka,” 2015).

In other words, it seems that some someone has enough confidence in the security of their land rights to invest – while others suffer from pervasive insecurity. Why do some people or firms have enough confidence to sink enormous sums into land? Writing about China, Oi (1992, 100) finds that universally secure, private property rights are not essential for investment and development; what is needed “are secure property rights for some organized unit and sufficient incentives for
that unit to pursue growth.” How can we characterize this heterogeneous security – what ‘units’ in Kazakhstan experience insecurity? Which enjoy security, and why? And finally, returning to the motivating question of this paper, what role do law and courts play in mediating these outcomes?

Land, Law, and Local Officials

As outlined above, post-Soviet Kazakhstan embodies an environment where we should expect law not to matter for property rights. This is especially true for land rights. Kazakhstan’s land code vests most formal authority for land rights in the local executive government, or akimat, and these appointed executives are frequently transferred among posts. Some might serve for extended periods in a single post, but more frequently they are transferred between regions every few years. This combination of concentrated authority in the akimat, low accountability to constituents, and short time horizons has predictably resulted in a situation where “everything associated with land is complicated” (Expert Interview 5, Almaty, 4/2015). What form do these ‘complications’ take? Are state officials pursuing their own, independent agendas, without reference to any formal authority, or do we see rent-seeking with law and courts shaping how it occurs? Where expropriation or other blatant threats to individuals’ or firms’ land rights emerge, do they more often conflict with the law or operate within its bounds? These may seem strange questions to ask, but they allow us to distinguish whether Kazakhstan faces the principal-agent problem generally implied in property rights literature, or whether insecurity is purposefully targeted.

Characterizing Land Rights

Although private ownership of land exists in Kazakhstan, the state is, according to the Land Code, the ultimate owner. However, outside cities and immediate population centers, most land remains in explicit state ownership with long- or short-term use rights, which were granted for free in the 1990’s. These use rights can take several different forms. First is the distinction among categories of land use: agricultural; housing or settlements; industry, transport, communications, defense and other non-agricultural purposes; protected areas (parks, etc.); forest; water resources; and reserve (land fund). Within the first category fall lands designated for dachas (summer cottages).
and individual/family gardens (Zemel’nyj Kodeks, 1.1). Land that it is not used in accordance with its designated use can be seized by district or city officials. While it is possible to transfer the category of use for example, from agricultural to individual dwelling, this process requires consent from the district or city akimat. Interviewees cited the process as difficult, with only about twenty percent of requests approved (Attorney Interview 5, Astana, 3/2015).

Second, land can fall under public or private ownership. Restrictions on land use remain regardless of ownership status, and land that is not used in accordance with its categorization may still be seized for illegal use (Official Interview 2, Shymkent, 2/2015). Land that is state-owned can be transferred into private ownership if lessees receive permission from the city or district akimat and pay the cadastral value.

In rural areas, land is primarily held in long-term leases from the state that last 49 years. These rights are inheritable but not alienable, and existing lessees have first right of renewal when the term expires. Land that belonged to former collective farms was originally distributed as shares; many of these were bought and consolidated by former farm directors, whose ownership today tends to be in the form of limited-liability firms (TOO; Organization Interview 4, Almaty, 10/2014). Those who retained their shares later had to convert them to certificates for particular plots. Plot assignation was decided at plenary sessions of the form collective farm; though conflict did occur at the local level during redistribution was largely completed by the early 2000s (Official Interview 2.1, Shymkent, 10/2014; Farmer Interview 3, Shymkent, 2/2015). Though land rights-holders may purchase their land (transfer it to private ownership), this practice is relatively rare. Few rural residents have the money or the motivation to do so – lease payments are low, and limited to yearly payments of the land tax. These comprise just 1% of the value of land (Ibid; Organization Interview 4, Almaty, 10/2014; Farmer Interview 1, Almaty, 1/2015). This provides little incentive to shift to private ownership; the exception is outside expanding cities, where land value continue to rise (Ibid). Thus, most land remains in long-term leases from the state. In contrast, in cities, private ownership is far more common. Urban residents received titles to apartments or land where they already resided, and as a result, rights to household plots within city limits are usually private. Many of these plots are designated for “dacha” or “garden” use, not full-time residence, but as cities have expanded, residents have built more permanent residences on them (Attorney Interview 8, Astana, 4/2015). At the same time, urban district akimats still own some land, and have the
right to seize additional plots for state need.

Kazakh law stipulates that all land rights – private or otherwise (e.g., long-term leases) - must be registered with the Ministry of Justice. Without registration, no state agency recognizes an individual’s or firm’s land rights. Formal rights to land begin only from the moment of registration. Thus, anyone who has any legal basis to land has a strong incentive to register it, and many do; especially in urban and rural areas, respondents could generally produce an akt na zemlu (land act/certificate). In newly-settled peri-urban areas, respondents were more likely to lack these documents, and did not pursue legalizatsiya, or legal registration of land, until they were preparing to sell it (registration is required for a sale to be valid and for rights to transfer). In addition to residents in these ‘suburburban’ settlements, those who obtained land through inheritance sometimes did not register their land; they tended to provide other documents, such as proof of inheritance, when asked how they asserted their claim to a land plot (Ethnographic Sites 1-6, 9, 2015). In such cases, landholders cited the time required to complete the registration process as the greatest barrier to formalizing land rights (cf. Landholder Interview 7, 8, 11/2015). Attorneys and some companies will register property for landholders, and on average, said that it required 1-2 months to complete. For individuals not familiar with the process, it took an additional 2-4 months. Asked why, respondents tended to cite the number of documents required, fees, and the need to visit multiple government offices (Ibid; All Village Ethnographic Sites, 2015). Only in one region did respondents regularly cite the need to pay bribes to accomplish any of the above functions, or use language that hinted corruption played a role (Attorney Interview 3, Shymkent, 2/2015). Indeed, an attorney who specialized in helping clients with property registration stated that she chose this area of practice because it was relatively straightforward and free from corruption (Attorney Interview 23, Astana, 10/2015).

Even where people have not registered their land, they generally have a formal, state-recognized documentary basis for their ownership or use claim. In other words, property rights require formal, state- (law-) backed means. Rights to property are derived from formal, legal documentation, and both citizens and the state acknowledge this state of affairs. Moreover, courts recognize legally-proscribed documents in disputes, even against state officials: in one court case over seizure for state needs, officials failed to pay compensation to a woman whose rights to a garage stemmed
from inheritance (for which she had a valid, notarized certificate). Under law, she had a limited period in which to register the property even after notice of seizure, and she signed an agreement with the akimat’s agent to do so; after that point, she was to receive compensation, but she never did. In court, officials tried to argue that because the property had not been registered, they owed her nothing; the judge upheld the woman’s claim (Ethnographic Notes, 10/2015).

Of course, that does not mean that these formal rights to property operate free from informal influence. Most direct formal authority for administering land rights rests with the local akimat, including the authority to grant new leases, approve lease extensions and renewals, approve land sales, seize land for state needs, and transfer land from one category of use to another (All Attorney Interviews; Zemel’nyj Kodeks). Only private land sales do not require an akim’s direct approval; essentially, he or she acts as the single channel for an extensive range of decisions related to land rights. In each district there is a land committee, responsible for reviewing applications and providing recommendations to the akim. These local-level land committees are also those responsible for surveying and establishing boundaries to land. However, committee members are appointed separately from their counterparts at the next-higher level of government (oblast, for rural districts, and city, for urban districts) level of the Department of Land Relations, and operate under the local akim’s supervision (Official Interview 2, Shymkent, 2/2015).

Though this essay has referred throughout to “local officials,” clarifying the relationship among various levels of local government is critical for understanding land rights security. Kazakhstan is a centralized state, with a vertical structure of authority. There are four levels of executive authority: national (presidential); provincial (oblast)/cities of republican significance (Almaty and Astana); district (raion)/cities of provincial significance (goroda oblast’nogo naznacheniia); and rural (sel’skii okrug). The president appoints provincial heads (akims), who then appoint the next level of executives (also called akims), and so on. These appointees are not beholden to citizens, but rather to the next rung up in the vertical hierarchy. Provincial authorities make decisions about land rights related to “mass-scale projects,” like the granting of land rights for mineral exploration (Attorney Interview 6, Astana, 3/2015), but again, the most common official transactions involving land occur at the district level. Rural akims have similar authority to district akims within the narrow geographic bounds of their districts, but can only recommend seizure for
misuse or state needs. District authorities must provide approval. Moreover, any reassignment of land rights at this level must be registered with district authorities. One respondent went so far as to highlight this specifically: the rural akim had to pay the district akim to look the other way when he took unused land and re-registered it in family members’ names (Ethnographic Site 2, South Kazakhstan Oblast). However, this link does not necessarily extend further upwards in the power vertical. Land is incorporated into the national registration system at the district level. That registration effectively compartmentalizes land rights at the lowest two levels of government. Within this ‘black box,’ higher-level executives have limited direct information or involvement.

This suggests principal-agent problems – if we ignore courts’ role in enforcing property rights. Where individuals or companies feel their rights have been violated, they can pursue a case in court (this likely helps explain why the official mentioned above took empty land); local officials can do the same, and frequently do in cases involving seizure for state needs when individuals do not acquiesce to the compensation they’ve been offered. The sheer number of land-related civil cases suggests that we should not dismiss courts’ role in these disputes: by official calculations, disputes over seizure for state needs comprised 8% of total civil cases from 2011-2013 (Spravka); preliminary calculations for data from 2013-present suggest similar numbers. Similarly, attorneys cited on average about 10% of their caseloads as pertaining to land-related disputes. Unlike the system of local government, all judges are directly accountable to the executive; the president personally appoints all judges, who are (informally even more than formally) under the close supervision of the chairman (председатель’) of the court. That chairman further ensures that his or her court’s rulings comply closely with national policy (so, the executive’s wishes) (Academic Interview 8, Almaty, 6/2015 and Attorney Interview 16, Almaty, 2015). Thus, while the structure of courts echoes that of executive government, with district, oblast/special-status city, and national levels, courts serve as a far more reliable, loyal agent. These experts acknowledge that the capture of local judges by district or provincial officials does occur, but assert that this phenomenon has declined significantly now that judges are paid directly from the republican budget (Ibid). Moreover, the relatively open appeals system means that higher courts ‘check’ the degree to which lower courts’ decisions align with executive demands. Land disputes are first heard in the district court where the land under dispute is located (or, for cases between legal entities, in special inter-district economic courts), but
if either party is unhappy with that court’s decision, they can pursue (and often do) pursue the case through the appellate courts and up to the Supreme Court in the capital, Astana. Knowing that their decisions are likely to be checked by higher-level courts has made lower courts hesitant to rule contrary top-level practice. Local officials may exert informal influence over cases, but they are unlikely to do so in a way that challenges or conflicts with central policy.

Indeed, during court sessions, judges sometimes took the akimat to task through rulings or for unprofessional conduct. In one case, the judge asked “How exactly do they work in the akimat?” and chastised their attorney for failure to provide basic documents; in another, he threatened to open an administrative case against the department for their conduct (Ethnographic Notes 10/2015). At the same time, both interviews and court observation suggested a regular pattern in legal rulings surrounding land disputes, especially those concerning seizure for state needs. These reflected a recently-introduced, 2011 law on state property, as well as a reported order from central government “not to drain the state budget” by providing too much compensation to owners of seized land. According to multiple sources, this law was drafted on direct order of the President in response to excessive payments for land seized during the construction of a portion of the Europe-China highway (for example, Appraiser Interview 7, Almaty, 12/2015). While data on compensation offered over time are not available, attorneys were consistent in characterizing previous compensation as fair. However, following the law’s introduction, the amount offered ceased to reflect market prices; falling exchange rates vis-a-vis the dollar compounded this issue. Courts may serve powerful local officials’ interests, but only appear to do so when those do not contradict top-down mandates; furthermore, their structure means courts serve as a largely self-monitoring institution. In other words, judges appear to act as reliable agents of the central regime.

What, then, comprises existing top-level mandates concerning land rights? And what accounts for the heterogeneity of property rights insecurity related to land? Before addressing this question, we need to understand exactly what shape these threats to land rights commonly take.

Threats to Land Rights

Property rights insecurity related to land takes several different forms in Kazakhstan. Predictably, news reports suggest that it is concentrated in areas where land values are high: around
rapidly-expanding cities, and in areas where population density and agricultural value of land are high. Among the former are Almaty, Kazakhstan’s ‘commercial capital,’ and the capital, Astana; the latter encompasses the country’s southern provinces, including Almatinskii Oblast. This article is based on over a hundred interviews in and near Astana, Almaty, and Shymkent (South Kazakhstan Oblast) with four target groups: individuals who own or have inheritable lease rights to land plots; officials involved in the administration of land rights; attorneys who work on cases tied to land; and academic and non-profit experts in policy, land use and surveying, and economics. In addition, villages near Astana, Almaty, and Shymkent were sites for ethnographic observation, as were local (district) and appeals courts in the city of Astana. Both interviews and village contacts were based on cold-calling or snowball sampling, primarily the former. Regardless of how individuals, attorneys, or experts were sampled and contacted, the kinds of insecurity they mentioned were consistent, particularly the five most common types: seizure for state needs; seizure of land that has not been used according to the specified lease terms; double-issue of land rights or other errors in assigning land rights; refusal to renew or prolong lease rights; issues with requests to change the categorization of land; and seizure of neighbors’ or other individuals’ land. The first four boil down to conflict with the district/city akim, and this characterization is reflected in court dockets. Most common are cases concerning seizure for state needs, and are between district akimats/land committees, and individuals/companies (Attorney Interviews; Supreme Court).

Interestingly, all four forms involving local officials are best characterized as allocation insecurity. In other words, they occur under conditions allowed by existing legislation. Even cases of outright seizure operated with legal pretense; officials did not simply appear and demand that individuals vacate the premises, but instead were careful to cite either state needs or failure to use land in accordance with its designation. Bundle insecurity related to land appears far more limited, and where it does occur, overlaps with allocation insecurity. For example, officials may fail to provide compensation for land seized under legal grounds for state needs (Attorney Interview, Shymkent, 4/2015). While seizure by neighbors or other citizens falls under the category of bundle insecurity, it was rarely mentioned in interviews; however, this varied between North and South. In the North, respondents either mentioned it last, or failed to mention it at all; in the South, where population pressures on land are higher and agricultural land is more valuable, it was far more common.
Nonetheless, all those interviewed cited seizure by local akims as the most prevalent concern surrounding land rights (in the North) and among the top three (in the South). Allocation insecurity remained at the top of the list when they were asked to consider these concerns over time (in the past five and ten years). The difference lay in their prevalence. In Astana, disputes over seizure were so common in the late 1990s and early 2000s – shortly after the capital was relocated there from Almaty – that one long-practicing attorney worked solely on such cases for several years. Today, only about 15-20% of his cases are related to land. Again, however, the kinds of insecurity that his clients face has not changed (Attorney Interview 8, Astana, 4/2015). Attorneys in Almaty and Shymkent, as well as those who began practicing law more recently in Astana heavily stressed allocation insecurity, especially seizure for state needs. Conversations with landholders echoed attorneys’ evaluations, and in the few remaining single-housing neighborhoods in Astana’s city center, those homeowners whose homes were not already in the process of being seized were extremely cognizant that they were likely to be threatened soon; many interviewed were in the midst of court cases over seizure. In the South, this issue is exacerbated, and extends to rural areas due to higher population pressures (Attorney Interview 10, Shymkent, 4/2015). Indeed, the failure to mention it first in the South may be due to greater political sensitivity surrounding government seizures there; one respondent called it a “very bitter issue” and noted that “people here are scared” (Attorney Interview 12, Shymkent, 4/2015).

These qualitative data strongly confirm that most insecurity comes in (technically) legal forms; ‘complications’ occur under the umbrella of the law, especially for state needs (eminent domain). Existing law provides clear examples for what state needs encompasses. Such seizures must be “exceptional circumstances” for the fulfillment of cities’ general plans, including construction of roads, engineering-communications networks, and objects needed for state programs designed to serve the public good, such as schools (Zemel’nyj Kodeks, st. 84). With rapidly-growing urban populations, the demand for new infrastructure and services means that it is hardly difficult for local officials to find a genuine justification for seizure. Eminent domain laws provide for seizure of an entire plot for, say, expansion or construction of a roadway. Often this construction does not occupy the full physical plot, and the akim’s office then finds itself the owner of very valuable real estate bordering the roadway – land that it has the authority to sell. When landholders asked to relocate
their homes to accommodate the roadway (but not to relinquish the entire plot), these claims were
denied (Attorney Interview 23, Astana, 10/2015). Similarly, large swaths of land have been seized
for state needs for the construction of a kindergarten, but the proposed school occupies only a
small part of the lands under seizure; the remainder will be developed into apartment complexes.
Technically, seizures such as these are justified under the law, and especially given Kazakhstan’s
lack of a common-law system, the failure of formal statutes to address the specifics means that
judges must decide the legal basis for such cases within the relatively broad terms defined by the
law – and directives that come from above.

The latter refers us back to the 2011 law governing compensation in cases of seizure for state
needs. That law stipulates that the compensation offered should be equivalent to the sale price listed
on the last agreement of sale/purchase agreement (Zakon Respubliki Kazakhstana ot 1 marta). In
doing so, it contradicts with Kazakhstan’s Land Code and Constitution; the former specifies comp-
pensation equal to the prevailing market price, while the latter calls for “equivalent compensation”.
In Kazakhstan’s legal hierarchy, both the Constitution and Land Code rank higher than any in-
dividual law, and on the question of compensation, the Law on State Property contradicts both.
However, the law remains in force – likely due to the high-level influence that induced its creation,
as noted previously. There thus exists effective legal plurality, and judges appear to pick and choose
which law to use when calculating compensation (Ethnographic Notes, 10-12/2015); when asked
what explained the apparent lack of consistency in how compensation is determined, attorneys
generally responded with a grimace. Though this law contradicts others, it remains on the books
and provides judges a legal tool for keeping demands on the central budget low.

Remaining within the formal legal framework in this way helps lower the risk associated with
seizures. Kazakhstan’s central government has made curbing corruption a prominent priority,
a push which has led to the arrest of several district and regional executives (cf. “Nazarbaev
rasskazal,” 2015; “Zaderzhan eshe odin zamestitel’ akima Kostanaya,” 2015). At the same time,
the regime relies on a complex web of patron-client relationships for its continued rule – and the
rents derived from being a chinovnik (official) in this system ensure these ties are maintained.
Laws are promulgated at the highest levels of Kazakhstan’s government; thus, officials’ ability to
justify seizures or other forms of allocation insecurity lowers the risk associated with their activities.
Moreover, ‘staying legal’ is low-cost; compensation for lands seized for state needs (even if those needs are local) comes from the central state budget (Official Interview 3, 12/2015). As a result, not only does the law provide officials a way to justify their actions to superiors and to citizens, it costs them nothing – and the profits to be made from selling, say, ‘new’ commercial road-side property can be enormous: in Astana, for example, the average price for a single sotok, or 1/100 of a hectare, was $8340 at the close of 2014 (“Analiticheskij obzor rynka,” 2015). That this legal basis for seizure matters is also reflected in the fact that most disputes are over the price paid for seized land, rather than the seizure itself. Even landholders whose plots were “pod snosom” (in the process of being seized) often acknowledged officials’ legitimate and legal interest in taking land; disagreements came over the compensation they were offered.

In economic terms, transaction costs associated with seizure and retaining land are thus limited when officials remain within legal bounds. Local officials do not see their own budgets drained by compensation, and by acting as middlemen who seize land and pass it to developers (who themselves are rumored to be intimately tied to the regime (Personal Communication, Political Geographer, 6/2015)), they stand to make a great deal of money for themselves. Staying within the law keeps transaction costs low: they do not pay to bring lawsuits in civil court (Attorney Interview 16, Almaty, 6/2015), and as long as they can provide evidence that their seizure satisfies basic tenets of the law, courts – which, given their direct accountability to the executive, are already predisposed to support the state – are unlikely to rule against them. The greatest transaction cost besides risk to their position (which again, is mitigated by choosing legal means) is simply time and effort. If the property is valuable enough, even time spent defending against successive legal challenges will be insufficient to deter seizure, because the outcome is most likely to be higher payment for land rather than returning it to the original owner/lessee.

That said, local officials seek to lower even those costs. They are especially low when associated with poor or otherwise vulnerable individuals, who are less likely to have the time and financial means to continue to pursue cases to their conclusion. Kazakhstan allows for universal right of appeal in civil cases (GPK, stat’a 332). Whereas officials do not need to pay to appeal court rulings, however, citizens do. his amount is based on the total value of the disputed property, and for for particularly well-located property, can be a substantial sum (Attorney Interview 24, Astana, 23
12/2015). Many individual landholders interviewed inherited their property or purchased it before huge increases in land value; this is especially true in Astana, where the transfer of the capital there has led to an enormous upswing in land values. They tend to be lower-income, working families or pensioners who are hard-pressed to pay fees for an attorney, or the sum required to appeal a case in the first place; they are also less likely to have personal ties with someone in the akimat or courts who can advocate informally on their behalf. They are, in other words, easy targets. It is therefore not surprising that land insecurity appears greater for individuals than firms; indeed, the effect has arguably been to increase insecurity especially among individuals who own or lease rights to land.

The conditions attached to different land categorizations further lower the cost for officials. As cities have expanded, permanent dwellings have often been built on land designated for “dachas (summer cottage) or garden use.” Permanent residence on such land is forbidden by law, and as outlined previously, transferring land to another categorization poses significant political and economic hurdles. If officials seize land belonging to individuals who own or lease dacha/garden land, then they pay a much lower price. Not only is the market price for it much lower, but buildings are not taken into account in the price paid except for their value as material (i.e., lumber, cement) (Attorney Interview 6, Astana, 3/2015). This land can then be re-sold or re-leased after its designation has been changed – authority which conveniently, also lies with the akimat.

One recent case in Astana involved several poor families who had their homes and land seized for state need; though they pressed their case as far as the Supreme Court, they ultimately lost. Official correspondence cited the fact that they were (contrary to the law) illegally residing full-time on land designated for another purpose (Akimat of the City of Astana, Department of Internal Policy of the City of Astana, Letter K-387-3T, 8.11.2014). Land designated for dachas (cottages) and gardening cannot be used for permanent habitation, which makes it much cheaper. Many individuals relocating to major cities have bought this land because it was the only affordable option and turned it into their year-round home, but in doing so, they were breaking the law, and this makes them vulnerable to seizure for improper use in addition to state needs. In this case, reporters later found that contrary to the cited reasons for the seizure, new developments had sprung up in that location instead. They cited informal pressure from the capital’s akim to rule
against the dispossessed land owners; that personal influence interacted with the formal authority vested in that office (for transferring categorization of land, initiating seizures) to create severe land insecurity for poor families (Personal Communication, Astana, 9/25/2014). Even though the ultimate reason for seizure had been falsified, the families had been residing illegally, and those officials responsible for enforcing occupancy laws belonged to the akimat administration – which initiated the seizure for state needs in the first place. Threatening land security among vulnerable populations like these is low-cost: payments for compensation are lower.

Simply refusing to renew leases is another low-cost option for local akims who seek to transfer land to their personal control or to those willing to pay an informal premium for it. Villagers in several villages in Akmolinskij Oblast complained that their leases were not renewed, and they were suddenly unable to rent sufficient land from the district to pasture their animals (Lakhanului, 2014). The land falls under district stewardship (state ownership), which means that formally, such akims have the ability to reassign land rights when lease terms expire; land must be granted to “more effective farmers” (Organization/Business Interview 1, Astana, 10/2014) or those with the best business plans. These highly subjective guidelines, coupled with formal defensibility, mean that this kind of allocation insecurity is relatively low-cost for officials – and high gain.

If we take a broader view, we see the interaction between formal and informal institutions more clearly. Most threats emerge at and are settled at the local level, but they are informed by centrally-imposed laws and courts. The latter strive to protect the central budget, but where that prerogative does not conflict with local officials’ actions, theirs are prioritized over citizens’ rights – to a point. As we will discuss in the next section, there exists a lower bound on officials’ actions that courts consistently enforce. Thus, threats to property rights emerge from interactions between informal power structures and formal rules at differing levels of official state authority. Formal legislation creates guidelines and ‘tools’ for local officials that balances their rent-seeking with the need to prevent these practices from draining the central budget. This results in vulnerable, low-resource individuals being targeted for expropriation. In particular, central mandates to limit compensation paid for seizures have shifted the burden of this insecurity from the republican budget to individual citizens; corruption has become ‘legal’ and acceptable for the regime, but at the cost of further marginalization of already-vulnerable segments of the population.
How Law Matters

Law matters because it communicates the central governments’ bounds for local officials. Land-related legislation concentrates enormous authority in akims. In doing so, it protects their ability to seek rents and reward their own networks, while legitimating those actions in terms of fulfilling public needs, such as improved infrastructure or educational facilities; it is difficult to garner broad public resistance to building schools or roads needed for rapidly-expanding urban areas. Local officials’ continued ability to line their own pockets using regime-sanctioned helps sustain the vertical pyramid of patron-client relations on which Kazakhstani politics are based. As Hale (2015, 19) notes, these behaviors are “not only a tumor on the body politic, something that can be isolated and excised. Instead, they are more like the body’s lifeblood.” At the same time, law guides how this ‘institutionalized rent-seeking’ may occur by setting effective upper and lower bounds for their acceptable behavior. Courts, as faithful agents of the executive, ensure that local officials remain within those boundaries. In doing so, there are multiple logics at play: a legal logic, which rests on a hierarchy of laws; and an informal logic predicated on personal connections to state officials and, to a lesser extent, on wealth (the two are often linked, and thus difficult to separate). Each logic constitutes a strategic resource, and how individuals combine them determines whether they get the upper or lower bounds of the law – but law still forms bounds.

We see this most clearly when it comes to the issue of compensation for state expropriation of private property. The introduction of the law on state property shows that this rent-seeking must occur in a way that does not run counter to central authorities’ interests, namely, their interest in not draining the central budget. That law introduced a clear mandate – backed by the president’s informal authority as key patron – for how land-related rent-seeking should not occur. Multiple sources involved in its creation stated that the law was developed in response to local akims’ collaboration with otsenschiki (land appraisers) to inflate prices for land seized for state needs, specifically, the construction of a major, international transit corridor crossing Kazakhstan’s southern regions (Appraiser Interview 7, Almaty, 12/2015; Attorney Interviews 9, 13, Shymkent, 4/2015). Land appraisal at market value takes into account numerous factors and legally, can rest on three different accepted methodologies (Standardt Otsenki “Otsenka Stoimosti Nedvizhimogo Imuschestva”). This combination of multiple accepted approaches, a relatively low
level of professional training among many appraisers, and room for subjective judgment and error mean that appraisals may differ significantly for the same land plot (Appraiser Interviews 1-5, Astana, 5/2015); where local officials collaborate with or pressure appraisers, those values can take on a particularly subjective hue. A report on the appraisals conducted for the transportation project found that most exhibit gross errors, with instances where acres of low-value land were appraised at $6,000 per sotok (1/100 hectare; Spravka, 3/12/2014). Funds for this purpose come directly from the central budget; when the money for the highway vanished and there was little to show for it beyond empty steppe, authorities demanded an investigation and quickly introduced the “Law of Frightened Bureaucrats” (Pokusov, 2015).

Because Kazakhstan does not use common law (and has abolished its Constitutional Court), judges can pick and choose statutes that provide officials with favorable terms while still remaining within the law. In court, attorneys and individuals often raise the argument that how compensation is calculated under point 2, article 67 of the Law on State Property violates Article 26 of the Constitution, which guarantees “equivalent compensation” in cases of expropriation for public use. (Konstitutsiya Respubliki Kazakhstana; Zakon Respubliki Kazakhstana ot 1 marta 2011 No413-IV; Zhajlauov, 2015). Following one such case, the judge advised against using this legal tactic: the Supreme Court had issued them guidance that compensation was to be calculated in accordance with the Law on State Property, and “it was better to take the money and leave” (Ethnographic Notes, Astana Appeals Court, 12/2015). In response, the attorney raised the example of a nearly identical land plot located in the same neighborhood as the one in question:

Attorney for landholder: They appraised it well, yes? 135,000,000 tenge.
Attorney for akimat: Well, that’s the expert’s appraisal.
Attorney for landholder: I heard that they have a sister in the akimat.
Attorney for akimat: Maybe the plot is somehow different? It’s not on [Street Name]?
Attorney for landholder: No, it’s exactly there.

This conversation was repeated between the attorney for the landholder and the judge, but claims that the neighbor’s plot must be somehow ‘different’ in a way crucial for appraisal were refuted by the neighbors. A physical inspection of the neighborhood provided no obvious reason to doubt them; those land plots under seizure appeared largely identical in location, home size, and other key factors. Yet, the neighbor reportedly received the equivalent of close to $500,000 in compen-
sation, while the individual in the courtroom that day received less than a quarter of that amount (26,000,000 tenge). This difference stemmed from distinct ways that legal and informal logics were combined. In the latter case, the landowner’s lack of informal connections meant that the judge followed the least-favorable legal interpretation, and protected both local officials’ interests and those of the central government; in the former, informal links to the local government led to the application of the more favorable laws governing compensation.

The above example suggests that barring some informal, personal connection that can be translated into “telephone justice” (or, perhaps, the ability to bribe the judge), individuals will always lose in court battles against local officials who violate their property rights. Certainly, only in highly exceptional cases will they manage to keep their property, and they are unlikely to receive a fair market value for their land. This results in acute property insecurity, because most who lack connections or wealth already exist in a precarious financial position; without land and housing, they become further marginalized. Most times, the sums offered were insufficient to buy anything remotely equivalent in the urban area, and families were left homeless. High land prices and rents in the city meant they have been forced to either move into far smaller homes – from a house into a single-room apartment, often without any bathroom or kitchen appliances (and no funds left to purchase those) – or to villages far removed from their current jobs and schools (Attorney Interview 23, Astana, 10/2015; Landholder Interviews 4-6 and 9, 9-10/2015). As one landholder decried in court, “This isn’t equivalent housing (as specified in the Constitution and Land Code) – we’re going from better to worse conditions. We’ll be on the street” (Appeals Court, 11/2015). All this suggests that local officials always win. That does not mean that law sets no bounds on how they do so, however, and this is an important distinction for the argument at hand.

Judges consistently emphasized the need – once a ruling was made – for the akimat to immediately release funds to those individuals whose land had been seized (Ethnographic Notes, 11-12/2015). Attorneys confirmed that in cases between state officials and citizens, court decisions were reliably and quickly enforced; “it goes [they’re fulfilled] sufficiently well if they’re state cases – if they’re private, sometimes it’s difficult (slozhnyj)” (Attorney Interview 24, Astana, 12/2015). Moreover, in court cases where local officials had failed to compensate landholders at all, such as the seizure of the garage and property in Astana discussed at the beginning of this paper, judges did
rule against the *akimat*. In the aforementioned case, the judge chastised the *akimat’s* representative and threatened to have the prosecutor bring an administrative suit for failure to follow the law and provide compensation. These cases were low in number compared to disputes over the amount of compensation offered, but again, courts stressed payment (granted, not the payment that any of the landholders sought) for the land within the period specified by the law. In a few cases, the judge marginally increased the amount of compensation provided, but did not stray significantly from the compensation offered by the *akimat*: “the difference [in what the landholders requested] was nearly 20,000,000 tenge (about $70,000 at then-current exchange rates) different from that which the state evaluated – I can’t offer them that much more than what was originally offered” (Appeals Court Judge, 11/2015).

In other words, this minimal, legally-stipulated compensation constitutes a floor for local officials. Should they seek to circumvent it, they risk censure by courts; in fact, the very need to speak of circumvention indicates that the law matters for their behavior. At the same time, the bounds set by central authorities on compensation provide local officials with strong incentives to target vulnerable individuals. Poorer, less-well-connected landholders are less likely to have informal networks that could change their or judges’ calculus for compensation. Therefore, they represent more attractive targets for seizure and rent-seeking. Rent-seeking in these instances is low cost, because it involves minimal payment and lower likelihood of formal, time-consuming challenges in court or potentially problematic issues involving informal ties. Those officials who fail to meet the minimum conditions for centrally-permitted rent-seeking – or who overstep their bounds in the other direction, by pocketing too much from the central budget or by taking from those with strong informal networks – increase their personal risk in what is otherwise a low-risk, legal rent-seeking enterprise.

**Conclusion**

Legal pluralism in property law, like the continued coexistence of the Law on State Property and Land Code examined in this paper and the ‘room for maneuvering’ built into laws on appraisal and seizure, provides intentional space for multiple logics. Where individuals can draw on personal ties to buttress their property claims, more favorable legal statutes suddenly become paramount; where they cannot, officials and courts uphold the rights of the state and its agents to the detri-
ment of ordinary citizens. This dynamic logic in the application of law reflects the politics which underlie social relations more broadly in Kazakhstan. Hale (2015, 20) refers to this as patronalism, and it “refers to a social equilibrium in which individuals organize their political and economic pursuits primarily around the personalized exchange of concrete rewards and punishments.” As a consequence of these politics, property relations do not involve a single, linear reasoning, but rather shift depending on underlying informal conditions. That is not the same as claims that formal legislation does not matter; if that were the case, we would see a much more diverse range of outcomes. Instead, law and informal logic combine in patterned yet dynamic ways to shape how threats to property occur, and to whom. By the same virtue, they shape whose property is secure: those landowners with close personal ties to local officials enjoy the upper bounds of what law has to offer – not only with compensation, but even extending to protection against seizure itself.

Perhaps the most obvious evidence of this is the continued existence of the small Chubary Raion, a neighborhood in the heart of Astana’s “new” city (as opposed to the older, colonial-era center). The neighborhood features numerous large, expensive residences; they also happen to be where many very high-ranking officials live, including the current head of the presidential administration. A new roadway has been planned that would require destroying a number of these homes, but there “were not financial resources” for the project to move forward in 2012 (Usupova, 2012); to date, no land has been seized, and no roadway built. In contrast, just a few kilometers away in the neighborhood discussed above, a similar road expansion project has already begun. The market rate there is – despite also being quite high – not an issue. There, most residents lack the informal ties needed to ensure the most favorable legal configuration.

In short, laws governing land rights in Kazakhstan reflect the informal principles which underlie the regime, but in a dynamic, interactive relationship, those laws also influence informal activities like local officials’ rent-seeking. Law shapes how threats to property occur by providing a signal from central to local officials charged with the day-to-day interpretation of property rights about the kinds of behavior that will be tolerated. Judges are agents who act to ensure that rent-seeking occurs within the bounds of the law. They do so not only by adjudicating between these legal and informal logics, but also by providing an opportunity for limited redress for individual citizens whose property has been threatened in ways that violate the lowest limits of the law.
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