

**DRAFT**

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**Unravelling the Illiberal Commons:  
On Property, Personhood, and the New Objectivity\***

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## I. Introduction

### *Boomtown and Ghost Town*

Property bears a particular burden in the literature on collective action problems. Legal and economic scholars count on property as a means of allocating access to finite resources and alleviating the prospect of scarcity that compromises cooperation.<sup>1</sup> A revolution in land tenure regime thus excites hopes of resolving some collective action problems or anxiety over creating others. The unexpected break-up of the Soviet Union aroused just such hope and anxiety, as post-Soviet governments of newly independent republics reconsidered state ownership and embarked on one of the largest land give-aways in modern times. Those interested in property paid particular attention to the redistribution of some of the richest farmland in the world, the “black soil” (*chernozem*) of Ukraine.

After years of civil society and parliamentary wrangling, in October 2001 the Ukrainian parliament passed a new comprehensive Land Code legalizing private ownership of land for the first time since 1928.<sup>2</sup> Private property ownership was by no means a foregone conclusion of post-Soviet independence. In fact, a decade of contentious debate was capped when a bill authorizing private property ownership finally came up for a vote with fist-fights breaking out on the floor of the parliament.<sup>3</sup> Both sides expected the best, or the worst, from the new property regime and the self-interest, industriousness, ambition, and greed it was expected to unleash. The bill’s passage made collectively-held land – from a territory the size of France – the private property of the farmers who occupied it. Since then, in the span of less than five years, a nation of collective farms has become a nation of property owners.

The response in the countryside was dramatic but startling to all. In the period during which they received their plots of land, roughly 10 million farmers (close to 60% of the rural population) evacuated their rural homes and moved to a city within Ukraine.<sup>4</sup> An additional five million, or 10% of the population, have left Ukraine since

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<sup>1</sup> See, e.g., ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990).

<sup>2</sup> Land Code of Ukraine, 2001 Laws No. 2905-III (adopted Oct. 25, 2001, signed by President Kuchma Nov. 13, 2001, and published in *Uryadovy Kur’yer* [Government Courier, the official reporter of the Cabinet of Ministers of Ukraine] Nov. 15, 2001).

<sup>3</sup> *Ukrainian President Signs Land Privatization Law*, AGENCE-FRANCE PRESSE (November 13, 2001).

<sup>4</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION KYIV MISSION, LABOUR MIGRATION ASSESSMENT FOR THE WNIS REGION (October 2007).

independence in 1991.<sup>5</sup> Not all farmlands were abandoned, of course. A few farms operating today exceed expectations, dazzling in their capital investment and productivity. Most, however, are dismally deserted. In this paper, I compare two types of rural outcomes, boomtown and ghost town, exception and rule. The discrepancy between them presents with us a puzzle, an unforeseen polarity, and a fresh opportunity to reconsider collective action problems and property forms meant to alleviate them. The first aim of this paper is to offer an explanation of these discrepant boomtown/ghost town outcomes. A second is to suggest a set of methods for analysis of forms of property and collective action problems. A third aim is to draw some conclusions about property and human collectives that may be of use in analyzing similar future problems. To lay groundwork for analyzing the empirical data presented below, I begin by reviewing theoretical understandings of property and collective action problems.

### *Collective Action and Common Property*

Collective action problems plague groups because rational, self-interested individuals will not necessarily form a group that acts rationally in the group's interests.<sup>6</sup> So runs Mancur Olson's counterintuitive finding. If a member of a group can gain access to a benefit without exerting him or herself (that is, if a public good is "non-excludable"),<sup>7</sup> collective action to achieve the common benefit is imperiled. "Rational, self-interested individuals will not act to achieve their common or group interest" unless there is "coercion or some other special device to make individuals act in their common interest."<sup>8</sup> Among legal scholars, one form of property, the commons, is characterized as

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<sup>5</sup> Roughly two million emigrated permanently. The other 3 million left as labor migrants, intending to return to Ukraine. *The State and Problems of Legal and Social Status of Contemporary Ukrainian Labor Migration*, Hearing of Parliament of Ukraine (17 November 2004), available at <http://portal.rada.gov.ua>.

This figure, 10% of the population leaving Ukraine, is likely low. Other research indicates that, not including permanent emigration, by 2006 10.6% of Ukrainians had had the experience of working abroad: 4.7% went away in search of a job once; 2.2%, twice; and 3.3%, three or more times. As of April 2006, 15.7% of households reported at least one person had temporary work outside Ukraine (compared with 11.8% in 2004 and 12.1% in 2005), according to the Institute of Sociology of the National Academy of Sciences of Ukraine. INSTITUTE OF SOCIOLOGY OF THE NATIONAL ACADEMY OF SCIENCES OF UKRAINE, UKRAINIAN SOCIETY 1992-2006 (V. Vorona, M. Shulga, eds., 2006) cited in IOM LABOUR MIGRATION ASSESSMENT, *supra* note tk. See also Cinzia Solari, Symbolic and Material Migration Systems: Constructions of Motherhood and Nation by Ukrainian Domestic Workers in Italy, paper presented at the annual meeting of the American Sociological Association, Montreal Convention Center, Montreal, Quebec, Canada (Aug 11, 2006) at [http://www.allacademic.com/meta/p104681\\_index.html](http://www.allacademic.com/meta/p104681_index.html) (on the experience of labor migration from the point of view of Ukrainian women workers in Western Europe).

<sup>6</sup> MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS (1965).

<sup>7</sup> *Ibid.* at 14-15.

<sup>8</sup> *Ibid.* at 2.

particularly susceptible to free-riders and other abusers and thus particularly challenging to cooperation. Scholarship around this form of property, then, will be of particular interest in taking up the problem at hand. Thankfully, a generation of scholars has worked at refining the relatively generic term, “the commons.”

Group size makes a difference in predictions of coordinating use of a common resource. Olson theorizes that the larger a group, the greater and more numerous the collective action problems.<sup>9</sup> As Ellickson puts it, “Coordination among land users becomes more difficult as the number of users rises,” so it is useful to designate subclassifications of property according to “the number of persons who own routine privileges to enter and use a parcel.”<sup>10</sup> For Demsetz’s one general category, “communal ownership,”<sup>11</sup> Ellickson gives several, distinguished by number of possible users (or persons with right to access): “group property,” where the collectivity in question is “larger than a household but small enough to permit intermittent face-to-face interaction;” an “open-access land regime,” in which “privileges of entry are universal;” and “horde property,” on which entry privileges are not unlimited but are more widespread than those of a group.<sup>12</sup> The possibility of face-to-face interaction makes the key difference for Ellickson.

Dagan and Heller offer two categories similarly based on the number of possible users: “open access property,” a scheme of “universally distributed privilege,” and “commons property,” resources that are “owned or controlled by a *finite* number of people who manage the resource together and exclude outsiders, what Carol Rose calls ‘commons on the inside, [private] property on the outside.’”<sup>13</sup> (For reasons explained below, the Soviet collective is well-described by the first half of this statement but somewhat less so by the second.) Their emphasis is not on the kind of interactions within the group as much on the ability to exclude outsiders; the relationship between group size and excludability is not explained.

Ostrom makes the connection between group, property, and collective action. In discussing what she calls a “common pool resource,” one that – like Olson’s public good – is defined by impossibility to exclude, Ostrom frames her discussion as a set of possible answers to collective action problems. In her analysis, the common-pool resource, posing a strong form of collective-action problem, generates in response strong forms of proposed solutions.<sup>14</sup> Some propose central government ownership (and management) of

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<sup>9</sup> *Ibid.* at 62.

<sup>10</sup> Robert Ellickson, *Property in Land*, 102 YALE L. J. 1315, 1322 (1992-93).

<sup>11</sup> “Communal ownership” means “a right which can be exercised by all members of a community.” Stated in the negative, “Communal ownership means that the community denies to the state or to individual citizens the right to interfere with any person’s exercise of community-owned rights.” Harold Demsetz, *Toward a Theory of Property Rights*, 52 AM. ECON. REV. 347, 354 (1967).

<sup>12</sup> Robert Ellickson, *Property in Land*, 102 YALE L. J. 1315, 1322 (1992-93).

<sup>13</sup> Hanoch Dagan and Michael Heller, *The Liberal Commons*, 110 Yale L.J. 549, 557 (2000-2001).

<sup>14</sup> For a brief overview of three approaches to addressing collective action problems, see ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990) 8-21 (*hereinafter* OSTROM, GOVERNING THE COMMONS).

a resource;<sup>15</sup> others would always privatize.<sup>16</sup> Still others recognize the virtues of locally-managed common pool resources.<sup>17</sup> Ostrom herself celebrates the virtues of an eclectic approach, eschewing a one-size-fits-all answer to collective-action problems.<sup>18</sup> Another well documented possibility is a mixed regime of both informal (local) and formal (supralocal) normative orders regulating a common-pool resource.<sup>19</sup>

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<sup>15</sup> Most famous, perhaps, is biologist Garrett Hardin. See Garrett Hardin, *The Tragedy of the Commons*, SCIENCE 162:1243-8, 1968. Hardin is hardly alone. See also, e.g., I. Carruthers and R. Stoner, *Economic Aspects and Policy Issues in Groundwater Development*, World Bank staff working paper No. 496 (Washington, D.C., 1981); D.W. EHRENFIELD, *CONSERVING LIFE ON EARTH* (Oxford, 1972); Garrett Hardin, *Political Requirements for Preserving our Common Heritage*, in *WILDLIFE AND AMERICA* 310-317 (H.P. Brokaw, ed., Washington, D.C., Council on Environmental Quality, 1978); R. L. HEILBRONER, *AN INQUIRY INTO THE HUMAN PROSPECT* (NY, Norton, 1974); or W. Ophuls, *Leviathan or Oblivion*, in *TOWARD A STEADY STATE ECONOMY* 215-230 (ed. H.E. Daly, San Francisco, Freeman, 1973) summarized in OSTROM, GOVERNING THE COMMONS “Leviathan as the only way,” 8-11.

<sup>16</sup> Harold Demsetz, *Toward a Theory of Property Rights*, 62 AM. ECON. REV. 347-59 (1967); see also summary discussion in OSTROM, GOVERNING THE COMMONS “Privatization as the ‘only’ Way,” 12-13.

As Ostrom points out, “It is difficult to know what analysts mean when they refer to the necessity of developing private rights to some common-pool resources (CPRs). It is clear when they refer to land, they mean to divide the land into separate parcels and assign individual rights to hold, use, and transfer these parcels as individual owners desire (subject to the general regulations of a jurisdiction regarding the use and transfer of land). In regard to nonstationary resources, such as water and fisheries, it is unclear what the establishment of private rights means.” OSTROM, GOVERNING THE COMMONS, 13.

<sup>17</sup> See, e.g., JAMES M. ACHESON, *THE LOBSTER GANGS OF MAINE* (Hanover, NH, Univ Press of New England, 1988) or Robert Ellickson, *Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1985-86). For discussion and synthesis of several case studies, see OSTROM, GOVERNING THE COMMONS at 18-19; 58-102; 143-181.

<sup>18</sup> ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990).

<sup>19</sup> Empirical scholarship, both contemporary and historical, on informal normative regimes regulating open-access and regulated-access property within a mixed regime of informal and formal normative orders, is rich. For just a few examples, see, e.g., JAMES M. ACHESON, *THE LOBSTER GANGS OF MAINE* (1988). D. Bruce Johnsen, *The Formation and Protection of Property Rights among the Southern Kwakiutl Indians*, 15 J. LEGAL STUD. 41 (1986). See also Edmund S. Morgan, *The Labor Problem at Jamestown 1607-18*, 76 AM. HIST. REV. 595 (1971); Virginia Bernhard, *Bermuda and Virginia in the Seventeenth Century: A Comparative View*, 19 J. SOC. HIST. 57 (1985), cited in Robert Ellickson, *Property in Land*, 102 YALE L. J. 1315 (1993). What is more rare, and to which I hope to contribute, is contemporary empirical scholarship on the process of parceling and formal structural change.

More recently, Dagan and Heller propose a new category to refine our understanding of “the commons” and its user group: the “liberal commons,” defined by preserving or enhancing group members’ right to exit.<sup>20</sup> The right to exit, they argue, exerts effects that may enhance in-group relationships: protection from group harm to an individual member’s interests; strengthening an individual member’s bargaining position; making a group more sensitive to member’s interests; making members better cooperators.<sup>21</sup>

This body of scholarship affords a starting point for understanding forms of property in relation to collective action problems. Number of members provides a point of inference for cooperative behavior, but in this literature attention to quantity of relationships in a group overshadows that paid to their qualities.<sup>22</sup> The units that make up the collectives in these models seem relatively homogenous over time and across geography, and this discussion seems to neglect consideration of the nature of the collective itself, including that dominant form of collective organization, the state.

### *State and Collective Property, the Illiberal Commons, and Practice: Four points of Distinction*

In the essay that follows, I follow the fate of land privatization in post-Soviet Ukraine in its discrepant outcomes and offer some explanations. While my discussion builds on the work of prior scholars, there are four important distinctions that I note at the outset.

#### State versus Collective Property

In many of the canonical works reviewed above, the category of “state property” is neglected. Demsetz gives just a one-sentence definition of state ownership in his theory of property, declining to examine it in detail in his focus on principles at work in “communities oriented towards private property.”<sup>23</sup> Ellickson, for his part, does not find this paucity problematic; in fact, he objects to Demsetz making state ownership a distinct category at all, asserting that when acting as a land manager, the state acts in ways indistinguishable from a non-governmental entity of comparable size.<sup>24</sup>

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<sup>20</sup> Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549-623 (2000-2001).

<sup>21</sup> Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 Yale L.J. 549, 568 (2000-2001).

<sup>22</sup> Some scholarship on other forms of property pays closer attention to the quality of relationships within a group. See, e.g., Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1 (1989-1990).

<sup>23</sup> Harold Demsetz, *Towards a Theory of Property Rights*, 57 AM. ECON. REV. 347, 354 (Papers & Proc. 1967). His definition of state property runs, “State ownership implies that the state may exclude anyone from the use of a right as long as the state follows accepted political procedures for determining who may not use state-owned property.” *Id.*

<sup>24</sup> “... Demsetz did not explain why the state should be singled out conceptually as a different form of ownership entity. ... [W]hen a government acts in a proprietary role as a

We might infer some features of state property (and the state) from Dagan and Heller's statements about its literal opposite, anarchy. They equate anarchy with "no law" or "open access;" "open access" is a "'scheme of universally distributed, all-encompassing' privilege."<sup>25</sup> Is state property merely defined as a subset of users or privileges? What about the distinction between commons property and state property? Recall that their definition of commons property is property controlled by a finite number of people who may exclude outsiders, where the identity of the outsiders is left unspecified. Their discussion of "state property" also depends on an intuitive, constructed sense of insiders and outsiders operationalized in relationship to a particular space or resource. Quoting Waldron, they note, "state property can be defined as a property regime in which, 'in principle, material resources are answerable to the needs and purposes of society as a whole ... rather than to the needs and purposes of particular individuals considered on their own.'"<sup>26</sup> The distinction between a group as a whole, as opposed to individuals within it, is helpful; but the entity "society" is left open to interpretation. Is society not composed of a finite number of people? And, if so, how is the Dagan and Heller category of "state property" to be distinguished from their category of a "commons" property, jointly managed on behalf of a community? We are practically back at the starting line where Ellickson left us when he openly admitted no dispositive difference between the state as property manager and an n.g.o. of comparable size. Is this critical difference between community and society (or between state and n.g.o.) merely a matter of scale? Or is there something intrinsically different between the two? Nuances in their discussion between state property and open-access property help, seeming to imply qualitative content. For them, the purposes underlying the use of state property are the general good, while open-access property seems to be a resource subject to the disparate needs and purposes of bunch of individualists not working in concert. This intent-driven distinction seems to carry more weight in their discussion than the right to exclude, notwithstanding statements that the right to exclude stands as the core definitional criteria. (Whereas privileges of access to or use of open-access property are distributed "universally," the unstated implication emerges that the benefits of state property intended for its citizenry).

In the end, although they admit the state has a special status,<sup>27</sup> Dagan and Heller come around to something like Ellickson's position dismissing the category of state property, or, rather, eliding state property with the category of collectively-held property.

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land manager, it shares many attributes with a nongovernmental group with a constituency of comparable size." Robert C. Ellickson, *Property in Land*, 102 YALE L.J. 1315, 1322 note 23.

<sup>25</sup>Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 Yale L.J. 549, 557 (2000-2001). Their equation of "a scheme of universal privilege" with "anarchy or no law" is problematic. It would certainly come as a surprise, say, to advocates of universal human rights law, extending a set of privileges to all human beings as a matter of international law.

<sup>26</sup> JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY (1988) cited in Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 Yale L.J. 549, 557 (2000-2001).

<sup>27</sup> Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 Yale L.J. 549, 558 (2000-2001).

They assert that since the end of the Soviet Union and demise of socialism, the category of state property has so lost importance as to warrant dropping it from the normalized trilogy of property categories (private, commons, and state).<sup>28</sup> I raise objections to this move on several grounds. The positive utility of keeping state property and collective property as separate categories will come up at several points in our discussion. Let me present two main arguments for keeping this distinction here at the outset. In the empirical case at hand, post-Soviet decollectivization, we retain separate categories of state property and collective property simply for ethnographic accuracy. The starting point was a legal system in which state and collective property were distinct legal categories holding very different legal outcomes for property users. In practice, as well, the two were distinct categories of use and experience. In the last few years before ownership in agricultural land was privatized, state ownership had been abolished and all agricultural land was held in collective ownership, but even then it took distinct legal measures to extinguish state ownership. The old distinction between state-owned and collectively-owned land still shapes rural practices and expectations today in ways of relevance to political and economic organization.

A second reason for keeping state property as a separate analytic category pertains more to its utility for Western legal scholarship. What's distinctive about state property as opposed to collective property? "State property" may take many forms; a state firm and a state forest are two very different things. What they have in common that a category of "state property" highlights are some particular qualities of this peculiar owner/manager. As Ellickson admits, "The state certainly has greater authority to tax, to regulate, and to exercise powers of eminent domain; it also has a distinct governance structure."<sup>29</sup> The powers of eminent domain, taxation, and regulation – including the capacity to criminalize certain uses or users – belong singularly to the state and hold particular explanatory power regarding the contemporary forms of private property and its users in our account. "State property" foregrounds the role of the state.

The state itself is not an unproblematic or simple category, standing for decidedly varied forms of organization and practice. A liberal state means something different than a Soviet state in ways important to property and its users. Combining state and collective property compounds the problem, accepting size as the analytically significant feature and perpetuating an ill-defined distinction between "society" and "community." Instead of dropping state property from the discussion or eliding state and collective property, I keep the distinction for conceptual clarity.<sup>30</sup> And, rather than relegating the relevance of the state to a subcategory of property owner, in our discussion of other forms of property, we are mindful of the state (and its property) as the setting in which practically all other property is held in any contemporary land tenure regime.

Collective property, I propose, in practice has several features. First, group size does matter, in part for the reasons Ellickson suggests. Like "state property," collectively-held property is jointly-held property; but it is organized on a scale so

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<sup>28</sup> Hanoch Dagan and Michael A. Heller, *The Liberal Commons*, 110 Yale L.J. 549, tk (2000-2001).

<sup>29</sup> Robert C. Ellickson, *Property in Land*, 102 YALE L.J. 1315, 1322 note 23.

<sup>30</sup> Section II gives a brief overview of the legal definition of the two and some implications for users.

different in orders of magnitude as to constitute a categorical difference in human experience. Collective property belongs generally to Demsetz's category of communal ownership and its management is primarily subject to relations that are, in Nader's term, face-to-face as opposed to face-to-faceless.<sup>31</sup> The nature of the group also matters, and this aspect is perhaps more important. Collectively-held property supports particular forms of the self and the social not based primarily on state forms of selfhood (like, for example, citizenship), sociability (like, for example, bureaucratic indifference), or ethical systems predicated on state values (like, for example, nationalism). I propose that quality as well as quantity of in-group relationships make a difference in collective action.

### The Collective and the Illiberal Commons

Post-Socialist privatization involves a particular form of collectively-owned property, and in specific a particular form of a commons. Let us accept that a commons is not merely a common-pool (or open-access) resource but rather is property the management of which is undertaken on behalf of a community (of a finite number of people who enjoy the right to exclude others). For specificity's sake, let me designate collectively-held property under state socialism by transliteration of its Russian name, the *kollektiv*. A *kollektiv* was a form of organization of experience with a particular material basis, set up for the purpose of cultivating a particular form of sociability,<sup>32</sup> which still shapes current post-privatization land use.

Dagan and Heller offer an idea central to an understanding of the *kollektiv*, their concept of a “liberal commons.” Dagan and Heller put the right to exit, standing for “the right to withdraw or refuse to engage” at the center of their definition of the “liberal commons.”<sup>33</sup> (I would extend this argument and say, by implication, that a right to exit also stands at the center of a liberal conception of private property.) A collective may be liberal or illiberal, but the *kollektiv* of a collective farm was, functionally, only illiberal; the difference between the two is marked by the definitional feature of right to exit. The collective farm itself fits the definition of a commons property, insofar as it was controlled by a finite number of people who managed the resource together;<sup>34</sup> enjoying a legal right to exclude (even if the latter was, *de facto*, rarely tested).

The rest of this essay describes the *kollektiv* and features of its creation which are, to this day, extant as legacies in successor forms of property. In the conclusion, I use discussion of the *kollektiv* to reflect further on alternatives to the “liberal commons.” A central claim that I make in this paper, which I elaborate on in the conclusion, is that collectively-held property under state socialism amounted to an “illiberal commons.”

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<sup>31</sup> LAURA NADER, THE LIFE OF THE LAW: ANTHROPOLOGICAL PROJECTS (2002) 172 and ff. See also Laura Nader, *A User Theory of Law as Applied to Gender*, in THE NEBRASKA SYMPOSIUM IN MOTIVATION: THE LAW AS A BEHAVIOURAL INSTRUMENT (1985).

<sup>32</sup> OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 211 (1999).

<sup>33</sup> Hanoch Dagan and Michael Heller, *The Liberal Commons*, 110 Yale L.J. 549, 568 (2000-2001).

<sup>34</sup> Hanoch Dagan and Michael Heller, *The Liberal Commons*, 110 Yale L.J. 549, 557 (2000-2001).

## Methods and Questions

This project finds close affinity with Ostrom's early work on the commons,<sup>35</sup> both in areas of substantive interest and in reliance on ethnographic and historical data, but there are two important points where we diverge. One is a matter of analytic method. Ostrom looks at *institutions* for managing common-pool resources. In this paper, I look at *practices* through which resources are managed and which, in turn, shape the informal normative orders, legal rules, and experiences of selfhood that give qualitative content to the *kollektiv* and other illiberal commons. The second point of divergence from Ostrom is the presumed systemic starting point and the main research question arising from it. Although her title names an interest in *evolution* of institutions, Ostrom's examples represent small groups of people managing a common pool resource through *existing* institutions. Her research question could be phrased, how do people use existing institutions to overcome collective action problems? The case that I take up involves people with a history (of relationships to each other as well as to the resource in question) working within a new legal order and land tenure regime. I look at the formative power of ongoing practices in property at its inception. This case leads me to ask instead, in the language of game theory, Is the outcome of a game different if players have a history, even if the game is new?

### *Two Tragedies of the Kollektiv*

As is famously alleged and disputed of the commons, the *kollektiv* is subject to its own tragic failures of collective action. Its common spaces were structurally vulnerable to over-harvest of assets or over-dumping of liabilities, like Hardin's iconic commons.<sup>36</sup> The remedy for the paradigmatic tragedy of the commons is internalization of externalities,<sup>37</sup> and the way to achieve proper allocation of cost and benefit is parcelling the commons or access to it.<sup>38</sup> In addition to this generic paradigm of commons tragedy, a second, political, tragedy more particular to state socialism is proposed. This critique alleges that collective ownership underwrites unacceptable concentrations of political power. Tragedy takes the form of abuse of power and productive resources that come from consolidation and an absence of accounting. Some theorists and historians accuse collective property ownership of supporting an authoritarian and wasteful system from which Ukraine suffered disproportionately.<sup>39</sup> The remedy for this tragedy is dispersal of

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<sup>35</sup> ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990).

<sup>36</sup> See, e.g., Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243-1248.

<sup>37</sup> Harold Demsetz, *Towards a Theory of Property Rights*, 57 AM. ECON. REV. 347 (Papers & Proc. 1967).

<sup>38</sup> See Demsetz, *supra* note tk; Hardin, *supra* note tk. See also James E. Krier, *Marketlike Approaches: Their Past, Present, and Future*, in REFORMING SOCIAL REGULATION: ALTERNATIVE PUBLIC POLICY STRATEGIES 151 (LeRoy Gramer and Frederick Thomson, eds. 1982). In fact, it was the hope of just such efficiency gains that led an adviser to Gorbachev, Ukrainian agricultural economist Pavlo Haidutsky, to draft the first perestroika-era proposal for decollectivization.

<sup>39</sup> See, e.g., ROBERT C. TUCKER, STALIN IN POWER (1990) or ROBERT CONQUEST, THE HARVEST OF SORROW: SOVIET COLLECTIVIZATION AND THE TERROR-FAMINE (1986). For

assets to many private smallholders, and accountability and transparency accomplished through private property ownership and democratic governance. The tragedy of the *kollektiv*, then, lies in either waste to which the remedy of private property brings efficiency; or authoritarianism, to which private property brings democracy. In either case, in this scholarship, the commons is the site of tragedy; private property, remedy.<sup>40</sup>

At the end of the Cold War and the foreseeable decline of Soviet socialism, these theoretical discussions took on a more pointed tone. Addressing this tragic legacy, non-Ukrainian legal and economic theorists have described the creation of private property out of collectively-held property as the key to economic prosperity or democratic governance,<sup>41</sup> an indispensable component of constitutional reform,<sup>42</sup> and even as “the keystone right” upon which other rights of a liberal order depend.<sup>43</sup> Many economists believe that land privatization captures previously wasted wealth, providing access to capital through the establishment of collateral<sup>44</sup> and correctly aligning producer incentives to maximize efficiency.<sup>45</sup> Some economists further propose that private

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Ellickson's brief discussion of the tragic effects of collectivization on Ukraine, see Ellickson, *Property*, text at footnote 5.

<sup>40</sup> The conclusion about the fate of open-access property is not universally shared, of course. Some theorists see open-access property not as tragedy but as comedy [Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986)], not as the source of collective-action problems but as a source of solutions to them. Rose further proposes that a property regime (even a private property regime) itself is an example of a human cultural technology of a more general order – like, say, language – that arises to address collective action problems. [Carol Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J. L. & HUMAN. 37, 51-53 (1990) (proposing a property regime, even a private property regime, is like language a product of joint human action to produce a shared good that solves problems of cooperation).] Generations of Marxist scholars, while expecting the state to wither away someday, in the meantime saw state socialist ownership as a lesser evil than private ownership.

<sup>41</sup> Janos Kornai, *What the Change of System from Socialism to Capitalism Does and Does Not Mean*, 14 JOURNAL OF ECONOMIC PERSPECTIVES 27, 29 and 35 (2000).

<sup>42</sup> Several noted Western legal scholars urged post-Soviet reformers to consider privatization an object of political (or constitutional) reform as well as economic reform. See, e.g., Cass R. Sunstein, *On Property and Constitutionalism*, 14 CARDOZO L. REV. 907 (1993); Carol Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329 (1995-1996).

<sup>43</sup> Carol Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329 (1995-1996) (summarizing seven arguments advanced by various scholars that property is the keystone right in a liberal order, of particular application to post-Socialist political and economic reordering).

<sup>44</sup> See, e.g., Hernando de Soto, THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD (1989).

<sup>45</sup> See, e.g., Andrei Schliefer, *State versus Private Ownership*, 12 JOURNAL OF ECONOMIC PERSPECTIVES 133 (2000) (private ownership yields greater efficiencies in production than state ownership because competition exerts pressure on private owners to innovate)

property and a market economy are necessary conditions for democracy.<sup>46</sup> Others have described the many bureaucratic controls on use of real property in the former U.S.S.R. as creating an “anti-commons” of rights that must be reassembled under unified ownership<sup>47</sup> for efficient development.<sup>48</sup> Within Ukraine, even for those opposed to the reformed Land Code, private property ownership was to use Carol Rose’s phrase “the keystone right” of a Liberal order, albeit in the service of social outcomes they opposed. The post-Soviet Ukrainian government took its program straight from the playbook of pro-privatization Western scholarship: it decided to unravel collective ownership, parcel, and privatize as a remedy for Soviet tragedy in both its political and economic respects.<sup>49</sup> This application of privatization theory begs the follow-up question, Does it work? Are collective-action problems mitigated when collectively-held property is parceled out? Is tragedy averted, in either boomtown or ghost town?

### Roadmap

My investigation is based on fourteen months of fieldwork among both law-makers and farmers.<sup>50</sup> Among agriculturalists, I conducted interviews and on-site observation on two different types of farms: those parcels farmed as allocated by the state, and farmlands that have since been re-consolidated. Both yield considerable insight into collective action problems and their remedies.

In the sections that follow, I sketch the boomtown and ghost town that emerged from privatization. In order to understand the discrepant outcomes of decollectivization, I isolate three features of collectivization that continue to shape rural practice. This investigation leads to my claim about legal rights and the social effectuation of decollectivization: although division of collective farmland commanded most attention, in this paper I argue that the key legal innovation in post-Soviet land reform is actually the creation of a right to exit. I argue that some of the most dramatic and visible changes in the property regime, like land division, are but steps in the realization of the right to exit and derive much of their importance in part in connection with it.

The broader question at stake is the role of legal change in effecting economic and social change. Regime change – in this case, the land tenure regime – is proposed as the solution to a set of collective action problems. This case is particularly apropos for legal scholars of property in that it was through formal change to property law, instituting a new land tenure regime, that the Ukrainian government unraveled its commons. This

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<sup>46</sup> See, e.g., Janos Kornai, *What the Change of System from Socialism to Capitalism Does and Does Not Mean*, 14 JOURNAL OF ECONOMIC PERSPECTIVES 27, 29 and 35 (2000).

<sup>47</sup> In Anglo-American legal parlance, what is called for is fee-simple ownership.

<sup>48</sup> See, e.g., Michael A. Heller, *The Tragedy of the Anti-Commons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621 (1998).

<sup>49</sup> Section III of this paper, below, describes this process.

<sup>50</sup> In this, I follow the urging of Duncan Kennedy and Frank Michelman, *Are Property and Contract Efficient?*, 8 HOFSTRA L. REV. 711, 744, 749 (1980) (arguing that the incentive effects of property and contract rules cannot be known without empirical investigation) and the example of Robert Ellickson. See, e.g., ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991) or ROBERT ELLICKSON, THE HOUSEHOLD: INFORMAL ORDER AROUND THE HEARTH (2008).

was not some haphazard, scattershot, *de facto*, or arbitrary arrival at decollectivization. Rather, decollectivization resulted from an intentional, nation-wide, systematic application of law, to outlaw the commons in agricultural land and institute private property ownership.

This paper follows the story of the composition, decomposition, and in some cases recombination of collectively-held property and the state in which it is situated. The goal is to analyze relationships between property and collective action by looking at a particular application of an accepted model, in order to give us a better picture of how it works in lived experience. Part II briefly describes the doctrinal background of state and collective property law that shaped user experience. Part III relates the introduction of the right to exit and the creation of the ghost town. Part IV tells the story of the opposite outcome, the boomtown, from the same legal reform process. Part V discusses antecedent forms of property, practices, and personhood of the *kollektiv* that, I propose, in part explain the discrepant outcomes. In Part VI, I conclude that the story of creating private property rights and conversion of a commons may be more complicated than proposed in the existing scholarship.

- One set of findings bears on assumptions about the nature of property and persons. Practices of abandonment and an affect of reluctance lead us provisionally to reconsider universalist assumptions about the relationship between people and property and an affect of readiness to become private property owners.
- A second set of findings bears directly on the relationship between private property ownership and democratic governance, which in the existing literature is presented as a virtuous circle. The beneficial effects of private property ownership on democracy are not as uniform as predicted.

This work also leads us to reconsider the formulation of a property regime as regulating the relationship between people in regard to things,<sup>51</sup> and reintroduces the relationships between objects and people as a useful formulation in the study of property. It calls for a new research program into how a property regime does (or does not) effect changes in those who may become owners.

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<sup>51</sup> Carol Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J.L. & HUMANITIES 37-57 (1990), reprinted in PERPECTIVES ON PROPERTY LAW 20-37, 21 (Robert Ellickson et al. eds., 1995).

## II. Doctrinal Background: State, Collective, and Commons under Communism

In Soviet law, the distinction between state and collective property occupied a clear place in a hierarchy of property forms in doctrine well-settled decades before *perestroika*. Soviet law erected a hierarchy of property, each level of which enjoyed a different extent of legal protection through the state. The more accessible to the public or reciprocal the relations between users, the higher in the hierarchy a category stood. At the top of the hierarchy, “state socialist property” included property specifically owned by the state, all land, and all natural resources. State socialist property could not be used as security, and was inalienable.<sup>52</sup> It was followed by “cooperative property,” a kind of restricted-use commons, belonging indivisibly to a distinct group of citizens.<sup>53</sup> The “*kommunalka*,” an arrangement in which a large pre-Soviet apartment was divided room by room among several families sharing a common kitchen and bathroom, is an example of cooperative property. At the bottom of the hierarchy, “personal property” served personal needs and included single-family apartments or houses, *dachi* (vacation cottages), furniture, clothes, and cars.<sup>54</sup> (It should be noted that ownership of a house or *dacha* did not include the land under the building.) Soviet law did not distinguish between realty and personality.<sup>55</sup> Personal property was the only freely transferable property, but its use for profit-making activities was largely outlawed.<sup>56</sup> The lower a property type stood in the hierarchy, the more vulnerable a particular holding was to confiscation, regulation, taxation, or counter-claim. The category of private property was abolished altogether.<sup>57</sup> All productive assets were “state property, i.e. the common property of the Soviet people.”<sup>58</sup>

Under this schema two entities were allowed to hold agricultural land: the state farm (*sovkhоз*), in which land and capital equipment belonged to the state and the workers were merely laborers receiving a monthly wage for their labor, and the collective farm (*kolkhoz*), a restricted-use commons in which use-rights to the land and equipment belonged indivisibly to the workers. The distinction between state and collective property was thus felt by the resident farmers; state farmers were wage laborers, while collective farms bore greater exposure to weather and other hazards of agricultural production. For outsiders, though, the distinction between them – and the distinction between *sovkhоз*, *kolkhoz*, and other forms of state property (like forests) – was experienced more through forms of land use than land management. Legal presumptions are reversed from those in the West: the more private the claim, the less legal protection

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<sup>52</sup> VICTOR P. MOZOLIN, PROPERTY LAW IN CONTEMPORARY RUSSIA 10 (1993).

<sup>53</sup> W.E. BUTLER, SOVIET LAW 169-176 (1983).

<sup>54</sup> MOZOLIN, *supra* note 42, at 10-11.

<sup>55</sup> F.J.M. Feldbrugge, RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW at 229-46 (1993).

<sup>56</sup> Butler, *supra* note tk, at 174.

<sup>57</sup> Heller, *supra* note tk, at 628.

<sup>58</sup> KONST. SSSR [Constitution of the U.S.S.R.] Art. 11 (1977) (“State property, i. e. the common property of the Soviet people, is the principal form of socialist property. The land, its minerals, waters, and forests are the exclusive property of the state. The state owns the basic means of production in industry, construction, and agriculture …”)

it enjoyed. Visitors from city to countryside knew better than to help themselves to state property, understood as a good produced by the labor of other citizens. *Kolkhoz* livestock might forage in the local state forest and the visiting townie would not enter the forest for a walk and re-emerge with a pig under one arm to take home for dinner. By contrast, “products of nature” like mushrooms, berries, fish, or fallen firewood were free game for any Soviet citizen to collect, whether on collective or state land. Gathering wild foods like mushrooms and berries held significance as a sociable leisure activity for urbanites and as an important supplement to winter stores for rural families, and in respect to the state and collective lands that yield wild foods, Soviet citizens experienced their homeland as a large-scale limited-use commons. Neither state farms nor collective farms could legally sell land or equipment. Nor were they allowed to use a parcel designated as agricultural land for any other purpose. Although a black market in equipment sales and unauthorized land use did arise, bargaining was curtailed by central planners’ control over allocation of inputs and price of outputs.

Over time, as the system grew more stable and forms of its regulation more intimately internalized by farmers, large-scale black market activities grew remarkably rare. Interviewing elderly villagers who had spent most of their working lives on state or collective farms, a question about inter-farm theft – by them, or by others against their farm – was generally met with a blank stare. A person might help herself to a sample of grain from the collective field; but the prospect of a stranger carting away a truckful of grain from the collective silo was unthinkable. “That guy, he’d be getting his monthly salary anyway. Why would he steal? And who would he sell it to? Who would want to come after their own work day was over and steal our grain? That’s just more work for him. Even if he did manage to sell or barter it, there wasn’t anything to buy,” was a typical answer.<sup>59</sup> The whole scenario was unthinkable, not because the farmers considered themselves or each other angels, but because it just made no sense in context. This is our first hint that a collective may have other significant defining features other than size; our discussion of the “created commons,” below, offers additional evidence as to the content of the *kollektiv*.

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<sup>59</sup> Interview with Dyadya Lyonya (September 19, 2009, former collective farmer, Gruzske village, Sumy oblast’, Ukraine).

### **III. Who Needs an Exit?: The Boomtown Village of Zhashkiv**

Enterprise privatization predated land privatization in Ukraine. Through the mid-1990s, state enterprises were transferred to the ownership of their workers, auctioned, or allotted to investors whose business plan was most highly evaluated by the State Property Fund. The facilities for food transport (like grain elevators) and food processing (like mills) upon which farms depend to get their produce to consumers were privatized. The village of Zhashkiv is home to a sugar-beet sugar factory upon which the farmers of the surrounding countryside (organized into two collective farms) depend to process the most valuable of their crops. This is the story of how the Sugar Beet Factory of Zhashkiv (although privatized to its workers through the privatization process) and the land of the surrounding collective farms (although privatized to their farmers through land privatization) has ended up under the *de facto* control of a klan implicated in organized crime.<sup>60</sup> This section will relate how land privatization is being implemented in Ukraine in one locale. This selection is not meant to imply that this is the only version of land privatization in Ukraine. It is meant to illuminate how implementation of land privatization may allow organized crime and klans to end up with most of the rural land assets of value, and how that in turn will affect the political culture in Ukraine.

#### UCF's Zhashkiv Sugar Beet Factory

The Ukrainian Foodstuffs Company (UCF), a subsidiary of the Brovarych corporation, owns 19 sugar-beet sugar factories nationwide of a Ukrainian total of 170. UCF and four other holding companies own 40% of the sugar factories in Ukraine, but the other 60% of the factories are so run-down or lacking sufficient supplies of beets that UCF and its four competitors control 70% of the market in sugar-beet sugar.<sup>61</sup> Even a well-equipped factory is only in active production for one and a half months a year, during the sugar beet harvest in the autumn. UCF's Zhashkiv factory is typical, turning 2 ½ tons of sugar beets per day into 30,000 tons of sugar during its six-weeks annual run. The Zhashkiv factory is over 150 years old, and has depended on the same surrounding farmlands (in the beginning, owned by landlords and farmed by serfs) for its beets since its inception.

When the three founding members of UCF started investing in sugar beet factories in 1995, the beet supply was unreliable. All the equipment was 15-20 years old, (“and it was not that great to start with”)<sup>62</sup> and the farms had no liquidity or credit to purchase operating capital like seeds, fertilizer, and herbicide.<sup>63</sup> UCF decided in short

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<sup>60</sup> Explanation of clan (Ukrainian and Russian: *klan*) tk.

<sup>61</sup> Figures are from June 2002. Interview with Mark Tomych, director of Ukrainian Fertilizer Import Company (June 6, 2002). Hereinafter, I follow anthropology’s convention of protecting interlocutors’ identities with pseudonyms.

<sup>62</sup> Interview with Mikhail Leonidovich Goldenberg, founding partner of Ukrainian Foodstuffs Company (June 17, 2002).

<sup>63</sup> Credit from a bank was unavailable: “Who’s going to give a *kholznik* [collective farmer] credit? They didn’t have any official claim individually to land at all until the 1995 Presidential decree. Even after that, they’re fourth out of four classes of creditors banks consider. No money in the bank, no history with the bank, and if they don’t pay

order to dispense with buying beets from the collective farms and turned to wet-leasing the land. Brovarych, through UCF, brought in capital for the agricultural production. Kievans think of Brovarych as an organized criminal group. The workers and farmers of Zhashkiv may not have that association. They do know that the UCF directors inexplicably have money to invest when no one else does, and that they behave differently than other bosses -- shouting, swearing, threatening managers with physical violence.<sup>64</sup>

A sugar beet factory's productivity and profitability depend on the "zona" around it. The "zona" refers to the collective farms that in Soviet times were obliged to supply beets to a particular factory and is an organizing principle still used by the new capitalists.<sup>65</sup> In the case of Zhashkiv, the *zona* comprises two collective farms (meaning two neighboring small villages, Zhitniki and Pugachovka, and the land that belongs to the farmers resident there) with a total of 70,500 hectares that span eight different local government areas (*raion*) in two different provinces (*oblast'*). UCF has also contracted to wet-lease an additional 1500 hectares from neighboring landholders outside the *zona*.

UCF rents the land from the local farmers around Zhashkiv on five-year leases.<sup>66</sup> Each shareholder (former collective farmer, or *kolkhoznik*) who received the right to a certificate under the 1995 executive order holds from 1-10 hectares, but for the most part, by 2002 the plots had not been demarcated and the shareholders did not know physically where their own parcel lay. Although some had exercised their right to secede from collective production and enforce exclusive access to their own plot, the overall number was negligible,<sup>67</sup> despite the apparent bargaining power of holdouts. Although collective farms were formally disbanded by Presidential decree in December 1999, when I asked the UCF directors with whom they negotiated the land leases, they answered in both cases, with the "collective farm director" who negotiated on behalf of the collective. A hold-out problem had not emerged, although in principle UCF is vulnerable, owning a stationary asset dependent on neighboring farmers who could hold out individually or

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you back the most you can get is a plot of land that even the local farmer couldn't make work. Even now [2002, post- land certification and privatization law], it would be hard for them to get access to credit." Interview with Goldenberg, *id.*

<sup>64</sup> I was witness to such behaviour (June 2002).

<sup>65</sup> When I asked if the *zona* were arranged by contract, the answer was a decisive "No!" Interview with Goldenberg, *id.* The *zona* is a way of conceptualizing an area of land around a particular feature, accepted as a "natural" periphery. For example, the restricted evacuated region around Chernobyl' is referred to as the Chernobyl' *zona*. In this case, it is concept that aggregates individually-owned land parcels; the idea of a *zona* serving the sugar factory transcends this particular transaction between UCF and the Zhashkiv collective farms.

<sup>66</sup> In areas around some of its other sugar beet factories, UCF has signed ten-year leases. Interview with Goldenberg, *supra* note 105

<sup>67</sup> *Id.*

collectively for a higher price. However, “The *kokholzniki* are desperate for investors. We get propositions from others [other *kokholzes*] all the time.”<sup>68</sup>

Fear of social costs vies with desire for control for investments when UCF directors consider whether to buy land when it is legally available. One notes, “No, it’s way too expensive. You buy enough land to farm with 40 or 50 people; 200 people live there, and you have to take care of all of them: health care, schools, the whole range of social services.” Although the obligation to provide social services is not explicitly required by law, it is keenly felt: “No, the obligation does not come from the law. But for 70 years [author’s note: i.e., through the Soviet period], we lived like that – people expected if you give them work, you give them social services. What are you going to do? Suddenly throw them out on the streets?”<sup>69</sup> By contrast, another founding partner said that UCF would “much rather” buy land after the moratorium on land sales is lifted. There is no options market yet, but they hope for one. “We’re investing in land now [providing inputs for agricultural production] but we have no control over the results of the investment. We could invest \$100 but get \$20 worth of produce from it if the owner treats his land badly.”<sup>70</sup>

The level of investment is one of the most striking features of the relationship between the sugar beet factory and its collective farms after the 2001 land privatization legislation passed. UCF bought three German-made Holmer combines in August 2001 (when legislation looked certain to pass in the coming legislative session) and seven more in March 2002 (after the Land Code passed in November 2001), at a price of 293,000 euros (then, \$280,000 dollars) apiece. UCF also purchased six “beet-gathering wagons” for its farms in spring 2002. UCF made the purchases in addition to the operating expenses for inputs for the farms and for the other operations associated with the sugar factory itself. Spending in 2001-2002 on capital equipment for the *zona*, which UCF does not own, exceeded \$3 million. UCF decided to purchase it because the Land Code passed, which provided UCF and its creditors with sufficient assurance that the farmers’ ownership and UCF’s rental rights would be backed by the courts. In contrast to investments in agricultural production on its leaseholds, UCF has been chary with the sugar factory itself.<sup>71</sup>

The relationship between the UCF Zhashkiv factory and the town and *zona* resembles that of a Soviet factory. The level of horizontal integration with other

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<sup>68</sup> In his first 18 months on the job, the sugar-factory director claimed he had always had 2-3 competing propositions on the table. Interview with Valentin Sergeyevich, director of Zhashkiv Sugar Beet Factory (June 17, 2002)

<sup>69</sup> Interview with Sergei Aleksandrovich Sitnikov, Executive Director, Ukrainian Foodstuffs Company (June 14, 2002).

<sup>70</sup> Interview with Goldenberg, *supra* note 25.

<sup>71</sup> The factory director explains, “We’re putting all our investment in land now. Fertilizer, seeds, herbicides, pesticides. Combines. We’re reducing the threats to production to the normal agricultural risk, the weather. Everything else we can do, we’re doing. Later, we’ll work on sugar-factory equipment: centrifuges, vats, vaporizers, conveyor belts, pumps. Finally, we’ll do aesthetic improvements. Right now, we paint and clean [the factory], just to make it look as nice as we can for cheap.” Interview with Valentin Sergeyevich, director of Zhashkiv Sugar Beet Factory *supra* note 111.

enterprises in the town would be unusual for a Western firm,<sup>72</sup> as would the amount UCF donates makes to keep local schools running.<sup>73</sup> UCF owns substantially all the other functioning enterprises in Zhashkiv, all of which were privatized in the 1990s and most of which are related to food processing. Raising sugar beets requires regular crop rotation, so the rented fields regularly produce wheat or corn instead of beets.

Accordingly, UCF owns a controlling packet of shares in the Zhashkiv grain elevator, is a separate operation from the sugar-beet factory. UCF partner Mikhail Leonidovich explains the governance structure. “They can’t get a new director without my vote, can’t spend more than 10,000 hryven [about \$2000] without my vote, but otherwise, they make their own decisions. The sugar factory, on the other hand, is my property. In place, they can make decisions up to, say, 500 hryven, but beyond that they have to come to me. All the finances are with us in Kiev. We control all decisions.”<sup>74</sup>

### The Origins of UCF and its Capital

UCF, from its inception in 1995 until 2002, had 4 employees: three founding directors and a secretary.<sup>75</sup> Brovarych was already a major player in the Ukrainian economy, which at that time consisted largely of importing essential raw materials for subsistence (heating oil, flour, sugar) and bartering them for the few “valutniy produkty” (hard-currency earners) still produced in Ukraine. In the early 1990s, Brovarych was one

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<sup>72</sup> Driving through Zhashkiv itself, the UCF director gave a guided tour: “in that field, those are our cows, our pigs [For “internal needs. The plant has a cafeteria.”]. That’s our school, that’s our workers’ club.” Do you run a private school? “No, not our school literally, but there’s a crisis in the country. Somebody has to teach our workers’ kids.” Interview with Goldenberg, *supra* note 105.

<sup>73</sup> The sugar factory shouldered a substantial amount of the expenses of a local K-12 school when the school principal asked for help. “Why did you say yes?” “How can you say no? That’s our school. Our kids go there [meaning, his workers’ kids]. We don’t do everything, but we do what we can. We supplied gasification [heat] last winter, we computerized two classes. Also, in the two villages where we rent, we give assistance. We supplied computers there. Our schools are the first in the local government area to have computers.” Interview with Valentyn Sergeyevich, *supra* note 111.

<sup>74</sup> Interview with Goldenberg, *supra* note 105.

<sup>75</sup> Mikhail Leonidovich Goldenberg, one of the UCF directors, relates his personal story of how he became associated with Brovarych. He came from Turkmenistan in 1994. He was born in Kiev, his father was in the military, and, as in a game of musical chairs, when the Soviet Union fell apart he and his family happened to be in Turkmenistan. His education was as an engineer-mechanic in the natural gas sector. By 1994, he, his wife, and his daughter were feeling the economic pinch and were apprehensive about the political and economic future in Turkmenistan, especially for non-Turkmen like themselves. At his wife’s urging, they moved to Kiev, where he looked for work: “No apartment [meaning, no connections through which to establish rights to an apartment before the private housing market started]; no job; family to feed; for the first few months, I scrambled. Whatever I had to do, I did.” Through a friend, Kostenko, also a Turmenistan-transplant with Ukrainian roots who was a philologist by training, he started working for Brovarych in 1995.

of the major energy traders in Ukraine. Brovarych bought refined oil from the Odessa refinery, diesel (*mazut*) through the port of Odessa, or natural gas from Russian transporters, and supplied those products to consumers. “But the Russians moved into the market and put enormous pressure on us. It was impossible to resist.”<sup>76</sup> (Russian investors ended up buying the Odessa refinery in 1998.) “Brovarych was being driven out of the barter market for oil products and was looking for other things to do. We always had *mazut*, because there aren’t as many customers for it. Sugar factories all used it. We were used to dealing with them, we had relationships with them. We four were looking for something to do, for a new direction, that others weren’t doing, and Brovarych was too. So we decided to try sugar products.”<sup>77</sup>

The four -- two Turkmen of Ukrainian descent who returned in desperation to Kiev when the U.S.S.R collapsed and one other scrambler, economist Sergei Andreyevich Sitnikov, together with their secretary -- went into the sugar-factory business. As Sitnikov expressed it, “Some privatized sugar factories approached us about becoming owners.”<sup>78</sup> None of the four had prior experience in agriculture or food processing, but they knew some sugar-factory directors and they knew Brovarych director Hrihoriy Medved, who had access to capital. That bridge would seem to be the basis of a profitable venture-capital enterprise. Medved provided the start-up capital, but UCF had to make its debt payments to Medved and turn a profit from the first year. For investments in some of its earlier acquisitions, UCF turned to Ukrainian banks, which charged an average 18% compounded annual interest in 1998. To purchase the combines for the Zhashkiv *zona*, UCF obtained loans from an Austrian investment bank, which gave them a much better interest rate, largely because of the 2001 changes to the land law.

The results in Zhashkiv have been remarkably profitable and socially constructive. Since UCF acquired it in 2000, sugar output at the factory has risen from 54 tons in 1999, to 78 tons in 2000, to 130 tons in 2001, which Goldenberg attributes to UCF’s investments in the *zona*: seeds, herbicides, fertilizers, and, after the Land Code passed, combines. For consumers of Ukrainian sugar, certainly, the lower price would be a mark of success. For residents of Zhashkiv and the two collective farm villages nearby, the advent of UCF’s investment has been a godsend. Of the 15,865 residents of Zhashkiv itself,<sup>79</sup> approximately 500 are directly employed by the sugar-beet factory,<sup>80</sup> and hundreds more by other enterprises in which UCF has invested. For five years, from 1992 until 1997, the workers at the factory did not receive a single paycheck. Since UCF acquired the factory through the period of my research in summer 2002, the workers had not missed a payday.<sup>81</sup> The overall picture is one of a reversal of an inefficient drain of

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<sup>76</sup> Interview with Goldenberg, *id.*

<sup>77</sup> Interview with Goldenber, *id.*

<sup>78</sup> Interview with Sitnikov, *supra* note 112.

<sup>79</sup> Population figure as of 2001 from the Association of Ukrainian Cities, *at* [www.auc.org.ua](http://www.auc.org.ua).

<sup>80</sup> Interview with Misha Kukel, driver for Zhashkiv Sugar-Beet Sugar Factory (June 17, 2002).

<sup>81</sup> From 1992-1997, workers generally went unpaid; when they were paid, remuneration was rendered in sugar, which they took to the market and sold. (As no one had access to

local resources: a sugar-drain, sold at the local market to petty traders at below-national-market prices; a combine-drain, as existing farm equipment, in the absence of reinvestment, was cannibalized for parts; a brain-drain, as the most talented, ambitious, or hungry of the area outmigrated.<sup>82</sup> Similarly, whereas Ukrainian sugar from sugar beets was exported over the first seven years of independence to provide a source of hard-currency in a barter economy starved for cash, by 2000 then-Prime Minister Yushchenko's reforms had stabilized the Ukrainian currency and domestic demand had recovered to the point that sugar-producers no longer found it more profitable to export.<sup>83</sup> The dependence on "valutniy produkty" vanished as reforms converted the barter economy to cash and domestic demand recovered. Even environmental costs and losses to efficiency have been stemmed: with new investment, nearly all of the 170 sugar-beet factories in Ukraine have converted from *mazut* to natural gas, because it is so much cheaper; as an added benefit, gas-run plants produce considerably less air pollution than *mazut*-run plants. The situation in Zhashkiv has turned around thanks to UCF's investment. UCF, in turn, praises the Land Code as the most important development that has aided its enterprises.<sup>84</sup>

#### How UCF Acquired the Zhashkiv Sugar Beet Factory

The story of successful economic development through land privatization is not that simple, however, for two complicating reasons. The first is the means by which UCF acquired the Zhashkiv factory and its other plants. The second is the place of parent company Brovarych, and its owner, Medved, in the social structure of Ukrainian politics

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a vehicle, they took it to the local Zhashkiv market, which resulted in extremely low prices for the workers.) "The last two years (2000-2002), everything is better. We get paid on time, every month [although the plant is only in operation for six weeks during the fall]. People work, our pensioners are paid. The factory does not officially provide health insurance; there is a medical office at the plant, and so far, for anything that requires more extensive treatment, even an expensive operation, the plant has paid for."

*Id.*

<sup>82</sup> As recounted *supra*, the principal of a local school beamed with pride as he spoke of the factory director. "He's a Zhashkiv boy. He's the first one in fifteen years who left the town to attend university or work, and came back to us. We need more like him." (The factory director returned to Zhashkiv in October 2000 as an employee of UCF/Brovarych.) Interview with Ivan Ivanovych, principal of Zhashkiv central school (June 17, 2002).

<sup>83</sup> "It's not about hard currency now. The demand is here, in the internal market. Demand has grown some, because of increased production in other sectors of food processing that require sugar; but in general, the difference comes from stability in the currency and in the legal basis of ownership." Interview with Sitnikov, *supra* note 112.

<sup>84</sup> "Before the Presidential decrees, you could agree with someone to 'rent,' to give him inputs, and then if he doesn't give you beets, what can you do? You couldn't take him to court. Even with the Presidential decrees, yes, we worked hard, but it was hard to plan; the decree could in principle be reversed or changed. Now you can rent from someone and trust it. A decree plus a law is hard to change. And after 2005, it will be very solid." Interview with Goldenberg, *supra* note 105.

during this period in which the political elite undertook fundamental reforms through legal change.

The Zhashkiv factory had been privatized and formally belonged to its worker-shareholders by the end of the first decade of independence. It had also, like collective farms, been subject to a national property tax for the first time since pre-Soviet times, during a time when the collapsing economy meant that revenues could not keep up with its property tax debt.

The four employees of UCF made it their business to research the sugar-beet factories of Ukraine. Their research covered two areas, mainly. First, they researched which factories had the largest profit potential based on longitudinal studies of Soviet-era production. They learned that, while tinkering with plant equipment can reap marginal increases in efficiency, the largest determinant of productivity and profitability is the fertility of the land around a sugar-beet factory. A given plot of land produces beets that yield sugar at a fairly stable ratio. The *zona* around Zhashkiv typically yielded sugar at a rate of roughly 12 kilos of sugar per kilo of beets. Many other areas yielded a much lower ratio. UCF's first step was to locate sugar factories whose *zona* yielded a much higher ratio than other factories'. This information rested largely in local and national archives not organized to facilitate public access. Finding the correct records depended on the expertise, and sometimes the permission to search, of archivists. The UCF employees secured archivists' cooperation partly through bribes and sometimes through the fear or respect inspired by Medved' reputation as head of the "Kiev Clan."

An explanation is in order. The "financial-industrial group" and its head, the oligarch, are figures that by the mid-1990s became a prominent feature of Western and post-Soviet discussions of business organization across the former Soviet Union.<sup>85</sup> Ukrainian analysts call the most powerful of these political and economic alliances *klani* (clans).<sup>86</sup> *Klani*, like the mafia, are creatures of post-Socialist private property rights, although the relationships between core members usually originate in the social networks of late Socialism. The typical *klan* unites several forms of private property – a private bank or other institution specialized in arranging credit or formalizing informal financial arrangements; a powerful industrial enterprise or sector; media outlets – and several conduits to elected officials or state bureaucracies. The metaphor of "social structure" is an insufficient descriptor of these configurations of patron-client relations; "social structure" implies something static or solid, whereas performances of the self and attendant sociabilities are keyed, fluid, and emergent. The same person in different performance frames may act as a *klan* member, friend, family member, parliamentarian, profit-motivated businessperson. A practice orientation is more useful for distinguishing different frames of performance of the self.<sup>87</sup>

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<sup>85</sup> In order to distinguish this metaphor from the technical kinship term, I will hereafter refer to it by the transliteration of the Soviet word *klan*.

<sup>86</sup> See, e.g., SLAVKO PIKHOVSHEK, DNIPROPETROVSK VS. THE SECURITY SERVICE (1996). For a description of "clans" in other regions of the post-Soviet space, see EDWARD SCHATZ, MODERN CLAN POLITICS: THE POWER OF "BLOOD" IN KAZAKHSTAN AND BEYOND (2004).

<sup>87</sup> For description of how these networks became active in the post-Soviet context in Russia, see, e.g., Alexei Yurchak, *Entrepreneurial Governmentality in post-Socialist*

However, notions of social structure in the sense of networks<sup>88</sup> do have some salience for understanding patterns and configurations of contacts. The networks of relationships that form the lines along which *klan* sociability runs are observably based in Ukrainian *klan* members' regions of origin in late Socialism. Individual political affiliations change and *klan* ambitions for national office fluctuate with a *klan*'s relative strength, but the regional bases of Ukrainian *klans* – Kiev, Donetsk, Dnipropetrovsk, Zakarpattya – has endured. The concentrations of late Socialism, manifest in part in provincial capitals, structure the geography of disciplinary configurations that have endured and now shape some of the emergent patterns of affiliation and circulation in these patron-client networks. The concept of *klani* also helps illuminate one mode in which members of the political elite may take collective action on a given problem.

To return to our explanation of UCF's entry into the sugar-beet sugar business, in addition to gathering soil yield information, UCF manipulated the tax collection process to acquire the plant at a non-public auction. In order to do this, the three directors ascertained the tax debt owed by those factories whose *zona* promised the highest profit potential. The law is silent on the privacy of tax records, but as a matter of practice, tax records are not publicly available in Ukraine. Finding out tax debt information meant cultivating contacts in the tax administration at the local government (*raion*) level and activating Brovarych contacts in Kiev. Armed with figures on tax arrears, UCF would draw the attention of the Tax Inspectorate in Kiev to the plant's tax debt. The Tax Inspectorate, responsible for inspecting and collecting on tax debts nationwide, is overwhelmed with enterprises in arrears. (It often chooses which enterprises to investigate under executive-branch orders to target businesses of political rivals or take-over targets of the President or other higher officials in the Presidential administration.) The Tax Inspectorate is often feared by enterprise directors and owners, as it has the authority to seize real property or other assets to satisfy tax arrears. Rather than a damaging, cannibalistic partial seizure of assets that could reduce a plant's productive capacity, UCF would propose an alternative solution: a quiet seizure of the plant by the tax authority and subsequent "auction" to a buyer willing and able to satisfy the tax debt. The tax authority would agree to this arrangement (and often, the plant director would be notified), and the entire seizure and resale would be effected in a single day, without public notice.

This process accomplished three purposes. It allowed UCF to acquire plants that had already been privatized and which were not currently "for sale" (either because the worker-owners did not wish to sell, or because, given the paucity of investors, there was effectively no market for enterprises in Ukraine after the first generation of privatization had just taken place, so debt-ridden workers did not bother trying to sell). Second, it allowed UCF to acquire plants without attracting potential competitive bidders, for prices well below the market valuation (upon which, *inter alia*, the property tax had supposedly been based). Finally, it allowed UCF to acquire plants without attracting the attention or

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*Russia: a Cultural Investigation of Business Practices*, in THE NEW ENTREPRENEURS OF EUROPE AND ASIA (Victoria Bonnell & Thomas Gold, eds., 1999).

<sup>88</sup> For discussion of Soviet networks, see OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA: A STUDY OF PRACTICES 315-316 (1999).

ire of Brovarych's political and economic rivals as participation in public auction might have done.

UCF found it prudent to keep a low profile because, among other reasons, Hrihoriy Medved is a *klan* leader whom some also consider heavily implicated in Ukrainian organized crime and avoids attracting the attention of rivals or provoking the jealousy of allies. Medved raised his initial capital through various black market dealings in the late Soviet and early independence periods; UCF was one of the agricultural subsidiaries through which he laundered those profits after 1994. Medved provided three essential assets to the four employees of UCF. He supplied them with contacts at the tax inspectorate and elsewhere, to learn what they needed about tax arrears and to make trustworthy deals on the tax-arrear auctions. He supplied them with a fierce reputation, so that none of their interlocutors at the local level or in Kiev would cross them. Finally, he supplied them with start-up capital, with which to purchase the tax debt for the first UCF plants and cover other initial costs.<sup>89</sup> All three of these assets, I would argue, were necessary for leveraging the anti-commons in Ukraine. Without all three, it would be difficult to acquire and conduct a profitable business at any level higher than a small town enterprise. Medved's reputation and networks, more than individual bribes, allowed UCF to obtain from public officials information not otherwise available and to use it in ways not available to other members of the public. His reputation raised the perceived costs to individual officials of not cooperating; perhaps equally importantly, it raised confidence that they would be protected from subsequent sanction by their supervisors.

### *Conclusions*

To review, the argument that I make in this section is that first, while land privatization law and previous decrees and executive orders provide a necessary foundation for investment in agricultural production in Ukraine, they are not sufficient to explain who controls agricultural use and production. The efficiency gains from production on privately-owned agricultural land are contingent upon the funnels that get agriculture to market: food storage, transport, and processing facilities. Second, while market incentives now shape the activities of investors in the agricultural sector, their behaviour cannot be explained without reference to Soviet (and perhaps pre-Soviet) norms of paternalism of owners to farmers and workers. Banks are not making loans to the new rural landowners to purchase combines and farm equipment. They are making loans to the cosmopolitan "brokers" who mediate provision of capital between the Ukrainian countryside and international capital. Finally, crime has provided the initial capital and corruption has shaped the early patterns of legitimate investment in the agricultural sector, and set criminal groups on a trajectory of ownership and influence in the future. It is clear that establishing a market, and relying on market incentives alone, will not result in an optimally functioning economy or democracy. In fact, supplying

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<sup>89</sup> NB: Medved has not provided other financing for operating expenses or further investments. UCF has relied on Ukrainian banks for loans collateralized by the initial sugar-factories. For the combine purchases, UCF secured a loan from an Austrian bank at a rate of 18% annual interest in 2002; despite the high rate, UCF expects to turn a profit on the combine investment.

organized criminal groups with fixed legal assets may put both the economy and the political system on trajectories for a distinctly worse future.

The boomtown enjoys almost the mirror-image results from the ghost town: dramatic gains in efficiency and agricultural production but potentially disastrous effects on democratic development. And in addition to these wild departures from rosier predictions, we are left with the puzzle of how the same legal reform process resulted in such discrepant outcomes.

#### **IV. The Other End of the Rainbow: The Right to Exit and the Ghost Town**

*My mom is still proud that she managed to get my grandmother moved to Kiev [in the early 1970s]. It was all legal and above-board, but still, it was quite a feat. After my Dad got transferred to a Kiev factory from the small town where I was born, his mom was left behind, all alone. She was legally allowed to move to Kiev, if we could find a place for her to move to. That was the trick. My mom somehow found a couple, pensioners, who were willing to trade their one-room apartment in the center of Kiev for my grandmother's three-room in the sticks. They were on a fixed income and wanted to live in a cheaper town. Of course, we paid them something extra under the table for their trouble. That's how my grandmother got to Kiev. To this day, my mom is still proud of herself for arranging it.<sup>90</sup>*

The previous section, describing the boomtown, tells of a farm that was not abandoned with privatization, the exception. The following account describes the ghost-town rule to boomtown's exception. We review legal measures dissolving the collective and introducing the right to exit. But first, we look at the right to exit, enjoyed in the late Soviet period *de jure*, but *de facto* practically ruled out by a pre-existing legal and bureaucratic form, the *propiska*.

##### *Propiska*

The most important, direct bureaucratic link between citizen and locality in Soviet life was the *propiska* system, although its lineage can be traced back significantly farther than the Soviet government. Its two major features, registration and the internal passport, were, in local experience, specifically linked to shifts in the balance between local sovereignty and imperial rule. They, and other measures regulating mobility, had been introduced as instruments of Russia's colonization of Ukraine under Catherine the Great in the late 1700s.<sup>91</sup> Catherine took a series of steps that significantly decreased mobility of those residing in Ukraine, particularly strict controls on Ukrainian peasants.<sup>92</sup>

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<sup>90</sup> Interview with Oleksandr Merezko, (law professor and resident registered in Kiev), (Kiev, Ukraine, September 15, 2009).

<sup>91</sup> See generally Z. Kohut, *The Abolition of Ukrainian Autonomy, 1763-1786. A Case Study in the Integration of a non-Russian Area into the Empire.* Ph.D. thesis, University of Pennsylvania, 1975.

<sup>92</sup> In a 1760 Decree, Catherine prohibited a landowner from settling a peasant on his land without the prior written permission of the landowner where the peasant had previously dwelt. Her 10 December 1763 *ukaz* further specified that the right of a peasant in Little Russia (or Russia Minor, as the designation for Ukraine may otherwise be translated) to move was subject to permission of the landowner of the peasant's previous place of residence. A 1770 law ordered the return of all *begliye*, runaway peasants, to their place of origin so they could be made to pay their taxes. Finally, a 1783 *ukaz* deprived a peasant of the right, theretofore enjoyed in Ukraine, to negotiate his departure from one landlord to move to another.

“Registration” was thus another part of the great extension of Russian law and bureaucratic practice over Ukrainian lands.<sup>93</sup> In 1783, the “internal passport,” also a pre-existing feature of Russian regulation of Russian lands, was extended to Ukraine. The internal passport was “the instrument by which the population was kept in its place.”<sup>94</sup>

The internal passport and the registration system, known in Soviet parlance as the *propiska* [“written through”] system, survived through the Soviet period. (The only brief interruption in the requirement of internal passports came with the 1917 Revolution, lasting until mobility restrictions were re-adopted during the Famine and industrialization in 1933.) During the late Soviet period, other organizational features introduced additional incentives and structures that established bonds of loyalty and affiliation between a citizen and her locale. One significant such feature came in the 1977 Soviet Constitution, which for the first time offered a constitutional guarantee of housing for every citizen.<sup>95</sup>

Measures of the Soviet system for establishing a relationship between citizen and locale, then, had a healthy provenance, if not an uncomplicated history. The institution of

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In May 1779, Catherine extended to Little Russia her *Statute of Local Administration* of 1775. This decision made the previously autonomous lands of the Zaporizhzhya Cossacks (a host of Ukrainian freebooter border troops and perennially an attractive destination for escaped serfs fleeing Russia) into the governorships (gubernii) of Kiev, Chernigov, and Novgorod Seversk. This extension of a Russian administrative form introduced stricter controls over mobility in an area whose military advantage and popular attraction had been predicated on mobility. In a letter of 26 October 1781 interpreting the *Statute*, Catherine changed the status of town and Cossack authority, which in Ukraine had previously been self-governing enclaves with the right corporately to own land. In the letter, Catherine stated that town and Cossack lands were to be stripped of local ownership and taken over by new imperial Russian treasury boards in each guberniya.

<sup>93</sup> The census (*reviziya*) of 1782 was conducted to get a fix on where a person lived; the poll tax 1783 fixed people to that place of residence. To facilitate collection, the *ukaz* imposing the poll tax added in Article 8 that inhabitants of the new gubernii of Kiev, Cherniv, and Novgorod Seversk were to remain in the place and the status in which they had been registered in the last census. Article 11 of the *ukaz* extended these provisions to Slobodska Ukrainia and the gubernii of Kursk, Kharkov, and Voronezh. (A person’s “status,” or estate, could be Cossack, “Little Russian” landowner, Great Russian landowner, clergy, peasant, or townsperson.)

<sup>94</sup> For journeys of less than 30 versts, a townsperson used a passport received from the town council or magistrate; a peasant, from his commune; and a serf, from his owner. For greater distances passports had to be obtained from local authorities of the imperial government. In other words, to move, one had to have an internal passport; and while familiar local authorities could provide a passport for short journeys, a journey of any length was contingent upon obtaining a document from local authorities of the imperial government. Whereas Little Russians had been subject to a household tax since 1765, the per-head tax – the poll tax – of 1783 caused peasant adscription to the soil and brought the end of traditional Ukrainian mobility.

<sup>95</sup> 1977 Soviet Constitution, Article 44.

measures to regulate mobility on Ukrainian territory has a distinctly colonial cast, but came to be a given of state administration. Every Soviet citizen was required to have an internal passport and was expected to carry it at all times on their person. It took special permission – an approved purpose for travel – to obtain an international passport. Within the Soviet Union, however, a space eleven time-zones wide, a citizen considered herself a member of a great commons, largely unrestricted by boundary fences, free to roam, to gather, to recreate.

The *propiska* system was abolished by deliberate omission from the 1996 constitution of independent Ukraine.<sup>96</sup> The state, for the first time since 1783, does not seek to control mobility of its citizens. The *propiska* was replaced by a registration [*reyestratsiya*] system that establishes the physical locale at which certain benefits are allocated and obligations are collected, but deliberately institutes “freedom of movement.”<sup>97</sup> The law has work-arounds built-in to accommodate rendering of obligations by the displaced.<sup>98</sup> For example, a taxpayer is supposed to pay personal income tax in the town where she is registered, at her local tax administration office, but she may pay at a special office for the displaced in the nearest provincial center. A voter is supposed to cast his ballot in the *raion* (local government area) where he is registered, but he may vote absentee. The registration system is less accommodating in regard to distributing benefits. To receive state-subsidized medical care, for example, one must visit a clinic in the place one is registered. Absent that, a person must rely on expensive private clinics, informal healers, or self-treating. The registration system, then, is a means for administering obligations and benefits, not for controlling mobility. Under the 1996 Constitution, any Ukrainian citizen has the right freely to leave the territory of Ukraine, meaning an international passport is available to any Ukrainian citizen who applies for one.<sup>99</sup>

State practices for controlling mobility did not die out as fast as the law changed. Although the constitution did away with the *propiska* system in 1996, as of 1997 Ministry of Interior barriers still blocked all roads into Kyiv. Driver, and usually passengers, were required to show their internal passport before entering the city. Even in small towns in the countryside, Ministry of Interior personnel manned speed bumps which required drivers to slow and produce documents. Even then, though, control was not enforced on trains or buses. And by 2006, roadblocks and internal passport checks were a nearly forgotten feature of the past.

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<sup>96</sup> Interview with Serhiy Holovatiy, Minister of Justice in 1996 and member of Parliament, 1994-present (June 27, 1996).

<sup>97</sup> According to Art. 3 of the Law of Ukraine “About freedom of movement and free changing of residence in Ukraine” [Pro Svobodu peresyvannya ta viln’nyy vybir mistsya prozhivannya v Ukrayini], “registration” is the recording of information about person’s location or residence in his/her passport and recording of this information in the [state] registration database of the “central organ of executive power for questions of registration” [reyestratsiyny oblik vidpovidnoho orhanu spetsial’no upovnovazhenoho tsentral’noho orhanu vykonavchoyi vlasti z pitan’ reyestratsiyi].

<sup>98</sup> *Id.*

<sup>99</sup> KONST. UKR. [Constitution of Ukraine] Art. 33 (1996).

## *Land Privatization and the Right to Exit*

### Sales without Markets

None of the farmers at ghost town or boomtown took advantage of the first wave of parcelization, which Mikhail Gorbachev introduced with late Soviet reforms allowing “private farming” with a law that provided for a 99-year lease on a plot not to exceed 50 acres per person, to be administered by the local (village) council. The response was modest. By 1991, only 3,000 farmers across the U.S.S.R. had availed themselves.<sup>100</sup> After Ukraine gained independence in 1991, the new Ukrainian government expanded rights for Gorbachev’s leaseholders. A 1992 Cabinet of Ministers decree allowed one of those private leaseholders to obtain title to his plot by purchasing the leasehold from the government.<sup>101</sup> The government and the buyers did not arrive at prices by reference to a market price, for reasons including the absence of a market; rather, the price for a given plot was determined from formulas factoring in land fertility, soil content, water table, and other physical data that were created by the Nazi occupation government during World War II, the last time most of Ukraine had private ownership of agricultural land. These formulas inaccurately reflected the value of land plots relative to each other, not least because the physical characteristics of sections of land changed in the intervening fifty years. Each local office in charge of administering the program could easily manipulate the formulas and the prices that were supposed to be a function of the formulas. The advantage over the leasehold arrangement, and where market pricing did affect land privatization, was that the decree allowed the new landowners to sell their land to others. Prices were not completely liberalized on the secondary market: the decree provided that the price of a plot of land could not fall below the “normative” (formula-derived), state-fixed price (although it could rise higher). Despite these vestigial protective measures, allowing the creation of a legal secondary market marked a distinct step away from collective ownership and state control of prices. This would, incidentally, be the last time that the post-Soviet Ukrainian government allowed sale of agricultural land. Legal sale on the secondary market is still limited to those relatively few Ukrainians among the 3,000 Soviet leaseholders.

To aid these new landowners, the Ukrainian government set up a credit facility, allowing landowners to borrow at 3% over a ten-year term for inputs and capital purchases, and private-plot productivity flowered.<sup>102</sup> However, lending under the credit facility soon became *de facto* restricted to collective farms, which borrowed to purchase inputs from the government enterprises that still produced them. Critics claim that the credits to private farmers dried up because of bureaucratic inertia and underlying hostility to private ownership of farmland and private agricultural production.<sup>103</sup>

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<sup>100</sup> Interview with Bohdan Chomiak, director of agricultural land programs for USAID Kiev (June 20, 2002).

<sup>101</sup> Dekret Kabinetu Ministriv Ukrayini Pro Privatizatiyu Zemelnikh Dilyanok [Decree of the Cabinet of Ministers of Ukraine on the Privatization of Land Plots], Decree No. 15-92, December 26, 1992, *reprinted in* ПРАВО ВЛАСНОСТІ НА ЗЕМЛЮ ТА ЙОГО ЗАХИСТ: ЗБІРНИК НОРМАТИВНИХ АКТІВ (THE RIGHT TO OWNERSHIP OF LAND AND ITS DEFENSE: A COLLECTION OF NORMATIVE ACTS), 168-169, (Kiev, Atika 2002).

<sup>102</sup> Interview with Chomiak, *supra* note 73.

<sup>103</sup> Interview with Chomiak, *supra* note tk.

### Abolishing State Farms, Mentally Dividing Collective Farms

Other legal measures to institute private property rights in land were similarly shaped by conceptual categories, allegiances, and habits from the collectives. One 1995 presidential order converted all state farms into collective farms (collectively but undividedly owned by the residents of the farm), except that the state retained 10% of the land of each state farm converted, to be held and administered by the village council (*silska rada*, an elected body).<sup>104</sup> The state itself was still in a process of formation, however. Legal experts disputed who had the power to do what. The conversion of state farms to collective farms provides an example. State assets, including land, should have been under the control of the Prime Minister's office; yet this order was issued by the Presidential Administration. The Presidency is not considered "the state," yet it ordered that state farms be given to their farmers. As one politician vehemently told me, "Only the state could legally give away state-owned land."<sup>105</sup>

A second 1995 executive order provided that each person resident on a collective farm be issued a "land and asset certificate" documenting the person's ownership of a share of the collective farm. Entitlement to a share was based on residence on, or retirement from work on, a collective farm.<sup>106</sup> Every farm was supposed to set up a "Land Committee" to compile a list of residents and pensioners who "belonged" to the farm and were therefore entitled to certificates. This measure had two important effects. First, it introduced the concept of divisibility and created an exercise by which farmers imagined division of the collective. Second, though, it reinforced some of the bonds within the collective by forcing local committees to consider who belonged to the farm and who did not. One nurse in a small city fondly recalled to me how a farm outside of

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<sup>104</sup> Указ Президента України "Про Порядок Пайування Земель, Переданих у Колективні Власності Сільськогосподарським Підприємствам і Організаціям" [Order of the President of Ukraine "On the Parcelization of Land, Given into Collective Ownership to Agricultural Enterprises and Organizations"] Order No. 720/95 of August 8, 1995 *reprinted in* ЗАКОНОДАВСТВО УКРАЇНИ ПРО ЗЕМЛЮ (LEGISLATION OF UKRAINE ON LAND), 162-163 (Kiev: Urinkom Inter, 2002).

<sup>105</sup> Interview with Oleksandr Yelyashkevych, member of Parliament 1994-2002 (August 8, 2003).

<sup>106</sup> Тимчасовий Порядок Проведення Робіт Видачи Державних Активів Колективним Сільськогосподарським Підприємствам, Сільськогосподарським Кооперативам, Сільськогосподарським Акціонерним Товариствам, у тому Числі Створених на Базі Радгоспів та Інших Державних Сільськогосподарських Підприємств, на Право Колективної Власності На Землю [A Temporary Order for Carrying Out Work of Given Government Acts to Collective Agricultural Enterprises, Agricultural Cooperatives, Agricultural Joint-Stock Companies, and those formed on the Basis of Sovkhoz and Other Governmental Agricultural Enterprises, on the Right of Collective Ownership to Land] confirmed by Order of the State Committee of Ukraine on Land Resources, No. 18 of 15 March 1995 *reprinted in* ЗАКОНОДАВСТВО УКРАЇНИ ПРО ЗЕМЛЮ (LEGISLATION OF UKRAINE ON LAND), 162-163 (Kiev: Urinkom Inter, 2002).

town where she had occasionally performed minor medical services had included her on its list and given her a share certificate.<sup>107</sup>

One detail held near-term significance for most farmers, and eventual importance for boomtown farms. The executive order did not change the governance structure of the collective farms, so although the members of the farm were entitled to share certificates and became something like stockholders in the farm, the director still ran it, Soviet-style, by fiat; the orders did not change the governance structure to empower the new shareholders in decision-making.<sup>108</sup> The government depended on collective farm directors to distribute land certificates, and they often failed to, out of incompetence or outright reluctance to further reforms towards individual ownership claims which would reduce the institution upon which a director's status and income depended. Of a total of 6.7 million Ukrainian citizens eligible for land share certificates (of a national population of approximately 51 million), approximately 30,000 were registered as private farmers by 1996.<sup>109</sup>

### Dropping the Prohibition on Private Property

Passage of the new constitution in June 1996 ensured that private ownership of land in Ukraine was not *per se* illegal. Private ownership of land was one of the five major sticking points in Rada (parliamentary) negotiations over the text of the Constitution, ranking alongside such fundamental issues of sovereignty as whether to allow Russia to maintain Soviet-era military bases on Ukrainian territory. As late as the night before the deadline for passing a constitution, parliamentarians believed that negotiations would fail for lack of agreement over whether to permit private ownership of land and the other four points.<sup>110</sup> The constitutional provision did pass, lending some confidence regarding ownership of the property claimed under the executive orders and dashing the left's hopes of reversing the previous decrees and executive orders with legislation.<sup>111</sup> Another change affected the collective more profoundly in the near term. After Ukrainian independence, agricultural workers could leave their farms of origin. Although the *propiska* registration system was still nominally in place until abolished by the new constitution in 1996, the weakened power of the state and the emergence of private markets for housing, employment, and food made it unenforceable. The new constitution omitted mobility restrictions altogether and affirmed the right of mobility (although it does allow for a system of local registration, registration does not bind the citizen to a particular locale).<sup>112</sup>

### Drawing Lines

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<sup>107</sup> Interview with Ira Pasichnyk, nurse and land-plot grantee, in Kamenets-Podilsky, Ukraine (June 28, 2002).

<sup>108</sup> Interview with Steve Dobrolovic, Kiev lawyer working for Chemonics on national land titling project, (July 3, 2003).

<sup>109</sup> Interview with Chomiak *supra* note tk.

<sup>110</sup> Interview with Serhiy Holovatiy, Minister of Justice in 1996 and member of Parliament, 1994-present (June 27, 1996).

<sup>111</sup> KONST. UKR. [Constitution of Ukraine] Art. 41 (1996).

<sup>112</sup> KONST. UKR. [Constitution of Ukraine] Art. 33 (1996).

The government expanded the meaning attached to the land share certificates in 1999. An executive order decreed that a land share certificate referred to a demarcated plot of land, not merely an intangible share in the collective, implying that a certificate-holder could elect to withdraw from collective production and farm independently.<sup>113</sup> The executive order did not specify the method for deciding which plot an individual would receive. On some collective farms, particularly in Western Ukraine where grassroots support for decollectivization was strong, farmers took matters into their own hands even before legal procedures were in place: in many cases, the farmers divided collective farm lands before the 1999 decree. Initiatives to divide collective farms, whether under the decree or before it, faced the same methodological problem of how to allocate land parcels fairly. In some cases, ideas about fair division were enforced by the recipients through self-help. For example, on the collective farm of Schastliv outside of the city of Kamenets-Podilskiy, when the chairman of a village council was suspected of favouritism in allocating the new plots (giving those with best access to road or water to his cronies, for example), he was beaten by villagers and ended up dying of his wounds. The new village council chairman called a meeting to redistribute according to a transparent lottery: a map with the plots, numbered, hung on the wall, and villagers drew numbers from a glass fishbowl to determine which plot would go to whom.<sup>114</sup>

By 1999, 600,000 share certificates had been issued. Apportionment of collective farm lands was clearly correlated with voting behavior in that year's presidential elections. In areas where the certificates had been issued, incumbent President Kuchma was the clear winner; in areas where directors managed to withhold them, Communist Party candidate Petro Symonenko, who openly promised to stop privatization, won overwhelmingly.<sup>115</sup> Accordingly, the first presidential decree Kuchma signed after re-election in December 1999 legally disbanded collective agricultural enterprises entirely.<sup>116</sup>

### Disbanding Collective Farms

The decree to disband collective farms, a swipe at Kuchma's political rivals, may also have been motivated by a desire to solve the problem of collective farm tax debts. Tax legislation on collective farms itself shows the lack of clarity regarding legal ownership of collective farm land. A 1996 law setting land tax rates reads, "Tax means

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<sup>113</sup> Executive order tk.

<sup>114</sup> From interview with Volodymyr Pasychnik, son of plot-owners outside Kamenets-Podilskiy (June 15, 2002).

<sup>115</sup> Interview with Chomiak, *supra* note tk.

<sup>116</sup> Pro Nevidkladni Zakhodi shchodo Priskorennya Reformuvannya Agrarnoho Sektora Ekonomiki (Про Невідкладні Заходи щодо Прискорення Реформування Аграрного Сектора Економіки)[On the Uninvested Means concerning Accelerating Reform of the Agrarian Sector of the Economy] Decree of the President of Ukraine No. 1529/99 of December 3, 1999 *reprinted in* ЗАКОНОДАВСТВО УКРАЇНИ ПРО ЗЕМЛЮ (LEGISLATION OF UKRAINE ON LAND), 85 (Kiev: Urinkom Inter, 2002).

monetary payment by legal entities and private individuals for the use of land parcels.”<sup>117</sup> The reformers in Parliament could read it as a property tax on privately-held land; the old guard could read it as national rental rates for use of state-owned land. Lest it be confused with an income tax on the fruits of agricultural land, the law specifies, “The amount of land tax does not depend on the results of production activities of land owners and land users.”<sup>118</sup> Whether it reaffirmed private ownership or reasserted state ownership, the tax law had set an annual .1% tax on the value of a land parcel (with the value determined by the old Nazi-era land formulas).<sup>119</sup> The state still controlled prices of most grain, so market prices did not reflect rising tax costs to producers. In 1998, there were “massive defaults” on tax and tax penalty debts by collective farms.<sup>120</sup> For some collective farm directors, whose enterprises commonly consisted of 10,000 hectares or more, decollectivization seemed the only escape from the tax debt: The law did not designate successors to the tax debt of a de-collectivized farm.

While the command economy had long since fallen into desuetude with the demise of Gosplan, the Soviet state economic planning authority, the state still played a large role in subsidizing inputs to collective farm production.<sup>121</sup> The formal disbanding of collective farms in 1999 was followed by a government decision in 2000 to switch the funding in the state budget from directly supplying inputs to subsidizing interest rates for agricultural loans. Prime Minister Yushchenko’s government diverted 150 million hryven (\$30 million) in March 2000 to agricultural loan subsidies,<sup>122</sup> giving producers much more control over what to grow and how.

### Land Code and Private Ownership in Land

The next step in this uneven progress towards private agricultural production, a new Land Code allowing private ownership of land, was introduced for a vote in October 2001. Communist members of parliament vigorously objected. What, exactly, was new for them to object to? First, the Code provides a mechanism for realizing alienability of land. Previously, a land-certificate holder could claim a particular parcel, and could rent it out to another, but could not sell it. The Land Code allowed sale of agricultural land beginning in 2005 (although Parliament subsequently extended the temporary

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<sup>117</sup> Article 1, The Law of Ukraine amending the Law of Ukraine “On Payment for Land,” Sept. 19, 1996, No. 37896 and January 1, 1997, No. 379/96; with amendments introduced by the Law of Ukraine dated July 27, 1997, No. 404/97.

<sup>118</sup> *Id.*, Article 4.

<sup>119</sup> See text infra notes 98-103.

<sup>120</sup> Interview with Bohdan Chomiak, director of agricultural land programs, USAID Kiev (June 20, 2002).

<sup>121</sup> Pro Nevidkladni Zakhodi shchodo Priskorennya Reformuvannya Agrarnoho Sektora Ekonomiki (Про Невідкладні Заході щодо Прискорення Реформування Аграрного Сектора Економіки)[On the Uninvested Means concerning Accelerating Reform of the Agrarian Sector of the Economy] Decree of the President of Ukraine No. 1529/99 of December 3, 1999 *reprinted in* ЗАКОНОДАВСТВО УКРАЇНИ ПРО ЗЕМЛЮ (LEGISLATION OF UKRAINE ON LAND), 85 (Kiev: Urinkom Inter, 2002).

<sup>122</sup> *Id.*

moratorium on agricultural land sales annually). Perhaps more importantly, a new Land Code was the piece of implementing legislation necessary to realizing the constitutional guarantee of a right to legal private property ownership. Its passage was a political signal that opponents of privatization were defeated, at least for the time being. A landowner could take the new Code to the bank, or to court, to prove the general legal validity of his claim.

The new Code allows for alienability (after the initial moratorium during a transition period), but it does not set up an unrestricted fee-simple for land parcels. Rather, it preserves the Soviet system of classifying land into use categories and prohibits use outside the authorized category. Under the new Land Code, it is still illegal to use a parcel registered as agricultural land for any purpose besides agricultural production. The social-service burden may also fall on new landowners. It is unclear whether new owners of agricultural land will be responsible for providing the pensions, elementary schooling, and health care in villages that previously fell to the collective or state farms to provide. The uncertainty of whether land ownership entails those obligations seriously affects the market for agricultural land. The 2001 Land Code forbids foreigners from owning agricultural land (although companies with foreign shareholders that are incorporated in Ukraine are not).

The 2001 Land Code had to establish rules for first claimants. Who is entitled to claim land ownership? The fiction of an unclaimed wilderness, dubious even in United States history, is even more difficult to maintain when modern industrial farmers, with capital equipment and written records, inhabit a territory. How then to establish entitlement to ownership? In some other former Socialist countries – Poland, Hungary, Czech Republic, Slovak Republic, the Baltic states – privatization permitted restitution. Where a pre-Socialist landholder could be identified, the law favored his claim.<sup>123</sup> The Ukrainian Land Code instead honors those who had use, and to some extent usufruct, rights on a collective farm. The *propiska* lives on in practice: Soviet-era residence provides the basis to land claims under the 2001 Land Code.

The new Land Code increased the ordinary farmer's confidence that private land ownership is a legal reality, that re-selling land would become legal in 2005,<sup>124</sup> and that property rights in agricultural land stood a lower chance of being reversed than they had under the various Presidential decrees and executive orders. This again proved to be a popular measure with the Ukrainian voting public. In parliamentary elections six months after the new Land Code passed, party-list candidates of pro-reform parties won 70% of the Parliamentary (Rada) seats allocated to party lists; Communist Party seats fell to 20%, their lowest ever. Also unexpectedly, some of the reformers' gains came at the expense of the pro-Presidential group.<sup>125</sup> Another indicator of early confidence in the new Land Code rights was the rate at which eligible persons claimed their share. As of June 1, 2002, just over six months after the new Code passed into law, 41% of the farmers

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<sup>123</sup> Interview with Chomiak *supra* note tk.

<sup>124</sup> N.B. Parliament subsequently extended the moratorium on agricultural land sales by legislation annually after 2005.

<sup>125</sup> Interview with Jaresko *supra* note tk. The pro-Presidential group was made of those politically and economically affiliated with then-President Kuchma's home base of Dnipropetrovsk, known to Ukrainian political observers as the "Dnipro clan."

eligible had already asserted their claim to a land parcel.<sup>126</sup> Rural population estimates, as well as assessments of pro-privatization sentiment, subsequently fluctuated significantly. Lived experience proved more problematic than legal change.

#### *View on the Ground: Red Star Farm and Gruzneske Village*

As noted in the introduction, the period of post-Soviet land privatization, during which every person on a collective farm was allocated a parcel, coincided with the well-documented mass exodus of newly-endowed farmers from the countryside cited in the introduction to this paper. To repeat the staggering figures, at least 20% of the overall population, roughly 10 million people, nearly all rural out-migrants, have evacuated their homes and moved to a new location within Ukraine.<sup>127</sup> (An additional five million, or 10% of the population, left Ukraine altogether since independence.)<sup>128</sup>

The scene at the Red Star farm in May 2007 was impressive in its uniformity with most other villages across the countryside. The countryside was empty except for a couple of late middle-aged women diligently hoeing rows of beets in front of their cottages, exhausted. The weather. The isolation. But mostly, the work. It was back-breaking and they were too old for it. At some point in our conversation, a similarly aged man wandered up and pointed out that what you would find here, as in most villages: the newly-privatized land plots and homes; old Soviet combine harvesters, long since cannibalized for parts; middle-aged and elderly farmers — but no youth. Everyone who could leave, had left.<sup>129</sup> Pani Halya and Pani Irena introduced me to the newcomer as “*nash traktorist*,” “our tractor-driver,” although they had not had a working tractor for more than five years, nor a joint farming operation for more than eight years. The significance here is that the collective farm had disappeared but *kollektiv* identity remained.

By 2007, this scene was by far much more the norm than the first one. Recall that by that year, nearly 60% of new rural property owners had voted with their feet, moved to the cities, and left their newly acquired farms behind.<sup>130</sup> Getting people to move the other way was significantly more difficult than it had been even for Oleksandr’s mother, trying to arrange for his grandmother to switch places with some city folk as related at the beginning of this section.

Those left in the villages, however, attest to the egalitarian experience of political power. In Gruzenskoye village in northern Ukraine in September 2009, residents were busy in digging potatoes from their backyard gardens. Returning to the village from searching the forest for mushrooms, we met Tyotya Dyusya on the road from her potato

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<sup>126</sup> *A Good Deed Indeed for Owners of Farmland*, KYIV WEEKLY, June 14, 2002 at 21.

<sup>127</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION KYIV MISSION, LABOUR MIGRATION ASSESSMENT FOR THE WNIS REGION (October 2007).

<sup>128</sup> Roughly two million emigrated permanently. The other 3 million left as labor migrants, intending to return to Ukraine. *The State and Problems of Legal and Social Status of Contemporary Ukrainian Labor Migration*, Hearing of Parliament of Ukraine (17 November 2004), available at <http://portal.rada.gov.ua>,

<sup>129</sup> Interview with Halya Prikhoda, Irena Kirova, and Petro Kiyashko, farmers, former Red Star collective farm, in Kirovograd oblast’, Ukraine (May 31, 2007).

<sup>130</sup> IOM Report, *supra* note tk.

field. Walking together into the village, we stop to say hello to neighbors whose yard borders our path. We smile at them through the split-rail fence, and they smile curiously back at me, the newcomer, although when we're introduced they clearly know who I am. He's in dungarees and a sweater; she's in village uniform of sweater and headscarf, although unlike the older women who wear skirts even to the fields, she has on a tracksuit. They are 45 and brimming over with happiness: their first grandchild was born the day before, to their daughter who now lives in the city. They are industriously digging potatoes to bring the crop in before they start baby visits. This man was the village high school teacher and is now the town mayor, he admits with a shy smile when prompted by Tyotya Dusya.

When we continue on our way, my hostess, seventy-two year old Tyotya Dusya proudly confided to me she was the village king-maker, taking credit for picking the village teacher to stand for election. It had not been easy to convince him. "The new one, he's letting me down too, but no one else will do it."<sup>131</sup> In fact, in this village of now 400 residents, a disproportionate percentage over 45, with eighteen years of post-Soviet political power and ten years since decollectivization, constraints on concentration of power and structures favoring egalitarianism were so strong – there was so little wiggle room for private gain – that it was getting hard to scare up volunteers to run for local office every election.

Others in the village confirmed this post-Soviet experience with elected government. "So, you were the head of the village council?" I ask Serhiy. Serhiy, one of the few car owners in this hard-scrabble northern village, has been drafted into driving me to the train station five miles away because he regularly receives milk from my hosts' cows. "Yep, 2002-2006. First and last time," he smiles, his gold molar replacements gleaming, bemoaning the "thankless job": "all our resources go to Kyiv and no help comes back. Somehow you have to do something with this impossible situation, you want to and everyone expects you to."<sup>132</sup> This was a strange result of multiparty democracy and the dissolution of a unified village economic organization. Elections in their village were free, everyone agreed, but no one really wanted to hold office. In a village that had suffered serious trauma still within folkloric memory of local residents from collectivization and local abuses of power, residents were not complaining much at this turn of affairs.

### *Conclusions*

In this section, we review the legal and policy measures introduced to lift state restrictions on mobility and to divide up collective agricultural holdings over the first ten years of Ukrainian independence. We also saw how those changes affected local practice and experience. How do these results stack up against claims made in privatization models? While the ghost town was disastrously less successful in securing the efficiency gains expected from decollectivization, it was remarkably more democratic, with local

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<sup>131</sup> Interview with Tyotya Dusya, farmer and former head of dairy production for the collective farm, Gruzneske village, Sumi oblast', Ukraine (September 20, 2009).

<sup>132</sup> Interview with Serhiy Khlib, farmer and former town mayor, Gruzneskoye village, Sumi oblast', Ukraine (September 21, 2009).

property owners enjoying greater political power than in the past vis-à-vis collective farm leadership and local party leaders.

## V. Created Commons: Property, Practice, and Personhood

*I would go back in a minute.*

Serhiy was a young agricultural specialist whom I interviewed to get a better idea of the flight from property so pronounced among the young. He was an excellent source: his father had a seat on the local committee in charge of parcel allotments on their collective farm when it disbanded and so could secure choice holdings for them; he had gone to an agricultural college with a degree in farm management; and he expressed a personal preference for living on the farm. Yet here he was, parked in the city of Kherson, manager of the southern regional operations of a Jordanian agricultural inputs supplier. Why had people abandoned their farmlands so soon after receiving private property rights in them?

*No one organizes anything any more. Meaning? We used to have cinema, right there on our farm, every weekend the latest films; dances in the summer; soccer games between our boys and the neighboring farm. Now it's all fallen apart. The work; the play. Nothing is organized. You go there and you're on your own. And it's too much to organize everything yourself, without counterparts on other farms or help from the center. There's no one to send us films, much less seeds or tractors. Kids like me would be happy to go back to the village if someone were organizing things.<sup>133</sup>*

The collective for which Serhiy longs was a particular form of social organization, entailing a particular material base, ethical structures, and practices of sociability and selfhood. It offers a striking reminder that land tenure regimes, and the forms of social organization and self-hood they underwrite, are not “natural.” They take a lot of effort. The effort to end private property ownership and pool land into holdings for common use in the Soviet Union was achieved through the process of collectivization. To understand Serhiy’s nostalgia, this section seeks to explore with greater specificity, What was collectivization, and what were its results?

Collectivization was a group of actions and practices aimed at the creation of group ownership and operation of agricultural land in the Soviet Union. One set of actions, legal measures and policy decisions taken by the highest governmental authorities and political leaders, was primary: without these, other actions and practices that constituted collectivization would not have been set into motion. This second, derivative set of practices entailed two steps: taking farmland from private owners, either by eliciting voluntary contributions of land or by confiscation; and forming an administrative unit called the “collective farm,” to be used in common, as one operation, by local occupants. Given the modernist aspirations of the Soviet state and the bureaucratic nature of its operations, these steps took a particular form and resulted in a farming system with some generalizable features. In this section, I will briefly review the

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<sup>133</sup> Interview with Serhiy Haydyuk, Regional Manager, Agrimatko agricultural inputs supplier, (Kherson city, Kherson oblast', Ukraine, June 5, 2007).

policy decisions and legal measures that set the process of collectivization in motion and then review milestones in the process itself, in order to present a capsule view of the results of collectivization.

Collective ownership in agricultural land made sense to Soviet decision-makers for two primary reasons. The first was the Marxist argument that private property is the source of bourgeois exploitation. For Marxists, private property ownership is “like original sin,” in historian Timothy Snyder’s phrase,<sup>134</sup> in that it alienates us from each other and it allows people to employ, and therefore exploit, each other for personal gain. Abolition of private property and establishment of collective ownership was an end in itself for the Soviet government.<sup>135</sup> The fledgling Soviet power took the first steps towards abolishing private ownership in land as one of its first acts after the Revolution when it authorized confiscation of crown and church estates and redistribution to local peasants, but this act did not touch smaller peasant holdings.<sup>136</sup> Collectivization was an aspiration but not a matter of active policy for nearly a decade thereafter. A second argument, a pragmatic argument, drove the timing of mass collectivization. The Soviet government had a plan to build industry. Stalin called for it as part of the campaign for rapid industrialization in 1927.<sup>137</sup> The government needed capital to invest in building industry. To obtain capital, in the absence of foreign direct investment or foreign loans, the government concentrated on securing export revenue from one of the country’s primary existing exportable goods: grain. For these short-term goals, collectivization of rural land ownership seemed a way of consolidating grain production, previously fragmented among rural smallholders, into fewer, larger units. This, in turn would facilitate collection of grain from the countryside by state agents. To fund industrialization, collectivization was a means to an end.<sup>138</sup>

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<sup>134</sup> Timothy Snyder, professor of modern Central European history at Yale University, Address at Yale University, New Haven, Conn. (November 8, 2005).

<sup>135</sup> Decree of All-Russian Central Executive Committee “On Socialist Land Reform and on Measures Leading to Socialist Farming,” Sobr. Uzakon. i Rasporiazh. RKP RSFSR (Collection of the Laws and Orders of the Workers’ and Peasants’ Government of the Russian Soviet Federated Socialist Republic) 1919, No. 4, Item 43 (reaffirming intention to outlaw individual types of farming and setting collective land use as the destination for law and policy in the Soviet Union) *reprinted in IDEAS AND FORCES IN SOVIET LEGAL HISTORY* 118 (Zigurds L. Zile ed., 1992); VLADIMIR ILYICH LENIN, *Otvet na zapros krest’ianina [Reply to a Peasant’s Inquiry]*, in POLNOE SOBRANIE SOCHINENII [Complete Collection of Essays], 1953 (1919).

<sup>136</sup> Second All-Russian Congress of Soviets Decree “On Land,” Sobr. Uzakon. i Rasporiazh. RKP [Collection of the Laws and Orders of the Workers’ and Peasants’ Government] 1917-1918, No. 1, Item 3 *reprinted in IDEAS AND FORCES IN SOVIET LEGAL HISTORY* 116-117 (Zigurds L. Zile ed., 1992).

<sup>137</sup> Decree of USSR Central Executive Committee and the Council of People’s Commissars “On Collective Farms,” Sobr. Zakon. i Rasporiazh. RKP SSSR [Collection of Laws and Orders of the Worker-Peasant Government of the Union of Soviet Socialist Republics] 1927, No. 15, Item 161.

<sup>138</sup> Lynne Viola, *Introduction, in WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE* 1-20 (Lynne Viola et al. eds., 2005).

### *The Right to Exclude: Collectivization and Violence*

These priorities, in conjunction with a divergent set of factors and rationale,<sup>139</sup> prompted Stalin to lead renewed action to collectivize rural land ownership. He began by persuading government and Party colleagues to authorize a series of legal changes and policy decisions. One of the primary targets of their offensive were the “kulaks,” a rather arbitrarily designated segment of the rural population marked in some cases by relative prosperity among village smallholders but over time designating any rural resident who opposed collectivization.<sup>140</sup> Spot measures, like government grain purchases, came to be seen as inadequate; Stalin became convinced that structural measures were imperative. There was “no way out” of the grain procurement crisis and its impact on industrialization but through a transition to collectivized agriculture, he told the delegates

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<sup>139</sup> Reviewing newly opened Soviet archives, historians largely agree on three: a crisis in procurement of grain to feed the cities resulting from peasants’ refusal to sell grain to state procurement agents; a war scare with Poland; and Stalin’s push to defeat his last remaining rivals, the so-called rightist-deviation. On the grain crisis, *see, e.g.*, U.S.S.R. People’s Commissar of Trade A.I. Mikoian, *On the Progress of Grain Procurements*, Speech to Collegium of Trade Commissariat (October 3, 1927) (transcript available in Russian State Archive of the Economy, f. 5240, op. 9, d. 102, ll. 45-49), *reprinted in part in* WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 27-29 (Lynne Viola et al. eds., 2005). *See also* R.W. DAVIES, THE SOCIALIST OFFENSIVE: THE COLLECTIVIZATION OF SOVIET AGRICULTURE 1929-1930 39-40 (1980). For a summary of the historical evidence of both the Polish threat and the Soviet government’s reaction to it, *see* WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 9, 16-18 (Lynne Viola et al. eds., 2005). On Stalin’s opportunism in using collectivization as a means to defeat political rivals, *see* V.P. Danilov, *Vvedenie*, in TRAGEDIA V SOVETSKOI DEREVNI: KOLLEKTIVIZATSIA I RAZKALUCHIVANIE. DOKUMENTY I MATERIALY, 1927-1939, 5 VOLs., VOL. I. 25 (V.P. Danilov et al. eds., 1999-2003).

<sup>140</sup> Stalin advocated only “economic measures” to limit the “the known growth of the kulak” as late as December 1927. [XV S’ezd vsesoyuznoi kommunisticheskoi parti (b). Stenographiccheskiy ochet. [Fifteenth Congress of the All-Union Communist Party (Bolshevik). Stenographic Record.] (1928), at 60, *cited in* WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 386 note 22 (Lynne Viola et al. eds., 2005).] However, shortly thereafter he would authorize the OGPU to direct the arrest of all those engaged in grain speculation. [OGPU Directive to arrest private grain procurement agents and merchants, January 4, 1928 (Central Archive of the State Security Service of the Russian Federation f. 2, op. 6, d. 982, l. 99. Telegram.) *reprinted in* WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 45 (Lynne Viola et al. eds., 2005).] The next day, by Central Committee directive, Stalin imposed additional strict measures on local Party officials to spur grain collection, short-term measures to put the squeeze on peasants.

at the Fifteenth Party Congress in December 1927.<sup>141</sup> With those words, he inaugurated an official policy of collectivization. Whereas previously, rural communities were allowed to form cooperatives and collective farms voluntarily, now, they would be so directed. Kulaks were singled out for economic isolation.<sup>142</sup>

The pace of collectivization took off like a lazy horse stung by a bee, first bumbling at a meandering amble but, once stung, bursting into a wild-eyed, uncontrolled gallop. Only a meager 1.7% of peasant households had joined collective farms by June 1928.<sup>143</sup> Party leaders decided to push local organizers harder, hoping momentum would snowball. For the first time, a five-year plan for agricultural development was formulated and adopted at the 16<sup>th</sup> Party Congress in April 1929.<sup>144</sup> Shortly thereafter, government bodies revised these targets drastically upwards to 85% of peasant households to be collectivized by the end of the first five-year plan in 1934.<sup>145</sup> This meant that heretofore voluntary contributions of land and membership in collectives would be insufficient. An increasing number of peasants resisted collectivization, were labeled “kulaks,” and targeted for particularly violent measures. The secret police authorized local authorities to arrest kulaks and others suspected of speculating in grain.<sup>146</sup> Arrests and property seizures, as well as so-called self-dekulakization (property sales, family division, and flight) brought *de facto* dekulakization to large swaths of the

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<sup>141</sup> XV S'ezd vsesoyuznoi kommunisticheskoi partii (b). *Stenographiccheskiy ochet.* [Fifteenth Congress of the All-Union Communist Party (Bolshevik). Stenographic Record.] (1928), at 56, cited in WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 386 note 24 (Lynne Viola et al. eds., 2005).

<sup>142</sup> Decree of USSR Central Executive Committee and the Council of People's Commissars “On Collective Farms,” Sobr. Zakon. i Rasporiazh. RKP SSSR [Collection of Laws and Orders of the Worker-Peasant Government of the Union of Soviet Socialist Republics] 1927, No. 15, Item 161, *supra* note tk (decreed “struggle against attempts of kulak elements to disguise their exploitative farms as pseudo-collective” by (a) restricting privileged terms for the purchase of machinery to machine associations of “poor and middle-sized elements;” (b) not permitting “pseudo-cooperatives made up of closely related persons;” (c) increasing the required minimum of founders for associations established to acquire tractors and other complex machinery to ten; (d) excluding persons who do not enjoy electoral rights from being members of managing bodies or founders).

<sup>143</sup> Viola, *Introduction*, *supra* note tk, at 122.

<sup>144</sup> Viola, *Introduction*, *supra* note tk, at 122.

<sup>145</sup> In June 1929 the USSR Central Executive Committee and Council of People's Commissars (Sovnarkom) instructed the central planning agency, Gosplan, to prepare new plans by October setting a target the 85% target. R.W. DAVIES, THE SOCIALIST OFFENSIVE: THE COLLECTIVIZATION OF SOVIET AGRICULTURE 1929-1930 112, 147 (1980); KAK LOMALI NEP. STENOGRAMMI PLENUMOV TsK VKP(B), 1928-1929 [HOW NEP WAS BROKEN: STENOGRAPHIC RECORD OF PLENUMS OF THE CENTRAL COMMITTEE OF THE ALL-SOVIET COMMUNIST PARTY], 5 VOLs., VOL. 5, 8 (V.P. DANILOV ET AL. EDS., 2000)

<sup>146</sup> By early November 1929, the OGPU reported arrests of 28,344 in the countryside. tk

countryside even before the government declared an official dekulakization campaign (*razkulachivanie*).<sup>147</sup>

By the end of 1929, voluntarism was sidelined when the Party called for “wholesale” (*sploshnaia*) collectivization (meaning no less than 75% of a village).<sup>148</sup> As a tandem measure, the Politburo issued a secret decree ordering 2500 party members from urban centers to go out to villages by February 20, 1930 and effect *dekulakizatlon*. The same decree chillingly spelled out what was meant by “dekulakization”: the “liquidation” of kulaks as a class. Local agents were to confiscate kulak farms; incarcerate active kulaks into concentration camps and summarily execute the more recalcitrant; send others to exile in remote areas of the U.S.S.R.; and resettle others on small plots within their home regions (but exclude them from the new collective farms). The decree authorized hiring 800 new secret police agents and endowed the secret police on the local level with extrajudicial punitive powers. It set quotas for concentration camp incarceration and exile, per province. The quota for Ukraine was two to six times higher than for all other oblasts, targeting 15,000 for concentration camps and 30-35,000 for exile. The mechanisms for liquidating kulaks should cure us of any Romanticism regarding local management of a commons, or presumptions about the warmth of face-to-face relations. The lists of specifically whom to send to concentration camps or to exile were to be drawn up on the local level by the newly collectivized farmers and poor peasants. The assets and cash of those incarcerated would be confiscated (with personality assumedly to be split among the local informants/survivors).<sup>149</sup>

The storm of collectivization struck between January and March 1930. As of January 1, 1930, only 16% of farmland in Ukraine had been collectivized. By March 11,

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<sup>147</sup> LYNNE VIOLA, PEASANT REBELS UNDER STALIN: COLLECTIVIZATION AND THE CULTURE OF PEASANT RESISTANCE, 79-81 (1996).

<sup>148</sup> Decree of the Central Committee of the Communist Party “On the Pace of Collectivization and State Assistance to Collective-Farm Construction,” January 5, 1930, KPSS V RESOLUTSIAKH I RESHENIAKH S’EZDOV, KONFERENTSIAKH, I PLENUMOV TSK, VOL. 5, 72-75 *reprinted in WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE* 201 (Lynne Viola et al. eds., 2005).

<sup>149</sup> Politburo Decree “On Measures for the Liquidation of Kulak Farms in Raions of Wholesale Collectivization,” January 30, 1930 (Russian Government Archive of Social and Political History f. 17, op. 162, d. 8, ll. 64-69) *reprinted in WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE* 228-234 (Lynne Viola et al. eds., 2005). When possible, kulaks of the younger generation were to be saved by setting them against older exiled family members by “the use of such methods as the gathering of newspaper subscriptions and literature, establishing libraries, setting up common canteens, and other cultural and general service measures. It is possible in certain cases to recruit specific groups of young people to perform jobs as a volunteer activity for local soviets, to support poor peasants, etc. . . .” Politburo Decree “On Measures for the Liquidation of Kulak Farms in Raions of Wholesale Collectivization,” January 30, 1930 (Russian Government Archive of Social and Political History f. 17, op. 162, d. 8, ll. 64-69) *reprinted in WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE* 228-234, 231 (Lynne Viola et al. eds., 2005).

1930, 64% had been.<sup>150</sup> By the end of 1930, some 377,000 families had been subject to some form of dekulakization.<sup>151</sup> Ukrainian peasants resisted; unlike their counterparts in Russia, Ukrainian peasants were well aware that for most of recorded Ukrainian history, Ukrainian peasantry were not enserfed and could own land, or at least aspire to it, aspirations realized in 1907-1909 reforms that allotted land to working farmers.<sup>152</sup> In Ukraine, the Soviet secret police (the OGPU) reported more than one million acts of peasant resistance to collectivization in the first quarter of 1930.<sup>153</sup> The Soviet leadership realized it had pushed too hard and brought on a moment of great vulnerability. Stalin placed an article in *Pravda* calling a halt to collectivization.

Claiming it had succeeded so well that everyone needed a breather, he reported that the Party was “Dizzy with Success” and criticized local officials for “excesses.”<sup>154</sup> The peasants had been kept in the dark about the Soviet leadership’s role in directing collectivization and blamed those that implemented the orders from on high. Ironically, Stalin became the hero of the day among the peasantry, who saw him as a protector from tyrannical local officials. The article was passed from hand to hand; peasants rode miles, and paid up to 15 rubles, to obtain a copy.<sup>155</sup> Meanwhile, for those left behind, an ominous indicator of worse times to come went largely unnoticed: socialized farms, expected to provide only 12.7% of national grain needs under the 1929 plan, fell short even of that.<sup>156</sup>

As the government was easing off dekulakization, the intense edge of collectivization, the weather played a cruel trick. The weather in 1930 had been unusually favorable to crop production, and yields were the best that Soviet Ukraine had ever enjoyed. That set up unrealistic expectations for the gains from collectivization that Soviet and Party leaders were predisposed to believe would result. In 1931, the weather was closer to normal and some of the excesses of collectivization on the local level were more noticeable. Crop yields fell dramatically, but Soviet authorities blamed neither weather nor collectivization, because they did not believe yields had actually fallen. They continued to order aggressive confiscation of grain even though peasants did not then have a surplus, blaming implementation of both collectivization and grain collection policies on inept local Party officials. Stalin sent his own team (Kaganovich, Postishev,

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<sup>150</sup> Snyder, *supra* note tk.

<sup>151</sup> TRAGEDIA V SOVETSKOI DEREVNI: KOLLEKTIVIZATSIA I RAZKALUCHIVANIE. DOKUMENTY I MATERIALY, 1927-1939, 5 VOLS., VOL. 2, 746 (V.P. Danilov et al. eds., 1999-2003).

<sup>152</sup> These were the Stolypin reforms of 1907-09.

<sup>153</sup> Moreover, the feared “Polish front,” long-rumored aggressive designs from the U.S.S.R.’s western neighbor, blended with the Ukrainian “peasant front”: during this period. Snyder, *supra* note tk.

<sup>154</sup> I.V. Stalin, *Dizzy with Success: Concerning Questions of the Collective Farm Movement*, PRAVDA, March 2, 1930, at 2.

<sup>155</sup> LYNNE VIOLA, BEST SONS OF THE FATHERLAND: WORKERS IN THE VANGUARD OF SOVIET COLLECTIVIZATION 123, 125 (1986).

<sup>156</sup> R.W. DAVIES, THE SOCIALIST OFFENSIVE: THE COLLECTIVIZATION OF SOVIET AGRICULTURE 1929-1930 104-105 (1980).

and Balytsky) in 1933 to clean up the Ukrainian Communist Party. There was, however, no examination of any connection between collectivization and crop yields.

In 1932, by spring, some peasants were already too hungry to work in the fields. By summer, peasants were committing suicide to avoid starvation and there were scattered reports of cannibalism by the OGPU (secret police) back to Moscow. Stalin's men make the Ukrainian Communist Party renew grain confiscation targets for 1933. In 1933, 120,000 people were removed from the Ukrainian Communist Party. While thousands of kulaks had been killed during collectivization and tens of thousands more exiled to Central Asia, the worst losses came from actual famine. The weather was not perfect, but farming conditions were merely suboptimal, not disastrous. Death came from state confiscation of the harvest, from the dislocation of hundreds of thousands during the growing season, and from the loss of managerial and normative order from dekulakization. Of a Soviet Ukrainian population of 33 million, 3.5 million starved to death between 1932 and 1933.

### *Building Collective Life*

This was the tragic end of the phase of setting up collective farms as administrative units, the establishment of a system of deliberate commons in agriculture within a modern state. That was not the end of the process of collectivization, however. Unlike a large percentage of the first wave of their farmers, collective farms survived as an organizational feature of rural life. They were to operate as unit, not merely as an agglomeration of lands held in group ownership. And so, after its violent inception, another extraordinary movement is associated with Soviet collectivization: building a modern collective life. Some of this looks familiar to Western eyes, like the establishment of a public apparatus for agricultural research and dissemination of its information to the countryside. This was the equivalent to a vast "extension service," working on seed and soil improvement, irrigation questions, and other topics that would be right at home in an American extension service. However, some of the perceived challenges, methods for meeting them, and specific projects of Soviet agricultural science administration would have been beyond the imagination of their rural American contemporaries. Many involved the cultivation of individual practices, that, multiplied on a mass scale, helped to found the new way of life of the collective. A prime example is, simply, literacy.

For a new government intent on building an modern industrial economy supported by and incorporating breakthroughs in applied science, the Soviet power inherited a disastrously illiterate population. While segments of the urban population varied widely in their literacy, the rural population had gained little in literacy, with rates growing only from an estimated 6% in the 1860s to roughly 25% in the 1910s.<sup>157</sup> To combat rural illiteracy, in the 1920s the Soviet government supported a new institution, the "rural reading room" (*izba-chital'nia*), where illiterates would be taught to read and political and scientific information would be disseminated. Until the "army" of twelve million illiterates (as of 1925/26) was taught to read, one pamphlet urged, it could not help develop the agricultural economy because the troops could not read the latest

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<sup>157</sup> BROOKS, *supra* note tk, at 4, citing A.G. RASHIN, NASELENIE ROSSII ZA 100 LET 295 (1956).

scientific literature on farming methods.<sup>158</sup> The rural reading room was also meant to provide a venue for lectures by local authorities, on medical, agricultural, or technical matters;<sup>159</sup> it was, in the words of one villager, a “*muzhitskii universitet*” [peasant university].<sup>160</sup> These early efforts enlisted the help of local teachers and other interested literates. During *dekulakization*, recall, local secret police agents were instructed to turn younger kulaks against their elders, *inter alia*, by providing reading materials and setting up local libraries.<sup>161</sup> In a less sinister vein, measures to promote literacy in order to facilitate the dissemination of applied science intensified after collectivization.

Reading was just one technology through which life and labor became modernized and standardized on collective farms. Literacy created readerships, through which common bodies of scientific knowledge circulated.<sup>162</sup> Both through reading and lectures, agricultural techniques within farming communities were standardized. Other institutions were introduced to standardize labor practices. For example, “comrades’ courts” were introduced to collective farms, to provide a forum where fellow farmworkers could admonish truants and job shirkers.<sup>163</sup>

In addition to being a site of standardization of labor practices, the collective farm became the site of careful division of labor,<sup>164</sup> particularly after the first wave of collectivization had settled down and the Party began to concentrate on increasing productivity through personal discipline, heroic effort, and feats of individual will. The Stakhanovite movement, inspired by a heroic coal mine worker in the Donbas region of

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<sup>158</sup> I. KUZ'MIN, KAK ORGANIZIROVAT' I POSTAVIT' RABOTU IZBY-CHITAL'NI [HOW TO ORGANIZE AND SET TO WORK A RURAL READING ROOM] 54-55 (1926), *cited in* CHARLES E. CLARK, UPROOTING OTHERNESS: THE LITERACY CAMPAIGN IN NEP-ERA RUSSIA 118 (2000).

<sup>159</sup> 3 RABOTNIK PROSVESHCHENIIA [WORKER OF ENLIGHTENMENT] 22-23 (1926), *cited in* CHARLES E. CLARK, UPROOTING OTHERNESS: THE LITERACY CAMPAIGN IN NEP-ERA RUSSIA 121 (2000).

<sup>160</sup> KREST'IANSKAIA GAZETA [PEASANT NEWSPAPER], June 29, 1924, at 5, *cited in* CHARLES E. CLARK, UPROOTING OTHERNESS: THE LITERACY CAMPAIGN IN NEP-ERA RUSSIA 121 (2000).

<sup>161</sup> Politburo Decree “On Measures for the Liquidation of Kulak Farms in Raions of Wholesale Collectivization,” January 30, 1930 (Russian Government Archive of Social and Political History f. 17, op. 162, d. 8, ll. 64-69) *reprinted in* WAR AGAINST THE PEASANTRY, 1927-1930, VOLUME 1 : THE TRAGEDY OF THE SOVIET COUNTRYSIDE 228-234, 231 (Lynne Viola et al. eds., 2005).

<sup>162</sup> For an analysis of some effects of creating a reading public, *see* BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (2006).

<sup>163</sup> *See, e.g.*, 9-10 ZA TEMPY, KACHESTVO, PROVERKU [FOR TEMPO, QUALITY, AND QUALITY CONTROL] 35 (1933), *photo reportage reprinted in* OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 281 (1999).

<sup>164</sup> For description of collective farms and patterned on the labor practices of heavy industry, *see* R.W. DAVIES, THE INDUSTRIALIZATION OF SOVIET RUSSIA, VOL. 2, THE SOVIET COLLECTIVE FARM, 1929-1930 (1980) SHEILA FITZPATRICK, STALIN'S PEASANTS (1994).

Ukraine, has been characterized as a movement of extreme individualism (of course, notably different from Western individualism).<sup>165</sup> Among their other strivings, rural Stakhanovites sought to bring both rigorous measures of self-discipline and cutting-edge applied science and specialized knowledge to their fellow collective farm workers. As “advanced” peasants, rural Stakhanovites had a duty to excell and to educate: “Stakhanovites had a duty to share information on better performance in order to boost food production.”<sup>166</sup> The Stakhanovite movement began in heavy industry where, adapting methods of Taylorism, factory workers tried to achieve maximum efficiency and productivity by analyzing their physical movements in very small increments in order to streamline motion and action, and to maximize coordination between man and machine. They concentrated on how to effect an efficient division of labor, how best to position one’s machines, how most quickly to move around them, how to coordinate work across different machines, and how to keep machines in good running order.<sup>167</sup> These lessons were propagated through mass media targeted at industrial workers.<sup>168</sup> The level of uniformity was not possible in agricultural labor, which demanded a wider variety of tasks and physical motion; but the thrust was the same. Rural Stakhanovites did not neglect diesel mechanics and upkeep, but in addition, they instructed collective farmers in how more efficiently to sow and gather harvest; how to cultivate a caring relationship with cows, pigs, and sheep; how best to massage the udder for productive results; how to manure the land; and how to tackle weeds and pests.<sup>169</sup> Teaching a peasant how to milk a cow?! Some of this reflects the thoroughness with which rural workers tried to apply scientific and efficient methods to collective farming. Some of it may also reflect the real crisis in rural knowledge that resulted from the deaths of so many millions during the violence and famine of collectivization.

Two enduring legacies of the rural Stakhanovites, then, were a new rural veneration of scientific learning and interest in learning cutting-edge “best practices”; and a scientific division of labor on collective farms, aimed at maximizing individual efficiencies through specialization, routinization, and spatial proximity to worksites. The collective farm became organized much more like an urban factory than a site of Jeffersonian yeoman-individualists. This distinction became even more pronounced with the general intensification of collectivization throughout the Soviet economy in the late 1950s. In agriculture, intensification was manifest in two policies: the curtailment of private plots (and cattle ownership) in 1958-59 and the creation of a new administrative

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<sup>165</sup> See, e.g., LEWIS H. SIEGELBAUM, STAKHANOVISM AND THE POLITICS OF PRODUCTIVITY IN THE U.S.S.R, 1935-1941 (1988).

<sup>166</sup> MARY BUCKLEY, MOBILIZING SOVIET PEASANTS: HEROINES AND HEROES OF STALIN’S FIELDS 115 (2006).

<sup>167</sup> MARY BUCKLEY, MOBILIZING SOVIET PEASANTS: HEROINES AND HEROES OF STALIN’S FIELDS 119 (2006).

<sup>168</sup> For example, the magazine STAKHANOVITE carried new lessons for different machines in every edition. STAKHANOVITE *cited in* MARY BUCKLEY, MOBILIZING SOVIET PEASANTS: HEROINES AND HEROES OF STALIN’S FIELDS 133 note 21 (2006).

<sup>169</sup> MARY BUCKLEY, MOBILIZING SOVIET PEASANTS: HEROINES AND HEROES OF STALIN’S FIELDS 119 (2006).

organ, the “link,” as the main organizing unit of the collective work effort.<sup>170</sup> The “link” united the existing primary labor units into a single group of agricultural brigades. Its mission was to coordinate all stages of the production process. Where each brigade had previously been paid upon completion of intermediate tasks according to a contract for each task, the “link” would be paid by final sale of the product (with revenue then divided up between brigades). Interbrigade “peer pressure,” horizontal surveillance, would eliminate the need for external discipline, since each brigade’s take would be dependent on the price that the whole “link” got for its final product.<sup>171</sup> Measures like these increased and intensified cross-cutting associations within a collective farm. These associations were enforced with a well-articulated legal code<sup>172</sup> and agricultural labor was controlled by a particularly effective registration and documentation regimen without which a worker could not obtain permission to rent housing, use public utilities, send children to school, or receive employment, wages, or ration coupons.<sup>173</sup> The 1977 Soviet Constitution declared as a matter of law, “A programme is being consistently implemented in the USSR to convert agricultural work into a variety of industrial work, to extend the network of educational, cultural, and medical institutions, and of trade, public catering, service and public utility facilities in rural localities ...”<sup>174</sup>

### *Conclusions*

The foregoing account advances three main points that illuminate our consideration of the commons. First, creating a commons meant a profound transformation in the place that was the object of collectivization. Villagers still, for the most part, lived in the same separate huts they had previously occupied and were allowed the same small kitchen gardens for personal consumption; but the fields were radically transformed by agglomeration. Economies of scale, the introduction of industrial agriculture, mechanization, and vast application of fertilizers and pesticides became the rule. Second, creating a commons meant a profound transformation of the individuals who were given occupancy and use rights over it. Commenting on the work of Soviet Ukrainian educator A.S. Makarenko, famous for rehabilitating hard-bitten war-abandoned street children (many of them felons) through collective enterprise, Oleg Kkarkhordin makes an observation of more general significance:

Makarenko’s techniques that aimed at objectivifying an individual by means of group pressure corresponded to the general matrix of Soviet power. He stressed the crucial point: if one forms a *kollektiv*, one also

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<sup>170</sup> KARL EUGEN WADEKIN, THE PRIVATE SECTOR IN SOVIET AGRICULTURE (2d ed. 1973), cited in OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 281 (1999).

<sup>171</sup> Description of the “link” in OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 281-282 (1999). On Khrushchev’s enthusiasm with “links” and further literature on them, see GEORGE BRESLAUER, KHRUSHCHEV AND BREZHNEV AS LEADERS 94 (1982).

<sup>172</sup> Described *supra* at text to notes tk to tk.

<sup>173</sup> Described *supra* at text to notes tk to tk.

<sup>174</sup> KONST. S.S.S.R. (Constitution of the U.S.S.R.) Art. 22 (1977)

forms a specific individual; engendering *kollektiv* [collective both in material organization of life and in consciousness] and *lichnost'* [personality] are two sides of the same coin.<sup>175</sup>

Kharkhordin goes on to note that Makarenko was a man of his times, and Soviet society “moved along the lines of the formation of the Soviet individual, parallel to what Makarenko proposed but largely independent of his influence.”<sup>176</sup>

A third point bears on our general discussion. A commons is created, not just found, and the practices by which a commons is created matter. In the case of Soviet Ukraine, the process of creating the commons – dekulakization -- eliminated the segment of the rural population with the most experience managing pools of land, animals, and labor. Creating collective farms after dekulakization entailed, to some extent, creating a workforce to farm them. Long after lands were pooled, “collectivization” meant forging a modern industrial enterprise of farmers marked by specialization, division of labor, and the inculcation of mutual responsibility for the finished product.

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<sup>175</sup> OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 211 (1999).

<sup>176</sup> OLEG KHARKHORDIN, THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA 211 (1999).

## V. Conclusions

### *Prosperity and Democracy in Boomtown and Ghost Town*

Agricultural reform in Ukraine, pursued almost exclusively through a revolution in land tenure regime, presents us with a strong set of results. Western scholars who advocated parcelling and privatization made two specific sets of claims about the ills of collectively holding property and the benefits of privatization. First, economically, they believed that privately-owned land would be more efficiently managed, and therefore more productive and profitable. Second, politically, they believed that private land owners would be empowered to defend their interests and rights and that parcelization would cause a fragmentation of the economic base upon which totalitarianism had stood. In short, they predicted both greater economic prosperity and a more empowered democracy for the new owners.

Instead, what we see is a clear bifurcation. In the boomtown, we see remarkable productivity accompanied by significant disempowerment of the new landowners in relation to “super-renter” oligarchs who provide capital for modern agriculture. In the ghost town, we see fairly robust democracy, at least among the few souls still in the village. But agriculture has been taken back to pre-modern levels of mechanization, seed varietals, and labor specialization, with drastically reduced levels of productivity in crops that benefit from economies of scale. The only crops that have increased per capita productivity in the ghost town are labor-intensive market vegetables. Villagers have abandoned ship.

The explanation for flight comes from the mouths of our villagers themselves, both those still farming and those who have abandoned their properties. Those who left (or wished they could) fled premodern conditions of production. They were well-trained, modern workers used to factory farming on a well-organized collective ruled by division of labor, specialization, steady wages and hours, and certain forms of companionship and sociability. As individual private property owners, they found themselves in conditions of premodern autarky. Of the hundreds of subjects that I interviewed, I found few who left a village out of a preference for city over country. The others preferred rural life, but within a modern organization of mechanized farming and community action. The city offered the closest approximation to a modern life they could imagine within their known set of alternatives. They exercised their right to exit specifically to flee private property, burdened by nostalgia for the old *kollektiv*. Those in the exceptional case, the exceptionally fortunate farmers of the boomtown, found in their oligarchic patron someone willing and able to reconstitute a form of modern, collective production. They were not insensitive to some of its power imbalances; what they enjoyed was precisely the benefits they associated with a resurrection of the *kollektiv*: training, new equipment, belonging, wage labor, reduced exposure to weather and other farming risks. In both cases, the former collective farmers were raised to think of themselves as workers in a modern enterprise. It was modernity and its forms of collective production that evoked pride in the boomtown and inspired flight from the ghost town.

### *Illiberal Commons, Illiberal Subjects?*

Much of the literature on property and collective action categorizes property type by size of user group. In this work, number of group members is accepted as a proxy for

ease or difficulty of coordinating action within the group. Our evidence suggests that a collective has other features in addition to size that bear significantly on collective action. One set of features are intrinsic to the collective itself: right of exit, or not; a shared ethos, a collective ethic, or anonymous users with disparate or competing aims; an organizational structure that depends on specialization and interdependence, or one that fosters individualism and self-sufficiency. Another set of features is extrinsic to the collective. What kind of state is it located within, and what kind of citizens surround it? Our sanguine acceptance of the state property owner as functionally equivalent to an n.g.o. of similar size, or as synonymous with any “collective,” ignores special features and capacities of the state. Weber’s famous definitional criterion that the state has a monopoly on the legitimate use of force is poignantly relevant here,<sup>177</sup> as is the state’s capacity to criminalize particular types of land use or infractions. Negative capacities of the state, to create incentives against certain kinds of conduct, are undeniable. The state may also develop spectacular positive capacities, to create or build. The Soviet state’s ability to mobilize millions of peasants into collectives in the span of several months stunned international observers.<sup>178</sup> Another feature extrinsic to the collective is the set of individuals, the outsiders, that surrounds it. Does the right to exclude gain its importance in Western scholarship because we assume there are outsiders who wish to enter? In the Soviet *propiska* system, each citizen had his or her place every farmer was attached to a collective farming enterprise. While one might correctly construe a “right to exclude,” based on Soviet collective-farm law, we must then wonder, Who would be excluded? Who do we imagine was knocking at the door? Our imagination of an inside defined by right to exclude or exit depends on an unspoken assumption of an outside and outsiders. Similarly, the threat we perceive of over-use of a resource may assume an eagerness and structural capacity for consumption, acquisition, or profit.

By logical symmetry, if we accept the notion of a “liberal commons” defined by a right to exit, we may also accept the notion of an “illiberal commons,” a resource whose users do not enjoy a robust right to exit from the group. Can we stretch our imaginations to admit the existence of illiberal commoners, illiberal subjects? Former collective farms found the means and motivation for large-scale theft unimaginable. No theft; no fences; no outsider seeking entry. Do we have the conceptual tools to analyze the collective action of people or entities formed by distinctly illiberal practices and ethics? An illiberal subjectivity would deeply inflect our understanding of groups, collective action, and commons. The idea of an illiberal commons might hold significant conceptual utility. Some forms of social organization, like the state, might constitute an illiberal commons: a citizen may enjoy a right to exit a particular state but cannot escape the state system as a form of social organization covering all habitable terrestrial territory. Also, some types of resource may constitute a *de facto* illiberal commons: while an individual or firm may choose not to participate in a scheme for regulating access to or use of the atmosphere, no one can *de facto* escape the atmospheric commons. A right to exit gains meaning when there is an “outside” to which insiders may exit. The “illiberal commons” gives us a starting point for thinking about the inescapable. Previous scholars argue the virtues of a

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<sup>177</sup> Weber tk

<sup>178</sup> This capacity may have actually so impressed rivals with the ability to create collective action that it warded off a planned military attack. Polish front tk

right to exit by explaining its effects on the quality of relations within a commons. This case study may give us a starting point for considering a variety of effects of an illiberal commons.

### *Lessons Learned*

Imagine one wanted to set up new game to promote collective action between players that already have a history in regard to a given resource; take, for example, setting up a cap-and-trade regime to regulate carbon emissions (that is, to regulate access to the atmospheric “dumping ground” for greenhouse gases). For such a situation, this study offers several points worth considering.

First is that any commons (or common-pool resource) is a **created commons**. As attached as we are to our Anglo-American paradigm of a pasture, forest, or wilderness, in contemporary land use regimes, there is no primeval wilderness, no pristine forest. Our carbon-enriched atmosphere, our tragically overfished oceans: at this point in human history, every commons is a created commons. Understanding the history of the creation gives special insight into the social features of the resulting commons, features that may determine the success or failure of our efforts.

A second potentially useful point, following the first, is that a person engaging in use or management of a common-pool resource is, likewise, a **created commoner**. Outsiders speculating on the fate of the land tenure revolution in Ukraine often assumed that the former collective farmers, or anyone, for that matter, would prefer to own property. Instead of eagerness, however, we saw a well-documented affect of reluctance to individual property ownership and nostalgia for the roles and specialization associated with the *kollektiv*. This is just one example of assumptions about given points in “human nature” that can trip us up. Players do not come to any game *tabula rasa* in regard to expectations, preferences, and self-understanding.

The “liberal commons,” with a robust right to exit, has its virtues; is the “illiberal commons” anything more than a historical anomaly? I propose that “the illiberal commons,” a group or collective in respect to managing a given property or resource from which exit is impossible, is a conceptual category worth considering. Is the state itself – not any particular state, but the state as a genre of human organization -- an illiberal commons? For the Ukrainian farmers, a modern self-image was an imaginary from which there was no exit, regardless of whether that modern *kollektiv* still existed. Certainly, the hypothetical I suggest, the carbon-enriched atmosphere, fits the definition of an illiberal common pool.

These points are important to bear in mind when trying to set up a new game (or a game with new rules) between players who have a history. An understanding of history should be incorporated both into game design and into expectations of outcomes. Practices of engagement will re-form the players in the course of the game; persons and collectives are re-created with new sets of practices in a new form of property. A commons can be tragically wasted or cooperatively well-managed; players may meet a bare threshold for minimal coordination or they may, through engagement in management or use of the resource, form a body greater than the sum of its parts. Collective action problems can be met. Particularly in regard to managing an illiberal commons, we should not rule out the collective itself as part of the solution. It certainly should figure, analytically, in our formulations of the problem.