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on Ownership in the USSR

AUTHOR: Kevin P. Block

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DEPOLITICIZING OWNERSHIP

AN EXAMINATION OF THE PROPERTY REFORM DEBATE AND THE NEW LAW ON OWNERSHIP IN THE USSR

KEVIN P. BLOCK*

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* EDITORS' NOTE: Kevin Block is currently an M.A. candidate in International Affairs at the Harriman Institute, Columbia University. He also holds a J.D. degree from New York University Law School.

I. INTRODUCTION

Efforts to reform the structure of ownership in the Soviet Union have spawned heated ideological debate. Conservatives accuse reformers of betraying socialism by divesting the state of the means of production. Reformers retort that state ownership has failed economically, and that new forms of property must be devised if socialism is to remain a viable political choice.

The political nature of the debate reflects the Soviet dilemma, namely, that the concept of ownership has been politicized beyond recognition. For years, Soviet ideologues emphasized the political consequences of ownership while ignoring its economic function. Property reform represents an effort to overcome that legacy, to reemphasize economics by depoliticizing ownership.

This paper first examines the politicization of ownership as reflected in Soviet law. It then turns to the recent reform debate, surveying major arguments for and against depoliticization. Next, the paper analyzes the new Law on Ownership in the USSR, and briefly assesses winners and losers. It concludes with an overview of the December 1990 property law enacted by the reform-minded RSFSR Supreme Soviet.

II. THE STALINIST LEGACY

Marxist doctrine has traditionally viewed ownership as the key to political power. Engels based his argument on a detailed study of history, while Lenin saw ownership as a tool to effect social change. It was Stalin, however, who had the most lasting effect on Soviet property relations, and it is the Stalinist legacy against which reformers are struggling today.

The Stalin Constitution of 1936 was a watershed in the politicization of ownership.¹ According to one Soviet legal scholar, early legislation emphasized labor, not property, as the basis of the new Soviet state [RUBANOV 1989, p. 119]. In contrast, the Stalin Constitution declared that socialist ownership of the means of production was the economic foundation of the USSR [Art. 4]. Socialist property was "the source of the wealth and strength of the motherland" and the "sacred and inalienable foundation of the Soviet social order" [Art. 131]. Those who undermined socialist ownership were "enemies of the people" [Art. 131].

¹ The process actually began four years prior to adoption of the Stalin Constitution. In 1932, for the first time, a decree of the Council of People's Commissariats proclaimed that "public property (state, kolkhoz, cooperative) is the foundation of the Soviet social order." In keeping with the new status of public property, the decree instituted the death penalty for misappropriating it, sentence to be commuted to imprisonment for a period of not less than ten years under mitigating circumstances. By the beginning of 1933, according to official statistics, 54,645 persons had been convicted under the new law, 2,110 of whom had been shot (RUBANOV 1989, p. 119).

The 1936 Constitution introduced two other important conceptual changes relating to ownership. First, it categorized property into socialist and non-socialist varieties. Property owned by the state was socialist, and included the land, air, water, and means of production [Arts. 5, 6]. Cooperative-kolkhoz property too was deemed socialist [Art. 5]. Property owned by individual citizens, on the other hand, was not socialist but "personal" property, and was limited to a residence and items for everyday use [Art. 10].

Second, the 1936 Constitution established a hierarchy of property, with state ownership ranked at the top [RUBANOV 1989, p. 122]. State property was superior because it belonged to all of the people. The product of state property was used to satisfy the needs of the people, and the people were involved in state property's use [GENKINA 1950, p. 278]. Because of its allegedly more socialist nature, Stalin regularly emphasized the "leading role" of state ownership in building a socialist society [VENEDIKTOV 1949, p. 69].

Next came cooperative-kolkhoz property. It belonged not to the people, like state property, but to separate kolkhozes and cooperatives [Art. 5]. The Constitution thus referred to state property as "property of all the people" [*vsenarodnoye dostoyaniye*] to distinguish it from its less socialist cousin. Indeed, kolkhoz-cooperative property qualified as socialist only because the principal means of production remained in the hands of the state [GENKINA 1950, p. 271]. According to doctrine, it was ultimately destined to be transformed into state property [*Istoriya* 1983, p. 129].

Personal property — which included an individual's savings, residence, household goods, and other items of everyday use — came last in the hierarchy.² It was characterized by its consumptive aim, and was thus distinguished in the Soviet lexicon from "private" property, which refers to ownership of the means of production. According to the Stalinist legal scholar Venediktov, personal property was tolerable in a socialist state because it derived from citizens' labor in the socialist sector of the economy [MALFLIET 1986, pp. 82–86]. Thus, ownership of even simple household items was politicized by stressing their "consumptive" aim and "derivative" nature.

The division of property into categories and hierarchies was based on political, not economic, considerations. Under Stalin, ownership as an economic concept disappeared from the professional literature, replaced by the identification of ownership with political power. Writing in 1931, for example, Stuchka defined ownership as a manifestation of class struggle. Since ownership was politics, he argued, it was not really a proper subject for legal regulation at all.

[The law of state ownership] is not simply the law of private ownership as applied to the state. On the contrary, as a class concept, it is the very antithesis of private ownership. ... [Indeed, the] right of state socialist ownership is not bound by any law whatsoever, since Soviet power is itself free of any statutory or contractual limitations. But such discourse is above all insipid, academic, for is it conceivable that the proletarian state would consciously permit the use of state

² Actually, personal property did not even qualify as "property" at all. Article 10 of the Constitution merely referred to the "right of personal ownership" [RUBANOV 1989, p. 121].

socialist property against the interests of the [working] class? All such reasoning is based on the unacceptable, traditional carrying over of the old concepts of rights and obligations to the Soviet state [STUCHKA 1931, p. 25-26].³

Soviet law soon reflected the politicization of ownership. Disputes regarding the nationalization of private property, for example, were generally excluded from the courts on the ground that nationalization was a political not a legal act [STUCHKA 1931, p. 25]. In the few such disputes subject to judicial scrutiny, a strong presumption operated in favor of the state [STUCHKA 1931, p. 22]. Such rules fell into disuse, of course, once nationalization was complete.

Other doctrines remained in force until the new ownership law was passed in 1990. Foremost among them is the doctrine of the unitary fund [*yedinyy fond*] of state assets, which provides that the state, and the state alone, holds title to all state property. State enterprises do not *own* the property at their disposal, but only *manage* it at the behest of the state. State assets therefore comprise an indivisible fund which belongs exclusively to the Soviet state [VENEDIKTOV 1948, p. 324].

Canonized by Vyshinskiy, Stalin's Minister of Justice, in 1938, the doctrine of *yedinyy fond* was the culmination of a fierce ideological battle. Opponents of the doctrine contended that enterprises in fact "owned" the property at their disposal. State ownership was therefore divisible, they argued, into assets directly owned by the state and assets owned by state enterprises (and thus indirectly owned by the state). After Stalin backed advocates of the *yedinyy fond* theory, however, supporters of competing "anti-Marxist" doctrines were branded "wreckers" and brutally suppressed [*Pravo* 1988, pp. 56-57].

The law of operative administration is another product of politicized ownership. It is really first cousin to the unitary fund theory, for it attempts to answer questions posed by direct and undivided state ownership. If enterprises do not "own" the property at their disposal, what is their relationship to it? What are their rights and obligations with respect to their assets? Without resolving such questions, enterprises cannot possibly manage such assets effectively. The law of operative administration attempts to address them by devising an ownership substitute, an ersatz ownership, that does not challenge ownership by the state.

Ownership in the Soviet Union is based on the famous civil law triad of disposition, possession, and use; an owner is limited in exercising his rights only by the bounds of the law [Civ. Code Art. 92].⁴ The right of operative administration also rests on the triad, but the holder (a state enterprise, for example) is bound by much more than the law. First, it is bound by its (state-granted)

³ By the end of Stalin's reign, the identification of ownership with political power was complete, as evidenced by a quotation from a civil law textbook of the time. "The Soviet state is simultaneously the bearer of political power and the holder of the entire fund of state socialist property. The use and disposition of state socialist property, the essence of state property, cannot be grasped in isolation from the organization and functioning of political power in the USSR" [GENKINA 1950, pp. 280-81].

⁴ All Code references are to the Codes of the Russian Soviet Federated Socialist Republic. Article 92 provides: "An owner shall have the rights of possession, use, and disposition of property within the limits established by law."

charter, which defines the purposes for which it may act. Second, it is bound by the tasks assigned to it under the (state-promulgated) plan. Third, it is bound by the (state-defined) purpose given to assets when the state allocates property among different funds [Civ. Code Art. 93].⁵ Thus, the right of operative administration is derivative from and subordinate to state ownership, ensuring that enterprises are in turn subordinate to the Soviet state [IOFFE 1987, p. 82].

More than fifty years after the Stalin Constitution, the legal regime of politicized ownership remains largely intact. The Brezhnev Constitution retains its predecessor's categories and hierarchy unchanged but for minor details.⁶ Socialist property, especially state property, is still heavily favored by law,⁷ and the doctrines of *yedinyy fond* and operative administration still hold sway. It is this backdrop against which the reform debate should be viewed.

III. THE PROPERTY REFORM DEBATE

Broadly speaking, the debate over property reform shares the same origins as the debate over economic reform in general. It springs from the abysmal state of the Soviet economy. The reforms to date have clearly failed to solve the country's economic problems. With things already bad and getting worse, the need for property reform could no longer be ignored.

The ownership debate also has more specific causes, having been moved to center stage by the "logic" of reform [HANSON 1988]. It does little good to "marketize" a socialist economy unless producers are motivated to behave competitively: to innovate, minimize costs, and seek new profit opportunities. The problem of how to stimulate such behavior in state enterprises has not been solved. A desire to establish markets, therefore, leads to a search for alternatives to state ownership; a logic exists leading from "market socialism" to ownership reform [HANSON 1989].

Reformers in Eastern Europe have recognized that logic for several years [MALFLIET 1987]. Kornai emphasizes the affinity between private ownership and

⁵ Article 93 provides: "Property allotted to state, interkolkhoz, state-kolkhoz, or other state-cooperative organizations shall be within the operative administration of such organizations, which shall be realized within the limits established by law, in accordance with the goals of such organizations' activity, planned tasks, and the designated purpose [*naznacheniyе*] of such property, and the rights of possession, use, and disposition of the property."

⁶ The Brezhnev Constitution adds a category for property belonging to trade unions and other public organizations, which it classifies as "socialist" [Art. 10]. Otherwise, it leaves the categories of the Stalin Constitution intact. The Brezhnev Constitution continues to characterize public ownership of the means of productions as "the economic basis of the USSR" [Art. 10].

⁷ Criminal penalties, for instance, are stiffer for the destruction of socialist property than personal property [Crim. Code Arts. 89-101]. In civil law, efforts to save socialist property from damage give rise to a special right of compensation in tort [Civ. Code Art. 472]. Actions to recover state socialist property from unlawful possessions are broader than actions to recover personal property [Civ. Code Art. 153]. One major advantage is that the statute of limitations does not apply [Civ. Code Art. 90].

markets, calling bureaucratic control and public ownership, on the other hand, a "package deal" [KORNAI 1989, p. 22]. That is why efforts to "marketize" the state sector in Eastern Europe failed, says Kornai, resulting in no more than "indirect bureaucratic control" [KORNAI 1989, p. 13]. Among the Soviets, only Mozolin has discussed the incompatibility of markets and state ownership at length [MOZOLIN 1989, pp. 74–75]. The USSR, however, is no exception to the logic of reform.

The Soviet property reform debate began in 1987, gained momentum throughout 1988 and 1989, and reached a frenzy in early 1990. A wide range of views appeared on the pages of professional journals and the popular press. The rhetoric was impassioned and sometimes colorful; the reasoning varied from insightful to dull. This section will highlight the themes of conservative, neo-conservative, moderate, and radical thinkers.⁸ The next section will examine the new ownership law.

* * * * *

Passage of the new ownership law was a defeat for conservatives who, above all, stand for resistance to change. Conservatives prefer triumphant Stalinist rhetoric to the reality of Soviet economic decline. Yet it would be a mistake to ignore them simply because their arguments fail to persuade. Conservatives may have lost the battle, but they most certainly have not lost the war.

Conservatives reject the notion that property should be depoliticized. They proceed from the premise that ownership equals political power, and that political power should remain in the hands of the state. To conservatives, state ownership *is* socialism; its surrender is tantamount to defeat [RODIN 1990; YEREMIN 1989]. They categorically reject the moderate view that socialism must be renewed by diversifying ownership forms. "[T]here could be a variety of things hiding behind this diversity," writes one, "including something of a non-socialist nature" [CHERKOVETS 1990].

Conservatives are united in their opposition to private property, grounding their argument on the traditional Marxist view of exploitation. If one class owns the means of production, and another has nothing to sell but its labor, the stronger class will inevitably exploit the weaker by removing surplus product, which rightfully belongs to those who create it. Private property, in this view, equals hired labor, and hired labor equals exploitation [PANOVA 1990]. The analysis is both dogmatic and central to the conservatives' faith.

Private property also leads to chaos by permitting "group egotism" to prevail over society's interests. It divides society into rich and poor, leading to bankruptcy, unemployment, and political chaos. Only state ownership can permit the

⁸ These categories should not mislead the reader; they are intended for analytic convenience. In reality, participants in the property debate expressed a continuum of views, some of which defy easy categorization. However, the debate was marked by a repetition of themes, the choice of which tended to identify participants with particular groups. It is these themes, rather than individual views, on which the categories of conservative, neo-conservative, moderate, and radical are based.

harmonious functioning of the economy through national planning [RODIN 1990]. Even the suggestion that private property be restored calls forth righteous indignation. "I am ready to join armed formations," one letter to the editor reads, "to take part in a civil war against the restorers of private ownership" [ORLIK 1989].

Conservatives sometimes invoke the country's revolutionary heritage in support of their cause. One writer, for example, ridiculing recent schemes to make workers the "masters" of their enterprise, described how workers seized a factory in 1917.

When the provisional government tried to close the factory temporarily in order to destroy the "Bolshevik nest," the workers dug a ring of trenches around the area, which they filled with cannons and machine guns. That's how our fathers and grandfathers made themselves feel like masters. And that's probably why our collective doesn't take too well to the suggestions by these ... economists to split the factory up using leases ... [SANTYLOV 1989].

Many conservatives are reluctant to acknowledge the reality of Soviet economic decline, while others acknowledge some "slowing of tempo" but propose unimaginative solutions. Some conservatives accept the need for organizational improvements, so long as they are guided by the ancient physician's credo: "Do no harm" [CHERKOVETS 1990]. Yet the essence of the conservative approach to property "reform" remains stricter discipline and a heightened awareness by workers of their socialist duty.

* * * * *

Neo-conservatives concede that the economy is in difficulty, and that the difficulty is related in a broad sense to property relations. They agree with moderates that state ownership has caused workers to lose interest in their product, and that the goal of reform should be to revive producers' flagging motivation. They disagree sharply with moderates, however, as to the solution. At bottom, neo-conservatives do not favor real ownership reform.

Neo-conservatives contend that there is nothing inherently wrong with state ownership, asserting that problems have arisen because state ownership has been "deformed" [GOSH 1990]. It has been distorted, they say, because the bureaucracy has taken over, usurping the people's role as masters of production. In short, the apparat has "hijacked" the state, and it is this deformation, not state ownership, which is to blame for lower productivity [SOROKIN 1988].

The solution lies in what neo-conservatives call "democratization," which signifies that state ownership should be preserved, but in a new, more democratic form [SUKHOTIN 1989]. Bureaucratic interests must be ousted so that every citizen can again become a co-owner of state property. Alienation can be overcome only by restoring workers to their rightful place as "masters" of the production process [TORKANOVSKIY 1988, p. 79].

The neo-conservatives propose that democratization occur on two levels. First, enterprises must become truly independent of the ministries; they must become

self-managed and be given more control over their income. The people, as represented by the state, will remain the owner [*sobstvennik*], but by freeing enterprises from petty tutelage, the collective will become a master [*khozyain*] [TORKANOVSKIY 1988, pp. 85-86].

Second, democratization must occur within the enterprise by expanding the collective's role in management. How this is to be accomplished is not clear, presumably, neo-conservatives would grant more rights to labor collective councils.⁹ They would not, however, transfer ownership rights to the collective, which might allow group interests to contradict the interests of society [SUKHOTIN 1988].¹⁰ The worker's position as master is not based on ownership, they emphasize, but on his participation in managing production [TORKANOVSKIY 1988, p. 66].

Neo-conservatives thus make common cause with conservatives in a number of respects. By avoiding the transfer of ownership to the collective, they preserve the concept of *yedinyy fond* [DUNAYEV 1989, pp. 88-89]. Neo-conservatives stress the role of the state as the guardian of public interest, an essential counterweight to group egotism. They also favor state distribution, not markets, as the primary coordination mechanism [SOROKIN 1988].

Neo-conservatives reject private property out of hand as exploitative and therefore, like conservatives, they are suspicious of the moderates' call for a multiplicity of ownership forms. Dunayev, for instance, would allow *some* new forms of property, provided they are strictly regulated by the state. He emphasizes, too, that diversity is not an end in itself, but only a temporary means of improving the efficiency of state enterprises [DUNAYEV 1988, p. 94].

In the final analysis, neo-conservatives bear a strong resemblance to their more conservative cousins. Their proposals amount not so much to ownership reform as tinkering with the administrative system.

* * * * *

Moderates favor a limited depoliticization of ownership. They are prepared to work within a "socialist" framework but they intend to redefine what "socialist" means. Socialism, all moderates agree, should no longer be synonymous with state ownership, but should henceforth be based on a diversity of forms of ownership.

⁹ Neo-conservatives are exceptionally vague as to how they would democratize the workplace. Most observers agree that labor collectives and their governing organ, the labor collective council, do not currently play a significant role in managing production. To begin with, their rights are primarily consultative pursuant the 1983 Law on Labor Collectives. TORKANOVSKIY [1988, p. 86] details a variety of additional means by which the power of labor collective councils is further reduced. They include the selection of pliable members, the nomination of a presidium consisting mostly of management personnel, and the issuance of procedural instructions by ministries which effectively prevent the council from making independent decisions. Proponents of democratization would presumably strengthen the collective's role by addressing these and other deficiencies.

¹⁰ In the Soviet lexicon, the ownership of enterprises by labor collectives is deemed "anarcho-syndicalism" [Istoriya 1983, p. 114]. Commentators frequently point to Yugoslavia as the result [YEREMIN 1989].

Beyond that, moderate views diverge, sometimes sharply. They disagree about the optimal degree of state ownership in the economy and what alternative forms property should take.

Moderates' commitment to reform stems from their perception that employee alienation is widespread, a fact confirmed by several studies. A 1988 poll of nearly 4,000 management and rank-and-file workers in six regions showed that only 14% considered themselves masters in their work place. Among rank-and-file workers, 77% believe that they and their collective have no effect on management decisions. Of managers, 44% said their activity was limited to the mechanical execution of instructions from above [TOSHCHENKO 1989, pp. 190-92].

The nature of moderate reform proposals stems from their analysis of the cause of alienation, a subject which has attracted the attention of Estonian economist Uno Mereste. The feeling of a master [*khozyain*], he argues, is the feeling of an owner [*sobstvennik*], and is based on "direct material rights and obligations" [MERESTE 1987, p. 16]. Socialism has historically considered the need for such a material stimulus unworthy for "extra-economic" ideological reasons [MERESTE 1989a, p. 29]. Through state property it has tried to emasculate a feeling of individual ownership, while through propaganda it has tried to instill a feeling of mastery [MERESTE 1989b, p. 44]. It has failed, however, because the feeling of a master is the feeling of an owner. According to Mereste, the goal of property reform is to reunite the two.¹¹

Moderates' efforts to redefine the "socialist" nature of property reflect their desire to depoliticize ownership. Vesnin distinguishes between the "form" of property and its "character" or "social content" [VESNIN 1990]. Property may be publicly or privately held in form, he writes, but that does not necessarily define whether it is socialist or capitalist in character. Because Vesnin and many others believe that labor income [*trudovoy dokhod*] is the essence of socialism, they would allow that private property can be socialist, provided the use of hired labor is illegal [*Sotsializm* 1989, p. 19].

Ulybin takes a similar approach using somewhat different terminology. Soviet theory has assumed that public ownership would necessarily result in collectivist production relations, a view which he says has proved erroneous. For Ulybin, collectivist production relations — not public ownership — are the essence of socialism. Therefore, any form of property which expresses such relations is admissible and, indeed, equally valuable from a social point of view [ULYBIN 1988, pp. 69].

Abalkin has also weighed in on the socialist nature of property. In his view, socialist property is (a) property over which the work collective is the "true and unconditional master" and (b) property which leads to efficient production [ABALKIN 1989]. Abalkin does not discuss whether these two criteria are

¹¹ Curiously, Mereste does not follow his own analysis to its logical conclusion. He stops short of suggesting that the state divest itself of title to enterprises, proposing instead that enterprises be given to collectives in the form of an indefinite lease. He draws upon the English law of trusts as an analogy [MERESTE 1989a, pp. 34-37].

compatible, or how they might be combined. He does add, however, that socialist property must be embedded in a system of social guarantees and so provide "certainty about the future" [ABALKIN 1989].

The heart of the moderate approach to property reform is support for diverse forms of ownership. Moderates coined the term "destatization" [*razgosudarstvleniye*] to describe a reduction of state ownership,¹² the dominance of which is responsible for the tenacity of the command-administrative system [MOZOLIN 1989, pp. 74-75]. Diverse forms of property should loosen the bureaucracy's vice grip and, in any case, are better suited to the "objective" diversity of economic life [AZROYANTS 1989].

Moderates also favor competition among different forms of property, since competition will not only reveal the strengths and weaknesses of different forms of ownership, but should make all property more efficient [ABALKIN 1989]. Competition will be meaningful, however, only if it is conducted fairly. Moderates therefore support the elimination of legal advantages for state property in favor of the complete equality of ownership [ABALKIN 1989].

Unlike radical reformers, most moderates do not support the introduction of private property, at least not on a widespread scale. They fear it will divide society into rich and poor, breaching a key term of the socialist social contract [AUZAN 1989, pp. 41-42]. Moderates want socialism to become more efficient without losing its egalitarian character. Consequently, they prefer to experiment with collective ownership in various forms.

* * * * *

Radicals reject the Stalinist legacy of politicized ownership in its entirety. They assert that economics, not politics, must guide property reform, and that the sole criterion of sound reform is success.

Ideological dogmas, even if they have a certain value in defining one's view of the world, are patently insufficient for an analysis of the actual economy. The question before us is to determine the specific combination of forms of property (and the means of managing them) that will ensure the economy gets out of crisis in an acceptable period of time and without social cataclysm [KUZNETSOV 1990].

Radicals view "property of all the people" as an ideological fiction. The only way an individual can exercise his "right" of ownership in state property, they assert, is by voting for a party which shares his view as to how the state sector should be managed. Even then, unlike a real title holder, the individual can exercise his right only in combination with all other citizens [STUDENTSOV 1989, p. 11]. In truth, state property belongs not to the people, but to no one.¹³

¹² The term "privatization" [*privatizatsiya*] also exists in Russian, but has connotations of turning enterprises over to the capitalists. The moderates therefore prefer to speak of "destatization," which encompasses the transfer of enterprises to collective ownership.

¹³ Radicals do not necessarily agree that the bureaucracy owns state property. If it did, they point out [e.g., KUZMINOV 1989], the apparat would attempt to manage it more efficiently. The

Radicals characterize the traditional notion of exploitation as hopelessly out of date. First, with the exception of a small class of rentiers, most modern capitalists work as hard as their employees and thus cannot be accused of exploitation in any concrete sense [KUZMINOV 1989]. Second, an owner should be compensated for the depreciation of equipment, the lease of land, his labor in managing, marketing, and so forth. Such compensation does not constitute the removal of labor's surplus product, but is just and necessary [DENISOV 1989]. Third, the prohibition on hired labor is breaking down in practice and is thus no longer meaningful. Why is it, for example, that three members of a cooperative can hire an employee, but if they do so individually they are accused of exploitation [PIYASHEVA 1989, p. 191]?

In contrast to moderates, radicals have little faith in collective ownership. Workers in collective enterprises tend to increase their pay, even when to do so is economically unsound [KUZMINOV 1989; KUZNETSOV 1990]. They also fault egalitarianism as leading to a lack of discipline. The practice of electing corporate leadership, for instance, requires that management remain popular with the work force. Effective commercial activity, on the other hand, requires managerial independence and a willingness to take unpopular risks [PIYASHEVA 1989, p. 193]. Collective enterprises are also disinclined to introduce technological innovations, since to do so might lead to layoffs. For these and other reasons, according to the radicals, cooperative enterprises are relatively uncommon in the West [PIYASHEVA 1989, p. 194].

Radicals favor private property because of its proven ability to raise productivity. The more that is produced, the more there is to redistribute; hence, private ownership is good not only for individuals but for society at large [PIYASHEVA 1989, p. 191]. Only private property, moreover, is flexible enough to adjust to imminent changes in the economy, harboring the potential to ease unemployment, localize labor conflicts, and soak up the monetary overhang [PIYASHEVA 1989, pp. 188, 197]. Private property is no panacea, just the best of the alternatives.

Radicals have a clearer understanding of private property than do their political opponents. They appreciate that bleak images of *laissez faire* — a favorite of conservatives — are largely a phenomenon of the past. Modern governments retain substantial control over property through taxation and regulation. The use of such economic levers is vastly preferable to bureaucratic-administrative control [STUDENTSOV 1989, pp. 9, 16].

Radicals contend that the "ownership equals political power" formula is also out of date. The universal franchise, they argue, has transformed the nature of political power in democratic countries. Ownership remains one pillar of political power but only one among many. Because politicians must now compete for votes, they act against the interests of capital when to do so secures them mass support

squandering of state property by the bureaucracy — its supposed "owner" — demonstrates that state ownership is in fact ownership by no one [*necheynost'*].

[STUDENTSOV 1989, pp. 18–21]. Private property, therefore, does not necessarily lead to capitalist domination, contrary to popular Soviet belief.

* * * * *

It is their approach to motivating producers that most sharply distinguishes the competing schools of thought. Conservatives would rely on moral encouragement and discipline. Neo-conservatives would democratize production. Moderates would diversify forms of property and let them compete. Radicals put their faith in private ownership. These approaches are very different but not mutually exclusive. Perhaps that is why the new ownership law to some degree reflects them all.

IV. THE USSR LAW ON OWNERSHIP

The new Law on Ownership in the USSR took effect on July 1, 1990. It is the centerpiece of a series of reform measures which significantly alter Soviet property law.¹⁴ This section is not a comprehensive analysis of the new statute. Rather, it is a review of the law's main features in light of the property reform debate.

Section I of the new law is entitled General Provisions. It continues the practice of categorizing property as individual, collective, or state [Art. 4(1)]. The statute abandons the Stalinist distinction, however, between socialist and non-socialist forms.¹⁵ The statute also dispenses with the category of "personal property" in its entirety, referring instead to the "property of Soviet citizens" [Art. 4(1)]. The significance of this seemingly rhetorical change becomes evident in Section II.

In a significant break with Stalinist tradition, the new law also eliminates the hierarchy of ownership. It does not identify any single form as the foundation of the Soviet social order. Conservatives unsuccessfully sought to insert language confirming the "leading role" of "property of all the people" [TSAKUNOV 1990]. Instead, the law embodies the principle of diverse forms of ownership, and strongly suggests that all forms are equal.

The state shall create the conditions necessary for the development of diverse forms of property and shall ensure their protection [Art. 4(1)].

The state shall legislatively ensure citizens, organizations, and other property holders equal conditions for the protection of their right of ownership [Art. 31(3)].

Finally, Section I grants property holders the right to hire labor in language which, on its face, is clear.

¹⁴ New statutes on land and leasing were recently enacted. Intellectual property and stock company laws are forthcoming. They join laws on individual labor activity, cooperatives, and state enterprises, which are summarized in HANSON [1989].

¹⁵ Indeed, astonishingly, the Law on Ownership does not once refer to socialism.

An owner is entitled, under the conditions and within the limits provided for by legislative acts of the USSR, union republics, and autonomous republics, to conclude agreements with citizens for the use of their labor in realizing the right of ownership belonging to him [Art. 1(4)].

Upon closer examination, however, the right is more ambiguous. First, the legislative acts which will determine its scope have not been drafted. Second, the law continues to prohibit "the exploitation of man by man" [Art. 1(6)] which, in Soviet parlance, refers to hired labor.¹⁶ Third, the primary vehicle of private economic activity, the labor partnership [*trudovoe khozyaystvo*], appears to exclude the use of hired labor [Art. 8(1)], an interpretation supported by one of the drafters of the statute [KALMYKOV 1989]. It remains to be seen, therefore, whether the new law in fact lifts the prohibition on hired labor.

* * * * *

Section II jettisons the ideological baggage of the "personal property" doctrine by introducing "citizens' property" as a new legal term. Citizens' property, in contrast to personal property, may include the means of production. Thus, the change in terminology is more significant than would appear.

Citizens' property abandons the doctrine that individual property necessarily "derives" from the socialized sector. The Law on Individual Labor Activity had already placed Venediktov's theory on the defensive [GRIBANOV 1989; MALFLIET 1986]. The new Law on Ownership acknowledges the doctrine, then moves well beyond it.

Citizens' property is created and augmented through their labor income from work in public production and from the conduct of their own economic activity, as well as income from money invested in credit institutions, shares of stock and other securities, from the inheritance of property, and through other means permitted by law [Art. 6(1)].

In addition, Section II expands the limits of individual ownership. Whereas prior law limited personal property to items for personal use [Civ. Code Art. 105], Article 7 of the new law allows ownership of the means of production for the operation of peasant and other types of labor-based businesses [*krest'yanskoye i drugoye trudovoye khozyaystvo*] as well as other types of property "intended ... for productive use" [Art. 7(1)].¹⁷ Article 8 is even more explicit:

¹⁶ Article 1(6) provides in its entirety: "The use of any form of property must exclude the alienation of the employee from the means of production and the exploitation of man by man."

¹⁷ Article 7(1) provides in full: "The property of citizens may include residences, dachas, greenhouses, crops on plots of land, means of transportation, shares of stock and other securities, household items and items of personal consumption, the means of production for the operation of peasant and labor-based businesses [*krest'yanskoye i drugoye trudovoye khozyaystvo*], subsidiary domestic husbandry, gardening [*sadovodstvo, ogorodnichestvo*], and individual and other forms of economic activity, as well as the products which are produced and the income received, and other types of property intended for consumptive and productive use."

Family members and other persons jointly conducting a labor partnership [*trudovoye khozyaystvo*] may own a workshop or other type of small-scale enterprise operating in the spheres of consumer services, trade, public dining, and other fields of economic activity, residences and commercial buildings, machines, equipment, means of transportation, raw materials and other inputs, as well as other forms of property necessary for the independent conduct of such activity [Art. 8(1)].

Article 9 makes similar provisions for agriculture. Peasants may own the means of production necessary to conduct independent agricultural activity, including tools and equipment, means of transportation, structures, cattle, and other livestock. The income generated from their activity belongs to the peasants, who may use it in their discretion [Art. 9(1)].¹⁸

The statute does contain a loophole, empowering national and republic legislatures to establish "types of property which may not be owned by citizens" [Art. 7(3)]. Thus, conservative majorities could effectively outlaw private ownership of means of production, transforming the property of citizens back into personal property.

* * * * *

Section III, Collective Property, is a testament to the moderates' vision of diverse ownership forms. Previously, collective property took the form of kolkhozes and cooperatives [Civ. Code Art. 99], whereas the new law refers to no fewer than nine different varieties of collective ownership. The drafters of the statute clearly envision an important role for collective property in a revamped Soviet economy.

Although some forms of collective ownership, like cooperatives, are familiar [Art. 13], others are so new they have yet to be defined. For example, the statute refers to business societies and partnerships [*khozyaystvennyye obshchestva i tovarishchestva*], describing them as juridical persons formed from investments by participants, who may be enterprises, state organs, or individuals [Art. 14(3)]. These entities appear to be some form of partnership, but their nature and purpose remain obscure.

Section III also contains the rudiments of a program to privatize state enterprises under which privatization may take one of several forms. Enterprises leased under the new leasing law may be subject to redemption [*vykup*]. Alternatively, the state may simply transfer a factory to its collective. In either case — transfer or redemption — the result is a "collective enterprise" [Art. 12(1)].

Although the statute envisions employees as investors in collective enterprises, the nature of their investment is unclear. Investments are plainly not a means of

¹⁸ In a peasant partnership, property is held jointly, with each member possessing an undivided interest [*obshchaya sovmestnaya sobstvennost'*] [Art. 9(2)]. Members of a labor partnership may specify the nature of property rights by contract. Otherwise, all property is held in common with each member possessing a divided interest [*obshchaya dolevaya sobstvennost'*] [Art. 8(2)].

transferring ownership to individuals; the labor collective holds title to a collective enterprise [Art. 12(1)]. Rather, investments form the basis of a profit sharing plan.

The property of a collective enterprise shall include the investments of its employees. Such investments shall consist of the amount of investment [*vklad*] by an employee in the state or leased enterprise from which the collective enterprise was formed, as well as an employee's contribution [*vklad*] to the increase in property of said enterprise after it was created.

The measure of an employee's contribution to an increase in property shall be defined based on his labor participation [*trudovoye uchastiye*] in the activity of the enterprise.

Interest [*protsenty*] shall be computed and paid on an employee's investment in a collective enterprise in an amount determined by the labor collective and based upon the results of the enterprise's economic activity [Art. 12(2)].

The third route to privatization is the issuance of stock. A collective may decide to transform its enterprise into a stock company [*aktsionernoye obshchestvo*], but only if its ministry agrees [Art. 15(3)]. Stockholders may include individuals as well as institutions; they may even include individuals who do not work at the affected plant [Art. 15(2)].¹⁹ Since at this stage the state intends to retain a majority of shares in all stock companies [*New York Times*, April 10, 1990, p. 8], privatization may not be the most fitting term.

* * * * *

Section IV, State Property, addresses the property relations of state enterprises. On the surface, it abandons the principle of operative administration, replacing it with enterprises' right of "complete managerial authority" [*polnoye khozyaystvennoye vedeniye*] over their assets. The statute describes the new right as follows:

In exercising the right of complete managerial authority over its property, an enterprise shall possess, use, and dispose of said property and, in its discretion, take any other action in relation to it which is not contrary to law. The rules of the right of ownership shall apply to the right of complete managerial authority, provided legislative acts of the USSR, the union republics, and the autonomous republics do not establish otherwise [Art. 24(1)].

The new terminology represents an effort to secure more enterprise autonomy than was possible under the operative administration doctrine. One of the draftsmen insists that complete managerial authority embodies a "totally new, innovative approach" to defining enterprise property rights [KALMYKOV 1989]. The "managerial authority" formula indeed appears to shed the restrictions of operative

¹⁹ At a news conference on April 9, 1990, Abalkin suggested that the sale of shares to individuals was still an open issue. "We contemplate the free sale of shares to banks and cooperatives," he is quoted as saying, "but we may try to experiment with selling shares to physical persons and see how that works" [*New York Times*, April 10, 1990, p. 8].

administration [see Section II of this paper]. Yet in reality the statute merely moves those same restrictions to a different place.

State organs authorized to manage state property shall decide questions concerning the creation of an enterprise, the goals of its activity, and its reorganization and liquidation, and shall exercise supervision over the preservation and effective use of state property entrusted to it, and shall have other rights in accordance with legislative acts of the USSR, union republics and autonomous republics concerning enterprises [Art. 24(2)].

Section IV outlines a new incentive scheme under which a portion of enterprise profits will be transferred to employees as stock. The enterprise will thereafter pay annual dividends from its profits in amounts to be agreed upon by management and the collective [Art. 25]. The "stock" which employees may purchase, however, grants no equity interest [TORKANOVSKIY 1988, p. 85] and thus more closely resembles a participatory debenture.

Finally, Section IV addresses the difficult ownership issues which have arisen between the center and the republics. The USSR Council of Ministers is directed to divide up property into all-union property and property belonging to the republics by July 1, 1991. It is to make such decisions "jointly" with the republics based on the following principles: All-union property is property "acquired through the expenditure [*za schet*] of all-union funds or transferred without compensation to the USSR by the union republics" [Art. 21]. Republic property is property "ensuring the sovereignty and economic independence of a republic, its economic and social development" [Art. 22(1)]. Disputes are to be submitted to arbitration [Art. 20(5)].

* * * * *

Moderates clearly played a major role in drafting the new Law on Ownership. It embodies their vision of competition among diverse forms of property, and reflects their preference for collective over private ownership. On the whole, the law embodies a guarded approach to property reform. It is not a bold leap into the unknown.

Neo-conservatives shaped the statute's state enterprise provisions. They prevented the enterprise and the collective from acquiring ownership status, and preserved the essence of operative administration and *yedinyy fond*. Their new vocabulary — words like "stock" and "dividend" — obscures the fact that the owner of enterprises remains the same as in 1936.

Conservatives attack the new law for "squandering" state property and ceding political and economic control [GUREVICH 1990]. They have not declared defeat, but intend to fight a rearguard action. Several provisions in the statute give conservatives legal ammunition, notably the continued ban on "exploitation" [Art. 1(6)].

Radicals have the least to celebrate, since the law plainly rejects their private property prescription. It allows some private ownership, but too little and too late.

Perhaps the patient is not yet sick enough to swallow such a bitter pill. However, that may change soon since, if the radicals are right, the prognosis is not good.

The law does represent progress in light of the Stalinist past. It abandons the hierarchy of property which ranked state ownership at the top. It identifies socialism with a diversity and equality of ownership forms. It breaches important ideological barriers by permitting hired labor and private ownership of the means of production, albeit on a limited scale. The statute is an imperfect effort to break with the Stalinist past.

In the final analysis, however, the law has no logic, no single vision, no overarching design. More than most pieces of reform legislation, it is the product of political compromise. It reflects confusion over socialism and a confused diagnosis of the nation's ills. In that sense, the new ownership law reflects the state of Soviet society, which is standing at a crossroads, deciding which way it will go.

V. THE RSFSR LAW ON OWNERSHIP

The balance of political power in the Russian Republic is quite different from that on the national level. Boris Yeltsin, Russia's de facto president, has staked out a radical position on economic reform, and has mustered a bare parliamentary majority in support. On December 24, 1990, the Republic's Supreme Soviet passed the Law on Ownership in the RSFSR, effective January 1 of this year. In doing so, it broke ideological barriers which the USSR Supreme Soviet was unable or unwilling to break.

The RSFSR law is inextricably intertwined with the issue of sovereignty, now at the top of the Soviet political agenda. It provides that ownership in Russia is regulated by republic, not all-union, law, and specifically that the Law on Ownership in the USSR does not apply on the territory of the RSFSR.²⁰

All actions of state organs of power and management, of participants in economic relations, and of other persons, inconsistent with the state sovereignty and economic interests of the Russian Federation and its constituent republics are hereby prohibited and deemed ineffective [Art. 1(1)].

The law contains a broader definition of property than its all-union counterpart. It encompasses not only land, buildings, securities, and the like, but expressly includes enterprises, minerals and other raw materials, and "other property for productive, consumptive, social, cultural, or other purposes." The statute also applies to intellectual property, including works of art, literature, and science,

²⁰ The unofficial text of the law and implementing decree are published in *Ekonomika i zhizn'*, No. 3, pp. 13-14 (January 1991). The decree provides that Article 25 of the Law on Ownership in the USSR, concerning the property rights of labor collective members in state enterprises, will continue in force in the Russian Republic. It presumably applies to all-union enterprises, though the language in the USSR statute is in any event consistent with similar provisions in the RSFSR law.

inventions, computer programs, trade secrets, and trade and service marks [Art. 2(4)]. The law does not regulate intellectual property in detail, however, which will presumably be the subject of forthcoming legislation. Its inclusion was apparently intended to secure for intellectual property the right of private ownership.

Like the USSR Law on Ownership, the RSFSR statute abandons the distinction between socialist and non-socialist ownership, and substantially modifies the traditional categories of state, personal, and collective-kolkhoz property. Most significantly, it recognizes private property [*chastnoye sobstvennost'*], which the USSR law pointedly fails to do. It also provides for the property of public organizations [*obshchestvennyye ob'yedineniya*], for state property, and for municipal property [*munitsipal'naya sobstvennost'*], a new category encompassing ownership by local authorities. In unequivocal language, the statute abandons the Stalinist preference for state ownership, guaranteeing equal treatment for all forms of property.

Establishment by the state, in whatever form, of limitations on or advantages in the exercise of the right of ownership depending upon whether property exists in the form of private, state, or municipal property, or the property of public associations (organizations), shall not be permitted [Art. 2(3)].

* * * * *

The express recognition of private property is an ideological watershed. The statute subdivides private property into the property of real and juridical persons, though the distinction does not alter the private nature of ownership. The property of real persons may include not only plots of land, homes, and securities, but enterprises, equipment, and other means of production, as well as the mass media. Indeed, private ownership may encompass almost any kind of property, "with the exception of isolated types of property, provided for by law, which by reason of state or public security, or in accordance with international obligations, may not belong to a citizen" [Art. 10(1)]. There is no limit on the quantity or value of private holdings [Art. 10(2)].

An individual may use his property directly for business activity, alone or in partnership, or may transfer it to a juridical person, which then enjoys the right of "complete managerial authority" [Art. 11].²¹ The term is familiar from the USSR Law on Ownership, but is defined much more broadly.

Exercising the right of complete managerial authority over property allotted to it, an enterprise may possess, use, and dispose of said property, and may take such other actions with respect to it as are not contrary to law. The rules of the right of ownership apply to the right of complete managerial authority if neither legislative acts nor an agreement between owner and enterprise provide otherwise [Art. 5(2)].

²¹ Correspondingly, the property of a juridical person is comprised of property transferred to it by its participants, derived from its business activities or the sale of stock, or property obtained by other lawful means (Art. 14).

Individuals may also own plots of land on which to build a house or use for agricultural purposes [Art. 12(1)]. They may possess land for other purposes, and the law holds out the possibility of private land ownership in the future [Art. 12(2)].²² Individuals may also own a house, apartment, dacha, garage, or other structure, which they may sell, rent, bequeath, or otherwise use in their discretion [Art. 13(1)]. Those renting apartments from the state have the right to purchase or otherwise acquire ownership of them [Art. 13(3)].

The RSFSR Law on Ownership overcomes the all-union legislation's ambivalence about the use of hired labor. A property owner has the right "to conclude agreements with citizens for the use of their labor" [Art. 4(2)]. The employee, in turn, has the right, as provided by law, to "a portion of the earnings received as a result of the use of his labor" [Art. 4(2)]. The employer must guarantee him a wage commensurate with his "personal labor contribution" [*lichnyy trudovoy vklad*] and provide such other terms and conditions of employment as are required by law and the employment agreement. The employee may also be entitled to part ownership of enterprise property, and to receive profits proportionate to his share. Whether an owner must consent to such arrangements is unclear.

The provisions dealing with ownership by foreign nationals will be of special interest to the business community. Real persons of foreign nationality enjoy the same rights as do Soviet citizens, which presumably include the right of private ownership [Art. 27]. The right to own property in the RSFSR is protected by law regardless of where the owner is resident [Art. 2(5)]. The statute is less clear concerning foreign juridical persons, who may own enterprises and other property "in the manner and in such cases as established by legislative acts of the RSFSR and USSR" [Art. 28]. At present, the legislative framework for such ownership remains undeveloped.

The law also expands the uses to which private property may be put and the protections which it enjoys. Not only may the owner sell, lease, or otherwise transfer it to third persons, but he may also encumber it [Art. 2(2)]. During his life he may possess, use, and dispose of it "in his discretion," and upon his death he may bequeath it to his heirs [Arts. 2(2), 9(2)]. The law guarantees just compensation for takings. If the property holder objects to the taking or to the amount of proposed compensation, the state may not act until all disputed questions are resolved in arbitration or in court [Art. 31(2)]. Indeed, the courts are empowered to declare invalid all administrative or legislative acts which improperly infringe upon the right of ownership [Art. 32].

* * * * *

While collective ownership occupies a central place in the USSR Law on Ownership, the republic statute allots to it a secondary role. The statute does not

²² "Plots for purposes not provided for by section 1 of this article shall be allotted to citizens for possession and, in the cases and under the conditions provided for by legislative acts of the RSFSR and constituent republics of the Russian Federation, for ownership" [Art. 12(2)].

recognize collective ownership as a principal legal category, but rather as a form in which state or private property, or the property of public organizations, may be held [Art. 3(1)]. Collective or "common property" [*obshchaya sobstvennost'*], as the statute sometimes refers to it, is formed by a voluntary combination of holdings. Owners may hold a divided or undivided interest, with the scope of their rights determined by agreement or, if necessary, by arbitral or judicial decree [Art. 3(2)].

Collective ownership does entail special obligations, however, in the case of certain enterprises. Upon creation, entities held in the form of collective, cooperative, or leased enterprises must determine the contribution of their employees to the value of the enterprise, and subsequently reevaluate employees' contributions based upon their "labor participation" in the enterprise's activity [Art. 15(1)]. The enterprise must periodically distribute profits or losses among employees, as determined by the labor collective, based on their contributions [Art. 15(2)]. Still, nothing in the law requires a juridical person to take the form of a collective, cooperative, or leased enterprise. It may, for example, be formed as joint stock company, and thus be regulated by separate statute.

Drawing on the 1977 Constitution, the law distinguishes as a separate category the property of public organizations. In addition to regulating such traditional quasi-governmental entities as trade unions, it recognizes the property rights of charitable societies and religious organizations [Arts. 18-19]. All such entities may create enterprises to carry on their work, enterprises which then enjoy the right of "complete managerial authority" or "operative administration" in managing the property entrusted to them. Upon dissolution, the property of public organizations is used to pay their debts, and is then distributed pursuant to their charters.

* * * * *

The RSFSR Law on Ownership departs significantly from all-union legislation in defining and regulating state property. First, it envisions the division of state property between republic and local authorities. Republic holdings are characterized as "federal property," while the holdings of cities and regional entities are described as "municipal property" [Arts. 20, 23]. The statute vests ownership of municipal property in local soviets and other organs of local self-government [Arts. 20(3), 23(3)]. Local authorities are "independent owners" of their property; they neither answer to republic authorities, nor are they responsible for its debts [Art. 20(4)].

The state ownership provisions raise numerous questions of sovereignty and federalism. For example, in addition to government buildings and other noncontroversial items, the RSFSR purportedly owns the resources of the continental shelf and a portion of all-union gold, diamond and hard currency reserves [Art. 21(1)]. The RSFSR may also own enterprises, all or some of the transportation infrastructure, information outlets, power plants, "and other enterprises and property necessary for the fulfillment of the tasks of the RSFSR" [Art. 21(1)]. In a direct challenge to both the center and other republics, the law allegedly applies "to all-union state property located on the territory of the RSFSR, as well as to the property of other union republics..." [Art. 20(4)].

Local authorities purportedly own local government buildings, housing, utilities, canals and irrigation projects, "and other objects directly bearing upon the communal service of consumers and which are located on the territory of the soviet..." [Art. 23(1)]. They may also own agricultural, trade and service firms, means of transportation, educational, cultural and health care facilities, manufacturing, construction and other enterprises, and other property "necessary for cultural and social development and the fulfillment of other tasks for which the relevant administrative-territorial formation is responsible..." [Art. 23(2)].

State and municipal enterprises will have broad leeway to manage their property under the expanded definition of "complete managerial authority" [Art. 24(1)]. Other state entities [*uchrezhdeniya*] funded by state budgets will continue to operate under the principle of operative administration [Art. 24(3)]. Labor collectives are granted the right to demand the leasing or privatization of state enterprises which are to be liquidated for reasons other than bankruptcy [Art. 24(2)]. Indeed, the statute expressly authorizes the privatization of all state and municipal enterprises pursuant to the decision of duly authorized republic or local authorities [Art. 25].

* * * * *

The RSFSR Law on Ownership is an unabashed victory for radicals. Although details of privatization are left for another day, the statute clearly relies upon a private property remedy to cure the country's economic ills. The law not only rejects the Stalinist legacy in property law, but rejects the moderates' guarded, collectivist approach to property reform as well. Insofar as ownership can be depoliticized, the RSFSR law succeeds.

The question which now hangs over the law whether it will be implemented. The RSFSR and USSR statutes represent different, probably irreconcilable, visions. Which vision prevails is a matter of politics, not law. But then it is hardly surprising that the issue of ownership, so long politicized, is now at the center of a fierce political struggle.

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