TITLE: LAW, PROPERTY RIGHTS AND THE ECONOMY

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This Report is one of a series of papers prepared in an interdisciplinary research project on the political economy of the USSR, presented at a workshop in March 1989, and in most cases updated since then. Almost all of the papers will be published by Cambridge University Press in a volume entitled "Political Control of the Soviet Economy", David R. Cameron and Peter Hauslohner Eds., forthcoming.

This paper is a review of innovations and revisions of Soviet legislation on property rights over the period from 1986 through the summer of 1990, which the author characterizes as "evolutionary" in 1986-87, and "revolutionary" from 1988 to the present. It consists of brief descriptions of the major legislative provisions set against the background of the pre-Gorbachev era.
I. Introduction

Under Gorbachev, the system of property rights in the Soviet underwent a period of evolutionary adjustment in 1986-1987, then moved into a period of revolutionary change in starting in 1988 and continuing through the present (August 1989). This change is goal-directed, aimed at creating a stable new property order by the mid-1990s. It is not clear, to this author at least, if the shift from evolution to revolution reflects an increase in political power that let Gorbachev do in 1988-1989 what he could not do in 1986-1987, or if it reflects a realization by Soviet leaders, after several years of mediocre economic performance, that half-way measures were ineffective or counterproductive. The questions of what Gorbachev is trying to achieve, what he should be trying to achieve, and what he can achieve have become the subjects of lively discussion. The present essay is an attempt to provide a detailed legal perspective to the discussion.

Any attempt to evaluate the current period of change must start with the modern history of property rights in Russia and the Soviet Union. The twentieth century there has been marked by periods of revolution, during which strong leaders abrogated legal guarantees of property, followed by periods of stability when the state provided strong legal protection of property rights. In the early twentieth century, while there was a strong state element in the Russian economy, there was also a large and very healthy private sector. There were very small businesses, such as restaurants and barbershops, that operated as sole proprietorships. There were medium sized business partnerships. There were large businesses in various branches of industry organized as stock corporations. There was foreign investment both in the form of loans and in
the form of joint enterprises. The law protected all these business forms, leaving entrepreneurs free to choose the form most appropriate to their activity. Owners were free to buy, sell, and combine business property. In the aftermath of revolution, the old system continued to function for a brief "Honeymoon" period, and then collapsed with the War Communism and the disappearance of protection for landlords' and capitalists' property rights. The government, local authorities, and military units wantonly seized property. The result was economic disaster. The New Economic Policy of the mid-1920s returned to something approximating the pre-1917 situation, with the law protecting a variety of forms of business property ownership, and with owners free to buy and sell business property. The economy returned to prosperity. In the early Stalin years, there was again a period of disappearance of legal protection for property rights. Stalin, in his drive for centralization of power, confiscated private businesses and turned them into state enterprises. He put these enterprises and the state sector that had existed during the New Economic Policy under the control of ministries run by his faithful followers. He disregarded peasants' rights in land in his drive to force peasants into collective farms, which he put under control of the Party hierarchy. When these changes were complete, by the mid-1930s, Stalin restored property law, this time to protect the property-rights structure of the ministerial and collective farm systems.

Stalin's system of property rights had two unique features. The first was the virtual elimination of the alienability of property rights in the means of production. In an analysis dating to Roman law, but still widely accepted, property ownership consists of three separate rights: the right of possession, the right of use (and to the profits from such use), and the right of
Stalin's legislation of the 1930s assigned productive assets to industrial ministries and to state and collective farms in agriculture and forbade disposition of these assets. The result was two fundamental economic inefficiencies. First, the pattern of possession and use of assets was more centralized than would have resulted from a more Darwinistic system. Second, the reallocation of assets from unproductive to productive sectors of the economy became legally impossible. The problem was not one of lack of legal protection of property rights. It was one of strong legal protection of a static and increasingly inefficient allocation of property rights. There were strong legal mechanisms that both guaranteed centralized ministerial rights of possession and use of property and denied ministries the right of disposition of property. Scholars developed an elaborate ideological justification of this property system. The system survived essentially intact through 1986--arguably through mid-1989. While Khrushchev tried to get rid of the ministries, he lost the power struggle. The ministries he abolished promptly reappeared and reclaimed their property.

Initially, Gorbachev attempted evolutionary change in the property rights structure. Measures enacted in 1986-1987 did not infringe upon existing property rights. Only in 1988 and particularly in 1989, did Gorbachev move on to changes in property rights that radically affect the rights of existing owners. At the same time, legal measures promised stability and protection for the property rights of the post-change owners. In the first stage, legislation gave individuals substantially more freedom to invest their funds in businesses organized as sole proprietorships (the Soviet term is "individual labor activity") or as partnerships (the Soviet term is "cooperatives"). Ministries and other superior agencies obtained considerably more flexibility in the forms
of organization they could use in their subordinate enterprises, over which they exercised legal rights of possession and use. The law permitted the formation of joint enterprises with foreign firms. However, there was no significant weakening of the hold of ministries over the means of production in industry or of the state and collective farm system over the means of production in agriculture. In the second stage, starting in 1988 and becoming more radical by the summer of 1989, Gorbachev moved to take property from the ministries and farms, in disregard of legal guarantees and long-hallowed ideology. Meanwhile some republics moved to attempt to alter property rights in ways threatening to central power.

II. Property Rights on the Eve of Perestroika—1985

Soviet ideology has given a prominent place to property rights because of the teaching of Marxism on the importance of the nature of the ownership of the means of production. Marxist theory, as long interpreted in the Soviet Union, sees the major difference between the Soviet and capitalist societies as being the fact that the means of production are publicly rather than privately owned. This ideology is reflected in the property provisions of the 1977 Constitution, which are not significantly different from those of the 1936 Constitution. These Constitutional provisions have served as a basis for indoctrinating generations of Soviet citizens on the legitimacy of the Soviet property right system.

Articles 10 through 13 of the 1977 Soviet Constitution outline the property structure of Soviet society. The Constitution provides for a division of property between that under "socialist ownership" and that under "personal ownership." Socialist ownership is further subdivided. Relying on these and
other Constitutional provisions, Soviet theorists developed an ideology of public property rights. According to this ideology, state property is the highest form of socialist property and there is a gradual evolution of individual ownership of means of production and of cooperative property toward the form of state property. According to this ideology ownership of property by the state not only prevents capitalist exploitation, it also ensures economic efficiency and full employment through the operation of the system of economic planning.

The pre-1985 ideology assumes that socialist property is not to be used for personal benefit at all, while individual property is only to be used for personal benefit only in severely restricted circumstances. The 1977 Constitution provides:

No one shall have the right to use socialist ownership for the purposes of personal gain and other mercenary purposes.

Property in the personal ownership or use of citizens should not serve to derive non-labor income nor be used to the prejudice of the interests of society.

Before 1985, these Constitutional provisions, like many other Soviet Constitutional clauses, were a mixture of myth and reality. Since 1985, myth has come to predominate over reality to such an extent as to undermine the whole Constitutional ideology of property.

The actual situation before 1985 is discussed at length in recent writings of Olimpiad Ioffe and myself. The state acted as if it owned most, though not all of the property formally classified as state property, most, though not all of the property classified as cooperative property, and all of the property classified as that of societal organizations.

Before 1985, the overwhelming part of the property classified as state property was in fact administered as state property. This property included
factories, schools, public utilities, retail stores, and service establishments--essentially almost all of the non-agricultural areas of the economy. All of these were operated under a system of central economic planning. For efficiency, this property was assigned by the state to what was called the "operative administration" of various state enterprises. In its description of state ownership and planning, the Constitution was reality, not myth. However, there was a fundamental contradiction between this Constitutional system and those articles of the Constitution that promised economic and political rights to citizens. The system of central economic planning produced inadequate quantities of shoddy goods and few services for the citizenry. Because the state owned all the means of production, every citizen was absolutely dependent upon the state and the Party behind the state for employment. This dependence rendered the freedoms guaranteed in the Constitution largely illusory, since any attempt to exercise these freedoms could result in loss of one's job, as happened so frequently to dissidents and refuseniks.

In rural areas much of the property was classified as cooperative property. This included the property of collective farms, and various food-processing, marketing, and retailing organizations. Although in form these cooperatives still had members, both the language of the Constitution and practice treated this property as part of the socialist economy. The state ran collective farms under the economic planning system as if they were state property, rendering the "members" of these cooperatives as dependent upon the state as urban workers. The integration of the state and cooperative sectors in agriculture continued with the growth of the vast Gosagroprom bureaucracy under Gorbachev.
Theoretically non-governmental organizations, for instance Soviet trade unions, acted as government agencies. The trade unions handled a considerable amount of property, in the form of worker benefit funds, but handled as agents for government policy, not as representatives of their worker-members. Much of the urban housing was state property. However, the state managed only a portion of the housing as its own property. State enterprises assigned housing in this category to employees in connection with their jobs, so as to bind employees to their jobs.

The other actual category of property was private property. Under de facto private ownership were not only the private property items listed in the Constitution, but also certain types of property classified in the Constitution as cooperative or state property. Under the Constitutional scheme, ownership of a cooperative apartment was considered cooperative and hence socialist ownership. However, in practice, it was no more socialist than ownership of a cooperative or condominium apartment in the United States. The same was true of other cooperatives, such as garage and vacation-home cooperatives, which served the more affluent class of Soviet citizens in the same way as garage and resort condominiums serve richer Americans. A system of rent control and renewable leases has long since turned what were nominally state owned apartments into de facto tenants' property, along the lines of New-York-City-type rent control. In smaller towns and rural areas, land was assigned to private house owners in perpetuity and became in effect private property.

Under Stalin, Khrushchev, and Brezhnev, private business property existed, but was ideologically suspect. The state did not cooperate with private business—it provided no operating premises or supplies through the state planning system. The official ideology regarded private business property as
doomed by the inevitable progress of socialism. The whole category of cooperative property listed in the Constitution did not exist at all in practice, since, as mentioned above, property that was formally cooperative was in fact treated as state or private. Some types of property did not seem to fit into the Constitutional scheme at all. These included the property of foreign businesses and of churches.

III. Individual Labor Activity--1986

The first step in the post-Brezhnev changes in property rights occurred in 1986. New legislation on "Individual Labor Activity" enhanced the status of small, individually-owned business. While Soviet law has always allowed small private family businesses in limited areas, what the new law has done is to give these business ideological approval and offer positive government support rather than grudging acceptance. Unlike the some of the later changes in property rights, this shift has a firm Constitutional basis in Article 17 of the Constitution, which provides that "in the USSR individual labor activity shall be permitted in accordance with the law in the sphere of handicrafts, agriculture, domestic services for the populace, and also other forms of activity based exclusively on the personal labor of citizens and members of their families." It also involves no infringement on the existing property rights structure, since the laws involved no transfer of property rights from other owners to the private businesses. Rather the new private business owners financed the businesses with their own savings, or in some cases legalized "second economy" operations.

IV. Joint Enterprises--1987
Joint enterprises with foreign corporations had existed in the 1920s, but were eliminated by the early 1930s. It is hard to find a Constitutional basis for the existence of capitalist property rights in the Soviet Union. However, in a sense there has been capitalist property in the Soviet Union for many years, since capitalist firms had been allowed to bring property into the country, for instance the necessary equipment to perform construction contracts. The original legislation limited the foreign share in a joint enterprise to 49%. Another requirement of the legislation, that joint enterprises generate sufficient foreign currency to pay earnings to foreign partners has been a major hindrance to their development.

V. Cooperatives--1987

Legislation adopted in 1987 allowed the formation of small business in the form of cooperatives. This legislation contradicted the constitutional principle that cooperative property was socialist property. Since the 1930s, the main forms of cooperatives--collective farms and consumer cooperatives, have been cooperatives in name only, for the state has treated them as if it owned them and their property as if it were state property, integrating these cooperatives into the planning system. Unlike state enterprises, where the Constitutional ideology and actual fact long coincided, there was long a fundamental contradiction between the theory of ownership of cooperatives by their members and the actual absence of effective ownership rights for members. Likewise cooperatives had no more rights over their property than did enterprises over theirs. In 1987, the USSR adopted rather timid legislation, allowing the formation of "cooperatives" to run restaurants, provide consumer service, make consumer wear, and run pastry and bakery operations.
these were called "cooperatives" in fact they were private business which owned their property as private business property. Legally their form was similar to that of a business partnership in the United States. This legislation not only contradicted the Constitutional principle that cooperative property was socialist property, but encouraged conduct that was still a serious criminal offense. For instance Article 153 of the Russian Republic Criminal Code provides:

Private business activity with the use of state, cooperative, or other social forms --
shall be punished by the deprivation of freedom for a term of up to five years with confiscation of property or by banishment for a term of up to five years with confiscation of property or by a fine of two hundred to one thousand rubles.

As in the case of individually owned businesses and joint enterprises, the creation of cooperatives involved no transfer of property rights away from original owners. Nevertheless, the obvious contradiction between the profiteering of cooperatives and Soviet ideology has led to broad popular resentment of cooperatives and to calls for legislation and regulation restricting certain cooperative activities.

VI. The State Enterprise--1987

There are three basic issues in enterprise property rights: (1) who owns the enterprise as legal entity; (2) who owns the physical and intellectual assets connected with the enterprise; (3) what is the relation between the enterprise and its assets. Traditional Soviet ideology answers: (1) the state
owns the enterprise; (2) the state owns the assets of the enterprise; (3) the enterprise has the right and duty of "operative administration" of the state assets assigned to it. In 1987, the Supreme Soviet adopted a new Law on the State Enterprise. Unlike the legislation on individual labor activity, joint enterprises, and cooperatives, the State Enterprise Law seemed to promise to significant reallocation of property rights. The new legislation attenuates state ownership of the enterprise itself with possibilities for employee ownership and shareholder ownership. It redefines the enterprise as the owner of its assets, thus moving away from the theory of division of ownership and administration.

Several legislative innovations have eroded the idea of state ownership of enterprises. The new enterprise statute gave employees many rights traditionally associated with ownership. They share with the ministry the most traditional prerogative of an enterprise owner, that of picking the top managers. The new statutes provide a variety of ways in which employees can share in another ownership right, that of receiving enterprise profits.

Legislation of the pre-Gorbachev period contained rhetoric about increasing participation of the "labor collective" in management, but was ineffective because it gave employees no actual legal powers over the enterprise. This was true of Khrushchev's abortive attempts to create an influential "Permanent Production Conference" and of the 1983 Law on Labor Collectives, which gave the labor collective the right to consultation about many matters, but the right to decide few of them. The 1983 law also provided no effective procedural channels for the labor collective to enforce its rights. Soviet commentators agree that these weaknesses, along with trade union resistance, made the Law on Labor Collectives virtually a dead letter.
The enterprise law and subsequent implementing legislation provided for employee election of management. The enterprise law also provides for the creation of a small elected council (sovet) to provide effective representation of the labor collective on a day to day basis. Recommendations adopted in 1988 spelled out the details of the election processes. By giving the labor collective the power to elect managers, the Recommendations on Election Procedures purport to move the collective from the category of a "discussion group" to that of a body with real powers. At the same time, however, the power to elect managers inevitably brings the labor collective into conflict not only with the trade union, but also with local Party authorities, who would have had an important role in selecting management personnel under the "nomenklatura" system. The new legislation does not provide an answer to the question whether the election of the council of the labor collective will be a real election or a managed "election" in the traditional Soviet style. Article 3 of the Recommendations provides for nominations at meetings of the labor collective. Party, trade union, and other societal organizations, collectives of structural subdivisions, the administration, and individual employees may make nominations. This power of individual employees to nominate suggests a move away from managed elections. However, the same Article 3 goes on to provide "Party, trade union, other societal organizations, and the administration may propose a unified list of candidates to the meeting." This language is strongly suggestive of a managed election. Management of elections may be implicit in the provision that at least one third of the members of the council should be new at each election and that the chairman should be an outstanding ordinary employee, not a top management official. Both managed and real elections appear to have happened in practice.
The same Recommendations provide details on the election of other enterprise officials. They provide for election of a broad range of enterprise officers but also for a number of exceptions. They also provide for the creation of formal competition for various positions. Essentially these Recommendations are a direct attack on the "nomenklatura" system under which Party authorities have the final voice in the selection of management officials using their political judgment (or finding jobs for their friends and relatives).

Positions open to election include those of the heads of associations, enterprises, and their structural subdivisions. Three positions are exempt, those of chief legal counsel, chief accountant, and head of quality control. These are positions for which hiring and firing always required the consent of the superior agency, since these officers have served as watchdogs for the superior agency in the enterprise. They will continue to act as watchdogs under the new enterprise law and therefore the superior agency will continue to have the final word on hiring or firing them. Here again, the employees fall short of having the hire and fire power of real owners.

Two other exceptions to selection by the labor collective rest on purely practical grounds. The enterprise may assign new graduates who have just completed their education to positions normally filled by election. Without this rule, the election requirement would effectively bar new graduates from positions for which they had trained, since the workers' collective at the enterprise would not know them and so would not elect them.

The provisions on internal democracy in the enterprise appear to be part of a plan to move from political selection of managers toward merit selection. Merit selection is implicit in the provisions for announcement of openings and
formal competition. Since a considerable portion of employee compensation is based upon the success of the enterprise, in theory at least employees will have a strong incentive to choose good managers. However, in enterprises with rapid employee turnover or with many employees nearing retirement, employees would have an incentive to choose managers who would maximize short term payouts to employees at the expense of long term investment, because of the fact that they have no property interest in the enterprise assets and goodwill.

A key right of the owner of an enterprise is the right to discharge management personal. The enterprise law restricts this ownership prerogative by limiting the power of higher agencies to fire enterprise management. It does so by requiring the consent of the general meeting of the employees or of their council for the firing of the enterprise general director. Ever since the Soviet planned economy was created by Stalin in the 1930s, superior organizations had the key power to fire directors of subordinate organizations. The existence of this power has often negated the protection given by legislation to managers, since a manager who disobeyed an illegal order would risk immediate discharge. The new enterprise statute purports to place some real limits upon the power of superior agencies to give orders to enterprises. These limits can only be effective if enterprise managers are given the job protection promised by the statute. Even then, as long as an enterprise remains in a ministry hierarchy, its director will still depend upon his superiors for their bonuses and for recommendations for career advancement.

The 1987 statute also formalized the possibility of transfer of certain ownership rights to employees by contract (kollektivnyi podriad). Implementing legislation in 1988 provided detailed rules.\textsuperscript{11} or leasing (arenda).\textsuperscript{12}. Both contract operation and leasing are designed to give employees a sense of
identity with the results of enterprise operations. In legal analysis there is not a sharp line between long-term contracts and leases on the one hand and ownership on the other. For instance, a lessee under a fifteen year lease of an automobile is essentially an owner, the only difference being the negligible junk value of the car fifteen years hence. Both the lessee and the owner could be expected to be equally interested in adhering to the proper schedule of oil changes and lubrication, to ensure the long-term maintenance of the value of their vehicles. An examination of the 1987-1988 Soviet legislation on contract operations and leasing suggests, however, that the contract and leasing arrangements, while increasing employee interest in short-term results of enterprise operations, lacked those features of true ownership that would give employees an incentive to identify with longer term enterprise welfare. In particular the employees could only realize increases in value of the assets under their management in a limited sense. During the term of the lease, increased asset value might lead to increased profits and increased earnings, if the elaborate restrictions on pay allowed the increased earnings. However, when the lease expired, or the employee left the enterprise, all increase in value would be lost. The introduction of layoffs of unneeded workers as a national policy must have made it hard for employees to identify with leased enterprises or shops as their property, since they could lose all their interest at any time in a layoff.

A key attribute of enterprise ownership is the right to receive the residual profits. The enterprise law took limited steps toward giving employees this right. Soviet legislation had wrestled with the issue of employee profit-sharing, adjusting bonus schemes and bonus funds with only limited success. The new enterprise law provided a more radical solution,
which effectively allowed the state to give up its rights to the residual profits. The change involved creating an alternative form of regulation of what an enterprise may pay in total compensation to its employees. However, the 1987 statute placed two key restrictions upon employee receipt of profits. First, increases in employee compensation could not exceed increases in productivity. Second, an enterprise could operate under a system whereby employees received residual profits only with the permission of its superior agency. (As will be discussed below, the Supreme Soviet repealed both these restrictions in the summer of 1989.)

The actual amount an enterprise may pay in total compensation under the enterprise statute and the implementing legislation was generally less than the upper limit determined by productivity increases. The new enterprise statute provides two alternative formulas for determining the limits on compensation in practice. While past legislation used similar formulas, the new statute adds a guarantee that the formula used will remain stable for some length of time. Under the statute there are two alternative methods for the calculation of limits on compensation. One method is the “normative distribution of profit.” The other is the “normative distribution of income.” The enterprise must have the approval of the superior agency for the method it uses. Regulations published in 1988 provide the details.

The “normative distribution of profit” method does not involve a sharp break from prior law, except for the very important promise that the formulas used for a particular enterprise will remain stable for a relatively long period. This method uses a formula to determine the “wages fund” (fond zarabotnoi platy).
This method, like prior law, provides for the creation, in addition to the "wages fund" of a fringe benefit fund, called the "social development fund." (fond sotsial'nogo razvitiia), and a bonus fund, called the "material reward fund" (fond material'nogo pooshchreniia). The new enterprise statute provides that these funds are to depend on a formula tied to net profit. It allows enterprises, as an alternative to forming the two separate additional funds to combine these funds with the wages fund to form a single "fund for payment for labor" (fond oplaty truda).

The "normative distribution of profit method" ties the "wages fund" to productivity. The formula involves multiplying a coefficient times the value of goods and services produced or by some other measure of production. Thus, for instance, for a particular enterprise, the formula might be: wages fund = 0.36 x value of goods produced. If this enterprise produced 1,000,000 rubles worth of goods during the year, its wages fund would be 360,000 rubles. If it had 100 workers, it could pay each worker 3,600 rubles in the course of the year or an average of 300 rubles a month. If the next year, it produced 1,200,000 rubles worth of goods, using only 80 workers, the wages fund would be 0.36 x 1,200,000 or 432,000 rubles. It could then pay each of the 80 workers 5400 rubles a year or 450 rubles a month. This method is really a continuation of the situation of the past several decades, where state acts as "owner" of the enterprise as far as receipt of residual profits are concerned, but as an enlightened owner, provided some profit sharing as an employee incentive.

The new enterprise statute provides for an alternative method for calculating the limits on employee compensation. This is the "normative distribution of income method." This method is quite different from that used under prior law. The 1987 Enterprise Law put a major restriction on the use of
this new method, by providing that an enterprise could use the method only with the permission of the superior agency. Under the "normative distribution of income method," the "fund for payment for labor" ("fond oplaty truda") consists of what is left after subtracting all non-labor expenses and all payments to superior agencies and to the state from gross receipts. This fund for payment for labor serves for the payment of both ordinary wages and bonuses. At enterprises using this alternative, there is no separate bonus fund. The rules setting the proportion of income to be paid to superior agencies and the state are to be based on formulas that are promised to remained fixed for long periods of time.

According to the orthodox theory developed in the early 1930s, the state owns assets connected with the enterprise, while the enterprise has the right and duty to engage in the "operative administration" of these assets. Professor V.P. Mozolin of the Institute of State and Law attacked this theory in an important 1984 article 15 He argued that the law's failure to treat the enterprise as "owner" of its assets led directly to the lack of enterprise independence and initiative. A significant change between the draft and final versions of the enterprise statute was the adoption of his recommendation. 16 In one key provision 17, language of the draft law (like that of previous legislation) referred to "property under its [the enterprise's] administration" (imushchestvo nakhodiasheesia v ego upravlenii). The corresponding language in the final version of the enterprise law refers to "its [the enterprise's] property" (ego imushchestvo).

The new property rights of the enterprise can only be effective if the enterprise can defend them not only against other enterprises, but also against superior agencies. For a number of years agencies of State Arbitration have
had the power to declare regulations issued by ministries and other administrative agencies illegal. However, this power has had no real effect in practice. Under the new enterprise law, enterprises will now be able for the first time to bring action in State Arbitration against superior agencies. Legal writers have been calling for this reform for years. Will it work in practice when previous reforms have not? A high state arbitrazh official told me last year that he was very doubtful. So far I have seen only one reported case of such a suit. New legislation has strengthened State Arbitrazh in preparation for its new role in deciding enterprise versus ministry disputes.

At present, most enterprises are grouped within production associations. Both before and after the new enterprise statute, the enterprises incorporated in production associations lacked legal personality—have been unable to go to court or arbitrazh in their own names to defend their rights. There are two possible ways that the subordinate enterprises can be given some legal independence. The first would simply involve dissolving the production associations. This approach has been favored by a number of Soviet economists. However, it would reduce the size of many economic operations far below that typical for such operations in capitalist countries and presumably below their economically optimum size. The other approach would be to create a new type of production association, whose enterprises would be subject to a much more limited form of subordination and which would have the power to own property and to enforce their rights in court. The new enterprise statute creates an alternate form of production association that would have such more limited powers. (As will be discussed below, the 1989 amendments to the Enterprise Law raise the possibility of dissolving production associations.)
VII. Private Housing--1988

Under Gorbachev, there appears to be a movement toward the expansion of private ownership of housing. Single-family homes in rural and suburban areas have long been subject to private ownership. Owners of single family homes have been free to buy and sell them at market prices. While the plot of land associated with each house in theory has been state property, the law has automatically assigned it to the new owner, subject to the payment of a token ground rent. However, the importance of single-family homes has decreased with the urbanization of the Soviet population, which has led to the abandonment of many rural homes and has led to the taking of many suburban houses by eminent domain (with compensation to the owners) to make way for new apartment complexes. (Soviet urban planning theory calls for discouraging private automobiles by providing high-quality public transportation, which in turn requires high-density apartment housing to supply the necessary passenger volume.) The predominant type of urban housing has been state-owned apartments, rented to lessees at extraordinarily low rents (so low that they do not cover the costs of routine maintenance). The law guarantees the lessees the right to indefinite renewal of leases at these nominal rents. The lessees thus effectively have two basic ownership rights, those of possession and use. Their right of disposition is very limited, however. Parents can pass apartments on to their children by having the children listed as co-lessees at the time of the parents' death. There has been no way, however, for state apartment lessees to sell their apartments at full value. In recent years, there have also been a large number of privately-owned "cooperative apartments." However, there have also been restrictions preventing the free sale of these apartments at market prices, though the owners may pass them on
to heirs or sell them at below-market prices. The result has been serious restrictions on the freedom of movement of Soviet citizens, because of the absence of a housing market in major cities. Now, there is talk of something closer to market rents for state-owned housing in major cities. If implemented and combined with permission for sale of apartments at market prices, this could mean the substitution of economic for legal barriers on change of residence. More changes in residence could reduce ethnic tensions by creating a "melting pot" society. The first major step in implementing the new policy is a 1988 decree. This decree authorizes the sale of state-owned apartments to lessees, or in the case of new or vacant apartments, to the public.  

VIII. Joint Enterprises--1988

A December 1988 decree made major changes in the property regime of joint enterprises. It removed the 49% limit on foreign ownership. It removed the rule against having a foreigner as the general director. It gave the enterprise greater freedom in hiring, firing, and wages. It provided for free transfer of ownership shares in joint enterprises. It allowed Soviet cooperatives to become part-owners of joint enterprises.

IX. Cooperatives--1988

The cooperative legislation adopted in 1987 had great success in creating a large number of new, productive, and thriving businesses. In 1988, the leadership expanded its limited experiment in cooperatives. Three very different types of production and service cooperatives are now emerging. All have their main legal basis in the 1988 Law on Cooperatives. This law greatly expands the rights of all types of cooperatives. Among their new rights is that of issuing non-voting stock.
The three types of cooperatives are old-style "cooperatives" — collective farms and consumer cooperatives, still run along traditional lines, new private business cooperatives, and new cooperatives owned by state enterprises and public organizations. The property of all three types of cooperatives is considered to be "socialist property." This label is certainly appropriate for the unreconstructed old-style cooperatives and for the publicly-owned cooperatives. However it hardly fits the private business cooperatives. Thirty seconds inside a cooperative restaurant in Moscow is enough for anyone to know that the cooperative is in fact a privately-owned business. The privately-owned cooperatives that run restaurants, services, such as TV repair, and a number of other types of businesses in areas where the public economy lags, are essentially private business partnerships. They have capital contributed by the partners, which is used in capitalist fashion for the needs of the business. They are supposed to have the support of the public sector of the economy in terms of providing working premises and supplies. These cooperatives violate not only the letter and spirit of the Constitution (which forbids use of socialist property for private gain), but the whole idea of progress toward full socialization in Soviet ideology.

The result of the contradiction between the formal and actual status of private business cooperatives has been a great deal of public resentment of "profiteering" by cooperatives. There has been a schizophrenic policy on taxation, probably reflecting a classic Kremlin power struggle between "liberals" and "conservatives." Early in 1988, the Presidium of the USSR Supreme Soviet adopted a tax edict with rates so high that it would have crippled the cooperative movement. Commentators promptly pointed out this fact. Eventually, in apparent counterattack by Gorbachev against
conservative forces responsible for the original cooperative tax, the Supreme
Soviet, in an unprecedented move, failed to ratify the edict, resulting in its
repeal. A revised tax proposal also met rejection.\textsuperscript{25} Further tax
developments, discussed below, occurred in 1989.

Cooperatives owned by public entities offer a chance for commercial
operations free of some of the restraints of existing hierarchies. However,
both private business and publicly-owned cooperatives may be dependent upon the
state planning system for necessary supplies. The cooperative form provides a
possibility of true non-state ownership in two senses, non-state ownership of
the cooperatives themselves, and ownership by the cooperatives of their
productive assets. It remains to be seen if these cooperatives will be a
sideshow or a main feature of the Soviet economy.

X. The Enterprise--1988

Legislation in 1988 authorized state enterprises to issue non-voting
securities.\textsuperscript{26} The new provisions allowing an enterprise to issue stock and to
sell it both to employees and outside organizations might be seen as a way of
giving some group a long-term ownership interest in the enterprise, and thus an
incentive to make rational decisions with a long-term orientation. However,
pending issuance of final regulations by the Ministry of Finance, it is
impossible to know if stockholders will have any voting rights in making
enterprise decisions. If not, outside organizations owning stock would really
be creditors, rather than owners. However, if employees owned a substantial
amount of stock, they might indeed begin to regard themselves as owners, in
view of the substantial powers that the enterprise statute gives them.
XI. Private Farming--1989

An April 1989 edict envisioned the conversion of a large proportion of arable land to agricultural leasing. The conversion plan involves short-term disregard of the legal rights of collective farms and a promise of long term respect for the rights of the lessees. First, contrast a sentence from Article 12 of the USSR Constitution:

The land occupied by collective farms is attached to them for use free-of-charge without limit of time.

with the following provision from Article 7 the Statute on Leasing:

An unfounded refusal by a state farm, collective farm, or other land-user to provide land [by lease] to its employees (or members, in the case of a collective farm) may be appealed to the executive committee of the district (or city) soviet of people's deputies.

Draft republic legislation goes even further toward attacking collective and state farm land rights.

Agricultural property may be shifting, with the move toward long-term land leases, from state administration to private hands and the simple forms of collective and state farms may be replaced by a much more varied system of ownership. However, leasing legislation to date, puts limits both on the maximum lease term (50 years) and on transferability (only to heirs or by will). These limits could serve as serious disincentives to investment in leased property. It is interesting to note that Stalin removed similar disincentives to private home ownership in 1948.

XII. Cooperatives--1989
A decree published early in 1989 restricted actions of cooperatives in certain fields, mainly those of a politically sensitive nature, such as manufacturing weapons, providing accommodations for foreigners, and publishing books.\textsuperscript{32} This legislation may reflect merely an attempt to deal with unintended side-effects of the cooperative legislation or it may reflect a somewhat harder line on personal freedoms. It does not involve any significant retreat on the economic role of the cooperative.

Tax legislation adopted in 1989 provides, at last, a fair balance between the incentive needs of the cooperative and the revenue needs of the state. In February 1989, the Presidium of the USSR Supreme Soviet adopted an edict on the controversial issue of taxation on the income of the cooperatives.\textsuperscript{33} In a compromise between pro- and anti-perestroika forces, the edict left the setting of tax rates on cooperatives to the republics. This gave individual republics the chance to stifle cooperatives with high taxes. In the summer of 1989, the full Supreme Soviet adopted a position more favorable to the cooperatives and thus more favorable to perestroika. It amended the Presidium edict so as to put reasonable caps on the top tax rates and confirmed the amended edict into law.\textsuperscript{34}

XIII. The State Enterprise--1989

There were two major pieces of legislation affecting the state enterprise in 1989. The legislation on leasing, in addition to authorizing agricultural leasing, expanded the possibilities for leasing of enterprise property.\textsuperscript{35} The most important changes, however, came in the Supreme Soviet's August 1989 amendments to the law on the State Enterprise.\textsuperscript{36}
At the Spring 1988 meeting of the Congress of People's Deputies, complaints were raised that Council of Ministers' decrees (and presumably administrative restrictions implementing the decrees) had betrayed the promise of the new enterprise statute that enterprises would be free to determine wage payments. Council of Ministers Chairman Ryzhkov replied:

Quite a few written questions, personal contacts from deputies, and speeches at this Congress have mentioned the Law on the State Enterprise. In particular, they have said that the government has introduced very strict measures of regulation of the relation of the growth of wages, productivity of labor, and production of goods, thereby violating the provisions of this Law. I must report to the Congress that the USSR Council of Ministers has not violated this law. Read carefully Article 14, part 4. There is clear language on this issue.

The Supreme Soviet adopted Gorbachev's invitation to take up Ryzhkov's challenge. It passed major amendments to the enterprise law that directly attack ownership rights previously held by superior agencies over subordinate enterprises. In particular, it repealed the rule limiting increases in employee compensation to the percentage increase in productivity was abolished and replaced by a new progressive tax on compensation increases. The amendments allow certain enterprises to declare independence from their superior agencies:

Structural units and independent enterprises included in the combine have the right, on decision of their labor collectives, to leave the combine with the observance of the contract procedure and obligations established at the formation of the combine.
The amendments remove the veto power that superior agencies had held over choosing a business form where the enterprise receives the residual profits. The enterprise obtained the right to determine its own internal structure. A new type of organization, an independent enterprise within a combine was created. Enterprises receive great freedom to create new economic organizations:

7. An enterprise, combine, or organization, regardless of its departmental subordination may independently create on contract bases: concerns, consortia, interbranch state combines, state production combines, various associations and other large organizational structures, including with the participation of cooperatives and joint enterprises founded with firms from foreign states. State enterprises (or combines) included in these structures keep their economic independence and act in accordance with the present Law.

Structural units and independent enterprises included in the combine have the right, on decision of their labor collectives, to leave the combine with the observance of the contract procedure and obligations established at the formation of the combine.

Enterprises; combines, and organizations upon transfer to leading relations have the right to leave the subordination to branch and territorial agencies of state administration. In such a case the relations between them shall be regulated by the contract of leasing. Industrial ministries lost their power to issue state orders, and enterprises could no longer be forced to deliver 100% of their output under state orders. Enterprises could contest unwanted state orders in State Arbitration.
These changes as a whole marked major steps toward removing the combines and ministries from a position of exercise of ownership rights over enterprises. However, as before, the important right of disposition of enterprise property was not assigned anywhere, meaning that there was still no possibility of an institutionalized capital market.

XIV. Republic Ownership of Natural Resources, Buildings and Equipment--1989

A major issue emerging in 1989 is that of ownership of natural resources and man-made means of production. Article 11 of the 1977 USSR Constitution was quite clear in denying the individual republics any ownership rights.

State ownership--the common wealth of the whole Soviet people is the basic form of socialist ownership.

The following are owned exclusively by the state: the land, its minerals, waters, and forests. There belong to the state the basic means of production in industry, construction and agriculture, the means of transportation and communication, banks, the property of trade, public service and other enterprises owned by the state, the basic urban housing stock, and also other property necessary for the conduct of the tasks of the state.

Soon after the adoption of the 1977 Constitution, each of the republics adopted a constitution containing the same phrase "common wealth of the whole Soviet people." This clause in the Constitution reflected the fact that the State Planning Committee in Moscow did administer the Soviet economy as a single whole. Some republics, particularly those in the Baltic area, called for changes both in the language of the USSR and republic constitutions, in the practice of managing local economies from
Moscow, and in the practice of using the surpluses of some republics to cover the deficits of others. In 1988 Estonia attempted to take matters in its own hands, amending its constitution to proclaim that natural resources and man-made resources located in Estonia were under the ownership of the Estonian Republic. Later in 1988, the Presidium of the USSR Supreme Soviet issued an Edict denouncing the Estonian constitutional amendment as contrary to Article 11 of the USSR Constitution. Estonia challenged the power of the Presidium to make this decision by "taking note" of it rather than repealing the contested amendment. In the summer of 1989, the Baltic republics did receive a promise of a major transfer of economic power from Moscow to the republic level. It seems probable that republic pressure both for actual ownership powers and for rewriting of the constitutional provisions on ownership will continue.

XV. Plans for the future

Of the various plans for the future, the most interesting is the resurrection of the joint stock companies (aktsionernye obshchestva) and companies with limited liability. Legislation setting up a Commission on Economic reform calls for the creation of these types of companies, whose existence is essential if there is ever to be any sort of market for capital. While no draft law has been published, a good idea of what such a law might provide may be obtained from reviewing the joint-stock company statute adopted during the New Economic Policy in 1927.

New draft legislation on intellectual property moves in the direction of direct property ownership by enterprises. Under prior legislation, enterprises could not have trade secrets from one another, the system of inventors' certificates put inventions in the public domain, and computer software was
unprotected. The draft legislation provides for patent ownership and computer software copyright at the enterprise level.\textsuperscript{45}

The draft patent legislation is also a compromise, providing incentives for contribution of patents to a state patent pool that would operate like the old inventors' certificate system and also imposing a compulsory licensing system. Given the limits of ownership rights of those making decisions at the enterprise level, the weakness of the proposed patent system, and the relatively long payoff period for patents, the new legislation appears unlikely to provide adequate incentives for investment of discretionary funds in research and development.

The unpublished draft I have seen of computer software legislation is of very poor quality compared with the draft patent law. It makes no effective provision for mass-marketing of software, but instead is based on a model of custom-written software more appropriate to the 1960s than the 1990s. The technical drafting is poor, in that the statute completely fails to make clear which of its provisions are compulsory and which are optional in computer software licensing contracts. Some provisions are bizarre such as one making every license a site licenses and one limiting licenses to a three-year term.

A trade secret law may be emerging. It is fundamentally inconsistent to give enterprises intellectual property rights in inventions and software once they are put on sale, but to allow other enterprises access to take the same property free as it is being developed. (Current Soviet law does not allow state enterprises to keep trade secrets from one another.) Already, one enterprise has complained to the press that some employees left to form a cooperative, taking trade secrets with them.
In the closing days of its Summer 1989 session, the USSR Supreme Soviet adopted a plan that calls for a number of important items of legislation affecting property rights.46 This plan calls, inter alia, for the drafting of the following laws: Law on Ownership in the USSR, Law on Land and Land Use, Law on Leasing and Leasing Relations, Law on the Uniform Tax System in the USSR, Law on Making Amendments and Additions to the USSR Laws "On the State Enterprise (or Combine)" and "On Cooperatives in the USSR", Law on the Socialist Enterprise, Law on the General Principles of the Management of the Economy and the Social Sphere in the Union Republics, Draft Law on Amendments and Additions to the Constitution (Basic Law) of the USSR on Questions of the Electoral System and on Other Very Important Matters of Social Development.

By mid-1989, Gorbachev and the Supreme Soviet under his leadership was attempting to go through a transitional period of disregard of property rights in order to arrive at a new system, similar in many ways to the NEP system, where there would again be protection for the new order of property rights. His attempt faces political, ideological, and legal barriers. He must wrest property rights to factories from the ministries and rights to land from state and collective farms. He must upset existing property rights while creating confidence of stability in property rights in the future, when this restructuring of property rights is completed. The task will not be easy.
NOTES

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4 Poriadok obespecheniia grazhdan, zanimaushchikhsia individual'noi trudovoi deiatel'nost'iu, produktsiei proizvodstvenno-tekhnicheskogo naznacheniia i priobreteniia etimi grazhdanami izlishnikh i neispol'zuemykh material'nykh

5 O voprosakh sviazannykh s sozdaniem na territorii SSSR i deiatel'nost'iu sovmestnykh predpriiatii, mezhdunarodnykh ob"edinii i organizatsii s uchastiem sovetskikh i inostrannykh organizatsii, firm i organov upravleniia [On Questions Connected with the Creation on the Territory of the USSR and the Activity of Joint Enterprises, International Combines, and Organizations with the Participation of Soviet and Foreign Organizations, Firms, and Administrative Agencies, Ved. SSSR [USSR Official Gazette], No. 2, item 35; O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriiatii s uchastiem sovetskikh organizatsii i firm kapitalisticheskikh i razvivaiushchikhsia stran [On the Procedure for the Creation on the Territory of the USSR and the Activity of Joint Enterprises with the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries], SP SSSR [Collection of Decrees of the USSR Government], 1987, No. 9, item 40; O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriiatii, mezhdunarodnykh ob"edinii i organizatsii SSSR i drugikh
stran -- chlenov SEV [On the Procedure for the Creation on the Territory of the USSR and the Activity of Joint Enterprises, International Combines and Organizations of the USSR and Other Member Countries of the Council for Economic Mutual Assistance], SP SSSR [Collection of Decrees of the USSR Government], 1987, No. 8, item 38.
poriadke prodazhi grazhdanam, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu, tovarov v
gosudarstvennoi i kooperativnoi roznichnoi togovoi seti i realizatsii

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merakh po
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6. A secret clause in the joint venture legislation allows savings from import substitution to take the place of foreign currency earnings.


10. O poriadke izbraniia sovetov trudovykh kollektivov i provedenie vyborov rukovoditelei predprietii (obedinienii) [On the Procedure for Electing Councils of Labor Collectives and Conducting Elections of Heads of Enterprises (or Combines)], SP SSSR [Collection of Decrees of the USSR Government], 1988, No. 9, item 24. Rekomendatsii o poriadke izbraniia
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конкурсов на заемление должностей специалистов государственных
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Competitions for the Holding of Positions of Specialists of Enterprises
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