

Cold-War Commons: Tragedy, Critique, and the Future of the Illiberal Problem Space

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Major twentieth-century social theories like socialism and liberalism depended on property as an explanatory principle, prefiguring a geopolitical rivalry grounded in differing property regimes. This article examines the Cold War as an under-analyzed context for the idea of “the tragedy of the commons.” In Soviet practice, collectivization was meant to provide the material basis for cultivating particular forms of sociability and an antidote to the ills of private property. Outsiders came to conceptualize it as tragic in both economic and political dimensions. Understanding the commons as a site of tragedy informed Western “answers” to the “problem” of Soviet collective ownership when the Cold War ended. Privatization became a mechanism for defusing old tragedies, central to a post-Cold War project of advancing “market democracy.” Meanwhile, the notion of an “illiberal commons” stands ready for redeployment in future situations conceived as tragically problematic.

INTRODUCTION

We insist on respecting the right ... to stand, in the middle of a sea of jeers and outrages, on the rock of the word “we.”¹

The twentieth century was marked by deeply discrepant views on the relationship between property and tragedy. Under both socialism and capitalism,

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mid-century discursive traditions became preoccupied with problems and consequences of private and collective holding. On one side, the commons came to figure as a site of tragedy. On the other, collectivization, with commonly-held property as its material base, was taken as an answer to the tragedies of private property. For its adherents, the collective would be the solution, rather than the problem. This great divide rarely figures into reflections on *The Tragedy of the Commons*.²

This article examines the Cold War as an epistemic context and proposes the idea of “the tragedy of the commons” as one of its artifacts.³ Part I considers the Cold War as a background within which property bore particular significance, functioning both as a taken-for-granted feature and as an object of intentional action. It then explores doctrine and practice regarding commonly-held property in the socialist world and Western reflections on it. These parallel histories show how revolutionary ideas about property were institutionalized and Cold War stances toward private and collective ownership, internalized. Part II describes a “tragedy of the commons” literature in the West⁴ as one expression of Cold War divergences, emerging from a background in which Soviet commonly-held property figured in tragic aspect just as, at the same time, in socialist thought it offered solutions and possibilities.

Reconsidering the “tragedy of the commons” in this light offers fresh insight into its contemporary career and new prospects on its future redeployment. Since the Cold War, dealing with the legacy of collective ownership became a new preoccupation. Part III proposes that conceptualizing the commons as a site of tragedy informed Western “answers” to the “problem” of Soviet collective ownership after the dissolution of the U.S.S.R. Commonly-held

1 Гилея [Нулаеа], *Пощёчина Общественному Вкусу* [*A Slap in the Face of Public Taste*], in *ПОЩЕЧИНА ОБЩЕСТВЕННОМУ ВКУСУ* [A SLAP IN THE FACE OF PUBLIC TASTE] (1912) (manifesto on the collective).

2 Some astute scholars have examined Hardin’s political and intellectual formation closely. Fabien Locher in particular identified fields of science, including ecology, that developed in the Cold War as formative of Hardin’s thought. However, he concentrates on fields of study that Hardin engaged through intentional effort. He does not look into the Cold War as an epistemic background, nor does he focus on the differing property regimes foundational in the Cold War epistemic milieu. Fabien Locher, *Cold-War Pastures: Garrett Hardin and the “Tragedy of the Commons,”* 60 *REVUE D’HISTOIRE MODERNE ET CONTEMPORAINE* [REV. HIST. MOD. CONTEMP.] 7, 18 (Cadenza Academic trans., 2013).

3 Garrett Hardin, *The Tragedy of the Commons*, 162 *SCI.* 1243 (1968) [hereinafter Hardin, *Tragedy*].

4 *Id.*; see also literature discussed *infra* Part II.

property became the target of reforms meant to defuse its presumed tragedies in a larger post-Cold-War project of advancing “market-democracy.”

My discussion focuses on Ukraine, as a case in which collectivization figured prominently in Cold War “tragedy” narratives and where, subsequently, opposing discourses have met in open contestation. Part IV points out lessons that may be drawn from considering the Cold War background of the “tragedy of the commons” and suggests the “illiberal commons” as an idea standing ready for redeployment in future situations conceived as tragically problematic.

I. THE COLD WAR

A. Cold War as Background

Garrett Hardin published *The Tragedy of the Commons* in 1968, at the height of the Cold War.⁵ Although in retrospect the Cold War is commonly reduced to arms races, missile crises, and moonshots, Katherine Verdery suggests that, more than merely a superpower standoff, it was a form of knowledge production and “cognitive organization of the world.”⁶ This Cold War was experienced in part as a set of assumptions and dispositions, a “common sense”⁷ on each side of the Iron Curtain that extended beyond cognition to more inchoate dispositions like anxiety or pride. Understood in this more encompassing way, the “Cold War” stands for a background within which Hardin and others thought about the commons.

I take philosopher John Searle’s work on “the Background” as a useful starting point for reconsidering the Cold War.⁸ Searle’s Background unites two dimensions: a “deep background” of capacities common to humankind, like walking, as well as embodied understandings taking account of, for example, the solidity of things; and a “local background” of specific cultural practices, like waltzing on a dancefloor. The Background prefigures action and has either to do with “how things are” or with “how I do things,” suggesting anthropologically interesting relationships between ontology and performativity.

For Searle, this Background of “preintentional capacities” operates in a network with intentional states such as beliefs, desires, hopes, or fears. To

5 Hardin, *Tragedy*, *supra* note 3.

6 KATHERINE VERDERY, *WHAT WAS SOCIALISM, AND WHAT COMES NEXT* 4 (1996).

7 Monica Eppinger, *On Common Sense: Lessons on Starting Over in Post-Soviet Ukraine*, in *UP, DOWN, AND SIDEWAYS: ANTHROPOLOGISTS TRACE THE PATHWAYS OF POWER* 192-209 (Rachael Stryker & Roberto Gonzalez eds., 2014).

8 For his discussion of the Background, see JOHN SEARLE, *INTENTIONALITY: AN ESSAY IN THE PHILOSOPHY OF MIND* 141-48 (1983).

illustrate, consider wanting to go for a swim in the ocean.⁹ Wanting to go for a dip, an intentional state, operates in a network with the Background, meaning the intention rests on a preintentional stance recognizing the relative density of things, liquid versus solid (i.e., how things are), that in turn informs performance of motion (how I do things). The deep background disposes me to go for a swim in the ocean but not in the sand. The culturally-informed local background directs my impulse to swim in the ocean rather than, say, a stranger's pool. The commons of the ocean features here as the setting for my intention, part of the Background that underlays an intentional state.

These concepts provide a vocabulary for several premises of my argument about the "tragedy of the commons" as a Cold-War discursive object. "Property" is one name for the way we experience patterned ideas about socio-spatial organization, in its proprioception incorporating phenomenology, epistemology, and sociability. During the "Cold War," new experiences of property were incorporated into preintentional stances and dispositions, while ideas about property assumed ideological significance. "Property" thus functioned on two levels. On the level of embodied understandings and preintentional stances, it became part of "local background," subsumed within the Background we call the Cold War. At the same time, on the level of intentional states, property regimes themselves became objects of action (like revolution or reform). In its work on two levels, as a feature of the Background and as a preoccupation of intentional states, property assumed particular significance in the twentieth century.

B. Cold War Soviet: Common Holdings and Collective under Communism

1. Beyond Orientalism

After the dissolution of the U.S.S.R., many in retrospect colored the Soviet past in grayness or fear. Soviet thinker Valerii Savchuk objected, recalling that socialist life included "human happiness," "comforts and well-being," "cordiality, successes and order."¹⁰ Significantly, Savchuk associated such preintentional dispositions with a "well-furnished common space of living."¹¹ The possibility of a Background of comfort, coziness, human values, or

9 Example adapted from Searle's example of peeling an orange. *Id.* at 144.

10 Valerii Savchuk, *Konets prekrasnoi epokhi. Monolog filosofa* [*The End of a Belle Epoque: Monologue of a Philosopher*], in KONETS PREKRASNOI EPOKHI. FOTOPOSTSCRIPTUM [THE END OF A BELLE EPOQUE: PHOTO-POSTSCRIPT] (Dmitrii Pilikin & Dmitrii Vilenskii eds., 1995) (exhibition catalogue), cited in ALEXEI YURCHAK, EVERYTHING WAS FOREVER, UNTIL IT WAS NO MORE 8 (2006).

11 Savchuk, *supra* note 10.

optimism and intentional states concerned with a positive future is lost in typical Western portrayals of life under socialism that flatten the range of intentional states to oppression or dissidence.¹² Ethnography about the late Soviet period exposes a richer lived experience of socialism,¹³ integral to which was a certain “common space of living.”

How does socialism’s “common space of living” compare to “the commons” of Western thought? Western scholarship came to define a “commons” as property managed on behalf of a community.¹⁴ In this community-based sense, its closest analogue in socialist thought and practice was the space of the *kollektiv*. Beyond an administrative category, the *kollektiv* was a deliberate reorganization of experience on a particular material basis, meant to cultivate specific forms of sociability.¹⁵

I propose that processes of establishing the material basis of the *kollektiv*, collectivization, played a prominent role in its signification as a site of tragedy in Western thought. The following subsections concentrate on holdings in land, which is what, for Westerners, Soviet “collectivization” came to stand for. I briefly review doctrines and legal measures that set collectivization in motion; two steps, destruction (of private owners and ownership) and construction (of common holdings and the *kollektiv*); and how the process was narrated in the West.

2. Doctrine, Law, and Consequences

Collective property ownership made sense to Soviet decision-makers for several reasons, primary being the Marxist conviction that private property is the basis of human alienation and exploitation.¹⁶ Land redistribution became

12 YURCHAK, *supra* note 10, at 5. Western historians of the U.S.S.R. thought along the same lines, their work subsequently characterized as of a “totalitarian school” (emphasizing oppression) or a “revisionist school” (emphasizing collaboration). For a summary of Western historiography, see STEPHEN KOTKIN, *MAGNETIC MOUNTAIN: STALINISM AS CIVILIZATION* 2-6 (1995); Jochen Hellbeck, *Fashioning the Stalinist Soul: The Diary of Stepan Podlubnyi (1931-1939)*, 44 *JAHRBÜCHER FÜR GESCHICHTE OSTEUPAS* [E. EUR. HIST. Y.B.] 344, 345 (1996).

13 YURCHAK, *supra* note 10.

14 Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 *YALE L.J.* 549, 557 (2001) (distinguishing a commons from a common-pool resource) [hereinafter Dagan & Heller, *Liberal Commons*].

15 OLEG KHARKHORDIN, *THE COLLECTIVE AND THE INDIVIDUAL IN RUSSIA: A STUDY OF PRACTICES* 211 (1999).

16 The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property . . . the final and most complete expression of . . . the exploitation of the many by the few. In this

a target of Soviet revolutionary activity,¹⁷ with the ultimate goal remaining not mere redistribution but establishing collective ownership in the Soviet people as a whole.¹⁸ Civil war and governing exigencies made collectivizing more aspiration than systematic policy for the first decade after the Socialist Revolution. When it finally got underway in 1927, the timing was not driven by revolutionary principles as much as by other priorities, a fact that held significant consequences for rural residents and for the impression that collectivization left in the West.

Historians, with the benefit of post-Soviet archival openings, now identify several factors driving the collectivization campaign. First was industrialization. Stalin and his allies had plans to build industry and infrastructure, but financing

sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property.

Karl Marx, *Manifesto of the Communist Party, Ch. II*, in 1 MARX/ENGELS SELECTED WORKS 98, 98 (Samuel Moore & Frederick Engels trans., 1969 (1848)) (Andy Blunden digital ed., 2004), <https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch02.htm>.

- 17 Decree of Second All-Russian Congress of Soviets, On Land, SOBR. UZAKON. I RASPORIAZH. RKP [COLLECTION OF THE LAWS AND ORDERS OF THE WORKERS' AND PEASANTS' GOVERNMENT], 1917-18, No. 1, It. 3 (authorizing confiscation of crown and church estates for redistribution to local peasants), *reprinted in* IDEAS AND FORCES IN SOVIET LEGAL HISTORY 116-17 (Zigurds L. Zile ed., 1992). *See also*, e.g., Vladimir Ilyich Lenin, Speech on the Agrarian Question (Nov. 14th (27th), 1927) (arguing, to a congress of peasants' deputies, that confiscation of landed estates was the "first step of the revolution," but the "land question" would not be settled "independently of the other problems of the revolution"), in 26 LENIN'S COLLECTED WORKS 321 (George Hanna ed., Yuri Sdobnikov & George Hanna trans., Progress Publishers, Moscow 1972).
- 18 For example, responding to a question about land seizures by the rural poor in May 1917 (six months before the Bolshevik Revolution), Lenin articulated the Bolshevik Party line that property in land should be "vested in the people as a whole." The Party opposed "any seizure of land as private property." Landed estates were to be

confiscated *immediately*, that is, private ownership of them must be abolished *immediately* and *without compensation*. . . . And what about the *possession* of these lands? Who is to take immediate possession of them and cultivate them? The local peasants are to do this in an organised (*sic*) way, that is, in accordance with the decision of the majority. . . . The local peasants are to have the *immediate* use of these lands, which are to become the *property* of the people as a whole.

Vladimir Ilyich Lenin, *On the "Unauthorised Seizure" of Land*, PRAVDA (June 2 (May 20), 1917), *reprinted in* 24 LENIN COLLECTED WORKS 449 (Isaacs Bernard trans., 1964).

was a problem after rupture with capitalist countries limited access to foreign financing. The Soviet state needed grain for revenue-raising exports, but peasants proved reluctant to sell to state procurement agents.¹⁹ Collectivizing fragmented smallholdings into fewer, larger units would consolidate grain production, facilitating its collection by state agents for export.²⁰ Second, a war scare with Poland seemed to demand greater integration of the state and the rural population.²¹ Third, Stalin used collectivization to maneuver against internal political rivals.²²

While preexisting Marxist convictions had long determined collective ownership in land as a just (even inexorable) end in itself, Stalin finally took it up as a means to these other ends.²³ When rural households lagged in joining

19 See, e.g., A.I. Mikoyan, U.S.S.R. People's Commissar of Trade, On the Progress of Grain Procurements, Speech to Collegium of Trade Commissariat (Oct. 3, 1927), *reprinted in part in* 1 WAR AGAINST THE PEASANTRY, 1927-1930: THE TRAGEDY OF THE SOVIET COUNTRYSIDE 27-29 (Lynne Viola et al. eds., 2005) [hereinafter Viola, TRAGEDY OF SOVIET COUNTRYSIDE].

20 Lynne Viola, *Introduction*, in Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 1-20.

21 For a summary of the historical evidence of both the Polish threat and the Soviet government's reaction to it, see Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 9, 16-18. See also, e.g., Walter Duranty, *Soviet War Frenzy Is Carried Higher, Story of Polish Preparation Is Broadcast, People Fear an Attack*, N.Y. TIMES, July 4, 1927, at 6.

22 On Stalin's opportunism in using collectivization as a means to defeat political rivals, see V.P. Danilov, *Vvedenie [Introduction]*, in 1 TRAGEDIA V SOVETSKOI DEREVNI: KOLLEKTIVIZATSIA I RAZKALUCHIVANIE. DOKUMENTY I MATERIALY, 1927-1939 [TRAGEDY IN THE SOVIET COUNTRYSIDE: COLLECTIVIZATION AND DEKULAKIZATION, DOCUMENTS AND MATERIALS, 1927-1939] 25 (V.P. Danilov et al. eds., 1999-2003) [hereinafter Danilov, COLLECTIVIZATION AND DEKULAKIZATION DOCUMENTS]. On Stalin's using grain collection against internal enemies, see Andrea Grazioso, *The Impact of Holodomor Studies on the Understanding of the USSR*, 2 EAST/WEST: J. UKR. STUD. 53 (2015) (arguing that Stalin thought of peasants and nationalities as enemies of the Soviet system and Stalin's personal power, and intentionally used collectivization to enforce grain confiscation and starvation as a tool in his war against them, particularly in Ukraine); see also ROBERT CONQUEST, *HARVEST OF SORROW: SOVIET COLLECTIVIZATION AND THE TERROR-FAMINE* (1986) (describing the collectivization famine as meant to crush the peasantry of the U.S.S.R. as a whole, and the Ukrainian nation in particular).

23 *XV S'ezd vsesoyuznoi kommunisticheskoi partii (b). Stenographicheskii ochet*. [Fifteenth Congress of the All-Union Communist Party (Bolshevik). Stenographic Record.] 56 (1928) (wherein Stalin exhorts delegates to the Dec. 1927 Party Congress that there was "no way out" of the grain procurement crisis but

collective farms,²⁴ the authorities decided to accelerate the process. “Plans,” “processes,” “goals”: anodyne policy terms risk masking the real violence that then ensued. The Party identified a rural class enemy, the “kulaks,” supposedly wealthy peasants, whom it blamed for low grain surrender totals.²⁵ In January 1930, the Party officially abandoned voluntarism and ordered widespread compulsory collectivization.²⁶ In tandem, the Politburo quietly ordered urban party members to villages by February 20 to effect “de-kulakization.” Activists and secret police²⁷ were to confiscate kulak lands; exile one category of kulaks within the U.S.S.R.; incarcerate a second in concentration camps; and summarily execute a third.²⁸

through transition to collectivized agriculture), *cited in* Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 386 n. 24. Decree of U.S.S.R. Cent. Exec. Comm. & Council of People’s Commissars, On Collective Farms, SOBR. ZAKON. I RASPORIAZH. RKP SSSR [COLLECTION OF LAWS AND ORDERS OF THE WORKER-PEASANT GOVERNMENT OF THE U.S.S.R.] (1927), No. 15, Item 161 (ordering government bodies to implement the Party Congress resolution on land collectivization).

- 24 By June 28, 1928, reportedly only 1.7 % of rural households had joined collective farms. Lynne Viola, *Introduction to The Great Turn, 4 May 1929 – 15 November 1929*, in Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 122. In June 1929, the authorities targeted collectivization to reach 85% by the end of 1934. 5 KAK LOMALI NEP. STENOGRAMMI PLENUMOV TsK VKP(B), 1928-1929 [HOW NEP WAS BROKEN: STENOGRAPHIC RECORD OF PLENUMS OF THE CENTRAL COMM. OF THE ALL-SOVIET COMMUNIST PARTY, 1928-1929] 8 (V.P. Danilov et al. eds., 2000); R.W. DAVIES, THE SOCIALIST OFFENSIVE: THE COLLECTIVIZATION OF SOVIET AGRICULTURE 1929-1930, at 112, 147 (1980) [hereinafter DAVIES, SOCIALIST OFFENSIVE].
- 25 The definition of “wealth” was relative, in some areas meaning a household possessing several hectares and in others, merely a flock of chickens.
- 26 Decree of Cent. Comm. of Communist Party, On the Pace of Collectivization and State Assistance to Collective-Farm Construction, Jan. 5, 1930 (calling for “wholesale” (*sploshnaia*) collectivization, defined as no less than 75% of every village), *reprinted in* Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 201.
- 27 I use “secret police” to refer to the O.G.P.U., the Russian acronym for the “Unified State Political Administration,” an organization uniting two predecessors, the CheKa (secret police, whose full name translates as the All-Russian Extraordinary Commission for Combating Counterrevolution and Sabotage) and the G.P.U. (State Political Administration).
- 28 Decree of Politburo, On Measures for the Liquidation of Kulak Farms in Raions of Wholesale Collectivization, Jan. 30, 1930, *reprinted in* Viola, TRAGEDY OF SOVIET COUNTRYSIDE, *supra* note 19, at 228-34.

This intensive, intimate action over the first three months of 1930 transformed the countryside.²⁹ Violence against those labelled “kulaks” was widespread,³⁰ as was resistance,³¹ to an extent that apparently surprised even the Soviet leadership. In a March article in *Pravda*, Stalin called a pause, reporting that the Party was “Dizzy with Success” over collectivization and criticizing local officials for “excesses.”³²

With the social chaos and loss of expertise and person-power from dekulakization, rural production fell. However, as expected, collectivization did facilitate state agents’ collecting grain from farmers and Soviet authorities intensified aggressive confiscation,³³ stripping villagers of food-stores. Peasants grew too malnourished to work; others committed suicide to avoid starvation, and scattered reports of cannibalism reached Moscow from secret police in the field.³⁴ Within three years, approximately 10% of the Ukrainian population (by conservative estimates) — at least 3 million people — had died of starvation.³⁵

29 As of January 1, 1930, only 16% of farmland in Ukraine had been collectivized. By March 11, 1930, 64% had been. Timothy Snyder, Professor of History at Yale University, Lecture at Yale University History Department (Nov. 6, 2005) [hereinafter Snyder 2005 lecture].

30 By the end of 1930, some 377,000 families had been subject to some form of dekulakization. Danilov, COLLECTIVIZATION AND DEKULAKIZATION DOCUMENTS, *supra* note 22, in VOL. 2, at 746.

31 The secret police reported more than one million acts of peasant resistance to collectivization in Ukraine in the first quarter of 1930. Snyder 2005 lecture, *supra* note 29. See also LYNNE VIOLA, PEASANT REBELS UNDER STALIN: COLLECTIVIZATION AND THE CULTURE OF PEASANT RESISTANCE 79-81 (1996) (analyzing villagers’ response to collectivization and finding that “Ukraine led in revolt”).

32 I.V. Stalin, *Dizzy with Success: Concerning Questions of the Collective Farm Movement*, PRAVDA (Mar. 2, 1930), at 2.

33 Joint Decree of Cent. Comm. of Communist Party of U.S.S.R. & Council of People’s Commissars, On the Compulsory Delivery of Grain to the State by *Kolkhozy* and Individual Households, Jan. 19, 1933, art. 25, cited in R.W. DAVIES & STEPHEN G. WHEATCROFT, THE YEARS OF HUNGER: SOVIET AGRICULTURE, 1931-1933, at 250 (2004) [hereinafter DAVIES & WHEATCROFT, YEARS OF HUNGER].

34 See, e.g., Special Comm’n of Dep. Head of Ukrainian G.P.U., Cases of Cannibalism in Uman district, Kiev Region, Jan. 28, 1932; Kiev G.P.U. Report, March 12, 1932; Dnipropetrovsk G.P.U. Report, March 5, 1932; Report of Information and Sowing Group of Ukrainian Party Cent. Comm., April 1, 1933, all discussed in DAVIES & WHEATCROFT, YEARS OF HUNGER, *supra* note 33, at 421-24.

35 Registered deaths (likely underreported) for 1931-33 in Ukraine reached 3,091,809, reflected against an estimated total 1930 population of 28,710,628. See DAVIES & WHEATCROFT, YEARS OF HUNGER, *supra* note 33, at 415 (estimating “excess deaths” from famine 1932-33), www.soviet-archives-research.co.uk/hunger.

3. *Collectivization as Modernization*

The bare-bones story of collectivization that reached the West in pieces — famine, terror, and violence — is different from the one Soviet farmers told about themselves. Famine, distinguished from starvation that can be individually verified, signifies death from hunger on the level of a population. For an event or period to become understood as “famine” requires institutional structures of fact-gathering and statistics, knowledge production, and information dissemination that, at the time of mass rural starvation in Ukraine, were not put to that purpose.³⁶ What rural residents made of their local experiences and their relationship to the state is a matter of debate among historians.³⁷ Contemporaneous reports indicate that a variety of affective states and calculations shaped locals’ reactions to signs of rural disaster: stigma or fear, but also commitment to the socialist project and social solidarity. As one regional Party secretary reported from Ukraine to Moscow in March 1933 (the height of the Famine), until the middle of February no one even paid attention to “cases ... of swelling from hunger and deaths from hunger.”

36 The word in circulation, *holod*, meaning “hunger” or “starvation,” is distinct from *holodomor*, meaning “mass death by starvation” or “famine.” In 1967, Ukrainian Party leader Petro Shelest tried to demand that academic writers of a new history of Socialist Ukraine include a paragraph on the collectivization famine of 1932-33; the authors successfully demurred. Stanislav Kul’chits’ky, *Il tema della carestia nella vita politica e sociale dell’Ucraina alla fine degli anni Ottanta* [The Theme of Famine in the Political and Social Life of Ukraine in the Late Eighties], in *LA MORTE DELLA TERRA: LA GRANDE CARESTIA IN UCRAINA NEL 1932-33* [THE DEATH OF THE EARTH: THE GREAT FAMINE IN UKRAINE IN 1932-33], at 431 (G. De Rosa & F. Lomastro eds., 2004), cited in Grazioso, *supra* note 22, at 65. Reportedly not until 1986 did a public figure, in a public address, use the word *holodomor* to describe retrospectively the experience of the early 1930s. Ivan Drach, address to Congress of Writers’ Union of Ukraine (June 5-7, 1986), reported in *Вивчення Голодомору 1932-1933 років в Україні* [STUDY OF THE ‘HOLODOMOR’ OF 1932-1933 IN UKRAINE] UKRAINIAN WIKIPEDIA, https://uk.wikipedia.org/wiki/Вивчення_Голодомору_1932—1933_років_в_Україні (last visited Jan. 5, 2018). *Holodomor* is the term now widely used in Ukraine (and in the Ukrainian language) to name The Famine as an event of mass starvation between 1930 and 1933.

37 *Contrast, e.g., CONQUEST, supra* note 22 (arguing that grain confiscation through collectivization was Stalin’s means of inducing “mass-terror” in order to force the population into submission) with Sheila Fitzpatrick, *Supplicants and Citizens: Public Letter-Writing in Soviet Russia in the 1930s*, 55 *SLAVIC REV.* 78 (1996) (describing collections of thousands of complaint letters from collective farmers, among others, to Soviet leaders that seem to evidence feisty engagement rather than terror).

Moreover, it seemed “anti-party and reprehensible” to react to them.³⁸ Some villagers ascribed local hardship to class “sabotage.”³⁹ In Stalin’s personal communications, only one mention of famine has been found from this time.⁴⁰

Along with grain confiscation and the physical “liquidation” of neighbors designated as class enemies, what did “collectivization” mean in the countryside? Over time, it became a process of integration. Through the 1930s, the collective farm was the vehicle by which the Soviets introduced applied science, labor-saving mechanization, hybrid seed varieties, improved stock maintenance, and standardized agricultural techniques to the countryside.⁴¹ The Stakhanovite movement (bringing Taylorist methods to the U.S.S.R.) reached rural collectives, coordinating labor and mechanization for economies of scale and giving rural areas their own ideal of Soviet heroism. It brought rural life into the nationwide narrative and farmers into the fields of Soviet imagination and aspiration.⁴² Farm organization became more like a factory of interdependent parts and workers than a site of yeoman-individualists. Soviet campaigns

38 Letter from M.M. Khataevich, First Party Sec’y of Dnipropetrovsk oblast’ of Ukr., to U.S.S.R. Communist Party Cent. Comm., *excerpt reprinted in* DAVIES & WHEATCROFT, *YEARS OF HUNGER*, *supra* note 33, at 205.

39 *See, e.g., The Soviet and the Peasantry, Pt. II Hunger in the Ukraine*, MANCHESTER GUARDIAN, Mar. 27, 1933, at 10 (published anonymously, later known to be written by Malcolm Muggeridge) (quoting a collective farmer outside of Kiev linking both his family’s starvation and his own disappointed hopes for being selected for the village council with “saboteurs”) [hereinafter *Hunger in Ukraine*, MANCHESTER GUARDIAN 1933].

40 Stalin wrote in a 1932 letter to the Politburo that in Ukraine, as a result of poor organization of state grain collection, “a number of districts with good harvests were in a state of ruin and famine.” STALIN I KAGANOVICH: PEREPISKA, 1931-1936 GG [STALIN AND KAGANOVICH: CORRESPONDENCE, 1931-1936] 279 (Oleg V. Khvelnyuck et al. eds., 2001), *cited in* DAVIES & WHEATCROFT, *YEARS OF HUNGER*, *supra* note 33, at xv. *But see* Nadezhda Aliluyeva, note to Stalin (Nov. 9, 1932) (unarchived but multiply-attested suicide note of Stalin’s second wife, reportedly after an argument with Stalin at a party that collectivization caused famine) *discussed in Rumor Revived that Stalin Killed His Wife*, *British Say*, N.Y. TIMES, Apr. 1, 1956, at 12.

41 Starting in 1931, for example, the authorities instituted a system of five-times-daily reports on each collective’s agricultural activity. (During harvest, for example, reaping, binding and stacking, and threshing were separately chronicled.) Farm self-reports, published in the daily newspapers, were accompanied by recommendations on how to cope with difficulties or deficiencies in the work. DAVIES & WHEATCROFT, *YEARS OF HUNGER*, *supra* note 33, at 71.

42 MARY BUCKLEY, *MOBILIZING SOVIET PEASANTS: HEROINES AND HEROES OF STALIN’S FIELDS* 119 (2006).

brought literacy,⁴³ electrical power,⁴⁴ and medical clinics⁴⁵ to collectivized farms. The formation of rural collectives was celebrated in popular culture as a triumph of the forces of modernity and science against daunting challenges.⁴⁶

The law also promoted collectivism. It put productive assets, including land, in the favored category of “state property, i.e. the common property of the Soviet people.”⁴⁷ It also privileged “cooperative property” belonging indivisibly to a group.⁴⁸ “Personal property” serving individual needs was tolerated,⁴⁹ but the category of “private property” was abolished altogether.⁵⁰

43 See, e.g., N.K. Krupskaya, *The Organization of Self-Study* (1922), reprinted in N.K. KRUPSKAYA, 2 PEDAGOGICHESKIE SOCHINENIE V SHESTI TOMAKH [PEDAGOGICAL ESSAYS IN SIX VOLUMES] 132-54 (1978) (translation my own) (in which Krupskaya, Lenin’s widow, offers tips to adult learners).

44 National electrification “will put an end to the division between town and country,” “raise the level of culture in the countryside,” and “overcome, even in the most remote corners of the land, backwardness, ignorance, poverty, disease and barbarism.” Vladimir Ilyich Lenin, Report on the Work of the All-Russian Cent. Exec. Comm. & the Council of People’s Commissars, to The First Session of the All-Russia Cent. Exec. Comm., 7th Convocation, (Feb. 2, 1920), published in VLADIMIR ILYCH LENIN, 30 COLLECTED WORKS 315-36 (George Hannah trans., 4th English ed. 1965).

45 See, e.g., *Meditsinskoye Obrazovaniye* [Medical Education], in 17 BOLSHAYA MEDITSINSKAYA ENTSIKLOPEDIYA [BIG MED. ENCYCLOPEDIA] 698-710 (1936) (describing medical training for rural medical personnel (at so-called “Feldsher” stations) from their introduction in 1895 through the first five years of rural collectivization to 1936).

46 See, e.g., ZEMLYA [EARTH] (Vufku 1930) (Ukrainian film-maker Oleksandr Petrovych Dovzhenko’s film valorizing collectivization in Soviet Ukraine, received enthusiastically by the audience at its premier in Kharkiv, Ukraine, afterwards derided by Soviet authorities on other grounds); Механізуємо Донбасс! [We are Mechanizing the Donbass!] (1930) (Aleksandr Deyneka’s graphic arts poster celebrating mechanization of agriculture in southeastern Ukraine).

47 KONST. SSSR [USSR CONSTITUTION] art. 11 (1977) (“State property, i.e. the common property of the Soviet people, is the principal form of socialist property. The land, its minerals, waters, and forests are the exclusive property of the state. The state owns the basic means of production in industry, construction, and agriculture . . .”).

48 W.E. BUTLER, SOVIET LAW 169-76 (1983).

49 VICTOR P. MOZOLIN, PROPERTY LAW IN CONTEMPORARY RUSSIA 10-11 (1993); F.J.M. FELDBRUGGE, RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW 229-46 (1993).

50 Michael A. Heller, *The Tragedy of the Anti-Commons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621, 628 (1998).

A farm could be organized either as a state farm (*sovkhov*), in which land and equipment belonged to the state and resident workers worked as salaried employees, or as a collective farm (*kolkhoz*), in which use-rights to land and equipment belonged indivisibly to members whose income depended on the farm's output.

Western terms do not map precisely onto Soviet doctrine and experience. For example, land as state property was the "common property of the Soviet people," but could not be used by just anyone or even by permitted users for just any purpose; by contrast, "products of nature" like mushrooms, berries, fish, or fallen firewood were in practice collected by any Soviet citizen without regard to boundaries between state forest, *sovkhov* field, or *kolkhoz* pasture. For uses like recreating or gathering, Soviet citizens experienced state and collective farmlands on a continuum of common enjoyment with the rest of their homeland. With respect to those uses for its citizens, in Western terms, would the U.S.S.R. be styled something of a large-scale, limited-use commons, eleven-time-zones wide, or a common-pool resource?

4. Summary: Situs of Progress and Modernity

Reorganizing rural land holding into collective ownership, a long-term goal of Marxist doctrine, became an urgent state priority due to the perceived need to collect grain for export revenue and to deal with external and internal threats. The famine that accompanied collectivization did not result from a Hardinian "tragedy of the commons." It came rather from grain seizures and rural class warfare. Formulated upon calculations of confiscation and predation, collectivization in its initial implementation held dire consequences for masses of rural residents. However, in Soviet discourse and in rural experience, the subsequent six decades of rural collectives were also decades of modernization. *De jure* and *de facto*, "collectivization" transformed the social life of the countryside, by the period of late socialism forging new experiences of space and social organization and yielding illiberal subjectivities including the *kollektiv*.

The next subsection relates how the story of Soviet collectivization was told in the West and shows how, by Hardin's time, Soviet collectivization had become associated in the West with both economic and political tragedy.

C. Collectivization in the West: What did they Know and When did they Know it?

One possible objection to the suggestion that, in the West, the commons figured as a Cold-War site of tragedy is that, with the news suppressed, the famine was unknown there. This subsection examines Western historiography about

Soviet collectivization. The goal is to uncover what was common knowledge in the West — what Western thinkers knew and when they knew it — in order to contextualize discussions about common property and tragedies.

I. Contemporaneous Accounts

The Soviet campaign to collectivize property holding was well-known outside of the Soviet Union, but famine only became an accepted part of the historical record in the West over time. Contemporary Western sources are mixed. Those reporting the famine found themselves contradicted by prominent voices including *The New York Times* and *The Nation* magazine.

New York Times U.S.S.R. correspondent and 1932 Pulitzer Prize winner Walter Duranty filed over 1,000 articles under his byline from Moscow,⁵¹ but did not break the story on the famine.⁵² Although a *Times* Moscow colleague, Harold Denny, sporadically reported famine conditions,⁵³ Duranty set the tone and, significantly, led the foreign press corps in discrediting visiting reporters who broke the silence.

One target was Gareth Jones, who travelled as a secretary of former U.K. Prime Minister Lloyd George to the Soviet Union in the early 1930s. Jones' first trip reports emphasized Stalinism, enthusiasm, and coercion, although he spoke of a "food shortage" attributed to the agricultural reorganization and the absence of a free market, with a Donbass (Ukraine) miner ominously

51 Search of Walter Duranty's articles, *NEW YORK TIMES*, <http://www.nytimes.com/ref/membercenter/nytarchive.html> (follow "Search the Article Archive: 1851-1980" hyperlink, then search "Walter Duranty").

52 For representative Duranty reporting on collectivization, see, for example, Walter Duranty, *Harvest Will Test Soviet Farm Policy*, *N.Y. TIMES*, July 8, 1929, at 5 ("This year it was realized that collective farming had something to offer — tractors, machinery, modern instructors, cleansed seed, fertilizers, and the reduction of taxes."); Walter Duranty, *Big Ukraine Crop Taxes Harvesters, Talk of Famine Now Is Called Ridiculous After Auto Trip Through Heart of Region*, *N.Y. TIMES*, Sept., 18, 1933, at 8 ("The writer has just completed a 200-mile auto trip through the heart of the Ukraine and can positively say that the harvest is splendid and all talk of famine now is ridiculous. . .").

53 Harold Denny, *Poor Crops Bring Soviet Migration*, *N.Y. TIMES*, Oct. 23, 1934, at 6 (painting desperate migrants as an antidote to famine, not a symptom of it). Duranty followed Soviet authorities' lead, reporting on pre-collectivization food shortages when they did. See, e.g., Walter Duranty, *Bread Shortage Admitted in Russia*, *N.Y. TIMES*, July 2, 1928, at 5 ("At last the truth is being told [in *Pravda*] about the bread situation on which correspondents have hitherto been compelled to refer in terms of vague pessimism without the possibility of stating the facts commonly known here.").

reporting mass regional exodus “because there is no food there.”⁵⁴ The diary from his second trip in 1931, published anonymously, spoke explicitly of confiscation and starvation.⁵⁵ His March 1933 walking tour through rural Ukraine revealed the crisis: no food, swollen bellies of starving children. Appalled, immediately upon departure, Jones held a press conference in Berlin to expose the famine in the U.S.S.R. Coverage of it garnered extensive coverage in U.K. and U.S. newspapers.⁵⁶

Another alternative voice, soon targeted, was British correspondent Malcolm Muggeridge, who published anonymous eyewitness accounts from March 1933 Ukraine and southern Russia. He described “kulaks” awaiting deportation on a train platform in southern Russia as “wretched looking peasants, half-starved, tattered clothes, frightened faces, standing to attention. These may be kulaks, I thought, but if so they have made a mighty poor thing of exploiting their fellows.”⁵⁷ In Ukraine, “The population is starving. ‘Hunger’ was the word I heard most. Peasants begged a lift on the train from one station to

54 Gareth Jones, *The Two Russia's: Fanaticism and Disillusion, Pt. II Open Discontent*, THE TIMES, Oct. 14, 1930.

55 For example, when villages should have been full of late-September harvest bounty, a collective farmer whispers,

It is terrible in the Kolkhoz! They took my cows and my horse. We are starving. Look at what they give us — nothing! Nothing! ... And we can't say anything or they'll send us away as they did the others. All are weeping in the villages today, little brother.

Anonymous (Gareth Jones) Diary Entry (Sep. 29, 1931), in ANONYMOUS [GARETH JONES], *EXPERIENCES IN RUSSIA 1931 – A DIARY* (1931). For a trip report published under his own name, see Gareth Jones, *Real Russia: The Peasant on the Farm, Pt. I Increase and Its Costs*, THE TIMES [LONDON], Oct. 14, 1931.

56 See, e.g., H.R. Knickerbocker, *Famine Grips Russia, Millions Dying*, N.Y. EVENING POST, Mar. 29, 1933, at A1 (Knickerbocker, a 1931 Pulitzer Prize winner, reporting from Jones' press conference); Edgar Adsel Mowrer, *Russian Famine Now as Great as Starvation of 1921, Says Secretary of Lloyd George*, CHICAGO DAILY NEWS, Mar. 29, 1933, at A2 (Mowrer, soon to win a 1933 Pulitzer Prize, reporting on Jones' press conference); *Russia in Grip of Famine*, THE MORNING POST [LONDON], Mar. 30, 1933; *Millions Starving in Russia. "There is No Bread. We are Dying"*, THE DAILY EXPRESS [LONDON], Mar. 30, 1933; *Famine in Russia. British Visitor Fears Death for Millions*, THE YORKSHIRE POST, Mar. 30, 1933; *Famine in Russia*, MANCHESTER GUARDIAN, Mar. 30, 1933. For Jones' own 1933 trip reporting in *The London Evening Standard*, *The Daily Express* (London), *The Western Mail* (Cardiff, Wales), and *The Financial News* (London), see RUSSIA IN GRIP OF FAMINE, http://www.garethjones.org/soviet_articles (last visited, Jan. 5, 2018).

57 *Hunger in Ukraine*, MANCHESTER GUARDIAN 1933, *supra* note 39.

another, sometimes their bodies swollen up — a disagreeable sight — from lack of food.”⁵⁸

Against such reporting, Duranty, the *Times* Moscow correspondent, issued a quick rebuttal. Based on “exhaustive inquiries” (in Moscow), he reported in March 1933, the countryside was seeing some shortage but the cities and army were well-supplied. Though admitting “definitely bad” conditions in a few regions (Ukraine, the North Caucasus, and Lower Volga), he criticized others’ famine reporting as motivated by anti-Soviet sentiments and blamed any rural shortages on the “novelty and mismanagement of collective farming” as well as — remarkably — a “conspiracy” by agricultural commissariats who had “made a mess of Soviet food production.”⁵⁹ Duranty denied that famine was underway or that anyone had starved.⁶⁰

This is a small sample of a wider story in which the act of reporting on the famine was taken as a right-wing political stance signifying an anti-Soviet, sometimes an anti-New Deal (or even pro-Nazi) line.⁶¹ In the years of mass starvation, 1930-1933, few reports of famine, and many rebuttals, circulated. *Time* magazine synthesized in a single column both Jones’ *cri-de-coeur* Berlin press conference and Duranty’s dismissal of it.⁶² The *New York Times*

58 *Id.* at 10. Muggerridge reported his dialogue with a now-starving beneficiary of land redistribution in a village outside of Kiev: “Why there is no bread in Ukraine?” “Bad organization.” “Some grain must have been produced. What happened to it?” “All taken by the Government.” *Id.*

59 At the time that Duranty wrote, the man he blamed, Dep. Min. Agric. Fedor Konar, together with 35 colleagues, had just reportedly been executed in what turned out to be one of the first waves of Stalin’s purges. *Сообщение ОГПУ [Soobshchnie OGPU] [OGPU Report] PRAVDA* (March 5, 1933), digitized photo of article, <https://varjag-2007.livejournal.com/1464750.html> (reporting Konar and his colleagues’ charges and verdicts); see also MARC JANSEN & NIKITA PETROV, *STALIN’S LOYAL EXECUTIONER: PEOPLE’S COMMISSAR NIKOLAI EZHOV, 1895-1940*, at 20 (2002).

60 Walter Duranty, *Russians Hungry But Not Starving. Kremlin’s ‘Doom’ Denied*, *N.Y. TIMES*, Mar. 30, 1933, at A13.

61 See, e.g., EDOUARD HERRIOT, *EASTWARD FROM PARIS* (Phyllis Megroz trans., 1934) (former French Premier’s account of a 1933 trip through the U.S.S.R., denying famine and blaming tales of hardship in the Soviet Union on right-wing provocateurs). For a summary of contemporaneous famine reports and denials in France, Germany, and Austria, see Etienne Thevenin, *France, Germany, and Austria Facing the Famine of 1932-1933 in Ukraine*, Paper Presented at James Mace Memorial Panel (June 29, 2005), <http://www.garethjones.org/ukraine2005/Etienne%20Thevein%20%20English%20translation.pdf>.

62 *Crusts on the Floor*, *TIME*, Apr. 10, 1933. *Time* introduced Duranty as “a U.S. correspondent long in Soviet good graces.” *Id.*

published Jones' answer to Duranty's nay-saying⁶³ and Duranty's subsequent digs.⁶⁴ Other Moscow-based foreign correspondents joined Duranty in denying famine reporting. One later recalled:

[T]hrowing down Jones was as unpleasant a chore as fell to any of us in years of juggling facts to please dictatorial regimes — but throw him down we did, unanimously and in almost identical formulas of equivocation. Poor Gareth Jones must have been the most surprised human being alive when the facts he so painstakingly garnered from our mouths were snowed under by our denials.⁶⁵

Prominent intellectuals like George Bernard Shaw and H.G. Wells, attempting to support the Soviet project, likewise poured scorn on famine reporting.⁶⁶

Jones was ostracized to the career backwater of rural Wales until American newspaper publisher William Randolph Hearst commissioned him to reprise his famine reporting as part of Hearst's "anti-Red" campaign of 1935 aimed at discrediting Roosevelt and stymying the New Deal. Hearst ran three famine articles by Jones⁶⁷ and five by a second writer, Thomas Walker, who had peddled his eye-witness accounts and photos of famine in Ukraine to Hearst.⁶⁸ After Walker's articles ran, however, a reporter for *The Nation*, Louis Fischer, exposed him as a fraud. His real name was Robert Green, a recently released convict who had spent only a few days in the U.S.S.R., and his photos were

63 Gareth Jones, *Mr. Jones Replies: Former Secretary of Lloyd George Tells of Observations in Russia*, N.Y. TIMES, May 13, 1933, at A12.

64 See, e.g., Walter Duranty, *Abundance Found in North Caucasus*, N.Y. TIMES, Sept. 14, 1933, at 14 (reporting from a September 1933 road trip "reaped grain in the fields" and "plump babies in the nurseries or gardens of collectives" and deriding "certain anti-Bolshevist elements abroad and some credulous American correspondents in Berlin and elsewhere" for confusing the 1933 abundance with 1921 hardships).

65 See, e.g., EUGENE LYONS, *ASSIGNMENT IN UTOPIA* 575 (1937).

66 See, e.g., George Bernard Shaw, *Letter to the Editor*, MANCHESTER GUARDIAN, Mar. 2, 1933 (calling the famine "a lie" and reporting on it as "inflammatory irresponsibility" and a "slander" on the Five-Year Plan).

67 Gareth Jones, *Russia's Starvation: What Lies behind Wave of Official Murder, that Followed the Assassination of Kirov, Grim Hunger of Peasants witnessed by former Foreign Adviser to Lloyd George*, N.Y. AM./L.A. EXAMINER, Jan. 12, 1935; Gareth Jones, *'There is No Bread': Gareth Jones Hears Cry of Hunger all over Ukraine*, SUNDAY AM./L.A. EXAMINER, Jan. 13, 1935; Gareth Jones, *'Reds Let Peasants Starve': Famine Found Even in Large City in Ukraine*, N.Y. AM./L.A. EXAMINER, Jan. 14, 1935.

68 See, e.g., Thomas Walker, *Six Million Perish in Soviet Famine, Peasants' Crops Seized, They and Their Animals Starve*, CHI. AM., Feb. 25, 1935, at A1.

faked. Fischer cast famine reporting more broadly as part of a right-wing campaign in the West to smear the Soviet Union.⁶⁹ (Jones, then traveling in Inner Mongolia, was murdered shortly thereafter, possibly by Soviet agents.)⁷⁰

Newspaper readers with personal knowledge of Ukraine challenged famine-denial narratives.⁷¹ Their assertions were bolstered by members of the Moscow foreign press corps who, as they rotated out of U.S.S.R. assignments, published memoirs exposing the famine (and their complicity in discrediting reporting on it), associating it with Stalin's consolidation of power, Stalinist terror, and the purges of the later 1930s.⁷²

Hitler's rise and other events soon eclipsed the drama of famine reporting, its discrediting, and attempts at its rehabilitation. However, word had gotten out. In Western records and imaginations, impressions of famine, imprecisely associated with Soviet collectivization, lingered. The narrative was murky, though, muddled by allegations of disinformation conspiracies, a paucity of close reporting as it was going on, and little access to authoritative material for policy analysis.

2. Postwar Accounts

With World War II, international experience and refugee flows brought to the West a new wave of collectivization/famine narratives. By the 1950s, émigré

69 Louis Fischer, *Hearst's Russian Famine*, THE NATION, Mar. 13, 1935, at 296.

70 For a contemporaneous report of his death, see *Gareth Jones Slain in China, is Report*, N.Y. TIMES, Aug. 16, 1935, at 4. For report on possible Soviet involvement, see *Gareth Jones' Murder and the Strong Circumstantial Evidence of the Involvement of the Soviet Secret Police (OGPU / NKVD)*, http://www.garethjones.org/soviet_articles/purpiss_nkvd.htm (last visited Apr. 2, 2018).

71 See, e.g., Katherine E. Schutock, *Letter to the Editor*, N.Y. TIMES, Apr. 6, 1933, at 16 (asserting that private correspondence from Ukraine defied Duranty's *Times* reporting and wrote of thousands dead and more dying of starvation); Emil Hladky, *Letter to the Editor*, N.Y. TIMES, Oct. 23, 1934, at 18 (challenging the *New York Times* reporting on Soviet agriculture policy and insisting on the existence of a famine).

72 See, e.g., LYONS, *supra* note 65; WILLIAM HENRY CHAMBERLIN, *RUSSIA'S IRON AGE* (1934). See also Marco Carynnyk, "Deliberate," "Diabolical" Starvation: *Malcolm Muggeridge on Stalin's Famine*, 51 UKRAINIAN WEEKLY (May 29, 1983), <http://www.ukrweekly.com/old/archive/1983/228321.shtml> ("The conspiracy of silence was largely successful. For years to come Stalinists and anti-Stalinists argued whether a famine had occurred and, if so, whether it was not the fault of the Ukrainian peasants themselves. Today [1983] . . . [except in Ukrainian circles], the events of 1933 are still largely unknown.").

memoirs confirmed the early 1930s news exposés⁷³ and the U.S. press had come to refer to the 1930s famine as established fact.⁷⁴ Marches marking Famine anniversaries made the national press.⁷⁵ Testimony to Congressional committees reiterated the 1930s Famine as fact, once again as a tactic in right-wing U.S. politics, including for the purpose of embarrassing Khrushchev's U.S. hosts on the eve of a visit.⁷⁶

The Famine became read in retrospect as an indistinguishable event from collectivization, and famine/collectivization, from authoritarianism and its terrors. By the fiftieth anniversary of the Bolshevik Revolution in 1967, a *New York Times* article surveying the Soviet record characterized collectivization as an exercise in Stalinist terror.⁷⁷ A 1968 review, reflecting the tenor of times, wrote of the "great man-made famine of 1932" and "the Great Purges" as if

73 See, e.g., 1 THE BLACK DEEDS OF THE KREMLIN: A WHITE BOOK (Semen Pidhainy ed., 1953); 2 THE BLACK DEEDS OF THE KREMLIN: A WHITE BOOK (Semen Pidhainy ed., 1955).

74 See, e.g., Harry Schwartz, *What We Do, and Don't, Know About Russia*, N.Y. TIMES, Apr. 8, 1951, at 13 (mentioning in passing "the ravages of war, famine, and disease over the past two decades" to explain the relative paucity of elderly people). See also *id.* at 32 (describing collective farms as having been "established as a result of state pressure" that since proved "a convenient mechanism for facilitating Government control of agriculture"); *New Soviet Union Hierarchy*, N.Y. TIMES, Mar. 7, 1953, at 4 (profiling Deputy Premier Kaganovich as an official in 1934 Ukraine who restored "the basic grain to the village warehouses after a winter of famine"). Harry Schwartz, *Russia has 'Paper' Curtain, Too*, N.Y. TIMES, June 4, 1950, at Magazine 17.

75 See, e.g., *Ukrainians March in Protest Parade*, N.Y. TIMES, Sept. 21, 1953, at 10 (reporting 10,000 marching in New York to mark the twentieth anniversary of the 1933 famine); *Soviet Office Picketed*, N.Y. TIMES, Oct. 5, 1958, at 20 (reporting 75 persons of Ukrainian and Slovak descent demonstrating outside the Soviet mission to the U.N. in observance of the 25th anniversary of "the 'forced' famine in the Ukraine where 6,000,000 persons died").

76 *Ukrainians Testify to Soviet Atrocities*, N.Y. TIMES, Oct. 12, 1954, at 5 (testimony to House Committee on Communist Aggression by "six victims of communism" on "Soviet atrocities in the Ukraine," including "murders, starvation, and persecution," and charging that the Party "intentionally created a famine in 1932-33, as a result of which '6,000,000 people died in the Ukraine'"); *House Witnesses Score Khrushchev*, N.Y. TIMES, Oct. 12, 1959, at 20 (telling of House Un-American Activities Comm. report on "man-made famine, purges, and terrorism in the Ukraine," based on hearings held Sept. 9-11 before Khrushchev's arrival on a U.S. visit Sept. 15).

77 Harrison E. Salisbury, *Balance Sheet of 50 Years of Soviet Rule*, N.Y. TIMES, Oct. 2, 1967, at 1, 18:

they were two events in one series evidencing authoritarianism.⁷⁸ Analysis of the famine as an event in its own right languished until a scholarly florescence beginning in the 1980s.⁷⁹ Collectivization, too, was poorly understood. Few postwar accounts from the point of view of Soviet collective farmers themselves circulated in the West.⁸⁰

They [Soviet spokesmen in 1967] conceded that Stalin's violent campaign to collectivize agriculture in the years 1928-30, the use of terror, expropriation, exile, and execution, was a principal contributor to the problem [in agriculture]. Stalin drove the surviving peasants into collective farms. . . . [H]ow many died, starved, or perished of deprivation no one has ever been able to estimate.

The modernizing and re-socializing aspects of collectivization, or even the transformative effects of rural mass casualties, seem not to register with the reporter. "The transformation of rural life in Russia in 50 years, or even since World War II, has not been so marked as that of urban life." *Id.*

78 Robert Conquest, *The Fruits of Revolt*, N.Y. TIMES BOOK REV., Jan. 7, 1968 at 6 (book review of IAN GREY, *THE FIRST FIFTY YEARS: SOVIET RUSSIA 1917-67* (1967)).

79 See Olga Andriewsky, *Towards a Decentered History: The Study of the Holodomor and Ukrainian Historiography*, 2 EAST/WEST J. UKRAINIAN STUD. 17 (2015) (reviewing historiography of the famine); see also FAMINE IN UKRAINE 1932-33 (Roman Serbyn & Bohdan Krawchenko eds., 1986) (papers presented at a 1983 Canadian scholarly conference on the famine, in itself considered a ground-breaking event); CONQUEST, *supra* note 22 (establishing the food crisis of early collectivization as "man-made famine"); U.S. COMM'N ON UKRAINE FAMINE, INVESTIGATION OF UKRAINIAN FAMINE, 1932-1933 (1988) (report of Congressional Commission, of which Conquest's research assistant James Mace had been appointed staff director). The Harvard Ukrainian Research Institute and Conquest's and Mace's work on the famine there is described in Frank Sysyn, *The Ukrainian Famine of 1932-3: The Role of the Ukrainian Diaspora in Research and Public Discussion*, in STUDIES IN COMPARATIVE GENOCIDE 182, 187-90 (Levron Chorbajian & George Shirinian eds., 1999). See also, e.g., ANDREA GRAZIOSI, *THE GREAT SOVIET PEASANT WAR: BOLSHEVIKS AND PEASANTS, 1917-1933* (1996); Andrea Graziosi, *The Soviet 1931-33 Famines and the Ukrainian Holodomor: Is a New Interpretation Possible, and What would Its Consequences Be?*, 27 HARV. UKRAINIAN STUD. 97, 108 (2004) (arguing that, rather than losses from "bungling" collectivization, in Ukraine and in the Kuban region of Russia, collectivization amounted to a "qualitatively different phenomenon" in its scale of both "punishment and terror").

80 But see CAROLINE HUMPHREY, *KARL MARX COLLECTIVE: ECONOMY, SOCIETY AND RELIGION IN A SIBERIAN COLLECTIVE FARM* (1983) (as a rare example of Western ethnography of a Soviet collective farm).

This omission led to distortions in the Western understanding of the lived experience of collective property. After World War II, rural collectives' coordination became closer, with the general intensification of collectivization in the Soviet economy from the late 1950s through the 1960s.⁸¹ Within farms, amenities making farm-work physically easier and rural life more comfortable grew. Extending the electrical grid to villages resumed as part of postwar reconstruction,⁸² as did restoring rural health clinics.⁸³ Where mechanization had been interrupted by the war effort, tractors and combines returned. Institutions were developed for rural areas, for example "comrades' courts," allowing collective farmworkers to regulate each other's labor habits and deficiencies.⁸⁴

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- 81 On the intensification of collectivization practices on farms in the late 1950s and 1960s, see, for example, KHARKHORDIN, *supra* note 15, at 281-82; GEORGE BRESLAUER, KHRUSHCHEV AND BREZHNEV AS LEADERS: BUILDING AUTHORITY IN SOVIET POLITICS 94 (1982) (describing a form of inter-brigade monitoring on collective farms, "the link," introduced in the 1960s). Some territories were only fully incorporated into the Soviet Union, and their agriculture collectivized, after World War II. On the intricate history of the postwar extension of Soviet power, collectivization, and lingering anti-Soviet insurgencies, see Serhiy Kudelia, *Choosing Violence in Irregular Wars: The Case of Anti-Soviet Insurgency in Western Ukraine*, 27 E. EURO. POL. & SOCIETIES 149 (2012) (detailing the impact of collectivization on insurgency mobilization in Western Ukraine after World War II).
- 82 See, e.g., D.T. Komarov, *Conference on the Operation of Soviet Rural Electrical Installation*, 12 ELEKTRICHESTVO [ELECTRICITY] 87 (1950), reprinted in U.S. C.I.A. REPORT (Oct. 15, 1952) (reporting from a 1950 all-Soviet conference of electrical engineers held in Zaporizhzhya, Ukraine, to compare problems and solutions for extending electrical power to rural areas); U.S. C.I.A., PROGRESS OF RURAL ELECTRIFICATION IN U.S.S.R. REPUBLICS (Dec. 22, 1951) (reporting on earlier Soviet accomplishments and continued plans to extend electric power to rural areas through the 1950s).
- 83 See, e.g., *The Functioning of Feldsher-Midwife Stations*, PROBL SOTSIALNO. GIG ZDRAVOOKHRANENNIIAI ISTOR MED. [PROBS. SOC. HYGIENE, PUB. HEALTH & HIST. MED.] 41 (2012) (comparing working conditions of rural health workers in Perm region in 1982 and in 2012).
- 84 12 SOVETSKAIA IUSTITSIIA 18-20 (1932), cited in Peter H. Solomon, Jr., *Criminalization and Decriminalization in Soviet Criminal Policy, 1917-1941*, in PERSPECTIVES ON SOVIET LAW FOR THE 1980s 123, 137 n. 82 (F.J.M. Feldbrugge & William B. Simons eds., 1982) (on extending comrades' courts to newly collectivized farms); Presidium of R.S.F.S.R. Supreme Soviet, Statute on Comrade's Courts, It. 371 (July 3, 1961) (restoring comrades' courts on farms, Stalin having abolished them in a 1935 power-centralization move). The writer of a handbook described comrades' courts as working "for the sense of collectivism and comradely mutual

Popular culture of the 1960s, even post-Stalin works depicting rural resistance to Soviet campaigns of the 1920s, linked material ameliorations like rural electrification with social campaigns like promoting literacy and women's rights in one Soviet modernization project.⁸⁵ By the 1970s, popular narrative and rural experience reached a consensus. As the system became more stable and forms of its regulation more intimately internalized, the *kollektiv's* own specific features — ethics, patterns of interdependence, modes of sociability — altered the kinds of tragedies or comedies experienced in association with collective landholding. Farm labor was mechanized, adapted to economies of scale, and integrated through extension agents with biological sciences striving to improve seed varieties and soil science. Collective farm councils and directors strove also to make rural life enjoyable. Football leagues organized competitions between farms; first-run films came to rural movie theaters; reading circles, clubs, and other activities aimed at enriching village life.⁸⁶

While the mechanization of agriculture and material amenities were important, the significance of collectivization encompassed a broader range of experience. A southern Ukrainian Futurist art collective earlier in the century had insisted on the right to stand, amidst a sea of jeers and indignity, “on the boulder of the word ‘we.’”⁸⁷ The collective was their rock, a stance presaging a movement that gathered wider adherence over time. An example from later in the century offers another window into this movement. By the 1960s, Soviet Ukrainian education specialist Anton Makarenko was celebrated for his success working with abandoned street children, war-hardened orphans, and juvenile delinquents. Makarenko had devised a program for rehabilitation

help, consideration, dignity, and honor.” K.S. YUDEL'SON, PRAKTICHESKOYE POSOBIYE DLYA TOVARISHCHESKIKH SUDOV [A PRACTICAL GUIDE FOR COMRADES' COURTS] 12 (1961). See also SAMUIL KUDEROV, THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION 168-97 (1970) (on the enhanced attention to comrades' courts under Khrushchev and the expansion of their areas of competence in the 1960s).

85 See, e.g., PERVYY UCHITEL [FIRST TEACHER] (Kirghizfilm & Mosfilm 1965) [the hero, in a fictional film about a Soviet Revolutionary veteran in early 1920s Kyrgyzstan, predicting (and praising!) the Soviets' future rural electrification program].

86 For a short account of the Soviet modernism of rural collectives, see Monica Eppinger, *Property and Political Community: Democracy, Oligarchy, and the Case of Ukraine*, 47 GEO. WASH. INT'L L. REV. 825 (2015).

87 *Hylaea*, *supra* note 2. See also Anna Lawton, *Introduction*, in RUSSIAN FUTURISM IN ITS MANIFESTOS, 1912-1928, at 1, 12-15 (Anna Lawton ed., Anna Lawton & Herbert Eagle trans. 1988) (discussing the Hylaea collective and its “Slap in the Face” manifesto).

and subject-formation through intensive teamwork. His success in turning underage felons into valued and healthy adults depended on incorporating a *kollektiv*, an interdependent group pursuing a purpose-driven life through “responsible dependence”; his work was celebrated not only because of his success with criminal kids, but because it offered lessons more generally for others wishing to work on themselves and to build a different society.⁸⁸ Makarenko’s work is another example of how “collectivization,” rather than merely the seizure of private property, came to be defined as a new experience of self and formation of the social.

In short, the brutality of collectivization at its inception did not mean that people on collectives failed to adjust, or failed to create common institutions on the collectives into which they or their predecessors had been forced at such great cost. Once in place, however much the initiation had depended on brute force, the collectives took on a social life of their own. Agricultural production became interdependent. Individual striving, the Stakhanovite ethos, took its meaning from the place of the individual within the group. The collective amounted to more than the sum of its parts. And this *kollektiv* functioned within a non-market-driven system of production. The calculations of markets and their rational actors did not dominate; the *kollektiv* was a situs of its own subjective experience. By the 1970s, popular culture narratives and rural experience settled around a consensus. Modernization of rural life: that came to be the significance the collective farm assumed in late Soviet experience. If the collective farm were asked its autobiography, modernization is the story it would tell and progress, not tragedy, its most persistent motif.

In Hardin’s 1960s, the narrative in the West was simultaneously solidly established and murky and full of gaps. On one hand, Soviet “collectivization” was firmly linked with starvation in U.S. popular consciousness. On the other hand, absent a precise analysis of its causes, the story was vague. Moreover, the picture was somewhat frozen; little information about collectivization after its initial years circulated and collective farms existed more in caricature than clarity. Cold War ideology filled in some of the gaps and fit collectivization into a larger narrative. Soviet collective property became associated with

88 ANTON MAKARENKO, *Методика Организации Воспитательного Процесса* [*Methods of Organizing the Educational Process*] (1936) <http://antmakarenko.narod.ru/liter/vospm/metod.htm>; ANTON MAKARENKO, *КНИГА ДЛЯ РОДИТЕЛЕЙ* [BOOK FOR PARENTS] (1937), http://antmakarenko.narod.ru/liter/kn_rod.htm. See also Tatyana Fyodorovna Korablyova, *Философско-Этические Аспекты Теории Коллектива А.С. Макаренко* [Philosophical-Ethical Aspects of the Theory of the *Kollektiv* of A.S. Makarenko] (Nov. 21, 2000) (dissertation presented to the Russian Academy of Sciences Institute of Philosophy), http://makarenko-museum.ru/lib/Science/Korabl/avtoref_Korablevoy_TF_2000.htm.

two tragedies, the economic tragedy of the Famine and the political tragedy of authoritarianism. Property regimes in the West themselves normalized the embodied experience of private property, its demarcations of inclusion and exclusion. By the time Hardin turned his attention to the commons, the association of collective property with tragedy did not have to rise to the level of conscious thought either; it too had become part of the Cold War Background of the West.

II. HARDIN'S COLD-WAR COMMONS, FROM OLSON TO OSTROM

Alongside figurations of Soviet collective property, authoritarianism, and famine, a late Cold-War discourse on the commons and collective action problems emerged, bookended by Mancur Olson's (1965) and Eleanor Ostrom's (1990) work and including Hardin's *Tragedy*. As others have shown, economic literature had long discussed the commons and commonly-held resources; their characterization as "tragic" was the new twist.⁸⁹ Stuart Banner points out that although Hardin's article itself concentrated on overpopulation and only discussed overuse of shared resources in a few paragraphs, it was very quickly taken as the canonical statement of the idea that commonly-held resources will be overused.⁹⁰ The very rapidity of this shift supports my contention as regards a predisposing Background informing scholars and readers. Late Cold-War commons scholarship worked from a "Cold-War commons," meaning a vision of an inherently tragic commons that emerged from a Cold War Background.⁹¹

Viewing this body of scholarship as a Cold War artefact foregrounds several of its features. First, it regards "collective action" in regard to a shared resource

89 See e.g., Nathaniel Wolloch, *Some Early Economic Precedents to the Tragedy of the Commons*, 19 THEORETICAL. INQUIRIES. L. 409 (2018) (reviewing economic literature to find that Hardin borrowed the nuts and bolts of his argument from earlier scholarship and what was new was the figuration of the commons as "tragic").

90 Stuart Banner, *The Banality of the Commons: Efficiency Arguments against Common Ownership Before Hardin*, 19 THEORETICAL. INQUIRIES. L. 395 (2018) (pointing out that already by the 1975 publication of a Bruce Ackerman volume, Hardin's article was so read).

91 To be clear, by "Cold-War commons," I am not referring to Soviet collective property or to the territory of the U.S.S.R. In fact, based on its different social aspects, I am trying to avoid referring to commonly-held property under socialism by terms of the Western academy, including "the commons."

or space as its foundational problem. As Olson wrote (anticipating Hardin's discovery of tragedy in the commons), if a public good is "non-excludable," collective action to achieve the common benefit is imperiled because "rational, self-interested individuals" will not act to achieve their common interest, absent "coercion or some other special device."⁹² For subsequent thinkers through Ostrom,⁹³ the non-excludable resource or space remained a problem to be reckoned with, not a solution. The "rational actor" became the tragic hero of Western commons critique, embedding its presumptions of liberal subjectivity.

Second, its analytic is dominated by formalism. This scholarship concentrates on quantity of users, taking the number of users as a point of inference for cooperative behavior,⁹⁴ rather than studying the quality of relations between users⁹⁵ or the nature of the collective itself. Most scholars ignored, or struggled with, differences between collective holders — between community and society, state and N.G.O. — beyond simply scale.⁹⁶ This mode of analysis has

92 MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 14-15 (1965); *id.* at 2.

93 ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990). In her analysis, the common-pool resource, posing a strong form of collective-action problem, generates in response strong forms of proposed solutions. On work advocating central government ownership, see OSTROM, *id.*, at 8-11 ("Leviathan as the only way"). On work advocating private ownership, see OSTROM, *id.*, at 12-13 ("Privatization as the 'only' Way"); see also Harold Demsetz, *Toward a Theory of Property Rights*, 62 *AM. ECON. REV.* 347 (1967). On work explaining local management, see OSTROM, *id.*, at 18-19, 58-102, 143-81; see also JAMES M. ACHESON, *THE LOBSTER GANGS OF MAINE* (1988); Robert Ellickson, *Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County*, 38 *STAN. L. REV.* 623 (1986).

94 Robert Ellickson, *Property in Land*, 102 *YALE L.J.* 1315, 1322 (1993) (distinguishing types of communal property by numbers of users, reasoning that coordination among land users "becomes more difficult as the number of users rises") [hereinafter Ellickson, *Property in Land*].

95 See, e.g., OLSON, *supra* note 92, at 62 (theorizing that the larger a group, the greater and more numerous the collective action problems); Ellickson, *supra* note 93; *But see* Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 *CORNELL L. REV.* 1 (1989) (for property scholarship paying closer attention to the quality of relationships within a group).

96 *But see* JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* (1988) (in defining state property, distinguishing "the needs and purposes of society as a whole" from those of "particular individuals considered on their own"); Demsetz, *supra* note 93, at 354 (treating "community" and "communal ownership" as distinct from the state).

its own genealogy, heavily informed by game theory;⁹⁷ it was not caused by neglecting to study the Soviet experience, but some of its deficiencies might have been mitigated by it. By a similar token, this body of scholarship only thinly treats “the state.”⁹⁸ The state’s particular powers (of taxation, say, or criminal punishment), its capacities, or the quality of its relation to its citizens, often do not factor seriously into their analysis. Ellickson, for example, dismisses state property as an analytic category on the grounds that “when a government acts in a proprietary role as a land manager, it shares many attributes with a nongovernmental group with a constituency of comparable size.”⁹⁹ Soviet farmers would be astonished.

More basically, in its formalism this literature specialized in property taxonomies, attending to ontology to the neglect of practice or performance.¹⁰⁰ The Soviet project was aimed at producing a “New Soviet Person,” a subjectivity for which the collective was formative, through specific practices based in a transformed material context. Studying it might have shed light on modifications of human sociability that property has been expected to perform or illuminated by comparison some of the subjectification accomplished by property forms in the West. The preintentional capacities of the Cold War Background prefigured action, as property became a fresh object of intentional states with the unwinding of the Cold War.

97 Hardin himself, already disposed to think of ecology, and human beings, as defined by competition for resources, adopted the anthropology of game theory, what Peter Galison has called an “ontology of the enemy,” with society reduced to a space inhabited by “calculating, anonymous monads who are embroiled in a merciless fight.” Fabien Locher, *supra* note 2 [drawing upon Galison’s characterization and situating Hardin’s argument in Hardin’s reading of postwar game theory, its anthropology, and its sociology (but not, interestingly, its microeconomics)].

98 Demsetz reduced his discussion of state ownership to one sentence, *supra* note 93.

99 Ellickson, *Property in Land*, *supra* note 94, at 1322, n. 23; *see also* Dagan & Heller, *Liberal Commons*, *supra* note 14 (reaching Ellickson’s position on the empirical grounds that, with the passing of state socialism, state property was no longer important).

100 Others have noticed formalism in this scholarship. Rose, for example, notes formalism, namely lawyers’ preference for formalistic rights structures, as a common criticism that legal scholars raise about Ostrom’s work. Carol Rose, *Ostrom and the Lawyers: The Impact of Governing the Commons on the American Legal Academy*, 5 INT’L J. COMMONS 28, 30 (2011).

III. TRAGEDY'S POST-COLD WAR CAREER

A. From Identity to Diagnosis

Property figured in Cold War identity formation. The property regimes of Marxist theory and socialist imaginations were formative for Soviet citizens; in the West, national identity was no less tethered to notions of property. As one Harvard professor of government put it, for the United States, “national identity is defined by a set of universal political and economic values,” namely “liberty, democracy, equality, *private property*, and markets.”¹⁰¹

In the post-Cold War period, the presumption of tragedy associated with collective property retained its grip on the Western imagination. Property became an object of geopolitical strategic thinking as a U.S. consensus emerged around a goal of enlarging “the world’s free community of market democracies.”¹⁰² Authoritarianism still figured in thinking about Soviet collectively-held property, but there was a subtle shift from the 1960s narrative. Previously treated as a cause of collectivization (Stalin forced farmers onto the *kolkhoz*), authoritarianism came also to figure as a consequence of collectivization (monopoly ownership underwrote authoritarian political power, prolonging the regime). Decollectivizing and creating private property ownership were seen as essential to “desovietizing” and establishing democracy.¹⁰³ Western academics largely concurred.¹⁰⁴ Underlying the privatization-democratization

101 Samuel Huntington, *Why International Primacy Matters*, 17 INT’L SECURITY 68, 82 (1993) (emphasis added).

102 Anthony Lake, U.S. Nat’l Sec. Adviser, From Containment to Enlargement, Remarks at Johns Hopkins University School of Advanced International Studies (Sept. 21, 1993), <https://www.mtholyoke.edu/acad/intrel/lakedoc.html>, *excerpted in* Anthony Lake, *A Call to Enlarge Democracy’s Reach*, N.Y. TIMES, Sept. 26, 1993, § 4, at 3 (announcing a new post-Cold War national security doctrine for the U.S.).

103 *See, e.g.*, Thomas Dine, Assist. Admin. for Eur. & Newly Independent States, U.S. A.I.D., U.S. Assistance to the Newly Independent States of the Former Soviet Union, testimony in Hearing before H. Comm. on Int’l Relations, 105th Cong. 10, 29 (1997) (in the democratic transformation of former Soviet states, “if you do not privatize ... the whole thing is not going to work”).

104 Prominent scholars urged post-Soviet reformers to consider privatization an object of political (or constitutional) reform as well as economic reform. *See, e.g.*, Cass R. Sunstein, *On Property and Constitutionalism*, 14 CARDOZO L. REV. 907 (1993); Carol Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329 (1996) (summarizing seven arguments advanced by various scholars arguing for post-Socialist reform, and asserting that property is the “keystone right” in a liberal order); Janos Kornai, *What the Change of System from Socialism*

program was the now-familiar ascription of Soviet tragedy to collective ownership: the economic tragedy of waste and famine, and the political tragedy of authoritarianism underwritten by monopoly over productive assets. As post-Soviet governments got with the program,¹⁰⁵ the Cold War commons took on one more layer of signification: dismantled collectives became a site of triumph.

B. Post-Soviet Commons

The Tragedy of the Commons is still less widely known in post-Soviet legal or social science circles and has only recently been translated into Russian or Ukrainian and become a topic of scholarly discussion.¹⁰⁶ In the last several years, a few post-Soviet scholars have played with Hardin's argument, subjecting it to experimental tests or adding their own thoughts regarding management of commons resources, such as the importance of increasing community involvement and elaborating on the idea of community.¹⁰⁷ The "tragedy of

to Capitalism Does and Does Not Mean, 14 J. ECON. PERSPECTIVES 27, 29, 35 (2000) (proposing that private property and a market economy are necessary preconditions for democracy).

- 105 See, e.g., Конституція України [CONSTITUTION OF UKRAINE] June 28, 1996 (providing that private ownership in land is not *per se* illegal); Decree of the President of Ukraine No. 1529/99, Pro Nevidkladni Zakhodi shchodo Priskorennya Reformuvannya Agrarnoho Sektora Ekonomiki [On the Uninvested Means concerning Accelerating Reform of the Agrarian Sector of the Economy] (Dec. 3, 1999) (disbanding collective agricultural enterprises), reprinted in ЗАКОНОДАВСТВО УКРАЇНИ ПРО ЗЕМЛЮ [LEGISLATION OF UKRAINE ON LAND] 85 (2002); ZEMEL'NIY KODEKS UKRAINI "Land Code of Ukraine" (signed Nov. 13, 2001 and promulgated Nov. 15, 2001) (providing for parceling collective farmlands into private landholdings).
- 106 See, e.g., Д.В. Горобченко [D.V. Gorobchenko], *Теорія трагедії громад в контексті прогнозування розвитку ринку асиміляційного потенціалу* [Theory of the tragedy of the commons in the context of predicting the development of the market of assimilated potential], 1 Економічні проблеми сталого розвитку: матеріали Міжнародної науково-практичної конференції, присвяченої пам'яті проф. Балацького О.Ф., м. Суми, 6-8 травня 2014 р. [ECON. PROBLEMS OF SUSTAINABLE DEVELOPMENT: MATERIALS OF THE INT'L SCHOLARLY AND PRACTICAL CONF. DEDICATED TO THE MEMORY OF PROF. O.F. BALATS'KIY, SUMI, UKRAINE, MAY 6-8, 2014], at 143-44 (О.В. Прокопенко & О.В. Люльова eds., 2014).
- 107 See, e.g., М.В. Рыжкова & Е.Д. Иваненкова [M.V. Ryzhkova and E.D. Ivanenкова], *Экспериментальная Проверка «Трагедии Общин»* [Experimental Test of "The Tragedy of the Commons"] 2 Современные проблемы науки и образования [CONTEMP. PROBS. SCI. & EDUC.] 359 (2013), <https://www.science->

the commons” has also begun to appear in popular media aimed at educated audiences¹⁰⁸ and in later post-Soviet college economics textbooks.¹⁰⁹ The concept still has limited circulation in circles familiar with it elsewhere, for example among ecologists, sociologists, or legal academics.¹¹⁰

While “the tragedy of the commons” may be in limited circulation in post-Soviet discourses, the idea of “the commons” is not. The word for “the commons” in Ukrainian, *hromada*, for example, is the basis for the word for post-Soviet Ukrainian citizenship, *hromadyanstvo*.¹¹¹ Although an assertion

education.ru/ru/article/view?id=8820; A. A. Sychev, *Этико-Экологические Измерения Проблемы Общинных Ресурсов* [*Ethical-Ecological Evaluations of the Problem of Common Resources*], 17 ИЗВЕСТИЯ САМАРСКОГО НАУЧНОГО ЦЕНТРА РАН [PROCEEDINGS OF THE SAMARA SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES] 737 (2015) http://www.ssc.smr.ru/media/journals/izvestia/2015/2015_1_737_741.pdf. (summarizing Hardin’s arguments regarding the tragedy, evaluating pluses and minuses of market and government regulation, adding Ostrom’s contribution of a “third way” for managing commons resources, and concluding that effectively managing ecological resources depends in part on increasing the role of local communities, the study and use of their experience, and the preservation of ethnic traditions and values).

- 108 See, e.g., Mikhail Petrov, Iulia Ignatenko, Igor Grigoriev, & Aleksandra Sorokina, *10 главных игр, в которые математики играют с нашим умом и совестью* [*Ten major games, in which mathematicians play with our minds and consciences*], РУССКИЙ РЕПОРТЕР [RUSS. REP.], Jul. 18, 2013, at 28 <http://www.rusrep.ru/article/2013/07/17/igry> (last visited Apr. 2, 2018) (repeating in a popular format ten paradigmatic game theoretic concepts).
- 109 Personal communication, Marharyta Fabrikant, Belarussian sociologist, Apr. 4, 2018 (attesting that the “tragedy of the commons” had been introduced into some post-Soviet college economics textbooks and that she had encountered it in a college course on economics for psychology majors).
- 110 Interview with Pavlo Kuytuyev, Ukrainian sociologist (Sept. 15, 2017); personal communication, Oleksandr Merezko, Ukrainian legal academic (Aug. 8, 2017); interview with Serhiy Mirniy, Ukrainian ecologist (Sept. 20, 2017).
- 111 громада, (*hromada*), as “commons” is translated into Ukrainian, also means a “social association of some people” and in a broader sense connotes a symbolic unity of any territorial population, including society on the national level. The root of the word громадянин (*hromadyanin*), “citizen,” *hromada* can also connote “territorial commune,” meaning the population of a region. The Constitution of Ukraine and some other laws, including the “Law on local self-governance,” delegate certain rights and obligations to the “hromada.” In draft constitutional amendments of June 2014, Ukrainian President Petro Poroshenko proposed changing the administrative divisions of Ukraine to “regions,” “districts,” and “hromadas.” Discussion condensed from ГРОМАДА ENTRY ON UKRAINIAN WIKIPEDIA, <https://uk.wikipedia.org/wiki/> (last visited Apr. 2, 2018).

of post-Soviet identity, the notion of *hromada* is inflected by the experience of the socialist *kollektiv*. Modes of group subjectivity surviving from the socialist Background and transformed in post-Soviet experience may offer lessons for a future of challenges involving the illiberal commons.

IV. FUTURE DEPLOYMENT

Understanding the Cold War epistemic context highlights several aspects of thinking about commonly-held property. First is the fundamentally discrepant treatment of tragedy. After its catastrophic inception, Soviet experience did not equate common holding with tragedy. Soviet thinking reserved that for private property. Western portrayals of common holding within the U.S.S.R. were shaped by the conditions of production of discourse about collectivization. Eyewitness reporting on collectivization peaked at the time of the Famine. Information asymmetries between decision-makers, citizens, and observers crippled analyses of its causes. World War II interrupted narrative production about collectivization, further arresting the tale of collectivization at the point of Famine (and eventually serving to reinforce fear of totalitarianism, whether Nazi or Soviet). By the 1960s and Hardin's writing, Cold War significations had become part of the Background, reifying the association of collective ownership and tragedy.

Thus, an association of commonly-held property with tragedy resonated with Hardin's Cold War audience. Some scholars responded with scholarship so focused on ontology that it neglected process and sometimes flattened context.¹¹² A collective may have qualities that bear significantly on its capacity for collective action: intrinsic features (like a shared ethos at its inception versus anonymous users holding disparate aims); those arising from its ongoing formation (or degradation) (like organizational practices that foster interdependence or individualism); or features extrinsic to the collective (like the kind of state it is located within, or the outsiders that surround it). Ostrom's institutional analysis, brought to bear on qualitative accounts, lent greater nuance to collective action studies. Adopting pragmatics to study how groups and cooperation form and decompose could be another useful reorientation.

112 Others have reached a similar conclusion from a different path. See, e.g., Dagan & Heller, *The Liberal Commons*, *supra* note 14, at 552 ("linking the utilitarian vocabulary of economic success with the conceptual binary of private/commons property creates too paltry a framework when utility cannot be safely reduced to wealth alone, that is, when the social gains from cooperation are not just fringe benefits, but instead are a major part of what people seek.").

A second aspect is how the Cold War Background assimilated private property. The Cold War West elevated it to the status of identity as well as good sense. This had a more basic ramification, normalizing and rendering unanalyzed the subjectivities it supports. Hardin and commons scholars after him took liberal subjectivity, and the actor for whom rationality equates with self-interested individualism, as a taken-for-granted feature. The conflation of local background (say, liberalism) with deep background (i.e., features common to human experience) leads to questionable, universalized assumptions. Abandoning the presumption of a “human nature” opens a path for thinking about an “illiberal commons.”

I propose thinking of the illiberal commons in two ways. First, if we accept the notion of a “liberal commons” defined by a right to exit,¹¹³ by logical symmetry, we may also accept the notion of an “illiberal commons,” a resource or social space used by liberal subjects who do not enjoy a robust right to exit. Some small commons holdings may be so organized. Some larger forms of social organization might be so characterized: for example, a citizen may enjoy a right to exit a particular state but cannot escape the state system as a form of social organization covering the globe. Understood in this way, some types of “common-pool resource,” like the atmosphere, may constitute a *de facto* illiberal space. In fact, our imagination of an inside defined by the right to exclude or exit depends on an assumption of an outside, an assumption that Hardin’s specter of an overpopulated global our own climate future may test.

Second, the “illiberal commons” may be a space or resource held by illiberal subjects. The illiberal subject may, like a late Soviet subject, seek to be at home in collectively held spaces and feel that “we” is the rock to which one may cling amidst oceans of individual adversaries or vicissitudes of fortune. This leaves us with a challenge. Recent anthropology proposes that “the commons” has become a “social imaginary” (defined as a “common understanding that makes possible common practices”).¹¹⁴ Can we stretch our imaginations beyond liberal subjectivity to analyze the collective action,

113 *Id.*

114 John R. Wagner, *Water & the Commons Imaginary*, 53 *CURRENT ANTHROPOLOGY* 617, 620 (2012) (drawing on Charles Taylor’s concept of the “social imaginary” and Benedict Anderson’s notion of “imagined communities” to argue that “the commons,” formerly an academic term for certain institutional arrangements, has become a social imaginary).

or collectives, formed by other practices or ethics?¹¹⁵ Illiberal subjectivities might have something to offer besides tragedy.¹¹⁶

Western commons scholarship does not routinely reflect on its own epistemological Background.¹¹⁷ Narratives of Soviet collectivization, short on details necessary for causal analysis but clear on the existence of famine, contributed to Cold War thinking in the West that would associate collectively-held property with tragedy. The absence of comedies¹¹⁸ of the Soviet commons in the Western imagination has gone unexamined. Human happiness; comforts and well-being; cordiality, successes, and order: admitting these elements of the Soviet “common spaces of living” into the precepts that inform our imagination might serve us well. The “illiberal commons” offers a starting point for thinking about the inescapable or for imagining common spaces of illiberal subjects. The Cold War experience on the other side of the Iron Curtain could suggest relational qualities that might serve us co-commoners in facing future challenges conceived as tragically problematic.

115 See, e.g., Amnon Lehavi, *Re-romanticizing the Commons in Israeli Discourse: Social, Economic, and Political Motives*, 19 THEORETICAL INQUIRIES L. 671 (2018) (studying the significance of collectively-held property in a tradition that valorizes the *kibbutz*).

116 This call finds common cause with the critique of scholars like Saki Bailey and Ugo Mattei, who connect property forms with an interest in living in a society that promotes community sociality, and the creativity of scholars like Anna di Robilant, who has argued for developing common property schemes that promote “equality of autonomy.” See Saki Baily, *The Architecture of Commons Legal Institutions for Future Generations*, in 26 TRENDS OF SOCIAL COHESION: PROTECTING FUTURE GENERATIONS THROUGH THE COMMONS 107, 111 (Saki Bailey, Gilda Farrell, & Ugo Mattei eds., 2013); Anna di Robilant, *One Property, Many Properties: Designing The Liberal Egalitarian Commons*, BEPRESS, EXPRESSO (Aug. 25, 2011), https://works.bepress.com/anna_di_robilant/2/download/.

117 See, e.g., James Acheson, *Private Land and Common Oceans: Analysis of the Development of Property Regimes*, 56 CURRENT ANTHROPOLOGY 28, 28-29 (2015) (universalizing conceptual categories and theoretical conclusions of Western Cold War and post-Cold War property scholarship).

118 On “comedies of the commons” in Western experience, see Carol Rose, *The Comedy of the Commons: Commerce, Custom, and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986).