

**Uzbekistan's Mahalla: From Soviet to Absolutist
Residential Community Associations**

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I. INTRODUCTION: ORDER DESPITE LAW

Only through associations of many people assisting each other, where each provides another with some share of that which is necessary for survival may a person attain that level of perfection to which he is destined by his nature.¹

At five in the morning the ritual begins. Side streets in one of Uzbekistan's thousands of neighborhoods, *mahalla*, fill with men exiting their houses. A few cars roll into the mahalla, most carrying two or three men. The men converge on a single house, a house no different than any other in the mahalla. As the men converge, childhood friends who have moved away from the old neighborhood catch up on family events with those who have stayed. Outside the house a middle-aged man stands and greets each guest, after which the guests are expertly herded into rows of Uzbekistan's equivalent of picnic benches, on which the host has arrayed raisins, apricots, nuts, and meat-filled *somosa*.²

After a brief benediction, servers load each table with teapots and platters of *osh*, the national pilaf dish. The quality of the food is excellent; master chefs oversaw all preparation. The guests consume their portions, quickly drink two or three small cups of green tea, give prayerful thanks, and in orderly fashion make their exit, with appropriate civilities to the host as they leave. Another group rapidly takes their place. The departing group makes promises to get together soon or to call each other to discuss a possible business opportunity. Some men linger on the street for many minutes to discuss personal issues or inquire if an acquaintance can solve a personal problem. By this time, other residents of the mahalla begin to leave their houses to go to work or school. At this early hour, young girls sweep the streets outside their houses, and young boys wash family cars. Flowerbeds and trees around houses are well maintained. Despite the

¹ AL-FARABI, *FILOSOFSKIE TRAKTATY* 303 (1972). Al-Farabi was a Central Asian born philosopher and scientist who lived in the 9th and 10th centuries A.D. and was long regarded in the Arab world as the preeminent philosopher after Aristotle.

² Indian *somosa* are a culinary and linguistic importation brought by the Moghuls who originated in Uzbekistan.

general crushing poverty of Uzbekistan, in contrast to poorer urban neighborhoods in the West,³ while the mahalla is obviously not rich, it is also clearly not neglected.

This ritual of morning feasting is a manifestation of a wider category of social norms that create order, increase group solidarity, and sustain vibrant urban communities within the framework of both a formal institution (mahalla) and a larger area (the city). In the case of mahalla, these norms constitute an institution that provides neighborhood level public goods that the state is unable to provide and functions to spread risk within the community. With the disassembly of the USSR, the legal structure of mahalla, like other poorly studied property regimes in the post-Soviet world became a target of reform.

I argue that these reforms to the residential regime⁴ of mahalla are cause for concern. Since mahalla are unknown to legal scholars and English-speaking scholars in general,⁵ Part II

³ While a topic not specifically pursued in this Article, given the pervasiveness of failed poor urban neighborhoods in the West, it is quite possible that troubled US and European cities could learn something of value from Uzbekistan and other developing and transitioning states. The current one-way direction of foreign assistance and advice means that the West misses many opportunities to enrich its own insights into potential strategies for domestic reforms and essentially theorizes in a vacuum. One reason for this one-sidedness of advice is that legal academic scholarship on both property institutions and state regulation of groups boasts very few vibrant connections to original sources or fieldwork in foreign cultures, a shortcoming that partially inspires this Article.

⁴ Regime is used here to signify an "amalgam of law and custom." Robert C. Ellickson, *Property in Land*, 102 YALE L.J. 1315, 1319 (1993). I use "residential regime" instead of Ellickson's "land regime" since, particularly in an urban setting, land ownership involves not only entitlements to use the land, but invokes a more general set of entitlements and obligations involving both actual land owners and all potential land owners. I also use this term because I suspect that the emphasis in most property literature on entitlements to land mutes the interests, sometimes primary interests, of owners and residents in the complex social interactions related to membership in a community. In classical property literature, analysis usually assumes an agricultural setting, or at least does not assume a dense urban setting. In this, property analyses risk being irrelevant to an increasing percentage of the world's people who live in urban areas. These classical analyses narrowly assume that wealth maximization involves, primarily, proper incentives for agricultural production, which implies that the capital represented in discussions of efficiency is limited to natural resources. Yet, a decreasing proportion of the world's population earns its primary income from agriculture, or from the other forms of direct natural resource extraction that dominate classical property analyses. Especially for urban property, a more appropriate conception of wealth maximization and economic efficiency as these relate to property regimes would adopt a broader definition of capital, one that would consider not only human made (converted natural) capital in balance sheets, but would also consider natural, social, and human capital. See, e.g., Robert Goodland & Herman Daly,

provides an overview of the mahalla residential regime. Part III presents results of fieldwork conducted in Uzbekistan in 1998 and 1999. This 1998 research, pursued in an anthropological mode, involved several months of residence with a family in a mahalla. The 1999 research, pursued in a sociological mode, involved surveys of homeowners in three cities in Uzbekistan in cooperation with Uzbekistani sociologists who, for safety reasons, prefer to remain anonymous. Throughout the Article, use of "we" refers to the work undertaken by the author and this group of talented sociologists.

Part IV attempts to connect findings on mahalla with larger theoretical currents of American legal scholarship on property and social norms. This Article aspires to enrich comparative property scholarship and law and economics discourse by presenting a case study to fields strong in theoretical ambition but weak in dedication to pursuit of theoretically significant empirical verification. Mahalla provide empirical evidence for and contribute to the maturation of three currents of primarily theoretical scholarship. First, mahalla suggest that the choice of an optimal land regime may vary between cultures or over time due to degrees of internal homogeneity. Second, mahalla illustrate some of the limits of decentralized or local government in providing public goods, including the risk that state efforts to codify social norms can undermine those norms and facilitate loss of group solidarity. Third, mahalla help sharpen the

Environmental Sustainability: Universal and Non-Negotiable, 6 ECOLOGICAL APPLICATIONS 1002 (1996). Adoption of such a broader conception of capital would also connect property analyses directly with analyses of sustainable development and sustainability. See, e.g., ERIC W. SEEVERS, *THE POST-SOVIET DECLINE OF CENTRAL ASIA: COMPREHENSIVE CAPITAL AND SUSTAINABLE DEVELOPMENT* (2002).

⁵ "Mahalla" has not been used even once in any law article accessible by Westlaw or Lexis. Neighborhood "mahalla" exist in Islamic areas from Central Europe to Southeast Asia. The word mahalla, of Arabic derivation, simply means "local" when used in its adjectival form in Uzbek. While Uzbekistan is, due to Soviet secularism, on the weak side of states that have preserved Islamic culture and traditions, mahalla are an exception. While mahalla are vanishing or vanished institutions in most parts of the Islamic world, they are "living units" in Uzbekistan that flourished during the Soviet era. See Victoria Koroteyeva & Ekaterina Makarova, *The Assertion of Uzbek National Identity: Nativisation or State-Building Process?*, Paper presented at the Fifth European Seminar on Central Asian Studies, Copenhagen University (Aug. 24, 1995), available at <http://ias.leidenuniv.nl/iasn/iiasn6/central/uzbek.html> (last visited Apr. 18, 2002).

distinction between bonding and bridging social capital, and their relationship to democracy and civil society.

While Part V occupies the place of a conclusion, I shy away from specific policy recommendations. The Article's goal is to identify and explain the complex issues confronted by reformers. This goal rises to the level of a conclusion given the general lack of even cursory consideration of these issues in Uzbekistan by domestic lawmakers and, especially, foreign donors.

II. MAHALLA SPACE AND MAHALLA EVOLUTION

While contemporary mahalla average roughly 2000 residents, no two mahalla are alike. In terms of space, population, and activity, Uzbekistan's more than 10,000 mahalla⁶ manifest tremendous diversity. Nevertheless, mahalla residential regimes adhere to a core set of understandings and practices that lend themselves to analysis. Furthermore, legislation regulating mahalla has become increasingly detailed over the past decade, reflecting the importance of the institution in Uzbekistan. To wit, mahalla may be one of the only residential community associations (hereinafter "RCA") mentioned by name in a constitution.⁷

⁶ Throughout this Article, mahalla is used to the exclusion of other possible terms, even for historical discussions where its use is otherwise inappropriate. *Farsi ku*, *Tajik guzar*, *Karakalpak kosheby*, and *Khorezmian elat* are not distinguished from mahalla in light of space concerns and their uniform legal status under Uzbekistan law.

⁷ UZB. CONST. Art 105. (Eric W. Sievers trans., 1992), in 49 *RUSSIA & THE REPUBLICS: LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota, eds. 1998). Throughout this Article, the term "residential community association" is employed, but a variety of other terms could have been chosen. For academic synonyms, see Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 *DUKE L.J.* 75 (1998).

A. MAHALLA SPACE

Four basic types of mahalla exist in post-Soviet Uzbekistan. In rural areas, former state and collective farms constitute mahalla ("rural mahalla").⁸ In cities, mahalla encompass modern apartment complexes ("apartment mahalla"), blocks of relatively spread-out family dwellings ("contemporary mahalla"), and blocks of densely organized pre-Soviet single-family dwellings ("traditional mahalla"). These latter two types of RCAs capture the focus of this Article; until 1992 no Uzbekistani would have called a *kolkhoz*, or a high-rise apartment, a mahalla.⁹

Within Uzbekistan, each residential area belongs to one, and only one, mahalla. Mahalla are the basic administrative unit of a republic whose hierarchy ascends to *tumanlar* (districts), in relevant cases to *shakharlar* (cities), in all cases to *viloyatlar* (regions), and finally to the state / nation. Everyone in Uzbekistan technically belongs to a mahalla. Complementing this technical point, the society abounds with truisms about the inseparability of individuals from mahalla, and, especially in contemporary and traditional mahalla, these residential community associations overlap pervasively with kinship, professional, and social networks.

Fundamental mahalla divisions include family, sex, and status. While each of these divisions holds significance, family possesses the most significance for the organization of space in a mahalla, and mahalla themselves probably evolved out of family groupings within expanding cities. In contemporary and traditional mahalla, teahouses, markets, mosques, and stores are public and quasi-public spaces. The private spaces in a mahalla consist of family dwellings. Although in most mahalla, community members (especially children) feel free to wander in off

⁸ While no work has been conducted on apartment mahalla, substantial discussion on rural mahalla is contained in OLIVIER ROY, *LA NOUVELLE ASIE CENTRALE* (1997). Roy generally describes these apartment mahalla as more mosque-centered and more overtly political than the urban mahallas described herein.

⁹ Uzbekistan law currently differentiates mahalla on the basis of administrative subordination. All urban mahalla (which is what the law calls them) are the same under the law, while a separate, but similar, legal regime exists for town, village, and settlement mahalla. See *Zakon Respubliki Uzbekistan Ob organakh samoupravleniya grazhdan* (Sept. 2, 1993, revised on Apr. 14, 1999), Oliy Majlis Resolution 758-1, arts. 10-1 [hereinafter "1999 Mahalla Law"].

the street into the courtyards of family dwellings, they are not as free to enter the rooms off this courtyard.

1. Walls and Boundaries in a Mahalla

Nearly the entire perimeter of a mahalla property lot is usually walled-in, and neighboring houses either share a wall or have walls built snug against each other. Newer or more ostentatious houses may boast small lawns or orchards separating a house from the street. One or more sides of this walled perimeter contain living quarters, and a courtyard always occupies a sizable portion of the area of the home. Most windows face in towards this courtyard, and the defining characteristic of any house is its courtyard. Many courtyards are dedicated to complex gardens that yield a good part of a family's food from a few square yards of soil, while others combine more decorative gardens with a pool, decorative brick pathways, an *aivan* (enclosed porch), or a pen for livestock. The courtyard is a barometer of wealth and status.

Traditional mahalla are, topographically, face blocks in which the largest streets are not boundaries but medians of communities.¹⁰ In contrast, in contemporary mahalla, thoroughfares constitute the boundaries delimiting the edges of mahalla. In either case, mahalla often include some central *guzar*, or collection of institutions, like a bazaar, a mosque, a barbershop, a tea house, or a general store. A mahalla is named sometimes for a person, sometimes for an event, and sometimes with a moniker whose meaning is now lost to its residents. While most female socializing occurs within family courtyards and on streets, men (especially older men) also

¹⁰ O.A. SUKHAREVA, KVARTALNAYA OBSCHINA POZDNEFEODALNOGO GORODA BUKHARY 13 (1976). However, in US urban sociology and property scholarship, the term face-block means only two sides of one street. See Albert J. Hunter & Gerald D. Suttles, *The Expanding Community of Limited Liability*, in GERALD D. SUTTLES, THE SOCIAL CONSTRUCTION OF COMMUNITY 44-81, 55-7 (1972); Ellickson, *New Institutions for Old Neighborhoods*, *supra* note 7, at 80. In the context used here, it means two sides of a main street, as well as the more minor streets and alleys that branch off along this length.

socialize in a *choikhana*¹¹ (tearoom) or in cafes run out of private courtyards. In the past, where a *choikhana* did not serve as a social center, a mosque or market did. Children socialize primarily on streets.

2. Entrance and Exit from Mahalla

One becomes a member of a mahalla by virtue of residency, not by choice. While one can maintain an association with a close relative's mahalla, one can only renounce one's own mahalla by moving out. Non-Uzbeks (i.e. Slavs) living within mahalla are often not expected to contribute work and services to mahalla, or even to participate in mahalla events, but the mahalla usually still provides them with some services and expects them to acknowledge the mahalla as a primary social force.¹² Even as a theoretical possibility, most Uzbeks reject the possibility of divorcing oneself from a mahalla. However, while voluntary secession from a mahalla is virtually unknown, some individuals do become outcasts. That this outcome is devastating is captured by several Uzbek sayings that equate internal mahalla exile with death. Uzbekistan society in general brandishes a robust set of non-legal punishments for those who defect from the cooperative requirements of mahalla life.¹³

Equivalently, once a family moves to another mahalla, ties to the old mahalla must be attenuated, and the family is expected to reorient its social life to the new neighborhood.

Similarly, when a woman marries, she resettles in her husband's mahalla (usually in a house

¹¹ This institution only comparatively recently assumed social functions in some parts of Uzbekistan. See SUKHAREVA, *supra* note 10, at 23.

¹² See David M. Abramson, *Traditionalizing Modernities and Modernizing Traditions: The Forming and Reforming of Ideologies in Post-Soviet Uzbekistan* (1997) (unpublished paper presented at 1997 American Anthropological Meeting in Washington, DC).

¹³ This reflects what Eric Posner calls the general phenomenon of the "stigmatization of the deviant and ostracism of the incorrigible." ERIC A. POSNER, *LAW AND SOCIAL NORMS* 3 (2000).

shared with her in-laws) and is discouraged from maintaining strong ties with her former mahalla, often even prohibited from visiting her old mahalla, even if it is only a few blocks away.

In terms of space, families worry primarily about sons. While a family acquires rights to the labor of a daughter-in-law (and mothers-in-law notoriously push the limits of such rights), it also should provide the new couple with at least one separate room, preferably with a separate entrance off the courtyard. Families unable to build such separate quarters may not be in a position to allow a son to marry.

While many courtyards easily lend themselves to the use of two or three perimeter walls as housing for two or three nuclear families, most husbands will, using their own or family resources, attempt to secure a separate house some time after a first child is born. The exception is the youngest son. The youngest son inherits the family home,¹⁴ and he is also expected to care for the parents, who remain in the family home, in their old age.

Despite young wives' wishes to escape a mother-in-law's yoke, a husband often wishes to remain in his home mahalla for social and professional reasons. Facilitating this desire is a norm of a right of first refusal conferred on mahalla members in the event a member wishes to sell a home. In many Islamic areas, only an abutting neighbor enjoys this right, but in Central Asia it extends to all mahalla members.¹⁵ In the event that no intra-mahalla buyer comes forward, a seller may still not be able simply to sell property to the highest bidder. Without the formality of a New York City co-op, but with equivalent scrutiny, the blessing of mahalla leadership is often sought before final sale. While law does not require this blessing, a family taking up residence against the wishes of mahalla leaders could be subject to unpleasantries. Savvy immigrants usually either seek such a blessing or, at least, make sure that their immediate neighbors are amenable.

¹⁴ During the Soviet period, while residents were not technically owners of property, for the most part usury rights in residential property passed as if by bequest.

3. *Gossip and Monitoring*

When a daughter moves out of a mahalla upon marrying, mahalla members know whom she married and to what mahalla she has moved. When events of national importance occur, most people hear the news first from mahalla cohorts instead of from the national media. Information networks in mahalla are comprehensive and quick. Even where mahalla boundaries are apparently indistinct, a stranger's entrance into mahalla space often attracts community interest. Children, who spend much of their time playing on the streets, are usually the first to notice such incursions. If the incursion is remarkable enough, adults quickly learn of it. If the incursion is truly remarkable, in a matter of minutes a mahalla leader will approach the stranger.

While children play an important role in generating important community information, women conduct the bulk of mahalla information exchange. Whether or not they have outside jobs, women in mahalla are more active, less reserved, and less selective in their information exchange than are men. Women also participate in wider social networks within mahalla, despite the fact that they enjoy less leisure time than their spouses.

4. *Mahalla Authority*

In modern Uzbekistan, mahalla leadership draws on four distinct sources of authority. Under authority of law, a chairperson (*rais*) leads the mahalla committee (*kengash*). As of 1999, the *rais* is a state employee selected in an unstandardized process of appointment by district government, internal voting, and consensus.¹⁵ Second, under informal authority, an *aksaqal* (whitebeard) is an older male in a mahalla selected by consensus from his generational cohort for

¹⁵ See SUKHAREVA, *supra* note 10. Mahalla residents were expected to be present at judicial notarization of a sale, and the judge asked them to confirm that no mahalla resident desired the house. *Id.*

¹⁶ Anticipating discussion in Part IV, these three modes track the governing logics of legitimacy of power of the post-Soviet, Soviet, and pre-Russian periods of mahalla.

his wisdom, personal clout, and managerial finesse.¹⁷ As wealth engenders respect, the wealthy comprise a third authority. Finally, under female authority, a senior mahalla woman assumes an informal leadership role, often in tandem with formal service on a mahalla women's committee.

In clientalistic Uzbekistan,¹⁸ state power, gerontocracy, wealth, and female status are usually not diffused throughout the mahalla. Usually a few families capture the bulk of mahalla leadership positions or alter the comparative weight of these positions so as to capture *de facto* power,¹⁹ notwithstanding formal legal entitlements (a straightforward apportionment of votes according to population). The structures, public demands on, and internal composition of mahalla across Uzbekistan produce a great diversity of allocations of mahalla power.

¹⁷ *Aksaqal* is a catchall term for older men; age confers respect in Central Asia. Yet, when Uzbeks refer to a mahalla's *aksaqal*, they mean only one person. Laws regulating mahalla use *rais* and *aksaqal* interchangeably, although this Article keeps these terms separate, as, increasingly, do Uzbeks. With the expansion of mahalla functions after independence, mahalla *rais* are rarely over 65 years old and rarely under 40. See UNDP, UZBEKISTAN NATIONAL HUMAN DEVELOPMENT REPORT 65 (1998) available at <http://www.cer.uz/nhdr/1998/ch-4.htm> (last visited Apr. 18, 2002). Many contemporary *rais* are managers who are not simultaneously *aksaqal*. Traditionally, while *aksaqal* were formerly not salaried employees of a mahalla (mahalla did directly employ a variety of people), they received compensation through gifts and through skimming off (appropriately) small portions of sums passing through their hands for house sales, festivals, funerals, and other events. See SUKHAREVA, *supra* note 10, at 36.

¹⁸ Corruption is a word used pervasively to describe Russia and the former Soviet Union. During *Glasnost*, Soviets considered the Uzbek SSR the most corrupt republic. Yet, corruption is a loaded term and carries only negative connotations. In describing institutions capable of and effective in providing services, making decisions, and channeling public opinion, it frustrates understanding, so I use the adjective "clientalistic" in this Article. I by no means endorse clientalism; rather I merely note that it cannot be automatically dismissed as illegitimate or inefficient.

¹⁹ For the pre-Soviet era, Sukhareva has outlined many of the mechanisms that existed to channel this influence. For instance, in selection of *aksaqal*, the wealthy often expressed their preferences to the imam of the local mosque, who was in charge of nominating candidates. See SUKHAREVA, *supra* note 10, at 33.

5. *Mahalla Institutions*²⁰

Mahalla channel several institutions that mediate between mahalla and family, mahalla and culture, mahalla and survival, and mahalla and commerce. Mahalla even externalize the most meaningful and intimate relations of nuclear families. Families must (at great expense) mark births, male circumcision, weddings, and deaths with a *toi* (a celebration). Some *toi* are open to the community at large, but a number are restricted to more parochial identity groups, such as adult males. Often, the mahalla owns or possesses a supply of tables, chairs, cooking supplies, and other implements that it lends or leases to community members for such occasions. In the pre-Soviet era, a mahalla often also owned communal pastureland outside the city.²¹

To the same degree that mahalla frame family events, they also shape Uzbek cultural celebrations. For national holidays, mahalla work together to clean public areas, cook national desserts for distribution to all mahalla residents, and provide small presents to poorer residents.

Even outside of these formal occasions, mahalla are a primary source of social services for community residents. In some mahalla during the Soviet era, this aspect of mahalla life declined due to the highly active Soviet welfare state, while in others, due to post-Soviet decline, mahalla have once again superseded the state as the primary provider of social guarantees. Mahalla residents call on each other to provide labor for repairs to houses, hand-me-downs to children, and a variety of other informal services that are easily described as "neighborliness." Uzbeks have a well-developed conception and practice of mutual assistance called *hashar* that transcends bilateral relations. Mahalla *rais* and members draw on *hashar* to motivate residents to,

²⁰ This Article adheres to a presumption towards the efficiency thesis of informal land regimes. This thesis assumes that land rules within a close-knit group evolve so as to minimize members' costs; people on the ground recognize that property in land is a positive-sum game and play it cooperatively. See Ellickson, *Property in Land*, *supra* note 4, at 1320. I extrapolate the efficiency thesis to residential regimes. The grounds for the efficiency thesis dissolve when change is rapid and introduced by formal structures (like the state) through formal institutions (like laws) and so efficiency is not a presumption of the subsequent analysis of the modern mahalla residential regime.

²¹ See SUKHAREVA, *supra* note 10, at 20.

inter alia, maintain the cleanliness of streets and gutters and improve the look of their mahalla on the eve of celebrations and state holidays.

Mahalla frequently also provide substantial support to the elderly, intercede in cases of domestic abuse (and deter divorce), provide adjudication to quell disputes between neighbors²² and, in the converse, pressure more wealthy residents to share some of their wealth with the wider community.²³

Finally, with the collapse of employment opportunities after the disassembly of the USSR, mahalla have in many cases become primary centers of economic activity. During the Soviet period, large parts of Uzbekistan's fabled gray economy also rested on mahalla foundations. With the collapse of the state's ability to provide even subsistence employment, the economic significance of mahalla has shifted from being a vehicle through which to amass additional or disposable wealth to a vehicle for basic survival. Much of Uzbekistan's foreign trade has been conducted by mahalla-based groups of traders, for instance women who fly to the United Arab Emirates to bring back suitcases of consumer goods and men who travel by train to Siberia and caravan Russian automobiles back to Tashkent for sale.

B. MAHALLA ERAS: PRE-MODERN, SOVIET, AND POST-SOVIET

The central dilemma for the scholar attempting to describe mahalla lies in the fact that mahalla are neither regionally uniform nor static, nor are the types of public goods available to

²² While customary law (*adat*) has been at the center of this function of mahalla, an investigation of this topic is beyond the scope of this Article, and is a largely unstudied topic. For an overview of academic literature in English and Russian on *adat* in Central Asia, see VIRGINIA MARTIN, *LAW AND CUSTOM IN THE STEPPE* (2001). *Adat*, like mahalla, was not static, and for this reason a study of *adat* is important to a deeper understanding of mahalla. "The unwritten rules of *adat* adjudication were framed loosely by tradition and precedent, which varied locally in time and space. In this sense *adat* embraced regional differences in interpretation and the individual judgment of judicial authorities. . . ." *Id.* at 25.

²³ In the post-Soviet period, with increased mobility, many wealthy mahalla residents are moving out of home mahalla to certain more fashionable contemporary mahalla to avoid this pressure.

mahalla residents. Moreover, mahalla have been changing for centuries and some elements of that change may be path dependent. So, any description of mahalla in modern Uzbekistan should include some account of mahalla in the Soviet and pre-Soviet periods.

1. Medieval Mahalla

Central Asia, neighboring the Fertile Crescent, was one of the first areas of the planet to witness the growth of urban centers. Two millennia ago and for a millennium thereafter, the area constituted a singularly cosmopolitan center of global trade, a position it enjoyed until intercontinental seaborne trade displaced land routes. At the intersection of Manichean, Zoroastrian, Buddhist, Islamic, and Christian empires, classification of Central Asia according to civilization models is ultimately unproductive. Consequently, classification of Central Asia's historical institutions and any explanation of them that relies on such civilization assumptions cannot progress far before encountering serious contradictions.

Well before the invasion of Chinggis Khan in the 13th century, Central Asia boasted large urban areas, and several of these areas certainly boasted communities that we might call mahalla, and this word is used in a number of histories of the period to refer to residential quarters.²⁴ In a review of Central Asia's largest city, Samarkand, from the 8th to 12th centuries, Wilhelm Barthold estimates that Samarkand's population reached 500,000 under the Samanids.²⁵ It also had an elaborate irrigation system, a system of dual walls and gates around the city, and 2000 areas where water and ice could be obtained from non-state sources for free.²⁶

After the Chinggisid invasion, the population was greatly reduced, the area never was able to restore its irrigation infrastructure, and the region in general began a precipitous decline

²⁴ See WILHELM BARTHOLD, *SOBRANNYE SOCHINENIYA* (9 vols., 1960), *passim* (but no mention of how many mahalla).

²⁵ *Id.* at 132-47 (Vol. 1).

²⁶ *Id.* For a picture of 14th and 15th century Samarkand, see BABUR, *THE BABURNAMA* 82-90 (Wheeler M. Thackston trans., 1996).

away from the center of the world stage. What we know about urban space from this period comes from both archaeological digs and from written records, including extensive court records detailing frequent transactions in land, trusts, and property.

Medieval Central Asia enjoyed an important place in the Islamic world,²⁷ particularly as the center of the Hanafi school of law. It also boasted an array of state structures, including courts. Parastatal judges (*qadi*) affirmed transactions of land, recorded in trust-like instruments and in simple conveyances, very often between individuals of modest means.²⁸ These documents often contain references to neighboring properties in such esoteric detail that they have allowed contemporary medieval historians to piece together a detailed map of several neighborhoods in several cities. On the basis of these maps, these scholars describe in detail the borders, characters, and activities of distinct mahalla.²⁹

Real estate ownership was widespread, perhaps nearly universal, in medieval Central Asian cities.³⁰ Moreover, women made up thirty percent of property owners in some areas, and emancipated slaves also often appear as property owners.³¹ In the 16th century, subsequent to driving the Timurids from power in Central Asia, the Uzbeks instituted a property audit over their new territories and faced the dilemma of how to assign property rights to abandoned lands so as to maximize their economic utilization.³²

²⁷ An impressive number of medieval Islam's greatest scholars (e.g., Avicenna) came from Central Asia. While Central Asia (more precisely, political units such as Balkh and Khorezm) occupied secondary importance in the khalifat, a number of social movements significant to the Islamic world in general originated in Central Asia.

²⁸ See R.D. McCHESENEY, *CENTRAL ASIA: FOUNDATIONS OF CHANGE* 58 (1996) [hereinafter McCHESENEY, *CENTRAL ASIA*]. Most land transfers involved small parcels of cultivable land; large parcels (over 10 acres) rarely appear in the records. *Id.* at 58-9.

²⁹ See, generally, CHEKHOVICH, *infra* note 41; McCHESENEY, *WAQF IN CENTRAL ASIA*, *infra* note 34; and SUKHAREVA, *supra* note 10.

³⁰ See McCHESENEY, *CENTRAL ASIA*, *supra* note 28, at 60.

³¹ See *id.*

³² See *id.* at 54-8.

In addition to this audit, the Uzbeks also surveyed *waqf*,³³ the Islamic equivalent of the trust.

In its narrowly legal sense, waqf is the voluntary relinquishing of the right of disposal of a thing by its owner and the dedication of the usufruct of that thing to some charitable end, as a charitable gift (*sadaquah*). . . . The act of waqf is considered by Hanafi lawyers to be accomplished and the right of alienation relinquished (implicitly to God) either when a *qadi* (judge) probates the waqf deed or when the waqf donor . . . delivers what he has made waqf to the waqf administrator (*mutawalli*) then (as a legal procedure) alleges that the waqf is not binding and the qadi issues a decision that it is.³⁴

Some waqf deeds (*waqfnama*)³⁵ escheated portions of land to the state in exchange for permanent exemption from taxes; waqf status alone did not alter tax liability. Waqf types included public (*waqf khayri*), private (*waqf ahli*),³⁶ and mixed waqf (*waqf mushtarak*). Private waqf were created to ensure a stream of tax-free income for beneficiaries, and in some cases waqf

³³ See *id.* at 58. The Uzbeks, apparently, did not try to dissolve these institutions. See *id.* Given that waqf records date back roughly 1000 years, it is more appropriate to call trusts the European equivalents of waqf. The earliest waqf appeared in the seventh century, and waqf have historically provided for the operation of "innumerable schools, libraries, mosques, charitable institutions, hospitals, facilities for travelers, fountains, bridges, roads, and commercial buildings." INTERNATIONAL ENCYCLOPEDIA OF FOUNDATIONS 233 (Joseph C. Kiger ed., 1990). Moreover, not only in pedigree do waqf eclipse trusts; in flexibility and application waqf evidence a number of characteristics that urge their recognition as substantially more interesting than trusts from an academic, especially a law and economics, point of view. In other words, trusts in 16th century England were both a late development and, in many ways, inferior to prior Islamic innovations. For example, centralized administration over many small waqfs endowed over time for a single shared purpose or institution appeared centuries before either modern university endowments or community foundations appeared in Europe.

³⁴ R.D. MCCHESENEY, WAQF IN CENTRAL ASIA 6-7 (1991) (references omitted).

³⁵ Waqfnama are lengthy, and they contain unique information about the history and context of property, as well as about the waqf founders (and their plans and expectations).

³⁶ See MCCHESENEY, WAQF IN CENTRAL ASIA, *supra* note 34, at 9. "To be legally valid, such private waqfs had to establish an ultimate public purpose in the event of the extinction of the founder's line." *Id.*

properties were held in trust to be transferred to a private beneficiary on some condition, like the death of a parent.³⁷ In contrast to the private waqf:

No one would question [the public waqf's] central importance in the social and economic history of the Islamicate regions, particularly in the twelfth to nineteenth centuries, and most scholars consider it the single most important institution for the provision of community social services in Islamdom. Whether supporting education; financing public buildings and facilities; providing welfare for the poor, the indigent, and travelers; feeding birds and stray cats and dogs; or supplying communal tools and utensils, waqf has been thoroughly woven into the fabric of daily life and its ubiquitousness established by the breadth and depth of the historical record.³⁸

As the foregoing should illustrate, unlike early trusts, medieval waqf enjoyed great latitude of choice in defining their charitable purposes. Also in contrast to European law, they reflected Islam's tolerance of subdivisions of property into parcels, such as ownership of a limb of a fruit tree.³⁹ Moreover, waqf pioneered the functional equivalent of community trusts, thereby encouraging modest private donations for charitable endowments.

A large amount of the institutional richness of medieval Central Asia and most of the fabled buildings of cities like Samarkand were under waqf management. Probably most service providing institutions in the region were endowed as waqf. Hospital waqf created by Karakhanid rulers appeared in Central Asia as early as the early 11th century,⁴⁰ and the oldest discovered

³⁷ See Ian Murray Matley, *Agricultural Development*, in CENTRAL ASIA 266-308, 279 (Edward Allworth, ed., 1994).

³⁸ See McCHESNEY, WAQF IN CENTRAL ASIA, *supra* note 34, at 3.

³⁹ See *id.* at 10. Cf. Michael A. Heller, *The Boundaries of Private Property*, 108 YALE L.J. 1163 (1999) (cautioning that land may be subdivided into wastefully small fragments).

⁴⁰ See NATIONAL ACADEMY OF SCIENCES OF THE KYRGYZ REPUBLIC, ISTORIYA KYRGYZOV I KYRGYZSTANA 58 (1998).

waqfnama of a Central Asian waqf is for a 1066 endowment in Samarkand.⁴¹ An 1886 Russian survey of roughly half the land in present-day Uzbekistan revealed more than 7500 waqf.⁴²

From these medieval legal texts and their descriptions of the physical characteristics of buildings, streets, and businesses, it is clear that medieval mahalla fulfilled functions no longer required of modern Uzbekistan's RCAs. In cases where a stream or canal did not run through a neighborhood, many mahalla contained a *khauz*, an open pool of water, the operation of which was usually effectuated by a waqf endowment. The borders of mahalla were more clearly boundaries, and the main street that formed the primary face-block of the mahalla was often gated. Defense was a principal service provided by mahalla, and during attacks from steppe nomads, neighboring khanates, or invaders from outside the region, cities probably shut down into semi-independent defensive cells.⁴³ Accordingly, quarters for guards and mercenaries existed, even though mahalla of the period were very frequently dedicated to professional homogeneity. Many mahalla specialized in trades such as metalworking, music, or food production, and some of their names reflected these specializations. Other mahalla carried names suggestive of ethnic exclusivity; Jewish and Arab communities survived in the region into the 20th century.

Yet, the exclusivity of mahalla is also not to be overemphasized. Marriages, economic conditions, the hiring of mercenaries for security, and other factors probably made an ethnically homogenous mahalla a rarity. The reason that this point is stressed is because many scholars of Central Asian history and even the sociology of those modern mahalla that remain solidary suggest that membership in a common mahalla usually trumps divisive factors such as religion.⁴⁴

⁴¹ See A.K. ARENDSA ET AL., *BUKHARSKII VAKF XIIIV9* (1979). For a complete collection of documents relating to a 1326 Bukhara region waqf, see O.D. CHEKHOVICH, *BUKHARSKIE DOKUMENTY XIVV* (1965).

⁴² See MCCHESENEY, *CENTRAL ASIA*, *supra* note 28, at 61.

⁴³ See *id.* at 14.

⁴⁴ In the past, this would be limited to Sunni / Shiite tensions since mahalla did exclude non-Muslims. See SUKHAREVA, *supra* note 10, at 28. However, in the present, mahalla contain many non-Muslims. Cf. ROY, *supra* note 8. While Roy assigns high importance to mahalla and would concede their ability to trump differences of ethnicity, he

Moreover, Central Asia is traditionally a multi-lingual area, and there is no convincing evidence in historical documents that language was ever, prior to Russian invasion, a primary component of identity formation, or, conversely that communities successfully employed language as a component of identity. Illustratively, the nominally Jewish and Shiite Arab communities of the Zaravshan Valley spoke both Turki (a loosely defined language whose gradients formed the basis for the state-engineered establishment of Uzbek, Kazakh, Karakalpak, and other distinct languages in the first half of the century) and Farsi (Tajik) as native languages.

Perhaps the most nearly universal aspect of mahalla and the most remarkable given the social divisions in past and present Central Asia is that no member of the mahalla is, for class, profession, or religious reasons, excluded from community events and interactions. Without idealizing the mahalla into areas of social harmony (which, of course, they are not), mahalla are traditionally the only places where some kinds of people (i.e. Sunni / Shiite, merchants / laborers, rich / poor) interact with each other.

Moreover, the mahalla system may have created a mechanism through which the services of charitable institutions reached a social cross-section of the population. Olga Sukhareva, an anthropologist who studied mahalla in Bukhara, posits that residents of mahalla possessed the right to use all social institutions in their mahalla, including mosques, large cooking areas and supplies, water supply (for cooking, drinking, and ablutions), and materials for transporting the deceased to a cemetery.⁴⁵

In stark contrast to such observations, a generation of Western scholars has intuited that medieval Central Asian societies were both despotic, in the Oriental vein, and "hydraulic." Wittfogel's "hydraulic society"⁴⁶ assumes that the managerial burdens of coordination can only be

would likely ontologically disagree with my assertion since he views even modern mahalla as, by definition, Islamic. He nowhere addresses the fact that mahalla overwhelmingly often contain non-Islamic (or non-Sunni) residents in very good standing.

⁴⁵ See SUKHAREVA, *supra* note 10, at 21-2.

⁴⁶ KARL A. WITTFOGEL, *ORIENTAL DESPOTISM: A COMPARATIVE STUDY OF TOTAL POWER* (1957).

met in medieval societies through despotism. Indeed, Central Asia's pre-Russian society is most often depicted (more accurately, rumored) in scholarly works to have been a strict, cruel, and dark hierarchy of power.⁴⁷

The efficiency thesis suggests that social norms and informal management are as capable of building and facilitating coordination as is a despotic state, perhaps more. As historical sources increase in richness, the state should continue to recede in scholarship as the sole actor in society. To wit, pre-Russian "non-governmental" initiatives did exist in Central Asia, and they assumed forms similar to modern NGOs. For example, in his study of musicians in medieval Central Asia, Alexander Jumaev identifies the three major types of musicians (*khafizi*--court musicians, *mutriby*--workers' musicians, and *kavvali*--religious musicians).⁴⁸ Jumaev roughly replicates the state, private, and non-profit division of society employed by many modern scholars throughout the world in their descriptions of modern Western societies.⁴⁹

The foregoing discussion is relevant to a robust modern analysis of Uzbekistan's mahalla because it establishes a history of public goods in Uzbekistan communities similar to the kinds of modern public goods important to Uzbekistan citizens and the Uzbek state. At the risk of presenting an overly simplified picture, public goods in medieval Central Asian cities flowed primarily from the community and waqf, and only marginally from the state. Mahalla provided the framework for important social and professional networks, coordinated defense, implemented

⁴⁷ Indeed, the trend among Western economists, political scientists, and legal scholars of Central Asia is to ignore any social theory that is not statist, and the hydraulic theory is virtually unchallenged still in these communities. For the best recent example, see GREGORY GLEASON, *THE CENTRAL ASIAN STATES* 37-9 (1997) (offering titillating but unsubstantiated lore about despotism, such as that unsuccessful candidates for office of watermaster were, by rule, executed).

⁴⁸ A. V. Jumaev, *Obschestvennoe polozhenie muzykanta na srednevekovom vostoke*, in *KULTURA SREDNEGO VOSTOKA* 16-28 (1992).

⁴⁹ Importantly, however, Jumaev also urges his readers to look at these separations as porous: "between these categories, there were no insurmountable borders." *Id.* Expanding Jumaev's insight to include chronological as well as horizontal differences, the inherent flexibility of Central Asian societies over time allows for the discovery of multiple precursors to civil society and cautions as well against deterministic interpretations of these precursors.

social insurance strategies, and facilitated communication with the government.⁵⁰

Complementing mahalla, waqf provided spiritual public goods and, with less complete coverage, public goods such as water, education, medical care, libraries, and charitable assistance.

Such a map of public goods suggests that medieval Central Asia was infused with diverse institutions pursuing non-state goals and sheltered from state mandates. These institutions would have had to mobilize and coordinate substantial resources, a task surely made much more interesting from a scholarly perspective by the fact that private and diverse individuals owned land and other property and possessed rights of autonomy.

Accordingly, social norms almost certainly lie behind many of the institutions that Wittfogelian scholarship could imagine only as the product of a coercive and attentive state. Increasingly, social coordination is replacing coercion in historical narratives, but the implications of this shift for social theory have yet to be fully appreciated.

2. Moscow and Mahalla

The administrative functions of the aksakal flow from his role as the leader of the community, and as such he represented the block before governmental authorities. He was not provided with any means of coercive power and, in managing to get community members to fulfill all their duties, had to rely on tradition, on his personal authority as community leader, and on the popular opinion of the collective.⁵¹

During the second half of the 19th century, the territory of contemporary Uzbekistan (covering large parts of the Bukharan and Khorezm emirates and the Kokand Khanate) came under Russian control. By this time, Central Asia had become a true backwater. Not only were

⁵⁰ The government, in fact, notarized the appointment of an *aksaqal* on the petition of the elders of the mahalla. *Aksaqal* were also charged with preventing, through mediation, court cases between residents of various mahalla. See SUKHAREVA, *supra* note 10, at 35.

⁵¹ See *id.* at 40-1.

literacy rates near zero, the region had even lost the ability to cast its own canon. Handfuls of trained Russian troops took cities although outnumbered by an order of magnitude. Decades of internecine warfare between the political entities of the region, weak ties with other parts of the Islamic world, and lost trade and commercial ties left Central Asia destined to fall to either Britain or Russia.

Within thirty years of the establishment of the USSR, literacy became nearly universal among the younger generation in Uzbekistan, life expectancy soared, morbidity plummeted, and numbers of local nuclear physicists, physicians, and engineers reached per capita parity with Europe and the United States. The state had suddenly become the source of an unprecedented number of public goods. To accomplish this unparalleled development accomplishment, which should be acknowledged even by those whose ideology finds the admission distasteful, more than financial resources or state violence was needed. Short on funds, the USSR resorted both to force and to a remarkably pragmatic and effective tinkering with local incentives, the bulk of which were not linked to force.

A cornerstone of this tinkering involved creating a homogenous set of institutions across the entire face of the USSR; deeply on the side of nurture in the nature / nurture debate on human development and psychology, Soviet planning embraced the idea that only isomorphic institutions could create the supranational *Homo Sovieticus*. This signaled the end of traditional structures such as nomadism, customary law (*adat*) courts, and mosques. Yet, thanks to the fact that education was always a cornerstone of Soviet policy in Central Asia, although waqf properties were nationalized by decree in 1918, a continuing lack of state schools delayed full enforcement of this decree until 1928.⁵² Only in the 1930s did waqf effectively disappear from Central Asia.⁵³ In the place of waqf came state courts, schools, hospitals, and baths. Moscow expanded cities,

⁵² See Hans Braker, *Soviet Policy Towards Islam*, in *MUSLIM COMMUNITIES REEMERGE* 157-82 (Andreas Kappeler et al., eds., 1994).

built apartment complexes, constructed municipal sewage systems, and otherwise Westernized the area.

However, as a glaring exception to this policy, mahalla were incorporated into the Soviet system of organization rather than targeted for dissolution.⁵⁴ Whether Moscow developers primarily saw mahalla as impossible to eradicate without risking revolt or whether these developers primarily saw the institution as complementing development and ideological goals is not clear, nor is it important to assign primacy to either of these reasons. In the final assessment, Moscow decided that the benefits of an effort to subvert mahalla outweighed the costs of a campaign to abolish it.

Just as pre-Russian governments dealt with mahalla as basic administrative units, working through their internal governing bodies in most of their interactions with the population of that mahalla, the Soviet government retained mahalla as local self-governing (in name) residential associations. The mahalla *aksaqal* became a symbolically elected chairperson of the mahalla, whose appointment was controlled by the local party apparatus. Instead of informal advisors, this chairperson now could rely on a committee to advise him, and certain issues were managed by separate committees, such as a women's committee. By the late Soviet period, the office occupied by the mahalla committee often looked like any Soviet office, decorated with Soviet symbols and graced with portraits of Soviet leaders. Remarkably, so harmonious was the integration of native and Soviet elements of mahalla that residents did not distinguish between the bureaucratic and informal aspects of mahalla.⁵⁵

⁵³ See Helene Carrere d'Encausse, *The National Republics Lose Their Independence*, in *CENTRAL ASIA* 254-65, 259 (Edward Allworth ed., 1994).

⁵⁴ National identities were also initially targeted for eradication, but fears of Pan-Islamicism, Pan-Turkicism and related broad-based social movements convinced Soviet planners instead to push for a temporary embrace of nationalism under a divide and conquer strategy. Until the USSR, the nationalities of Uzbeks, Kazakhs, and others in Central Asia hardly existed, and in no case were there standardized separate languages that delineated between these groups.

⁵⁵ See Koroteyeva & Makarova, *supra* note 5.

Destatization was a cornerstone of the rhetoric of late Soviet development policy. Establishment of the Soviet state and nationalization of economic activity (necessary, the rhetoric went, in order to eradicate the perverse and inefficient influences of private ownership of means of production) was supposed to be followed by devolution of state power to nongovernmental hands. By Stalin's death, the Soviet state had progressed far in eradicating private initiative and concentrating state power. Khrushchev in turn, in repudiating Stalin's excesses at the Twentieth Party Congress in 1956 and in the 1961 Party Program, placed devolution of state power and functions onto social associations as a primary mission of the next stage of communist development, which in theory was to lead to the eventual withering of the state. *Druzhiny* (brigades) of citizen police, comrades' courts, and other social associations were hoped to begin to assume the basic governmental functions of securing public order, while a variety of more charitable associations, like the Red Cross / Red Crescent and the Znanie (Knowledge) Society, were hoped to advance public health, education, and related fields. Not truly nongovernmental, these parastatal social associations were nevertheless somewhat independent.

Soviet law recognized three types of social associations: social organizations, social movement organizations, and social self-government organizations (SSGOs).⁵⁶ Social organizations, like trade unions and the Red Cross / Red Crescent, displayed (ideally) four identifying elements: voluntary membership, a charter, property, and self-government.⁵⁷

Social movement organizations, typified by the Soviet Peace Committee, were more informal and lacked membership. Since membership was relatively meaningless in the Soviet

⁵⁶ For general explanations of these three categories, see GALINA KUDRYAVTSEVA, *MATERIALNAYA OSNOVA DEYATELNOSTI OBSHESTVENNYKH ORGANIZATSII NA SOVREMENNOM ETAPE* (1988). See also ARON ISAAKOVICH SCHIGLIK, *ZAKONOMERNOSTI STANOVLENIIA I RAZVITIYA OBCHESTVENNYKH ORGANIZATSII V SSSR* 3-4 (1977).

⁵⁷ Complicating analysis, the term "social organizations" is often indiscriminately applied by non-experts as a catch-all in the Russian academy for social associations. These confusions of terminology are, unfortunately, largely carried over into the post-communist discussions of social associations in Central Asia.

context and all needed funds were provided by the state, there were few salient differences between social organizations and social movements.

SSGOs were typified in Central Asia by mahalla, but they also included *druzhiny*, residential committees (*domovye*, *ulichnye* and *kvartalnye komitety*), agricultural committees (*selskomy*), and parents' committees for schools. They date back to the earliest days of the regime in legal acts establishing institutions like the 1920 library committees,⁵⁸ the 1918 police support brigades,⁵⁹ and the 1919 comrades' courts.⁶⁰

Activities of SSGOs included presenting state agencies with the opinions and ideas of constituents and facilitating rights of citizens to participate in managing the state and society. They were intended to, and did, assume quasi-governmental powers,⁶¹ even police powers in the case of *druzhiny* members' authority to make arrests. SSGOs were formed by decrees of state agencies and, unlike social organizations, did not have paid staff or status as legal persons.

Soviet social associations enjoyed a special relationship with the state. The Soviet state was envisioned as democratically holding property in trust and acting as a fiduciary for citizens consonant with the idea of popular sovereignty. Social associations were envisioned as subsidiary organizations, more efficient since subsidiary, but with essentially identical fiduciary duties. The adherence to conceptions of homogeneous fiduciary duties, benefits of subsidiarity,

⁵⁸ See V. I. Chekharina, *Organy obshchestvennoi samodeyatelnosti v sfere kultury i narodnogo obrazovaniya*, in *ORGANY OBCHESTVENNOI SAMODEYATELNOSTI KAK FORMA SOTSIALISTICHESKOI DEMOKRATII* 76-113 (Aron Isaakovich Schiglik ed., 1988).

⁵⁹ See V. I. Kriger, *Organy obshchestvennoi samodeyatelnosti v sfere okhrany pravoporyadka*, in *ORGANY OBCHESTVENNOI SAMODEYATELNOSTI KAK FORMA SOTSIALISTICHESKOI DEMOKRATII* 150-208 (Aron Isaakovich Schiglik ed., 1988).

⁶⁰ See *id.*

⁶¹ For general descriptions of the powers and activities of all types of women's councils and residential committees, see O. V. Orlova, *Territorialnye organy obshchestvennoi samodeyatelnosti*, in *ORGANY OBCHESTVENNOI SAMODEYATELNOSTI KAK FORMA SOTSIALISTICHESKOI DEMOKRATII* 25-75 (Aron Isaakovich Schiglik ed., 1988); for medical organizations of social self-activity, see K. N. Pchelintseva & D. V. Shutko, *Organy obshchestvennoi samodeyatelnosti v sfere zdravookhraneniya*, in *ORGANY OBCHESTVENNOI SAMODEYATELNOSTI KAK FORMA SOTSIALISTICHESKOI DEMOKRATII* 114-149 (Aron Isaakovich Schiglik ed., 1988).

and the legitimacy of popular sovereignty⁶² explains much of the structure of Soviet society. It explains why Soviet architects scoffed at the utility of separation of powers,⁶³ why Soviet doctrinaire political scientists could not acknowledge social or environmental problems,⁶⁴ why Soviet civil society was parastatal,⁶⁵ and why nongovernmental organizations were corporatist.⁶⁶

Accordingly, the role of an SSGO was most frequently to channel the interests of a discrete employment group⁶⁷ or a local community. Mahalla fell into this latter category. Accordingly, during the Soviet period, while apartment complexes in Uzbekistan were not considered mahalla, they were represented by residential SSGOs identical in form to and almost

⁶² While this terminology differs from that used in Soviet legal texts, it accurately represents the fundamental conceptions at the core of these texts.

⁶³ According to the standard Soviet legal account, only bourgeois democracies required separation of powers given their intrinsic lack of a state purpose. In contrast, the USSR was imagined to have a clear purpose (in the Hegelian sense) and its agents to have undivided loyalties, thereby making the otherwise valuable institutional guarantees of bourgeois governments inefficient and wasteful in the Soviet context.

⁶⁴ Soviet political scientists, economists, and legal scholars envisaged social and environmental problems as resulting from the rent-seeking of private actors, as social costs of state capture by vested interests. Since all relevant actors in the Soviet economy (factories, planners, state agencies) were supposed to be agents of the state and people, rent-seeking was *a priori* presumed out of existence.

⁶⁵ Conflicts between nonstate and state agencies were similarly presumed away by the confluence of fiduciary duties. While nonstate agencies could claim to overcome certain transaction costs (particularly in information and monitoring costs), they could not reasonably be imagined to be in conflict with the state. Beginning in the Constitution of the USSR in 1936, and continuing until a February 1990 removal of the clause, Article 6 (Art. 126 in the 1936 Constitution) defined the climate in which social associations operated: "The Communist Party of the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system and of state agencies and social associations. The CPSU exists for the people and serves the people . . ." USSR CONST. art. 6 (1976).

⁶⁶ Since the values of nonstate organizations were merely in their subsidiarity (both in terms of issue disaggregation and in terms of geographic particularity), it would be wasteful for the Soviet state or people to have two clubs for radio enthusiasts, two environmental organizations, or two women's councils. Accordingly, Soviet civil society was diverse in a corporatist, but not a pluralistic, sense.

⁶⁷ While residential groups are easily understood as components of grassroots democracy and subsidiarity, it should also be recognized that professional groups were long considered a vital part of democratic representation in the era of social theory that helped produce the USSR, most prominently in the work of Emile Durkheim. "A nation can be maintained only if, between the State and the individual, there is intercalated a whole series of secondary groups near enough to the individuals to attract them strongly in their sphere of action and drag them, in this way, into the general torrent of social life." EMILE DURKHEIM, *THE DIVISION OF LABOUR IN SOCIETY* 29 (1964). Durkheim's "corporations" transcend trade unions but rest on the idea of employment associations.

identical in operation to those in Siberia or Georgia. While such residential committees consolidated an entryway, a building, or a few dozen people, mahalla differed in both their consolidation of single family dwellings and their size of from several hundred to several thousand individuals. The average contemporary or traditional mahalla contains 2000 individuals.⁶⁸

Over its lifespan, the Soviet state steadily razed neighborhoods of traditional mahalla, which had their narrow streets providing shelter from the summer sun, and replaced them with apartment complexes or contemporary mahalla. Residents could choose to take apartments in these buildings or move away to areas reserved for contemporary mahalla,⁶⁹ with the effect that the composition of mahalla changed. By 1989, only a third of Tashkent citizens lived in contemporary or traditional mahalla.⁷⁰ Those who remained in mahalla nevertheless shared increasingly little with pre-Soviet predecessors. While Moscow-era mahalla carried the same name as their 18th century predecessors, and while these mahalla looked similar on the surface, they had changed into fundamentally different institutions.⁷¹ Most important for the present discussion, whereas pre-Russian mahalla residents expected almost nothing from the state in the way of public goods (and expected a lot from mahalla and waqf), late Soviet mahalla residents

⁶⁸ See Koroteyeva & Makarova, *supra* note 5. This corresponds to 300-400 dwellings. In this, they are considerably larger than the average RCA in America, which contains about 100 dwellings (and probably only 300-400 residents). See ROBERT JAY DILGER, *NEIGHBORHOOD POLITICS: RESIDENTIAL COMMUNITY ASSOCIATIONS IN AMERICAN GOVERNANCE* 20 (1992). For other examples, see Ellickson, *New Institutions for Old Neighborhoods*, *supra* note 7, at 81-2.

⁶⁹ In the post-Soviet system, a resident whose house is taken (i.e. for a new apartment complex) may exercise one of three options. He may demand a free apartment in the new building; he may demand that the taking agency construct a house on a new plot of land; or he may demand compensation for the house and all improvements made to the land. See Law of the Republic of Uzbekistan On Privatization of the State Housing Supply (May 7, 1993), Art. 8 [hereinafter Privatization Law].

⁷⁰ See Koroteyeva & Makarova, *supra* note 5.

⁷¹ *Cf. Id.* ("The Soviet state was content to leave the mahalla to its traditional functions as long as it maintained the ideological appearance of a Soviet institution.").

imagined that the only way to good schools, adequate medical care, potable water, and crime prevention was through a strong state.

3. Nation-State Mahalla

In accord with the historical traditions and mentality of the people, the significance of mahalla has been restored as an important citizen self-government organization and teacher of good-neighborliness, respect and humanism in affairs between people. Mahalla committees have begun to play an important role in the defense of social interests and the provision of assistance to groups of the population in need.⁷²

Uzbekistan became a nation state in 1991, and in the ensuing years its government has revised history and institutions in an effort to imbue "Uzbek" with favorable meaning. While "Uzbek" was a vague term and no "Uzbekistan" existed prior to Soviet administrative and ethnolinguistic engineering, Uzbekistan leaders have foreclosed any reflexive revisitation of these terms. In deciding by fiat that the Uzbek nation is a distinct entity that has existed for centuries or longer,⁷³ the state has correspondingly recast mahalla as the traditional, romantic basic structure of Uzbek society. Likewise, inheriting the Soviet predisposition toward the state, Uzbekistan's

⁷² Islam Karimov, President of Uzbekistan, national speech (Aug. 29, 1996).

⁷³ Uzbek was a pejorative term in some local languages, and the group that most scholars consider "Uzbeks" descended from Siberia to capture much of Central Asia only in the sixteenth century by driving out or aligning with the dominant Timurid leaders. Nevertheless, in the current state ideology, Timur (Tamerlane) is now an Uzbek and the icon of Uzbekistan, Uzbekistan is officially the birthplace of the Avesta (and, hence, Zoroastrianism), and "ancient Uzbek" is now the term of art for any Turki dialects spoken in the area previously, despite their actual names. For the moderated version of state history (in English), see G. A. Abdurakhmanov, *The Ethnogenesis of the Uzbek People and the Formation of the Uzbek Language*, in *ESSAYS ON UZBEK HISTORY, CULTURE, AND LANGUAGE* 1-12 (Bakhtiyar A. Nazarov & Denis Sinor eds., 1993). For the strong version of state history (in Uzbek only, and including the assertion that Uzbekistan is home to Buddhism), see TOHIR QAHHOR, *HUR TURKISTON UCHUN* (1994). History is the vehicle through which the current government aspires to build state legitimacy; 84% of Uzbekistanis (90% of Uzbek

government implicitly suggests that an "Uzbek state" is the legitimate repository of all authority in Uzbek culture, despite the lack of any such state previously over the course of Uzbek history. Naturally, "Uzbekistan" is just such a legitimate repository.

Under the Uzbekistan Constitution, mahalla *rais* are elected to 30-month terms.⁷⁴

Beyond this constitutional provision, Uzbekistan law now widely regulates and standardizes mahalla to perform state functions formerly implemented primarily by specialized state agencies, or going back further in time, by waqf. Part IV is dedicated to an analysis of how these reforms, what I call "mahallization," further distance mahalla from its roots in social norms despite the fact that most legal reforms allegedly merely codify the heretofore informal workings of mahalla.

By law, a "citizen gathering"⁷⁵ governs mahalla, but day-to-day governance is in the hands of an elected body, the *kengash* (composed of the *rais*, his advisors, commission chairs, and a secretary).⁷⁶ While all mahalla residents 18 and older ostensibly elect the *kengash* in a direct vote,⁷⁷ in fact the district government is a power broker.

Uzbekistanis) classify themselves as intensely interested in the history of the Uzbek people. Data from "static" fieldwork discussed in Part III.

⁷⁴ UZB. CONST., *supra* note 7, at art. 105.

⁷⁵ 1999 Mahalla Law, *supra* note 9, at art. 7.

⁷⁶ *Id.* at art. 10. This formula, almost identical to treaty regime organizations with secretariats that manage the regime between conferences of the parties, was the norm for all Soviet quasi-legislatures like the USSR Supreme Soviet and its local analogs. The citizen gathering, which convenes quarterly, also elects two commissions (for management and oversight) and appoints a secretary nominated by the *rais*. *Id.* The structure of these commissions is constrained by Cabinet of Ministers' provisions. *Id.* at art. 15. Almost the only formal aspect of mahalla governance left unregulated is whether voting at the citizen gathering will be by secret or open ballot; this choice is explicitly left to mahalla. *Id.* at art. 18. The *kengash*, however, may not vote by secret ballot. *Id.* at art. 19.

⁷⁷ *Id.* at art. 8. While mahalla voting has traditionally been (for males), and is now legally (for males and females), tied to residency alone, this creates no explanatory problems from an efficiency perspective. In analyzing other RCAs, Ellickson concludes that, unless voting is tied to ownership instead of residency, perverse incentives for rent-seeking and inefficient outcomes obtain. Ellickson, *New Institutions for Old Neighborhoods*, *supra* note 7, at 90-95. However, Ellickson explicitly assumes that many residents rent property and are transient. Historically, neither condition holds for mahalla; mahalla residents and owners are essentially undifferentiated. While this may now be changing, most mahalla residents live their entire lives in only one or two mahalla. Accordingly, given such a stable community, limiting voting to owners may be unnecessary; almost all adults in the community are present, past, or future leaders of households or property owners in the mahalla in question.

This attention to mahalla reforms and the mahallization of farms and apartment buildings are measures taken in shallow rejection of the USSR and as a bulkhead against Islam. The appeal of mahallization from the state's perspective is that it introduces homogeneity into the governing structure of the state, can be portrayed as Uzbek without reference to Islam, and can Uzbekify an ethnically diverse population.⁷⁸ Such a foundation of mahallization explains how the state can trumpet mahalla as the cornerstone of Uzbekistan society while at the same time accelerating Soviet projects to raze traditional mahalla, ignoring protests from local residents, and erecting modern apartment buildings. In this process, the state views mahalla as secular, foundational political subdivisions that facilitate communalistic values and appears to assume that mahalla are inevitable, immutable, and stable. This Article challenges all three assumptions.

The Uzbekistan government is eager to harvest the fruits of social norms, but unconcerned about their roots. State policies assume mahalla norms are static and stable and, therefore, manipulable. For example, the state advocates the creation of mahalla *posbonlari* (guards) as neighborhood anti-crime groups. These groups are formally citizen self-government organizations (hereinafter "CSGOs")⁷⁹ like Soviet *druzhiny*. Through mahallization they are expected to draw on *hashar* norms of noncompensated work and produce results consistent with the fact that during the Soviet and early post-Soviet period contemporary and traditional mahalla reported lower crime rates than other areas.

⁷⁸ See Koroteyeva & Makarova, *supra* note 5.

⁷⁹ The Civil Code lists CSGOs as one of six types of noncommercial organizations. OZBEKISTON RESPUBLIKASINING FUQAROLIK KODEKSI 37-8 (1996), art. 78 [hereinafter 1996 Civil Code]. The other types of noncommercial organizations are consumer cooperatives, social associations, social foundations, institutions, and unions of legal persons. *Id.* at arts. 73-7. Whereas social associations must incorporate with the Ministry of Justice, district governments register mahalla. Despite their inclusion in the 1996 Civil Code as noncommercial organizations, neither mahalla in particular nor CSGOs in general are regulated by the Zakon Respubliki Uzbekistan O negosudarstvennykh nekommercheskikh organizatsiyakh (Apr. 14, 1999), Oliy Majlis Resolution 763-1. Moreover, the 1999 Mahalla Law, *supra* note 9, does not call mahalla noncommercial, encourages them to engage in business, and places no restrictions on disbursement of profits.

When it comes to management, the government views mahalla purely as CSGOs, not as a balance of social norms. For example, *kengash* are now composed in part, by law, of nonresident representatives of state welfare agencies, a clear symbol of state interference in mahalla. In response, in many mahalla, an unofficial *aksaqal* has arisen parallel to the official *rais* and *kengash*. Through one lens, this parallel power structure can be viewed as a form of resistance to state arrogation of mahalla.⁸⁰

In a similar legerdemain, Uzbekistan has ostensibly revived waqf. The Uzbekistan government describes the Ulugh Beg Foundation as centuries old and claims that Samarkand's mausoleums and maddrassahs have been operating continuously for centuries. Yet, there has been no legal effort to reinstate waqf; rather the reality is that all Uzbekistan nonprofits are corporations in a civil law jurisdiction that allows no concessions to Islamic law.⁸¹

These attempts to empower and legitimize the new state by association with traditional institutions converged when, in September 1992, the government created the Mahalla Foundation.⁸² Part of the effort that this foundation represents is a reinvention of the mahalla idea throughout Uzbekistan, even in neighborhoods of Soviet architecture and Slavic or rural population. The Mahalla Foundation's explicit mission is to coordinate mahalla, conduct research

⁸⁰ "[E]fforts to change social norms can produce unpredictable norm cascades." POSNER, LAW AND SOCIAL NORMS, *supra* note 13, at 7. State validation through law of a social norm is no less an act of state regulation than is state prohibition of a social norm and so "norm cascade" is an appropriate description for the general trends in post-Soviet mahalla described in this Article, although the Article does not employ this term.

⁸¹ Weak voices urge the reintroduction of Islamic law.

Today, statutory law, the legacy of the Soviet era, has lost legitimacy though it is still the basis of practice. Islamic law is seen by many, if not a majority, as legitimate . . . [and it is likely that] the earlier tradition of Islamic legal thinking will play a role in the formulation of new legal precepts concerning contracts, possession, and ownership.

McCHESNEY, CENTRAL ASIA, *supra* note 28, at 52-3.

It is highly improbable that the future development of Uzbekistan will involve fundamental reconceptions of the current legal system. While McChesney's argument is appealing and eloquent, to date it finds no empirical support.

⁸² *Presidential Decree of Sept. 12, 1992 on Creation of the Mahalla Foundation*, PRAVDA VOSTOKA, Sept. 13, 1992.

on mahalla, and pioneer the explication of mahalla as the fundamental components of Uzbekistan's transition to democratic civil society.

The irony, of course, is that civil society presupposes spheres of public life autonomous from the state. Leaving aside concerns about democracy for the moment, it is impossible to reconcile efforts by the state to consolidate control at the expense of autonomous associations⁸³ with development of civil society. At best, Uzbekistan's current trajectory is towards an, albeit organizationally rich, parastatal civil society.

III. THE PROBLEMATIQUE OF MODERN MAHALLA LIFE⁸⁴

Time and again in Uzbekistan, lawmakers list the alleged traditional benefits of mahalla, add new responsibilities to mahalla, and then laud mahalla for providing both traditional and new public goods. Their implicit assumption is that mahalla will retain local authority and will continue to provide traditional public goods, all the while integrating themselves into the new administrative system of sovereign Uzbekistan.

Is this assumption defensible? Might the *administrative mahalla* turn out to be immiscible with the *social mahalla*? Might expanding administrative functions and state salaries gradually effect a change in perceptions, gradually transforming mahalla into state agencies unable to mobilize the local community without dangling state funds and no longer able to authoritatively mediate neighborhood affairs?⁸⁵

⁸³ These associations could include both mahalla and more general NGOs. While Uzbekistan also allows true NGOs, their numbers are miniscule compared to Kazakhstan, Kyrgyzstan, or Russia, and these rare NGOs also frequently complain of state efforts at control or subversion of their autonomy.

⁸⁴ To reiterate the scope of this research, it is current only to mid-1999.

⁸⁵ Actual empirical investigation of these questions is still premature in many ways. Most mahalla interactions occur without reference to the law. More pertinently, the findings presented here reflect conditions in Uzbekistan prior to the passage of the 1999 Mahalla Law, *supra* note 9. Even though most of the provisions of this law (such as state salaries for mahalla leaders) had already been implemented in practice prior to passage of the law, it is still too early to determine what effect, if any, this law will have on evolving mahalla dynamics.

Most mahalla scholarship within and beyond Uzbekistan describes mahalla exclusively through one perspective and one perspective alone. Common are scholarly works where this lone perspective is either welfare, nationalism, or identity. But mahalla are complex systems. Moreover, while the state can and is changing them, they also adapt in their own directions. They answer to state agencies, but they also respond to local constituencies. National laws and standards exist for mahalla, but regional peculiarities persist. The conflicting pressures on mahalla and the diverse forces that shape mahalla in contemporary Uzbekistan underscore the need for a more complex, systems-oriented investigation.

Accordingly, in order to research how mahalla in Uzbekistan are changing, we surveyed mahalla resident attitudes toward mahalla and other aspects of contemporary life in Uzbekistan. We introduced regional disaggregation to illustrate the degree to which regions of Uzbekistan exhibit persistent differences despite uniform national laws. We also introduced resident disaggregation in order to understand better how the role of mahalla in Uzbekistan is changing in light of the administrative reforms of the 1990s.

A. THE ROLE OF THE MAHALLA: MEMBER PERSPECTIVES

Slightly less than 2000 respondents in seven of Uzbekistan's twelve *viloyatlar* provided information to my colleagues on the importance of mahalla in their lives. Nationally, 57% of respondents classified mahalla as essential to their daily lives. However, this national average contains statistically significant regional differences, which regional differences in ethnic composition cannot explain. In the city of Tashkent,⁸⁶ the most Sovietized part of Uzbekistan, only 26% of respondents relied heavily on mahalla. In the Syrdaryo and Tashkent *viloyatlar*, 58% and 39% of respondents, respectively, relied heavily on mahalla. In the Zeravshan Valley,

both Samarkand and Bukhara *viloyatlar* reported roughly 76% heavy reliance. In Fergana *viloyat* 89% reported heavy reliance. Khorezm *viloyat* in the north reported 86% heavy reliance, and Kashkadaryo *viloyat* in the southwest reported only 51% heavy reliance.⁸⁷

In this survey, differences in responses based on sex are minor and not statistically significant. Slavic respondents value mahalla only 26% of the time, compared to 70% and higher rates for native nationalities. Divorcees also value mahalla much less than do their married or widowed neighbors. Also, the more children a family has, the more it values the mahalla. Similarly, the richer a family is, the less it values the mahalla, with the exception that the richest families either highly value (at levels substantially higher than the merely rich) or essentially resent mahalla. Of critical interest, among the services most appreciated and valued by residents is spousal dispute resolution.⁸⁸

B. THE VALUE OF MAHALLA: PROSPECTIVE MEMBERS

The explanatory value of the foregoing "static" research is limited in that it fails to address mahalla as evolving institutions. By surveying mahalla homebuyers⁸⁹ in three cities,⁹⁰ we

⁸⁶ Although most of the spellings used in this Article opt for transliteration from Uzbek instead of Russian, "Tashkent" is used instead of "Toshkent" and "Fergana" is used instead of "Farghona" since the Russianized spellings are so well-known.

⁸⁷ Inter-regional research on the strength of folk rituals mirrors these results. In descending order, statistically they are strongest in Khorezm, Bukhara, Samarkand, Kashkadaryo, Fergana, and Tashkent.

⁸⁸ The importance of families in the provision of public goods and family dispute resolution is a topic beyond the scope of this Article, but is discussed well in Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, 63 U. CHI. L. REV. 133, 155-65 (1996).

⁸⁹ Forms of real property are defined in Article 83 of the 1996 Civil Code, *supra* note 79. Real estate sales presuppose privatization. To privatize a house, a right each citizen or resident may exercise only once, application is made to the district government, the government entity that usually owns the property in question. Privatization Law, *supra* note 69, at arts. 5, 16. Payment is required based on a state value assessment; a certificate of ownership is issued after a two-month registration period, and the property is then listed in a land registry, the State Technical Inventory. *Id.* at arts. 16, 19-20. The Bureau of Technical Inventory (hereinafter "BTI") is the key agency for real-estate sales. BTI assesses property for tax purposes once every five years. Law of the Republic of Uzbekistan on Taxes and Individual

found that the presence of relatives in a mahalla shapes attitudes as strongly as does the number of children (Figure 1).⁹¹

| Figure I: Mahalla Importance | | |
|------------------------------|------------------------|---------------------------|
| | Nearby Extended Family | No Nearby Extended Family |
| Few Children | LOW | MEDIUM |
| More Children | MEDIUM | HIGH |

We found substantial differences between respondents who inquire into the identities and characters of *rais* and *aksaqal* before

| TABLE 1: What Sparks Concern About Rais and Aksaqal? | | | | | |
|--|-------|-------------------|------|------------------------------|--|
| RAIS | | | | | |
| N= 72 | | Prob > chi2= 0.00 | | Pseudo R ² = 0.48 | |
| Rais | Coef. | Std. Err | z | P> z | |
| Advice | 4.7 | 1.8 | 2.6 | .01 | |
| RFamily | -4.4 | 1.7 | -2.7 | .01 | |
| REcology | -3.9 | 3.8 | -1.0 | .30 | |
| Risk | -4.0 | 1.2 | -3.2 | .001 | |
| City | .82 | .64 | 1.3 | .20 | |
| Time | .12 | .27 | .46 | .65 | |
| AKSAQAL | | | | | |
| N= 72 | | Prob > chi2= 0.00 | | Pseudo R ² = 0.26 | |
| Aksaqal | Coef. | Std. Err | z | P> z | |
| Advice | 1.4 | .78 | 1.8 | .07 | |
| City | 1.2 | .44 | 2.8 | .01 | |
| Risk | -1.5 | .76 | -2.0 | .05 | |
| REcology | 2.9 | 3.2 | .92 | .36 | |
| RFamily | -1.5 | .87 | -1.7 | .08 | |
| Time | .41 | .22 | 1.8 | .07 | |

purchase and those who do not (Table 1).⁹² While these differences include variables such

Property (Dec. 9, 1994) #591. The assessment concentrates not on market value, but on construction costs multiplied by a depreciation coefficient plus a value generated by absolute area. Polozheniya ob otsenke pereotsenke zdaniy i sooruzheniy, prinadlezhaschikh fizicheskim litsam na prave sobstvennosti (Dec. 29, 1995) #478, Section III. Any later changes of ownership must be registered with BTI, and the sale price recorded. 1996 Civil Code, *supra* note 79, at arts. 481, 485.

⁹⁰ We chose these three cities based on the regional differences highlighted in the original survey, the cities are in the Fergana Valley (Andijan), Tashkent, and the Zeravshan Valley (Samarkand).

⁹¹ Asked to rank 10 factors for their importance in influencing the decision to purchase, price was most important for 33 of 83 respondents (mean= 1.7), and presence of relatives within the mahalla was most important for 23 respondents (mean= 2.2). The other eight factors (*see App. infra*) were also important; no factor was never named as most important. In a Kruskal-Wallis test, there is no significant difference between city and the ranked importance of relatives (chi-squared=1.5 with two degrees of freedom), but for ranking of price, there is a chi-squared value of 23. In Samarkand (which is also comparatively wealthy), price is far more important. Because of space concerns, this regional difference is not analyzed, although it generally supports the conclusions contained herein.

⁹² See App. *infra* for description of variables and methodology.

as what region of Uzbekistan one inhabits, they also include a proxy for social capital,⁹³ the desire to avoid environmental risks, individual risk averseness, the desire to live near family, and when respondents moved. The dividing line between the 71% of homebuyers who learn about *rais* before purchasing and the 29% who do not is in large part explained through these variables.

At statistically significant levels, prospective buyers who do not seek advice outside the family on whether or not to purchase a given house also tend not to inquire into *rais* and *aksaqal*. Likewise, buyers without family in their prospective mahalla and more risk averse buyers more frequently make inquiries about *aksaqal* and *rais*.

While 71% of homebuyers inquired into *rais*, only 39% inquired into *aksaqal*. However, also at statistically significant levels, the more recent homebuyers⁹⁴ were more likely to inquire into *aksaqal*, suggesting that as the effects of the transition period penetrate society, the *aksaqal* is gaining importance again.

While the influence of environmental concerns is not statistically significant, the variable's coefficient is positive for *aksaqal* and negative for *rais*. Under the transition period⁹⁵ reforms, mahalla have been endowed with extensive rights and duties regarding environmental protection and assessment. This curious difference in coefficients may reflect some early effects of state efforts to establish mahalla as local environmental agencies. New residents concerned about environmental health may see *administrative mahalla* as relevant and *social mahalla* as irrelevant. Education, surprisingly, is a poor predictor of environmental concern. Rather, women, older respondents, and those who emphasize prestige of a given mahalla in their house selection are more concerned with environmental health (Table 2).⁹⁶

⁹³ The proxy here is whether or not homebuyers turned to non-family to a meaningful degree for advice before purchasing. Non-family advisors primarily included friends. Whether or not an individual turns to non-family for advice on home purchases is predicted strongly ($z=2.4$, significant at .01 level) by which area of Uzbekistan he or she inhabits, again reinforcing the suggestion that there are significant regional differences.

⁹⁴ The survey was restricted to those who purchased in the past five years.

⁹⁵ See 1999 Mahalla Law, *supra* note 9.

⁹⁶ See App. *infra* for description of variables and methodology.

Notwithstanding this result, in general, the data provide no support for the conventional wisdom of Western scholars of Uzbekistan. Disaggregating the data by sex or

| | N= 78 | Prob > F= 0.00 | Adjusted R ² = 0.27 | | |
|-----------|-------|----------------|--------------------------------|------|--|
| REcology | Coef. | Std. Err | t | P> t | |
| Sex | -.059 | .026 | -2.3 | .026 | |
| Age | .0065 | .0013 | 5.1 | .000 | |
| Image | .059 | .025 | 2.3 | .024 | |
| Intercept | -.028 | .054 | -.52 | .61 | |

education fails to produce statistically significant divergent populations with regard to attitudes about *rais*, *aksaqal*, and most other aspects of mahalla life. Similarly, the bifurcation between city and country is not a significant source of divergent attitudes in the dataset.⁹⁷

The general conclusion relevant to evolving mahalla is that family characteristics remain central to understanding individual attitudes. The role of the family comes into clearer focus within the framework of understanding both mahalla and family as insurance mechanisms. Table 3⁹⁸ outlines some of the characteristics of those who emphasize the importance of living in a mahalla that

contains close relatives. Those who are unconcerned with *aksaqal*, younger,

| | N= 72 | Prob > F= 0.00 | Adjusted R ² = 0.32 | | |
|-----------|-------|----------------|--------------------------------|------|--|
| RFamily | Coef. | Std. Err | t | P> t | |
| Rais | -.37 | .11 | -3.4 | .001 | |
| Age | -.011 | .004 | -3.0 | .004 | |
| Risk | -.18 | .092 | -2.0 | .05 | |
| Utilities | .22 | .087 | 2.5 | .02 | |
| Advice | .15 | .089 | 1.6 | .11 | |
| Intercept | 1.0 | .21 | 4.9 | .000 | |

less risk averse, less concerned with the material comforts of a given home, or less likely to turn to friends for advice are more likely to seek out a house in a mahalla with family.

⁹⁷ Cf. Less than 1% of rural mahalla residents ignore community rituals in general, while nearly 15% of urban residents ignore such rituals. Generally, richer families and more well-educated individuals are far more likely to abstain from community rituals.

⁹⁸ See App. *infra* for description of variables and methodology.

In contrast, as illustrated in Table 4,⁹⁹ those who simply looked for the best house at the best price were more likely to be moving from another city or *viloyat* than merely from one mahalla to another. They were also less likely to be

| | N= 75 | Prob > F= 0.00 | Adjusted R ² = 0.23 | |
|----------------|-------|----------------|--------------------------------|------|
| RPrice | Coef. | Std. Err | t | P> t |
| Immigrant | .09 | .07 | 1.3 | .20 |
| Aksaqal | .19 | .08 | 2.3 | .022 |
| Age | -.010 | .004 | -2.7 | .009 |
| Price/Services | .10 | .075 | 1.4 | .17 |
| Utilities | -.11 | .087 | -1.3 | .19 |
| Price/Ag | -.16 | .077 | -2.1 | .041 |
| Price/Ecology | .21 | .075 | 2.7 | .008 |
| Family | .14 | .080 | 1.8 | .077 |
| Intercept | .61 | .18 | 3.4 | .001 |

interested in the distribution of power in a mahalla, were more likely to be younger, less likely to be interested in home gardening, less concerned about environmental health, and less likely to have family in their prospective new mahalla.

While self-reliant market economy participants may be common in Samarkand, they are probably less common in the less wealthy areas of Uzbekistan. A great number of Uzbekistanis are today looking beyond primary family and employment associations to ensure the future. Uzbekistan currently offers three general risk-spreading institutions: extended family, social mahalla, and administrative mahalla. Given the critical importance of risk-spreading institutions in the lives of Uzbekistanis, fundamental disruptions in any of these institutions could produce misfortune for large numbers of Uzbekistanis. Family may still be sacred in Uzbekistan. The state has lost much of its capacity in the past decade. It remains an open question how traditional mahalla functions of providing social insurance will weather the transition.

C. MAHALLA RITUALS, COMMUNITY, AND INSURANCE

In the present, mahalla residents may enjoy an advantage over apartment mahalla peers. The failed economy of Uzbekistan and the inadequate social insurance programs of the post-

⁹⁹ See *Id.*

Soviet period create insurance needs that reinvigorate mahalla, and may provide a foundation for the appearance of mahalla functions in apartment mahalla. In modern Uzbekistan, few weddings, emergency medical operations, university matriculations, house repairs, or funerals take place in the life of the average mahalla resident without some community financial support.

Ellickson points to the costs of community gathering as a barrier to large communities.¹⁰⁰ However, this logic assumes that community gatherings must be organized for the explicit purpose of community information sharing and knitting together the group.¹⁰¹ That is not actually how communities operate in settings more organic than the atomistic condominium associations of the United States. This logic underestimates the degree to which community gatherings can be frequent and community interactions frequent.

Among the Uzbek traditions that bring mahalla or large parts of a mahalla together are births (*sunnat toi* and *beshtik toi*),¹⁰² *khudoi* (prayer),¹⁰³ *toi* (weddings),¹⁰⁴ four funeral events

¹⁰⁰ Ellickson, *Property in Land*, *supra* note 4, at 1331.

¹⁰¹ *Id.* Ellickson also refers to "evening" meetings. Curiously, mahalla socializing occurs largely in the morning for men and during the day for women.

¹⁰² In a *sunnat toi* (celebration of circumcision), emphasis is placed on the paternal bloodline in organization of the event, and gifts are given to the child. This ritual is being partially removed from its mahalla base as it is now frequently performed in a hospital with local anesthesia instead of by a non-doctor at home with no anesthesia. In a *beshtik toi* (cradle celebration), forty days after birth, the bride's family provides a traditional cradle. They also provide clothes and supplies for the child, and should provide furniture or some other large gift to the household in which the bride now lives. The bride's family and all strangers should stay away from the new mother and child for 40 days after birth.

¹⁰³ Prayers are used to mark events of importance not of national importance (*yedi*). Invited guests eat and listen to recitation of *sura* from the Koran. Followed by a morning prayer, *yedi* attract large numbers when the morning *pilau* marks some anniversary or wedding. Prayer ceremonies exist for both men and women. Currently, this ritual is being partially offset by *Amri-Marif* in which only *pilau* is prepared, a cleric recites a sermon, and women are not invited. *Yedi* include such celebrations as *Kurban-yedi* (thanksgiving), in which food is distributed to relatives and the poor.

¹⁰⁴ Prior to a wedding, there is a *kiz oshi* (bachelorette's party). Before the wedding the groom arrives with the *kalym* (bride price). A *kalym* often consists of one or more animals, traditional clothes for the bride, and an *ona suti* (mother's milk) payment to the bride's family presented as part of a carnival-like entourage. For "new Uzbeks" this colorful entourage is transformed into a status statement and quasi-potlatch by surrounding it with a convoy of Mercedes and Jeeps, among other displays of wealth. A dowry is less dramatically presented, and it consists of clothes for the groom, twenty to forty sets of cushions and blankets, and furniture (including, for more wealthy families, electrical appliances

spread over a year,¹⁰⁵ post-Soviet celebrations (*Novruz* and *Mustakillik*),¹⁰⁶ and *gap* (mutual aid).¹⁰⁷ In a mahalla of 2000 people, excluding the rituals that happen more often than once a year, the annual and once in a lifetime rituals alone should create roughly 200 occasions for community or partial community gathering each year.¹⁰⁸ Essentially, in an average mahalla, the community comes together once a week, although in reality the warmer months see more activity. Even if half of mahalla residents balk on their responsibility to host the community, gatherings

like a refrigerator and television). Wedding celebrations involve a central evening reception for both sexes provided by the groom's family, after which female relatives of the bride live at the house of the groom for three days. The day after a wedding, for the *kuyov chakirik*, male friends and relatives of the groom gather again. Three days after the wedding, for *challar*, the bride returns to her family home, where female friends and relatives gather and celebrate until the evening when she is returned to the groom's house.

¹⁰⁵ Marking the seventh, twelfth, and fortieth days after death, as well as the first anniversary after death. The latter markings are now often *Amri-Marif*. When celebrated, funeral ceremonies are usually celebrated as *ertalabki osh* (morning pilau). Elders may go from house to house waking mahalla men to participate in the preceding morning prayer.

¹⁰⁶ The state has particularly pushed celebration (both at the national and mahalla levels) of these events as secular holidays. For both *Novruz* (Islamic New Year) and *Mustakillik* (Independence Day), mahalla women prepare desserts for mahalla distribution.

¹⁰⁷ Sharing similarities with rotating credit institutions the world over, participants contribute funds to a common pot, which is then handed over to a participant to hold (with a small part of the receipts) at a male only or female only evening *gap* ("discussion," which may involve food, song, and drink) that usually precedes that participant's outlays to organize a wedding or funeral event. This mix of mutual benefit and charity contributions is both important, and not really charitable in a larger context, since *gap* is not really anonymous. In an empirical demonstration of Ellickson's "even-up" strategy for maintaining equity and social order in a close-knit group, individual members keep detailed records of to whom, when, and for what such contributions are made, so as to provide a basis for each successive bilateral contribution. ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 225-9 (1991). Although each pot consists of contributions from many sources, it also represents a bilateral relationship between each contributor and the recipient for that particular *gap*. Uzbeks use this bilateral monetary exchange to settle general accounts, sometimes accumulating over more than a decade. It is this institution that explains how a family with an income of ten dollars a month can expend several thousand dollars on a wedding. This institution also provides an alternative to collective ownership of land; by forcing contributions of output (cash) instead of input (labor), *gap* largely overcomes the problems of free-riding that plague collective ownership. See Ellickson, *Property in Land*, *supra* note 4, at 1342-3.

¹⁰⁸ Because of *gap*, the events that concentrate attention of funds to purchase expensive presents instead of on funds to feed hundreds of people often still do have a community-gathering component.

still occur frequently. They occur so frequently that almost two-thirds of respondents point to these rituals as a reason for the impoverishment of families.¹⁰⁹

Property scholars usually look to the hypothetical productivity of agricultural land as the metric to compare various property regimes. However, such analyses offer little to those interested in urban areas¹¹⁰ in states with large service sectors, like Uzbekistan. The connection between alternative property regimes and wealth in Uzbekistan's cities depends little on which regimes foster better agricultural productivity.¹¹¹ Wealth in urban land regimes depends more on issues such as security, location, aesthetics, and transportation. In contemporary Uzbekistan, specifically, wealth in land regimes may largely depend on the nature of the social insurance institutions that are tied to the land.

IV. MAHALLA REFORM AND DEVELOPMENT

Ignored for many years, mahalla are now a hot topic in the foreign development community in Uzbekistan, even as these developers raise their eyebrows at the rhetoric of the government and the Mahalla Foundation. Yet, the rhetoric of the developers and the government

¹⁰⁹ On several occasions President Karimov has urged Uzbekistanis to be more modest in their festivities. *Cf.* Ritual gift giving and exchange can be an important survival strategy in times of economic dislocation. *See* Abramson, *Constructing Corruption: Foreign Aid, Bureaucratization, and Uzbek Social Networks* (Mar. 20, 2000) (unpublished paper presented at Harvard University). As indirect support, while Khorezm is the region with the most active observance of rituals, it is also the region where, by far, the fewest people consider these rituals to be a reason for impoverishment. Most likely, in Khorezm neighbors take greater pains to assist less wealthy neighbors host such events and the surrounding community places more emphasis on the event of community than on the material extravagance of the event. In game economic terms, the spiraling one-upsmanship of celebratory gift giving can be understood by reference to the Folk Theorem, which holds that groups are apt to become stuck at suboptimal equilibria. *See* Drew Fudenberg & Eric Maskin, *The Folk Theorem in Repeated Games with Discounting or Incomplete Information*, 54 *ECONOMETRICA* 533 (1986).

¹¹⁰ In discussions about monitoring costs, traditional analyses concentrate on the limitations of dogs as monitors. In the urban setting, if Uzbekistan is any indication, the primary monitors are often children.

is converging. Islamic donors see mahalla as the engine to revive Islamic culture, while Western donors interested in civil society try to recast mahalla as NGOs. The UN Population Fund hopes mahalla "NGOs" will get contraception information to youth. The UN Commission on Human Rights similarly plans for several thousand mahalla to build human rights awareness. Moreover, donors interested in pursuing women's issues and emphasizing the role of women in economies in transition embrace the women's committees that exist in many mahalla. Donors active in economic issues rely on mahalla to administer microcredit programs, and Uzbekistan itself has established and funds six dozen "factory mahalla" zones charged with building small businesses. Mahalla are even part of the state's natural disaster management legislation. Finally, European donors hot off the heels of EU debates on subsidiarity¹¹² and not averse to emphasizing the welfare state over market panaceas see mahalla as the Rosetta Stone of reforms.

All these groups view mahalla through parochial lenses. Accordingly, their programs make demands on mahalla with little consideration of how the effects of these demands will spill over into other aspects of mahalla life. Yet, unless mahalla are an exceptional form of human organization, it stands to reason that mahalla cannot really be all things to all parties. Pursuit of mahalla's promise to contribute to some fashionable development concept may lead to erosion of mahalla social functions of social insurance and conflict resolution. Such a result would be unfortunate given the reality that it is unlikely that expected gains from better access to contraception or more information about human rights would offset losses from deterioration of

¹¹¹ The average Uzbek family derives a large portion of its diet from kitchen gardens. However, as these are contained within courtyards, they are relatively unaffected by the varieties of property regimes discussed most often in property analyses.

¹¹² The European Parliament defines subsidiarity as granting the EU primary jurisdiction "if a problem cannot be adequately settled by the Member States acting on their own" but as upholding "the authority of the Member States in those areas that cannot be dealt with more effectively" by EU institutions. EUROPEAN PARLIAMENT FACT SHEETS, § 1.2.2. SUBSIDIARITY, Oct. 16, 2000 *available at* http://www.europarl.eu.int/factsheets/1_2_2_en.htm (last visited Apr. 18, 2002).

these two social functions, which our own research results, discussed above, indicate are of primary importance to citizens.

Thus, investigation of what mahalla are should, at least for a time, push aside opportunistic experiments into what mahalla can do. "What mahalla are" comes more clearly into focus through building on the historical and sociological information of Parts II and III to test mahalla against general models of social behavior and property law. This Part pursues such a test through reference to the fee simple and theories of governance of solidary associations, welfare policies, and social capital.

A. THE MAHALLA FEE

The mahalla private lot (mahalla fee) shares much in common with the American fee simple, and it is equivalently distant from the Blackstonian fee simple absolute.¹¹³ Proceeding from the ideal of the Blackstonian fee, three principal structures (family, mahalla, and state) intrude on the ideal of complete discretion in the enjoyment of private property in Uzbekistan. These intrusions capture what it means in Uzbekistan to be not only an individual, but to be enmeshed in social networks at the family, community, and national levels. Property rights and norms speak as much to individual rights as they do to what duties and expectations lie at the foundation of the interpersonal relations of Uzbek society.

Family members who are not the nominal owners of houses enjoy numerous claims over property, and some of these claims also find expression in legal entitlements. Social norms require that a son who marries receive either a section of the family house for his new family or a new house. Under Uzbekistan law, sales of houses may only take place with the approval of all

¹¹³ The core elements of fee simple absolute involve single ownership, in perpetuity, with clear horizontal and unlimited vertical demarcation, with absolute rights to exclude, with absolute privileges to use and abuse, and with power to alienate the whole or any part of the fee at any time. See Ellickson, *Property in Land*, *supra* note 4, at 1362-3.

individuals for whom the residence is the principal residence.¹¹⁴ Both of these limitations on absolute ownership stress the importance of family obligations in Uzbekistan. Both limitations, regardless of whether punishable by law or norms, are the functional equivalents of subsidies to decrease the payoff for defections from the family.

Property is also subject to a number of easements that derive from mahalla.¹¹⁵ Mahalla residents, especially neighbors, children, and rais, expect free entry into a family courtyard (although not entry into interior rooms). Mahalla also channel social norms that encourage easements on land for expansion or creation of dwellings for needy community members, for passage, and for rights of first refusal for mahalla members in the event of a sale of real estate. These norms are the functional equivalents of subsidies to decrease the payoff for defections from mahalla.

The actual status of these norms is changing, since under the 1999 Mahalla Law violation of mahalla decisions is now a crime.¹¹⁶ This "law from order" change means that mahalla now have powers to levy taxes on landowners.¹¹⁷ It could also mean that some atrophied norms, such as rights of first refusal, may find new enforcement from the state when *kengash* so desire. In addition to, or in place of, community self-help or even-up, violators of mahalla decisions may now face arrest. Even despite the 1999 reforms, mahalla norms establish that members of mahalla live in a communitarian society. With the 1999 reforms, it is increasingly more difficult to separate the community from the state, or norms from laws.

¹¹⁴ Polozhenie o poryadke oformleniya dogovorov kupli-prodazhi privatizirovannykh kvartir, domov (chasti domov), Cabinet of Ministers Resolution 180, Attachment 1 (Apr. 4, 1994), Art. 8. [hereinafter 1994 provisions].

¹¹⁵ Completely unstudied in any language is the issue of nuisance law and norms in Uzbekistan. Respondents in both contemporary and traditional mahalla inquired spontaneously whether telephone solicitation was really allowed in the United States, and when told that it was virtually unregulated, they reacted in horror at such an invasion of privacy. On the flip side, Tashkent dairy vendors daily wake residents at dawn by screaming from the street for long periods of time; even disturbed sleepers (who are in the majority in contemporary and apartment mahalla) feel no right to interfere with this practice.

¹¹⁶ 1999 Mahalla Law, *supra* note 9, at art. 16.

¹¹⁷ *Id.* at art. 10.

Finally, the state limits absolute enjoyment of privately owned land through the Constitution, taxes, and regulations concerning sales of land. Under the Constitution, an individual property owner in Uzbekistan does not own the subsoil.¹¹⁸ While not in the Constitution, citizens also know that they have no rights to the atmosphere. In addition, Uzbekistan levies a property tax based on the assessed value of land and structures on the land; failure to remit this tax can, as is the case everywhere in the world, lead ultimately to escheatment. Likewise, under the law, private abodes may not be used as business premises without state authorization.¹¹⁹ Finally, since all water is owned by the state,¹²⁰ individuals enjoy no permanent privileges to water from streams and rivers by virtue of land ownership or prior claim. Given this set of legal conditions, owners of urban residential land in Uzbekistan enjoy truncated rights to use natural resources, and land is one of the principal spheres through which the state and citizens interact.

In summary, in Uzbekistan, the mahalla fee involves *de jure* individual ownership, limited rights to exclude, limited rights to alienate part or all of a fee, extensive rights to bequeath,¹²¹ and general, but not unlimited, rights to use and abuse the land. While the mix of entitlements in Uzbekistan is singular, and while it is somewhat more communitarian than in the United States, for the most part, the mahalla fee resembles the fee simple. These similarities contradict efforts by some scholars to the effect that mahalla are a wholly unique regime and not suited to comparisons with other residential regimes or analyzable through general social theory.

¹¹⁸ UZB. CONST., *supra* note 7, at art. 55.

¹¹⁹ 1994 Provisions, *supra* note 114, at art. 7.

¹²⁰ UZB. CONST., *supra* note 7, at art. 55.

¹²¹ Unlike in European legal systems, wills may not be abrogated in Uzbekistan to ensure that estate proceeds provide family support, although Islamic law and local norms support such outcomes.

B. INTERNAL HOMOGENEITY

Mahalla rely on homogeneity to ensure solidary communities.¹²² Efforts to reduce heterogeneity rest on rational ground in an informal community governed by consensus.¹²³ These efforts, however, often place special demands on members for the sake of ensuring solidarity, and these demands would often be considered impermissibly abusive were they made on a non-member. For example, in the American context, state and society tolerate abusive relations (by disallowing recourse to courts) between spouses that would not be tolerated in workplaces.¹²⁴ This is, in part, because in America, the "state's commitment to the family, like a commitment to any other solidary group, requires toleration of a higher level of abusive behavior between group members than that tolerated between strangers."¹²⁵

By implication then, any commitment to mahalla must find a way to recognize and reconcile mahalla efforts to ensure homogeneity as a necessary price for the benefits of solidarity. Yet, in practice, the need and importance of such efforts, especially for Americans, are difficult to understand as linked to such cherished values as self-government and local authority.¹²⁶ For example, when the first Peace Corps volunteers arrived in Uzbekistan, in the more traditional areas of Uzbekistan some were stoned and beaten.¹²⁷ Volunteers in other parts of Central

¹²² As traditionally non-hierarchical consensus-based institutions, this result is fully in accord with the conclusions of organizational theory. Hansmann concludes that participatory government is effective if residents have homogenous interests and hierarchy is more effective if they do not have such homogenous interests. Henry Hansmann, *Condominium and Cooperative Housing: Transactional Efficiency, Tax Subsidies, and Tenure Choice*, 20 J. LEGAL STUD. 25, 34-6 (1991).

¹²³ *Id.*

¹²⁴ For other examples see Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, *supra* note 88.

¹²⁵ *Id.* at 190.

¹²⁶ See generally, ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000). Anticipating later discussion, "[b]onding social capital (as distinct from bridging social capital) is particularly likely to have illiberal effects." *Id.* at 358.

¹²⁷ Based on Author's own memory while working for development agencies in Uzbekistan during this time.

Asia faced far easier receptions than those sent to Uzbekistan. Americans interpreted these assaults as possibly government sanctioned and definitely symptomatic of something sinister in Uzbek culture. However, only the more profligately dressed and less reserved Americans suffered such taunts, and, for the most part, only within the borders of traditional mahalla. While young women in shorts may be tolerated in Soviet-style town centers, in traditional mahalla they often elicit complaints.

Communities, or any organizations, in which residents have homogenous interests are easier to govern, more stable, and less prone to be divisive.¹²⁸ Despite American (academic) prejudices against forces of conformism, homogeneity may be part of the reason why mahalla are successful community institutions. Accordingly, in the pre-Russian era many mahalla combined residents of predominantly one trade. During the Soviet period, this homogeneity was facilitated by the Soviet practice of assigning employing enterprises with responsibility for and ownership of employee housing. Even today, employment and mahalla correlate strongly. In the mahalla in which I lived, a group of the neighborhood men derived their principal income from traveling by train together to Russia, purchasing new cars there, and caravanning together back to Tashkent.

The Peace Corps volunteers were assaulted not for being foreigners; they were subject to community sanctions. Any mahalla resident exhibiting such behavior within the area of the mahalla would be subject to similar treatment. Indeed, Uzbeks of the same age cohort as the Peace Corps volunteers readily admit to a range of behaviors (most related to courtship) in which they will not engage while in their mahalla, but in which they feel free to engage while in a public park or the city center. For the same reasons, one never sees streetwalkers within traditional mahalla, while they are now, subsequent to the 1998 Asian / Russian economic flu that halved

¹²⁸ Henry Hansmann, *When Does Worker Ownership Work? ESOPS, Law Firms, Codetermination, and Economic Democracy*, 99 *YALE L.J.* 1749 (1990). See also Henry Hansmann, *Ownership of the Firm*, 4 *J.L. ECON. & ORGANIZATION* 267 (1988).

incomes in Uzbekistan, ubiquitous at bus stops near apartment mahalla and along roads too large to be considered part of a mahalla.

Age and dispute resolution are two additional aspects of mahalla solidarity that create dissonance for Western development agencies. Just as homogenous interests (facilitated through homogenous lifestyles and behavior) facilitate community order, so does a social order that rewards age. While Americans commonly belittle Uzbekistan's unconditional respect for the aged, such a system facilitates social order since it promises an eventual reward for each member of society.¹²⁹

Likewise, Uzbekistanis recoil at adversarial dispute resolution. Uzbekistanis rarely turn to courts for assistance in resolving disputes. To wit, courts lack general legitimacy in Uzbekistan and themselves shy away from sensitive issues; a court involved in divorce proceedings often requires communication from a *rais* to the effect that local mediation has failed before it will allow court proceedings. This deference might at first seem at odds with human rights or rule of law, but it is in fact hardly different from American treatment of similarly cherished solidary groups.¹³⁰ The crucial difference is that mahalla do not exist in the United States.

From a game-theory perspective, since parties to local disputes are usually involved in lifelong contact (and therefore, unlimited iterations), the tendency of court proceedings to exacerbate tensions produces costs in terms of community solidarity that often outweigh the benefit of definitive, objective, or even accurate resolution. The generally uniform popular denial of legitimacy to courts, along with the close-knit nature of mahalla challenge Western institutional preferences for courts and urge a more rounded appreciation of alternative dispute

¹²⁹ Ellickson uses a similar model to explain academia's deference to senior scholars. "[A]cademicians have developed an informal system of lifecycle compensation that tends to underreward the young and overreward the old." Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. LEGAL STUD. 537, 538 (1998).

¹³⁰ See Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, *supra* note 88.

resolution techniques that allow flexibility in resolutions, reduce adversariness, and, perhaps, accept confidentiality, gag rules, and "incorrect" outcomes.¹³¹

These observations about homogeneity, and an admission that Uzbekistan communities are more homogeneous than is the norm for the West, lead to a tentative caveat to Robert Ellickson's chart of the numerical dividing lines between manageable family, group, and horde units.¹³² The previously cited average mahalla size of 2000 seemingly contradicts Ellickson's assertion that group property is unworkable if the group exceeds 1000 individuals.¹³³

While there is little information available about the size of pre-Soviet mahalla, Sukhareva concluded that turn-of-the-century Bukhara contained 220 mahalla.¹³⁴ While there are no firm population figures for the city, and the population was in great flux and even depopulation due to Russian conquest, scholars estimate the population in 1897 to have been between 75,000 and 100,000.¹³⁵ This estimate would put the average size of a late 19th century mahalla in Bukhara at 400 persons, and the range in size of mahalla from 90 to 900.¹³⁶

Extrapolating this figure to the rest of Uzbekistan, it would appear that mahalla generally increased in size during the Soviet period at approximately the same rate, almost four per cent per year, as the population in general.¹³⁷ By growing to an average size of 2000 persons, Uzbekistan's mahalla now constitute unusually large solidary groups. During the late pre-Soviet period in Bukhara, only two mahalla increased in size to more than 1000 persons. The Shokhi

¹³¹ Scholars studying dispute resolution in areas bordering Uzbekistan have found similar tendencies towards emphasizing social harmony over absolute justice. "If a Kazakh gave his oath as to the soundness . . . of the defendant, then it no longer mattered . . . whether the defendant was "guilty" or not; it was only important that kinship solidarity had been upheld by a respectable person, so that other . . . relations, such as mutual aid . . . could [function] normally." MARTIN, *supra* note 22, at 29.

¹³² Ellickson, *Property in Land*, *supra* note 4, at 1322.

¹³³ *Id.*

¹³⁴ SUKHAREVA, *supra* note 10, at 62.

¹³⁵ Ian Murray Matley, *The Population and the Land*, in CENTRAL ASIA 92, 98 (Edward Allworth, ed., 1994).

¹³⁶ SUKHAREVA, *supra* note 10, at 268.

¹³⁷ Matley, *The Population and the Land*, *supra* note 135, at 96.

Akhsi Mahalla contained 2200 persons, and the Usto Rukhi Mahalla, more than 1200 persons.¹³⁸

Sukhareva suggests that these aberrations are the result of the establishment of an unusual number of waqf endowments in the mahalla, providing such an exceptional range and number of public goods to residents as to forestall the mahalla's bifurcation.¹³⁹ In Shokhi Akhsi, these endowments included a large school, a madrassah, unusually extensive public baths, and one of the best mosques in the city.¹⁴⁰ In Usto Rukhi, these endowments included a school, a very large madrassah, an impressive marble *khauz*, one of the best mosques in the city, a second mosque, and famous public baths endowed by a revered female religious teacher.¹⁴¹ In the case of Shokhi Akhsi, large size produced aberrations throughout the mahalla that illustrate the strains of such a large population; it had two *aksaqal* and was divided into four distinct sub-neighborhoods.¹⁴²

Almost certainly, the decreased demands on mahalla in the Soviet era and the hand of a strong state enabled their expansion to a size of 2000. Accordingly, post-Soviet policies of transferring back to mahalla a range of self-government and economic responsibilities may fail for the simple reason that 2000 is an unworkably large group of humans, even if they are homogeneous. However, if post-Soviet mahalla prove workable in this context, Ellickson's numbers, which are suited primarily to Western norms of groups, should be revised to include a coefficient for homogeneity.

Given the preceding, it is possible that a larger homogeneous group can be as workable as a smaller heterogeneous group. To the extent that most property scholarship draws on (more heterogeneous) Western groups for empirical evidence, it is possible to argue that a more universal chart would revise Ellickson's numbers upwards for more homogenous communities. For example, in such a "homogenous" chart the dividing line between group and horde should

¹³⁸ SUKHAREVA, *supra* note 10, at 24.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 242-3.

¹⁴¹ *Id.* at 143-4.

¹⁴² *Id.* at 24.

probably be 3000, not 1000. The practical implication of this revision is that the choice of an optimal land or residence regime may vary between cultures or over time due to differences in degrees of internal homogeneity.

C. THE WELFARE STATE AND SUBSIDIARITY

Uzbekistan's government faces a Sisyphian task. Average incomes have fallen to a few dollars a month, while tax receipts are negligible compared to the range of social programs promised by the state and expected by a citizenry used to adequate welfare benefits, adequate universal medical care, and very good universal education. Roughly half the population is too young to work, both under national law and under conventions on children's rights that Uzbekistan has ratified. While youth employment is common in a range of domestic services, it remains uncommon in formal employment settings; rights of the child are respected in Uzbekistan. Laissez-faire capitalism and abandonment of welfare programs are not acceptable or even conceivable solutions for either the government or the citizenry, although the state has cut back all of its welfare programs and warns the population not to rely on welfare.

Accordingly, Uzbekistan needs to stretch what funds it does have for welfare programs, and it needs to find complementary funding. Mahalla attractively offer themselves as an answer to both of these needs. As local institutions they have the perspective and knowledge requisite to make more equitable and efficient decisions about benefit allocations. Moreover, as the institutions through which *hashar* is traditionally funneled, they also promise the capacity to make up shortfalls in state allocations. Thus, to the extent that mahalla and state social welfare ambitions intersect, it would apparently make sense to transfer to mahalla some or all state welfare program resources. Such a transfer to a local group would almost certainly, as advocates

of decentralization and subsidiarity would argue, produce "a more efficient method for obtaining . . . goals than conventional regulation of individual action"¹⁴³ through state programs.

In line with such reasoning, in 1994 basic social welfare assistance for low-income citizens began to be distributed through mahalla instead of through places of employment and specialized state agencies. *Kengash* can now decide, without much regard to objective criteria, which mahalla residents receive benefits.¹⁴⁴ As a result, mahalla can ensure that truly needy individuals do not fall through the cracks, that local realities are not obscured by national standards, and that individuals who enjoy strong family support do not absorb funds more humanely spent on the truly needy.

Yet, at the same time that the state is devolving funding decisions on mahalla in recognition of their status as popular and integral parts of local communities, it is implementing another set of mahalla reforms that undermine both the authority and the flexibility of mahalla. This second set of mahalla reforms centers not on individual welfare, but on rationalizing the administrative structure of Uzbekistan. Moreover, this second set of mahalla reforms elicits concern because with less local authority and less flexibility, much of the rationale for turning social welfare programs over to mahalla dissipates.

Under this set of administrative reforms, mahalla now constitute the polling areas of electoral districts. Candidates for any local electoral commissions for any national or local elections must be nominated through mahalla citizen gatherings.¹⁴⁵ Likewise, a mahalla citizen

¹⁴³ Posner, *The Regulation of Groups*, *supra* note 88, at 136.

¹⁴⁴ See 1999 Mahalla Law, *supra* note 9, art. 10. This program has received roughly 0.5% of GDP and provided assistance to roughly 11% of families annually, 598,072 households in 1997. See Aline Coudouel & Sheila Marnie, *The Mahalla System of Allocating Social Assistance in Uzbekistan* (July 21, 1998) (unpublished paper presented at UNDP Central Asia 2010 Conference in Almaty, Kazakhstan). While mahalla make need-based allocations, state allocations to mahalla are not need-based. *Id.* In 1997, mahalla became the vehicles for state benefits to needy children; these benefits consume more than 2% of GDP. *Id.* 40% of families receive this allowance. Uzbekistan has a population of 23 million and a per capita income of only about \$500. UNDP, *supra* note 17, at 55. As of 1999, mahalla also determine and disburse funds to the elderly. 1999 Mahalla Law, *supra* note 9, art. 12.

¹⁴⁵ 1999 Mahalla Law, *supra* note 9, art. 10.

gathering must directly nominate candidates for district or city councils and indirectly nominate candidates for regional councils and the Oliy Majlis (the legislature). Further, a mahalla can now demand that an enterprise on its territory provide an environmental report, and it can set levels of "voluntary" contributions¹⁴⁶ that are really local taxes since non-payment may now be a crime. By law, mahalla must facilitate all state programs, organize the logistics of local visits of any state official, and report any unregistered religious association,¹⁴⁷ a euphemism for any Islamic group that strays from the innocuous state theology. Similarly, mahalla must aid law enforcement agencies and facilitate tax collection.¹⁴⁸ In all but legal status, mahalla have become grassroots state agencies, and they are annually stripped of former elements of flexibility. Indeed, reflecting the state's new emphasis on mahalla, *rais* (and secretaries) now receive state salaries.

From an efficiency perspective based on the public good of national governance alone, homogenization of mahalla is desirable. After all, polling districts of a democratic republic should be of uniform size. So should agencies of representational democratic government. Especially for those concerned with democracy, to the extent mahalla are the basic administrative units of Uzbekistan's government and directly tied to drafts, voting, and the census, rough parity in size between mahalla is a laudable goal.

Yet, pursuit of this goal comes at a price. Perhaps the greatest difference between European and US donors in Uzbekistan concerns what each sees in mahalla. Where US donors (incorrectly)¹⁴⁹ see potential NGOs, Europeans (incorrectly) see potential subsidiary government. European emphases on welfare programs and current EU discussions on subsidiarity shape a set of normative expectations about mahalla that rest on European assumptions and preferences that extrapolate poorly to mahalla. Mahalla, mobilizing European definitions, are not subsidiary governments. They have no autonomy. Without autonomy, their participation in state programs

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at Art. 12.

¹⁴⁸ *Id.*

is not a dynamic federal interplay of sovereignties but merely a hierarchical relationship. For Uzbekistan, there is no palpable local authority invested in mahalla to serve as a check on centralized power and a guarantee of effective and efficient government.

This parody of subsidiarity should, one would think, fool no one. After all, the USSR was also a "federal" state composed of "sovereign" republics.¹⁵⁰ From the 1960s on, Soviet development policies stressed the need to cede authority to increasingly more local institutions. Indeed, while foreign development agencies tend to analyze "development" from the time of the USSR's disassembly, such a practice distorts perspective. David Abramson notes that, "beginning in the late 1980s and intensifying in the 1990s, the Uzbek mahalla became the centerpiece of a state-sponsored campaign to transfer responsibilities for welfare and other social services onto local shoulders."¹⁵¹ The potent *Perestroika* war that pitted republic governments against Moscow and the texts of laws notwithstanding, the Soviet system was not a model of checks, balances, and strong local voices. In reality, Uzbekistan is merely continuing adherence to a purely Soviet logic of state administration and rhetoric. Functionally, Uzbekistan could not be further from federalism. Uzbekistan's 10,000-plus mahalla are in reality the basic administrative units of an unambiguously hierarchical state.

One price paid by mahalla as a result is a loss of flexibility. A district *hokimiyat*¹⁵² (government) now possesses exclusive powers to record, determine, and change mahalla

¹⁴⁹ This presages an argument developed in the section immediately following.

¹⁵⁰ The Russian Federation is still a federal state. Under the USSR Constitution, republics had extensive (paper) rights to, *inter alia*, secede, conduct their own foreign relations, and manage their own internal affairs.

¹⁵¹ David M. Abramson, *Constructing Corruption*, *supra* note 109. Despite Uzbekistan's rich history of social institutions, and despite its Islamic identity, all state-generated reform policies are based on Soviet civil law and Soviet secular modernity, but discursively presented as ongoing efforts to shed Soviet-era structures and practices.

¹⁵² A *hokim*, who heads a *hokimiyat*, is an unelected political appointee who possesses the executive powers of his / her district or region, and he / she also chairs the elected council of his / her district or region. The President can appoint and dismiss any *hokim*. UZB. CONST., *supra* note 7, at art. 102. Uzbekistan often deflects criticism about its lack of political checks and balances with wishful claims about the autonomy of mahalla. "The mahalla's self-governance bodies have a significant opportunity to function within the national system as democratic counter-balances for Khokims." Embassy of the Republic of Uzbekistan in the United States, Newsletter.

borders.¹⁵³ While mahalla residents elect some *kengash* members, others now serve *ex officio* by virtue of employment with ministries that fund mahalla. Increasingly, the constituents to whom *rais* devote deference are state agencies instead of local residents, district *hokims* now possess the power to fire a *rais*. As a consequence, the President is the only political principal in Uzbekistan, and *rais* are fundamentally only third level agents of this principal. Further, while mahalla retain discretion over individual funding decisions, they have no discretion over which state programs to implement; they must implement them all.

These efforts at standardization and their resulting attack on flexibility are of particular importance since historical records show a great diversity of size in mahalla. This diversity reflects the varying functions of mahalla, the informal negotiations that shape mahalla, and the number of residents of, say, a metalworkers' mahalla as compared to a musicians' mahalla.

During the Soviet period, even as water / electric utilities and universal state employment changed local life, individual residents still experienced the need for loans for community festivals, and crime remained an issue. Of course, local dispute resolution was also very important. Since new customary rights in property evolve most readily from old customary rights in property,¹⁵⁴ the mahalla became the focus for provision of Soviet era medium sized public goods not provided by the state. To the extent that Uzbeks resisted Russification, mahalla facilitated this resistance by carving out public areas where Russian was never a privileged language, where Islamic practices could be sheltered, and where local customs prevailed. The mahalla-level public goods provided during the Soviet period (loans, crime prevention, dispute resolution, and preservation of Uzbek culture) all had Soviet analogs in the form of banks, state militia, courts, and pervasive institutions for the study and celebration of local culture and history. However, the lending policies of Soviet banks, the limitations of Soviet militia, the procedures of Soviet courts, and the emphases of Soviet cultural programs often fell short of or meshed poorly

¹⁵³ 1999 Mahalla Law, *supra* note 9, at art. 5.

¹⁵⁴ Robert Cooter, *Inventing Market Property: The Land Courts of Papua New Guinea*, 25 L. & SOC. REV. 759 (1991).

with the expectations and needs of mahalla residents. Further, since immigrant Soviets of various nationalities, as well as Sovietized Uzbeks, who lived primarily in apartment complexes did not share these expectations or needs, apartment mahalla naturally did not appear in any notable numbers during the Soviet period.¹⁵⁵

In the post-Soviet era, the state still does not provide loans for feasts, and it still endeavors to command and shape Uzbek cultural practices and values. More importantly, there is still no state dispute resolution mechanism that does not employ adversarial methods. In addition, the crumbling of state guarantees of employment, social welfare, education, infrastructure maintenance, and crime prevention reintroduces a range of public goods that will likely be demanded at the mahalla level.

That provision of these goods may be a Pareto optimal function of mahalla does not mean that these goods will actually be provided. Preservation of or the re-appearance of these mahalla public goods depends largely on the scale of the deadweight losses introduced by state penetration of mahalla, especially through formalization, on transaction costs involved in adapting mahalla to a new economic and regulatory environment, and on the types of rent-seeking and other strategic behavior made possible in these new environments. While transaction costs remain low because of the degree of social interaction within mahalla, the increased mobility of the population¹⁵⁶ and the state-imposed size of mahalla (roughly 2000 persons) will likely frustrate the transition. If the optimal size for social insurance functions is now closer to

¹⁵⁵ Insurance is a common reason why communal property regimes arise instead of pure private regimes. In the past, security insurance shaped the architecture of mahalla. During the Soviet era, with the state providing adequate levels of social insurance, there were no equivalently pressing communal insurance needs to be met by mahalla. While outside help may have been needed by residents to stage elaborate weddings or to generate funds to pay the bribe needed to get a child into a university, a wide range of medical, social, and material needs could be reliably met through state insurance mechanisms. Thus, during the Soviet era, there was a place for preservation of mahalla, but little need for expansion of mahalla. That fact probably also explains why mahalla functions usually failed to appear in apartment complexes.

¹⁵⁶ See Ellickson, *Property in Land*, *supra* note 4, at 1378 (holding that active real estate markets weaken close-knitted settlements).

500 in a certain mahalla,¹⁵⁷ the new laws of Uzbekistan provide little hope that an appropriate revision in that mahalla's scale will be possible to effect.

The second price paid by mahalla is a loss of authority. Mahalla residents are quickly losing faith in the new administrative mahalla. *Kengash* welfare allocation decisions elicit much grumbling and frequent suspicions of corruption.¹⁵⁸ Such dispositions suggest that *rais* and *kengash* will find little response to *hashar* requests to supplement state welfare benefits, thereby defeating one of the principal arguments for devolving welfare administration to mahalla.

In its full context, then, the elevation of social norms to laws ("law from order") in Uzbekistan should not be celebrated. It may be that the previous system of parallel welfare systems (state subsidies administered by state agencies and separate mahalla subsidies) operated better in the aggregate. Unlike examples from the scholarly literature, Uzbekistan lacks the core conditions necessary for successful application of "law from order."

The prevailing academic literature discusses legal development as a corollary to economic development.¹⁵⁹ Such parallelism is normatively inapplicable to Uzbekistan where median per capita salaries stated in dollars have fallen 15% annually for a decade. The experience of Uzbekistan may be illustrating an institutional setting in which a state undermines a norm by passing a facilitative law.¹⁶⁰ "Law from order" risks disaster if a state is overextended,

¹⁵⁷ From the preceding, one could suggest that a size less than 2000 and closer to 500 might be beneficial, since it might facilitate the mahalla's social insurance function, while also restraining the excesses and extravagance of mahalla-funded social events.

¹⁵⁸ See Koroteyeva & Makarova, *supra* note 5.

¹⁵⁹ See particularly, Robert Cooter, *Law from Order: Economic Development and the Jurisprudence of Social Norms*, in JOHN M. OLIN WORKING PAPERS IN LAW, ECONOMICS, AND INSTITUTIONS 2 (1997).

¹⁶⁰ While this result would surprise Cooter, *id.* at 25-6, it would complement the insights of Posner, *The Regulation of Groups*, *supra* note 88. Posner anticipates that state social policies pursued through simultaneous subsidies to groups representing target recipients and through subsidies aimed directly at the recipient category will likely lead to perverse or counterproductive results. Posner's dialectic of group and category parallels my own of local and national public goods.

failed, failing, illegitimate, absolute,¹⁶¹ or corrupt.¹⁶² In such cases, social norms may need to be insulated from the state. If Uzbekistan is any example, it may generally be a public good in and of itself to have a government that walls off sources of local public goods from sources of national public goods.

D. THE DEMOCRATIC POLITY AND CIVIL SOCIETY

As a matter of legal semantics mahalla are explicitly non-governmental. Under Uzbekistan law, CSGOs are autonomous legal persons that may not be part of the system of state administration.¹⁶³ However, because, historically, they successfully mobilize resources and people, because they are only ambiguously not governmental, and because their efforts are ostensibly non-profit,¹⁶⁴ mahalla also resemble southern NGOs. The term southern NGO refers to those non-advocacy¹⁶⁵ grassroots organizations, primarily in the Southern Hemisphere, that

¹⁶¹ During the Soviet period, there was no separation of powers. *See supra* note 63. The search for an ideal institution is being replayed in modern Uzbekistan as mahalla are increasingly assuming the equivalent discursive role of the ideal institution, just as they are concurrently becoming more and more an extension of an authoritarian national government.

¹⁶² Corruption increases not just when enforcement is lacking, as many scholars narrowly assume, but also when opportunities for corruption expand, as under mahallization. A reform that multiplies channels for corruption is as bad a development approach as is dismissing private enforcement. *Cf.* Robert Cooter, *The Rule of State Law Versus the Rule-of-Law State: Economic Analysis of the Legal Foundations of Development*, in JOHN M. OLIN WORKING PAPERS IN LAW, ECONOMICS, AND INSTITUTIONS 96/97-3 (1997) ("Suppressing corruption requires help from private citizens."). Scholars tend to praise Soviets for developing a gray market in response to Soviet distribution pitfalls. In this mode, they dismiss the fact that this market was explicitly illegal. Given high levels of public acceptance for "illegal" market activity (which includes bribes alongside getting goods to consumers) in Uzbekistan, prevailing definitions of corruption stand in need of rigorous and reflexive examination. In Uzbekistan, bribes are generally accepted as market transactions.

¹⁶³ 1999 Mahalla Law, *supra* note 9, at art. 7.

¹⁶⁴ Current changes in mahalla are erasing this non-profit presumption about mahalla in Uzbekistan.

¹⁶⁵ In their community-based membership, quasi-governmental character, and primary concern with the local economy and general welfare of the local population, these southern NGOs and mahalla are readily distinguishable from the more typical issue-oriented voluntary societies of the United States and the former USSR.

coordinate local development and provide services not otherwise provided by the state.¹⁶⁶ Their local orientation and position make mahalla potentially dynamic facilitators of development. Accordingly, many civil society development organizations trumpet mahalla as essentially NGOs and as the bedrock of Uzbekistan's civil society.¹⁶⁷ However, such a characterization of mahalla fails to take Uzbekistan's context into consideration.

Southern NGOs typically fill the void left between a weak state and a rural population. They are prevalent in states that lack developed capacity. In contrast, Uzbekistan, thanks to Soviet development policies, still possesses a tremendous state infrastructure, even in rural areas. Moreover, mahalla are increasingly being roped into this state infrastructure. Mahalla, as urban institutions of a centralized state, increasingly rarely enjoy autonomy from the state or distance from the state, and therefore parallels with southern NGOs are weak.

Further, mahalla are only weakly connected with the kind of social capital¹⁶⁸ that facilitates democracy and pluralistic civil society. Bonding social capital, which primarily facilitates intra-group social networks, is not the same in nature or effect as bridging social capital,¹⁶⁹ which facilitates networks beyond those of primary associations, such as work, family,

¹⁶⁶ Studies of southern NGOs employ an argot not applied here. Grassroots organizations (GROs) are community and local associations, while grassroots service organizations (GRSOs) are intermediary and advocacy NGOs. For the sake of simplicity, these terms are not used in this Article.

¹⁶⁷ One example is Counterpart Consortium's myopic Mahalla Initiative Program. See COUNTERPART CONSORTIUM, MAHALLA INITIATIVE PROGRAM, available at <http://win-stage.cango.net/news/archive/june-12-01/a0003.asp> (last visited Apr. 18, 2002).

¹⁶⁸ While social capital is only vaguely defined in existing literature, I posit that it can be defined concisely with reference to game theory. One's social capital refers to the sum of one's involvement in iterated games. The result is that one's social capital reflects reputation and reduces certain transaction costs. Reputation allows other players to gauge in advance what your game strategy will be and how likely it is that you will cooperate or defect. Likewise, the information forcing and sharing elements of social interactions reduce general societal transaction costs of information. As social capital relates to democracy, to the extent that social capital is a barometer of how active or passive individuals are generally, it is directly proportional to democratic participation. As social capital relates to economics, while reducing transaction costs of information facilitates general economic well-being, some cooperative game strategies (like cartels) have negative economic externalities. See SIEVERS, *supra* note 4.

¹⁶⁹ PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY, *supra* note 126, at 22-3.

or school. Bonding social capital is more likely to produce negative externalities.¹⁷⁰ While it is clearly related to the economic fortunes of small groups, bonding social capital boasts no solid claim to facilitating the democratic traditions of larger societies. Bridging social capital is the product of secondary associations that are horizontal and voluntary.¹⁷¹ Mahalla are neither secondary nor voluntary.

Mahalla combine mandatory membership with lax accountability. The prospect for mahalla as an RCA would be brighter if mahalla were voluntary with lax accountability or mandatory with guarantees of accountability. An exit option from mahalla would mean that the malfeasance of mahalla leaders could be restrained, even though this structure would also open avenues for strategic behavior by members and free-riding by non-members. Similarly, mandatory membership with guarantees of accountability would alleviate concerns about free-riding and strategic behavior, while at the same time it would restrain the malfeasance of leaders. Either organizational strategy would be preferable to mahalla's current structure: compulsory membership with very weak accountability.

For these reasons, mahalla relate to only a broad definition of social capital.¹⁷² While mahalla may be "founded on principles of democracy, transparency, social justice, humanism, independence, and mutual assistance,"¹⁷³ that is not enough to justify conflating them with voluntary, charitable, or secondary associations. Mahalla primarily engineer social coordination,

¹⁷⁰ See *id.* at 23, 322.

¹⁷¹ See, generally, ROBERT PUTNAM, MAKING DEMOCRACY WORK (1992).

¹⁷² Cf. Ellickson, *New Institutions for Old Neighborhoods*, *supra* note 7, at 84 (arguing that RCAs might incubate social capital). Ellickson relies in part on Putnam for support, although Putnam specifically excludes primary associations and nonvoluntary associations from his analyses of social capital. PUTNAM, MAKING DEMOCRACY WORK, *supra* note 171. "Some regions of Italy have many choral societies and soccer teams and bird-watching clubs and Rotary clubs. Most citizens in those regions read eagerly about community affairs in the daily press. They are engaged by public issues, but not by personalistic or patron-client politics . . . Social and political networks are organized horizontally, not hierarchically . . . At the other pole are the 'uncivic' regions . . . where . . . [p]ublic life . . . is organized hierarchically, rather than horizontally." *Id.* at 115.

¹⁷³ 1999 Mahalla Law, *supra* note 9, at art. 4.

and, only tangentially, the kind of social capital that correlates to democratic successes. The extrapolation of the supposed democratic, as distinct from economic, benefits of social capital to RCAs (mahalla and other) is not, as yet, warranted by empirical research, and it is largely precluded by a careful reading of the classic works on social capital.¹⁷⁴

V. CONCLUSION

The 1993 Mahalla Law conferred on mahalla both nonremunerated officers¹⁷⁵ and a set of tasks intimately related to life within the mahalla,¹⁷⁶ a set of tasks not unlike those pursued by RCAs in the United States. The 1999 revisions of this law, which more than double the length of the law,¹⁷⁷ make mahalla officers salaried agents of the state and connect mahalla to almost every state policy that concerns the world outside mahalla.

In absolutist states, leaders are overworked. Dictators hold many offices simultaneously, and these offices often showcase their alleged abilities in and mastery of the military, the sciences, economics, law, and the range of social issues that characterize the absolutist state's

¹⁷⁴ Social capital analyses may be more applicable to the pre-Soviet era. Examples include the autonomy enjoyed by waqf, McChesney's claim that (in contrast to other areas of the Islamic world) medieval Sufi orders in what is today Uzbekistan embraced a broad cross-section of society, and Olga Sukhareva's evidence of non-residential chivalric fraternities that refused to allow any nobles to assume leadership positions. MCCHESENEY, WAQF IN CENTRAL ASIA, *supra* note 34, at 34-5; SUKHAREVA, *supra* note 10, at 51-5. Robert McChesney's work on the history of the Mazar-i-Sharif waqf, in explicating the deviations, concessions, influences, and continuities of one waqf, begins the process of presenting waqf as components of a working civil society. "The transformation of the shrine from village holy site to urban conglomeration was largely dependent on the economic fortunes of the shrine, and these in turn were predicated mainly on the management of the waqf endowment." MCCHESENEY, WAQF IN CENTRAL ASIA, *supra* note 34, at ix.

¹⁷⁵ 1993 Law at Art. 21. See 1999 Mahalla Law, *supra* note 9. Cf. Roy attributes different effects to the law, but he makes no reference to the text of the law or any indication that he personally examined the provisions of the law. ROY, LA NOUVELLE ASIA CENTRALE, *supra* note 8, at 271.

¹⁷⁶ Under the 1993 law Article 12, the *kengash* already had to cooperate with draft boards, tax authorities and the police, and could notarize documents, but most enumerated functions of mahalla concerned local life exclusively. See 1999 Mahalla Law, *supra* note 9.

penetration of and eradication of the private sphere. Uzbekistan is pioneering grassroots absolutism. One institution is becoming the focal point for all state and non-state functions. Except for formal education and direct employment, mahalla stand poised to usurp most spheres of public life. In the converse, every wonderful aspect of mahalla, from *hashar* to the *aksaqal*, is now a formal legal responsibility of mahalla, and failure to abide by any mahalla decision is now a state crime,¹⁷⁸ which obviates the magic of and basis for social norms. Such an incursion of the state into norms and such a reshuffling of incentives for individual parties sets the stage for a classic breakdown of a community solution to a collective action problem.¹⁷⁹ This breakdown might include increased attempts at free-riding and increased attempts to defect from mahalla; in either case mahalla will suffer in substance. Mahalla social insurance mechanisms threaten to dissipate, and insurance and other functions might migrate to extended families, which the fieldwork described in this Article suggests is already occurring.

Since they are at the heart of elections, at the heart of executive government, at the heart of much employment, administer most social programs, collect taxes, act as a monitor against the appearance of enemies of the state, organize community events, and are the conduits for foreign efforts for human rights, family planning, and microcredit, mahalla are suddenly no longer mere residential associations. Elegantly employing the very rhetoric of development agencies in the process of defeating the objectives of these agencies, Uzbekistan is transforming post-Soviet mahalla into the main agencies of an emerging absolutist state.

¹⁷⁷ Even to the extent that the law merely codifies mahalla norms, it is to be viewed cautiously since laws "that merely duplicate the group's own norms will generally undermine self-regulation." Posner, *The Regulation of Groups*, *supra* note 88, at 136.

¹⁷⁸ 1999 Mahalla Law, *supra* note 9, at art. 16.

¹⁷⁹ This suggestion generally contradicts the general tenor of law and economics writings on social norms in developing states, which argue that the normative content of laws should mirror social norms and that a "law from order" incorporation of the best practices of pre-existing social norms should prevail. See Robert Cooter, *Law from Order: Economic Development and the Jurisprudence of Social Norms*, in JOHN M. OLIN WORKING PAPERS IN LAW, ECONOMICS, AND INSTITUTIONS 96/97-4 (1997). See also Cooter, *Inventing Market Property*, *supra* note 154.

The majority of mahalla residents, and probably the majority of *rais*, are unaware of the normative provisions of recent mahalla legislation. Despite rapid major changes in the laws, for the most part, mahalla change slowly. In most mahalla, most social organization and most problem solving proceed from the same bases as ten years ago, often in contravention of these new laws. However, it would be premature to conclude from this situation that mahalla will resist legislative restructuring. More likely, mahalla will, over time, increasingly conform to the provisions of the new laws. Accordingly, the warning signs and trends provoked by the 1993 mahalla reforms are probably only minor compared to what will result from the 1999 Mahalla Law, which is far more ambitious in its demands on these local associations to assume new roles.

Just as mahalla begin to capture international attention, much of their charm and promise may be disappearing. Despite Western awe of the scale of clientalism in Uzbekistan, somehow most commentators (except mahalla residents, who are already complaining) assume that the hallowed status of mahalla limits corruption, the need for monitoring of agents, and the need for increased oversight of mahalla by institutions such as courts and auditors.¹⁸⁰ In contrast, it is nearly a truism of politics in general and RCAs in particular that they warrant "more and more external checks as [their] power grows."¹⁸¹

This need is only exacerbated given new rights of *rais* to lease land, collect rents, and engage in commerce. It is no surprise that *rais* are well-off and that mahalla are increasingly the objects of popular resentment; they may soon be as healthily resented as any other unit of government. Even in connection with the supposed charitable functions of mahalla, the new power to disburse funds challenges and erodes mahalla norms of using community resources to

¹⁸⁰ It is this lack of checks and balances, both within mahalla and within the political system of Uzbekistan itself, that precludes characterization of mahalla as comparable to American condominium associations or more innovative models of urban residential / development associations, such as the Neighborhood Improvement Districts advocated by Ellickson. Ellickson, *New Institutions for Old Neighborhoods*, *supra* note 7. Notwithstanding observations about the unsuitability of courts in Uzbekistan, some effective mechanisms for oversight and accountability are needed.

¹⁸¹ *Id.* at 100.

address welfare cases poorly decided by state welfare agencies.¹⁸² It also creates opportunities for corruption.¹⁸³

At least one scholar has noted that botched land reforms are responsible for a suspicious number of recent human tragedies.¹⁸⁴ Current residential regime reforms threaten to disrupt and dislocate local communities across Uzbekistan, all in the name of harnessing the promise of local communities. Since this process is already well under way and broadly supported by foreign donors, one can only hope that social norms of community celebration, *hashar*, and *gap* will migrate to new settings sheltered from state regulation and beneficence. Notwithstanding the undeniable benefits to be gained by harnessing the power of mahalla, these benefits pale in comparison to what stands to be lost in the form of conflict resolution, social insurance, and strong communities.

¹⁸² "Thus, despite attempts to distribute aid through mahalla networks, this focus on mahalla may well strengthen bureaucratic means at the expense of less formal and decentralized ones. I am suggesting here one way development work that proceeds in the name of building civil society actually creates bureaucracies, perhaps at the expense of a local understanding of civil society itself." Abramson, *Constructing Corruption*, *supra* note 151.

¹⁸³ See Koroteyeva & Makarova, *supra* note 5, report that this new function gives rise to much mahalla conflict. A mitigating component of this system is that aid should not be distributed until a family submits a formal application that outlines family assets, income, and employment and / or until the mahalla committee directly documents the assets of a family. See Coudouel & Marnie, *supra* note 144. Yet, such disclosures can also work to increase the leverage of *rais* and other *kengash* members within the community.

¹⁸⁴ "Beyond dispute, botched land policies have been the chief domestic source of woe during the past century." Ellickson, *Property in Land*, *supra* note 4, at 1318.

APPENDIX: DISCUSSION OF RESEARCH AND METHODOLOGY

Few consider Uzbekistan an open or democratic society, and its academic community does not enjoy either the resources available under the USSR or academic freedom. However, from afar, the difficulties of Uzbekistan are easy to exaggerate; it is also easy to underestimate the people and possibilities of Uzbekistan.

The legal scholar ambitious to pursue research into a topic like mahalla cannot (and should not) access work of historians, sociologists, anthropologists, and political scientists. Existing work on the subject of mahalla is, for lack of a more diplomatic word, weak. Accordingly, I took to heart the interdisciplinary examples of authors such as Ellickson, Cooter, Acheson, and Cappell¹⁸⁵ and endeavored to provide this Article with a foundation in history, sociology, and anthropology¹⁸⁶ as well as the kind of intuition that only comes through fieldwork.¹⁸⁷ Yet, in doing so, I could not but note that the one continuing theoretical failing of property scholarship is that it curiously avoids urban issues, focusing instead on pastoral issues of the past, singularly uncommon pastoral events of the present, or property issues divorced from land ownership.

While not an anthropologist, I drew inspiration from ethnologies of Central Asia and other areas in committing to live for several months in both contemporary mahalla and apartment mahalla. Similarly, while not a sociologist, I was easily convinced that empirical research into mahalla was possible and necessary.

¹⁸⁵ See ELLICKSON, ORDER WITHOUT LAW, *supra* note 107; Cooter, *Inventing Market Property*, *supra* note 154; JAMES M. ACHESON, THE LOBSTER GANGS OF MAINE (1988); and Andrew J. Cappell, *Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L.J. 617 (1991).

¹⁸⁶ "Adapting economic theory to new institutions and cultures . . . requires careful field research." Robert Cooter, *Mongolia: Avoiding Tragedy in the World's Largest Commons*, JOHN M. OLIN WORKING PAPER IN LAW, ECONOMICS, AND INSTITUTIONS (1995).

¹⁸⁷ *Id.*

While meaningful anthropological fieldwork is an isolationist endeavor, sociological fieldwork is best when informed daily by a cohort of sociologists; I benefited immensely from the camaraderie and assistance of a capable group of Uzbekistan sociologists. Unfortunately, this group cannot publish its research, nor can I openly acknowledge the crucial role it played in the research behind this Article. Yet, I make no proprietary claims to the "static" statistical information in this Article; all findings not related to new immigrants to mahalla are theirs alone, although I assume responsibility for any misrepresentations. Also, all the regressions, including choices of methodologies, are mine alone.

Our joint research on mahalla immigrants began as a somewhat different task. Initially, I planned to investigate the impact of mahalla rights of first refusal on real-estate sale prices. However, such a topic proved unrealistic for several reasons. First, exact sale prices are difficult to coax out of informants, often differ from prices reported to tax and registry agencies, and are impossible to confirm if sellers have moved away.¹⁸⁸ Second, the Uzbekistan economy does not lend itself to this kind of research. Uzbekistan still has an artificial state exchange rate, and it is still a crime to exchange currency on the black market. The difference between black market and official exchange rates has varied wildly between only a few percent and up to 500%. Moreover,

¹⁸⁸ Under Articles 480-8 of the 1996 Civil Code, *supra* note 79, sales of real property are only valid if executed on the basis of a written contract that contains a sale price, is notarized, and is filed with BTI. The sale price may not be below the assessed price. 1994 Provisions, *supra* note 114. The sum stated in the contract, for the tax assessment reasons stated above, is usually only the assessed value, not the actual sale price. Accordingly, actual records of sale prices really only repeat state assessments, and fail to record market adjustments to this price from location, community, and other intangibles. A higher-than-assessment sale price officially recorded would result in income tax burdens for the seller and higher annual taxes for the purchaser. In effect, then, real estate in Uzbekistan consists of two values, a paper value and a non-paper premium. A purchase contract is the formal mechanism through which parties signal their agreement over price and trust of each other to comply with an informal purchase arrangement. This system also means that loans for home sales are informal. State agencies do not pursue these violations. Thus, the better the piece of property or the more a state assessment undervalues a piece of property, the higher a price a buyer will need to pay to coax an owner to sell the property for book value. However, on receipt of a contract between private parties, the state reserves a right to purchase the property for the assessment price if the stated price is no higher. *Id.* But it does not exercise this right.

outside of currency differences, economic crises are frequent, and devaluations are common.

These factors precluded meaningful panel data.

Accordingly, the survey that we finally conducted was far more complicated and involved thirty questions, with a good deal of built-in redundancy. To avoid the inevitable confounding effect of an obvious foreigner taking part in interviews, sociology graduate students conducted all interviews. These students canvassed a cross-section of mahalla in Andijan, Samarkand, and Tashkent to identify representative mahalla, and then they spent hours finding suitable informants—residents who had acquired a mahalla house in the past five years. These three cities represent the poles of urban life in Uzbekistan in both the popular imagination, and as illustrated by previous sociological research. Most interviews lasted slightly longer than half an hour, and in total 83 completed surveys remained after weeding out incomplete or otherwise unacceptable surveys.

Forty-four of the informants were women, and 39 had university level education. Twenty-five were from Andijan, 26 from Samarkand, and 32 from Tashkent. While this small sample size produced enough data to produce statistically significant results, financial constraints prevented pursuit of research on a better scale. Table 1 reflects a logistical regression since the independent variables (*rais* and *aksaqal*) are binary; the remaining regressions employed OLS multiple regression techniques.

The variables used in the regressions are explained below:

| | |
|--------|--|
| Advice | Respondents separated into groups that turned outside the family for advice in home buying and those that did not. |
| Age | Ten year cohorts used |
| Rais | Respondents separated into groups that inquired into identities of prospective mahalla's chairperson and those that did not. |
| Family | Respondents separated into groups that had family within a new mahalla and those that did not. |

| | |
|----------------|--|
| Image | Respondents separated into groups that emphasized the premium paid for living in prestigious mahalla and those that did not. |
| Immigrant | Respondents separated into groups that moved within a city and those moving from more distant locations. |
| Aksaqal | Respondents separated into groups that inquired into identities of prospective mahalla's informal leadership and those that did not. |
| Price/Ag | Respondents separated into groups that emphasized the premium paid for arable land and those that did not. |
| Price/Ecology | Respondents separated into groups that emphasized the premium paid for land safe from environmental health risk and those that did not. |
| Price/Services | Respondents separated into groups that emphasized the premium paid for living a mahalla that provides quality services and those that did not. |
| Risk | Respondents separated into groups reflecting their willingness to take chances in moving given limited information. |
| RFamily | Weighted importance of factor of ability to be near relatives in making final decision to purchase house. |
| REcology | Weighted importance of factor of ability to be safe from environmental health risks in making final decision to purchase house. |
| Utilities | Respondents separated into groups that emphasized the premium paid for houses with better utilities and those that did not. |

In addition, data was collected on level of educational attainment, ethnicity, tenure in current house, language, and weighted importance of factors including mahalla prestige, future neighbors, future *rais*, safety of neighborhood, quality of utilities, and quality of house purchased. The complete dataset is available by request to esievers@igc.org.