

## The Restructuring of Perestroika: Pragmatism and Ideology (The Preamble to the Soviet Constitution of 1977 Revisited)

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# The Restructuring of *Perestroika*: Pragmatism and Ideology (The Preamble to the Soviet Constitution of 1977 Revisited)

## Introduction

Oddly perhaps, my contextual approach to *perestroika* is framed by three near-trivial recollections. Two of these contexts, the interplay between *ideology* and *expediency*, and the limits of *history* to an understanding of *perestroika*, I shall offer in a tentative fashion, as my perception is impeded by question marks to which time alone will provide definitive answers. The third context is that of constitutional law, within which many of the changes introduced in the Soviet Union during the past five years should be, at least formally, intelligible. This context provides the *legal framework of the reforms*. The present Article will be confined to the first context, the interplay between ideology and expediency; it constitutes the first part of a projected trilogy.

I remember a dreary Saturday afternoon in Amsterdam, two winters ago, when driving rain and approaching darkness convinced me and my guest, Gennadi Gerasimov, the Soviet spokesman, to abandon our sight-seeing expedition (after a boat ride on the canals and a quick visit to a bookstore to buy Dorothy Lessing's recent book on Afghanistan) and to return to Leiden where Dutch students had invited us for a few drinks and dinner.

Looking around the crowded dining room, I thought with relief: for the past three days, not a single kremlinologist or distinguished professor of this or that in sight; we will have good time. And indeed, Gerasimov seemed more relaxed than I had seen him in fifteen years. Conversation was uninhibited, a model of *glasnost*:

Q. "Mr. Gerasimov, are you allowed to have a drink with the campaign against alcoholism in full swing in your country?"<sup>1</sup>

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1. For English translation of the principal normative acts enacted in the Soviet Union under *perestroika* to combat drunkenness, see *The Legislation of Perestroika: I. Measures to Combat Drunkenness and Alcoholism*, 25 SOV. STAT. & DEC., No. 1, at 1-96 (1988).

23 CORNELL INT'L L.J. 227 (1990)

A. "This glass of wine will be recorded in statistical surveys as an increase in the alcohol consumption in Holland; it will help make the *per capita* consumption figures in the Soviet Union look better."

Q. "Mr. Gerasimov, the Press Center of the Ministry of Foreign Affairs, which you head up, is supposed to operate on the principles of *khozraschet*, of full cost accounting. How do you manage that?"

A. "Easy. I also manage the Press Center's cafeteria and this allows me to show an actual profit."

Soon the conversation turned to more serious subjects. With the recent announcement of the withdrawal of Soviet troops from Afghanistan fresh on their minds, the students asked Gerasimov the question which was to become the subject of endless debates on TV talk shows in the United States for the next two years: "Does this mean that the Brezhnev Doctrine is dead?" "Yes," he answered firmly,<sup>2</sup> and, leaning towards me, remarked in a low voice, with a touch of incredulity: "They still believe that the Brezhnevs need the pretext of a doctrine for marching into Afghanistan or into Czechoslovakia."

Now, it is true that Mr. Gorbachev never mentions expressly the Brezhnev Doctrine. This is because the Soviet Union never proclaimed a "Brezhnev Doctrine" and the political justification,<sup>3</sup> which Brezhnev used in invading Afghanistan and Czechoslovakia, and which *does imply* adherence to the legal concept of limited sovereignty, was in no way different from the reasons invoked by Khrushchev in crushing the Hungarian uprising in 1956. Khrushchev, however, in his theoretical pronouncements, went considerably farther than Brezhnev and, in his speech at the All-German Workers Conference in Leipzig, East Germany, on March 7, 1959, looked forward to the total obliteration of borders within the Communist commonwealth: "[t]he State borders will disappear, [he proclaimed], as predicted by Marxism-Leninism."<sup>4</sup> Brezhnev never went quite so far. Yet no one ever referred to a Khrushchev doctrine.

But the true significance of Gerasimov's statement, on that rainy Saturday night in the late winter of 1988, is surely this: Do not always try to find an explanation, a justification or an excuse in the doctrine of Marxism-Leninism for the actions and policies of the Soviet leaders;

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2. As late as July 1989, N.Y. Times correspondents were speculating whether a statement by Gorbachev on reduction of short-range missiles did, or did not, imply rejection of the Brezhnev Doctrine. See Markham, *Gorbachev Spurns the Use of Force in Eastern Europe*, N.Y. Times, July 7, 1989, at A1, col. 6.

3. For a summary of Brezhnev's arguments in justification of the invasion of Czechoslovakia by the armed forces of the Warsaw Pact, known in the West as the "Brezhnev Doctrine," see HENKIN, PUGH, SCHACHTER & SMIT, *INTERNATIONAL LAW CASES AND MATERIALS* 926-28 (2d ed. 1980).

4. Nikita S. Khrushchev, Speech at the All-German Workers Conference in Leipzig (Mar. 7, 1959), reprinted in Pravda, Mar. 27, 1959 (also published in Moscow as a separate English pamphlet in 1959). The "prediction" was made in Marx's *Communist Manifesto* itself: "the working men have no country . . . national differences . . . are daily more and more vanishing . . ." K. MARX, *COMMUNIST MANIFESTO*, 72-3 (Norton Critical Edition 1988).

pragmatism and expediency are often more reliable guides. Does this apply to Gorbachev and his *perestroika* as well? Gerasimov, in the intimate surroundings of a student club, would probably have said "yes." As for myself, I say both "yes" and "no," while abstaining from all value judgments. Let us consider the elements of expediency and ideology separately.

#### A. *Perestroika*: The Pragmatic Element

When asked if another doctrine has, under Gorbachev, replaced the Brezhnev Doctrine, Gerasimov quipped, "Yes, we call it 'Now we'll do it my way.' " He was, of course, paraphrasing the Frank Sinatra song title. Here, there was a strong hint at Gorbachev's pragmatic bent. And there is no doubt that many of Gorbachev's reforms were inspired by purely pragmatic considerations, and the constant changes in the new institutions often obey the dictates of expediency. But only up to a point.

##### 1. *The Flexibility of Perestroika and the Constraint of Ideology: The Reform of Individual Economic [Labor] Activity*

It is the nature of *perestroika* to be a self-renewing phenomenon, relying on the trial-and-error method, and new decrees, laws and regulations often replace those published only a few months earlier. Sometimes, this happens simply because the newly created institution is not quick enough, or efficient enough to achieve its assigned goal or to register progress. For example, the Interdepartmental Commission for Questions of the Application of the New Methods of Planning and Economic Stimulation, an instrumentality of *Gosplan*, the state planning agency,<sup>5</sup> was reorganized on December 20, 1985, into the Commission of the Presidium of the USSR Council of Ministers for the Perfecting of Management, Planning and Economic Mechanism.<sup>6</sup> Motivated by expediency, it was to be reorganized again, on January 5, 1989, into the Commission of the USSR Council of Ministries for the Perfecting of the Economic Mechanism,<sup>7</sup> and again six months later, in line with Gorbachev's own suggestion,<sup>8</sup> into the State Commission of the USSR Council of Ministers on Economic Reform, with a Deputy Chairman of the USSR Council of Ministers as its head.<sup>9</sup> Expediency was the principal motivation in each case.

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5. G. van den Berg, *List of Operative Statutes of Soviet Agencies of State Administration*, LAW AND THE GORBACHEV ERA 21-2 (D. Barry, G. Brunner, F. Feldhegge & G. Ginsburgs eds. 1988).

6. Decree of the USSR Council of Ministers No. 1290, Dec. 20, 1985, reprinted in *Izvestiia*, Oct. 26, 1986; and 15 *EKONOMICHESSKAIA GAZETA* 7 (1987).

7. Decree of the USSR Council of Ministers No. 12, Jan. 5, 1989, SP SSSR 1989, No. 7, item 19.

8. See Gorbachev, *Ob osnovnykh napravleniakh vnutrennei i vneshnei politiki SSSR* [On the Main Directions of Domestic and Foreign Policy of the USSR] (Report to the First Congress of the People's Deputies of the USSR), reprinted in *Izvestiia*, May 31, 1989, at 2.

9. Decree of the USSR Council of Ministers No. 581, July 24, 1989, SP SSSR 1989, No. 28, item 108, at 662-70.

Gorbachev's reasons for substantially expanding the scope of economic activities permitted to individual citizens<sup>10</sup> were likewise predominantly pragmatic, including the failure of the public sector to even come close to satisfying consumer demand: an acknowledged seventy-five percent of the citizens' needs in consumer goods and services remained unfulfilled.<sup>11</sup> An earlier attempt to "reverse" this process by a decree that had sought to encourage state enterprises and organizations to branch out into providing paid services to the population — even when such activities were not part of the regular or principal occupation of these enterprises and organizations<sup>12</sup> — proved to be a notable failure. According to one Soviet legal scholar, only seventeen percent of all industrial enterprises in the country implemented measures to provide such services, and even those enterprises limited the benefits of the new services to their own employees.<sup>13</sup> Gerasimov's cafeteria would probably fall into this category among the non-industrial organizations.

When the Law on Individual Economic [Labor] Activity was enacted on November 19, 1986,<sup>14</sup> the resulting expansion of the "private sector" was presented not only as an important element of *perestroika*, but as an integral, albeit distinct, part of the *Soviet socialist economic system* under Chapter II of the USSR Constitution of 1977.<sup>15</sup> Under strong pressure from the new CPSU leadership, Individual Economic [Labor] Activity (IEA), hitherto one of the officially most discredited institutions, was transformed within nineteen months into one of the brightest hopes of *perestroika*. This metamorphosis occurred even though it meant the reversal of decades-long hostility and public mistrust towards the concept of "supplemental income," refusal to regard IEA as a part of the socialist economy, and frequent discrimination against citizens engaged in IEA, who were considered "social parasites."

Accordingly, IEA is now characterized as an institution endowed with vital "social interest,"<sup>16</sup> hostility towards the "commodity-money" character (*tovarno-denezhnyi kharakter*) of IEA is dismissed as unjustified

10. For English translations of the principal normative acts relating to the reform of individual non-agricultural economic labor activity under *perestroika*, see *The Legislation of Perestroika: II. Organization of Soviet Economic and Labor Activity*, 26 SOV. STAT. & DEC., No. 1, at 1 (1989).

11. See Trud, May 25, 1984.

12. Decree of the USSR Council of Ministers No. 716, *On Measures to Expand Paid Services to the Public by Enterprises and Organizations Whose Principal Activity Is Not the Provision of Such Services*, July 31, 1985, SP SSSR 1985, No. 25, item 128, at 463-66.

13. Kabalkin, *Zakon ob individual'noi trudovoi deiatel'nosti - vazhnyi ryuchag osushchestvleniia sotsial'no - ekonomicheskoi politiki* [The Law on Individual (Labor) Activity - An Important Tool for Implementing Social and Economic Policy], 3 SOV. GOS. & PRAVO 12 (1987).

14. USSR Law No. 6050-XI, *Ob individual'noi trudovoi deiatel'nosti* [On Individual Economic (Labor) Activity], Nov. 19, 1986, Ved. Verkh. Sov. SSSR 1986, No. 47, item 964, at 905-14.

15. KONST. SSSR (CONSTITUTION OF THE USSR), arts. 10-18 (1977).

16. Cf. Report by I. I. Gladkii, Chairman of the USSR State Committee of Labor and Social Problems to the USSR Supreme Soviet, Nov. 13, 1986 (introducing the Draft Law on Individual Economic [Labor] Activity), reprinted in Pravda, Nov. 20, 1986, at 5; and Izvestiia, Nov. 20, 1986, at 5 [hereinafter Gladkii].

prejudice, and State encouragement of IEA has been pledged in the form of assistance in obtaining raw materials, tools, and other property, in the marketing of the IEA output, and through granting credits.<sup>17</sup> Tax rates on IEA income were appreciably lowered.<sup>18</sup>

A comprehensive new legal system for IEA had to be devised to replace the virtually complete conceptual and normative vacuum in which IEA traditionally maintained a precarious existence. Since some areas of IEA had never been regulated<sup>19</sup> during the preparation of the new Law on Individual Economic [Labor] Activity and its transformation into a basic institution of *perestroika*, Soviet jurists were guided by a series of firmly-held *priorities*. The most important of these priorities was that IEA was to be treated as an *integral part of socialist economy*<sup>20</sup> and its economic and legal nature had to be defined and its status and exercise regulated in accordance with this axiom.

The second priority was that IEA was to be part of the "second wave" of *perestroika*. The "first wave" of reforms consisted of measures designed to help *eliminate negative trends* in the development of Soviet society, including drunkenness, alcoholism and drug abuse,<sup>21</sup> erosion of labor discipline,<sup>22</sup> and the extraction of "nonlabor," *i.e.*, "unearned" income.<sup>23</sup> The "first wave" also responded to the urgent need to

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17. For statutory and other normative acts relating to these questions, see *supra* note 10, at items 13 (app. 4 & *passim*), 14, 18. See also INDIVIDUAL'NAIA TRUDOVAIA DEIATEL'NOST': SBORNIK NORMATIVNYKH AKTOV [INDIVIDUAL ECONOMIC (LABOR) ACTIVITY: A COLLECTION OF NORMATIVE ACTS] 129-215 (V. Trynkov comp., P. Sedugin ed. 1989) [hereinafter Trynkov & Sedugin].

18. See 26 Sov. STAT. & DEC., No. 1, at 73-76; Trynkov & Sedugin, *supra* note 17, at 216-58.

19. Cf. Gladkii, *supra* note 16, at 5; Schweisfurth, *Die Komplementarität persönlichen Nutzens und gesellschaftlichen Interesses - Das Gesetz der UdSSR über individuelle Arbeitstätigkeit vom 19. November 1986* [The Complementarity Between Personal Benefit and Socialist Interest: The USSR Law on Individual Economic (Labor) Activity of 19 November 1986], 34 OSTEUEUROPA-RECHT 1, 4, 7-18 (1988).

20. Private entrepreneurial and commercial middleman activity are punished under article 153 of the RSFSR Criminal Code by deprivation of liberty for a period of up to five years with confiscation of property or other appropriate penalties. See RSFSR Law, Oct. 27, 1960, Ved. Verkh. Sov. RSFSR 1960, No. 40, item 591 (as amended Feb. 1, 1987); Ved. Verkh. Sov. RSFSR 1982, No. 49, item 1821; Ved. Verkh. Sov. RSFSR 1986, No. 23, item 638. According to article 4 of the 1986 Law, persons engaged in individual economic labor activity must use "property belonging to them by right of personal ownership . . ." The Draft Law on Property, made public on Nov. 18, 1989, in article 1 classified personal property as one of the forms of socialist property. Pravda, Nov. 18, 1989, at 3. See also Kalmykov, *Zakon o sobstvennosti* [Law on Ownership], 42 EKONOMICHESKAIA GAZETA 6 (1988) (Diagram). On individual economic labor activity's place in the system of Soviet socialist economy, see Malein, *K razrabotke zakona ob individual'noi trudovoi deiatel'nosti* [Toward the Drawing Up of a Law on Individual Economic (Labor) Activity], 10 Sov. Gos. & PRAVO 2, 31-35 (1986); Bykov, *Kompleks obshchestvennykh otnoshenii, reguliruemyykh Zakonom ob individual'noi trudovoi deiatel'nosti* [The Complex of Socialist Relations Regulated by the Law on Individual Economic (Labor) Activity], 3 VMU 29, 25-33 (1987).

21. See 25 Sov. STAT. & DEC. No. 1, pt. A, at 2-96 (1988).

22. See *id.*, No. 2, pt. B, at 5-45 (1988).

23. See *id.*, No. 2, pt. C, at 46-66 (1988).

improve the quality of goods and services,<sup>24</sup> to strengthen "legality,"<sup>25</sup> and to enact pecuniary sanctions against officials and individuals whose actions inflicted material damage to enterprises and institutions.<sup>26</sup> When the Law on IEA was enacted in November 1986, it was clear that the edicts and decrees of May and July 1986, "On the Intensification of the Struggle Against Nonlabor Income,"<sup>27</sup> were more than measures to deal with one of the "negative trends" in the development of Soviet society. They were also prerequisites for the subsequent enactment of the Law on Individual Economic [Labor] Activity. They *had to precede* the Law on IEA, *firstly* in order to make clear the lines of demarcation between "nonlabor income" and "income derived from individual labor activity," and *secondly*, to create an arsenal of stiff penalties in case the exercise of IEA under the Law of November 19, 1986 (and later also cooperative activities, under the Law of May 26, 1988),<sup>28</sup> degenerated into "nonlabor activity."<sup>29</sup> Also, the expanded scope of permitted individual economic labor activities and of the means of production that could be individually owned, was now matched by a corresponding stiffening of penalties in case of abuse, including the criminalization of "nonlabor income."<sup>30</sup> Since individual economic labor activity is now an integral part of the Soviet socialist economy, the "eradication of nonlabor income," even by means of criminal law, is its logical consequence, since "nonlabor income" is deemed alien to the nature of socialism. Pragmatism, in the restructuring of Soviet economy, should not be mistaken for an abandonment of socialism.

I could go on with other examples, but I believe the conclusion would remain the same: Pragmatic thinking in the economic sphere always emerges as a search for new *socialist models* into which newly-created institutions are tentatively integrated.

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24. See *id.*, No. 2, pt. D, at 67-91 (1988); No. 3, pt. D, at 1-100 (1989); No. 4, pt. D, at 1-53 (1989).

25. See *id.*, No. 4, pt. E, at 54-91 (1989).

26. See *id.*, No. 4, pt. F, at 92-123 (1989).

27. Decree of the CPSU Central Committee, *O merakh po usileniiu bor'by s netrudovymi dokhodami* [On Measures to Intensify the Struggle Against Nonlabor Income], May 15, 1986, SP SSSR 1986, No. 21, item 121, at 373-76; Edict No. 4719-XI of the Presidium of the USSR Supreme Soviet, *Ob usilenii bor'by s izulecheniem netrudovykh dokhodov* [On Intensifying the Struggle Against Nonlabor Income], May 23, 1986, Ved. Verkh. Sov. SSSR 1986, No. 21, item 120, at 368-72; Ved. Verkh. Sov. SSSR 1986, No. 22, item 364, at 369-73; Decree of the RSFSR Council of Ministers No. 329, *O merakh po usileniiu bor'by s netrudovymi dokhodami* [On Measures to Intensify the Struggle Against Nonlabor Income], July 22, 1986, SP RSFSR 1986, No. 20, item 154, at 412-15.

28. USSR Law No. 8998-XI, *On Cooperatives in the USSR*, May 26, 1988, Ved. Verkh. Sov. SSSR 1988, No. 22, item 355, at 375-421 [hereinafter *Law on Cooperatives*].

29. A "nonlabor activity" involves the hiring of outside labor (which was permitted under Lenin's NEP, but is not under Gorbachev's *perestroika*), speculation, or extraction of profits by means prohibited by law.

30. See 26 SOV. STAT. & DEC. No. 1, at 101-05 (1989). See also O. IOFFE, GORBACHEV'S ECONOMIC DILEMMA 176-80 (1989).

## 2. *The Revival of Cooperatives*

The mushrooming of *cooperatives* has become a hallmark of Gorbachev's economic *perestroika*, although significant, even if not exceedingly impressive, growth in the number of non-agricultural cooperatives has occurred only since the promulgation, on May 26, 1988, of the Law on Cooperatives.<sup>31</sup> Official statistics<sup>32</sup> show that between January 1, 1989, and July 1 of that year the number of such cooperatives in the Soviet Union increased from 77,548 to 133,000. During the first half of 1989, the number of individuals working in cooperatives increased from 1.4 million to 2.9 million.<sup>33</sup> After registration was ordered for all cooperatives and enterprises directly engaged in foreign trade operations in March 1989,<sup>34</sup> a surprising 1,400 producer cooperatives complied with this requirement by the following September.<sup>35</sup>

The continuing gap between demand and availability in consumer goods and services is usually cited as the principal impetus to the proliferation of cooperatives as well as the main reason why cooperatives have assumed a new significance in the strategic thinking of Party and government leaders. Cooperatives are perceived as a potentially vital instrument in overcoming this weakness in the Soviet economy and, consequently, as an integral aspect of *perestroika*.

Economic considerations played a major role in the Law on Cooperatives as well as in measures enacted in response to popular criticism of their activities. These measures include the imposition of price controls in an amendment to the Law on Cooperatives, introduced on October 16, 1989, to bring under control the often exorbitant prices charged by the cooperatives, as well as other measures intended to curb inflationary pressures.<sup>36</sup> Nevertheless, in a series of normative acts regulating the activities of the cooperatives, non-economic and political measures were resorted to in order to preserve the central government's role and oversight over the activities of the cooperatives. They include long lists of restrictions on what the cooperatives may produce, or which

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31. See *Law on Cooperatives*, *supra* note 28. See also Maggs, *Constitutional Implications of Changes in Property Rights in the USSR*, 23 CORNELL INT'L L.J. 201, 209 (1990).

32. See 13 EKONOMICHESKAIA GAZETA 14 (1989) (quoting from data compiled by the State Committee for Statistics of the USSR, 1988); 19 PRAVITEL'STVENNYI VESTNIK 10 (1989) (for the first six months of 1989).

33. 19 PRAVITEL'STVENNYI VESTNIK 10 (1989).

34. Cf. Decree of the USSR Council of Ministers No. 203, *O merakh gosudarstvennogo regulirovaniia vneshneekonomicheskoi deiatel'nosti* [On Measures Assigned to the State in Regulating Foreign Economic Activities], Mar. 7, 1989, SP SSSR 1989, No. 16, item 50, implementing Decree of the USSR Council of Ministers No. 1405, Dec. 2, 1988, SP SSSR 1989, No. 2, item 7, at 19-37, and article 28 of the *Law on Cooperatives*, *supra* note 28.

35. *Predpochtenie proizvoditeliu*, 42 EKONOMICHESKAIA GAZETA 20 (1989).

36. USSR Law, *On Amendments and Additions to the USSR Law, On Cooperatives in the USSR*, Oct. 16, 1989, reprinted in *Pravda*, Oct. 21, 1989, at 1. See also Sennagoz, *Tsel' - Sderzhat'rost' tsen'* [The Goal - To Halt Price Rises], 26 PRAVITEL'STVENNYI VESTNIK 8 (1989).



services they may offer,<sup>37</sup> as well as lists detailing what cooperatives may not export or import.<sup>38</sup> Some activities of the cooperatives may be exercised only on the basis of a contract with state enterprises and establishments "for whom such activities constitute their primary functions."<sup>39</sup>

Can Gorbachev's cooperatives still be made intelligible within a context of ideology? Certainly, although some conclusions point to innovations in comparison with Stalin and Khrushchev, or end in a question mark. There is no doubt, for instance, that cooperatives continue to be considered ideologically one step above individual economic labor activity and are entitled to preferential treatment because they are "more socialist." For example, while all IEA activities that can be lawfully engaged in by individual citizens are automatically open to cooperatives, cooperatives can perform additional tasks not available to individuals.<sup>40</sup>

Soon after the IEA Law went into effect on May 1, 1987, and even prior to the enactment of the Law of Cooperatives, Soviet authorities began to encourage citizens engaged in IEA to group in cooperatives.<sup>41</sup> Article 1(3) of the Law on Individual Economic [Labor] Activity of November 19, 1986, even declares that the Soviet State encourages citizens engaged in individual economic labor activity to either enter into contractual relations with State, cooperative or other enterprises, or to form cooperatives by grouping together with other citizens engaged in IEA, "following the procedure established by law." To provide incentives, such special cooperatives were declared eligible for government assistance, special privileges and benefits (including pensions) not available to individuals working on their own. Even the tax rates for cooperatives are more favorable.<sup>42</sup> Local authorities have considerable discretion to grant or refuse permits to engage in IEA and to subordinate authorizations to local economic needs.<sup>43</sup>

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37. See, e.g., Decree of the USSR Council of Ministers No. 1468, *O regulirovanii otidel'nykh vidov deiatel'nosti kooperativov . . .* [On the Regulation of Individual Types of Activities by the Cooperatives . . .], Dec. 29, 1988, SP SSSR 1989, No. 4, at 75-79 (with two schedules).

38. See, e.g., Decree of the USSR Council of Ministers No. 1440, *On Amendments to the List of Objects That Are Forbidden for Import and Export, To and From the USSR, Established by Decree of the USSR Council of Ministers No. 394, of 27 April 1981*, Dec. 21, 1989, SP SSSR 1989, No. 4, item 14, at 84.

39. See Decree of the USSR Council of Ministers No. 1468, *supra* note 37, app.2.

40. Cf. A. MAKSIMOVICH, STANOVLENIE I RAZVITIE NOVYKH KOOPERATIVOV [FORMATION AND DEVELOPMENT OF NEW COOPERATIVES].

41. *Id.* at 22.

42. Law of Nov. 13, 1986, article 1, *translated in* 26 SOV. STAT. & DEC., No. 1, at 39 (1989).

43. See, e.g., Edict No. 8614-XI of the Presidium of the USSR Supreme Soviet, Mar. 14, 1988, Ved. Verkh. Sov. SSSR 1988, No. 11, item 74, at 182, *translated in* 26 SOV. STAT. & DEC., No. 1, at 49-50 (1989); *Rekomendatsii o primenении nekotorykh polozenii Zakona SSSR "Ob individual'noi trudovoi deiatel'nosti"* [Recommendations on Implementation of Certain Provisions of the Law of the USSR 'On Individual Economic (Labor) Activity'], confirmed by the USSR State Committee for Labor and Social Problems and the USSR Ministry of Finance, on Feb. 26, 1987, No. 20-IG, *translated & commented in* 26 SOV. STAT. & DEC., No. 1, at 51 (1989).

Although article 10 of the Law on Cooperatives expressly forbids government interference in the economic or other activities of a cooperative, this prohibition does not, of course, extend to the cooperative's activities that it may not lawfully exercise. Among such forbidden activities is "publishing of works of science, literature and the arts,"<sup>44</sup> as well as production, exchange, distribution or public viewing of motion pictures and television films.<sup>45</sup>

It is interesting to note that in the case of the prohibition against publishing activities, the authorities have made it a point to invoke economic and other *pragmatic* reasons for the prohibition, citing such factors as shortages of newsprint and printing machinery.<sup>46</sup> But such pragmatic arguments continue to coexist with "socialist" considerations, such as reluctance to allow "commercial competition,"<sup>47</sup> and, at lower administrative levels, with old-fashioned censorship. I am thinking here of the unsuccessful attempt by a Soviet cooperative to distribute copies of an already printed new edition of Sigmund Freud's *Essays on the Psychology of Sexuality*; the distribution was stopped by the local authorities allegedly on grounds that "our young people don't need books about Freud."<sup>48</sup> I am willing to give credence to this report, which appeared in the *New York Times*, especially after Gennadi Gerasimov told the Dutch students, in answer to their question, that "No, 'The Last Emperor,' [the motion picture which was then being shown in Leiden], will not be seen in the Soviet Union because the commission which decides on such questions felt that the film contained no social message of interest to the Soviet people."

In the final analysis, the Soviet authorities are still reluctant to grant the cooperatives the last word on what their members may watch, read, or listen to. Nevertheless, in assessing Gorbachev's new cooperatives from the point of view of the interplay between pragmatism and ideology, one should not minimize either the extent of the innovations introduced under *perestroika* or the daring flexibility of the "socialist economic model" under Gorbachev. To be sure, it was Lenin himself who had said that socialism was an association of independent cooperatives and their members.<sup>49</sup> Under Stalin as well as under Khrushchev of the later period, the independence of the existing types of cooperatives was, in

44. Decree of the USSR Council of Ministers No. 1468, Dec. 29, 1988, *supra* note 37, app. 1, translated in 26 SOV. STAT. & DEC., No. 3 (1990).

45. *Id.*

46. See, e.g., Keller, *New Ban on Press in Russia; Decision Outlaws Co-ops to Protect State Monopoly*, Int. Herald Trib., Feb. 3, 1988, at 1 (statement by Gennadi Gerasimov); LITERATURNAYA GAZETA, Mar. 23, 1988, at 1 (remarks of M. Nenashev, chairman of the State Committee for Publishing, Printing and the Book Trade (Goskomizdat)).

47. See Keller, *supra* note 46.

48. See Clines, *Moscow Represses Freud's Slip into Print*, N.Y. Times, May 2, 1989, at A1, col. 2.

49. See Gorbachev, *Sotsialisticheskaya ideya i revoliutsionnaya perestroika* [*The Socialist Idea and Revolutionary Perestroika*], Pravda, Nov. 26, 1989, at 2. See also Smirnov, *Restructuring the "Citadel of Dogmatism"*, in VOICES OF GLASNOST: INTERVIEWS WITH GORBACHEV'S REFORMERS 89 (S. Cohen & K. van den Heuvel eds. 1989).

fact, surrendered in varying degrees to the State,<sup>50</sup> and their very existence required the express permission of appropriate government agencies. Gorbachev, on the other hand, has added elements to his cooperatives which undoubtedly go considerably farther than even Lenin had originally contemplated. I do not refer here merely to the introduction of such sound economic management techniques as full economic cost accounting and self-financing,<sup>51</sup> or even the leasing of buildings and equipment,<sup>52</sup> but also to the right of producer cooperatives to engage, beginning on April 1, 1989, directly in foreign trade activities (export and import) and other foreign economic transactions<sup>53</sup> (subject to restrictions spelled out in a decree issued in December 1988),<sup>54</sup> and, more particularly, to the growing scope of objects which the citizens can acquire in *personal* ownership.<sup>55</sup> Under a Decree of December 2, 1988, tenants in state apartment buildings may *buy* apartments in such buildings, and the tenants may then form a cooperative which will jointly own the apartment building itself, although the building must be administered by a state housing authority under a contract signed with the apartment owners' cooperative.<sup>56</sup>

To what extent is the Law of Cooperatives still primarily intelligible in an ideological context?

### 3. *The Law on the State Enterprise of June 30, 1987, and Its Fate*

The equivocation between pragmatism and ideology in the development of new institutions recurs constantly, as does the attempt to integrate the new institutions into the overall framework of the "new socialist economic model." This is perhaps best illustrated by the Law on the State Enterprise of June 30, 1987, which went into effect on January 1, 1988.<sup>57</sup> Chapter I, article 1 of the law characterized the new enterprise as the most fundamental link in the whole new structure of the Soviet

50. See Ioffe, *supra* note 30, at 103-04; Gorbachev, *supra* note 49, at 2.

51. See *Law on Cooperatives*, *supra* note 28, arts. 14, 17.

52. See Decree of the USSR Supreme Soviet, Enacting *Fundamental Principles of Legislation of the USSR and the Union Republics on Leasing [Arenda]*, Nov. 23, 1989 (with effect from Jan. 1, 1990), reprinted in *Izvestiia*, Dec. 1, 1989, at 3. The Decree repealed the edict of the Presidium of the USSR Supreme Soviet, *On Leasing and Relationships Based on Leasing*, Apr. 7, 1989, *Ved. Verkh. Sov. SSSR* 1989, No. 15, item 105 (except clause 18); reproduced in *Pravda*, Apr. 9, 1989. See also 19 *EKONOMICHESKAIA GAZETA* 7-8 (1989) (Decree of the USSR Council of Ministers No. 294, Apr. 7, 1989).

53. See *supra* note 34. See also 13 *EKONOMICHESKAIA GAZETA* 21-23 (1989).

54. See *supra* note 38. See also *On Licenses for Export and Import*, *Pravda*, Jan. 28, 1990, at 7.

55. See 26 *SOV. STAT. & DEC.*, No. 1, at 2, n.5 (1989) (examples cited).

56. Decree of the USSR Council of Ministers No. 1400, *O prodazhe grazhdanam v lichnuiu sobstvennost' kvartir v domakh gosudarstvennogo i obshchestvennogo zhilishchnogo fonda* [On the Sale of Apartments Belonging to State and Public Housing Stocks to Citizens Under Personal Ownership], Dec. 2, 1988, *SP SSSR* 1989, No. 1, item 4.

57. USSR Law No. 7284-XI, *O gosudarstvennom predpriatii (ob'edinenii)* [On the State Enterprise (Association)], June 30, 1987, *Ved. Verkh. Sov. SSSR* 1987, No. 26, item 385 [hereinafter *On the State Enterprise*]. This law was amended Aug. 3, 1989. See 34 *EKONOMICHESKAIA GAZETA* 5 (1989); and Edict of the Presidium of the USSR Supreme Soviet No. 10277, *Ob arende i arendnykh otnosheniakh v SSSR* [On Leasing and Relation-

economy. "We attach primary importance to the Law on the State Enterprise in our economic reform," Gorbachev declared, "we use it as a yardstick for our other steps and measures. We consider them from the point of view of how fully they conform to this law and contribute to its practical implementation."<sup>58</sup>

Subsequent to its first enactment, the Law on State Enterprise has been amended to include many new features, dictated for the most part by purely economic considerations and pragmatic motives.<sup>59</sup> These features include the leasing of enterprises or their individual components to workers' collectives and citizens (*arenda*),<sup>60</sup> and the ability to engage directly in foreign trade and other foreign economic activities.<sup>61</sup> Even more significantly, the law now includes a diversification of the forms of ownership, highlighted by the introduction of joint stock companies and limited liability companies.<sup>62</sup>

But when the step towards a pluralistic concept of ownership was subsequently consolidated in a new Draft Law on Ownership, introduced in the second session of the Supreme Soviet on November 14,

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*ships Based on Leasing*], Apr. 7, 1989, Ved. Verkh. Sov. SSSR 1989, No. 15, item 105, cl. 18. See also *supra* note 52.

58. M. GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD 86 (1989). This characterization has been repeatedly used since in Party Resolutions, legislative acts, and in reports by Party and government officials. See, e.g., Resolution of the USSR Supreme Soviet, *O perestroike upravleniia narodnym khoziaistvom na sovremennom etape ekonomicheskogo razvitiia strany* [On the Restructuring of the Management of National Economy at the Present Stage of the Country's Economic Development], June 30, 1987, Ved. Verkh. Sov. SSSR 1987, No. 26, item 384 ("Of key importance for the realization of the envisaged reforms is the adoption of the USSR Law on the State Enterprise (Association)."). See also *On the State Enterprise supra* note 57, art. 1.

59. See *supra* note 57.

60. See *supra* note 52.

61. See Decree of the CPSU Central Committee and the USSR Council of Ministers No. 991, *O merakh po sovershenstvovaniiu upravleniia vneshneekonomicheskimi svyaziami* [On Measures for Improving the Management of Foreign Economic Relations], Aug. 19, 1986, 9 SVOD ZAKONOV (1987), at 48-3; Decree of the USSR Council of Ministers No. 1405, *O dal'neishem razvitii vneshneekonomicheskoi deiatel'nosti gosudarstvennykh, kooperativnykh i innykh obshchestvennykh predpriatii, ob'edinenii i organizatsii* [On Further Development of Foreign Economic Activities of State-, Cooperative-, and Other Social Enterprises, Associations and Organizations], Dec. 2, 1988, SP SSSR 1989, No. 2, item 7, at 19-37; 51 EKONOMICHESKAIA GAZETA 17-18 (1988); VNESHNIAIA TORGOVLIA, No. 2 (Supp. 1989).

62. See Decree of the USSR Council of Ministers No. 1195, *O vypuske predpriatiiami i organizatsiiami tsennykh bumag* [On the Issuance of Negotiable Instruments by Enterprises and Organizations], Oct. 15, 1988, SP SSSR 1988, No. 35, item 100; Decree of the Council of Ministers of the Estonian SSR No. 385, *Ob utverzhdenii Polozheniia ob aktsionernom obshchestve* [On Confirmation of the Statute on Joint Stock Companies], Nov. 23, 1989, VED. EST. SSR 1989, No. 37, item 573, at 898-905 (translated from Estonian); Law of the Estonian SSR, *On Banks*, Dec. 23, 1989, VED. EST. SSR 1989, No. 41, item 647, 1012-26; Zhagel', *Novye banki, novye problemy* [New Banks, New Problems], Izvestiia, Jan. 30, 1990, at 1; Fedorov, *Ne Birzha, a rynek kapitalov* [Not a Stock Exchange, But a Capital Market], Moskovskie Novosti, Jan. 28, 1990, at 10 (according to the author there are at present more than 200 commercial and cooperative banks in the USSR); Romaniuk, *Sozdaetsia rynek tsennykh bumag* [A Market for Negotiable Instruments Being Created], Izvestiia, Jan. 3, 1990, at 1.

1989,<sup>63</sup> article 1 proclaimed socialist ownership to constitute the foundation of the social-economic system of the USSR. Socialist ownership, however, was defined as capable of taking on many forms, including that of personal property.<sup>64</sup> In the Soviet Union, "personal" property is distinct from private property. The many changes introduced in the economic structure of the Law on the State Enterprise, combined with the diversification of the forms of ownership, in turn required a complete revision of this law. But when a new Draft Law was introduced in the Supreme Soviet on October 2, 1989, it was no longer called the Law on the State Enterprise, but the Law on the Socialist Enterprise.<sup>65</sup> The socialist model of the economy was deemed compatible with the adoption of so-called traditional "capitalist" techniques.

#### 4. *Limiting the Painful Consequences of Transition to a Market Economy*

I believe I have made my point! If it is valid, I do not understand the outcry about a supposed retreat from *perestroika* from some of the delegates to the Congress of People's Deputies of the USSR who were meeting in December in a second 1989 session, such as the economist Gavril K. Popov.<sup>66</sup> Nor do I understand the concerns of Western observers including U.S. Secretary of State James A. Baker,<sup>67</sup> who seemed surprised that the new blueprint for economic growth was presented by Prime Minister Ryzhkov in the form of a Five Year Plan, the traditional Soviet instrument of central economic planning, which failed to yield to the forces of the free market on such basic positions as subsidies, real prices, and convertibility of the ruble. These critics have forgotten the paramount role of pragmatism in the decision-making process under *perestroika*.

President Gorbachev has repeatedly acknowledged that, ultimately, price controls and subsidies must give way to real prices determined by

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63. Decree of the USSR Supreme Soviet, *Publication of the Draft Law On Ownership in the USSR*, Nov. 14, 1987, (introduced by the USSR Council of Ministers after initial changes), reprinted in *Izvestiia*, Nov. 18, 1989 at 1-2, and *Pravda*, Nov. 18, 1989, at 3.

64. Article 1, *Socialist Property in the USSR*, provides:

1. The basis of the social-economic system in the USSR is socialist property which may take on a variety of forms of social [obshchestvennoi] property and personal [lichnoi] property of Soviet citizens.

2. Socialist property comes into being by the joint and individual labor of Soviet citizens . . . .

*Id.* at art. 1.

65. Cf. *Strategii uglubleniia ekonomicheskoi reformy - novuiu zakonodatel'nuiu osnovu* [*A New Legislative Basis for the Strategy of Intensification of Economic Reform*] (report by Chairman of the Council of Ministers N. Ryzhkov at the Second Session of the USSR Supreme Soviet), reprinted in *Pravda*, Oct. 3, 1989, at 2-4. Ryzhkov introduced *inter alia* the Draft Law On the Socialist Enterprise. *Id.* at 3. The Supreme Soviet voted to accept the Draft Law for consideration. See Decree of the USSR Supreme Soviet No. 561-I, Oct. 2, 1989, *Ved. Verkh. Sov. SSSR* 1989, No. 17, item 329.

66. See Clines, *Soviet Deputies Fault Gorbachev*, *N.Y. Times*, Dec. 14, 1989, at A1, col. 5.

67. See Friedman, *Baker Says Gorbachev's Economic Plan Lacks Basic Changes*, *N.Y. Times*, Dec. 16, 1989, at 10, col. 5.

the market mechanism and unprofitable enterprises must be shut down.<sup>68</sup> Furthermore, the convertibility of the ruble is, in fact, already being introduced by stages.<sup>69</sup> But Gorbachev has never renounced recourse to central planning when fundamental problems of the Soviet economy were involved, exceeding the frame of competence of voluntary associations and collectives.<sup>70</sup> Given the prevailing mood among Soviet consumers, Gorbachev felt that he could not knowingly unleash uncontrollable forces of inflation and expose the already disgruntled populace to the spectre of massive unemployment while still calling his *perestroika* a quest for a more perfect socialist system. For him, a sudden plunge into the worst consequences of capitalism without first offering the people a taste of its benefits could be political suicide. Poland has taken this plunge, but if Poland succeeds, it will be a victory for capitalism, not for socialism. N. P. Shmelev, the head of the Economics Department of the Soviet Institute for the U.S.A. and Canada, spoke of

68. See, e.g., Gorbachev's address to the Plenum of the CPSU Central Committee on July 29, 1988, reprinted in 12 KOMMUNIST 22-23 (1988). See also Decree of the Plenum of the CPSU Central Committee, June 26, 1987, reprinted in Pravda, June 27, 1987, at 3. On the basis of the Decree of June 26, 1987, a Joint Decree was published on July 17, 1987, by the CPSU Central Committee and the USSR Council of Ministers, No. 820, *Ob osnovnykh napravleniakh perestroiki sistemy tsenoobrazovaniia v usloviakh novogo khoziaistvennogo mekhanizma* [On the Main Directions of the Reorganization of the System of Price Formation Under Conditions of the New Mechanism of the Economy], reprinted in *O korennoi perestroike upravleniia ekonomikoi* [On Radical Restructuring of the Management of the Economy], in SBORNIK DOKUMENTOV [A COMPENDIUM OF DOCUMENTS] 150-64 (1987). The Joint Decree contained guidelines to agencies that were to draft the new pricing system as an important element of the economic reform. The failure of these reforms, thus far, to produce tangible results, and the growing dissatisfaction of the population with this failure (including irritation over the substantial rise in retail prices charged by the cooperatives) caused postponement of the pricing reforms and the decrees imposing a ceiling on prices.

For a recent discussion of steps towards establishment of a market mechanism in retail trade, see Romaniuk, *Cherez optovuiu torgovliu - k rynku* [Reaching the Market in Retail Trade], Izvestiia, Jan. 18, 1990. For statistics on business failures in 1988 under the new system of full cost accounting and self-financing, see Subbotin, *Predpriiatie ob "iavleno neplatezhеспособnym"* [An enterprise is declared bankrupt], 11 EKONOMICHESSKAIA GAZETA 15 (1989), (total number in the USSR was 1,752).

69. On Nov. 1, 1989, a highly devalued ruble was introduced in relation to freely convertible foreign currencies (US \$1 = 6 r. 26 k.) in a number of specified cases (including foreign currency needs of Soviet and resident foreign citizens traveling abroad). Thereafter, the rate fluctuates monthly. See Izvestiia, Oct. 25, 1989, at 6. See also Mikheev, *Valiuta ukhodit ot 'teni'* [Hard Currency Leaves the "Shadows"], Pravda, Oct. 28, 1989; Berger, *Rubl' i dollar: detali vzaimootnoshenii* [The Ruble and the Dollar: Details of Their Mutual Relationship], Izvestiia, Oct. 28, 1989; Gerashchenko, *Konvertnost' rublia: Iselesobraznost', predposylki, perspektivy* [Convertibility of the ruble: Expediency, Prerequisites, Prospects], 3 VNESHNIAIA TORGOVIA 45-48, (1989); *Kak sdelat' rubl' konvertiruemyim* [How to make the ruble convertible] (roundtable discussion), 19 PRAVITEL'STVENNYI VESTNIK 8-9 (1989); Gumbel, *Soviets Will Devalue Ruble 50% on Business Over Next Two Years*, Wall St. J., Dec. 12, 1988, at 1, 6; Passell, *Next Step for Ruble: Devaluation is Likely to Set Stage for Making the Currency Convertible*, N.Y. Times, Oct. 26, 1989, at D2, col. 1.

70. See Gorbachev, *supra* note 49, at 2.

"unbearable social tensions" if retail prices rose suddenly.<sup>71</sup> And A. Glushetskii, writing in *Ekonomicheskaiia Gazeta* [*The Economic Gazette*], justified the imposition of mandatory price controls upon the cooperatives in the following terms:

"The most acute social problem relating to the cooperative movement is connected with prices for goods and services. The right of cooperatives to determine, as a rule independently, the prices for the goods manufactured by them, led, in the circumstances of the current shortages of consumer goods and services, to a *de facto* monopoly on [unchecked] price increases. The population found itself, for all practical purposes, defenseless in the face of the cooperatives' *diktats*. Some seventy percent of consumers find the goods and services of the cooperatives out of their reach, even though they have a need for many of them."<sup>72</sup>

Similarly, V. I. Shum, a senior member of the Commission for Economic Reform of the USSR Council of Ministers, spoke at length about the need to introduce measures for the purpose of "preventing the growth of inflationary processes in the country" and concluded, "we haven't yet come to grips with the destructive consequences of the looming danger of inflation."<sup>73</sup> To Mr. Baker, of course, spiraling inflation, along with growing unemployment, was part of the *solution* to the Soviet economic dilemma, not a part of the *problem* itself. Meanwhile, the search for an answer within the framework of the new Soviet "socialist economic model" is still on.

Although centralized economic planning seems contrary to a market economy, the continued use of Five Year Plans that embody a centrally-planned blueprint for the long-range development of Soviet economy cannot in itself be interpreted as a retreat from *perestroika* as long as the amended text of the 1977 Constitution, enacted on December 1, 1988,<sup>74</sup> remains in effect. Article 108(5) of chapter 15 expressly assigns exclusive jurisdiction over the confirmation or rejection of *long-term state plans* for the economic development of the country to the Congress of the People's Deputies of the USSR. Such state plans, in accordance with article 131(2) of chapter 16 of this same amended version of the Constitution, are formulated and submitted to the Supreme Soviet by the USSR Council of Ministers. The Congress approved the latest proposed Five Year Plan by a margin of 1,532 votes to 419.<sup>75</sup> Formally,

71. *Perestroika: The View from Moscow*: "We Are Doomed to be Successful," N.Y. Times, April 30, 1989, § 3, at 2, col. 3.

72. Glushetskii, *Kooperativy: Tseny, nalogi* [Cooperatives: Prices and Taxes], 15 *EKONOMICHESKAIA GAZETA* 13-14 (1989).

73. 42 *EKONOMICHESKAIA GAZETA* 9 (1989).

74. For an English translation of the 1977 Constitution, see *THE CONSTITUTIONS OF THE USSR AND THE UNION REPUBLICS: ANALYSIS, TEXTS, REPORTS* 71-171 (F. Feldbrugge ed. 1979). For the 1988 amended text, see Feldbrugge, *Comparative Text of the 1977 USSR Constitution with Draft and Final Amendments*, 15 *REVIEW OF SOCIALIST LAW* No. 1, at 76-115 (1989).

75. See Clines, *Gorbachev Wins Vote on Economy*, N.Y. Times, Dec. 20, 1989, at A18, col. 6. For the Decree of the Second Congress of the People's Deputies of the USSR approving N. I. Ryzhkov's Report, see *Izvestiia*, Dec. 22, 1989, at 1.

a new amendment of the Constitution alone (or a new Constitution which is currently being prepared by a commission appointed by Congress) could abolish central economic planning.

None of this, of course, answers the real question: To what extent can a market economy, if it is indeed the ultimate goal of Gorbachev's reform, be combined with centralized economic planning? But then, Gorbachev never did promise his people a capitalist rose garden.<sup>76</sup>

##### 5. *Pragmatism and Politics: Gorbachev's Visit to the Pope and "Ideological Omnivorousness"*

The interaction between expediency (or pragmatism) and ideology takes on an entirely different configuration once we leave the field of economy and enter the domain of politics. It becomes, in fact, much more complicated. In economic legislation, pragmatism often lies in its motives or its substance, upon which an ideological *imprimatur* is formally conferred by calling the legislation "socialist" or claiming that it contributes to the strengthening of *perestroika*. In the case of *political* pragmatism, one sometimes finds it in actions and pronouncements of Soviet and Party leaders which clearly contradict either a law, the Constitution, or — *horrible dictu* — the CPSU program, even though such actions or pronouncements may be valuable portents of legislation soon to be introduced.

For example, President Gorbachev was clearly violating the Soviet Constitution of 1977 when he told Pope John Paul II during his state visit to the Vatican:

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76. Soviet economic reformers approach the conversion to a market economy with a set of priorities: (a) the conversion itself is not challenged by "alternatives"; (b) the dismantling of the administrative command economy must not result in the dismantling of socialism; and (c) the conversion is to be accomplished in stages (and possibly completed in five to six years), with the reform of the planning process proceeding in tandem with the introduction of market elements. The restructuring of the pricing mechanism itself envisages a three-tier system, with each component evolving toward the free-market model in a different, planned manner. To make the current rigid planned-economy system amenable to the conversion while preserving the socialist features of the economy, first priority must be given to reforms affecting the economic "basis" of the Soviet society (as opposed to "superstructure"), in Marxist parlance. Legislation effecting the necessary changes is currently being enacted — including laws on land, ownership, leasing, territorial alternatives, cooperative principles, joint stock companies, etc. — and must be assimilated. Reform of the financial mechanism of the economy is currently planned for 1993-1995 (including a two-tier banking system and anti-monopoly laws). For further detail, see Gorbachev, *Vse tsennoe - v praktiku* [Everything of Value — To Be Converted to Practice], *Pravda*, Nov. 6, 1989, at 2; *Reforma ekonomiki: prognoz na zavtra* [Economic Reform: Prognosis for Tomorrow] (Stenographic transcript of a session of the Presidium of the Council of Ministers of the USSR), reprinted in 24 *PRAVITEL'STVENNYI VESTNIK* 1, 8-9 (1989); *Rynok i ozdorovlenie ekonomiki* [The Marketplace and Normalization of the Economy] (Interview with A. V. Orlov), reported in 3 *PRAVITEL'STVENNYI VESTNIK* 3, (1990); *Radikal'naia Ekonomicheskaiia Reforma: Pervoocherednye i dolgoversennnye mery: Materialy dlia obsuzhdeniia* [Priorities and Long-term Measures: Discussion Papers], 43 *EKONOMICHESKAIA GAZETA* 4-7 (1989).



[N]ow we not only proceed from the assumption that no one should interfere in matters of the individual's conscience . . . [w]e also say that the moral values that religion generated and embodied for centuries can help in the work of renewal in our country, too . . . . In fact, this is already happening.<sup>77</sup>

This is hardly compatible with the Constitution of 1977, which in article 52 only permits the conduct of atheist propaganda, not the spread of pro-religious sentiments. I don't know how one would classify the spectacle of bells pealing at St. Basil's Cathedral in Red Square.<sup>78</sup>

It is true that Lenin once dismissed religion as a problem of "third-rate importance" for communism.<sup>79</sup> But it is equally true that Khrushchev, often regarded as the father of the Gorbachev reforms,<sup>80</sup> issued a decree in 1954 in which he stressed that the Communist Party, based on the scientific theories of Marx and Lenin, cannot remain neutral and indifferent towards religion but must wage an unrelenting ideological battle against it.<sup>81</sup> Khrushchev's decree "on atheistic education" is more consistent with the letter and spirit of the Soviet Constitution.

As another example of pragmatism in the political realm are certain statements of the new Soviet Minister of Culture, Nikolai N. Gubenko, which in my opinion are clearly at odds with the CPSU Party Program in its most recent revised version of 1986. As introduced by Secretary-General Gorbachev himself at the Twenty-seventh Party Congress in 1986,<sup>82</sup> after one full year of *perestroika*, it lists "socialist realism" as the basis of Soviet arts and literature and the Party was exhorted to continue its war on "ideological indifference" (*bezydeinnost'*) and "ideological omnivorousness" (*mirovozzrencheskaia vseiadnost'*).<sup>83</sup> When Minister Gubenko was asked on November 21, 1989, the day of his confirmation, about his views on "socialist realism" in the arts, he responded: "I don't know what this means . . . [E]ach of us artists has his own [concept of] realism." He claimed that there was no time for theory now and suggested that "[i]t is the task of the new generation to exclude this kind of formula."<sup>84</sup> Gorbachev himself appears to have partaken of "ideological omnivorousness" when he vowed in 1989: "[t]o develop our culture

77. Haberman, *Gorbachev Lauds Religion on Eve of Meeting Pope*, N.Y. Times, Dec. 1, 1989, at 1, col. 3.

78. See Clines, *Bells Are Ringing as Soviets Return Churches to Faithful*, N.Y. Times, Apr. 16, 1989, at 1, col. 4.

79. See MCFADDEN, *THE PHILOSOPHY OF COMMUNISM* 128 (1939).

80. See Smirnov, *supra* note 49, at 23, 103, 143, 248-49, 290.

81. See Levitsky, *Khrushchev's Decree on Atheistic Education*, 93 AMERICA 428-30 (1955). For Marx's views on religion, see, e.g., MCFADDEN, *supra* note 79, at 118-31; S. HOOK, *FROM HEGEL TO MARX; STUDIES IN THE INTELLECTUAL DEVELOPMENT OF KARL MARX* 291-93 (1958). For Lenin's views, see, e.g., L. SCHAPIRO, *THE COMMUNIST PARTY OF THE SOVIET UNION* 346-47 (1960).

82. MATERIALY XXVII S'EZDA KOMMUNISTICHESKOI PARTII SOVETSKOGO SOIUZA [DOCUMENTS OF THE 27TH CONGRESS OF CPSU] 91-96 (1986).

83. *Id.* at 169-70. For the full text of the revised Party Program, see *id.* at 121-87.

84. Kisselgoff, *The New Minister of Soviet Culture Takes Truth as Task*, N.Y. Times, Dec. 27, 1989, at C13, col. 1.

through . . . acceptance of all that is applicable in our conditions.”<sup>85</sup>

But in both examples — formal violations of the Constitution and the CPSU Party Program — we must keep in mind that a new Constitution was, in fact, already being drafted by a commission set up by the First Congress of the People’s Deputies,<sup>86</sup> a new Law on the Freedom of Conscience was promised by Gorbachev in his visit with Pope John Paul II, and the draft of a new Party Program (or platform, as it was referred to), was about to be introduced to the Party’s Central Committee by Secretary-General Gorbachev. It was approved by the Plenum on February 7, 1990.<sup>87</sup>

There are some political and ideological issues, however, on which Soviet leaders are less likely to adopt a casual attitude or indulge in “opportunism” in their pronouncements (for example, on questions of “private ownership” *vs.* “personal ownership,” or on article 6 of the Constitution which assigns to the Communist Party the monopoly as the leading and guiding force in Soviet society and the nucleus of its political system and of state and social organizations). During the first five years of *perestroika*, the Soviet government remained adamant in its ideological positions on these questions against all opponents, including those in Congress and the Supreme Soviet — rigid adherence to the Party line, principled, and truly Marxist-Leninist.<sup>88</sup> Or so it seemed. Yet, when the time came, it was Gorbachev himself who led the opposition to the retention of the Party’s constitutionally-guaranteed status. The Plenum of the Party’s Central Committee on February 7, 1990, went along with Gorbachev’s proposal.<sup>89</sup> This was no doubt the most

85. Gorbachev, *supra* note 49, at 1, col. 6; *id.* at 2, col. 3.

86. See Gorbachev, *supra* note 8, at 3.

87. See *O proekte platformy TsK KPSS k XXVIII S“ezdu partii* [On the Draft of the Platform of the CPSU C.C. in View of the XXVIII Party Congress] (Report by M. S. Gorbachev to the Plenum of the CPSU Central Committee), Feb. 5, 1990, reprinted in *Pravda*, Feb. 6, 1990, at 1-2. For the text of the Platform, see *Izvestiia*, Feb. 13, 1990, at 1-2 (the full title is *K gumannomu, demokraticheskemu sotsializmu: Platforma TsK KPSS k XXVIII S“ezdu partii* [Towards a Humane, Democratic Socialism: Platform of the CPSU C.C. for the XXVIII Party Congress]). The Platform is to be used as an interim document pending the drafting and adoption of a new Party Program.

88. The Party’s opposition to the recognition of “private” ownership as opposed to “personal” ownership prevailed in all new laws adopted by Congress and the Supreme Soviet during autumn 1989 and winter 1989-90. The Party’s opposition to the abolition of article 6 of the Constitution of 1977 was forcefully articulated by Gorbachev until mid-January 1990. The road traveled by Gorbachev between his Lithuanian visit and the Plenum of February was eloquently staked by headlines in the *New York Times*: *Gorbachev Says the Party Should Wait Before Sharing Power* (Dec. 10, 1989); *Gorbachev Blocks Debate on Ending Party Supremacy* (Dec. 13, 1989); *Gorbachev Hints He Would Accept Multiparty Rule* (Jan. 14, 1990); *Gorbachev Calls on Party to Forgo Power Monopoly*; *Meets Hard-Line Opposition* (Feb. 6, 1990); *Gorbachev Gains Support in Rauous Debate on Role of Party, Delegates Report* (Feb. 7, 1990); *Soviet Leaders Agree to Surrender Communist Party Monopoly on Power* (Feb. 8, 1990); *While Gorbachev Gives In, the World Marvels at His Power* (Feb. 11, 1990).

89. In the “Platform” adopted on Feb. 7, 1990, section IV provides:

The development of [our] society does not exclude even the possibility of the creation of [political] parties. The manner of their establishment will be determined by law and reflected correspondingly by the Constitution of the

eloquent example of the respective strength of pragmatism and ideology under Gorbachev's *perestroika* and I shall return to it again.

#### B. *Perestroika*: The Ideological Element

With the events in Eastern Europe of late 1989 still fresh in our memories, it may be difficult to summon sufficient interest to look at obsolete or even recent blueprints for the transition to integral communism or listen to debates about the forms of dictatorship of the proletariat.<sup>90</sup> How utterly irrelevant such concepts have suddenly become! Or have they? The masses did rise and overthrew their oppressors. Only in China have they failed, and a capitalist government rushed in to toast the victors. But on which side of the barricades was the "proletariat"? Which social class was being exploited and which was finally overthrown? The old superstructure is being dismantled, but it was erected under the "dictatorship of the proletariat," the product of a utopia that had nowhere else to go. The debate which has divided the communist movement for over seventy years — when and how will the State wither away—has received an answer in Eastern Europe: the State will remain, but the Communist Party will wither away. The Party's role as the "vanguard of the proletariat" has brought the countries of Eastern Europe to the brink of economic disaster and plunged the Party itself into a moral bankruptcy. Except in Romania, where an aging dictator had hoped to cling to his mantle of despotic Stalinism, the Party's failures have forced it to abdicate its "dialectical" mission virtually without a shot being fired.

And yet Gorbachev, the man who made the revolutions of Eastern Europe possible without taking credit for them because, in his own words, they were "the logical outcome of a certain stage of development" which called for change and that change will make them better

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USSR . . . . The CPSU has no claims on a monopoly and is ready to enter into a political dialogue and to collaborate with all those who speak for a renewal of socialist society . . . .

#### Section VII:

The CPSU will . . . struggle to maintain its status as the ruling party within the framework of a democratic process . . . . [The] party, exercising the right of legislative initiative, deems it indispensable to introduce an appropriate proposal in the Congress of the People's Deputies . . . concerning Article 6 of the country's Basic Law [i.e., Constitution].

Izvestiia, Feb. 13, 1990, at 1-2, excerpted in English in N.Y. Times, Feb. 14, 1990, at A12.

90. On the vicissitudes of the doctrine of the "Dictatorship of the Proletariat," see, e.g., I. Lapenna, *Dictatorship of the Proletariat and the All-People's State in the Light of Original Marxism*, in PERSPECTIVES ON SOVIET LAW FOR THE 1980s 33-35 (1982); G. Ginsburgs, *Dictatorship of the Proletariat Versus the All-People's State: Constitutional Contrasts*, *id.* at 13-31; A. Fogelklou, *Dictatorship of the Proletariat*, in ENCYCLOPEDIA OF SOVIET LAW 253-54 (2d ed., F. Feldbrugge, G. van den Burg, & W. Simons, eds. 1985); R. SCHLESINGER, MARX: HIS TIME AND OURS 41, 240, 252, 332-33, 415 (1950); J. PLAMENATZ, GERMAN MARXISM AND RUSSIAN COMMUNISM 155-56, 243-44, 268-69, 299-300, 322-24, 326-28 (1954).

societies<sup>91</sup> pledged to revive Marxism in the Soviet Union under the leadership of the Communist Party<sup>92</sup> by means of *perestroika*. In fact, he said, the destinies of *perestroika* depended on the initiatives of the Party.

### 1. *Lenin's New Economic Policy and Perestroika*

Stephen F. Cohen looks upon Lenin's New Economic Policy (NEP) as the primary source of *perestroika*'s ideological legitimacy.<sup>93</sup> Significantly, Lenin's retreat from the ruinous economic policies of War Communism by introducing many elements of the market economy is now assessed by Gorbachev's reformers as a "renewal of socialism." This could be a most pragmatic ideological safety valve should the current economic crisis force Gorbachev to take a faster plunge into market economy than he had intended. But following Lenin's death and the advent of Stalin's own brand of state socialism and command economy, NEP entered history as merely a respite from the economic ruin of War Communism and a temporary retreat from socialist orthodoxy. Gorbachev, on the other hand, aspires to make his own reforms irreversible. Cohen also believes that without Khrushchev there would have been no Gorbachev,<sup>94</sup> although his fourteen high-level Soviet *perestroishchiki* whom he interviews together with Katrina van den Heuvel cite only Khrushchev's role in repudiating Stalinism and his abortive literary thaw.

Thus, I should like to briefly indicate the extent to which, in my opinion, Khrushchev's blueprint for the establishment of socialism and communism has either been retained or repudiated by Gorbachev, to be replaced by his own "platform" of *perestroika*. To "Z" of *Daedalus* fame, of course, possible differences are nothing if not a desperate exercise in expediency in the pursuit of identical ideological goals, which Z reduces to one inevitable model: totalitarian Stalinism.<sup>95</sup> I beg to disagree.

### 2. *Perestroika and Khrushchev's "Integral Communism"*

There are more than cosmetic differences between Gorbachev's platform and the "blueprint for the building of communism" drafted by Khrushchev, that Romantic of communism who was convinced that his own generation of Soviet people "will live to enjoy the benefits of inte-

91. For Gorbachev's characteristic responses to the events in Eastern Europe in late 1989 at numerous press conferences, see, e.g., The Bush-Gorbachev News Conference in Malta, *reprinted in* N.Y. Times, Dec. 4, 1989, at A12.

92. See Smirnov, *supra* note 49.

93. *Id.* at 17.

94. *Id.* at 290.

95. Z, *To the Stalin Mausoleum*, 119 DAEDALUS 295-344 (1990). The conclusions were adapted in *The Soviets' Terminal Crisis*, N.Y. Times, Jan. 4, 1990, at A23, col. 1, and uncritically praised on the same page. Safire, *The Z Document: "Mr. X" in Our Time*, N.Y. Times, Jan. 4, 1990, at A23, cols. 5-6. The fanfare accorded Z's article in the N.Y. Times was unprecedented.

gral communism."<sup>96</sup> This has nothing to do with the fact that, as Nikolai Shmelev observed, Khrushchev was "only semi-educated and not sufficiently skilled as a politician."<sup>97</sup> That would be like saying that Gorbachev, instead of exclaiming at the United Nations "we shall bury you," as Khrushchev had done, would have used Shakespeare's loftier "I shall live your epitaph to make."<sup>98</sup> The contrast lay in a different approach to communism, a different interpretation of the historical stage currently reached by the Soviet Union, and a difference in methods required to get from here to there. It is irrelevant that to us this journey might seem, in the words Graham Greene used in a different context, "a dusty pilgrimage towards a dubious and uninteresting conclusion."<sup>99</sup> The stated goal, after all, may provide us with a yardstick to measure the progress of Gorbachev's reform just as it allowed us to appreciate the full extent of the failure of Khrushchev's.

### 3. Stalin's "Socialism in One Country"

The common point of departure in evaluating and comparing Khrushchev's and Gorbachev's ideological positions lies in what Marx had failed to predict and what Stalin was forced to do, in part by expediency, as a consequence of this failure. Stalin successfully advanced his theory of "Socialism in One Country," (despite "Capitalist Encirclement"), as opposed to Trotsky's "world revolution first,"<sup>100</sup> after it had become clear that the 1917 revolution would remain confined to Russia alone. And, having built socialism in Russia, which was State socialism but socialism nevertheless, Stalin half announced and half implied that he would go on building communism alone, without awaiting final victory of socialism globally (Marx notwithstanding), and without awaiting the liquidation of capitalist encirclement.<sup>101</sup>

96. See *Programma KPSS [Program of the CPSU]* (adopted by the XXII CPSU Congress on Oct. 31, 1961), reprinted in 3 *XXII S"ezd Kommunisticheskoi partii Sovetskogo Soiuzu. Stenograficheskii Otchet [XXIIth Congress of the Communist Party of the Soviet Union, Stenographic Transcript]* 276 (1962); N. Khrushchev, *O programme KPSS*, id., vol. 2, at 167.

97. SHMELYOV, *The Rebirth of Common Sense*, in *VOICES OF GLASNOST: INTERVIEWS WITH GORBACHEV'S REFORMERS* 143 (S. Cohen & K. van den Heuvel eds. 1989). The late British writer and political commentator, Edward Crankshaw, would have disagreed with Shmelev. In *Khrushchev's Russia*, he wrote: "[B]oth Malenkov and Khrushchev are first-class politicians, the latter rather more first-class than the former." E. CRANKSHAW, *KHRUSHCHEV'S RUSSIA* 61 (1959).

98. SHAKESPEARE'S SONNETS AND A LOVER'S COMPLAINT 85 (S. Wells ed. 1985) (Sonnet 81).

99. GREENE, *Henry James: The Private Universe* in *COLLECTED ESSAYS* 21 (Penguin Ed. 1981) (reprint of a 1936 essay).

100. See E. CARR, 2 *SOCIALISM IN ONE COUNTRY* 1924-26, pt. I, 36-51 (1959) (vol. 6 of Carr's *A History of Soviet Russia*).

101. See Medalie, *The Communist Theory of State*, 18 AM. SLAVIC & E. EUR. REV. 510, 520-21 (1959).

#### 4. *Khrushchev's Integral Communism*

Nikita S. Khrushchev's pronouncements on future communist society constitute a far greater contribution to the "creative development of Marxism-Leninism" on this subject than for which Stalin could ever take credit. Although Khrushchev's views do owe a great debt to both Lenin and Stalin, the differences are more significant than the similarities. Such differences were the product of Khrushchev's own analysis, inspired by his re-assessment of the balance of power in the post-war world, and resulting from the formation of a ring of satellite buffer states along Soviet borders, the emergence of new political structures on the ashes of the former colonial empires, China's claim to have found a "shortcut" to communism, and the modified political, military, and economic situation in the Soviet Union itself.<sup>102</sup>

Mikhail S. Gorbachev did not, at first, expressly quarrel with Khrushchev's basic assessment; he merely revised and even reversed Khrushchev's conclusions in line with a new political reality which he preferred to call a new stage, reached by the Soviet Union and the world in the second half of the 1980s. And indeed, both the Soviet Union and the world *had* changed a great deal in the late 1980s.

Khrushchev believed that the new post-war geopolitical realities allowed the Soviet Union to repudiate some of Stalin's "fundamental laws" concerning the building of communism in Soviet society, such as the concepts of "Socialism in One Country"<sup>103</sup> and "Capitalist Encirclement."<sup>104</sup> Communism, Khrushchev believed, could again be built on an international scale, just as Marx had said it would be, and "integral communism" was within sight. It was on the State's role during the period of transition to integral communism, and under communism itself, that Khrushchev voiced some of his most original ideas, not hesitating to deviate even from Lenin's views on this subject (*e.g.*, on the role of violence).<sup>105</sup> While believing that the "withering away of the State"

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102. Many of Khrushchev's conclusions were articulated by him at the 21st Party Congress held 31 years ago (Jan. 27-Feb. 5, 1959). For the transcript of Khrushchev's Report, see *Pravda*, Jan. 28, 1959, at 9, col. 4.

103. On the theory and building of "Socialism in One Country," see, *e.g.*, CARR, *supra* note 100, at 36-51 (Carr devoted four volumes of his *History of Soviet Russia* to "Socialism in One Country." The four volumes were published between 1958 and 1964). See generally HISTORY OF THE COMMUNIST PARTY OF THE SOVIET UNION (BOLSHEVIKS): SHORT COURSE 415-28 (1951) (an official English version, published under Stalin).

104. J. STALIN, PROBLEMS OF LENINISM 189-90 (1953). For Khrushchev's repudiation of this doctrine, see *Pravda*, Jan. 28, 1959, at 9, col. 4.

105. Classical Marxist-Leninist doctrine considered violence indispensable to achieving the three goals of the proletarian revolution: to seize power; to crush the resistance of the defeated bourgeoisie; and to guide the masses in the work of organizing a socialist society. See K. MARX, THE COMMUNIST MANIFESTO 82 (Gateway English ed. 1954); V. LENIN, STATE AND REVOLUTION 15-16 (English ed. 1932). Stalin justified his rule of terror by his thesis, according to which class struggle becomes more acute with the advance towards a higher phase of socialism. Cf. L. Labedz, *Ideology: The Fourth Stage*, 8 PROBLEMS OF COMMUNISM No. 6, 1959, at 3-5. Khrushchev modified the thesis on the absolute need for violence as the main pro-

can begin even during the "preliminary stage of communism," i.e., "socialism,"<sup>106</sup> by gradually turning over some of the functions of the State to "social" organizations,<sup>107</sup> Khrushchev denied that there was a "shortcut" to communism (such as was implied by the Chinese "Big Leap Forward")<sup>108</sup> and drew up a blueprint for a "unified approach" towards transition to communism, in which all socialist countries would reach "integral communism" simultaneously.<sup>109</sup>

As for the final "withering away" of the State, Khrushchev subordinated it to the fulfillment of a number of political, economic, and social prerequisites.<sup>110</sup> He saw it as a process of "gradual evolution towards communist self-government."<sup>111</sup> But while the formal State apparatus in the other socialist countries would gradually wither away, and the State borders would themselves become pointless,<sup>112</sup> the State would linger on in the Soviet Union, although its function would be chiefly that of coordinating economic integration within the Communist Commonwealth.<sup>113</sup>

Gorbachev never discussed the dynamics of integral communism nor the process of the withering away of the State under communism, and for good reason, as we shall see.

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motor of the proletarian revolution. Cf. S. Possony, *Nonviolent Violence: Khrushchev's Program for Conquest*, in THE GREAT PRETENSE, H.R. REP. NO. 2189, 84th Cong., 2d Sess., at 5-14 (1956). Khrushchev stressed the role of persuasion instead. Cf. P. ROMASHKIN, in 2 SOV. GOS. & PRAVO 17-30 (1960).

106. To which as time progressed, was added the stage of "mature socialism." KONST. SSSR, Preamble (1977). See also Pravda, Jan. 28, 1959, at 8.

107. In the field of justice; maintenance of public order; growing participation of the masses in the political life of the country, etc. Pravda, Jan. 28, 1959, at 9; ROMASHKIN, *supra* note 105, at 25-27. For excerpts from the Statutes on the People's Guards and on Comrade's Courts, see J. HAZARD, W. BUTLER & P. MAGGS, THE SOVIET LEGAL SYSTEM 19-30 (3d ed. 1977); J. HAZARD, W. BUTLER & P. MAGGS, THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980s 18-21 (1984). See also A. LEPESHKIN, XXI S'ezd KPSS o gosudarstve [THE XXI CONGRESS OF THE CPSU ON THE STATE] 26-29 (1959); V. GSOVSKI, *Legislation of the Soviet Republics and Laws on Anti-Soviet Parasitic Elements*, in 5 HIGHLIGHTS OF CURRENT LEGISLATION AND ACTIVITIES IN MID-EUROPE 405-09 (1957); V. GSOVSKI, *An Analysis of the Soviet Union's Revised Criminal Code*, NEW LEADER, Apr. 27, 1959, at 11; Decree of the CPSU Central Committee, *On the Tasks of Party Propaganda in Present-Day Conditions*, Jan. 9, 1960, reprinted in 1 KOMMUNIST 10-24 (1960).

108. Pravda, Jan. 28, 1959, at 8-9. See also Levitsky, *Post-Mortem of a Party Congress*, AMERICA, May 2, 1959, at 274-75.

109. See Levitsky, *supra* note 108, at 273; Levitsky, *Soviet-Satellite Relations*, AMERICA, Mar. 12, 1960, at 709; Pravda, Jan. 28, 1959, at 9, col. 4.

110. These included, inter alia, (a) various measures for "further democratization" of the Soviet system (political and cultural democracy, social "self-government," popular justice, creation of a "territorial army"); (b) expansion of socialist production, raising the living standards of the population, raising collective farm property to the level of public property; (c) gradual elimination of antitheses between industry and agriculture, and between physical and mental labor.

111. See Khrushchev, *supra* note 4.

112. *Id.*

113. See LEPESHKIN, *supra* note 107, at 7-12; Davletkel'diev, *Razvitie XXI S'ezdom KPSS ucheniia o sotsialisticheskome gosudarstve* [The Teaching About the Socialist State as Developed by the XXI Congress of CPSU], 11 KOMMUNIST 17 (1959).

### 5. *Gorbachev's Rejection of Confrontation and Endorsement of Different Paths to Socialism*

Gorbachev implicitly agreed with Khrushchev on the need for discarding Stalin's doctrine of "Capitalist Encirclement," but replaced Khrushchev's justifications. Instead of stressing Soviet industrial and military might as making the likelihood of foreign aggression against the Soviet Union unlikely while permitting the two ideologically hostile camps of class enemies to co-exist and even compete in an armed peace, (with the knowledge that in time the inner contradictions within the capitalist bloc will cause its disintegration in line with Marxist teaching),<sup>114</sup> Gorbachev played down class antagonism and ideological differences in favor of common human values, fears, and aspirations. This made cooperation and the common cause the only alternative to confrontation and total annihilation of our common civilization, the preservation of which we are jointly responsible.<sup>115</sup> He did not, however, give up the theory of inner contradictions of capitalism. Gorbachev was not about to boast of Soviet economic might and pleaded for a concerted reduction of the military threat to permit concentration on the economic ravages caused by both Stalin's brand of "Socialism in One Country" and the mismanagement of the country's economy by administrative fiat and sheer stagnation under Stalin's successors.

Unlike Khrushchev, Gorbachev does not invoke the formation of a belt of satellite buffer states along the Soviet borders as an argument for the discarding of the doctrine of "Capitalist Encirclement." The pragmatic lessons of recent history have taught Gorbachev that Stalin's doctrine of "Socialism in One Country," which Khrushchev had discarded, should not be replaced with "Simultaneous Transition to Communism," but with "Multiplicity of Models in Building Socialism." The time for Integral Communism is not close at hand.<sup>116</sup> Gorbachev is not a romantic *à la* Khrushchev.

### 6. *The Ideological Justifications for Reform*

Both Khrushchev and Gorbachev were very slow in addressing theoretical questions of the transition of Soviet society from the preliminary stage of "socialism," or even "mature socialism,"<sup>117</sup> to communism, the

114. See, e.g., A. MEYER, *LENINISM* 238-39, 248-56 (1957); SCHLESINGER, *supra* note 90, at 178-201; S. LEVITSKY, *INTRODUCTION TO KARL MARX, DAS KAPITAL* xiii-xiv (Gateway ed. 6th printing 1970).

115. Gorbachev, *supra* note 49, at 1-3.

116. *Id.* at 1 ("[r]emoved far in the future").

117. Neither Marx nor Lenin foresaw an "intermediate" stage in the transition from capitalism to socialism (*id.* at 2) and the characterizations of Soviet society such as "socialism" (KONST. SSSR (1936)); "all-people's state" (Khrushchev; adopted in Constitution of 1977); or "developed socialism" (KONST. SSSR (1977)) are artificial (and, according to Gorbachev, exaggerated) constructions corresponding to the Communist Party's compulsion to record progress on the road to integral communism and to convince the citizens that there has, in fact, been progress towards a classless society and "integral communism." Gorbachev characterized his *perestroika* as "an historically intermediate stage of development," *supra* note 49, at 3, presuma-



final stage of societal evolution charted by Marx.<sup>118</sup> In Khrushchev's case, the efforts to address these questions came three years after he stunned the world with his Secret Speech at the 20th Party Congress; in Gorbachev's case, he waited until he approached the end of *perestroika*'s fourth year. In both cases, the impetus came from a challenge that had placed them on the defensive, forcing them to refute their opponents by recourse to ideological arguments. Khrushchev's response to his opponents was a full-blown ideological blueprint; Gorbachev delivered an *auto-da-fé*, characteristically justifying pragmatic but revisionist ideas, dressing them up in the mantle of Marxism-Leninism.

It is perhaps ironic that the theoretical underpinnings of Khrushchev's and Gorbachev's actions were preceded, in both cases, by rebuffs addressed to "hotheads" impatient to get on with reform and calling for faster pace. In Khrushchev's case, the rebels wanted to reach "integral communism" more quickly,<sup>119</sup> while in Gorbachev's case, "hotheads" (Yeltsin and company) demanded a quicker pace for reforms which would have led *perestroika* away from communism.<sup>120</sup> What were the challenges that forced the two Soviet leaders to turn to ideological crutches? How did they react?

#### a. Khrushchev's "Integral Communism"

In Khrushchev's case, the emerging status of *China* as an ideological leader in its own right, particularly the implications of the "Big Leap Forward" experiment and the implied Chinese boast that China would attain integral communism within a decade, made it imperative for the Soviet Union to redefine its own stand on the question of transition to communism.<sup>121</sup> The challenge to the historically-rooted Soviet ideolog-

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bly between "dictatorship of the proletariat" and "developed socialism," with integral communism being a distant "ideal" society with a still uncharted (and unchartable) road of access.

118. Neither Marx nor Lenin attempted to chart the road to integral communism. See Gorbachev, *supra* note 49. For a "Marxist" discussion of final communist society, see SCHLESINGER, *supra* note 90, at 385-401.

119. At the 20th Party Congress in 1956, Khrushchev criticized the "hotheads" who were calling for "an immediate realization of the principles of communist society" and were drawing up "a detailed timetable for the transition to communism." Medalie, *supra* note 101, at 523 (quoting Khrushchev). See also Achimov, *Theoretical Problems of Communism and the Twenty-First Party Congress*, 6 BULLETIN: INST. FOR THE STUDY OF THE USSR, Mar. 1959, at 7.

120. After casting his ballot in the first elections to the Congress of the People's Deputies on March 26, 1989, Gorbachev cautioned against impatience with the pace of reforms and remarked: "We must not commit stupidities, attempt great leaps forward, or overreach ourselves because we could put the people's future at risk." N.Y. Times, Mar. 27, 1989, at A1, col. 5. Gorbachev had on various previous occasions criticized "hotheads" who failed to understand the need for prudence in carrying out reforms.

121. See Chairman Mao Speaks on Current Situation, Peking Rev., Sept. 16, 1958, at 4. On the "Big Leap Forward" doctrine, see S. Rich, D. Rousset & R. Löwenthal, *China's Uninterrupted Revolution*, 8 PROB. COMMUNISM, Jan.-Feb. 1959, at 1-24. China launched "The Big Leap Forward" on September 10, 1958, in a resolution of the Central Committee of the Chinese Communist Party, *On the Creation of the People's*

ical leadership was very real indeed.

Khrushchev responded, at the 21st Party Congress, by formulating his theses about the "simultaneous transition to communism" of all the socialist regimes.<sup>122</sup> The theses were designed:

- to reject the Chinese concept of a "shortcut to communism" as ideologically wrong; an aberration and impertinent;
- to preserve the political unity of the socialist camp and ensure a uniform approach toward the issue of transition to integral communism;
- to ensure that this transition would take place under Soviet direction.

Rebuking the Chinese, Khrushchev pointed out that "the transition from the socialist stage of development to the higher stage is a regular historical process which cannot be violated or by-passed at will."<sup>123</sup> You may recall the Orson Welles commercial: "We shall sell no wine before its time." This is a close enough parallel. Still, the shock of a possible Chinese shortcut may have sufficiently terrified Khrushchev into suggesting that under Soviet direction the process could be completed within his own generation.<sup>124</sup> This was clearly a counter-boast and not easily compatible with Khrushchev's own implied assumption that no transition to communism could take place until Albania and Mongolia caught up economically with the Soviet Union or East Germany.

#### b. Gorbachev's *Perestroika*

In Gorbachev's case, the challenge to come up with convincing ideological arguments to defeat a political threat from within the ranks of his own party and of the Congress of People's Deputies, which he had created, originated amidst the fervor of the revolutionary upheaval in Eastern Europe which Gorbachev himself had endorsed if not directly encouraged.<sup>125</sup> This threat was the call for political pluralism and the

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*Communes in the Villages.* The Resolution proclaimed: "It seems that the realization of communism in our country is already not something far away. We must actively use the form of the people's commune and through it find the concrete road of transition to Communism." Jen Min Jih Pao, Sept. 10, 1958. See also Z. BRZEZINSKI, *THE SOVIET BLOC: UNITY AND CONFLICT* 366-68 (1960).

122. Pravda, Jan. 28, 1959, at 9, col. 4.

123. *Id.* at col. 3.

124. See *supra* note 96.

125. "Mr. Gorbachev's achievement was having the vision to see the inevitable, and adopting it as his program rather than applying the repressive apparatus at his command to suppress it." Keller, *While Gorbachev Gives In, the World Marvels at His Power*, N.Y. Times, Feb. 11, 1990, § 4, at 1, 2, col. 2. While this may have been true in regard to the events in Eastern Europe in late 1989, the N.Y. Times reporter fails to do justice to Gorbachev's power of initiative in carrying out reforms that are changing the USSR itself and its people more effectively than 70-year old slogans about the "New Man" supposedly being formed under communism. Mr. Keller's colleague, R. W. Apple, Jr., was closer to the truth here when he wrote, "as Dr. Sakharov himself wrote not too long before his death, it was Mr. Gorbachev, for all his failings, who made the decisions 'that completely changed the situation in the

termination of the Communist Party's constitutionally guaranteed position as the leading and guiding force in each country. In the Soviet Union, this principle was embodied in article 6 of the 1977 Constitution.<sup>126</sup>

Coincidentally, Gorbachev may have felt the need to defend his reforms, and the revolutions in Eastern Europe which they had spawned, against Chinese accusations that Gorbachev had betrayed orthodox Marxism-Leninism which the Chinese "upheld" following the pro-democracy revolts at Tiananmen Square. An informal Chinese Party memorandum accused President Gorbachev of "subverting socialism" and having catalyzed similar subversion in Eastern Europe.<sup>127</sup>

But Gorbachev seemed primarily concerned with justifying the retention of article 6, for the present at least, as the principal instrument of *perestroika*. The reasons he cited in November 1989 had a ring of logic and sincerity about them, coming as they did from the principal architect of the current reforms who, like a modern Archimedes, pleads in anger and frustration: "Do not destroy my *perestroika*!"

The declaration of independence by the Lithuanian Communist Party from Moscow,<sup>128</sup> followed by Latvia's repeal of article 6, added an element of urgency to Gorbachev's call for the preservation of article 6. The Communist Party's leading role, its monopoly in fact, was necessary, said Gorbachev, because:

— while each country in Eastern Europe has the right, free from outside pressure, to shape its political and social future as it deems

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Soviet Union and the psychology of its people.' " N.Y. Times, Dec. 24, 1989, § 4, at 1, col. 2. As for Mr. Gorbachev himself, he only claimed that,

deep changes in socialist countries . . . proceed in the same mainstream as our *perestroika*, although we in no way encouraged these processes . . . . New political forces [in Eastern Europe] include both those who support the socialist idea and those who seek other ways of social development . . . . [A]ny nation has the right to decide its fate itself, including the choice of a system . . . . [In our country] we are carrying out *perestroika* on the basis of our own socialist principles.

N.Y. Times, Dec. 12, 1989, at A18, col. 5 (TASS English translation of speech to CPSU Central Committee, Dec. 11, 1989).

126. Article 6 defines the status of the Communist Party in the USSR as "[t]he leading and guiding force of Soviet society and the nucleus of its political system [and] of all state organizations and public organizations," functioning within the framework of the Constitution of the USSR. KONST. SSSR, art. 6 (1977).

127. See *Worried Chinese Leadership Says Gorbachev Subverts Communism*, N.Y. Times, Dec. 28, 1989, at A1, col. 4. See also Kristof, *In Reaction to Rumania, A Hardening in Beijing*, N.Y. Times, Jan. 7, 1990, at 16, col 5 ("Mr. Ceausescu was one of the few world leaders to praise China's military crackdown of the democracy movement").

128. President Gorbachev declared, in a speech to the Central Committee of the CPSU on December 26, that he considered the decision of the Lithuanian Party "illegitimate," since the Deputies to the Lithuanian 20th Communist Party Congress "were given a mandate for *perestroika*, not a split of the party . . . ." N.Y. Times, Dec. 27, 1989, at A12, col. 2. On the decision to break away from Moscow, see *id.*, Dec. 21, 1989, at A1, col. 1. On the decision to abolish constitutionally guaranteed monopoly on power of the Lithuanian Communist Party and legalize a multiparty system, see *id.*, Dec. 7, 1989, at A21; Dec. 8, 1989, at A1. See also Fein, *Gorbachev Voices Alarm on Lithuanian Party Split*, *id.*, Dec. 22, at A12.

best, the Communist Party in the USSR has gained its legitimacy by leading the socialist revolution to victory, more than seventy years ago. The revolution now continues in the form of *perestroika* designed to reshape the entire edifice of society, from basis to superstructure, until socialism re-emerges with a new, modern, more human and true face. The fate of *perestroika* is linked to the Party's fate. The Party's initiative had launched *perestroika* and now provides its direction.<sup>129</sup>

— Many promises have been made to the people by Lenin's successors in the name of building socialism. Too many have remained unfulfilled. The people are tired of promises and the Party leaders' failure to create living standards for the population worthy of a civilized state. The present Party leadership must be given a chance to make good on missed opportunities, false promises, and frustrated hopes, to discharge its responsibility for correcting past errors and distortions in the building of socialism. *Perestroika* must be allowed to continue.<sup>130</sup>

— Freed from the burden of daily meddling into minute details of running the affairs of the country, the Party can now devote its efforts to pondering the meaning of current trends and political realities and formulating political platforms and long-range goals for the transformation of society, always guided by the principles of *glasnost*, pluralism, competition of ideas, rights of individuals, and socialism adjusted to the requirements of today and tomorrow, socialism that is non-confrontational, focussed on the individual, and mindful of the common fears and aspirations of our civilization regardless of political and social formations. Concrete proposals and recommendations for implementation of these policies shall be submitted for the consideration of the people in the persons of its elected representatives.<sup>131</sup>

— In building socialism in its reshaped but genuinely Marxist form, the Party of Lenin, engaged in the formulation of *perestroika*, continues indeed to be the vanguard of Soviet society. *It must retain its present independence*<sup>132</sup> although acting within the commands of the Constitution and of other Soviet laws. In its function as agent of renewal of socialist society, the Party cannot abdicate its role and right of initiative to populist demagogues, nationalist or chauvinist currents, or the separate agendas of pressure groups.<sup>133</sup>

— Debate about the role of the Party is in order, but it must take place in its proper forum, namely the Commission for Constitu-

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129. Based on Gorbachev's article in *Pravda*, *supra* note 49, at 1-3, and his subsequent speeches, reports, and interviews as reported in *Pravda* and *Izvestiia*, Dec. 1, 1989 - Feb. 8, 1990. See also N.Y. Times reports and dispatches covering the same time period.

130. Gorbachev, *supra* note 49.

131. *Id.*

132. *Id.*

133. *Id.*

tional Reform of the Congress of the People's Deputies and aired as well at the Twenty-eighth CPSU Party Congress which was rescheduled to meet in Autumn 1990, earlier than the date originally fixed, and subsequently, advanced again to the early summer of 1990.<sup>134</sup> Concrete proposals would then be submitted to the Congress of the People's Deputies which has final authority on amending the Constitution or drafting a new one.<sup>135</sup>

Two months and five days after his passionate plea for retention of the Party's constitutionally guaranteed role in Soviet society as the prime mover behind the reforms of *perestroika* and architect of the "new socialism," Gorbachev stood before the Plenum of the Party's Central Committee and urged it to accept the removal of the constitutional guarantee for the Party's special status. The Plenum complied on February 7, 1990.<sup>136</sup>

#### 7. Gorbachev's Ambivalence Towards Article 6 and the Movement to Abolish It

Non-confrontational socialist ideology replacing the struggle of classes; defense of universal human values *in lieu* of those of the proletariat alone; the individual in the center of the collective's preoccupations: these were the principles of Gorbachev's own vision of socialism embodied in his *perestroika*. Yet, in his appeal for the retention of article 6, Gorbachev felt obligated to present it as a road to the future which was designed by Marx and Lenin (even though the mantle of ideology could not entirely conceal the return to many old-fashioned non-Marxist positions, once decried as bourgeois), in a pragmatic effort to preserve, understated in the appeal, as much of socialism as seven decades of avowed economic mismanagement would permit. Gorbachev would even make an appeal, if necessary, to a kind of revised version of "Socialism in One Country," with *perestroika* continuing where Lenin left off, but without "Capitalist Encirclement."

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134. Gorbachev, *O proekte platformy TsK KPSS k XXVIII S"ezdu Partii* [On the Draft of the Platform of the CPSU Central Committee for the XXVIII Congress of the Party], Pravda, Feb. 6, 1990, at 1-2.

135. In actual fact, the Congress met in an extraordinary session in March 1990, on the initiative of Mr. Gorbachev himself, to create the post of President and vote on its powers; it was during this March meeting that the constitutional monopoly of the Party under article 6 was abolished by a vote of 1,771 to 264, with 74 abstentions. In press reports, Western and Soviet alike, the vote, and the entire question of formal repeal of article 6, were submerged in accounts of the progress of debates on the new presidency. The quiet demise of article 6 was possibly intentional. See *Parliament Votes Expanded Powers for Soviet Leader*, N.Y. Times, Mar. 14, 1990, at A1, col. 6.

136. See Gorbachev, *supra* note 134, at 1-2. See also, *Excerpts from Remarks by Gorbachev Before Central Committee of Party*, N.Y. Times, Feb. 6, 1990, at A16, col. 1; Keller, *Gorbachev Calls on Party to Forgo Power Monopoly; Meets Hard-Line Opposition*, *id.* at A1, col. 3. For affirmative vote by the Central Committee's Plenum, see Clines, *Soviet Leaders Agree to Surrender Communist Party Monopoly on Power*, *id.*, Feb. 8, 1990, at A1, col. 6. For the text of the new Platform, see *Izvestiia*, Feb. 13, 1990, at 1-2.

Not uncharacteristically, when Gorbachev's all-out effort in January 1990 to persuade the Lithuanian parliament not to legalize rival political parties failed,<sup>137</sup> his immediate reaction was pragmatic: "I do not see anything tragic about a multiparty system if it emerges and meets the realistic interests of society," he told the Lithuanians.<sup>138</sup> This, and his subsequent offer to give up Party monopoly in the USSR, may have been an act of political wisdom as well as of expediency. But I refuse to believe that Gorbachev, who considered the Communist Party as the principal instrument of social engineering, the Gorbachev who liked to do things "the Bolshevik way"<sup>139</sup> and was now engaged in transforming Soviet society in the image fashioned by him — a humane and "modern" Marxism-Leninism—could have been satisfied with a shrug of his shoulders, destined to be echoed by that of history in the cruel imitation of the shrug closing the last chapter concerning Arthur Koestler's *Darkness at Noon*.<sup>140</sup> And could Gennadi Gerasimov, speaking of "the Gorbachev doctrine" still say and mean it: "He'll do it his way"? Make no mistake about it: for Gorbachev, the Lithuanian Parliament's decision *was* a tragedy.

On the question of the supremacy of the Party in the life of Soviet society, Gorbachev was surely in agreement with Khrushchev who said at the 21st Party Congress: "one of the key principles of Leninism [is] . . . that in the process of building *communist* society, the role of the Party must increase, not decrease . . . ."<sup>141</sup> But how can it increase if it has already diminished in the process of building *socialist* society, the preliminary and inferior phase of communism? Gorbachev's pragmatism won over ideology.

#### 8. *Khrushchev's Simultaneous Transition to Communism Through Planned Economic Integration*

The ideological differences between Khrushchev and Gorbachev become still more pronounced when we examine more closely the consequences for the Soviet buffer states, in Eastern Europe, of Khrushchev's 1959 theses of the "simultaneous transition to commu-

137. See Fein, *Gorbachev Urges Lithuania to Stay With Soviet Union*, N.Y. Times, Jan. 12, 1990, at A1, col. 6. Gorbachev pleaded with the Lithuanians: "separation would spell the end of his economic and political changes in the Soviet Union, and strongly suggested it could threaten his position . . . . 'We have embarked on this path, and I am the one who chose it,' he said, 'My personal fate is linked to this choice.'" *Id.*

138. Excerpts from Gorbachev's speech are reproduced in the N.Y. Times, Jan. 15, 1990, at A9, col. 1.

139. See, e.g., Report of Gorbachev, Secretary-General of the CPSU Central Committee, to the XIX All-Union CPSU Conference, *O khode realizatsii reshenii XXVII S"ezda KPSS i zadachakh po uglubleniiu perestroiki* [On the Progress in Implementing the Decision of the XXVII CPSU Congress and On Tasks Relating to the Intensification of Perestroika], June 28, 1988, reprinted in 10 *KOMMUNIST* 50 (1988).

140. A. KOESTLER, *DARKNESS AT NOON* 266-67 (1941).

141. See Shitarev, *Povyshenie rukovodiashchei roli Partii v stroitel'stve kommunizma* [Strengthening of the Role of the Party in the Building of Communism], 12 *KOMMUNIST* 13 (1958). See also Pravda, Jan. 28, 1959; Labeledz, *supra* note 105, at 8.

nism" of all the socialist regimes, albeit under Soviet direction, which Khrushchev had enunciated at the 21st Party Congress and in several other speeches.<sup>142</sup> Even Gorbachev had at first accepted many of the practical implications of this doctrine.

Khrushchev's theses meant that the system of "little Russias" and "little Stalins" in Eastern Europe was over, to be replaced by the increasing importance of multilateral action involving several or all satellite countries, with a view towards an eventual "socialist economic commonwealth,"<sup>143</sup> operating on the principles of international division of labor and economic specialization.<sup>144</sup> In a word: integration — ever-expanding and planned economic integration<sup>145</sup> — which was to be the basis for the eventual "simultaneous transition to communism." In Khrushchev's own words:

Can we envisage a situation in which one of the socialist countries passes to communism and introduces communist principles of production and distribution, while other countries are left trailing behind, somewhere in the early stages of socialist construction? That prospect is highly improbable . . . [T]he socialist countries will more or less simultaneously pass to the higher stage, that of communist society.<sup>146</sup>

We know today that neither Khrushchev nor his successors ever succeeded in thoroughly integrating the East European economies. Still, it is important to recall the means by which the Soviet leadership had proposed to achieve this goal: "synchronization" of the satellite economic plans with that of the USSR;<sup>147</sup> establishment of overall economic targets;<sup>148</sup> planned cooperation in the exchange of investments;<sup>149</sup> and ambitious joint economic projects, from an inter-linking oil and gas pipeline network to a common television hookup,<sup>150</sup> to full convertibility of national currencies within the bloc.

Sooner or later, according to Khrushchev, economic integration would result in a *political* union of the communist-rule world.<sup>151</sup> While at the time the Soviet leaders were reluctant to offend the national sus-

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142. See *supra* note 109 and accompanying text.

143. See Deutscher, *The Soviet Economic Commonwealth*, THE REPORTER, July 9, 1959, at 9-13; and BRZEZINSKI, *supra* note 121, at 400.

144. See Pravda, Dec. 17, 1959.

145. E. EUR., Apr. 1960, at 9. See also SWISS REV. WORLD AFF., June 1959, at 4.

146. Pravda, Jan. 28, 1959, at 9, col. 4.

147. See Le Monde, May 19, 1959; Christian Science Monitor, May 29, 1959, at 1, col. 3; N.Y. Times, Dec. 23, 1959, at 3, col. 1; Pravda, Dec. 17, 1959.

148. See N.Y. Times, May 24, 1959, at 1, col. 3; *id.*, May 25, 1959, at 1, col. 4.

149. See N.Y. Times, Nov. 11, 1958, at 15, col. 1.

150. See London Times, June 8, 1959, at 14, col. 4; *id.*, Sept. 28, 1959, at 9, col. 4; *id.*, Jan. 20, 1960, at 4, col. 1; Levitsky, *Soviet-Satellite Relations*, AMERICA, Mar. 12, 1960, at 709-11; Levitsky, *Communists' Economic Alliance*, COLUMBIA, June 1961, at 12-13, 33.

151. See BRZEZINSKI, *supra* note 121, at 401; Zauberman, *Economic Integration: Problems and Prospects*, PROB. OF COMMUNISM, July-Aug. 1959, at 23, 29.

ceptibilities of the satellite countries<sup>152</sup> and press for an outright surrender of their national sovereignties, Khrushchev left no doubt as to the extent to which he was relying on economic integration to achieve a political union of the communist camp. In a speech in Leipzig on March 7, 1959, reported in *Pravda*, Khrushchev said:

Communist society . . . is capable of satisfying the needs of every individual as well as every nation . . . . In these conditions, . . . state borders will disappear, as Marxism-Leninism has taught. In all likelihood, only ethnic borders will survive for a time . . . . They will simply demarcate the historically formed location of a given region . . . . [I]t seems to me that the further development of the socialist countries will in all probability proceed along the lines of consolidation of the single-world socialist economic system. One by one, the economic barriers which divided our countries under capitalism will fall . . . eventually making the question of borders a pointless one.<sup>153</sup>

Khrushchev was right in one respect. Within a generation's lifespan, the borders have begun to fall. Only the dream of communist society is more distant today than it may have appeared in Stalin's or Khrushchev's time. And it would be presumptuous and wrong to suggest that there may be a continuity between Khrushchev's thoughts on the obliteration of borders in Eastern Europe and Gorbachev's more recent advocacy of a "common European home."

#### 9. *The Evolution of Comecon Under Perestroika*

In Khrushchev's scheme for a "simultaneous transition to communism," the Soviet Union was to retain the role of leadership. Ideologically, Khrushchev justified this role by the Soviet Union's position as the most economically advanced of the socialist countries, not only in economic and military terms, but also in terms of advancement towards communism. It had the right, nay, the duty, to share its rich experience in building socialism and communism with the others<sup>154</sup> and to ensure and protect, by its military might, the final victory of socialism in the satellite countries. Khrushchev, the "designated father" of *perestroika*, had clearly formulated the doctrine which is known in the West as the Brezhnev doctrine.<sup>155</sup> Just as he has articulated the doctrine according to which, in the period of the gradual transition from socialism to communism, the Soviet state will not entirely wither away but will acquire a new function that will become increasingly important as the other functions of the state were gradually being vacated: the function of organizing, strengthening, and expanding mutual cooperation, economic, political, and cultural, between countries belonging to the world system of

152. See Deutscher, *Communism's Common Market*, NEW STATESMAN, July 11, 1959, at 37; and Zauberman, *supra* note 151, at 29.

153. *Pravda*, Mar. 27, 1959. See Davletkel'diev, *supra* note 113, at 17.

154. See *Pravda*, Jan. 28, 1959, at 9. LEPESHKIN, *supra* note 107, at 5, 7, 8-12; Romashkin, *Sovetskoe gosudarstvo v period razvernutoho stroitel'stva kommunizma* [Soviet State in the Period of Intensified Building of Communism], 2 VMU 139-54 (1959).

155. See HENKIN, PUGH, SCHACHTER & SMIT, *supra* note 3.



socialism.<sup>156</sup>

Decidedly, there was more to Khrushchev's concepts of socialism and communism than his de-Stalinization and his abortive literary thaw.

In the first years of *perestroika*, indeed in some ways even up to the victory of the recent revolutions in Eastern Europe, Gorbachev has actively pursued Khrushchev's goal of greater integration of the satellite economies, alas, with just as little success. I shall cite here but two examples among many of this continuity, one from legislation enacted in 1987, the other from drafts of legislation that had not yet been enacted by 1989.

When the Soviet government published its first joint venture laws in 1987, the proposed joint ventures pursued a different goal depending on whether they were formed with firms from capitalist or developing countries<sup>157</sup> on the one hand, or with enterprises, associations and organizations from CMEA (*Comecon*) countries on the other.<sup>158</sup> The terminology of the decrees themselves, as well as the authoritative commentaries, were explicit enough: Joint ventures with firms from capitalist countries had as their goal the promotion of "cooperation on the basis of mutual advantage," while joint ventures with *Comecon* economic entities pursued the goal of "deepening socialist economic integration and binding more closely the scientific-technological and production potential of the countries of the socialist community." Article 25 of the Decree on joint *Comecon* ventures stipulated that "the assets of the joint enterprise are regarded as the common socialist property of the USSR and the relevant CMEA member country."<sup>159</sup>

The second example of recent efforts to strengthen the integration of the socialist community is taken from the "Legislative Plan for 1986-1990," published on August 28, 1986,<sup>160</sup> which provided for changes to be introduced in Part IV of the Fundamental Principles of Civil Legislation during the first half of 1990. Part IV deals with Copyright Legislation. Having been forced to renounce many so-called "socialist"

156. LEPESHKIN, *supra* note 107, at 12.

157. See Decree of the USSR Council of Ministers No. 49, *O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovместnykh predpriatii s uchastiem sovetskikh organizatsii i firm kapitalisticheskikh i razvivaiushchikhsia stran* [On Procedures Governing the Creation and Operation on the Territory of the USSR of Joint Enterprises Involving Soviet Organizations and Firms from Capitalist and Developing Countries], Jan. 13, 1987, SP SSSR 1987, No. 9, item 40. For English translation and commentary, see M. BOGUSLAVSKY & P. SMIRNOV, *THE REORGANIZATION OF SOVIET FOREIGN TRADE: LEGAL ASPECTS* 81-109, 173-81 (S. Levitsky ed. 1989).

158. See Decree of the USSR Council of Ministers No. 48, *O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovместnykh predpriatii mezhdunarodnykh ob'edinenii i organizatsii SSSR i drugikh stran - chlenov SEV* [On Procedures Governing the Creation and Operation on the Territory of the USSR of Joint Enterprises, International Associations and Organizations of the USSR and Other CMEA Member Countries], Jan. 13, 1987, SP SSSR 1987, No. 8, item 38. For English translation and commentary, see BOGUSLAVSKY & SMIRNOV, *supra* note 157, at 81-109, 186-97.

159. BOGUSLAVSKY & SMIRNOV, *supra* note 157, at 191.

160. Edict of the Presidium of the USSR Supreme Soviet Aug. 28, 1986, Ved. Verkh. Sov. SSSR 1986, No. 37, item 782, cl. 18.

features of the Soviet copyright system as the result of the Soviet accession in 1973 to the Universal Copyright Convention (albeit in its 1952 version),<sup>161</sup> the draftsmen of the new Soviet copyright law were determined to ensure the socialist character of Soviet copyright law. By gradual harmonization, later to be followed by standardization and unification, the principal concepts and institutions of copyright within what was referred to as the "Socialist Commonwealth" were eventually to culminate in the establishment of a *multilateral* copyright convention grouping all socialist countries.<sup>162</sup> This was conceded to be a long-term project,<sup>163</sup> but the present Soviet network of bilateral copyright conventions with other socialist countries had been planned with such an eventuality in mind,<sup>164</sup> and the "working agreements" reached between the copyright agencies of the socialist countries were expected to play a major role in bringing about such a multilateral socialist copyright convention.<sup>165</sup> Until 1989, the trends in *perestroika* did not contradict this long-term goal, although there was no explicit commitment to it on the part of the Soviet Union's partners in the "Socialist Commonwealth."

At the present time such schemes to integrate the socialist nations are presumably in a holding pattern as, until the first meeting of the "post-reform" CMEA in January 1990, the main priority of the East European countries and main concern of the West was in obtaining

161. On amendment of the Soviet copyright legislation in connection with accession of the USSR to the Universal Copyright Convention of 1952, May 27, 1973, Ved. Verkh. Sov. SSSR 1973, No. 9, item 138; Ved. Verkh. Sov. RSFSR 1974, No. 10, item 286; Ved. Verkh. Sov. SSSR 1976, No. 42, item 585; Ved. Verkh. Sov. RSFSR 1976, No. 42, item 1270. See also Levitsky, *Soviet Copyright Law at the Crossroads*, J. OF MEDIA L. AND PRAC., May 1983, at 3-35. On partial retreat from the "socialist approach" to copyright as the result of the accession to the UCC, see S. LEVITSKY, *The Union of Berne at 100: What Keeps the Superpowers Away? Thoughts and Apprehensions*, in LAW AND THE GORBACHEV ERA 271, 330, n.306 and accompanying text (D. Barry ed., Law in Eastern Europe No. 39, 1988).

162. See Levitsky, in [Changes in the Fundamental Principles of USSR Civil Legislation, Part IV: Copyright], text accompanying footnotes 125-29 (forthcoming, No. 41 in the series Law in Eastern Europe); MATVEEV, MEZHDUNARODNAIA OKHRANA AVTORSKIKH PRAV [INTERNATIONAL COPYRIGHT PROTECTION] 98-106, 186-95 (1987).

163. Levitsky, *supra* note 162, at 229, n.126; MATVEEV, *supra* note 162, at 110ff; V. SHATROV, MEZHDUNARODNOE SOTRUDNICHESTVO V OBLASTI IZOBRETATEL'SKOGO I AVTORSKOGO PRAVA [INTERNATIONAL COOPERATION IN THE LAW OF INVENTION AND OF COPYRIGHT] 7, 194-209, 217-21 (1982).

164. See Decree of the USSR Council of Ministers No. 819, *On Bilateral Agreements with Socialist Countries Concerning Reciprocal Protection of Copyrights*, Aug. 29, 1967, SP MOLD. SSR 1972, No. 11, item 156, at 771. See also Decree of the USSR Council of Ministers No. 762, *On Bilateral Agreements with Socialist Countries Concerning Reciprocal Protection of Copyrights*, Oct. 19, 1972, SP MOLD. SSR 1972, No. 11, item 157, pp. 769-71 (for Amendments, see SP MOLD. SSR 1974, No. 8, item 102, at 699-701). See also Levitsky, *Continuity and Change in Soviet Copyright Law: A Legal Analysis*, 6 Rev. of Socialist L. 451-52 & n.95-98 (1980).

165. Levitsky, *supra* note 164, at 451; TURKIN, *Dvustoronnie soglashiia o vzaimnoi okhrane avtorskikh prav mezdu SSSR i drugimi sotsialisticheskimi stranami* [Bilateral Agreements on Reciprocal Protection of Copyrights Between the USSR and Other Socialist Countries, in PROBLEMY SOVETSKOGO AVTORSKOGO PRAVA [PROBLEMS IN SOVIET COPYRIGHT LAW] 14 (Boguslavskii, Gavrillov & Chernysheva, eds. 1979); MATVEEV, *supra* note 162, at 101, 189.

assurances from President Gorbachev that he would not resort to the Brezhnev doctrine — or the Khrushchev doctrine, I should say—in thwarting the evolution in Eastern Europe towards democracy and, in most cases, away from communism. It is a tribute to Gorbachev's political realism that he not only refused to intervene militarily to stop the Eastern European uprisings, but actually lauded them as a natural extension of his own *perestroika*. "I am encouraged and inspired by all these processes," he said at Malta,<sup>166</sup> adding that "each people has the right to decide, and does decide the fate of its own state." In a speech to the Party's Central Committee on December 9, 1989, Gorbachev applied this freedom of choice both to political forces supporting socialism and to "those seeking other ways of social development,"<sup>167</sup> although the USSR, he said, is firmly committed to carry out *perestroika* "on the basis of our own, socialist principles." Soviet Foreign Minister Eduard A. Shevardnadze found the atmosphere in post-Ceausescu Romania "absolutely purifying."<sup>168</sup>

But if Gorbachev is a realist, he is not an opportunist. Even when he faced the dissident Lithuanian Party in Vilnius, on January 13, 1990, he expressed the conviction that the premise of "gravitation towards integration, towards the combining of efforts in the economy, science and politics does not contradict but is also inseparably connected with the upsurge of national awareness and national self-affirmation."<sup>169</sup> Gorbachev must obviously have had in mind the integration movement in Western Europe. But the Lithuanians were not listening that closely or with sufficient interest.

Representatives of the member countries of *Comecon* met in Sofia on January 9, 1990, for the first time since the dramatic political upheavals of the closing months of the previous year.<sup>170</sup> The results were predictable — up to a point. Members wished to assert their newly gained independence by criticizing every aspect of the alliance, from the rigid planning of intra-group trade to CMEA's archaic structure and Soviet dominance of the group. But when the Soviet Prime Minister Nikolai I. Ryzhkov presented a proposal for dropping Soviet subsidies to member countries' economies and switching to trade on a hard currency basis and in real world market prices, there was an outcry: you can't do this to us!<sup>171</sup>

Up to now the Soviet Union's principal shipments to CMEA members consisted of subsidized oil and gas, which could easily be sold on world markets, while its partners' exports to the Soviet Union were

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166. N.Y. Times, Dec. 4, 1989, at A12, col. 5.

167. *Id.*, Dec. 12, 1989, at A18, col. 5.

168. *Id.*, Jan. 7, 1990, at A1, col. 3.

169. *Id.*, Jan. 15, 1990, at A9, col. 2.

170. See Clines, *Soviets and Partners Say Comecon Needs Repair*, N.Y. Times, Jan. 9, 1990, at A13, col. 1; Haberman, *Moscow Proposes That Trade Bloc Begin Using Real Market Prices*, *id.*, Jan. 10, 1990, at A1, col. 3; and Passell, *Unsnarling a Tangled Trade Alliance*, *id.* at A11, col. 4.

171. Haberman, *supra* note 170, at A1; Passell, *id.* at A11.

mostly shoddy manufactured goods that had little value on any market in any currency. Better-quality goods were reserved for export outside CMEA. The Hungarian delegate complained that billion-ruble surpluses in the trade with the Soviet Union would turn overnight into billion-dollar deficits, while others criticized Soviet demands for a quick settlement of accounts (to permit the Soviet Union to raise billions of dollars for the import of consumer goods). The Soviet Union was asked to write off the deficits as aid to its CMEA partners "to which they were entitled."<sup>172</sup>

But there was agreement on the new functions of CMEA: integration and multilateral projects were out, while bilateral trade agreements were in, with CMEA serving as an umbrella organization for regional trade.<sup>173</sup> Khrushchev's dream of using CMEA as an instrument for eventual simultaneous transition to communism went up in smoke, as may have the Soviet plan for transforming CMEA into a trade organism based on free-market principles, at least for the foreseeable future. Comecon itself, however, appears to be here to stay.

#### 10. *Khrushchev's Blueprint for Socialist Development and Its Fate*

In the final analysis, Khrushchev, by repudiating in 1959 Stalin's doctrines of "Socialism in One Country" and "Capitalist Encirclement," had hoped to give the rank-and-file the distinct conviction that after the ossification of Marxism under Stalin and its virtual irrelevance after the Nineteenth Party Congress<sup>174</sup> (except for Stalin's warning that class struggle will become more acute with the advance of socialism, hardly a Marxist tenet),<sup>175</sup> the dialectical process of history did move along its pre-ordained tracks, and a new stage in that process had been reached: the beginning of the process of building integral communism. Khrushchev sought to erase in the Soviet people's minds the picture of

172. "Unless the Soviet Union agrees to maintain the current pattern of trade subsidies for several years, manufacturing industries in Hungary, Czechoslovakia, and East Germany could be devastated . . . [and] the West could end up paying the bill." Passell, *supra* note 170, at A11. But see Clyde H. Farnsworth, writing in the N.Y. Times exactly one month earlier, "Hungary has moved to have its trade with the Soviet Union settled in dollars instead of rubles . . . . Other Eastern European governments are also seeking to free themselves from the ruble . . . ." N.Y. Times, Dec. 9, 1989, at 34, col. 1.

173. See Haberman, *Soviet Bloc Trade Group Says It Needs to Make Big Changes*, N.Y. Times, Jan. 11, 1990, at A14, col. 1. "Reuters quoted a Soviet delegate, Deputy Prime Minister Stepan A. Sitaryan, a [sic] saying today that Moscow 'would agree on pricing and payment conditions with each country on a bilateral basis.' But, he said, 'prices must come closer to world market values.'" *Id.* at col. 4.

174. See N. TIMASHEFF, *THE GREAT RETREAT* (1946); *Idem*, *Okamenenie kommunisticheskogo stroia [The Ossification of the Communist System]*, 30 NOVYI ZHURNAL 213-24 (1952). Timasheff traces the decline of Communist ideology as an active ingredient in the building of Soviet society under Stalin. See also Labeledz, *supra* note 105, at 3-5; and CRANKSHAW, *supra* note 97, at 17 ("The guiding Party lost its dynamism and its authority").

175. See Stalin, *Ekonomicheskie problemy sotsializma v SSSR [Economic Problems of Socialism in the USSR]*, 18 BOL'SHEVIK 1-50 (1952); reprinted in Pravda, Oct. 3-4, 1952 (also published in English as a separate pamphlet).

an isolated socialist country on the defensive toward the capitalist world and to replace this image with one of a victorious socialist society, capable of neutralizing potential threats from all opponents and gradually driving the U.S. and other foreign class enemies into an isolated position where, as one British observer had put it, some American theoretician will have to invent the doctrine of "Capitalism in One Country."<sup>176</sup>

To give his blueprint substance, Khrushchev went beyond mere lofty new theories by proposing and establishing institutions to implement his ideas, institutions that were gradually to replace the State which was to slowly wither away even before the stage of integral communism had been reached. Some of these institutions are still in place, although not always too conspicuously (as evidenced by the comrades' courts,<sup>177</sup> for example), while others, such as the anti-parasite laws, were abolished many years ago.<sup>178</sup> Several others, including the citizens' or "territorial" army as Khrushchev called it, have never left the drawing board.<sup>179</sup> Similarly, many of the principles underlying the functions of the State that were to continue during the building of communism are either completely obsolete today or still surprisingly alive. References to "a permanent revolution from above" (not originating with Khrushchev but a phrase which is today curiously reminiscent of the function that Gorbachev appeared intent on assigning to the Party through its leadership of *perestroika*);<sup>180</sup> an overall plan for the growth of the Soviet economy as a whole (to which Gorbachev still subscribed in 1989 with the introduction of the 13th Five-Year Plan by Prime Minister Ryzhkov);<sup>181</sup> central direction of education policies; and the function of "further strengthening and expanding the brotherly ties with countries of the world system of socialism" (which Gorbachev has drastically changed into "expanding cooperation"<sup>182</sup> purely and simply, although a

176. Edward Crankshaw in a (possibly second-hand) remark to this author in 1961.

177. See, e.g., F. Gorié, *The Latest Developments in the Area of Comradely Justice*, in *PERSPECTIVES ON SOVIET LAW FOR THE 1980s* 171 (F. Feldbrugge & W. Simons, eds., Law in Eastern Europe No. 24, 1982); F. Gorié, *Comrades' Courts*, *ENCYCLOPEDIA OF SOVIET LAW* *supra* note 90, at 153-57.

178. See, e.g., W. CONNOR, *DEVIANCE IN SOVIET SOCIETY* 196-98 (1972); *THE NEW JUSTICE IN THE USSR* 8-9 (Soviet Affairs Notes No. 239, Mar. 28, 1960). Anti-parasite laws were in effect during 1957-70. Under these laws, persons convicted of "parasitism" were sent into exile by the local soviets or by the people's court acting as administrative agencies. See also Beermann, *The Law Against Parasites, Tramps and Beggars*, 11 *SOVIET STUD.* 453-55 (1960); H. BERMAN, *JUSTICE IN THE USSR* 291-98 (2d ed. 1963).

179. See Khrushchev's Report to the Fourth Session of the USSR Supreme Soviet (Fifth Convocation), Jan. 14, 1960, reprinted in *KRASNAIA ZVEZDA*, Mar. 4, 1960 (pamphlet printed in English, titled *On the Future of the Standing Army*). See also Stevens, *Soviets Blueprint Territorial Army*, *Christian Science Monitor*, Feb. 23, 1960, at 15 and *Pravda*, Feb. 23, 1960.

180. *Pravda*, Nov. 26, 1989, at 2.

181. Prime Minister N. I. Ryzhkov explained the basic concepts embodied in the 13th Five-Year Plan to the Deputies of the Congress in his report *Effektivnost', konsolidatsiia, reforma - put' k zdorovoi ekonomike* [Efficiency, Consolidation, Reform — The Road to a Healthy Economy], reprinted in *Izvestiia*, Dec. 14, 1989, at 3-4.

182. See, e.g., Joint Decree of the CPSU Central Committee and the USSR Council of Ministers No. 992, Aug. 19, 1986; 3 *VNESHNIAIA TORGOVLIA* 4-8 (Supp. 1987).

new framework for this cooperation is in the process of being created with the concurrence of all CMEA members), evoke strong echoes of concepts familiar during the Khrushchev era.<sup>183</sup>

Khrushchev spoke endlessly about these and many other operational principles and functions of the State, with some of which Gorbachev agreed. Like Khrushchev,<sup>184</sup> Gorbachev favored replacing coercion with persuasion and prevention and stressed the need for a wide preliminary discussion by the public at large of all major new laws and decrees,<sup>185</sup> the assumption of some functions of the State by voluntary associations of citizens,<sup>186</sup> and a host of other concrete measures which he was later to implement.

With two of Khrushchev's theses, however, Gorbachev could not agree: (a) the growing transformation of guarantees of the rights of individual citizens, from purely political rights to predominantly economic and organizational rights; and (b) the gradual transfer of the functions of justice and law enforcement to public and social organizations.<sup>187</sup> In Gorbachev's view, what individual citizen's rights lacked were not economic guarantees, however arbitrarily enforced by the government, but real *political* substance,<sup>188</sup> while an independent judiciary and the creation of solid foundations for a socialist *Rechtsstaat* in the USSR should replace the "withering away" of formal justice.<sup>189</sup>

By contrast, two of the "social and economic prerequisites" which Khrushchev considered indispensable for the "withering away of the

183. See *supra* notes 170-73.

184. See, e.g., Pravda, Jan. 28, 1959, at 9, col. 3; Romashkin, 'Rol' pobuzhdeniia i prinuzhdeniia v sovetskom gosudarstve [The role of persuasion and compulsion in the Soviet State], 2 Sov. Gos. & PRAVO 25 (1960); *Up the Party*, London Times, Mar. 4, 1960, at 13; 1 KOMMUNIST 10-24 (1960); Pravda, Feb. 25, 1960; *id.*, Mar. 11, 1960; *id.*, Mar. 13, 1960.

185. Romashkin, *supra* note 184, at 20-21. Gorbachev was instrumental in implementing such a *consultatio per turbam* with the adoption of USSR Law No. 7286-XI, *O usenarodnom obsuzhdenii vazhnykh voprosov gosudarstvennoi zhizni* [On Nationwide Discussion of Major Questions of Public Life] (consultative referendum), June 30, 1987, Ved. Verkh. Sov. SSSR 1987, No. 26, item 387, at 464-69.

186. Pravda, Jan. 28, 1959, at 9, col. 3; D. KERIMOV, V. PETROV & B. SHEINDLIN, *Uchenie Marksizma-Leninizma o sotsialisticheskoi gosudarstvennoi prave* [Marxist-Leninist Teaching About the Socialist State and Law], in SOROK LET SOVetskogo PRAVA [40 YEARS OF SOVIET LAW] 19-31 (1957). See also *supra* note 107. This principle has, thus far, found its most prominent expression in Gorbachev's Law on Cooperatives May 26, 1988, USSR Law No. 8998-XI, *O kooperatsii v SSSR* [On the Cooperative System in the USSR], of May 26, 1988, Ved. Verkh. Sov. SSSR 1988, No. 22, item 355, at 375-421.

187. See KONST. SSSR, ch. X (1936). B. PONOMAREV, KONSTITUTSIIA SSSR - POLITIKO- PRAVOVOI KOMMENTARI [CONSTITUTION OF THE USSR - POLITICAL AND LEGAL COMMENTARY] 137-38 (1982). See also *supra* notes 177-78.

188. Pravda, Nov. 26, 1989, at 2.

189. *Id.*; Gorbachev, *Perestroika i prava cheloveka* [Perestroika and Human Rights], in *O khode realizatsii reshenii XXVII S"ezda i zadachakh po uglubleniiu perestroiki* [On the Progress in Implementing the Decisions of the XXVII Congress of the CPSU and the Tasks in Intensifying Perestroika], Report of the Secretary-General of the CPSU Central Committee to the XIXth All-Union CPSU Conference, June 28, 1988, reprinted in 10 KOMMUNIST 26-29 (1988). See also Sharlet, *Party and Public Ideals in Conflict: Constitutionalism and Civil Rights in the USSR*, 23 CORNELL INT'L L.J. 601 (1990).

State" survived under Gorbachev's *perestroika*, not as conditions for the transition from "mature socialism" to integral communism, but as indispensable conditions if the Soviet Union was to be a viable socialist society *tout court*: rise in the living standards of the population,<sup>190</sup> including Khrushchev's emphasis on greater technological know-how, and the radical improvement of housing conditions. They remain important objectives under Gorbachev's *perestroika*.<sup>191</sup> Khrushchev's insistence on reducing the prices of consumer goods,<sup>192</sup> on the other hand, is currently the subject of an agonizing tug-of-war between those in the Soviet Union (including Gorbachev) who are looking for a quick transition to real market prices and the elimination of subsidies, and an opposing camp (including Gorbachev) who see the need for price controls lest the spiraling consumer prices, particularly those charged by the cooperatives, result in intolerable social problems and summon the spectre of destructive inflation.<sup>193</sup>

Khrushchev took some concrete but often misguided steps towards the creation of eventual "material abundance." But, carried away by his own enthusiasm, he deluded himself by the conviction — or was it but an empty boast? — that the Soviet Union under his leadership could exceed the *per capita* output of the U.S. and achieve the highest living standard in the world by about 1970.<sup>194</sup>

190. N. Khrushchev, Report to the Extraordinary XXIth Congress of the Communist Party of the Soviet Union, Jan. 27, 1959, *reprinted in Pravda*, Jan. 28, 1959.

191. Khrushchev believed in 1959 that "Full satisfaction, within necessary and reasonable bounds, of the requirements of all Soviet citizens as regards food, housing and clothing is probably a matter of the not-too-far-distant future." *Id.* See also Sosnovy, *The Soviet Housing Situation Today*, 11 SOVIET STUD. 1-21 (1959); Beermann, *Legal Implications of the 1957 Housing Decree*, 11 SOVIET STUD. 109-116 (1959). For a Western discussion of the Soviet record in social welfare after Stalin, see the symposium, *Toward a 'Communist Welfare State'*, 9 PROBS. OF COMMUNISM 1-22 (1960); Goldman, *The Soviet Standard of Living and Ours*, 38 FOREIGN AFFAIRS 625-37 (1960). On the "right to housing" (*pravo na zhilishche*) in the 1977 USSR Constitution, see KONST. SSSR, art. 44; PONOMAREV, *supra* note 187, at 148-51.

192. Such a policy had already been formulated by Stalin. See 1 CURRENT SOVIET POLICIES 14 (1953).

193. See *supra* notes 68, 71-73. See also USSR law, *O vnesenii izmenenii i dopolnenii v Zakon SSSR 'O kooperatsii v SSSR'* [On the Introduction of Amendments and Additions to the Law of the USSR 'On Cooperatives in the USSR'], Oct. 16, 1989, *reprinted in Pravda*, Oct. 21, 1989, at 1, and *Izvestiia*, Oct. 21, 1989, at 1; Sennagoz, *Tsel' - sderzhat' rost tsen* [The Goal - To Halt Rising Prices], 26 PRAVITEL'STVENNYI VESTNIK 8 (1989); Romaniuk, *Tovary i tseny* [Goods and Prices] (press conference of Deputy Prime Minister L. Abalkin in the Council of Ministers), *reprinted in Izvestiia*, Nov. 12, 1989, at 1; *On the Progress in Implementing the Decisions of the XXVII Congress of the CPSU and the Tasks in Intensifying Perestroika*, *supra* note 189, at 13-14; Decree of the USSR Supreme Soviet, *O dopolnitel'nykh merakh po stabilizatsii potrebitel'skogo rynka i usileniiu gosudarstvennogo kontrolya za tsenami* [On Further Measures to Stabilize the Consumer Market and to Strengthen Government Supervision of Prices], Nov. 20, 1989, *reprinted in Izvestiia*, Nov. 25, 1989.

194. *Pravda*, Jan. 28, 1959; Khrushchev's Report to the 22nd Congress of the Communist Party of the Soviet Union, Oct. 17, 1961; *Idem's Report on the Programme of the Communist Party of the Soviet Union and Reply to Discussion*, Oct. 18, 1961; PROGRAMME OF THE COMMUNIST PARTY OF THE SOVIET UNION (1961). See also *supra* note 96.

Khrushchev soon departed from the political scene in the Soviet Union, somewhat in haste, to be succeeded by what today is officially characterized as “a period of stagnation.” No one took Khrushchev’s boast seriously, but the severity of the economic crisis in the USSR today is deadly serious indeed. The expectations of an ongoing transition to integral communism, enshrined in the *Preamble* to the Constitution of 1977,<sup>195</sup> have given way to a wholesale *de facto* rejection of the claims made in the *Preamble* and in many chapters of the Constitution itself. With all the countries of Eastern Europe except Albania, and Romania off and on, having rejected the monopoly of the Party as the leader in building the future society, will the Soviet Union elect to return to building “Socialism in One Country,” once again?

On November 26, 1989, Mikhail S. Gorbachev attempted to answer this question<sup>196</sup> and thereby to place his *perestroika* into the context of Marxist-Leninist ideology. The interplay between pragmatism and ideology was given a more tangible frame of reference than at any time since the launching of *perestroika* in April 1985. Because flexibility is one of the characteristic features of the new path to socialism under Gorbachev, the new blueprint of socialist construction itself appears to have been often dictated by considerations of expediency.

### 11. *The Marxist-Leninist Apostolic Succession*

#### a. Khrushchev’s Claim to Lenin’s Mantle

There is a kind of “apostolic succession” within the Communist movement. The only way for Khrushchev to lay claim to Lenin’s mantle was to achieve recognition as an authoritative interpreter and custodian of Marxist dogmas. Khrushchev’s “theses” on the transition of society to integral communism were his most important single effort in this direction. His contribution to doctrine, however, such as it was, was soon forgotten, and today he is chiefly remembered as the leader who launched de-Stalinization in his country and initiated a short-lived cultural thaw.

#### b. Gorbachev’s Ideological Claim to Leadership of the Communist Movement

Gorbachev’s own claim to Marxist-Leninist apostolic succession was virtually forced upon him as his country, and the Communist movement at large, began to feel uneasy and impatient after almost five years of waiting to discover what he was up to apart from trying to save the Soviet Union from economic ruin. How could Gorbachev, who liked to say “we must act as good bolsheviks”<sup>197</sup> and who declared passionately at the Second Congress of the People’s Deputies in December 1989 that he

195. KONST. SSSR, preamble, *reprinted in* Izvestiia, Oct. 8, 1977, at 3-6; USSR Law, Oct. 7, 1977, Ved. Verkh. Sov. SSSR 1977, No. 41, item 619. For English translation, see 4 REV. OF SOCIALIST L. 57-58 (1978).

196. Gorbachev, *supra* note 49, at 1-3.

197. See, e.g., 10 KOMMUNIST 50 (1988).



was a "convinced Communist" for whom communism was not a fantasy but his main goal,<sup>198</sup> go on changing, and then modifying anew, concepts and institutions that not only were often at odds with accepted ways of doing things but sometimes seemed to defy Marx himself, without articulating his own interpretation of The Creed? How long could he delay defining his vision of the future in the name of which all these changes under *perestroika* were being made?

Prior to giving expression to his practical program for building socialism, endorsed by the Plenum of the Central Committee on February 7, 1990,<sup>199</sup> in the Draft of a new Party "platform," Gorbachev's closest approximation of the new communist manifesto (and explanation of his motives) was contained in an article he wrote as a "synthesis" of his views in November 1989 — three decades after Khrushchev's blueprint—under the title "The Socialist Idea and Revolutionary *Perestroika*."<sup>200</sup> Only history will show whether "Z" of *Daedalus* fame was right that Gorbachev's *perestroika*, too, will pass and. "Sovietism," presumably a concept coined by the masked author of "To the Stalin Mausoleum," will inevitably revert to a totalitarian dictatorship.<sup>201</sup> To our understanding of the present, this is just as irrelevant as are George Ginsburgs' continued attempts to publish his views on the post-*perestroika* political and legal system without bothering to warn his intended readers that "the new state," which will "largely coincide with the area inhabited by people of Great Russian stock,"<sup>202</sup> is still only a figment of a political scientist's imagination. While "Z" and George Ginsburgs, the distinguished professor of law at Rutgers, wait for their predictions for *perestroika* to materialize, let us grant Gorbachev his own day in court to explain and defend his faith in *perestroika*'s (and communism's) future.

Gorbachev's arguments can be summed up in six propositions:

#### i. Perestroika Is Revolutionary

Gorbachev characterizes *perestroika* as "revolutionary"; this is apt because the restructuring is to affect not merely the superstructure of Soviet society, but its economic basis as well. It is revolutionary because Gorbachev had the courage to say that Marx was wrong on a number of issues and even Lenin was not always right. *Perestroika* is revolutionary because it aims to eliminate, step by step, the distortions of socialism

198. See Clines, *Enough for Glasnost?*, N.Y. Times, Dec. 26, 1989, at A19.

199. See Pravda, Feb. 6, 1990, at 1-2; Izvestiia, Feb. 13, 1990, at 1-2; *Gorbachev Calls on Party to Forgo Power Monopoly*, N.Y. Times, Feb. 6, 1990, at A1; *Soviet Leaders Agree to Surrender Communist Party Monopoly on Power*, *id.*, Feb. 8, 1990, at A1; *Party's Agenda: Liberty and Justice*, *id.*, Feb. 14, 1990, at A12.

200. Gorbachev, *supra* note 49, at 1-3.

201. See *supra* note 95.

202. See G. Ginsburgs, *Post-Perestroika and the Prospects for Criminal Law: An Early Prognosis* (unpublished manuscript submitted for publication in June 1989, in which the author attempts to answer the questions: "[W]hat kind of political system is likely to be established in Russia in the aftermath of the old Soviet regime and its current mutant?" and "[W]hat in the Soviet criminal law portfolio can be retained in the successor era?").

imposed by Stalin and to make up for the failure of socialism to renew itself, resulting in a state of stagnation and acute economic crisis.<sup>203</sup>

ii. Where Marx Went Wrong

Marx was wrong, according to Gorbachev, because having endowed his doctrines with the twin attributes of *universality* and *inevitability*, he underestimated *capitalism's* capacity for re-vitalization and evolution (a) by incorporating many of socialism's own programs and achievements, as a result of the long coexistence of socialism and capitalism which Marx had not foreseen,<sup>204</sup> and (b) by drawing new strength from the opportunities offered by the scientific-technical revolution, while socialism lingered on in self-imposed isolation or wallowed in stagnation and decline.<sup>205</sup> *Carpe diem* became, by default, a capitalist monopoly. Marx was wrong, Gorbachev contended, because the capitalist approach to ownership and property has evolved beyond the validity of laws which Marx had deemed immutable.<sup>206</sup>

iii. The Fraudulent "Socialism" of the Preamble to the 1977 Constitution

The "mature socialism" embodied in the *Preamble* to the Constitution of 1977 is a fraud. The founders of Marxism never conceived of socialism as a ready-made, rigid mold into which real life was to be squeezed.<sup>207</sup> Lenin searched constantly for better models and more satisfying solutions to the social, political, economic, and cultural problems of the new society and defied prevailing dogmas when necessary (as was the case with NEP).<sup>208</sup> *Perestroika* follows a similar method to eradicate Stalin's perversions of the socialist idea, by dismantling his authoritarian command economy based on administrative fiat, tolerating no alternatives, disassembling his centralized bureaucratic machinery which survived the de-Stalinization of the 20th Party Congress, and rebuilding true socialism, a process that will stretch well into the 21st century.

iv. Gorbachev's "Socialism with a Human Face"

Gorbachev's "true socialism" is "socialism with a human face."<sup>209</sup> It assumes that "political expediency will never prevail over formal laws," and its institutions include parliamentary democracy in a future genuine *Rechtsstaat*.<sup>210</sup> A major effort will be required to reach Western levels of applied science and high technology, but no more boasts of "we shall catch up and surpass" will be heard.

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203. Gorbachev, *supra* note 49, at 1-3.

204. *Id.* at 1.

205. *Id.*

206. *Id.*

207. *Id.* See also Gorbachev Article Excerpts: *A New Aspect of Socialism*, N.Y. Times, Nov. 27, 1989, at A12, col. 1.

208. Gorbachev, *supra* note 49, at 1-2.

209. *Id.* at 2 (*chelovecheskii oblik*).

210. *Id.* (*pravovoe gosudarstvo*).

Two features of the new socialist model may hold surprises for some. The first of these is *diversification of the forms of ownership* in the USSR, which has become one of the tenets of Gorbachev's *perestroika* and an element of his new socialism.<sup>211</sup> Prime Minister Nikolai I. Ryzhkov's Report to the Supreme Soviet graphically illustrates the extent of etatisation of the entire structure of ownership that has taken place in the USSR since Stalin;<sup>212</sup> moreover, this process continued into the fourth year of *perestroika*. In 1970, Ryzhkov pointed out, 83% of the Soviet economy was in the hands of the State; in 1988, the State's share was close to 90%.<sup>213</sup> The relative share of personal ownership, on the other hand, decreased during this same period even more rapidly: from 8.6% in 1970 to a mere 3.4% in 1988.

This lopsided distribution of ownership is expected to change more or less rapidly once the Draft Law on Ownership, still at the stage of deliberation in the Soviet parliament as of mid-February 1990,<sup>214</sup> is promulgated and the new institutions and establishments endowed with ownership rights are created. The Draft Law provides for de-etatisation of ownership by diversification of the kinds of property that are protected by law, although the divestment by the State of its property is not expressly tied to a potential "withering away of the State." It provides for a pluralistic approach to ownership based on territorial or organizational criteria, as well as on the nature of property (*e.g.*, intellectual property)<sup>215</sup> or the owner's legal status (*e.g.*, lease-holder's property; individual or joint ownership). While personal ownership is considered in the Draft Law both as individual and as social ownership, private ownership is still forbidden; religious organizations, however, may acquire property for the discharge of religious purposes.<sup>216</sup>

Two statements made by Ryzhkov sum up the scope and the significance of this aspect of *perestroika* for the dismantling of the old Stalinist model of Soviet economy: (a) The success of *perestroika* as a whole, he claimed, echoing Gorbachev himself, will greatly depend on the progress in restructuring the system of ownership. For etatisation of ownership had given birth to what should be feared most: "the cutting off of the tie which bound the workingman to his property, an alienation of the sense of ownership," whereas "the only means of creating an interest in productive work on the part of its producer is the interest flowing from ownership"; and (b) "for all practical purposes, all restrictions on ownership of any kind have been removed from the exercise of individual

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211. *Id.* at 2, col. 6.

212. Ryzhkov, *Strategii uglubleniia ekonomicheskoi reformy - novuiu zakonodatel'nuiu osnovu* [A New Legislative Foundation for the Strategy of Intensification of the Economic Reform] (report at the Second Session of the USSR Supreme Soviet), reprinted in *Pravda*, Oct. 3, 1989, at 2-4.

213. *Id.* at 2.

214. USSR Draft Law, *O sobstvennosti v SSSR* [On Ownership in the USSR], Nov. 14, 1989, reprinted in *Pravda*, Nov. 18, 1989, at 3, and *Izvestiia*, Nov. 18, 1989, at 1-2.

215. *Id.*, art. 4, para. 3.

216. *Id.*, art. 21.

economic labor activity.”<sup>217</sup>

A second feature of Gorbachev's view of socialism is that it *plays down* Marx's main law governing the historical process: the “*struggle of classes*.”<sup>218</sup> With respect to Soviet society, this implies his acceptance of the concept of an “all-people's state,” enshrined in the *Preamble* to the 1977 Constitution and in article 1, despite the avowed continued existence of at least three social classes — a purely non-Marxist concept.<sup>219</sup>

Gorbachev himself asks the crucial question: If today's socialism stands for universal values and ideals, what is the proper class approach to such a proposition? One quotation from Marx and Engels<sup>220</sup> contains Gorbachev's answer: “[t]he struggle for the liberation of the working class does not mean a struggle for class privileges and monopolies but equal rights and duties and the eradication of all class dominance.”<sup>221</sup> Marx came through, once again. Gorbachev, therefore, urges increased knowledge of the needs and interests of all classes and social groups in Soviet society, in order to better satisfy them under *perestroika*.

Gorbachev's special appeal, however, is directed at the intelligentsia (not the *Lumpenproletariat* or the “working class”). He wants to make up for decades of lost opportunities by assigning to the intelligentsia, and the professional classes in general, a special role in the process of *perestroika*; their social role, he asserts, and the value assigned to creative and intellectual pursuits must be raised, for socialism will have no appeal to humanity unless the scientists, the artists, and all the creators are in the front ranks of *perestroika*, not at the tail end of a social class hierarchy.<sup>222</sup> Gorbachev adds, for the benefit of the non-intellectuals, that socialism will have no future unless it can unleash the creative energies of *all* individuals, whatever their class affiliation. Perhaps Gorbachev's record in this direction does not, thus far, bode well for the future of socialism; but, once again, this is beside the point. Or is it?

#### v. Gorbachev's Global Socialism

Gorbachev's socialism will continue to be built on a global basis.<sup>223</sup> It will not, however, be built “in common” as Khrushchev understood it, *i.e.*, in a uniform and planned manner, under Soviet leadership, or as a prelude to the “simultaneous transition to integral communism.” Perhaps a more accurate way of expressing what Gorbachev's “global”

217. Ryzhkov, *supra* note 212, at 2.

218. Gorbachev, *supra* note 49, 2-3. The “non-confrontational” approach towards other classes and different socio-political formations was later enshrined in the Draft Platform to the Twenty-eighth Party Congress, *infra* note 242. See *supra* note 199; and *K gumannomu, demokraticheskomu sotsializmu* [Towards a Humane, Democratic Socialism], Pravda, Feb. 13, 1990, at 1-2.

219. KONST. SSSR, preamble and art. 1.

220. K. MARX & F. ENGELS, 16 WORKS 12 (Russian ed.).

221. Gorbachev, *supra* note 49, at 2.

222. *Id.* at 3.

223. *Id.* at 1-3. See also “Platform,” *infra* note 242, pts. I, VI.

socialism stands for is (1) the greater influence of foreign socialist movements on the formation of progressive socialism in the Soviet Union; and (2) socialism's increased role in solving global problems.

(1) In building "new" socialism under *perestroika*, the Soviet Union is not left without models and precedents, as it had been during Stalin's "Socialism in One Country." It can draw lessons from its own experience as well as take into account the vast experience already accumulated by the socialist movement in all parts of the world.

There is a long record of building socialism *within a socialist political formation* (in Eastern Europe, China, and elsewhere); that experience has not been lost for *perestroika*. Furthermore, there is the contribution made to socialism by reform groups in *other political formations*, including capitalism. "We are aware of," Gorbachev said, "and have due esteem for, the achievements of Social Democracy on behalf of the socialist idea, and the social reforms it has inspired, contributing to the well-being of the populations in the capitalist countries."<sup>224</sup>

The Soviet Union no longer considers that there is only one correct path to socialism. "Socialism is not something that has been given once and for all time," Gorbachev argues. Disagreeing with Marx, he contends: "we have no monopoly on truth."<sup>225</sup> Each country must build socialism in its own way and according to its own model predicated on its historical, cultural, and ethnic heritage and the level of its present economic development.<sup>226</sup> The Soviet Union can only benefit by the expanded range of possible solutions, drawing lessons from both successful and failed experiments in other countries and other socio-political environments.

Finally, there is an undeniable benefit for socialism in *studying and integrating capitalist experiences*, in the same manner as capitalism itself has benefited from the socialist experience and has actually evolved under its influence. *Socialism, too, is capable of evolving*. Of particular value is the manner in which capitalism has taken advantage of the vast opportunities created by the Scientific-Technical Revolution which occurred while socialism was asleep.<sup>227</sup> Socialism can also learn from capitalism about new techniques (managerial, informational) and new institutions (diversity of ownership, variety of forms to organize industrial production).

There is, in Gorbachev's opinion, no contradiction in adopting the tools and techniques used by reformed capitalism in the construction of

224. Gorbachev, *supra* note 49, at 1; and Draft Platform, *infra* note 242, pt. II.

225. Gorbachev, *supra* note 49, at 1, col. 6; *id.* at 2, col. 3.

226. *Id.* at 1, cols. 5-6.

227. *Id.* at 1, col. 4; *id.* at 2, cols. 2, 7. One finds here a distant echo — if not confirmation — of Raymond Aron's argument that scientific and technological revolutions — not capitalism itself, as the Marxists maintained — were the central feature of modern life. It is because of the scientific and technological revolution that capitalism today, on Gorbachev's own admission, is no longer what it was in the days of Marx. See generally R. ARON, INTRODUCTION TO THE PHILOSOPHY OF HISTORY: AN ESSAY ON THE LIMITS OF HISTORICAL OBJECTIVITY 122 (trans. ed. 1961). See also text accompanying notes 205 & 228.

revitalized socialism, because (a) some processes of economic development are quite similar in socialism and capitalism; and (b) because not all tools that are "modern" or "advanced" are, by that fact, "capitalist," even when devised under capitalism. This is quite acceptable as long as the interests of individuals remain the purpose rather than mere instrument of the reformers' goals.<sup>228</sup>

(2) Gorbachev's global socialism also presupposes that under *perestroika*, socialism will acquire many features and preoccupations that are not purely socialist but are shared by all societies molded by today's global threats and universal aspirations that overshadow narrower concerns.

According to Gorbachev, "[g]lobal problems have reached such proportions that without taking them into account it is now impossible to arrive at realistic views about current trends in societal development, or the future of mankind."<sup>229</sup>

Beyond purely socialist concerns there lies a common heritage of cultural, moral-ethical, and legal values: concepts of justice, supremacy of law and freedom of the individual that supersede the confines of a superstructure built by a class for its own particular interests. In defense of these common values of our threatened civilization we must forsake confrontation between socialism and capitalism and learn to cooperate. Gorbachev lists economic values among these common values: the principles of production and exchange of goods based on the laws of value and cost ("*ekvivalentnyi obmen*" and "*zakon stoimosti*"). He does not elaborate.<sup>230</sup>

Socialism cannot exist in a vacuum, and its activities are likely to be increasingly influenced by common global problems and values, including concern for peace and security, freedom, and self-determination. Under *perestroika*, socialism in the Soviet Union will endeavor to contribute to the building of a more humane and rational society within the framework of a common civilization, without abandoning its own values and priorities.<sup>231</sup>

#### vi. The Decline of Khrushchev's Blueprint for Integral Communism

"Integral communism" is not coming, at least not for a very long time, according to Gorbachev. It was clearly wrong for Khrushchev to assume that with the removal of Stalinism as a brake on normal societal development, the creative forces of socialism would be freed and the highest stage of socialism, *i.e.*, communism, would prevail within a generation's time. A new utopia was presented to the Soviet people, laden with exaggeration and oversimplification.<sup>232</sup> Khrushchev and his immediate successors came from the same rigid ideological mold as Stalin

228. Gorbachev, *supra* note 49, at 1, col. 3; *id.* at 2, cols. 2, 4, 6, 7.

229. *Id.* at 1, col. 5.

230. *Id.* at 2, col. 3.

231. *Id.* at 2, col. 3; *id.* at 3, cols. 7-8.

232. *Id.* at 2, cols. 2, 5.

himself. So much for Khrushchev's blueprint for "transition to integral communism."

Never again, Gorbachev contends, must immutable theoretical models, blueprints and timetables, however superficially attractive, be imposed upon the Soviet people, for pragmatic reality to be squeezed into them by decree. Rather, life itself must determine the paths along which society will evolve. Gorbachev pointed out that neither Marx nor other classics of Marxism have ever built models for future communist society, much less speculated about the details of its organization.<sup>233</sup> At best they would use very general summaries of trends and tendencies in social evolution as a "compass" in the transformation of social practices.<sup>234</sup> "We do not know," Lenin wrote, "and have no way of knowing, the stages or the practical measures by means of which mankind will reach [communism]."<sup>235</sup>

Gorbachev assures the readers that there were no plans under *perestroika* to impose communism by decree. *Perestroika* itself, he argues, which is the stage of renewal of socialism, does not follow any predetermined dogmatic schemes but evolves as the result of analysis and synthesis of actual trends in society which are subject to change and of a contest of conflicting views and ideas about the meaning of these trends. Gorbachev expected that *perestroika* would continue during the balance of the 20th century and extend into the 21st.<sup>236</sup>

According to Gorbachev, the Soviet Union still has a long way to go before it can talk about transition to communism. It must create the prerequisites for self-government as a first step, and it must master to the fullest extent possible the virtually endless opportunities offered by the Scientific-Technical Revolution. This, too, is a prerequisite for contemplating transition to a higher stage of socialism. Realistically, this alone would tend to push it to a remote future.<sup>237</sup>

Gorbachev slams shut further talk about future communist society by paraphrasing Lenin, making sure to add a last word: "There is still much that we do not know, but we hope to learn as our society goes through the historically transitional stage of *perestroika*."<sup>238</sup>

## Conclusion

As a communist and social engineer, Mikhail Gorbachev described *perestroika* as a *stage of societal development*<sup>239</sup> during which socialism in the Soviet Union would be purged of Stalinist and post-Stalinist "aberrations," rescued from stagnation, and, at the same time, be revitalized, to

233. *Id.* at 1, cols. 3, 5. See, e.g., K. MARX & F. ENGELS, 22 SOCHINENIIA [WORKS] 563 (Russian ed.).

234. Gorbachev, *supra* note 49, at 1, col. 3.

235. *Id.* at 1, col. 5; V. LENIN, 33 COMPLETE WORKS 99 (Russian ed.).

236. Gorbachev, *supra* note 49, at 1, col. 2.

237. *Id.* at 1, col. 4.

238. *Id.* at 2, col. 2; *id.* at 3, col. 8.

239. *Id.* at 1, col. 2. The definition is his.

enable it to fulfill the promise of 1917, and modernized so it would be equal to the tasks facing Soviet society today. But *perestroika* was also the *instrument* by which this ambitious reform was to be accomplished. The first aspect of *perestroika* called for a redefinition of socialism and of its place in the development of society: a redefinition of the *ideological* aspects of the reforms carried out under *perestroika*. The second aspect of *perestroika* required a large dose of *pragmatism* in building a new society, repudiating dogmatic stereotypes, experimenting with new methods and techniques, and incorporating the applicable experience gained in other countries and under other social systems, including capitalism.

Not surprisingly, *perestroika* appears to fluctuate constantly between pragmatism and ideology. It comes across as a self-renewing phenomenon which requires that newly-introduced laws and institutions be constantly revised and adjusted in response to pragmatic needs, to be then incorporated into the new model of socialism that is itself subject to permanent redefinition. Gorbachev's "manifesto" of November 1989, "The Socialist Idea and Revolutionary *Perestroika*,"<sup>240</sup> represented the ideological underpinning of his restructuring of Soviet society. But, characteristically, in publishing it his motive was expediency, his Marxism was revisionist, and his advice to forget for the foreseeable future the advent of the communist millennium, was pragmatic and practical.

Gorbachev's *volte-face*, in prevailing upon the Plenum of the Party's Central Committee to accept the removal of constitutional endorsement for the Party's role as the vanguard of social development and the fount of all political power<sup>241</sup> was, no doubt, the most significant swing thus far — historical in its importance — in favor of pragmatism, in its continuing interplay with ideology. But it also raises serious questions about *perestroika*'s future nature and direction, if not its future *tout court*.

It has been said that a camel is a horse designed by a committee. Even if socialism itself should continue to be guaranteed by the Constitution as the basis of the Soviet economic system, the participation of the new Congress and of heterogeneous political groupings pursuing their own agendas in the shaping of *perestroika* is bound to have an effect on each of its two aspects. Should, on the other hand, the Communist Party find itself in the minority, the future of socialism itself may be affected. Gorbachev's suggestion that the Soviet federation be restructured by introducing the treaty principle, thus allowing for the existence of diverse forms of federative ties,<sup>242</sup> could affect the future of the USSR

240. Pravda, Nov. 26, 1989; Gorbachev, *supra* note 49, at 1-3.

241. See *supra* note 199.

242. See Gorbachev, *O proekte platformy TsK k XXVIII S'ezdu partii* [On the Draft Platform of the CPSU Central Committee for the XXVIIIth Party Congress] (report to the Plenum of the CPSU Central Committee), Feb. 5, 1990, reprinted in Pravda, Feb. 6, 1990, at 2, col. 2. For text of the "Platform," see Izvestiia, Feb. 13, 1990, at 2, col. 3 (the Russian term *dogovornyi*, used in both texts, means both "based on a treaty," and "contractual"). See also N.Y. Times, Feb. 6, 1990, at A16, col. 1. In the excerpts from the "Platform," published in the New York Times, this clause was omitted. N.Y. Times, Feb 14, 1990, at A12, col. 1.



itself, as we know it today particularly if the constituent republics should decide to take their fate into their own hands.

In presenting his vision of the new socialist society in the Soviet Union and its role in the world, Gorbachev is a pragmatist, as well as a revolutionary in the ideological sense. Both Gorbachevs are authentic. The pragmatist is a political moderate, his revolutionary *alter ego* a Marxist revisionist. His political courage is matched only by the political risks he takes. Wisdom commands caution; hence these two quotations, addressed to the pragmatist and the revolutionary alike:

“Die Geister die ich rief, die werd’ ich nun nicht los!”

(The spirits whom I summoned, no longer can I exorcise them!)

(J. W. von Goethe, *Faust*)

and

“Revolutions are started by moderates and finished by extremists.”

(B. de Jouvenel, *Du Pouvoir*)

In a supreme feat of pragmatism and expediency, Mikhail S. Gorbachev now aspires to become the radical who will complete the revolution which he has started as a moderate. What will be the role of ideology? — one wonders. When precisely did Gorbachev stop thinking and acting *po bol'shevistski* (like a good Bolshevik), or did he?