

# **The Soviet Economic System**

A Legal Analysis

**Olimpiad S. Ioffe and  
Peter B. Maggs**



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## About the Book and Authors

A comprehensive analysis of the Soviet economy from a legal perspective, this book discusses the Soviet theory of legal regulation of economic activity and the formal structure of economic legislation. The authors argue that two contradictory tendencies characterize the Soviet economic regulatory system: reform and retreat from reform. Legal reform efforts usually result from the attempt to increase economic efficiency, which typically involves according greater independence to lower-level economic organizations. The danger that political power might be undermined, however, eventually leads to the reestablishment of the dominance of the central authorities over lower-level decisionmaking. Drs. Ioffe and Maggs also examine the tensions in labor law, which must reconcile the needs of the economy for job mobility and high worker morale with administrative ideals of strict discipline, and the legal aspects of technology transfer. In addition, emphasis is placed on the ways that economic legislation is developed and applied in practice; the authors note in particular the progress that has been made in systemization and codification of economic legislation.

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# Introduction

## **The Soviet Economy in the Soviet System**

The intrinsic nature of the Soviet economy depends not only on this economy itself but also on the Soviet system as a whole. Western Sovietologists, oblivious of what is happening around the Soviet economy and concentrating on purely economic matters, often make mistakes inexcusable in light of elementary facts that are readily available.

Sometimes these mistakes are not very important and result more from the juggling of words than from errors in substantive analysis. Thus, John H. Wilhelm contends, with reference to his own arguments and relying upon Eugène Zaleski,<sup>1</sup> that “the Soviet Union has an administered, not a planned, economy”: while a planned economy means that “the plan and the planning process constitute the dominant mechanism by which economic coordination and decision making are achieved,” in the USSR one finds, “instead of a plan and planning process governing economic operations, . . . an ever-changing process of administrative corrections of ‘the plan’ actually characterizing economic activity.”<sup>2</sup> Yet, it is apparent that economic planning can be implemented only administratively and in no other way. Had Wilhelm combined his study of the Soviet economic system with appropriate information gleaned from the Soviet legal system, he undoubtedly would have avoided this obvious error. As the most significant Soviet legislation on civil law provides: “civil rights and duties arise from . . . administrative acts, including . . . planning acts.”<sup>3</sup> Consequently, planning acts are only a species of administrative acts, and therefore there is no point in contrasting a planned economy with an administered one. Actually, Wilhelm unconsciously substituted the contrast between stable and non-stable plans with a contrast between planning and administration. However, changeable planning is still planning, and moreover, under certain circumstances, it is preferable to rigid unchangeable planning. But regardless of the stability of Soviet plans, an administered economy arises owing to its planning as such, not to the character of this planning. Unfortunately, there are more significant errors arising as a result of the academic insulation of the Soviet economy, not from the Soviet legal system, but from the Soviet political system. Hardly any other Western work describes the Soviet economic mechanism more faithfully than does the universally known book written by Alec Nove.<sup>4</sup> Even a hypercritical reader can find, at most, only a few inaccuracies and no evident mistakes. However, once Professor Nove

attempts to suggest the measures that should be employed in order to improve the economic situation in the USSR,<sup>5</sup> any interest previously engendered by his book disappears without a trace. His innovations possess no originality: liberalize economic management and economic miracles will be achieved. But how would this economic liberalization affect the Soviet political system? Professor Nove must sincerely think that the two, his economic reform and the Soviet political system, are basically compatible. Otherwise, the question "Is a within-system reform possible?," the title of his paper at the 1985 Geneva conference on the USSR, could not have been positively answered as it was in this paper.<sup>6</sup> It is true that the call to economic liberalization has not brought Professor Nove to the extreme expressed by his supporters at the same conference who insisted without a trace of humor upon the compatibility of the Soviet political regime with the economic model of Taiwan and Singapore. Nevertheless, like his supporters, Professor Nove makes no attempt to argue the correctness of his assertions with reference to the substance of the Soviet political system. He entirely disregards this system, preferring a bare postulate of the invulnerability of the political regime even in the face of essential economic modifications. But just as a postulate does not bind its author, it also need not impress its addressees.

Who are these addressees? At any rate, they are neither the Soviet rulers, nor anti-Soviet activists. The former have never followed the suggestions of their Western advisers, and there is no reason to assume that anything has recently changed in this regard. Anti-Soviet activists, in turn, demand economic modifications incompatible with the Soviet system, i.e. modifications that either are not suggested by Western Sovietologists or cannot be introduced without the politically suicidal support of the Soviet rulers. The only "consumers" of Sovietological "production" are Western democracies interested in discovering the truth in order to prevail in their competition with the USSR. To be equal to the singular task of making their work valuable to their readers, Sovietologists must strictly observe certain fundamental principles which require them: (1) to study the Soviet system as it really is and not as one desires it to be; (2) to ascertain the actual forms of social improvement determined by the Soviet system itself and not those invented by its explorers; (3) to discover whether these forms are potential sources for the strengthening of the Soviet regime and to refrain from instructing this regime how to overcome its weakness; (4) to elucidate specifically Soviet processes with reference to all aspects of the Soviet system and not as isolated phenomena. With this last guideline in mind, it is convenient to begin by considering the Soviet economy as an important ingredient of the Soviet system.

The predominant component of the Soviet system is the unlimited political power of the ruling summit. Domination of this summit does not mean, of course, that its representatives directly manipulate all of the governing apparatus. Mikhail Voslensky is unquestionably right, in emphasizing the distribution of such functions among all of the ruling agencies,

from the Politburo to the local executive committees.<sup>7</sup> As he says, the Politburo would never appoint the chairman of the collective farm: this must be left to the appropriate district committee of the CPSU (the Communist Party of the Soviet Union).<sup>8</sup> However, despite the actual distribution of governing functions, not the entire “nomenclature,” as Professor Voslensky calls the Soviet bureaucracy, but only its highest pinnacle wields unlimited political power, whether this pinnacle is represented at a given historical period by collective or by personal dictatorship. As Professor Voslensky himself recognizes, “the Politburo, certainly, may appoint . . . a chairman of a collective farm,” but this “would be an outrageous violation of established rules and would be met with silent perplexity by the nomenclature (if, it were not, of course, a question of demotion . . . of some one of the high-ranking persons included in the nomenclature of the Politburo).”<sup>9</sup> This means, in other words, that the power of all other agencies is restricted by their functions, while the Soviet summit, though fulfilling only certain functions, possesses supreme and not subordinate, all-embracing and not partial, or, to be brief, unlimited and not restricted political power.

The subject of this power is the Soviet people, as the next component of the Soviet system. This component, being the largest in quantitative terms, does not occupy a qualitatively appropriate position. While political dominance is effected from the top of the system, the Soviet people, as subordinate subjects, are at the bottom of it. However, this bottom level is not homogeneous. There are different social strata. Official Soviet ideology distinguishes workers, peasants, and intelligentsia.<sup>10</sup> In fact, the social stratification of the USSR is even more complex than the Soviet Constitution acknowledges.<sup>11</sup> Unskilled labor and the “working aristocracy” are united under the general notion of “workers,” well-to-do and extremely poor members of collective farms are called by one name “peasants,” to say nothing about the intelligentsia, which, in Soviet parlance, includes everyone except workers and peasants—from the new millionaires among a section of the highly paid intellectual elite down to ordinary clerks with miserable salaries and without any hope for the future. The actual stratification of the Soviet people demands an application of different approaches toward various groups, and, accordingly, one stratum will be somewhat more politically dominant than another. But this, in principle, does not change the basic situation. The entire population lives under the fully unrestricted weight of the elite’s political might, and the Soviet regime would cease to exist if the relationship between the ruling pinnacle and the subordinate masses were to be destroyed or even shaken. From this point of view, distinctions between the nomenclature and the remainder of the Soviet people are of little significance, whether one considers the nomenclature as a new dominating class or as a privileged part of the dominated people.

The means that support political domination are the functions of the next components of the Soviet system: propagandistic persuasion, on the one hand, and organized suppression, on the other hand. Although Soviet

propaganda is generally notorious as the most boring in the world, one must recognize its capacity to elaborate a certain stereotyped mode of thinking adapted to the totalitarian system and capable of explaining social events or phenomena in light of the official attitude. As a result, even the invasion of Afghanistan, despite its duration and the suffering involved, is not properly understood or interpreted by the majority of the Soviet people. As to organized suppression, its implementation is ensured by the special work of punitive agencies (the judicial system, the procuracy, the police, the KGB, etc.) as well as by the routine methods of governmental activity (legal regulations and administrative orders, formal and discretionary solutions to the daily problems of the executive process, etc.). As a result of the activity of these agencies, even the dissident movement, despite the personal boldness of the majority of its participants, has lost any substantial significance, though it continues to show itself now and again. However, strong as they are, propagandistic persuasion and organized suppression can be utilized only in the performance of relatively specific tasks and for the achievement of comparatively limited purposes. The general task of holding each individual and the entire population in check is beyond their capacity.

The efficient execution of this task, essential to the dominant summit, is ensured by another component of the Soviet systems—by the Soviet economy. The most important peculiarity of the Soviet system consists of the fact that the holder of unlimited political power is at the same time the economic monopolist in the USSR. It keeps in its grasp all more or less significant economic ingredients, beginning with land, factories, and means of transportation; ending with housing funds, retail-trade enterprises, domestic service, etc. Here, in the economic monopoly of the ruling stratum, one can find the explanation for Soviet-style economic miracles: technological backwardness in one area and high technical achievements in another, shortages of material resources for some industries and unrestricted abundance for others. Owing to its economic backwardness the USSR does not have the capacity to maintain an optimal correspondence between supply and demand in general. But, possessing at its unfettered disposal the entire economy of one-sixth of the world, the Soviet leadership does concentrate as many resources as are needed to solve those problems which the Soviet regime regards as being of paramount importance. Mikhail Checinski does not take into consideration this peculiarity of the Soviet system, when he contends that in the USSR “a dramatic shift in the allocation of resources is extremely difficult.”<sup>12</sup> In fact, just the opposite is true. In the United States Congress may waste years or even decades in argument and debate; the Politburo, as the actual holder of unlimited power and economic monopoly in the USSR, can obtain an unanimous decision in five minutes, as soon as a new leadership, overcoming a short period of political struggle, manages to consolidate its power after the replacement of previous rulers. Economic monopoly has, however, not only this but also another, incomparably more substantial, importance for the Soviet system: it is the main source of the unlimited political power of the dominating summit in the

USSR. Other methods for the maintenance of dictatorship have been encountered in human history, if not in identical shape, than at least with an extremely similar nature. However, in the entire history of humanity no other regime has possessed political omnipotence of such magnitude as does the Soviet regime. Such an extraordinary phenomenon becomes understandable only when one recognizes that, owing to this economic monopoly, each individual in the USSR is permanently and inseparably dependent on the political power. Withdraw the economic monopoly from the grasp of the Soviet rulers, and they will lose their unlimited political power; withdraw from the grasp of the same rulers unlimited political power, and they will lose their economic monopoly. Only the combination of unlimited political power with economic monopoly gives rise to and assures the continuance of the Soviet system, and, conversely, were the Soviet system to be deprived of either of these two components, it would as such cease to exist.

The Soviet leadership knows no less than do Western Sovietologists that the liberalization of economic management would have positive economic effects. At the same time, the Soviet rulers understand their own interests better than even their good-natured critics and advisers from the West. They are not so naive as to rely upon those who strive to assure them that the acceptance of a "combination of certain capitalist elements with state property and the state interference in the economy—convergence is not dangerous" for the regime as such, for the highest and middle links of party and state machinery."<sup>13</sup> Soviet rulers know that at the very moment when a liberalized economy is permanently introduced, their political power will be doomed.<sup>14</sup> This must be seriously taken into account by those Sovietologists who, in professing to lending a helping hand to the Soviet regime, are actually suggesting the means of its destruction. They must also not forget that, because of the correlation outlined between economy and politics, the Soviet system presents substantial contradictions.

First, the Soviet state as a political organization cannot directly implement economic activity. Such activity must be imposed upon economic entities recognized as state organizations (economic associations, state enterprises, etc.) or disguised as non-state economic units (collective farms, consumer cooperatives, etc.). Thus, the economic monopoly of the political rulers exists in the USSR under an inevitable separation of economic activity from economic domination. This is the determinative contradiction of the Soviet system which, in the final analysis, leads to all other insoluble conflicts.

Second, in order to directly implement economic activity, Soviet economic entities need a certain economic independence from the Soviet state. Where the necessary independence is not assured, the state substitutes itself for its entities in the realm of economic activity, activity which requires initiative, not merely the carrying out of orders issued "from above." Such substitution has always resulted in economic failures, since political organizations are incompatible with the direct implementation of economic

activity. Conversely, if economic entities attain the necessary independence, then the state itself actually loses its economic monopoly, which assumes an absolute, not simply a relative, governmental control. Such a loss of control has always resulted in political failures, since unlimited political power is incompatible with the economic independence of those who are politically dominated.

Third, the permanent attempts to find a way out of this vicious circle by the Soviet leadership have always necessitated maneuvering between economic centralization and economic decentralization. Economic centralization (Lenin's War Communism, Stalin's rigid planning, Brezhnev's economic and industrial associations<sup>15</sup>) corresponds to the nature of the Soviet system, in supporting an economic monopoly as the primary source of unlimited political power. But this entails an economic collapse and thus threatens the entire system. Economic decentralization (Lenin's NEP, Khrushchev's *sovnarkhozy*,<sup>16</sup> Kosygin's 1965 reform<sup>17</sup>) contradicts the nature of the Soviet system, in undermining the state's economic monopoly and in weakening, as a result, its unlimited political power. But, it is necessary to prevent an economic collapse, even though economic decentralization threatens the entire system with political collapse. In this regard, it is very remarkable that new Soviet leaders—Andropov and his successors, including Gorbachev—have appeared at the stage where the economic cycle attains the point of the turn to decentralization. Andropov actually purported to move toward decentralization, but employed the cautious method of an economic experiment.<sup>18</sup> Instead of introducing an economic reform, Gorbachev's line continues to be ambiguous, expressing tendencies toward both centralization and decentralization.<sup>19</sup> But under all circumstances, the Soviet economy develops in a cyclical continuum,<sup>20</sup> each cycle beginning with centralization and ending with decentralization.<sup>21</sup>

The Soviet economy, as described above,<sup>22</sup> has both strong and weak points.<sup>23</sup> The former are expressed in the efficiency of this economy and the latter in its inefficiency.

The Soviet economy is efficient, however flabbergasting this assertion may appear from the viewpoint of *communis opinio doctorum*. Any system can be evaluated by a number of criteria, but if one is not to misconceive the nature of a given system, one must measure its efficiency by the criterion that best mirrors its primary aim. In a society that subordinates politics to economic success, productivity constitutes the chief criterion of efficiency, on the condition that the level and structure of productivity corresponds to the level and structure of demand. So it is with efficiency under a market economy. But one must avoid the mistake made by Ljubo Sirc who identifies efficiency of a market economy with any economic efficiency.<sup>24</sup> In a society that subordinates the economy to politics, the criterion of efficiency must be found in the degree to which the structure of the economic system guarantees the unlimited dominance of the political rulers. So it is with efficiency under the Soviet economy. Efficiency of this kind is the source of the phenomenon noticed but not explained by Vladimir Kon-

torovich's words: "The Soviet political structure differs from most others in that it is very well insulated from the consequences of economic failures."<sup>25</sup> It is really insulated from these consequences because no economic failure can undermine unlimited political power so long as the state's economic monopoly remains inviolate. Once this point is grasped, one will never ask certain questions so fashionable in the West: why cannot the Soviet leadership make the economy work, why does one economic failure follow another, why is every new economic measure more stupid than the last? In fact, the Soviet leadership has made the economy work splendidly as the source of its dictatorship. In this regard, Soviet economic policy has never suffered a single real failure, and each new economic measure has appeared at least as effective as any previous one.

However, being efficient, the Soviet economy is simultaneously inefficient, however inconsistent such an assertion appears from the viewpoint of the unacceptability of any form of *contradictio in adiecto*. Although efficiency in the meaning of a market economy has never been and could never become the goal of the Soviet system, this kind of efficiency may not be entirely disregarded, first of all, because of domestic problems. There are natural limits below which the standard of living of a human being cannot be lowered, and the Soviet regime would be doomed, were it to ignore this natural factor. This explains, for example, why the Soviet government, greedy as it is with respect to gold and hard currency, does not hesitate to buy grain abroad in order to maintain the standard of living of the Soviet population at least at the level of natural limits. On the other hand, external problems also push the Soviet regime toward economic efficiency in the market meaning of these words, and among these problems military superiority plays the most important role. Therefore, all Soviet leaders, even Stalin, have been concerned with economic efficiency in its common sense, without which it is impossible to resolve other significant tasks, except the task of maintaining of political dominance based upon economic monopoly. Thus, the insulation of the Soviet political structure from the consequences of economic failures does exist, but this insulation is not absolute because of the impossibility, even for the Soviet regime, of entirely ignoring certain aspects of economic efficiency intrinsic to the market economy. At the same time, such efficiency can be achieved, within the limits of the Soviet system, only if the system itself is inviolable, i.e., on the condition that political power is unlimited, and the economic monopoly is in the grasp of political rulers.<sup>26</sup> This, the most fundamental contradiction of the Soviet system, entails both its ability to survive and its impending doom.

The general conclusion which follows from what has been argued above must be sufficiently clear. Cyclical development on the basis of an alternation of opposite reforms—from centralization to decentralization and then back to centralization—as an objective law of economic development in the USSR ensures the existence and retention of the Soviet system. However, the real potential of such maneuvering is not inexhaustible. On the contrary,

its actual force undergoes continual weakening with the transition from one stage of economic development to another because of the incessant intensification of the contradiction between efficiency and inefficiency of the functioning economy. As a result, the Soviet system must collapse under the effects of its own nature. However, until its collapse occurs, this system needs to be explored rather than interred, and genuine exploration assumes the ascertainment of objective reality by all available means, among which Soviet legal theory and Soviet law play especially significant role.

### **The Soviet Economic System in Soviet Law and Soviet Legal Theory**

Soviet sources concerning the economic problems of the USSR suffer from a substantial lack of terminological coordination in the area under discussion. Thus, one can come across such terminological designations as “the economic system” and “the economic mechanism,” employed with the same or, at least, with a similar meaning, and yet these terms are not identically interpreted by different sources. Various conceptions are united only by the recognition that: (1) the economic system (the economic mechanism) in the USSR is a broader phenomenon than the economic basis (the total set of dominant production relations) as the most fundamental category of Marxist doctrine; (2) this system (mechanism) includes all links of economic activity and all methods of economic management (centralized planning, self-regulation, etc.); (3) the essential feature of this system (mechanism) is represented by the established forms of ownership of the means of production.<sup>27</sup> It follows from these generally accepted theoretical prerequisites that during “the transitional period from capitalism to socialism”<sup>28</sup> there was no unitary economic system in the USSR because of the poly-economic structure of the Soviet society where socialist ownership existed along with private ownership. “Only after the end of the transitional period and under the victory of socialism was this system created in its principal features.”<sup>29</sup> As to the mature system of new economic relations, it appears only at the stage when so-called developed socialism has been achieved.<sup>30</sup>

These theoretical declarations correspond completely to the appropriate legal provisions, and it could not be otherwise: the content of those declarations became part of the 1936 (Stalin) Constitution, and since that document was promulgated, these Constitutional principles have enjoyed both legally and ideologically binding force. Strict adherence to the standard interpretation has been required in all cases, except where a principle may be ambiguous. Any other deviation by a legal theorist from constitutional formulae has been persecuted to the same degree as would be an outright violation of the corresponding legal provisions.<sup>31</sup> It is, however, another question as to whether legal theory and law, while certainly corresponding one to another, are in conformity with Soviet reality.

The Soviet legislation of the 1920's did not use such terminological designations as the economic system or the economic mechanism. This legislation distinguished between state, cooperative and private ownership, without employing the terminology "socialist ownership" either as a general notion for state and cooperative ownership or as a specific term denoting state ownership. Nevertheless, state ownership received the most privileged support in this legislation, while private ownership was substantially restricted.<sup>32</sup> As the law stated, "legally existing cooperative organizations may possess various kinds of property to the same degree as may private persons."<sup>33</sup> Thus, in principle, cooperative ownership qualified as private ownership, though the cited rule provided for cooperative organizations certain advantages in comparison with those provisions addressed to private persons. It is obvious therefore that the Soviet legislator of that period of time could not employ even formal pretexts (to say nothing about the actual situation) as bases for proclaiming that a unitary economic system had been established in the USSR.

The legal and the appropriate doctrinal positions, supported by Lenin and other Soviet leaders as well as by representatives of Soviet jurisprudence during the NEP period, were, in essence, adequate for the circumstances.<sup>34</sup> Some phenomena called by Lenin "excesses of NEP" appeared, of course, now and again. Namely, certain persons strove to engage in prohibited trades (for instance, private credit operations) or to exceed the limits established for private activity (for instance, hiring more than five workers). Judicial practice unfailingly applied measures of confiscation to such enterprises, if the violations committed were the issue of a penal accusation or of a civil law suit. However, these violations cannot be considered as symptoms of the creation of an "underground" (or of a "second") economy in its contemporary interpretation. A "second" economy arises as an illegal antipode of the "first" or the only allowed legal economy. Since there was no economic monopoly of the Soviet state at that time, the objective circumstances that could give rise to an underground economy did not exist. Strange as this may seem, the underground economy is a specific anti-socialist product of the so-called socialist economy. When "under the victory of socialism" the Soviet economic system was created "in its principal features,"<sup>35</sup> the underground economy appeared in nascent form. After the new economic relations were proclaimed to have attained the level of maturity,<sup>36</sup> the underground economy entered the stage of genuine prosperity.

The "victory of socialism" was effected by measures initiated in the late-1920s—early-1930s. First, the Soviet authorities implemented the compulsory collectivization of agriculture and the mass expropriation of retail trade and other private enterprises by means of exorbitant income taxes and extra-judicial repression. A 1930 decree prohibited hired labor in districts of complete collectivization,<sup>37</sup> and a 1932 decree precluded the creation of private enterprises in general.<sup>38</sup> This legal development, prepared by illegal activity when the Soviet authorities "moved the law aside," as

Stalin cynically recognized, was finally crowned with Stalin's 1936 Constitution. The new Soviet Constitution proclaimed "the liquidation of the capitalist system of economy" and "the abolition of private ownership of the . . . means of production."<sup>39</sup> In fact, the terminology "private ownership" entirely disappeared from the Constitution, regardless of whether it dealt with means of production or with consumer goods. With regard to individual peasants and artisans, whose activity was still allowed, though within very restricted limits, the Constitution introduced the designation "small-scale private economy," instead of private ownership.<sup>40</sup> In all other cases, individual property was subsumed under a new legal category—the right of personal (not private) ownership.<sup>41</sup> At the same time, the Constitution put into legal circulation a notion previously employed only in political declarations and theoretical works: socialist ownership.<sup>42</sup> Simultaneously, the terminology "the socialist system of economy," the predecessor of the category of "the socialist economic system," appeared for the first time in Soviet legislation.<sup>43</sup> "The socialist system of economy and socialist ownership of the . . . means of production" qualified as "the economic foundation of the USSR."<sup>44</sup> However, "the socialist system of economy" was "the predominant" but not the only existing form of economy in the Soviet Union: along with it, "small-scale private economy of individual peasants and artisans" was also "permitted by law."<sup>45</sup> This could leave one with the impression that two different, though not equivalent, economic systems functioned in the USSR. But the predominance of the "socialist economy" attained such a level, and "small-scale private economy" was so weak and uncoordinated, that contrasting the two economic systems would not be realistic or truthful. Since the time of Stalin's Constitution, the economic monopoly of the Soviet rulers has been firmly established, and, as a result, their unlimited political power has been ensured. Stalin's purges were important only from the viewpoint of determining the personal holders of the established dictatorship. As to the dictatorship itself, it is based upon economic monopoly, the creation of which results from a series of measures beginning with the "nationalization" carried out directly after the seizure of political power in October 1917 and completed by the "collectivization" and other forms of expropriation undertaken in the late-1920s—early-1930s.

The rules cited and the terminology mentioned were transformed into the dogmatic arsenal of Soviet doctrine. Only certain problems of secondary importance were disputed owing not so much to the complexity of these problems as to the vagueness of the relevant parts of the Constitutional text. What is the substance of the right of personal ownership? Does it allow the possession of small means of production? If not, then how is one to interpret the collective farm household, bearing in mind Article 7 of the 1936 Constitution, which entitles the owners of such households to possess minor agricultural implements? If so, then does the small-scale private economy of individual peasants and artisans qualify as personal ownership or as a specific kind of private ownership? Should it be neither one nor the other, what kind of ownership is represented by legally allowed private economy? Such were the economic problems that figured prominently

in Soviet doctrinal discussions from the moment of the promulgation of the 1936 Constitution until its replacement by the 1977 Constitution.<sup>46</sup> Other economic issues of theoretical analysis, far more significant than those enumerated above, were not directly connected with Constitutional provisions and, therefore, despite the established dogmatism, a relative freedom of doctrinal exploration was not entirely precluded. In contrast, analyses of the Constitution could not exceed the limits of pure explanatory commentary.

It is, however, well worth noting that the 1936 Constitution and, after it, Soviet legal theory in fact supplied the designations for all of the most substantial modifications which had occurred in the Soviet society by this period of time. Unfortunately, the designations employed, instead of being adequate, are extremely distorting. But, replace the misleading Constitutional jargon incessantly repeated in doctrine with clear terminology supplemented by proper interpretation, and a true picture of the Soviet society will supplant the legally confirmed propagandistic farce. So-called socialist ownership actually was and is ownership by the ruling elite, and since this elite keeps in its grasp the Soviet state, one can treat "socialist ownership" as state ownership, and there will be neither a distortion of the truth nor a complete break with the official language of Soviet legislation. Further, the predominance of "the socialist system of economy" terminologically camouflages the predominance of the economic power of the Soviet rulers over all other components of the Soviet economy. Finally, the dependence of the latter on the former finds direct expression in the 1936 Constitution where this states that the right of personal ownership primarily comprises citizens' labor income,<sup>47</sup> and that each collective farm household has its own farming operation "in addition to the basic income from the social collective farm economy."<sup>48</sup> Only the small-scale private economic activity of individual peasants and artisans was restricted not by subordination to the dominant economy, but by established legal limitations.<sup>49</sup> Since, however, these limitations stemmed from the same source from which economic domination emanated, this legal subordination did not essentially differ from economic dependence.

The only economic phenomenon omitted by the 1936 Constitution was the underground or second economy. But this omission should not be assessed as a gap in the Constitution, which, according to its nature, was to deal with permitted, not with prohibited, types of economic activity. At the same time, the new situation summarized by the Constitutional provisions provided stronger encouragement for illegal economic activity than had the circumstances prevailing during the USSR's early years. The collectivization of agriculture led to rampant starvation. Rationing of the food supply was continued until 1935. The expropriation of private property in urban areas marked the beginning of the Soviet system's inability to meet consumer demands, which has since become the chronic disease of the Soviet economy. Owing to these events, the black market, which had vanished after the replacement of war communism by NEP, reappeared

after NEP was destroyed by the “victory of socialism.” Furthermore, the 1936 Constitution, legally allowing for the small-scale private economy of individual artisans, restricted this economy to the extent that it had to be based upon the personal labor of artisans and not upon the use of other persons’ labor. Therefore, openly acting as a laboring artisan and secretly functioning as an employer of hired workers, one could illegally perform that which previously had been assessed as quite legal activity. Secrecy also was useful in evading legislation that made certain types of trade legally unavailable to individual artisans. Thus, as always, actual demands were stronger than legal prohibitions, and although the underground private economy of the period of the “victory of socialism” did not attain the scale of the legalized individual enterprise of the period of NEP, this economy was, nevertheless, a concealed supplement to the official system. And any small openings resulting from the weakness of the official system were immediately filled by such concealed supplemental economic activity despite the danger of persecution and suppression.

The present stage of doctrinal development and legislative innovations is connected with the promulgation of the current 1977 Constitution. From this document the entire world learned that the USSR seemingly not only had achieved the “victory of socialism” but also boasted the creation of “a developed socialist society.”<sup>50</sup> The official announcement of such an historical event entailed a number of consequences. However, despite the purely propagandistic character of the announcement itself, its results are, at least to some extent, quite significant. First of all, in contrast to its predecessor, the new Constitution employed the terminology “the economic system” (not “the system of economy”) and dedicated to this topic a separate chapter<sup>51</sup> (instead of several words). In this latest version, socialist ownership of the means of production plays the role not of “the economic foundation of the USSR” but of “the basis of the economic system of the USSR.”<sup>52</sup> Neither private ownership nor small-scale private economy are mentioned. Individual ownership qualifies exclusively as personal ownership.<sup>53</sup> However, a new provision addressed to all Soviet citizens, whereas the older version was directed only to individual artisans, states: “In the USSR individual labor activity is permitted in accordance with the law in the sphere of handicraft, agriculture, domestic service to the populace, and also other forms of activity based exclusively upon the personal labor of citizens and members of their families,” but at the same time “the state shall regulate individual labor activity, ensuring its use in the interests of society.”<sup>54</sup>

The two formulas cited have different purposes. The first formula, generally allowing individual labor activity, on the one hand, sanctions the actually established situation previously legal only for individual artisans and illegal for workers and officials, and, on the other hand, it formally confirms the common knowledge that the “socialist economic system” cannot satisfy the needs of the populace without individual labor activity. The second formula, in subordinating such activity to state control, entitles the

appropriate governmental agencies to introduce limitations on individual labor (prohibitions on certain trades, or on the expansion of individual economic activity, etc.) that serve to maintain the absolute predominance of the "socialist" economic system "in the interests of society," as the law euphemistically expresses itself. Actually, however, this represents only a measure by which the holders of unlimited political power can retain their economic monopoly, while allowing a certain amount of private activity.

Further, the Constitutional proclamation of the "socialist" economic system is combined with a characterization of the USSR's economy as "a single national economic system."<sup>55</sup> This system embraces "all links of social production, distribution, and exchange within the territory of the country."<sup>56</sup> Because individual labor activity also is connected with production, distribution and exchange, one may quite logically conclude that it too pertains to the "links" of the national economic system. Such an assumption, however, finds no confirmation in a subsequent part of the same provision, which reads: "The direction of the economy is carried out on the basis of state plans for economic and social development, taking into account branch and territorial principles and combining centralized management with the economic independence and initiative of enterprises, associations and other organizations. Economic accountability, profit, cost of production, and other economic levers and stimuli shall be actively used in this connection."<sup>57</sup> Neither "direction," "planning," nor "organizations," to say nothing of economic accountability or similar "other economic levers," are compatible with individual labor activity.

Thus, the Constitutional interpretation of "a single national economic system" is more narrow than the Constitutional definition (all links of production, distribution, and exchange). But just these logical defects render the appropriate Constitutional provision, in fact, irreproachable, because "a single national economic complex" is only the official jargon substitute for the dictatorship's economic monopoly which relies upon the "socialist" economic system as opposed to individual labor activity. One may also notice that "the socialist economic mechanism," a category introduced by the Soviet legislature in the early 1980's,<sup>58</sup> originates with the "single national economic complex" and the methods of its direction outlined in the 1977 Constitution. As a result, the economic monopoly of the politically ruling bureaucracy has, at last, found consistent legal confirmation in the multifarious, though conventional, terminology of the Soviet Constitution as well as in the Soviet theoretical writings based upon this terminology.

Finally, as to the underground economy, it is not, of course, mentioned in the Constitution, but it exists and prospers, despite the post-Brezhnev battle against corruption and money-making. Yet only in the period immediately preceding the proclamation of the epoch of "developed socialism" and since that proclamation has the underground economy of the USSR finally attracted the serious attention of Western Sovietologists.<sup>59</sup> This could occur only because at that time development of this economy attained its zenith. While, seemingly, the all-embracing predominance of the official

economic monopoly should leave no room for its antipode, in reality, this antipode has managed to infiltrate the "socialist" economic system itself. While continuing to manifest itself in the traditional areas, the underground economy has also been appearing in numerous new forms, namely: (1) private production as a part of "socialist" production (where private equipment functions as a part of equipment of a state enterprise); (2) private production under the mask of "socialist" production (where an enterprise, though registered as "socialist," is in fact private); (3) "socialist" production for the purposes of private gain (where a state enterprise, fulfilling its planning task, also produces "*nalevo*," i.e., illegally and not for the benefit of the state); (4) "socialist" production and private wholesale (where the distribution of "socialist" output is partly implemented by private persons evading the channels of planned supply); (5) "socialist" production and private retail trade (where articles produced by a state enterprise are sold directly to customers by workers and officials of the enterprise).<sup>60</sup> Such expansion of the underground economy under "developed socialism," strange as it seems at first glance, appears as quite natural when viewed as a spontaneous reaction against the barefaced polarization of Soviet society. In the broad sense, there is a process of just, though illegal, correction of the legal, though unjust, distribution of goods established in the USSR. In aspect of interests of different groups of the Soviet population, the underground economy functions as a source of a monetary supplement not only to the beggarly salaries provided by the state, but even to the living standard that legally is available only to the Soviet official elite.

This contemporary peculiarity of the underground economy has proven to be so impressive to certain Sovietologists that with reference to it they sometimes deny the economic monopoly of the Soviet political rulers. Such a view results, however, from an obvious misunderstanding. First, the number of people enriched by illegal economic activity represents only a small part of the Soviet population. Thus, it is normally not the underground economy but the official economy that determines the living standard and source of income in the USSR. Second, the underground economy is illegal, and it can be engaged in only under the constant risk of probable prosecution. One must not forget that, because of the significance of the official economy as the primary source of unlimited political power, economic crimes are ranked among the most dangerous crimes in the USSR, and the death penalty, inapplicable to such infractions in free countries, is the common reaction of the Soviet regime against its sworn enemy. Third, to engage in illegal economic activity a Soviet citizen must occupy an appropriate legal position as a worker, an official, or a member of a collective farm. Otherwise he will be punished if not for an economic crime, then for malicious evasion of socially useful work. Therefore, even those who could ensure a high living standard for themselves by participation in unofficial economic activity remain dependent on the official economy. Fourth, the underground economy is prohibited by Soviet law. As a result, similar to the political monopoly of the Soviet rulers which exists despite

illegal dissidents' movement, the economic monopoly of the same leadership cannot be abolished by illegal economic activity. Because of these arguments there is no need to directly deal with the underground economy in the subsequent analysis.

Henceforth, the only object of our study will be the phenomenon officially called in the USSR the socialist economic system. Since, however, this system is developed on the basis of individuals' labor, representing the principal or often even the exclusive source of individuals' income, economic relations in which Soviet citizens take part cannot be entirely disregarded. At the same time, the purpose of this book is to analyze the Soviet economy not from an economic but from a legal standpoint. Therefore, a general characterization of the Soviet legal system in its connection with the Soviet economic system is inserted (Chapter 2); ownership, production, distribution and exchange are considered in their legally established forms (Chapters 3–8); and, finally, the legal protection of the Soviet economy is to be considered (Chapter 9). However, as a logical premise of legal analysis one must explain the Soviet economic system as a whole and as a combination of its fundamental elements (Chapter 1).

### Notes

1. Eugène Zaleski, *Stalinist Planning for Economic Growth* (Chapel Hill: University of North Carolina Press, 1984), p. 484.
2. John Howard Wilhelm, "The Soviet Union Has an Administered, Not a Planned, Economy," *Soviet Studies*, 37, (January 1985), 118–119.
3. Fundamental Principles of Civil Legislation, art. 4.
4. Alec Nove, *The Soviet Economic System*, Second Edition (London: George Allen and Unwin, 1980).
5. *Ibid.*, p. 293–328.
6. The Second International Congress of Professors World Peace Academy, 1985, Panel No. 1, Paper No. 4.
7. Mikhail Voslensky, *Nomenklatura—Gospodstvuiushchii klass Sovetskogo Soiюза* (London: Overseas Publication Interchange Ltd., 1985) pp. 148–149.
8. *Ibid.*, p. 149.
9. *Ibid.*
10. 1977 Constitution, art. 1. This grouping, mirroring the evolution of the official ideology, actually results from stratification of the Soviet society, the genuine character of which is, however, deliberately distorted. Marx emphasized only establishment of the dictatorship of the proletariat (Marx i Engels, *Sochineniia*, Second edition, vol. 28, p. 427). The 1936 Constitution, proclaiming the victory of the dictatorship of the proletariat, characterized the USSR "as a socialist state of workers and peasants" (Articles 1–2). At the same time, the Soviet intelligentsia qualified not as a class but as a "stratum between classes" (Stalin, *Sochineniia* vol 14, p. 145). The 1977 Constitution (Art. 1), contending that the USSR is "a socialist all-the-people's state," enumerates workers, peasants and intelligentsia as the three groups of this "all people," without reference either to "classes" or to "strata."
11. For Western Sovietologists this has long been an open secret. E.g.: *Interests Groups in Soviet Politics*, ed. by N.G. Skilling and P. Griffith, Princeton, 1971.

12. The Second International Congress of Professors World Peace Academy, 1985, Panel No. 1, Paper No. 2.

13. Igor Birman, *Ekonomika nedostach* (New York: Chalidze Publication, 1983), p. 168. This consolation sounds especially persuasive after the author's warning that "affairs will get worse before they become better" (*ibid.*, p. 169). In a very peculiar interview given to the a magazine *Vremia i My* 86 (1985), p. 125) a famous American economist, Nobel Laureate, Milton Friedman, the author of the book *Capitalism and Freedom*, answering the question if the introduction of a free market economy in the USSR would cause any major disturbances, formulates ideas even more encouraging for the Soviet rulers: "No disturbances will occur. Only advantages will be realized, because the Soviet economy is so inefficient that as soon as a market system will be introduced, literally in a month everybody will actually live better, except for the *nomenklatura*." Thus, the *nomenklatura* will be defeated, but no perturbation will occur! An excellent prediction!

14. References to the experiments of China and Hungary, usually employed by the proponents of the opposite view, do not seem persuasive. As to China, only the future can prove whether this is simply one temporary reform in an overall cyclical pattern that will eventually lead back to centralization (then, nothing has occurred) or "a new deal" has been permanently established (then, the system itself will be modified). In assessing the situation in Hungary, one must not forget that under the umbrella of the USSR this country has the opportunity to operate a relatively decentralized economy and at the same time to retain centralized political power. As a matter of course, the Soviet Union cannot employ an identical approach under the umbrella of Hungary. Therefore, both examples have no demonstrative value.

15. See the section of Chapter 4 ("Production: its legal organization") on "General Principles."

16. *Sovmarkhozy* replaced industrial ministries and administered economy of regions subordinate to each *sovmarkhoz*.

17. See note 15.

18. *SP SSSR*, 1983, part 1, no. 20, item 109.

19. See note 15.

20. In contrast to Vladimir Kontorovich's assertion that "there are no cyclical fluctuations in the Soviet economy" (Second International Congress of the Professors' World Peace Academy, 1985, Panel No. 1, Paper No. 1).

21. Therefore, not "some" Soviet reforms have been implemented in contradictory directions, as Professor Nove claims (Note No. 6), but each reform is opposite to the one that preceded it.

22. See also Olimpiad S. Ioffe, "Law and Economy in the USSR," *Harvard Law Review* 95 (1982): 1591-1625; Olimpiad S. Ioffe and Peter B. Maggs, *Soviet Law in Theory and Practice* (New York: Oceana Publications, 1983), pp. 10-13, 75-88, 119-132.

23. In order to ascertain these points not all of the schemes of Soviet society disseminated in Western literature seem helpful. Let the reader judge for himself on the basis of the most recent publication which summarizes its discussion of the Soviet society as follows: it is "not characterized by class conflicts" because "the relations to the means of production are socialist in the sense of there being collective ownership of the means of production"; "Soviet society is not a classless society" but is "a unitary class society involving the domination of the state acting on behalf of the working class"; "planning has replaced the market," and "full employment has eliminated the reserve army of labourers"; "the pattern of dis-

tribution . . . is unequal," and "this gives rise to various forms of hierarchy"; and, finally, "inequalities and incompatibilities . . . are of a qualitatively different kind from notions of class conflicts developed by traditional Marxists." David Lane, *Soviet Economy and Society*, (New York: New York University Press, 1985), p. 97.

24. Second International Congress of the Professor's World Peace Academy, 1985, Panel No. 1, Paper No. 5.

25. Second International Congress of the Professor's World Peace Academy, 1985, Panel No. 1, Paper No. 1.

26. These limitations stemming from the Soviet system itself are entirely disregarded in the reassuring perspectives outlined in the book *The Soviet Economy Toward the Year 2000*, ed. Abram Bergson and Herbert S. Levine (London: George Allen and Unwin, 1983), to say nothing about the official optimism expressed by the Twenty-Seventh Congress of the Communist Party of the Soviet Union (*Izvestia*, Feb. 26-March 9, 1986).

27. E.g., P. G. Bunich, *Khoziaistvennyi mekhanizm i ekonomicheskaiia politika partii* (Moscow: Nauka, 1980), p. 49; *Sovershenstvovanie sotsialisticheskikh proizvodstvennykh otnoshenii i effektivnost' proizvodstva* (Moscow: Mysl, 1980), pp. 5-11; D.P. Evstigneeva and R. N. Evstigneev, *Sotsialisticheskii khoziaistvennyi mekhanizm* (Moscow: Ekonomika, 1981), pp. 3, 6, 45, 62-68.

28. Marxist doctrine proceeds on the premise that after establishment of the dictatorship of the proletariat this dictatorship itself will ensure the liquidation of classes and the creation of a classless society—socialism. The time period required for such an achievement is called in the same doctrine "the transitional period from capitalism to socialism" (Marx and Engels, *Sochineniia*, vol. 28, p. 427).

29. *Sovershenstvovanie sotsialisticheskikh proizvodstvennykh otnoshenii*, p. 9.

30. *Ibid.*

31. As an illustration one can point to the fate of Academician I. P. Trainin, who lost all of his official positions in 1949 as one result of his attempt to draft a system of teaching Soviet Constitutional law organized on a basis different from that outlined by Stalin's Constitution.

32. 1922 RSFSR Civil Code, art. 52-55.

33. *Ibid.*, art. 57.

34. E.g., I. B. Novitskii, *Pravo sobstvennosti, kommentarii k st. 59-65 Grazhdanskogo kodeksa* (Moscow: Izd-vo iuridicheskoi literatury, 1925).

35. Above, note 29.

36. *Ibid.*

37. *SZ SSSR*, 1930, no. 9, item 105.

38. *SZ SSSR*, 1932, no. 38, item 233.

39. Art. 4.

40. Art. 9.

41. Art. 7 and 10.

42. Art. 5.

43. Art. 5.

44. Art. 5.

45. Art. 40.

46. E.g., compare R. F. Mazhitova, *Osnovnye problemy prava lichnoi sobstvennosti* (Moscow: Izd-vo iuridicheskoi literatury, 1949) with A. Eroshenko, *Lichnaia sobstvennost' v grazhdanskom prave* (Moscow: Iuridicheskaiia literatura, 1973).

47. Art. 10.

48. Art. 7.

49. Art. 10.

50. 1977 Constitution, Preamble.

51. Chapter 2.

52. 1977 Constitution, art. 10.

53. *Ibid.*, art. 13.

54. *Ibid.*, art. 17.

55. *Ibid.*, art. 16.

56. *Ibid.*

57. *Ibid.*

58. See above, in the present section.

59. There is no need to enumerate the boundless Western explorations of this topic. It seems, however, important to make special mention of F. J. M. Feldbrugge's article "Government and Shadow Economy in the Soviet Union," *Soviet Studies* 37 (1984): 526–543, where one can find a general theory of the phenomenon discussed here: the definition and morphology of the Soviet second economy, the interdependence of the first and the second economy, the second economy within the Soviet political system, and the governmental treatment of the second economy. The same article lists the most important publications on the Soviet underground economy (pp. 442–443).

60. O. S. Ioffe, *Soviet Law and Soviet Reality*, pp. 103–108.

## The Fundamental Structural Elements of the Soviet Economic System

### Ownership

In his work, “A Contribution to the Critique of Political Economy,” (published in English in New York in 1904), Marx characterized the economic system as a phenomenon based on a specific type of ownership. He described the system as consisting of production, distribution, and exchange; and also of consumption insofar as it consisted of what he called “production consumption” and thus embodied a component of production. This scheme is the only one legally recognized in the USSR. At the same time, the doctrinal terminology stemming from Marx is supplemented by official terminology created by the Soviet authorities and expressed in their theoretical dogmata or even in legal provisions. Such terminology, taken as a whole, is binding, regardless of its objective correctness, for Soviet scholars, and regardless of their subjective attitudes. Bearing in mind the issue of our research—legal analysis of the *Soviet* economic system, we also will employ this official terminology, emphasizing wherever necessary, however, its adequacy or inadequacy with respect to Soviet reality. This approach determines the sequence of the forthcoming discussion: first ownership and then production, distribution, and exchange.

According to Marx, ownership is the first fundamental element of every economic system. The Soviet economic system presents no exception to this general rule. What constitutes a purely Soviet feature is the divergence between ownership as such and its legal and doctrinal interpretations. In addition, while these legal and doctrinal points of view have evolved, ownership in the USSR has not changed in substance.

The 1936 Constitution distinguished between two types of ownership: socialist and personal.<sup>1</sup> Production purposes were connected with socialist ownership, while personal ownership was designed to satisfy the citizens' needs as consumers. As collective ownership, socialist ownership could be exercised by two types of collective bodies: (1) the Soviet state and (2) collective farms or other cooperative organizations. Correspondingly, two forms of socialist ownership were distinguished: state ownership and cooperative/collective farm ownership.<sup>2</sup> Personal ownership may be ownership

by one individual, by several individuals, or by a specific group of individuals, such as the collective farm household.<sup>3</sup> Ownership by the collective farm household, i.e. the household of a member of a collective farm and his family, is subject to special legal rules, particularly rules based upon deeply rooted Russian customs preventing the fragmentation of a rural family's estate. Another peculiarity of the collective farm household is that, while personal ownership usually assumes consumer purposes, this particular form of personal ownership is inseparable from production activity. Because the 1936 Constitution did not characterize ownership of a small-scale private economic operation as a particular type of ownership,<sup>4</sup> Soviet legal theory, while relentlessly following the Constitutional text in all other cases, showed in this specific instance a degree of independence: one group of scholars considered it as a separate type of ownership, another found nothing but a variety of personal ownership.<sup>5</sup>

The first question that arises in connection with these legal and doctrinal postulates is a question that relates to state ownership. Why does state ownership qualify as socialist ownership? Because, as Article 4 of the 1936 Constitution says, it constitutes the wealth of all the people? But this Constitution, in contrast to the 1977 Constitution that has replaced it, did not rely upon the idea of the "state of all the people." Then, how could state ownership be ownership by all of the people? The 1936 Constitution relied upon the idea of the dictatorship of proletariat,<sup>6</sup> and this meant, according to Marx, the creation of a state in which the "proletariat [is] organized as the dominant class."<sup>7</sup> Consequently, at best, only the proletariat, not all of the people, could qualify as the holder of state ownership under the 1936 Constitution. But what kinds of actions could this collective owner implement under circumstances where the jurisdiction of various state agencies taken as a whole exhausted all of the opportunities to which the owner was entitled? Or, could it be that socialist ownership of the Soviet state was only a euphemistic designation for the economic domination of the Soviet bureaucracy? On the other hand, why is the second form of socialist ownership personified by collective farms and other cooperative organizations? It is true that, in contrast to the proletariat, which even formally has no rights with regard to state ownership, members of collective farms or consumer cooperatives are entitled to take part in the management of these entities' activities, at least according to the wording of cooperative/collective farm statutes. However, Article 11 of the 1936 Constitution established that "economic life in the USSR is determined by the state national economic plan." This formula, dealing with the "economic life of the USSR" makes no mention of any exceptions for collective farms or other cooperative organizations. They too are subordinated to the state plan, which is by nature strictly binding and precludes any deviation, except those directly provided for by law. As a matter of course, neither collective farms nor other cooperative organizations may manage their operations otherwise than in the manner indicated by the state plan. Thus in the final analysis, the highest disposition of cooperative/collective farm property is in the grasp of the same dominant bureaucracy, regardless of

whether the members' rights to participate in the administration of common affairs are fictitious or genuine. As a result, the distinctions between the two forms of socialist ownership are not so palpable as the 1936 Constitution might suggest.

Finally, if any kind of collective ownership in the USSR is a form of socialist ownership, why are there only two such forms? Consider the most important examples that do not fit in the narrow limits of these two forms: ownership by trade unions and ownership by the Communist Party. Neither one nor the other can qualify as cooperative/collective farm ownership. At the same time, their correlation with state ownership is very peculiar. Trade unions, whose membership includes almost the entire adult urban population, possess a tremendous amount of property. But this property is subordinated to the state no less than are the trade unions themselves. Therefore, implementation of certain state functions by trade unions does not change anything either in the nature of these functions or in their economic substance. Ownership by the Communist Party of the Soviet Union is very different. State agencies exercise no control over the Communist Party's internal economic activity, and, consequently, one cannot argue that ownership by the Party and ownership by the state are identical on the basis of state control. But it can be shown that the two types of ownership are identical, starting from an examination of Party control. The Party, represented by its appropriate agencies, directs the administration of state ownership and, if necessary, employs state resources for the fulfillment of purely Party tasks. Owing to these circumstances, it does not matter whether the Soviet Constitution touches upon trade union and Party ownership or passes over these issues in silence. In all cases, there is one, and solely one owner—the ruling bureaucracy. Only the methods of ruling differ. As soon as this becomes clear, the Constitutional parlance ceases to be an obstacle to the ascertainment of the truth, and one begins to understand the actual situation concealed by the words “socialist ownership” and its “various forms.”

The Constitution, as a law and not a text-book, does not, of course, explain its provisions. Therefore the questions formulated above remained unanswered even after the promulgation of the 1977 Constitution. Subsequent legislation could not leave unfilled the gaps in the 1936 Constitution connected with the omission of the ownership of so-called social organizations. The 1961 Fundamental Principles of Civil Legislation, paying no attention to the constitutional dual classification, enumerates three forms of socialist ownership: “state ownership (or ownership by the whole people); ownership by collective farms, other cooperative organizations, their associations; ownership by societal organizations.”<sup>8</sup> This new classification was transferred in the draft of the 1977 Constitution. However, a number of scholars, mainly economists, disagreed with this solution when the draft was discussed publicly. They contended, citing Marx, that only ownership of the means of production could be characterized as the basis of the economy, while ownership by societal organizations served primarily non-

production purposes. Because of these arguments, the drafters of the 1977 Constitution adopted, in Article 10, another wording: "Socialist ownership of the means of production in the form of state (all-the-people's) and collective farm/cooperative ownership constitutes the basis of the economic system of the USSR. The property of trade unions and other social organizations needed by them to carry out charter tasks also is socialist ownership." The new definition, clumsy as it is, actually implies three forms of socialist ownership, two of them as parts of the basis of the Soviet economic system and one outside of this basis. One can hardly explain what such a differentiation means in terms of Marxist doctrine where all social phenomena are distributed between "the basis" and "the superstructure," while the ownership by social organizations belongs neither to "the superstructure" (as ownership!) nor to "the basis" (as the Constitution provides!). Let, however, the Soviets themselves rationalize their laws from the Marxist point of view. For those who study Soviet laws in the West the fact of the constitutional recognition of another form of socialist ownership, along with the two forms previously proclaimed, is the only matter of significance. Moreover, the 1961 Fundamental Principles of Civil Legislation, which, in contrast to the Constitution, deal with ownership in general, not with its specific substance as "the basis" of the economic system, have retained intact the legal provision confirming *expressis verbis* three forms of socialist ownership, instead of the "two and a half" mentioned in the 1977 Constitution.

Thus, the law in force multiplies the forms of socialist ownership in comparison with former legislation. This law also rejects certain contradictions inherent in the earlier legislation, if not actually, then at least in words. It combines the interpretation of state ownership as "all-the-people's" wealth with the characterization of the Soviet state as an "all-the-people's state." In substance, nothing has been modified, and "all-the-people" as a whole dispose of state property to no greater extent than did the proletariat in its nominal role as the dictatorial class. As in the past, the ruling bureaucracy, not the people, keeps this property in its grasp. But the obvious contradiction contained in the abolished legislation has been doubtlessly eliminated by the new legal provisions. Unfortunately for their compilers, however, these new provisions engender their own contradictions. With respect to the discovery of the true nature of the Soviet regime, these contradictions are incomparably more significant than those that have been eliminated.

The 1936 Constitution did not characterize the Soviet economy as a unitary economic system. Therefore, it could distinguish different types of ownership and different forms within the limits of socialist ownership. The 1977 Constitution uses the notion of the "economic system of the USSR"<sup>9</sup> as an integrated phenomenon which, by definition, cannot be based upon different types of ownership or even upon different forms of one type. While this conclusion is purely theoretical, the Constitution in force renders it practically indisputable, in proclaiming that "the economy of the USSR

constitutes a single national economic complex” and that all components of this complex are directed by “state plans of economic and social development.”<sup>10</sup> Could a unitary economic complex and its centralized management exist along with socialist ownership of three various forms encumbered by a vast multitude of rightholders? And because the former really exists, the latter is no more than a propagandistic declaration. Only as the actual holder of so-called socialist ownership can the ruling bureaucracy treat the Soviet economy as a single complex under the rulers’ domination. However, because it is expedient to apply different approaches to exercising its ruling powers does the bureaucracy consider it reasonable to proclaim the existence of “socialist” ownership in three different forms.

Gorbachev has already eloquently demonstrated that for Soviet leaders economic dogmata are one thing and economic practice is entirely another. Under Gorbachev’s leadership, the Twenty-Seventh Congress of the Communist Party adopted a new edition of the Program of the Soviet Communist Party.<sup>11</sup> Communist programs are purely propagandistic documents, and as such they assume strict observance of Marxist dogmata. Therefore, like Brezhnev’s Constitution, Gorbachev’s Program speaks about socialist ownership, its forms, and the distinctions between these forms.<sup>12</sup> The Program also outlines the direction of future development, which must lead to the merging of these different forms of socialist ownership and result in the establishment of an integrated “all-the-people’s” ownership in a stateless communist society.<sup>13</sup> Thus, comprehensive “all-the-people’s” ownership is a matter of the communist future, according to Gorbachev’s Program. But it is considered as a *fait accompli* when Gorbachev addresses problems of contemporary practice. In order to centralize the administration of agriculture, a new agency, the *Gosagroprom* of the USSR (the State Agricultural Industrial Committee) was created in 1985.<sup>14</sup> *Gosagroprom* has republican and local agencies. As an extremely centralized system, it absorbed not only five Soviet ministries, but also the whole system of consumer cooperatives and all of the collective farms of the country. Is this compatible with the recognition of collective farm/cooperative ownership as a specific form of socialist ownership? From the propagandistic viewpoint, it is not. But propaganda can easily be adjusted to new circumstances by means of appropriate verbal manipulations. From the viewpoint of practice, however, nothing extraordinary has occurred. Since the ruling bureaucracy deals with property under its exclusive ownership, this bureaucracy itself is entitled to decide which method of property administration must be chosen in each specific case.

Soviet theory pays no attention to such practices, assessing the character and differentiation of Soviet ownership in conformity with the Constitution, as if the latter existed in a vacuum, and as if it was in no way connected with Soviet reality. In those rare cases where theoretical constructions deviate from constitutional provisions, the authors of these constructions strive to be more Catholic than the Pope. For instance, the compilers of the 1977 Constitution mention ownership by trade unions and other social