The Soviet Recourse to the Death Penalty for Crimes Against Socialist Property (1961-1986)*

George L. Kline
(Bryn Mawr College and Clemson University)

This paper focuses attention on a little-noticed and even less-discussed chapter in the history of Soviet criminal law, namely, the introduction in 1961 of the death penalty for certain large-scale crimes against "socialist" (i.e., state and public) property. The Soviet recourse to the death penalty for economic crimes raises important moral, ideological, and philosophical questions. But the topic was inadequately examined during the Soviet period, both inside and outside the Soviet Union. Now, unfortunately, it is in danger of being either forgotten or casually justified, as is evidenced by three significant publications of the past two decades: (1) William Taubman's Pulitzer Prize-winning political biography of Khrushchev, admirable in other respects, makes absolutely *no* mention of Khrushchev's unprecedented introduction of the death penalty for crimes against property[1]; (2) Aleksei Adzhubei's memoirs, pointedly entitled "Those Ten Years" (i.e., the decade 1954-1964 when his father-in-law Khrushchev was in power); although it discusses the famous Secret Speech (1956) and the Cuban missile crisis (1962), it is equally silent about this key element of Khrushchev's rule[2]; (3) A Russian author who expresses nostalgia for the "socialist" Soviet Union, including its Stalinist period, makes casual mention (without mentioning Khrushchev) of the

* An earlier version of this paper was presented at the conference "Ideas and Power in Modern Europe: A Conference in Honor of Andrzej Walicki" held at Notre Dame University on January 20-21, 2006. My sincere thanks to the National Council for Soviet [now Eurasian] and East European Research for their generous support, which gave me an opportunity to look closely at Soviet law journals, legal textbooks, and monographs on this topic. In completing this study I have profited greatly from the helpful comments of Donald D. Barry, William E. Butler, George Ginsburgs, Peter Juviler, Steven G. Marks, and James P. Scanlan.

1 William Taubman, *Khrushchev: The Man and His Era* (New York, 2003)

2 Aleksei Adzhubei, *Te desiat' let* (Moscow, 1989).

recourse in the 1960s to the death penalty for economic crimes, but goes on to offer an equally casual, and quite general, justification of this policy. He sees it as an example of the "traditionally Russian humane attitude toward the criminal", representing a "reasonable approach, elicited by the need to defend society and the state from criminal elements".[3]

I

Although Soviet policy-makers and ideologists had quietly abandoned other key elements of Marxist-Leninist ideology (e.g., Marx's egalitarianism and his principled opposition to the death penalty), they remained faithful to both Marx and Lenin in their continuing powerful orientation, both theoretical and practical, toward the long-term historical *future*. With this came a willingness, in many cases an eagerness, to reduce living persons to the status of (present) *means* serving the (future) *end* of achieved communism. Large-scale economic crime came to be seen, in 1961, as massively obstructing the building of an ideal future society. It is no accident that in the period just prior to the issuance of Khrushchev's *ukaz* of May 5, 1961, which for the first time introduced the death penalty for the *khishchenie* ('plundering, embezzling, theft') of socialist property, the Soviet media were saturated with the May Day slogan "Long live Communism – the *radiant future* of all mankind!"[4]

Two brief comments about the expression *svetloe budushchee*: (1) It appears to be a translation of the French *avenir radieux*, an expression that is redolent of the ideology and rhetoric of the French Revolution. But I have not been able to find it in late 18th-century texts. And the data base of French literature traces it back only as far as Flaubert (1845) and Victor Hugo (1853). The first occurrence I've found in Russian - in the expression "the

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[3] E. A. Klimchuk, *Problema smertnoi kazni v obychae i v ugolovnom prave Rossii: Sravnitel'ny istoricheskii analiz* (Moscow, 2000), p. 111, 112. He also claims that the "Russian" method of execution by shooting is "more humane" than the methods used in other countries, such as hanging and electrocution (p. 133-135).

[4] This slogan "Da zdravstvuet kommunizm - *svetloe budushchee* vsego chelovechestva!" - appears both as a banner headline and as the final (99th) May Day slogan on the front page of *Izvestia* for April 9 1961, italics added. It is also the title of the lead editorial in *Sovetskaia iustitsiia* [hereafter SIu], No. 20 (Oct. 1961), p. 1.

future is radiant and beautiful" (*budushchee svetlo i prekrasno*) - is in Chernyshevsky's novel *What's to be Done* (1863). (2) The Russian term *svetlyi* also means "blessed" as in the expression *svetloi pamiati* (of blessed memory). One Russian philosopher with an excellent command of English standardly translates *svetloe budushchee* as 'blessed future'.

My central point is nicely made by a political joke (*anekdot)* that surfaced during the period of high glasnost: "Comrades, what is time?" - "Time, comrades, is the mysterious force that somehow transforms our *radiant future* into our *accursed past*." I take "time" here in the sense of the historical present, namely, the time in which Soviet leaders made the fateful decisions that instrumentalized living persons, treating them as *means* (positive or negative, facilitating or obstructive) for the realization of world communism as a remotely future *end.* It was by treating certain persons as negative and obstructive, hence as subject to the most severe forms of repression, including the death penalty, that decisions made in the historical *present*, decisions intended to bring about the desired historical *future*, actually produced the *accursed* historical *past*.

Like Marx, Soviet policy makers tacitly committed what I have called "the fallacy of the actual future" and the related "fallacy of deferred, or historically displaced, value"[5]. Holding that the projected "Communist future of all mankind" was, in some queer sense, "already there"; they regarded *future* communities, cultures, and especially persons as of infinitely greater value than anything in the historical *present,* since they will have been perfected and purged of the "birthmarks" (Marx) and other flaws that still marred everything in the present.

The much discussed "humanism" of the young Marx was not a present-oriented "humanism of *principles*" which treats the rights of persons as inviolable (Marx was scornful of all talk about human rights), but rather a future-oriented "humanism of *ideals*" which - in the historical interim, lasting centuries or even millennia - is quite compatible with what I have called "transitional totalitarianism".[6] One commentator, using figurative

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[5] See my essays, "'Present', 'Past', and 'Future' as Categoreal Terms, and the 'Fallacy of the Actual Future'," *Review of Metaphysics,* Vol. 40 (1986-1987), especially p. 219-220, 223-225, and 229-230, and "The Use and Abuse of Hegel by Nietzsche and Marx" in *Hegel and His Critics: Philosophy in the Aftermath of Hegel,* ed. William Desmond (Albany, NY, 1989), p. 1-34.

[6] See my essay, "Was Marx an Ethical Humanist?" *Studies in Soviet Thought,* Vol. 9

language, finds it "strange" that Marxists

> habitually regard the Present as merely the mean entrance-hall to the spacious palace of the Future. For the entrance-hall seems to stretch out interminably; it may or may not lead to a palace; meanwhile, it is all the palace we have, and we must live in it. I think we shall live in it better…if we try living in the present instead of in the future.[7]

II

Capital punishment, except for such state crimes as treason, assassination, and espionage, was abolished in Russia in 1812. The death penalty "applied for some military crimes, but not for common crimes like murder or rape".[8] And the death penalty had a checkered career in the Soviet Union between 1917 and 1961, its final brief suspension lasting only from 1947 to 1950.[9]

Nikita Krushchev, in his more than six years as Premier and Party

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(1969), p. 91-103. In another place I have quoted both Marxists and their commentators to make the point that Marx's "whole work serves the future" (Ernst Bloch) and that Marxism is the "most future-oriented of doctrines," one that holds the "promise of a future millennium" (Baruch Knei-Paz). See "The Defence of Terrorism: Trotsky and His Major Critics" in *The Trotsky Appraisal,* ed. T. Brotherstone and P. Dukes (Edinburgh, 1992), p. 156-157.

7 Dwight Macdonald, "The Root is Man," *Politics,* Vol. 2 (1946), p. 98, italics added.

8 Peter H. Juviler, *Revolutionary Law and Order: Politics and Social Change in the USSR* (New York, 1976), p. 24.

9 The definitive history and analysis of capital punishment in imperial Russia and the Soviet Union is A. S. Mikhlin, *The Death Penalty in Russia,* trans. by W. E. Butler (London, 1999). See also Will Adams' two (only partly overlapping) papers: "Capital Punishment in Imperial and Soviet Criminal Law," *American Journal of Comparative Law,* 18 (1970): 575-94, and "Capital Punishment in Soviet Criminal Legislation, 1922-1965" in E. E. Kanet and I. Volgyes, eds., *On the Road to Communism*: *Essays on Soviet Domestic and Foreign Politics (*Lawrence, KS, 1972), p. 78-121. Further bibliography in Donald 'D. Barry and Eric J. Williams, "Russia's Death Penalty Dilemma," *Criminal Law Forum,* Vol. 8 (1997), p. 231n.1. See also the two recent books by A. B. Meziaev: *Smertnaia kazn' v Rossiiskoi Federatsii: Vzaimodeistvie mezhdunarodnogo i natsional'nogo prava* (Kazan', 2002) and *Smertnaia kazn' i sovremennoe mezhdunarodnoe pravo* (Moscow, 2006).

First Secretary (1958-1964), not only made no move to abolish the death penalty; he steadily enlarged the class of capital crimes and, in 1961, for the first time in modern Russian history, made a broad range of crimes against *property* punishable by death. There were only three partial Soviet precedents for this in the period 1917-1961:[10] (1) Lenin's 1918 *ukaz* specifying the death penalty for bribery, something that remained in effect until 1927[11]; (2) Stalin's *ukaz* of August 1932 specifying the death penalty for the hoarding of grain and the theft of socialist property. This measure, which was in effect only until May 1933, was applied primarily as a component of the massive and cruel program of forced collectivization of agriculture[12]; (3) Khrushchev, as First Secretary of the Ukrainian Communist Party, arranged in 1952 to have the economic crimes of certain defendants (most of them Jews) identified as "counterrevolutionary acts in the area of trade", thus assimilating their crimes against property to treason, by crude analogy with counterrevolutionary acts of a purely political kind.[13]

The reputation which Khrushchev enjoyed (and to a considerable extent still enjoys as a reformer and "liberalizer") is, in my judgment, quite undeserved. In fact, he continued the "lawlessness" of the Stalin period, in Evel'son's words, when he "established the death penalty for economic crimes".[14] To be sure, he "de-Stalinized" the surface of Soviet society but only in order to "re-Leninize" it in its depths.

In his magisterial study Walicki has given us a balanced and nuanced account of the contradictory nature of Khrushchev's initiatives.[15] Instead of

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[10] Mikhlin notes that the Divna Charter (1397) and Russkaia Pravda (11th century) allowed the death penalty for theft committed three times, and the *Sobornoe Ulozhenie* (1649) allowed the death penalty for counterfeiting, and for bribe-taking by nobles to release people from military service (p. 9-11).

[11] As emphasized, after 1961, by such Soviet commentators as M. P. Karpushin and P. S. Dmitriev in *Vziatochnichestvo –pozornyi perezhitok proshlogo* (Moscow, 1964), p. 20.

[12] See Juviler, *Revolutionary Law and Order*, p. 49-51.

[13] See Evgeniia Evel'son, *Sudebnye protsessy po ekonomicheskim delam v SSSR (shestidesiatye gody)* (London, 1986), p. 49-50.

[14] Ibid., p. 11.

[15] See Andrzej Walicki, *Marxism and the Leap to the Kingdom of Freedom: The Rise and Fall of the Communist Utopia* (Stanford, CA, 1995), especially p. 512-516.

speaking of Khrushchev as either a "reformer" or a "liberalizer," Walicki refers to the "detotalitarization process" that Khrushchev initiated with his secret speech to the Twentieth Party Congress in February 1956, and continues:

> The cultural "thaw" that this bold move produced represented "the beginning of a spiritual renewal" for Soviet society. [The speech dealt] a powerful blow to the cult of Stalin and to his reign of terror, it was [a major] contribution to the delegitimation of the whole structure of communist totalitarianism, as a result of which the role of the terrorist features of the system was greatly reduced. The use of slave labor in concentration camps was partially dismantled, and most political prisoners were rehabilitated and freed.[16]

A significant aspect of Khrushchev's "thaw" was that the previously "submissive and silent press of the Stalin period" began, within limits, to "criticize authority." Adzhubei insisted, according to an authoritative account, that *Izvestia* carry regular reporting on court cases involving the defense of human rights.[17] The limits on such reporting will become clearer in our further discussion.

In foreign affairs Khrushchev's harsh response to the 1956 uprising in Hungary, his close 1961 involvement with the infamous Berlin Wall, and his installing in 1962 of nuclear-tipped missiles in Castro's Cuba are well

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[16] Ibid., p. 512. After toppling Khrushchev from power in 1964 the Brezhnev regime treated him as an Orwellian unperson for the rest of his life. But, at Khrushchev's unpublicized funeral in 1971 an elderly woman paid him a heartfelt tribute. She had known and worked with Khrushchev since 1926 but in 1937 had been arrested, imprisoned, and sent to the gulag, being released only in 1956. She declared "In the name of the millions of innocent people who were tormented in the camps and prisons to whom you, Nikita Sergeevich, restored their reputations, in the name of their friends and loved ones, the hundreds of thousands whom you freed from their dreadful places of confinement, accept our profound gratitude." Quoted in Adzhubei, *Te desiat' let*, p. 332.

[17] Yuri Feofanov (law correspondent of *Izvestia)* and Donald D. Barry, *Politics and Justice in Russia: Major Trials of the Post-Stalin Era* (Armonk, NY, and London, 1996), p.10.

known, yet often conveniently overlooked. A Russian historian, coauthor with an American historian, has made two relevant points: (1) Khrushchev "was the most provocative, the most daring, and, ironically, the most desirous of a lasting agreement with the American people" of any Soviet ruler[18] and (2) "Kennedy's choice of covert action [against Castro] and Khrushchev's missile gambit proved not only costly failures but catalysts for the single most dangerous moment of the cold war".[19] As an Italian commentator recalled:

I vividly remember when Nikita S. Khrushchev was extolled here as one of a trio of harbingers of hope for mankind (the other two were John F. Kennedy and Pope John XXIII) by "experts" who somehow forgot the crushing of the Hungarian Revolution, the building of the Berlin Wall, and the Cuban missiles.[20]

Khrushchev was no less an extremist and "hard-liner", no less prone to violent and repressive measures, in domestic affairs. His introduction of the death penalty for crimes against socialist property was only one aspect - although clearly the most striking and shocking - of what I would call "social Leninism" or, in a more accurate, if more colloquial formulation, "busybody Leninism".[21] Social Leninism, as distinguished from "classical" or police-state Leninism, was formulated in a series of drastic, largely

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[18] Aleksandr Fursenko and Timothy Naftali, *Khrushchev's Cold War: The Inside Story of an American Adversary* (New York, 2006), p. 7.

[19] Fursenko and Naftali, "*One Hell of a Gamble": Khrushchev, Castro, and Kennedy, 1958-1964* (New York, 1997), p. 355.

[20] Silvio F. Senigallia, "Italy's Reaction to *Glasnost,*" *New Leader*, Vol. 70, No. 4 (March 23, 1987), p. 7.

[21] I once ventured to label Khrushchev's position 'social Stalinism' (see my article "Philosophy, Ideology, and Policy in the Soviet Union," *Review of Politics,* Vol. 26 (1964), p. 174-190, especially p.185-188. Steven Marks has convinced me that 'social *Leninism*' is, for several reasons, a more accurate expression. The most important of these reasons is that Khrushchev's position, like classical Leninism, though both were authoritarian and committed to one-party rule, did not share the megalomania, forced hero-worship, or paranoia that were central to Stalinism and that resulted in the sheer arbitrariness of many repressive measures. Khrushchev himself might have been quite willing to describe his position as "social Leninism" though he would doubtless have bristled at the label *"busybody* Leninism".

unprecedented, measures introduced by Khrushchev between 1958 and 1964. They included the massive mobilization of "volunteers" whose task was to "check and report on" their fellow citizens' errors of commission and omission. As he declared in November 1962, if all Party, Komsomol, and trade-union members were put to work "checking and reporting on" what is happening in Soviet society, not even a mosquito could take wing without being detected![22]

Social Leninism crystallized into recognizable institutional forms, all of which continued to function for more than two decades, among them the Comrades' Courts, the People's Voluntary Militia (*Narodnye druzhiny),* and the home-and-family-life detachments (*Bytovye otriady*) of the Komsomol. Leading positions in the *druzhiny* were often held by former KGB officers. Strong pressure - applied by means of both carrots and sticks - was exerted on the "volunteers" to get them to undertake their unsalaried duties. The resulting mobilization was massive: there were, in 1967, six million *druzhiniki* and an equal number of people involved in checking and reporting on the activities of trade and service workers, as well as two hundred thousand Comrades' Courts and twenty-three million Party activists, along with a huge army of volunteers engaged in helping the police, the prosecutors, and the courts.[23] One commentator noted the "continuous interaction" between the *druzhiniki* and the regular Soviet police.[24]

Walicki refers to "the gradual replacement or supplementing of existing state laws by nonjuridical social norms and ideological relationships." He continues:

> The enforcement of these norms, essentially a policing

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22 See *Izvestia*, Nov. 20, 1962, p. 7.

23 Ninel' F. Kuznetsova, *Ugolovnoe pravo i moral'* (Moscow, 1972), p. 86.

24 Galina L. Kriger, *Bor'ba s posiagatel'stvami na sotsialisticheskuiu sobstvennost' i interesy narodnogo khoziaistva* (Moscow, 1971), p. 4, 125. Cf. also V. M. Safronov, *Sotsialisticheskaia sobstvennost', gosudarstvo, grazhdanin* (Moscow, 1975), p. 73, 77-78; V. Tanasevich and K. Skvortsov, "V. I. Lenin ob okhrane sotsialisticheskoi sobstvennosti*," Sotsialisticheskaia zakonnost'* [hereafter 'SZ'], No. 2 (1971), p. 30; G. A. Kriger and M. M. Babaev, *Sotsialisticheskaia sobstvennost' – neprikosnovenna* (Moscow, 1976), p. 72.

> function, was entrusted to different public organizations, such as the so-called *druzhiny*…, comradely courts, and so forth. All these became instruments for denunciation, blackmail, or even (in the case of the overzealous *druzhiny*) physical intimidation and harassment of fellow citizens considered to be not adequately socialist or Soviet in their private morality and life-style. For example, the people's guards were used to force people to denounce one another, to exercise unscrupulous control over the private lives of their neighbors, and even to forcibly remove unauthorized exhibitions of paintings. The comradely courts had the power to sentence people for violating socialist morality…Most important, they were used to implement the infamous law against so-called parasites…[25]

The *aim* of social Leninism, like that of classical Leninism (and classical Stalinism), was to channel all the energies of Soviet society into "socially-useful work" - where usefulness was of course defined by the ideological and political leadership of the day. Its *means* were largely public and social, in contrast to the bureaucratic and terroristic means employed by classical Leninism, and - more massively and arbitrarily - by classical Stalinism. But, while the agencies engaged in "checking and reporting" were to a significant extent non-professionals - groups of unpaid "volunteer," as contrasted to Lenin's, and especially Stalin's, salaried police agents - the actual sanctions, under Khrushchev and his successors, down to and including Gorbachev, were applied, as under both Lenin and Stalin, by instrumentalities of the state and the Party.

Anyone who still tends to view Khrushchev as a "liberalizer" should recall, on the one hand, his 1962 "donkey-tail" speech condemning modernist tendencies in Soviet painting,[26] and, on the other, the fact that the first (post-Stalin) trial of a writer simply for the "crime" of writing, not for any alleged political offense, was carried out in Leningrad in February-March 1964 against the twenty-three-year-old poet Joseph Brodsky (who

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[25] Walicki, *Marxism and the Leap to the Kingdom of Freedom,* p. 516.

[26] See *Izvestia*, Dec. 4, 1962, p. 1.

was to receive the Nobel Prize for Literature in 1987). Brodsky would, in all probability, have served out his entire five-year term for *tuneiadstvo* ("social parasitism") in the tiny, isolated Northern village of Norenskaia, despite support from certain prominent Soviet intellectuals and an outcry in Western literary and intellectual circles, if Khrushchev had not been toppled in October 1964. Brodsky was in fact released after only twenty months in November 1965.

The heart of social Leninism, the laws against social parasitism,[27] and the edicts against large-scale economic crime represented a response to what the post-Stalin leadership had come to regard as the intolerable persistence in a significant sector of the Soviet population of self-interested and anti-collectivistic motives. But anti-social self-interestedness was in fact *encouraged* by various Leninist policies and practices. And the stress upon acquisitive motivation, implemented by a complicated network of incentive payments, bonuses, and piece-work wages, continued and, in some respects, was expanded, e.g., under Gorbachev in the 1980s, when bonuses were awarded for exceeding the norm, not just in quantity but also in *quality* of production.

III

According to Konstantin Simis, a Soviet émigré with many years of experience as a lawyer and legal researcher, Khrushchev's son-in-law Alexei Adzhubei, then editor of *Izvestia*, played a significant role in persuading his powerful father-in-law to introduce the death penalty for crimes against socialist property.[28] Evel'son, four years later, gave a somewhat different account of Adzhubei's role. She reported that *Izvestia*, like the rest of the Soviet media, simply featured stories supporting, and

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[27] See, for example, A. S. Shliapochnikov, "Voprosy usileniia gosudarstvennopravovogo i obshchestvennogo vozdeistviia v bor'be s paraziticheskimi elementami," *Sovetskoe gosudarstvo i pravo* [hereafter 'SGP'], No. 9 (1963) and the same author's *Tuneiadstvo k otvetu* (Moscow, 1964).

[28] Konstantin M. Simis, *USSR:The Corrupt Society - The Secret World of Soviet Capitalism,* trans. by J. Edwards and M. Schneider (New York, 1982), p. 29-30. As noted above (p. 1n.2), Adzhubei's 1989 memoirs say *nothing* about Khrushchev's introduction of the death penalty for crimes against property.

attempting to arouse public sympathy for, decisions already taken by the political leadership. The truth may lie somewhere between these two accounts. Supporting Simis' claim is the fact that Adzhubei published a number of "letters to the editor" which prominently featured the outrage of ordinary Soviet citizens, many of whom demanded the death penalty for major economic criminals. Supporting Evel'son's claim is the fact that editorials in such Soviet law journals as *Sovetskaia iustitsiia* confidently asserted that Soviet citizens had greeted the May 5th *ukaz* "with approval".[29]

Before 1956 there were hardly any tourists or other foreign visitors in the Soviet Union. Scholars and other tourists came for the first time, in modest numbers, in that year, and crowds of young people from many countries attended the Soviet "Youth Festival" in 1957. This gave many Soviet citizens the opportunity to meet, and buy foreign currency from, some of these visitors for profitable resale. Such speculation was purely economic and in no way political. It was Khrushchev, according to Feofanov, who made the activities and subsequent trial of the *valiutchiki* ("speculators in foreign currencies") political "and in doing so he once again confirmed that all of his liberalization [had] changed nothing of the totalitarian nature of the regime, where the law and the administration of justice were subordinated to the party and [the] personality [of] its leader".[30]

During May and June 1961 the activities of a group of *valiutchiki* headed by Ian Rokotov and Vladik Faibishenko were discussed in lurid detail in the pages of *Izvestia*.[31] There was more than a hint of xenophobia in the report that the avaricious Rokotov spiced his Russian conversation with such English words as "sir", "okay", and "good-bye". And the detailed catalogue of the Rokotov-Faibishenko loot, totaling twenty million rubles in

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29 Cf. SIu, No. 13 (1961), p. 3.

30 *Politics and Justice in Russia,* p. 22.

31 For a detailed account of the Rokotov-Faibishenko trial, with extensive excerpts from the Soviet press coverage, see Evel'son, *Sudebnye protsessy*, p. 268-280. Simis adds the sensational claim that for several years Rokotov had worked as an undercover KGB agent, luring foreigners into illegal currency exchanges. When the KGB no longer needed him, it caused him to be charged with just those economic crimes that he had previously carried out under their direction. (See Simis, *USSR: The Corrupt Society*, p. 197-203.)

the "old" currency, in effect until early 1961 (the equivalent of two million rubles in the "new" currency), was at pains to note that it included 19,000 dollars as well as smaller amounts in pounds sterling, French francs, and other Western currencies. The message for the Soviet public was hammered home by Feofanov, writing on May 19th, the day on which the May 5th *ukaz* was published in his newspaper: "All honest people demand that they [viz., Rokotov, Faibishenko, and their accomplices] be brought to justice with all the severity [and] strictness of the just Soviet laws" - i.e., those set forth in Khrushchev's *ukaz*.[32] However, we should note that, forty-five years later, Feofanov insisted that he was so upset by the *retroactive* application of the death penalty that he asked Adzhubei to excuse him from reporting further on the Rokotov-Faibishenko trial. His request was granted.[33]

As the trials were drawing to a close (in June), Khrushchev summoned the Soviet Prosecutor General, Roman Rudenko, and demanded to know why Rokotov and Faibishenko could not be put to death. Rudenko is said to have replied that there were two decisive reasons: (1) speculation in foreign currencies, however brazenly carried out, and on however large a scale, is not a capital crime under Soviet law, and (2) even if the law were to be changed tomorrow, *these* defendants could not be retroactively charged under an *ukaz* that had not yet been issued at the time their crimes were committed. Khrushchev, in a rage, reportedly shouted: "Who's the boss here, we or the law?"[34] He promptly gave orders to extend the death penalty in include large-scale *khishchenie* (stealing, plundering, embezzlement), counterfeiting, speculation, currency violations, and bribery; and to devise some stratagem for applying the new law with *obratnaia sila* (retroactively) to the case of Rokotov and Faibishenko. Both of these orders were expeditiously carried out, beginning with the *ukaz* of May 5th even though the carrying out of the second order (by means of a second trial, one that began after May 5th) involved a clear violation of Soviet law since it

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32 It had been published in the *Vedomosti Verkhovnogo Soveta* on May 11, 1961.

33 *Politics and Justice in Russia,* p. 27.

34 Simis, *USSR: The Corrupt Society*, p. 30. Evel'son's account of this conversation agrees in substance with that given by Simis, although it differs in certain minor details (*Sudebnye protsessy*, p. 274).

"applied new legislation retroactively"[35]. Sakharov made the same point a bit later, noting that "Rokotov and Faibishenko were retried and sentenced to death in violation of the fundamental legal principle barring retroactive application of criminal sanctions".[36]

Some commentators have suggested that Khrushchev's draconian edicts were uniquely a product of his personal impetuousness, rashness, and extremism in matters of public policy. However, if Khrushchev's successors had viewed the edicts of 1961-1962 as an integral part of the "hare-brained scheming" with which they charged him when they toppled him from power in October 1964, they would presumably have revoked his *ukazy*, or, at the very least, would have allowed them to lapse quietly, uninvoked. They did neither: Brezhnev, Andropov, Chernenko, and Gorbachev all retained the death penalty for crimes against socialist property until 1986. Brezhnev, to be sure, had been in a sense a co-issuer with Khrushchev of the three edicts (those of May 5 and July 6, 1961, and February 20, 1962), since, as Chairman of the Presidium of the Supreme Soviet he had co-signed all three of them. There was obviously institutional as well as personal momentum behind the twenty-six-year retention of Khrushchev's innovation.

The draft revision of the Soviet criminal code was actively discussed during 1987-1988 and published on December 17, 1988. This revision retained many capital crimes - state crimes, such as treason, espionage, and terrorism; and crimes against persons, such as murder under certain special circumstances and rape of a minor. However, crimes against socialist *property*, on however large a scale, no longer merited the death penalty.

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[35] Juviler, *Revolutionary Law and Order*, p. 241n.74. The texts of the *ukazy* establishing the death penalty for crimes against socialist property *v osobo krupnykh razmerakh* are given by Evel'son: that on counterfeiting and *khishchenie* of May 5; that on speculation and currency violations of July 6; and that on bribery of Feb. 20, 1962 (cf. *Sudebnye protsessy,* p. 57-63). All of these *ukazy* pay lip service to the Marxist goal of eventually eliminating the death penalty: "The application of the death penalty – by shooting – is admitted as an exceptional punitive measure until such time as it is completely abolished" (ibid., p. 58). The same language appears in the May 5 *ukaz,* the RSFSR Criminal Code, Art. 93^1, and Soviet textbooks of criminal law published in the 1960s and 1970s.

[36] Andrei Sakharov, *Alarm and Hope*, ed. E. Yankelevich and F. Friendly, Jr., (New York, 1978), p. 121-122.

Rather, they were punished by the more usual penalties: prison terms up to fifteen years, substantial fines, and confiscation of property.[37]

American specialists who were present during Soviet discussions of this major reform reported both strong support for it and strong resistance to it among Soviet lawyers, judges, and law-enforcement officials. However, the support among this group must have been stronger than the resistance. At least, Butler asserts that: "*Professional* opinion…was opposed to the death penalty, whereas *public* opinion by a rather impressive majority" favored its retention.[38] In the period of high glasnost a book of essays appeared in Moscow with the previously impossible title: "The Death Penalty: Pro and Con." One of the essays, by O. F. Shishkov, entitled "The Death Penalty in the History of the Soviet State", makes a strong case against the death penalty.[39]

But there was disagreement, even among "professionals". In June 1988, two months before the trial of Brezhnev's son-in-law, Yuri Churbanov, who had been Deputy Minister of Internal Affairs from 1980 to 1984, on charges of massive bribe-taking, a Soviet philosopher who stood squarely on the side of democracy and human rights told me with emphasis that, since Churbanov had stolen from "the Soviet people" the equivalent of two hundred tons of gold (valued at between two and three billion rubles), he deserved to die. In fact, Churbanov was sentenced on December 30, 1988 - well after the beginning of the moratorium on capital punishment for economic crimes - not to death, but to a twelve-year prison term.

Polls of People's Deputies of the Russian Republic and of the delegates to a miners' convention in June 1990 found that 31% of the Deputies and 44% of the delegates favored the death penalty for large-scale "corruption," presumably what I call (see p. 66 below) red-collar crime. The corresponding figures for first-degree murder were significantly higher: 87% and 75%, respectively.[40]

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37 Cf. *Izvestia,* Dec. 18, 1988, p. 2.

38 W. E. Butler, "Foreword" to Mikhlin, *The Death Penalty in Russia*, p. v, italics added.

39 O. F. Shishkov, "Smertnaia kazn' v istorii Sovetskogo gosudarstva," in *Smertnaia kazn: za i protiv* (Moscow, 1989).

40 See *Argumenty i fakty,* No. 46 (1990), p. 7. (My thanks to Donald Barry for calling

The arguments pro and con as to whether the death penalty should be retained for large-scale economic crimes continued until at least April 1991[41]. But it appears that a compromise had been reached: to suspend actual executions for crimes against socialist property in 1986, but to postpone for more than a decade the judicial elimination of the death penalty for such crimes, which finally went into effect only on January 1, 1997.

IV

There is a certain historical irony in the fact that, at just the time when the Sino-Soviet conflict had come to a boil (1960-1961), Khrushchev should have made two dramatic policy changes, both of which had a distinctly "Chinese" cast. First he consolidated a pervasive "social Leninism," which - as I have indicated - might be described both more accurately and more colloquially as "busybody Leninism"; second, he, perhaps unknowingly, followed the lead of the only major country in the world that a decade earlier, under Mao, had already made certain large-scale crimes against state and public property punishable by death.

As it happens, the *technical* mode of execution is the same in China as in the Soviet Union. It is not the gallows, the electric chair, lethal injection, or even the firing squad. Rather, it is a single bullet to the base of the skull - what the Soviets called *deviat' grammov v zatylok*." But the *social* mode is entirely different. Soviet executions were regularly carried out behind the walls of the Lubianka and in similar non-public places, whereas in China those convicted of major crimes against property were, and continue to be, executed *publicly*, in the company of murderers, rapists, traitors, and saboteurs. This happens in groups of several dozen, typically in town squares or open fields. For some weeks prior o the executions large posters with portraits of the criminals and descriptions of their crimes surround the places of execution. On the appointed day a policeman with a rifle stands behind each convict and, at a signal, shoots him in the back of the head.

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this report to my attention.)

41 See the article by Z. Iakovleva, Chief of the Section of Legal Statistics of the Soviet Ministry of Justice, "O smertnoi kazni v SSSR," SZ, No. 4 (1991), p. 44. (My thanks to George Ginsburgs for bringing this article to my attention.)

Anyone who survives the first shot is given the *coup de grâce* by an officer. For several weeks after the public execution the posters are left standing, but each pictured criminal is "checked off" in red paint.[42]

How many Soviet citizens have in fact paid with their *lives* for taking or abusing the *property* of the state? For three decades no one, except a few members of the Soviet elite, had any idea of the total number of people executed for crimes against socialist property. However, it seemed obvious that the number was greater, perhaps much greater, than the handful of cases made public in the Soviet press. In the mid 1970s Sakharov estimated that the annual number of Soviet executions for crimes of all kinds was between seven hundred and one thousand. However, he made no effort to estimate what percentage of these were for crimes against property.[43]

No actual statistics from the Soviet secret archives were made public until 1991, when one source confirmed Sakharov's estimate, putting the annual average number of executions for the period 1962-1986 at 800.[44] Another source gives specific annual figures for a later period (1985-1986): 770 in 1985, 526 in 1986.[45] As it turned out, the later, and more complete as well as more accurate, statistics published by Mikhlin in 1997[46] showed all of these earlier figures to have been somewhat too high. Mikhlin provides annual figures for the total number of executions, 1961-1996, broken down into four categories: (1) crimes involving murder under certain special circumstances, (2) other violent crimes, (3) other [i.e., economic] crimes, and (4) state crimes.[47] For the period that interests us, 1961-1986, we find

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42 For a graphic firsthand account of such a public execution, see Liu Fong Da, with John Creger, "Execution Day at Zhengzhou," *American Spectator*, Vol. 19, No. 12 (Dec. 1986), p. 19-20. I have supplemented this published account with information provided by Chinese émigrés and an American sociologist who has done field work in China.

43 Andrei Sakharov, *My Country and the World*, trans. by Guy Daniels (New York, 1975), p. 43.

44 See *Argumenty i fakty,* No. 28 (1991), p. 8. (My thanks to Donald Barry for bringing this item to my attention.)

45 Iakovleva, "O smertnoi kazni v SSSR," p. 45.

46 In the Russian edition of his book: *Smertnaia kazn': Vchera, Segodnia, Zavtra.*

47 *The Death Penalty in Russia,* Table 2, p. 62-63. Mikhlin notes that his statistics have been obtained "directly from the Ministry of Justice, Supreme Court, and Ministry of

the following figures: Total executions ranged from an annual high of 2,159 (in 1962) to a low of 222 (in 1977), averaging 548 per year, for a grand total of 14,258. Executions for *economic* crimes ranged from a high of 43 in 1962 to a low of just one per year in 1979, 1981, and 1982, averaging 8 per year, for a total of 316. The *percentage* of executions for crimes against property given by Iakovleva in 1991, namely, "between 2% and 3%," was very close to the mark.[48] The actual figure turned out to be 2.2%.

In any case, the total figure of 316 Soviet citizens whose *lives* were taken only because they had taken or abused the *property* of the state over a 26-year period is shocking enough. The comparable figures for China are mind-boggling. According to one plausible estimate, the number of public executions in a typical year (1983) was over a hundred thousand. To this one would need to add an unknown, but presumably significant number of *non*-public executions.[49] As of 1986 the Chinese law specifying the death penalty for certain crimes against state and public property had been in effect for thirty-six years, a decade longer than the Soviet law. The total number of Chinese citizens executed during this period for crimes of all categories may well have exceeded three million, assuming that something close to the estimated rate for 1983 was maintained throughout this period.[50] (There is no evidence that the Chinese followed the Soviet lead in suspending executions for crimes against property in, or after, 1986.)

Using the same proportion as in the Soviet case (2.2% of the total) one would get the staggering total of some sixty thousand Chinese citizens executed for crimes against property. This is more than two hundred times as great as the Soviet total. Allowing for the more than four-to-one ratio by

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Internal Affairs," and adds: "In our view, they can be used with confidence" (p. 57n.24).

48 "O smertnoi kazni v SSSR," p. 44.

49 "Execution Day at Zhengzhou," p. 19-20.

50 Meziaev points out that in 2005 94% of all executions took place in four countries, which he lists in (Cyrillic) alphabetical order as Iran, China, Saudi Arabia, and the United States. He fails to mention that China accounted for the overwhelming majority of these executions. His principal motivation appears to be to show that Russia accounted for fewer than 6% of all executions world wide. (See *Smertnaia kazn' i sovremennoe mezhdunarodnoe pravo,* p. 4.)

which the Chinese population exceeded the Soviet population in the period 1961-1986, one still gets a total number of Chinese executions more than fifty times greater than the Soviet total. And of course in China executions for both economic and other major crimes still continue, to say nothing of the widely reported "harvesting" and highly profitable sale of the organs of those executed - something which, to my knowledge, had no counterpart in the Soviet case.

V

What I have been referring to as "major or large-scale crimes against socialist property" have been characterized in Soviet legal jargon since 1961 as *khoziaistvennye* [or *ekonomicheskie*] *prestupleniia v osobo krupnykh razmerakh*, literally, "economic crimes on an especially large scale" and include *khishchenie*, counterfeiting, speculating in foreign and domestic goods and currencies, giving and taking bribes, and short-changing the public. Parallel crimes against *private* property, on however large a scale, e.g., automobile theft or grand larceny, were never capital offences under Soviet law. They were, and are, punished in the normal way, by prison terms, fines, and the confiscation of property - the same penalties that applied to crimes against state and public (i.e., socialist) property on a less than "especially large scale".

Although the Soviet criminal code did not specify ruble amounts, Soviet juridical practice in the period 1961-1986 established 2,500 rubles as the threshold for "large-scale" (*krupnye*) economic crimes, and 10,000 rubles as that for "especially large-scale" (*osobo krupnye*) economic crimes.[51] And it appears that about 200,000 rubles was the de facto threshold for the application of the death penalty. The existence of this threshold leads to such grisly pedantry as the distinction, stressed by Soviet legal scholars, between the *wholesale* and *retail* price of the plundered goods. Since the latter could be more than twice as much as the former, an economic crime that stood safely *below* the threshold in wholesale terms

[51] See A. A. Pinaev, *Ugolovno-pravovaia bor'ba s khishcheniami* (Kharkov, 1975), p. 78.

could stand ominously *above* that threshold in retail terms.[52]

I have no explanation why the two-hundred-thousand-ruble figure was chosen, rather than, say, a threshold twice as high, or half as high. This figure may bear a very rough relation to the lifetime earnings of an average Soviet industrial or clerical worker, which in 1961 was about 50,000 "new" rubles, and by 1986 had risen to almost 150,000 rubles. It might be calculated that, in depriving the state economy of 200,000 rubles worth of goods (and/or services) an economic criminal would in a sense be destroying more than the equivalent of an average worker's lifetime earnings, thus entirely removing a worker's lifetime productivity and, in a sense, "killing" that worker. This, in turn, would make "especially large-scale" economic crimes roughly analogous to murder.[53]

A common-sense, morally-based objection to the quantification of capital crime was aptly formulated in the bitter comment of a Polish citizen concerning the execution in 1965 of a Polish official convicted of large-scale meat distribution fraud: "What is the price of human life now in Poland? Is it a ton of meat or is it only half a ton?"[54] Soviet citizens, during the twenty-six-year period, 1961-1986, must have wondered whether the price of a human life in the Soviet Union was 250,000, 200,000, or only 150,000 rubles.

After briefly following the Soviet lead, the Polish government - perhaps under the influence of the Catholic Church - quietly abandoned its resort to the death penalty for crimes against socialist property, having in the meantime - to the best of my knowledge - carried out *no* further executions for such crimes. Since 1986 China remains the only major power to continue this practice, although the "Islamic Republic of Iran" under Ayatollah Khomeini and his successors, Iraq under Sadam Hussein, and Nigeria under one of the recent "revolutionary" regimes have all applied the death penalty for economic crimes.[55]

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52 Cf. Iu. Liapunov, "Kriterii i poriadok opredeleniia razmera khishcheniia," SIu, No. 8 (1986), p. 6-8.

53 I owe this ingenious suggestion to William C. Fletcher.

54 As reported in the *New York Times,* March 28, 1965.

55 Mikhlin lists fifteen countries, including South Korea, Saudi Arabia, and Sudan, that have in recent years introduced the death penalty for certain economic crimes (*The*

The particular threshold for the application of the death penalty is not, of course, as important as the fact that there is some quantitative threshold. Even if the threshold were ten times, or a hundred times, higher than it appears to have been, there would still be a morally unacceptable conversion of quantitative into qualitative differences. A relative difference, a difference of degree, between two crimes - say, the embezzling of n rubles and the embezzling of n+m rubles, where m might be arbitrarily small - resulted in an absolute difference, a difference of kind, between the respective punishments: a prison term, a fine, or loss of property in the one case, death by shooting in the other.[56]

All economic crimes are quantifiable; they result in the loss of so-and-so many rubles (or dollars) worth of goods or services. The normal punishments for such crimes are also quantifiable: the greater the loss the longer the prison term, the heftier the fine, the more extensive the confiscation of property. But where certain economic crimes are punishable by death, an incommensurable element is introduced: a crime which is a matter of more-or-less is punished by something which is a matter of all-or-none.

As late as the 1980s Soviet commentators continued to complain about the increase in large-scale economic crimes. This makes it clear, if only by implication, that the death penalty for such crimes, in effect for more than twenty years, had not proved to be an effective deterrent.[57] Apart from the more general question of the effectiveness of the death penalty as a deterrent for any sort of crime, there is the specific question of whether, and to what extent, executions were made public.[58] In the Soviet case - in clear contrast

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Death Penalty in Russia, p. 55).

[56] For an earlier formulation of this point, see my article "Economic Crime and Punishment," *Survey,* No. 57 (Oct. 1965), p. 67-72, especially p. 67-68.

[57] See V. Bolysov, "Usilit' bor'bu so spekuliatsiei," SZ, No. 12 (1984), p. 9, and R. Brize, "Primenenie zakonodatel'stva ob otvetstvennosti za spekuliatsiiu," SZ, No. 3 (1982), p. 13.

[58] See Mikhlin*, The Death Penalty in Russia,* p. 146f for descriptions of public executions in Russia from the 16th to the 18th century. Of course, during those centuries executions were public in Western Europe as well, e.g., beheadings and later hangings in England, hangings and later guillotinings in France.

to the Chinese case discussed above - there was a curious ambivalence. Not only were the executions themselves carried out behind closed prison doors, but only a few of them were even announced in the press. According to Sakharov, most executions remained unannounced. And the few announcements that did appear were typically sketchy and schematic.

In any case, as economic crime continued, and even increased, it became almost impossible, by the 1980s, for Soviet commentators to repeat their standard claims, now seen as hollow, that crimes against socialist property resulted not from any feature of Soviet society or the Soviet economy, but from the *perezhitki* (survivals) of the capitalist past, together with the pernicious influence of contemporary "bourgeois ideology" emanating from beyond the borders of the Soviet Union.[59]

VI

Although Soviet commentators seldom made the distinction clear or even explicit, there are in fact three distinct, and only partly overlapping, categories of crimes against socialist property: (1) Grand larceny, speculation in goods and in both domestic and foreign currencies, counterfeiting, and the giving of bribes by "private" citizens, i.e., those whose occupation was not the primary source of their criminal opportunities. (2) Abuse of office or "red-collar" crime,[60] where the office in

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[59] See, for example, V. G. Vittenberg, *Otvetstvennost' za spekuliatsiiu* (Moscow, 1962), p. 10; A. Zhukov, "Usilit' bor'bu s khishcheniami gosudarstvennogo imushchestva," SZ, No. 7 (1963), p. 10; V. G. Tanasevich, I. L. Shraga, and V. B. Iastrebov, "Zadachi bor'by s khishcheniami na sovremennom etape," SGP, No. 8 (1983), p. 81.

[60] This expression was introduced by the distinguished Polish-Canadian sociologist of law Maria Łoś in ch. 6: "Crimes of the Political Elite: 'Red-Collar Crime'," p. 147-166, in her book *Communist Ideology, Law and Crime*: *A Comparative View of the USSR and Poland* (London and New York, 1988). The contrast, of course, is with "blue-collar crime," on the one hand, and "white-collar crime," on the other. The Russian term for criminal abuse of office – *dolzhnostnoe prestuplenie* – is somewhat broader than "red-collar crime," since not all Soviet abusers of office were members of the Communist Party, although most of them were. According to Party rules, no Party member could be indicted on criminal charges; therefore, the many abusers of office who *were* Party members had to be expelled from the Party before such

question was typically of at least mid-level political or economic importance. This included not just *khishchenie*, the taking of bribes and kick-backs, but also short-changing the public. Note that the capacious term *khishchenie* covers some of the forms of theft or plundering included under both (1) and (2). (3) Private enterprise.

In connection with (1) and (2) it is interesting that it was not until 1986 that a Soviet commentator ventured to suggest that the prevailing practice of punishing the bribe-giver (*vziatkodatel'*) much more harshly than the bribe-taker (*vziatkopoluchatel'*) needed to be reversed: bribe-takers, who generally stood on a higher socio-economic rung than bribe-givers, should be punished much more harshly than they had been to date.[61] Since during the 1960s and 1970s a majority of Soviet bribe-givers were Jewish and a majority of bribe-takers non-Jewish (Russian, Ukrainian, Georgian, Kirgiz, etc.), the belatedly admitted judicial bias against bribe-givers clearly had anti-Semitic consequences and may have been anti-Semitic in its intention.

In connection with (3) it needs to be emphasized that, having no legitimate outlet in Soviet society, private managerial and commercial initiative, energy, and skill tended to be deflected into activities which in other societies were and are regarded as quite legitimate and respectable, but in the Soviet Union were viewed, until the late 1980s, not only as morally reprehensible but also as criminal. In the blunt words of one Soviet commentator: "Private-entrepreneurial activity is a mercenary crime, carried out with the plain intention, and pursuing the goal, of receiving unearned income, i.e., illegal enrichment."[62] On this point, of course, Soviet legal theorists are simply applying to the organization and management of production the severely negative judgment that Marx himself applied to all economic services. He denied that they were "productive" in any of the three relevant senses of that term: they were neither goods-producing, nor

indictments could be brought.

[61] See A. Iakimenko, "Kak usilit' bor'bu so vziatochnichestvom?" SZ, No. 8 (1986), pp. 11-12. The accurate but unwieldy terms *vziatkodatel'* and *vziatkopoluchatel'* had been used at least as early as 1961. See M. Kovalev and G. Shel'kovin, "Vziatochnichestvo – tiagchaishee prestuplenie," SIu, No. 24 (1961), p. 11.

[62] Iu. Liapunov, "Khishchenie sotsialisticheskogo imushchestva i chastnopredprinimatel'skaia deiatel'nost'," SIu, No. 15 (1974), p. 10.

capital-enhancing, nor socially useful.[63] If he had been candid, Marx would have had to admit that his own life work was "productive" only in the third, and weakest sense of the term. With similar candor, Liapunov would have had to admit that his own work, like that of the entire "Soviet intelligentsia" and Soviet bureaucracy, could be called "productive" only in the weak sense of (being possibly) socially useful, and that therefore his, and their salaries, no less than the profits of the despised Soviet entrepreneurs, represented "unearned income".

Consider the following quite typical case of private enterprise in the Soviet "second economy." Nikolai Kotliar and D. Begelman went into business for themselves in Riga, in the early 1960s, manufacturing and selling lipstick. To start their basement "factory" they of course needed machinery and raw materials. To get both they had to bribe officials of a state-owned lipstick factory. Their enterprise flourished, but under the 1961 edicts they were arrested, tried, and sentenced to death.[64] The International Commission of Jurists lists several other cases of private enterprise from the early 1960s, involving illegal factories that produced knitwear, silk, and other textiles, as well as lace. In all of these cases at least some of the organizers and "administrators" of these factories were sentenced to death.[65]

Evel'son claims that the primary motivation for many kinds of economic crime, at least during the period 1961-1967, was the attempt to make a reasonable profit by meeting, through "private enterprise" in the "second" or underground economy, consumer needs that were not being met by the official "first" economy, in part at least because of the first economy's heavy stress on military production.. This would presumably apply in the Kotliar-Begelman case, and it is an important corrective to standard Soviet accounts.[66] But it strikes me as overstated, because it neglects two other significant kinds of motivation (which differ from the

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63 See my essay, "The Myth of Marx's Materialism" in *Philosophical Sovietology: The Pursuit of a Science,* H. Dahm, T. J. Blakeley, and G. L. Kline, eds. (Dordrecht, 1988), p. 158-203, especially Sec. III (p. 169-173).

64 See "Economic Crimes in the Soviet Union," a staff study, in *Journal of the International Commission of Jurists* (Geneva), Vol 5, No. 1 (summer 1964), p. 25f.

65 Ibid., p. 16-26.

66 *Sudebnye protsessy*, p. 28-29.

first as well as from each other), namely (1) the efforts of factory managers working within the first economy to obtain scarce and desperately needed raw materials, machinery, and spare parts, efforts which often involved the bribing of officials of various government ministries; and (2) the striving of the greedy rich to get even richer, although admittedly this was more clearly the case with speculators in goods and currencies than with most private entrepreneurs.

At the very end of the twenty-six year period during which the death penalty was being systematically invoked for crimes against socialist property, there was a significant change in the law that, since 1930, had criminalized private enterprise. In November 1986 small-scale enterprises - those employing only family members - were decriminalized.[67] But there was no change in the law respecting larger private enterprises, those that employed persons other than family members. Such enterprises remained illegal until the post-1986 changes in the Soviet law governing such activities.

VII

All of the people executed for crimes against socialist property during the early 1960s whom I have named - Rokotov, Faibishenko, Kotliar, and Begelman - were Jewish. In my earlier study I raised the question of the "anti-Semitism" of the 1961 edicts and concluded that, although they had clearly anti-Semitic consequences, they appeared not to be anti-Semitic in their intention. Evel'son, however, makes a persuasive case that the intention as well as the consequences of Khrushchev's edicts was explicitly anti-Semitic.[68] She summarizes four hundred trials for economic crimes (1961-1967), mentioning several cases in which Jewish defendants were sentenced to death or given very long prison terms, while equally guilty non-Jewish defendants were given short prison terms, or no prison terms at all.[69]

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[67] See T. A. Abakarov, "Ugolovnaia otvetstvennost' za chastnopredprinimatel'skuiu deiatel'nost'," SGP, No. 8 (1986), p. 137-38.

[68] *Sudebnye protsessy,* especially p. 10, 11, 15, and 29.

[69] Ibid., p. 102, 125.

During the 1980s the proportion of Soviet Jews among those sentenced to death for crimes against property, which had been high in the 1960s, fell significantly as the number of ethnic Russians, Georgians, Latvians, Tadzhiks, Uzbeks, and Kirgiz sentenced to death for such crimes increased. (The ancillary crime of demanding bribes of up to 100,000 rubles to commute death sentences was presumably committed by members of all ethnic groups.) The reasons for this shift are complex, but I suspect that an important reason was the increase in the number of "red-collar" economic criminals, a group among which Jews were a relatively small minority. This in turn is no doubt a result of anti-Semitism of a more pervasive but less lethal kind - a form of discrimination that limited the number of Jews who held mid-level and upper-level economic and political positions.[70]

In the Soviet juridical literature there was much trumpeting of the justice and "humanism" of the recourse to the death penalty for large-scale economic crimes, but hardly any attempt at justification. The nearest thing to a theoretical justification that I have found is an unargued and controversial assimilation of such crimes against property to treason, espionage, and sabotage, by simply classifying them as "state" (*gosudarstvennye*) crimes.[71] That such an assimilation of economic crimes to state crimes was initiated by Lenin made it easier for Soviet commentators to assert it, without argument, under Lenin's authoritative ideological patronage. In November 1919 Lenin had identified the peasants' "free trade in grain" as a state crime.[72]

One can see a certain justification for classifying smuggling, counterfeiting, and currency violations as state crimes. But *khishchenie* (in both category [1] and category [2] above), as well as the giving and taking of bribes, and short-changing the public are also regularly classified as crimes against not only state property but also public (*obshchestvennyi*)

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70 Simis, *USSR: The Corrupt Society,* p. 13, 18, 149, 153f.

71 Compare the title of vol. 4 of a standard "Soviet textbook of criminal law: "Gosudarstvennye prestupleniia i prestupleniia protiv sotsialisticheskoi sobstvennosti" in *Kurs sovetskogo ugolovnogo prava, Chast' osobennaia,* ed. A. A. Piontkovsky, P. S. Romashkin, and V. M. Chkhikvadze (Moscow, 1970).

72 V. I. Lenin, *Sochineniia*, vol. 30, p. 128, quoted in *Otvetsvennost' za gosudarstvennye prestupleniia*, ed. V. I. Kurliandskii and M. P. Karpushin (Moscow, 1965), Pt. 2, p. 20.

property. The key question is how the latter can be assimilated to the former. A corollary is the implicit admission by Soviet authorities of what had been evident to most observers of the Soviet scene for some time, namely, that the distinction between state and public institutions, and hence between state and public property, was specious. Otherwise, it would not have been possible to define crimes against the public property of a university, a collective farm, a trade union, or a research institute, as state crimes.

Certain Soviet statements, particularly those made immediately after the 1961 edicts were issued, attempted without any argument to assimilate large-scale but nonviolent crimes against property to violent crimes against persons. Thus Prosecutor General Rudenko lumped together "plunderers (*raskhititeli*) of socialist property, murders, [and] rapists."[73] This list was repeated, with additions, by a Soviet commentator who spoke of "Plunderers of socialist property, counterfeiters, armed robbers, murderers, rapists, [and] those who make a profession of speculation on a large scale".[74] In another list the same author added bribe-takers and *kaznokrady*, literally, "persons who steal official funds" - in other words, red-collar criminals.[75]

What is perhaps most chilling about such rhetorical assimilations is the expression they have received in literary works, e.g., the sardonic comment by the narrator of a short story by Soviet émigré author Yuri Miloslavsky, that "the state…was insisting on the supreme measure of punishment [viz., the death penalty] for rapists, as though they were…large-scale speculators in foreign currencies".[76] In other words, violent crimes against *persons* were now to be assimilated to major but non-violent crimes against socialist *property* when it came to justifying the death penalty!

The Soviet attempt to assimilate the crime of massively short-changing the public to treason and espionage would be much more convincing if, say, a Soviet restaurant manager or food-distribution official

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73 See *Izvestia,* May 7, 1961, p. 5.

74 Baksheev, "Zlostnye prestupniki dolzhny nesti nakazanie po vsei strogosti zakona," SIu, No. 11 (June 1961), p. 20.

75 Ibid., p. 21.

76 "Syn Liudmily Ivanovny" in *Ot shuma vsadnikov i strelkov* (Ann Arbor, Michigan, 1984), p. 10.

had been charged with substituting a much cheaper but toxic ingredient for a much more expensive but nourishing one, and pocketing the considerable savings - like the Moroccan merchants, who, in the 1950s, mixed motor oil with cooking oil, or the Austrian and Italian winegrowers who, in 1985 and 1986, adulterated their wine with an inexpensive but poisonous kind of alcohol. In both cases, disabling illness and death were the result.

China provides two recent examples, both of which date from 2008. (1) The introduction of a cheap but toxic ingredient into baby formula, something that sickened thousands of babies and killed dozens of them; and (2) the collapse of the "tofu" school buildings (as a result of substandard materials and shoddy construction, which, in turn, issued from corrupt builders and government officials) during the earthquakes that struck Sichuan Province in May, killing thousands of the children of ordinary Chinese citizens, while hardly any children of the Party and business elite died, because their school buildings were sturdily constructed. At this writing, a few of those guilty in the adulterated baby-formula case, but none of those guilty in the "tofu" school-building case, have been punished.

The crimes listed in the last two paragraphs, although in an obvious sense "economic", and clearly motivated by greed, are in their consequences more like assault and murder, even mass murder, something for which the death penalty might be an appropriate punishment. But, to my knowledge, Soviet restaurant managers and food-distribution officials were condemned to death only for massively short-changing the public, e.g., for putting only 75 grams instead of the required (and announced) 150 grams of meat in their institutional stews, and pocketing the difference. The very small difference in the case of a single meal grew quickly to major proportions when multiplied by ten thousand, a hundred thousand, or a million.

VIII

It is perhaps unsurprising that Soviet ethical theorists, in the period 1961-1986, should have been silent about the justification for invoking the death penalty for crimes against socialist property, and that they should have made no effort to classify this practice as a justified element of the "Soviet humanism" they regularly celebrated.

What is surprising is the near-silence of Soviet human-rights activists,

among whom only Sakharov, to my knowledge, protested this practice. In both 1975 and 1978 he made some mention of the Soviet recourse to the death penalty for crimes against property. But Sakharov's most explicit condemnation came in the statement that he prepared in 1977 for a conference on capital punishment convened in Stockholm (which he was not permitted to attend) and even this was quite restrained: "[I]n the USSR the death penalty is a possible punishment for many crimes which have no relation to crimes threatening human life".[77] In this connection he made specific mention of Rokotov and Faibishenko. However, since, like the official position of Amnesty International, Sakharov's position was unequivocally opposed to capital punishment as such, he, like Amnesty International, tended to draw what seems to me an insufficiently sharp distinction between the death penalty for crimes against persons and the death penalty for crimes against property.

The relative silence of another group is harder to understand. I refer to Western specialists on Soviet affairs generally and on Soviet criminal law in particular. Peter Juviler, already referred to, is an honorable exception.[78] But many standard works on Soviet law published after 1961 barely mention the edicts of that year, and those which do mention them tend to treat them as (1) a development of no special importance and (2) a practice likely to be abandoned in the fairly near future (as of the 1960s or 1970s). The first of these claims strikes me as egregiously false; the second one was, at the very least, premature at any time before the 1980s.

One reason for the relative lack of attention to this topic among both Soviet human-rights activists and Western specialists was perhaps the general impression that many of the Soviet citizens executed for large-scale crimes against socialist property were rich, powerful, arrogant, corrupt in themselves, and corrupters of others. I dispute none of these charges. I do not claim that any of them were blameless. I agree that most of them were indeed criminals and deserved to be punished. However, two relatively small but significant categories of "economic criminals" should be

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77 Andrei Sakharov, *Alarm and Hope*, p. 121.

78 See in particular his *Revolutionary Law and Order*, p. 83-84, 172, and nn. 72-74 (on p. 212-214).

exempted from the charge of criminality as well as that of arrogance and corruption. I refer to (1) the hard-pressed factory managers mentioned above (p. 67) and (2) at least some of those who were engaged in private enterprise in the "second" economy. Such a manager and such an entrepreneur might better be called "an economic criminal *malgré lui*". - My only point is that the punishment for economic crimes of all kinds and all degrees of seriousness should have been limited to prison terms, fines, and confiscation of property, or some combination of all three, rather than execution.

Groups like Amnesty International, which did a great service in compiling statistics on executions in the Soviet Union,[79] and people like Sakharov, whose efforts on behalf of human rights were legendary, proved insufficiently sensitive to the difference between the (sometimes justifiable) recourse to the death penalty for such crimes as terrorism and serial murder, on the one hand, and the (never justifiable) recourse to that penalty for crimes against (state and public) property, on the other. This distinction, which I find clear and compelling, is also obscured by those both inside and outside Russia who have in recent years been waging a campaign to raise Russia to full eligibility for membership in the Council of Europe by accepting that Council's total ban on capital punishment.[80]

A late-Soviet and an early post-Soviet development marking the period since 1986 are worth noting in conclusion.

(1) The long and deafening silence among Soviet ethical theorists as well as social and legal theorists with respect to the application of the death penalty for crimes against property was finally broken, first and tentatively, by legal scholars,[81] then, more decisively, by public intellectuals, and finally by ethical and social theorists.

(2) The powerful, even obsessive, Marxist-Leninist orientation toward the remote historical future and the corollary instrumentalizing of living persons was belatedly subjected to acute criticism by philosopher Yuri N. Davydov and a few others. In a "Diaolog" on the question "Love of One's

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79 See *The Death Penalty: Amnesty Internatio*nal Report (London, 1979), p. 130-139.

80 See Donald D. Barry and Eric J. Williams, "Russia's Death Penalty Dilemma," especially p. 243-248.

81 For a list of the articles that began appearing in 1987, see ibid., p. 234nn. 9 and 11.

Neighbor or [Love of] the Distant [Future]?" Davydov placed much of the blame for the inhumanities of the Soviet period on an all-devouring "love of the distant future" with its concomitant implicit rejection of "love of one's neighbor".[82] And public intellectual Gelian Prokhorov blamed the related focus on attaining the "radiant future of Communism" and its corollary denial of ordinary human decency in the historical present for the worst of those inhumanities.[83]

[82] "Liubov' k blizhnemu ili dal'nemu?" Dialog nedeli, *Literaturnaia gazeta*, Feb. 22, 1989.

[83] "Rossiia mezhdu budushchem i nastoiashchem" [Russia Between the Future and the Present], *Moskovskii zhurnal*, No. 3 (1992), p. 10.