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ENFORCEMENT OF LAW AND THE SECOND ECONOMY

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Motto:
"U nas v magazinakh pusto
a doma gusto"
(A current Russian
saying)

I. Introduction

"The second economy" is a catchy term; it is also a useful term to start with since it points out a general line of investigation. Nevertheless, it lacks clarity; it is a metaphor rather than a workable conceptual tool for research. At the least, the following two alternative approaches to the concept of "second economy" in the Soviet context present themselves for consideration:

1) By second economy one may mean any private, spontaneous economic activity beyond direct control by the central planner. This concept includes both functional and disfunctional activities from the standpoint of the Soviet system. The former, one would expect, will be usually allowed or even encouraged by Soviet law; the latter will be denounced as "unlawful" and prohibited. One can also readily imagine activities whose impact on the system is not unequivocal. Let us use as an example "subsidiary households" in agriculture: they now meet with a definitely positive attitude on the part of the authorities, for without them the system is incapable of feeding the population. But, at the same time, "subsidiary households" are in some respects disfunctional from the perspective of the socialized sector of the agriculture: they compete for manpower and material resources with kolkhozes/sovhhozes and stimulate illegal appropriations of socialist property (e.g., stealing fodder for privately owned cattle.)

Dealing with the multidimensional phenomena of the second economy, the authorities no doubt engage in "balancing interests," and the end policy hinges

on the outcome of the balancing process. Obviously official habits of thought, including ideological inclinations, leave a deep mark upon the process.

2) An alternative approach would reduce the concept of the "second economy" to spontaneous, private activity officially denounced as harmful and, hence, prohibited by law. Within this frame of reference, one would investigate only what is perceived as antisystemic economic behavior, formally denounced as such.

The latter of the two formats has something to recommend it: the scope of the investigation is much narrower and better manageable; the subject matter has more specific contours. Moreover, the results would lend themselves easier to comparison with the experience recorded in other countries where research into "hidden" or "illegal" economies has been done.[1]

Without denying that these reasons have some validity, we prefer the first scenario, featuring substantive behavioral criteria rather than legal and formal ones. This approach draws a wider, yet not unmanageable, radius of investigation. It sets a better perspective for analysis of changing official and unofficial attitudes. Furthermore, the officially tolerated sector of the private economy has recently been expanding and here is another reason why the "legal" segment of the second economy should not be omitted.

Advocating, in principle, a broader vision of the "second economy", we still realize that our immediate task in this paper will be limited to its illegal or even criminal aspects. Since our interest focuses primarily on the responses of the Soviet penal system to the phenomena of the second economy, it seems natural to structure the discussion following the major types of criminal conduct recognized in the penal legislation. The current statutory scheme is based on the fifteen republican criminal codes enacted in 1959-1962 and the subsequent amendments to these codes, most of which technically originated from the respective republican legislatures. Nevertheless, the legislative

solutions adopted by the union republics show a fair degree of uniformity and the existing differences between republican codes are usually of secondary importance.[2] Therefore, in looking at the current law, we tend mainly to rely on the 1960 Criminal Code of the RSFSR,[3] although local disparities will on occasion be indicated when deemed sufficiently important to warrant separate notice.

II. Major Types of Criminal Conduct and Legal Responses

Economic criminality figures as one of the major social problems on the Soviet scene. At the heart of it lie crimes against socialist ownership,[4] with stealing of socialist property as their principal, statistically overwhelming variant.[5]

1. Crimes Against Socialist Property

Socialist ownership occupies a highly prominent position on the official Soviet scale of values. It is characterized as "the foundation of the economic system of the USSR".[6] Basic legal and political documents make it the duty of every Soviet citizen to respect and defend socialist property.[7] Consequently, Soviet law affords special, superior protection to socialist property, consistent with its exalted rank. Indeed, the practice of preferential protection of socialist ownership has been identified as one of the distinctive features of socialist penal systems in general.[8] The intensified protection extended to socialist ownership is manifested in the extra punitiveness of the applicable statutory law and a corollary policy of vigorous enforcement, including substantial preventive work. Thus, the 1960 Criminal Code of the RSFSR mandates much greater legal protection for socialist ownership than for personal ownership of citizens. The enhanced status of socialist ownership is reflected in the code's system of sanctions, its definition of specific offenses, and, in some sense, its structure and policy

statements.[9]

Crimes against socialist ownership are made punishable by the code's provisions with stricter severity, by and large, than analogous crimes against personal ownership. First of all, the upper limits of statutory sanctions for crimes against socialist ownership are fixed markedly higher than statutory maximums for crimes against personal ownership. Under a 1961 edict,[10] stealing state or social property on an especially large scale is a capital offense. Code provisions on crimes against personal ownership carry no such sanction. Chapter Two of the Special Part of the Code[11] contains six provisions allowing for deprivation of freedom for up to fifteen years,[12] whereas such a statutory maximum crops up only once in Chapter Five.[13] In almost all other cases where there is enough similarity between the respective offenses to make comparison of sanctions meaningful, one is struck by the significantly higher limits of sanctions assigned for crimes against socialist ownership.[14]

Considerable differences occur in the statutory minimums as well. For example, for aggravated stealing through swindling, the statutory minimum of deprivation of freedom is five years in the case of socialist ownership (article 93, para. 3) but only three years where personal ownership is concerned (article 147, para. 3). Likewise, article 93-1 (stealing of state or social property on an especially large scale) prescribes a term of eight years of deprivation of freedom as a minimum, whereas the most severe minimum for a crime against personal ownership calls for six years (aggravated assault with intent to rob, article 146, para. 2)). Six provisions[15] in Chapter Two impose confiscation of property as an additional punishment; such a sanction is mentioned only once (article 146, para. 2) in Chapter Five.

Several crimes against socialist ownership simply have no counterparts among crimes against personal ownership. Stealing committed by appropriation,

embezzlement or by abuse of official position (article 92),[16] causing property damage through deception or abuse of trust (article 94),[17] embezzlement of property found or accidently in possession of the defendant (art. 97),[18] criminally careless use or maintenance of agricultural equipment (article 99-1) are crimes if directed against socialist ownership, but if directed against property owned by private individuals they are not criminal at all. Socialist ownership is further protected by some provisions dealing with "official" crimes, as, for instance, articles 170-172 of the Criminal Code.[19] Thus, criminal legislation protecting socialist ownership is highly punitive not only by virtue of the severity of the postulated sanctions, but also because of the latitude of criminalization.

Under the prevailing statutory scheme, all crimes against socialist ownership may be divided into three groups:

1) Stealing (khishchenie) of state or social property (articles 89 V93-2, 96);
2) Modes of criminal enrichment at the expense of socialist property other than stealing (articles 94-95, 97);
3) Crimes against socialist ownership causing destruction, damage or loss of property (articles 98-100).[20]

The central legal concept of stealing (in Russian: khishchenie) is not defined in the Code. Soviet high courts as well as learned writers have long maintained that khishchenie involves more than physical removal of property from the owner's control. It has been held that "stealing" involves unlawful taking of property from a state or social organization without consideration (Russian: bezvozmezdno) with intent to deal with it as with one's own and, hence, with intent to deprive the owner of his property permanently.[21]

The Code distinguishes some seven types of stealing, depending on the manner of criminal action (theft, open stealing [grabezh], assault with intent

to rob [razboi], appropriation, embezzlement, abuse of official position, and swindling).[22] It has been legislatively established, then, that stealing of socialist property may be committed only in one of the ways specified by the code,[23] and some curb was thereby imposed on extensive judicial construction of the broad and vague concept of khishchenie. True, the drafting of the present code is far from perfect: several types of stealing still remain undefined by the statute, so law enforcement agencies continue to exercise substantial power to define criminal conduct in this area.

The new code explicitly excluded from the concept of khishchenie the appropriation of socialist property found by or accidentally in the possession of the guilty person (art. 97). After a spell of hesitation and controversy, extortion of socialist property (article 95) was also expunged from the concept of khishchenie.[24]

Within each type of stealing defined by the manner of perpetration of the criminal act (such as theft, open stealing, etc.), the code has distinguished between non-aggravated and "large scale" stealing determined by the volume of material damage. Stealing is generally considered "large scale" if the damage runs from 2,500 to 10,000 rubles.[25]

In addition to the above categories based on the modus operandi criterion, the Code recognizes three types of khishchenie defined primarily in terms of the volume of the damage inflicted or the value of the stolen property:

- Stealing of state or social property in any manner indicated in articles 89-93 or any combination thereof on "an especially large scale" (art. 93-1). An act of stealing falls within this category if the amount of ensuing damage exceeds 10,000 rubles.[26] The penalty is deprivation of freedom from eight to fifteen years or the death sentence; confiscation of property is mandatory. The court may, at its discretion, supplement confinement with exile.

- Stealing of state or social property "on a small scale." The punishment

is only a fine in a sum no more than three times the value of the stolen property, provided that other conditions specified in the statute are met (art. 93-2). Stealing rates as "small scale" if the value of the property involved does not surpass 100 rubles.[27]

- Petty stealing of state or social property, "committed by a person to whom, due to the circumstances of the case and personality, measures of social or administrative pressure cannot be applied." Here, conviction entails deprivation of freedom up to six months, or non-custodial penalties (correctional tasks for no longer than one year, fine not exceeding 100 rubles) (art. 96). Stealing is generally considered "petty" (melkoe khishchenie) if the value of the property stolen does not exceed 50 rubles. However, in "borderline cases" such other factors as physical quantity of the property stolen or its "economic significance" should also be taken into account.[28] It is interesting that, in principle, the Code decriminalized petty stealing of socialist property, while petty stealing of personal property remained a criminal offense. The primary sanctions for petty stealing of socialist property are "measures of social pressure" applied by comrade's courts or administrative penalties imposed by a single judge of "a people's court", that is, the regular court of general jurisdiction.[29]

Consequently, the differentiation and individualization of the several forms of stealing rests on two criteria:

- the manner of stealing;
- the value of the property stolen or the amount of damage.

The statutory scheme just outlined is remarkably punitive; however, one should also keep in mind its considerable flexibility. Under this set-up, which should be viewed in the context of general rules on criminal and informal disposition, Soviet law-applying agencies retain broad discretionary powers over individuals charged with provable offenses.[30] Therefore, it is

essential to look at the record of current law enforcement policies which, in this particular area, have remained relatively stable since the middle 1960's. Changes have been mostly a matter of accent and adaptation:

a) Cases of stealing socialist property have consistently received a high, if not the highest, priority in law enforcement activities and in crime prevention efforts. The most recent party document reinforces this position in pointing out that the struggle against stealing in agriculture, transportation and construction assumes particular importance at the present time.[31]

b) The theme of judicial activism - at least as a matter of officially voiced desideratum - pervades Soviet criminal procedure. Where protection of socialist property is concerned, expectations on that score have been pushed to the extreme.

Even at the pre-trial stage, courts must verify whether all the incidents of criminal activity imputed to the defendant have been included in the charges and whether all the guilty parties have been arraigned. Significant gaps require remanding the case to the procuracy for full investigation.[32] Courts, prosecutors, and investigators owe it to expose causes and other factors which had facilitated commission of the crimes and to demand from the institutions and persons responsible that these lapses forthwith be corrected.[33]

c) A fundamental principle of sentencing policy has consisted of "stratification" of offenses and offenders, i.e., discrimination between serious and trivial offenses.[34] The key criterion of distinction has been the monetary value of the property stolen, assessed, in principle, by reference to retail prices. The second most important element has been whether the defendant is a first offender or a recidivist, particularly an "especially dangerous recidivist". Persons guilty of stealing socialist property "on a large scale" or "on an especially large scale," as well as organizers of thefts

and especially dangerous recidivists are singled out for punishment with the utmost severity.[35] Imposition of lengthy prison terms in such cases has long been urged upon lower courts, and sentences contradicting this policy have been consistently vacated.[36] Death sentences, fairly often reported by the press, in cases involving stealing socialist property have met with complete official approval.[37] On the other hand, practice shows that the regime is inclined to treat trivial stealing, particularly if committed by first offenders, with leniency and tends, in principle, to resort to informal procedures[38] or apply non-custodial type sanctions.[39]

d) A policy of long-term isolation of serious offenders has been coupled with a policy dictating that they be deprived of the fruits of their criminal activities and, at the same time, the funds of socialist property be compensated in full. These goals have been pursued in two ways: First, Soviet high courts have put a premium on use here of the additional punishment of confiscation of property.[40] Second, courts are encouraged to award civil damages on such occasions to the victimized state and social organizations. A state or social organization sustaining a loss as the result of a crime is expected in due course to file a civil suit with the court before which the criminal case is pending. If suit is not filed, the court should assign damages on its own motion.[41]

e) Finally, heavy emphasis has been placed on participation by the community in the protection of socialist property.[42] The primary outlets for popular participation have been the comrade's courts which, as far as we have managed to establish, still have jurisdiction over cases of petty stealing in the majority of the union republics. Broadening popular participation, pompous declarations notwithstanding, has not really been practiced in recent years. To the contrary, growing disappointment has been voiced concerning the performance of comrade's courts as agencies waging war against petty stealing

of socialist property and, for that reason, their jurisdiction in this class of cases has since shrunk considerably.[43]

In the foregoing sketch, we have relied on the decisions of the USSR and RSFSR Supreme Courts and other official statements. Little is known about the actual enforcement patterns marking the work of the prosecutors, trial courts and lower appellate courts. The fractional evidence available seems to suggest that, on some issues at least, there has been a striking degree of non-compliance with the announced standards. Let us cite just two examples:

1) Contrary to orders, almost 50% of persons found guilty of aggravated stealing of socialist property by the Russian courts were sentenced to serve penalties that did not call for deprivation of freedom.[44]

2) Lower courts have persistently balked at imposing additional penalties; confiscation of property was especially avoided even in cases where the statute provided for its mandatory application.[45]

Widespread, chronic disregard for items which rate high on the regime's agenda seems to be gaining ground in a system which extolls obedience to commands from above, but has never cultivated a taste for judicial independence. One can think of several plausible explanations for this strange situation. Lower courts, because of their proximity to the facts figuring in individual cases, may tend to nullify the rules of positive law and overlook the pitch of official pronouncements on criminal policy simply because these are perceived as too harsh in light of the relevant circumstances. Judicial circumvention of excessively harsh penal laws is a phenomenon familiar to legal history. Soviet courts might be offering another illustration of that experience. Mass corruption of the judiciary may also account for the anomaly. It is quite possible that judges simply accept bribes from the affluent defendants and, in return, impose sentences milder than those officially intended.[46] Or trial courts, each composed of two laymen and one

professional, perhaps more accurately convey the sense of popular attitudes toward the value labeled by law as "socialist ownership."

The last hypothesis assumes a major discrepancy here between the official canon and unofficial mores and we will have occasion to revert to that subject later in the paper.

This highly punitive statutory scheme and the vigorous bid to enforce its terms do not stand alone as a means of protection of socialist property. Soviet authorities have devised a complex system of administrative measures designed to achieve the same objective. All these efforts are backed by conspicuous propaganda and other techniques of indoctrination and mobilization. Despite such exertions, the Soviet state has not registered any major success in this field. On the contrary, the available information indicates that state and social property has throughout been, and is still being, stolen by millions of culprits. Moreover, these offenses do not even evoke reactions of condemnation or disapproval from the law-abiding segment of the population. A reliable estimate of the incidence of crimes against socialist property is virtually impossible to venture, for even standard criminal statistics are not published in the USSR. From fragmentary and random figures, from scattered official and semi-official statements, one can only put together an extremely rough picture of officially recorded occurence of criminality in this area.

Some data on criminal convictions (circa 1967 and reduced to relative terms) show that convictions for crimes against socialist ownership represented 17% of the total number of convictions, whereas convictions for "economic crimes" amounted to 5% and convictions for "official crimes" (dolzhnostnye prestupleniia) constituted 4%.[47] One should keep in mind that a substantial number of crimes, technically classified as "economic"[48] or "official" are, in substance, offenses causing harm to socialist property.[49]

By conservative standards, that would make crimes against socialist

ownership the second largest group of crimes after hooliganism.[50] Indeed, M.P. Maliarov, First Deputy Procurator General of the USSR, in an interview with Pravda in 1972 said that "Hooliganism holds first place in the structure of crime. It is followed by the stealing of state and social property".[51] Some local reports seem to suggest that cases of khishchenie account for nearly 25% of the caseload.[52]

In view of Soviet assertions that the overall number of crimes has been constantly decreasing, it is interesting that the absolute number of cases of stealing socialist property has admittedly remained stable within the span of the past fourteen years.[53] One may therefore venture the tentative conclusion that cases of stealing socialist property statistically represent a very large group among the crimes effectively prosecuted.

However, criminal statistics lag very far behind social reality,[54] for at least two reasons. Many reported offenses against socialist ownership are disposed of informally and, hence, never appear in these computations.[55] Furthermore, the overwhelming majority of cases of stealing remain undetected.[56] The "real" picture of criminality against socialist ownership emerges, in rough contours, from the Soviet press and other Soviet publications and may be summarized as follows:

Large segments of the Soviet population do not perceive state property or property held by "social organizations" as socialist, i.e., communal property. Instead, they think of it as government property, alien to them, and in whose protection they have no interest.[57] Many people who otherwise conceive of themselves as honest thus evince no inhibitions against stealing socialist property.[58] Petty stealings are especially widely tolerated--a sample review revealed that, on the average, 25% of the reported cases of petty stealing remained unpunished, while at some enterprises as much as 90% of the culprits got off scot-free.[59] A typical attitude here was that of

comrade's courts in the Lithuanian SSR: they practically nullified the law by letting the majority of persons proved guilty walk away without incurring any meaningful sanction. The frustrated policy makers responded to the affront by withdrawing petty stealing from the jurisdiction of the comrade's courts.[60] Judging by some reports and legislative changes emanating from other republics (for example, Russian, Ukrainian), the phenomenon must have been fairly universal.[61]

One may fairly conclude, then, that stealing socialist property has become very much a part of every day routine, a quite common way of earning a livelihood which no longer strikes many people as deviant behavior. Almost all social strata have had their share in illegal appropriations: from manual laborers and collective farmers through lower clerical personnel, middle level administrative and technical staff, managers, chief engineers and chief accountants,[62] up to the party and state dignitaries at the republican and all-union level.[63] Most of the stealing and, one might note, practically all of the large scale stealing is committed by "insiders", that is, by individuals who handle socialist property by virtue of their employment.[64] The notion seems to be widespread that a desirable job is a job which provides a convenient access to socialist property, that is to say, an opportunity to steal systematically and at low risk of prosecution. The same is true of jobs which involve direct dealings with consumers and therefore a ready opportunity to cheat the latter. Individuals who exercise power over persons enjoying such "access" (by medium of job assignment, administrative supervision, inspection, law enforcement) claim their share in illegal appropriations by the "operatives". Bribe expectation is high within this fraternity and, reportedly, rarely frustrated.[65] For that matter, it is sometimes difficult to distinguish between bribe-taking and complicity in group-stealing.[66]

The highly organized nature of many criminal schemes, and their duration, is striking. According to periodic exposes, literally whole factories, and even entire aggregates of enterprises, have engaged in criminal operations. The organizational structure of criminal rings has often overlapped with the formal official structure of management and administration. Thus, the captains of criminal rings have often turned out to be the heads of factories, department stores, restaurants, etc.[67] Chief accountants--by law responsible for upholding financial discipline--have often played a crucial role in serious crimes by manipulating the accounting system for criminal purposes.[68]

Highly organized criminal groups usually manage to pursue their activities for a long time, typically for several years.[69] Routine inspections have demonstrated very low effectiveness, due to the incompetence of the inspectors, their susceptibility to corruption, or successful cover-ups by their superiors.[70] Some criminal schemes are devised with considerable ingenuity, which makes them hard to detect. Many crimes have been committed out in the open: nevertheless, the culprits suffered no unpleasant consequences thanks to clique solidarity in their "home" territory, or just general indifference, apathy, and corruption.[71] Leading local party executives stage mass cover-ups of crimes committed by managers within their jurisdiction; local prosecutors are sometime powerless to proceed even in cases of major crimes.[72] Independent, grass-roots whistle-blowers are ruthlessly persecuted by local establishment circles who resort to a wide variety of illegal methods to silence their critics, including misuse of the formal criminal process.[73]

A major problem faced by those individuals who want to pursue stealing of socialist property as a continuous, large-scale business is how to avoid detectable shortages. Numerous techniques have been devised to get around this

obstacle, adapted to the particular branch of the economy and a host of individual circumstances and skills. Nevertheless, certain generalizations seem applicable:

At least in two branches of the economy, that is, in retail trade and the restaurant business, major crimes have as their primary targets the property of consumers rather than socialist property.[74] We shall have more to say on that a little later.

In industry, the lack of direct contact with consumers naturally forecloses such an option. But, the fact that industrial production involves qualitative transformation of several elements (materials, spare parts) into finished products opens up other avenues. A typical mechanism of organized stealing comprises two states:

1) generating "surpluses" or "savings" (izlishki) of materials or finished products, that is, unregistered, unreported quantities thereof; and,

2) stealing of the surpluses.

Surpluses of materials, spare parts or finished products can be created in at least three ways:

a) through improvements in the technological process resulting in increased productivity;

b) by taking advantage of incorrect, inflated coefficients of materials per unit of the finished product;

c) by deliberately lowering the quality of production through reduced input of materials/parts.

The surpluses of materials thus procured are either stolen in their natural form or are used in a hidden line of production.[75] Such an operation involves submitting false reports to the planner concerning certain essentials of plan fulfillment (productive potential, volume of output, etc.), which qualifies as a criminal offense per se.[76]

The format of stealing construction materials is basiclally similar to the one encountered in industry. Reportedly, collective farms have emerged as major purchasers of stolen construction materials.[77] Construction executives often create large surpluses of money by claiming a volume of construction much in excess of the work actually done; the surpluses are embezzled through the familiar device of "dead souls". In all fairness, report-padding has been widely practiced as a method of stealing and is by no means a monopoly of the construction business.[79]

Stealing materials/parts from production (construction) facilities very often causes serious deterioration in the quality of the end products and is particularly wasteful. The harm caused by stealing of bag of cement from a construction site much exceeds the value of the cement stolen. A wall built without the necessary quantity of cement will be less durable and the house less serviceable.[80] Acts of stealing from produciton enterprises which result in inferior consumer goods merit special comment: If a final product of poor, sub-standard quality reaches an individual consumer and is purchased at the regular price--the initial harm to socialist property is shifted to the consumer. Under the circumstances, the loss to socialist proerty is of a transitional nature, since ultimately it becomes externalized. Classification of such offenses as khishcheniie while technically correct involves nevertheless substantive mislabelling.[81] For the sake of accuracy, though, the analysis should be carried a step farther and then a somewhat different picture takes shape:

First, the formula applies only to production of consumer goods (by the same token also to construction of cooperative apartments.)

Second, even so individual consumers are not always the victims or the sole victims, and that for at least two reasons:

Deterioration of quality may render the goods unsaleable, which would mean

that socialist property must permanently absorb the entire loss, on a scale that in fact greatly exceeds the value of the original stolen property.

If the diminished saleability of poor quality goods dictates a reduction in price--the harm to socialist property either remains permanent in toto or the financial burden is split between the socialized sector and the consumers.

Poor quality of such consumer goods as passenger cars, home appliances, TV sets, etc., as well as poor quality of apartment buildings, substantially increase the demand for maintenance and repair services. These services are provided, to a large extent, by the private sector, which in turn is impelled to engage in more stealing of materials and spare parts in order to carry on its activities.

2. Deception of Purchasers

Deception of purchasers in retail stores and restaurants seems to be the single most common method of illicit income-earning by sales personnel.[82] It clearly takes precedence over stealing of socialist property. Sales personnel offered a choice of two potential alternative victims definitely tend to select purchasers.

Typically, the crime is committed in two stages: In the first stage, multiple deceptions of purchasers take place; the deceptions are numerous, but small if taken as isolated incidents. The deceptions generate surpluses of money or goods in a store or in a restaurant. In the second stage, surpluses thus accumulated are embezzled. Prudence dictates prompt disposition of surpluses since otherwise they can be exposed by inventory.

In small establishments, with one or two persons in charge, the whole operation is very simple. In larger stores or restaurants it often involves well organized group activity, carefully planned, with definite division of roles, double accounting and prearranged distribution of profit.[83]

After some period of hesitation, current judicial practice, backed by the

prevailing opinion of legal writers, treats the above outlined activity as one crime, namely, as deception of purchasers.[84]

The inevitable question arises--why do sales personnel turn primarily to deception of purchasers? Why is personal property, in this particular context and contrary to general practice, preferred over socialist property as an object of illegal appropriation?

One can think of a number of reasons, most of which are related to the prevailing law and patterns of its enforcement. These factors should be considered not in the abstract, but as perceived by the specific type of offender we are dealing with. Our knowledge pertaining to the personality of the offenders is very scarce and anecdotal. Such as it is, the data lead us to the following hypothesis: jobs offered by trade establishments or restaurants are apparently extremely unattractive--the work is hard, the atmosphere tense, while salary and prestige are very low. Nevertheless, the jobs are considered very desirable, are vigorously sought out and held on to. There is a good likelihood that their principal attraction lies in the opportunity to derive illegal income and that this opportunity is carefully assessed in terms of gains and costs involved. Individuals considered "honest" by the standards currently prevailing in the USSR seem unlikely to seek employment in trade/restaurant establishments. We are dealing here with offenders belonging to a particular subculture--a subculture of Soviet trade employees.

No doubt, any moral scruples they may individually experience are apt to be suppressed or diminished by the organized nature of deception, the facelessness of the mass of consumers, and, finally, the triviality of individual incidents of deception.

With these assumptions in mind, we now proceed to a review of the major law-related factors from the perspective of a "rationally calculating" offender.

Probably, the most striking of these is the incentive generated by the differential in the applicable statutory sanctions--organized and/or large scale deceptions, even producing very high income, are punishable by confinement for up to seven years, whereas stealing socialist property of comparable magnitude is likely to result in a double-digit sentence, with the alternative possibility of a death penalty.[85] Perhaps an even more essential advantage for the culprit resides in the fact that deception of purchasers is a crime difficult to detect in its totality and difficult to prove. First of all, deception of purchasers does not cause any shortage; to the contrary, the act creates a surplus which, if embezzled in time, remains undetectable.[86] Almost the only way to expose the crime is to catch the culprit in flagrante delicto; that, however, does not happen too often. The purchaser himself is an easy victim. His expectations are low and his "bargaining" power vis-a-vis a salesperson very weak. After standing in line for hours, pressed to complete his transaction quickly, a purchaser is unlikely to engage in argument over a trivial difference in kopeks. More often than not, the people who stand behind him in the queue would probably side with the salesperson if only to shorten their own waiting time. The administration of trade enterprises, judging by some local reports, is either completely inactive or is active only in covering up detected offenses. Disciplinary sanctions evoked even against persistent offenders smack of mockery.[87] A major method of enforcement consists of "control purchases", that is pretenced purchases by undercover inspectors. The success ratio of this technique seems to be very low and that again due to several factors. The bare number alone of "control purchases" compared with the vast number of genuine retail transactions makes the deterrent effect of the device doubtful. Moreover, enforcement agents are notoriously corrupt, but even an honest and efficient inspector can usually expose and report no more than the tip of the iceberg. As we mentioned before, almost all deceptions

taken as individual, isolated incidents are trivial. It is their multiple, continuous nature that makes them profitable. The prosecutors and the courts are therefore usually confronted but with minor specimens of deception which in such reduced doses indeed look very insignificant.[88] To a large extent, it is in response to the apparent pettiness of these offenses that rather lenient patterns of disposition have been favored. Many "first offenders" are disposed of informally, that is, sent to comrade's courts, or subjected to disciplinary or administrative penalties. Informal, non-criminal disposition has been recently encouraged by legislative changes and judicial guidelines.[89] Based on fragmentary information, the sentencing patterns of the courts in this area have, by Soviet standards, been lenient. An official review of the judicial record reported that "an overwhelming majority" of convicted persons have received non-custodial punishment.[90] A more recent follow-up study corroborated, in principle, this pattern of disposition.[91] This basic trend of sentencing practice has not been questioned by the Supreme Court, since it is seen as a reasonable response to trivial offenses. Lower courts have been mostly criticized for overlooking the preventive functions of punishment and, indeed, some of the facts reported on that score are quite astounding: About 50% of the offenders sentenced to correctional tasks were assigned to the very jobs they had held while engaging in deception.[92] The "additional punishment" of deprivation of the right to occupy positions in stores/restaurants is often skipped, even in cases where it is intended as mandatory.[93] Lower courts very rarely apply confiscation of property.[94] Many indictments left out figures playing a crucial role in organized, large scale deceptions and the courts nevertheless rubber-stamped such indictments.[95] Local cliques acted in some cases in flagrant defiance of the courts' decisions ordering that the defendants be kept out of executive positions.[96] We thus find a basically lenient tilt of the law machinery

toward individuals found guilty of deception of purchasers: some of this leniency is approved by the central authorities; a substantial proportion of it is not, but an unduly mild policy is still de facto widely adhered to by local agencies.

To sum up, one can say that deception of purchasers is a low-cost and highly profitable activity. These characteristics explain adequately why it is preferred, in general, over stealing of socialist property. It also explains why jobs giving access to purchasers are considered desirable and are bought at high prices. In some contexts, however, deception of purchasers is engaged in not as an alternative to but as a conduct correlated with stealing of socialist property. Such, for example, is the case when state/cooperative property is first stolen, and only then multiple deceptions follow to cover the shortage. Soviet authorities are unanimously of the opinion that in such cases two offenses are committed, and the two are to be punsihed cumulatively.[97] It should be noted that damage to socialist property in these circumstances is again transitory: at the second stage, the harm is externalized and ultimately borne by consumers.

3. Private Business Activity

Soviet officialdom is, as a matter of principle, hostile to private business activities for reasons too well known to be discussed here. This official animosity, however, is neither unlimited nor inflexible. After all, there exists a sizeable private sector in agriculture, which provides more than one fourth of the gross agricultural output. Official attitudes toward privately pursued trades and crafts are more complex, but the situation has recently been evolving in the direction of a less prohibitive posture, with some chances that "enlightened tolerance" might be forthcoming.[98]

Privately pursued trades can be divided into three major legal categories:

1) trades which can be freely engaged in without registration with local administration; 2) trades which are allowed, but subject to registration with the local authorities; 3) trades specifically prohibited by federal or republican regulations.[99] Considering that the law, however restrictive, is not totally prohibitive, and that the demand for goods/services is vast, one would expect to find a sizeable class of legally operating artisans. Surprisingly, the official statistics register their absence.[100]

On the other hand, Soviet press reports unequivocally portray the prosperous operation of whole armies of private car mechanics, taxi drivers, apartment repairmen, plumbers, painters, private construction teams, etc.[101] The discrepancy is readily explained:
because of legal restrictions, steep taxation[102] and other economic disadvantages, as well as political stigma, very few wish to assume the status of private artisans. At the same time, hundreds of thousands if not millions of citizens supply services in contravention of the law. The attitude of the authorities toward these masses of economic illegals is vague and ambivalent. They alleviate acute shortages, especially in the service sector and in construction, but they create problems as well. The authorities, judging from press releases, are well aware of it. Nevertheless, very little is done to reintegrate the illegals into the system, to "legalize" them. The prevailing attitude of the apparatus may be characterized as reluctant tolerance combined with selective enforcement directed against the more serious transgressions.

We can distinguish three major types of violations committed by those engaging in private business:

1) Individuals who pursue trades not specifically prohibited, but do so without the required registration with local tax agencies, are only guilty of administrative offenses. Tax evasion, per se, is not a criminal offense in the Soviet Union.[103] These kind of violations are very common.

2) Individuals who systematically engage in a trade concerning which there is a special prohibition[104] at first incur an administrative penalty; only a second violation committed within one year following imposition of the administrative sanction, is considered a criminal offense.[105] The precondition of previous administrative penalty does not apply to persons who engage in a prohibited trade "on a significant scale, or by using hired labor," or to persons previously convicted of the same offense.[106] Since any trade pursued "by using hired labor" is generally prohibited by a federal statute, this feature puts the offender within closer reach of criminal law.[107]

Enforcement of the statute seems to be erratic. The USSR Supreme Court treats the statute as marginally important.[108]

3) In view of the legal restrictions, economic disadvantages and political stigma, many willing entrepreneurs set up private business operations using various "socialist disguises,"--a phenomenon long known to Soviet history.[109] Soviet law-makers, in response, came up with a provision specifically tailored to control such mischief. Art. 153 §1 of the Criminal Code reads as follows:

> "Private entrepreneurial activity by utilization of state, cooperative, or other social forms shall be punished by deprivation of freedom for a term not exceeding five years with confiscation of property or by exile for a term not exceeding five years with confiscation of property."[110]

The provision is extremely vague, since the statute left its key concepts undefined. Naturally, judicial practice showed substantial disparity.[111] The situation was to some extent remedied by the USSR Supreme Court which appended an authoritative gloss to the enigmatic statute.[112] According to its ruling, the statute only criminalizes conduct which includes the following characteristics:

(1) pertains to production of goods, construction or services:

(2) is engaged in with the purpose of deriving unearned income, that is

income unjustified by labor contributions;[113]

(3) involves utilization of "socialist forms" in order that the culprit might enjoy the privileges due exclusively to socialist organizations (e.g., using hired labor, supplies, taxation);

(4) is engaged in either systematically or on a significant scale. The Supreme Court explicitly ruled out criminal liability for persons who knowingly participated in illicit operations as just laborers paid for the work actually performed.

The ruling distinguished two types of "utilization" of socialist forms: First, when the socialist organization actually does not exist, and the culprit operates a purely private business, protectively mislabelled. Second, when the defendant functioning within the framework of an actually existing socialist organization operates a private, unaccounted for line of production or services.

The two major types of private entrepreneurship distinguished by the Court encompass, of course, a quite rich and diversified phenomenology.[114] The former of the two major types usually involves highly organized activity on a large scale. The operators usually invest a substantial amount of resources to set up the business and expect to operate it for a long period of time. The case of Schnitman et. al., tried in Georgia, will serve as a good example. Defendants with their own money bought equipment and raw materials, hired seventy workers, and set up the production of plastic bags. They operated from behind the facade of a state advertising agency.[115] Soviet commentators feel that this type of private entrepreneurship represents an especially high degree of social danger.[116] Recently, private establishments disguised as subsidiary enterprises or workshops attached to collective farms have mushroomed in the Soviet Union. The Council of Ministers of the USSR expressed a few years ago its grave concern about the matter.[117] A 1976 ruling by

Supreme Court and a recent survey of judicial practice suggest that the malady has not abated.[118]

The second major type of private entrepreneurship includes an even greater variety of activities. Probably the simplest and most common is production and delivery of services on a "retail" ad hoc basis, off the record, of course, (reportedly it accounts for 56 per cent of all prosecuted cases). This kind of activity is common at car service stations, TV/radio repair shops, dental offices. It may or may not involve using materials stolen from socialist organizations.[119]

Operating hidden lines of production in state industrial enterprises involves almost always a complex group action. The group in many cases includes individuals employed by a supplying enterprise as well as personnel of the retail stores, through which hidden production is marketed.

As we indicated earlier, hidden lines of production very often feed upon "surpluses" of raw materials deliberately created, processed and only then embezzled. Judicial and police practice indicates that private entrepreneurship of this kind very often occurs in the context of other wrongdoing, but foremost it correlates very closely with stealing of socialist property. If such is the case, a culprit should bear cumulative liability for multiple offenses.[120] The mischief of the offense is therefore manifold: it disorganizes the legitimate activity of socialist organizations, hinders the fulfillment of the plan, exploits public resources for private gain, and enables private operators to derive unearned income. Private entrepreneurial activity is a specific kind of social parasitism. Moreover, private entrepreneurship generates other kinds of wrongdoing and therefore poisons the social environment.[121] Two more specific issues dealt with by the Supreme Court in its 1976 decree deserve a bit more attention.

Until 1976, Soviet courts were quite inconsistent in their treatment of individuals and teams who performed certain kinds of work (typically

construction work) under specific contracts (either labor agreements or "independent work contracts", in Russian: podriad). Some courts treated such activity as lawful, under arts. 350-351 of the Civil Code, some others found it to be criminal private entrepreneurship. The issue had been very controversial; the fact remains, however, that many convictions were upheld on these facts by the appellate courts.[122] The 1976 Supreme Court decree clearly endorsed the former current in judicial practice, but with a proviso. Work done on a contractual basis by private individuals or teams for socialist organizations is, in principle, legal--the Court says. Such activity may be punishable under art. 153 §1 only if the persons involved,

> "using socialist organizations as a cover, unlawfully obtain construction equipment or other equipment, funded materials, etc. and in connection with this derive income which obviously does not correspond to the labor contributed by such persons."[123]

Clearly, the Court tries here to isolate the disfunctional aspects in the activities of private construction teams and to limit criminalization to these aspects only. Under this ruling, the prosecution would have to sustain an additional burden of proof in order to secure conviction.

The second specific issue addressed by the Court is the distinction between private entrepreneurial activity, on the one hand, and legitimate activity at subsidiary enterprises and artisan workshops attached to collective farms and other agricultural organizations. Having raised the issue, the Court obviously did not want to commit itself to any clear-cut standards for its resolution. In spite of the ambiguous, if not evasive, language of this part of the ruling,[124] a close reading provides some general sense of direction.

First, the court seems to suggest that the very issue of liability arises only with respect to persons who <u>manage</u> subsidiary enterprises. Second, liability under art. 153 §1 is justified only upon a finding that the enterprise was in fact private and was established with the purpose of deriving

unearned income. Such a finding may, but need not, be made on the basis of evidence showing that a) the defendant wholly controlled the enterprise, while the role of the collective farm was limited to letting its bank account be used; b) remuneration was paid "arbitrarily", that is, not in proportion to the labor contributed; c) the enterprise employed persons with no ties to the farm.

A few general reflections about the 1976 Supreme Court ruling are now in order:

The ruling is "low key", its language restrained, the lower courts have not been reprimanded for leniency in sentencing. Its general tendency is toward limitation of criminal liability. The Court read into the statute two general qualifiers: 1) the purpose of deriving unearned income, and 2) the systematic or "large scale" character of the activity concerned.[125] Very characteristic is the mode of resolution of the controversial issue of "private brigades": again, the Court made a definite move toward decriminalization. Given the volume of activity and the number of persons involved, a decision on this point has serious practical consequences. In effect then, private construction business, which services large segments of socialized agriculture has thus gained legitimacy. Characteristically the low-key medium of the Supreme Court was recruited to the practical end of notifying the law enforcers and courts, sub rosa, to leave private construction brigades alone.

Activity as a "commercial middleman" (indeed a special variation of private entrepreneurship) is criminalized by all of the republic codes, if carried on "as a form of business"; ten of the union republics, including the RSFSR, also criminalize such activity if performed for a "substantial fee."[126] Brokerage without these characteristics is lawful, -- indeed, protected by the law of contracts.[127] A fee of 100 rubles or more, it was suggested, should be deemed "substantial" under the statute.[128] According to an authoritative ruling of the USSR

Supreme Court, the offense includes either services to obtain goods for a third person or to market goods for a third person or, finally to conclude other "commercial deals."[129] A necessary element of the crime, read into the statute is acting "with the purpose of deriving unearned income."[130] Statutory sanctions for the offense are substantially lower than sanctions for disguised private entrepreneurship. The mischief inherent in a broker's activity is perceived as twofold: First, the defendant is likely to upset the planned distribution of goods, diverting them from the recipients chosen by the planner. Second, the middleman derives unearned income which enables him to lead a parasitic way of life.[131] Very little is known about actual patterns of enforcement. A recently published survey of judicial practice in Ukrainian SSR revealed that most prosecuted brokers rendered their services to socialist organizations. The sample apparently included two major groups of cases: those which involved services for the purchasers and cases which involved services for the sellers (marketing). In the former group, 72 percent of the defendants were acting on behalf of socialist organizations, predominantly (52 percent) on behalf of kolkhozes. In the latter group, 38 percent of the defendants provided marketing services for socialist organizations.[132]

Many of those acting on behalf of socialist organizations are linked to their clients by formal labor agreements. The courts are therefore often confronted with the question of how to distinguish genuine employment from a labor agreement used as a mere form to funnel fees to a broker. Again, Soviet higher courts have not developed any general operational standards for drawing the distinction. The USSR Supreme Court, while deciding individual cases, focused instead on independent determination of whether socially useful labor contributions justified the payments made to the defendant. Such an approach, while reaching back to the rationale of the statute, is insufficient as a guide

for future cases. It is remarkable, however, that the Court itself, while making independent assessment of the facts in individual cases, has shown a tendency favorable to the defendants. Organizational efforts and initiative were credited as useful labor contributions, consequently the purpose of "deriving unearned income" was ruled out, and the charges dismissed.[133]

Bribery

At first glance, the connection between bribery and economic crimes seems a bit remote. Closer inspection of the record, however, reveals that the phenomenon of bribery has a significant impact on the performance of the Soviet Union's economic apparatus, in both a direct and indirect sense, so that in fact the two items have much in common. A few examples will illustrate how they often interrelate.

For starters, take the case in which a member of the personnel of a plant turning out some product through bribery succeeds in inducing an official on the staff of another plant or store to accept substandard or defective goods and use them for manufacturing purposes or sell them to the public as though they had passed the prescribed quality control. Here, bribery leads to further violation of the rules governing economic activity and disrupts the state plan by putting on the market merchandise that does not fulfill its assigned functions. Or, consider the situation where an employee of a factory or state stores stages a theft or embezzlement and bribes the bookkeeper-auditor to doctor the files and balance the accounts in such a way as to hide the loss.[134] Not only is an economic crime covered up in the process, but the guilty party is offered an opportunity to continue to plunder public resources and compound the amount of damage inflicted on the national economy. Or, look at what happens at an even later stage when the individual who committed an economic crime has been unmasked and yet manages through bribery to get the proper individual in the procurator's office to suppress the evidence. If the "benefactor" then resorts to extortion, his protege may be compelled to steal some more to meet the demands for additional payments and the appointed guardian of the law, after having arranged to abort retribution for the initial crime, might well become the positive impetus for renewed looting of socialist property.[135]

Finally, to the extent that resort to bribery enables some people to acquire a disproportionate share of the local stock of scarcer goods and services, the practice acts to distort the regime's distribution schedule and adversely affects the operation of the planning system. Besides, the resulting shortages encourage their fellow citizens to follow suit in the belief that the only sure way to get a fair slice of the national pie is by greasing the right palm, while still others see in the occasion a chance to slake the consumers' unappeased appetite and incidentally line their own pockets by engaging in various sorts of illicit entrepreneurship. At any rate, popular confidence is undermined and the experience triggers a search for shady alternatives, thereby creating fresh difficulties for the authorities in their bid to stick to the original design. The extensive harm caused to the economic blueprint by the material and psychological consequences of bribery is thus quite obvious.

Three provisions in the current RSFSR Criminal Code (the Criminal Codes of the other Union Republics feature identical formulas)[136] deal with the subject of bribery. According to Article 173 (as amended by the RSFSR Law of July 25, 1962),[137] the taking by an official personally or through an intermediary, in whatever form, of a bribe for performance or nonperformance, in the interests of the giver, of any kind of action which the official has the duty to perform or can perform by utilization of his official position, shall be punished by deprivation of freedom for a term of three to ten years with confiscation of property. The same actions committed by an official who is occupying a responsible position, or who has been previously convicted of bribery or of having taken bribes repeatedly, or in conjunction with the extortion of a bribe, shall be punished by deprivation of freedom for a term of eight to fifteen years with confiscation of property and with or without exile for a term of two to five years after the serving of deprivation of freedom, or under especially aggravating circumstances, by death with confiscation of

property.[138]

Next, Article 174 directs that the giving of a bribe shall be punished by deprivation of freedom for a term of three to eight years. The giving of bribes repeatedly or by a person previously convicted of bribery shall be punished by deprivation of freedom for a term of seven to fifteen years with or without confiscation of property and with or without exile for a term of two to five years after the serving of deprivation of freedom. A person who has given a bribe shall be relieved of criminal responsibility if the bribe was extorted from him or if after giving the bribe he voluntarily reported its occurrence. Lastly, pursuant to Article 174-1, acting as an intermediary in bribery shall be punished by deprivation of freedom for a term of two to eight years. Acting as an intermediary in bribery committed repeatedly or by a person previously convicted of bribery, or by utilizing one's official position, shall be punished by deprivation of freedom for a term of seven to fifteen years with confiscation of property and with or without exile for a term of two to five years after the serving of deprivation of freedom.

Although the language of the code is straightforward enough, some problems have arisen in the course of subsequent application of these clauses. We will skip the more narrow technical questions encountered in law practice[139] and focus instead on matters marked by somewhat broader policy implications. Note, for instance, that the legislation, in spelling out the crime of taking a bribe, speaks solely of officials. The concept of official has proved difficult to define in Soviet conditions, since so much of the population figures on the payroll of either state institutions or social organizations. The regime has nevertheless chosen to reserve that designation just for individuals entrusted with a certain range of executive and administrative decision-making powers, presumably on grounds that these people are in a position to do major injury to state interests if they stoop to accepting

bribes and, by virtue of their rank, are liable to bring serious discredit to the system if implicated in such activities. No good purpose would be served by equating the selling of favors by a procurator, say, or a government inspector and an episode of a bus-conductor taking a tip from a passenger to let the latter ride without purchasing a ticket, albeit the situations are substantively alike. In that context, the severity of the punishment prescribed for the different aspects of bribery lends added support to the regime's claim that it perceives this species of crime as especially dangerous to the well-being of the community.

A review completed by the USSR Supreme Court in 1962 on how the lower courts had handled bribery cases in recent years revealed several weak spots in their treatment of the pertinent issues.[140] One of the shortcomings the report pinpointed was the unjustified leniency of the sentences pronounced by the courts in trials involving bribery. Thus, a sample research survey confirmed that in some oblast courts over 45% of individuals found guilty of bribery received a lesser penalty than the minimum established by the corresponding article of the code and 16% escaped with a mere conditional conviction. Many courts indeed behaved as though lighter sanctions were the "norm" on these occasions.[141]

Now, the codes do formally permit the courts to assign milder punishment than that provided by law if, taking into consideration the exceptional circumstances of a case <u>and</u> the personality of the guilty person, they feel that mitigation is warranted, as long as they indicate the motives prompting the decision. Apart from the fact that both indicia must be present to license departure from the fixed pattern, the court must, of course, be able to cite reasons that led it to conclude that the incident entailed special extenuating factors and the personality of the culprit evinced enough redeeming characteristics to excuse setting the penalty beneath the stipulated minimum.

These requirements, it seems, are routinely disregarded: courts tend to refer either to supposedly unique material elements or the defendant's positive qualities instead of a combination of the two, and even those reasons they see fit to invoke often fail to single out the uncommon particle that would call for a suspension of the general rule.[142]

Professional ineptitude is partially to blame for the poor record. The main problem, however, lies in the law itself, since the minimum punishment specified for giving or taking a bribe is deprivation of freedom for a term of three years and seven or eight years if the offense is committed repeatedly. The difficulty here, Soviet spokesmen note, is that among those sentenced (especially for giving bribes) are frequently found older individuals, never before in trouble with the law, burdened with large families, guilty of giving a bribe amounting to a paltry sum. In such circumstances, we are told, no serious objections can arise to resort by the courts to the expedient of reducing the penalty below the specified limit, except that in order to spare the courts the constant need to draw invidious distinctions to accommodate these "singular" occurrences, local judicial personnel have purportedly been pressing for changes in the applicable law in the direction of further diversification of the designated measures of punishment. The curious feature, though, is that, despite the obvious tone of sympathy for the "worthy" people caught in these events, the source of this account betrays no surprise nor seems impelled to explain why "honorable" individuals should be moved to engage in bribe-giving. On balance, this casual attitude offers, unwittingly perhaps, the most telling comment on the state of Soviet mores in this domain: the impression one gets is that the phenomenon, though regrettable, is quite normal and, instead of indignation, the sensible solution is to temper the law with ad hoc mercy in the sample of situations involving inherently law-abiding people who, virtually by force of circumstances, end up committing a relatively

routine sort of offense.

The courts also incurred criticism for excessive liberalism expressed in the inadequate utilization of supplementary forms of punishment. According to a random survey, confiscation of property figured in a mere 21% of the sentences. The ancillary sanction depriving the party guilty of bribery of the right to hold certain jobs or pursue certain professions is almost a dead letter. Equally lax has been the judiciary's handling of the problem of cumulative offenses, notwithstanding multiple instructions to the effect that when the taking or giving of bribes is connected with the performance of acts which constitute independent grounds for indictment, the defendant must receive a cumulative sentence on the various counts. The procedure is particularly relevant in cases of bribery which, by its very nature, is frequently coupled with other crimes. For example, the person accepting a bribe is often led to indulge in abuse of official powers, falsification of official documents, and so forth, while fulfilling the bribe-giver's request. Conversely, the bribe-giver in many instances takes that route in the hope of thus covering up theft of state or social property, speculation, cheating of buyers, etc.

It is common practice, however, for the investigative agencies and the courts to stick to prosecution and sentencing for bribery alone. Again, a sample review indicated that 51.6% of the individuals sentenced for bribery were likewise implicated in other crimes, but that cumulative sentences were imposed on only 62.5% of that number. The rest were tried just for bribery and remained unpunished for the companion offenses.

Another controversial item concerns the treatment accorded those charged with acting as intermediaries or accomplices in bribery when in fact the self-styled middlemen never meant to turn the money or valuables over to the intended receivers, but from the first had planned on appropriating it for themselves. Legal specialists consider valid here the prosecution of the

respective principals for attempted bribe-giving and bribe-taking, but brand as intrinsically illogical the designation of an individual as intermediary or accomplice in bribery if his behavior is aimed precisely at preventing the consummation of that crime by diverting the means of bribery to his personal benefit. In their opinion, such an act should qualify as swindling involving the property of a private party and not designed to harm the proper functioning of the state apparatus, which is what bribing an official ultimately achieves.

The authorities have nevertheless persisted on the present course and have just recently reiterated their commitment to the current formula. The policy may stem from the feeling that swindling would be harder to prove than instigation to bribe-giving or bribe-taking, especially since the code does promise immunity to those who voluntarily report the occurrence of bribery and an average citizen may be confused about what immunity he might be entitled to when swindling is at stake. Technical questions aside, though, the regime may simply prefer to deal with the matter as a single package with all the parties caught in the same net and probably willing to implicate each other in the hope of alleviating their own position by shifting the primary blame on the codefendants.

Interestingly enough, statistics show that 19% of the people sentenced in connection with bribery were in truth guilty of swindling. The mass gullibility of the Soviet citizenry in this respect offers further proof of how deeply ingrained is the community's faith in the effectiveness of bribery as a method of attaining desired ends under the local system. One assumes that this kind of trust springs from hard experience.

Fifteen years after the USSR Supreme Court conducted its study on how the lower courts were faring in their struggle against incidents of bribery, it returned to the topic and issued a new resolution on the subject.[143] The most noteworthy aspect of the latest directive was the degree to which it

echoed the old themes. Nothing had apparently changed during that time, since the court went on to pinpoint the same sort of errors in the work of the judiciary in handling bribery cases, explained again how to deal correctly with these questions, and called on the legal apparatus to exert fresh effort to stamp out this especially dangerous crime. The repetitive tone of the message is intriguing. Does the resurrected script signify that the authorities failed in their bid to get the law enforcement agencies to crack down on the phenomenon of bribery and that in practice legal personnel have routinely paid no attention to the orders from above, attesting to a wide gap between the model prescriptions of the law and the state of social consciousness verging on spontaneous nullification of formal norms through silent refusal to apply them in concrete situations? Or, was the leadership only going through the periodic motions of inveighing against bribery, the hackneyed language plainly putting its listeners on notice that the regime contemplated no serious counter-measures, either because its priorities lay elsewhere or because the designated behavior pattern had become so much a part of the national culture that the ruling clique tacitly conceded impotence to alter the picture beyond occasional resort to verbal onslaughts?[144] No answer is forthcoming from the official record, the versions are equally plausible, and the reader is invited to draw his own conclusions. Neither alternative is very flattering to the Soviet image.

Speculation

Soviet sources generally describe speculation as one of the most dangerous economic crimes.[145] In the RSFSR Criminal Code, Article 154 provides that:

> Speculation, that is, the buying up and reselling of goods or any other articles for the purpose of making a profit shall be punished by deprivation of freedom for a term not exceeding two years with or without confiscation of property, or by correctional tasks for a term

> not exceeding one year, or by a fine not exceeding three hundred rubles.
>
> Speculation as a form of business or on a large scale shall be punished by deprivation of freedom for a term of two to seven years with confiscation of property.
>
> Petty speculation committed by a person who has previously been convicted of speculation shall be punished by deprivation of freedom for a term not exceeding one year, or by correctional tasks for the same term, or by a fine not exceeding two hundred rubles with confiscation of the articles of speculation.[146]

Note, though, that on the issue of speculation republican legislative policy does not follow the practice of statutory uniformity observed in the case of bribery and the relevant clauses of the various codes here differ considerably from each other. The picture suggests that the regime either consciously decided that an individualized approach represented the most effective means to combat this phenomenon or, official contentions to the contrary notwithstanding, did not attach sufficient importance to the whole affair to set rigid standards in this area, leaving the component republics with relatively wide latitude to experiment at their discretion.

Thus, the Azerbaidzhan, Armenian and Georgian codes identify the objects of speculation to include checks and other trade documents. The definition of aggravated speculation is occasionally expanded to include such acts committed by an especially dangerous repeating offender (Art. 154 Ukrainian CC; Art. 171 Turkmenian CC; and Art. 152 Estonian CC), by a person previously sentenced for speculation (Art. 153 Azerbaidzhan CC), pursuant to earlier collusion (Art. 149 Latvian CC). In Article 156 of the Kirgiz CC, the notion of aggravated speculation conducted as a form of business is replaced by the concept of speculation engaged in systematically, whereas the Kazakh CC omits all mention of aggravating circumstances in this connection. In some codes, criminal liability for petty speculation depends on resort within the preceding year to social (Georgia) or either social or administrative (Kazakhstan and Estonia) countermeasures. Substantial disparities mark the penalties featured in the assorted criminal codes. In some of the statutes, the maximum term of

deprivation of freedom is raised: for ordinary speculation (in the Armenian CC and Kirgiz CC) to three years; and for aggravated specualtion (in the Armenian CC and Turkmen CC) to ten years. The Kazakh CC permits as a primary punishment for ordinary speculation banishment for up to five years, and in the Estonian CC banishment for up to five years is envisaged as supplementary punishment for aggravted specualtion. In seven of the republic criminal codes, confiscation of property figures as an optional extra measure of punishment (instead of a mandatory one as in the RSFSR CC), and in the majority of the republics confiscation of the articles of speculation is prescribed as a mandatory measure of punishment. Discrepancies also occur in the size of the fine which may be imposed on the party found guilty of speculation: for example, the upper limit in Azerbaidzhan and Latvia is fixed at 200 rubles and in Georgia and Lithuania at 100 rubles.[147]

The courts run into certain technical problems in applying these provisions, many of them stemming from the difficulty of distinguishing between speculation and such analogous offenses as private entrepreneurial activity and activity as commercial middleman.[148] Although interesting in a legal sense, these experiences shed little light on broader aspects of the social agenda and we would now rather analyze the record from that latter standpoint.

Some good insights into these matters are provided by the USSR Supreme Court itself. In a Resolution dated December 13, 1974, assessing judicial performance in this department,[149] the court took the usual path of complimenting the lower tribunals on the progress so far achieved in handling this type of traffic and then proceeding to tick off assorted defects still encountered in their work. To begin with, the federal Supreme Court sounded the familiar theme that the courts were lax in that they tended to assign unduly mild penalties to individuals who pursued speculation as a form of business and led a parisitic mode of life and committed this crime on a large

scale; they also often failed to direct the confiscation of property without bothering to state the grounds for the omission when the law treated that supplementary measure of punishment as obligatory, nor did they always order the seizure of the articles of speculation as well as money and other valuables obtained by criminal means and were reminded that cars, motorcycles and any types of conveyance belonging to the culprit and used in connection with speculation ventures were likewise subject to confiscation.

Next, the courts were instructed to pay special attention to the task of ferreting out all the parties to the crime and establishing the reasons for any conditions contributing to its perpetration. Particular reference was made to the activities of official persons guilty of sale of goods and other items in full knowledge that these commodities would be converted to speculation or resale through the trade system of objects received from speculators. These individuals incurred responsibility for abuse of official position and complicity in speculation on aggregate terms and, if all this was done in exchange for a bribe, that last count was to be added to the bill.

Mention of the role of official personnel in this context is highly significant and the Supreme Court's rather casual observations on that score do not do justice to the real dimensions of the problem. The trouble stems not only from the fact that speculators strive to forge close ties with trade employees, but that the latter, aware of increased popular demand for sundry merchandise and not above creating artificial shortages to stimulate the consumer's appetite, prompted by base motives themselves seek to institute contacts with speculators. Indeed, such operations have gradually spread from the people manning shopping facilities to include the staff of wholesale outlets who have evolved a complex system of fraudulent accounts extending to participating stores to cover up for volume sales of goods to speculators straight from the central depots.[150] The Supreme Court's neutral tone in

discussing the involvement of official personnel in these affairs is thus quite deceptive, for in essence it is mostly their initiative that makes speculation a mass phenomenon on the Soviet scene. The image of the average civil servant as an inert bystander who just by his ineptitude enables the professional speculators to thrive turns out to be a convenient fiction masking the true record where people in positions of public trust frequently emerge as the masterminds behind these criminal schemes.

Naturally, the judicial apparatus was told forthwith to correct the lapses catalogued by the Supreme Court and alerted to the pressing need to recruit the community's resources in waging the struggle against the scourge of speculation, especially in conjunction with the staging of trial sessions on location designed to bring the message nearer home.

An authoritative review published soon after supplied further details on how well the judiciary was coping with its assignment to stamp out speculation in the land.[151] For example, according to the study, court statistics indicated that for the country as a whole convictions for speculation in 1973 declined by almost half compared to 1958. On a similar note, the deputy chief of the Main Administration of Internal Affairs of the Moscow City Soviet Executive Committee, in an article printed in 1976, claimed that on the general scale of criminality the relative weight of speculation was minor and explained the urgency of stepping up the fight against the practice as being due not to its frequency, but to its social danger. Whatever the rationale, the consequence is that in Moscow alone the police mounts over 300 raids each year on the city's marketplaces and the state has collected more than 85,000 rubles annually from those sentenced in the wake of these round-ups.[152]

Of the total number of persons prosecuted for speculation, approximately 60% were convicted for ordinary speculation (para. 1 of Art. 154 of the RSFSR CC and corresponding provisions in the criminal codes of the other republics).

However, between 1970 and 1975, 10.5% fewer individuals were convicted for ordinary speculation, while the quota of those sentenced for aggravated speculation rose during that period by 9.8%. The data may mean that the amateurs were losing ground to fellow professionals in this field or that the law enforcement agencies had eased up on the occasional layman guilty of an ad hoc venture into speculation and concentrated their efforts on breaking up organized speculation activities. An overwhelming proportion of the incidents of speculation reportedly occurred in towns and workers' settlements, primarily in the marketplaces: in the RSFSR more than half of these crimes were exposed in oblast and krai centers and the capital cities of the autonomous republics.

The source next points out the interesting fact that recent improvements in the population's standard of living had had an effect on the species of objects of speculation. Whereas previously essential items and foodstuffs had featured as the principal attraction in this kind of situation, now more than half of the traffic purportedly consisted of expensive articles (cars, motorcycles, rugs, furniture, etc.) and fashionable goods (lady's wear, boots, umbrellas, etc.). In about a third of the cases sampled, the guilty parties had engaged in speculation in agricultural products, especially out-of-season vegetables and fruit. Trading in cars seems to be particularly widespread and the criminal element has apparently resorted to all sorts of techniques to drum up business: invalids who have priority rights to acquire motor vehicles have been induced to resell them at a profit;[153] inter-republic commerce in cars flourishes because titles are then harder to verify and the deals more difficult to trace. (A 1978 newstory estimated that in the preceding three years 26,000 automobiles had been bought in the country's commission stores and brought into Georgia, amounting to 64% of the total number of automobiles sold to the local residents through state and cooperative stores during that time. Most of these intercity commission-sales were allegedly in clear violation of the law.)[154] The

figures on the size of the operations involving scarce vegetables and fruit probably also fall far short of the mark: besides being routine, these episodes are virtually impossible to monitor or control since, as one critic observed, the existing procedure for trading in marketplaces allows any citizen to sell agricultural produce without having to show documents confirming lawful possession of these goods and forbids requiring him to supply such proof.[155] Whether or not the official spokesmen are justified in heaping the blame on the inertia and inefficiency of the country's distribution system, by their own admission the deplorable result is that speculators use the opportunity to buy up fruits, vegetables and flowers in the southern regions for resale elsewhere in the USSR.

Even so, the picture here offered is flawed in that the current emphasis on "luxury" items in connection with speculation represents in a sense an attempt to prettify reality. The latter is much less exotic, for very common goods are also the object of a brisk illicit trade--ranging from books to spare parts for appliances to foreign novelties like chewing gum, lapel badges, apparel, etc.[156] It may salve the regime's ego to pretend that "fancy" goods are at stake in order to account for the inadequate supplies and the persistence of speculation under these circumstances, but the truth is doubtless a lot more prosaic: the average citizen is accustomed to the lack of daily necessities and solves the mini-crisis caused either by poor planning or administrative mismanagement or plain corruption through recourse to the services of "private enterpreneurs," be they speculators, commercial middlemen, "pirate" manufacturers, and so forth.

In the matter of assigning proper punishment for the crime of speculation, the lower courts got mixed notices. Though most of them were said to be doing a good job of matching the penalties with the gravity of the offense, a few were taken to task for excessive lenience in sentencing for aggravated speculation.

Too often, the courts still failed to heed the law's injunction concerning the imposition of supplementary sanctions in the form of confiscation of property in cases of aggravated speculation. Although the legislation of all the republics permits the confiscation of property under these conditions and in most of them that extra measure is in fact treated as a mandatory step, in 1973 official computations revealed that courts chose to apply it in only 37.3% of the relevant cases. Nor, contrary to what the law prescribes, did the courts in most instances bother to furnish in their decisions the reasons for acting in this fashion, even when the statutes specified that confiscation of property was obligatory, and not discretionary, on such occasions. There were also recurrent difficulties with establishing what qualified as aggravated speculation, given that in most of the republics the law did not spell out what, in terms of amount of profit, cost or volume of purchased and resold goods, distinguished aggravated speculation from the routine variety. Finally, the courts were found to be remiss in not paying enough attention to ascertaining the causes and factors abetting the phenomenon of speculation and rarely issuing special instructions to economic and trade organizations to correct deficiencies in their work that enabled the speculators to pursue their metier. In 1973, for example, directives of this type ensued in just 12.4% of the cases tried in which the defendant was charged with engaging in speculation (12.7% in the first half of 1974) and a mere 8.9% of these called for the elimination of specific shortcomings that had encouraged the incipience of speculation.

The federal survey prompted similar exercises at the republic level in the course of which answers were provided to some of the questions raised by the USSR Supreme Court and a few of the themes sounded by the nation's top tribunal were further embroidered upon. Thus, a 1975 report dealing with the RSFSR's experience in this domain clarified the point of what constitutes speculation on a large scale (i.e., one specimen of aggravated speculation) by pegging it to a

profit in excess of 200 rubles and warned the republican courts henceforth to comply with the norm, which in the past many of them had signally failed to do.[157] The judiciary's performance in handling cases in which speculation came coupled with abuse of official position, bribery, acquisition of stolen goods, etc., was still found to be spotty in that the courts often avoided assigning aggregate punishment and preferred to charge the defendant solely with committing speculation. Errors continued to occur in the differentiation by law enforcement agencies between speculation and, say, acting as a commercial middleman. Criticism was again aimed at the tendency of local courts to pronounce unduly mild sentences where the culpable individuals maintained an antisocial, parasitic life-style or indulged in speculation as a form of business or in large amounts. Even when speculators were rightly convicted, the courts seldom looked beyond the men in the dock to extend the investigation to the broader circle of their accomplices among trade and managerial personnel, whose participation was, in the final analysis, crucial to the success of the whole illegal enterprise. Special court directives remained a rarity and, significantly enough, not once did such an instruction call for the indictment of the official partners in the scheme. The record with respect to use of trial sessions on location and mobilization of the community in the struggle against speculation had meanwhile not improved much either.

The persistence of the pattern leads one to wonder whether: 1) the regime's statements on that score are only meant as a rhetorical gesture and are so perceived by the institutions to which these "orders" are ostensibly addressed; or, 2) the authorities are powerless to get the judicial apparatus to follow the rules because the latter's staff is incompetent, or negligent, or ignorant, or unresponsive; or, 3) the population and the officials of inferior rank simply do not share the values propounded by the policy-makers and, for example, will consciously favor light penalties for speculation because they do

not see it as the major evil it is portrayed to be or they realize that the practice is so common (and perhaps so vital for the citizenry's welfare) that the tough standards set by the government are bound here to produce draconic or adverse consequences.

Petty speculation also was discussed on this occasion. The report indicated that in two thirds of the cases the administrative sanctions applied by judges to persons guilty of petty speculation consisted of fines, and arrests accounted for the balance. The people's judges were faulted, however, for not taking sufficient care to "individualize" the measures of punishment and tending to adhere to a stock formula: an allegedly typical sample showed the judges routinely imposing fines ranging from 3 to 10 rubles whereas the pertinent legislation allowed fines of up to 50 rubles. The usual reference was made to the theme of unjustified leniency, prompted by instances where charges against individuals accused of petty speculation were summarily dismissed. True, sometimes the reverse situation was observed, with people being wrongly punished for engaging in petty speculation when, according to the available evidence, they had not violated the law. Although speculation fell into the petty class when the profit did not exceed 30 rubles, quite frequently judges stretched the concept to include speculation on a substantially larger scale in open contravention of the prescribed procedures.[158] In this department too, then, the local judicial personnel seems to be demonstrating either a certain independent spirit toward their superiors or a plain inability to carry out accurately instructions received from above.

Some of the republican statutes feature additional forms of speculation. The criminal codes of Armenia (Art. 156, para. 3), Kazakhstan (Art. 169) and Tadzhikistan (Art. 168), for instance, single out as a separate species of crime speculation in housing facilities, defined as the purchase and resale of privately owned homes and apartments for purposes of making a profit. In

Kazakhstan and Tadzhikistan, conviction in this count entails a penalty of deprivation of freedom for a term of between 1 and 7 years with confiscation of property, and in Armenia the corresponding punishment is deprivation of freedom for a term of up to 5 years. Furthermore, the criminal codes of the Azerbaidzhan, Armenian, Georgian, Moldavian, Turkmen and Ukrainian SSR's in their respective chapters on economic offenses envisage criminal liability for illegal transfer of living space in housing belonging to local Soviets or state and social organizations; in the Latvian CC a similar provision figures in the chapter on crimes against the administrative order, while in Kazakhstan and Tadzhikistan a clause to that effect appears under the same heading as the theme of speculation in housing facilities. The Moldavian and Ukrainian criminal codes also recognize as criminally punishable the collection of rental payments in excess of the rates established by law.

Incidentally, the Kazakh and Tadzhik decision to bracket illegal transfer of housing space with speculation in housing facilities has met with doctrinal criticism on grounds that in the former case the element of prior purchase of living space which is indispensable to the concept of speculation is lacking.[159]

The courts have experienced considerable difficulties in applying these norms because the activities they have in mind often assume the guise of other, closely related practices which are sanctioned by the law, i.e., exchange of living quarters, leasing a residence during absence, subletting surplus floor space, etc. Hence, the courts have been instructed to focus attention here on situations where a party systematically derives unearned income by renting out a room or apartment over a certain period of time at prices higher than those allowed by law.[160]

17. Beijing Review (October 26, 1979), p. 15.

18. Beijing Review (June 1, 1979),p.4.

19. These passages were culled from three different interviews with the same respondent. Two of these interviews were conducted by Christine Wong, who graciously gave us access to her transcripts.

20. For a discussion of blat see Joseph S. Berliner, "The Informal Organization of the Soviet Firm," The Quarterly Journal of Economics, Vol. LXVI, No. 3 (August 1952), pp. 356-358.

21. Joseph S. Berliner, Factory and Manager in the U.S.S.R., (Cambridge, Mass.: Harvard University Press, 1957), pp. 207-230.

22. One is reminded of Berliner's description of the tolkach -- that in Soviet industry it is precisely the supplies purchasers who develop the wheeler-dealer style and outlook of the classical entrepreneur in the capitalist world. Our interviewee, two years after arriving penniless in Hong Kong as an immigrant, was already prospering in that acutely capitalist city as a middleman in deals between merchants and subcontractors. He attributes his rapid success to his entrepreneurial experiences as a procurement officer in China.

23. Xinhuashe, December 15, 1978, in FBIS-CHI, December 20, 1978, p.L2.

24. Zhangchun RAdio, May 22, 1979, in FBIS-CHI June 22, 1979, p. S6.

25. According to Chinese government statistics, in 1973 private peddlars accounted for 0.2 percent of the total volume of retail sales in China. Guangming Ribao (Beijing), May 7, 1975, p.2.

26. Xian Radio, June 19, 1978, in FBIS-CHI June 23, 1978, p.M3.

27. Xian Radio, May 19, 1978, in FBIS-CHI, May 25, 1978,pp. H2-3.

CONCLUSIONS

It is now time for a few general reflections. We would first like to focus on the social and political causes of pervasive "economic criminality" and sketch a few explanatory hypotheses concerning stealing of socialist property. These remarks, we feel, will have broader relevance since some of them, at least, will apply to yet other forms of economic criminality that include as their common denominator illegal acquisitions at the expense of the state. Most obviously and directly, they will be germane to private business activity from behind a socialist facade, a practice which nearly always feeds upon state resources, though without necessarily assuming the form of "stealing."

1. The facts which emerge from Soviet publications, i.e., facts showing massive violations of the norms protecting socialist property amid almost total indifference on the part of the populace, beg for an explanation. Why do so many Soviet citizens, otherwise law-abiding, steal property belonging to the state and do so without any feeling of impropriety? Why do their neighbors, co-workers, superiors, and fellow-countrymen in general, not disapprove of, let alone condemn, such conduct? What makes legitimacy of property relations existing in the USSR suspect in the eyes of Soviet citizens?

We propose to take as a point of departure the low living standards of large segments of the Soviet population prompted by at least three factors: low wages, scarcity and poor quality of consumer goods and services. A substantial part of the population (40%) live below the line of absolute poverty, unable to get even bare necessities by legal means. Subsisting below or close to the line of poverty _per se_ certainly motivates illegal appropriations and makes moral justification much easier. If moral justifications persist for a long time, the relevant legal and corresponding moral norms are gradually eroded: their internalization either collapses or may never occur.

It is easy to see why those motivated by poverty turn against socialist

property rather than against the property of their more fortunate fellow countrymen, legal disincentives notwithstanding. First, socialist property is easy to get at: there is a lot of it around and it is much more accessible. Also, the risk of detection is actually low, given widespread attitudes of indifference and tolerance even among those formally in charge of its protection.[161]

Second, the moral justification in cases of crimes against socialist property is almost self-evident; the state as a super-employer, super-producer and super-distributor is presumed "guilty" for the poverty suffered. Therefore, stealing from the state is perceived as getting one's due.[162] An explanation based on absolute poverty can account only for a fraction of the phenomenon under discussion, however. A substantial number of people who engage in stealing are well above the line of absolute poverty.[163]

There is no doubt that an overwhelming proportion of the Soviet population experience scarcity and live frugal lives, and that this situation is shared by the majority of those who steal socialist property. But it is old hat in criminology that frugality of life _per se_ cannot explain the high rate of crimes against property.[164] Instead, _dissatisfaction_ with existing living standards and economic frustration offer more help in understanding deviant economic behavior. So, the questions to be asked are: Why do such large segments of the Soviet population feel that the existing living standards are unbearable? Why do they not want to accept a frugal life style? Why do socially experienced needs exceed the means legally available to satisfy them? Why have ideological and moral motivations almost completely failed?

Without trying to give complete answers to these questions,[165] we shall discuss several factors which may contribute to a better insight into these issues within the Soviet context.

One of the basic contradictions pervading Soviet public life is the

contradiction between the ideology of participation and the social experience of total control by the party/state apparatus.[166] Innumerable political and legal documents and statements, beginning with the USSR Constitution, have tried to convince the Soviet citizen that he participates in the exercise of political and economic power and that decisions on all important matters of public life are his decisions. In fact, though, the actual experience of the individual in Soviet society is dramatically different: he actually has no part in essential political and economic decisions; the latter are made by the paid, self-selecting and self-perpetuating party/state apparatus. The individual is a passive object of the decisions rather than an active participant.

The contradiction between between the ideology of participation and the social experience of alienation has several essential implications for popular attitudes toward state-social property:

The individual is constantly told that state property is his property and that he is the genuine owner.[167] In reality, he experiences none of the powers of the owner and none of the privileges. In the long run, this contradiction has probably had an impact on his general attitude toward state ownership. That attitude is stamped by ambiguity and ambivalence: the daily record teaches him that state property is not his; ideology insists that it is. Therefore, the individual experiences neither feelings of identity, characteristic of an owner or co-owner, nor feelings of respect for the autonomous rights of another.

The perception of socialist property as no one's property has, in the Soviet context, its specific roots in the abovementioned contradiction.

The total control exercised by the apparatus at various levels appears to the populace as neither benevolent nor efficient. Scarcity is, to a large extent, the result of deliberate policies assigning high priority to the means of production and the military sector. The allocation of resources between

the civilian and the military sectors is decided by the governing elite and imposed on the population. The citizenry pays for the growing industrial and military might of the country without ever being asked whether and to what extent it is willing to do so. Under the circumstances, spontaneous commitment to goals never approved by the masses can hardly be expected.

Scarcity is substantially exacerbated by the inefficiency of the economic system. Socialist property is systematically wasted by incompetent, poorly informed and deliberately misinformed decision-makers at all levels, or through simple neglect, poor-quality production, defective storage or transportation, etc. For decades, the Soviet mass media have been full of lamentations about wasteful economic administrators. The inefficiency of the system has had a highly demoralizing influence on the population. The assumption that stolen state property would be wasted anyway and, hence, that stealing harms no one, but at least benefits somebody, is often made and not without some justification.[168] In a way, the state has shown its partial inability to discharge one of the fundamental functions which legitimize ownership. Under the circumstances, legitimacy of state ownership lacks any solid foundation. The masses have neither a sense of genuine participation in the control of the means of production nor the feeling that the elite uses them in the interests of society.

Even on these grounds alone, ideologically motivated acceptance of low living standards in the spirit of conscious sacrifice cannot be reasonably expected. The point, however, is that official ideology has not been used to play down the consumption aspirations of the populace; on the contrary, it tends to increase appetites. Frugal life, austerity, selfless work for the common cause have not been emphasized, especially recently. We reach here another major paradox of Soviet life: a discrepancy between <u>the ideology of affluence</u>, on the one hand, and daily <u>experience of scarcity</u>, on the other. Not only is

affluence presented as the supreme goal for the future, as the dominant ingredient of "full Communism", but official propaganda has also tried for a long time to convince the population that economic well-being, if not already achieved, is right at hand. The promises to improve living conditions, repeated over the years, have hardly been kept. After raising expectations of affluence, the system proved unable to meet them. The likely result is disappointment with the officially approved avenues for improving living conditions. Moreover, the system has not established any legitimized forms of pressure by the working class, such as strikes. The stealing of socialist property or other forms of economic criminality make up for the lack to some extent.

The ideology of affluence has been accompanied by practical economic measures encouraging egotistical motivations and acquisitive attitudes rather than altruistic ones. The non-egalitarian system of wages and other "material incentives" is the most pronounced manifestation of this policy. Material wealth and a high level of consumption have become important attributes of social prestige in the Soviet Union. Such objects of luxurious consumption as private cars or summer houses are sought today not only because of their practical utility, but also because they have become symbols of success and prestige. The whole ethos of the Soviet society is imbued with a striving for material achievement.[169] Such attitudes, when confronted with a daily experience of scarcity, must produce a widespread sense of relative deprivation. Indeed, Soviet criminologists today admit as much.[170]

Under the circumstances, occasional attempts at reviving a spirit of selflessness and sacrifice are doomed to failure. Ideology, when internally incoherent and permanently incongruent with social experience, loses its potential for mobilization. Thus, solemn condemnations of acquisitiveness, appeals to altruistic feelings and spiritual rewards of the kind found in recent resolutions of the CPSU Central Committee[171] sound like cries of despair,

which come far too late. First, they are completely out of tune with the whole ethos of Soviet society. Second, the appeals emanate from people who themselves labor under strong suspicion of insincerity. The entire lifestyle of the Soviet power elite reflects its unwillingness to accept sacrifices. Conspicuous consumption by the members of the elite, supported by the whole complex system of economic privileges, make such appeals look like nothing but a crude exercise in hypocrisy.

This brings us to the next major discrepancy between ideology and social experience. We will call it a contradiction between the meritocratic ideology of income distribution[172] and the social experience of power privileges. It is widely believed that those who belong to the bureaucratic elites live a comfortable, even luxurious, life paid for from public funds while contributing less than others. The legitimacy of these privileges is doubtful since it is justified neither by talent and professional qualification[173] nor by quantity and quality of the work done by the recipients of such benefits. The suspect status of these privileges is further aggravated by the secrecy with which they are surrounded. The privileges enjoyed by the Soviet elites at various levels are criminogenic in several ways: First, they generate a widespread sense of economic injustice and contribute to the feeling of relative deprivation. Stealing of socialist property is therefore often rationalized as an act vindicating the socialist principle of distribution according to one's work.[174] The moral authority of criminal punishment which here allegedly purports to vindicate the same principle must be close to zero.

Second, these privileges--technically legal, yet lacking legitimacy--tend to demoralize lower level bureaucrats: offenders from this group tend to justify illegal appropriations as a way of life <u>actually</u> practiced by their superiors, except with the advantage of immunity. Finally, the secrecy surrounding these privileges tends to blur the line dividing the "lawful" from

the illegal ones. This fact, coupled with the severe restraints imposed on expressions of public criticism, creates fertile ground for white-collar criminality within establishment groups of various levels. Sometimes, establishment cliques pursue their criminal schemes for years enjoying virtual immunity from prosecution.

2. There seems to exist a general unarticulated assumption that the second economy tends to increase the welfare of private individuals at the expense of the public sector. In view of our preceding discussion this assumption should be qualified in at least two ways:

First, private individuals are not always the beneficiaries of the second economy. Deception of purchasers, a chronic phenomenon, is only one instance where they are not. As we pointed out earlier, many crimes technically classified as "stealing socialist property" ultimately inflict harm upon consumers rather than the state. Typically, the cost of stealing from the production of consumer goods is ultimately externalized, that is, shifted to purchasers. Second, private business activities have at some stages become functional in relation to the first economy and that in at least two ways: Indirectly, when "the state considers itself unable to provide a particular product or service, it may decide that the cheapest solution is to let the second economy take over."[175] Here, the second economy covers for the state by producing goods and services for individual consumers. Private car repair/maintenance services, as well as apartment maintenance services, are notorious examples. But, the second economy also contributes sometimes <u>directly</u> to the operations of the entities of the socialist economy. Probably the best illustration features private construction brigades servicing kolkhozes. Reportedly in remote areas, such as Siberia or the Far East, all rural construction would have to come to a halt without private brigades.[176] The first economy has proved incapable of resolving one of the high priority

tasks assigned by the leadership. Construction workers simply do not want to move to remote areas and work there in primitive conditions. One would guess that a Stalinist-type system might solve the problem by combining crude coercion with ideologically-colored mobilization. Rural construction in the Far East or Far North would then be carried out by deportees and prisoners as well as Party/Komsomol members driven by high ideological spirits (enthusiasm, sense of duty, fear of rejection). Neither of these means is available to the present tired oligarchy. At the same time, the system is unwilling or incapable of offering sufficiently strong monetary incentives to draw enough volunteers. The gap has been filled by private construction brigades which offer high pay for hard work in primitive conditions and without the protection of labor law.[177] The management of kolkhozes and sovkhozes resort to all sorts of financial irregularities in order to meet the demands of private construction brigades, demands much exceeding approved wage scales.[178] There are other problems too: apparently, private construction brigades compete successfully for labor resources with socialist organizations. Again, labor-starved kolkhozes are among the losers.[179] Shabashniki manage to obtain construction materials/equipment mostly by unlawful means. The functional and disfunctional aspects of the private construction business are closely intertwined. The official response has been marked by indecision and ambiguity. Obviously, the authorities cannot at the present afford to crack down on the private brigades, but they do not want to give them full legitimacy either. The solution found is rather typical for the current leadership: the USSR Supreme Court, hardly an agency of power and prestige, in effect told the law enforcement agencies and lower courts to leave the private construction brigades alone, as long as they do not engage in flagrant transgressions.

Other areas of Soviet life are not immune, of course, to the effects of these corrosive forces. In a milieu where stealing of public property is

commonplace, few individuals are likely to feel strong inhibitions against engaging in more innocuous sounding activities such as, for instance, speculation, which does not even carry the stigma of theft. For that matter, the popular view seems to be that persons involved in so-called speculation perform a useful social function by providing scarce goods and services in exchange for fair remuneration and that the law gratuitously punishes them for picking up the logistical slack left by the regime's proven inability to manage properly its monopolistic control of the national system of production and distribution. Though in fact responsible for the existence of the conditions which cause speculation to flourish, the authorities prefer to focus attention on the alleged misdeeds of those who simply try to "compensate" for gross official incompetence and cast them in the role of convenient scapegoat for the economic mechanism's myriad shortcomings. For, if speculation were not subject to sporadic repression, the phenomenon would quickly assume mass proportions and conclusively demonstrate the superiority of private entrepreneurship in meeting the population's needs compared to how the socialist sector has fared in that respect.

The social roots of bribery as a feature of community mores are a bit more complex. Clearly, a general climate of "disrespect" for property rights is bound to spawn a whole "counter-culture" whose practitioners will also routinely indulge in violations of the established norms in adjoining domains. Next to theft, bribery looks relatively mild and where stealing is an every-day occurrence lesser infractions of the law then figure so widely that the very sense of their "illegality" tends to disappear. Besides, history shows that bureaucratic graft and corruption can only be effectively policed through the external threat of ouster from political power by an aroused constituency with access to institutionalized means of installing a "cleaner" administration. The ruling apparatus itself has little incentive to keep its membership honest when

it operates with impunity and knows that it will not have to account for its record to a citizenry in a position to exercise a different set of options. To be sure, a case of extreme abuse by one of the elite may on occasion incur the culprit's public disgrace to lend the regime's image a touch of credibility, both at home and abroad, but incidents of this type are rare exceptions and certainly not the rule. Otherwise, the men at the top might even be happier if the subordinate cadres who help them mind the store do run afoul of the law, since the guilty parties are apt to prove themselves complaisant executors of their superiors' will for fear of consequent exposure if they should antagonize those higher up on the administrative ladder whose tacit complicity shields them from richly deserved punishment.

Where the initiative originates for the practice of bribery is hard to pinpoint. Are the people who can "dispense favors" the ones who engendered a pervasive attitude that indeed the average person's rights are mere indulgences to be bought and sold at a going rate because the apparatus owes its subjects nothing and cannot be compelled to observe the principles which it has formally deigned to endorse? Or, has the population come to terms with its impotence to control the political machine by cynically dismissing the relevance of the prescribed procedures and putting its trust instead in the proposition that, to get along, one must go along, meaning tangible steps to insure a benevolent disposition on the part of the competent official(s)? Or, has a combination of bureaucratic dishonesty and greed and popular conviction that the fellows in charge will only respond to material inducements to do either right or wrong, coupled with a consistent background of benign neglect by the hierarchy of this sorry state of affairs, gradually brought Soviet society to its present toleration of bribery as a standard fixture of quotidian experience? Whatever the causal factor(s), the net result is wholesale disregard for the pertinent postulates of enacted legislation and quasi-universal acquiescence in the de

facto validity of alternative values sanctioned by constant application, producing a situation where the "second economy" structure now comes equipped with its own fully developed canon of "second law" precepts,--a behind-the-scenes economic system serviced by a behind-the-scenes legal code, so to speak. Schizophrenia or conscious duplicity, such perverse phenomena stamp much of Soviet conduct and the "deviant" edition of the official script must also be correctly understood if one hopes to gain a comprehensive picture of local reality.

FOOTNOTES

1. Compare, for example, "Exploring the Underground Economy", The Economist, September 22, 1979, at 106-107.

2. V. N. Ivanov, Ugolovnoe zakonodatelstvo Soiuza SSR i soiuznykh respublik: Edinstvo i osobennosti (Moscow, 1973), pp. 75, 129ff.

3. Ugolovnyi kodeks RSFSR, Octover 27, 1960, Vedomosti Verkhovnogo Soveta RSFSR, (hereafter VVS RSFSR), 1960, No. 40, item 591, as amended (hereafter "the criminal code" or "the code").

4. The term "socialist ownership" is used in the technical sense in the way it has been used in Soviet law. It includes state ownership, as well as ownership by collective farms, cooperatives, trade unions, and other "social organizations". Cf. Constitution of the USSR, Arts. 10-12; Fundamental Principles of Civil Law of the USSR and the Union Republics, arts. 21-24.

5. S. Pomorski, "Criminal Law Protection of Socialist Property in USSR," in D. Barry, G. Ginsburgs, P. Maggs (eds.), I Soviet Law After Stalin (Leyden, 1977), p. 239. The section of the article dealing with stealing of socialist property draws extensively on this essay.

6. Constitution of the USSR, Art. 10 section 1.

7. Id.,Art. 61; "Moral'nyi kodeks stroitelia kommunizma," section 3, in XXII S'ezd Kommunisticheskoi Partii Sovetskogo Soiuza: Stenograficheskii Otchet (Moscow, 1962), p. 318.

8. I. Andrejew, Ocherkpougolovnomu pravu sotsialisticheskikh gosudarstv (Moscow, 1978), p. 90.

9. Crimes against socialist ownership have been assigned second place in the Special Part of the Code, whereas crimes against personal ownership occupy fifth place. Altogether, thirteen of the republican criminal codes follow the same arrangement. Pomorski, note 5, p. 249.

Article 1 paragraph 1 of the Criminal Code which represents a basic

policy statement, reads as follows:

> "The RSFSR Criminal Code has as its task the protection of the Soviet social and state system, of socialist property, of the person and rights of citizens, and of the entire socialist legal order, from criminal infringements"[emphasis added].

It is noteworthy that protection of socialist property was specifically mentioned and placed ahead of protection of the person and the rights of citizens.

10. Compare Ukaz Prezidiuma Verkhovnogo Soveta SSSR, May 5, 1961, "Ob usilenii bor'by s osobo opasnymi prestupleniiami", VVS SSSR, 1961, No. 19, item 207. The relevant part of the edict was incorporated into the Criminal Code as art. 93-1.

11. I.e., the chapter on crimes against socialist ownership.

12. Arts. 89-90 and 92-93, paragraphs 3; art. 91, para. 2, and art. 93-1.

13. I.e., in the chapter on crimes against personal ownership. Compare article 146 para. 2.

14. For a more extensive discussion, see Pomorski, note 5, pp. 230f.

15. Compare provisions listed in note 12 above.

16. Embezzlement of personal property entrusted to the defendant is criminalized in some ten republican criminal codes. The crime is unknown in the Russian, Ukrainian, Belorussian, Armenian and Estonian republics. Ivanov, note 2 above, at 128.

17. The criminal codes of the Uzbek and Kirgiz SSRs do not penalize causing damage to socialist property through deception or abuse of trust. The Lithuanian and Estonian criminal codes limit penalization to causing "substantial property damage". Ivanov, note 2 above, at 79-80.

18. Such an offense against personal property is known only in six union republics (Uzbek, Kazakh, Moldavian, Kirgiz, Tadzhik and Turkmen). Ivanov, note 2 above, at 129.

19. To the same category belong such offenses as, for example, "systematic failure to apply measures to prevent stealing of state or social property" (the Criminal Code of the Uzbek SSR, art. 114-2) or "criminally careless or cruel treatment of livestock" (the Criminal Code of the Kazakh SSR, art. 86). Compare Ivanov, note 2, p. 76.

20. N.A. Beliaev, M.D. Shargorodskii (eds.) Kurs sovetskogo ugolovnogo prava: Chast' osobennaia, Tom 3 (Leningrad, 1973), at 343-344.

21. Postanovlenie Plenume V.S. SSSR No. 4, July 11, 1972, as amended, "O sudebnoi praktike po delam o khishcheniiakh gosudarstvennogo i obshchestvennogo imushchestva," Sbornik postanovlenii Plenuma Verkhovnogo Suda SSSR 1924-1977, Vol. 2 (Moscow, 1978), p. 154. A.A. Piontkovskii et al. (eds.), Kurs sovetskogo ugolovnogo prava, V shesti tomakh, Tom IV (Moscow, 1970), p. 307; V.A. Vladimirov, Iu. I. Liapunov, Sotsialisticheskaia sobstvennost' pod okhranoi zakona (Moscow, 1979), p. 21.

22. The Criminal Code, arts. 89-93; Vladimirov et al., note 21, p. 35.

23. Beliaev, Shargorodskii, note 20, at 341; G.A. Kriger, Kvalifikatsiia khishchenii sotsialisticheskogo imushchestva (Moscow, 1974), p. 23.

24. Beliaev, Shargorodskii, note 20, pp. 348f. The crime of extortion of socialist property is unknown to the criminal codes of the Ukrainian, Uzbek, and Kirgiz SSSRs. Ivanov, note 2, p. 75.

25. Vladimirov et al., note 21, p. 65.

26. G.Z. Anashkin, I.I. Karpets, B.S. Nikiforov (eds.) Kommentarii k ugolovnomu kodeksu RSFSR (Moscow, 1971), p. 237; Vladimirov et al., note 21, p. 65.

27. Anashkin et al., note 26, p. 239; Vladimirov et al., note 21, p. 65. Art. 93-2 applies only to "small scale" stealings committed through theft, (art. 89) appropriation, embezzlement, abuse of official position (art. 92), or swindling (art. 93) committed for the first time, if according to the circumstances of the case and taking into account the personality of the guilty person the

application of measures of punishment provided by the indicated articles is not necessary.

28. Compare: Ukaz Prezidiuma Verkhovnogo Soveta RSFSR, "O vnesenii izmenenii i dopolnenii v Ugolovnyi i ugolovno-protsessual'nyi kodeksy RSFSR" December 13, 1977, VVS RSFSR, 1977, No. 51, Item 1217; Ukaz Prezidiuma Verkhovnogo Soveta RSFSR, "Ob administrativnoi otvetstvennosti za melkoe khishchenie gosudarstvennogo i obshchestvennogo imushchestva," December 13, 1977, id., Item 1215; Postanovlenie Prezidiuma Verkhovnogo Soveta RSFSR, "O poriadke primeneniia Ukaza Prezidiuma Verkhovnogo Soveta RSFSR 'Ob administrativnoi otvetstvennosti....'," December 13, 1977, id., Item 1216.

It has been suggested for example that in cases of stealing construction materials or spare parts for automobiles the "economic significance" of the items stolen should be considered in addition to their monetary value. Iu. Liapunov, "Otvetstvennost' za melkoe khishcheniie sotsialisticheskogo imushchestva," S.Z., 1979, No. 4, p. 33. Petty stealing may be committed through theft, appropriation, embezzlement, abuse of official position or swindling (art. 96). Therefore, grabezh and razboi, regardless of the value of the property stolen, never fall within the petty stealing category.

29. See Liapunov, preceding note, at p. 32. Compare, however, art. 96 para. 2 which qualifies decriminalization of petty stealing.

30. Recent changes in the criminal legislation substantially enlarged the discretionary power of the Soviet courts at sentencing. To give only one example: in all cases where the statutory maximum does not exceed one year of deprivation of freedom or the statute provides for more lenient punishment, the court may relieve the defendant from criminal liability, and charge him with administrative responsibility. Compare two edicts of the Presidium of the USSR Supreme Soviet, February 8, 1977, VVS SSSR, 1977, No. 7, Item. 117.

31. "On Improving Work to Safeguard Law and Order and Intensifying the Struggle

Against Law Violations," Pravda, September 11, 1979, cited after CDSP, vol. XXXI, No. 36, p. 2; Postanovlenie Plenuma Verkhovnogo Suda SSSR, No. 4, note 21 above, pp. 153f; R. Rudenko, "XXV S'ezd KPSS i zadachi prokuratury", S.Z., 1976, No. 5, p. 10; V. Terebilov, "XXV S'ezd KPSS i zadachi organov iustitsii i sudov," S.Z., 1976, No. 6, pp. 6f.

32. Postanovlenie Plenuma Verkhovnogo Suda SSSR, No. 9, November 28, 1975, "O povyshenii roli sudov v borbe z khishcheniiami sotsialisticheskoi sobstvennosti, v vyiavlenii i ustraneii prichin i uslovii, porozhdaiushchikh eti prestupleniia", in Sbornik, note 21, p. 180; Postanovlenie Plenuma Verkhovnogo Suda SSSR, No. 13, October 8, 1973, "O khode vypolneniia postanovleniia Plenuma Verkhovnogo Suda SSSR ot 11 iulia 1972, ...," Sbornik, note 21, p. 175.

33. Postenovlenie, No. 9, note 32, at p. 183; V.G. Tanasevich (ed.), Preduprezdenie khishchenii sotsialisticheskogo imushchestva: Deiatel'nost sledovatelia, prokurora i suda (Moscow, 1969).

34. See in general: Postanovlenie Plenuma Verkhovnogo Suda SSSR, No. 3 June 29, 1979, "O praktike primeneniia sudami obshchikh nachal naznacheniia nakazaniia,"S.Z.,1979, No. 9, p. 62-63. The Court put heavy emphasis on the priority of non-custodial sanctions. In effect, the lower courts were told to presume that a non-custodial sanction is a better solution.

35. Postanovlenie Plenuma Verkhovnogo Suda No. 13, note 32, p. 176.

36. "Rassmotreniie del o khishcheniiakh gosudarstvennogo i obshchestvennogo imushchestva (Obzor sudebnoi praktiki)", BVS SSSR, 1976, No. 2, p. 41; "Obzor sudebnoi praktiki po delam o khishcheniiakh gosudarst vennogo i obshchestvennogo imuschestva", BVS RSFSR, 1976, No. 9, p. 14.

37. Compare, for example, a statementby M.P. Maliarov, First Deputy Procurator General of the USSR, Pravda, July 11, 1972; CDSP, XXIV, 1972, No. 28, p. 5. See also:

"Plunderers Punished", Bakinskii Rabochii, December 25, 1975, and CDSP

XXVII, 1975, No. 52, p. 7 (five death sentences imposed upon "the ringleaders" by the Azerbaidzhan Republic Supreme Court emphatically endorsed); "Plunderers Punished", Kazakhstanskaia Pravda, January 4, 1978, and CDSP, XXX, No. 4, p. 22 (three death sentences imposed on "the organizers of the group of plunderers" by the Kazakh Republic Supreme Court). Sakharov estimates that the annual number of executions in the USSR averages from 700 to 1,000. A.D. Sakharov, My Country and the World, (New York, 1975), p. 43. If we assume that only 20% of this total represents executions for stealing socialist property, the number would be from 140 to 200 annually.

38. Informal disposition means: dropping charges because of the triviality of the offense (Criminal Code, art. 7, para. 2), application of measures of "social pressure" by comrade's courts or imposition of administrative penalties by a single judge. Liapunov, note 28.

39. Postanovlenie Verkhovnogo Suda SSSR, No. 13, note 32, p. 176. Postanovlenie No. 7 Plenuma Verkhovnogo Suda RSFSR, December 23, 1975, Sbornik postanovlenii Plenuma Verkhovnogo Suda RSFSR 1961-1977 (Moscow, 1978), p. 285. The policy of broad application of non-custodial sanctions has been reinforced by recent changes in criminal legislation. Compare:

Ukaz Prezidiuma Verkhovnogo Soveta SSSR, "O vnesenii izmenenii i dopolnenii v ugolovnoe zakonodatel'stvo SSSR", February 8, 1977, VVS SSSR, 1977, No. 7, Item 116.

40. Confiscation of property is applicable to aggravated forms of khishcheniie and to other "grave mercenary crimes". Compare arts. 35, 89-93-1 of the Criminal Code. See guidelines on confiscation of property in Postanovlenie No. 4, July 11, 1972, note 21, p. 161. See also Postanovlenie No. 7 Verkhovnogo Suda RSFSR, note 39, pp. 285f.

41. Postanovlenie No. 4, note 21, p. 162; Postanovlenie Plenuma Verkhovnogo Suda SSSR No. 6, June 24, 1968, "Ob uluchshenii deiatelnosti sudov po bor'be s

khishcheniiami gosudarstvennogo i obshchestvennogo imushchestva", Sbornik, note 21, p. 167.

42. See Resolution of the Central Committee of the CPSU, "On Improving...," note 31, above, p. 3; Postanovlenie No. 6, note 41, p. 167.

43. In effect, proceedings before the comrade's courts have been replaced in many cases by administrative penalties imposed by a single judge of a people's court. See Ukaz Prezidiuma Verkhovnogo Soveta RSFSR, December 13, 1977, note 28. For critical assessment of comrade's courts see: T. Dabauskas, "Administrativnaia otvetstvennost' za melkoe khishchenie", Voprosy Bor'by s Prestupnostiu, Issue 14, 1971, p. 155-121; N. Tairova, "The Citizen, Society and the Law: Comrade's Courts", Pravda, Sept. 10, 1979, and CDSP, XXXI, No. 36, p. 4.

44. Editorial, "Sotsialisticheskoi sobstvennosti vsemernuiu okhranu," Sov. Iust. 1973, No. 14, p. 1.

45. Pomorski, "Criminal Law Protection...," note 5 above, p. 238, and authorities collected there in note 140.

46. Sakharov, note 37 above, pp. 12-14; K. Simis, "The Machinery of Corruption in the Soviet Union," Survey, Vol. 23, No. 4 (Autumn 1977-78), p. 45.

47. S.S. Ostroumov, Sovetskaia sudebnaia statistika (Moscow, 1970), p. 248; W.D. Connor, Deviance in Soviet Society: Crime, Delinquency and Alcoholism (New York and London, 1972), p. 150. Characteristically, the same old table depicting the overall "criminality structure" was used again by Ostroumov in his brochure Ugolovnaia statistika i bor'ba s prestupnostiu (Moscow, 1975), p. 26.

48. Such, for example, as issuance of poor quality production (Criminal Code, art. 152).

49. Compare B.V. Zdravomyslov, Dolzhnostnye prestupleniia: poniatie i kvalifikatsiia (Moscow, 1975), p. 120; Vladimirov et al., note 21, pp. 98f.

50. According to Ostroumov, convictions for hooliganism make up 24% of the

total. Ostroumov, Sovetskaia sudebnaia statistika, note 47, p. 248.

51. Pravda, July 11, 1972; CDSP, XXIV (1972), No. 28, p. 5.

52. V. Lopatin, "Organizatsiia bor'by s khishcheniiami," S.Z., 1976, No. 2, pp. 38-39.

53. I.I. Gorelik, T.S. Tishkevich, Voprosy ugolovnogo prava (Osobennoi chasti) v praktike Verkhovnogo Suda BSSR (Minsk, 1976), p. 9.

54. Connor, note 47, pp. 151-152.

55. A majority of the stealings, up to 50 rubles, are handled by comrade's courts or are punished by administrative fines up to 50 rubles, and therefore never appear in the criminal statistics.

56. V.G. Tanasevich, I.L. Shraga, "Issledovanie problem bor'by s khishcheniiami", Voprosy bor'by s prestupnostiu, Issue 20, 1974, p. 131

57. L. Sudakov, "Sotsialisticheskaia sobstvennost' sviashchenna i neprikosnovenna," Kommunist, 1961, No. 10, p. 65; L.A. Andreeva, G.A. Levitskii, "Obstoiatel"stva sposobstvuiushchie khishcheniiam (Opyt vyiavleniia obshchestvennogo mneniia)," SGIP, 1969, No. 11, p. 105.

58. Pomorski, note 5, footnote 155 and accompanying text.

59. B. Dubrovinskii, B. Korobeinikov, "Ne prostupok a prestuplenie", S.Z., No. 3, p. 35.

60. Dubauskas, note 43, Dubrovinskii et al., note 59.

61. N. Tairova, note 43,Ukaz Verkhovnogo Soveta RSFSR, Dec. 13, 1977, "Ob administrativnoi otvetstvennosti...," note 28; Ukaz Prezidiuma Verkhovnogo Soveta UKRSSR, February 26, 1973, Ugolovnyi kodeks Ukrainskoi SSR, Nauchno-prakticheskii kommentarii (Kiev, 1978), p. 279.

62. V.V. Bratkovskaia, "Nekotorye voprosy uluchsheniia bor'by s khishcheniiami gosudarstvennogo i obshchestvennogo imushchestva," in V.N. Kudriavtsev (ed.), Borda s khishcheniiami gosudarstvennogo i obshchestvennogo imushchestva (Moscow, 1971), p. 236; Pomorski, note 5, footnote 158 and authorities cited therein;

D. Sniukas, "High Cost of Lack of Principle," Pravda, June 5, 1978, and CDSP, XXX, No. 23, p. 17.

63. Pomorski, note 5, footnotes 159-160 and authorities cited therein.

64. The point clearly discernible in the Soviet materials was well documented in a Polich study: I. Majchrzak, Pracownicze przestepstwo gospodarcze i jego sprawca (Warsaw, 1965).

65. Simis, note 46.

66. Vladimirov et al., note 21, p. 116-118.

67. Pomorski, note 5, p. 240.

68. Bratkovskaia, note 62, p. 236; "Plunderers Punished,"Bakinskii Rabochii, Dec. 25, 1975, and CDSP, XXVII, No. 52, p.7.

69. Pomorski, note 5, footnote 164 and accompanying text.

70. Id., note 165 and accompanying text. See also "special ruling" (Chastnoe opredelenie) of the RSFSR Supreme Court, BVS RSFSR, 1977, No. 7, p. 7.

71. Pomorski, note 5, footnote 166 and accompanying text.

72. Sniukas, note 62; "Plunderers Punished," note 68; "Plenary Session of the Kazakh District Party Committee" Bakinskii Rabochii, Jan. 5, 1979, and CDSP, XXXI, No. 4.

73. Case of Iudin et al.

74. A.D. Davletov, Predvaritel'noe rassledovaniie i preduprezhdenie khishchenii sotsialisticheskogo imushchestva (Tashkent, 1978), p. 183.

75. Davletov, note 74, at pp. 191-95. For an analysis of similar crimes in Polish industry compare: L. Kubicki, S. Pomorski, "Oceny prawno-karne produkcji zlej jakosci," Panstwo i Prawo, 1969, No. 4-5, at pp. 776-784; S. Pomorski, "Problem ochrony konsumenta prezed produkcja zlej jakosci," Panstwo i Prawo, 1965, No. 2, at pp. 199-203.

76. S. Pomorski, "Crimes Against the Central Planner: 'Ochkovtiratel'stvo'," in D. Barry, G. Ginsburgs, P. Maggs (eds.), 2 Soviet Law After Stalin (Leyden,

1978), pp. 291-317.

77. Davletov, note 75, p. 214.

78. Id., pp. 213-214.

79. Pomorski, note 76, p. 302; B.V. Korobeinikov, Bor'ba s pripiskami i drugimi iskazheniiami otchetnosti (Moscow, 1974), especially pp. 164-5; Vladimirov, note 21, p. 121; V. Bulagrin "Bor'ba z khishcheniiami sotsialisticheskoi sobstvennosti v selskom khoziaistve, sovershaemymi putem pripisok," S.Z., 1963, No. 1, p. 33. Reporting feigned success in the fulfilling of plans often generates undeserved payments in 6 onses or otherwise. This seems to be a most common form of stealing through report-padding.

80. Soviet courts picked up the theme in a particular context of petty stealing: the gravity of the crime is to be judged not only by the value of the property stolen but also by its "economic significance." Characteristically, spare parts and construction materials have been used as examples. Liapunov, note 28, p. 33.

81. Pomorski, note 75, p. 202.

82. The statute (Criminal Code, art. 156) originally criminalized "false measuring, false weighing, marking up of established retail prices, false reckoning or any other deception of purchasers in stores or any other trade enterprises or in public eating establishements." In 1972 amendment extended the scope of the statute also to include deception of customers of the service establishments. Edict of the Presidium of the Supreme Soviet of the RSFSR, March 17, 1972, VVS RSFSR, 1972, No. 12, Item 302. All fifteen republican codes include special statutes criminalizing deception of purchasers, only nine of them also include deception of customers in the service sector (predpiiatiia bytovogo obsluzhivaniia i kommunal'nogo khoziaistva). Ivanov, note 2, p. 137. Reportedly the most common manner of deception in retail stores is marking-up prices, in the restaurants--shortchanging the

quantities of food or serving food of lower quality than provided. Pointkovskii, note 21, Vol. V, p. 497-99. If a purchaser is aware that the price paid is higher than the standard price, a sales person is guilty of bribe-taking rather than the crime under art. 156. Id., p. 497f.

83. For an excellent thorough description of such a criminal scheme, committed on a large scale by the crew of the café at the Yaroslavski railroad station in Moscow see: G. Feifer, Justice in Moscow (New York, 1964), pp. 297-322.

84. Postanovlenie Plenuma Verkhovnogo Suda RSFSR No. 24, December 12, 1964, (as amended), Sbornik postanovlenii Plenuma Verkhovnogo Suda RSFSR 1961-1977, note 39, pp. 188, 190; Vladimirov et. al., note 39, pp. 149-152; Anashkin et al., note 26, p. 338; Ugolovnyi kodeks Ukrainskoi SSR, note 61, p. 441; Pointkovskii, note 21, Vol. V. p. 501; N.A. Beliaev (ed.), Kurs sovetskogo ugolovnogo prave Chast' osobennaia, Vol. 4 (Leningrad, 1978), p. 130.

The legal nature of embezzlement of surpluses created by deception of purchasers has been controversial for some time. Some commentators have argued that it should be treated as stealing of socialist property (either cumulatively with or in lieu of the crime of deception). Today, the wight of authority supports the opposite view, but the controversy seems to be still alive. Some courts still resort to more severe statutes protecting socialist property, especially in cases which involve large amounts of money embezzled. Pointkovskii, note 21, Vol. V p. 502. Beliaev, pp. 129f. Some unofficial reports by the newspapers confirm that such a practice is still current: See A. Podolsky, "Mandarines for Four" Sovetskaia Rossiia, March 12, 1976, and CDSP, Vol. XXVIII, No. 10, p. 24; T.Novokshonov, "What Does A Label Mean", Izvestiia, Feb. 23, 1977, and CDSP, Vol. XXIX, No. 8, p. 21.

85. Compare: Criminal Code, arts. 93-1 and 156 para. 2. Aggravated deception of purchasers includes "actions committed in accordance with a preliminary agreement of a group of persons, or on a large schale, or by persons, previously

convicted of the same crimes". A "group" counts from two persons, deception which generates an overall profit exceeding 100 rubles is deemed to be on "a large scale". Anashkin, note 26, p. 337. There are some minor differences between the republics in statutory definitions of aggravated deception. Ivanov, note 2, p. 137.

It is therefore much to the advantage of the defendant to be tried under art. 156 para. 2 rather than under the statutes on aggravated stealing.

86. One should keep in mind that "materially responsible" sales personnel bear contractual liability for shortages in trade establishments. By and large, it is more difficult to conceal a shortage in retail stores than in production enterprises.

87. G. Vol'fman, N. Shevchenko, "Nedostatki v bor'be s obmanom pokupatelei," S.Z., 1969, No. 6, p. 24.

88. See for example: Case of Abramova where the offense of the defendant consisted of "not pouring 205 grams of beer, worth 10 kopeks." The case was ultimately decided by the RSFSR Supreme Court. Soviet Statutes and Decisions, Vol. I, No. 4 (1965), pp. 78-79.

Research in judicial practice done recently by the USSR Supreme Court established that

> "almost two thirds of the convicted persons were women, as a rule, without criminal record, who committed deception on an insignificant scale" (emphasis added).

"Rassmotrenie del ob obmane pokupatelei i zakazchikov (Obzor sudebnoi praktiki), "BVS SSSR, 1976, No. 1, p. 41. But even in such diminished form, deception is not easily provable. The crime, large or small, requires proof of intent. It is not enough to show that a purchaser was in fact harmed, it must be proven that the harm was done intentionally. Consequently, allegation of error is a full defense, that is, if unrebutted, it entitles the defendant to

exoneration. Anashkin, note p. 337; Ugolovnyi kodeks Ukrainskoi SSR, note 61, p. 440; Piontkovskii, note p. 500.

In the notoriously bad working conditions of Soviet stores and restaurants mistakes are in fact quite understandable. It is worth noting, however, that the empirical study conducted in the early 1960's in Poland showed that mistakes detrimental to the purchasers occurred about 25 times more often than mistakes detrimental to the store. J. Marecki, "Ochrona mienia spolecznego a ochrona interesow konsumenta," Panstwo i Prawo, 1962, No. 12, p. 988.

89. As to relevant legislation, see note 30 above. Since non-aggravated deception of purchasers is punishable by deprivation of freedom for up to two years, or by correctional tasks for up to one year, or by "deprivation of the right to occupy positions in trade enterprises or public eating establishments" (art. 156 para. 1), people charged with the offense may be relieved of criminal responsibility and their case disposed through administrative proceedings. The USSR Supreme Court recently suggested broader application of informal (social, disciplinary) sanctions to trivial cases of deception. Postanovlenie Plenuma Verkhovnogo Suda SSSR No. 2, March 14, 1975, "O sudebnoi praktike po delam ob obmane pokupatelei i zakazchikov," Sbornik, note 21, pp. 226, 227.

90. "Rassmotrenie...," note 88, p. 41.

91. G. Petrova, "Izuchenie praktiki primeneniia nakazaniia za obman pokupatelei i zakazchikov," S.Z., 1979, No. 9, pp. 47-48. Petrova, relying on a sample of 400 cases, reports the following findings: 69 percent of convicts were sentenced to non-custodial punishment (50% correctional tasks, 19%--prohibition to occupy positions in trade establishments); 31 percent to deprivation of freedom, 56 percent of those sentenced to deprivation of freedom for unaggravated deception (art. 156 para. 1) were given terms of up to one year. Petrova expressed doubts about the wisdom of short custodial sentences, preferring non-custodial punishment.

The sentencing structure under art. 156 para. 2 looks very different: 46 percent of convicts were sentenced to custodial terms of 2-5 years, longer terms were imposed on 7 percent of the convicts. It is not clear what happened to the remainder of the convicts--whether suspended sentences were imposed or perhaps some non-custodial sanctions.

92. Postanovlenie No. 2, note 89,p.26; "Rassmotrenie...," note 88, p. 42; Petrova, note 91, p. 48.

93. Postanovlenie No. 2, p. 226; "Rassmotrenie...," note 88, p. 42; Petrova, note 91, p. 48.

94. Petrova, note 91, p. 48, reports that confiscation of property was imposed in 6 percent of the cases.

95. Postanovlenie No. 2, note 89, p. 226; Postanovlenie No. 24, note 84, p. 189.

96. "Rassmotrenie...", note 90, p. 46.

97. Postanovlenie No. 2, note 89, p. 229; Postanovlenie No. 24, note 84, p. 189; Anashkin, note 26, p. 338; Vladimirov, note 21, p. 154. Retail stores sometimes serve as outlets for marketing goods stolen from industrial enterprises. If such stealing is done according to a prearranged plan and involves doctoring of the goods stolen, the personnel of the retail stores should be charged with stealing socialist property and deception of purchasers. Ibid.

98. Constitution of the USSR, art. 17; G. Ginsburgs, S. Pomorski, "A Profile of the 1977 Soviet Constitution," p.

99. A. A. Piontkovskii et al. (eds.), Kurs sovetskogo ugolovnogo prava, V shesti tomakh, Tom V (Moscow, 1971), p. 434.

100. Narodnoe khoziaistvo SSSR v 1977 g., Statisticheskii ezhegodnik (Moscow, 1978), p. 9.

101. "Out of Love for Three Tangerines," Komsomolskaia Pravda, May 25, 1975,

and CDSP Vol. XXVIII, No. 36, p. 21; "When the Volga Runs," Literaturnaia Gazeta, Sept. 20, 1978, and CDSP, Vol. XXX, No. 40, pp. 1-4.

102. G. Grossman, "Notes on the Illegal Private Economy and Corruption," in Soviet Economy in a Time of Change (Washington, D.C., 1979), p. 835.

103. Anashkin, note 26, pp. 183, 347.

104. For the list of trades prohibited by the federal government see: "Polozhenie o kustarno-remeslennykh promyslakh grazhdan," May 3, 1976, section 3, SP SSSR, No. 7, Item 39. The Union republics issue, in addition, their own lists of prohibited trades.

105. Criminal Code, art. 162 para. 1 is so construed by the majority of commentators. The issue of whether previous imposition of an administrative penalty is always required has, however, been disputed by some writers. The legislation on this point is somewhat vague. Beliaev, note 84, p. 155. As to interrepublican differences, see Ivanov, note 2, pp. 141f.

106. Art. 162 para. 2.

107. Polozhenie, note 104, section 1.

108. The Supreme Court issued its guidelines, which are still deemed binding, more than 25 years ago. Postanovlenie Plenuma Verkohovnogo Suda No. 7, September 3, 1954, "O sudebnoi praktike po delam o zaniatii zapreshchennym promyslom," Sbornik, note 21, p. 234.

109. Piontkovskii, note 99, p. 404.

110. All the republican criminal codes include analagous provisions. The differences in the definitions of the crime seem to be minor: two of the codes (Uzbek and Kazakh) left out a proviso about utilization of "other social forms," so that the scope of the crime here is somewhat narrower. Five of the codes (Ukrainian, Uzbek, Kazakh, Lithuanian and Armenian) use the formula of private entrepreneurial activity being "covered up" by socialist forms rather than activity "by utilization of" such forms. Ivanov, note 2, at 133. The

difference seems to be merely verbal. Compare: Postanovlenie Plenuma Verkhovnogo Suda SSSR No. 7, of June 25, 1976, "O praktike primeneniia sudami zakonodatel'stva ob otvetstvennosti za chastnopredprinimatel'skuiu deiatel'nost i kommercheskoe posrednichestvo," BVS SSSR, 1976, No. 4, at 15.

More substantial differences between the republican codes are found in the statutory sanctions. Four of the republican codes provide for a fine (Ukrainian --up to 500 rb.;Uzbek--up to 300 rb.) or correctional labor tasks (Kazakh, Lithuanian) as alternatives to imprisonment. Six of the republican codes do not provide for exile. Several codes makes confiscation of property a non-mandatory sanction. Piontkovskii, note 99, at 413.

111. Piontkovskii, note 99, p. 407.

112. Postanovlenie No. 7, note 110.

113. V. Gribanov, "O poniatii netrudovogo dokhoda," S. Iu., 1967, No. 9, pp. 6-8.

114. For a more developed typology see: Beliaev, note 84, p. 36-37; Ugolovnyi kodeks Ukrainskoi SSR, op. cit., p. 416-17.

115. "Rassmotrenie ugolovnykh del o chastnopredprinimatel'skoi deiatel'nosti i kommercheskom posrednichestve," BVS SSSR, 1977, No. 2, p. 28.

116. Piontkovskii, note 99, p. 406.

117. Postanovlenie Soveta Ministrov SSSR, May 11, 1973, "O merakh po uporiadochneniiu deiatelnosti podsobnykh predpriiatii i promyslov v selskom khoziaistve," SP SSSR, 1973, No. 12, Item 61. See also: P.P. Mikhailenko, Ugolovno-pravovaia okhrana sotsialistickeskogo selskogo khoziaistva (Moscow, 1963), p. 136.

118. See notes 110 and 115, respectively.

119. "Rassmotrenie...," note 115, p. 26; Vladimirov, note 21, p. 136.

120. Postanovlenie No. 7, note 110, p. 217; Vladimirov, note 21, p. 134.

121. G.V. Ovchinnikova, "Ob obshchestvennoi opasnosti chastnopredprinimatel'skoi

deiatel'nosti v sfere obsluzhivaniia," Pravovednie, 1977, No. 4, p. 108; P. Kudriavtsev, "O sudebnoi praktike po delam o chastnopredprinimatel'skoi deiatel'nosti," S.Z., at p. 405; Piontkovskii, note 99, at p. 405; B.M. Leontev, Otvetstvennost' za khoziaistvennye prestupleniia (Moscow, 1963), p. 18.

122. Piontkovski, note 99, p. 407-408.

123. Postanovlenie No. 7, note 110, p. 218.

124. Id., p. 218.

125. F. Ch. Schroeder, "Wandel der Strafrechtlichen Behandlung der privatunternehmerischen Tatigkeit in der Sowjet Union," Recht in Ost und West, Vol. 21, No. 1 (January 1977), p. 1-3.

126. Criminal Code, art. 153 para. 2; Ivanov, note 2, p. 134; V. Ia. Tatsii, Ugolovnaia otvetstvennost' za kommercheskoe posrednichestvo (Moscow, 1974), p. 30.

127. Civil Code RSFSR, arts. 396-403.

128. Tatsii, note 125, p. 30.

129. Postanovlenie No. 7, note 110, p. 219.

130. Tatsii, note 126, p. 42; Case of Litvinov, June 29, 1970, BVS SSSR, 1970, No. , p. 30.

131. Id., p. 18-19.

132. V. Ia. Tatsii, "Chastnopredprinimatel'skaia deiatel'nost i kommercheskoe posrednichestvo," S.Z., 1974, No. 7, pp. 56-57.

133. Case of Andrushko, July 7, 1972, BVS SSSR, 1973, No. 1, pp. 25-27; Case of Litvinov, note 130.

134. See, for instance, the Case of Bazaev, Biulleten Verkhovnogo Suda RSFSR, 1976, No. 6, p. 9.

135. Cf., Case of Turkhan Guseinov, Bakinskii Rabochii, Aug. 12, 1977.

136. Article 171 of the Ukrainian criminal code formulates a separate offense of "provocation to bribery": "Provocation to bribery, that is, the deliberate

creation by an official person of a situation and conditions inducing an offer or receipt of a bribe with the object of subsequent exposure of the giver or receiver of the bribe is punishable by deprivation of freedom for a term up to two years." See, Ugolovnyi kodeks Ukrainskoi SSR, Nauchno-prakticheskii kommentarii, Kiev, 1969, p. 381.

137. VVS RSFSR, 1962, No. 29, Item 449.

138. E.g., K.I. Lyskov, "Sudebnaia praktika po ugolovnym delam o poluchenii vziatki pri otiagchaiushchikh obstoiatelstvakh," Kommentarii sudebnoi praktiki za 1976 god, Moscow, 1977, pp. 78-98.

139. For a comprehensive review of recent theory and practice, see Kurs Sovetskogo ugolovnogo prava, Moscow, 1971, Vol. 6, pp. 55-73. Likewise, O. Svetlov, "Kriminalna vidpovidalnist za dachu khabára," Radianske pravo, 1979, no. 1, pp. 19-20.

140. Sbornik postanovlenii Plenuma Verkhovnogo Suda SSSR 1924-1973, Moscow, 1974, pp. 512-522 (text as amended by Resolution of the Plenum of June 30, 1970, No. 6).

141. B. Korobeinikov, M. Orlov, "Otvetstvennost za vziatochnichestvo," S.Iu., 1970, No. 20, pp. 19-20.

142. See, M.D. Lysov, A.Ia. Svetlov, "Nekotorye voprosy naznacheniia nakazaniia za vziatochnichestvo," Problemy pravovedeniia, 1978, No. 38, pp. 98-104.

143. Postanovlenie No. 16 Plenuma Verkhovnogo Suda SSSR of September 23, 1977, "O sudebnoi praktike po delam o vziatochnichestve," BVS SSSR, 1977, No. 6, pp. 10-14.

144. Compare the data and analysis in K. Simis, op. cit.

145. E.g., V. Pashkovskii, "Izuchenie i profilaktika spekuliatsii," S.Iu., 1976, No. 1, p. 21.

146. As amended by the RSFSR Law of July 25, 1962, VVS RSFSR, 1962, No. 29, Item 449.

147. Kurs Sovetskogo ugolovnogo prava, Moscow, 1971, Vol. 5, p. 491.

148. Cf., V. Stashis, V. Tatsii, "Razgranichenie spekuliatsii i kommercheskogo posrednichestva," S.Iu., 1972, No. 20, pp. 13-16. Also, K.I. Lyskov, "Sudebnaia praktika po delam o chastnopredprinimatelskoi deiiatelnosti i kommercheskom posrednichestve," Kommentarii sudebnoi praktiki za 1974 god, Moscow, 1975, pp. 128-139.

149. Postanovlenie No. 11 Plenuma Verkhovnogo Suda SSSR, "O sudebnoi praktike po delam o spekuliatsii," BVS SSSR, 1975, No. 1, pp. 13-16.

150. V. Pashkovskii, op. cit., p. 21.

151. "Sudebnaia praktika po delam o spekuliatsii," BVS SSSR, 1975, No. 2, pp. 41-48.

152. V. Pashkovskii, op. cit., p. 23.

153. E.g., Pravda, February 11, 1977; CDSP, 1977, Vol. XXIX, No. 6, p. 23.

154. Pravda, February 8, 1978, p. 3; CDSP, 1978, Vol. XXX, No. 6, p. 22.

155. V. Pashkovskii, op. cit., p. 22.

156. For example, Komsomolskaia Pravda, Nov. 4, 1976, p. 2, and CDSP, 1976, Vol. XXVIII, No. 45, pp. 7-8; Pionerskaia Pravda, Oct. 18, 1977, p. 3, and CDSP, 1977, Vol. XXX, No. 43, pp. 12-13, Vecherniaia Moskva, March 6, 1979, p. 3, and CDSP, 1979, Vol. XXXI, No. 10, p. 25.

157. "Nekotorye voprosy sudebnoi praktiki po delam o spekuliatsii," BVS RSFSR, 1975, No. 10, pp. 11-16. Also, G. Vol'fman, "Spekuliatsiia v vide promysla ili v krupnykh razmerakh," S.Iu., 1974, No. 20, pp. 24-27.

158. Note, too, Postanovlenie No. 4 Plenuma Verkhovnogo Suda RSFSR of June 27, 1978, BVS RSFSR, 1978, No. 9, pp. 5-8.

159. Kurs Sovetskogo ugolovnogo prava, Vol. 5, p. 494.

160. E.g., Pravda, Jan. 20, 1979, p. 6, and CDSP, 1979, Vol. XXXI, No. 3, p. 22.

161. Even the administrators of enterprises refuse to report stealing committed by their subordinates. This attitude seems to be on the rise; it is, one would

suppose, one of the methods of competing for scarce labor resources. De facto immunity for small-scale stealing has become a fringe benefit offered by the managers. Compare: N. Tairova, "The Citizen, Society and the Law: Comrade's Courts," Pravda, September 10, 1979; CDSP, Vol. XXXI, No. 36, p. 4. See also: CDSP, Vol. XXIX, 1972, No. 40, p. 21.

162. A similar explanation was offered by American students of property crimes "against bureaucracy," i.e., against corporate or governmental organizations. Compare E.O. Smigel, H.L. Ross (eds.), Crimes Against Bureaucracy (New York, 1970), pp. 31ff.

163. Indeed, those guilty of large scale misappropriation often belong to the economically privileged strata and live relatively affluent lives.

164. E. Durkheim, Suicide: A Study in Sociology (New York, 1951), pp. 246ff; L. Radzinowicz, "Economic Conditions and Crime," paper presented to the National Commission on the Causes and Prevention of Violence (1968), reprinted in L. Radzinowicz and M.E. Wolfgang (eds.), Crime and Justice: The Criminal in Society (New York-London, 1971), p. 437; C.R. Chester, "Perceived Relative Deprivation as a Cause of Property Crime," Crime and Delinquency, January 1976.

165. One of the causes of massive criminality against socialist property is no doubt the nature of the "victims" which are large, state-owned or state-controlled impersonal organizations. The generalizations about causes of crimes "against bureaucracy" in the United States proposed by Smigel and Ross seem to be fairly applicable to other bureaucratized economies, including the Soviet economy. As these writers put it, the reasons for massive criminality of this kind, "can be found in public attitudes towards bureaucracies and in the opportunity offered by bureaucratic procedures... The low visibility of crimes against bureaucracies, combined with unpopularity of the victims, leads to a failure of the public to stigmatize the perpetrators of the crimes." Smigel and Ross, note 162 above, pp. 4-5. The thesis of this generalization is hardly

disputed today by anybody. In our remarks we will try to go beyond it and analyze several more specifically Soviet phenomena.

166. Indeed, Soviet ideology itself is incoherent on this point: the principle of popular participatory democracy exists side by side with the principle of "the leading role" of the elitist party. See Constitution of the USSR, Arts. 1-3, 6 and 8.

167. Id., Articles 10-11.

168. V.G. Tanasevich, I.L. Shraga, V.P. Iastrebov, "Zadachi bor'by z khishcheniiami ne sovremennom etape", SGiP, 1974, No. 2, p. 1; see also L. Kushnir, "Integrity - In One's Youth and Afterward," Sovetskaia Moldaviia, March 18, 1979; CDSP, Vol. XXXI, No. 31, p. 14.

169. The results of recent public opinion polls reveal that Soviet youth assign top priority to possession of the outward insignia of affluence. R.W. Mouly, "Values and Aspirations of Soviet Youth," in P. Cocks, R.V. Daniels, and N.W. Heer (eds.), The Dynamics of Soviet Politics (Cambridge, Mass., 1976), pp. 221-238. See also a very interesting article by a teacher, H. Gusev published in Uchitelskaia Gazeta, March 17, 1979; CDSP, Vol. XXXI, No. 18, pp. 13-14, about money-grubbing attitudes prevailing among school children and their parents. Compare also: L. Kushnir, "Integrity In One's Youth and Afterward," note 168 above, p. 14. That the system of "material incentives" may condition "pecuniary strivings" and "revive egoistic feelings" has been recently admitted by a highly authoritative Soviet writer. Comp.: V.N. Kudriavtsev, Prichiny pravonarushenii (Moscow, 1976), pp. 140ff.

Soviet criminology, in general, has treated economic criminogenic factors neglectfully, relegating them to factors of marginal importance at best. For an admission and critique of this deficiency compare: M.M. Babaev, S.A. Shliapochnikov, "Ekonomicheskie faktory v mekhanizme prestupnogo povedeniia," SGiP, 1979, No. 2, pp. 60, 62. For a proposed classification of "economic

factors" see id. at p. 63ff.

170. M. Babaev et al., note 169 above, pp. 63-65.

171. Resolution of the CPSU Central Committee, "On the Further Improvement of Ideological and Political Upbringing Work," Pravda, May 6, 1979; CDSP, Vol. XXXI, No. 18, p. 8.

172. Constitution of the USSR, Art. 14.

173. There is substantial evidence that large segments of Soviet elites are formed according to "negative selection of cadres" criteria.

174. Soviet writers only very obliquely allude to a sense of social injustice as a criminogenic factor. Every now and then they point out to "contradictions of socialism" and "inherent inequality" of the distribution of goods according to the work done as causes of crime. Tanasevich et al., note 168, p. 72. For a more explicit statement see Babaev et al., note 170, p. 65.

175. F.J.M. Feldbrugge, "Rationality and Functionality in Soviet Law: An Epilogue," in D. Barry, G. Ginsburgs, P. Maggs, (eds.), Soviet Law After Stalin, Vol. III (Leyden, 1979), p. 401.

176. A. Tarasov, "Only Benefit?", Literaturnaia Gazeta, June 14, 1978; CDSP, Vol. XXXI, No. 31, pp. 13-14. The writer identified as director of a subdepartment of the USSR State Planning Committee's Labor Department, admits that, "many rural construction projects, especially in regions of Siberia and the Far East, cannot presently get by without moonlighters.

177. According to reports from various parts of the USSR, members of private construction brigades make as much as 2,000 rubles a month, that is, 2-3 times more than the earnings of a construction worker on the payroll of a socialist enterprise. Tarasov, note 16, at p. 13; L. Yefimov, "Half My Kingdom for a Brandy," Pravda, August 15, 1976; CDSP, Vol. XXVIII, No. 33, p. 22.

178. Tarasov, note 16, p. 13; Yefimov, note 177, p. 22; A. Salkov, "Like Rooks in the Spring," Pravda, Sept. 8, 1976; CDSP, Vol. XXVIII, No. 36, p. 21.

179. S. Gurili, "Who Will Stop the Private Construction Workers," Zaria Vostoka, Jan. 22, 1978; CDSP, Vol. XXX, No. 5, p. 15.