THE CONTRADICTION BETWEEN SOVIET AND AMERICAN HUMAN RIGHTS DOCTRINE: RECONCILIATION THROUGH PERESTROIKA AND PRAGMATISM

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What moral right do you have to give us lectures? . . . I'm not on trial and you are not here to judge me.
Mikhail Gorbachev, Washington Summit, 1987

I. INTRODUCTION

Just as Mikhail Gorbachev delighted the people of the United States with his artful displays of political savvy and diplomatic expertise, underscoring certain basic similarities which exist between the two superpowers and their respective citizenry, so too he highlighted the now familiar, fundamental debate between the two countries concerning the issue of human rights. Amidst more positive discussions with American business regarding joint ventures and with government negotiators regarding mutual reductions in strategic arms, the 1987 Washington summit was tattered with barbed quips and caustic exchanges between Mr. Gorbachev, President Reagan, and the western press.

These exchanges not only served to indicate the continued political and diplomatic rivalry between the United States and the Soviet Union, but also highlighted a much more fundamental point: the United States and the Soviet Union disagree concerning the issue of human rights. As former General Secretary Konstantin Chernenko wrote, ""[the freedom of the individual and democracy, human rights, equality and humanism—these major issues of our day are at the center of the ideological struggle between the two systems, socialism and capitalism . . . .]

The difference between American and Soviet ideologies is essentially a semantic one. The single term ""human rights"" as used by Americans, and

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1 Smith, Newsweek, Dec. 21, 1987, at 21 (quoting Mikhail Gorbachev who, in response to U.S. concerns over Soviet human rights policies, criticized Washington for being slow to ratify international agreements condemning racism and backing social and economic rights).
2 See, e.g., id. at 18 (the President and General Secretary discussing immigration and emigration policies).
3 See, e.g., id. at 21.
4 K. CHERNENKO, HUMAN RIGHTS IN SOVIET SOCIETY 3 (1981).
indeed by most westerners, is fraught with a cultural, ideological and political significance that is, ultimately, very different from the significance attached to the term by Soviets and socialists generally. Thus, when Americans and westerners attack Soviet violations of human rights, they are generally concerned with concepts such as freedom of speech, association, religion, emigration, and the press. When Soviets and socialists attack violations by the United States, they are generally focusing on concepts such as the absolute right to work, the right to shelter, the right to medical care, and the right to education.

This Article explores the two very distinct concepts evoked by the single term "human rights," with the hope that the exercise will provoke more thoughtful discourse and creative responses to the valid and continuing concerns of each of the two superpowers over their respective conceptions of human rights. Moreover, it seeks to suspend anti-Soviet sentiments regarding human rights policies and practices in an effort to stimulate such discourse. The Article does not argue that either the American or the Soviet conception of human rights is correct, nor does it expose actual or alleged violations of human rights by either country. Rather, it examines the dual conceptions of human rights, and it presents a theoretical framework for reconciling the dualism.

Part II of this Article discusses the Soviet concept of human rights, its doctrinal underpinnings, and its application in contemporary Soviet constitutional and statutory law. It also addresses the place of dissent in the Soviet Union. Part III derives paradigms from the political philosophies of the Soviet Union and the United States, which are employed to discuss the controversy over the meaning of human rights. Part IV uses the paradigms, established in Part III, to attempt a reconciliation of the competing conceptions of human rights. In this context, Part IV discusses the policy of

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6 Throughout this article the word "Soviet" will be used to describe a person who is ideologically a doctrinaire Marxist-Leninist, rather than merely a citizen of the U.S.S.R.

7 While the Soviet Constitution does provide for rights and freedoms analogous to these civil rights, they are often circumscribed. Konst. SSSR arts. 39-69. See also infra text accompanying notes 30-49.

8 Dean, supra note 5, at 61 (noting that while "[t]he Soviet Constitution . . . contains certain provisions for broad civil and political rights[,] it is clear . . . that Soviet legal scholars view economic and social rights as primary").

9 Although there are several ways to view the issue of human rights, all of which clearly have substantial merit in any serious discussion of the topic, the focus of this Article is purely ideological. Thus, the problem of human rights is addressed within the framework of political philosophy rather than, for example, through an historical or psychological analysis. While such a comprehensive discussion is beyond the intended scope of this Article, mention will be made when the importance of an historical and/or psychological approach is evident.
perestroika\footnote{Perestroika refers to the economic and social reforms currently being implemented in the U.S.S.R. Mikhail Gorbachev has discussed the policy of perestroika, or restructuring, at length in M. Gorbachev, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD (1987).} and examines whether it signals a reconciliation of the dualism. The Article concludes that the dual definitions of human rights is beneficial, because it encourages communication over the rights and freedoms encompassed by both conceptions—a communication which may persuade the leaders and ideologues in the United States and the Soviet Union that a reconciliation or synthesis of the dualism is doctrinally possible and could serve to perfect both systems.

II. THE TRADITIONAL SOVIET CONCEPT OF HUMAN RIGHTS

A. The Jurisprudential Distinctions Between the Soviet and American Concepts of Human Rights and Their Respective Ideological Foundations

In order for Americans to participate effectively in the intellectual exercise that is understanding the Soviet conception of human rights, they must approach the subject legalistically rather than politically. For, until the fact that there is a structured Soviet approach to human rights is understood and accepted by Americans, western politicians will continue to use human rights as a tool to harm the Soviet Union diplomatically. In this vein, commentator Richard Dean writes that:

It is crucial that the West understand that the Soviets have a coherent, logically consistent legal theory that shapes their perspective on human rights. This theory is not mere sophistry designed to counter Western criticism, but rather a deeply rooted theoretical position to which the Soviet Union has adhered consistently . . . .\footnote{Dean, supra note 5, at 55, 57. At least one commentator appears to disagree with this notion of a consistent Soviet theoretical position on human rights. Christopher Osakwe writes that "modern Soviet human rights law did not crystallize until the early 1970s." Osakwe, Soviet Human Rights Law Under the U.S.S.R. Constitution of 1977: Theories, Realities and Trends, 56 Tul. L. Rev. 249, 250 (1981). Indicating that Soviet human rights law was designed to counterattack the dissident movement and "to create the semblance of aligning its laws with the evolving international standards on human rights," Osakwe claims that the theory, the "systematic rationalization," followed the lawmakers, rather than vice versa. Id. Osakwe's support for his conclusion is the "explosion of Soviet scholarship in the area of human rights" in the mid-1970's, particularly the work of Professor Chkhivadze, see, e.g., CHKHIVADZE, SOCIALIST HUMANISM AND HUMAN RIGHTS (1978), which Osakwe claims provides the Kremlin leaders with an "articulate theoretical framework for their . . . human rights policies . . . ." Osakwe, supra, at 250 n.5. Note, however, that while it is true that open dissent was not a commonplace}
Moreover, as another commentator notes,

In striving for a full understanding of Soviet law one cannot disregard manifestations which indicate a rejection of certain values and principles basic to most legal systems in the West, in particular those connected with concepts like 'the rule of law' or the Rechtsstaat—the belief that law should be more than just an instrument of politics, that the state most of all should respect certain basic human rights.12

The Soviet's rejection of the western "rule of law" is further highlighted by Dean, who posits four fundamental jurisprudential distinctions between the Soviet and American conceptions of human rights. The first distinction is that the source of human rights in the Soviet system is the state, whereas the source in the American system is natural law.13 The Soviet view is a product of Marxist-Leninism which teaches that the state, as the "perfect embodiment of the Soviet people,"14 grants rights which are "the product of the collective will of the people."15 Thus, Marxist-Leninism teaches that it is the Soviet people, through the state, who determine the scope of human rights in

occurrence in the U.S.S.R. until Krushchev's era, this fact alone is certainly not sufficient support for the proposition that a consistent ideological foundation for the U.S.S.R.'s human rights policies did not exist until that time.


Soviet jurisprudence on human rights, like all of Soviet jurisprudence, has its roots in Marxism. Karl Marx argued that "humanity is not individuality first; humanity is a 'species being.'" M. Stackhouse, CREEDS, SOCIETY AND HUMAN RIGHTS 187 (1984). "Individual, inner existence is a product of social interactions without which the self has no existence." Id. According to Marx, "civil rights," the sub-category of human rights espoused by Rousseau and incorporated into the Bill of Rights of the U.S. Constitution, are simply the rights "of egotistic man, of man separated from other men and from the community." Id. at 190 (quoting K. Marx, On the Jewish Question, in EARLY WRITINGS 229 (1975)). Thus, "civil rights" are merely the rights of "dominant members of a bourgeois society," and do not inure to the average man. Id. at 190. For Marx, only these rights which inured to all men were to be included under the umbrella of "human rights."

Yuri Andropov elaborated on this theme, writing that "[w]hen analyzing the main trend in present-day bourgeois criticism of [Soviet] human rights policies one is bound to draw the conclusion that although this criticism is camouflaged with 'concern' for freedom, democracy, and human rights, it is directed in fact against the socialist essence of Soviet society . . . . Such criticism only confirms that all ideological conceptions of imperialism, of problems of democracy in particular, pursue the object of defense of the interests of the bourgeoisie." Y. ANDROPOV, SPEECHES & WRITINGS 292 (2d ed. 1983).

13 Dean, supra note 5, at 57, 59.
14 Id. at 58.
15 Id. at 59.
1989] RECONCILIATION THROUGH PERESTROIKA 65

the U.S.S.R. Conversely, the American theory of human rights, premised upon the philosophy of John Locke, teaches that human rights are innate—a product of natural law.

Dean's second distinction concerns the substance of human rights. Soviet law places an emphasis upon economic rights. Marxist doctrine postulates that without a fully developed panoply of economic rights, political and civil rights are meaningless. Dean notes that although "[t]he Soviet constitution also contains provisions for broad civil and political rights [i]t is clear . . . that Soviet legal scholars view economic and social rights as primary." The American view on the substance of human rights elevates political and civil rights to primary status, "civil and political liberties are natural, inalienable entitlements; material benefits and economic and social achievement are not classical Liberal 'rights.'" While government sponsored programs designed to protect the health and social welfare of the

16 Id. The Soviet ideological belief that the state is the source of human rights is delimited, as a practical matter, by the fact that the ideology of the state is determined by the CPSU whose role it is to "[interpret] the objective laws of historical development." Id. at 67. Because the overriding goal of the CPSU is the building of socialism and the ultimate attainment of a communist state, the substance of human rights in the Soviet Union is defined to fit within these parameters. Id. For a further discussion on how dissent fits into this framework, see infra text accompanying notes 50-64.

17 Dean, supra note 5, at 59 (noting that John Locke "argued that man possesses certain rights by virtue of his humanity and not by virtue of social convention or law"). See J. Locke, Two Treatises of Government (P. Laslett rev. ed. 1963). Osakawa explains this distinction in terms of positive versus natural law:

Soviet law in general and Soviet constitutional law in particular are essentially positive law. This means that Soviet constitutional law neither recognizes natural law as a source of law nor does it recognize the concept of the inalienable rights of man . . . . [T]here are no "rights of man" if by that expression one means those rights which flow from the nature of man per se . . . . All the rights of a citizen are created by the constitution or laws of the state to which he belongs.

Osakawa, supra note 11, at 254.

18 Dean, supra note 5, at 60.

19 Id. at 61 (citing U.N. Human Rights Comm., Fifth Sess., Summary Records (108th mtg.) at 3, U.N. Doc. CCPR/C/SR.108 (1978) (statement of Soviet Representative on the United Nations Human Rights Committee that "[t]he Soviet state, guided by the teachings of Lenin, had from the outset proceeded from the assumption that there could be no genuine democracy and freedom unless man was guaranteed employment, education, medical care and social welfare").

20 Dean, supra note 5, at 61. Marxist-Leninist theory teaches that the substance of human rights are "historical categories with the social content and meaning determined by the social, economic and political structure of a given society in which the rights in question exist and function." Osakawa, supra note 11, at 255. Thus, the Soviet concept of human rights is dynamic, and the particular historical context in which it is discussed defines its substantive nature.

21 Dean, supra note 5, at 62.
people do exist in the United States, such programs are not fundamental, constitutionally mandated benefits of its democratic, capitalist agenda.\textsuperscript{22}

The third distinction between Soviet and American policies posited by Dean concerns the beneficiaries of human rights. Marxist-Leninism holds that "[o]nly through the emergence of a classless society [will an] individual realize, as a part of the community, the creativity and purposefulness inherent in his nature."\textsuperscript{23} Therefore, individuals must subordinate their own needs and desires in order to fulfill the needs of the collective.\textsuperscript{24} Consequently, Soviet legal theory holds that it is the collective, society generally, that is the ultimate beneficiary of human rights. Western legal theory holds that it is the individual who is the beneficiary of human rights which are to be asserted against the government.

Dean's fourth, and perhaps most important, distinction focuses on the government's role in the protection of human rights.\textsuperscript{25} While western political philosophy envisions a government that only minimally intrudes upon its citizens' inherent human rights, Soviet theorists propose an active governmental role in the creation and definition of the parameters of human rights.\textsuperscript{26} Thus, because Marxist-Leninist ideology holds that the state is the source of human rights, the state fulfills the parental role of educating its citizenry on the law.\textsuperscript{27} As Dean notes,

In the Soviet concept there is an underlying assumption that the subject of law, legal man, is not a mature, independent adult, not the free-willing—and freewheeling—'reasonable prudent man' of [the western] tradition, but an immature, dependent child or youth, whose law-consciousness must be guided, trained, and disciplined by official legal rules and processes.\textsuperscript{28}

\textsuperscript{22} See Matthews v. Eldridge, 424 U.S. 319 (1975) (social security benefits may be terminated without a pre-termination hearing, because no fundamental right to such benefits exists under the Due Process Clause of the U.S. Constitution); cf. Goldberg v. Kelly, 397 U.S. 254 (1970) (federal agency may not terminate minimal welfare benefits providing sustenance without a pretermination hearing). See also infra note 112 and accompanying text (discussing Goldberg v. Kelly).

\textsuperscript{23} Dean, supra note 5, at 63.

\textsuperscript{24} Id. at 62-63; see supra note 20 (discussing the dynamic quality of human rights and their substance).

\textsuperscript{25} Dean, supra note 5, at 64.

\textsuperscript{26} Id. at 64-66; see Y. ANDROPOV, supra note 12, at 292 ("Soviet society has abolished the gulf between the interests of the state and the citizen existing under capitalism.").

\textsuperscript{27} Y. ANDROPOV, supra note 12, at 292 ("Unfortunately, there are still a few individuals who attempt to [impose] their selfish interests on society and its other members. In this light one can clearly see the need for work in education [by the government] . . . .").

\textsuperscript{28} Dean, supra note 5, at 64 (citing Berman, Human Rights in the Soviet Union, 11 How. L.J. 333, 340 (1965)).
The state’s active role also arises out of necessity. The state must have extensive control in all areas of society in order to guarantee extensive economic and social rights.29

B. The Constitutional and Legal Framework Designed to Implement Soviet Human Rights Theory

The contemporary Soviet concept of “human rights” is multi-faceted.30 It includes “civil rights,”31 “socioeconomic” rights,32 and cultural, educational and creative rights.33 This expanded body of rights, currently embodied in the 1977 Constitution of the Union of Soviet Socialist Republics,34

29 Id. at 66.

30 See K. Chernenko, supra note 4, passim (discussing generally the scope of human rights protections available in the U.S.S.R.); A. Szymanski, Human Rights in the Soviet Union 2-3 (1984) (distinguishing five types of rights subsumed within the general concept of human rights: (1) property rights, (2) distributive or consumptive rights, (3) civil rights, (4) civil liberties, and (5) political rights).

31 See Konst. SSSR art. 48 (right to participate in government management and administration) & art. 51 (right to associate in public organizations).

32 See id. art. 40 (right to work), art. 41 (right to rest and leisure) & art. 42 (right to health protection).

33 See id. art. 45 (right to education) & art. 46 (right to enjoyment of cultural benefits).

34 Id. art. 34 (equality without distinction of origin, social or property status, race or nationality, sex, education, language, religion, occupation or domicile); art. 35 (equal rights for women including special labor and health protection measures and conditions enabling mothers to work, as well as to leave for pregnancy, and reduction of working time for expectant mothers and mothers); art. 36 (equal rights for different racial and national groups); art. 39 (full social, economic, political and personal rights and freedoms for all citizens under the Soviet Constitution and laws, provided that the enjoyment of such rights does not act as a detriment to the interests of society, the state or other citizens); art. 40 (right to work); art. 41 (right to rest and leisure, including a 41-hour work week, paid annual holidays, and enjoyment of state-developed sports, camping and tourism programs); art. 42 (right to free health protection); art. 43 (the right to maintenance during old age, sickness or disability); art. 44 (right to housing, provided citizens take care of their allocated housing; art. 45 (right to free education at all academic levels); art. 46 (right to enjoy cultural benefits); art. 47 (freedom of scientific, technical and artistic work within the bounds of building communism); art. 48 (right to participate in management and administration of state and public affairs and in the discussion and adoption of laws, right to vote and to be elected to elective state bodies); art. 49 (right to submit proposals to and criticize the work of state bodies and public organizations); art. 50 (freedom of speech, the press, and assembly meetings, street processions and demonstrations “in accordance with the interests of the people and in order to strengthen and develop the socialist system”); art. 51 (right to association in public organizations to promote political activity); art. 52 (freedom to profess or not to profess any religion, and to
reflects the belief of Soviet officialdom that the Soviet Union has entered a stage of mature socialism in which the Soviet citizen can enjoy more rights and freedoms. True to the precepts of dialectical materialism, the 1977 Constitution is viewed as an evolving document, necessarily changing as socialism itself evolves towards communism. Thus, the 1977 Constitution expressly provides for rights and freedoms which "considerably improve...on the rights of Soviet citizens." For example, where the 1936 Soviet Constitution merely proclaimed the right to work, the 1977 Constitution ensures the individual right to select a profession as well as the right to pursue an education.

The two most striking features in the Soviet Constitution are the existence of socioeconomic, cultural and creative rights, and the obligations which attach to the exercise of certain rights. The fact that the Soviet Constitution expressly guarantees economic rights has a clear ideological foundation: Economic equality is a fundamental Marxist-Leninist principle. The additional fact that certain rights, particularly civil and political rights, are circumscribed also has a clear ideological foundation: Under Marxist-Leninism the collective, rather than the individual, is the unit of philosophic and political importance. Thus, if the individual is to be allowed "individual rights," those rights must not in any manner harm the interests of the collective.

The concomitant legal framework is primarily negative from a western perspective because it targets those who violate constitutional norms. From

conduct religious worship or atheism in an environment where the church is separated from the state and the school from the church); art. 53 (equality in familial relations, the right to state assistance for child care).


36 Dialectical materialism refers to the "science" of historical resolution and evolution through contradiction. See infra note 52 and accompanying text.

37 L. BREZHSVE, supra note 35, at 68.

38 Id. at 68, 69.


40 KONST. SSSR art. 59.


42 As Andropov wrote:
The socialist system makes the exercise of the collective rights and duties of the working people the mainspring of social progress. At the same time the interests of the individual are by no means ignored. The Soviet Constitution grants Soviet citizens broad rights and freedoms and at the same time emphasizes the priority of public interests, service to which is the supreme expression of civic awareness.

Y. ANDROPOV, supra note 12, at 292.
a Soviet perspective, of course, the laws reinforce positive norms—they protect the interests of the people from deviant individuals. The two most cited laws in this regard are Articles 70 and 190-1 of the Russian Soviet Federated Socialist Republic (RSFSR) Criminal Code. Both laws are used to prosecute dissident activity; that is, activity which violates one or another of the fundamental Marxist-Leninist principles expressed in the Constitution.

Article 70 (Anti-Soviet Agitation and Propaganda) of the RSFSR Criminal Code proscribes:

Agitation or propaganda carried out with the purpose of subverting or weakening the Soviet regime or in order to commit particularly dangerous crimes against the state, the dissemination for the said purpose of slanderous inventions defamatory to the Soviet political and social system, as well as the dissemination or production or harboring for the said purpose of literature of similar content.

Article 190-1 (Spreading of Deliberate Fabrications Discrediting the Soviet Political and Social System) of the RSFSR Criminal Code provides:

The systematic dissemination in oral form of deliberately false inventions, discrediting the Soviet political and social system, as well as the production or dissemination in written, printed or other form of works of similar content, shall be punished by deprivation of freedom for a term not exceeding one year, or by a fine not exceeding one hundred roubles.

Of such legislation, Yuri Andropov wrote:

Strong socialist legality guarantees the rights and interests of Soviet citizens, as well as the interests of society as a whole. Quite naturally, Soviet laws do not recognize anybody’s “right” to harm society, to infringe on the public order, to disturb the normal life, work and leisure of honest citizens. Universal respect for the law, the inevitability of sanctions against offenders, cultivation in Soviet citizens of intolerance of any antisocial behavior are important aspects of socialist community life. The development and improvement of the socialist way of life

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43 Commenting on the frequent western criticism that circumscribed rights amount to no rights at all, Brezhnev noted that Soviet notions of rights and freedoms with attendant obligations “conform[s] to fundamental international documents,” for example, the United Nations Universal Declaration of Human Rights. L. Brezhnev, supra note 35, at 149. He quotes the U.N. document which provides that “the exercise of rights and freedoms by citizens requires ‘due recognition and respect for the rights and freedoms of others and . . . meeting the just requirements of morality, public order and the general welfare in a democratic society.’” Id.

44 UK RSFSR Criminal Code art. 70.
45 UK RSFSR Criminal Code art. 190-1.
46 UK RSFSR Criminal Code art. 70.
47 UK RSFSR Criminal Code art. 190-1.
demand more vigorous opposition to anything that contradicts the Leninist principles of attitude towards work and towards individuals.\(^{48}\)

Laws such as Articles 70 and 190-1 are thus designed to deter activity which has the potential to detract from Leninist principles and the socialist way of life. It is precisely because Leninism requires homogeneity of thought and action that political dissidence—activity which contradicts Leninist principles—must be criminalized, or at least punished civilly. Legislation that provides civil and criminal penalties for those who dissent from the system is the sole predictable and legitimate manner in which to assure the vitality of the constitutional guarantees of communal well-being.

Presumably, when Soviet ideologues perceive that there is less danger that communal interests will be violated by political dissidence, the constitutional rights of the individual will be interpreted more broadly by legislation. There is presently evidence of such a trend. For example, pending legislation provides procedures for nationwide discussion and referenda on major issues of public life: more freedom of the press, allowances for individual labor activities, procedures for appealing judicially illegal acts of officials violating individual rights, and procedures to prevent commitment of mentally healthy individuals to psychiatric institutions.\(^{49}\)

C. Dissent as Viewed Through the Doctrinal Prism of Marxist-Leninism

In order to fully understand the Soviet conception of human rights, it is critical that westerners divorce themselves from their traditionally pro-dissident biases and ‘view dissidents and nonconformists as Soviet officials perceive them: from the perspective of officialdom’s logic and reasoning and not merely through traditional western concepts.’\(^{50}\) Thus, for American

\(^{48}\) Y. Andropov, supra note 12, at 149.

\(^{49}\) See The American Lawyer, Apr. 1989, at 43, cols. 1-2. For a further discussion of how these laws may affect the future of human rights in the U.S.S.R. under perestroika, see infra text accompanying notes 72-112.

\(^{50}\) W. Parchomenko, Soviet Images of Dissidents and Nonconformists 27 (1986) (discussing the writings of D. Simes and B. Bociurkiw).

In their writings, Brezhnev and Andropov have given us a glimpse of how Soviet officialdom views dissent. Andropov wrote that ‘the very term ‘dissident’ is a shrewd propaganda trick designed to mislead the public.’ Y. Andropov, supra note 12, at 171. He went on to quote Brezhnev who said that ‘[i]n our society nobody is forbidden to ‘think differently’ from the majority, to assess critically this or that aspect of social life. We regard comrades who come forward with justified criticism, trying to help matters, as conscientious critics and are thankful to them. Those who criticise by mistake we regard as deluded individuals.’ Id. at 171-72 (citing 6 L. Brezhnev, Following Lenin’s Course: Speeches and Articles 336 (1978)).
politicians and diplomats, it is essential that the doctrinal foundations of official Soviet views of dissent be understood.\footnote{For the purposes of this paper, one who practices dissent, a "dissident," is "an individual who, openly and outside the channels approved by the Communist Party, disagrees with regime policies and seeks to expand the range of allowable freedoms." \textit{Id.} at 3. \textit{See also Szymanski, supra note 30, at 273 (defining political dissident and distinguishing from nationalist and religious groups). It should be noted that there are certain individuals who have continually criticized the policies of the Communist Party of the Soviet Union (CPSU) without suffering severe sanctions. For example, Roy Medvedev has been a prominent dissident in the U.S.S.R. for many years. Although he has from time to time suffered minor repercussions as a result of his political activities, he has generally been tolerated by the authorities.}  

Although a certain degree of political dissent is tolerated by the Soviet authorities, it is generally believed that such dissent must be suppressed.\footnote{It is appropriate at this point to note that while there is an ideological basis derived from Marxist-Leninist doctrine for repression of political dissent, the equally weighty rationale that is the Russian-Soviet historical legacy may also account for such repression. Parchomenko views this historical legacy, borne of continual external invasions and internal strife, as causing contemporary Soviet leaders to be "unwilling to settle for anything less than reliable protection against all foreign and domestic challenges." \textit{W. Parchomenko, supra note 37, at 50. He notes that "[a]n official aversion to any challenge to authority can be found in pre-revolutionary Russia, particularly during the nineteenth century." \textit{Id.} Thus, for example, Siberian labor camps and official censorship of the intelligentsia are not a product of Marxist-Leninism but rather a legacy of Czarist Russia.}  

It must be stressed from the outset that the majority of western writings on the subject of political dissent in the Soviet Union discount the impact of Marxist-Leninist doctrine in the official treatment of dissidents. Parchomenko has reviewed the extant literature on the subject which all focuses upon historical and psychological sources of repression:  

The explanations provided for the persistence of the extreme control mentality of Soviet authorities are typically very general and include official insecurity, the authoritarian mind, Russian national character, official intolerance for heretics, habit, a desire to safeguard the power of the Communist Party, and the repressive nature of the Soviet system.  

\textit{W. Parchomenko, supra note 30, at 14. In particular, what Parchemenko terms the "Russian-Soviet historical experience" is seen as the principal rationale for official Soviet repression of dissidents. \textit{Id.}}  

However, there are those commentators who see official action differently, and who view ideology as an important factor in determining official action. As one commentator has stated:  

\textit{[I]t is remarkable not how little but how much Russian Communist leaders adhered to the pursuit of their ideological goals—from Lenin’s determination to build socialism on the morrow of the Revolution, to Stalin’s fantastic five-year plans, and to Khrushchev’s efforts to speed the establishment of a truly communist society.}  

While this may seem to be an unnecessarily harsh conclusion from a western political perspective,\textsuperscript{53} it is an inevitable one if Soviet officialdom is to be doctrinally orthodox. The Soviet state is founded upon the thesis that the collective is the unit of philosophical, political and legal primacy in the Soviet socialist system.\textsuperscript{54} Moreover, it is essential that it be understood that ideologically, it is the collective, democratic will of the people which mandates that primacy.\textsuperscript{55} Thus, dissent by individuals targeted at the socialist system is seen as individual action against the people themselves.\textsuperscript{56} Because the collective is more important than the individual, the individual who attacks the democratic will of the collective must be repressed.\textsuperscript{57} Thus, dissent against the system contradicts the most basic tenets of socialism and illustrates the ideological necessity for repressing dissent.\textsuperscript{58}

\textsuperscript{53} Western writings on dissidents in the U.S.S.R., and hence, Western public opinion, tends to be pro-dissident and thus generally portrays dissidents as "loyal and nonviolent citizens who lawfully [protest] against perceived injustices." W. Parchomenko, supra note 50, at 12. As a result, suppression of such "lawful" protest is generally seen as unnecessarily harsh and reprehensible by westerners. The difficulty with this view is that such dissent, such protest, is, by definition, not lawful within the legal parameters set by the Soviet system.


\textsuperscript{55} Y. Andropov, supra note 12, at 127 ("Taking part in government of the people, in the administration of the state, the working people themselves are vitally interested in maintaining law and order, in strict observance of the principles and norms of socialist community life, which are established at their own will in Soviet laws."); see Dean, supra note 5, at 58-59.

\textsuperscript{56} Szymanski notes that Roy Medvedev, a prominent dissident, admits "there are practically no links between dissidents and the masses." A. Szymanski, supra note 30, at 275. See also id. at 274 ("Western Sovietologists—most of whom are not sympathizers of the Soviet system—essentially concede that there is widespread support for Soviet institutions among the Soviet people as a whole.").

\textsuperscript{57} N. Riasanovski, supra note 52, at 521. See also Dean, supra note 5, at 63 ("The achievement of a sense of collectivism requires the subordination of individualism: In a community whose aim [is] the building of communism, it [is] natural that the norms and goals of the individual must conform to those of society as a whole.").

Further, as Andropov wrote;

The communists have never concealed the fact that socialist democracy has a class character . . . Any soviet citizen whose interests are in harmony with the interests of society feels the full scope of our democratic freedoms. The matter is different if there is no such harmony, as is the case with a few individuals. Here we have to say frankly: priority must be attached to the interests of all society.

Y. Andropov, supra note 12, at 126.

\textsuperscript{58} See supra notes 27-28 and accompanying text (discussing the parental role of the Soviet state vis-à-vis the citizenry).
If, for the purposes of this exercise, one accepts this ideological premise, certain actions by the Soviet state against political dissidents become logical necessities, rather than reprehensible violations of human rights. This is particularly true because Marxist-Leninism is seen by its adherents as a science rather than a mere political philosophy.\textsuperscript{59} Consequently, "those who oppose it are regarded . . . as absolutely and demonstrably wrong . . . [T]hey are either misguided or class enemies."\textsuperscript{60}

Perhaps the most extreme example of such logical repression is the confinement of political dissidents in psychiatric hospitals. If one accepts that Marxist dialectic is a science with socialism, and ultimately communism, as historical stages resulting from the force of the dialectic, opposition to this scientific evolution is "misguided."\textsuperscript{61} Thus, a political dissident who questions and criticizes the science and its product—socialism—can, given a broad definition of mental illness,\textsuperscript{62} be considered psychologically

\textsuperscript{59} It is important for westerners to appreciate that Marxist-Leninism assumes that the dialectic is a scientific force creating history rather than a mere structure designed by political historians through which man's political and economic history can be interpreted. The fact that this assumption underlies Marxist-Leninist analysis lends to the dialectic a credibility bordering on Truth which western political theory, as the product of political forces, does not have. See N. Riasanovsky, supra note 52, at 517 ("the laws of the dialectic . . . present a . . . scientifically established pattern" (emphasis added) \& 517 ("[the teachings of Marxism] are believed to have the conclusiveness of scientific laws") (emphasis added). See also Y. Andropov, supra note 12, at 277 ("Marx discovered the objective, essentially material, laws of the process of history . . . . It was precisely these discoveries that turned socialism from a Utopia into a science and gave a scientific definition to the class struggle."); Dean, supra note 5, at 67 (describing the role of the Communist Party of the Soviet Union as "[interpreter] of the objective laws of historical development") (emphasis added).

\textsuperscript{60} N. Riasanovsky, supra note 52, at 521.

\textsuperscript{61} Id. See also J. Vincensini, LE LIVRE DES DROITS DE L'HOMME, 203 (1985) ("The scientific system cannot be rationally contested. Those who would dare to do so could be considered mentally ill.") (D. Lambelet trans.).

\textsuperscript{62} Dissidents committed to mental institutions in the U.S.S.R. have been classified by psychiatrists and officials as schizophrenic under an expanded definition of the psychosis schizophrenia. A. Szymbanski, supra note 30, at 282. This expanded definition, propounded by a leading Soviet psychiatrist, Andrei Snezhnevsky (Director of the Institute of Psychiatry of the Academy of Medical Sciences and Editor of the Korsakov Journal of Neurology and Psychiatry), provides that there are three different forms of schizophrenia. \textit{Id.} One of these three forms—"continuous schizophrenia"—is characterized by "subtle personality changes, . . . withdrawal, apathy and diminished interests, . . . delusions and hallucinations." \textit{Id.} This form of schizophrenia has two sub-types, one of which, the "mild" or "sluggish" form, is characterized by "paranoid symptoms of over-evaluation of one's own importance, often exhibiting grandiose ideas of reforming the world." \textit{Id.} at 283. It is under this form of schizophrenia—"mild continuous schizophrenia"—that dissidents are
committed. \textit{Id. See also} Reich, \textit{The World of Soviet Psychiatry}, N.Y. Times, Jan. 30, 1983, § 6 (Magazine) at 20, 23.

While recent publicity has focused upon the changes made in Soviet psychiatry in view of the U.S.S.R.’s efforts to regain membership in the World Psychiatric Association, there is every indication that mild continuous schizophrenia continues to be a viable diagnosis for these purposes. In particular, Dr. Marat Vartanyan, ideological successor to Dr. Snezhnevsky, continues to lead the Soviet psychiatric community. Dr. Vartanyan evidently adheres to the theoretical principles underlying the use of the schizophrenic diagnosis for “treating” dissidents: He was recently quoted as describing a critical journalist as “very severely schizophrenic and criminal.” Wall St. J., Feb. 2, 1989, at A6, cols. 1-3.

While such apparent manipulation of the definition of schizophrenia in order to rationalize the civil commitment of dissidents to psychiatric institutions may seem draconian to most westerners, it is important to note three basic points. First, psychiatry is still an inexact science. The definition of schizophrenia in the West has changed often since the early 1900’s and even today there remain disagreements among professionals as to the symptoms that characterize the psychosis. Reich, \textit{supra}, at 23. Thus, depending upon the available literature and data, together with the particular professional’s own experiential understanding of the disease, an individual may or may not be considered “schizophrenic.”

Second, it has historically been the case that when “there is a high level of consensus or very strong feelings about what is ‘proper’ or ‘true’ the ability to understand people who fundamentally disagree is reduced, and hence the likelihood of dismissing them as ‘crazy’ is enhanced.” A. Szymanski, \textit{supra} note 30, at 283. Thus, both in the United States and the Soviet Union, there have been periods when individuals who have fundamentally disagreed with the national consensus have been considered psychologically impaired. \textit{See, e.g., id.} at 284 (noting that U.S. pilots in the Indo-China War who refused to fly bombing missions because of their political objections were committed to mental institutions). In this vein, it has been noted that such findings by Soviet psychiatrists who themselves grew up in Soviet society, a society which breeds homogeneous thought are not unexpected since they will also view different thought as strange and deviant in a psychological sense. Reich, \textit{supra}, at 25.

Third, Walter Reich, a prominent American psychiatrist who has studied Snezhnevsky’s theories extensively, does not believe that Snezhnevsky concocted the category of mild continuous schizophrenia “with the deliberate aim of providing the Soviet authorities with a diagnostic niche within which dissidents could easily be placed.” \textit{Id.} at 25. Instead, Reich notes that Snezhnevsky’s theories had “achieved mature form during the late 1950’s and early 1960’s, well before the commitment of dissidents to psychiatric wards began to take place with any frequency.” \textit{Id.}

Legal commitment of dissidents to psychiatric institutions in the U.S.S.R. is subject to the following procedure: Generally, dissidents who violate the law are evaluated by an expert psychiatrist. \textit{Id.} If the psychiatrist finds that the individual is mentally ill, the psychiatrist can initiate civil commitment proceedings against the individual. “Within 24 hours of such civil commitment, the dissident must be examined by a three member panel of psychiatrists, which will determine the appropriateness of commitment and the need for compulsory treatment.” \textit{Id.} Dissidents are generally committed for indefinite periods, with re-evaluation of their conditions
impaired. Furthermore, allowing that contemporary Soviet laws and policies are deprived from the collective will of the people, Soviet law should eradicate individual dissent from that collective will, not so much through the removal of the dissident from society but through the psychological reeducation of the dissident. As Yuri Andropov wrote:

[There are still a few individuals who attempt to oppose [sic] their selfish interests on society and its other members. In this light one can clearly see the need for work in education, and sometimes in the re-education of certain individuals, for struggle against violations of socialist law and order, of the rules of our collectivist community life. This is not a violation of "human rights," as is hypocritically alleged by bourgeois propaganda, but real humanism and democracy which means government by the majority in the interests of all working people.]

III. SETTING UP THE PARADIGM: SOVIET DIALECTICAL MATERIALISM AND AMERICAN PRAGMATISM

A successful analysis of the dual American and Soviet human rights objectives demands a preliminary examination of the paradigm which provides the structure for all of Soviet ideology. That paradigm is the Hegelian doctrine of dialectical materialism:

'Materialism' asserts that only matter exists: in Marxism it also [leads] to a stress on the priority of the economic factor in man's life, social organization, and history . . . . 'Dialectical' adds a dynamic quality to materialism, defining the process of the evolution of reality. For the Marxists insist that everything changes all the time. What is more, that change follows the laws of the dialectic and thus presents a rigorously correct and scientifically established pattern. Following Hegel, Marx and Engels postulated a three-step sequence of change: the thesis, the antithesis, and the synthesis.

This "scientific" model thus posits that in any given relationship between concepts, objects, or historical forces, there is a contradiction which must ultimately be resolved in some relative sphere of time.

every six months. Id. Recently, the U.S.S.R. enacted a law "to curb psychiatric abuses by protecting patients against arbitrary commitment to mental hospitals and providing them with legal recourse against malpractice." Wash. Post, Jan. 5, 1988, at 1, col. 1.

63 Dissidents are frequently referred to by non-psychiatric professionals, members of the CPSU and average Soviet citizens, as schizophrenics. See, e.g., A. Szymbanski, supra note 32, at 275 ("[A]n average Soviet man cannot understand that five people went out on Red Square to protest against the invasion of Czechoslovakia. 'What are they, schizophrenics?'"") W. Parchomenko, supra note 50, at 15 (official representation of dissidents is as "psychopaths" or "schizophrenics").

64 Y. ANDROPOV, supra note 12, at 292.

65 N. RIASANOVSKY, supra note 52, at 516-17.
The principal example of the use of the dialectic as a paradigm is the postulation that with regard to the forces underlying man's social organization, bourgeois capitalism is the thesis, socialism the antithesis, and communism the synthesis. Application of the dialectic to the issue of human rights can yield numerous formulations, but one evident contradiction is readily apparent: Soviets emphasize economic rights and westerners emphasize political freedoms. Because Soviets actually use the doctrinal paradigm of dialectical materialism to structure and resolve contradictions, this Article also utilizes the paradigm to show that, from the perspective of Soviet ideology, the two seemingly irreconcilable concepts of human rights can yield a synthesis.

In Western ideology, particularly in the United States, pragmatism is used as a paradigm for structuring problems and yielding solutions. Pragmatism differs from the Soviet model of dialectical materialism in that no synthesis of two antitheticals is required; no reconciliation of a contradiction is necessary.

Pragmatism is premised upon the notion that the best idea, or "the Truth," will ultimately prevail, and will continue to prevail so long as it works. As Justice Holmes wrote in his dissent in Abrams v. United States, "the best test of truth is the power of the thought to get itself accepted in the competition of the market . . ."). Thus, pragmatism envisions the triumph of one idea, rather than the synthesis of two competing ideas. Pragmatists presume that the marketplace of ideas will yield the Truth as the best solution. Although different in focus, American pragmatism, like Soviet dialectical materialism, can result in the best idea being a reconciliation of two competing ideas, rather than the victory of one idea over another. Thus, like dialectical materialism, a pragmatic analysis of the issue of human rights can result in a reconciliation of the dual conceptions, rather than a mere determination that one or the other is the better of the two. This Article, therefore, also employs paradigmic theory to show how the dualism between the Soviet Union and the United States can be resolved.

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66 G. Cowles, ed., An Interview with Nikita Khrushchev, LOOK MAGAZINE (personal report and official verbatim transcript) at 28 (1962) ("Capitalism engendered irreconcilable contradictions, and a new progressive social system, communism . . . has appeared to replace it.").
67 See, e.g., Y. Andropov, supra note 12, at 297 ("Marxism is not dogma but a living guide to action, to independent work on complicated problems we are faced with at every new turn of history. Not to lag behind the progress of life the communists must advance and enrich Marx's theory in all directions, apply creatively in practice his method of materialistic dialectics which is rightly called the living soul of Marxism.").
69 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).
70 Id. at 630.
71 R. RORTY, supra note 68, at xiii.
IV. RECONCILING THE COMPETING CONCEPTS THROUGH THE PARADIGMS: PERestroika AND PRAGMATISM

Our most tremendous achievements do not prevent us from seeing contradictions in the development of our society . . . . Our ideology itself is critical and revolutionary by nature.

Mikhail Gorbachev72

The best test of truth is the power of the thought to get accepted in the competition of the market.

Justice Oliver Wendell Holmes73

Thus far, this Article has attempted to show that the Soviet conception of human rights is ideologically sound. The truth of this internal consistency does not depend upon whether one accepts the ideology itself. It is this internal consistency, rather than the acceptance or rejection of the ideology, that is significant for purposes of reconciling or synthesizing the two competing views of human rights. A synthesis of substance is at issue, not a synthesis of ideological foundations.

A. Dialectical Materialism: The Restructuring of the Substance of Human Rights

Dialectical materialism, the "science" of historical evolution and resolution through contradiction, is premised upon the idea that reality is dynamic, and that change in social and political relations, for example, results from a necessary synthesis of contradictions. Just as government and society evolve according to the dialectic, so too does the substance of human rights.

Marxist-Leninist theory teaches that the substance of human rights has a "social content and meaning determined by the social, economic, and political structure of a given society in which the rights in question exist and function."74 The early stages of socialism demanded unwavering adherence by the Communist Party of the Soviet Union (CPSU) and the citizenry of the Soviet Union to the communal ethic in order to reach a state of relative economic equality, the necessary foundation of all future developments.75 The substance of human rights was necessarily defined to fit within those parameters.76 Thus, for example, the 1936 Constitution guaranteed the right to work.77 However, naissant socialism required that Soviets work wherever they were needed by The Plan.78 Thus, there was no concomitant guarantee

72 M. Gorbachev, supra note 10, at 42.
74 Osakawe, supra note 11, at 255.
75 See B. Brutzdus, Economic Planning in Soviet Russia 36-37 (1935) (a feature of the "natural" economy is that of production circulated without the equivalent of sale or purchase, as in the socialist state).
76 Id.
77 Konst. RSFSR of 1936, art. 118.
78 In December, 1927, the Soviet State Planning Commission, Gosplan, began to
of the right to select employment of one's own choosing.\textsuperscript{79} Nor was there guaranteed education so that one could pursue one's professional objectives.\textsuperscript{80} Once the Soviet Union evolved past those earlier, more precarious stages into mature, advanced socialism, the substance of human rights was redefined. The 1977 Constitution reiterated the guarantee that a citizen has the right to work, but added new freedoms of choice: the right to select one's own profession and the right to education.\textsuperscript{81}

The question now is whether this evolution of Soviet human rights doctrine means that the Soviet Union has reached a new stage of contradiction which will ultimately result in a new synthesis—a synthesis which will once more redefine the substance of human rights.\textsuperscript{82} \textit{Perestroika,} the Soviet policy of restructuring, provides an affirmative answer to the question. In his book \textit{Perestroika: New Thinking for Our Country and the World (Perestroika: New Thinking),} Mikhail Gorbachev posits the contradiction: the lofty ideals of communism are in contradiction with the current stagnation which has resulted from "insufficient consistency in applying the principles of socialism, of departures from them and even distortions of them, and of continued adherence to the methods and forms of social management that arose under specific historical conditions in the early stages of socialist development."\textsuperscript{84} The dynamic forces inherent in dialectical materialism provide the solution to the contradiction—restructuring.

Gorbachev sees the restructuring as an all-inclusive "economic, social and ideological endeavor."\textsuperscript{85} Thus, although in \textit{Perestroika: New Thinking} he never directly discusses human rights and how they fit into his revolutionary scheme, his conception of the movement necessarily implicates a restructuring of the substance of human rights. Gorbachev implicitly recognizes the necessity for this change in the substance of Soviet human rights throughout \textit{Perestroika: New Thinking} as he continually reinforces the

develop a five-year plan "for the overall development of the Soviet economy." L. Kochan, \textit{The Making of Modern Russia} 283 (1962). Since that time, there have been a succession of five-year plans, each designed to fulfill the particular goals of the period at issue. Thus, "The Plan" in any given five-year period imposes goals and obligations upon Soviet citizens, all designed to achieve that degree of socialism that is the overall objective of the period. \textit{Id.} at 282-83, 290.

\textsuperscript{79} \textit{Konst.} RSFSR of 1936, art. 118.
\textsuperscript{80} \textit{Id.} art. 121.
\textsuperscript{81} \textit{See supra} note 34 and accompanying text.
\textsuperscript{82} It is important to understand that for Soviet ideologues, it is not a contradiction from \textit{without} (i.e., from the West) which will lead to a re-evaluation of the substance of human rights, but rather a contradiction from \textit{within} the Soviet socialist system itself. This is a basic truth which emanates from the nature of the dialectic as a science which provides the roadmap for the evolution of man's political history.
\textsuperscript{83} M. Gorbachev, \textit{supra} note 10, at 36.
\textsuperscript{84} \textit{Id.} at 37.
\textsuperscript{85} \textit{Id.} at 66.
necessity for reviving intellectual creativity and engendering a new process of self-criticism. Gorbachev, thus, appears to have recognized that in order for perestroika to effectively resolve the contradiction, Soviet citizens must have creative freedom as well as the freedom to critique "progress and perestroika." Not only is this freedom vital to the success of perestroika, but it is practically feasible in light of the fact that socialism and the communist ideal are well established in the Soviet Union and that, at least publicly, the CPSU leadership believes that "the people and the Party will withstand [the criticism]." Furthermore, under purely Marxist principles, it is possible to recognize that once private property is abolished and there is relative economic equality, civil rights can be exercised to check and perfect socialism rather than as an instrument to reestablish the bourgeoisie.

Translating this recognition into an effective expansion of the substance of human rights will require substantial lawmaking. The extent to which Soviet leaders are serious about a restructuring of human rights will ultimately be determined in the legal arena. Gorbachev recognizes that perestroika requires a "far-reaching transformation both in the sphere of our legislation, and in the perfection of socialist legality as a whole." He has even gone so far as to declare a new policy which provides that "everything which is not prohibited by law is allowed," reversing the assumption that anything not expressly permitted is forbidden. Gorbachev continues this discussion by pointing to a recent enactment making suppression of criticism punishable by law, and instituting a procedure for compensating citizens for damages caused by unlawful state action. Perhaps forecasting the demise of Article 70 and Article 190-1 of the RSFSR Criminal Code, he writes that "[w]e shall have to work a great deal on changes to our criminal code. It should be closely tailored to the current stage of Soviet society’s maturity."

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86 See, e.g., id. at 36 ("more socialism means a more dynamic pace and creative endeavor"); id. at 66 (Perestroika has already resulted in a "press that is more incisive, taking up 'taboos,' printing a rich variety of public points of view, and conducting an open polemic on all vital issues concerning our progress and perestroika."); id. at 67 ("A conflict of opinions generates thought."); id. at 76, 77 (all are encouraged to critique government and social operations); id. at 108 ("suppression of criticism [is] punishable by law"); id. at 129 ("[I]f we criticize ourselves . . . that is only because we are strong . . . . We will withstand these criticisms; the people and the Party will withstand them.").

87 Id. at 129.
88 Id. at 107.
89 Id. at 108.
90 M. GORBACHEV, supra note 10, at 108 ("We have lost too much trying to list all rights of enterprises in different instructions.").
91 Id.
92 See supra notes 44-47 and accompanying text.
93 M. GORBACHEV, supra note 10, at 109.
The Constitution of 1977 can support such legislation without amendment. While the duties and obligations of citizens who exercise their rights and freedoms have thus far been interpreted in a manner which is arguably restrictive of political critique and intellectual creativity, a broader interpretation can be sustained. Given the current policy of restructuring, true intellectual freedom and honest political criticism are essential "to strengthen and develop the socialist system."94 Legislation which reinforces this broad interpretation of citizens' rights has been proposed, and several of the proposals have been enacted.95 Further developments in this direction will firmly establish the new substance of human rights in the Soviet Union.

Apart from the ideological feasibility of this broadening of human rights is the fact that some Marxist-Leninists actually view the change as consistent with socialist doctrine. The Solidarity movement in Poland and Socialist Modernization in the People's Republic of China (PRC), illustrate this view. While idealistic westerners see both movements as a recognition by socialists that socialism has failed, these countries are, in fact, operating within a socialist ideological framework "to strengthen and develop the socialist system."96

It is not coincidental that Lech Walesa links the unofficial Solidarity movement to Gorbachev and perestroika,97 for Solidarity is a movement within socialism to perfect socialism.98 It does not seek "global rejection of the [socialist] system . . . [but rather] radical criticism of the regime and of the state of Polish society . . . ."99 It is self-limiting in the sense that "it is prepared to adopt strategies involving compromise with the authorities."100 It is significant that ideologically, Solidarity is not viewed by all Marxists as being in contradiction with socialism. As one Soviet journalist wrote of Solidarity, "[t]he old leadership of the Polish Communist Party did not live up to the promises it made at its congresses. The Gdansk strikes demanded that those pledges be fulfilled, and there is nothing contradictory with the

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94 Konstr. SSSR art. 50.
95 See supra note 49 and accompanying text.
96 Konstr. SSSR art. 50.
97 Walesa has apparently sought protection for Solidarity by affiliating the movement with Gorbachev and perestroika. He has done this by speaking publicly of Solidarity as a form of unofficial perestroika in Poland. N.Y. Times, May 4, 1988, at 1, col. 2 (nat'l ed.). Such a step, if successful, will place diplomatic pressures on the Jaruzelski regime and ultimately, if perestroika and Gorbachev are successful in the U.S.S.R., and if Poland retains its strong ties with the U.S.S.R., cause Jaruzelski and the Communist Party of Poland to loosen controls over Solidarity and its activities.
99 Id.
100 Id.
essence of the socialist system in that.”\textsuperscript{101} Moreover, although Gorbachev himself did not speak of Solidarity in \textit{Perestroika: New Thinking}, he did paint a new picture of the role of trade unions which looks strikingly similar to the grass-roots Solidarity movement.\textsuperscript{102}

Socialist Modernization in the PRC also illustrates a creative, perhaps unorthodox approach to “strengthen[ing] and develop[ing] the socialist system.”\textsuperscript{103} The principle of Socialist Modernization, articulated in the preamble to the PRC Constitution of 1982, has been designed to “improve the socialist system [and] develop socialist democracy.”\textsuperscript{104} Although this program involves seemingly western economic notions, and may appear to be in contradiction with socialism, it is in fact a program designed to reinforce socialism. Gorbachev himself has spoken positively of the modernization process in the PRC.\textsuperscript{105}

\textbf{B. Pragmatism: Another Concept of Human Rights}

The marketplace of ideas has yielded a view of human rights that essentially reflects natural law concepts of individual rights and the role of government. At its inception, the U.S. government recognized innate, inalienable rights which were incorporated into the U.S. Constitution. These rights are essentially civil rights. The validity of other rights, such as economic and social rights, have had to be proved in the marketplace of ideas.

The purist notions of Lockeian natural law have been tempered by two other philosophical ideas extant in the marketplace: utilitarianism and legal positivism.\textsuperscript{106} Utilitarianism teaches that “law and the institutions of government should be devoted to achieving the highest possible average welfare amongst its citizens.”\textsuperscript{107} Legal positivism teaches that “legal rights cannot preexist any form of social lawmaking.”\textsuperscript{108} Together, utilitarianism and legal positivism have diluted Lockeian natural law to the point where westerners now are increasingly accepting of expanded notions of what the Truth is regarding the substance of human rights. It is clear that the duty of the state to provide for the economic and social welfare of the people has not been constitutionally validated; the duty has not been accepted as the Truth in the

\textsuperscript{102} M. Gorbachev, \textit{supra} note 10, at 113, 114.
\textsuperscript{103} \textit{See supra} note 97.
\textsuperscript{104} PRC Const. preamble (1982).
\textsuperscript{105} M. Gorbachev, \textit{supra} note 10, at 169 (It is “very interesting and in many respects fruitful. . .”).
\textsuperscript{106} Locke’s theory of natural law and innate rights has been “diluted” by utilitarianism and legal positivism. Dean, \textit{supra} note 5, at 59-60.
\textsuperscript{107} \textit{Id}.
\textsuperscript{108} \textit{Id}.
marketplace of ideas. However, there are indications throughout the western world that the role of a capitalist government can legitimately be expanded to encompass such a broadening of the scope of human rights. The Scandinavian governments, particularly Sweden,\footnote{"For years Sweden has been described as a country of the middle way, of compromise, of splitting the difference between capitalism and socialism." H. Helco & H. Madsen, Policy and Politics in Sweden 29 (1987). For example, in 1973, a children's ombudsman was created "to serve as the advocate and friend of all children in court," and, in 1979, the Swedish Parenthood and Guardianship Code was revised to make it "unlawful for parents or anyone else to subject a child to 'physical punishment or other humiliating treatment.'" Id. at 28-29.} illustrate that a western democratic government can redefine its role to include economic and social guarantees for its people. President Carter, speaking before the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognized that the role of western government can include providing for the basic human needs of its constituents.\footnote{See 77 Dep't State Bull. 269, 568 (1977).}

If capitalism and Western democratic government are the Truth, they must, like Soviet society, evolve. Honesty on the part of western ideologues and political leaders requires a recognition of the failures of capitalism and democracy along with a recognition of its successes. Amongst the failures are the extreme inequality of wealth resulting in poverty, the insufficient availability of medical care, and the restricted opportunities for the development of all citizens. The Truth cannot sustain such a failure. U.S. legislation has recognized these weaknesses to a certain extent. An expanded concept of human rights which includes economic and social rights has emerged. Programs such as Welfare, Social Security, Medicare, and Guaranteed Student Loans are a few examples of such legislation.

What remains to be achieved is constitutional recognition of a place for economic and social rights in the American system. While the express incorporation of social and economic rights into the U.S. Constitution appears to be a remote possibility given the obstacles inherent in amending the Constitution, a broad interpretation of the substantive due process clause of the fourteenth amendment could sustain such rights.\footnote{This concept is not a novel one. The U.S. Supreme Court has considered the issue whether the Fourteenth Amendment imposes an affirmative duty to assist the poor. Goldberg v. Kelly, 397 U.S. 254 (1970). The Goldberg Court held that due process requires that a welfare recipient's benefits not be terminated without a quasi-judicial administrative hearing. Id. The foundation for an affirmative duty to provide essential human rights was laid by the Court in the process: "'Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. . . . Public assistance, then, is not mere charity, but a means to promote the general Welfare, and secure the Blessings of Liberty to ourselves and to posterity.'"} Ultimately, if eco-
nomic and social rights "get . . . accepted in the competition of the market"\textsuperscript{112} and thereby come to reflect the Truth, such an expansion of the due process clause will be validated.

V. Conclusion

The different conceptions of human rights held by the United States and the Soviet Union have been characterized as "differences so broad and deep as to make the Soviet and western conceptions of human rights theoretically and practically irreconcilable."\textsuperscript{113} Although it is true that the differences are "broad and deep," legalistically as well as politically, they are not irreconcilable. Whether the differences are viewed through the Soviet paradigm of dialectical materialism or the American paradigm of pragmatism, a synthesis—a reconciliation—is possible.

This view is perhaps best expressed by a French writer:

The contradictions between civil and political rights and [economic and social rights] are, in effect, numerous. Each category of rights reflects different aspirations and different conceptions of government which can be viewed as in conflict. However, the complementary character of the two recognized categories of rights can be as evident as their contradictions . . . . We can reasonably envisage the possibility of balance between the two. Beginning with fundamental commonalities—personal dignity and a rejection of oppression and arbitrariness—the framework of human rights can support liberty as well as the development of social rights, rights which can liberate those who feel the concrete oppression of misery.\textsuperscript{114}

\textsuperscript{112} Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).
\textsuperscript{113} Dean, supra note 5, at 57.
\textsuperscript{114} J. Vincensini, supra note 61, at 203 (D. Lambelet trans.).