

January 1975

## Review of “To Defend These Rights: Human Rights and the Soviet Union,” By Valery Chalidze

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### Recommended Citation

Robert C. Williams, *Review of “To Defend These Rights: Human Rights and the Soviet Union,” By Valery Chalidze*, 1975 WASH. U. L. Q. 866 (1975).

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TO DEFEND THESE RIGHTS: HUMAN RIGHTS AND THE SOVIET UNION. By Valery Chalidze (translated by Guy Daniels). New York: Random House, 1974. Pp. viii, 340. \$10.00.

PRAVA CHELOVEKA I SOVETSKII SOIUZ. (HUMAN RIGHTS AND THE SOVIET UNION) By Valery Chalidze. New York: Khronika Press, 1974. Pp. 304.

*To Defend These Rights* will interest any reader concerned about the politics of dissent and the functions of law in the Soviet Union. The author was an active participant in the trials, demonstrations, petitions, and illegal publications that flourished in the U.S.S.R. from the autumn of 1965 until the winter of 1973-1974. In legal matters he is a self-taught amateur, a physicist with a first-hand working knowledge of the Soviet legal system and its operation.<sup>1</sup> His book is thus a cry for justice in the best tradition of the Russian intelligentsia, rather than a scholarly analysis of Soviet law, by a dissenter forced into exile. It is part historical memoir, part analysis of the judicial system, and part strategy handbook for putting Soviet law on trial. The book is most valuable for its case studies of the systematic violations of human rights in the Soviet Union and for its documentary materials. Yet the evidence presented in the book contradicts the author's thesis that Soviet law can be used to advance the cause of human rights. Instead, the author shows us, quite unconsciously, that in the U.S.S.R. justice is best served by the appeals to public opinion of a courageous intelligentsia, and not by the law.

## I.

Russian law traditionally emphasized duties rather than rights. The Russian word for "right" is *pravo*, a term primarily meaning "a set of norms, rules, and regulations established and accepted by the state," and

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1. Chalidze, born in Moscow in 1938 and educated as a physicist, only became involved in the "democratic movement" in November 1970 when he cofounded the Human Rights Commission with two physicist colleagues, Andrei Sakharov and Andrei Tverdokhlebov. He did not sign the May 20, 1969, appeal to the United Nations Commission on Human Rights. As the editor of a *samizdat* journal entitled SOCIAL PROBLEMS and the author of unpublished essays on *Class Discrimination in Soviet Law* and *On the Civil Rights of Man*, Chalidze became a central figure from 1970 to 1972 in attempts to use the law to protect dissenters. In November 1972, while lecturing in the United States, Chalidze was deprived of his citizenship and refused re-entry into the Soviet Union. He currently lives in New York, where he edits the CHRONICLE OF HUMAN RIGHTS IN THE USSR.

only secondarily “freedoms (*svobody*) established and accepted by state law.”<sup>2</sup> A right meant something permitted by the state, rather than something claimed by an individual or held to be just by some higher standard. The great legal codes of 1649 and 1833 were essentially compilations of governmental edicts, not accumulations of common law decisions of the courts. In no sense was the state itself subordinate to the law. The word for “property” (*sobstvennost*), which permeates Western law, only appeared in Russian legal usage in 1782. Until the great legal reforms of Alexander II in 1864, there were separate courts for the separate social classes defined by law: landed gentry, townsmen, clergy, and peasantry.<sup>3</sup> Judges were removed at will, trials were secret, and criminals enjoyed no right to either a lawyer or trial by jury. Only during the brief parliamentary period of the Duma (1906-1917) was there anything approaching a working system of justice in Imperial Russia.

In Imperial Russia the defense of rights was undertaken not by the law but by an alienated social group known as the intelligentsia, which based those rights on higher claims of justice and morality and was influenced by Western legal and political philosophy. Formed in the late eighteenth century from the educated and well-to-do segment of the landed gentry, the Russian intelligentsia began by criticizing the state and ended by rebelling against it in the name of justice. The call for rights thus came from outside the state through a Westernized elite which looked to Europe for its standards of legality and justice. The victories of the intelligentsia were limited—the acquittal of a terrorist for a known political assassination in 1878, and of a Jew for ritual murder in 1912—but not unpromising on the eve of the Russian Revolution.

The Soviet Union has inherited this Russian tradition in a manner not entirely appreciated by Chalidze, who stresses the Communist and Soviet sources of the law. Yet party and state interests remain the determinant of legal doctrine, and law is conceived as a weapon in the class struggle. Recently added is the ideological dimension of Soviet law, styled by Soviet jurists the “educational role of the law” (*vospitatel'naiā' rol' prava*). In a Soviet court the problem is not only to determine the guilt or innocence of the defendant, but also to expose the

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2. 11 SLOVAR' SOVREMENNOGO RUSSKOGO LITERATURNOGO YAZYKA 26 (1961); OXFORD RUSSIAN-ENGLISH DICTIONARY 585 (M. Wheeler ed. 1972).

3. H. BERMAN, JUSTICE IN THE U.S.S.R. 211 (1963).

social conditions of crime to the public.<sup>4</sup> In this manner, the state has in part usurped the old function of the intelligentsia by introducing its own Marxist-Leninist standards of justice into the law. This has not prevented the post-Khrushchev dissenting intelligentsia from trying to use Soviet law to serve its own ends.

## II.

Khrushchev himself initiated what Chalidze calls the "movement for human rights" in the Soviet Union.<sup>5</sup> His attack on Stalin at the Twentieth Party Congress in 1956 emphasized Stalin's "crimes" against Leninist doctrine, party rules, and Soviet legality; his liberalization of the censorship, which enabled Solzhenitsyn to publish *One Day in the Life of Ivan Denisovich* in 1962, encouraged further literary freedom. The Brezhnev regime from the outset was faced with a legacy of growing hopes and dissent among the educated strata of Soviet society.

Soviet law provides little opportunity for the exercise of human rights. For example, a broad definition of "anti-Soviet" behavior in section 70 of the R.S.F.S.R. Criminal Code permits the state to prosecute dissenters freely, as in the February 1966 trial of two writers who had allowed their works to be published abroad. Article 70 reads:

Agitation or propaganda carried on for the purpose of subverting or weakening Soviet power or of committing particularly dangerous crimes against the state, or the spreading for the same purpose of slanderous fabrications that defame the Soviet political and social system, or the circulation or preparation or keeping, for the same pur-

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4. Berman, *The Educational Role of Soviet Criminal and Civil Procedure*, in CONTEMPORARY SOVIET LAW; ESSAYS IN HONOR OF JOHN N. HAZARD 1 (D. Barry, W. Butler & G. Ginsburgs eds. 1974).

5. The literature on dissent in the Soviet Union is enormous. For a guide to the legal aspects of the movement, see Sharlet, *Samizdat as a Source for the Study of Soviet Law*, in 1 SOVIET UNION 181 (1974). The documents of the movement, including the CHRONICLE OF CURRENT EVENTS, are presented best in UNCENSORED RUSSIA; PROTEST AND DISSSENT IN THE SOVIET UNION (P. Reddaway ed. 1972). See also DEAR COMRADE: PAVEL LITVINOV AND THE VOICES OF SOVIET CITIZENS IN DISSSENT (K. Reve ed. 1969); IN QUEST OF JUSTICE (A. Brumberg ed. 1970); G. SANDERS, SAMIZDAT: VOICES OF THE SOVIET OPPOSITION (1974). For important trial transcripts, see P. LITVINOV, THE DEMONSTRATION ON PUSHKIN SQUARE (1969); ON TRIAL: THE CASE OF SINYAVSKY (TERTZ) AND DANIEL (ARZHAN) (L. Labeledz & M. Hayward eds. 1967). On the trials of Ukrainian intellectuals and lawyers, see V. CHORNOVIL, THE CHORNOVIL PAPERS (1968); FERMENT IN THE UKRAINE (M. Browne ed. 1971). For legal aspects of psychiatric confinement, see R. & Z. MEDVEDEV, A QUESTION OF MADNESS (1971). On copyright problems, see Z. MEDVEDEV, TEN YEARS AFTER IVAN DENISOVICH (1974).

pose, of literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years.<sup>6</sup>

Nonetheless, the severe sentences handed down to Siniavsky and Daniel, seven and five years at hard labor respectively, only precipitated more demonstrations, protest letters, petitions, and trials.

A second weakness of any attempt to establish individual rights in Soviet law lies in the power of the regime to change the law at will. Thus, the dissent that followed the Siniavsky-Daniel trial prompted the R.S.F.S.R. Supreme Soviet to add a new Article 190-1 to the R.S.F.S.R. Criminal Code in September 1966 entitled "The Dissemination of Deliberately False Inventions, Discrediting the Soviet Political and Social System":

The systematic dissemination by word of mouth of deliberate fabrications discrediting the Soviet political and social system, or the manufacture or dissemination in written, printed or other form of works of the same content, shall be punished by deprivation of freedom for a term not exceeding three years, or by corrective labor for a term not exceeding one year, or by a fine not exceeding one hundred rubles.<sup>7</sup>

At the time, protest literature was appearing more and more frequently as *samizdat* publications: writings of any kind incapable of passing the censor that were reproduced by carbon copy or photograph and given widespread distribution among the dissenters. Because the proof of "anti-Soviet" intent required by Article 70 was eliminated, Article 190-1 provided the regime with a new weapon. When Article 478 of the R.S.F.S.R. Civil Code (permitting authors to establish copyright even if their work was first published abroad) proved inconvenient, it was simply revoked.<sup>8</sup>

Third, the law itself makes little mention of rights at all. When the *Chronicle of Current Events (Khronika tekushchikh sobitii)* made its appearance as the "official" newsletter of dissent in April 1968, it carried on its masthead the text of the United Nations Declaration of Human Rights, Article 19, which guarantees to all persons "the right to

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6. R.S.F.S.R. 1966 UGOL. KOD. (Criminal Code) art. 70 (reviewer's translation). Another English translation appears in H. BERMAN, *SOVIET CRIMINAL LAW AND PROCEDURE: THE RSFSR CODES* 180 (1966).

7. R.S.F.S.R. 1966 UGOL. KOD. (Criminal Code) art. 190-1 (reviewer's translation).

8. Z. MEDVEDEV, *TEN YEARS AFTER IVAN DENISOVICH IX* (1974).

freedom of opinion and expression." In accord with tradition, Russians have again sought legal sources in the West for their rights. Certainly, freedom of speech, press, assembly, and association are guaranteed in Article 125 of the Soviet Constitution, but only if "in the interests of the working people." References to Article 125 in recent Soviet trials are rare, and, when evoked, have served only to rally public opinion, and not to alter judicial decisions.<sup>9</sup>

Finally, those rights mentioned in Soviet law are often violated by the authorities. In theory no more than 33 days can elapse between the end of a preliminary investigation and the start of a court hearing; in fact, defendants are often held in jail for a year or more.<sup>10</sup> Further, authorities frequently ignore the rights of all prisoners and camp inmates to receive specified numbers of packages, mail, and visitors.<sup>11</sup> The law may itself permit the most arbitrary kind of prosecution. Articles 58-60 of the R.S.F.S.R. Criminal Code allow a psychiatric examining board to order "compulsory measures of a medical character," that is, confinement to a mental hospital. Thinking, as one dissenter put it, "turns out to be a crime. A crime for which he is tried. But if his 'crime' cannot be squeezed under an article of the law, they call in you—the doctors."<sup>12</sup> All of this suggests that Soviet law is not a useful weapon for the defense of human rights, and yet this is precisely what Chalidze proposes.

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9. In February 1967, during one of the first trials of dissidents under Article 190-1, a defendant argued that "Article 125 of the Constitution allows demonstrations to be held in our country;" a second defendant claimed that the judge had no right to prevent him from speaking, citing Article 243 of the R.S.F.S.R. Criminal Code regarding trial procedure. Neither argument achieved anything. The only advantage of such tactics, as one scholar has pointed out, consists in "arousing public opinion under the banner of constitutionalism," rather than in making legal guarantees effective. See P. LITVINOV, *supra* note 5; Wiener, *Socialist Legality on Trial*, in *IN QUEST OF JUSTICE* 49 (A. Brumberg ed. 1970). See also Feldbrugge, *Law and Political Dissent in the Soviet Union*, in *CONTEMPORARY SOVIET LAW* 55-68 (D. Barry, W. Butler & G. Ginsburgs eds. 1974).

10. A friend of Chalidze was arrested on September 28, 1972, and charged under Article 70; he was then held for a year without seeing a lawyer, having a visit from his wife, or getting a court hearing. Finally he was declared mentally ill by a psychiatric examining board. 4 *A CHRONICLE OF HUMAN RIGHTS IN THE USSR* 35-36 (1973).

11. Connor, *The Soviet Criminal Correctional System: Change and Stability*, 6 *LAW AND SOCIETY REV.* 367 (1972). Prisoner rights are guaranteed in a 1961 statute and in the 1969 *Principles of Corrective Labor Legislation in the USSR and the Union Republics*.

12. Letter from Viktor Nekrasov to Andrei Snezhnevsky, March 10, 1975, in 2 *SURVEY* 177 (1975). Andrei Snezhnevsky is an academician at the Serbsky Institute of Forensic Psychiatry in Moscow. See also Bukovsky & Gluzman, *Manual on Psychiatry for Dissidents*, 2 *SURVEY* 179-99 (1975). The classic story of the use of Soviet psychiatry for political purposes is R. & Z. MEDVEDEV, *A QUESTION OF MADNESS* (1971).

## III.

The central thesis of Chalidze's book is that "knowledge and understanding of the law is the factor that will determine whether the authorities can violate human rights with impunity or whether they must reckon with the possibility of mass resistance to tyranny."<sup>13</sup> Yet in his introduction he suggests that ultimately not the law, but public opinion aroused by the dissenting intelligentsia, will decide the issue. "[T]he most important contribution that can be made to the defense of human rights in any country is publicity. . . ."<sup>14</sup> These two arguments concerning the relative effectiveness of law and public pressure are in tension throughout the book.

In Chapter I on "The Specifics of Soviet Law" Chalidze illustrates why publicity is often more effective than the use of the law. He catalogues the familiar weaknesses of the Soviet judicial system: discrimination against social classes; the primacy of the state over the individual; the educational-ideological use of the law through the "comrades courts" and the volunteer police *druzhina*. He also describes the "logic of the end," by which that legal reasoning is correct which produces the desired result in the eyes of the party or state. Thus, concerning the 1971 arrest of the writer Andrei Amalrik, "the procurator told the court that Amalrik knew he might be arrested, consequently he knew his actions were punishable, consequently he knew he was disseminating palpably false fabrications."<sup>15</sup> None of this will surprise the reader. What is interesting is that Chalidze fails to see that many of the present weaknesses of the Soviet judicial system lies as much in the Russian tradition as in Communism.

The democratic movement, as we have seen, often attempted to appeal to the international law for evidence of their rights inside the Soviet Union. In Chapter II on "The Soviet Union and the International Conventions," Chalidze notes that although the U.S.S.R. has ratified many conventions, including those on human rights, "the problem of securing the rights guaranteed by those conventions is still unresolved."<sup>16</sup> Chalidze optimistically argues that the appeal to outside laws can some day liberalize the Soviet system. For example, the Soviet Union signed the International Convention on the Elimination of All

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13. V. CHALIDZE, *TO DEFEND THESE RIGHTS* 170 (1974).

14. *Id.* at vi.

15. *Id.* at 33.

16. *Id.* at 43.

Forms of Racial Discrimination,<sup>17</sup> which guarantees the civil right of anyone to leave any country; in the light of recent emigration of Soviet Jews to Israel, such a convention could have a salutary effect. Nonetheless, as Chalidze notes, "Soviet courts have simply refused to consider such cases."<sup>18</sup>

Interesting details on the democratic movement in which Chalidze took part appear in Chapter III, "The Movement for the Defense of Human Rights in the U.S.S.R." Here Chalidze becomes both historian and memoirist. He dates the start of the movement from the December 5, 1965, Pushkin Square demonstration, which urged that the imminent Siniavsky-Daniel trial be public and also urged a general respect for the law. Still, the trial was held in secret and was only followed by more demonstrations, arrests, and trials. Chalidze stresses four aspects of the movement: (1) the publication and distribution of its ideas and writings through *samizdat* and the *Chronicle*; (2) appeals and petitions to individuals and organizations both inside and outside of the U.S.S.R.; (3) a careful study of Soviet laws, apparently under the influence of Professor Esenin-Volpin, son of the famous poet Sergei Esenin;<sup>19</sup> (4) the public exercise of rights through publication, demonstration, and association. While Chalidze tells us little new, he gives an interesting interpretation of the movement as non-political and intended "to propagate legal and ethical views common to all mankind."<sup>20</sup> It is also apparent that Chalidze's legalistic approach of restraint was not popular among many other dissidents.

Chapters IV and V on "Freedom of Speech, Press, Assembly, and Association" and "Freedom of Movement" are less useful. We learn, as we expected, that Article 125 of the Constitution in practice does not provide the freedoms described, and that freedom of movement is restricted for all Soviet citizens through the ubiquitous passport and *propiska*, or residence permit. Emigration is also extremely difficult, not only because of the law but also because of the red tape of OVIR, the Visa and Foreign Registration Section of the Ministry of Internal Affairs.

The most interesting chapter is Chapter VI, "The Price of Freedom." Here, and also in the documents appended to the essay, Chalidze cites a

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17. G.A. Res. 2106A, 20 U.N. GAOR Supp. 14, at 47-52, U.N. Doc. A/6014 (1969).

18. V. CHALIDZE, *supra* note 13 at 47.

19. *Id.* at 56.

20. *Id.* at 57.

number of cases of violations of Soviet law in detail. Many, already familiar to readers of *samizdat*, are better presented there: trials are often held in secret, in violation of the law; lawyers, when available to the defense, rarely even request a trial; neither lawyer nor defendant can ordinarily see the prosecutor's file, which is usually kept under KGB guard in an office known as the *Spetchast*, or special section; isolated detention without trial is common; defense counsel only participates after the preliminary investigation is completed; defendants cannot choose their own lawyer; lawyers need to be cleared before being allowed to appear in political trials; defense counsel often cannot subpoena crucial documents or witnesses. It will also come as no surprise that Soviet prison conditions are bad, that psychiatric examination can often substitute for a trial and lead to commitment in a mental hospital, or that the KGB often violates the law in its searches, confiscations, and investigations. Much of this will be familiar to Sovietologists, but the detail is rich with Chalidze's own experiences, including, for example, the inability of Vladimir Bukovsky to call him as a witness in 1972.<sup>21</sup>

Chalidze's cases do not support the thesis that knowledge of the law is a useful political weapon. One example should suffice. On May 16, 1968, the KGB arrested the mathematician Ilya Burmistrovich; he was charged under Article 190-1 with illegally circulating works by Siniavsky and Daniel and held, in violation of the law, for one year in Lefortovo Prison. At his trial in May 1969, Burmistrovich argued that he did not understand the charge, citing a law that all indictments must be explained to the defendant; Judge Lavrova simply refused to explain the charge on the grounds that such a law was intended for illiterates, not university professors. Burmistrovich also argued that since Siniavsky and Daniel were convicted under Article 70 and not charged with "deliberate fabrications" under Article 190-1, that he, Burmistrovich, could not be charged under the latter either; he received no answer from the judge other than a sentence of three years in a corrective labor camp.<sup>22</sup> Like other cases cited, this one does not suggest the efficacy of legal cleverness in a Soviet court.

In his concluding chapter Chalidze discusses briefly the prospects for human rights in the U.S.S.R. His optimism concerning the possibility

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21. *See id.* at 131.

22. *Id.* at 132. A more detailed body of evidence on Burmistrovich appears in *UNCENSORED RUSSIA* 68-69 (P. Reddaway ed. 1972).

of testing Soviet legality itself by referring to Soviet law contrasts sharply with his initial emphasis on the importance of public opinion. This confusion, as I have suggested, is not accidental, for it reflects the age-old tradition in Russian history in which the intelligentsia and public opinion provide a substitute legal conscience not present in the law itself. The confusion is demonstrated in an interesting way by a mistranslation in an otherwise good rendering by Guy Daniels; the term *pravovaia kultura*, or literally "legal culture," appears as "knowledge and understanding of the law."<sup>23</sup> Missing in translation is the peculiar ambivalence created in the Russian by the compounding of "right" and "culture," which is to combine and confuse legality and articulated conscience.

#### IV.

The last half of Chalidze's book is perhaps more valuable than his essay, for it contains a number of documents that provide firsthand glimpses of the Soviet legal scene. In his essay Chalidze suggests the utility of a legal struggle; the documents do not.

First, legal efforts often simply fail to have an effect. In 1970, the Committee on Human Rights, of which Chalidze was a cofounder, was threatened with prosecution because it did not register as an association under a 1932 law on voluntary unions and associations. In a letter of February 19, 1971, to the Moscow City Procurator, Chalidze argued that there existed associations of Soviet citizens that were *not* juridical persons, citing the example of co-authors who covenant to publish under Article 482 of the R.S.F.S.R. Civil Code; he also argued that the 1932 law applied only to associations of more than ten members.<sup>24</sup> The prosecutor did not share Chalidze's logic.

Second, Chalidze himself often directed his efforts not at the law but at public opinion. When the historian Andrei Amalrik was arrested in October 1970, Chalidze resorted to a public "Appeal to the Intelligentsia." In it he wrote that "fostering people's culture is the task of the intelligentsia. In particular, this means teaching people (and rulers) not to fear words."<sup>25</sup> There is no mention in the letter of rights; instead Chalidze asks his readers to "intercede for him—some as they can, others as they dare to."<sup>26</sup>

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23. V. CHALIDZE, *supra* note 13, at 170.

24. *Id.* at 179-85.

25. *Id.* at 186.

26. *Id.* at 187.

Third, Chalidze often went not to the law but to higher political authorities by personal appeal. A December 7, 1971, letter from Chalidze to the Supreme Soviet requested that it intercede on behalf of a group of 24 believers of the Orthodox faith in the town of Naro-Fominsk; in October 1968 they had requested that the Orthodox church recognize them as a religious society and had been turned down. The church in refusing had cited a 1929 law on "religious associations." In appealing to higher authority rather than the law, of course, Chalidze was acting well within a long-standing Russian tradition.

Fourth, legal ploys failed as much with the police as with the courts. Chalidze's correspondence and accounts of the KGB's search of his apartment in the spring of 1971 are extremely interesting.<sup>27</sup> They present specific details about the procedure preparatory to any prosecution under Articles 70 and 190-1, and about general police procedure. Once again, Chalidze asserted his rights by refusing to sign the KGB report on the search and confiscation of his *samizdat* files. During his interrogation at Lefortovo, he refused to answer KGB questions. Chalidze was arrested and interrogated again; while abroad in 1972, he was simply deprived of citizenship.

Finally, the law is easily circumvented by the use of psychiatric examinations. In his *samizdat* essay on "The Rights of Persons Declared Mentally Ill,"<sup>28</sup> Chalidze shows clearly how the use of psychiatric examination for political purposes often contradicts the rights of patients set down in the Criminal Code. Examining boards, whose power to refer a mentally ill person to a hospital is equally well founded in law, were scarcely affected by this contradiction.

## V.

In sum, readers interested in Soviet law and politics will find a wealth of material in this book more interesting than the essay itself. The bulk of the cases cited and the documents presented suggest, contrary to Chalidze himself, that the optimum strategy for human rights in the Soviet Union is social and political rather than legal: the open letter, the journal, the demonstration, the letter to higher authorities and the United Nations. The key to the momentary successes of the movement was not in "rights" defined in law and tested in court, but in "legal

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27. *Id.* at 209-46.

28. *Id.* at 247-90.

culture"—the public assertion of those rights by concerned and courageous individuals like Chalidze. Yet the movement has, for the moment, failed, and Chalidze has now joined the ranks of other exile dissidents. In this sense the book is, sadly, more of an epitaph than a prophecy.

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