

INTRODUCTION

A constitution—the legal definition of this term is basically the same in both communist and non-communist states: the fundamental law forming the basis of the body politic of both state and society. But here agreement would end, for the nature of a constitution and its rôle, function, and enactment, amendment, and application are viewed differently. In the West, a constitution is commonly held to be that cherished document, quoted and referred to as the legitimator of sovereign authority, the guarantor of the fundamental rights of citizens, the separator of powers; it is axiomatic in the West that a constitution provides for the rule of law and not of men. In the communist world, a constitution is not defined in the same way, but that does not necessarily mean that a constitution is therefore any less respected and cherished in communist countries than it is in western nations.

Communist constitutional theory has come a great distance since Marx and Engels first began putting their thoughts on paper in the last century. For them, the most important concept was the revolution rather than the constitution; they believed that if the proletariat followed only the rules of the constitutional game, they would never be able to free themselves from their chains of oppression. Eventually the revolution did occur, albeit in agrarian Russia and not in industrialized western Europe, as had been the original prognosis. And the new rulers of Soviet Russia wanted a constitution, for they felt it important to have a fundamental law to provide the basic framework for their new state structure, and a political document for both internal and external consumption. The first communist constitution of the Russian republic dealt briefly with communist ideology, and concentrated mainly on the state structure, the establishment and limitation of citizens' rights, and the economic basis of the new order.

The 1936 USSR Constitution (often called the "Stalin" Constitution) was subsequently adopted to take account of the changes that took place in the USSR following the establishment of communist power and the Soviet federation. Technically, the previous constitution could have been amended rather than totally replaced by a new document, but the whole procedure of drafting the new law, a nationwide discussion of its provisions, and its subsequent enactment provided the necessary pomp and circumstance commensurate with the advancement of the USSR from the establishment of the dictatorship of the proletariat phase to the construction of socialism, even though the text

of the document was rather short on pure ideological content. But this, at the time and under the circumstances, was natural enough, since ideology was crowded out by the political and economic facts of the day—the USSR (along with its only fraternal communist state, Mongolia) was the proponent and practitioner of socialism in an otherwise hostile world of capitalist nations, and the continued strengthening of its internal political and economic system came first on the agenda.

After the end of World War II, the Stalin Constitution was used as the basic model for the fundamental laws of the people's democracies that were being established in Eastern Europe.¹ There were some national peculiarities of the new fraternal nations that had to be taken into account when drafting their new constitutions, but the general principles of the USSR Constitution came through loud and clear. The communist world had expanded and the constitutions increased in number.

The year 1957 was another significant date in the history of the constitutions of the communist world, for in October a declaration of the communist parties in power was made in Moscow to commemorate the 40th anniversary of the October 1917 Russian Revolution. The declaration enumerated principles and basic laws of socialism—guidance of the working masses by the Marxist-Leninist party, and the alliance of the working class with the peasantry and other working people; the abolition of capitalist ownership of the means of production and the socialization of agriculture; the planned development of the national economy; the carrying out of the socialist revolution in areas of ideology and culture; the abolition of national oppression and the establishment of friendship among the socialist nations; the defense of the achievements of socialism; and the promotion of proletarian internationalism.² This list was both reflective and prescriptive, since many of these principles were in the constitutions of the communist world, but other of these basic tenets were only obliquely referred to in the constitutions of that time. The 1957 declaration also made mention of the permissibility of some measure of national variation on socialist practices. And a good thing that it did since, although the existence of the declaration seemed to point toward the continued development of communist constitutions along a uniform line, as had hitherto been the case, the fact that one member of the communist commonwealth, Yugoslavia, did not sign the declaration indicated that perhaps the future road of communist constitutional development might not be so straight and narrow after all.

The new constitutions of the communist world of the 1960s and 1970s are still based upon the principles contained in the 1957 declaration, but there is a greater degree of national variation and diversity in the

manner in which some of these principles are developed than was previously the case.

Communist constitutional theory has never recognized the western theories of either the separation of powers or the system of checks and balances,³ although executive, legislative, and judicial branches of government are provided for in the constitutions of the communist world. But with regard to the executive branch, the Council of Ministers model is no longer the single pattern which it once was—taken from the 1936 USSR “Stalin” Constitution (as amended) and used in the countries of the people’s democracies just after the Second World War. In examining the communist constitutions of the 1960s and 1970s, one can also find the Council of State type and the Presidential type of executive organization.⁴ In the judicial sphere, some form of constitutional review (*e.g.* constitutional court, constitutional commission, supreme presidential body) has been established under the provisions of several communist constitutions.

The bills of rights in the new communist constitutions have in general been expanded in their scope, as compared with previous versions: new political, economic, and personal rights include those of housing, health care, family protection, scientific, technical and artistic creation, the right to submit proposals to state officials and agencies concerning the latter’s activities, to the protection of one’s honor and dignity, and of one’s property. The duties of citizens have also been expanded: a duty to protect the environment and to preserve historical monuments, to respect the rights and interests of other citizens, for parents to raise their children properly and for children to aid their parents are some of the more important new additions that come to mind.⁵

Unlike their predecessors, most of the new constitutions contain a section on foreign policy, though there are noticeable differences in the manner in which this subject is treated; in part, these differences may be traced to the relationship that a particular communist state enjoys with either the USSR or the PRC, and a desire to maintain close contacts (*e.g.* GDR Art. 6(2)) or to stress national independence (*e.g.* Yugoslavia, Introduction IV).

The socio-political and ideological content of most of the new generation of constitutions has noticeably been altered. The 1974 Yugoslav Constitution provides perhaps the best example by containing an entire chapter of 65 articles devoted to the socio-political system, and there are numerous references made to politics and ideology in the new Preamble to the 1977 USSR Constitution, as well as the addition of a whole new chapter on social development. The leading rôle of the Marxist-Leninist party is now discussed in most of the recent con-

stitutions in terms that more adequately reflect the position of influence and power exerted by the communist party in these societies, although some communist constitutions stress the party's rôle more strongly than do others. This new constitutional emphasis on, or realistic recognition of, the party's rôle has not however been to the total exclusion of other social organizations; in several of the communist countries (*e.g.* Bulgaria, Czechoslovakia, GDR, Hungary, Poland, and Viet-Nam), mention is made in the constitution of other political parties, and for the first time labor collectives are now listed as participants in the resolution of state affairs (*e.g.* Bulgaria, GDR, and USSR). There is also the entire system of the organizations of associated labor which are provided for throughout the Yugoslav Constitution. New provisions have also appeared which establish the participation of citizens in the administration of state and public affairs as constitutional principles (*e.g.* GDR and USSR), and the use of referenda for the resolution of important questions of state life (*e.g.* Bulgaria and USSR). Further in the ideological sphere, all of the states of the communist world (with the sole exception of Kampuchea) are now characterized as "socialist", and this too is in contrast to the previous versions of communist constitutions which stressed the dictatorship of the proletariat phase, but it is unclear exactly how the term "socialist" is used in the various fundamental laws in the sense of the Marxian progression to the ultimate goal: have these states arrived at socialism, are they building socialism, or rather is the term used in a less precise theoretical and looser propagandistic meaning?⁶ It is clear however, that the USSR—which was proclaimed to be a socialist state in its 1936 constitution—has advanced to a new stage of political development along the road to the final construction of communism: the socialist "all-people's" state of a developed socialist society.

In viewing the communist constitutions as a whole, it is interesting to note the changed relationship between the USSR Constitution and the constitutions of those communist nations within the Soviet sphere of influence. The first generation of constitutions of the "people's democracies" were heavily influenced by, and to a great degree based upon, the then existing USSR Constitution of 1936. But some of the latest communist constitutions appear to have had a noticeable influence upon the new 1977 Soviet Constitution. Soviet President Brezhnev himself stated in his speech accompanying presentation of the draft 1977 USSR Constitution that "the experience of the constitutional development of the fraternal countries has been utilized in the preparation of the draft".⁷

Ideology, society and politics, and economics—the content of the constitutions of the communist world. But what of the functions of

communist constitutions? We believe that they are two-fold: a fundamental law which lays down norms for state and society; and a political statement of what has been achieved and what remains to be carried out by state and society. As it were, both a legal and a propaganda function.⁸ The normative function of communist constitutions is the subject of debate and discussion in communist legal literature.⁹ In the early years of any communist state, when considerations of consolidation of power and the restructuring of the economic system are of primary importance, it is perhaps natural that the norms contained in a fundamental law are emphasized to a lesser degree than are the programmatic goals in the same law. But as the same communist state matures and its political and economic bases stabilize, the normative function of the fundamental law can be the subject of greater emphasis. One may argue that this seems to be the case in many of the countries of the present-day communist world—an interest in using law, and of course the fundamental law, as an instrument to achieve and promote societal programs and goals. One could point for example to the ambitious legislative program of the USSR which has been adopted on the basis of the new 1977 Soviet Constitution. However, the normative rôle of communist constitutions has not in the past excluded the propaganda function, nor is it likely to do so in the future. The constitutions of the communist world have always been used for internal as well as external consumption—to proclaim what has been achieved and to lay down the program of what is still to be accomplished.

There is much that one can derive from the study and comparison of the constitutions of the communist world—to see what type of norms and institutions are being provided for and to learn what lies ahead on the road to the ultimate goal of communism. But one must—in any society and under any legal system—not forget to look beyond the pure letter of the law, be it normative or programmatic, and examine the whole of society in an attempt to observe the degree and the manner in which the laws, fundamental and otherwise, are being implemented and the way in which they affect the people who make up the society. For perhaps it is rather academic to speak of the constitution of any society as the ultimate regulator of state and social affairs without taking into account that laws may rule, but that men create and carry out the laws, both in the non-communist and communist worlds.

NOTES

1. See John N. Hazard, "The Soviet Legal Pattern Spreads Abroad", *University of Illinois Law Forum* 1964 No. 1, 277-297.

2. A full text of the declaration of "the twelve", plus other related documents, and an overall introduction can be found in *The New Communist Manifesto and Related Documents*, (Dan N. Jacobs, ed.), 2nd ed., New York 1962, 176.

3. P.F. Martynenko, "Sotsialisticheskaia konstitutsiia — neposredstvenno deistvuiushchee pravo", *Problemy Pravovedeniia* 1979 No. 39, 6ff.

4. For an examination of these three forms of state power organization, see Georg Brunner, "The Functions of Communist Constitutions", 3 *Review of Socialist Law* 1977 No. 2, 130-137. See also Chris Osakwe, "The Common Law of Constitutions of the Communist-Party States", 3 *Review of Socialist Law* 1977 No. 2, 155-217.

5. However, the important question of the linkage (or absence thereof) of the rights and duties of citizens under communist constitutions remains still to be resolved.

6. The unresolved discussion in Soviet legal circles concerning the meaning and use of the term "socialist state" is referred to in the text and the notes of V.M. Korel'skii, "O prirode i tipicheskikh priznakakh sotsialisticheskogo gosudarstva", *Pravovedenie* 1979 No. 4, 12-17.

7. *Izvestiia*, 5 June 1977. English translation in *The Constitutions of the USSR and the Union Republics*, (F.J.M. Feldbrugge, ed.), Alphen aan den Rijn, The Netherlands 1979, 188-189. For a discussion of the influence of the constitutional development of the other communist states upon the USSR, see John N. Hazard, "A Constitution for 'Developed Socialism'", in *Soviet Law After Stalin, Part II, Social Engineering Through Law*, (D.D. Barry, G. Ginsburgs, P.B. Maggs, eds.), No. 20 (II) *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Alphen aan den Rijn, The Netherlands 1978, 24-27.

8. The propaganda value of communist constitutions is referred to in a positive way by N.A. Mikhaleva, "Poniatie i sistema printsipov sotsialisticheskoi konstitutsii", *Aktual'nye problemy gosudarstvenno-pravovoi nauki v razvitom sotsialisticheskom obshchestve*, Vol. 48 *Trudy VILSI*, Moskva 1977, 51-52.

9. An analysis of the normative aspects of communist constitutions is contained in V.S. Osnovin, "Osobennosti konstitutsionnykh norm", *Sovetskoe Gosudarstvo i Pravo* 1979 No. 4, 12-19. See also Martynenko, *op. cit.*, note 2, 7ff.