

THE THEORIES AND REALITIES OF MODERN
SOVIET CONSTITUTIONAL LAW:
AN ANALYSIS OF THE 1977 USSR CONSTITUTION

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I. INTRODUCTION: THE 1977 USSR CONSTITUTION IN HISTORICAL PERSPECTIVE

In October 1977 the Soviet state unveiled a new national constitution for the fourth time in the sixty years of its existence.¹ Each of these basic laws marks the transition from one era to the next in the development of Soviet society. Taken together, they provide a compendium of the achievements and aspirations of that ever-changing society.

The 1918 constitution of the Russian Soviet Federative Socialist Republic (RSFSR),² the first Soviet constitution adopted, documented the irreversible demise of tsarism in Russia and the violent advent of a dictatorship of the proletariat. This revolutionary document was in turn replaced by the 1924 USSR Constitution.³ The latter document provided a constitutional foundation for the newly formed Union of Soviet Socialist Republics (USSR), and at the same time paved the way for a socialist reconstruction of the country's entire social, economic, and political system. The 1924 constitution was, in effect, the constitution of a

¹ The official Russian language text of the 1977 USSR Constitution was published in the official journal of the USSR Supreme Soviet. See *Konstitutsiia (Osnovnoi Zakon) SSSR* (Constitution (Fundamental Law) of the USSR), 41 VED. VERKH. SOV. SSSR item 617 (1977), [hereinafter cited as *Konstitutsiia (Osnovnoi Zakon) SSSR*]. The Russian language text of the new constitution was also published in the Soviet Union's two national daily newspapers. See *Izvestiia*, Oct. 8, 1977, at 3, col. 1; *Pravda*, Oct. 8, 1977, at 3, col. 1.

In the United States there are three widely available English language translations of the 1977 USSR Constitution. See *Constitution (Basic Law) of the Union of Soviet Socialist Republics*, XXIX CURRENT DIGEST OF THE SOVIET PRESS [C.D.S.P.] No. 41, at 1-3 (1977); NOVOSTI PRESS AGENCY PUBLISHING HOUSE, CONSTITUTION (FUNDAMENTAL LAW) OF THE USSR (1977) (copies on file with the author and the *University of Pennsylvania Law Review*); *Constitution (Fundamental Law) of the USSR*, 4 REV. SOCIALIST L. 57 (1978). From the standpoint of clarity and accuracy of translation, the author recommends both the *Novosti Press* and the *Review of Socialist Law* translations. The C.D.S.P. version is replete with inaccurate translations of Russian terms into English. This may be the most readily accessible translation, however, since it has been reproduced without changes in two books recently published by American authors. See W. BUTLER, *THE SOVIET LEGAL SYSTEM: LEGISLATION AND DOCUMENTATION* 3 (1978); R. SHEARLET, *THE NEW SOVIET CONSTITUTION OF 1977*, at 73 (1978).

Quotations from the constitution used in this Article are translations from the Russian by the author. As a result, they do not always correspond exactly to the English language versions mentioned above.

² For a discussion of the circumstances surrounding the adoption of the first Soviet constitution, see E. CARR, *A HISTORY OF SOVIET RUSSIA* (1951); W. CHAMBERLIN, *THE RUSSIAN REVOLUTION, 1917-1921* (1935); R. DANIELS, *RED OCTOBER: THE BOLSHEVIK REVOLUTION OF 1917*, at 208-13 (1967); L. TROTSKY, *THE HISTORY OF THE RUSSIAN REVOLUTION* (1936); A. ULAM, *THE UNFINISHED REVOLUTION* (1960); G. VERNADSKY, *A HISTORY OF RUSSIA* 339-40 (rev. ed. 1961); B. WOLFE, *THREE WHO MADE A REVOLUTION* (1948).

³ See E. CARR, *A HISTORY OF SOVIET RUSSIA: THE INTERREGNUM 1923-24* (1955); L. TROTSKY, *supra* note 2; B. WOLFE, *supra* note 2.

state at the stage of transition from capitalism to socialism; it was also the last Soviet basic law to be masterminded by the founder of the Soviet state, Vladimir Lenin. This constitution guided the development of the Soviet state during the next twelve years.

A short time after the completion of the 1924 constitution, Lenin died, and after considerable struggle among the leaders of the Bolshevik Party the baton of Soviet political power passed to Joseph Stalin. By 1936 the effects of Stalin's rule were clearly imprinted on the Soviet Union: the collectivization of Soviet peasants was nearing completion; the Soviet government had unveiled a massive industrialization program; and the backbone of capitalist resistance in Russia had been broken. It was against this background that "Stalin's Constitution" of 1936 was adopted.⁴ This document proclaimed the irreversible victory of socialism in the USSR and laid the foundation for the construction of a state of advanced socialism. Even though Stalin died in 1953, the constitution that bore his name continued to guide the development of the Soviet state for the next twenty-four years. While accepting the basic premise of the 1936 Soviet constitution, however, the post-Stalin Soviet rulers soon began the process of political exorcism that was intended to purge the 1936 constitution of all of the undesirable relics of the cult of Stalin's personality. Provisions of the constitution of 1936 were amended to the point of saturation.⁵ Finally, in 1977 a new basic law for the USSR was adopted.

The new constitution declares that the Soviet Union is a "state of all the people," and that the social, economic, and political relationships in the USSR have matured into those of advanced socialism.⁶ Following the tradition of the past constitutions, the 1977 Soviet basic law promises to catapult the Soviet society directly

⁴ See R. CONQUEST, *THE GREAT TERROR* 90-91 (1968); R. SHARLET, *supra* note 1, at 3-4; A. ULAM, *STALIN: THE MAN AND HIS ERA* (1973). See also J. ARMSTRONG, *THE POLITICS OF TOTALITARIANISM* 78 (1962); E. CARR, *SOCIALISM IN ONE COUNTRY 1924-1926* (1958); C. FRIEDRICH & Z. BRZEZINSKI, *TOTALITARIAN DICTATORSHIP AND AUTOCRACY* 117 (1956).

⁵ Between 1937 and 1974 the USSR Constitution of 1936 was amended 250 times, affecting seventy-three of the original 146 articles. For example, article 22 dealing with the territorial division of the RSFSR was amended fifteen times; article 23, which listed the constituent regions of the Ukrainian Soviet Socialist Republic was amended ten times; articles 77 and 78, which listed the all-union (federal) ministries and union-republican ministries, respectively, were amended thirty times each; article 70, which established the composition of the USSR Council of Ministers was amended twenty times. For details on other amendments, see *SOVETSKOE KONSTITUTIONNOE PRAVO* (Soviet Constitutional Law) 81-85 (S. Rusinova & V. Rianzhin, eds. 1975) [hereinafter cited as *SOVIET CONSTITUTIONAL LAW*]. See also R. SHARLET, *supra* note 1, at 4-5.

⁶ *KONSTITUTSIA* (Constitution) art. 1 (USSR).

into communism,⁷ that is, into a free association of workers in which there will be no governmental influence and no state constitution.

To the western student of Soviet constitutional law, however, the adoption of the long-awaited⁸ USSR Constitution of 1977 will go down in history as the greatest non-event of the decade. Despite all official proclamations to the contrary, the new document does not break any new ground in Soviet law. It creates no meaningful new expectations in the minds of the ordinary Soviet citizens, and it fails to promulgate a new developmental policy for Soviet society. Nevertheless, a deliberate effort was made to involve a cross

⁷ See *id.* preamble, paras. 11, 12.

⁸ It took nearly 15 years to draft the new Soviet constitution. The original Constitutional Drafting Commission, consisting of 97 members, was set up in 1962 by a decree of the Central Committee of the Communist Party of the Soviet Union (CPSU). By 1966, the size of the commission had decreased to 75 members. It further decreased to 54 by the early part of 1977, but in April 1977 21 new members were added, bringing the size up to the 1966 level. See R. SHARLET, *supra* note 1, at 1-4, 26. The original chairman of the commission was Nikita Sergeevich Khrushchev, who was replaced as chairman in 1964 by Leonid Brezhnev. Decree of Dec. 11, 1964 "On the Election of Comrade L. I. Brezhnev as Chairman of the Constitutional Commission," USSR Supreme Soviet, reprinted in KONSTITUTSIA OBSHCHE-NARODNOGO GOSUDARSTVA (THE CONSTITUTION OF THE STATE OF ALL THE PEOPLE) 15 (M. Smirniukov & K. Bogoliubov eds. 1978) [hereinafter cited as CONSTITUTION OF THE STATE OF ALL THE PEOPLE].

Prior to the formation of the Constitutional Drafting Commission in 1962, Soviet constitutional scholars not only had called for the adoption of a new basic law, but had put forward many proposals for it. For a comprehensive bibliography on pre-1962 Soviet movements for a new constitution, see R. SHARLET, *supra* note 1, at 58 n.6. Thus, the formal and informal processes which culminated in the adoption of the 1977 constitution date back more than 20 years.

By contrast, the process that led to the adoption of the 1936 constitution was relatively brief. A constitutional drafting commission was set up in 1935 and charged with the specific task of drafting a document to replace the 1924 constitution. By the middle of 1936 the commission produced a draft constitution and submitted it for nationwide discussion during the summer and fall of that year. After minor editorial amendments to the draft, it was adopted on December 5, 1936. See sources cited in note 4 *supra*.

The process of adopting the 1977 constitution was as follows. The Constitutional Drafting Commission secretly submitted its completed draft to the Central Committee of the CPSU at an undisclosed date. The Plenum of the Central Committee of the CPSU discussed the draft constitution and adopted it "in principle" on May 24, 1977, with minor amendments. See Pravda, May 25, 1977, at 1, col. 1. The Plenum of the Central Committee of the CPSU recommended the draft constitution, as adopted, to the Presidium of the USSR Supreme Soviet. After discussing the draft, the Presidium of the USSR Supreme Soviet approved it, with minor amendments, on May 27, 1977. See Pravda, May 28, 1977, at 1, col. 3. Thereafter the Presidium authorized the publication of the draft constitution, as approved, and called for a national debate. Following this general discussion, suggestions for changes were submitted to the Constitutional Drafting Commission, which sifted through them and sent its recommendations to the Presidium of the USSR Supreme Soviet. The Presidium integrated some of the changes into the draft that was subsequently submitted to a specially convened session of the USSR Supreme Soviet for action. Upon adoption in final form by that body, the new constitution was promulgated into law by a decree of the USSR Supreme Soviet. For a general discussion of the political forces that were at work during the various stages of the adoption process, see R. SHARLET, *supra* note 1, at 26-31 (1978).

section of the Soviet population in the last stages of its adoption.⁹ The impact of this citizen involvement is questionable. The political intrigue that surrounded the protracted process of adoption of the new document seemed at many points to suggest to outside observers that some major reforms in the area of Soviet constitutionalism were in the making. As it turned out, the 1977 constitution is noteworthy more for what it did not do than for what it did.

For support of this conclusion one need only examine the anticipated reforms that have not been incorporated into the new con-

⁹ The national debate over the provisions of the draft constitution lasted more than four months. During this time it was estimated that over 140 million people took part in the general discussion. (This figure represents 80% of the adult population of the USSR as of 1977. See J. SCHERER, II USSR FACTS & FIGURES ANNUAL 134 (1978).) The draft constitution was discussed not only in the pages of prominent Soviet law journals, and in various law schools, but also by the several union-republican supreme soviets, by trade-union organizations, and by other social organizations. The Constitutional Drafting Commission received 400,000 suggested amendments to individual provisions of the draft constitution; based on these suggestions the Commission made 150 amendments to the text. See L. Brezhnev, Report to the USSR Supreme Soviet "On the Draft Constitution of the USSR," Oct. 4, 1977, reprinted in CONSTITUTION OF THE STATE OF ALL THE PEOPLE, *supra* note 8, at 82-3.

In his September 27, 1977 report to the Constitutional Drafting Commission, Leonid Brezhnev pointed out that most of the suggested amendments were rejected for one of the following four reasons: they duplicated provisions of current statutory law; they called for inclusion in the constitution of details that were best left to statutes; they called for inclusion in the constitution of provisions concerning matters that were best left to the discretion of agencies called upon to implement the laws in question; or, finally, they were substantively unacceptable under Soviet law. L. Brezhnev, "Report to the Session of the Constitutional Drafting Commission," Sept. 27, 1977, reprinted in *id.* 73-74. For a general report on the types of suggested amendments received by the Constitutional Drafting Commission, see *Zacedanie Konstitutsionnoi Kommissii* (Session of the Constitutional Commission), Pravda, September 28, 1977, at 1, col. 3.

Even after the national debate had ended, some changes were made in the course of the final discussion of the draft constitution by the special session of the USSR Supreme Soviet. For a general review of these last-minute amendments, see *Editorial Article*, 12 SOVERSKOE GOSUDARSTVO I PRAVO (Soviet State and Law) 5-11 (1977) [hereinafter *Sov. Gos. i Pravo*].

In addition to these group discussions, individual Soviet jurists were encouraged to send their opinions of the draft to the Constitutional Drafting Commission. Some of these individually submitted opinions are published in *Obsuzhdenie Proekta Konstitutsii SSSR* (Discussion of the Draft Constitution of the USSR—*Individual Commentaries*), 8 *Sov. Gos. i Pravo* 14-20 (1977) [hereinafter cited as *Discussion of the Draft Constitution I*]. This was the first part of a two-part publication. The second part, hereinafter cited as *Discussion of the Draft Constitution II*, appeared as *Discussion of the Draft Constitution of the USSR*, 9 *Sov. Gos. i Pravo* 3 (1977)].

During the discussion by members of the Moscow State University Law School community, an unidentified speaker suggested that a provision be added to the new constitution that would make it a constitutional duty for all Soviet citizens to know (*znat'*) the provisions of the USSR Constitution and to observe conscientiously all Soviet laws. See *Discussion of the Draft Constitution II*, *supra* at 6. The first part of the suggestion obviously was not adopted, probably because of the enormous enforcement problem that it would have posed.

stitution.¹⁰ To the dismay of many Soviet constitutionalists, the new constitution does not significantly alter the political structure of the government. It does not confer upon the USSR Supreme Court the power of constitutional review of federal or state legislation, and it does not grant to the court the authority to render an advisory opinion, either *sua sponte* or at the request of the USSR Supreme Soviet or its presidium, on a bill pending before the legislature.¹¹ Despite official Soviet rhetoric about the emergence of a new concept of "one Soviet people,"¹² the new constitution does not eliminate the federal system of government in the USSR.¹³ Although it expands the rights of the union republics¹⁴ vis-à-vis the federal government, and proclaims the USSR to be a free union of sovereign states,¹⁵ the new constitution fails to grant any formal procedural standing to the various union republics in the processes leading to either the adoption or amendment of the federal constitution.¹⁶ This failure to involve the states in the constitutional amendment processes has the practical effect of perpetuating the long-standing role of the federal legislature as a continuing consti-

As a result of editorial refinement, the sheer bulk of the draft was reduced from 13,000 to 9,000 words.

¹⁰ Various Soviet constitutional scholars have in the past proposed specific reforms of the Soviet system. For example, some have called for the creation of a special supreme constitutional council to review sub-constitutional acts for conformance with the USSR Constitution. In the view of these writers, such an organ would operate under the general supervision of the USSR Supreme Soviet. See V. KOTOK, KONSTITUTIONALNAIA ZAKONNOST' KONSTITUTIONNYI NADZOR I KONSTITUTIONNYI KONTROL' v SSSR (Constitutional Legality, Constitutional Supervision, and Constitutional Control) 104-09 (1971); I. KUZNETSOV, KONTROL' ZA KONSTITUTIONNOST' IU AKTOV VYSHIKH ORGANOV VLASTI I UPRAVLENIIA v SOTSIALISTICHESKIKH STRANAKH EVROPY (Control Over the Constitutionality of Acts of Supreme Organs of Power and Administration in European Socialist States) 96 (1973); M. SHAFIR, KOMPETENTSIIA SSSR I SOIUZNOI RESPUBLIK (The Jurisdiction of the USSR and the Union Republic) 216-18 (1968); B. SICHETENIN, PROBLEMY TEORII SOVETSKOGO GOSUDARSTVENNOGO PRAVA (Theoretical Problems of Soviet State Law) 167-68 (1969). Another leading Soviet constitutional scholar, Professor V. M. Savitskii, strongly condemns the elimination of the power of constitutional review that was originally vested in the USSR Supreme Court in 1924. See note 390 *infra*. He urges the restoration of this right not to the Supreme Court, however, but to a body analogous to the supreme constitutional council referred to above, modeled on the Yugoslavian and Rumanian examples. See *Discussion of the Draft Constitution I, supra* note 9, at 18, 18 n.3.

¹¹ See text accompanying notes 188-90 *infra*.

¹² See KONSTITUTSIIA (Constitution) preamble, para. 7 (USSR).

¹³ See text accompanying notes 270-99 *infra*.

¹⁴ The union republics roughly correspond to the states of the United States. See text accompanying notes 278-83 *infra*. For a discussion of the federal structure of the USSR, see A. ULAM, THE RUSSIAN POLITICAL SYSTEM 68-75 (1974).

¹⁵ See KONSTITUTSIIA (Constitution) preamble, para. 7 (USSR).

¹⁶ See text accompanying notes 287-88 *infra*. For a discussion of the steps involved in drafting the 1977 Soviet constitution, see notes 8-9 *supra*.

tutional convention.¹⁷ Finally, while instituting the notion of a national referendum for the first time in Soviet constitutional history, the new constitution dilutes the effect of such innovation by vesting in the USSR Supreme Soviet the exclusive power to determine what issues may be put to a vote in national referenda.¹⁸

Turning to other areas of much-longed-for reform of Soviet law, it is disappointing to note that the new constitution does not eliminate the much vilified notions of personal property and collective-farm property, and it fails to eliminate or even to curb the use of garden plots by collective-farm households.¹⁹ It does not equalize wages or pension benefits among all workers. To the utter disappointment of Soviet civil-rights activists the new constitution fails to recognize the concept of inalienable human rights; instead, it steadfastly adheres to the notion of enumerated positive human rights.

For those who had fought to secure constitutional recognition of the institution of state *arbitrazh*,²⁰ it was disappointing to note that the new federal constitution does not grant to the organs of state *arbitrazh* the right of legislative initiative that has long been enjoyed by the USSR Supreme Court, as well as by the Procurator General of the USSR.²¹ Despite the existence of well-publicized studies which show that the comrades' courts today handle over

¹⁷ Article 174 provides that the constitution may be amended upon approval of not less than two-thirds of the deputies of each of the two chambers of the USSR Supreme Soviet. The decision of the Supreme Soviet to amend the constitution is final; it is not subject to ratification by the union republics. In other words, a bill to amend the constitution may be introduced and voted on in the same manner as an ordinary statute. See text accompanying notes 316-22 *infra*. This arrangement in effect turns each ordinary session of the Supreme Soviet into a potential constitutional convention.

¹⁸ See text accompanying note 322 *infra*.

¹⁹ Personal property and garden plots cultivated by members of collective farms are often viewed as vestiges of pre-socialist society. Thus, whereas the various forms of socialist ownership are described in articles 10 through 12 of the constitution, the non-socialist forms are separately described in article 13. It is expected that under full communism all of these forms of ownership will blend into one—communist ownership. See Program of the CPSU 70-72, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House Edition, Moscow 1961). See also J. ARMSTRONG, *IDEOLOGY, POLITICS, AND GOVERNMENT IN THE SOVIET UNION* 149-51, 225-26 (1974); M. FAINSOD, *HOW RUSSIA IS RULED* 447-55 (1958).

²⁰ The state *arbitrazh* is a special system of tribunals set up to arbitrate disputes between economic enterprises. These arbitration tribunals differ markedly from the regular courts.

²¹ For a description of the institution of the procuracy, see notes 431-46 & accompanying text.

A suggestion to grant such a right was made by Professor T. E. Abova during the discussion of the draft constitution by members of the Moscow State University Law School community. See *Discussion of the Draft Constitution II*, *supra* note 9, at 23.

thirty-three per cent of all disputes in the USSR, the drafters of the new constitution bluntly refused to grant constitutional status to these "courts of the future."²² The two popular but radical suggestions of Professor M. A. Fedotov of the Moscow State University Law School to grant all Soviet citizens "the constitutional right to be fully and objectively informed of all major domestic and international newsworthy events," as well as "the constitutional right of Soviet citizens freely to express their opinions in all the means of public information, i.e. radio, press and television"²³ were neglected by the drafters of the new constitution.

Furthermore, despite numerous suggestions by Soviet citizens to the contrary,²⁴ the new constitution does not expand the scope of the procurator's supervisory jurisdiction to include statutes enacted by the Supreme Soviets of the union republics and the autonomous republics; decrees and orders promulgated by the Presidium of the Supreme Soviets of the union republics and the autonomous republics; orders issued by the USSR Council of Ministers or by the councils of ministers of the union republics; decisions of the local soviets; or the conformance of the union republican constitutions with the federal constitution. In the course of the discussion of the draft constitution, Dr. Savitskii noted that as long as the procurator's supervisory jurisdiction does not cover the above areas of Soviet governmental activity, it would be inaccurate to refer to procuratorial supervision in the USSR as "supreme."²⁵

Finally, it may be noted that the new constitution continues to leave open the possibility, at least in theory, of a reversal of a ruling of the Plenum of the USSR Supreme Court by the Presidium of the USSR Supreme Soviet. Despite the expansion of the constitutional rights of citizens, especially in the areas of due process of law, the new constitution fails to advance the point in the criminal process at which criminal defendants become entitled to the presence of counsel.²⁶

²² A suggestion to grant constitutional status to the comrades' courts was made by Iu. M. Tkachevskii. See *id.* 6.

²³ See *id.* 24.

²⁴ See *id.* 30.

²⁵ See *Discussion of the Draft Constitution I*, *supra* note 9, at 14. See also sources cited by Professor V. M. Savitskii in *id.* 19 n.5.

²⁶ Under present Soviet law, with very few exceptions, a criminal defendant's right to counsel attaches only upon the conclusion of the preliminary investigation. Proposals to advance the stage at which such a right may attach so far have gone unheeded by Soviet law reformers. For general discussions of the right to counsel under modern Soviet law, see *ADVOKATURA V SSSR* (The Advokatura in the USSR) (V. Chkhikvadze ed. 1971); Luryi, *The Right of Counsel in Ordinary Criminal*

Despite its failure to break new ground in Soviet law, the new constitution does make certain cosmetic changes in the system created by the 1936 constitution. For the purpose of this analysis, these changes have been divided into five general categories, as follows.

First are the changes in the official designations of some existing Soviet institutions. Among these are the change in the name of the organs of state power from "soviets of workers' deputies" to "soviets of people's deputies";²⁷ the reclassification of the status of Soviet society from a "socialist state" to an "advanced socialist state";²⁸ and the characterization of the essence of Soviet political authority, formerly a "dictatorship of the proletariat,"²⁹ as a "state of all the people."³⁰

Second are the organizational and structural changes in the constitution itself, including the insertion, for the first time, of chapters on the political system,³¹ foreign affairs,³² social development and culture,³³ national defense,³⁴ and Soviet citizenship;³⁵ the expansion of the provision regarding the role of the Communist Party of the Soviet Union (CPSU) in the Soviet constitutional sys-

Cases in the USSR, 20 LAW IN EASTERN EUROPE 105 (1977); Osakwe, *Due Process of Law and Civil Rights Cases in the Soviet Union*, 20 LAW IN EASTERN EUROPE 179, 200-02 (1977); Osakwe, *Due Process of Law Under Contemporary Soviet Criminal Procedure*, 50 TUL. L. REV. 266, 293-315 (1976).

²⁷ See, e.g., KONSTITUTSIYA (Constitution) art. 2 (USSR). For a discussion of the functions of these and other governmental bodies in the USSR, see A. ULAM, *supra* note 4. These changes in the designations of these organs of state power seem to follow the tradition of the past constitutions: the 1918 RSFSR Constitution referred to these organs as "soviets of workers', peasants' and red army deputies," KONSTITUTSIYA (Constitution) arts. 1, 3, 7 (RSFSR 1918); the 1936 USSR Constitution changed the name to "soviets of workers' and peasants' deputies," KONSTITUTSIYA (Constitution) arts. 2, 3, 94-101 (USSR 1936). Each change in the name of these organs was intended to reflect substantive changes in the political power balance within the Soviet society. For an analysis of the implications of these name changes, see *Discussion of the Draft Constitution I*, *supra* note 9, at 15.

²⁸ *Id.* preamble, paras. 5, 11.

²⁹ KONSTITUTSIYA (Constitution) art. 2 (USSR 1936).

³⁰ KONSTITUTSIYA (Constitution) art. 1 (USSR). It has been argued by Soviet officials and commentators that all of these changes have substantive connotations and that it would be wrong to refer to them as merely cosmetic.

³¹ *Id.* arts. 1-9. See text accompanying notes 98-134 *infra*.

³² KONSTITUTSIYA (Constitution) arts. 28-30 (USSR). See text accompanying notes 145-54 *infra*.

³³ KONSTITUTSIYA (Constitution) arts. 19-27 (USSR). See text accompanying notes 135-44 *infra*.

³⁴ KONSTITUTSIYA (Constitution) arts. 31-32 (USSR). See text accompanying note 155 *infra*.

³⁵ KONSTITUTSIYA (Constitution) arts. 33-38 (USSR). See text accompanying notes 173-252 *infra*.

tem;³⁶ the inclusion of a preamble;³⁷ and the overall increase in the number of provisions from 146 articles to an all-time high of 174 articles.

The third category comprises institutions of statutory law that, for the first time, have been accorded constitutional recognition. These include the institutions of advocatura;³⁸ state *arbitrazh*;³⁹ social defenders and social accusers;⁴⁰ the USSR People's Control Committee;⁴¹ and the right of social organizations to initiate legislation.⁴²

In the fourth category are newly created institutions (unknown under either prior statutory law or constitutions). Noteworthy among these are the Presidium of the Council of Ministers of the USSR;⁴³ the institution of the national referendum;⁴⁴ and the expansion of the powers of the Presidium of the USSR Supreme Soviet⁴⁵ to include the authority to form the National Defense Council of the USSR and approve its membership.⁴⁶

Category five embraces provisions that alter the terms and eligibility requirements of certain state officeholders. The terms of office of deputies of the USSR Supreme Soviet, the supreme soviets of the union republics, and the supreme soviets of the autonomous republics are increased from four years to five.⁴⁷ The terms of deputies of the local soviets are increased from two years to two and one-half.⁴⁸ The USSR Procurator General's term of office is reduced from seven years to five.⁴⁹ The age of eligibility for election

³⁶ KONSTITUTSIIA (Constitution) art. 6 (USSR).

³⁷ *Id.* preamble. See text accompanying notes 91-97 *infra*.

³⁸ KONSTITUTSIIA (Constitution) art. 6 (USSR).

³⁹ *Id.* art. 113. See note 20 *supra*.

⁴⁰ KONSTITUTSIIA (Constitution) art. 162 (USSR). See note 424 *infra* & accompanying text.

⁴¹ KONSTITUTSIIA (Constitution) art. 126 (USSR). See text accompanying notes 358-59 *infra*.

⁴² KONSTITUTSIIA (Constitution) art. 113 (USSR).

⁴³ *Id.* arts. 132-33. See text accompanying note 369 *infra*.

⁴⁴ KONSTITUTSIIA (Constitution) art. 5 (USSR). See text accompanying note 322 *infra*.

⁴⁵ KONSTITUTSIIA (Constitution) art. 121(1)-121(18) (USSR). See text accompanying notes 333-47 *infra*.

⁴⁶ KONSTITUTSIIA (Constitution) art. 121(14) (USSR). See text accompanying note 344 *infra*.

⁴⁷ KONSTITUTSIIA (Constitution) art. 90 (USSR).

⁴⁸ *Id.*

⁴⁹ *Id.* art. 167.

to the USSR Supreme Soviet is lowered from twenty-three to twenty-one.⁵⁰ Finally, the eligibility age for election to the soviets of peoples' deputies is lowered from twenty-one to eighteen.⁵¹

In addition to these ornamental changes, there are noteworthy incremental amendments to the section of the constitution dealing with the basic rights of citizens. New rights are created and old ones are expanded, but generally this has been accomplished merely by elevating to the constitutional level rights that previously had been recognized under Soviet statutory law. All in all, the 1977 Soviet constitution is more of a codification of Soviet law of the 1970's than anything else. Its provisions are so exhaustive that it could readily serve as a full table of contents of contemporary Soviet law. A *Pravda* editorial described the 1977 constitution as a "concentrated summation of the entire sixty years of the Soviet state."⁵² That is exactly what it is—a passive summation rather than an active reform. The constitution was drafted with the expectation that it would serve as the cornerstone of an effort to systematize all branches of Soviet law; this task was mandated by the Twenty-fifth Congress of the CPSU.⁵³

It is inconceivable that the Soviet government required twenty years to produce a document that is merely a synthesis of Soviet governmental practices since 1958. Rather, it is more likely that some of the major reforms that may have been contemplated during the tenure of the late Nikita Khrushchev as chairman of the Constitutional Drafting Commission⁵⁴ were abandoned by Khrushchev's

⁵⁰ *Id.* art. 96.

⁵¹ *Id.* See text accompanying notes 435-36 *infra*.

⁵² Editorial, *Gosudarstvo i Pravo, Rozhdennye Velikim Oktiabrem* (State and Law as Created by the Great October Socialist Revolution), 11 *Sov. Gos. i Pravo* 3 (1977) [hereinafter cited as *Soviet State and Law*].

⁵³ In the portion of its final resolution dealing with the development of science, the 25th Congress of the CPSU (February 24 to March 5, 1976) called for the intensification of research in both the social and natural sciences. In the area of social sciences (which includes law as a humanitarian discipline) the resolution called for comprehensive systematization as well as further theoretical analysis of legal norms. See Resolution of the 25th Congress of the C.P.S.U., "Major Tendencies in the Development of the National Economy of the USSR during 1976-1980," March 3, 1976 (adopted by unanimous vote), reprinted in *MATERIALS OF THE 25TH CONGRESS OF THE CPSU: FEBRUARY 24-MARCH 5, 1976*, at 213-15 (1977).

It is expected that with the adoption of a new USSR constitution each of the fifteen constituent union republics of the USSR will be required to adopt a new state constitution of its own. The process of replacing the state constitutions has already begun. The RSFSR became the first union republic to adopt a new constitution on April 12, 1978. The official Russian language text of the new RSFSR Constitution is published in *Pravda*, April 13, 1978, at 1, col. 1. An English language translation may be found in 4 *REV. SOCIALIST L.* 259 (1978).

⁵⁴ See note 9 *supra*.

successors. In all respects the 1977 constitution bears the imprint of the cautious pragmatism that has come to characterize the Brezhnev regime.⁵⁵

The failure of the new constitution to break new ground in Soviet law raises three interrelated questions of interest to the western student of Soviet law. Why did the government of the Soviet Union choose to replace the 1936 constitution with a new one when all of the changes that were introduced by the new document could have been adequately handled through a series of amendments to the relevant provisions of the existing basic law? What factors led to the choice of 1977 as the year in which to unveil a new federal constitution? Did the new constitution purport to break with the traditions of earlier Soviet constitutions?

The answer to the first question was provided by Comrade Leonid Brezhnev during his May 1977 report to the Plenum of the Central Committee of the CPSU,⁵⁶ entitled "On the Draft Constitution of the USSR."⁵⁷ In that widely publicized report, Brezhnev stated that the Soviet Union needed a new constitution because of the phenomenal changes that Soviet society had undergone in the four decades since the adoption of the then-current constitution. In a litany of all imaginable changes in the Soviet Union since 1936 he specifically pointed to several. In 1936, he said, the Soviet Union had just established the rudiments of a Marxian socialist state, the collective farm system was still in its experimental stages, the national economy was at a low level of technical development, and the relics of pre-revolutionary Russia were evident in virtually all aspects of Soviet life. But in 1977, according to Brezhnev, the

⁵⁵ Unlike with the 1936 constitution, which was formally referred to as "Stalin's Constitution," the present USSR Supreme Soviet hesitated to officially designate the 1977 constitution as "Brezhnev's Constitution." But in an editorial article which appeared in the Soviet government newspaper, *Izvestiia*—obviously with the blessing of the political leadership—it was openly stated that the

Soviet people, with full justification, currently link the formation of the new Constitution with the name of Leonid Brezhnev. By so doing, they express their deepest gratitude to him for his exceptional personal contribution to the preparation of this major document of the contemporary times, this charter of advanced socialism.

Editorial, *Zakon Obshchenarodnogo Sotsialisticheskogo Gosudarstva* (The Law of a Socialist State of All the People), *Izvestiia*, October 9, 1977, at 1, col. 1.

⁵⁶ The "Plenum" of the Central Committee of the CPSU refers to the full membership of the Central Committee. For a discussion of the structure of the Soviet Communist Party, see A. ULAM, *supra* note 4.

⁵⁷ L. Brezhnev, O Proekte Konstitutsii SSSR: Doklad na Plenum Tsentral'nogo Komiteta KPSS (On the Draft Constitution of the USSR: A Report to the Plenum of the Central Committee of the CPSU), May 24, 1977 [hereinafter cited as Brezhnev, On the Draft Constitution].

Soviet Union had succeeded in building an advanced Marxian socialist society. In 1977, he continued, the socialist form of ownership had become the dominant form of ownership in the Soviet economy, the working class now comprised more than two-thirds of the Soviet population, the constituent nationalities and ethnic groups of the Soviet Union had become equal not only under the law, but also in fact, and the economies of the constituent union republics of the USSR had successfully blended into one unified national economic complex, thus transforming the economy of the USSR into one true economic unit. Most important, according to Brezhnev, the differences between the various Soviet nationalities and ethnic groups had disappeared, resulting in the formation in the USSR of an historically unique common bond among people, that is, the formation of "one Soviet people."⁵⁸ This, he added, had been accompanied by the evolution of "the dictatorship of the proletariat" into a "state of all the people."⁵⁹

On the international scene, Brezhnev proudly pointed out, the position of the USSR had changed radically since the adoption of the 1936 constitution. The issue of the formation of a "capitalist ring" around the USSR had become a concern of the past, and the question of "who surrounds whom" had been resolved in favor of the socialist camp.⁶⁰ He further noted that former western colonies had joined forces with the Marxian socialist countries to form an anti-imperialist coalition under the leadership of the USSR.⁶¹ Now, said Brezhnev, the Soviet people, acting under the leadership of the CPSU, were ready to confront a new set of challenges: the creation of the material-technical base for a truly communist society, the transformation of the present socialist relationships into communist relationships, and the creation of a new communist man out of the present imperfect "homo sovieticus."⁶²

All of the factors cited by Comrade Brezhnev reflect only one side—the objective aspect—of the true reason for the Soviet Union's desire to adopt a new constitution, however. The other side of the same argument—the subjective aspect—may be found in the nature of Soviet law and the political system of the USSR. The need for

⁵⁸ *Id.* This last phrase appears in the 1977 constitution. KONSTITUTSIYA (Constitution) preamble, para. 7 (USSR).

⁵⁹ Brezhnev, On the Draft Constitution, *supra* note 57. This notion also appears in the 1977 constitution. KONSTITUTSIYA (Constitution) art. 1 (USSR).

⁶⁰ Brezhnev, On the Draft Constitution, *supra* note 57.

⁶¹ *Id.*

⁶² *Id.* All of the above arguments, as adduced by Brezhnev, were echoed in an editorial in *Pravda*. See Editorial, *Vazhnaiia Vekha Nashei Zhizni* (An Important Era of Our Life), *Pravda*, May 26, 1977, at 1, col. 1.

periodic changes in the law is inherent in the Soviet socialist legal system. In adopting a Marxian socialist-state constitution, the intention is not to create a basic law to last for all ages or to hand down an immutable supreme law of the land, but to draft a document that will change and develop as the society itself evolves through the stages of socialism to true communism.⁶³ The realities of the uncertain processes of governmental succession in Marxian socialist countries have added emphasis to this characteristic political malleability of such constitutions. Built into every socialist constitution is the expectation that within a few years it will be replaced by the new political overlords with a document befitting the new image of the incoming regime. The truth of the matter is that the Soviet political system contemplates a government of men, not of laws; it is left to the men who rule at any given time to fashion to their own taste the laws by which they propose to govern.⁶⁴ A new state constitution invariably comes at the beginning or towards the end of any communist regime. Thus, the surest way to crown a communist political leadership is for the leaders to engineer the adoption of a new state constitution.⁶⁵ In this sense the 1977 USSR Constitution marks the beginning of the end of the reign of Leonid Brezhnev in the Soviet Union.

As to why the government of the Soviet Union chose 1977 to unveil its new constitution one can only speculate. One highly knowledgeable student of Soviet politics and law, Professor John Hazard of Columbia University, suggests that there are two possible reasons for this choice.⁶⁶ The first reason, which he regards as sentimental, is that 1977 marked the sixtieth anniversary of the Bolshevik Revolution.⁶⁷ The second reason he attributes to "the phenomenon of old age," pointing out that most members of the Politburo of the Central Committee of the CPSU are old and ailing,

⁶³ See CONSTITUTIONS OF THE COMMUNIST PARTY-STATES xii (J. Triska ed. 1968); Osakwe, *The Common Law of Constitutions of Communist Party-States*, 3 REV. SOCIALIST L. 155, 156 (1979). See also A. ULAM, *supra* note 14, at 61-63; A. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 87-89 (1948).

⁶⁴ See CONSTITUTIONS OF THE COMMUNIST PARTY-STATES xi (J. Triska ed. 1968). See also J. ARMSTRONG, *supra* note 19, at 130, 156; M. FAINSOD, *supra* note 19, at 291-92.

⁶⁵ In a thoroughly documented argument, Professor John Hazard takes the position that successive communist leaders, upon approaching their inevitable retirement from the political scene, have always sought to bind their successors to policies that they revered by putting them into a constitution. See Hazard, *A Constitution for "Developed Socialism,"* 20 LAW IN EASTERN EUROPE pt. 2 at 1-33 (1978). See note 69 *infra*.

⁶⁶ Hazard, *supra* note 65, at 16-19.

⁶⁷ *Id.*

including Brezhnev himself, who is in his seventies and not in very good health.⁶⁸ As a result of this age factor, the "old gang" wishes to consolidate its imprint on the Soviet system before its members depart from the scene. To support this argument, Professor Hazard notes that the late Chinese leader, Mao Tse-tung, left the People's Republic of China with a new state constitution just before his death in his eighties.⁶⁹ Similarly, Yugoslav leader Josip Broz Tito, also in his eighties, has forced a new state constitution on the people of Yugoslavia, perhaps in anticipation of his impending departure from the Yugoslav political scene.⁷⁰ Based on the comparison to these other Marxian socialist countries, Professor Hazard concludes that age is becoming a factor in decisionmaking in the Kremlin. Professor Hazard's conclusion is basically sound. It should be added, however, that if the Chinese experience is indicative of what may happen in other Marxian socialist countries, both the Brezhnev constitution of 1977 and the Tito constitution of 1974 will be swept away immediately following the departure of these men from office.

The answer to the last of the three basic questions posed above is that the 1977 USSR Constitution does not in any way purport to break with the tradition of previous Soviet constitutions. The preamble to the new constitution specifically provides that it "preserves the continuity of the ideas and principles of the first 1918 Soviet Constitution, the 1924 USSR Constitution and the 1936 USSR Constitution."⁷¹ In the words of a leading American authority on the political history of Soviet constitutions, the Brezhnev constitution is "a moderate middle-of-the-road document, neither anti-stalinist nor neo-stalinist in its thrust, but rather a generally pragmatic state-

⁶⁸ *Id.*

⁶⁹ The last constitution of the People's Republic of China to be engineered by Mao Tse-tung was adopted in 1975. *See id.* One writer believes that the adoption of the 1975 constitution, barely a year before Mao Tse-tung died, was an attempt by Mao and his followers to "legalize the changes brought about by the Cultural Revolution, which had uprooted the State and Party hierarchy and reestablished Mao's dominant position in China's political life." deHeer, *The 1978 Constitution of the People's Republic of China*, 4 REV. SOCIALIST L. 309, 309 (1978). The National People's Congress has since adopted a new constitution—on March 5, 1978.

⁷⁰ To date Yugoslavia has had four constitutions, adopted in 1946, 1953, 1963, and 1974. It is expected that, because of the advanced age of President Tito, the 1974 constitution will be the last Yugoslav state constitution to be adopted under his tutelage.

⁷¹ КОНСТИТУЦИЯ (Constitution) preamble, para. 17 (USSR). The point that the 1977 constitution represents a continuation of the general principles of the previous Soviet constitutions was made by virtually all the groups and individual commentators who took part in the national debate on the draft constitution. For a representative view on this question, see the position taken by Professor N. P. Farberov in *Discussion of the Draft Constitution I*, *supra* note 9, at 4.

ment of already existing practice and principle."⁷² This characterization of the 1977 constitution is accurate, as the following sections of this Article will demonstrate.

II. THE JURIDICAL NATURE OF SOVIET SOCIALIST CONSTITUTIONS

The Soviet constitution is one of fourteen Marxian socialist constitutions in force in the world today,⁷³ all of which have certain common features.⁷⁴ But the Soviet constitution is a reflection of the history, culture, psychology, and social mores of the Soviet people, and as such contains provisions that are peculiarly Soviet. The following discussion draws upon the common elements of socialist constitutions⁷⁵ and the unique national characteristics of Soviet basic laws. Only by considering both of these factors can the emergence and content of the 1977 USSR Constitution be fully understood.

To the Soviet legal mind, a state constitution performs two dialectical functions within the legal system: first, it serves as the supreme law of the land, providing an element of stability to Soviet law; and second, it is the supreme codification of the social, economic, political, and cultural development program of the Soviet state. In this latter capacity the state constitution is intended to be inherently dynamic. This dual role of a Marxian socialist-state constitution was recognized by Soviet Communist Party leader, Leonid Brezhnev, in a major policy speech delivered in 1977.⁷⁶ Referring to the draft constitution of 1977, he said,

⁷² R. SHARLET, *supra* note 1, at 6.

⁷³ The fourteen countries in the world with Marxian socialist constitutions are People's Republic of Bulgaria, Hungarian People's Republic, German Democratic Republic, Polish People's Republic, Socialist Republic of Rumania, Czechoslovak Socialist Republic, Socialist Federated Republic of Yugoslavia, People's Republic of Albania, Democratic Republic of Vietnam, People's Republic of Korea, People's Republic of China, Republic of Cuba, Mongolian People's Republic, and Union of Soviet Socialist Republics.

⁷⁴ See I. L'INSKII, KONSTITUTSII MIRA I SOTSIALIZMA (The Constitutions of Peace and Socialism) 99-172 (1967); N. IVANISHCHEVA, OSNOVNYE CHERTI KONSTITUTSII ZARUBEZHNYKH SOTSIALISTICHESKIKH STRAN (The Basic Features of the Constitutions of Foreign Socialist States) 40-116 (1973); V. KOTOK, O PREDMETE I ISTOCHNIKAKH KONSTITUTSIONNOGO PRAVA SOTSIALISTICHESKIKH STRAN; KONSTITUTSIONNOE PRAVO SOTSIALISTICHESKIKH STRAN (On the Subject and Sources of Constitutional Law of Socialist States: The Constitutional Law of Socialist States) 5-66 (1963); SOVIET CONSTITUTIONAL LAW, *supra* note 5; Ambartsimov, Borisov, Kpemnev, & Kondrashov, *Sotsialisticheskaiia Konstitutsiia Respubliki Kuba* (The Socialist Constitution of the Republic of Cuba), 10 Sov. Gos. i PRAVO (1976); Osakwe, *supra* note 63, at 155. A concise analysis of the Marxist-Leninist political theory of socialist constitutions may be found in Mikhaleva, *Leninskoe Uchenie O Konstitutsii: Metodologicheskie Aspekty* (Lenin on Constitutions: Methodological Aspects), 10 Sov. Gos. i PRAVO 12 (1977).

⁷⁵ See generally Osakwe, *supra* note 63.

⁷⁶ Brezhnev, On the Draft Constitution, *supra* note 57, at 5-6.

Following the true Leninist tradition, the CPSU operates on the assumption that a state constitution is not just a juridical act, but also a major political document. The Party looked upon the constitution as a consolidation of the achievements of the revolution and at the same time as a proclamation of the fundamental tasks and goals of a socialist construction. Such was our first Constitution of RSFSR of 1918, which consolidated the achievement of the October Revolution and articulated the class orientation of the Soviet state as the dictatorship of the proletariat. Such was the Constitution of the USSR of 1924, which articulated the general principles of the construction of a new socialist state. In the same vein, the Constitution of 1936 legislatively consolidated the victory in the USSR of socialist social relationships. The new Constitution retains many of the principal provisions of the current [1936] Constitution to the extent that these continue to reflect the essence of our system and the character of its development. In other words, the new Draft Constitution, on the one hand generalizes the entire constitutional experience of Soviet history, while on the other hand it enriches this same experience with its reflections of the demands of the contemporary era.⁷⁷

In other words, a Marxian socialist-state constitution is not just a formalistic legal instrument, but also "a mighty instrument for the construction of communism."⁷⁸

As the supreme law of the land, the Marxian socialist-state constitution serves as the litmus by which the legality of subordinate legislation is tested. Two leading Soviet commentators articulated this principle of Soviet constitutional law very well:

In a socialist state . . . among the category of basic laws may be included such acts the significance of which is reflected in their very designations, e.g., the fundamental principles of legislation of the USSR and the union-republics. The Constitution, however, is not just a basic law, but rather a special juridical act which is distinguishable in terms of its legal force from all the other laws. The legal force of a juridical act is generally determined by another juridical act of superior legal force. Being an act of the highest legal force, the Constitution does not need to be regulated by another superior law. In this lies

⁷⁷ *Id.*

⁷⁸ *Id.*

the peculiarity of the Constitution in terms of the legal basis for its legal force.⁷⁹

The authors then proceed to elaborate further:

Ordinary legislation may not conflict with the Constitution; they must fully conform to it, and in the case of a discrepancy between such legislation and the Constitution, the norms of the Constitution shall prevail; international agreements (treaties) concluded by the Soviet government may not conflict with the Constitution. They must conform to it. In case of a discrepancy between an international agreement (treaty), concluded in accordance with the established procedure, with the Constitution, the competent [Soviet] organs have no authority to ratify such agreements. The Constitution, in its turn, may not conflict with a generally recognized norm of international law; all other legislative acts promulgated in the Soviet Union may not conflict with the Constitution, and, if they were adopted in contravention of the Constitution, they may not be deemed to have any legal force.⁸⁰

The statement that the Soviet state constitution is the supreme law of the land needs qualification, however. Under Soviet constitutional theory, all state and social organizations and all individual citizens must conform their activities to the provisions of the state constitution. Taken at face value, this principle would create the impression that the supremacy of the Soviet constitution is universal and absolute. In reality, however, this is not the case; the Program of the CPSU is the actual supreme law of the land in the USSR. Any specific provision of the state constitution that is inconsistent with a general provision of the Program of the CPSU must yield to the latter. Speaking generally of all Marxian socialist constitutions, Professor Triska of Stanford University states:

Communist party-state constitutions do not limit the respective governments; instead, they are themselves limited by the ruling party's decision-makers, whether in government or not. Men are supreme, not law; hence, the communist party-state constitutions are not the symbols of freedom they are in Western democracies And because they serve the rulers rather than limiting them, the norms which they contain are interpreted from the sole point of

⁷⁹ SOVIET CONSTITUTIONAL LAW, *supra* note 5, at 46.

⁸⁰ *Id.* 47.

view of the interests of the state as determined by the rulers.⁸¹

As applied to the Soviet constitutional system, the conclusion reached by Professor Triska in the passage quoted above is supportable on two grounds. First, Soviet constitutional-law doctrine takes the position that the state constitution is merely a normative concretization of the general policies articulated in the Party program.⁸² As such, under the doctrine of *lex generalis derogat specialis*, the constitutional provisions, *qua* the specific law, must yield to the provisions of the party program, *qua* the general law. Second, the state constitution is what the Communist Party says it is. As the self-appointed guardian of the state constitution, the Communist Party has the task of first attempting to construe its provisions strictly. If such strict construction fails, the Party has the choice of engineering either an amendment to,⁸³ or a political exorcism of, the state constitution. The process of political exorcism⁸⁴ is resorted to if the Party feels that a particularly troublesome provision of the state constitution could be read out of the document or allowed to lapse into disuse. Through such exorcism the Party finds it possible to reconcile the provisions of the more static state constitution with those of the relatively more dynamic Party program, without going through the formal procedures of amendment or revision.

The constitution itself is silent on the question of its specific relationship to the CPSU Program, but a careful analysis of Soviet doctrinal sources suggests the conclusion reached in the foregoing paragraph. Thus, two leading Soviet commentators aptly note:

A close link exists between the Soviet [state] Constitution and the Program of the CPSU. The CPSU Program is a theoretical document of the [Communist] Party, the force

⁸¹ CONSTITUTIONS OF COMMUNIST PARTY-STATES xi (J. Triska ed. 1968).

⁸² For a general synthesis of modern Soviet constitutional doctrine on the relationship between norms of the state constitution and provisions of the CPSU Program, see Osakwe, *Book Review*, 51 TUL. L. REV. 411, 419-21 (1977).

⁸³ See note 5 *supra*.

⁸⁴ An illustration of resort to political exorcism as a method of expunging undesirable provisions from the state constitution is the Soviet government's decision to repeal articles 23 and 29 of the 1936 constitution. At the highest level of political power in the post-Stalin USSR, it was decided that the new regime could not live with the provisions of these two articles. The official reason given for their repudiation was the fact that they glorified Stalin's personality to a sickening degree, thus leaving the Party with no choice but to drop them entirely from all subsequent editions of the 1936 constitution. In the case of these two articles, neither amendment nor revision would have served the intended purpose.

of which lies in its in-depth and accurate analysis of the path of development, in its infallibility in predicting the goals of future development, i.e., in its scientific analysis of social life and historical progress Emphasis in the Party Program is placed on the ultimate goal of social development in a given historical formation. The Constitution, by contrast, does not and cannot contain the detailed analysis of the paths gone by and of a scientific explanation of the ultimate goals, merely because it is essentially a legislative act and not, in the strict sense of the term, a theoretical document. The state Constitution places emphasis on those political and economic forms which already now and in the future guarantee the progress towards the ultimate goal proclaimed under the Constitution, albeit in a most generalized sense. The Constitution in this regard operates on the basis of the Party Program and utilizes those ready-made analyses contained in the Program.⁸⁵

It is perhaps equally noteworthy, however, that even though the state constitution ultimately is subordinate to the CPSU Program, it is nevertheless the supreme law of the land until it is actually amended, revised, or exorcised at the instigation of the Party. Accordingly, until the federal constitution itself is amended, the provisions of subordinate laws, that is, the decrees of the Presidium of the USSR Supreme Soviet, the fundamental principles of federal legislation, federal statutes, the constitutions of the individual union republics, union-republican codes and statutes, and federal and union-republican administrative rules and regulations, must conform with its peremptory norms. For example, an amendment of a union-republican code of criminal procedure may not resurrect a principle of criminal procedure that had been abandoned in the current federal constitution. Similarly, a governmental reorganization statute promulgated by either the federal or union-republican government may not abandon a principle of allocation of powers specifically contemplated in the federal constitution in force. In short, all legislative reforms in the USSR must fall within the boundaries established by the federal constitution.

Thus, the state constitution provides stability and predictability to the entire Soviet legal system. This element of stability in the constitution, however, is counterbalanced by the built-in element of dynamism. If the state constitution is truly and effectively to

⁸⁵ SOVIET CONSTITUTIONAL LAW, *supra* note 5, at 52.

reflect the evolving Soviet social, economic, and cultural development program, it must change with the times. Some of these changes can be adequately accommodated through the technique of constitutional amendment. But once amendments to the constitution have reached a saturation point,⁸⁶ the extreme solution of constitutional revision becomes necessary. This point is made by Professor Triska in the following passage:

[C]onstitutions function both to legitimize the role within the state and to socialize the citizens into their political and social roles. In the communist party-states, the constitutions formulate the theory of state and law current at the time of enactment among the leadership, and periodic changes in official theory demand repeated periodic changes in constitutions. As the bases of both legitimation and socialization functions change, constitutional amendments become insufficient for the purpose. The need for complete rewriting of the constitutional document becomes imperative. Hence the sustained need for constant rewriting of communist party-state constitutions that will conform to new demands.⁸⁷

The essence of this is that the Soviet state constitution is essentially a legal instrument that has been purposefully placed at the generous disposal of the CPSU. The interpretation of the provisions of this instrument is a recognized political, not legal, function. This means that the interpretation of the constitution that will prevail is the view of the CPSU and not that of the USSR Supreme Court. Supervision of the observance of the provisions of the constitution has been placed squarely in the political department of government and not in the courts. Thus, the Soviet constitution affords the CPSU a legal platform for the execution of its political designs for the entire Soviet society.⁸⁸

III. AN ANALYSIS OF THE PROVISIONS OF THE 1977 USSR CONSTITUTION

In addition to performing the two functions discussed in the foregoing sections, the 1977 USSR Constitution serves as a glossary of modern Soviet law. It deals with virtually every branch of

⁸⁶ For example, between 1937 and 1974 the USSR Constitution of 1936 was amended 250 times, affecting 73 of the original 146 articles. See *id.* 81-85; note 5 *supra*.

⁸⁷ CONSTITUTIONS OF COMMUNIST PARTY-STATES xi-xii (J. Triska ed. 1968).

⁸⁸ See A. ULAM, THE RUSSIAN POLITICAL SYSTEM 59 (1974).

modern Soviet law. Consequently, its provisions are not limited to legal norms. Discussing the topology of constitutional norms, a leading Soviet expert, Dr. Iu. A. Tikhomirov, identifies several general categories in the 1977 constitution: (1) self-executing norms; (2) general norms, that require implementation through the adoption of organic statutes or executing regulations; (3) structural norms, that define the structure and authority of the various governmental and non-governmental agencies; and (4) aspirational norms, that articulate the general orientation of the development of the state's responsibilities to its citizens.⁸⁹

In addition to these four broad categories of provisions, the Soviet constitution contains a broad range of political declarations. For the purpose of this analysis, all the provisions, legal and non-legal, of the 1977 constitution may be treated under ten major structural headings:⁹⁰ the preamble; the political and economic system of the USSR; social development and culture; foreign policy and national defense; equal protection of law; the bill of rights and duties; problems of federalism; separation of powers; the electoral system; and the amendment procedure. The following discussion provides a commentary on the provisions that fall under each of these headings.

A. *The Preamble: Spirit of the Constitution*

For the first time in the history of Soviet constitutionalism, the 1977 constitution contains a preamble. Like most of the other provisions, the preamble catalogues past achievements of the Soviet state and announces new goals for the future. Yet it differs significantly from other provisions in that it articulates the spirit and the philosophical underpinnings of the constitution. By so doing, it serves as a helpful tool in interpreting substantive provisions of the constitution. In the words of an editorial in the prestigious Soviet law journal *Sovetskoe Gosudarstvo i Pravo*, "the significance of the Preamble lies in the fact that it serves as a sort of 'key' to the constitutional text; in it are restated the achievements of the past, as well as the projected goals of future development."⁹¹

⁸⁹ Tikhomirov, *Problemy Teorii Sotsialisticheskoi Konstitutsii* (Theoretical Problems of a Socialist Constitution), 2 *Sov. Gos. i Pravo* 3, 6 (1978).

⁹⁰ Some of these headings directly correspond to similarly designated chapters in the 1977 constitution, but others are thematic consolidations of two or more chapters.

⁹¹ Editorial, *Konstitutsiia SSSR 1977—Vazhnaia Vekha v Razvitiu Nauki o Sotsialisticheskome Gosudarstve* (The USSR Constitution of 1977—A Major Milestone in the Development of the Science about a Socialist State), 12 *Sov. Gos. i Pravo* 5 (1977).

The preamble reminds all that Soviet society is the embodiment of the Marxist progression to communism. The Bolshevik Revolution of 1917 dealt a fatal blow to capitalism in Russia and ushered in a new form of government—a dictatorship of the proletariat—that marked mankind's historic turn from capitalism to socialism; during the sixty years of its existence the Soviet society has developed into a state of all the people.⁹² The preamble concludes that in 1917 the Soviet society was in a transitional stage from capitalism to socialism, whereas today it has attained the status of a "society of advanced socialism" and is steadily advancing towards communism.⁹³ The preamble makes the strong point that in this national movement toward communism the moving force is the CPSU—the self-ordained vanguard of the Soviet people. As one would expect in a society of advanced socialism, the preamble notes that through the guidance of the CPSU the USSR has attained social, political, and ideological unity among its people, as well as high levels of ideological conviction and class consciousness.⁹⁴ According to the preamble this unity is evidenced by the willingness of Soviet citizens to act as their brothers' keepers, showing sincere concern for the welfare of fellow citizens.⁹⁵ Finally, the preamble proclaims the attainment of a classless communist society as the ultimate goal of the Soviet state.⁹⁶

Without specifically saying so, the preamble thus elevates the ideology of scientific communism almost to the level of a Soviet state religion. Since this "religion" is characterized by the continuing economic, social, and moral development of the society and its citizens, the preamble provides that the 1977 constitution is not only a quantitative statement, but also a dynamic continuation of the

⁹² KONSTITUTSIJA (Constitution) preamble, para. 4 (USSR). An editorial in *Sovetskoe Gosudarstvo i Pravo* defines a "state of all the people" as "an historical successor to the dictatorship of the proletariat and a stepping stone in the direction of full communism." *Soviet State and Law*, *supra* note 52, at 6.

⁹³ The meaning of "society of advanced socialism" is spelled out in three major CPSU documents adopted prior to the unveiling of the 1977 constitution: the resolution of the 25th Congress of the CPSU; the Postanovlenie (Decree) of the Central Committee of the CPSU entitled "O Shestideciatom Godovshine Velikoe Oktjab'rskoi Sotsialisticheskoi Revolutsii (On the 60th Anniversary of the Great October Socialist Revolution); and the Materials of the proletariat and a stepping stone in the direction of full communism." *Soviet State and Law*, *supra* note 52. According to this article, the 1977 constitution merely codified the principles already expressed in these Party documents. See *id.* 5.

⁹⁴ KONSTITUTSIJA (Constitution) preamble, para. 8 (USSR).

⁹⁵ *Id.* preamble, para. 9.

⁹⁶ *Id.* preamble, para. 12.

traditions of past Soviet constitutions.⁹⁷ To understand fully the provisions of the preamble, one has to look to the substantive provisions contained in the main body of the constitution. It is to these provisions that this analysis now turns.

B. *The Political and Economic System of the USSR*

The quintessence of the Soviet system may be gleaned from the provisions of chapters one and two of the new constitution. At a glance, these opening provisions reflect both the balance of political power in the USSR and the foundations of the Soviet economic system. As in the preamble, the major provisions of these two chapters are essentially declarations of political and economic principles. Whatever legal principles one may find in them are secreted in the interstices of the general social and political pronouncements.

Article 1 of the new constitution proclaims the USSR to be "a socialist state of all the people,"⁹⁸ a society in which the two friendly classes—the proletariat and the peasantry—share political power in

⁹⁷ *Id.* preamble, paras. 13-18.

⁹⁸ KONSTITUTSIJA (Constitution) art. 1 (USSR). Some western commentators have attacked the new constitutional designation of the USSR as a "state of all the people" as being incompatible with the teaching of Karl Marx and V. I. Lenin. According to these western critics, Lenin foresaw the dictatorship of the proletariat as the last phase before the advent of communism. Therefore, the argument continues, Lenin would condemn from his grave any interposition of a qualitatively different state of affairs between the dictatorship of the proletariat and communism. These western sources point out that Marx essentially took the same position as that of Lenin, believing that dictatorship of the proletariat would give way only to "an association of free workers." Editorial, *Der Spiegel*, cited in Editorial, *Dialektika Razvitiia Sovetskoi Gosudarstvennosti i Konstitutsiia SSSR* (The Dialectics of the Development of the Soviet State and the Constitution of the USSR), 4 *Sov. Gos. i PRAVO* 3, 4 (1978) [hereinafter cited as *Dialektika*].

One example of western concern over the dilution of Marxism-Leninism in the Soviet Union came from a West German newspaper, which stated:

[A]ccording to the teaching of Marx and Engels a dictatorship of the proletariat shall be followed by a community of free persons devoid of any forms of governmental authority. However, according to the new USSR Constitution, the dictatorship of the proletariat in Russia even though ended, is now being replaced, as announced in the Preamble, by a state of all the people.

Id. 4 n.2.

Apologists of the Soviet system, on the other hand, defend the Soviet position by arguing that Marx and Lenin used the term "dictatorship of the proletariat" to characterize the political orientation of the government of workers, while using the term "an association of free workers" to refer to the socioeconomic structure of the working-class society. Thus, to Marx and Lenin, the term "association of free workers" could refer both to a "dictatorship of the proletariat" and to a stage of communism. In other words, the rationalizers of Soviet government policies take the position that the concept of the "state of all the people" is the CPSU's creative contribution to the objective theory of scientific communism. For a Soviet doctrinal defense of the Soviet constitutional theory of a "state of all the people," see *id.* 4-5.

collaboration with members of the progressive intelligentsia.⁹⁹ It is highly doubtful, however, that the Soviet peasantry is in fact an equal partner in this political alliance. It is equally doubtful that the role of the intelligentsia in this partnership is merely that of a faithful servant of the two political masters. Data on the class composition of the last Supreme Soviet of the USSR, elected in 1979, indicate that of a total of 1500 deputies, 34.8% (522 deputies) were members of the industrial proletariat; 16.3% (244 deputies) were peasants; and 48.9% (734 deputies) were "others," including members of the intelligentsia.¹⁰⁰ Clearly, not only is the leadership role of the intelligentsia still pervasive, but the interests and opinions of this class are disproportionately represented in the Soviet government. Thus, the Soviet government today is neither a dictatorship of the proletariat, nor a state of all the people.¹⁰¹ It is a dictatorship of the CPSU, the stronghold of the elite intelligentsia of the USSR. Whether or not this is viewed as a bad thing in itself, it is an inescapable fact of Soviet life.

To demonstrate the popular democratic base upon which the Soviet government purports to operate, article 2 proclaims that "[a]ll power in the USSR belongs to the people."¹⁰² Since it is

⁹⁹ KONSTITUTSIYA (Constitution) art. 1 (USSR).

¹⁰⁰ Editorial, *Pravda*, March 7, 1979, at 1, col. 1.

¹⁰¹ See A. ULAM, *supra* note 88.

In his report to the Special (Constitutional Ratification) Session of the USSR Supreme Soviet, Leonid Brezhnev attacked all those western writers who refer to the present arrangement in the USSR as a dictatorship of the CPSU, or as reflecting the supremacy of the Party over the state apparatus. In response to such western "inventions" he stated,

What can one possibly say in this regard? The reasons for such [western] attacks on our system are well known. The CPSU is the vanguard of the Soviet people. It is society's most politically conscious and progressive segment. It is inseparable from the people as a whole. To attempt to counterpose the Party against the people or vice versa, to speak in terms of a "dictatorship of the Party," is tantamount to an attempt to counterpose the heart to the rest of the human organism.

L. Brezhnev, Report to the USSR Supreme Soviet, *cited in* Editorial, *Osnovnoi Zakon Razvitoego Sotsializma* (The Basic Law of Advanced Socialism), *Pravda*, October 9, 1977, at 1, col. 2.

¹⁰² KONSTITUTSIYA (Constitution) art. 2 (USSR). The phrasing of the concept of popular sovereignty as "[a]ll power in the USSR belongs to the people," is intended to reflect a certain degree of maturity in the class relationships that exist in Soviet society. The phrase itself suggests that the USSR has now attained the status of a "state of all the people." By contrast, article 10 of the 1918 RSFSR Constitution stated that "all power belongs to the working people of the country." KONSTITUTSIYA (Constitution) art. 10 (RSFSR 1918). The 1918 choice of terms reflected the status of a society in transition from capitalism to socialism. By the same token, article 3 of the 1936 constitution stated that "all power belongs to the workers residing in the cities and villages," KONSTITUTSIYA (Constitution) art. 3 (USSR 1936), a wording which, as interpreted by Soviet commentators, reflected the fact that even though the USSR at that time had achieved the irreversible victory of socialism, it

practically impossible for the people to govern directly, however, they delegate their political power to elected representatives who remain under their effective control.¹⁰³ This statement, taken at face value, suggests that there is true popular sovereignty in the USSR. But the realities of Soviet life suggest that the true sovereign in the Soviet Union is the CPSU, not the people.¹⁰⁴

What all of this amounts to is that the new constitution projects an erroneous image of the Soviet government as a government of the people, by the people, for the people. In reality, however, the Soviet government is nothing more than a government of the people, by the Party, for those who have secured the highly coveted blessings of the Party. The original sovereignty vests in the people, but the people, in the interest of orderly government as perceived by the Party, have delegated virtually all of their original powers to the self-appointed guardians of the Soviet society: the CPSU. The scope of the delegation as well as the manner in which the delegated authority will be exercised is determined exclusively by the Party in its capacity as the sole administrator of the affairs of the people. For all practical purposes this arrangement renders the people legally incapacitated.

Article 4 provides that all Soviet state agencies and social organizations shall operate on the basis of Soviet laws.¹⁰⁵ It further provides that these agencies shall ensure the protection of law and order, the interests of society, and the rights and liberties of Soviet citizens.¹⁰⁶ There is no reason to question the likelihood of good faith observations of these provisions. It should be added that it is in the interest of the CPSU that the laws of the Soviet state be uniformly observed by all Soviet state agencies, social organizations, and individual citizens.¹⁰⁷ A degree of stability is essential in any large, modern state to maintain order. The extralegal powers of the CPSU do not interfere with the daily functioning of the Soviet system. The exercise of these powers is only rarely apparent where non-political issues are concerned.

was still a dictatorship of the proletariat. For a general discussion of the political content of Soviet constitutions, see Stepanov, *Konstitutsionnye Osnovy Sovetskoi Politicheskoi Sistemi* (The Constitutional Foundation of the Soviet Political System), 9 *Sov. Gos. i Pravo* 33 (1977).

¹⁰³ See KONSTITUTSIYA (Constitution) arts. 2 & 3 (USSR).

¹⁰⁴ See note 101 & text accompanying notes 99-101 *supra*

¹⁰⁵ KONSTITUTSIYA (Constitution) art. 4 (USSR).

¹⁰⁶ *Id.*

¹⁰⁷ See note 101 *supra*.

Pursuing the general theme of popular sovereignty articulated in article 2, article 5 provides that the most important questions of state life shall be submitted to the people by national referenda.¹⁰⁸ What article 5 fails to spell out, however, is that the responsibility for deciding when to call a referendum and what questions to put before the people rests solely with the government. Article 5 does not grant to the Soviet citizens any right of initiative. It is nevertheless interesting that the principle of article 5 is new to the Soviet constitution. Up to this point it had been a rarely invoked principle of Soviet constitutional practice.¹⁰⁹ If the history of referenda in the USSR is a reliable guide to what to expect in the future, the referendum provisions of article 5 are doomed to relative obscurity.

Article 6 marks a radical departure from previous Soviet constitutions: it explains at length, for the first time in Soviet constitutional history, the role of the CPSU in the Soviet political system.¹¹⁰ It provides in unequivocal language that the CPSU is "the leading and guiding force of Soviet society, the nucleus of its political system and of all state and public organizations."¹¹¹ For all practical purposes the CPSU operates as the mind, the conscience, and the brain of the Soviet body politic. It is the only "thinking"

¹⁰⁸ KONSTITUTSIYA (Constitution) art. 5 (USSR).

¹⁰⁹ The Soviet attitude toward the referendum as a form of direct government may be understood only in historical perspective. During the phase of the dictatorship of the proletariat, V. I. Lenin, in a speech delivered to an extraordinary All-Russian Congress of Railroad Workers in 1918, openly took the position that the referendum was an unacceptable form of direct government in light of the political situation at that time. In a subsequent policy statement, Lenin conceded, however, that the referendum could be suitable during the phase of transition from capitalism to socialism. Since then, the CPSU has taken the position that in appropriate circumstances there is nothing wrong with resorting to a referendum in order to solicit public opinion, as long as the decision to call a referendum and the determination as to the issues to be presented to the people are made not by the people, but by the state authorities. The referendum in Soviet constitutional practice has no statutory basis. It is founded solely on Party policy statements. For a thorough discussion of the historical evolution of the institution of the referendum in the USSR, see *SOVIET CONSTITUTIONAL LAW*, *supra* note 5, at 173-77.

¹¹⁰ KONSTITUTSIYA (Constitution) art. 6 (USSR). During the discussion of the draft constitution of 1977, Professor A. V. Mitskevich called for a further clarification of the role of the CPSU. In his view it was not enough to say that the CPSU is the leading force in society. He would have stressed that the CPSU does not strive to displace or compete with the state agencies in the administration of Soviet socialism. In other words, he wanted included in the new constitution a provision that would emphasize the leadership role of the CPSU without giving the impression that the government agencies are totally dispensable bodies. His suggested wording of article 6 was not adopted, but it is abundantly clear that the Party not only leads, but also works through, the state agencies. For a summary of Professor Mitskevich's comments, see *Discussion of the Draft Constitution I*, *supra* note 9, at 7-8.

¹¹¹ KONSTITUTSIYA (Constitution) art. 6 (USSR).

organ in the Soviet society.¹¹² Consequently, when Party leaders signal what is to be done, all appendages of the Soviet political being must carry out their wishes.¹¹³ As the ultimate sovereign in the Soviet political system, the CPSU is essentially infallible because it is the final authority on what is best for the Soviet people.¹¹⁴ In the true sense of the term, the CPSU is the keeper of the Soviet political conscience. Article 6 of the 1977 constitution merely legitimizes the general practices in the area of Soviet party-state relationships.

Given the position of the CPSU in the Soviet system, it is extremely intriguing to read in the last paragraph of article 6 that all organizations of the CPSU shall operate within the framework of the USSR Constitution.¹¹⁵ It is perhaps too early to piece together what this new provision will mean in practice. It appears that this particular provision is intended to be binding upon the local, re-

¹¹² The Statute (Ustav) of the CPSU refers to the Party as the combative and fully tested vanguard of the people, the leading and guiding force of the Soviet society, which unites in its ranks the most conscious members of the working class, the peasantry, and the intelligentsia of the USSR. As such, the Party is regarded as the highest form of socio-political organization of the people. The Statute further provides that the Party, armed with the theory of Marxism-Leninism, is the sole pilot of the Soviet society's coordinated march toward its ultimate goal—communism. Statute (Ustav) of the CPSU, adopted by the 22d Congress of the CPSU on October 31, 1961, preamble (version printed by Political Literature Press, Moscow 1977). An English language version of the statute may be found in W. BUTLER, *supra* note 1, at 361-77. These provisions of the Statute of the CPSU have since been incorporated into article 6 of the 1977 constitution.

¹¹³ Article 6, paragraph 1 of the 1977 constitution, in describing the role of the Party, refers to it as the nucleus around which all the other social, political and legal institutions revolve. As such, the Party determines the general direction of the movement of the entire "solar system," and assigns roles to the constituent institutions of the system. See A. ULAM, *supra* note 88, at 59-61.

¹¹⁴ Since the Party is regarded in its Statute as an association of the most conscious members of the Soviet society, see note 112 *supra*, and in article 6, paragraph 1 of the 1977 constitution as the epicenter of the entire Soviet political system, see note 113 *supra*, it may reasonably be inferred that no authority within this system is hierarchically superior to the Party. See A. ULAM, *supra* note 88, at 59-61.

¹¹⁵ KONSTITUTSIYA (Constitution) art. 6 (USSR). The Statute of the CPSU lists as the organs of the Party the local party organizations, including those at the level of the union republic, the region, the province, and the city, see Statute (Ustav) of the CPSU, art. 41, adopted by the 22d Congress of the CPSU on October 31, 1961 (version printed by Political Literature Press, Moscow 1977), and the central organs of the Party, including the Congress, the central committee, the central revision commission, the committee on party control attached to the central committee, the politburo, the secretariat, and the general secretary, see *id.* arts. 30-40. In his report to the 25th Congress of the CPSU (February 24-March 5, 1976), Brezhnev supplied the following figures on the membership of the central organs of the CPSU as of February, 1976: 15,694,000 members of the Party; 5,000 delegates to the 25th Congress; 287 full members and 139 alternate (non-voting) members of the central committee; 16 full members and 6 alternate (non-voting) members of the politburo; and 11 members of the secretariat. L. Brezhnev, Report to the 25th Congress of the CPSU, reported in Editorial, Pravda, March 6, 1976, at 1, col. 1.

gional, and union-republican organizations and officials of the CPSU, but not upon its central organs or its national officials. Furthermore, even if one accepts *arguendo* that the provisions of the constitution are binding on all levels of the CPSU, the constitution is what the CPSU says it is. This makes the CPSU a truly supra-constitutional body. Any contrary interpretation of article 6 would violate the spirit of the constitution itself, as reflected in its preamble.¹¹⁶

Articles 7 and 8 of the new constitution grant to the various other social organizations the right to participate in the administration of Soviet socialism.¹¹⁷ There is nothing new in these provisions—they merely elevate to the constitutional level what previously had been principles of Soviet laws on trade-union organizations and on the activities of economic cooperatives and social organizations.¹¹⁸

Article 9 embodies a governmental promise to maximize progressively the participation of Soviet citizens in the administration of the affairs of state and society.¹¹⁹ Such a vague and imprecise promise, however, is incapable of legal enforcement. Thus, article 9 is at best only of psychological value to Soviet citizens.

The economic philosophy of the USSR is set forth in the 1977 constitution beginning with article 10. Without departing from constitutional tradition on this question, article 10 proclaims socialist ownership to be the cornerstone of the Soviet economic system.¹²⁰ Generally, socialist ownership manifests itself in two unequal forms—state property and the property of socialist organizations such as collective farms and trade unions. Taken together articles 10 and 12 provide that socialist organizations are free to own any property necessary to the performance of their statutory tasks, including buildings, machines, and cattle. Article 11 specifically lists those items that come within the state's exclusive right

¹¹⁶ The relevant provision of the preamble on this question is paragraph 4, which assigns to the CPSU the leadership role in Soviet society. Paragraph 4 suggests that this leadership role tends to grow as the society advances towards communism. See *KONSTITUTSIA* (Constitution) preamble, para. 4 (USSR).

¹¹⁷ *KONSTITUTSIA* (Constitution) arts. 7, 8 (USSR).

¹¹⁸ The role of the trade-union organizations in the administration of Soviet labor law and related social legislation is enshrined in the labor codes of the union republics. See, e.g., *RSFSR KOD. ZAK. O TRUDE* (Labor Code) arts. 225-235 (1971). Workers may also participate in the administration of Soviet enterprises by operating through social organizations other than the trade unions. See *id.* art. 228.

¹¹⁹ *KONSTITUTSIA* (Constitution) art. 9 (USSR). See *id.* art. 48.

¹²⁰ *Id.* art. 10. Article 10 virtually reproduces the provisions of article 4 of the 1936 constitution. Compare *id.* with *KONSTITUTSIA* (Constitution) art. 4 (USSR 1936).

of ownership.¹²¹ These include land, mineral wealth, the waters, and the forests. It is provided in article 12, however, that the land occupied by the collective farms is assigned to them in perpetuity by the state free of all rent.¹²² The only obligations of the collective farms that receive such land from the state are to use it effectively, to take proper care of it, and to take positive measures to increase its fertility.

The constitutional provisions governing ownership of personal property did not undergo any radical changes.¹²³ Article 13 recognizes the right of personal property over such items as household goods, articles of personal consumption and convenience, a dwelling house, earned income, and savings.¹²⁴ Whatever items an individual citizen owns by virtue of the right of personal property may, under article 13, be transmitted to other persons by inheritance.¹²⁵

Like all other Soviet constitutional rights,¹²⁶ the right of personal ownership is not and was never intended to be absolute. There are two specific qualifications of this right in the 1977 constitution. First, under article 13 the right of personal ownership attaches only to property acquired with earned income. This means that any individual property right that might have been acquired with unearned or speculative income is null and void *ab initio*. Such property is subject to forfeiture to the state on the theory that the putative owner had, at best, an imperfect right to it.¹²⁷ Second, article 13 provides that "[p]roperty in the personal possession or use of citizens shall not serve as a means for the derivation of unearned income or be used to the detriment of the interests of society."¹²⁸ In other words, since the purpose of the individual ownership right is to satisfy the personal needs of citizens and members of their families, any use of personal property for an undesig-

¹²¹ KONSTITUTSIYA (Constitution) art. 11 (USSR).

¹²² *Id.* art. 12.

¹²³ Article 13 of the 1977 constitution virtually reproduces article 10 of the 1936 constitution. Compare *id.* art. 13 with KONSTITUTSIYA (Constitution) art. 10 (USSR 1936).

¹²⁴ KONSTITUTSIYA (Constitution) art. 13 (USSR).

¹²⁵ *Id.*

¹²⁶ See the general discussion of the nature and scope of the constitutional rights of Soviet citizens at text accompanying notes 173-268 *infra*.

¹²⁷ For a general discussion of the Soviet law of forfeiture of property, see Osakwe, *Forfeiture*, in 1 ENCYCLOPEDIA OF SOVIET LAW 288-90 (F. Feldbrugge ed. 1973). Modern Soviet law draws a distinction between forfeiture of property and requisition of property. For a general discussion of the Soviet law of requisition, see Osakwe, *Requisition*, in 2 ENCYCLOPEDIA OF SOVIET LAW 484-86 (F. Feldbrugge ed. 1973).

¹²⁸ KONSTITUTSIYA (Constitution) art. 13 (USSR).

nated purpose would constitute an abuse of that right. Depending on the specific form of such abuse of right, the legal sanction may be criminal, civil, administrative, or a combination of two or all of the three.¹²⁹

The application of Soviet political and economic philosophy to an issue of central concern to Marx and Lenin—the labor of human beings—begins with article 14. Article 14 merely elevates to the level of a principle of constitutional law what previously had been principles of Soviet labor law: the labor of Soviet citizens shall be free from exploitation, and individual labor shall be compensated according to a state-approved graduated wage scale that takes into consideration the social value of such labor.¹³⁰ This constitutionally based freedom from involuntary servitude is, however, subject to many statutory exceptions. Thus, for example, that provision of article 14 would not be deemed to be violated if a court of law imposed a sentence of compulsory and uncompensated labor on a person adjudged to be criminally or administratively liable.

Article 17 permits individual citizens to engage in certain types of carefully selected “private” entrepreneurial activities, as long as in so doing they do not exploit outside labor.¹³¹ This means that individual labor activities in the spheres of handicrafts and agricultural and consumer services are permissible as long as the entrepreneur does not hire the services of persons outside his immediate family. The spirit of this law would also prohibit the formation of a business partnership consisting of the members of separate families or households for the purpose of engaging in any of the activities listed therein.

¹²⁹ For example, a homeowner may not convert his home into a den of debauchery, or into a place for narcotics use or gambling. Any such unlawful use of personal property is criminally punishable under union-republican law. *See, e.g.*, RSFSR UCOL. KOD. (Criminal Code) art. 226 (1960). RSFSR law also provides, for example, that religious societies have the rights to acquire religious articles and means of transportation, and to lease, build, or buy buildings to be used for religious purposes. RSFSR Law on Religious Associations art. 3 (1929), *amended by Decree of the Presidium of the Supreme Soviet of the RSFSR*, June 23, 1975, 27 *VED. VERKH. SOV. RSFSR* item 572 (1975). (An English translation of this law appears in 1 *REV. SOCIALIST L.* 223 (1975).) The law also provides, however, that a properly registered religious society may designate and use only one building or complex for prayer purposes, *id.* art. 10, and may not generally use property at its disposal for non-religious purposes, *id.* art. 17, para. (a). Any church building used for an unlawful purpose is subject to forfeiture under the general laws of forfeiture. *See note 127 supra*. Furthermore, the law on religious associations requires that all buildings held by religious societies be maintained in full compliance with technical building and sanitary regulations. *Id.* art. 10. Failure to comply may subject the property to requisition under the general laws of requisition. *See note 127 supra*.

¹³⁰ KONSTITUTSIYA (Constitution) art. 14 (USSR).

¹³¹ *Id.* art. 17.

The final provision of the introductory chapters of the 1977 constitution, article 18, expresses overt Soviet concern for environmental protection "in the interests of present and future generations."¹³² It does not, however, expressly impose a legal duty on the state to protect the Soviet environment. The provision merely recites that the necessary steps are being taken in the USSR to protect the environment by making scientifically substantiated and rational use of the land and its mineral wealth, flora, and fauna, and that the state has taken measures "to preserve the purity of the air and water, to ensure the reproduction of natural resources, and to improve man's environment."¹³³ In sharp contrast to article 18's declarative language with respect to the duty of the state to preserve the environment, article 67 imposes a specific obligation on Soviet citizens "to protect nature and to safeguard its riches."¹³⁴

C. Social Development and Culture

The dedication of a special chapter to the treatment of matters of social development and culture is one of the many structural innovations of the 1977 constitution, but most of the provisions included in this chapter are by no means new to Soviet constitutional law. To a great extent the chapter is merely declaratory of present Soviet governmental practice. Some of these provisions are so amorphous and vague that they do not amount to anything more than an unenforceable state promise to give effect to the Leninist notion that culture belongs to the people.¹³⁵

Article 19 begins by declaring that "the social foundation of the USSR is the indestructible alliance of workers, peasants and the intelligentsia."¹³⁶ It then goes on to express the Soviet government's promise to wipe out, at some unspecified future date, the present differences between mental and physical labor, as well as the present differences between the city and the countryside.¹³⁷ In

¹³² *Id.* art. 18.

¹³³ *Id.*

¹³⁴ *Id.* art. 67.

¹³⁵ The Program of the CPSU states that artistic and cultural creations in a socialist society should reflect socialist realism—the "principle of partnership and kinship with the people"; that art should "embody the versatility and richness of the spiritual life of society and the lofty ideals of humanism of the new world"; and that access to the cultural and artistic wealth of the country should be facilitated for all citizens. Program of the CPSU 117-19, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House edition, Moscow 1961).

¹³⁶ KONSTITUTSIYA (Constitution) art. 19 (USSR).

¹³⁷ *Id.* See V. I. LENIN, THE STATE AND REVOLUTION ch. I (1932); K. MARX & F. ENGELS, THE COMMUNIST MANIFESTO ch. I (S. Moore trans. 1967).

article 21 the state promises to eliminate physical labor in the USSR by fully mechanizing the production processes at some indefinite time in the future.¹³⁸

Other political guarantees contained in this chapter include promises to raise the level of workers' wages and to increase workers' real spendable income.¹³⁹ The program of the CPSU has identified the elimination of the individual income tax¹⁴⁰ as one way to raise the real income of Soviet citizens.¹⁴¹ To give effect to this Party policy, the 24th Congress of the CPSU adopted a resolution eliminating all income tax on the wages of workers who earn up to seventy rubles per month.¹⁴² The provisions of article 23 are a reaffirmation of this long-standing promise made to Soviet workers by the CPSU and the Soviet government.

For the first time in the history of Soviet constitutions, article 26 raises to the constitutional level the idea of state control of science. Under article 26, the Soviet state will not only "ensure the planned development of science and the training of scientific cadres,"¹⁴³ but also will use its oversight powers to see that scientific research serves the interest of the national economy.¹⁴⁴ Like all the other provisions of chapter 3, article 26 is merely a codification of Soviet governmental practice since the inception of the Soviet state. State control over scientific research, manpower training, and the utilization of scientific inventions and discoveries has always been viewed as essential.

D. Foreign Policy and National Defense

Like the chapter on Soviet development and culture, the chapter on foreign policy is new to the USSR Constitution.¹⁴⁵ The pro-

¹³⁸ KONSTITUTSIYA (Constitution) art. 21 (USSR). See generally V. I. LENIN, THE STATE AND REVOLUTION ch. V (1932).

¹³⁹ KONSTITUTSIYA (Constitution) art. 23 (USSR).

¹⁴⁰ While pushing to eliminate the individual income tax on workers' earnings, the Party Program does not seek to do away with the other forms of individual taxation, such as the childlessness tax imposed on single adults and families with less than the minimum number of children. See text accompanying notes 243-44 *infra*. The continued retention of the childlessness tax is defended by Dr. O. N. Gorbunova in her published individual commentary on the draft constitution. See *Discussion of the Draft Constitution II*, *supra* note 9, at 27.

¹⁴¹ This CPSU Program policy was analyzed by Dr. O. N. Gorbunova in her commentary on the draft constitution. See *id.*

¹⁴² See DOCUMENTS OF THE 24TH CONGRESS OF THE CPSU: MARCH 30-APRIL 9, 1971, at 192 (1971).

¹⁴³ KONSTITUTSIYA (Constitution) art. 26 (USSR).

¹⁴⁴ *Id.*

¹⁴⁵ In addition to the general provisions of Chapter 4, other provisions dealing with the regulation of foreign policy matters may be found in KONSTITUTSIYA (CON-

visions of chapter 4, however, do not reflect any changes in Soviet foreign-policy posture. Once again these provisions are more a declaration that established policies rise to a constitutional level, rather than a statement of new guiding principles. For example, "the USSR steadfastly pursues a Leninist policy of peace";¹⁴⁶ Soviet foreign policy "is aimed at ensuring favorable international conditions for the building of communism in the USSR, for protecting the Soviet Union's state interests [and] for strengthening the positions of world socialism."¹⁴⁷ These policies are familiar to any knowledgeable student of Soviet foreign policy. A third provision—that "war propaganda is forbidden in the USSR"¹⁴⁸—was formerly a provision of Soviet criminal law.¹⁴⁹

Article 29 lists the following as the ten pillars of Soviet foreign policy: sovereign equality of states; mutual renunciation of the use of force or the threat of force; the inviolability of state borders; respect for the integrity of state territory; peaceful settlement of disputes; noninterference in the internal affairs of another state; equality and the right of peoples to decide their own fate; peaceful cooperation among states, regardless of differences in their social and economic system; and *pacta sunt servanda*.¹⁵⁰ The leading Soviet writers take the position that although all states agree that all of these principles are principles of general international law, there is no universal agreement among states as to the specific content of each one of them. The Soviet Union is noted for its persistent unwillingness to submit to international adjudication in any form. When it signs international agreements it does so very selectively, always with an eye to avoiding coming under the operation of any built-in procedure for settlement of disputes that would

stitution) arts. 80, 121, paras. 6, 8, 10, 12, 13, 17, 18, & 131, para. 6 (USSR). For a general analysis of the provisions dealing with foreign policy matters, see Mironov, *Konstitutsionnye Printsipi Vneshnei Politiki SSSR* (The Constitutional Principles of Soviet Foreign Policy), 3 *SOV. GOS. I PRAVO* 13 (1978); Hazard, *Foreign Policy and the 1977 Soviet Constitution*, 72 *AM. J. INT'L L.* 350 (1978).

¹⁴⁶ KONSTITUTSIYA (Constitution) art. 28 (USSR).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Under article 71 of the RSFSR criminal code, for example, it is a crime to engage in any form of war propaganda. RSFSR UCOL. Kod. (Criminal Code) art. 71 (1960).

¹⁵⁰ KONSTITUTSIYA (Constitution) art. 29 (USSR). For a detailed analysis of Soviet doctrinal interpretations of these general principles of the contemporary law of nations, see G. TUNKIN, *THEORY OF INTERNATIONAL LAW* (English language trans. 1974); 2 *KURS MEZH DUNARODNOGO PRAVA* (Treatise on International Law) 5-329 (F. Kozhevnikov, D. Levin, N. Ushakov & U. Shurshalov eds. 1967).

involve submission to third-party adjudication.¹⁵¹ It therefore follows that for the purpose of the day-to-day conduct of Soviet foreign policy, each of the principles enunciated in article 29 means what the government of the Soviet Union says it means.

The next section of chapter 4 emphasizes the special relationship of the USSR to other socialist countries. For the first time in Soviet constitutional law, article 30 announces to the world that the Soviet Union "is a component part of the world socialist system and of the socialist commonwealth of nations."¹⁵² The fact that Soviet foreign relations with other members of the socialist commonwealth of nations are governed by the principles of socialist international law—which is what article 30 says in a roundabout way—is hardly anything new.¹⁵³ Article 30 concludes with the provision that the relationship between the Soviet Union and all the other socialist countries is governed by the principle of socialist internationalism.¹⁵⁴

Chapter 3 concludes with a statement that appears to be a political concession to the Soviet military machine: article 32 expresses the promise by the Soviet state to "outfit the USSR armed forces with everything they need."¹⁵⁵ Here again, the Soviet government's commitment to maintaining the military preparedness of its armed forces at any cost is hardly a new element in the overall East-West military equation.¹⁵⁶

¹⁵¹ For general discussions of the official Soviet attitude toward international agreements, as well as an analysis of the strategy of Soviet participation in international organizations, see C. OSAKWE, *THE PARTICIPATION OF THE SOVIET UNION IN UNIVERSAL INTERNATIONAL ORGANIZATIONS: A POLITICAL AND LEGAL ANALYSIS OF SOVIET STRATEGIES AND ASPIRATIONS INSIDE ILO, UNESCO, AND WHO* (1972); A. RUBINSTEIN, *THE SOVIETS IN INTERNATIONAL ORGANIZATIONS—CHANGING POLICY TOWARD DEVELOPING COUNTRIES, 1953-1963* (1964); Osakwe, *Soviet Pactomania and Critical Negativism in Contemporary International Law—An Inquiry into the Soviet Drive for a Comprehensive Codification of General International Law*, 19 *LAW EASTERN EUROPE* 291 (1975).

¹⁵² KONSTITUTSIYA (Constitution) art. 30 (USSR).

¹⁵³ For a general discussion of the question whether or not there still exists a concept of "socialist international law," see Butler, "Socialist International Law" or "Socialist Principles of International Relationships?" 65 *AM. J. INT'L L.* 796 (1971); Hazard, *Renewed Emphasis Upon a Socialist International Law*, 65 *A.J. INT'L L.* 142 (1971); Osakwe, *Socialist International Law Revisited*, *AM. J. INT'L L.* 596 (1972).

¹⁵⁴ KONSTITUTSIYA (Constitution) art. 30 (USSR).

¹⁵⁵ *Id.* art. 32.

¹⁵⁶ Rather than commit itself to providing more and cheaper consumer goods to its citizens, the Soviet Union has elected to channel all its efforts into outfitting the USSR armed forces with everything they need. Based on national average take-home pay in January 1976, a Soviet worker required 37.5 months of work time in order to earn enough money to buy a compact car in Moscow. By contrast, his American counterpart required 6.9 months of work time in order to earn enough money to buy a compact car in Washington, D.C. Also in 1976, a Soviet worker had to work 190 minutes to earn enough money to buy 10 gallons of regular gasoline;

E. Equal Protection of Law

The 1977 constitution continues the tradition of the 1936 constitution with respect to equal protection of law.¹⁵⁷ It provides, *inter alia*, that all Soviet citizens are equal before the law regardless of their national origin, social or property status, race or nationality, sex, education, language, religious beliefs, nature or type of employment, place of residence, or any other personal characteristic.¹⁵⁸ On its face this provision means, among other things, that in the eyes of Soviet law a Russian or Ukrainian citizen has the same rights and obligations as does the Uzbek or Lithuanian. It means that the worker (the industrial proletarian) will receive the same treatment under law as the peasant or member of the intelligentsia. Read literally, this provision also means that no citizen may be discriminated against on account of his religious beliefs.¹⁵⁹

It is particularly worth noting that this nondiscrimination clause of the new constitution, like that of the past Soviet constitutions, applies not only to state actions, but also to actions by individual citizens and social (non-state) organizations.¹⁶⁰ Accordingly,

a U.S. worker required 91 minutes of work time. It is estimated that real income in the Soviet Union now averages \$208 a month per person. *Russia's 60 Years of Communism: Success or Failure?*, U.S. NEWS AND WORLD REPORT, October 24, 1977, at 42, 53, cited in Osakwe, *Automobilization and Soviet Law: Reflections on Certain Aspects of Soviet Automobile Law*, 20 LAW EASTERN EUROPE pt. 2, at 139, 180 n.109 (1978).

¹⁵⁷ For a general discussion of equal protection of law in the Soviet constitutional system, see Osakwe, *Equal Protection of Law Under the Soviet Constitutional System* in CONSTITUTIONAL PROTECTION OF EQUALITY 159 (T. Koopmans ed. 1975).

¹⁵⁸ KONSTITUTSIA (Constitution) art. 34 (USSR).

¹⁵⁹ It is estimated that there are 150 national and ethnic groups in the USSR today. See sources cited in note 274 *infra*. See generally Pipes, "Solving" the Nationality Problem in MAN, STATE, AND SOCIETY IN THE SOVIET UNION 503 (1970); IN QUEST OF JUSTICE: PROTEST AND DISSENT IN THE SOVIET UNION TODAY 183 (A. Brumberg ed. 1970).

In practice, Soviet treatment of ethnic and religious minorities is not without blemish. The fact that persons of Russian origin dominate the key Party and state offices is common knowledge. A Soviet Jew who is dismissed from his or her job for expressing a desire to emigrate will hardly find consolation in the constitutional guarantee of equal protection of law to all citizens regardless of religious preference. Western studies on the status of ethnic minorities and religious groups in the USSR abound. The following works discuss the subject from a legal perspective: V. CHALIDZE, TO DEFEND THESE RIGHTS: HUMAN RIGHTS AND THE SOVIET UNION (1974); Boim, *Human Rights in the USSR*, 2 REV. SOCIALIST L. 173 (1976); Boim, *The Passport System in the USSR, with Special Reference to the Status of Jews*, 2 REV. SOCIALIST L. 15 (1976); Feldbrugge, *Criminal Law and Traditional Society: The Role of Soviet Law in the Integration of Non-Slavic Peoples*, 3 REV. SOCIALIST L. 3 (1977); Uibopuu, *The International Legal Status of Soviet Minorities Today*, 2 REV. SOCIALIST L. 217 (1976).

¹⁶⁰ For example, article 134 of the RSFSR criminal code makes it a crime to violate substantially a woman's equal protection under the law by obstructing her participation in state, social, or cultural activity. RSFSR UGOL. KOD. (Criminal Code) art. 134 (1960). A violation of a woman's right to vote, run for elective

no state agency, social organization, or private citizen may discriminate against any Soviet citizen on the basis of any of the above criteria.

To understand fully the proper meaning of the equal-protection provision of article 34, one must bear in mind several other relevant principles of modern Soviet constitutional law.¹⁶¹ First, because equal treatment under law can be truly equal only if the individuals so treated are in fact equal, article 34 does not prohibit any form of governmentally designed policy of remedial or preferential treatment in favor of an historically disadvantaged social, racial, or national minority group, as long as the purpose of the policy is to offset an identifiable past discrimination against the group. Such remedial treatment does not amount to "reverse discrimination" against the historically preferred majority groups. It simply is an attempt to equalize opportunities for all members of society by tilting the scale of social justice in favor of the historically disadvantaged groups. Under this policy the Soviet government may, for example, design an affirmative action program to enable citizens of the Soviet central asiatic republics or the children of peasants to be admitted to prestigious Soviet universities.¹⁶²

office, receive free education and housing, or to work would be covered under this provision. On its face, it is not clear whether article 134 requires "state action" as a prerequisite for the crime contained therein. Soviet commentators, however, have interpreted this article to apply to the actions of any person. See KOMMENTARIJ K UGOLOVNOMY KODESKY RSFSR (A Commentary on the RSFSR Criminal Code) 298-99 (G. Anashkin, I. Karpets & B. Nikiforov eds. 1971).

¹⁶¹ What follows is a distillation of the prevailing viewpoints in modern Soviet constitutional doctrine. General discussions of each of the principles enumerated in this section of the study may be found in SOVIET CONSTITUTIONAL LAW, *supra* note 5; A. DENISOV & M. KIRICHENKO, SOVETSKOE GOSUDARSTVENNOE PRAVO (Soviet State Law) (1957); B. SCHECHETENIN AND A. GORSHENEV, KURS SOVETSKOGO GOSUDARSTVENNOGO PRAVA (Treatise of Soviet State Law) (1971); GOSUDARSTVENNOE PRAVO SSSR (State Law of USSR) (S. Kravchuk ed. 1967).

¹⁶² As a student at the Moscow State University Law School, I observed that women were noticeably underrepresented in the student body. The same situation obtained at other leading Soviet law schools. By contrast, I also observed that in Soviet medical schools men were noticeably underrepresented. Such underrepresentation of one sex is neither the result of a governmental policy to limit the admission of women into law schools or of men into medical schools, nor is it the result of a discriminatory admissions policy on the part of the respective professional schools. Rather, it is the result of the cultural upbringing of Soviet youth. The enduring myth among the Soviet people is that women generally lack the "killer instinct" to become good lawyers and that men generally lack a sufficient degree of humaneness to become good medical doctors. If and when the Soviet government decides that affirmative action would be required in order to remedy the de facto imbalance in the representation of the sexes in the law and medical schools, even though such imbalance was not the result of any exclusionary governmental policy, I foresee no constitutional impediment to such an action. In other words, the Soviet government may order remedial affirmative action whenever it establishes that a social inequity exists, regardless of the causes of such injustice. A finding of past discrimination by the schools would not be a prerequisite for ordering such affirmative action.

Second, the Soviet constitution does not prohibit certain exclusive gender-based rights as long as those rights are associated with biological or anatomical considerations and do not result in invidious discrimination against members of the other sex. For example, it is not a violation of the equal-protection provision of article 34 for the state to grant maternity leave with pay to expectant or nursing mothers. Maternity privileges are seen as peculiarly gender-based and as such do not discriminate against men. By the same reasoning, it is not viewed as violative of the spirit of article 34 for the state to lower the age of retirement for women or to impose military duty solely on male citizens of the USSR. In these three cases, the legislative choice of unequal treatment of the sexes may not successfully be challenged under the equal protection clause of the USSR Constitution.¹⁶³

Third, the equal-protection provision of article 34 elevates to the constitutional level protection of illegitimate children and unwed mothers against discrimination. It does not preclude preferential treatment of such people under certain circumstances, however.¹⁶⁴ Soviet law operates on the unarticulated assumption that all children, including illegitimates, are children of the state and that the state is the supreme father of all of its children. Since the single mother has no lawful husband to help her bring up her child the state comes to her rescue through a package legislation designed to secure her equal treatment under law.

Fourth, the equal-protection clause of article 34 applies primarily to Soviet citizens. Under article 37, aliens¹⁶⁵ and stateless

¹⁶³ The principle discussed here refers only to exclusively gender-based benign discrimination where the privilege so conferred is rationally related to the biological peculiarities of the sex favored. It is doubtful, however, that a governmental decision to exclude men from the medical professions would be justifiable under this principle. On the other hand, a governmental decision to exclude women from working in underground mines or from working in any job in which the working conditions would be detrimental to their health would be justifiable. Such an exemption is specifically granted to women under the RSFSR labor code. See RSFSR KOD. ZAK. O TRUDE (Labor Code) art. 160 (1971).

¹⁶⁴ For example, if two children are applying for only one available slot in a day care center, kindergarten, or youth camp, and if one of the applicants is the child of a single mother, Soviet policy requires giving the available slot to the single mother's child. The rationale for this action is that the other child comes from a home in which there are at least two parents to take care of him or her, whereas the second child, through no fault of his or her own, is deprived of such home care. It is the Soviet policy in this case to come to the aid of the disadvantaged child.

¹⁶⁵ See Zakon SSSR "O Grazhdanstve SSSR" (Law of the USSR "On the Citizenship of the USSR") arts. 3, 9 (1978) (effective July 1, 1979), published in full in Pravda, December 2, 1978, at 1, col. 1. The law classifies all persons resident in the USSR into three groups: citizens of the USSR (persons who are citizens as of July 1, 1979 and those who acquire Soviet citizenship pursuant to the provisions of the new law); citizens of foreign states (aliens); and stateless persons (persons who reside in the USSR and have no proof of citizenship of any nation). The new

persons who are residents of the USSR are also entitled to equal protection of the law, but only to the extent that statutes do not place specific limitations on their rights. Among the rights that aliens and stateless persons enjoy in the USSR are the right to sue and be sued in Soviet courts, and the right to assert and defend their rights under Soviet law in any agency of the Soviet state.¹⁶⁶ Among the rights they do not have are the right to vote or be voted for, the right freely to enter or leave the territory of the USSR, and guaranteed freedom of movement within the territory of the USSR.¹⁶⁷ Invariably, the scope of the rights and privileges enjoyed by aliens in the USSR is governed by the principle of reciprocity,¹⁶⁸ but under article 38 the right of asylum is granted to aliens who are "persecuted for defending the interests of the working people and the cause of peace, for participating in a revolutionary or national-liberation movement, or for their progressive sociopolitical, scientific, or other creative activity."¹⁶⁹

Regardless of the scope of the rights they enjoy, all aliens and stateless persons who are residents of the USSR are obligated to respect and observe all Soviet laws in force. This means that in those instances in which Soviet law imposes on the alien a general duty not imposed on him by the laws of his home country, he is obligated to respect and observe the Soviet law in question.¹⁷⁰ Furthermore, incompatibility of the demands of Soviet law with those of the national law of an alien's home country is not an acceptable defense in an action against the alien for his failure to observe Soviet law.¹⁷¹ Therefore, any alien who willfully takes up tempo-

law does not deal specifically with the issue of the legal status of foreigners and stateless persons. Their status may be inferred from, *inter alia*, articles 37 and 38 of the 1977 constitution. KONSTITUTSIYA (Constitution) arts. 37, 38 (USSR).

¹⁶⁶ See, e.g., RSFSR GRAZH. KOD. (Civil Code) arts. 562, 563 (1964).

¹⁶⁷ See *Polozhenie o Vyborakh v Verkhovnyi Sovet SSSR* (Statute on Elections to the USSR Supreme Soviet) arts. 2, 3 (1950). Regarding travel restrictions, see, e.g., RSFSR UGOL. KOD. (Criminal Code) art. 197-1 (1960).

¹⁶⁸ See, e.g., RSFSR GRAZH. KOD. (Civil Code) art. 562, para. 2 (1964).

¹⁶⁹ KONSTITUTSIYA (Constitution) art. 38 (USSR).

¹⁷⁰ Among the general obligations imposed on aliens as well as citizens by Soviet criminal law are the duties to rescue persons in danger, RSFSR UGOL. KOD. (Criminal Code) art. 127 (1960), to render aid to sick persons, *id.* art. 128, and to report knowledge of the commission of certain crimes by other persons, *id.* arts. 88-91, 190.

¹⁷¹ See, e.g., RSFSR UGOL. KOD. (Criminal Code) art. 4 (1960). Under this article, all persons who commit crimes on the territory of the RSFSR are subject to criminal liability in accordance with RSFSR law. This is known as the principle of territoriality in Soviet criminal law. An act that is criminal under Soviet law, and is committed on Soviet territory, is a crime even if it would not be a crime under the laws of the foreigner's home state. For a general commentary on article 4 of the RSFSR Criminal Code, see Osakwe, *Contemporary Soviet Criminal Law: An Analysis of the General Principles and Major Institutions of Post-1958 Soviet Criminal Law*, 6 GA. J. OF INT'L AND COMP. L. 437, 445 (1976).

rary or permanent residence in the USSR waives all his rights under his own national law, to the extent that the latter is incompatible with Soviet law. The waiver, however, is subject to those general principles of international conventions and customs recognized by the USSR as binding upon it. In other words, the legal personality of an alien in the USSR is determined, not by the national laws of the alien in question, but by Soviet law, as well as by the norms of any applicable international convention or international custom which is recognized as binding by the USSR. An alien, just like a Soviet citizen,¹⁷² cannot predicate his rights upon an unassimilated principle of natural law or upon the so-called general principles of the law of "civilized nations," unless these principles have been recognized by the Soviet Union as binding upon it.

F. *The Bill of Rights and Duties*

The section of the 1977 constitution dealing with the bill of rights is considerably more extensive than the corresponding sections of the earlier Soviet constitutions; Chapter 7 contains thirty separate provisions.¹⁷³ This does not mean that the Soviet citizen possesses new substantive rights or that he has been saddled with new obligations. Rather, those rights which in the past had been treated merely as statutory rights have now been elevated to the constitutional level. It is true, however, that some of the old constitutional rights have now been broadened.

Some of the individual liberties listed under the bill of rights are referred to as "rights," while others are categorized as "freedoms," suggesting that there might be a substantive difference between the so-called "rights" and "freedoms." Professor Voevodin of Moscow State University Law School, a leading Soviet constitutional scholar, dispels the notion of any intended difference between the two groups of enumerated liberties with the following explanation:

By individual rights or freedoms, in a strictly legal sense, one means the legally recognized opportunity of an indi-

¹⁷² For a general discussion of the nature and scope of the constitutional rights of Soviet citizens, see text accompanying notes 173-268 *infra*.

¹⁷³ During a joint session of the Section of State and Law of the Academy of Social Science of the Central Committee of the CPSU and the Section of State Constitution and Law of the High Party School attached to the Central Committee of the CPSU, devoted to a discussion of the draft constitution of 1977, academician D. A. Kerimov suggested that the expansion of the provisions on individual rights and civil liberties in the new constitution was motivated in part by the determination of the Soviet government to rebut the baseless western charges that human rights of individual citizens are being violated in the Soviet Union. See *Discussion of the Draft Constitution I, supra* note 9, at 5-6 (1977).

vidual to choose the form or mode of his conduct, to utilize those blessings afforded him by law both in his self-interest as well as in the interest of society at large. . . . Such legally recognized opportunities sometimes are traditionally referred to as "rights," whereas at other times they are referred to as "freedoms." Between these two concepts, it is difficult to draw any meaningful distinction, because the same opportunity may be interchangeably characterized both as right and as freedom. . . . In other words, there are two forms which express the legally recognized opportunity of an individual to choose his mode of conduct. When such an opportunity is linked with the exercise of a specific social blessing the law traditionally speaks of a "right," whereas when the reference is to a degree of choice of mode of conduct the law speaks of "freedom." Compare, for example, the right of education, the right of medical care, with the freedom of conscience and the freedom of creativity.¹⁷⁴

In discussing the rights and duties of Soviet citizens under Chapter 7, as in the case of the equal-protection provision of article 34, it is imperative to bear in mind the related fundamental principles of Soviet constitutional law.¹⁷⁵ First, Soviet law is essentially positive law, but it does not recognize natural law as a source of law. This means that the Soviet constitution does not recognize the concept of inalienable rights of man. Accordingly, all of the rights that Soviet citizens have are those that are granted to them either in the constitution or in other organic statutes that are not incompatible with the constitution. A right not specifically granted to a citizen may not be deemed to be an inherent right.

¹⁷⁴ Voevodin, *Rozhdennye Velikim Oktiabrem i Garantirovannye Sotsializmom Prava i Svobody Sovetskogo Cheloveka* (The Rights and Liberties of the Soviet Citizen as Created by the Great October Socialist Revolution and Guaranteed by Socialism), 9 Sov. Gos. i PRAVO 131, 132 (1977). As an illustration, Professor Voevodin gives the following example. Article 40 of the draft constitution speaks of the right to choose one's profession and occupation, but the opportunity embodied in this right may very well be referred to as the freedom to choose one's profession and occupation. Conversely, the freedom of scientific, technical, and artistic creation which is proclaimed in article 47 of the draft constitution may be categorized as the right of scientific, technical, and artistic creation. *Id.*

¹⁷⁵ What follows in the text is a distillation of the prevailing viewpoints in modern Soviet constitutional doctrine. A general discussion of each of the principles enumerated in this section of the study may be found in the Soviet constitutional-law treatises cited in note 160 *supra*. See also G. ANASHEKIN, *PRAVA I OB'IAZANNOSTI GRAZHDANINA SSSR* (The Rights and Duties of a Soviet Citizen) (1977); V. PATIULIN, *GOSUDARSTVO I LICHNOST' v SSSR* (The State and the Individual in the USSR) (1974); L. VOEVODIN, *KONSTITUSIONNYE PRAVA I OB'IAZANNASTI SOVETSKIKH GRAZHDAN* (The Constitutional Rights and Duties of Soviet Citizens) (1972).

Second, Marxist-Leninist theory regards individual rights and freedoms as historical categories with 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. Individual rights and freedoms are not abstract categories; therefore, they may not be deemed to have universally applicable meanings or contents. A leading Soviet authority on Soviet constitutional law articulates this underlying principle in the following passage:

On the basis of historical generalizations Marxism-Leninism demonstrates that the essence of individual rights and freedoms is rooted in the nature of the Society in which such rights originated and exist, in the character of the social relationships that exist in our society. Accordingly, rights and freedoms cannot be anything but the product of the concrete development within a given historical type of society. . . . to the extent that socialist and capitalist countries are radically different, the one from the other, by virtue of their social and state structure, it follows that the social contents of the rights and freedoms of citizens within these societies cannot be the same.¹⁷⁶

Third, it is the position of Soviet law that rights and duties constitute two sides of the same coin. In the language of article 59 of the 1977 constitution, "the exercise of rights and liberties [under the constitution and laws of the USSR] is inseparable from the performance by citizens of their duties."¹⁷⁷ Prior to the adoption of the 1977 constitution, a *Pravda* editorial articulated this general principle in the following passage:

The rights and freedoms of Soviet citizens are inseparable from their obligations, from those duties which they owe to society at large. Each Soviet citizen, on the one hand exercises the gifts of our democratic society on equal terms with all the other members of the society, but also, on the other hand, bears certain responsibilities on equal terms with all the others, both in his own self interest as well as in the interest of society. This is a fundamental law of life. Each time a citizen behaves irresponsibly with regard to his civil obligations he at the same time violates the democratic principles of the socialist way of life.¹⁷⁸

¹⁷⁶ L. VOEVODIN, *supra* note 174, at 132-33.

¹⁷⁷ KONSTITUTSIYA (Constitution) art. 59, para. 1 (USSR).

¹⁷⁸ Editorial, *Demokratiia i Ditsiplina* (Democracy and Discipline) *Pravda*, May 19, 1976, at 1, col. 1.

In what amounts to a stern warning to those individual Soviet civil libertarians who are willing to assert rights under the Soviet constitution while at the same time neglecting their constitutional duties, Leonid Brezhnev stated

It is essential that each individual should realize that the real guarantee of individual rights, in the final analysis, is provided by the strength and prosperity of the fatherland. In order to lend support to this proposition each citizen must feel a sense of responsibility before society at large and must conscientiously carry out his duties before the state and before society.¹⁷⁹

This boils down to the proposition that for every right there is a concomitant duty. It is presumed that any citizen who accepts a right granted under the law enters into a social compact with the Soviet state to fulfil the reasonable obligations that go with the right he seeks to exercise. If the citizen fails to live up to his side of the compact, the state may subject him to one or a combination of the following legal sanctions: it may prevent him from any prospective exercise of the right in question; it may demand full reparation for the rights already enjoyed by such citizen, if it is felt not to do so would be tantamount to an unjust enrichment of the citizen at the expense of society;¹⁸⁰ it may subject the citizen to criminal punishment if the breach of the social compact violates any rule of Soviet criminal law; and finally, the state may subject the individual to the appropriate administrative sanctions for his wrongful breach of his contractual obligations to the state.

Fourth, Soviet law adopts the Marxist-Leninist position that constitutional rights can be fully realized only if there are exercised responsibly. As applied, this principle means that every Soviet citizen has a constitutional duty to reconcile and subordinate his individual rights to the overriding interests of society at large. The Central Committee of the CPSU crystallized this principle in a recent policy statement: "socialist democracy presupposes the unity of rights and duties, of genuine freedom and civil responsibility,

¹⁷⁹ L. Brezhnev, Report to the May (1977) Plenum of the Central Committee of the CPSU, cited in Kudriavtsev, *Konstitutsia Obshchenarodnogo Gosudarstva* (The Constitution of the State of All the People); 11 Sov. Gos. i PRAVO 16, 17-19 (1977).

¹⁸⁰ One example of the implementation of this rule was the passage in 1972 of a law that required all Soviet citizens who wished to emigrate from the USSR to repay the state a prorated portion of the amount incurred by the state in educating them. See Ukaz (Decree) of the Presidium of the USSR Supreme Soviet, *On Reparation by USSR Citizens Who Are Taking Up Permanent Residency Abroad for State Expenses on Their Education*, 52 VED. VERKH. Sov. SSSR item 519 (1972).

[and a] harmonious reconciliation of the interests of the society and of the collective with those of the individual.”¹⁸¹ In a contemporaneous construction of this basic doctrine of Soviet constitutional law, Professor Voevodin stated:

Whatever their form, freedom and responsibility constitute an integral and indivisible unity. But freedom and responsibility necessarily co-exist in each individual freedom, as well as in each individual responsibility Thus, for example, it would be erroneous to interpret the freedom of speech and of the press in article 50 as an unrestricted freedom to exercise such a sharp weapon. The opportunity to express one's opinion presupposes not only freedom but also the responsibility of each individual who elects to exercise such right. By the same token, the Draft Constitution prohibits the prosecution of an individual who exercises his right of criticism where such right is exercised in the interest of the workers and with the aim of strengthening the socialist system By the same token the freedom (right) to choose one's profession or occupation (as contained in article 40 of the Draft Constitution) must be exercised with due regard for the superior demands of society at large.¹⁸²

Fifth, because the Soviet government is presumed to know what is best for its citizens,¹⁸³ it grants to the citizens only a limited right to pick and choose among the available constitutional and statutory rights. Thus, whereas citizens are free to exercise certain constitutional rights, they are not free to reject certain other rights which the state deems essential to their individual well-being, as well as the well-being of the society at large. As a reflection of this philosophy, article 20 provides that “[t]he free development of each

¹⁸¹ Resolution of the Central Committee of the CPSU, *On the Occasion of the 60th Anniversary of the Great October Socialist Revolution*, cited in *Editorial*, 11 *Sov. Gos. i Pravo* 3, 8 (1977).

¹⁸² L. VOEVODIN, *supra* note 174, at 138. For useful discussions of the relationship between rights and responsibilities in Soviet law, see sources cited in *id.* 141.

¹⁸³ If one accepts the general premises of the Soviet legal system—that the CPSU is the leading and guiding force of Soviet society and the nucleus of its political system, that the Soviet government acts merely as the agent of the Party, that acts of the Soviet government are generally cleared with the Party before they are promulgated, and that the Party is the self-appointed sole administrator of the affairs of the entire Soviet society—it logically follows that the Soviet government is presumed to know what best serves the interests of the Soviet people at large. Acts of the Soviet legislature in furtherance of the interests of the people are presumptively correct unless they are rescinded by the Party. For a general discussion of the role of the CPSU in the Soviet system, see notes 112-14 *supra*.

is the condition for the free development of all.”¹⁸⁴ This means that the rights under the new constitution are divided into two major categories—the peremptory rights and the dispositive rights. Citizens are free to elect to exercise their dispositive¹⁸⁵ rights, but they are not free to refuse to exercise peremptory rights.¹⁸⁶

Sixth, the rights granted to Soviet citizens under the state constitution, like all rights under Soviet statutory law, are not absolute; they are conditional rights. The first general condition under which these rights are granted is that they are intended to promote the individual self-improvement of the recipient. As such, they may not be used to promote any other goals not contemplated by law. The second condition is that if there is an irreconcilable conflict between a contemplated exercise of an individual citizen's rights and the interests of society at large, the citizen's rights must yield. According to article 39, paragraph 2, “[t]he exercise of rights and liberties of citizens must not injure the interests of society and the state or the rights of other citizens.”¹⁸⁷

Seventh, the right of the Soviet state to grant, modify, or eliminate a particular right, either from the bill of rights or as applied to a specific citizen, is absolute. This sovereign right of the Soviet lawmaker flows from the fact that Soviet law does not recognize any human right as inalienable. For example, a Soviet citizen has no inalienable right to Soviet citizenship, since under article 33 of the 1977 constitution, “[t]he grounds and procedure for acquiring or losing Soviet citizenship are defined by the Law on USSR Citizenship.”¹⁸⁸ Under the principles of Soviet positive law,¹⁸⁹ nothing

¹⁸⁴ This famous line in article 20 of the 1977 constitution is lifted directly from the Communist Manifesto of 1848. K. MARX & F. ENGELS, *THE COMMUNIST MANIFESTO* 105 (S. Moore trans. 1967).

¹⁸⁵ The great majority of the rights granted by the constitution are of a dispositive nature. See the general discussion of the rights of citizens at text accompanying notes 253-68 *infra*.

¹⁸⁶ Examples of peremptory rights under the 1977 constitution are the right to work, *KONSTITUTSIIA* (Constitution) art. 40 (USSR), which later becomes a duty to work, *id.* art. 60, and the right to education, *id.* art. 46, which is enforceable against all Soviet citizens who, under the compulsory primary and secondary education law, must exercise their right of free education at least up to and including the secondary level, *id.* art. 45, para. 2.

¹⁸⁷ *Id.* art. 39, para. 2 (USSR).

¹⁸⁸ *Id.* art. 33, para. 2.

¹⁸⁹ For a general discussion of the legal aspects of Soviet citizenship, see V. SHEVTSOV, *SOVETSKOE GRAZHDANSTVO* (Soviet Citizenship) (1965); Ginsburgs, *Citizenship*, in 1 *ENCYCLOPEDIA OF SOVIET LAW* 108-11 (F. Feldbrugge ed. 1973); Shevtsov, *Grazhdanstvo* (Citizenship), in *ENTSTIKLOPEDIЧЕСКИЙ СЛОВАРЬ ПРАВОВЫХ ЗНАНИЙ—SOVETSKOE PRAVO* (Encyclopedia of Soviet Law) 90-91 (S. Bratus, N. Zhogin, P. Kovanov, V. I. Terebilov, N. Tumanova, & V. Chkhikvadze eds. 1965).

could prevent the appropriate agency of the Soviet state from stripping a particular Soviet person of his citizenship as a measure of political sanction.¹⁹⁰ The Soviet lawmaker, acting under the guidance of the CPSU, determines not only the rights that Soviet citizens may enjoy, and the scope of these rights, but also who may enjoy them and under what conditions the rights may be exercised by their recipients.

Finally, within the hierarchy of constitutional rights, social and economic rights take precedence over civil and political rights. The Soviet constitutional system operates on the assumption that the possession of social and economic rights is a prerequisite to any meaningful exercise of civil and political rights. This notion manifests itself in the fact that in practice the Soviet citizen actually enjoys more social and economic rights than his American counterpart, while the civil and political rights of a Soviet citizen are very limited in comparison to those of his American counterpart.¹⁹¹

For the purpose of orderly discussion of the specific provisions of the Soviet bill of rights and duties, the following analysis divides the provisions of chapter 7 into three major groups: social, economic, and cultural rights; civil and political rights; and duties of citizens.¹⁹²

1. Social, Economic and Cultural Rights of Citizens

Under article 40 of the 1977 constitution all Soviet citizens have a right to work.¹⁹³ This is interpreted to mean the right to

¹⁹⁰ The 1978 law "On The Citizenship of the USSR" provides that a Soviet citizen may be deprived of his citizenship in extreme situations by decision of the Presidium of the USSR Supreme Soviet if such citizen engages in activities that are derogatory to the esteemed honor of a Soviet citizen and either defame the prestige of the USSR or damage the state security of the USSR. Zakon SSSR "O Grazhdanstve SSSR" (Law of the USSR "On the Citizenship of the USSR") art. 18 (1978). In recent years the Presidium of the USSR Supreme Soviet has invoked this awesome power against Alexander Solzhenitsyn, Svetlana Alelueva (Joseph Stalin's daughter), and a host of other Soviet dissidents. Upon stripping such persons of their Soviet citizenship, the Soviet government usually repossesses their Soviet passports, expels them from the USSR, and thereby places them in perpetual exile from their native country.

¹⁹¹ See Berman, *Human Rights in the Soviet Union*, 11 HARV. C.R.-C.L. L.J. 333, 334 (1965).

¹⁹² For a general discussion of the nature and scope of human rights granted under Soviet law, see Berman, *supra* note 191; Towe, *Fundamental Rights in the Soviet Union*, 115 U. PA. L. REV. 1251 (1967). For a general discussion of the nature and scope of the human rights enjoyed by aliens in the USSR, see Sherman, *The Civil and Political Rights of Aliens in the U.S.S.R.: A Survey of Soviet Legislation*, 11 TEX. INT'L L.J. 571 (1976); Shevtsov, *The Legal Status of Foreigners in the U.S.S.R.*, 5 DEN. J. INT'L L. & POL'Y 273 (1975). See also M. BOGUSLAVSKI & A. RUBANOV, PRAVOVOE POLOZHENIE INOSTRANTSEV V SSSR (The Legal Status of Foreigners in the USSR) (2d ed. 1962); M. ORZIKH, LICHNOSTI I PRAVO (The Individual and the Law) (1975).

¹⁹³ KONSTITUTSIYA (Constitution) art. 40, para. 1 (USSR).

receive guaranteed work and to be remunerated in accordance with its quality and quantity, but not below the minimum wage set by law.¹⁹⁴ In what amounts to a constitutional codification of a principle of Soviet labor law, article 40 also provides that citizens have a right to choose their occupations and type of employment in accordance with their primary vocation, capabilities, vocational training, and education.¹⁹⁵ Realizing that a decision by a great majority of Soviet citizens to exercise this right could lead to a disruption of the state's plans for the equitable distribution of manpower, article 40 immediately balances the citizen's choice with a provision stating that the exercise of the above right is "subject to [overriding] consideration for the needs of society."¹⁹⁶ The citizen's right to work, of course, creates a duty for the state to provide work for needy citizens. Article 40, paragraph 2, stipulates the ways in which the Soviet state hopes to meet this obligation.¹⁹⁷

The right to rest is secured for all citizens under article 41.¹⁹⁸ This is guaranteed, *inter alia*, through "the provision of annual paid vacations and weekly days off; the expansion of the network of cultural-enlightenment and health-improvement institutions; the large-scale development of sports, physical culture and tourism; the creation of favorable opportunities for rest at one's place of residence and other conditions conducive to the rational use of free time."¹⁹⁹ It goes without saying that the right to leisure may be enjoyed only by those who exercise their right to work. Put straightforwardly, article 41 contemplates that he who does not work, neither shall he rest.²⁰⁰

¹⁹⁴ See *id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Work is to be provided "by the socialist economic system, the steady growth of productive forces [of society], free vocational instruction, the improvement of labor skills and training in new specialties, and the development of the systems of vocational and job placement." *Id.* art. 40, para. 2 (emphasis omitted).

¹⁹⁸ *Id.* art. 41, para. 1. The right to paid vacation is generally referred to in Soviet law as the right to rest.

¹⁹⁹ *Id.*

²⁰⁰ The Soviet constitution does not specifically provide that he who does not work, neither shall he rest. Such a conclusion may reasonably be inferred, however, from the general provisions of article 41, paragraph 1 (granting the right to rest and leisure); article 41, paragraph 2 (listing forms of rest that obviously are available only to those who are working); article 41, paragraph 3 (establishing the framework for collective-farm members' rest); article 40, paragraph 1 (granting the right to work); and article 60 (imposing a general duty to work). It is interesting to note that the phrase, "He who does not work, neither shall he eat," which was contained in article 12 of the 1936 constitution, does not appear in the successor article 60 of the 1977 constitution. The general notion persists under the new constitution, however, that he who does not work, neither shall he eat.

Under modern Soviet labor law,²⁰¹ a worker may neither forego his annual vacation nor demand monetary payment in lieu of his vacation. The state's interest in each worker's rest and replenishment of his working abilities supersedes the individual worker's right to waive his annual vacation or to exchange it for money. Also, Soviet labor law²⁰² severely limits overtime by making it extremely difficult for the worker to forego his weekend rest in exchange for overtime pay.

Article 42 secures for all Soviet citizens the preemptory right to health care through the provision of free medical assistance by state public-health institutions.²⁰³ Under the Soviet system of socialized medicine all persons who need medical or psychiatric care receive it free of charge.²⁰⁴ Because the state has a compelling interest in the physical and mental health of its citizens, it is doubtful if under Soviet law a citizen has a constitutional right to refuse treatment for a diagnosed illness. It makes no difference whether the person who has been diagnosed to be mentally ill is also deemed to be dangerous either to himself or to society. The mere fact that he is mentally ill is sufficient basis for his commitment to be treated.²⁰⁵

The article 42 right is complemented by the right to material security, which entitles all citizens to "material security in old age, in case of illness, and in the event of complete or partial disability or loss of breadwinner."²⁰⁶ The present Soviet social-security system²⁰⁷ covers virtually all Soviet citizens—workers, salaried employees, peasants, and members of their families.

²⁰¹ Under articles 66 and 67 of the labor code of the RSFSR, each worker is entitled to an annual vacation of not less than fifteen days at half pay. RSFSR KOD. ZAK. O TRUDE (Labor Code) arts. 66, 67 (1971).

²⁰² Under article 54 of the labor code of the RSFSR, it is unlawful for managers to require overtime work. The exceptional situations in which overtime work may be permitted are listed in article 55 of the labor code, subject to the further limitation in article 56. *Id.* arts. 54-56 (1971).

²⁰³ KONSTITUTSIYA (Constitution) art. 42 (USSR).

²⁰⁴ *Id.*

²⁰⁵ The criminal code of the RSFSR provides for commitment of insane persons who commit crimes. RSFSR UGOL. KOD. (Criminal Code) arts. 58, 59 (1960). The procedure for criminal commitment is spelled out in the code of criminal procedure. RSFSR KOD. UGOL. PRO. (Code of Criminal Procedure) arts. 403-413 (1960). The procedure for civil commitment of the mentally ill is stated in the code of civil procedure. RSFSR KOD. GRAZH. PRO. (Code of Civil Procedure) arts. 258-263 (1964).

²⁰⁶ KONSTITUTSIYA (Constitution) art. 43, para. 1 (USSR).

²⁰⁷ The statutory framework for the Soviet social security system is contained in arts. 236-243 of the RSFSR labor code, as well as in the corresponding provisions of the labor codes of the other fourteen union republics of the USSR. *See* RSFSR KOD. ZAK. O TRUDE (Labor Code) arts. 236-243 (1971).

The right of citizens to guaranteed housing, formerly solely a principle of Soviet administrative law, also has been elevated to the level of a principle of constitutional law. Article 44 provides that all USSR citizens have the right to housing.²⁰⁸ This right is secured through construction of low-rent local council housing, encouragement of the construction of dwelling houses not only by cooperative and other social organizations, but also by individual citizens, and allocation of housing to citizens in local council houses according to the principle of "fair allocation."²⁰⁹ Article 44 also provides that citizens must take good care of the housing provided them.

A peremptory right of Soviet citizens to education is recognized under article 45 of the 1977 constitution.²¹⁰ On the one hand, it provides that all USSR citizens have a right to education; on the other hand, it makes primary and secondary education compulsory. Education at all levels—from kindergarten through the university—is free. Students at these institutions are issued free textbooks.²¹¹ Moreover, students at post-secondary schools are paid monthly subsistence allowance by the state.²¹²

The right of Soviet citizens to free education, however, does not imply a right to be admitted to any particular educational institution of their choice. For example, an applicant for admission to the Moscow State University School of Law who fails to pass the required entrance examination and consequently is rejected by the school may not claim that he has been discriminated against. The right to free education merely means that anyone who meets all the constitutionally valid admissions requirements and passes the entrance examination may not be denied admission. It does not mean, however, that a student admitted to the institution cannot later be dropped for failure to meet academic requirements.

For the first time in Soviet history the new constitution grants to Soviet citizens a user's right to all Soviet cultural achievements.²¹³ This right, according to article 46, is guaranteed by granting to Soviet citizens general, although not necessarily free, access to the rich art collections in all state museums, art galleries, and exhibits; by using the radio, television, and newspaper networks as means of

²⁰⁸ KONSTITUTSIYA (Constitution) art. 44 (USSR).

²⁰⁹ *Id.*

²¹⁰ *Id.* art. 45.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* art. 46.

cultural education; by holding the price of books and periodicals at a level that can be comfortably afforded by all; by operation of a network of libraries; and, finally, by promotion of cultural exchanges with foreign countries. All of this is consistent with the Leninist idea that art and culture belong to the people.²¹⁴

In another new provision, article 47 grants to all citizens the "freedom of scientific, technical and artistic creation."²¹⁵ This right, however, is not absolute. The Soviet political system operates on the philosophical premise that science, technology, and art must serve the needs and interests of the people and promote the political goals of the society. An artistic creation that does not project socialist realism is not within the coverage of article 47. By the same reasoning, research into dehumanizing technology or any nonsocialist uses of science would not come under its protective umbrella.²¹⁶ The state reserves the right to determine on a case-by-case basis whether a particular trend in scientific and technological research or any form of artistic expression is compatible with the spirit of article 47.²¹⁷

2. Civil and Political Rights of Citizens

The first of the numerous civil and political rights that the new constitution grants to Soviet citizens is the right to participate in the administration of the affairs of state.²¹⁸ This right may be exercised in one of many ways: participation in the discussion and adoption of new laws and decisions of nationwide and local importance; voting in all elections and seeking to hold elective office at all levels of government; participation in the system of people's control which

²¹⁴ For useful discussions of the ideological linkage between art and socialism and between culture and the masses, see Program of the CPSU 117-19, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House edition, Moscow 1961).

²¹⁵ KONSTITUTSIIA (Constitution) art. 47 (USSR).

²¹⁶ The Program of the CPSU proclaims the attitude of the Party toward science and scientific research in the following passage:

Under the socialist system of economy, scientific and technical progress enables man to employ the riches and forces of nature most effectively in the interests of the People. . . . Application of science in production becomes a decisive factor of rapid growth of the productive forces of society. Scientific progress and the introduction of scientific achievements into the economy will remain an object of special concern to the Party.

Program of the CPSU 113-14, 22d Congress of the CPSU, Oct. 13, 1961 (Foreign Language Publishing House edition, Moscow 1961). The practical implication of this policy is that scientific investigations in the USSR must further one goal: the construction of socialism.

²¹⁷ *Id.*

²¹⁸ KONSTITUTSIIA (Constitution) art. 48 (USSR).

is designed to oversee the activities of all state agencies and public organizations; and membership in social organizations that exercise oversight powers over the activities of state agencies.²¹⁹ This right is not new to the Soviet legal system; it previously had been secured under statutory law.²²⁰

Article 49 grants to Soviet citizens the right to criticize constructively the actions of state and public organizations, as well as the public actions of officials of these agencies.²²¹ Any agency or official publicly criticized is obligated by law "to examine proposals and statements by citizens, to reply to them, and to take necessary steps."²²² In an effort to encourage citizens to exercise this right, article 49, paragraph 3, stipulates that no one shall be persecuted for his constructive criticism of state and social organizations and their officials.²²³ It should be particularly borne in mind here that the protection afforded by article 49 extends only to *constructive* criticism. The protection, as can be expected, does not extend to irresponsible, malicious, vindictive, or divisive criticism of the actions of these agencies or officials. It is expected that the relevant provisions of Soviet criminal law and the law of torts will provide adequate sanctions against any such unprivileged criticism.²²⁴

Some of the broadest civil and political freedoms ever granted in the USSR are contained in article 50. It grants to all Soviet citizens freedom of speech, freedom of the press, freedom of assembly, and freedom to hold mass meetings and public demonstrations.²²⁵ Paragraph 2 of article 50 states that "the exercise of these political freedoms is ensured by placing public buildings, streets, and squares at the disposal of the working people and their organizations, by

²¹⁹ *Id.*

²²⁰ The right of Soviet trade-union organizations to participate in the administration of the enterprise, factory, or institution is secured under articles 225 through 235 of the RSFSR labor code, as well as in the corresponding provisions of the labor codes of the other fourteen union republics. See RSFSR KOD. ZAK. o TRUDE (Labor Code) arts. 225-235 (1971).

²²¹ KONSTITUTSIYA (Constitution) art. 49 (USSR).

²²² *Id.* art. 49, para. 2.

²²³ *Id.* art. 49, para. 3.

²²⁴ For example, the RSFSR criminal code, RSFSR UGOL. KOD. (Criminal Code) (1960), criminalizes anti-Soviet agitation and propaganda, *id.* art. 70; defamation, *id.* art. 130; insult, *id.* art. 131; circulation of fabrications known to be false which defame the Soviet state and social system, *id.* arts. 190-191; insulting a representative of authority or representative of the public fulfilling duties for the protection of public order, *id.* art. 192; and insulting a policeman or a people's guard on duty, *id.* arts. 191-192. By the same token, the RSFSR civil code, RSFSR GRAZH. KOD. (Civil Code) (1964), makes it a tort to slander, *id.* art. 7, para. 1, or libel, *id.* art. 7, para. 2, another. See the general discussion in note 228 *infra*.

²²⁵ KONSTITUTSIYA (Constitution) art. 50, para. 1 (USSR).

the broad dissemination of information, and by the opportunity to use the press, television and radio.”²²⁶

A critical qualification of these rights is contained in the first phrase of paragraph 1 of article 50. It states that they are granted “in accordance with the people’s interests and for the purpose of strengthening and developing the socialist system . . .”²²⁷ It follows that none of these rights is absolute either in theory or in fact. Freedom of speech is subject to checks provided by norms of Soviet criminal law and the law of torts.²²⁸ Freedom of the press is subject to the exercise of editorial discretion by the newspaper.²²⁹ Freedom of assembly does not mean that those who plan to assemble are exempt from any relevant state laws requiring the procurement of an official permit before making use of public accommodations or open spaces for public assemblies or meetings.²³⁰ Freedom to dem-

²²⁶ *Id.* art. 50, para. 2.

²²⁷ *Id.* art. 50, para. 1.

²²⁸ Various provisions of Soviet law afford remedies to the victim of slanderous statements. For example, article 7 of the RSFSR civil code affords a civil tort remedy. RSFSR GRAZH. KOD. (Civil Code) art. 7 (1964). Similarly, articles 130 and 131 of the RSFSR criminal code make it a crime to defame or insult any person. RSFSR UGOL. KOD. (Criminal Code) arts. 130-131 (1960). See note 224 *supra*. Criminal prosecution under articles 130 and 131 of the RSFSR criminal code does not preempt the right of the victim to bring a separate suit in tort to recover damages.

It is also a crime to make a report known to be false charging someone with the commission of a crime. *Id.* art. 180. These and other provisions of Soviet statutory law are deemed to be limitations on citizens’ constitutional right of free speech. See KONSTITUTSIA (Constitution) art. 50 (USSR).

²²⁹ *Pravda* is the official organ of the Central Committee of the CPSU. The editorial policy of the newspaper is established by the Central Committee of the CPSU. The immediate implementation of that policy is entrusted to a board of editors who serve at the pleasure of the Central Committee of the Party. As the official mouthpiece of the Party, the newspaper serves as a formidable weapon for propagating the Party line. The size of the newspaper (it generally has only six pages per issue) and the need to maximize the educational impact of the information contained therein of necessity compel the editorial board to print only all the news that is ideologically fit to print. The same constraints operate over the editorial decisions of *Izvestiia*, the newspaper that is the official organ of the Supreme Soviet of the USSR.

²³⁰ The authority to issue permits for the holding of public meetings, assemblies, and conferences is generally vested in the local authorities or in special commissions organized to oversee the activities of identifiable groups of private citizens. For example, article 20 of the RSFSR Law on Religious Associations provides that “religious societies and groups of believers may convene religious congresses and conferences only with the permission, issued separately in each case, of the Council of Affairs of the Religions of the Council of Ministers of the USSR”. RSFSR Zakon o Religioznykh Obedeneniakh (RSFSR Law on Religious Associations) art. 20 (1929), amended by Decree of the Supreme Soviet of the RSFSR, June 23, 1975, 27 *VED. VERKH. SOV. RSFSR* item 572 (1975). This means that even after a religious association has been properly registered as required under articles 2 and 4 of this Law, it would still need to seek and receive a permit to convene a conference, a public meeting, a congress, or an assembly each time it plans to hold such an event.

onstrate does not mean freedom to demonstrate publicly against the policies of the Soviet government or of the CPSU.²³¹ Rather, it means freedom to join with one's fellow workers to manifest public support for the policies of the state and Party.²³² Very simply, Soviet law stresses an elementary fact of any Marxian socialist legal system: the bill of rights in the constitution is not a suicide pact;²³³ its guarantees do not extend to those who oppose the government of the state.

Article 51 grants to all Soviet citizens the right of association.²³⁴ This means only the right of citizens to form and associate with a public organization whose goals are consistent with the purposes of a socialist state and the construction of a communist society. There is no constitutionally protected right to join or form an organization whose goals are anti-Soviet or anti-communist.²³⁵ The laws on the registration of public organizations²³⁶ are designed to prevent abuses of the right of association.

²³¹ Unauthorized public demonstration against the policies of the Soviet government conceivably is prosecutable under the omnibus provisions of articles 190 through 193 (organization of, or active participation in, group actions which violate public order) and/or article 206 (hooliganism, that is, intentional actions violating public order in a coarse manner and expressing a clear disrespect toward society) of the RSFSR criminal code. RSFSR UCOL. KOD. (Criminal Code) arts. 190-193, 206 (1960).

²³² Soviet law does not tolerate any form of disruptive, even though civil, disobedience or any public manifestation of dissatisfaction with the policies of the Party or of the Soviet government in such a manner that it could play into the hands of the "enemies of the Soviet state". (The latter phrase is a Soviet euphemism for the western news media and their "collaborators"). Such actions conceivably could be criminal. For a general discussion of the relevant criminal laws governing such actions, see notes 230-31 *supra*. Article 49 of the USSR Constitution specifically lists avenues that are available to those individuals who wish to criticize or make suggestions regarding the operations of the government and/or the various social organizations. KONSTITUTSIYA (Constitution) art. 49 (USSR). Strictly construed, this provision would not condone a complaint to a foreign embassy or foreign newspaper correspondent in Moscow, or, in fact, to any foreign organization that could use such information for purposes of anti-Soviet propaganda. But, on the other hand, Soviet citizens with legitimate complaints about the workings of the various state or social organizations may express their feelings in the form of "letters to the editor" in any of the national or local newspapers. *Pravda* and *Izvestiia* periodically publish such letters. Obviously, the decision to publish any letter is subject to the discretion of the board of editors of the newspaper in question.

²³³ For the general discussion of the scope and limitations of the bills of rights in Marxian socialist constitutions, see *Osakwe, supra* note 63, at 190-204.

²³⁴ KONSTITUTSIYA (Constitution) art. 51 (USSR).

²³⁵ Under the RSFSR criminal code, it is a crime to form or join any anti-Soviet organization under the guise of exercise of freedom of association. RSFSR UCOL. KOD. (Criminal Code) arts. 70, 190-193 (1960). The criminal codes of the other fourteen union republics contain similar provisions.

²³⁶ In an effort to exercise effective control over the operation of churches in the RSFSR, a law was passed in 1929 requiring all churches, as a prerequisite to operation, to register with a designated state agency. See RSFSR Zakon o Religioznykh Obedeneniiakh (RSFSR Law on Religious Associations) (1929), *amended*

The freedom of conscience granted in article 52 is equally laden with limiting qualifications.²³⁷ It grants to individual citizens the right to profess any religious beliefs or none at all; the right to conduct religious worship services; and the right to abet the propagation of atheism. Article 52, however, does not grant the right to engage in religious propaganda; the right to incite hostility and hatred in connection with the exercise of one's religious beliefs; or the right to operate religious or parochial schools on the territory of the USSR.²³⁸ Anyone who, under the guise of practicing his religion, violates Soviet public order may be subject to criminal²³⁹ and/or civil sanctions.²⁴⁰

Article 52 provides that churches are separate from the state and all schools are separate from the churches.²⁴¹ Thus there may be neither a state religion nor any type of religiously affiliated school.

Article 53 merely codifies what formerly had been a principle of Soviet family law—that the family is the basic unit of the Soviet society and as such is protected by the state.²⁴² Article 53 further

by Decree of the Supreme Soviet of the RSFSR, June 23, 1975, 27 VED. VERKH. SOV. RSFSR item 572 (1975). An English language translation of this law, as amended, may be found in *The RSFSR Law on Religious Associations of 1929*, 1 REV. SOCIALIST L. 223 (1975). A similar law exists in all other union republics. For an English language translation of the Estonian statute, see Timmerman's *The Estonian Statute on Religious Associations of 22 April 1977: A Note*, 4 REV. SOCIALIST L. 91 (1978).

²³⁷ KONSTITUTSIYA (Constitution) art. 52 (USSR).

²³⁸ The RSFSR Law on Religious Associations provides that "the teaching of religious cults is admissible only in ecclesiastical educational institutions according to the established procedure" and that "the teaching of any kind of religious cult in educational institutions is inadmissible". RSFSR Zakon o Religioznykh Obedeneniakh (RSFSR Law on Religious Associations) art. 18 (1929), amended by Decree of the Supreme Soviet of the RSFSR, June 23, 1975, 27 VED. VERKH. SOV. RSFSR item 152 (1975). See note 236 *supra*.

²³⁹ See RSFSR UGOL. KOD. (Criminal Code) art. 227 (1960).

²⁴⁰ See RSFSR Zakon o Religioznykh Obedeneniakh (RSFSR Law on Religious Associations) (1929), amended by Decree of the Supreme Soviet of the RSFSR, June 23, 1975, 27 VED. VERKH. SOV. RSFSR item 572 (1975); note 236 *supra*. This law imposes many limitations on the exercise of the freedom of conscience by properly registered religious associations. The essence of all of these limitations is to compel the associations to conform their activities with Soviet public policy. Violation may result in the removal of the offender from the list of registered religious associations. *Id.* art. 43.

²⁴¹ KONSTITUTSIYA (Constitution) art. 52 (USSR).

²⁴² *Id.* art. 53. See Fundamental Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, as adopted by the USSR Supreme Soviet, June 28, 1968, 27 VED. VERKH. SOV. SSSR item 241 (1968). An English language translation of this law may be found in W. BUTLER, *supra* note 1, at 451-62. A similar recognition is accorded to the family in the family codes of all the union republics. See, e.g., RSFSR KOD. O BRAKE I SEM. (Family Code) art. 1 (1969). This provision of the RSFSR, family code, like the corresponding provisions of the family codes of the other fourteen union republics, is a verbatim reproduction of article 1 of the 1968 Fundamental Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, *supra*.

provides that marriage is the method of creating a family; that marriage shall be based on the voluntary agreement of the prospective spouses; and that spouses shall enjoy equal rights throughout the duration of their marriage.²⁴³

Paragraph 2 of article 53 seems to suggest that the sole recognized purpose of a Soviet marriage is the procreation of children. It stresses the concern of the state for the family and declares that this concern is manifested in the following ways: creation and development of an extensive network of children's institutions; payment of special childbirth allowances to the nursing mother; and payment of an inducement allowance and benefits for persons with large families. As further encouragement of population growth through families, contemporary Soviet tax law levies a six per cent income tax on single men and childless families.²⁴⁴

Three basic protections against unlawful actions of overzealous law-enforcement agencies²⁴⁵ are provided to Soviet citizens in articles 54 through 56: protection against unlawful arrest;²⁴⁶ protection against unlawful entry into the home;²⁴⁷ and protection of the confidentiality of correspondence, telephone conversations, and telegraphic communications.²⁴⁸

The last of the individual rights granted by the 1977 constitution is the citizen's right to file a complaint against actions of state or social organizations.²⁴⁹ Article 58, paragraph 1, grants standing to any citizen aggrieved by the actions of a state agency or social organization to seek redress "according to the procedure and within the time periods established by law."²⁵⁰ Paragraph 2 of the same

²⁴³ KONSTITUTSIA (Constitution) art. 53, para. 1 (USSR).

²⁴⁴ Nalog na Kholostiakov, Odinokikh i Malosemeinykh Grazhdan SSSR (Tax on Bachelors, Single Women and Childless Citizens of the USSR), 28 VED. VERKH. Sov. SSSR item 45 (1957). The law was amended in 1957, effective the following year, to exempt all single women from the tax. Other exempt groups are students, until the age of 25; men over the age of 50; persons in active military service; war invalids and their spouses; persons who lost their children in combat during World War II; and persons who for medical reasons are incapable of producing children.

²⁴⁵ These protections, like all the others in the Soviet bill of rights, are enforceable against private citizens, as well as against social organizations and their officials. For a discussion of criminal-law protection of individual rights in the Soviet Union, see generally A. BELLAVSKII & N. PRUDVOROV, OKHRANA CHESTI I DOSTOINSTVA LICHNOSTI v SSSR (The Protection of the Honor and Dignity of the Individual in the USSR) (1971); A. KUZNETSOV, UGOLOVNO-PRAVOVAIA OKHRANA INTERESOV LICHNOSTI v SSSR (Criminal Law Protection of the Interests of the Individual in the USSR) (1969).

²⁴⁶ KONSTITUTSIA (Constitution) art. 54 (USSR).

²⁴⁷ *Id.* art. 55.

²⁴⁸ *Id.* art. 56. See Osakwe, *Due Process of Law Under Contemporary Soviet Criminal Procedure*, *supra* note 12.

²⁴⁹ KONSTITUTSIA (Constitution) art. 58 (USSR).

²⁵⁰ *Id.* art. 58, para. 1.

article states that anyone aggrieved by an illegal or unauthorized act of an individual official of such an organization may seek legal redress in a court of law.²⁵¹ These provisions may be interpreted to mean that redress of official misconduct may be sought under paragraph 1 against the state or social organization that employs the official, but redress under paragraph 2 must be sought directly against the defendant officer. Article 58, paragraph 3, effectively waives the immunity of Soviet governmental units from tort liability arising from the actions of state agencies or their officials.²⁵²

3. Fundamental Duties of Citizens Under the Constitution

Among the fundamental duties imposed on all Soviet citizens are the following: to observe the USSR Constitution and laws;²⁵³ to respect the rules of socialist communal living;²⁵⁴ to conduct oneself in a manner that is becoming of the high honor and dignity of a Soviet citizen;²⁵⁵ to work;²⁵⁶ to protect and enhance socialist property;²⁵⁷ to safeguard the interests of the Soviet state and to help strengthen its might and prestige;²⁵⁸ to defend the socialist fatherland;²⁵⁹ to serve in the armed forces;²⁶⁰ to respect the national dignity of other citizens and to strengthen and promote friendship among the peoples of various nationalities living in the Soviet Union;²⁶¹ to respect the rights and legitimate interests of other persons;²⁶² to show intolerance for any manifestation of antisocial behavior by others;²⁶³ and, finally, to help in every possible way to safeguard public order.²⁶⁴

Article 66 imposes a special duty on Soviet parents to rear their children as worthy members of a socialist society.²⁶⁵ Conversely, Soviet children have a constitutional duty to show concern for,

²⁵¹ *Id.* art. 58, para. 2.

²⁵² *Id.* art. 58, para. 3.

²⁵³ *Id.* art. 59.

²⁵⁴ *Id.* art. 59, para. 2.

²⁵⁵ *Id.*

²⁵⁶ *Id.* art. 60.

²⁵⁷ *Id.* art. 61.

²⁵⁸ *Id.* art. 62.

²⁵⁹ *Id.* art. 62, para. 2.

²⁶⁰ *Id.* art. 63.

²⁶¹ *Id.* art. 64.

²⁶² *Id.* art. 65.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.* art. 66.

and render assistance to, their parents in need.²⁶⁶ Whereas article 67 obliges all Soviet citizens to protect nature and to safeguard its riches,²⁶⁷ article 68 imposes upon all citizens the constitutional duty to preserve historical monuments and other objects of cultural value.²⁶⁸ Finally, article 69 imposes on Soviet citizens an "internationalist" duty to promote international friendship and cooperation among nations.²⁶⁹

G. Problems of Federalism in the 1977 Constitution

The Union of Soviet Socialist Republics, as a union of independent Soviet socialist republics, was formed in 1922. The original members of the union were the Russian Soviet Federal Socialist Republic (RSFSR),²⁷⁰ the Ukraine, Byelorussia, and the Trans-Caucasian Federation,²⁷¹ which consisted of Soviet Azebaidjan, Soviet Armenia, and Soviet Georgia.²⁷² Other socialist states were admitted to the union later.²⁷³

The choice of the federal structure is the Soviet Union's solution to its nationality problem. It is estimated that there are over 150 national and ethnic groups in the USSR today.²⁷⁴ It is expected, however, that as the Soviet society advances towards communism, there will be a fusion of all Soviet nationalities into one Soviet people.²⁷⁵ The first stage of this two-step progression, in the

²⁶⁶ *Id.*

²⁶⁷ *Id.* art. 67.

²⁶⁸ *Id.* art. 68.

²⁶⁹ *Id.* art. 69.

²⁷⁰ Soviet Russia was reorganized into a socialist federation, the RSFSR, consisting of the remnants of what was once tsarist Russia, in January 1918. For a general discussion of the formation of a new Soviet state from the disintegrated tsarist continental empire, see O. CHESTIAKOV, *PROBLEMY DEMOKRATII I FEDERALIZMA V PEROI SOVETSKOI KONSTITUTSII* (The Problems of Democracy and Federalism in the First Soviet Constitution) (1977).

²⁷¹ The Trans-Caucasian Federation was reorganized in 1936 into the three separate Soviet socialist republics of Azerbaidjan, Georgia, and Armenia. They were admitted to the USSR in the same year.

²⁷² For a general discussion of the formation of the USSR, see Kirichenko, *Soiuz Sovetskikh Sotsialisticheskikh Respublik* (The Union of Soviet Socialist Republics), in *ENTSIKLOPEDICHESKII SLOVAR' PRAVOVYKH ZNANIY-SOVIETSKOE PRAVO* (Encyclopedia of Soviet Law) 435 (S. Bratus, N. Zhogin, P. Kovanov, V. Terebilov, N. Tumanova & V. Chkhikvadze eds. 1965).

²⁷³ Uzbekistan and Turkmenia were admitted in 1925, Tadjikistan in 1929, Kazakhstan, Kirgizia, Azerbaidjan, Georgia and Armenia in 1936, and Moldavia, Latvia, Lithuania, and Estonia in 1940.

²⁷⁴ See *WORLD ALMANAC AND BOOK OF FACTS* 585 (1979). See generally G. CARTER, *THE GOVERNMENT OF THE SOVIET UNION* 17 (2d ed. 1967); D. LANE, *POLITICS AND SOCIETY IN THE USSR* 426 (1970).

²⁷⁵ See *KONSTITUTSIIA* (Constitution) preamble, para. 7 (USSR). The Program of the CPSU, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House edition, Moscow 1961), offers the most comprehensive and authoritative

view of the drafters of the 1977 constitution, seems to have been reached. As noted above,²⁷⁶ the preamble to the new constitution proclaims that the USSR today "is a society of mature socialist social relations, in which a new historical community of people—the Soviet people—has come into being on the basis of the drawing together of all classes and social strata and the juridical and actual equality of all nations and nationalities and their fraternal cooperation."²⁷⁷ Thus, the Soviet federation will not be dismantled until there has been a total fusion of all the nationalities and ethnic groups in the USSR.

Accordingly, article 70 of the 1977 constitution declares that the USSR is "a unitary, federal and multinational state, formed on the basis of the principle of socialist federalism and as a result of the free self-determination of nations and the voluntary union of equal Soviet Socialist Republics."²⁷⁸ In fact, the USSR is a federation of federations which is organized into a hierarchy of sovereignties. It consists of fifteen union republics,²⁷⁹ twenty autonomous Soviet republics,²⁸⁰ and eight autonomous provinces.²⁸¹

Under article 86, an autonomous province, which is the lowest level of sovereignty, is part of a union republic or of a territory. The laws of an autonomous province are adopted by the Supreme Soviet of a union republic on the basis of a representation submitted by the autonomous province's Soviet of People's Deputies.²⁸² Each autonomous republic is also part of a union republic,²⁸³ but

definition of communism. In its relevant provisions, it refers to communism as "a classless social system with one form of public ownership of the means of production and full social equality of all members of society." *Id.* 59. "Under communism the nationalities [of the USSR] will draw closer and closer together in all spheres on the basis of a complete identity of economic, political and spiritual interests, of fraternal friendship and cooperation." *Id.* 61. As a "free association of socially conscious working people," *id.* 59, it is expected that communism would fuse all socially, economically, and culturally different groups into one. Economic classes would disappear, and nationalities would converge.

²⁷⁶ See text accompanying note 12 *supra*.

²⁷⁷ КОНСТИТУЦИЯ (Constitution) preamble, para. 7 (USSR).

²⁷⁸ *Id.* art. 70, para. 1.

²⁷⁹ The fifteen union republics of the USSR today are RSFSR, Ukraine, Byelorussia, Uzbekistan, Kazakhstan, Georgia, Azerbaidjan, Lithuania, Moldavia, Latvia, Kirgizia, Tadjikistan, Armenia, Turkmenia, and Estonia. КОНСТИТУЦИЯ (Constitution) art. 71 (USSR).

²⁸⁰ An autonomous republic is a part of a union republic. *Id.* art. 82, para. 1. The following union republics have autonomous republics as subdivisions: RSFSR—16; Uzbekistan—1; Georgia—2; Azerbaidjan—1.

²⁸¹ An autonomous province is part of a union republic or a territory. *Id.* art. 86. The following union republics contain autonomous provinces: RSFSR—5; Georgia—1; Azerbaidjan—1; Tadjikistan—1.

²⁸² See note 309 *infra*.

²⁸³ КОНСТИТУЦИЯ (Constitution) art. 82, para. 1 (USSR).

unlike the autonomous provinces, each autonomous republic has its own constitution. The autonomous republic is the middle level of sovereignty in the USSR. The allocation of power between the national government and the first level of sovereignty in the USSR—the governments of the fifteen union republics—has presented some of the most difficult problems of federalism in the USSR. Over the years there has been a noticeable expansion of the powers of the union republics vis-à-vis the federal government, but this has not resolved all of the difficulties. Generally speaking, three principles of Soviet federalism must be borne in mind in understanding these problems. First, the powers of the federal government are delegated and enumerated. The majority of these federal powers are listed in article 73 of the USSR constitution. They are delegated to the federal government by the union republics, in whom ultimate sovereignty theoretically resides. The enumeration of the delegated powers is intended to curb any unintended intrusion by the federal government into the domain of the states. Nothing prevents the federal government, however, from exercising those powers that are necessary and proper to give effect to its delegated powers. By contrast, under article 76, the union republic possesses general jurisdiction over all questions of state power in its territory,²⁸⁴ subject only to the limitations contained in article 73.²⁸⁵ This means that powers that are not delegated to the federal government are reserved to the respective union republics.²⁸⁶

In theory, therefore, the federal government is an agency of the state governments. Its sovereignty is secondary, in the sense that it is based upon subrogation of authority from the states. Its functions are limited to the preservation of the union and the coordination of the separate activities of the constituent states. In practice, however, the Soviet federal government has abandoned its position as an agent of the respective states and has become the virtual master of the federation. Since the union republics do not have any formal input into the USSR constitutional amendment processes,²⁸⁷ nothing would prevent the USSR from amending the provisions of article 73 to grant itself more powers at the expense of the union republics. On its face, the amendment procedure in article 174—to the extent that it excludes the union republics from formal participation—is

²⁸⁴ *Id.* art. 76, para. 2.

²⁸⁵ *Id.* art. 73, para. 1.

²⁸⁶ *Id.* art. 76, para. 2.

²⁸⁷ *Id.* art. 174. See notes 456-61 *infra* & accompanying text. See also note 9 *supra*.

inconsistent with the spirit of article 73.²⁸⁸ The practical effect of article 174 procedure is to make the federal government into the delegator, as well as the recipient, of authority.

Under the provisions of article 73, the exclusive jurisdiction of the federal government extends to the following: admission of new union republics to the USSR; approval of the formation of new autonomous republics or autonomous provinces within a union republic; determination of the national boundaries of the USSR, as well as approval of changes in the boundaries between the union republics; establishment of the general guiding principles of legislation of the USSR and the union republics; drafting and approval of the USSR consolidated budget; administration of a uniform monetary and credit system of the USSR; administration of the federal tax system; all questions of war and peace; defense of the USSR sovereignty and the protection of its borders and territories; all questions of state security; representation of the USSR in foreign relations; and coordination of the principles of foreign relations of the respective union republics.²⁸⁹

In addition to the general jurisdiction of the union republics set forth in article 76, the integrity of the union republic is assured through a series of other provisions: the territory of a union republic cannot be changed without its consent;²⁹⁰ a union republic determines its own internal administrative divisions;²⁹¹ a union republic has the right to enter into direct relations with foreign states and with international organizations, including the authority to conclude international agreements and exchange diplomatic and consular representatives with foreign entities.²⁹² The ultimate manifestations of the sovereignty of a union republic are its constitution²⁹³ and its right to secede from the federation.²⁹⁴

The second general principle of federalism under the 1977 constitution is the supremacy of federal laws over state laws. Since

²⁸⁸ Compare КОНСТИТУЦИЯ (Constitution) art. 174 (USSR) with *id.* art. 73.

²⁸⁹ *Id.* art. 73.

²⁹⁰ *Id.* art. 78.

²⁹¹ *Id.* art. 79.

²⁹² *Id.* art. 80.

²⁹³ *Id.* art. 76.

²⁹⁴ *Id.* art. 72. Finland, once a self-governing part of the vast tsarist continental empire, is the only territory that has successfully seceded from Soviet Russia. Finland, however, seceded in 1918, before the formation of the RSFSR. It is highly doubtful that Moscow would allow any portion of the contemporary USSR to follow the much-regretted example of Finland. For all practical purposes, therefore, the provision of article 72 of the 1977 constitution which grants the right to secede is a dead letter.

the sovereignty of the USSR extends to all parts of the USSR,²⁹⁵ and since the laws of the USSR have the force of law throughout the territory of the USSR,²⁹⁶ it follows that "in the event of a discrepancy between a union republic law and an all-union law, the USSR law shall prevail."²⁹⁷ The constitution of the USSR is thus the supreme law of the land; all subordinate laws, general statutes, state constitutions, state statutes, and the constitutions of the autonomous republics, must conform with the provisions of the federal constitution.²⁹⁸ The responsibility for overseeing the conformance of state constitution and laws with the federal constitution is vested in the federal government by article 73, paragraph 11.²⁹⁹

The third general principle of Soviet federalism is that the laws of one union republic must be given full faith and credit in the other union republics. This means, for example, that a valid marriage entered into in one union republic shall be recognized in another union republic; that a divorce perfected in one union republic shall be recognized in another; that a judgment entered by a court of one union republic shall be given full effect in another union republic; that legal documents issued or notarized by the governmental authorities of one union republic, such as birth or death certificates, labor cards, and acts of sales, shall be given the same legal effect as if they were issued by the authorities of the union republic in which they may be tendered.

On balance, it appears that the USSR is a federation, but a federation held together through the exercise of federal police powers. A Soviet union republic exercises its sovereign right to join the union at the outset. Once such election has been made, however, the constitutional obstacles to its subsequent rescission are virtually insurmountable. The right of secession under such circumstances is tantamount to a constitutional farce. As long as the union republics agree to subordinate their parochial interests to those of the union as a whole, their sovereign existence is guaranteed by the federal government. Thus, the primary sovereignty theoretically exercised by the union republics in practice becomes a secondary sovereignty, the powers and limitations of which are determined by the federal government.

²⁹⁵ KONSTITUTSIYA (Constitution) art. 75 (USSR).

²⁹⁶ *Id.* art. 74.

²⁹⁷ *Id.* art. 173.

²⁹⁸ *Id.* arts. 72, para. 3 & 86, para. 3.

²⁹⁹ *Id.* art. 73, para. 11.

H. *Separation of Powers*

For ideological reasons, Soviet constitutionalism is not premised on the doctrine of separation of powers. In its stead the USSR adopts the doctrine of unity of powers. According to this latter principle, Soviet state power in its totality is one and indivisible.³⁰⁰ The doctrine further postulates that in order to achieve the ultimate goal of Soviet constitutional development—the construction of a communist society—it is imperative that all instruments of Soviet state power work together under the leadership of the CPSU. To the Soviet legal mind, operation of the doctrine of separation of powers is bound to be inefficient in the short run. Any such arrangement, it is argued, is wasteful of governmental energy and is inherently unprogressive. One is further told by Soviet apologists for the doctrine of unity of powers that one of the underlying purposes of the doctrine of separation of powers is to prevent the exercise of arbitrary powers by any one branch of government. To that end one branch of government is designed to act as a check upon, as well as a balance to, the powers of the other departments of government. Soviet constitutional doctrine rejects the idea and the practice of checks and balances, and so repudiates the doctrine of separation of powers as a model for governmental organization.

While rejecting the doctrine of separation of powers in principle, the Soviet constitution of 1977 adopts a structural separation of state *functions* into three authorities: the legislature, executive, and judiciary. To understand fully the operation of these three authorities under the Soviet system, one should bear in mind the following relevant principles of Soviet constitutional law doctrine. First, all three departments of government operate under the leadership of the CPSU. The CPSU, however, does not seek to compete with or to displace these governmental agencies. Rather, the CPSU uses them as instrumentalities for carrying out Party policies. In other words, the CPSU prefers to function as the invisible hand operating from behind the scenes. This fundamental principle of Party-state relationship was adopted back in 1919 at the 8th Party Congress of the Bolshevik Party. Noting the considerable overlap between Party and state functions, the 1919 Program of the Bolshevik Party stated:

It certainly does not follow that the functions of the Party organs shall be merged with those of state organs. Rather, the Party shall seek to implement its decisions by work-

³⁰⁰ See A. MEYER, *THE SOVIET POLITICAL SYSTEM* 200 (1965).

ing through the state organs, within the limits of the Soviet Constitution. The Party shall strive to direct the activities of the state organs, but not to replace them.³⁰¹

Second, the three departments are by no means co-equal; there is a clearly discernible hierarchy. At the pinnacle of state power is the legislative authority.³⁰² This is followed by the executive branch.³⁰³ At the bottom of the ladder is the judiciary, which, for all practical purposes, is literally the least dangerous branch of the Soviet state.³⁰⁴ This means that once Party policies have been made, they are channelled to the legislature for enactment into general legislation. The essence of the executive department's functions is to execute and administer the statutory schemes enacted by the legislature.³⁰⁵ By the same token, the sole function of the judiciary is to enforce laws and regulations as adopted by the legislative and executive branches, as well as to adjudicate disputes arising therefrom.³⁰⁶ In performing its functions, not only is the judiciary not co-equal with the legislature, but it is subject to legislative oversight and various forms of control.³⁰⁷

The third general observation one may make about the functional separation of authority in the USSR is that the Soviet procuracy is slowly but clearly emerging as a fourth branch of the Soviet state. Technically speaking, the functions of the procuracy are executive in nature, but the office of the Procurator General of the USSR is responsible directly to the USSR Supreme Soviet (the legislature) rather than to the Council of Ministers of the USSR (the federal executive branch). Also, the supervisory jurisdiction of the procuracy covers organs of both the executive and the judicial

³⁰¹ II KPSS v REZOLIUTSIKHI I RESHENIYAKH S'EZDOV, KONEVENTSI I PLENUMOV TSK (CPSU in Resolutions and Decisions of the Congresses, Conferences and Plenums of the Central Committee) 77 (8th Russian ed. 1970), quoted in *Dialektika*, *supra* note 98, at 11.

This provision of the 1919 Bolshevik Party Program has been retained in all subsequent Programs of the CPSU, including the latest Party Program. See Program of the CPSU, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House Edition, Moscow 1961).

³⁰² KONSTITUTSIYA (Constitution) art. 108, para. 1 (USSR).

³⁰³ *Id.* arts. 128-136.

³⁰⁴ *Id.* art. 153. See note 307 *infra*.

³⁰⁵ KONSTITUTSIYA (Constitution) art. 131 (USSR).

³⁰⁶ J. HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 168-69 (3d ed. 1964).

³⁰⁷ KONSTITUTSIYA (Constitution) art. 153, para. 3. In addition, the procurator general, see text accompanying notes 430-46 *infra*, exercises supervisory jurisdiction over all USSR courts. See Statute on Procuracy Supervision in the USSR, in 9 *VED. VERKH. SOV. SSSR* item 222. For an English translation, see *BASIC LAWS ON THE STRUCTURE OF THE SOVIET STATE* 183-96 (H. Berman & J. Quigley, Jr. trans. & eds. 1969) [hereinafter cited as *BASIC LAWS*].

branches of the Soviet state. But because its powers of oversight do not extend to the higher organs of the executive branch or even to the lowest level of the legislative branch of state power, the procuracy has not yet attained even approximate equality with these branches of government.³⁰⁸ Nevertheless, it is possible that the procuracy will eventually emerge as the fourth branch of the Soviet state.

Against this general background the following sections of this Article will move on to an in-depth analysis of the nature, powers, and functions of the four functional instruments of Soviet state power.

1. Legislative Authority

There are four levels of legislative authority in the Soviet Union: the Supreme Soviet of the USSR, the supreme soviets of the union republics, the supreme soviets of the autonomous republics and the local soviets of people's deputies.³⁰⁹ Referring to all of these levels of legislative authority, Leonid Brezhnev characterized them as "the omnipotent collective brain of Soviet power, which undertakes and will continue to undertake even more complex and varied tasks."³¹⁰ This section of our study focuses attention on the federal legislative authority.³¹¹

Under article 108 the Supreme Soviet is the supreme lawmaking body in the USSR.³¹² As such it exercises all the powers delegated to the federal government under article 73,³¹³ with the exception of those powers that have been specifically assigned to other organs of the federal government. Among the powers exclusively vested in the USSR Supreme Soviet by article 108 are the powers

³⁰⁸ See the general discussion of the scope of procuratorial supervision at text accompanying notes 437-40 *infra*.

³⁰⁹ KONSTITUTSIYA (Constitution) art. 96 (USSR). The term "local Soviet of People's Deputies" is a generic name for all the legislative bodies at the level of the territory, province, autonomous province, autonomous region, district, city, borough, settlement, and rural community. See *id.* art. 145; text accompanying note 27 *supra*. The term of office of members of the supreme soviets of the USSR, the union republics, and the autonomous republics is five years. KONSTITUTSIYA (Constitution) art. 90 (USSR). The term under the previous constitution was four years. KONSTITUTSIYA (Constitution) arts. 36, 58, 90 (USSR 1936). By contrast, the term of office of the local soviets, two years under the 1936 constitution, *id.* art. 95, is now two and one-half years. KONSTITUTSIYA (Constitution) art. 90, para. 2 (USSR).

³¹⁰ L. Brezhnev, Report to the May (1977) Plenum of the Central Committee of the CPSU, cited in *Soviet State and Law*, *supra* note 52, at 7.

³¹¹ The constitutional regulation of the structure, powers, and functions of the other levels of legislative authority may be found in KONSTITUTSIYA (Constitution) arts. 137-150 (USSR).

³¹² *Id.* art. 108.

³¹³ See *id.* art. 73.

to admit new members into the USSR; to ratify the formation of new autonomous republics and autonomous provinces within the union republics; and to enact the laws of the USSR.³¹⁴ All laws, once passed by the USSR Supreme Soviet, are signed by both the chairman and secretary of the Presidium of the USSR Supreme Soviet and published in the fifteen languages of the union republics.³¹⁵

Under article 109 the USSR Supreme Soviet consists of two co-equal chambers, the Council of the Union and the Council of Nationalities,³¹⁶ each of which has the same number of deputies.³¹⁷ Enactment of a law requires the approval of a simple majority of each chamber.³¹⁸ If there is a disagreement between the two chambers on any legislative matter, the bill is referred for settlement to a conciliation committee consisting of an equal number of deputies from each chamber.³¹⁹ If the committee fails to reach agreement,³²⁰ the matter is held over until the next session of the Supreme Soviet.³²¹ Alternatively, the Supreme Soviet may choose, after the conciliation committee has failed to reach a decision, to submit the dispute to the people in a national referendum.³²²

³¹⁴ *Id.* art. 108.

³¹⁵ *Id.* art. 116.

³¹⁶ *Id.* art. 109.

³¹⁷ *Id.* art. 110, para. 1. The two chambers of the USSR Supreme Soviet differ only in apportionment of representation. Deputies of the Council of the Union are elected from election districts with equal populations. Representation in the Council of Nationalities is apportioned according to a formula under which each union republic elects 32 deputies, each autonomous republic elects 11, each autonomous province five, and each autonomous region elects one. ΚΟΝΣΤΙΤΟΥΣΙΑ (Constitution) art. 110, paras. 1, 2 (USSR).

³¹⁸ *Id.* art. 114, para. 2.

³¹⁹ *Id.* art. 115.

³²⁰ Article 115 does not specify what majority is needed for a bill to be adopted by the Conciliation Committee, but it is likely that a simple majority vote is contemplated.

³²¹ *Id.* art. 115.

³²² *Id.* The new procedure established under article 115 is substantially different from the procedure under article 47 of the 1936 constitution. The latter provided that

[i]n the event of a disagreement between the Soviet of the Union and the Soviet of Nationalities, the question is referred for settlement to a Conciliation Commission formed by the Chambers on a parity basis. If the Conciliation Commission fails to arrive at an agreement or if its decision fails to satisfy one of the chambers, the question is considered for a second time by the chambers. Failing agreement between the two chambers, the Presidium of the USSR Supreme Soviet dissolves the Supreme Soviet of the USSR and orders new elections.

ΚΟΝΣΤΙΤΟΥΣΙΑ (Constitution) art. 47 (USSR 1936).

One is tempted to add, however, that the chances that one chamber will disagree with the other on a legislative bill are virtually non-existent. For this reason, this provision of article 115 of the 1977 constitution, just like that of article 47 of the 1936 constitution before it, is for all practical purposes a dead letter.

Under article 111 each chamber of the Supreme Soviet elects a chairman and four vice chairmen.³²³ At any joint session of the two chambers the two chairmen alternately chair meetings.³²⁴ Sessions of the Supreme Soviet are held twice a year,³²⁵ but if the need arises, an emergency session may be convened at the initiative of the Presidium of the USSR Supreme Soviet, at the request of the government of one of the union republics, or at the request of at least one-third of the membership of either one of the constituent chambers.³²⁶ The Supreme Soviet also has standing committees of each chamber, and joint standing committees of the USSR Supreme Soviet.³²⁷ The standing committees are organized in such a way as to be able to meet between sessions of the chambers. Article 125 authorizes the Supreme Soviet to create ad hoc committees when the need arises to perform certain tasks.³²⁸

Even though article 114 vests exclusive³²⁹ legislative authority in the USSR Supreme Soviet, right to initiate legislation is vested in a number of bodies and individuals.³³⁰ These include each of the chambers of the USSR Supreme Soviet; the USSR Council of Ministers; the respective union republics, acting through their supreme soviets; the standing committees of the respective chambers of the USSR Supreme Soviet; deputies of the USSR Supreme Soviet acting alone; the USSR Supreme Court; and the Procurator General of the USSR.³³¹ Article 113 also grants the right of legislative initiative to the central (national) organs of the various social organizations.³³²

a. *The Presidium of the USSR Supreme Soviet*

The Presidium of the USSR Supreme Soviet in effect serves as the Soviet collective head of state. Because the Supreme Soviet

³²³ KONSTITUTSIYA (Constitution) art. 111, para. 1 (USSR).

³²⁴ *Id.* art. 111, para. 3.

³²⁵ *Id.* art. 112, para. 1.

³²⁶ *Id.* art. 112, para. 2.

³²⁷ The structure and jurisdiction of the standing committees are defined in *id.* art. 125.

³²⁸ *Id.* art. 125, para. 2.

³²⁹ *Id.* art. 114. For a representative Soviet view on the role and functions of legislation in the Soviet legal system, see A. MITSKEVICH, *PRAVOTVORCHESTVO V SSSR* (Law Making in the USSR) (1974); *ZAKONODATEL'STVO I ZAKONODATEL'NAIA DEJATEL'NOST' V SSSR* (Legislation and Legislative Activity in the USSR) (P. Gureev & P. Sedugin eds. 1972).

³³⁰ KONSTITUTSIYA (Constitution) art. 113 (USSR).

³³¹ *Id.* art. 113, para. 1.

³³² *See id.* art. 113, para. 2.

meets only twice a year³³³ and is too large to engage in any meaningful deliberation, in the interest of maintaining continuity of the legislative processes the USSR Constitution vests certain legislative powers in the Presidium of the USSR Supreme Soviet. The Presidium is elected by and accountable to the USSR Supreme Soviet.³³⁴ Its members are elected from among the deputies of the Supreme Soviet. The body consists of thirty-nine members at the present time: the chairman, the first vice chairman, fifteen vice chairmen representing fifteen union republics, a secretary, and twenty-one ordinary members.³³⁵

The powers of the Presidium of the USSR Supreme Soviet are enumerated in articles 121 through 123.³³⁶ Some of these are original powers; the others are caretaker powers. The original powers relate to those matters over which the Presidium has exclusive jurisdiction.³³⁷ In exercising its caretaker powers the Presidium is merely acting in behalf of the recessed Supreme Soviet.³³⁸ All decisions made by the Presidium in the latter capacity must be submitted to the reconvened Supreme Soviet for ratification.³³⁹ Prior to ratification, the interim caretaker decisions of the Presidium have the force of law.³⁴⁰ Should the reconvened Supreme Soviet fail to ratify such interim decisions of the Presidium, they are voided, but only prospectively.³⁴¹

Among the original powers of the Presidium listed in article 121 are the following: to set the date for elections of representatives to the USSR Supreme Soviet; to convene the newly elected Supreme

³³³ Each session of the Supreme Soviet lasts only two to five days. This means that during the entire five-year term of a Supreme Soviet, the full membership is convened only for approximately twenty to fifty days.

³³⁴ KONSTITUTSIA (Constitution) art. 119 (USSR).

³³⁵ *Id.* At its session on June 16, 1977 the USSR Supreme Soviet elected Leonid Brezhnev to the post of Chairman of the Presidium of the USSR Supreme Soviet. See POSTANOVLENIE VERKHOVNOGO SOVETA SSSR (Decree of the USSR Supreme Soviet), in *Pravda*, June 17, 1977, at 1, col. 6. With this appointment, Leonid Brezhnev became the first Soviet leader simultaneously to hold the two most powerful positions in the Soviet system: General Secretary of the Politburo of the Central Committee of the CPSU and Chairman of the Presidium of the USSR Supreme Soviet.

³³⁶ KONSTITUTSIA (Constitution) arts. 121-123 (USSR).

³³⁷ See *id.* art. 121.

³³⁸ See *id.* art. 122.

³³⁹ *Id.*

³⁴⁰ *Id.* art. 122, para. 1.

³⁴¹ Soviet constitutional scholars uniformly assert that caretaker decrees of the Presidium operate as law until the next session of the USSR Supreme Soviet. See SOVIET CONSTITUTIONAL LAW, *supra* note 5, at 373; note 340. The logical implication of this theory is that decrees not ratified by the Supreme Soviet simply cease to have the force of law at the time of the Supreme Soviet's action.

Soviet; to coordinate the activities of the standing committees of the chambers of the Supreme Soviet; to exercise political control over the observance of the constitution as well as to ensure conformance of union-republican constitutions and laws with the federal constitution and laws; to render a supreme interpretation of the laws of the USSR; to ratify and abrogate international treaties³⁴² of the USSR; to annul resolutions, orders, and regulations promulgated by the Council of Ministers of the USSR if the latter are found to be inconsistent with federal laws; and to grant, deny, and determine the validity of any unilateral renunciation of, Soviet citizenship.³⁴³

Prominent among the new original powers granted to the Presidium of the USSR Supreme Soviet by article 121 are the authority to form the Defense Council of the USSR and to appoint its members and the power to appoint and dismiss the high command of the armed forces of the USSR.³⁴⁴

The caretaker powers of the Presidium are set forth in article 122. These include the powers to amend general statutes; to ratify changes in the boundaries between union republics; to create, reorganize, or abolish ministries and state committees of the USSR, at the recommendation of the USSR Council of Ministers; and to appoint individual members of the USSR Council of Ministers, on the recommendation of the chairman of the USSR Council of Ministers.³⁴⁵

Although the Presidium is an agency of the Supreme Soviet, the tenure of Presidium members continues even after that of the Supreme Soviet that elected them terminates. Under article 124, the Presidium continues in office until a new Supreme Soviet is

³⁴²The 1977 constitution draws a subtle distinction between "international treaties" and "intergovernmental international agreements." Only the Presidium of the USSR Supreme Soviet may ratify or denounce an international treaty of the USSR. *ΚΟΝΣΤΙΤΟΥΣΙΑ* (Constitution) art. 121(6). Under article 131(6), the Council of Ministers of the USSR (the highest executive and administrative body of state authority, *id.* art. 128; *see* note 360 *infra*) may ratify or denounce intergovernmental agreements with a foreign government. *Id.* art. 131(6). Such intergovernmental agreements do not require ratification by the Presidium of the Supreme Soviet. Generally, however, they are designed to implement either outstanding international treaties of the USSR or non-self-executing provisions of the constitution or federal legislation. Article 121(7) makes intergovernmental agreements subordinate to international treaties of the USSR. *Id.* art. 121(7). Thus, in order to be valid under Soviet domestic law, intergovernmental agreements must be consistent with the international treaties currently in force.

³⁴³*Id.* art. 121.

³⁴⁴*Id.* art. 121(14).

³⁴⁵*Id.* art. 122.

elected and convened, at which time the newly elected Supreme Soviet dissolves the current Presidium and elects a new one.³⁴⁶

In light of the foregoing factors—that the CPSU is the de facto super-legislature, that the Supreme Soviet meets only twice a year, that the sheer size of the Supreme Soviet makes it impossible for it to function as a deliberative body, and that when it convenes, it routinely ratifies all interim decisions made in its behalf by its Presidium—it would be misleading to think of the USSR Supreme Soviet as the real legislature. The USSR Supreme Soviet is neither supreme, nor is it a soviet.³⁴⁷ It is, at best, a surrogate legislature. Whether or not this is a desirable state of affairs is beside the point.

b. *The Soviet Deputy*

Recent Soviet legislation has bolstered the status of the Soviet deputy.³⁴⁸ The adoption of the 1977 constitution seems to continue this trend in Soviet Law. Chapter 14 of the new constitution is devoted to an explanation of the status of the Soviet deputy.³⁴⁹ The thrust of the provisions of this chapter may be stated as follows. The deputy is a plenipotentiary representative of the people in the legislature.³⁵⁰ In performing his legislative tasks, he is not guided solely by the parochial interests of his electoral district, but rather by the interests of the USSR as an indivisible unit.³⁵¹ The deputy is not a professional lawmaker, but a “working legislator.” While serving in the legislature he retains his regular job, for which he continues to draw his regular salary.³⁵² As a lawmaker he receives no extra compensation, except that he is reimbursed for all inci-

³⁴⁶ *Id.* art. 124.

³⁴⁷ In the Russian language, the term “soviet” means a “council,” a “deliberative body.” The USSR Supreme Soviet is anything but a deliberative body, and the title “soviet” does not correspond any better to the true functions of the other bodies so designated by the USSR Constitution. This is especially true in the case of the three top levels of soviets. In contrast, the local councils, because they meet more frequently and are much smaller than the supreme soviets, may conceivably truly be “soviets.” Pursuant to the 1978 RSFSR Constitution, the local soviets of people’s deputies meet from four to six times a year. See KONSTITUTSIYA (Constitution) art. 141 (RSFSR 1978).

³⁴⁸ In 1972 the USSR Supreme Soviet adopted a law spelling out the duties, privileges, and status of the deputy. Law on the Status of Deputies of Soviets of Working People’s Deputies in the USSR, as Adopted by the USSR Supreme Soviet on September 20, 1972, in 39 VED. VERKH. SOV. SSSR item 347 (1972). An English language translation of this law may be found in W. BUTLER, *supra* note 1, at 111-20.

³⁴⁹ KONSTITUTSIYA (Constitution) arts. 103-107 (USSR).

³⁵⁰ *Id.* art. 103.

³⁵¹ *Id.*

³⁵² *Id.* art. 104.

dental expenses connected with his legislative work. While attending the sessions of the legislature, as well as while performing his other functions as a legislator, he is given time off from his regular job. Even though article 101 permits the same individual to be elected to two different levels of legislatures (for example, to the USSR Supreme Soviet and to the supreme soviet of either a union republic or of an autonomous republic), this rarely happens in practice. Certain top members of the Presidium of the USSR Supreme Soviet may, from time to time, choose to maintain simultaneous but essentially symbolic membership in the supreme soviet of one of the union republics.³⁵³

Among the powers and privileges of a deputy of the Supreme Soviet are the right to request and receive within a reasonable time any and all appropriate information from government agencies or officials,³⁵⁴ and freedom from any criminal prosecution, administrative action, or civil suit without the prior consent of the Supreme Soviet or its Presidium.³⁵⁵

As a form of popular control over the activities of the deputy, article 107 requires each deputy to give a periodic account of his stewardship to his electors.³⁵⁶ The same article reserves to the electors the right to recall a deputy who has failed to fulfill his responsibilities as a lawmaker.³⁵⁷

c. *People's Control Committee of the USSR*

Exercising its power to control the activities of all state agencies that are constitutionally accountable to it, the USSR Supreme Soviet has formed a federal People's Control Committee.³⁵⁸ This committee coordinates the activities of all subordinate agencies

³⁵³ Certain leading members of the CPSU, notably Leonid Brezhnev and Alexei Kosygin, are simultaneously members of the Supreme Soviet of the USSR and the Supreme Soviet of the RSFSR.

³⁵⁴ KONSTITUTSIIA (Constitution) art. 117 (USSR). A similar right is granted to deputies of other soviets in article 105. *Id.* art. 105.

³⁵⁵ *Id.* art. 118. This conditional immunity applies to actions taken outside, as well as within, the scope of the deputy's legislative activities.

A similar conditional immunity is accorded members of other soviets of people's deputies under article 106, *id.* art. 106, which incorporates by reference relevant statutory law, *see* Law of the USSR on the Status of Deputies of Soviets of Working People's Deputies in the USSR, arts. 10, 33, 39 VED. VERKH. SOV. SSSR item 347 (1972).

³⁵⁶ KONSTITUTSIIA (Constitution) art. 107 (USSR).

³⁵⁷ *Id.* art. 107, para. 2. For some reflections on the theory and practice of electoral recalls in the Soviet Union, *see* Siekmann, *The Development and Practice of the Right of Recall in the Soviet Union Since 1917*, 3 REV. SOCIALIST L. 423 (1977).

³⁵⁸ KONSTITUTSIIA (Constitution) art. 126 (USSR).

that compose the People's Control System of the USSR. The elevation of the People's Control Committee to the level of a constitutional creature is an innovation of the 1977 constitution. The structure, jurisdiction, and rules of procedure of the organs of the People's Control System of the USSR are governed by general laws.³⁵⁹

2. Executive Authority³⁶⁰

In the theoretical hierarchy of Soviet federal power the executive is inferior to the legislature, but superior to the judicial branch. The official designation of the federal executive authority is the Council of Ministers of the USSR. It is charged with executing and administering the laws of the USSR.³⁶¹ The Council of Ministers is formed³⁶² by the joint session of the USSR Supreme Soviet; it consists of a chairman, constitutionally unlimited numbers of first vice chairmen and ordinary vice chairmen, ministers of the USSR,

³⁵⁹ In 1968 the USSR Council of Ministers, acting jointly with the Central Committee of the CPSU, adopted a statute that defines the organizational structure, jurisdiction, and rules of procedure of the organs of the People's Control System of the USSR. Statute on People's Control Agencies in the USSR, as Jointly Adopted by a Decree of the Central Committee of the CPSU and the Council of Ministers of the USSR on December 19, 1968, 1 *SBORNIK POSTANOVLENIY PRAVITEL'STVA SSSR* (Collection of the Decrees of the Government of the USSR—S.P.) item 2 (1969). An English language translation of this statute may be found in W. BUTLER, *supra* note 1, at 319-27.

³⁶⁰ There are four levels of executive authority under the Soviet constitution: the Council of Ministers of the USSR, the councils of ministers of the union republics, the councils of ministers of the autonomous republics, and the executive committees of the local soviets of people's deputies. The discussion in this section of the Article focuses attention on the federal executive authority. General constitutional regulation of the powers and structure of the other levels of executive authorities in the USSR may be found in *KONSTITUTSIYA* (Constitution) arts. 137-150 (USSR).

³⁶¹ *Id.* art. 128.

³⁶² It is not clear from the use of the term "formed" in the 1977 constitution whether the USSR Supreme Soviet actually elects or merely appoints members of the Council of Ministers. A similar confusion is caused by the use of term "forms" in article 126 with respect to the creation of the USSR People's Control Committee. *See id.* arts. 126, 129. The 1936 constitution of the USSR used the term "appoints" in reference to the method of formation of the USSR Council of Ministers. *KONSTITUTSIYA* (Constitution) art. 70 (USSR 1936). I believe that the unfortunate choice of the term "forms" in the 1977 constitution is not intended to indicate a departure from the past practice of appointing, rather than electing, members of the Council of Ministers by the USSR Supreme Soviet. The choice of the term "forms" in article 129 of the 1977 constitution is, however, particularly cryptic in light of the fact that in other relevant provisions of the same constitution a clear choice between "appointed" and "elected" is made. *Compare id.* art. 129 *with id.* arts. 120, 152, 165. Under article 152, justices of the USSR Supreme Court are *elected* by the USSR Supreme Soviet; under article 165, the Procurator General of the USSR is *appointed* by the USSR Supreme Soviet; and under article 120, members of the Presidium of the USSR Supreme Soviet are *elected* by the USSR Supreme Soviet. *Id.* arts. 120, 152, 165.

and the chairmen of all the USSR state committees.³⁶³ The chairmen of the union republican councils of ministers are ex officio members of the USSR Council of Ministers.³⁶⁴ At the request of the chairman of the USSR Council of Ministers, heads of other federal agencies and state organizations may be appointed to the council by the USSR Supreme Soviet.³⁶⁵ Even though it is a creature of the Supreme Soviet, the tenure of the Council of Ministers exceeds that of the Supreme Soviet. Like the Presidium of the Supreme Soviet, the Council of Ministers stays in office until a new Supreme Soviet is elected and convened.³⁶⁶ At that time the outgoing ministers formally tender their resignations en masse, allowing the Supreme Soviet to form a new Council of Ministers.³⁶⁷ Members of an outgoing Council of Ministers are eligible to serve in the newly formed Council of Ministers.³⁶⁸

Once the ministers have taken office, the council forms its own presidium, consisting of the chairman of the Council of Ministers (who also serves as chairman of the presidium), the first vice chairmen, and the vice chairmen of the Council of Ministers.³⁶⁹ This inner working group functions as a permanent executive organ of the Council of Ministers. The notion of a presidium for the Council of Ministers is an invention of the 1977 constitution.

Under article 130, the Council of Ministers is responsible and accountable to the Supreme Soviet of the USSR, or to its presidium (during the recess of the Supreme Soviet).³⁷⁰ The USSR Supreme Soviet may change the composition of the Council of Ministers at any time during the latter's five-year term.³⁷¹ The general authority of the USSR Council of Ministers is spelled out in article 131. According to its provisions, all executive powers that are vested in the federal government by the constitution and laws of the USSR accrue to the USSR Council of Ministers, to the extent that such powers have not been otherwise delegated to the Supreme Soviet or

³⁶³ *Id.* art. 129, para. 1.

³⁶⁴ *Id.* art. 129, para. 2.

³⁶⁵ *Id.* art. 129, para. 3.

³⁶⁶ *Id.* art. 129, para. 4.

³⁶⁷ *Id.*

³⁶⁸ A look at the present membership of the Council confirms this. Among the most prominent holdovers from previous terms are Alexei Kosygin, Andrei Gromyko, Nikolai Patolichev, and Viacheslav Eliutin.

³⁶⁹ *KONSTITUTSIA* (Constitution) art. 132 (USSR).

³⁷⁰ *Id.* art. 130.

³⁷¹ *Id.* art. 122(4).

to its presidium by other limiting provisions of the constitution or laws.³⁷²

Among some of the general powers and responsibilities of the executive branch are overall guidance of the national economy and the program for the social and cultural development of the Soviet society; formulation of long-range policies for the development of science and technology and for the rational utilization and conservation of natural resources; administration of the Soviet monetary and credit system, wages and price policy, and social-security policy; administration of a uniform state statistical system; formulation and submission to the USSR Supreme Soviet of both short-range and long-range plans for the economic and social development of the USSR; implementation of measures designed to safeguard state security; and conduct of Soviet foreign relations.³⁷³

Among the special powers of the federal executive in the area of foreign affairs are the power to oversee the fulfillment of Soviet treaty obligations within the USSR, and the power to ratify or denounce intergovernmental agreements without the advice and consent of the Presidium of the USSR Supreme Soviet.³⁷⁴

In the exercise of its executive authority, the USSR Council of Ministers issues implementing orders and regulations. Like all other federal acts, orders and regulations issued by the council have the force of law throughout the USSR.³⁷⁵ In theory, this means that if the constitution, statutes, or regulations of a union republic are inconsistent with an order or regulation promulgated by the USSR Council of Ministers, the former must yield to the latter. This interpretation of article 133 is consistent with the general spirit of the

³⁷² *Id.* art. 131.

³⁷³ *Id.*

³⁷⁴ *Id.* art. 131(6). See note 342 *supra*. On its face this may seem like an expansion of the foreign-affairs power of the Soviet executive, but in reality it is not. The powers granted under article 131(6) of the 1977 constitution had long been exercised by Soviet government under the general authorization granted by specific Soviet legislation. Postanovlenie (Decree) of the Central Executive Committee of the USSR Entitled "O Poriadke Zakliucheniia i Ratifikatsii Mazhdunarodnykh Dogovorov Soiuza SSR" (On the Procedure for the Conclusion and Ratification of International Treaties of the USSR) of May 21, 1925, 35 SBORNIK ZAKONOV SSSR (Collection of USSR Statutes SZ-SSSR) item 258 (1925) [hereinafter cited as SZ-SSSR]; Postanovlenie (Decree) of the Central Executive Committee of the USSR Entitled "O Poriadke Predstavleniia Mezhdunarodnykh Dogovorov i Soglashenii, Zakliuchennykh ot Imeni SSSR na Odobrenie, Utverzhdenie i Ratifikatsiiu Pravitel'stva SSSR" (On the Procedure for the Submission of International Treaties and Agreements Entered into in the Name of the USSR, for Adoption, Affirmance and Ratification by the Government of the USSR) of October 2, 1925, 68 SZ-SSSR item 503 (1925).

³⁷⁵ KONSTITUTSIIA (Constitution) art. 133 (USSR).

federal supremacy clauses of articles 74 and 173 of the constitution.³⁷⁶ Article 134 specifically grants the USSR Council of Ministers the authority to suspend the execution of the order of the council of ministers of a union republic if the latter is inconsistent with an order of the USSR council.³⁷⁷

Finally, article 135 classifies USSR ministries into two groups, all-union and union-republican ministries.³⁷⁸ Unlike the 1936 constitution,³⁷⁹ however, the 1977 constitution makes no attempt to specify which ministries belong to each of these two groups. Each USSR ministry is responsible for the administration of state policy in one single area or in a group of related areas.³⁸⁰ To ensure uniformity in the operations of the ministries of the USSR, article 135 charges the Council of Ministers with the responsibility of coordinating the work of the individual ministries.³⁸¹

3. Judicial Authority

The 1977 constitution does not in any meaningful way enhance the traditionally lowly position of the judiciary in the Soviet system. Chapter 20,³⁸² however, does two things. First, it perpetuates the status of the courts as embodied in the 1936 constitution.³⁸³ This in itself could be seen as a major feat, given the basic premise of Soviet political philosophy that laws and the courts are destined to wither away as the Soviet society advances towards communism.³⁸⁴ Soviet society, however, has leaped from its 1936 status as a "dictatorship of the proletariat"³⁸⁵ to its new 1977 status as a "state of advanced socialism,"³⁸⁶ without showing any signs of

³⁷⁶ See *id.* arts. 74, 173.

³⁷⁷ *Id.* art. 134.

³⁷⁸ *Id.* art. 135.

³⁷⁹ Articles 77 and 78 of the 1936 constitution contained the lists of all-union and union-republican ministries, respectively. KONSTITUTSIIA (Constitution) arts. 77, 78 (USSR 1936). This meant that any routine reorganization of a ministry, from a union-republican to an all-union ministry or vice versa, would automatically call for an amendment of the pertinent provision of the constitution. This apparently proved to be an awkward arrangement, as evidenced by its abandonment in the 1977 constitution.

³⁸⁰ J. HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 103-06 (3d ed. 1964).

³⁸¹ KONSTITUTSIIA (Constitution) art. 135, para. 1 (USSR).

³⁸² *Id.* arts. 151-163.

³⁸³ See KONSTITUTSIIA (Constitution) arts. 102-117 (USSR 1936). See also note 388 & accompanying text.

³⁸⁴ See V. I. LENIN, *State and Revolution (August-September 1917): The Marxist Theory of the State and the Tasks of the Proletariat in the Revolution*, in *LENIN ON POLITICS AND REVOLUTION* (J. CONNOR ed.).

³⁸⁵ See KONSTITUTSIIA (Constitution) art. 2 (USSR 1936).

³⁸⁶ See KONSTITUTSIIA (Constitution) preamble, paras. 4, 5 (USSR).

an impending dismantling of the courts. This is a major boost not only for the stability of the court system, but, perhaps more importantly, for the morale of Soviet judges.

The second accomplishment of the 1977 constitution concerning the judicial system respects the delivery of legal services. In articles 161 and 163 it elevates to the constitutional level two institutions of Soviet statutory law—the college of advocates and state arbitration system, respectively.³⁸⁷

With the exception of these two cosmetic changes, the status of the Soviet courts remains the same as under the 1936 constitution.³⁸⁸ Judges of the USSR Supreme Court and judges of the supreme courts of the union republics are elected by, responsible to, and removable by the legislature, and even decisions of the USSR Supreme Court sitting en banc may be reviewed and overturned by the Presidium of the USSR Supreme Soviet.³⁸⁹ The USSR Supreme Court is not authorized to render universally binding interpretations of Soviet laws; its decisions have no precedential value; and it has no power to review the constitutionality of acts of the legislature.³⁹⁰ The content of Soviet federal law is not determined by the interpretations placed on it by the USSR Supreme Court, but rather by the decisions of the Presidium of the USSR Supreme Soviet, acting in its ultimate review capacity. It is thus misleading to speak of the USSR Supreme Court as “supreme”; it is

³⁸⁷ See *id.* arts. 161, para. 1 & 163.

³⁸⁸ The 1936 constitution diminished the powers the USSR Supreme Court had exercised since its establishment in 1924. For instance, as originally constituted, the court, at the request of the Presidium of the Central Executive Committee (CEC) of the USSR, had the authority to recommend that the Presidium of the CEC suspend or repeal any acts of the central organs of the USSR—including acts of the CEC and of the Council of People’s Commissariats of the USSR—that were deemed by the Supreme Court to be inconsistent with the constitution. KONSTITUTSIYA (Constitution) arts. 43(c), 47 (USSR 1924). Pursuant to this authority, between 1924 and 1929 the court sent to the Presidium of the CEC eighty-six recommendations to suspend or repeal individual acts of the central organs of the USSR and issued eleven advisory opinions on the unconstitutionality of individual acts of the central and union-republican governments. This power of the USSR Supreme Court to render advisory opinions on the constitutionality of federal acts was eliminated in the 1936 USSR Constitution. A general discussion of the regrettable shrinkage of the powers of the USSR Supreme Court may be found in Kulikov, *Verkhovnyi Sud SSSR—Vyshee Zveno Sovetskoi Sudebnoi Sistemi* (The USSR Supreme Court—The Highest Level in the Soviet Judicial System), 11 *Sov. Gos. i Pravo* 91 (1977). For an in-depth discussion of the structure, jurisdiction, and history of the Court, see M. SHALAMOV, *SUD I PROVOSUDIJE V SSSR* (The Court and the Administration of Justice in the USSR) (1974); VERKHOVNYI SUD SSSR (USSR Supreme Court) (B. Nikiforov, L. Smirnov, V. V. Kulikov eds. 1974).

³⁸⁹ KONSTITUTSIYA (Constitution) arts. 152, 153 (USSR).

³⁹⁰ Regarding proposals for the reinstatement of the judicial power of constitutional review, see note 10 *supra*; Osakwe, *supra* note 82; *Discussion of the Draft Constitution II*, *supra* note 9, at 13 (proposal of M. A. Mogunova, professor at the Moscow State University Law School).

far from supreme in the sense that the United States Supreme Court is supreme.

Against this background we may proceed to analyze the major provisions of the 1977 constitution relating to the role and status of the courts. Article 151 reiterates a settled principle of Soviet constitutional law: "in the USSR justice is administered only by the courts."³⁹¹ In the USSR there are two categories of courts—federal courts (including the USSR Supreme Court and the military tribunals) and union-republican courts (including the supreme courts of the union republics, the supreme courts of the autonomous republics, and the local people's courts at the level of the territory, the province, the autonomous province, the autonomous region, and the district or city).³⁹²

Regardless of the level of the court on which they sit, all judges in the USSR are elected. With the exception of the supreme courts and the inferior appellate courts, all courts are composed of panels comprising one judge and two lay assessors. The latter are lay persons who sit with the law judges during trial; they also are elected.³⁹³ The only difference between the levels of courts is that the judges, as well as the lay assessors, of the higher courts³⁹⁴ are elected by the corresponding supreme soviets,³⁹⁵ whereas the judges of the district (city) courts are elected directly by the people.³⁹⁶ The lay assessors who sit on the district courts are elected "by meetings of citizens at places of work or residence by open ballot."³⁹⁷ The judges of the military tribunals are elected by the Presidium of the USSR Supreme Soviet; the lay assessors who sit on these military tribunals are elected by meetings of servicemen.³⁹⁸

The term of office of the judges is uniform for all levels of courts, but the tenure of the lay assessors varies with the level of the court on which they serve. Thus, judges of all courts, including the military tribunals, are elected for five-year terms;³⁹⁹ the lay

³⁹¹ KONSTITUTSIYA (Constitution) art. 151 (USSR).

³⁹² The structure, jurisdiction, and rules of procedure of these courts are defined by union-republican law. For a representative Soviet view on the proper role and appropriate functions of courts in the Soviet legal system, see V. BOLDYREV, *SOVETSKII SUD* (The Soviet Court) (1966).

³⁹³ KONSTITUTSIYA (Constitution) art. 152 (USSR).

³⁹⁴ Within the meaning of article 152, the term "higher courts" refers to all courts above the level of the district (city) courts.

³⁹⁵ KONSTITUTSIYA (Constitution) art. 152 (USSR).

³⁹⁶ *Id.* art. 152, para. 2.

³⁹⁷ *Id.*

³⁹⁸ *Id.* art. 152, para. 4.

³⁹⁹ *Id.* art. 152, paras. 2, 3.

assessors of the district courts and the military tribunals are elected for two and one-half-year terms;⁴⁰⁰ and the lay assessors of the higher courts are elected for five-year terms.⁴⁰¹

The closing paragraph of article 152 provides that all judges and lay assessors are accountable to and removable by those who elect them to office.⁴⁰² It requires judges to give periodic reports of their stewardships to their electors. If found not to merit the trust placed in them, the judges may be recalled by their electors.⁴⁰³

It is important to point out at this juncture that in practice the Soviet judge is neither independent in the same way that his American counterpart is nor is he free to dispense abstract or classless justice. Decisions handed down by a Soviet judge must not be politically neutral. Since the laws a Soviet judge is required to apply are themselves not blind to class interests, a judge cannot apply them without regard for class interests. The Soviet judge must apply the relevant laws to the case before him, but only against the backdrop of Marxist-Leninist ideology and articulable CPSU policy. He is supposed to administer socialist justice, and socialist justice is essentially class justice. Accordingly, only a judgment that furthers the cause of communism is just. It is against this background that the provision of Article 155 of the new constitution should be understood.⁴⁰⁴

Article 155 provides that judges and lay assessors are independent and subordinate only to the law.⁴⁰⁵ This in itself is a very significant principle of Soviet constitutional law. It means that judges and lay assessors may be neither dictated to nor unlawfully influenced by an outside body with regard to a pending case. Strictly speaking, not even the CPSU organs or Party officials are exempt from the application of this general provision. It may be conceded that Party officials do not, as a matter of policy, exert pressure on Soviet judges with regard to pending non-political cases, but the same cannot be said when a case has an arguably political

⁴⁰⁰ *Id.* art. 152, paras. 2, 4.

⁴⁰¹ *Id.* art. 152, para. 3. Article 152 of the 1977 constitution represents a minor change in the terms of lay assessors. Under the 1936 constitution, lay assessors of the higher courts served for five years, *KONSTITUTSIIA* (Constitution) arts. 105-108 (USSR 1936), and lay assessors of the district courts served two-year terms, *id.* art. 109.

⁴⁰² *KONSTITUTSIIA* (Constitution) art. 152 (USSR).

⁴⁰³ See Osakwe, note 63 *supra*.

⁴⁰⁴ See *Narodnyi Sudia* (The People's Judge), *Izvestiia*, April 10, 1976, quoted in *id.* 183.

⁴⁰⁵ *KONSTITUTSIIA* (Constitution) art. 155 (USSR).

undertone.⁴⁰⁶ For reasons that are perhaps inherent in the Soviet political and judicial systems, the administration of socialist justice in political cases is more of a political than a legal process.⁴⁰⁷

What this means in practice is that the political defendant is regarded as a non-person for purposes of those due-process protections which modern Soviet law accords to all other criminal defendants. At all stages of the criminal process he is subjected to flagrant violations of his constitutional and statutory rights. The situation is even more terrifying when one realizes that modern Soviet law does not establish guidelines for determining which crimes are political for due-process purposes and which are not. It seems that the ultimate decision to treat a criminal case as political is within the absolute discretion of the state security police—the K.G.B. It is regrettable that on this sensitive issue of due-process protection for political criminals, Soviet law has not cleansed itself of its much-despised Stalinist past.

At the top of the Soviet judicial pyramid is the USSR Supreme Court,⁴⁰⁸ which administratively supervises the activities of all the other courts, including the supreme courts of the union republics.⁴⁰⁹ The role of the USSR Supreme Court as the supreme judicial body in the USSR, however, does not mean that it is the highest court of appeals in the USSR. The USSR Statute on the Supreme Court leaves open the possibility of a procuratorial protest of a ruling of the Plenum of the USSR Supreme Court to the Presidium of the USSR Supreme Soviet.⁴¹⁰ As stated in the discus-

⁴⁰⁶ See H. BERMAN, *JUSTICE IN THE U.S.S.R.* 369-70 (rev. ed. 1963); Osakwe, *Due Process of Law and Civil Rights Cases in the Soviet Union*, *supra* note 26.

⁴⁰⁷ For a general discussion of due process of law applicable to political cases in the Soviet Union, see Osakwe, *Due Process of Law and Civil Rights Cases in the Soviet Union*, *supra* note 26, at 179.

⁴⁰⁸ The composition, structure, and jurisdiction of the USSR Supreme Court are defined in the 1957 law on the USSR Supreme Court. Statute on the Supreme Court of the USSR, Adopted by the USSR Supreme Soviet, Feb. 12, 1957, 4 *VED. VERKH. SOV. SSSR* item 84 (1957), amended by Decree of the Presidium of the USSR Supreme Soviet, Sept. 30, 1967, 40 *VED. VERKH. SOV. SSSR* item 526 (1967). The English language translation of this statute may be found in *BASIC LAWS*, *supra* note 307, at 199. Article 153 of the 1977 constitution merely provides that the USSR Supreme Court consists of a chairman, vice chairmen, members of the court, and lay assessors. The chief justices of the supreme courts of the union republics are *ex officio* members of the USSR Supreme Court. *KONSTITUTSIIA* (Constitution) art. 153 (USSR).

⁴⁰⁹ Statute on the Supreme Court of the USSR art. 1, Adopted by the USSR Supreme Soviet, Feb. 12, 1957, 4 *VED. VERKH. SOV. SSSR* item 84 (1957), amended by Decree of the Presidium of the USSR Supreme Soviet, Sept. 30, 1967, 40 *VED. VERKH. SOV. SSSR* item 526 (1967).

⁴¹⁰ *Id.* See note 438 *infra* & accompanying text.

The Soviet tradition of allowing review of a decision of the USSR Supreme Court by another agency of the federal government dates back to the court's enabling

sion above,⁴¹¹ the 1977 constitution grants to the Presidium of the USSR Supreme Soviet the authority to issue binding interpretations of the laws of the USSR.⁴¹² Thus, the Presidium of the USSR Supreme Court is the true supreme court of the USSR.

Article 154 addresses itself to a related aspect of the administration of justice, requiring that all trials be conducted with the participation of lay assessors who have the same procedural rights as the law judges.⁴¹³ This means that whenever a higher court,⁴¹⁴ sits as a trial court, it is required to include lay assessors on its panel.⁴¹⁵ Article 156 bases the administration of justice on the principle that all citizens are equal before the law and the courts.⁴¹⁶

Articles 157 through 162 provide the framework upon which the entire Soviet system of criminal procedural due process⁴¹⁷ is built. These articles provide that court proceedings must be open to members of the general public, unless it serves an overriding public interest to conduct the proceedings behind closed doors;⁴¹⁸ that the defendant has a right to counsel;⁴¹⁹ as well as the right to an appointed interpreter if he does not have full command of the language in which the proceedings are conducted;⁴²⁰ and that the defendant is presumed innocent until his guilt has been established by a court of competent jurisdiction.⁴²¹ Colleges of advocates pro-

acts. The Supreme Court was established under articles 43 through 48 of the 1924 constitution. KONSTITUTSIIA (Constitution) arts. 43-48 (USSR 1924). The rules of procedure for the new court were promulgated in two separate acts: Polozhenie o Verkhovnom Sude SSSR (Decree on the USSR Supreme Court), Nov. 23, 1923, 29-30 SBORNIK UZAKONENIYA RSFSR item 278 (1924), and Nakaz o Verkhovnom Sude SSSR (Instruction to the USSR Supreme Court), July 14, 1924, 2 SZ-SSSR item 25 (1924). Pursuant to article 46 of the 1924 constitution a decision of the Plenum of the USSR Supreme Court was reviewable by the Presidium of the Central Executive Committee of the USSR (CEC). KONSTITUTSIIA (Constitution) art. 46 (USSR 1924). This power passed to the Presidium of the USSR Supreme Soviet when the 1936 constitution changed the name of the CEC to USSR Supreme Soviet. KONSTITUTSIIA (Constitution) art. 49(C) (USSR 1936).

⁴¹¹ See text accompanying note 342 *supra*.

⁴¹² KONSTITUTSIIA (Constitution) art. 121(5) (USSR).

⁴¹³ *Id.* art. 154.

⁴¹⁴ See note 394 *supra*.

⁴¹⁵ By contrast, when the court sits as a court of cassation—to hear a cassational appeal or cassational protest—lay assessors are not included on the panel of judges hearing the appeal.

⁴¹⁶ KONSTITUTSIIA (Constitution) art. 156 (USSR).

⁴¹⁷ *Id.* arts. 157-162. See Osakwe, *Due Process of Law Under Contemporary Soviet Criminal Procedure*, *supra* note 26.

⁴¹⁸ KONSTITUTSIIA (Constitution) art. 157 (USSR).

⁴¹⁹ *Id.* art. 158.

⁴²⁰ *Id.* art. 159.

⁴²¹ *Id.* art. 160.

vide legal services to persons in need.⁴²² For those individuals who cannot afford to retain counsel on their own, the law makes provisions for court-appointed counsel.⁴²³

The right of representatives of social organizations to appear in court as social accusers or defenders is granted in article 162.⁴²⁴ This is one of the many ways in which the Soviet system involves private citizens in the administration of criminal justice.⁴²⁵ Once the court has decided to accept a case for trial,⁴²⁶ it must decide whether to admit social accusers and/or defenders. Once admitted, the social accuser or defender has exactly the same procedural rights as all the other participants in the trial. He or she is not permitted to participate in any pre-trial or post-trial proceedings, however.⁴²⁷

During the national discussion of the draft constitution of 1977, the director of the Sverdlov Law Institute, Professor V. M. Semenov, suggested that since the search for "objective truth" is one of the fundamental principles of Soviet criminal procedure, it should be accorded constitutional recognition. The suggestion was not adopted, but the principle remains one of contemporary Soviet statutory criminal procedural law.⁴²⁸

As a form of limitation on the jurisdiction of the regular courts, article 163 creates special economic courts—state arbitration agencies—⁴²⁹ to settle disputes among economic enterprises, institutes, and organizations. At the pinnacle of the economic court system is the USSR State Court of Arbitration, presided over by the

⁴²² *Id.* art. 161.

⁴²³ *Id.* The RSFSR criminal procedure code lists instances in which participation of defense counsel is mandatory and requires court-appointment of counsel in those cases if the defendant cannot afford his own. RSFSR Kod. UGOL. PRO. (Code of Criminal Procedure) art. 49 (1960).

⁴²⁴ KONSTITUTSIJA (Constitution) art. 162 (USSR).

⁴²⁵ See H. BERMAN, *JUSTICE IN THE USSR* 271 (1963). The procedural status of the social accusers and defenders is defined in the union-republican codes of criminal procedure. See, e.g., RSFSR Kod. UGOL. PRO. (Code of Criminal Procedure) arts. 228, 250, 251 (1960).

⁴²⁶ The decision by the court to accept the indictment referred to it by the prosecutor is one of the critical stages in the Soviet inquisitorial criminal proceeding. For a general discussion of the stages of the Soviet criminal process, see Osakwe, *Due Process of Law Under Contemporary Soviet Criminal Procedure*, *supra* note 26, at 284-93.

⁴²⁷ See, e.g., RSFSR Kod. UGOL. PRO. (Code of Criminal Procedure) art. 325 (1960).

⁴²⁸ See *Discussion of the Draft Constitution I*, *supra* note 9, at 16.

⁴²⁹ KONSTITUTSIJA (Constitution) art. 163 (USSR). Dr. V. M. Savitski, in his commentaries on the draft constitution, expressed dissatisfaction with the inclusion of the state arbitration agencies in the same chapter with the regular courts. See *Discussion of the Draft Constitution I*, *supra* note 9, at 18.

Chief Arbitrator, who is appointed by the USSR Supreme Soviet for a term of five years.⁴³⁰

4. The Procuracy as an Emerging Fourth Branch of the Soviet State

The procuracy⁴³¹ is a unique institution of Soviet law. Among the major legal institutions recognized under the 1977 constitution, the procuracy, along with the military tribunals and the USSR State Court of Arbitration, has no union-republican counterpart; it is strictly an all-union institution. At the apex of the procuratorial organization is the Procurator General of the USSR. The subordinate procurators, who serve as the procurators of the union republics, autonomous republics, territories, provinces, and autonomous provinces, are appointed by the Procurator General.⁴³² The procurators of the autonomous regions and districts are appointed by the union-republican procurators, with the advice and consent of the USSR Procurator General.⁴³³

The procuracy shares many attributes with the other non-legislative hierarchies of federal authority in the Soviet system, but at the same time it has certain features that are peculiar to it. Chief among the unique features of the procuracy is the system, just noted, of internal appointments and accountability. Subordinate procurators are appointed by their superiors and accountable only to the Procurator General;⁴³⁴ in other branches of the Soviet government, officers are appointed or elected by, and accountable directly to the USSR Supreme Soviet. Among some of the attributes the procuracy shares with all or some of the other non-legislative branches of the Soviet state are the following: the Procurator General, like the head of the federal executive department, is appointed by, accountable to, and removable by, the USSR Supreme Soviet, or its presidium when the Supreme Soviet is in recess;⁴³⁵ and the

⁴³⁰ KONSTITUTSIA (Constitution) art. 163 (USSR).

⁴³¹ See *id.* arts. 164-168. For an in-depth analysis of the historical evolution, structure, and jurisdiction of the Soviet procuracy, see V. SAVITSKII, *OCHERK TEORII PROKURORSKOGO NADZORA V UGOLOVNOM SUDOPROIZVODSTVE* (Theoretical Essay on Procuratorial Supervision over Criminal Procedure) (1975); *SOVETSKAIA PROKURATURA: ISTORIJA I SOVREMENNOST'* (The Soviet Procuracy: Its History and Its Present) (A. Rekunov & R. Rudenko eds. 1977). For a leading western analysis of the procuracy as an institution of Soviet law, see G. SMITH, *THE SOVIET PROCURACY AND THE SUPERVISION OF ADMINISTRATION* (1978).

⁴³² KONSTITUTSIA (Constitution) art. 166 (USSR).

⁴³³ *Id.*

⁴³⁴ *Id.* art. 168.

⁴³⁵ *Id.* art. 165.

terms of office of the Procurator General and his subordinate procurators, just like those of Soviet judges at all levels, is five years.⁴³⁶

A major portion of the procuracy's jurisdiction is supervisory. Under article 164 of the 1977 constitution, these oversight powers extend to all ministers at all levels, to all state committees and departments, to all enterprises, to all state institutes and organizations, to all executive and administrative agencies of the local soviets of people's deputies, to all collective farms, to all cooperatives and other public organizations, to governmental officials, and to all citizens of the USSR.⁴³⁷ The USSR Statute on the Procuracy⁴³⁸ extends the supervisory jurisdiction of the procuracy to all federal and state courts, including both regular and special courts.

The procuracy does not have supervisory jurisdiction over legislative authorities at any level, from the USSR Supreme Soviet to the lowliest local soviets of people's deputies. Arguably, the supervisory jurisdiction of the procuracy does extend to the organs and officials of the CPSU, since the Party is not specifically exempted. In other words, the procuracy has "supreme power of supervision over the strict and uniform observance of laws" in the USSR,⁴³⁹ but it does not have any control over the strict and uniform *making* of laws, even to ensure conformance with the constitution. Such supreme supervisory jurisdiction over legislative activities in the USSR is vested in the Presidium of the USSR Supreme Soviet.⁴⁴⁰

Another major function of the procuracy is the handling of all criminal prosecutions on behalf of the state. In this sense the office of the procurator performs the functions generally reserved

⁴³⁶ *Id.* art. 167. Under the 1936 USSR Constitution, the term of office of the Procurator General of the USSR was seven years, KONSTITUTSIIA (Constitution) art. 114 (USSR 1936); that of his subordinate procurators was five years, *id.* art. 115. It is not clear why the new constitution reduced the term of office of the procurator general to five years. One can safely assume, however, that this equalization of the term of office of the procurator general with that of the justices of the USSR Supreme Court does not signal a diminution in the role of the procuracy vis-à-vis the courts. If this reform means anything at all, it represents an unwillingness on the part of the USSR Supreme Soviet to dignify the office of a USSR Supreme Court Justice with a seven-year term. After all, deputies of the USSR Supreme Soviet are elected only for five-year terms.

⁴³⁷ KONSTITUTSIIA (Constitution) art. 164 (USSR).

⁴³⁸ Statute on Procuracy Supervision in the USSR, Adopted by the USSR Supreme Soviet, May 24, 1955, 9 VED. VERKH. SOV. SSSR item 222 (1955), amended by Decrees of the USSR Supreme Soviet, Feb. 27, 1959, 9 VED. VERKH. SOV. SSSR item 67 (1959), March 3, 1960, 10 VED. VERKH. SOV. SSSR item 65 (1960), Feb. 14, 1964, 8 VED. VERKH. SOV. SSSR item 100 (1964), and Dec. 14, 1966, 50 VED. VERKH. SOV. SSSR item 1021 (1966). For an English language translation of this statute, see W. BUTLER, *supra* note 1, at 241-51.

⁴³⁹ KONSTITUTSIIA (Constitution) art. 164 (USSR).

⁴⁴⁰ *Id.* art. 121(4).

for the district attorney in the United States. With the assistance of the organs of the People's Militia (police department), it also conducts preliminary investigations of all alleged crimes. On the basis of the results of the preliminary investigation, it makes a determination whether or not to indict a suspect.⁴⁴¹ But in order to avoid any conflicts of interest that might otherwise arise from the combination in one office of the functions of investigator, grand jury and prosecutor, the office of the procurator assigns these tasks to independent internal units.⁴⁴²

In sum, it may be said that the Soviet procuracy performs the following functions: ⁴⁴³ executive ombudsman, ⁴⁴⁴ judicial ombudsman, ⁴⁴⁵ general ombudsman, ⁴⁴⁶ criminal investigator, grand jury, and district attorney. The failure of the 1977 constitution to transform the procuracy into a legislative ombudsman is regrettable. This omission notwithstanding, the Soviet procuracy may very well be regarded as an emerging fourth branch of the Soviet state.

I. *The Electoral System*

With the exception of a few minor changes, the general provisions of the 1936 constitution regulating general elections in the USSR have been preserved in the 1977 constitution. As in the past, "elections of deputies to all levels of Soviet people's deputies are conducted on the basis of universal, equal and direct suffrage and by secret ballot."⁴⁴⁷ This means that all persons who have attained the age of eighteen have the right to vote and to run for office.⁴⁴⁸ Only persons who have attained the age of twenty-one,

⁴⁴¹ See, e.g., RSFSR Kod. UGOL. PRO. (Code of Criminal Procedure) arts. 116, 125, 199, 207, 213, 217 (1960).

⁴⁴² A detailed discussion of the internal administrative divisions of the Soviet procuracy may be found in G. SMITH, *supra* note 431, at 13-32.

⁴⁴³ Some of these functions are founded upon the constitution; others are of statutory origin.

⁴⁴⁴ In this capacity, the procuracy oversees the activities of all agencies of the executive department.

⁴⁴⁵ The procuracy performs this function by lodging procuratorial protests to all court actions it deems to be substantively or procedurally unlawful.

⁴⁴⁶ In this capacity, the procuracy receives complaints from citizens who feel that their rights have been violated by state organs, social organizations, officials of these agencies or organizations, or private citizens.

⁴⁴⁷ KONSTITUTSIYA (Constitution) art. 95 (USSR).

⁴⁴⁸ *Id.* art. 96, para. 1. This article denies the right to vote or be voted for to "persons who have been certified as insane under the procedure established by law." *Id.* The age of eligibility for election to soviets other than the USSR Supreme Soviet had been twenty-one. See note 449 *infra* & accompanying text.

however, may be elected to the USSR Supreme Soviet.⁴⁴⁹ Each Soviet citizen has one vote,⁴⁵⁰ which he casts directly for the candidate for deputy.⁴⁵¹

Continuing the rule established in the 1936 constitution, the new constitution grants the right to nominate candidates for the office of deputy to all properly constituted social organizations, including the CPSU, the Communist Youth League (Komsomol), cooperatives and other public organizations, labor unions, and general assemblies of servicemen in their military units.⁴⁵² In an effort to equalize campaign opportunities among candidates, the law provides that all "expenses connected with the holding of elections to soviets of people's deputies shall be defrayed by the State."⁴⁵³ Again preserving the rule of the 1936 constitution, the new constitution provides that an individual may be elected to two different soviets of people's deputies.⁴⁵⁴

Even though there is only one political party in the Soviet Union today, one does not have to be a communist party member in order to be a candidate for elective office. A non-member who decides to run for office, however, must accept the communist party's political principles and views. Even with the recent introduction of multiple candidate arrangements into the Soviet electoral system, all the competing candidates invariably run on the same platform. Thus, when candidates A, B, and C campaign for the same seat in the USSR Supreme Soviet, for example, their campaign essentially amounts to nothing more than a personality contest. In short, a Soviet electoral campaign is a low-key race among volunteers to help implement what seems like a pre-determined legislative platform.

This is not to suggest, however, that there are no political disputes over the formulation of such platforms in the USSR. In the Soviet political system the political fight over the formulation of

⁴⁴⁹ KONSTITUTSIA (Constitution) art. 96, para. 2 (USSR). Under the 1939 constitution, the right to be elected to the USSR Supreme Soviet did not attach until age twenty-three. KONSTITUTSIA (Constitution) art. 135 (USSR 1936). The changes in the ages of eligibility for election to USSR soviets have also been incorporated into the elections statute. Statute on Elections to the USSR Supreme Soviet art. 2, Confirmed by Decree of the Presidium of the USSR Supreme Soviet, July 6, 1978, 28 VED. VERKH. SOV. SSSR item 441 (1978). See note 448 *supra* & accompanying text.

⁴⁵⁰ KONSTITUTSIA (Constitution) art. 97 (USSR).

⁴⁵¹ *Id.* art. 98.

⁴⁵² *Id.* art. 100, para. 1.

⁴⁵³ *Id.* art. 100, para. 3.

⁴⁵⁴ *Id.* art. 101, para. 2. See note 353 *supra* & accompanying text.

any developmental scheme or of a legislative calendar takes place inside the Party organization.

Soviet citizens are not under any legal duty to vote, but citizen participation in elections generally is very high.⁴⁵⁵ On election days, various forms of social pressure are brought to bear upon citizens to induce them to go to the polls.⁴⁵⁶

J. Amendment Procedure

If a Marxian socialist constitution is to perform its primary task—to serve as a supreme codification of the social, economic and political program of the state—its amendment procedure necessarily must be flexible. On this critical question the 1977 constitution follows the long-standing tradition of previous Soviet constitutions: it concentrates the power of amendment in the USSR Supreme Soviet, to the exclusion of all other institutions in the Soviet federation,⁴⁵⁷ providing for adoption of an amendment by a two-thirds majority vote of each chamber of the Supreme Soviet.⁴⁵⁸ In effect, article 174 makes the federal legislature a continuing constitutional convention⁴⁵⁹ with the power to amend, modify, and revise the constitution. In practice, however, there is informal consultation with the union-republican legislatures on any proposed amendment to the federal constitution.⁴⁶⁰ Like all the other contemplated changes of major proportion in Soviet law, any proposed amend-

⁴⁵⁵ For example, 99.98% of the registered electors voted in the June 16, 1974 general elections of deputies to the USSR Supreme Soviet. 25 VED. VERKH. SOV. SSSR items 467-471 (1974).

⁴⁵⁶ On election days, CPSU local prefects and members of the residential (house) committees and block (neighborhood) committees go from door to door to remind citizens of their moral obligation to vote. These committeemen and prefects make as many house visits as are necessary during the election day and continue to "remind" those citizens who have not yet voted of their civic duty to do so. If after polls have closed an individual citizen still has not exercised his right to vote, he may be singled out for other forms of "social censure." In a society in which, from the standpoint of an individual citizen, the personal opinions of the residential or block committeemen or local party prefects make all the difference between being able to receive certain social services or not, such pressure is a very effective method of securing high attendance at the polls.

⁴⁵⁷ KONSTITUTSIYA (Constitution) arts. 108, 174 (USSR). See KONSTITUTSIYA (Constitution) art. 146 (USSR 1936).

⁴⁵⁸ KONSTITUTSIYA (Constitution) art. 174 (USSR).

⁴⁵⁹ *Id.*

⁴⁶⁰ Article 77 provides that "[U]nion Republics take part in decisionmaking in the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of the USSR, the Government of the USSR, and other bodies of the Union of Soviet Socialist Republics in matters that come within the jurisdiction of the Union of Soviet Socialist Republics." *Id.* art. 77. Other than by the informal consultation mentioned in the text, it is not exactly clear how the participation referred to in article 77 is accomplished.

ment to the federal constitution must first receive the political blessing of the CPSU.⁴⁶¹

IV. SOME GENERAL CONCLUSIONS

The adoption and promulgation of the USSR Constitution of 1977 marks the culmination of a rugged process that formally began in 1962.⁴⁶² Prior to the formation of the Constitutional Drafting Commission in that year, however, the real Soviet constitution had already been adopted—the 1961 Program of the CPSU.⁴⁶³ The document that was held out to the rest of the world in October 1977 as the new USSR Constitution merely legitimized the 1961 Party Program, as amended and updated by the resolutions of the subsequent congresses of the CPSU.⁴⁶⁴

The theories of the 1977 USSR Constitution do not fully reflect the realities of Soviet constitutionalism, as evidenced by the following dichotomies. First, the 1977 constitution designates the Supreme Soviet as the supreme lawmaking body, when in fact the real lawmakers are the delegates to the Congress of the CPSU, whose power rests in the members of the Central Committee of the CPSU⁴⁶⁵ during the intervals between the sessions of the Party

⁴⁶¹ See, e.g., G. CARTER, *THE GOVERNMENT OF THE SOVIET UNION* 39 (1967): "But since no vote in the Supreme Soviet is ever less than unanimous, and since *the highly disciplined Communist Party is always in control*, there is never any doubt that an amendment desired by the country's political leaders will be adopted" (emphasis added).

⁴⁶² See note 8 *supra*.

⁴⁶³ The current Program of the CPSU was adopted by the 22d Congress of the CPSU on October 31, 1961. The Program not only notes the economic, political, and social changes that have taken place throughout the world since the inception of the communist movement over one hundred years ago, but also lays down the tasks of the CPSU in building a communist society in the USSR. See Program of the CPSU, 22d Congress of the CPSU, Oct. 31, 1961 (Foreign Language Publishing House edition, Moscow 1961). The 1977 USSR Constitution reaffirms the general principles of the CPSU Program as amended by subsequent CPSU congresses, up to and including the 25th CPSU Congress held in February 1976. For a collection of the major resolutions adopted during the 25th Congress of the CPSU, see *MATERIALY 25OGO S'EZDA KPSS* (Materials of the 25th Congress of the CPSU) (1976).

⁴⁶⁴ In his report to the May 1977 Plenum of the Central Committee of the CPSU on the draft constitution of the USSR, Leonid Brezhnev acknowledged that in drafting its new constitution, the Soviets looked to the constitutional experience of some of the other socialist countries, notably Bulgaria, the German Democratic Republic, and Cuba, for ideas. See Brezhnev, *On the Draft Constitution*, *supra* note 57, at 6.

⁴⁶⁵ For instance, the Constitutional Drafting Commission was created not by the USSR Supreme Soviet, but by the Central Committee of the CPSU. The draft constitution of 1977 was discussed and approved by the Plenum of the Central Committee before it was ever sent to the Presidium of the Supreme Soviet. And the text and music for the new Soviet national anthem also was adopted by the Plenum of the Central Committee before it was passed on to the Presidium for discussion and pre-ordained adoption. In all these cases the state agency had to await the appropriate signal from the CPSU.

congresses.⁴⁶⁶

Second, the designation of the supreme lawmaking body as a "soviet" suggests that it is a deliberative body. A body with as many members as the USSR Supreme Soviet that meets so infrequently cannot afford to be deliberative in practice. The actual work of the session of the Supreme Soviet consists of rubber-stamping the recommendations of the Presidium.⁴⁶⁷ Thus, in fact, the USSR Supreme Soviet is neither "supreme" nor a "soviet." The real supreme soviet, as that term is formally used in the new constitution, is the Presidium of the USSR Supreme Soviet, and, as noted, the power behind the Presidium is the CPSU.

Third, the 1977 constitution refers to itself as the supreme law of the land,⁴⁶⁸ suggesting that there is no law beyond the constitution. The reality, however, is that the Program of the CPSU, as amended by the organic resolutions of the various organs of the CPSU, such as the Party Congress, the CPSU Central Committee, and the Party Secretariat, is the real constitution of the USSR. It is the ultimate source of Soviet law. The provisions of the USSR Constitution merely recodify and thereby legitimize the deliberately omnibus declarations contained in the Party Program. For this reason it may be said that the true Soviet state constitution is secreted in the interstices of the Program of the CPSU.

Fourth, the 1977 constitution designates the USSR Supreme Court as the supreme judicial body in the USSR. The fact of the matter is that the Presidium of the USSR Supreme Soviet is the court of highest appeal in the Soviet system. Thus, the Presidium of the USSR Supreme Soviet is both the highest legislative and the highest judicial authority in the USSR.

Fifth, the 1977 constitution expressly grants supreme supervisory jurisdiction to the Procurator General of the USSR. Analyzed at close range, however, this supervisory jurisdiction appears less than supreme. The only organ that can lay claims to supreme supervisory jurisdiction in the USSR is the Presidium of the USSR Supreme Soviet.

Finally, the enumeration of federal powers in article 73 and the provision in article 76 that powers not specifically delegated to the federal government shall be deemed to be reserved to the states,⁴⁶⁹ erroneously suggests that the union republics are the re-

⁴⁶⁶ See J. HAZARD, *supra* note 306, at 245-62.

⁴⁶⁷ See KONSTITUTSIYA (Constitution) arts. 121, 122 (USSR); notes 333-35 & accompanying text.

⁴⁶⁸ See KONSTITUTSIYA (Constitution) art. 173 (USSR).

⁴⁶⁹ See *id.* arts. 73, 76.

positories of ultimate sovereignty. This ostensible protection of union-republican sovereignty is vitiated by article 174, which empowers the USSR Supreme Soviet to change unilaterally the provisions of the USSR Constitution. The practical result of this arrangement is that even though in theory the sovereignty of the federal government is limited in scope and derivative in nature, in practice there are no definable limits on the exercise of federal powers.

None of the above conclusions is intended to suggest that the present Soviet constitutional arrangement is in any way bad or less than desirable. There are no universal principles of constitutional law against which the principles of Soviet constitutional law may be judged. It is my belief that every country, including the Soviet Union, has the constitution that it deserves. In the course of this Article, some value judgments inevitably have been made. But the primary purpose of this survey of the provisions of the new USSR Constitution has been to study and understand, as objectively as possible, the social, economic, political, and cultural context in which the constitution operates. The 1977 constitution should be seen, first and foremost, as a reflection of the sixty-year history of the Soviet state, as a codification of the culture, traditions, and psychology of the Soviet people. It is, in other words, a concentrated expression of the pains and sufferings, as well as the aspirations, of the Soviet society.