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FEDERALISM AND THE SOVIET CONSTITUTION OF 1977: COMMONWEALTH PERSPECTIVES

William C. Hodge*

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INTRODUCTION

The Union of Soviet Socialist Republics, or rather its precursor, the Russian Socialist Federated Soviet Republic, pioneered Marxist-Leninist constitutionalism with the world's first Communist party constitution in 1918.¹ Since that time, and especially since the Second World War, the Soviet Union had fallen behind its thirteen sister Socialist republics in constitutional draftsmanship.² While the USSR was making do with its 1936 Stalinist constitution, the oldest fundamental law among the eight Communist States of East Europe was the Czechoslovakian Constitution of 1960, most of which was replaced by amendments in late 1968 and after.³ Of the five non-European Communist States, Vietnam's 1959 Constitution is the oldest⁴ and presumably will be replaced soon. China adopted a new constitution in 1975 and again in 1978.⁵ In the Communist world, the patina of constitutional age is not ideological virtue: constitutional updating demonstrates social and economic mileage on the high road to communism.

The Soviet Union lagged behind, in all probability, because of jurisprudential problems remaining from the Khrushchev era, and the consolidations of the "return to normal" implemented under Brezhnev's leadership. After some fifteen years of private and public debate, the new Soviet Constitution was adopted by the Supreme Soviet of the USSR on

1. J. TRISKA, CONSTITUTIONS OF THE COMMUNIST PARTY-STATES 2-16 (1968) [hereinafter cited as TRISKA]. In addition to the Russian Constitution of 1918, the Soviet Union has had three constitutions: The First Union Constitution of 1924, the Stalin Constitution of 1936, and the new Constitution of 1977.

2. For present purposes, it is assumed that there are fourteen states with Communist constitutions. These are, to use their English common names: Albania, Bulgaria, China (The People's Republic of), Cuba, Czechoslovakia, East Germany, Hungary, Mongolia, North Korea, Poland, Rumania, the Soviet Union, Vietnam, and Yugoslavia. See the similar list in PRAVDA, February 10, 1963, at 2, and TRISKA, *supra* note 1, at v. See also Brunner, *The Functions of Communist Constitutions: An Analysis of Recent Constitutional Developments*, 3 REV. OF SOCIALIST L. 121 (1977). Some commentators may wish to include Afghanistan, Angola, Cambodia (Kampuchea), Ethiopia, Laos, or South Yemen.

3. Brunner, *supra* note 2, at 121. Of the remaining seven countries, Bulgaria adopted a new constitution in 1971, Hungary in 1972, Yugoslavia in 1974, Rumania in 1974, East Germany in 1974, Poland in 1976, and Albania in 1976. The Hungarian, Rumanian, East German, and Polish constitutions were complete revisions rather than officially new organic instruments. See *id.* at 122-23.

4. Mongolia's constitution dates from 1960, North Korea's from 1972, and Cuba's from 1976. *Id.* at 123.

5. The frantic pace of Communist constitution making is demonstrated by the resulting obsolescence of a 1968 collection of the fourteen states' constitutions. Ten years after publication, only two of the fourteen documents remained current. TRISKA, *supra* note 1. Perhaps the most accessible source of up-to-date constitutions is [1980] I-XV CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Oceana) [hereinafter cited as CONSTITUTIONS].

October 7, 1977.⁶ Although this Constitution ought to be known as the Khrushchev-Brezhnev Constitution, it is probably fated to be known as the new Brezhnev Constitution, just as the 1936 constitution is commonly referred to in Stalin's name.⁷

Part I of this article will consider the 1977 Constitution in a general manner, focusing on the debate over whether it represents an advancement of the rule of law, or an embodiment of arbitrary party power. Part II will focus on the validity of the Soviet model of federal republican sovereignty. Throughout, the experience and constitutions of other nations will be drawn upon for comparison and analysis.⁸

I. LEGAL NORMS AND ARBITRARY POWER IN THE 1977 CONSTITUTION: AN OVERVIEW OF SOVIET CONSTITUTIONALISM

A. *Soviet Constitutionalism and the Evolution of Socialist Society*

As with other Communist party states, a new Soviet Constitution is not a confession of failure, nor an admission that the previous constitution was deficient.⁹ On the contrary, adoption of a new Communist party Constitution indicates that the old has successfully guided a developing socialist society onto a new and higher plane of evolutionary socialism. In the more picturesque language of one recent commentator: "Every new socialist constitution is a giant step toward that great graveyard of all constitutions known as communism."¹⁰

A new Soviet Constitution acknowledges progress since the adoption of its predecessor, eliminates obsolete institutions, and institutionalizes those mechanisms thought necessary to implement the next developmental stage. Thus, speeches made by Secretaries-General Stalin¹¹ and Bre-

6. An English version of the new Constitution is available from NOVOSTI PRESS AGENCY PUBLISHING HOUSE (Moscow, 1977). English translations are also found in CURRENT DIGEST OF THE SOVIET PRESS, Nov. 9, 1977, at 1; XIV CONSTITUTIONS, *supra* note 5; 4 REV. OF SOCIALIST L. 57 (1978).

For accounts of the drafting process, see R. SHARLET, THE NEW SOVIET CONSTITUTION OF 1977 2 (1978).

7. See, e.g., B. Ramundo, *The Brezhnev Constitution: A New Approach to Constitutionalism?*, 13 J. OF INT'L L. & ECON. 41 (1978).

8. For another interesting study of the 1977 Soviet Constitution, see Osakwe, *The Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution*, 127 U. PENN. L. REV. 1350 (1979) [hereinafter cited as *Theories and Realities of Soviet Constitutional Law*].

9. An exception may be the Chinese Constitution of 1978, which was adopted only three years after the previous one had been adopted.

10. OSAKWE, *The Common Law of Constitutions of the Communist-Party States*, 3 REV. OF SOCIALIST L. 155, 208 (1977).

11. J. STALIN, ON THE DRAFT CONSTITUTION OF THE USSR (1936).

zhnev,¹² introducing the constitutions of 1936 and 1977, respectively, both concentrated on the great strides made in Soviet political economy. Stalin noted the economic changes in the USSR from 1924 to 1936, the end of the quasi-capitalistic New Economic Policy, the elimination of the surviving private industrial sector, and the liquidation of kulaks, traders, merchants, and profiteers.¹³ Being careful to use present active participles, Stalin claimed that a new class structure was evolving: "[T]he dividing line between the working class and the peasantry, and between these classes and the intelligentsia, is being obliterated, while the old class exclusiveness is disappearing. . . . [T]he distance between these social groups is steadily diminishing . . . , [and] the economic [and] . . . political contradictions between them are also subsiding and becoming obliterated."¹⁴ Multinational fraternal cooperation within the Soviet Union, of a degree unknown during the Revolution, was also asserted.¹⁵

Brezhnev similarly listed the indicia of progress: the socialist economy has matured; social changes have taken place in the working class, the peasantry, and the intelligentsia; the republics have evolved, especially those which "used to show an economic and cultural lag"; the growing homogeneity of the three classes, and the fifteen republics, has resulted in a "state of all the people"; and the hostile "capitalist encirclement" of the USSR has ended.¹⁶

In addition to acknowledging the progress of developed socialist society, the new Soviet Constitution set the framework for its continued evolution. Brezhnev's review of the main features of the draft emphasized the strengthened constitutional position of the Communist Party;¹⁷ the enhancement of Soviet Deputies' role;¹⁸ the expansion of social, economic,

12. *Brezhnev's Speech on Draft Constitution*, CURRENT DIGEST OF THE SOVIET PRESS, July 6, 1977, at 6.

13. J. STALIN, *supra* note 11, at 7-16.

14. *Id.* at 14.

15. *Id.* at 16.

16. *Brezhnev's Speech*, *supra* note 12, at 6.

17. *Id.* at 7.

18. *Id.* The elected term of deputies to the Supreme Soviet was extended from four to five years (possibly to coincide with five-year plans). Compare article 36 of the 1936 constitution with article 90 of the 1977 constitution. The minimum age for electoral eligibility was reduced from 23 years to 18, although in the final draft, 21 years was chosen as the minimum age for election to the USSR Supreme Soviet. Compare article 135 of the 1936 constitution with article 96 of the 1977 Constitution. From 1936 until 1945, a deputy could be elected to the Supreme Soviet at age 18. The constitution was amended de facto and the age was raised to 23 by a Decree (Ukaz) of the Presidium of the Supreme Soviet in October, 1945, and apparently retrospectively ratified by a unanimous decision of the newly elected Supreme Soviet in 1946 (which of course contained no deputies under the age of 23). This dubious constitutional practice is discussed in Nove, *Some Aspects of Soviet Constitutional Theory*, 12 MOD. L. REV. 12, 17 (1949).

political and civil rights;¹⁹ “[t]he further strengthening of socialist legality and law and order”;²⁰ the drawing together of the nationalities;²¹ the drawing together of the national economy;²² and the unprecedented chapters on Soviet foreign policy and defense.²³

As a symbol of the evolution of socialist society, much of the new constitution cannot be interpreted in a strictly legal sense. For example, the foreign policy chapters, which marked a clear departure from the Stalin constitution of 1936, must be explained apart from their legal significance. The substantive content of articles 28–30 (Foreign Policy) and 31–32 (“Defence of the Socialist Motherland”) is elegant and eloquent.²⁴ Article 29 sets out ten basic principles of Soviet foreign policy:

- (1) Sovereign equality with other states;
- (2) Mutual renunciation of the use or threat of force;
- (3) Inviolability of frontiers;
- (4) Territorial integrity of states;
- (5) Peaceful settlement of disputes;
- (6) Non-intervention in internal affairs;
- (7) Respect for human rights and fundamental freedoms;
- (8) Equal rights of peoples and their right to decide their own destiny;
- (9) Cooperation among states;
- (10) Fulfillment in good faith of obligations arising from international law and international treaties.²⁵

Article 31 prescribes that the Armed Forces “be in constant combat readiness, guaranteeing that any aggressor is instantly repulsed.”²⁶

There is little doubt that these provisions are not binding upon the So-

19. *Brezhnev's Speech*, *supra* note 12, at 7. With the Constitution's new emphasis on education (article 49), health (article 42), housing (article 44), and culture (articles 46 and 72), Brezhnev emphasized that exercise of rights was associated with performance of duties, and that no right could be exercised against the interests of the state. *Id.*

20. *Brezhnev's Speech*, *supra* note 12, at 8. Brezhnev here permitted himself a remark critical of his predecessor:

We know, comrades, that some of the years following the adoption of the Constitution now in effect were darkened by unlawful repressions and by violations of the principles of socialist democracy and the Leninist norms of Party and state life. This was done in defiance of constitutional provisions. The Party has resolutely condemned these practices, and they must never be repeated.

Id.

21. *Id.*

22. *Id.*

23. *Id.*

24. KONSTITUTSIIA (Constitution), art. 28–32 (U.S.S.R.), *reprinted in XV CONSTITUTIONS*, *supra* note 5 [hereinafter cited as KONSTITUTSIIA].

25. KONSTITUTSIIA, *supra* note 24, art. 29.

26. KONSTITUTSIIA, *supra* note 24, art. 31.

viet leadership. Action taken in violation of article 29's principles, such as armed invasion of another state, would not be subject to judicial restraint, either in the form of declaratory or injunctive relief.²⁷ Assuming that a Soviet citizen had enough information to draft a plea, assuming further that plaintiff and counsel were not arrested for defamation and weakening of the Soviet State,²⁸ and assuming still further that a court would entertain the action, no relief could be forthcoming. Counsel for the Soviet Government might suggest that such military activity was encouraged by article 30's reference to "comradely mutual assistance with other socialist countries."²⁹ Moreover, any remedy would be precluded by article 73(8), which gives full and unlimited jurisdiction to Soviet "authority and administration" to direct the Armed Forces of the USSR.³⁰ The legal force of the statements of policy in article 29 is thus undermined by other provisions and in that sense they are merely political rhetoric, of no normative or legal value. Similarly, temporary occupation of disputed border territory by units of the Chinese People's Army demonstrates that article 31's instant repulsion clause cannot be taken literally, in spite of its significant symbolic value to a people who remember German aggression.³¹

27. It can be said that similar issues, concerning presidential war-making in Vietnam, have had a day in court in the United States, if not in the United States Supreme Court. See *Velvel v. Nixon*, 415 F.2d 236 (1969), *cert. denied* 396 U.S. 1042 (1970); *McArthur v. Clifford*, 402 F.2d 58 (1968), *cert. denied* 393 U.S. 1002; *Hart v. United States*, 382 F.2d 1020 (1967), *cert. denied* 391 U.S. 956 (1968); *Holmes v. United States*, 387 F.2d 781 (1967), *cert. denied* 391 U.S. 936 (1968). See also *Velvel, The War in Viet Nam: Unconstitutional, Justiciable and Jurisdictionally Attackable*, 16 KAN. L. REV. 449 (1968); Note, *Congress, the President and the Power to Commit Forces to Combat*, 81 HARV. L. REV. 1771 (1968); Symposium, *Legality of United States Participation in the Viet Nam Conflict*, 75 YALE L. J. 1084 (1966).

To the author's information and belief, no law review article has been published in the Soviet Union which questions the legality of the Czechoslovakian invasion or the peace time draft.

28. Law on the Criminal Responsibility for Crimes Against the State § 7, *translated in 3 LAW IN EASTERN EUROPE 75-76* (Z. Szirmai ed. 1959).

29. KONSTITUTSIIA, *supra* note 24, art. 30.

30. *Id.* art. 73.

31. The constitutions of other socialist nations also make reference to the Soviet's foreign relations, but with differing perspectives. The East German (German Democratic Republic) Constitution states that that nation "cultivates and develops, according to the principles of socialist internationalism, mutual cooperation and friendship with the Union of Soviet Socialist Republics." VERFASSUNGEN art. 6(2) (E. Ger.), *translated in V CONSTITUTIONS, supra* note 5. A similar declaration of "indestructible friendship with the great Union of Soviet Socialist Republics" was made in the Preamble of the 1954 Chinese Constitution. FOREIGN LANGUAGES PRESS, CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA 5 (1954). Other constitutions contain clauses which imply actual or possible Soviet aggression. The Chinese Basic Law of 1978 refers to "countries subjected to aggression, subversion, interference, control and bullying by the social-imperialist and imperialist superpowers." HSIEN-FA (Constitution) Preamble (People's Republic of China), *translated in III CONSTITUTIONS, supra* note 5.

A Chinese review of the Brezhnev Basic Law spoke more frankly about Soviet constitutional foreign policy:

Several reasons explain the inclusion of the foreign policy chapters. First, no other document from the Brezhnev era will have the educational, informational, and communicational value, both within the Soviet Union, and internationally, as the 1977 Constitution. It is at once an historical anchor for Brezhnev and his policies of peaceful coexistence, and an instrument of immense propaganda value.³² Second, foreign policy statements have appeared in all other recently adopted socialist constitutions, and the Brezhnev model, which includes support for third world liberation and peace through strength, reasserts Soviet leadership among friendly socialist states. Third, the foreign policy chapters respond to less than friendly constitutional attacks on Soviet foreign policy in hostile Communist constitutions, such as China's 1975 Basic Law.³³ Fourth, as Professor Hazard has written, "it has become customary, if not fashionable, for constitutional draftsmen to include a foreign policy statement."³⁴ It may even be "psychologically necessary [since World War II] . . . to satisfy a state's own citizens and also governments of neighboring states that they can expect to live in peace."³⁵

The foreign policy chapters are thus declaratory of Soviet leadership of the socialist commonwealth, and the Soviet Union's status as a super-

The history of Soviet social-imperialism is one of aggression, expansion, intervention and subversion. With its truculence inflated after feverish arms buildup and war preparations, it occupied Czechoslovakia by force, attacked China's Chenpao Island, dismembered a sovereign state on the subcontinent of South Asia by provoking a war, manipulated and meddled in the affairs of the Middle East countries, employed mercenaries to commit armed intervention in Angola, instigated mercenaries to invade Zaire and is intensifying its scramble for the control of southern Africa and the Red Sea region. It poses a growing menace to the security of Western Europe, occupies the northern territories of Japan and constantly levels threats of force at adjoining countries. Its warships cruise all the oceans. The whole world is thrown into unrest. This is what Brezhnev's "policy of peace" and his assurances of "no threat," "non-interference" and "non-aggression" amount to in reality.

Hsinhua Correspondent, *Reactionary Essence of New Soviet Constitution*, PEKING REVIEW, June 17, 1977, at 15, 28.

The 1978 Chinese Constitution may itself implicitly endorse expansionism with its "Greater China" clause in the Preamble, which purports to unite "our compatriots in Taiwan, Hongkong and Macao, and our countrymen living abroad." HSIEN-FA, *supra*.

Albania's Constitution of 1976 prohibits "the stationing of foreign military bases and troops" in Albanian territory and prospectively declares illegal any occupation of its territory. KUSHTETUTA (Constitution), arts. 93, 94 (Albania), *translated in* I CONSTITUTIONS, *supra* note 5. Such clauses were not found in the previous Albanian constitution. The Yugoslav Constitution of 1974 prohibits the acceptance or recognition of any future "occupation . . . of Yugoslavia or any of its individual parts." USTAV (Constitution) art. 238 (Yugoslavia), *translated in* Appendix, CONSTITUTIONS, *supra* note 5.

32. The word "propaganda" has a pejorative connotation in English not present in the Russian word. A better term might be persuasive publicity.

33. See note 104 and accompanying text *infra*.

34. Hazard, *Foreign Policy and the 1977 Soviet Constitution*, 72 AM. J. OF INT'L L. 350, 352.

35. *Id.* at 350.

power. They portray a nation having worldwide commitments, allegiances, friends, and enemies. Like other clauses in the Brezhnev Constitution, such declarations would have been out of place and premature in 1936, and are an explicit hallmark of Soviet success in 1977.

B. *Rhetoric and Ideology*

Much of the new Constitution is "bombastic and boastful,"³⁶ "empty rhetoric and vague Articles,"³⁷ characterized by "[d]iffuseness of language"³⁸ and "undefined terms,"³⁹ wherein "legal precision gives way to the requirements of . . . journalistic and political language,"⁴⁰ possibly "written by Party hacks."⁴¹ One should approach the Constitution, however, in the context of Soviet and Communist constitutionalism. The Soviet draftsman may intend his language to be educational, aspirational, inspirational, imprecational, or merely declaratory.⁴² His prose is not always susceptible to the common lawyer's surgically precise statutory interpretation, but the constitution ought not to be condemned on that basis alone.⁴³

Political and ideological rhetoric is not unknown in western constitutions. Consider, for example, the requirement that laws be conducive to "peace, order, and good government," routinely used by British draftsmen to limit the powers granted to colonial legislatures.⁴⁴ No Australian, Canadian, or New Zealand statute, regardless of content, has ever been voided for promoting "war, disorder or bad government."⁴⁵ In the American Constitution, the general welfare clause, the privileges and im-

36. Kallistratova, *Comments on the Draft Constitution*, 27 CHRONICLE OF HUMAN RIGHTS IN THE USSR 56 (1977).

37. *Id.*

38. Chalidze, *Human Rights in the New Soviet Constitution*, 28 CHRONICLE OF HUMAN RIGHTS IN THE USSR 63 (1977). Chalidze's article also appears in 2 SOVIET LAW AFTER STALIN 67 (D. Barry, G. Ginsburgs & P. Maggs eds.) (1978). The translation varies significantly in tone, as "party hacks" in THE CHRONICLE becomes "party bureaucrats" in SOVIET LAW.

39. Chalidze, *supra* note 38, at 63.

40. Volpin, *On the Constitution of the USSR*, 1 PAPERS ON SOVIET LAW 52 (1977).

41. Chalidze, *supra* note 38, at 63.

42. See notes 11-23 and accompanying text *supra*.

43. Pious prose reaches new levels in the Chinese constitution of 1978, outreaching even the Soviet draftsmen. HSIEN-FA (Constitution) (People's Republic of China) *translated in* III CONSTITUTIONS, *supra* note 5. China seeks "fraternal love among the nationalities," *id.* art. 4 and "adheres to the general line of going all out, aiming high and achieving greater, faster, better and more economical results . . . through self-reliance, hard struggle, diligence and thrift." *Id.* art. 11.

44. Commonwealth of Australia Constitution Act, 1900, 63 & 64 Vict., ch. 12, § 51; British North America Act, 1867, 30 & 31 Vict., ch. 3, § 91; New Zealand Constitution Act, 1852, 15 & 16 Vict., ch. 72, § 53; South Africa Act, 1909, 9 Edw. 7, ch. 9, § 59.

45. See the discussion of cases in *Queen v. Fineberg* [1968] N.Z.L.R. 119.

munities clause, and the Preamble might all be considered less meaningful than rhetorical. Indeed, no empty Soviet rhetoric can be equated in infamy with the puissant hypocrisy of the early American constitutional endorsement of slavery, the non-applicability of the Bill of Rights to a race of slaves, or the slave-owner who could proclaim the self-evident truth that all men are created equal. The Irish Constitution apparently is grounded “[i]n the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,”⁴⁶ while the Samoan legislative capacity is “to be exercised by the people of Western Samoa within the limits prescribed by His commandments.”⁴⁷ Taking such piety at face value, the efficacy of the Irish and Samoan constitutions is measured by its substance otherwise, and the ideological piety of a Soviet Constitution ought not detract from taking its legal measure.

Much of the Soviet Constitution is quite openly nonlegal symbolic rendering of political principles, perhaps analogous to the United States’ Declaration of Independence. For example, the proletarian watchword “He who would not work, neither shall he eat,” does not mandate constitutional starvation for the voluntarily unemployed.⁴⁸ Such slogans do not, by themselves, destroy the substantive meaning of the entire document. Americans in particular should remember that it is a constitution they are interpreting, and a Communist constitution at that.

C. *The Role of the Communist Party (CPSU)*

Perhaps the most important development in the new Constitution, and thus the most critical obsolescence in the 1936 constitution, concerns the constitutional stature of the CPSU.⁴⁹ In the 1936 constitution, the CPSU was mentioned only incidentally in a passing reference to the right to unite in mass organizations,⁵⁰ and in its capacity, along with other organi-

46. BUNREAH T NA HEIREANN (Constitution of Ireland) Preamble, *reprinted in VII CONSTITUTIONS*, *supra* note 5.

47. THE CONSTITUTION OF THE INDEPENDENT STATE OF WESTERN SAMOA, Preamble, *reprinted in XV CONSTITUTIONS*, *supra* note 5.

48. KONSTITUTSIYA (Constitution) of 1936, art. 12 (U.S.S.R.), *reprinted in TRISKA*, *supra* note 1, at 38.

49. There was no mention of any party in the constitutions of 1918 and 1924. *See* KONSTITUTSIYA (Constitution) of 1918 (U.S.S.R.); KONSTITUTSIYA (Constitution) of 1924 (U.S.S.R.). The CPSU originated as the Russian Social Democratic Labor Party (RSDLP) in 1898, became the Russian Communist Party (Bolsheviks (RKP(B))) in 1918, the All-Union Communist Party (Bolsheviks (VKP(B))) in 1925, and the Communist Party of the Soviet Union (CPSU) in 1952.

50. KONSTITUTSIYA, *supra* note 24, art. 126.

zations, as nominator of candidates for elective office.⁵¹ In the new constitution, “[t]he leading role of the Communist Party, the vanguard of all the people, has grown.”⁵²

Introduced early in 1977, article 6 provides:

The leading and guiding force of Soviet society and the nucleus of its political system, of all state organisations and public organisations, is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people.

The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of the home and foreign policy of the USSR, directs the great constructive work of the Soviet people, and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism.⁵³

Western media focused attention, naturally enough, on this constitutional sanctification of the CPSU, and drew a response from Brezhnev in his October speech to the Supreme Soviet.⁵⁴ “[The] bourgeois analysts . . . shout from the house-tops that [article 6] amounts to ‘proclamation of the dictatorship of the Communist Party’, ‘the primacy of the Party over the State’, ‘a dangerous intertwining of the Party and government constitutions’, ‘the obliteration of the boundaries between the Party and the state.’”⁵⁵ On one level Brezhnev rejected this criticism, by saying: “To try to counterpose the Party to the people by talking about the ‘dictatorship of the Party’ is tantamount to trying to separate, say, the heart from the whole of the body.”⁵⁶ At the same time, however, the final draft was amended to include words of limitation, apparently neutralizing the extra-constitutional import of the first two paragraphs. The added third paragraph of article 6 declares that “[a]ll party organisations shall function within the framework of the Constitution of the USSR.”⁵⁷ At least one commentator has suggested that the proviso was “aimed at silencing” Western criticism.⁵⁸

51. *Id.* art. 141. Compare the frequent references to the Chinese Communist Party in the Chinese constitutions of 1975 and 1978. In 1978 there were nine references to the party, and in 1975 there were eleven. HSIEN-FA (Constitution) OF 1978 (People’s Republic of China); HSIEN-FA (Constitution) OF 1975 (People’s Republic of China).

52. KONSTITUTSIJA, *supra* note 24, Preamble.

53. *Id.* art. 6.

54. Brezhnev, *On the Draft Constitution (Fundamental Law) of the USSR and the Results of its Nationwide Discussion*, XV CONSTITUTIONS, *supra* note 5.

55. *Id.*

56. *Id.*

57. KONSTITUTSIJA, *supra* note 24, art. 6.

58. Luryi, *The New Constitution of the USSR from Draft to Laws: An Analysis of the Changes Adopted*, 2 SOVIET LAW AFTER STALIN 35, 39 (D. Barry, G. Ginsburgs & P. Maggs, eds. 1978).

Although the CPSU is not expressly given a monopoly on party activity in the USSR, and the third paragraph of article 6 denotes a multiparty function, other provisions, by implication, effectively exclude rival, non-Communist, party organizations. Article 51 grants citizens "the right to associate in public organisations" but such groups must promote their political activity "[i]n accordance with the aims of building communism."⁵⁹ Organizational activity cannot "be to the detriment of the interests of . . . the state",⁶⁰ and organizational behaviour cannot be separate from citizens' duties and obligations to the state.⁶¹ In addition, the CPSU is declared the nucleus ("yadro") of the political system and all state and public organizations,⁶² which might suggest that an independent trade union, a league for immigration rights, the Moscow chapter of Amnesty International, or Helsinki Watch can function as public organizations only with a CPSU nucleus.⁶³

Western criticism of the constitutional preeminence of the CPSU is frequently strident or cynical, and usually suggests that such preeminence renders the constitution less constitutional.⁶⁴ Open confirmation of party political power in the Brezhnev Constitution is asserted to be a "scandalous and overt contradiction"⁶⁵ between article 6 and the articles which proclaim a "state of the whole people"⁶⁶ in which "[a]ll power . . . belongs to the people"⁶⁷ based on "the electiveness of all bodies of state authority . . . [and] their accountability to the people."⁶⁸

In one respect, such criticism misses the point. Condemning the Soviet Constitution for operating under the aegis and imprimatur of the CPSU is like criticizing France on the grounds that it is excessively French.⁶⁹ The supremacy of the party should properly be regarded as the *grundnorm* of the Soviet political structure, a fact no more mysterious than the unwritten British *grundnorm* of absolute parliamentary sovereignty. In this sense, article 6 is welcome as a recognition of actual political practice. It "openly confirms and reinforces the *de facto* situation in which the lead-

59. KONSTITUTSIIA, *supra* note 24, art. 51.

60. *Id.* art. 39.

61. *Id.* art. 59.

62. A literal translation of the Russian text would be "the nucleus of its political system, state and public organizations." The word "all" was added to the English version.

63. See Chalidze, *supra* note 38, at 71; Luryi, *supra* note 58, at 40-41.

64. See, e.g., 224 THE NATION 741 (1977).

65. Kallistratova, *supra* note 36, at 56.

66. KONSTITUTSIIA, *supra* note 24, art. 1.

67. *Id.* art. 2.

68. *Id.* art. 3.

69. The figure of speech is taken from Volpin, *supra* note 40, at 52.

ership of the CPSU decides all political, economic, and international questions."⁷⁰

In Western constitutions, one looks in vain for recognition of party dynamics. The founding fathers of the United States, for example, made no effort to circumscribe party activity by constitutional means. There can be no doubt that the prescription for choosing an American president found in article II and the twelfth amendment bears only a superficial resemblance to the actual political process. Surely the Soviet Constitution ought not to be criticized for its greater candor in recognizing party existence.

Nonetheless, the Constitution legitimates ad hoc party prerogative and facilitates political expedience by clothing *partinost* (party orientation) in *zakonnost* (legal orientation).⁷¹ It does signal continued and increasing application of legal norms to institutional behaviour and individual relations.⁷² At the same time, however, Stalin's dictum that "the withering away [*otmiranie*] of the State will come not through the weakening of the power of the State, but through its uttermost strengthening," remains operative.⁷³ The Brezhnev Constitution lends internal steel reinforcement to concrete party rule, and thereby enables the dialectic "socialist legality" to serve in harness. Constitutional recognition of the party emphasizes that while the constitution may be a milestone on the high road to communism, the road map for future travel is to be found not in the Constitution, but in the party program of the CPSU.⁷⁴

70. Kallistratova, *supra* note 36, at 57.

71. *Partinost* complements *zakonnost* with Brezhnev's dual role of President of the USSR and General Secretary of the CPSU.

Another indication of the increasing significance of *zakonnost* is the recent expansion of the number of Soviet law schools. See Osakwe, *The Common Law of Constitutions of the Communist Party-States*, 3 REV. OF SOCIALIST L. 155, 209 (1977).

72. Many of the changes made in the 1977 Constitution may be "cosmetic," but cosmetology has substance. For example, the articles on civil and social rights, found in chapter ten (out of thirteen chapters) in the 1936 constitution, have been promoted to the front of the new Constitution. A simple reordering may have no significance in strict statutory construction, but it must have meaning. Most Americans would intuitively agree that the "first" amendment has a primacy, a certain pre-eminence, which might be lost were freedom of speech renumbered, and surely the sense of urgency would be lessened if the first amendment were "article I, section 9, clauses 4, 5, and 6."

Another change is the increased length of the new Constitution, with 174 articles instead of 146, nearly twice as much prose, and an extensive preamble. The criterion of size is offered as *prima facie* evidence, admittedly slight, of the increasing usefulness of legal norms—if not absolute adherence to the rule of law—for the rulers of the Soviet state.

73. Nove, *Some Aspects of Soviet Constitutional Theory*, 12 MODERN L. REV. 12, 14 (1949) quoting STALIN, LENINISM (10th ed. 1947).

74. It may also be appropriate to recall that the Party itself is monolithic. As early as 1919, the program of the Russian Communist Party left no doubt about regional party autonomy:

The Ukraine, Latvia, Lithuania, and Byelorussia exist at the present time as individual Soviet republics. This is how the question of the forms of *State* structure has been decided for the

D. Individual Rights

The political utility of expedient *zakonnost* is best exemplified by part II, chapters 7 and 8 of the 1977 Constitution, entitled "Equality of Citizens' Rights" and "Basic Rights, Freedoms, and Duties of Citizens of the USSR." These chapters guarantee political and civil rights, as well as rights to employment, rest and leisure, health, old age, disability and sickness benefits, housing, education, cultural benefits, sexual equality, and family protection.⁷⁵ Officials and all state organs, for the first time, are directed to have respect for the individual and to protect the rights and freedoms of citizens.⁷⁶ Citizens are guaranteed the right to criticize official shortcomings without persecution.⁷⁷ Enforcement mechanisms and remedies are also created, and citizens may lodge a complaint, appeal to a court, and receive compensatory (not punitive) damages in appropriate cases.⁷⁸

All of the above rights, however, are subject to conditions precedent or subsequent. No legal right or remedy may be exercised or sought "to the detriment of the interests of society or the state"⁷⁹ and any exercise of legal rights is dependent upon performance of duties and obligations.⁸⁰

In addition, the rights and remedies are not self-executing; they are dependent upon Union or Republican legislation for their meaning. Complaints are to be examined according to procedures and within time limits

present. But it does not in the least mean that the Russian Communist Party should in turn reorganise itself on the lines of a federation of independent Communist Parties.

The Eighth Congress of the [Russian Communist Party] decrees: it is necessary that there exist a *single* centralised Communist Party and a single Central Committee to direct the entire work of the Party throughout all the parts of the RSFSR. All decisions of the [Russian Communist Party] and its directing organs are unconditionally binding on all branches of the Party, irrespective of the national composition. The Central Committees of the Ukrainian, Latvian, Lithuanian Communists enjoy the status of regional committees of the Party, and are wholly subordinated to the Central Committee of the [Russian Communist Party].

Soviet Nationalities Policy in Practice 27 (R. Conquest ed. 1967).

75. KONSTITUTSIYA, *supra* note 24, arts. 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 53.

76. *Id.* art. 51. Complaints are to be examined according to procedures and within time limits established "by law," *id.* art. 58; appeals to a court may be "in the manner prescribed by law," *id.*; trials must be open to the public, except "in cases provided for by law," *id.* art. 157; damages are available as compensation for "unlawful" actions of officials and state organs, *id.* art. 58; officials may not enter a home "without lawful grounds," *id.* art. 55; privacy of conversations and correspondence is protected "by law," *id.* art. 56. While no one may be arrested except on a warrant, *id.* art. 54, an individual may be held for 2 months "confinement under guard" for preliminary investigation without counsel, until the investigation is complete. RSFSR UGOL KOD (criminal code) arts. 47, 97 (1960).

77. KONSTITUTSIYA, *supra* note 24, art. 49.

78. *Id.* art. 58.

79. *Id.* art. 39.

80. *Id.* arts. 59–69.

established "by law."⁸¹ Appeals to a court may be "in the manner prescribed by law."⁸² Trials must be open to the public, except "in cases provided for by law."⁸³ Damages are available as compensation for "unlawful" actions of officials and state organs.⁸⁴ Officials may not enter a home "without lawful grounds."⁸⁵ No one may be arrested except on a warrant, but custodial interrogation does not amount to "arrest."⁸⁶ Privacy of conversations and correspondence is protected "by law."⁸⁷

Thus if the "right" in question is employed as a sword—as the basis of plaintiff's cause of action to secure a legal entitlement—the action may be defeated because no cutting edge has been provided by enabling legislation; if the right is employed as defendant's shield—to ward off criminal prosecution—it may not be proof against asserted state and societal interests. The Constitution, and the rights it confers, are the creatures of the legislators, and not vice versa.

The dialectic of legal norms and arbitrary power one finds in considering the role of the CPSU is equally apparent when considering such constitutional rights. One school of Western critics perceives evolutionary growth in Soviet legality, analogous even to recent American developments:

More and more [Soviet dissidents] appeal to the rights granted them by the constitutions allegedly guiding their political systems. Like the civil rights movement [in the United States], which began by asserting rights which full citizens take for granted (like being served a bowl of soup at a drugstore lunch counter), the liberal-radical protest movement (if one can speak of a movement) in the communist world has begun to insist on the actual exercise of rights formally granted by existing laws. Indeed, the appeal to formal norms of the polity, the insistence on adherence to rules, laws, and constitutions, in short, the legalism and constitutionalism of the dissenters is the trait in the pattern of Soviet and East-European protest phenomena most likely to impress the foreign observer.⁸⁸

As the well-known translator Max Hayward⁸⁹ wrote in an introduction to

81. *Id.* art. 58.

82. *Id.*

83. *Id.* art. 157.

84. *Id.* art. 58.

85. *Id.* art. 55.

86. *Id.* art. 54. See note 76 *supra*.

87. KONSTITUTSIJA, *supra* note 24, art. 56.

88. Meyer, *Political Change through Civil Disobedience in the USSR and Eastern Europe*, POLITICAL AND LEGAL OBLIGATION 421, 436 (J. Pennock & J. Chapman, eds. 1970).

89. Translator of Pasternak, Sinyavsky, Solzhenitsyn, Babel, Amalrik, Mandelstam, and many others and editor of ON TRIAL: THE SOVIET STATE VERSUS "ABRAM TERTZ" AND "NIKOLAI ARZHAK" (1967).

Andrei Amalrik's *Involuntary Journey to Siberia*: "[I]t is rarely effective to resist the encroachments of a bureaucratic police state in the name of an idea, or on the basis of moral indignation. It does make sense, on the other hand—and not merely as a last despairing, existentialist gesture—to study the rules and regulations, and quote them at one's persecutors."⁹⁰

Another school of thought remains skeptical, and declares that the extra-constitutional party program and extra-legal executive convenience prevail:

[P]olitical expedience may usurp formal legality in the relationship of state to citizen if it is deemed necessary. An *ad hoc* legal policy, then, tailored to 'fit' a lone individual or a small group . . . is the quintessence of a prerogative act.

[T]he new Soviet Constitution incorporates most of the caveats on the relation of citizen to state from the 1936 Constitution (and adds several more), which will continue to facilitate and now even more formally legitimate the regime's resort to *ad hoc* legal policy in political cases."⁹¹

Each school of thought—that characterized by optimistic faith in rule of law, and its opposite, characterized by cynical appreciation of arbitrary party rule—will find support in the new Constitution. It is at once more legalistic and, simultaneously, more communistic. But as Hayward concluded: "It remains to be seen whether . . . 'juridical norms' can become the main cohesive force in a society that for too long was held together only by terror."⁹²

II. FEDERALISM

"The Union of Soviet Socialist Republics is an integral, federal, multinational state. . . ."

—1977 Constitution, article 70⁹³

"[The so-called federalism in the 1977 Soviet Constitution is] typical great-Russian chauvinism and forced Russification of non-Russian nations and nationalities."

—Hsinhua Correspondent.⁹⁴

90. Hayward, *Russia, Dissent, and the Rule of Law*, 33 A CHRONICLE OF HUMAN RIGHTS IN THE USSR 37 (1979).

91. Sharlet, *Legal Policy under Khrushchev and Brezhnev: Continuity and Change*, 20 LAW IN EASTERN EUROPE 319, 326 (1978).

92. Hayward, *supra* note 90, at 38.

93. KONSTITUTSIIA, *supra* note 24.

94. 25 PEKING REVIEW, June 17, 1977, at 13.

The Soviet Union is a self-proclaimed federal system, with fifteen allegedly autonomous federal republican units making up the Union. The object of this part is to assess the validity of that federalist assertion, within the general context of Soviet constitutionalism.⁹⁵ Section A will briefly survey the general characteristics of federal, quasi-federal, and unitary states as an introduction to consideration of the federal aspects of the Soviet Union of Republics, which are described in section B, and evaluated in section C.

A. *The Characteristics of Federalism*

Federal systems can originate in one of two ways, or in a combination of the two ways: (1) pre-existing colonies or states, each with its own identity, may be united by peaceful agreement or military conquest; (2) a previously undivided (perhaps undeveloped) whole may be subdivided. Examples of the former (which would likely retain pre-union identity) include the Union of South Africa,⁹⁶ the Dominion of Canada,⁹⁷ the Commonwealth of Australia,⁹⁸ and the American colonies—under both the Articles of Confederation and the United States Constitution. Examples of the latter (which ought to be more susceptible to centralization)

95. For a general discussion of problems of federalism in the Soviet Constitution see *Theories and Realities of Soviet Constitutional Law*, *supra* note 8, at 1406–10.

96. The South Africa Act, 1909, 9 Edw. 7, ch. 9, united the former Boer colonies of the Orange Free State and Transvaal (both of which were landlocked) with the British Natal and Cape of Good Hope colonies. The four former colonies became provinces of the Union of South Africa, but provincial laws were void if repugnant to a union law, *id.* § 86, and the union had full “peace, order, and good government” powers. *Id.* § 59. The union was not a true federal system. See R. HYAM, *BRITAIN'S IMPERIAL CENTURY* 293–317 (1976).

97. The British North America Act, 1867, 30 & 31 Vict. ch. 3, united the colonies of Canada (Upper and Lower Canada became Ontario and Quebec respectively), Nova Scotia and New Brunswick. Section 91 gave the Dominion “peace, order, and good government” powers excepting only those subjects assigned exclusively by § 92 to the provinces.

98. The Commonwealth of Australia Constitution Act, 1900, 63 & 64, Vict. ch. 12, united the colonies of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia, *id.* § 3, leaving New Zealand the option to join the Commonwealth. *Id.* § 6. The Commonwealth Parliament was given “peace, order, and good government” powers in express terms. *Id.* § 51.

include New Zealand,⁹⁹ Brazil,¹⁰⁰ Mexico,¹⁰¹ and the territorial expansion of both the United States¹⁰² and Canada.¹⁰³

A federal system is subjected to both centrifugal and centripetal forces. A true federal system—one capable of resisting both a collapse around the gravitational center and a disintegration into its component parts—has two opposing attributes. On one hand, the federal center, symbolized by Ottawa, the District of Columbia, and the Australian Capital Territory, must have some legislative-executive powers not shared by the state or provincial components.¹⁰⁴ To prevent the states from flying out of orbit, the federal powers must not be subject to provincial nullification, either by legislative means or by secession. An example of a federation where the member states have had such powers is Malaysia.¹⁰⁵ The Canadian record is not complete. The present federal government of Canada may

99. The New Zealand Constitution Act, 1852, 15 & 16 Vict. ch. 72, created six provinces but, as in the case of South Africa, the central government was given plenary “peace, order, and good government” powers; the provinces were abolished in 1875. Abolition of the Provinces Act, 1875 (N.Z.).

100. See Constitution of the Federal Republic of Brazil, October 17, 1969, in II CONSTITUTIONS, *supra* note 5. Article 1 describes Brazil as “a federative republic, constituted . . . by the indissoluble union of the states, the Federal District, and the territories.” *Id.* See also Haring, *Federalism in Latin America*, THE CONSTITUTION RECONSIDERED 341 (C. Read ed. 1968).

101. See Constitution of Mexico, 1917, in IX CONSTITUTIONS, *supra* note 5. Article 40 established “the will of the Mexican people to organize themselves into a federal, democratic, representative Republic composed of free and sovereign States in all that concerns their internal government, but united in a Federation established according to the principles of this fundamental law.” *Id.*

102. It can be argued that the Western States did not join the union “on an equal footing” with the Eastern States. Alaska, for example, had to “forever disclaim all right and title” to all territory within its borders owned by the federal government, a condition not imposed on eastern states. See ALASKA CONST. art. XII, § 12; Alaska Statehood Act, Pub. L. No. 85-508, § 4, 72 Stat. 339 (1958).

103. Six provinces were added to the Dominion of Canada between 1870 (Manitoba) and 1949 (Newfoundland). British action was necessary in each case, being either an order in Council under the terms of Section 146 of the British North America Act, 1867, 9 Edw. 7, ch. 9, or a new statute.

104. It is suggested that effective institutional review of power sharing is a *sine qua non* of a genuine federal system. If such review is not expressly provided for in a constitutional document, it must evolve by implication, or the federal system will disintegrate or implode. The judiciary is the institution which most naturally can assume such a role. Supervision of fundamental rights is secondary, both in importance and evolution. Once accustomed to finding legislation outside the constitutional allocation of power, a bench and a bar can move more easily to scrutiny of legislation in terms of fundamental rights. Absence of such institutional review is a hallmark of a loose amalgamation of states, a unitary state, or a pseudo-federal unitary state.

An example of an institution expressly created to oversee federal relations is the constitutional court of Yugoslavia. USTAV (Constitution) art. 375 (Yugoslavia), *translated in* Appendix, CONSTITUTIONS, *supra* note 5.

105. Singapore, North Borneo, and Sarawak joined the Federation of Malaya (called Malaysia) in 1963. Malaysia Act, 1963, c. 35. Singapore later seceded from Malaysia and became an independent member of the British Commonwealth. Singapore Act, 1966, ch. 29. See also 6 HALSBURYS LAWS OF ENGLAND 442, 459-60 (4th ed. 1974).

yet face some test of provincial sovereignty.¹⁰⁶ There is no clear language in the United States Constitution, although presumably a *de facto* solution was provided by the Civil War.¹⁰⁷

On the other hand, the states or provinces, to resist the gravitational pull of centripetal forces, must have some constitutional integrity—some kernel of power—not susceptible to occupation by the center. The New Zealand provincial system, 1852–1875, was a defective federal scheme, wherein the provinces lacked a constitutional power-sharing framework.¹⁰⁸ The Canadian federation, while confronting Quebecois separatism, may simultaneously be endangered by excessive centralization through the disallowance power.¹⁰⁹ The British Empire, or Commonwealth, can also be considered a federal entity, albeit subject to a continuing political process of disintegration, but in constitutional theory susceptible to absolute rule from the parliamentary center.¹¹⁰ Devolution

106. See Matas, *Can Quebec Separate?* 21 MCGILL L. J. 387 (1975); Greenwood, *The Legal Secession of Quebec—a Review Note*, 12 U. BRIT. COLUM. L. REV. 71 (1978). A test of provincial power to secede from the federal union was recently averted when Quebec citizens voted down a proposed secession measure.

107. The only *de jure* hint in the text of the United States Constitution is the preamble, wherein a drafting committee's first draft beginning "We the people of the states of New Hampshire, Massachusetts, [etc.] . . ." was replaced with "We the people of the United States . . ." See C. ROSSITER, 1787—THE GRAND CONVENTION 196–219 (1966). See generally Bestor, *Respective Roles of the Senate and President in the Making and Abrogation of Treaties—The Original Intent of the Framers of the Constitution Historically Examined*, 55 WASH. L. REV. 1, 19 (1979); VIRGINIA COMMISSION ON CONSTITUTIONAL GOVERNMENT, WE THE STATES (1964), a collection of states' rights documents. See also the prohibition on states entering into any treaty, alliance, confederation agreement, or compact. U. S. CONST. art. I, § 10, cl. 1, 3. This prohibition was interpreted to deny the Confederation of Southern States "any legal existence." *Williams v. Bruffy*, 96 U.S. 176, 182 (1878); E. CORWIN, THE CONSTITUTION AND WHAT IT MEANS TODAY 138 (14th ed. H. Chase & C. Ducat 1978).

108. The New Zealand Constitution Act, 1852, 15 & 16 Vict., ch. 72. All provincial legislation was subject to "[d]isallowance" by the Governor. *Id.* § 29. The provincial Superintendent was obliged to follow gubernatorial instructions, *id.* § 31, and there were no provincial spheres from which the central government was barred. By contrast, there was an extensive list of powers exclusive to the central government. *Id.* § 19. Sections 19, 29, and 31 were among those sections of the Act repealed in 1892. The Statute Law Revision Act, 1892, 55 & 56 Vict., ch. 19.

109. See Wilson, *Disallowance: The Threat to Western Canada*, 39 SASK. L. REV. 156 (1974–75).

110. The plenary legislative powers and responsible self-government granted to Australia, Canada, and New Zealand, for example, repose today in the British statute books and could, in theory, be repealed by the United Kingdom Parliament. See notes 16, 97–99 *supra*. The Statute of Westminster, 1931, 22 Geo. 5, ch. 4, commonly referred to as a Commonwealth independence act, is itself a British statute, and may be repealed in the ordinary fashion by Parliament.

Both Canada and Australia would need British statutory assistance to adjust their federal-state balance. New Zealand, whose legislative capacity is still derived from the 1852 Constitution Act ("[t]here shall be within the colony of New Zealand a General Assembly. . . ." The New Zealand Constitution Act, 1852, 15 & 16 Vict., ch. 72) was unable to abolish its moribund second chamber until enabling legislation was passed by the United Kingdom. New Zealand Constitution (Amendment) Act, 1947, 11 Geo. 6, ch. 4; Legislative Council Abolition Act, 1950, 7 REPR. STAT. N.Z. 829.

of power within the Empire is not a perfected process and is continuing in Malaysia,¹¹¹ the West Indies,¹¹² Zimbabwe-Rhodesia,¹¹³ and Great Britain itself.¹¹⁴ Perhaps the best evidence of a viable federal system, with areas of exclusive concern for both the federal center and the provincial units, is the continuing tension, if not litigation, over marginal or innovative legislative domains.

B. The Model of Soviet Federalism

The first union of socialist states was solemnized in January 1924, although the engagement was sealed in December of 1922 and the constitution of the combined republics was put into effect, provisionally, on July 6, 1923 by Central Committee decision.¹¹⁵ The Ukraine, Byelorussia (White Russia), Russia (RSFSR),¹¹⁶ and Transcaucasia (itself an artificial federation of Armenia, Azerbaidzhan and Georgia) declared the *grund-norm* of their union to be “[t]he will of the peoples of the Soviet Republics, unanimously proclaimed at their recent Soviet Congresses. . . .”¹¹⁷

The Declaration of Union, section one of the Constitution, anticipated the evolutionary atrophication of the republican powers by forecasting “the union of the toilers of all countries into one World Soviet Socialist Republic.”¹¹⁸ The union was granted exclusive powers in numerous areas.¹¹⁹ Article two abolished republican citizenship and created union

111. Malaysia Act, 1963, ch. 35.

112. British Caribbean Federation Act, 1956, 4 & 5 Eliz. 2, ch. 63.

113. Rhodesia's 1965 Unilateral Declaration of Independence (U.D.I.) was never accepted by British courts. See *Madzimbamuto v. Lardner-Burke*, [1969] 1 A.C. 645, 656.

114. It seems likely that increasing federal powers will be given to regional legislatures in Scotland and Wales. See Scotland Act, 1978, ch. 51, and Wales Act, 1978, ch. 52.

115. The “Central Committee” referred to here is the indirectly elected bicameral legislature created by the 1924 Constitution, not the CPSU Central Committee. See KONSTITUTSIYA (Constitution) of 1924, art. 4, reprinted in TRISKA, *supra* note 1, at 21–23.

116. In 1924 Russia was called the Russian Socialist Federated Soviet Republic. KONSTITUTSIYA (Constitution) of 1924, § 2 (Covenant), reprinted in TRISKA, *supra* note 1, at 18. In 1936 and 1977, it was called the Russian Soviet Federative Socialist Republic. KONSTITUTSIYA (Constitution) of 1936, art. 13, reprinted in TRISKA, *supra* note 1, at 38–39; KONSTITUTSIYA, *supra* note 24, art. 71.

117. KONSTITUTSIYA (Constitution) of 1924, § 1 (Declaration of Union), reprinted in TRISKA, *supra* note 1, at 18. As in the preamble to the United States Constitution, the draftsman sought legitimacy in the will of the people, not in the agreement of political units.

118. *Id.*

119. KONSTITUTSIYA (Constitution) of 1924, § 2, art. 1, reprinted in TRISKA, *supra* note 1, at 18–20. The Union was given exclusive authority over foreign affairs, foreign trade, treaties, war and peace, the armed forces, all domestic and foreign borrowing by the republics, economic planning, internal trade, the post office, transportation, communications, all republican budgets, taxes and revenues, currency, credit, principles of land use, principles of exploitation of minerals, forests, and waterways, inter-republican movement, labor law, principles of education, health, and weights and measures, civil codes and criminal codes, civil procedure and criminal procedure. *Id.*

citizenship.¹²⁰ Separate sovereignty, and the right to freely withdraw, however, was guaranteed each of the four republics, in express language, in the Declaration of Union¹²¹ and in article two of the Covenant.¹²²

Republican membership in the union soon expanded, although Soviet territory did not. Three new republics were carved out of central Asian lands of the RSFSR (Uzbekistan and Turkmenia in 1925 and Tadzhikistan in 1929) and the four became seven.

All mention of the covenant, or any contractual theory of union, was omitted in the 1936 constitution, although it did refer to the USSR as "a federated state, formed on the basis of the voluntary association of . . . Soviet Socialist Republics. . . ."¹²³ Power was again concentrated in the central government, with the additional proviso that "[i]n the event of a discrepancy between a law of a Union Republic and the law of the Union, the all-Union law prevails."¹²⁴ Moreover, whereas in 1924, the authority of the union was limited to "[e]stablishment of basic principles for the . . . procedure of the courts and the civil and criminal legislation,"¹²⁵ in 1936, the union was to enact the detailed legislation.¹²⁶ After Stalin's death, the adoption of codes was referred back to the republics, allowing for minor variations based on ethnic differences in family composition, climatic conditions, architectural tradition, urban versus rural settlement, and "national peculiarities."¹²⁷

In 1936, two additional central Asian republics (Kirghizia and Kazakhstan) were carved out of RSFSR territory with no pretense that they had a prior existence as independent states.¹²⁸ The Transcaucasian Republic dissolved into its Georgian, Armenian, and Azerbaidzhani parts which were recorded in article 13 as separate republics, for a total of eleven states (three in the Caucasus, five in Central Asia, plus the RSFSR, Byelorussia, and the Ukraine).¹²⁹ In 1940, the eleven became sixteen, as territorial expansion sovietised Moldavia, Latvia, Lithuania, Estonia, and

120. KONSTITUTSIIA (Constitution) of 1924, § 2, art. 2, reprinted in TRISKA, *supra* note 1, at 20.

121. KONSTITUTSIIA (Constitution) of 1924, § 1, reprinted in TRISKA, *supra* note 1, at 18.

122. KONSTITUTSIIA (Constitution) of 1924, § 2, art. 2, reprinted in TRISKA, *supra* note 1, at 20.

123. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art. 13, reprinted in TRISKA, *supra* note 1, at 38.

124. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art. 20, reprinted in TRISKA, *supra* note 1, at 40.

125. KONSTITUTSIIA (Constitution) of 1924, § 1, art. 1 (o), reprinted in TRISKA, *supra* note 1, at 19.

126. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art. 14 (u), reprinted in TRISKA, *supra* note 1, at 40.

127. See Y. FLEISHITS & A. MAKOVSKY, *THE CIVIL CODES OF THE SOVIET REPUBLICS*, 1-33 (1976). See also Law of the USSR, December 25, 1958, which referred code-making back to the republics.

128. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art. 13, reprinted in TRISKA, *supra* note 1, at 38-39.

129. *Id.*

Karelia. Article 13 was amended to embrace all sixteen republics,¹³⁰ albeit political consolidation awaited liberation of the occupied territories in 1944-45. The Karelo-Finnish Republic, whose population had dropped well below the one million mark, was absorbed into RSFSR in July of 1956, and became the Karelian Autonomous Republic. Since then, the number of republics has remained fixed at fifteen.¹³¹

In the 1977 Constitution, union legislative power is unbounded. Whereas the constitutions of 1924 and 1936 recited specific union powers, much like the Canadian, Australian, and the United States Constitutions,¹³² the Constitution of 1977 simply extends union authority to "the ensurance of uniformity of legislative norms throughout the USSR and establishment of the fundamentals of the legislation of the Union of Soviet Socialist Republics and Union Republics."¹³³ In other words, any republican code must conform with its respective union fundament, be it substantive civil or criminal law, or civil or criminal procedure.¹³⁴ In addition to formulating fundamental principles, the union also has power to legislate in specific areas. This is implicit in article 74, which declares that "[i]n the event of a discrepancy between a Union Republic law and an All-Union law, the law of the USSR shall prevail."¹³⁵

130. KONSTITUTSIJA (Constitution) of 1936, amend. to art. 13, reprinted in TRISKA, *supra* note 1, at 54.

131. The fifteen republics are recorded in the amended 1936 Constitution and the 1977 Constitution in the following order: Russia, Ukraine, Byelorussia, Uzbekistan, Kazakhstan, Georgia, Azerboudzhan, Lithuania, Moldavia, Latvia, Kirghizia, Tadzhikistan, Armenia, Turkemenia, and Estonia. KONSTITUTSIJA, *supra* note 24, art. 71; KONSTITUTSIJA (Constitution) of 1936, art. 13, reprinted in TRISKA, *supra* note 1, at 38-39, 54.

132. KONSTITUTSIJA (Constitution) of 1936, ch. 2, art. 14, reprinted in TRISKA, *supra* note 1, at 39-40; KONSTITUTSIJA (Constitution) of 1924, § 2, art. 1, reprinted in TRISKA, *supra* note 1, at 18-20.

133. KONSTITUTSIJA, *supra* note 24, art. 73 (4).

134. The British notion of "repugnancy" may be relevant in explaining the relationship of Union "fundamental" law to republican code law. The doctrine of repugnancy operated to invalidate colonial laws which conflicted with British law in the area which extended to the colony. For example, the New Zealand General Assembly was authorized, by § 53 of the New Zealand Constitution Act of 1852, *supra* note 108, to pass laws for the peace, order, and good government of New Zealand, so long as such laws were not repugnant to British laws which extended to the colony. If a British statute, then, declared a 50 hour working week for bakers, a New Zealand statute which purported to raise that limit to 60 hours per week would presumably be void. But what about a New Zealand statute which set a 40 hour working week for bakers? The New Zealand court in the first instance would be obliged to consider the common law mischief which the statute was designed to remedy. If the statute was designed to protect the health of bakers against working long hours in bad conditions, then the British statute only set a maximum and the New Zealand statute would be *intra vires*. If, on the other hand, the British statute was part of a code to control all aspects of the economy, including wages, prices, and hours, it would have set both a maximum and a minimum and the New Zealand law would be void.

The British repugnancy doctrine is closely analogous to the familiar American doctrine of federal preemption in cases where state and federal law overlap.

135. KONSTITUTSIJA, *supra* note 24, art. 74.

Union control of the economy is total under the 1977 Constitution. Article 73 expressly grants to the union "direction of the country's economy," control of a uniform economic policy, drafting of economic plans, "determination of . . . general measures for rational exploitation and conservation of natural resources . . . management of a single monetary and credit system . . . determination of the taxes and revenues . . . formulation of prices and wages policy," and direction of enterprises and industry.¹³⁶ In addition to conferring upon the central government complete control over the domestic economy, article 73 grants the union exclusive power over foreign trade and external economic activity.

Union constitutional preeminence is complete. The union ensures that republican constitutions conform to the union Constitution, which includes the power of interpretation.¹³⁷ If necessary, the Constitution can be amended by a two-thirds vote of the union legislature, the Supreme Soviet, with no reference back to the republican governments.¹³⁸

Union supervision of institutions is unqualified. The Supreme Court of the USSR supervises the administration of justice in the Union Republics.¹³⁹ The Procurator-General of the union appoints, or confirms the appointment of all republican, district, and city procurators¹⁴⁰ and they remain "subordinate solely to the Procurator-General of the USSR,"¹⁴¹ exercising their powers independently of any republican control. The Council of Ministers of a union republic must execute the legislative acts, decisions, and ordinances of the union legislature and the union Council of Ministers.¹⁴²

Union direction of the uniformed forces is unilateral and unrestrained. Article 73 (clauses 8 and 9) expressly grants sole authority for internal state security, safeguarding of frontiers, organization of defense, and direction of the armed forces to the union.

A further monolithic shadow was cast on the union republics by article

136. *Id.*, art. 73. The 1936 Constitution, as amended by the Fifth Session of the Sixth Supreme Soviet of the USSR, contained extensive lists of union industrial ministries and union-republican industrial ministries. KONSTITUTSIIA (Constitution) of 1936, arts. 77 & 78, reprinted in TRISKA, *supra* note 1, at 69. Under article 73 of the new Constitution, such industrial control is to be allocated by union statute.

137. KONSTITUTSIIA, *supra* note 24, arts. 137, 143 & 173.

138. KONSTITUTSIIA, *supra* note 24, art. 173. Statutes are always passed unanimously by the Supreme Soviet. Judicial review is not likely to evolve when every statute meets the technical requirements of a constitutional amendment. For an example of unchallenged, unconstitutional executive behavior, see *V. CHALIDZE, TO DEFEND THESE RIGHTS 20* (1974).

139. KONSTITUTSIIA, *supra* note 24, art. 153. Forum shopping is unknown in the Soviet Union, and Soviet law students do not pursue courses in domestic conflicts of laws.

140. *Id.* art. 166.

141. *Id.* art. 168.

142. *Id.* art. 140.

75, which states that “[t]he sovereignty of the USSR extends throughout its territory . . . [which] is a single entity and [which] comprises the territories of the Union Republics.”¹⁴³

Nonetheless, the Soviet republics are expressly given “the right freely to secede from the USSR”¹⁴⁴ and the right to conduct their own foreign relations.¹⁴⁵ These republican rights, as expounded in Soviet texts, are twin pillars of republican sovereignty. The object here is to determine the actual nature of Soviet federalism. Are the powers expressly granted to the union in article 73 undermined by the “nullification” or “states’ rights” effect of article 72, the right freely to secede? Is the USSR a loose federation of “sovereign Soviet Socialist States”? Is it a true federal system with protected congeries of power residing in both the union and the republics? Or is it a pseudo-federal state with a republican facade concealing a monolithic centralism?

C. *The Validity of Soviet Federalism*

1. *Marxist-Leninist Theory*

The practice of federalism is undoubtedly in sharp conflict with pre-revolutionary Marxist-Leninist theory, which postulated working class loyalty over bourgeois nationalism, unitary party control, and centralized administration.¹⁴⁶ The starkest, least compromising, post-revolutionary manifestation of this centripetal drive is found in the political posture and writings of Joseph Stalin:

When a life and death struggle is developing between proletarian Russia and the imperialist *Entente*, there are only two possible outcomes for the border regions. *Either* they go along with Russia. . . ;

Or they go along with the *Entente*. . . .

There is no third course.

The so-called independence of so-called Georgia, Armenia, Poland, Finland, etc., is only an illusion, and conceals the utter dependence of these apologies for States on one or another group of imperialists.¹⁴⁷

143. *Id.* art. 75.

144. *Id.* art. 72.

145. *Id.* art. 80.

146. Engels was uncompromising: “In my opinion the proletariat can only use the form of a united and indivisible republic.” Engels, *Zur Kritik des Sozialdemokratischen Programmentwurfs 1891*, in 22 *MARX-ENGELS WERKE* 235 (1959), translated and quoted in Uibopuu, *Soviet Federalism under the New Soviet Constitution*, 5 *REV. SOC. L.* 171, 172 (1979).

147. J. Stalin, *The Policy of Soviet Power Regarding the National Question in Russia*, Pravda, Oct. 10, 1920, and 4 *SOCHINENIA (WORKS)* 353 (1947), translated and quoted in *SOVIET NATIONALITIES POLICY IN PRACTICE* 23 (R. Conquest ed. 1967).

His views were sharpened at the 12th Party Congress in April, 1923, in a debate on the formation of the Transcaucasian Republic, which Stalin favored and Lenin opposed:

We are told that we must not offend the non-Russian nationalities. That is perfectly true; I agree that we must not offend them. . . . Nevertheless it is clear that the political basis of the dictatorship of the proletariat is primarily and chiefly the central, industrial regions and not the border regions, which are peasant countries. If we exaggerate the importance of the peasant border regions, to the detriment of the proletarian districts, it may result in a crack in the system of the dictatorship of the proletariat. . . . There are cases when the right of self-determination conflicts with another, a higher right—the right of the working class that has come to power to consolidate its power. In such cases—this must be said bluntly—the right of self-determination cannot and must not serve as an obstacle to the working class in exercising its right to dictatorship.¹⁴⁸

Stalin repeated this argument, opposing the independence of any small socialist state, in 1936 saying that “the imperialist beasts of prey would soon grab [a small socialist state].”¹⁴⁹

It may well be Stalin’s greatest (if not only) contribution to Marxist-Leninist theory to allow and encourage constitutional federalism and national autonomy while simultaneously neutralizing real power sharing by means of absolute unitary party discipline. The Soviet dialectic of legal norms and party power again appears to be in operation, and casts doubt on the validity of the Soviet Union’s alleged federalist structure.

2. *The Vocabulary of Soviet Federalism*

In Brezhnev’s speech introducing the 1977 Constitution, he quoted from article 70 and defined the USSR as a “unitary, federal, multinational state.”¹⁵⁰ “Unitary” is an English rendering of the Russian word *yedinoye*—from the word for “one”—which can be translated as “integral”—denoting the absence of multiplicity or subdivisions. “Federal” is from the Russian word *soyuznoye*, the adjectival form of *soyuz*, or “union,” perhaps best rendered as “composite.” Like other dialectical phrases, such as “democratic centralism,” “socialist reality” (in literature), and “socialist legality,” “unitary federalism” is a self-contained contradiction. Brezhnev explained that:

148. J. STALIN, 5 SOCHINENIYA (Works) 264–65 (1947), translated and quoted in SOVIET NATIONALITIES POLICY IN PRACTICE 35–36, 40 (R. Conquest ed. 1967).

149. J. STALIN, ON THE DRAFT CONSTITUTION OF THE U.S.S.R., 37 (1936).

150. Brezhnev’s Speech, *supra* note 12, at 8.

[T]he progressive drawing together of the USSR's nations and nationalities has prompted a need to strengthen the state's federal principles. This has been reflected in the definition of the USSR [in article 70]. . . .

[The draft] ensures the all-round flourishing and continued drawing together of all nations and nationalities in our country. . . .

[It] reflects the new stage in the development of our national economy. *It indicates that the USSR's economy has become a single national-economic complex that embraces all elements of social production, distribution and exchange in the country's territory.*¹⁵¹

His interpretation of "unitary federalism" thus leans toward the centralist thesis and undermines the federalist claim.¹⁵²

3. Citizenship

No fourteenth amendment was necessary in the Soviet Union to clarify and guarantee federal citizenship. By article 7 of the 1924 constitution, federal citizenship in the union "replaced" the citizenships of "the several constituent Republics."¹⁵³ In 1936, it was declared that "[s]ingle Union citizenship is established for all citizens of the U.S.S.R."¹⁵⁴ and that "[e]very citizen of a Union Republic is a citizen of the U.S.S.R."¹⁵⁵ In addition, the Supreme Soviet of the union was granted express authority to pass "[l]aws governing citizenship of the Union."¹⁵⁶ The 1977 Constitution maintained federal control, repeated the language of the 1936 constitution concerning single union citizenship,¹⁵⁷ and anticipated

151. *Id.* (emphasis added).

152. Article 71 of the 1977 Constitution lists the fifteen member republics, with the prefatory phrase "the USSR unites," using the verb *obyedinyatsya* (also from the noun meaning "one") which denotes limited union, perhaps best translated as "amalgamated" or "confederated." The Soviet term for "United Nations" uses a participial for *obyedinyatsya*, while "United States" is expressed in Russian with the much stronger *soyedinyatsya*. By article 71, the Soviet Union more resembles the United Nations than the United States. On the other hand, the slogan of the Soviet Union urges "*soyedinyatsya*" in "Workers of the World, Unite." KONSTITUTSIIA, *supra* note 24, art. 169; KONSTITUTSIIA (Constitution) of 1936, art. 143, *reprinted in* TRISKA, *supra* note 1, at 53.

153. KONSTITUTSIIA (Constitution) of 1924, §2, art. 2, *reprinted in* TRISKA, *supra* note 1, at 20.

154. KONSTITUTSIIA (Constitution) of 1924, ch. 2, art. 21, *reprinted in* TRISKA, *supra* note 1, at 40.

155. *Id.*

156. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art. 14 (v), *reprinted in* TRISKA, *supra* note 1, at 40. For a discussion of citizenship under the 1936 Constitution and the Union Citizenship Statute of August 19, 1938, see A. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 290-93 (1948). "At the basis of the Soviet system of citizenship lie the principles of the internationalism and unity of the Soviet Union State [expressed in] Article 21 of the USSR Constitution. . . [which characterizes] the actual unity of the socialist union state." *Id.* at 290-91.

157. KONSTITUTSIIA (Constitution), *supra* note 24, art. 33.

an all-union citizenship law, controlling grounds for acquisition, forfeiture, and renunciation of Soviet citizenship.¹⁵⁸

Neither the Constitution nor the union citizenship statute of 1979 makes provision for republican citizenship. The only evidences of republican citizenship, according to one writer, are the occasional naturalization decrees published in Lithuania and Estonia.¹⁵⁹ Unlike other areas (land, water resources, public health, labor, the judicial system, succession, torts, contract, criminal law, criminal procedure, corrective labor, marriage, family, and education), where the union publishes fundamental principles and leaves code details to the republics, the 1979 citizenship statute amounts to a union code.

The republican constitutions uniformly express the following norm: "Every citizen of Republic (X) is a citizen of the USSR. Citizens of all other Union Republics enjoy on the territory of X Republic equal rights with citizens of Republic (X)."¹⁶⁰ Even the republican criminal codes define treason, and other crimes against the state, such as smuggling, draft evasion, illegal entry or exit, and counterfeiting, in terms of the USSR, not the republic, much like treason in a 19th century British colony.¹⁶¹

158. *Id.* arts. 33 & 121 (10). The new law was adopted by the Supreme Soviet on December 1, 1978 to become effective (and replace the old law of August 19, 1938) on July 1, 1979. CURRENT DIGEST OF THE SOVIET PRESS, Jan. 10 1979, at 11. Article 26 of the statute provides that renunciation of citizenship may only be accepted or authorized by the Presidium of the Supreme Soviet. *Id.* at 14. Further, article 17 provides that "[r]enunciation of USSR citizenship may be refused if the person applying for renunciation has unfulfilled obligations to the state or property obligation involving the essential interests of citizens or of state, cooperative and other public organizations." *Id.* at 13.

Renunciation *must* be refused if the person applying "has had charges brought against him, if a court sentence against him has taken legal effect and is subject to enforcement, or if the person's renunciation of USSR citizenship is at variance with the interests of the USSR's state security." *Id.* See also Ginsburgs, *The New Soviet Citizenship Law and the Universal Declaration of Human Rights*, 33 CHRONICLE OF HUMAN RIGHTS IN THE USSR 47 (January-March 1979); Chalidze, *The Right of a Convicted Citizen to Leave his Country*, 8 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 1 (1973).

The comparative British doctrine, the antecedent of all emigration law, is found in the ancient prerogative writ of *ne exeat regno*, recorded in Chapter 44 of Magna Charta, and revived unsuccessfully in New Zealand in 1970 in an attempt to prevent the New Zealand rugby football team from touring South Africa and Rhodesia. *Parsons v. Burke* [1971] N.Z.L.R. 244.

159. Uibopuu, *International Legal Personality of Union Republics of U.S.S.R.*, 24 INT'L & COMP. L. Q. 811, 814 (1975).

160. *E.g.*, Constitution of the Georgian Soviet Socialist Republic of 1937, art. 18, reprinted in H. COLLINS, THE CONSTITUTIONS OF THE 16 CONSTITUENT OR UNION REPUBLICS OF THE U.S.S.R. (1950). The homogeneity of the fifteen republican constitutions is demonstrated by their uniform ordering: the citizenship clause is article 17 in the Armenian, Moldavian, Tadzhik, and Uzbek constitutions, and article 18 in the eleven republican constitutions.

161. The crime of treason predates the modern concept of state citizenship—rather than a crime against the state, treason was a violation of the allegiance owed the ruler by the subject. New Zealand's Crimes Act of 1908, for example, defined treason against His Majesty in ten paragraphs, only one of which related to New Zealand. Crimes Act 1908, § 94, 3 N. Z. STAT. REPR. 285-86 (1958). (It

Documentary attestation of USSR citizenship makes no express reference to republican citizenship. The data expressly required includes name, date and place of birth, and "nationality" (which refers to ethnic or racial group, not republic).¹⁶² The passport must be made out in the Russian language in every case, and (if not in the RSFSR) the language of the union republic, and if necessary (even if in the RSFSR) in the language of the relevant autonomous republic. A passport for a resident of the Abkhasian Autonomous Republic in the Georgian Republic would, therefore, be made out in Russian, Georgian and Abkhasian.¹⁶³

Thus the *ligamen* which characterizes an inhabitant of the USSR is obligation to the government of the Soviet Union. Like a British subject anywhere in the 19th century Empire, the Soviet citizen's primary allegiance is due the authority at the center, not the administrator of the region. The 19th century inhabitant of New Zealand, Canada, Australia, Wales, or India was a British subject, and could go anywhere in the realm without legal re-categorization. So it is with the Soviet man or woman. He or she is primarily a Soviet subject and secondarily a republican citizen.

4. Russian Predominance

"Consequently to Russify the aliens, there is a means,—to breed as many children as possible."

—Koznyshev, in *Anna Karenina*, by Leo Tolstoy¹⁶⁴

Common western usage, in both formal and casual communication, employs "Russian" interchangeably with "Soviet," and "Russia" interchangeably with "Soviet Union."¹⁶⁵ Such indulgence is inexcusable in

was, for example, a capital offense for a New Zealander to seduce the wife of the Crown Prince, or heir-apparent. *Id.* § 94(i).

A Soviet citizen's allegiance is to the central government, not his republic. For a detailed critique of the Soviet citizenship law, see Ginsburgs, *supra* note 158, at 47-53. See also the exhaustive collection of documents in Volume 7 of SOVIET STATUTES AND DECISIONS.

162. See Regulations Concerning the Passport System in the USSR, resolved by the USSR Council of Ministers to take effect January 1, 1976, reprinted in INSTITUTE ON SOCIALIST LAW, PAPERS ON SOVIET LAW, No. 1 173-87 (L. Lipson & V. Chalidze eds. 1972).

163. *Id.*

164. L. TOLSTOY, ANNA KARENINA, translated in 10 THE COMPLETE WORKS OF COUNT TOLSTOY 227 (L. Werner trans. 1904).

165. Perpetrators include the western sports announcer who refers to Georgian weightlifters, Armenian boxers, and Uzbek wrestlers as "Russian." (Of course, it is difficult to identify correctly Central Asian nationals with Russian-Asian sounding surnames, or Russian nationals born and resident in a non-Russian republic. Naturally, the internal passport records nationality.) At the other end of the communications spectrum, social science indices, such as the Reader's Guide to Periodic Literature, file entries on the Soviet Union under "Russia." Well written articles in carefully edited

strict constitutional analysis,¹⁶⁶ but may be explicable in terms of a descriptive review of certain objective criteria. This section examines the extent of Russian influence within the Soviet federal system. The federal equality of the fifteen Soviet Republics is severely impaired by factors which create a presumptive Russian predominance over the remaining fourteen republics.

a. *Geography and Demography*

A cursory glance at a globe demonstrates the overwhelming transcontinental Euro-Asian bulk of the RSFSR.¹⁶⁷ No other federal unit so deviates from a statistical federal mean, in both population and surface area, as does the RSFSR. To take Alaska as an example, the largest unit in the United States is approximately 550 times larger than Rhode Island (the smallest), a ratio similar to the relation between the RSFSR and Armenia.¹⁶⁸ The parallel, however, goes no further, as Alaska's population is approximately one-third that of Rhode Island, while the population of the RSFSR is sixty times that of Armenia. Furthermore, Alaska is only one-sixth of the United States surface area, while the RSFSR embraces a full three-quarters of the USSR. To span the Soviet continental mass is to travel across the RSFSR, "from sea to shining sea"—to visit the other republics is to make difficult connections to reach far corners. It can be argued that Ontario and New South Wales are *primus inter pares* in the Dominion of Canada and Commonwealth of Australia, respectively, but both are in smaller federal systems (ten and six subunits respectively), their population shares are preeminent, but not predominant, and in each system there is an effective counterweight (Quebec and Victoria, respectively).

The RSFSR dominates the Soviet Union, in area and in population, to

journals employ the same device. See *A Konstitution*, 224 NATION 741 (1977). And consider the titles of scholarly works, including I. LEDERER, *RUSSIAN FOREIGN POLICY* (1962); D. TREADGOLD, *TWENTIETH CENTURY RUSSIA* (3d ed. 1972); R. KAISER, *RUSSIA: THE PEOPLE AND THE POWER* (1976); H. SMITH, *THE RUSSIANS* (1976).

166. Compare the use of "England" for "United Kingdom" or "Great Britain." Such usage may be defended as the figure of speech known as *synecdoche*, or substitution of the part for the whole. Compare also the use of "America" for "United States of America."

167. A hypothetical North American analogy might be the following: the fifteen American colonies (including upper and lower Canada) are centered around English-speaking Virginia, the epicenter of the rebellion. The southernmost colonies are Spanish in origin, and the northern colonies speak Dutch, French, and Iroquois. The capital of the new union is Richmond, Virginia. The trans-Appalachian claims of the State of Virginia are perfected and expanded all the way across the continent, so that only Virginia reaches the Pacific, excepting a few Spanish-speaking states in the southwest.

168. The chart below sets out the statistical relationship of the largest and most populous state or province to its federal union:

Soviet Constitution: Commonwealth Perspectives

an extent unrivaled, or even remotely approximated, by any state or province in any comparable federal system. This domination is prima facie evidence of similar political preponderance in violation of Soviet constitutional norms.

b. Capital Area

The capital city or territory of an animated federal system will be either located in a neutral zone, or its location will be a contentious political issue. The United States and Australia have neutral capital districts, beyond state jurisdiction, achieved only by hard-driven political compromise and pragmatic bargaining.¹⁶⁹ In Canada, on the other hand, an his-

State	Number of Units	Square Miles	% of Whole	Population	% of Whole
USSR	15	8,599,341	100	248,626,000	100
RSFSR (largest and most populous)		6,593,850	76.6	132,151,000	53.3
Australia	6	2,967,909	100	13,130,000	100
Western Australia (largest)		975,920	32.9	1,084,000	8.2
New South Wales (most populous)		309,433	10.4	4,738,000	36.1
Canada	10	3,851,809	100	22,130,000	100
Quebec (largest)		594,860	15.4	6,081,000	27.0
Ontario (most populous)		412,582	10.7	7,939,000	35.9
USA	50	3,615,123	100	211,390,000	100
Alaska (largest)		586,412	16.2	337,000	.16
California (most populous)		158,693	4.4	20,907,000	9.9

The statistics, for the sake of uniformity, are all taken from BARTHOLOMEW (JOHN) AND SON, LTD., *THE TIMES ATLAS OF THE WORLD* (1975). The populations figures were taken from 1973 or 1974 and are given here for comparative purposes only. More recent statistics are available in the annual *Statistical Yearbook* (Annuaire Statistique) published by the United Nations, and in the *Statistical Abstract of the US*, published by the U.S. Department of Commerce, Bureau of Census.

169. Australians agreed that their federal capital could not remain at Melbourne or Sydney, the leading candidates in Victoria and New South Wales, respectively—just as Americans agreed that the union capital could not repose in Philadelphia or New York. The Australian constitution provided:

The Seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of South Wales and be distant not less than one hundred miles from Sydney. . . .

The Parliament shall sit at Melbourne until it meet at the Seat of Government.

Commonwealth of Australia Constitution Act, 63 & 64 Vict. ch. 12, 1900, § 125. See also the Seat of Government Act (1908–1973) (Australia), the Seat of Government (Administration) Act 1910–1973 (Australia), and the Australian Capitol Territory Representation (House of Representatives) Act 1973 (Australia).

The location of the capitol of the U.S. on the banks of the Potomac was apparently a political *quid pro quo* for Virginia's support of Hamilton's plan for national assumption of preconstitutional debts.

torical anachronism survives, and Canada's capital city (Ottawa) remains wholly within the province and legal jurisdiction of Ontario. Three factors mitigate this anomaly: (1) the provincial governors reside in a different city (Toronto) some distance away, and there is no room for the federal reins of power to be taken in provincial hands; (2) the capital city, Ottawa, is located on the provincial border, and a substantial Francophone city is directly across the border (the Ottawa River); and (3) the Canadian Parliament recognizes the inequity symbolized by the location of the capital, and a National Capitol Act has established a planning and zoning commission for an 1,800 square mile area in Ontario and Quebec. A Special Joint Committee of the Senate and House on the Constitution of Canada has recommended that "there should be a movement by stages towards the possible creation of an autonomous Canadian Capitol."¹⁷⁰ The committee came to its conclusion after making this finding of policy: "A country's capitol is an essential instrument of national pride. In a federal, bilingual and multicultural country, it must also be an essential instrument of national unity."¹⁷¹

These Canadian conclusions can be applied to the Soviet experience. The capital city of the USSR, of course, is the ancient Russian Moscow, or Moskva, at once the union capital, the republican capital, and the CPSU headquarters. The laws of the city are those of the Russian republic, to the extent that they differ from those of the union. The language of the capital is, of course, Russian. It became the capital of the RSFSR immediately upon the Revolution, and has been the only union capital, as the union expanded from four republics to sixteen. It became the capital before the Baltic and Central Asian republics came into Union existence

See W. B. BRYAN, 1 A HISTORY OF THE NATIONAL CAPITOL 1-43 (1914).

Consider also the selection of Bonn as the capital of the Federal Republic of Germany.

170. FINAL REPORT OF THE SPECIAL JOINT COMMITTEE OF THE SENATE AND OF THE HOUSE OF COMMONS ON THE CONSTITUTION OF CANADA, 28th Parl. 4th Sess. (1972). See Chapter 16, "The National Capitol Area," which said:

[A country's capital] must reflect equitably all aspects of that country's character, and each citizen should have a true sense of ownership in the capital of his country regardless of the distance which separates him from the seat of government.

In Canada this has not been and is not now the case. Ottawa was chosen as capital [See Section 16 of the British North American Act 1857 (U.K.): "Until the Queen otherwise directs, the seat of Government of Canada shall be Ottawa"] at a time when the Western Provinces did not exist and Canada had only two of its Atlantic Provinces. It was not granted territorial autonomy, but was situated on the territory of one central Province in close proximity to the other.

As Canada grew, so did its Capital, but it did so reflecting the character and the flavour of the Province of which it was a part and on which it was dependent, to the exclusion of the many other characteristics which were already present in, or which were steadily being added to, the fabric of Canada. The absence of a truly bilingual character is particularly marked.

Id. at 41.

171. FINAL REPORT, *supra* note 170.

and thus can hardly be said to partake equally of the “character and flavour” of the non-Russian republics.

A recent Soviet constitutional critique noted that “the fact that the capitals of the USSR and RSFSR coincide strengthens the predominant role of the RSFSR in the Union.”¹⁷² At the same time, it undermines the norm of republican equality and the assertion of a viable federalist system.

c. Russian Language and Soviet Symbols

The Brezhnev Constitution of 1977 guarantees the right to use a non-Russian, national language,¹⁷³ prohibits discrimination based on nationality or language,¹⁷⁴ and requires that judicial proceedings be conducted in the appropriate republican language.¹⁷⁵ These constitutional protections have not always been reflected in legal practice. A 1922 Decree, paradoxically called “Expanding the Use of the Tatar Language,” prohibited private telephone conversations in the Tatar language, “by virtue of the impossibility of establishing monitoring.”¹⁷⁶ In the late twenties the Soviets began a linguistic attack on Islam by eliminating Arabic script—the alphabet of the Koran—and substituting the Latin alphabet in Central Asia.¹⁷⁷ Another tack toward Russification was taken in 1938–40, when the Latin alphabet was in turn replaced by the Russian alphabet in the Central Asian republics, Azerbaidzhan, the Tatar Autonomous Republic, and the Crimea.¹⁷⁸ This shift was justified on the grounds that Russian loan words could be introduced into these languages more easily, and that the study of the Russian language itself would be made easier.¹⁷⁹ On March 13, 1938, the study of the Russian language became compulsory in non-Russian schools everywhere in the Union.¹⁸⁰ For five

172. A. Volpin, *On the Constitution of the USSR*, PAPERS ON SOVIET LAW 52, 106 (L. Lipson & V. Chalidze eds. 1977).

The USSR should create an extra-republican capital territory outside the jurisdiction of the RSFSR. The most appropriate region might be the southeastern corner of Byelorussia, near Gomel, the tricornered area where the borders of Russia, the Ukraine, and Byelorussia are contiguous. The nearest settlement to these borders is known, happily enough, as Lenino.

173. KONSTITUTSIJA, *supra* note 24, art. 36.

174. *Id.*, art. 34.

175. *Id.*, art. 159.

176. The Decree of the Central Executive Committee Area Council of People’s Commissars of the Crimean Autonomous Soviet Socialist Republic on Expanding the Use of the Tatar Language, *cited in* CHALIDZE, *TO DEFEND THESE RIGHTS* 87 (1974).

177. *See* SOVIET NATIONALITIES POLICY IN PRACTICE 70–78 (R. Conquest ed. 1967).

178. *See id.* at 75.

179. *See id.*

180. *See id.*

years—between 1960 and 1965—statutes and regulations were published only in Russian.¹⁸¹

The preeminence of the Russian language can be characterized as Great Russian linguistic imperialism, benign westernization and socialization of feudal states, or the inevitable use of the only possible *lingua franca* in scientific institutions, the military, major industrial enterprises, educational facilities, and trade union centers. Such preeminence does exist, however, and constitutional protections are of no avail where *de facto* discrimination against non-Russian speakers limits opportunity. As a Soviet authority recently wrote: "Every Soviet citizen, while making wide use of his native tongue, strives to satisfy *his need for knowledge of Russian* . . . [but] the desire that peoples of the USSR have to master the Russian language is depicted as a threat to other languages."¹⁸²

Several symbols receive constitutional sanctification in the 1977 Constitution, and Russification is evident here as well. A Soviet seal is specified as "a hammer and sickle on a globe depicted in the rays of the sun and framed by ears of wheat with the inscription 'Workers of All Countries, Unite!' in the languages of the Union Republics."¹⁸³ The Russian language inscription occupies central position, in large type, framed by folds of red ribbon and flanked by Ukrainian and Byelorussian; the other twelve languages radiate upward in smaller type on either side of the Russian center piece.¹⁸⁴

The 1977 Constitution provides for a State Anthem to be confirmed by the Presidium of the Supreme Soviet.¹⁸⁵ The most recent lyrics were approved on May 27, 1977, and appeared, with score, in *Izvestia* of June 12, 1977, emphasizing the formation of the Union:

*"Great Russia has united forever
An unbreakable union of free republics.
Long live the indivisible mighty Soviet Union,
Created by the will of the peoples."*¹⁸⁶

Song writers may of course be granted artistic license, but an indivisible,

181. See *id.* at 78.

182. Bagramov, *Relations Among Nationalities and the Struggle of Ideas*, CURRENT DIGEST OF THE SOVIET PRESS, Aug. 22, 1979, at 12.

183. KONSTITUSHIA, *supra* note 24, art. 169.

184. Soviet symbolism is extensively discussed in 8 SOVIET STATUTES AND DECISIONS 13-410 (1971-72). See particularly Smith, *Soviet State Symbolism*, in 8 SOVIET STATUTES AND DECISIONS 26-42, for a demonstration of the similarity between the seal of the Russian Empire and the seal of the Soviet Union.

185. KONSTITUSHIA, *supra* note 24, art. 171.

186. See CURRENT DIGEST OF THE SOVIET PRESS, July 13, 1977, at 10. The Russian words for "united," "unbreakable," and "indivisible" are *splotit*, *nerushimi*, and *yedini*, respectively.

unbreakable union united (not amalgamated or federated) by Great Russia does not comport with constitutional norms.¹⁸⁷

5. *Military Capacity*

The 1924 constitution allocated armed forces “organization and control” to the Union,¹⁸⁸ but left open the possibility that republics might have their own formations. The Third Congress of Soviets (of the 1924 constitution) approved a plan for national units, and by 1934, there were seventeen non-Great Russian divisions in the Red Army—ten Ukrainian, three Byelorussian, two Georgian, one Armenian, and one Azerbaidzhani. The Stalin (1936) constitution, however, assigned “[o]rganization of the defense of the U.S.S.R. and the direction of all the armed forces of the U.S.S.R.” to the Union,¹⁸⁹ and in the last party Congress before the war, in 1939, it was declared that:

The Workers’ and Peasants’ Red Army is the sole army of the Soviet State on a common and equal basis. For this reason the existence of separate small national military formations, permanently tied to their own territory, contradicted the fundamentals of the Stalin Constitution and the principles of the extra-territorial recruitment of our Army. The national units have been merged in the Workers’ and Peasants’ Red Army on a common basis.¹⁹⁰

A political reversal occurred in 1944 (perhaps anticipating republican membership in the post-war United Nations organization) and a constitutional amendment authorized “republican military formations”¹⁹¹ under the organizational control of the relevant republican Supreme Soviet.¹⁹² A further amendment gave the union responsibility to formulate “directing principles” for the “organization of the military formations of the Union Republics.”¹⁹³

All such republican powers were stricken from the 1977 Constitution. Complete authority for (internal) state security, war and peace, safe-

187. KONSTITUTSIIA, *supra* note 24, arts. 70–81.

188. KONSTITUTSIIA (Constitution) of 1924, §1, art. 1(m), *reprinted in* TRISKA, *supra* note 1, at 19.

189. KONSTITUTSIIA (Constitution) of 1936, ch. 2, art 14(g), *reprinted in* TRISKA, *supra* note 1, at 39.

190. STENOGRAPHIC ACCOUNT OF 18TH CONGRESS OF ALL-UNION COMMUNIST PARTY (Bolsheviks) 191 (1939), *reprinted in* SOVIET NATIONALITIES POLICY IN PRACTICE 53 (R. Conquest ed. 1967).

191. KONSTITUTSIIA (Constitution) of 1936, as amended by the Fifth Session of the Sixth Supreme Soviet of the USSR, ch. 2, art. 18b, *reprinted in* TRISKA, *supra* note 1, at 62.

192. KONSTITUTSIIA (Constitution) of 1936, as amended by the Fifth Session of the Sixth Supreme Soviet of the USSR, ch. 4, art. 60(f), *reprinted in* TRISKA, *supra* note 1, at 66.

193. KONSTITUTSIIA (Constitution) of 1936, as amended by the Fifth Session of the Sixth Supreme Soviet of the USSR, ch. 2, art 14(g), *reprinted in* TRISKA, *supra* note 1, at 61.

guarding frontiers and territory, direction of the Armed forces, and organization of defense was given to the USSR, not the republics.

If a well-regulated militia is necessary to the security of a free State, then it must be concluded that the Soviet republics are less than free states. To be sure, neither the Canadian provinces nor the Australian states have military capacities, but then, neither do they have a constitutional right to secede or conduct foreign relations.¹⁹⁴ The lack of a military potential further taints the presumption of republican sovereignty.

6. *International Legal Personality and the Right to Secede*

Soviet authorities have only recently emphasized the international legal capacity of the republics, introducing constitutional concepts which run counter to claims of economic interdependence. In his 1936 speech on the draft constitution of that year, Stalin emphasized "fraternal cooperation" in a single state, while opposing increased federal rights for administrative units like the Tatar Republic and the Volga German Republic, nowhere mentioning republican capacity to treat with foreign nations.¹⁹⁵ Indeed, two years before, on September 18, 1934, the Soviet Union joined the League of Nations as a single entity, leaving no record of having sought multiple membership. The standard constitutional law text of its day, A. Y. Vyshinsky, *Law of the Soviet State*, emphasized that "questions of external relationships (diplomatic and economic) . . . [are left] to the unlimited jurisdiction of the Union as before [the 1936 constitution]."¹⁹⁶ To demonstrate his thesis, Vyshinsky recorded the communication of July 23, 1923, when "the government of the USSR informed foreign powers that it had assumed conduct of the foreign relations of the Soviet Republics."¹⁹⁷ He also discussed and rejected the federal, or state's rights, theory of the American Calhoun, whose theory, Vyshinsky says, "was accepted by the bourgeoisie of the Confederate States which,

194. British North America Act, *supra* note 97; Commonwealth of Australia Constitution Act, *supra* note 98.

195. Report delivered by J. Stalin to the Extraordinary Eighth Congress of Soviets of the U.S.S.R. (Nov. 25, 1936), *reprinted in* J. STALIN, *ON THE DRAFT CONSTITUTION OF THE USSR* 16 (1936).

196. A. Y. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 280 (1948).

Vyshinsky was the leading Soviet jurist of his time. He wrote (or perhaps edited) the definitive work on Soviet constitutional law, edited the leading law review (*Sovetskoye Gosudarstvo i Pravo*—Soviet State and Law), was the chief Prosecutor of the USSR, and personally directed and conducted the trials of leading old Bolsheviks (Bukharin, Pyatakov, Kamenev, and Radek) in 1937–38. He also served as deputy minister of Foreign Affairs, as Foreign Minister from 1949 to 1953, and as Soviet delegate to the U.N. after Stalin's death until his death in 1954.

197. *Id.* at 107.

during the Civil War, sought to withdraw from the Northern States.”¹⁹⁸ He sets out the USSR as “protector of the sovereign rights of Union Republics”¹⁹⁹ and describes the “nature of the USSR as a single, union, socialist state” whose laws are binding upon each Union republic and have binding force in its territory.”²⁰⁰

Revision and reversal came on February 1, 1944, when the Soviet Constitution was amended, giving the republics “the right to enter into direct relations with foreign states and to conclude agreements and exchange diplomatic and consular representatives with them,”²⁰¹ and declaring that “Each Union Republic [shall have] its own Republican military formations.”²⁰²

This amendment preceded, by six months, the demand for sixteen Soviet seats in the post-war allied nation’s organization (Dumbarton Oaks, August-October 1944). A few months later, at Yalta (February 1945), the Soviet request for sixteen places (at that time, the Karelo-Finnish Republic still existed) was revised downward to three seats, for the Ukraine, Byelorussia, and Lithuania. One of the participants at Yalta, E. R. Stettinius; the American Secretary of State, recorded various justifications for the Soviet request advanced by Stalin, Foreign Minister Molotov, and President Roosevelt.²⁰³

Molotov argued that the constitutional changes of 1944 justified multiple Soviet membership. He also noted that Byelorussia, Lithuania, and

198. *Id.* at 278 n.60. The essence of Calhoun’s theory, “the great and leading principle,” which Vyshinsky rejected, is “that the General Government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact, to which each state is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions. . . . This right . . . , be it called what it may,—State-right, veto, nullification, or by any other name,—I conceive to be the fundamental principle of our system. . . .” Address by John C. Calhoun (July 26, 1831), *reprinted in WE THE STATES 278–79* (1964) (collection of commentaries published by the Virginia Commission on Constitutional Government).

Presumably, Vyshinsky rejected the “sovereign capacity” of the republics to nullify or veto Union Action. The republics had a constitutional power to secede, but this option, assuming it is viable, embraced no lesser alternative.

199. A. Y. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 288 (1948). The USSR will protect the republics, according to Vyshinsky, from the fascist states and the “right-Trotsky bloc” which “yearn[s] to wrest from the USSR the majority of the Union Republics and turn them into colonies of their own.” *Id.* at 288–89.

200. *Id.* at 289.

201. KONSTITUTSIYA (Constitution) of 1936, art. 18(a), *reprinted in TRISKA, supra* note 1 at 54.

202. *Id.* art. 18(b). Note that article 18(b) does not merely declare a right; it postulates the thing itself. The republics did not, in fact, have national formations after 1939. It could, of course, be suggested that a Lithuanian, Latvian, Finnish, Estonian, or Ukranian Army might have been as much of a threat to Stalin as to Hitler.

203. See E. R. STETTINIUS, *ROOSEVELT AND THE RUSSIANS* 173 (1950).

the Ukraine, were heavily populated, and that they had borne the greatest sacrifice of the war. According to Stettinius, Stalin told F.D.R. that Stalin's position in the Ukraine was "insecure" and a vote for the Ukraine, ironically, would assist Soviet unity. Roosevelt observed that the British were themselves embarrassed about multiple votes within the Empire. Churchill in particular had little standing to protest, as he was opposed to independence for India, which was expected to gain U.N. membership. F.D.R. added a pragmatic rationalization by concluding that out of fifty or more seats in the General Assembly, two, three, or four for the Soviet Union would make little difference.

An additional reason was advanced after the fact by the Ukrainian Foreign Minister, Dmitri Maniulsky, who implied in 1945 that when the other republics have reached a certain level of production and self-sufficiency they would also join the U.N. separately.²⁰⁴ A more cynical explanation was offered by another contemporary diplomat, Sumner Welles, who suggested that a bargain was struck, in part, because of confusion in the American camp about regional associations in Latin America, and in part, to secure the admission of Argentina's pro-German government.²⁰⁵

Article 2(1) of the Charter of the United Nations proclaims: "the Organization is based on the principle of the sovereign equality of all its Members."²⁰⁶ The Ukraine and Byelorussia (but not Lithuania or the Russian Republic) joined the USSR in charter signatory membership, and thus arguably, possessed a degree of sovereignty equal to that of the USSR. In addition, the Ukraine and Byelorussia have joined many international organizations,²⁰⁷ consequent upon their U.N. membership, and, in turn, become signatories to many multilateral treaties and conventions.²⁰⁸ The Ukraine took the lead in advancing the Soviet position in the Dutch-Indonesian crisis of 1946, and was a member of the Security Council from January 1, 1948 through December 31, 1949. Recent Soviet constitutional texts, which have replaced Vyshinsky's, emphasize that the republics are independent entities at international law,²⁰⁹ and routinely cite

204. S. ARNE, UNITED NATIONS PRIMER 134 (1948).

205. S. WELLES, WHERE ARE WE HEADING? 211 (1946). American conservatives believed that a Communist conspiracy, led by Alger Hiss, was responsible for the multiple Soviet membership. Hiss had participated in the Yalta Conference and had presided at organizational meetings in San Francisco; he was subsequently interrogated by the House Un-American Activities Committee concerning his support for the Soviets. See A. WEINSTEIN, PERJURY: THE HISS-CHAMBERS CASE 14, 359 (1978). See also J. C. SMITH, ALGER HISS: THE TRUE STORY 114-134 (1976).

206. U.N. CHARTER art. 2, para. 3.

207. For a list of these organizations see generally 29 UNITED NATIONS YEARBOOK (1975).

208. Uibopuu, *International Legal Personality of Union Republics of U.S.S.R.*, 24 INT'L & COMP. L. Q. 811, 835 (1975). No bilateral treaty between a western nation and a Soviet Republic is cited.

209. V. I. LISOVSKY, MEZH DUNARODNOE PRAVO (International Law) 68 (1970); 1 KURS MEZH DUNAR.

their right of secession and the international activity of the Ukraine and Byelorussia as proof.

Critics writing in the west unanimously reject these claims, citing the republican failure to pursue meaningful international relations. Dolan claims that post-war British and American diplomatic approaches to Byelorussia and the Ukraine resulted in "a complete fiasco,"²¹⁰ and Uibopuu refers to unanswered British attempts to exchange representatives with Ukraine.²¹¹ Luryi flatly states that:

It is obvious from even a cursory analysis that the union republics do not have even partial independence in terms of internal politics and none in terms of external politics. . . . On constitutional grounds, there is even less reason to consider the republics as independent states than states in the United States or Provinces in Canada.²¹²

These critics base their conclusions on their empirical observation of what the republican governments have failed to do, and the absence of meaningful diplomatic activity by the Ukraine and Byelorussia as well as the other twelve republics (excluding the RSFSR). Constitutional fraud, however, is not demonstrated by the failure of, say, Kazakhstan to identify with a League of Islamic States, but by the anomalous inconsistencies that do exist. For example, the second and third, but not the most populous of Soviet republics are represented at the U.N. Does this prove that the RSFSR is less developed than the Ukraine and Byelorussia, or that the USSR is really the RSFSR writ large? Are Latvia, Lithuania and Estonia less developed than the Ukraine? Did the Balkan republics suffer less in WW II than Byelorussia? Neutral constitutional analysis can accept the republican powers of the 1977 document and still demonstrate a lack of genuine international republican capacity.

The republics have no international economic capacity. They cannot create, subsidize, or otherwise control international exchange of material goods. They cannot engage in international trade. They cannot raise capital abroad, extend credit, or otherwise take part in international finance by

ODNOVO PRAVA V. SHESTI TOMAKH (A Course in International Law in Six Volumes) 150 (1967). See generally D. B. LEVIN, *ISTORIYA MEZH DUNARODNOVO PRAVA* (History of International Law) (1962).

210. Dolan, *The Member-Republics of the U.S.S.R. as Subjects of the Law of Nations*, 4 INT'L & COMP. L. Q. 629, 631 (1955).

211. Uibopuu quotes official British correspondence:

[I]t is confirmed by the Foreign and Commonwealth Office, London, that the British Government in August 1947 formally requested the Soviet Government to forward to the Government of the Ukrainian Republic their proposal for an exchange of diplomatic representatives. No reply was received from the Ukrainian Government. . . .

Uibopuu, *International Legal Personality of Union Republics of U.S.S.R.*, 24 INT'L & COMP. L. Q. 811, 840 n. 165 (1975).

212. Luryi, *supra* note 58, at 56.

the terms of article 73(10)—which explains republican non-participation in the IMF, IDA, IFC and the International Bank. They can participate in the exchange of information and regulation of intellectual property, but ironically, they may neither export nor import material goods nor manage a financial exchange—the very essence of the tasks of a socialist state.

As the 1977 Constitution abolished republican military operations, the republics lost the von Clausewitzian option to pursue diplomacy by other means. They can engage in symbolic friendship, but have not the means to constitutionally resist foreign, or internal, territorial incursions. They have no control of their own borders,²¹³ nor even their internal territorial security.²¹⁴ They cannot try a citizen for treason against their own republic, even if it was possible to identify their own citizenry vis-a-vis citizens of other republics.

Finally, even the right to secede is an empty vessel, devoid of legal meaning. There exists no legal means or republican agency capable of pursuing such a decision, even if the decision could be approached verbally without violating that section of the relevant republican criminal code, required by the All-Union norm, which proscribes “weakening the Soviet State” by word or by deed.²¹⁵

CONCLUSION

The Soviet federal system is suspect at every level of legal, judicial, executive, legislative, and administrative activity, and the constitutional forms of federalism are a facade. The Russia of the Czars, the Great Russian Empire, has transmuted and is now concealed in Marxist cloth of Leninist cut, but the fundament of Russian domination remains. Union legislative power is unbounded, union control of the economy is total, union constitutional preeminence is complete, union supervision of institutions is unqualified, and union direction of the armed forces is unilateral and unrestrained. Marxist-Leninist theory, the vocabulary of Soviet federalism and the absence of republican citizenship support an interpretation of Soviet “unitary federalism,” which emphasizes the central unit. The republics have no policy-making authority, either foreign or domestic, and they do not share, in any consistent manner, international legal personalities. In practice they cannot exercise their power to secede. In law, the so-called republics have less autonomy than Canadian provinces or Australian states. It must be concluded that the USSR is a supremely unitary state, with a superficial federal veneer.

213. KONSTITUTSIA, *supra* note 24, art. 73(8).

214. *Id.* art. 73(9).

215. *See, e.g.*, Criminal Code of RSFSR, art. 70.