Searching for a New Constitutional Model for East-Central Europe

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SEARCHING FOR A NEW CONSTITUTIONAL MODEL FOR EAST-CENTRAL EUROPE

Rett R. Ludwikowski*

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V. CONCLUSIONS: TOWARD A NEW CONSTITUTIONAL MODEL FOR EAST-CENTRAL EUROPE

I. INTRODUCTION

Even the most enthusiastic commentators on Gorbachev’s attempts to restructure the Soviet economy admit that the system does not show many symptoms of a quick economic recovery. Gorbachev’s glasnost and perestroika are tested in an atmosphere that resembles the Sisyphean Labors rather than the noisy hurrah-enthusiasm of the Khrushchev era. Until recently, only an internal reform of the Soviet Communist Party and a heralded shift of power from the political to the legislative and executive bodies were perceived in the West as significant evidence of a structural transformation within the Soviet Constitutional System. The assessment of these constitutional changes, however, requires a careful study of the Soviet post-revolution constitutional development and an examination of the question whether they constitute true reform, or only a deception conceived to divert attention from internal distresses of the system.

At this moment, it is also quite apparent that constitutional transformation in Eastern Europe is imminent as the Eastern European leadership continues to change. Now is the most appropriate time to consider what, if anything, the future constitutional model will be. Obviously, it will not continue to be the Soviet model. Will it be, however, based to any extent on American, British, East or West European liberal traditions? Will it be an amalgam of any, or all, of these? These questions have not yet received adequate attention.

Experts studying the process of political transformation observe that the successful transfer of power or the emergence of new centers of political responsibility requires a vast knowledge of the social, economic, cultural and geopolitical circumstances in which the new institutions are to be installed. Successful constitutional or legal engineering also requires advanced comparative technique to help locate political devices applicable to unique combinations of local factors. The success of the constitutional works is largely attributable to the mature intellectual background of the constitutional drafters, and to their ability to draw from the experience of other nations. It requires appropriate channels of information which can facilitate the exchange of political ideas.

The dissemination of the constitutional experience currently makes possible the quick adoption of well-tested constitutional principles. One may argue that the time factor has become less important
with the growth of a world-wide constitutional experience. In the conditions of significant political isolation, however, the development of constitutional movements requires more time than in conditions conducive to the transfer of constitutional experience.

For years, free access to constitutional experience was blocked for the socialist countries. Because of the lack of significant interflow of opinions between the West and East and because of Soviet control, the societies of Eastern Europe had either to adopt blindly the Soviet constitutional model or to try to draw from their own constitutional traditions. Today, the East Europeans face an exciting and challenging prospect of developing a new constitutional model. With discussion of new laws many questions naturally arise. It is necessary to evaluate the legacy of socialist constitutional structures and to determine the applicability of the Western models and the East European constitutional traditions and experiences. This may need insight into both the inner dynamics of the East-Central European political arena and the Western perspective.

The purpose of this Article is to review the constitutional traditions of the East-Central European states with emphasis on their liberal and democratic attributes. The Article will also examine the common core of the socialist constitutions and analyze the current constitutional development in the Soviet Union and in the two Central European countries most advanced in the process of constitutional transformation, Poland and Hungary. Finally, it will supply observations on the process of forming a new constitutional model in East-Central Europe.

II. CONSTITUTIONAL TRADITIONS: THE OVERVIEW

A. Polish Constitutional Traditions

The constitutional history of a country begins when some institutions have been established and when procedures have been implemented to limit the power of the government. "Constitutions," wrote Kenneth C. Wheare, "spring from belief in limited Government." In trying to trace the origins of the Polish constitutional government, one finds that the process of limiting the king’s power began in Poland as early as the fourteenth century, and that Poland emerged as a constitutional monarchy in a period when other major European countries were reinforcing their absolutism. At the end of the sixteenth

1. K.C. Wheare, Modern Constitutions 10 (1951).
2. See Wagner, Coleman & Haight, Laurentius Grimaldus Goslicius and his Age -
century, Poland with its system of so-called "democracy of the gentry" looked like an island surrounded by monarchies which vested the combined legislative, executive and judicial power in one ruler. This system contributed to the internal crisis of the Polish Commonwealth which coincided with successful internal reforms in Russia, Prussia and Austria. The neighbors were interested in keeping Poland demilitarized, neutralized and in a state of anarchy. In the eighteenth century, a faction of politically mature nobles was formed. This faction was quite aware of the deficiencies within the Polish political system and despite internal opposition prepared sound programs of reforms. By the end of the eighteenth century, the nobles' activity resulted in the adoption of the first written constitution in Europe which substantially reformed the Polish political structure.\(^3\)

1. The Constitution of May 3, 1791

The Polish Constitution of 1791 began with the words, "In the name of God, the one and only in the Holy Trinity." It drew the distinction between Roman Catholicism and "other creeds," and stated that the deviation from Catholicism was recognized as apostasy. It confirmed, however, that "the religious freedom, and protection of the government for other (than Roman Catholic) religions is guaranteed."\(^4\)

The critics often tried to expose the non-democratic character of the Polish Constitution of 1791 and claimed that it was adopted by the nobility, served the interests of this single class, and did not solve the crucial social problems of the time.\(^5\) In fact, the constitution did not undermine the monopoly of the nobility's political power, but introduced the burghers into the political arena and gave peasants better protection of law. The recent bicentennial comparative studies of the American and Polish first constitutions demonstrate that the traditional attempt to set the democratic American Constitution against the non-democratic Polish Act is not justified, and the comparison of the political rights addressed in both constitutions demonstrates much more impressive similarities than are usually admitted.\(^6\)

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4. NEW CONSTITUTION OF THE GOVERNMENT OF POLAND (1791) (English trans.).

5. See A. Ajenkiew, POLSKIE KONSTYTUCJE (Polish Constitutions) 21-22 (1983) [hereinafter Ajenkiew].

The critics of the first Polish Constitution argued frequently that despite the declaration that the highest authority was vested in the three powers, the whole concept of the distribution, separation and balances of the main branches of government was not accomplished. The Law on Government, as the Constitution of May 3 was officially called, and a few detailed statutes departed from the original concept of "checks and balances" and granted far superior power to the Seym.

The Seym held the legislative power. It was composed of two chambers: the Senate and the Chamber of Deputies. Although the king presided over the Senate, the national sovereignty was vested in the Chamber of Deputies which was declared "to be a temple of legislature." All bills were introduced to the lower chamber and later sent to the Senate for further debate. The king did not have the right to veto the decisions of the lower chamber. This right was vested in the Senate, and the Senate's veto could be overruled by the Chamber of Deputies in the second ballot at the subsequent session. The legislative initiative was vested in the king, the Council of Guardians, the deputies, and in the local diets. The local diets retained the legislative initiative, but could no longer vote on local taxes, and their instructions were not binding on the deputies to the Seym, who were recognized as the representatives of the whole nation. In this way, the whole legislative power was centralized in the Seym. The constitutionality of its decisions was not subject to any control. As Boguslaw Lesnodorski wrote, "In short, we do not have here [in the concept of the reformed government] the idea of the strict division of powers. There is no balance. There are good foundations for the symocracy of the nobility."  

The constitution introduced a system which featured some of the attributes of the parliamentary form of government. The legislature was recognized as a supreme power. The king, as head of the state, appointed the ministers for two years, but the nominations were to be presented to both Chambers of the Seym which could vote "no confidence" on the king's nominees. Also, a two-thirds majority of the joint Chambers could dismiss a minister during his two-year tenure. The constitution did not provide, however, for any procedure which could dismiss the whole government. The king, as a chief executive officer, was no longer elected. After the death of Stanislas Augustus, the Polish throne was to become hereditary in the House of the Elec-

7. New Constitution of the Government of Poland (1791), at art. VI.
The king was not responsible for the parliament, but his decisions (as in the British government) could be exercised through, and on, the advice of ministers who were expected to countersign them.

The constitution provided that the executive power would be vested in the king and the Guardians of Law. The Guardians did not constitute a formal cabinet. They were to perform the role of the king's Council. In this Council, the "king's voice was to prevail." The king, similar to the President in the American system, assumed two roles: the head of state and head of government.

The Law on Government played a very special role in the Polish constitutional history. Under Russian pressure, the constitution was abolished by the rebel Confederation in 1792 and was followed by the second partition of Poland of January 23, 1793. The basic principles of the government as advanced by the framers of the constitution, however, remained very much alive in Polish political thought. The Polish Governmental Law was not only the first European written constitution, but, for generations of Poles, it became a symbol of a mature political culture. It left an important legacy which was followed by the Polish constitution in the twentieth century.

2. Polish Constitutions in the Period of the Partitions

The Polish constitutions of the nineteenth century were granted by the foreign monarchies and displayed few similarities to the Constitution of 1791. They also exerted less influence on the development of current Polish constitutional thought and, as such, do not require more extensive analysis in this study.

In 1794, Poland once again tried to end Russian tutelage. A national insurrection led by Tadeusz Kosciuszko, a hero in the American Revolutionary War, was not successful. The Kosciuszko Insurrection was followed by the abdication of King Stanislas Augustus Poniatowski (November 24, 1795) and the third partition of Poland, which eliminated the Polish State. Most of the Polish territories were incorporated into Austria, Prussia or Russia.

The next constitution was granted to the Poles by Napoleon. In July of 1807, Napoleon established a small, independent buffer state carved out of the Prussian segment of Poland. Napoleon summoned the representatives of the Polish Governing Committee to Drezden.

9. The two Polish kings directly preceding Stanislas Augustus were from the Saxon dynasty.
New Constitutional Model

and dictated a compact constitution.\textsuperscript{10} It consisted of eighty-nine short articles and was deprived of the patriotic phraseology of the Constitution of 1791. It confirmed the status of Catholicism as "a State religion," but it emphasized that "all religious worship is free and public."\textsuperscript{11} The proclamation of the Constitution of 1791, which stated, "the deviation from Catholicism was recognized as apostasy," was deliberately dropped. The Constitution of 1807 vested strong executive power in the King of Saxonia, who was to be hereditary ruler of the Duchy of Warsaw. The legislative power of the Seym was limited to taxation, civil and criminal law. The Council of Guardians from the Constitution of 1791 was replaced by the French model of the Council of State. The Council, composed of ministers, was given vast powers to work on bills which were to be submitted to the Seym. It operated as an administrative court and a court of cassation. In regard to the social sphere, the Constitution of 1807 "abolished slavery" and stated that "all citizens are equal in law." Generally, the constitution was fashioned on the French pattern, and incorporated only a few Polish institutions. The Constitution of the Duchy of Warsaw served as a model for the Constitution of Westphalia and a few constitutions of the member states of the Union of the Rhineland.\textsuperscript{12}

The fall of Napoleon ended the short life of the Duchy of Warsaw. Early in 1813, the Russian army again entered Polish territory. After the Vienna Congress of 1815, the western part of the Duchy of Warsaw, named the Grand Duchy of Poznan, was incorporated into Prussia. A tiny autonomous state, the Republic of Cracow, was formed from the district of Cracow. Out of the remainder of the former Duchy of Warsaw, Russia created the Kingdom of Poland. In November of 1815, the new state was granted a constitution. The text was drafted by the Polish aristocrat, Adam Czartoryski and was edited considerably by Tsar Alexander the First.\textsuperscript{13} The king, acting simultaneously as the Russian Tsar, reserved for himself the legislative initiative and the right to veto the Seym's statutes. Both chambers were allowed to discuss the government's reports and legislative projects. The Chamber of Deputies could question the ministers and submit complaints about governmental officials to the Senate. The meetings of the Seym were to be open to the press, an arrangement

\textsuperscript{10} See A. Gieysztor, S. Kieniewicz, E. Rostworowski, J. Tazbir & H. Wereszycki, History of Poland 413 (1968) [hereinafter Gieysztor].

\textsuperscript{11} See The Constitution of 1807, reprinted in M. Handelsman, Trzy Konstytucje (The Three Constitutions) 1-12 (1915).

\textsuperscript{12} See Ajnenkiel, supra note 5, at 91.

\textsuperscript{13} See Gieysztor, supra note 10, at 433.
which was to guarantee public control over the lawfulness of governmental actions.

The constitution was quickly recognized as the most liberal constitution in Europe. In numerous pamphlets, Polish commentators glorified the “Magnanimous Tsar” and emphasized his “unlimited generosity” and truly liberal convictions. Common optimism as to the glorious future of the kingdom under the Tsar’s liberal government reached its height shortly before the first session of the Seym in 1818.

The Poles expected that the organization of the legislature, consisting of two chambers, would enable them to participate in the political process. The first session showed, however, that the deliberate use of ambiguous constitutional language by Alexander I would provoke numerous clashes between the deputies and the government. The practice quickly proved that the apparently liberal constitution was a mere declaration whose provisions were manipulated, avoided and violated at whim by the tsarist administration. The constitution lasted until the next Polish upheaval, called the November Insurrection of 1830. After the defeat of the Insurrection of 1830, Tsar Nicholas I declared the constitution null and void and abolished both the Seym and the Polish army. In 1832, he granted the Polish Kingdom, linked to Russia by the personal union, an Organic Statute, which was to give the kingdom separate administrative and civil rights. “The Statute, however,” wrote S. Kieniewicz, “was never enforced and the country was kept in a state of emergency.”

Until World War I, the Polish territories remained part of the partitioning empires of Austria, Prussia and Russia. The Poles living in Galicia, the Austrian part of the Polish territories, were reintroduced into constitutional practices in the period of the early 1860s when Emperor Franz Joseph granted two constitutional acts, the Diploma of 1860 and the Patent of 1861, which were to regulate the organization of the governmental departments of the empire. After the Prussian-Austrian war in 1867 the Reichstrat, the parliament in Vienna, enacted the constitution under which the Austrian part of the monarchy was governed until 1918. The empire was divided into two

14. See A. REMBOWSKI, Nasze Poglady Polityczne w 1818 (Our Political Opinions in 1818), in PISMA (Works) 73 (1901-1908). See also Mowa na Obchodzie Rocznicy Wstąpienia na Tron N. Pana Imperatora Aleksandra I - 12 VI 1818 (Speech on the celebration of the Anniversary of the Elevation to the Throne of His Imperial Highness Alexander the First) (June 12, 1818); see J. WYBICKI, ZBIOR MYSLI POLITYCZNYCH O RZADZIE REPRESZENTACYJNYM (Collection of Thoughts on the Representative Government) 21 (1819).

15. See GIEYSZTOR, supra note 10, at 463.
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parts: "the historic kingdom of Hungary" and the "historic kingdoms and lands" of Austria (including Galicia).16

In the loose confederation of German states, after the early experience with the Napoleonic constitutions, the era of constitutional experiments began with the revolutionary events of the Spring of Nations. The Nationalist movement of January 1848 sparked a local revolution in Sicily which overthrew the monarchy in France in February 1848, and extended quickly throughout Europe, reaching the German states in March. The governments in the German states promised to adopt a constitution and the National Assembly was convened in St. Paul's Church at Frankfurt to draft a German constitution.17 The framers of the constitution carefully examined European constitutional models, but drew most heavily from the American constitutional experience. Besides the federal structure which followed the American model:

references to and comparisons with the U.S. Constitution within the commission and the National Assembly covered many important subjects to be dealt with by the draft constitution - for example, the separation of church and state, and freedom of religion; a republican form of government; election system; citizenship; immunity and indemnity of members of parliament; the presidential system; amendment of the constitution; freedom of trade and occupation; free movement within the Union; freedom of the press, and jury trial; and states of emergency.18

The victory of the counterrevolution in Germany hampered the constitutional movement until the adoption of Bismarck's constitutions of 1867 and 1871. The first, in 1867, followed the Prussian-Austrian war and the formation of the North German Federation in October 1866; the second, the 1871 Constitution of the German Empire, was adopted as a result of the victorious war with France. Under the Constitution of 1871, the emperor controlled foreign policy and the military forces but Germany remained a federal union. Aristocratic-monarchical order was preserved in the individual states whose rulers were represented in the Bundesrat (Federal Council). The Reichstag (Imperial Parliament) exercised the legislative power.19 Prussia,

18. Id. at 202.
which led the other German states into the federal union, adopted for herself a short-lived constitution in 1848. The Constitution of 1850 was very inadequate by democratic standards. The influence of the German Constitution of 1871 and the Prussian constitutions on the political life in the Polish province was insignificant.

3. Constitutions of the Restored Polish State After World War I (1918-1939)

World War I brought Poland independence. The new state wished to continue the Polish constitutional traditions and, in January 1919, the “Ankieta” group was called to draft a project of the basic laws. “Ankieta” held seventeen meetings between February 17 and March 12, 1919, and prepared a project which vested broad executive power in the office of the president. The process for electing the president was based on the American model.

The new Constitution of March 17, 1921, disappointed those who believed that the new republic needed a strong presidential system rather than an impotent “seymocracy.” In fact, the Constitution of 1921 referred directly to “the glorious and memorable traditions of the Constitution of May 3.” Despite the 130 years which divided the constitutions, their major principles showed considerable similarities. The preambles of both the 1921 act and the Constitution of May 3, 1791 began with the phrase, “In the name of the Almighty God.” The position of the Roman Catholic faith, being the religion of the great majority of Poles, was referred to in the 1921 constitutional text as “predominant among equal worships.”

Article Two of the 1921 constitution, resembling article five of the Constitution of 1791, proclaimed that “the supreme power belongs to the nation” and explained that this power is to be divided among the legislature, executive and judiciary. Although the new state adopted a republican form of government, this form was denoted

20. Id. at 207; see also THE NEW CONSTITUTIONS OF EUROPE 214 (H. McBain & L Rogers ed. 1922) [hereinafter THE NEW CONSTITUTIONS OF EUROPE].
21. See 2 PRAWA PANSTWA POLSKIEGO (Laws of the Polish State) 428 (1918); PROJEKTY KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ (Projects of the Constitutions of the Polish Republic) 139 (1919); see also M. JASKOLSKI, HISTORIA, NANOL, PANISTWO 131-32 (1981).
22. See generally S. ESTREICHER, NASZA KONSTYTUCJA (Our Constitution) (1922).
23. See CONSTITUTION OF THE POLISH REPUBLIC OF MARCH 17, 1921, in A. BURDA, KONSTYTUCJA MARCOWA (The March Constitution) (1983) [hereinafter BURDA]. The Constitution of 1921 was preceded by the temporary Constitutional Act, the so-called “Little Constitution” of February 20, 1919.
24. Id. at 14.
a “Commonwealth,” in reference to the traditional name of the Polish state in the period of elective monarchy. Similar to the Constitution of 1791, the separation of powers in the new constitution did not amount to their equality. The Seym had been given a far more predominant role among the powers. Although the Constitution of 1921 referred to the traditions of Polish constitutionalism, its drafters also borrowed heavily from contemporary political systems, particularly from the French Constitution of 1875.\(^{25}\)

As a result of the coup d’etat of 1926, the constitution was amended. The Act of August 2, 1926, enhanced the executive power of the president. On April 23, 1935, the constitution was changed. The new act, known as the April Constitution, declared that total and undivided power was to be vested in the President of the Republic.\(^{26}\) The new constitution departed from the spirit of the Constitution of 1791 and marked a distinct evolution of the system toward an authoritarian government.\(^{27}\)

The fate of Poland after World War II was decided at the Yalta conference in February 1945. Although the conference declared that the Polish government was to be created on the basis of free and democratic elections, Poland was, in fact, left in the Soviet-controlled zone. The Polish “government of national unity,” which included the leaders of the Polish government in exile, and the Soviet-sponsored provisional government, was short-lived. A mass referendum was called in April 1946 to determine the composition of the Polish parliament and to determine the public attitude toward agrarian reform, nationalization of industry and the Polish western frontiers. The elections of January 19, 1947 proved that the government was not “democratic and free.” The elections were not fair and the leaders of the anti-communist opposition were in constant threat of persecution. The top Polish military commanders and underground activists linked to the London government were under permanent police surveillance. In October 1947, Mikolajczyk, the Deputy Premier and former Prime Minister of the London-based government in exile, was accused of being “an ally of foreign imperialists” and left Poland. Despite the Soviet assurances to the West in Yalta, Poland remained under total control of the pro-Moscow puppet government, headed by President Boleslaw Bierut and the Premier Jozef Cyrankiewicz.

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25. See id. at 32; see also GIEYSZTORN, supra note 10, at 653.
26. CONSTITUTION OF 1935 (Poland), at art. 2. (Text of the Constitution in separate brochure of 1935).
The organization of the governmental structures was initially regulated by a Statute called the “Little Constitution,” passed on February 19, 1947. In 1952 the full fledged constitution was adopted. As this constitution shared all fundamental features characteristic of socialist constitutions it will be analyzed in the section dealing with the common core of the socialist constitutionalism.

B. Soviet Constitutions

1. Constitutional Legacy of Tsarist Russia

It must be admitted that the constitutional legacy of Tsarist Russia was not impressive. Rapid westernization and remarkable industrial development at the turn of the century could not obscure the backwardness of the Russian political system.

The constitutional experience of Russia was much less impressive than its Polish territories. Prior to 1906, except for the brief period of activity of the “Zemsky Zabor,” popular dissatisfaction could not find any official representation before the tsar. Successive forced steps to move toward a more democratic government were a failure.

The announcement of a general strike and the rise of peasants frightened Tsar Nicholas II. On August 19, 1905, he issued regulations for the election of a national representative body based upon a restricted suffrage. On October 30, he signed an imperial manifesto in which he promised: 1) to grant inviolability of the person, freedom of conscience, freedom of speech and assembly, and the right to form unions; 2) to permit the participation in the Duma (representative body) of the Empire, leaving the further development of the principle of the universal suffrage to the newly established legislative procedure; 3) to establish, as an immutable right, that no law shall become effective without the approval of the Imperial Duma; and 4) to vest in the Duma the right to supervise the legality of the work of the Imperial administration. The fundamental laws of the Russian Empire of May 6, 1906, still provided that “the Emperor of all the Russians wields the supreme autocratic power. To obey his authority, not only through fear but for the sake of conscience, is ordered by God himself.”

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29. See W.F. Dodd, 2 Modern Constitutions 181 (1909) [hereinafter Modern Constitutions].
30. Id.
31. The Fundamental Laws of the Russian Empire art. 4, reprinted in Modern Constitutions, supra note 29, at 182-95.
Imperial Duma, jointly held legislative power. The initiative in all legislative measures, however, belonged to the Emperor.\textsuperscript{32}

The first Duma was instituted by the Imperial order of August 19, 1905, on the basis of indirect elections with limited suffrage. The Duma never acquired the functions usually associated with a genuine parliamentary legislature and was dissolved on July 21, 1906.\textsuperscript{33} The second Duma met on March 5, 1907,\textsuperscript{34} and it was dissolved on June 16, 1907, “because of its failure immediately to surrender, upon the demand of the government, fifty-five Social Democratic members accused of plotting against the government.”\textsuperscript{35} The third Duma met on November 14, 1907.\textsuperscript{36} In violation of the fundamental laws, the Emperor issued election laws which made suffrage even more unequal than before.\textsuperscript{37} The fourth Duma was called in 1912, and survived until 1917. Its legislative initiative was weak and it remained mostly an instrument of mild criticism of the government.

The Polish nationalists, led by Romand Dmowski, were active in all the Dumas which preceded World War I. They tried to persuade the Russian government to take over the Polish nation and, at the outbreak of war, they pressed the Emperor's administration to proclaim liberation of Poland as a war goal.

The Revolution did not bring about rapid constitutional changes. Even after the abdication of the tsar and victory of the Revolution, the Bolsheviks remained a small and relatively unpopular minority among other revolutionary parties.\textsuperscript{38} The subsequent overthrow of the provisional government and the seizure of power by the Bolsheviks did not give them a decisive majority in the electoral bodies - the Soviet and the Constituent Assembly. The Assembly where the Bolsheviks gained only twenty-five percent of the vote (175 of the 707 seats), was promptly dissolved.\textsuperscript{39} “After one day, when they were un-
able to compel the Constituent Assembly to do their bidding, armed
guards under their control closed the session. This ended the only
genuinely elected legislative body during the whole period of Soviet
rule.” Lenin commented that life and revolution pushed the Con-
stituent Assembly into the background. The Soviets (The Councils
of the Workers’ and Soldiers’ Delegates), who were more sensitive to
revolutionary rhetoric, survived. “All power to the Soviets” meant
controlled participation under the leadership of the Party that took
power by force.

The factors accounted for Lenin’s belief that the revolution could
be rescued only without democracy, and, if it was to be the Bolshevik
revolution, he was absolutely right. The Bolsheviks, masters of the
art of grasping power and of backstage manipulations, could not lead
Russia along the parliamentary path. The Party seized power and, as
many Bolshevik leaders explicitly admitted, it could not relax its
domination without the risk that it would be swept from power alto-
gether. Even if Lenin believed that in the future it would be possible
to reconvert the dictatorship of the Party into a dictatorship of the
proletariat, actual practice proved that the Party could never ren-
ounce its position without the risk of total defeat. The forced “ed-
ucation” of the masses appeared to be completely unsuccessful. In
this sense, reality undoubtedly solidified Lenin’s theoretical totalitar-
ian construction.

2. The Soviet Revolutionary Constitution of 1918

Characterizing the constitution-making process, Christopher
Osakwe wrote:

The making of a Soviet Constitution has all the trappings of a theatri-
cal show. The preparation leading to the staging of the show is elabo-
rate, exhaustive, and behind the scene. At the point during which the
general public is brought into the process, the script for the play has

also D. Barry & C. Barner-Barry, Contemporary Soviet Politics: An Introduction 19 (1977) [hereinafter Contemporary Soviet Politics].
40. See Contemporary Soviet Politics, supra note 39.
41. “Thus the Constituent Assembly, which was to have been the crown of the bourgeois parliamentary republic, could not but become an obstacle in the path of the October Revolution and the Soviet Power.” Lenin, Draft Decree on the Dissolution of the Constituent Assem-
bly, in Documentary History of Communism 133 (R. Daniels ed. 1960) [hereinafter History of Communism].
42. Id.
44. Id. at 93, 100.
been written, the cast of actors who will play assigned roles has been carefully chosen, and the general manager for the play has been picked.\textsuperscript{45}

In the Spring of 1918, the All-Russian Central Executive Committee of Soviets excluded from its membership the representatives of “anti-Communist” socialist parties.\textsuperscript{46} In this situation, the Bolsheviks decided that it was the right time to give their power structures a constitutional sanction. The leaders of the Revolution did not have any illusions as to the declaratory character of the constitution. The act was recognized as part of a superstructure that was supposed to describe rather than prescribe the organization of power. Lenin did not take interest in the constitutional works or comment on them in his writings. Edward Carr wrote:

The period of drafting of the Constitution was one of grave and continuous crisis both in economic and in external policy, which threatened the existence of the regime and left little leisure for smaller preoccupations. . . . The Constitution was scarcely expected to last as a working instrument. . . . In these circumstances it is not surprising that the principal leaders themselves took no personal part in the work.\textsuperscript{47}

On January 28, 1918, the Third All-Russian Congress of Soviets adopted a resolution “On the Federal Institutions of the Russian Republic” announcing that the Central Executive Committee (CEC) would draft principles of the constitution.\textsuperscript{48} On April 1, 1918, the CEC, following the decision of the Central Committee of the Bolshevik Party, appointed a constitutional committee composed of fifteen members including Sverdlov, the President of the CEC, Stalin, the Commissar of Nationalities, Bukharin, editor of Pravda, Pokrovskii, a well-known Marxist professor, and Steklov, editor of Izvestiya.\textsuperscript{49} The committee worked for three months and, in July 1918, submitted the text to the Fifth Congress of Soviets which adopted the constitution on July 10, 1918.\textsuperscript{50} The adoption of the constitution was followed by

\textsuperscript{45} 8 MODERN LEGAL SYSTEMS CYCLOPEDIA 418, § 1.13(c) (K. Redden ed. 1985) [hereinafter LEGAL SYSTEMS CYCLOPEDIA]; see also Foster-Simons, Towards a More Perfect Union: The Restructuring of Soviet Legislation, 22 STAN. J. INT'L L. 33 (1989).

\textsuperscript{46} Decree on the Expulsion of the Right Socialist Parties from the Soviets, reprinted in HISTORY OF COMMUNISM, supra note 41, at 156-58.

\textsuperscript{47} E. CARR, THE BOLSHEVIK REVOLUTION 1917-1923 124 (1951) [hereinafter BOLSHEVIK REVOLUTION].

\textsuperscript{48} See LEGAL SYSTEMS CYCLOPEDIA, supra note 45, at 423.

\textsuperscript{49} BOLSHEVIK REVOLUTION, supra note 47, at 125.

\textsuperscript{50} See ENCYCLOPEDIA OF SOVIET LAW 159 (F. Feldbrugge, G. Van Den Berg & W. Simons 2d rev. ed. 1985) [hereinafter SOVIET LAW].
the killing of the former Tsar and his wife, children, members of his family, his personal physician and three servants on July 17, 1918, in Ekaterinburg.51 Two days later, the constitution, incorporating the Declaration of Rights of the Laboring and Exploited People (hereinafter Declaration of Rights of People), approved in January 1918, was formally promulgated.52

The Declaration of Rights of People (located in the first four chapters of the constitution) was followed by General Provisions of the Constitution. The General Provisions characterized the Russian Republic as a federation which recognized equal rights of all citizens (article 22), guaranteed freedom of speech, opinion and assembly (articles 14-15), recognized freedom of conscience (article 13), promised the separation of the school and state from the church (article 13) and promulgated free general education (article 17).53 The constitution deprived “all individuals and groups of individuals of the rights which could be utilized by them to the detriment of the Socialist Revolution” (article 23).54 With respect to work, the duty of every citizen of the Republic was proclaimed in the constitution’s motto, “He shall not eat who does not work.”55

The constitution vested the supreme power of the Republic in the All-Russian Congress of Soviets and, in periods between the convocation of the Congress, in the All-Russian CEC.56 While the Fundamental Law referred to equal rights of all toilers, the drafters of the Law were quite aware of the different interests of the peasants and the workers. To counter-balance the considerable numerical superiority the peasants would have had over the workers if fully equal suffrage had been adopted, the law provided that “the All-Russian Congress of Soviets is to be composed of representatives of urban Soviets (one delegate for 25,000 voters) and of representatives of the provincial congresses of Soviets (one delegate for 125,000 inhabitants).57 In this way, the constitution granted as much representation to one town


52. RUSSIAN REVOLUTION, supra note 51.


55. Id. at art. 18.

56. Id. at art. 12.

57. Id. at art. 25.
dweller as to five country dwellers. The All-Russian Congress was to elect an All-Russian CEC of not more than 200 members which had the supreme legislative, executive and controlling power between the convocation of the congresses. The general management of the affairs of the Republic was vested in the Council of People's Commissars appointed by the CEC. William H. Chamberlin commented:

Many provisions of the Constitution were of purely theoretical interest, because they were not carried out in practice (sic). Real power rested not with the Soviets, but with the Communist Party; and those provisions of the Constitution which prescribed the methods of election, the frequency of convening Soviet Congresses, etc., were neglected or violated.

3. The First Post-Revolutionary Constitution of 1924

William Munro observed that the Constitution of 1918 "was not framed by men who had been elected for the purpose nor was it submitted to the Russian people for acceptance. But it served as a starting point, and five years later became the model on which a constitution for the entire Union of Socialist Soviet was framed."

The consolidation of Communist power in the Soviet Union required consideration of the nationality question. In order to restore a centralized administration, the Bolsheviks had to formally prescribe the links between Moscow and the non-Russian nationalities. The steps toward federation came from the various republics and led to the transformation of the Tenth All-Russian Congress of Soviets into the First Congress of the Union of Socialist Soviet Republics in December 1922. On December 30, 1922, the Congress declared that the state is a Union of the Soviet Socialist Republics.

The formal federal character of the Union was to be confirmed by the new constitution.

On January 10, 1923, the Presidium of the CEC appointed a commission headed by Stalin to draft the principles of the constitution. In fact, as the sequel showed, "the crucial decisions on the constitution did not rest either with the commission or with any organ of [the] state, but rather with the Politburo or with some informal
group of leaders within the [P]arty." The new federal constitution was adopted on July 6, 1923, and ratified on January 31, 1924, shortly after Lenin's death.

The Fundamental Law began with the Declaration of the Union of the four republics: Russian, Ukrainian, White Russian and Transcaucasion, which consisted of the Republics of Azerbaijan, Georgia and Armenia. The supreme authority was vested in the Soviet Congress, which was still composed of the representatives of the Soviet Cities' (one delegate for each 25,000 voters) and provincial Soviets (one delegate for each 125,000 inhabitants). The sessions of the Congress were to convene once a year. The CEC of the Union was a bicameral organ. It consisted only of the Council of the Union, a body of 371 members elected by the Congress from among the representatives of the republics in proportion to the population of each republic. The CEC also included the Council of Nationalities which was composed of 131 delegates; five from each union republic or autonomous republic and one from each autonomous region. The delegates were elected by the executive committee of the republic or region. In the intervals between sessions of the CEC, supreme authority was further delegated to its Presidium composed of twenty-one members. The Presidium was to be the highest legislative, executive and administrative organ between the sessions of the CEC. The Council of the People's Commissars remained the executive and administrative organ responsible to the CEC and its Presidium. Carr observed:

To sum up the changes in the Soviet structure resulting from the 1923 constitution is a difficult task. The student is confronted at the outset by one curious paradox. The Russian Socialist Federal Soviet Republic (hereinafter RSFSR) has the word "federal" in its title and was constantly referred to as such; yet it was, in strict constitutional terms, a unitary state, incorporating a number of subordinate, though partially autonomous, units. In the [C]onstitution of the USSR

64. BOLSHEVIK REVOLUTION, supra note 47, at 399.
65. Id. at 409.
66. KONST. SSSR (Triska ed.), supra note 53.
67. Id. at arts. 3, 8, 9.
68. Id. at art. 11.
69. The number of representatives to the Council of the Union was increased to 414 by the Second Congress. See BOLSHEVIK REVOLUTION, supra note 47, at 401.
70. KONST. SSSR (Triska ed.), supra note 53, at arts. 4, 14.
71. See id. at arts. 4, 26.
72. Id. at arts. 6, 37, 41.
73. Id. at art. 31.
New Constitutional Model

(Union of Soviet Socialist Republics) and in official documents relating to it, the words "federal" and "federation" were avoided. Yet the USSR was, in essential points, a federation. 74

4. The Stalin Constitution of 1936

After the years of war-communism, Stalinist Russia entered the period of collectivization of agriculture and industrialization. The years 1932 and 1933 were stigmatized by the so-called "forgotten holocaust" - the famine in the Ukraine. Stalin dumped millions of tons of wheat on the Western markets, while in the Ukraine, men, women, and children were dying of starvation at the rate of 25,000 a day or seventeen people per minute. 75 Seven to ten million people perished in a famine caused not by war or natural disaster, but by a ruthless decree. 76 The famine was followed by a period of purges in the Party and sham trials which resulted in the arrest and execution of hundreds of thousands of people. 77 In the midst of the "great terror," Stalin announced his will to adopt a new constitution. The constitution was to be an element of Stalin's "cover-up" of the atrocities of his system. It was "to convince the world that the Soviet Union was, after all, a state run according to Law." 78 Victor Kravchenko, a defector from the Soviet Union, noted:

To survive, man needs hope even as he needs air. Like millions of others, I reached out for the promise of more human rights for the ordinary Soviet citizen. We grasped at the straw of hope to save ourselves from sinking to the lower depths of despondency. Except for the minority of hard-bitten cynics, to whom the Constitution was just one more hoax, Communists especially wanted to believe. 79

The new constitution was to democratize electoral law and to declare that the Soviet Union, after eliminating its antagonistic classes, was to become the society of all the people. 80

On February 1, 1934, on Stalin's motion, the Plenum of the Central Committee of the Party instructed the Chairman of the Council of Commissars, Molotov, to present a proposal to amend the constitut-

74. BOLSHEVIK REVOLUTION, supra note 47, at 406-07.
75. See Harvest of Despair, (Film and documents collected by the Ukrainian Famine Research Committee 1981).
76. Id.
77. CONTEMPORARY SOVIET POLITICS, supra note 39, at 72.
78. Id.
79. V. KRAVCHENKO, I CHOSE FREEDOM 198 (1989) [hereinafter FREEDOM].
80. See V. CHKHIKVADZE, SOVIET STATE AND LAW 218 (1969) [hereinafter SOVIET STATE].
tion to the forthcoming Seventh Congress of Soviets.81 In February 1935, the CEC formed a constitutional commission.82 It was formally chaired by Stalin and consisted of a thirty-one member panel.83 The commission included Nikolai Bukharin, who later confided that “he alone, with a little assistance from Radek, had written the document from first word to last.”84 In the Spring of 1936, the Commission prepared a draft of a new constitution which was submitted for nationwide discussion. The draft was a full-fledged show of the work of democratic centralism. In late April 1936, Stalin made preparations for the trial and execution of the “Trotskyite-Zinovievite Terrorist Center,” but the Party of propaganda claimed that everyone was talking about the Stalin constitution.85 Stalin’s decorative deceit was fully successful. On June 1, 1936, a Plenum of the Central Committee approved the draft, and on December 5, 1936, the Eighth Extraordinary Congress unanimously adopted the final text of the constitution. December 5 was declared a national holiday: Day of the Constitution. The Soviet newspapers exclaimed: “Let the balalaikas ring, Raise anew the chorus, Isn’t it a happy thing . . . the road that lies before us?”86 Article 1 of the constitution declared that the Union of Soviet Republics was a “socialist state of workers and peasants.”87 Soviets of Working People were to be chosen on the basis of “universal, equal and direct suffrage by secret ballot.”88 The constitution recognized the right to work, rest and leisure;89 the right to maintenance in old age and sickness;90 the right to education;91 equal rights for women and for all citizens irrespective of nationality or race;92 freedom of religion;93 freedom of speech, press, assembly and demonstration;94 freedom of association;95 and guarantees of inviolability of the person,96 domicile and correspondence.97

81. LEGAL SYSTEMS CYCLOPEDIA, supra note 45, at 421.
82. Id.
83. Id. at 422.
85. Id. at 366-67.
86. GOVERNMENTS OF EUROPE, supra note 61, at 744.
87. KONST. SSSR, reprinted in CONSTITUTIONS OF NATIONS 480-503 (Peaslee 2d ed. 1956) [hereinafter KONST. SSSR (Peaslee ed.)].
88. Id. at art. 134.
89. Id. at arts. 118, 119.
90. Id. at art. 120.
91. KONST. SSSR (Peaslee ed.), supra note 87, at art. 121.
92. Id. at arts. 122, 123.
93. Id. at art. 124.
94. Id. at art. 125.
95. KONST. SSSR (Peaslee ed.), supra note 87, at art. 126.
96. Id. at art. 127.
The constitution substituted the Congress of Soviets and the CEC with one bicameral organ of legislative power, the Supreme Soviet of the Union of Soviet Socialist Republics (USSR), comprised of the Soviet of the Union and the Soviet of Nationalities. The Soviet of the Union was to be elected on the basis of one deputy for every 300,000 of the population. The Soviet of Nationalities was elected by the same universal, equal, direct and secret suffrage on the basis of twenty-five deputies for each union republic, eleven for each autonomous republic, five for each autonomous region, and one for each national area. Executive power belonged to the Council of Ministers of the USSR which was to be appointed by, and responsible to, the Presidium. The Presidium was composed of thirty-three members elected by a joint sitting of both chambers.

In the symptomatic way of Stalin's era, two years after the constitution was adopted, the main drafters of the "most democratic Constitution in the world," including Bukharin and Radek, were condemned to death for espionage, terrorism and conspiracy. As a result of the "show trials," the "old guard" Bolsheviks were executed: in 1936, Zinoviev, Kamenev and Smirnov; in 1937, Radek, Pyatakov and Sokolnikov; and in 1938, Bukharin, Rykov, Krestinsky, Rakovsky and Yagoda. Leonard Schapiro wrote:

When the smoke of battle lifted the pattern of the operation became discernible. Most of the old native leaders who still survived in 1937 had now disappeared. But below them, considerable inroads had also been made into the network of subordinate secretaries, those men who had been trained during the 30s. In the Ukraine, for example, in 1938, nearly half of the secretaries of [P]arty organizations were once again replaced. In Georgia, between early 1937 and early 1939, 260 out of a total of less than three hundred first, second and third secretaries of local [P]arty committees were replaced, as well as several thousand other [P]arty officials. It was a salutary lesson to those who wished to rise in the [P]arty that nothing less than complete subordination of national interests to the interests of the USSR, as decided

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97. Id. at art. 128.
98. Id. at arts. 32, 33.
99. KONST. SSSR (Peaslee ed.), supra note 87, at art. 34.
100. Id. at art. 35.
101. Id. at art. 64.
102. Id. at arts. 65, 70.
103. KONST. SSSR (Peaslee ed.), supra note 87, at art. 48.
104. See FREEDOM, supra note 79.
105. CURTISS, supra note 39, at 137-44.
5. *The Post-Stalinist Constitution of 1977*

Stalin’s death resulted in a wave of popular unrest: a revolt of East German workers in 1953, turbulence in Siberian camps soon afterward, and upheavals of Hungarian and Polish workers three years later. His death also began attempts to reassess the significance of communism in the Soviet block. Thousands of political prisoners were released from labor camps; they had enough time to realize that some mechanisms of the system were obsolete and needed rapid modernization. “De-Stalinization,” no matter how serious its concessions, undoubtedly stimulated widespread discussion over the theory and practice of communism. The discussion also embraced the area of constitutional regulations.

The newest constitution-making process, which lasted over fifteen years, was heralded even more pompously by Stalin’s successors. Robert Sharlet wrote:

The drafting, discussion, revision, and ratification of the 1977 constitution reflected the scope and limits of de-Stalinization as it affected the policy-making process. Comparing the “making” of the constitutions of 1936 and 1977, it is apparent that the high concentration of political resources and the severely restricted access to policy-making arenas that were characteristic of Stalinism have given way to a greater dispersal of political resources and far more access to these arenas in the post-Stalin period. An obvious comparative measure is that the 1936 constitution was little more than a year and a half in [the] making, including the public discussion, while preparation of the 1977 constitution required nearly two decades of intermittent activity.

Certain similarities are evident in the constitution-making processes of 1936 and 1977. Stalin had formally chaired the constitutional commission, and his successors, Khrushchev, and Brezhnev later followed suit, underscoring that a new Soviet constitution was considered not merely a technical instrument of government but a policy statement of some magnitude. Secondly, the political symbolism of the two documents is similar; both followed periods of intensive internal change.... Finally, the ultimate products, the constitutions of 1936 and 1977, were intended to consolidate, institutionalize, and legitimize Stalinism and post-Stalin reform respectively.\(^{107}\)

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107. SHARLET, *De-Stalinization and Soviet Constitutionalism*, in *THE SOVIET UNION*
There were an enormous number of amendments introduced into the Stalin constitution, and it was apparent that, rather than amending the old constitution again, a new constitution should be drafted. The Constitutional Commission was formed in 1962 consisting of ninety-seven members. The Commission's draft, adopted by the Plenum of the Central Committee of the Communist Party of the Soviet Union on May 24, 1977, was subject to a further nationwide discussion in the media during which over 150 amendments and clarifications were made. At the seventh extraordinary session of the Ninth Convocation of the USSR Supreme Soviet on October 7, 1977, the constitution was adopted. Christopher Osakwe commented:

To the Western student of Soviet constitutional law, the adoption of the long-awaited USSR Constitution of 1977 will go down in history as the greatest non-event of the decade. Despite all official proclamations to the contrary, the new document does not break any new ground in Soviet law. It creates no meaningful new expectations in the minds of the ordinary Soviet citizens, and it fails to promulgate a new developmental policy for Soviet society. Nevertheless, a deliberate effort was made to involve a cross section of the Soviet population in the last stages of its adoption. The impact [sic] of this citizen involvement is questionable.

Comparing the Fundamental Laws of 1936 and 1977, it is apparent that the changes introduced should not be overestimated. The Act of 1977 did not refer to the "Society of workers and peasants." The state was not portrayed as a "dictatorship of the proletariat" but as a "socialist all-peoples state," an "indissoluble alliance of workers, peasants, and intelligentsia." The constitution emphasized the
democratic foundations of the Soviet system.\textsuperscript{115} It declared that the Soviet state is organized on the principle of democratic centralism which "combine[s] unified direction with initiative and creative activity."\textsuperscript{116} The leading and guiding role of the Communist Party was emphasized by the constitution.\textsuperscript{117} The constitution introduced separate chapters on "The Economic System,"\textsuperscript{118} "Social Development and Culture,"\textsuperscript{119} and "Foreign Policy."\textsuperscript{120} The chapter on the basic rights of citizens was extended. The constitution declared that the enjoyment of citizens of their rights and freedoms must not be to the detriment of the interests of society or the state, or infringe the rights of other citizens,\textsuperscript{121} meaning that citizens' rights are constitutionally guaranteed only when exercised in a manner consistent to the interests of society as defined by the Party, "the nucleus of the Soviet political system."\textsuperscript{122}

The Supreme Soviet of the USSR remained the highest body of state authority.\textsuperscript{123} The bicameral body of 1500 deputies was, as previously, composed of two chambers equal in numbers.\textsuperscript{124} Moreover, the Supreme Soviet remained the most efficient legislative body in the world. It was expected to approve a significant number of legal instruments during two relatively short convocations a year, with essentially no dissent permitted. The Presidium remained the permanent nucleus of the legislative body and the Council of Ministers was designated as the highest executive and administrative body.\textsuperscript{125}

\textbf{C. Outline of the Constitutional History of Romania, Bulgaria, Czechoslovakia and Hungary}

The constitutional history of the Eastern European members of the Soviet block hardly reached beyond the turn of the century. Romania was established in 1859 as a result of the Crimean War and the national movements in the principalities of Moldavia and

\begin{itemize}
\item \textsuperscript{115} \textit{Id.} at art. 9.
\item \textsuperscript{116} \textit{Id.} at art. 3.
\item \textsuperscript{117} \textit{KONST. SSSR OF 1977, supra} note 113, at art. 6.
\item \textsuperscript{118} \textit{Id.} at arts. 10-18.
\item \textsuperscript{119} \textit{Id.} at arts. 19-27.
\item \textsuperscript{120} \textit{Id.} at arts. 10-18.
\item \textsuperscript{121} \textit{KONST. SSSR OF 1977, supra} note 113, at art. 39.
\item \textsuperscript{122} \textit{Id.} at art. 6.
\item \textsuperscript{123} \textit{Id.} at art. 108.
\item \textsuperscript{124} The representation of Union Republics in the Soviet of Nationalities was slightly changed. In the new constitution each Republic has 32 instead of the previous 25 deputies. \textit{Id.} at art. 110.
\item \textsuperscript{125} \textit{KONST. SSSR OF 1977, supra} note 113, at arts. 119-124, 128-136.
\end{itemize}
Walachia. The first Romanian constitution adopted in 1866 was modeled on the Belgian constitution of 1831.\textsuperscript{126} The constitution was amended in 1923 and was subsequently replaced by the royal, authoritarian constitution of 1938.

During World War II, Romania declared its neutrality. Romania soon, however, was forced to accept pro-German cabinets. Romania’s King Carol abdicated in favor of his adolescent son, Michael. The constitution was suspended and a dictator General, Ion Antonescu, rose to power.

The \textit{coup d'etat} of August 1944 deposed Antonescu and led to war with Germany. The end of war left Romania in the control of Soviet forces which established authority fashioned on the Soviet model. In 1944, some provisions of the 1923 constitution were restored. In December of 1947, simultaneous with the abdication of King Michael and the establishment of the People’s Republic of Romania, the constitution of 1938 was abolished. The new constitution was promulgated on April 13, 1948. The 1948 constitution fell within the Soviet model and the second socialist constitution of 1952 was “nearly a reproduction” of Stalin’s constitution of 1936.\textsuperscript{127}

Although the history of the early Bulgarian state goes back to the sixth century, the Bulgars fell under the Turkish rule in the fourteenth century (1396). Bulgaria remained part of the Turkish Empire until the Congress of Berlin of 1878, when a new autonomous Bulgarian principality was established. The Tîrnovo Constitution of 1879, the first Bulgarian constitution, was praised as one of the most democratic in Europe. The new state, however, lacked the experience needed to establish stable democratic mechanisms provided by the organic law. Hence, over the next five years the constitution was suspended and restored. The principality was involved in numerous Balkan conflicts during which the more independent rulers were intermingled with Russian-dominated governments. In 1908, Bulgaria, taking advantage of a revolution in Turkey, declared an independent kingdom with Ferdinand of Saxe-Coburg-Gotha as Tsar.

In the Balkan Wars and in the early stages of World War I, the Bulgars regained territories which they later lost under the Treaty of Neuilly on November 27, 1919. Tsar Ferdinand abdicated in October of 1918 in favor of his son Boris. In the interwar period, Bulgaria,

\textsuperscript{126} T. SZYMCZAK, \textit{Ustroi Europejskich Panstw Socialistycznych} (Political System of the European Socialist States) 194 (1983) [hereinafter SZYMCZAK].

\textsuperscript{127} W. SIMONS, \textit{The Constitutions of the Communist World} 312 (1980) [hereinafter COMMUNIST WORLD].
involved in conflicts with Greece, underwent a period of successive coups d'etat and dictatorial regimes.

In World War II, Bulgaria was allied with Germany, but it refused to declare war on the Soviet Union. It finally withdrew from the war in 1944 and proclaimed its neutrality. Bulgaria appealed for an armistice with the Soviet Union which was granted on September 9, 1944. Soon thereafter, a Soviet controlled government was established. The first Socialist Constitution of 1947 followed the Stalinist model. It was replaced by the 1971 constitution which declared Bulgaria a "socialist state" and made constitutional adjustments typical of the post-Stalinist era.128

Although Czechs, Slovaks and Hungarians have history reaching back many centuries, modern Czechoslovakia and Hungary were formed as a result of the disintegration of the Hapsburg Empire after World War I. The Czech lands consisted of the Kingdom of Bohemia and the Margravate of Moravia, both recognizable political entities since medieval times.129 Slovakia was carved from the territories which, after 1867, fell within the lands of the Hungarian crown. World War I brought crisis to the Austro-Hungarian Empire. The war drew the Czech and Slovak nationalist movements closer together resulting in the formation of Czechoslovakia from the traditional Czech and Slovak lands.130

On October 28, 1918, the independence of Czechoslovakia was proclaimed, and on November 13, 1918 a provisional constitution was promulgated. This constitution was later replaced by the definitive Constitution of February 29, 1920.131 The six section 1920 Constitution borrowed heavily from the 1875 French Constitution of the Third Republic. The preamble defined Czechoslovakia as a "cultured, peaceloving, democratic, and progressive" republic.132 "The system," wrote D.W. Paul, "embodied many liberal principles such as separation of church and state, guarantees of individual rights, and due process of law."133 The legislative power was vested in a bicameral parliament, elected on the basis of universal and equal suffrage, by a direct and secret ballot, and on the principle of proportional rep-

128. Id. at 35.
129. See C. LEFF, NATIONAL CONFLICT IN CZECHOSLOVAKIA 11, 26 (1988) [hereinafter NATIONAL CONFLICT].
131. CZECH. CONST. (1920), reprinted in THE NEW CONSTITUTIONS OF EUROPE, supra note 20, at 310 [hereinafter CZECH. CONST.].
132. Id. at preamble, art. 2.
133. CZECHOSLOVAKIA, supra note 130, at 21.
Executive powers were entrusted to a strong president, analogous to the French presidency, elected by the National Assembly (joint session of both chambers), who in turn appointed the prime minister and a cabinet. The constitution created an independent judiciary and established a Constitutional Court which followed the so-called Austrian "centralized" type of judicial review, confining the power to review the constitutionality of laws to a single judicial organ. D.W. Paul observed:

The positive achievement of the First Republic should not be underestimated. For twenty years Czechoslovakia had remained a viable and true democracy, despite being surrounded by increasingly undemocratic and hostile states. Its economy, despite weak spots, was one of the strongest and most advanced in Europe. Whatever their grievances, Czechoslovakia's minorities were treated with less ethnic discrimination than those of its neighbors - and, to the credit of the dominant Czechs, the other nationalities were better off than the Czechs had been under Austrian rule. This unique interwar experiment with the multinational democracy came to an end following the Munich Agreement.

The Munich Pact of 1938 was followed by annexation of the western territories of Czechoslovakia, known as the "Sudetenland." This precipitated the fall of the First Czechoslovak Republic. President Edvard Benes, denouncing the Munich agreement as a betrayal by France and Britain, resigned under pressure from Berlin on October 5, 1938 and left the country. The Second Republic yielded to Slovak demands for self-government and was officially renamed "Czecho-Slovakia," emphasizing the confederative association. Soon after, Germany annexed the remaining Czech lands as the "Protectorate of Bohemia and Moravia," while Slovakia was proclaimed a separate state under German "protection," although portions were annexed by Hungary. World War II tightened German control over the Czech and Slovak territories.

134. CZECH. CONST., supra note 131, at arts. 8, 13.
135. Id. at art. 2. In Austria, this model was first tested in 1867, adopted in the Constitution of October 1, 1920, and amended in 1929. See Z. CZESZEJKO-SOCHACKI, TRYBUNAL KONSTYTUCYNY w POLSCIE 15-17 (1986).
136. CZECHOSLOVAKIA, supra note 130, at 25.
138. CZECHOSLOVAKIA, supra note 130, at 28; R. SADLER, CZECHOSLOVAKIA: DEMOCRATIC TRADITIONS, CONSTITUTIONAL CHANGE, NATIONAL CONFLICT AND PROSPECTS UNDER HAVEL 89 (1990) (unpublished paper) [hereinafter DEMOCRATIC TRADITIONS].
139. DEMOCRATIC TRADITIONS, supra note 138, at 96-97.
Similar to other East-Central European countries, the Soviet "liberating" maneuvers placed communists of Czechoslovakia into the government for the first time in 1945 and solidified their rule in 1948.\textsuperscript{140} A new Soviet-style "Constitution" was promulgated on June 7, 1948. On July 11, 1960, Czechoslovakia adopted its second socialist constitution, which upgraded the country's "people's democracy" status to that of a "socialist republic." The 1960 Constitution was primarily for propaganda value, allowing the Communist Party to claim that Czechoslovakia was the second country to have achieved socialism. The USSR made this claim in 1936.\textsuperscript{141} The 1960 constitution has been amended by the six Constitutional Laws.\textsuperscript{142} The most important of these was the October 31, 1968, Constitutional Law which created a Czechoslovak federation consisting of the Czech Socialist Republic and the Slovak Socialist Republic.\textsuperscript{143}

The fall of the Austrian-Hungarian Empire after World War I also helped the Hungarians dissolve their links with Austria. On November 16, 1918, Hungary was proclaimed a republic.\textsuperscript{144} In the spring of 1919, in the midst of internal disorder and the various nationalistic demands of the Romanians, Czechs and Serbs, the communist propaganda successfully spread a message that a new state can only survive as a dictatorship of the proletariat if it is in alliance with Soviet Russia. On March 21, 1919, a new government, which consisted of the Social Democrats and the Communists, established the Hungarian Soviet Republic. The Republic lasted for 133 days. On April 2, 1919, the Revolutionary Council adopted a temporary constitution and on June 23, 1919, the National Soviets proclaimed a comprehensive constitution for the Hungarian Soviet Republic.\textsuperscript{145} In August, as a result of Romanian intervention and under pressure from the Allied forces, the Hungarian Soviet Republic ceased to exist.

A monarchical system was restored by the Constitutional Statute I of February 28, 1920, entitled "On the Restoration of the Constitutional System and the Temporary Supreme Power." Hungary remained a kingdom without a king, as the statute declared that "the

\textsuperscript{140} \textit{National Conflict}, \textit{supra} note 129; \textit{see also Democratic Traditions}, \textit{supra} note 138, at 9.

\textsuperscript{141} \textit{Democratic Traditions}, \textit{supra} note 138, at 9; \textit{see also R. Staar, Communist Regimes in Eastern Europe} 61 (1988).


\textsuperscript{143} \textit{Id}.

\textsuperscript{144} H. DONATH, \textit{Prezeminy Ustrojowo-Prawne na Wegrzech 1939-1949} (Political and Legal Transformation in Hungary in 1939-1949) 6 (1978) \textit{[hereinafter DONATH].}

\textsuperscript{145} \textit{Id} at 7.
monarchic power ceased to exist” and the functions of the head of state were vested in a regent. On March 1, 1920, the National Assembly elected Admiral Nicholas Horthy regent with 131 votes in his favor and ten opposing. Horthy remained in power for the next twenty-three years.

Although Hungary referred to the country’s “one thousand years of constitutional traditions,” it chose not to adopt a single constitutional act until the post World War I period. At that time, the Hungarian political system was established by several constitutional laws. The most important of them was the Statute I of 1920 which vested the legislative power in the National Assembly. A second chamber was established by the Statute XXII of 1926. Executive power was entrusted to the regent and the ministers. The ministers were responsible to the parliament, but were nominated and recalled by the regent. The premier, nominated by the regent, automatically became the leader of the ruling party - the Party of Unity. The regent enjoyed the same privilege as a monarch. With the exception of organic laws, he had a suspensive veto over all legislative actions. He could decline his signature and return legislative acts to the Assembly for reconsideration. Although his veto could be overruled by the Assembly, in 1937 he was given a right to veto the same act twice in a period of six months. The successive constitutional acts increased the power of the regent, who was empowered to nominate, at first forty, and later during the war, eighty-seven senators. In 1942, Horthy processed the nomination of his son, Istvan Horthy, as vice-regent. Istvan, however, died in a plane accident and a new vice-regent was not elected.

When Germany attacked Poland in 1939, Hungary proclaimed itself nonbelligerent and refused a request to allow the German army to pass its territory. However, on June 27, 1941, under strong German pressure, Hungary declared war on the Soviet Union and found itself in war with England and the United States. The ill-equipped Hungarian army suffered serious losses and Horthy’s government faced the dilemma of either fully cooperating with the Germans or acceding to the German occupation of Hungary. Horthy’s plan to slowly withdraw from military action against the Soviet Union was blocked by the Germans. Horthy was deported to Germany. The functions of regent were passed to the Hungarian leader, Ferenc Szalasi, of the fascist organization Crossed Arrows, who combined

146. Id. at 11; see also SZYMczAK, supra note 126, at 237.
147. DONATH, supra note 144, at 18.
148. Id. at 21.
the functions of head of state and head of government.\textsuperscript{149}

In the midst of fighting, a new provisional government was formed at Dobrecen, on December 23, 1944. Hungary was to share the fate of other Soviet-liberated countries of East-Central Europe. After some early experiences with coalition governments and provisional constitutional statutes, the communist-controlled Hungarian parliament adopted the first constitution on August 20, 1949. "Constitution," wrote W. Solyom-Fekete, "was a slavish imitation of the Soviet-type constitutions, with some variations resulting from the historical and political differences between the Soviet Union and Hungary." According to the constitution, Hungary became a people’s republic which "was the state of workers and working peasants."\textsuperscript{150} In 1972 the constitution was amended and article 2 stated that "[t]he Hungarian People’s Republic is a socialist state."\textsuperscript{151} The Hungarian political system became a typical reflection of a model drafted by the Soviets for their European satellites.

III. CONSTITUTIONAL LEGACY: CONFRONTATION OF EAST AND WEST

A. The Liberal Tradition of Pre-World War II Constitutions in East-Central Europe

In discussing the constitutional transformations in the socialist states, many questions naturally arise: Are there any parallels between the Western and East-Central European constitutional histories? Does Eastern Europe have any liberal or democratic traditions to draw upon? Will the ties with the West be strong enough to counterbalance the legacy of the Soviet constitutional experience?

George Schöpflin wrote:

The Western political tradition always emphasized pluralism and the fragmentation of power. In Eastern Europe, which was politically backward, the state played a much more dominant role as the principal agent of change. This resulted in a politically preeminent bureaucracy and a weak society. The independent states of the interwar period were fragmented socially and ethnically and were unable to make much progress toward democracy. However, their record did allow for some political pluralism, which was then destroyed by the

\textsuperscript{149} Id. at 68.
\textsuperscript{150} COMMUNIST WORLD, supra note 127, at 192.
\textsuperscript{151} Id. at 197. Another more important amendment of December 22, 1983 established the Constitutional Law Council which, as an organ of parliament, was given a right of internal constitutional review.
Communists after the war.152

Schopflin’s points provoke commentary. The first reservation concerns evaluative elements of his analysis. Although I wholeheartedly admire Western democratic and liberal traditions, I have to admit that the very attempt to evaluate political culture or political traditions raises my almost instinctive reservations. In public opinion, the terms “progressive” or “backward” themselves become measures of what political models are desirable and good or undesirable and bad. The problem is that it is often difficult to estimate “social progressiveness” in such spheres as art, philosophy, literature or politics. Some components of political culture are subject to evaluation; others can only be described. For example, it is possible to measure the degree of a society’s political knowledge or amount of information available to the public but one can hardly evaluate social emotions or attitudes. In the same way, political traditions are a function of a variable that is the sum total of all the social, economic and geopolitical elements. These elements always have some relativistic aspects and can hardly be evaluated as clearly “progressive” or “backward.” Admittedly, one can examine liberal or democratic elements of Western or Eastern traditions. One can even argue that from the perspective of social well-being the Western model was economically more prosperous, but as a matter of general evaluation, the Western and Eastern models are not “backward” or “progressive”, “good” or “bad”; they are simply different.

Although one has to admit that the West made more contributions toward democracy than the East, and emphasized more political pluralism and the fragmentation of power, these visible symbols of the West are not synonymous with progress. As Montesquieu remarked almost two and a half centuries ago, the value of human arrangements is always relative. The East now faces the prospect of quick liberalization and democratization. Questions remain: how much stomach does it have to digest these reforms and what should be the right speed of transformation to secure the “progressive” character of change?

A second reservation concerns a descriptive element of the traditional East-West confrontation. A careful examination does not seem to confirm the often claimed clear-cut distinction between the political traditions of Eastern and Western Europe. The attempt to set the democratic, liberal and pluralized models of the Western political cul-

ture against the non-democratic, state-controlled, statist Eastern models can only be accepted with numerous reservations. 153

For example, by tracing the roots of Western European constitutional government in the British constitutional experience one sees that in East-Central Europe, Poland was a country with at least comparably mature constitutional traditions. The sixteenth century was a particularly crucial period for the establishment of royal authority in both countries. Under the reign of the Tudors, England experienced the golden age of her absolutism. However, the concept of absolute sovereignty was mitigated by the English doctrine that the king is beneath the law and that the supreme power is vested not in the king alone, but in the “king in parliament.” The principle lex facit regem acknowledged that the king was a “fountain of justice,” but required him to be bound by the law which was enacted by himself and his council. The seventeenth century brought more restraints on the exercise of royal authority in England, and the political system of the country began to evolve into a mature model of constitutional monarchy.

In comparison, the monarchy in Poland was neither hereditary nor absolute. The elective king was not “divinely appointed” although in theory it was assumed that God directed the electorate during each election. Theoretically, the monarch was answerable to no one, save God, but in practice his power was effectively limited by the vast privileges of the gentry and the activity of the gentry’s representation. As in England, the power was vested in the “king in parliament” and the king was required to rule justly. The Polish nobility, however, worked out much stronger instruments for the application of their standards to the concept of royal justice. When English absolutism reached its peak, the drive toward absolutism in Poland was losing momentum. The fragmentation of power in Poland was legally guaranteed and the system of “democracy of the gentry” was well established.

Looking at other European political models, the French king was distinguishable from that of the English and Polish monarchs. The king in France was above human law and could override both parliament and custom. The king’s absolutism could be restrained only by the contracts he made with his people, by his Christian virtues which required him to rule justly, and by the voluntary agreements to enhance the prestige and stability of the monarchy. The extent of royal authority was increased in both France and England by the advanced

153. See generally id. at 52.
process of unifying the realm, the successful financial arrangements at the end of the fifteenth century, and by the victory over the magnates. The trend to consolidate royal authority in Poland was less successful. The unifying efforts of the Polish kings were counterbalanced by the attempts of the Polish magnates - "kinglets" as they were called - who retained private armies, courts and their own clientele. Hence, contrary to England, France, Russia and Austria, Poland gradually became a grouping of landed estates ruled by individual magnates.\textsuperscript{154} The military potential of Poland was weakened by the pluralization and fragmentation of power, but the society of the nobles gained superiority over the royal authority. It was Poland, rather than any other Western European country, that became the early symbol of a liberal and constitutional monarchy.

It is not surprising that Poland, surrounded by absolute monarchies, could hardly defy competitions of the systems which vested the combined legislative, executive and judicial power in one ruler. It is also not surprising that Poland was a country which adopted the first written European constitution in 1791. Although the powers established by the constitution were unequal, the Polish Constitutional Act referred to the doctrine of the separation of powers as the most fundamental principle of good government. The traditional attempt to set the democratic American Constitution and French Constitution of 1791 against the non-democratic Polish Act was verified and corrected. It was often raised that, in fact, the Polish constitution did not receive enough attention as an act that concluded the centuries long development of Polish constitutional institutions.\textsuperscript{155}

Hence, a careful examination confirms that the roots of liberal and democratic institutions can be found in the traditions of both the Western and East-Central European countries. In fact, the confrontation of the East and the West resulted from nineteenth century political developments which highlighted the contrast between the Western representative institutions, and the absolute empires of Russia, Prussia and Austria. While Western democracies began to flourish, the restraints imposed on the activities of representative bodies in East-Central Europe successfully hampered the development of constitutionalism until the last decades of the nineteenth century.

Admittedly, the input of nineteenth century East-Central European constitutional thought into the diffusion of liberal and democratic ideas, was not impressive. Russian, German and Austro-

\textsuperscript{154. See Gieysztor, supra note 10, at 224.}
\textsuperscript{155. Two Firsts, supra note 3, at 117-56.}
Hungarian states began their constitutional experiments in the late decades of the eighteenth century. Until World War I, Polish, Czech, Slovak and Hungarian territories were still deprived of sovereignty and were incorporated into the Romanov, Hohenzollern or Hapsburg empires. Bulgaria and Romania joined the family of sovereign states in the last decades of the nineteenth century. The first constitutions adopted by these countries in 1866 and 1879, respectively, followed democratic European constitutional models. These democratic constitutional mechanisms, however, did not work according to the expectations of their drafters.

The clear-cut distinction between the West and East evaporates again in the period between the two World Wars (1919-1939). The constitutions adopted by the East-Central European states in the first decade after World War I referred clearly to world democratic and liberal constitutional traditions. The Weimar Constitution of Germany (1919), wrote Helmut Steinberger:

> contained a comprehensive bill of rights and ‘fundamental duties of Germans.’ It included not only the traditional liberal rights, freedoms, and liberties but also cultural, social, and economic rights and instituted, under the rule of law, principles of democracy, ordered liberty, and social justice. The liberal fundamental rights had their historical roots in the bill of rights of 1848.

The constitutions of Austria and the Constitutional Charters of the Czechoslovak Republic of 1920 proclaimed that both countries were “democratic republics” and introduced into their constitutional systems advanced models of judicial review. The Polish Constitution of 1921 referred to progressive and democratic traditions of the Polish Constitution of 1791. The Party of Liberals in Romania adopted a Constitution in March 1923 which was based on their constitution of 1866. Romania remained a monarchy, but the Constitution sanctioned the principle of division of power, extended electoral rights and gave citizenship rights to Jews. Hungary did not adopt a single document that would set forth their constitutional framework, but it limited, at least originally, the power of the ruling regent through a series of authoritative constitutional documents.

The authoritarian transformations of the constitutional systems of the East-Central European states were similar to the responses of the West European governments to the crisis of the 1930s. The deval-

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156. The Romanov dynasty ruled Russia until 1917, the Hohenzollerns ruled Prussia and united Germany, and the Hapsburgs were emperors of Austria until the end of World War I.  
157. CONSTITUTIONALISM AND RIGHTS, supra note 17, at 210.
ulation of liberal democratic values resulted in a process of fascistization in Italy and Spain, brought an end to the Weimar Regime in Germany, and was accompanied by the authoritative changes of the constitutional systems in all East-Central European countries.

The traditional clear-cut distinction between the Western and the Eastern constitutional traditions requires careful scrutiny. The roots of liberal ideas and democratic constitutional structures can be found in both the West and East. The confrontation of these two political models was primarily a matter of nineteenth century historical development. The East-Central European countries shared the liberal and democratic Western trends in the beginning of the period between the two World Wars while following the authoritarian mode of political change in the thirties. The East-Central European states can draw from their liberal and democratic legacy and from certain fundamental constitutional ideas which, at least in limited periods of their past, they shared with the West. They have certain knowledge of the essence of world constitutionalism. Their experience, however, with democratic structures is comparatively less impressive than that of Western European democracies. In addition, the period of Soviet domination had a profound and enduring impact on these countries during the last several decades. All the former satellite countries will be grappling with this legacy for many years. Hence, the drafters of the new constitutions have to confront a critical question: how to enhance democratic and liberal seeds of their own political culture and set them against the core attributes of socialist constitutionalism?

B. The Common Core of the Socialist Constitutions

Both Soviet and Western constitutional experts agree that “the constitutions of the socialist countries have [had] common fundamental features characteristic of all constitutions of a socialist type, regardless of their distinctive feature.” The experts differ, however, in their evaluation of the general function or character of socialist constitutions. Some of the Western constitutionalists, such as Mauro Cappelletti and William Cohen, stress the “declaratory” character of socialist constitutions which stems primarily from the repudiation of judicial review by the socialist countries as a “bourgeois doctrine.”

Alongside this unitary orientation toward the exercise of state power there has existed in the socialist legal systems a concept of “constitu-

"conception" which differs greatly from Western theory. In Western Europe the constitution is conceived as a body of more or less permanent rules and principles which express the fundamental value norms of the state and establish a program for their realization. In the U.S.S.R. and other socialist countries, the constitution has traditionally been conceived as a "superstructure" over the economy and a reflection of the actual socioeconomic results achieved.\(^{159}\)

The portrayal of a purely "descriptive" role of socialist constitutions has been strongly criticized by Soviet jurists who pretended to believe that their constitutions have had a "prescriptive" character. They used to admit that the socialist constitutions contain "programmatic provisions" but claimed that "the programmatic provisions of a constitution, unlike those of a programme (which do not constitute legal norms), are expressed in legal form and have the force of norms of law."\(^{160}\) A.Kh. Macknenko wrote, "What is the place of constitutional norms in the system of socialist law as a whole? Since a constitution is a fundamental law, its norms have supreme juridical force. All the norms established by conventional laws and other legal acts must be in accordance with constitutional norms."\(^{161}\)

In fact, the distinction between Western and Socialist constitutions does not mean that most Western constitutions have few or no declaratory statements and are confined to nothing more than rules of law while socialist constitutions are manifestos, codifications of economic will, and declarations of ideals that contain no legal norms.\(^{162}\)

In most countries of the world, socialist countries included, constitutions are mixtures of legal and non-legal rules. The real distinction lies in the proportions to which the constitutions confine themselves to norms of law or provide more general socio-economic and political statements. General declarations of political or economic objectives are usually stated in preambles. In socialist constitutions, these objectives were elaborated into the programs for the socio-economic development of the state. Topics usually covered were a confession of faith in the inevitable victory of socialism over capitalism, a statement on the superiority of a socialist form of economy, socialist ownership, principles of foreign policy, communist internationalism, republicanism and populist power.

\(^{159}\) M. CAPPELLETTI & W. COHEN, COMPARATIVE CONSTITUTIONAL LAW 21 (1979) [hereinafter CAPPELLETTI].

\(^{160}\) STATE LAW, supra note 158, at 64.

\(^{161}\) Id. at 65; see also the examination of this point of view in CAPPELLETTI, supra note 159.

\(^{162}\) Common Law, supra note 158, at 159.
The clear-cut distinction between the Western and the socialist constitutions did not mean that the socialist fundamental laws contained merely "declarations" or that they were not superior than other laws. It did not even mean that socialist constitutions did not limit the powers of the institutions they created because they did not provide for outside judicial review of the constitutionality of laws. There are constitutions of Western countries which are not supreme over the legislatures and there are those which do not provide for judicial review. The real difference stems from the clear contrast between socialist theory and practice which made many socialist legal concepts merely legal fictions.

The "declaratory" character of a constitution does not mean that all constitutional provisions sound like "manifestos." Provisions of fundamental law sound like "norms," but may still lack any real prescriptive character. In this sense they may command no social respect to observe these norms or may provide for no politically impartial institutions capable of executing the constitutional "rules." This is a case where socialist constitutions, which had never obtained the status of enforceable limitations upon the communist-party controlled governments, merely became useful decorations which were adopted to disguise the real, unconstitutional distribution of power. As a result, despite the presence of constitutions, constitutional governments, as they are known in Western Europe and in the United States, did not develop in East-Central Europe. Robert G. Neumann wrote:

There is a basic difference between constitutions in a democracy and dictatorship. In a democracy a constitution, whether written or unwritten, whether supported by judicial review or under a system of legislative supremacy, is designated to limit, to restrain. Constitutional government in the Western sense is therefore limited, restrained government. But limitation and dictatorship are mutually exclusive terms, and while satellite Europe has a number of interesting constitutions it does not have constitutionalisms.

A glance at the socialist constitutions shows that, in addition to a declaration of political objectives, they all contained descriptive outlines of political and economic systems. Following the Soviet doctrine, they ascribed sovereignty to the people and declared that the

164. R.G. NEUMANN, Constitutional Documents of East-Central Europe, in CONSTITUTIONS AND CONSTITUTIONAL TRENDS SINCE WORLD WAR II 175-76 (A.J. Zurcher ed. 1979) [hereinafter CONSTITUTIONAL TRENDS].
source of power is "in the will of the people." After World War II, Soviet jurisprudence proclaimed that the Soviet Union was entering a phase of mature socialism in which classes disappeared forever, and even the remnants of the bourgeoisie were destroyed. Society was to become "the union of all the toilers" and "the organization of all the people." The classless society was strengthened as a result of the dictatorship of the proletariat, but it was claimed that society did not need that dictatorship any more. Finally, the Soviet Constitution of 1977 confirmed the thesis that the Soviet state passed the stage of dictatorship of the proletariat and entered a new phase of the mature, classless society. Chkhikvadze wrote:

This new state [of the society of all the people] is marked, firstly, by the fact that the law is an expression of all classes and social sections of society, without exceptions, in the form of the state, and there is no class or social section in the Soviet Union which is antagonistic in respect of the Law or vice versa.

After expressing strongly that authority had to belong entirely and exclusively to the toiling masses, the socialist constitution claimed that a socialist state created a democratic apparatus of authority and that the people exercise power through their authorized representatives. The Soviet Constitution of 1977 contains a provision which declares:

The organization and activity of the Soviet state are constructed in accordance with the principle of democratic centralism: the elective nature of all bodies of state power from the lowest to the highest, their accountability to the people, and the obligation of lower bodies to observe the decisions of higher ones. Democratic centralism combines single leadership with local initiative and creative activeness with the responsibility of every state agency and official for the assigned task.

All of the socialist constitutions adopted a republican (federal or unitary) form of government. They upheld the idea of separation of church and state. They introduced special chapters, or at least several paragraphs, on foreign policy which were declared to be based on

165. See A. VYSHINSKY, THE LAW OF THE SOVIET STATE 167 (1948) [hereinafter VYSHINSKY].
167. SOVIET STATE, supra note 80, at 218.
168. KONST. SSSR OF 1977, supra note 113, at art. 3.
169. See Common Law, supra note 158, at 167.
principles of socialist internationalism, friendship, fraternal collaboration and respect for sovereign equality and national independence.

At the core of all the socialist constitutions were the provisions on basic citizens’ rights, freedoms and duties; and on the organization of central and local organs of state power. These provisions claimed to have a "prescriptive" character limiting the powers of the institutions the constitution created. They were to give socialist constitutions the force of superior law.

All the constitutions of socialist countries provided an elaborate list of fundamental rights of citizens: the right to work, the right to rest, the right to material security in old age and in case of illness or loss of working capacity, the right to education, the equality of rights of men and women and all citizens regardless of their nationality or race, freedom of conscience, speech, press, assembly, meetings, street parades and demonstrations, the right to unite in social organizations, the inviolability of the person, home and privacy of correspondence, and the right of asylum. Socialist jurists always emphasized the breadth of the socialist social and economic rights which were never guaranteed "in the very best and most democratic bourgeois republics." They also stressed inseparability of rights and obligations of the citizens.170

There is no need here to reexamine the record of human rights violations in socialist states. It suffices to say that the declarations of the socialist constitutions created no direct rights which could be claimed by individuals against the state. As Robert G. Neumann wrote, they were "merely a promise that the legislature would be guided by certain principles."171

Judicial control of the observance of fundamental constitutional rights in the Soviet bloc seemed to conflict with fundamental assumptions of socialist jurisprudence. Socialist law theorists traditionally argued that "the legislature is conceived to be the supreme expression of the will of the people and beyond the reach of judicial restraint."172 Legislation, not judicial decisions, was recognized as the sole source of law in the socialist system.173 It was assumed that the legislative

170. Vyshinsky, supra note 165, at 552-57.
171. Constitutional Trends, supra note 164, at 178; see also K. Grzybowski, Ustroj Polski Wspolczesnej (The political system of contemporary Poland) 120 (1948).
body was responsible for maintaining the constitutionality of State actions and that constitutional review could not be exercised by extra-parliamentary bodies. Constitutional control was usually reserved for internal organs of the legislative bodies, like the Presidium of the Supreme Soviet of the USSR, Council of State in Poland, Presidential Council in Hungary or State Council in Romania, which exercised many of the powers of the parent body. 

Supervision over the observance of laws was vested in the procurator-general who was appointed by and accountable to the supreme legislative body. Traditional socialist legal theory assumed that an individual who believed that his constitutional rights had been violated could file a complaint with the executive branch supervising the office blamed for the violation or with the appropriate office of the procurator. Until recently, with just a few exceptions, the constitutions of socialist countries did not serve as a basis for litigation and no one could go to court to sue for a violation of his rights. Socialist theorists claimed that, in the socialist state, the administration cannot be “set against” individuals. In accordance with Trotsky’s logic, “the workers could not defend themselves against the workers.” The institution of “bourgeois judicial review” was criticized as manipulative, an instrument in the hands of big capital. As Andrei Vyshinsky wrote:

Every sort of statute [in bourgeois countries] is considered as having force until it occurs to some private person or capitalist enterprise to file a petition to have it, or a separate paragraph of it, declared unconstitutional. Naturally this right is broadly used by monopolist cliques of exploiters to obtain a declaration of “unconstitutionality” as to laws running counter to their interests.

Following Vyshinsky’s argument, other socialist theorists widely criticized the institution of judicial review. In Poland, Professor Stefan Rozmarnyn wrote:

The constitutional control of statutes by extra-parliamentary bodies, particularly judicial and quasi-judicial, is a reactionary institution and because of that, there is no room for it either in a socialist State or in a State of people’s democracy, which trusts the people’s justice.

174. To give just one example see Konst. SSSR of 1977, supra note 113, at art. 121; see also M. Cappelletti, Judicial Review in the Contemporary World 7 (1971).
176. Contemporary Soviet Politics, supra note 39, at 82-83.
With the denunciation of the Stalinist dictatorship by Khrushchev and criticism of the deviation of the bureaucratic centralism, socialist theorists raised the idea that adopting some modes of social control over the omnipotent administration might be crucial for the regeneration of socialist democracy. The representatives of the developing revisionism argued that the administration is never neutral and often tries to implement political programs which may depart from the interests of the represented class. They opted for reconstruction of judicial control over administrative authorities, which had been abolished in the countries of Eastern Europe after World War I.

As a result of this opinion, in the late 1950s, the attitude toward judicial control of administrative acts began to change in socialist countries. The right of an individual to challenge the legality of administrative decisions was introduced by statutes in Yugoslavia in 1952, Hungary in 1957, Romania in 1967, and Bulgaria in 1970. These rights were later confirmed by constitutional amendments. Also, the 1977 constitution of the Soviet Union declared that "actions of officials, performed in violation of the law and exceeding their authority, that infringe on the rights of citizens may be protested to a court according to the procedure established by Law." In Czechoslovakia, judicial review was theoretically provided for by the code of civil procedure, but there were no regulations that could implement the statute. Neither had there been any significant attempts to introduce judicial review in the German Democratic Republic.

In the countries mentioned above, in which the control of the legality of administrative decisions has been put into effect, individuals can seek judicial review of the questioned decision in the regular courts. This right may be exercised only after all administrative remedies have been exhausted. Moreover, the review is limited exclu-

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180. Rozmarn, Kontrola sprawiedliwosci Ustaw (The Control of the Legality of the Laws), 11-12 PANSTWO i PRAWO 866 (1946).
181. Nowakowski, Konstytucyjne podstawy dzialalnosci sadownictwa administracyjnego w. Polsce (Constitutional basis for the operation of administrative adjudication in Poland), 4 PANSTWO i PRAWO 70 (1985); see also M. Wyrzykowski & S. Kontrola, decyzji administracyjnych w Panstwie Socialistycznym (Judicial Control of Administrative Decisions in the Socialist State) 80 (1978) [hereinafter Wyrzykowski].
183. The development of judicial review in Poland is the most advanced of socialist legal systems and it will be discussed separately. Concerning the development of judicial review in East Germany, see also M. Wiersbowski & S. McCaffrey, The Supreme Administrative Court of Administrative Law: A New Development in Eastern Europe, in LEGAL SYSTEMS CYCLOPEDIA, supra note 45, at 159 [hereinafter Wiersbowski].
sively to the legal basis of the administrative act. In Yugoslavia, the Administrative Disputes Act of 1952 provides that any final administrative act can be challenged in court and that court's decision, after determination by appeal, is binding. Until the promulgation of the 1974 Constitution, administrative disputes were heard only by the supreme courts of the socialist republics and the Supreme Court of Yugoslavia. In accordance with this recent practice, the review of administrative decisions in the republics of Serbia and Vojvodina is within the jurisdiction of the regular district courts of first instance, and subsequently the supreme courts of the republics. In Bosnia and Herzegovina, disputes are heard by the special republic Administrative Court, while in other republics the disputes are still handled by the supreme courts of the republics.  

Some countries, like Romania and Bulgaria, adopted judicial review of administrative decisions in general but with several exceptions. For example, Romanian Law 1/1967 provided a list of matters which could not be submitted for judicial determination. The list included matters of state defense and security, public order, central planning, epidemics and public calamities. In addition, some other exceptions were provided for by special statute.  

In Bulgaria, the exceptions from judicial review related to matters of defense and security, social control and foreign currency exchange. In contrast, Hungary's 1957 law enumerated areas in which judicial review was permissible. Five major spheres of judicial review were set forth: (a) decisions concerning refusal to include or remove data from the registers of civil status; (b) matters relating to assignments of apartments; (c) matters on expropriation; (d) decisions concerning property taken into custody; and (e) matters concerning taxation. In the Soviet Union, the right to resort to regular courts was generally permissible under the 1977 constitution but was rarely exercised, and the list of areas in which review was possible was not clearly specified.

In the early 1960s, socialist countries began to consider introducing judicial control over the constitutionality of legislation. With the exception of Yugoslavia, however, development in this direction was

185. See id.
188. Id. at 162. Experts on Hungarian law comment that after the adoption of the new statute in 1981 there was a tendency to increase the number of matters that may be appealed.
comparatively less impressive. Yugoslavia, which first started to experiment with forms of judicial review, established the Federal Constitutional Court and the special constitutional courts in 1963.\textsuperscript{189} Czechoslovakia also introduced some forms of judicial control over the division of legislative competence between the federal government and federal units. Russian intervention in 1968, however, hampered the development of the system which was formally declared by the constitution of 27 October 1968, but has never been implemented.

Some other socialist countries, like Romania and Hungary, decided to adopt the principle of political rather than judicial control of constitutionality. This control was exercised either by the central legislative body or by the special organs composed of deputies and extra-parliamentary experts on constitutional law. Cappelletti states:

The recent Romanian Constitution of 1965, although not admitting to judicial control such as that adopted in 1963 Yugoslavia has instituted within the Parliament itself a "Constitutional Committee", elected by Parliament. Up to maximum of a third of the total number of its members, the Committee may be composed of specialists who are not members of Parliament. The Committee under Article 53 of the Constitution has the task of putting before the "Great National Assembly" reports and opinions on the constitutionality of bills, on its own initiative or at the request of the bodies as indicated by the rules of Parliamentary procedure.\textsuperscript{190}

A similar organ was established in Hungary in 1984. The Council of the Constitutional Law was expected to cooperate with other state organs to review the constitutionality and legality of all statutes, decrees and ordinances. Eleven to seventeen members of the Council are selected by the National Assembly from deputies and "of the personalities of political life."\textsuperscript{191}

One must admit that, in socialist countries, the role of judicial review as an instrument for protection of constitutional rights of individuals was rather symbolic. Practices established in the late 1950s and 1960s, however, undermined the general principle that judicial review was incompatible with the Marxist-Leninist doctrine and paved the way for the further-reaching development of this institution in Poland during the 1980s.

\textsuperscript{189} FED. CONST. YUGO. at arts. 241-51 (1963); see also Law on the Yugoslav Constitutional Court (Institute de Droit trans.); c.f. (1963) 7 and (1965) 14 Recueils des Lois de la RSF de Yugoslavie.

\textsuperscript{190} CAPPELLETTI, \textit{supra} note 159, at 51.

\textsuperscript{191} CZESZEJKO-SOCHAKI (The constitutional Tribunal Konstytucyjny w PRL in the Polish people's Republic) 19 (1986).
By further examining the core of the socialist constitutional principles, one will find that communist jurisprudence has never recognized the significance of the theories of separation of powers or system of checks and balances. The Soviet constitutional theory claimed that the powers should work in accord with the recommendations of the Communist Party, the leading and guiding force of socialist society. Article 126 of the 1936 Constitution of the USSR declared that the Party is the most active and politically conscious "vanguard of the working people." This declaration in the Soviet Constitution of 1977 was moved to the beginning of the constitutional text and put among the most significant rules (article 6). The Party was introduced as the focus of power in all socialist constitutions. William B. Simons commented:

[T]he new constitutional emphasis on, or realistic recognition of, the party’s role has not, however, been to the total exclusion of other social organizations; in several of the communist countries (e.g., Bulgaria, Czechoslovakia, GDR, Hungary, Poland, and Viet-nam), mention is made in the constitution of other political parties, and for the first time labor collectives are now listed as participants in the resolution of state affairs (Bulgaria, GDR, and USSR). There is also the entire system of the organizations of associated labor which are provided for throughout the Yugoslav Constitution.

Socialist law theorists traditionally argued that the legislative departments of government should be recognized as the supreme organs of power. The legislatures, however, were to meet only twice a year for two short sessions and between sessions their main functions were to be carried out by the nucleus of legislative organs called different names such as the Presidium, the Council of State, the State Council or Standing Committee. In the socialist constitutions, with the exception of Czechoslovakia and Romania, these organs also took over the functions of the collegiate head of state.

In the Czechoslovakian model, the Presidium of the Federal Assembly exercises the functions of a sort of super-legislature between

192. Const. of the Czechoslovak Socialist Republic 1960, at art. 4 (as amended); Const. of the People’s Republic of Bulgaria 1971, at art. 1-2; Const. of the Socialist Republic of Romania 1974, art. 3 (as amended); Const. of the Hungarian People’s Republic of 1949, at art. 3 (as amended); Const. of the Polish People’s Republic of 1952, at art. 3 (as amended); Const. of the German Democratic Republic of 1968, at art. 1 (as amended). For texts see Communist World, supra note 127.

193. See Communist World, supra note 127.

194. See Common Law, supra note 158, at 175.
the sessions of the Federal Assembly. Czechoslovakia maintained a double executive model. At the head of the Czechoslovak Socialist Republic is the President, elected by the Federal Assembly. The President could not be a deputy or take any other governmental function. The President appoints and recalls the Chairman and the other members of the Government of the Republic. The prerogatives of the President do not limit the functions of the Parliament, which is still a Supreme Power, and the legislature could vote "no confidence" for the Government by a simple majority of the deputies present.

In Romania the Constitutions of 1952 and 1965 provided for the State Council (formerly Presidium). Since 1974, the President of the Council also carried the title of President of the Romanian Socialist Republic. The President was elected by the Grand National Assembly and his office was vested with the function of head of state.

All socialist constitutions provided for the parliamentary executive. The socialist theorists claimed that the system maintained a functional separation of both legislative and executive powers. The system did, however, permit some organizational fusing of the executive and legislative departments in the sense that the heads of governmental departments were allowed to sit in the parliaments. Chris Osakwe wrote:

Under the functional separation of powers recognized by the constitutions of communist party-states, the executive department constitutes a much weaker arm of the socialist government as compared to the legislative branch. As the name suggests, the primary function of the executive department is to execute the laws of the state and to administer the general policy of the legislature and of the communist party. In order to carry out its functions properly, however, the executive department is authorized to issue rules, regulations, and other executive orders which by their very nature are not a laws stricts sensu but nevertheless have the force of law. As a source of law, however, the acts of the Executive department are inferior both to the state constitution and to the acts of the legislature.

All of the socialist constitutions declared that the administration of justice should be vested in the courts staffed by independent judges.

196. Id. at art. 60.
197. Id.
198. Id. at art. 43 § 2; See SZYMczak, supra note 126, at 427-31.
199. CONST. OF THE SOCIALIST REPUBLIC OF ROMANIA, at art. 72.
Some of the constitutions, following the Soviet model provided for the direct election of judges by the citizens or for the option of either the election directly by the people or by popular representative bodies. For example, the Polish constitutional model provided for the appointment of the judges by the State Council. In fact, well-known defects of the democratic mechanisms of the socialist electoral system, made the differences of these two models insignificant.

In the 1980s, the common core of the socialist constitutions began to break down as a result of a combination of the Polish Solidarity upheaval, the Soviet reforms of the glasnost era and the subsequent anti-communist revolts in Eastern and Central Europe. For those searching for a new constitutional model for East-Central Europe, the stages of this constitutional restructuring warrant a careful analysis.

IV. CONSTITUTIONAL TRANSFORMATION OF THE GLASNOST ERA

A. Gorbachev's Law On Constitutional Amendments

There is some routine in the process of making constitutional changes in the socialist system. The initiative usually stems from the Politburo or Secretary General himself. It is typical that the process begins after the initial period of solidification of power of the Party leader. Each transitory period in the Soviet Union may be characterized, however, by the tendency to set up a more collective leadership of the Party, and this period was usually followed by the emergence of a single leader who successfully reduced the number of rivals and introduced his clients to the highest Party bodies. The tendency may be traced through Stalin's triumvirates, Khrushchev's temporary readiness to share power with Tanastas Mikoyan and Brezhnev's coalition with Aleksey Kosygin. The tendency to purge the Politburo and the Central Committee of potential rivals was typical of the pre-glasnost era. Even today the full Politburo and a substantial part of the Central Committee are Gorbachev's appointees. Gorbachev's position as primus inter pares (first among equals) was

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201. BULGARIAN CONST., at art. 128; ROMANIAN CONST., at art. 108; CZECHOSLOVAK CONST., at art. 1010; HUNGARIAN CONST., at art. 48.
203. POLISH CONST., at art. 60.
204. See LEGAL SYSTEMS CYCLOPEDIA, supra note 45, at 418.
206. In 1964, Mikoyan rose to the rank of President of the Presidium of the Supreme Soviet, but the following year he resigned this office for reasons of ill health. In 1964, Kosygin was elevated to the Premier position. He resigned in 1980 for the same reasons as Mikoyan.
clearly confirmed, although it by no means signifies the inevitable success of his reforms.

In this situation, the will to amend the constitutional law in the direction that would reflect innovations in political philosophy of the new leader is natural. According to the Soviet tradition, the constitutional changes were to crown the Party leader’s victory over his rivals. It is paradoxical, however, that the process of consolidation of power was always accompanied by the declarations of the democratic evolution of the system. Each new constitution was portrayed as an apex in the long-lasting process of democratization. Gorbachev’s constitutional reform is no exception to this principle.

On October 22, 1988, drafts of the Law on Constitutional Amendments were submitted for nationwide discussion. Similar to the period preceding the adoption of the Stalin Constitution and the Constitution of 1977, the media announced enormous involvement of the readers whose political maturity was assessed very highly. Pravda reported:

The most distinctive feature of today’s stage in our society’s renewal is that millions of Soviet people have emerged from a state of political apathy and are adopting active civic stances. The reform of the political system should be the most important lever for further boosting this activeness of the people and directing it into a single creative channel.207

On December 1, 1988, the Supreme Soviet unanimously approved, by separate voting in the two chambers, the USSR Law on Elections of USSR People’s Deputies. The Supreme Soviet also approved the USSR Draft Laws on Changes and Amendments to the USSR Constitution by a vote of 1344 votes for, five against, and twenty-seven abstentions.208

Widely heralded changes of the electoral system are quite vague and must be examined with cool skepticism. Article 95 of the Law on Constitutional Amendments provides that “[e]lections of people’s deputies take place in a single-seat and multi-seat electoral districts on the basis of universal, equal and direct suffrage by secret ballot.”209

207. Demokratazatsiya nashay zhizni (Democratization in Our Time), Pravda, Oct. 25, 1988, at 1 [hereinafter Democratization in Our Time].
Amended article 100 provides for multiple nominations. It reads, "Ballot papers can include any number of candidates." 210

The reform inspires several observations. First, the extent to which multi-seat electoral districts were implemented is not clear. The elections of People's Deputies took place in single-seat electoral districts. 211 One USSR people's deputy was elected per electoral okrug. 212 Multi-seat electoral districts were most likely tested in elections of local Soviet people's deputies. 213 Second, multiseat elections are not Gorbachev's innovation. It was confirmed that Stalin spoke favorably about them to Roy Howard in 1936, although this concept did not materialize in his Constitution of 1936. 214 Until recently, however, only one person would run for each seat in an uncontested election with a high electorate participation. Vyshinsky wrote:

Under the Stalin Constitution elections to the Supreme Soviet of the USSR and to the Supreme Soviets of Union and Autonomous Republics have shown that the entire population of the land of the Soviets are completely united in spirit and have demonstrated an unprecedented democracy. The days of elections have actually been festive days of the entire people, when the bloc of Party and non-Party Bolsheviks have elected their best people to the Supreme Soviet. The call of the Bolshevik Party to the Soviet People, to all the electors, the vote for candidates of the bloc of the Communists and the non-Party members had exceptional results. In the voting for the candidates to the Supreme Soviet of the USSR, 91,113,153 electors out of 94,138,159 took part - 96.8 percent of the entire number of citizens having the right to vote. 215

The multi-seat districts were tested in other socialist countries. They were introduced in Poland where four to six representatives were elected from one district, and in the GDR where four to ten representatives may be elected from one list. The 1983 Reform of the Hungarian electoral system also introduced the system of double or multiple nominations, confirming at the same time the primacy of in-

210. Id. at 50.
212. Id. at art. 15.
213. See Democratization in Our Time, supra note 207; see also Constitutional Amendments, supra note 209.
214. VYSHINSKY, supra note 165, at 7.
215. Id. at 722.
The multi-seat system or system of multiple nominations did not democratize the electoral law of these countries \textit{ipso facto}. It is well known that the democratic electoral system of the socialist countries broke down as a result of a combination of a few major elements: defective nomination process, defective secrecy, and lack of adequate and reliable public control of the election's results.

The nomination phase, one of the most sensitive and important elements of the democratic electoral process, was seriously affected by the system, which granted the right to nominate candidates to branches and organizations of the Communist Party (the CPSU), trade unions, Young Communist League, co-operatives and other public organizations, work collectives, and meetings of servicemen. An average citizen was intimidated rather than encouraged to take part in this process. The new Law on Elections of People's Deputies provides that new representatives would be nominated by labor collectives, social organizations and servicemen's meetings. \textit{Pravda} notes:

Now the situation is changing, although this is not happening everywhere or all at once. This is facilitated by the tremendous preparatory work that has preceded the report election meetings and conferences. \textit{Pravda} notes:

Now the situation is changing, although this is not happening everywhere or all at once. This is facilitated by the tremendous preparatory work that has preceded the report election meetings and conferences. Lists of [P]arty committees for bureau candidates have been published in advance so that they could be discussed comprehensively. Use has been made of questionnaires in order to discover people's opinion of the possible candidates. Non-[P]arty members have been invited to the conferences which also helps stimulate collective discussion.

This report sounds promising, however, it again resembles Vyshinsky's report on the electoral activity under Stalin's constitution:

Never in a single country did the people manifest such activity in elections as did the Soviet people. Never has any capitalist country known, nor can it know, such a high percentage of those participating in voting as did the USSR. The Soviet election system under [the] Stalin Constitution and the elections of Supreme Soviets have shown the entire world once again that Soviet democracy is the authentic sovereignty of the people of which the best minds of mankind have dreamed.

\begin{itemize}
\item \textit{216. See Dezso, Socialist Electoral Systems and the 1983 Hungarian Reform, in Y.B. ON SOCIALIST LEGAL SYSTEMS 46-47 (W. Butler ed. 1986).}
\item \textit{217. KONST. SSSR OF 1977, supra note 113, at art. 100.}
\item \textit{218. See Constitutional Amendments, supra note 209, at art. 100; DEPUTY ELECTIONS LAW, supra note 211, at art. 24.}
\item \textit{219. Strogii Examen (Strict Examination), Pravda, Oct. 18, 1988, at 1.}
\item \textit{220. Vyshinsky, supra note 165, at 724.}
\end{itemize}
In reality, the reports from the ten-week election campaign that commenced on January 10, 1989, confirmed the reservations drawn from the initial examination of the text of the Law on Elections. At least one-third of the people's deputies had to be elected from the CPSU and organizations associated with the party. The rule which was later dropped still determined the results of 1989 elections. The 100 seats allocated to the Soviet Communist Party were filled by decision of the Politburo, and endorsed by the Central Committee. The process of "election" of the representatives from the Komsomol, trade unions, labor veterans and associations of women all looked similar. Western observers reported from Moscow:

Today's selection of approved Communist Party candidates provided a dramatic reminder of the Kremlin's ability to manipulate what have been billed as the most democratic elections in Soviet history. The Party has managed to devise new electoral rules that guarantee it a virtual monopoly of political power behind the trappings of parliamentary democracy.

The new system produced some multi-candidate elections for the seats that are not allocated to social organizations. The choice was limited, however, even for this section of the Congress. The new amended laws guarantee representation to such organizations as stamp collectors, book-lovers and "friends of cinema," but not to independent mass movements such as Memorial, which has been supported by millions of people. Dobbs wrote from Moscow:

Last week's nominating session of the filatelists' association provided an excellent opportunity to see how the system works in practice. The meeting was called to choose candidates to fill the one seat in Congress reserved for the representative of the Soviet Union's 300,000 stamp-collectors. . . . In the case of candidates who have been endorsed by the Party, all obstacles have a miraculous tendency to disappear. Unofficial candidates, by contrast, usually find that they are required to fulfill every exacting detail of the electoral law.

This reflection is also true for non-allocated seats. Observations of the initial phase of the election process confirm that despite the attempts

222. Id.
223. Id.
224. Id.
to portray the campaign as Western-style, its outcome on March 26, 1989, which gave eighty percent of seats in the Congress to the Communist Party, was easily predictable.

The actual casting of ballots was another element that has affected the democratic character of the socialist election process in the past. The voter, before obtaining a ballot paper, had to identify himself and check his or her name on the list of voters. The Party propaganda claimed that the voter could cast a valid ballot simply by dropping it in the ballot box. This procedure was recognized as evidence of trust for the Party candidates who are located at the beginning of the list. In this case, even if the list had more candidates than seats allocated to this electoral district, the first candidates on the list were deemed voted on. The voting booths were usually located at the distant part of the electoral rooms. To vote secretly, the voter would have to pass by the whole room in the full view of Party representatives. The lack of trust in the elective practice (electoral rolls and the procedure for their compilation; counting votes in the electoral wards), created the atmosphere of futility and hopelessness that worked against the attempts to vote secretly. In addition, the Party's backstage propaganda discretely persuaded the voter to remember that the electoral behavior of the members of society would be carefully watched by the Party and would affect the assessment of individual contribution to the social well-being, a basic factor in the process of distribution of social goods. Comparing this approach to the Polish system of the mid-eighties (which *nota bene* provided for multiple-seat constituencies and was recently radically democratized), Dr. Wrobel wrote:

On September 26, 1985, just prior to the Seym “elections” Minister Miskiewicz announced, at a meeting of university chancellors, that the participation of Polish academic teachers in the “election” would be the criteria to judge whether or not these academics were in conformance with the constitutional principles of the Polish Peoples Republic. In practice, this meant that refusing to participate in “voluntary elections” could lead to the refusal to grant degrees, academic titles and even loss of job. From the perspective of Polish law, the minister acted criminally since according to article 189.1 of the Polish Penal Code whoever by force, illegal threat, deceit or exploitation of dependency interferes with the free exercise of election rights is subject to the loss of freedom from six months to five years. Unfortunately, Polish law is treated instrumentally by the ruling group, as

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226. *Id.*; see *RUSSIAN REVOLUTION*, *supra* note 51, at 458.
a tool serving exclusively to maintain power. The minister is free.227

It has to be admitted that, as far as the elective mechanisms are concerned, the reform was a major sign of the restructuring of the Soviet legal system. The pressure described above, which always accompanied socialist elections, was not eliminated, but significantly reduced. The first session of the convened Congress did not bring major surprises but demonstrated, however, that perestroika is a risky game and that Gorbachev is not fully in control of the forces he unleashed.228 Gorbachev easily won unanimous nomination of the Party and was elected President facing only symbolic opposition of the Congress, which is still composed eighty percent by members of the Communist Party.229 In the voting, Gorbachev’s word still prevails. However, the deputies voted down the government’s candidates to the Supreme Soviet commissions.230 Jeff Trimble wrote from Moscow, “when it came to talking, arguing, shouting, criticizing and insulting, this Congress bowed to no one.”231

One reform of the legislative structures to shift power from the Party to the representative bodies was widely heralded as another major element of constitutional restructuring. A Pravda editorial declared:

The draft laws are the legal foundation for the reform. . . . The soviets of people’s deputies proved powerless. The work of law enforcement organs weakened drastically. . . . The additions and amendments to the USSR Constitution and the new law on elections are extensive. They are aimed primarily at the democratization of our entire life and the return of power to the soviets of people’s deputies, placing them above all other state institutions. It is essentially a case of full power for the people.232

The amended Fundamental Laws draw from the tradition of the first constitutions (1918 and 1924) which provided for a double legislative body: the Congress and its nucleus CEC, itself a bicameral body since 1924. The new Law vests the supreme power in the USSR Congress of People’s Deputies.233 The Congress consists of 2250

230. Id.
231. Trimble, supra note 228, at 28.
232. Democratization in Our Time, supra note 207.
elected deputies who are comprised of the following: 750 territorial electoral districts with an equal number of voters; 750 from national-territorial electoral districts (thirty-two deputies from each union republic, eleven deputies from each autonomous republic, five deputies from each autonomous region, and one deputy from each autonomous area); and 750 deputies from all-union social organizations (CPSU elects 100 deputies, USSR trade unions elect 100 deputies, cooperative organizations elect 100 deputies, Komsomol elects seventy-five deputies, women’s councils elect seventy-five deputies, organizations of war and labor veterans elect seventy-five deputies, associations of scientific workers elect seventy-five deputies, USSR creative unions elect seventy-five deputies and other legally constituted social organizations elect seventy-five deputies). 234

The reservation of a bloc of one-third of the seats for the CPSU and other social organizations was recognized as a controversial departure from Western practice and abandoned once the new Congress was formed. 235

The Congress elects its nucleus body, a 450-person, bicameral, USSR Supreme Soviet which is “the standing legislative, administrative and monitoring organ of the USSR state power.” 236 The USSR Supreme Soviet has two chambers: the Soviet of the Union and the Soviet of Nationalities, which are numerically equal and possess equal rights. 237 The chambers are elected at the USSR Congress of People’s Deputies by a general vote by the deputies. 238 The Soviet of the Union was elected from among the USSR people’s deputies, the territorial electoral districts and the USSR people’s deputies from the social organizations. 239 The Soviet of Nationalities is elected from among the USSR people’s deputies, the national-territorial electoral districts and the social organizations in accordance with the following norms: eleven deputies from each union republic, four deputies from each autonomous republic, two deputies from each autonomous region and one deputy from each autonomous area. 240

Elected by the clear Party majority, the Supreme Soviet gave Gorbachev less control over the proceedings than was expected. The

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234. Deputy Elections Law, supra note 211, at arts. 15, 17, 18. For the full text of art. 18, see Pravda, Dec. 4, 1989, at 1.
236. See generally Constitutional Amendments, supra note 209, at ch. 15.
237. Id.
238. Id.
239. Id.
240. See generally Constitutional Amendments, supra note 209, at ch. 15.
number of radical deputies, who occupied up to thirty percent of the seats in the Congress, was reduced to between ten and fifteen percent in the Supreme Soviet. Nonetheless, Gorbachev faced unexpectedly strong opposition against his nomination of Politburo member, Anatoly Lukyanov, as first deputy chairman of the Supreme Soviet and in several votes on national minorities issues.241

Although the overall reaction of the Western media was favorable, it must be cautiously noted that the laws introduced few new elements into the socialist constitutional framework. The functioning of the double legislative body composed of the huge Congress and the smaller, but still bicameral, nucleus organ (the Central Executive Committee or Supreme Soviet), was well-tested in the 1920s and 1930s. The Soviet practice demonstrated that the Congress of several thousand delegates are handicapped by their size and are typically more responsive to the Party rhetoric. The organization of the Party Congress proved that they may be prepared in advance and may be held in an atmosphere encouraging no symbolic or dissenting debate.

Observations of the recent Congress indicate how much has changed in the Soviet political culture. In fact, using the disguise of a revolutionary reform, Gorbachev tried to reintroduce well-known legislative structures. This strategy was, however, only partially successful. Gorbachev still controls the Congress and the Supreme Soviet, but not without effort anymore. The evaluation of his personal position is, in this situation, extremely difficult. His nomination to the position of the President of the Supreme Soviet enhanced his power in light of the new constitutional law. The new law limited the tenure for this position to ten years (two five-year successive terms), but extended the functions of the President as head of state who chaired the powerful Defense Council and named candidates for the posts of Chairman of the USSR Council of Ministers, USSR General Procurator, Chairman of the USSR Supreme Court and other high officials. The combination of the position of the General Secretary of the Party with the presidency and the announced combination of the equivalent positions on the local level could hardly favor the announced “revival of the absolute power of the soviets.”242

On February 27, 1990, the draft law was approved and marked the further shift in power from the Communist Party and the Soviet

legislature to the President. In March 1990, Gorbachev was elected to a four year term as President of the Republic (a different position than the previously held post of the President of the Supreme Soviet) by the USSR Congress of People's Deputies. Further, elections for five-year terms will be by nationwide popular vote.

The new laws raise an array of concerns, especially in the northern republics of the Soviet Union. The widely heralded, but vaguely implemented, shift from the Party to the legislature was accompanied by restrictions on public demonstrations and the freedom of association. The tide of resistance to communism and to Russian domination swept among the Soviet captive nationalities in 1989, and put Gorbachev under tremendous pressure. By unanimous vote, the Lithuanian legislature declared the 1940 annexation of its country by the Soviet Union void, and the Communist Party of Lithuania separated itself from Moscow center. The Estonian Parliament voted on the controversial residency requirement (later suspended), in its new election law. In spite of Moscow’s warnings, the Lithuanians and Estonians followed East European countries and abolished the clause in their constitutions giving the Communist Party a leading position - in fact, a monopoly of power.

Responding to the threat of a further disintegration of the Soviet Union, Gorbachev released, in November 1990, his new “Draft Union Treaty” which is to be signed by all member states of the Soviet Union. The Draft Union Treaty contains a lot of typical communist rhetoric: it denounces racialism, chauvinism, nationalism and authoritarianism. It declares protection of culture and native languages of member states, primacy of human rights, freedom of religion, information, personal freedoms, and fundamental principles of democracy. The new Draft Treaty provides that the new unions' membership will be voluntary but it does not give the member states the right to secede which was clearly guaranteed by the Soviet Constitution of 1977.


249. See KONST. SSSR OF 1977, supra note 113, at art. 72. It is expected that under
Instead the Treaty declares that “Members of the union may raise the question of terminating the membership of the USSR of a republic that violates the terms of the treaty and the commitments it has assumed.” 250

The Union would receive wide powers over foreign policy, economic development, defense, trade, social policy, communication, transportation, education, public order and crime protection. The Draft Treaty states that “Republic legislation on the territory of the republics takes precedence in all questions with the exception of those which are ascribed to the union’s jurisdiction.” 251 Also, republics are entitled to challenge the USSR if it contravenes the republic constitution and if it exceeds the powers of the Union. The disputes are to be resolved by conciliation procedures or are passed to the newly established USSR Constitutional Court. The Court was set up for monitoring the compliance of USSR and republican laws with the union treaty and the USSR Constitution. 252

It has to be noted that the new Draft Treaty vests the legislative power in the union in the USSR Supreme Soviet without any reference to the Congress. The USSR President is to be the guarantor of the observance of the union treaty, the commander-in-chief of the USSR armed forces and the head of the union state exercising supreme executive power. The USSR prime minister and the cabinet of ministers will be both subordinated to the USSR President and responsible to the USSR Supreme Soviet. 253

The adoption of the new treaty of the Union was preceded by the nation-wide referendum (on March 17, 1991) which was held to answer the question: “Do you consider it necessary to preserve the Union of the Soviet Socialist Republic as a renewed federation of equal Soviet republics, in which the rights and freedoms of people of any nationality will be fully guaranteed.” 254 The referendum which was conceived to legitimize Gorbachev’s efforts to keep the Union together, alerted the Baltic states which held their own referenda to confirm the will of their people to live in “an independent and democratic republic.” The Baltic states, Armenia, Georgia and Moldavia pressure from the Soviet Republics Gorbachev may introduce the right to secede into the revised version of the Draft Union Treaty. See Yeltsin Launches New Russian Reform Drive, Wash. Post, Mar. 10, 1991, at A1, col. 6.

250. See Draft Union Treaty, supra note 248, at art. 1.
251. Id. at art. 9.
252. Id. at art. 16.
253. Id. at art. 15.
have refused to take part in the federal referendum on the grounds that they have no intention of negotiating a new union treaty. The Russian Republic asked the voters to also approve the idea of a popularly elected President. While the people in the Baltic Republics voted overwhelmingly in favor of seceding from the Soviet Union, the unofficial results of the federal referendum showed that Gorbachev's proposal was approved by seventy-six percent of the people who voted. The referendum was also Yeltsin's electoral triumph as seventy percent of the voters in Russia said they wanted a popularly elected President.255

Summarizing, with all power vested in him, Gorbachev seems to be vulnerable and more exposed to the criticism of the Party's conservatives and the Soviet workers.256 In light of his domestic distresses, the current legalization of the Ukrainian Uniate Church appears almost suicidal. An inevitable process of democratization and liberalization of religious life will undoubtedly contribute to the new tide of social ferment. What Gorbachev still does not seem to comprehend is that those who are feared a great deal are sometimes admired, but those who are feared a little bit are usually hated. He does understand, however, that glasnost has its limits. To survive he has to retain control of his crumbling empire and, most likely, crack down on the rebelling national minorities, workers, and again on the Party's conservatives. In a tradeoff presented silently to the West, the East European freedom is offered as a price paid up-front for the tolerance to an inevitable upcoming domestic confrontation in the Soviet Union. These possible implications of perestroika must be well analyzed in the West. In 1988, Sakharov claimed that so far the Soviet people faced "perestroika only from above."257 After one year of experimenting with constitutional restructuring it is quite clear that perestroika is now hardly controllable from above. The question remains, however, whether it is still reversible.

B. Poland’s Peaceful Revolution

The anti-communist upheaval in Poland was often characterized as "a peaceful revolution"258 but it would be, perhaps, more accurate to speak about the series of events or to call the Polish transformation

an "evolution," rather than to present it as a sudden and radical revolutionary change. The last attempt to throw off communist control and establish the first non-communist government took almost a decade in Poland. It took only months and sometimes only weeks to successfully spread the crisis of communism to the other countries of Eastern Europe. In fact, the Polish "revolution" did not begin in the eighties. It started with the establishment of the communist system after World War II and proceeded through the consecutive Polish upheavals of 1956, 1968, 1970 and 1976 to end up with the Solidarity era of the 1980s.  

The post-war Polish Constitution of 1952 was adopted during a periods of intense bolshevisation. The fear and feeling of futility practically paralyzed the anti-communist opposition until the mid-1950s. In the late 1950s the political atmosphere began to change. Stalin’s death in 1953 and that of Polish party Boleslaw Bierut at the Soviet Party Congress following Stalin’s death, revitalized the new, predominantly intellectual opposition to Stalinist orthodoxy. The new patterns of dissidence developed within the Soviet communist party and spread to other countries of the Soviet bloc. Intellectual revisionism did not intend to depart from Marxism; its proponents wanted to “purge communism of abuses,” “reform Marxism” and “go back to sources.” Revisionism did not attack basic socialist dogmas. It criticized the role of party ideology, contributing to its disintegration, but still defended the possibility of “reform from within.” Revisionists believed in the socialist future of Soviet bloc countries, in the possibility of “socialism with a human face;” almost all were determined to retain the communist party domination of their countries. Even the most militant revisionists, highly critical of their communist party’s policies, manifested their attachment to socialism and believed that they would be able to offer an alternative and viable socialist political program.

Gradually, however, the optimistic vision of widespread reform turned out to be nothing but a series of disappointments. When the Soviets invaded Hungary in 1956, the optimism of believers in the “new deal” was dealt a shattering blow. After popular unrest in Budapest and Poland was suppressed, the Soviet regime and authorities of the satellite countries turned their attention to strengthening party

259. For more profound analysis of the process of the collapse of communism in Poland see R. R. LUDWIKOWSKI, THE CRISIS OF COMMUNISM, ITS MEANING, ORIGINS AND FACES (1986).

discipline and purging dissenters. In Poland, which avoided a Soviet invasion, an optimistic faith in the liberal policy of Gomulka's new government lasted a little longer. Yet in 1957, Gomulka proclaimed that revisionism was worse than the distortions of Stalinism. Revolutionists soon discovered that, despite de-Stalinization, the main institutions of the Soviet system remained essentially Stalinist. Disappointed and demoralized, some young rebels joined the group of party cynics. Others needed more time to develop new projects and plans.

In the early 1960s, Czech and Polish revisionists took a step forward. Gradually, they began to realize that the deficiencies, discussed so broadly, had become permanent components of communist regimes. The awareness that a process of further deterioration of the system was inevitable gradually spread over intellectual circles in Eastern Europe. During 1963 and 1964, the Gomulka regime in Poland resumed a policy of restricting democratic rights, which was temporarily suspended after the "Polish October" in 1956. It shut down the leading liberal weeklies. These events led two young intellectuals from Warsaw University, Jack Kuron and Karol Modzelewski, to submit An Open Letter to Communist Party Members to the Warsaw University branch of the Polish United Workers Party. On November 14, 1964, police searched the home of Karol Modzelewski (whose father was nota bene, a top-ranking party official) and uncovered an unfinished manuscript of the letter. At the end of November, Modzelewski and Kuron released the text of their letter, and in 1965, were tried and sentenced for three, and three-and-a-half years, respectively. The letter was published as a separate brochure in the West. In the spring and summer of 1968, several Czechoslovak periodicals published articles by Czech intellectuals such as L. Vaculik, I. Svitak and V. Havel. They provoked the events of the so-called "Prague Spring of 1968" which were followed by the Soviet intervention in Czechoslovakia. The events had a fundamental significance for the education of a whole generation of Polish intellectuals. Until 1968, most of them believed that, with time, even the most orthodox communist leaders would be able to see the crisis of their model and would try, when pressed by social forces from outside of the party, to modify it. The experience of the late 1960s, followed by the new wave of popular unrest in Poland in 1970, strongly undermined this belief.

The events of 1970 resulted in the intra-party shifts and purges which elevated the pragmatically oriented clique of Edward Gierek. By the mid-1970s, the failure of Gierek's "economic recovery" program produced an increase in social tension and a new wave of unrest.
These tensions culminated in 1976 and the events of the Polish summer of 1980, which brought to life in Poland the first independent trade union - Solidarity.

The events which preceded and followed the imposition of martial law in Poland in December 1981 are well known in the West. It may be argued that without the gradual process of maturation of the crisis of communism in all countries of the Soviet bloc and Gorbachev's transformations of the glasnost era, the reemergence of the Polish Solidarity in the late 1980s could not have occurred. Still, one has to admit that the Polish experiment began long before Gorbachev initiated his program of restructuring the socialist economy. Poland's peaceful revolution was more than a sheer by-product of perestroika.

In 1985, General Jaruzelski resigned as prime minister, although he remained the First Secretary of the Polish United Worker's Party. After the party-controlled elections in 1985, he was replaced by Zbigniew Messner. Messner's successive attempts to cure Poland's collapsing economy became a total failure and, as a result of a new tide of labor unrest in 1988, Messner resigned and the Party turned the government over to Mieczyslaw Rakowski, who announced his support for ideas of political pluralism and declared his readiness to hold discussions with the opposition.

The roundtable negotiations began in February 6, 1989, and culminated on April 5. Ernest Skalski, a prominent Polish journalist and one of the editors of Solidarity's new daily Gazeta Wyborcza (Electoral Gazette), reported:

First of all despite the shape of the table, the negotiations were really a bilateral affair between the authorities and the opposition represented by Solidarity. There were three primary discussion "subtables," concerned with politics, economics and the trade union question. These dealt with issues ranging from mass media accessibility, the independence of the judiciary and local self-rule to the creation of a new government body and the Office of the President. The proceedings at the subtables were reported in the press and on television, with the authorities' delegates underlining how much was accomplished and the similarities in the objectives of both sides. Indeed, the government needed to appear conciliatory; it wanted to give an impression that it is gaining the support of the challengers and that an entente is around the corner.

261. Id. at 47-49.
262. Skalski, After the Roundtable-Poland Turns to the Polls, NEW LEADER, Apr. 3-17, 1989, at 6 [hereinafter Skalski].
In fact, however, the main decisions were taken in an isolated government building in Magdalenka, near Warsaw, where Walesa with his closest advisors met with the chief of the governmental delegation, Interior Minister Czeslaw Kiszczak. After several successive deadlocks, a major breakthrough for the roundtable talks occurred when the regime's negotiators offered a real novelty: the establishment of a Senate, a Second Chamber in the Polish parliament that would be elected in a truly democratic election in which the party coalition would compete with opposition for all seats. Before the government had time to reconsider all consequences of the proposal, it was accepted by Bronislaw Gieremek, one of the opposition delegation leaders. The deal was made.

The opposition agreed to political pluralism in exchange for permission to participate in elections. This pluralism meant the re-legalization of Solidarity, Rural Solidarity and the rebellious Independent Student's Association and the possibility of reviving various other organizations that were dissolved by the authorities after the imposition of martial law. The regime has also promised further liberalization of censorship and some independence for the judiciary - both to a degree that was difficult to determine.

It was decided that the provisions of the roundtable accords should be incorporated in the constitution in a way that would reflect Poland's democratic traditions.

The constitutional changes were adopted in great haste shortly after the roundtable accords were concluded. The constitutional amendments provided that the National Assembly would consist of two chambers: the Seym (or Diet) and the Senate. Electoral liberty for the 460 seat Seym was limited. The opposition could freely nominate candidates for thirty-five percent of the legislative mandate. Placement on the ballot required 3,000 voter signatures from a given province. Sixty percent of the legislative seats were to belong to the coalition of the communist party (Polish United Worker's Party) and its satellite parties (Democratic Association and United Peasants' Party). Five percent of the seats were allocated to pro-Communist Catholic groups.

The elections to the Senate were not subject to any limitations. The Senate was composed of 100 senators, two from each of the forty-
seven national voivodships and six from the two largest agglomerations of Warsaw and Katowice. To claim the seats in the Seym and the Senate, the candidates had to receive more than one half of the valid voters, otherwise a new round of elections would have to be held.

Solidarity’s election to the Polish Parliament in June of 1989 gave it dominance in the new, freely elected Senate. The union captured ninety-nine of 100 seats. Solidarity also won thirty-five percent, or 161, of the seats in the Seym. The communists and their allies suffered a crushing rejection by voters in the first round of the election. All but two of the thirty-five Communist Party officials who ran unopposed on a so-called “National List,” including eight members of the Politburo, failed to win the fifty percent of votes necessary to claim the seats allocated to them. Two hundred and ninety-five seats out of 299 left to the Communist allies had to be filled in the second round of election. The morning after the vote, General Jaruzelski was said to admit to his top aides, “Our defeat is total. A political solution will have to be found.”

Although Jaruzelski was elected the Polish President, his government, led by General Kiszczak, could not form a viable coalition. Walesa’s negotiations with two minor parties resulted in a Solidarity-led coalition. On August 24, 1989, Tadeusz Mazowiecki, an editor of Solidarity’s weekly newsletter, Tygodnik Solidarnosc, became the new premier of Poland. On September 12, 1989, the Seym confirmed the coalition government’s cabinet. Four ministers (agriculture, justice, environment and health) were allocated to the United Farmers’ Party; the commerce and technical development ministries were allocated to the Democratic Association; the defense, the interior, transport and foreign trade ministries were given to the Polish United Workers’ Party. Solidarity took over major economic ministries: communication, labor, central planning, country planning and building, industry, finance, culture, art and education. The Ministry of Foreign Affairs was taken over by an independent Polish scholar. Poland’s peaceful revolution was complete.

Since the completion of the roundtable talks, the 1952 Constitution was amended five times. Three amendments introduced major changes and two made marginal adjustments to the constitutional vocabulary. The most significant amendments were adopted on April 7,

268. See Electoral Law, supra note 266, at 3.
1989,270 published on September 7, 1990,271 and December 29, 1989272 (Dziennik Ustaw Nr 75, December 31, 1989). Two less important changes were introduced by the Statutes of March 28, 1990273 and of April 11, 1990.274 While the role of the most important amendment of April 1989, was to prepare the legal framework for the forthcoming election through restructuring the main organs of state power, the function of the other amendments was to purge the constitution of the remnants of its Stalinist legacy.

The consolidated text dropped the word “People’s” from the official name of the state, which now is called “Polish Republic.”275 The new law struck out the whole preamble which focused on “the liberating ideas of the Polish working masses; the historic victory of the Union of Soviet Republic over Facism which liberated Polish soil; the Polish working people’s fight against the bitter resistance of the remnants of the former capitalist-landlord system,” etc. Poland ceased to be described as “a socialist state . . . implementing and developing a socialist democracy.”276 The term “socialist society” was substituted with “citizens’ society.”277 Chapter two on “Social and Economic System” was deleted from the new constitutional text.

In the new constitutional scheme, Poland is described as “a democratic legal state (state of law) that implements principles of social justice.”278 Article 2 explains that “democratic” means that sovereignty “is vested in the Nation” which “exercises its power through its representatives in the Seym, the Senate and the People’s Councils.” It also means the introduction of elements of direct democracy in a constitutionally guaranteed system of referendums. The “nation” became the subject of power, replacing “the working people of town and country.” This notion corresponds to Polish doctrine, which views the nation not as an ethnic but, rather, a political aggregate of all the citizens.279

The concept of “legal state” or “state of law” is well known to

270. See Dziennik Ustaw (Official Gazette), Apr. 8, 1989.
274. See Dziennik Ustaw (Official Gazette), at May 7, 1990.
275. POLISH CONST. (1990) (as amended), at art. 1, [hereinafter POLISH CONST.].
276. Id. at arts. 1, 7.
277. Id. at art. 85.
278. Id. at art. 1.
279. See Sokolewicz, Rzeczypospolita Polska - Demokratyczne Panstwo Prawne (Polish Republic - A Democratic Legal State), 4 PANSTWO I PRAWO (State and Law) 19 (1990) [hereinafter Sokolewicz].
socialist theory, which views this idea as a relic of the widely criti-
cized legal normativism and positivism. In Polish doctrine, the con-
cept of “legal state” involves a variety of principles such as: a duty of
strict observance of the law by every organ of State and every citizen;
the rule that all the organs of State authority and administration work
solely on the basis of and within the boundaries of the law; the prin-
inciple of a hierarchy of the law with the constitution at the apex of the
legal system, followed by the statutes and sub-statutory acts; the hier-
archization of organs of state power and administration with the legis-
lature as a supreme power; a wide catalog of citizens rights; and an
extensive system of public control.280

The meaning of “the principles of social justice,” which the Po-
lish Republic is supposed to implement, is less clear. Polish commen-
tators explain that this pronouncement is a reflection of post-socialist
protectionism. The Polish Republic is no longer a socialist state, but
neither is it a market economy. The new Polish law eliminated the
privileges of state property and guarantees an equal protection to all
forms of ownership. In contrast to the new Hungarian constitution, it
does not describe Poland as a market economy. In the opinion of
Polish constitutional experts, an emphasis put on the “principles of
social justice” means that in the transitory period between non-mar-
ket and market economy, the Polish society needs a special protection
against the brutal mechanisms of a capitalistic competition.281

Another important principle which was introduced into the Po-
lish Constitution in 1989, is political pluralism. The reform was the
result of a severe parliamentary struggle and intense social pressures.
On August 23, 1989, the fifteen members of the communist party
political club in the Seym moved to eliminate the words “the leading
role of the Communist Party” from article 3. The new article 4 states
that “political parties are organized on the basis of principles of vol-
untary and equal membership of the Polish citizens and in order to
influence in a democratic way the state’s politics.”

Despite numerous suggestions that the principle of division of
powers does not mean that the powers are equal and is recognized
also in parliamentary systems, the new amendments, regrettably, did
not enact this most commonly recognized constitutional rule.282 The

280. See Zawadzki, No wa Konstytucyjna Definicja Polskiej Panstwowosci (A New Consti-
tutional Definition of the Polish State), 5 PANSTWO I PRAWO 3-11 (1990) [hereinafter
Zawadzki].
281. Id. at 20; Sokolewicz, supra note 279, at 14.
282. A. Zawadzki spoke in favor of the principle of division of powers. See Zawadzki,
supra note 280, at 17-18. But see Sarnecki, Zalozenia Konstytncji (Fundamental Constitutional
reluctance to adopt this principle seems to be a typical legacy of the socialist theory of law, which for years argued that the division of powers is incompatible with the principle of superiority of the legislature. For a long time it was argued incorrectly that in a typical parliamentary system only the legislature is "an organ of a nation's power." Although the principle that the "Seym is a supreme representative of the will of the Nation,"283 has deep roots in the Polish constitutional traditions, it is questionable whether the words "supreme organ" or "superior representative" mean "exclusive representation." Simply, the concept of superiority does not rule out the right of other organs to exercise or share legitimate power on behalf of the Nation.

The new amendments provided for a bicameral legislature composed of the Seym and the Senate.284 The Seym remained the supreme legislative body, while the new Senate was given legislative initiative and the right to review the legislation passed by the Seym. Amendments introduced by the Senate could be overruled by a two-thirds vote in the Seym with at least one half of all deputies present.285 It was resolved that the Senate would participate on equal footing with Seym in modifying and adopting the constitution and in the election of the President of the Republic.286

The constitutional amendments created the office of the President. The initial changes of April 8, 1989, provided that the President would be elected for six years by the joint session of the National Assembly. The amendment of September 27, 1990, shortened the tenure of the President's office to five years and resolved that the President is elected directly by the Nation and can be reelected only once.287 The President has legislative initiative and signs laws. His refusal to sign a statute may be overridden by a two-thirds vote of the Seym in the presence of at least half of its members.288 The President can also submit the statute to the Constitutional Tribunal for a review of its constitutionality.289 The president was given the power to proclaim martial law for a period of three months in the case of a serious danger to the state or a natural catastrophe. He could dissolve the

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283. POLISH CONST., supra note 275, at art. 20 § 2.
284. POLISH CONST. OF 1952, at ch. 3.
285. POLISH CONST., supra note 275, at art. 27.
286. Id. at art. 32.
287. Dziennik Ustaw (Official Gazette).
288. POLISH CONST., supra note 275, at art. 27 § 5.
289. Id. at § 4.
Seym when the legislature is unable to establish a new government within a period of three months, when the legislature fails to adopt a budget or when the legislature takes steps which encroach on the president's constitutional prerogatives. The president is commander-in-chief of the Polish army and presides over the Committee of National Defense. He nominates the Prime Minister and can submit to the Seym a motion for his dismissal. The right to approve or dismiss the government and the members of the Council of Ministers is reserved to the Seym. Executive acts of the President must be co-signed by the Prime Minister. As head of state, the President is not politically accountable to the Seym but is constitutionally accountable. He can be impeached for a violation of the constitution before the Tribunal of State by a vote of all the members of the National Assembly (the Seym and the Senate).

As the Polish model of administrative and constitutional judicial review was well established by the Statutes on the Supreme Administrative Court of January 31, 1980, and on the Constitutional Tribunal of April 29, 1985, the changes introduced by the amendments were relatively minor. The new laws resolved that independence of the judiciary was safeguarded by a National Judicial Council composed of judges delegated by a General Assembly of the Supreme Court, the High Administrative Court and District Courts.

The other institutional changes in the constitution terminated the existence of the Council of State, the duties of which passed to the President. The laws introduced an organ of Ombudsman, Rzecznik Praw Obywatelskich, and eliminated the office of the Procurator General whose functions were taken over by the Minister of Justice.

To sum up, the Polish elections of 1989 were "free" in a specific way. Some Polish observers noted that the pre-electoral accords did not pluralize the Polish system. The roundtable accords did not guarantee the proportional representation to all or even major political groups. They replaced the monopoly with a one-party bipolar system in which the Communist bloc of parties was free to compete with Solidarity for the seats in the Senate which were distributed in advance in the Seym. The multi-seat electoral districts were maintained. Altogether, there were 108 electoral districts: nine two-seat

290. Id. at art. 30.
291. Id. at art. 24.
292. POLISH CONST., supra note 275, at art. 32.
293. Id. at art. 37.
districts (8.3%); twenty-seven three-seat districts (25%); thirty-four four-seat districts (31.4%); and thirty-eight five-seat districts (35.2%). In each district, one to three Solidarity candidates competed with one to four candidates of the Party bloc. In fact, what produced election results was not a political personality of candidates, but the support of the two blocs, and in Solidarity’s case, Walesa’s personal recommendation.

Constitutional reform was an important element in Solidarity’s strategy to take power from the communist party. The amendments substantially changed the Stalinist profile of the Polish political system but they still have a provisional character. As W. Sokolewicz wrote, “The April Constitutional amendments were not the realization of a consciously planned long-term project of a constitutional reform and still they have to be melded in an entirely new constitution.”

C. Hungary - Reform “from within” and “from without”

The post-war history of the Hungarian People’s Republic does not differ significantly from other countries of the Soviet bloc. The Yalta conference in February 1945 recognized the Soviet “liberation” of Hungary but called for a cooperation of the communists with other non-communist parties. At the time of the adoption of the first communist constitution in May 1949, this cooperation was already a fiction and the communists controlled the government.

Matyas Rakosi, the leader of the Hungarian Worker’s Party, introduced a typical Stalinist program of industrialization and collectivization. The program was designed to create an economic infrastructure which was recognized as necessary for the subsequent creation of the mature communist superstructure: the political system, education and collective mentality of the communist society. Both the attempts to create a successful economic base and a collective mentality resulted in total failure. The role of the collective in the formation of a socialist personality was severely crippled. Party prop-


297. Id. In the first round of elections, 62.32% of the electorate participated; in the second round only 25.11% voted. Id. at 12.

298. Sokolewicz, Kwietniowa Zmiana Konstytucji (April Constitutional Changes), 6 PaniSTWO I PRAWO 6 (June 1989) [hereinafter April Constitutional Changes].
agenda notwithstanding, the collective in any true sense posed a threat to totalitarian control. The real aim of the collective, as it developed under Stalin, was not to bring people together, but to serve as an instrument for the destruction of the individual approach to life and to promote the complete atomization of society. The attempts to collectivize the economy caused a widespread discontent and resulted in the adoption of the so-called “New Course” in 1953. New Prime Minister, Imre Nagy, put more emphasis on the economic sector by producing consumer goods and discontinuing some of the projects which were focused on the increase of the heavy industry potential of the Hungarian economy. As a result of the power struggle between Nagy and Rakosi, Nagy, the forerunner of the Hungarian “New Deal,” was ousted and Rakosi and his successor, Erno Gero, tried to reintroduce a “proper” Stalinist course.

Stalin’s death resulted in attempts to reassess the significance of communism in the Soviet bloc. Thousands of political prisoners were released from labor camps; they had enough time to realize that some mechanisms of the system were obsolete and needed rapid modernization. “De-Stalinization,” no matter how serious its concessions, undoubtedly stimulated widespread discussion over theory and practice of communism. Stalin’s death and Khrushchev’s attack on the alleged “sanctities” of Stalinism deepened the process of the intellectual disintegration of Marxism-Leninism and initiated the relatively long stage of denunciation of the fallacies of communism. It started with the revolt of East German workers in 1953, turbulence in Siberian camps soon afterwards, and upheavals of Hungarian and Polish workers three years later.

The demonstrations of the students in Budapest in 1956 provoked a split in the Hungarian party. The conservative faction, supporting Gero, called for a crackdown on the opposition; while the reformist faction, supporting Nagy, demanded Hungary’s withdrawal from the Warsaw Pact and recognition of its neutral status. On November 4, 1956, the Soviet tanks entered Budapest, and after several weeks of bloody fighting, the pro-Soviet government of Janos Kadar was installed. Imre Nagy was executed and Hungary remained an obedient Soviet satellite.

Renee de Nevers wrote:

299. Lukacs, The Year Zero, 14 Wilson Q. 41 (Spring 1990) [hereinafter The Year Zero].
300. Id.
301. Id.
302. Id.
Following the revolution of 1956 the new party leader Janos Kadar implemented a policy designed to heal the wounds inflicted by the crushing of the revolt. He tolerated all but outright hostility to his regime, using as his slogan, "He who is not against us is with us," and launched an economic policy, which, by favoring consumer goods over the development of heavy industry, paid more heed to domestic needs than had the earlier Stalinist model. These steps gradually gained the regime a measure of credibility with the population, who recognized that the leadership was exploring the limits of Soviet patience with these cautious reforms. In time, Kadar's government gained more popularity than any other in Eastern Europe. It also came to be viewed in the West as being as legitimate and independent as was consistent with membership of the socialist community; the result was that it gained relatively favourable trade terms.303

In the long run, Kadar's policy was only partially successful. On the one hand, it calmed public dissatisfaction and through decentralizing measures gained some recognition and support from the West. On the other hand, it decreased the integration of the Hungarian economy with the highly centralized system of other Council of Mutual Economic Assistance (CMEA) countries.304 In the 1980s, the Hungarian government deteriorated badly.305 The foreign debt was close to twenty billion dollars by 1989. It had the highest external debt per capita in the Soviet bloc.306 There was a widespread conviction in the Hungarian Socialist Worker's Party (HSWP) that Kadar's regime was blocking a thorough reform. The initiative for reform came "from within" the communist party. It again called for adaptation of the healthy core of the party to recent social and political trends. On May 22, 1988, Karol Grosz, the representative member of a moderate reformist group in the party, was appointed as General Secretary of HSWP and he promised to sponsor a series of political and economic reforms in Hungary.

The further split in the HSWP occurred over the issue of "socialist pluralism." The new party leaders nominated to the Politburo, such as Imre Poszagy and Rezso Nyers, believed that further pluralization of the Hungarian political life was inevitable. The moderate conservatives, led by Grosz, tried to hammer the steps toward a multi-party system. Finally the Hungarian Parliament's new law,
adopted in January 1989, established a legal basis for the creation of independent political parties. In February, the HSWP conference decided to relinquish its constitutionally guaranteed position as “a leading and guiding force” of the Hungarian society. Indeed, on May 2, 1989, Hungary became the first socialist country to tear down its part of the Iron Curtain by removing the barbed wire on its border with Austria. In the fall of 1989, Hungary decided to honor its commitments under the Helsinki Act, which proscribed forcible repatriation of foreign citizens to their home countries. Further, the Hungarian government allowed East Germans who were passing through Hungarian territory to emigrate to the West. It accelerated the fall of Communism in Eastern Germany.

At the Party Congress in October 1989, the Hungarian Socialist Worker’s Party was dissolved. A new party subsequently emerged and was named the Hungarian Socialist Party (HSP). It was led by a new Prime Minister, Miklos Nemeth, and such leaders as Reszo Nyerers and Imre Pozsagy. The opening of the political system accelerated the mushrooming of opposition parties, at least forty of them emerging immediately in the Hungarian political arena. The strongest political groups were: the Hungarian Democratic Forum, the Alliance of Free Democrats, the Union of Young Democrats, the Independent Smallholders’ Party, the Social Democrats and the Greens. Some HSWP members joined two small conservative groups: the Ferenc Munich Society and the Janos Kadar Society (reportedly inactive in early 1990).

The issue of the presidential election caused a major collision between the opposition, which favored a presidential election following free parliamentary elections, and the leadership of the HSP, which opted for the idea of an early ‘ad hoc’ presidential election. The opposition view narrowly prevailed in the referendum and the election in April of 1990 gave the victory to the Hungarian Democratic Forum, which was joined in an alliance in the 386-member Parliament by the Independent Smallholders Party. The isolated Alliance of Free Democrats scored twenty-four percent of the vote and Hungarian Socialist Party received only 8.3 percent. The Prime Ministry was turned over to the leader of the Hungarian Forum, Josef Antall, and the initiative in the process of political and economic transformation passed to the non-communist bloc.

308. See *The End of an Era*, supra note 303, at 32-33.
Although the Hungarians did not adopt a new constitution, amendments introduced in 1989 and 1990 to the Constitutional Act XX of 1949 were the most thorough transformations in the Soviet bloc. According to the new constitutional text, Hungary changed its official name from the Hungarian People’s Republic to the Republic of Hungary. It is no longer described as a socialist state in which all power belongs to the working people and their leading force, the Marxist-Leninist party. Instead, the Republic is described as “a constitutional state implementing a multi-party system, parliamentary democracy and social market economy.”

The constitutional amendments emphasize that the Republic of Hungary draws from the achievements of both Western-type democracy and traditions of democratic socialism. With the exception of this introductory statement, the word “socialism” was carefully deleted from the entire constitutional text. The typical statements of the socialist constitutions on “the process of building of socialism,” “elimination of the exploiting classes,” and on “the dependence of the rights of citizens on the interests of socialist society” were totally omitted in the new text.

The constitution no longer guarantees a privileged status to “all forms of social ownership.” The amendments declare that “the economy of Hungary is a market economy” and gives equal rights and protection to forms of public and private ownership. The new text recognizes within the constitutional limitations the expropriation of property only for reasons of public interest, the right to free competition, and guarantees the right of inheritance.

The constitutional amendments did not change a form of the state which is still described as a parliamentary democracy with the parliament as “a supreme organ of state power and popular representation.” The Parliament still has vast powers to elect the highest executive and judicial officials of the state such as the members of the Council of Ministers, the Constitutional Court, the Commissioners of

310. A uniform structure of the Constitutional Act XX of 1949 and its amendments was published in Magyar Kozlony (The Hungarian Official Gazette) Aug. 24, 1990. The English version is quoted from the official translation of the constitutional text, which was sent to the author by the Hungarian Embassy in Washington, D.C.

311. HUNGARIAN CONST. OF 1949, preamble (former version).
312. Id. at art. 5.
313. Id. at art. 6.
314. Id. at art. 54.
315. HUNGARIAN CONST. OF 1949, at art 6 (former version).
316. Id. at art. 9 (amended text).
317. Id. at arts. 9, 13, 14.
Citizens' Rights, the Presidents of State Audit Office, the National Bank, the Supreme Court and the Chief Prosecutor. The term of the Parliament, however, was shortened from five to four years and its right to declare a state of war, and to pronounce states of exigency and emergency was reserved to the decision of a qualified, two-thirds majority.\footnote{318} In addition, the amendments imposed new checks on the power of the Parliament through the elimination of the collegiate head of state, the Presidium of the Hungarian People's Republic, and the creation of the separate office of the President of the Republic. The amendments also introduced the elements of direct or plebiscitary democracy by adding the provisions on a national referendum.\footnote{319}

The introduction of the office of the President of the Republic signifies an important step in the evolutionary process which may change the socialist model of parliamentary democracy into the presidential system. The amendments of 1989 and 1990 still seem to have only a temporary character. After the numerous attempts to stipulate that the president will be elected directly by the Hungarian people, the current act declares that he is elected for four years by the Parliament with only one chance for re-election. The nomination for the post of the president requires valid support of at least fifty members of Parliament, with each member having the right to support only one candidate.\footnote{320} The election can take place in several rounds. In the first two rounds, the President can be elected only by a qualified majority of two-thirds. In the third round, where only two candidates remain, a plurality suffices for election. The president cannot be recalled by the Parliament, but all measures taken by him must be countersigned by one of the ministers, who are elected and dismissed by the Parliament. The president is not fully independent. He is a senior statesman and intermediary between the Parliament and the prime minister. After consultation with the leaders of the Parliamentary panels, the president gives the prime minister "the mandate to form a Government."\footnote{321} However, the final approval of the governmental program and the composition of the Council of Ministers is vested in the Parliament. The president appoints and dismisses only Parliamentary undersecretaries, the vice-presidents of the National Banks and the university professors. The president represents the Hungarian state and is the commander-in-chief of the armed forces.\footnote{322}

\footnote{318}{Id. at art. 19.}
\footnote{319}{Hungarian Const. of 1949, at art. 19 (amended text).}
\footnote{320}{Id. at art. 29B.}
\footnote{321}{Id. at art. 33.}
\footnote{322}{Id. at art. 30A.}
The president can be impeached at the motion of one-fifth of all the members of Parliament supported by the vote of two-thirds of the members of the Parliament. The impeachment shall be considered by a Council of Judgment composed of twelve persons elected by Parliament from among its members.

The president does not have a constitutional right to veto the legislative acts. He can, however, ask the Parliament to reconsider the Act and eventually submit it to the Constitutional Court for the review of its constitutionality. If the act is not declared unconstitutional by the court, the president must sign it within five days. The president may dissolve the Parliament if it withdraws confidence from the Council of Ministers at least four times within twelve months or is unable to appoint the Council of Ministers. The provision that the president can dismiss the Parliament only twice during his tenure was dropped by the newest constitutional amendments.

The introduction of the new Constitutional Court, composed of fifteen members elected by two-thirds of the Parliament and vested with the right to annul unconstitutional laws, is another remarkable change. However, despite the importance of the development of constitutional review in Hungary, one has to observe that the constitutional requirement of an apolitical character of the court is at least unusual and unrealistic. It can be expected that the provision that the members of the court should not be members of any political party will have to be reconsidered and the rationale of this requirement submitted to a wider discussion.

The major changes were introduced into Chapter XII on the Fundamental Rights and Duties. The economic rights that were put in all Stalinist constitutions gave way to the declaration of human rights to life and dignity, and the due process rights of citizens in the criminal procedure that were omitted by the socialist constitutions. The Hungarian Constitution now guarantees due process rights against unlawful criminal prosecution: the right to liberty and personal safety, the right to compensation for victims of unlawful arrest and detention, the presumption of innocence, the right to defense and observance of the principle *nullum crimen sine lege*, which means that no person shall be convicted and punished for an action that, at the time of commission, did not qualify as a criminal offense under the law. The list of civil rights and freedoms is also more impressive and includes the right of thought, conscience and religion, expression of opinions, liberty of press, the right to freely create organizations or communities, and the right to strike. The constitution no longer states that the exercise of rights is inseparable from the duties of citi-
zens. It does, however, enumerate several basic duties in its concluding articles such as: the duty to defend the country, the duty to contribute proportionally to income and property circumstances and public expenditures, and the duty of parents to take care of the education of their minor children.

In short, the Hungarian constitutional amendments, although they still require some further refinement, created a solid framework for further economic and social restructuring. The reform initiated from within the party was undertaken by the non-communist elements and it continued without loss of momentum. Despite Hungary’s ethnic and social problems, its own grass-roots support in the process of political restructuring and the flexibility of the competitive political forces gained Hungary some credit in the West which facilitate the country’s progress toward marketization and privatization.

V. CONCLUSIONS: TOWARD A NEW CONSTITUTIONAL MODEL FOR EAST-CENTRAL EUROPE

Is constitutional reform a major sign of restructuring the legal system of former “People’s Democracies”? Given a kaleidoscope of political changes sweeping the Soviet Union, a definite answer may hardly be rendered at this moment. With the Soviet empire dissolving and crumbling rather than reconstituting, each change begets some unpredictable change, and requires evaluation of upcoming events. As far as it concerns the more advanced former Soviet satellite countries such as Poland or Hungary, a well-balanced assessment of the constitutional changes in practice still requires time and numerous constitutional adjustments. Thus, one should question whether this situation allows a follow-up to the emerging constitutional model applicable to the countries of Central and Eastern Europe. With all the diversities of traditions, national problems and ethnic aspirations, this task seems to be not only possible but necessary. Timothy G. Ash wrote:

Of course there is a kaleidoscope of new parties, programs, and trends, and it is little short of impudence to subsume them in one ‘message.’ Yet, if you look at what these diverse parties are really saying about basic questions of politics, economics, law and international relations, there is a remarkable underlying consensus.\textsuperscript{323}

Based on these political changes, the following observations deserve notice:

1. A new constitutional model is surfacing although the process is still far from completion. Until recently, no country within the former Soviet bloc adopted an entirely new constitution, although all of them introduced remarkable changes into their basic laws and several of them declared already that new constitutions are in process. The Soviets still seem to have only a vague concept of political restructuring and their economic reforms are losing momentum. However, even they seem to comprehend at this moment that glasnost is a distress signal within their system. At the moment they conclude that they do not need a "conservative revolution," but, rather, a radical and thorough perestroika, they will have to draft a new constitution.324 The preamble of the amended Hungarian Constitution of 1949 states that the Parliament lays down the changes "until enactment of a new Constitution." Bulgaria announced that a new constitution will be adopted in 1991. As far as Poland is concerned, the Constitutional Commission is already working on a project for a new constitution, and its president declared that it will be submitted to the Seym in early spring to be adopted on the bicentennial of the first Polish Constitution of May 3, 1791.325

2. There is a strong tendency to emphasize that former communist states are in the process of transformation into liberal democracies. It is quite clear that the new constitutions will describe their countries not as "socialist democracies" but as parliamentary democracies. It means that all the power in these states will not be vested in the working classes as represented by their communist parties but in "people" (like in Hungary) or in "nation" (like in Poland). The parliamentary character of these democracies means the same as in the West: that the people exercise their sovereignty indirectly through elected representatives. Representative or indirect forms of democracy will prevail, although it already can be expected that the forms of direct participation of people in power (through referenda or plebiscites) will be better developed in new constitutions.

Communism managed to poison numerous basic principles of Western constitutionalism, particularly, the concept of division of

324. For comments on the idea of a "conservative revolution" see R. R. Ludwikowski, *Glasnost as a Conservative Revolution*, INTERCOLLEGIATE REV., Fall 1989, at 25-32.
325. The most recent news from Poland indicates that the adoption of a new constitution was postponed until the new parliament will be democratically elected in the Fall of 1991. The current Seym was created in 1989 according to the deal which gave 60% of the legislative seats to the coalition of the communist party.
powers. The observer of the development of constitutionalism in East-Central Europe has to admit that the reluctance to experiment with the idea of checks and balances as practiced in the United States, or even in a limited way in Western Europe, is widespread in the former socialist countries. The reservations to the concept of balance and division of powers stem equally from the interwar parliamentary experiences of Central European countries, the Polish legacy of "seymocracy" and from the idea of socialist parliamentary superiority, which did not function in practice, but was prevalent in socialist constitutional theory. Upon taking all these factors into account, it can be expected that forthcoming constitutional acts will favor parliamentary forms of government, with elements of the presidential system tested cautiously and introduced gradually through the system of further amendments.

3. There is a tendency to describe the state as a "democratic constitutional state" (such as Hungary) or a "democratic legal state" (such as Poland). Both concepts put an emphasis on: a) the legality (without the adjective "socialist") of state actions, b) the observance of the law requiring every governmental organ to act on the basis of law, c) the hierarchic character of legal acts with the basic laws recognized as an apex of the legal system, d) the hierarchic character of state organs subordinated to the supreme legislative bodies, and e) extended protection for human rights.

4. The new constitutions will show no clear preference for a bicameral or unicameral legislature. In the socialist legal theory of law, the second chamber was recognized usually as unnecessary, with the exception made only for countries with a federal system, like the Soviet Union or Czechoslovakia. As K. Grzybowski wrote, "Senate is either anti-democratic or unnecessary."326

The creation of the Senate in a unitary state such as Poland responded to the demand of revolutionary times and was expected to create a framework for further pluralization of the political system.327 During the disputes of "the roundtable," it was reminded that sometimes the second chamber was conceived as an equivalent of "the chamber of labor" and was expected to represent trade unions or self-governmental institutions as in the Yugoslavian system. Some of the Polish commentators argued for a more democratic electoral system.

326. K. Gryzbowski, Senat albo niedemokratyczny albo niepotrzebny (Senate either antidemocratic or unnecessary) (1946); see also Jarosz, Problem drugiej iaby parlamentu - Zarys Koncepcji (Problem with the second chamber of Parliament - Outline of the Concept), 44 PANSTWO i PRAWO, 16-28 (Jan. 1989).

327. See April Constitutional Changes, supra note 298, at 3-19.
in which one senator would be elected by one million electors and not by the artificially created 100 electoral districts, two from each voivodship. Some others argued that a weaker position of the Senate in comparison with the Seym underminds the rationale of this institution. To sum up, one has to admit that the emergence of bicameral legislative bodies in unitary states has to be reconsidered and that it can be expected that in a new constitutional model there will be room for the second chamber only as a federal component of the representative body.

5. The new constitutions will incorporate the principle of political pluralism into the basic constitutional structures. One of the discernible trends in the new constitutions is the attempt to recognize a multi-party system as an element of a well-functioning constitutional government. The drafters of the constitutional amendments have already shown some sensitivity on this issue as well as concern that some functions and public offices should be reserved only to people who are politically neutral. Although it can be expected that the last mentioned requirement will be dropped from the new basic laws, the general tendency for guaranteeing constitutional protection for a multi-party system will most likely prevail in the next round of constitutional works in Central-Eastern Europe.

6. It is still not clear which electoral system will prevail in the new constitutions. Poland traditionally favored the system of plurality which recognized as elected those persons who received a majority of the votes in their constituencies. The Electoral Law of April 7, 1989\textsuperscript{328} introduced two rounds of elections. The first round requires more than fifty percent of votes for victory and in the second round a plurality suffices. This system worked properly during the transitory time when only two political blocs - Solidarity and the governmental coalition, competed for power. With the further pluralization of Polish political life, this system might require some adjustments. Under the Hungarian election rules, \textit{nota bene} one of the most complex in the world, the plurality system was combined with a principle of proportionality which fills nearly half the seats in the parliament on the basis of votes cast for individual parties.\textsuperscript{329}

The drafters of the new constitutions have to realize that the plurality model was traditionally favored by the countries with a two-party system; while the proportionality system prevailed in the multi-

\textsuperscript{328} Dziennik Ustaw, (Officiale Gazette), Nr. 19.f, Apr. 8, 1989.
party democracies. It can be expected that if the multi-party system is going to prevail in a new constitutional model, it will have to be linked to further introduction of proportionality into the electoral laws of the countries of East-Central Europe.330

7. There is a clear tendency to incorporate into the new constitutional model some elements of the presidential system. The collegiate heads of state (Councils of State or Presidiums) were eliminated and their functions passed onto the executive. Although, at this moment, there is a clear difference between the roles played by executives in the new European democracies, it can be expected that these posts will become a basic engine for further transformation in this region. The role of presidents in the new democracies will inevitably grow. Although it can be observed that Jaruzelski, the former leader of the Polish Communist Party, kept a relatively low profile as president, the Soviet or Czech presidents are clearly conductors of domestic and foreign policies of their countries. It is almost certain that Lech Walesa, elected Polish president in December of 1990, will not be a figurehead.

At this moment, there are no indications that the new Eastern European constitutional model will evolve toward the American presidential system. The prevailing opinion is that the new models should maintain a dual executive system, with presidents as heads of state playing roles of “senior statesmen” or “supreme arbitrators” and the prime ministers functioning as politically accountable chief executive officers.331 The observers believe that the new constitutional system may evolve either toward a German type of “chancellor’s democracy” or a French presidential system.332 In fact, an evolution toward either the French or German models primarily depends on the political personalities of future presidents and prime ministers. Moreover, one has to recognize that the presidential prerogatives in the Soviet Union, Poland and Hungary are closer to the model worked out in socialist Czechoslovakia, rather than to any of the West European types.

The presidents currently in office (with the exception of Walesa) were elected by the representative bodies. This system is going to undergo a major change, and it can be expected that the successive bear-

330. See Zawadzki, supra note 280, at 19.
331. SOKOLEWICZ, RZAD W PRZYSZLEJ KONSTITUCJI 12-27.
332. Some commentators believe, however, that in Eastern Central Europe (especially in Poland) there is no conducive political environment for the development of a “chancellor’s system.” See SARNECKI, ZALOZENIA KONSTITUCJI at 10.
ers of the presidential offices will be elected directly by the people.\textsuperscript{333} The presidents will have a superior right of veto and a right to deny their signature on legislative acts, which can be overruled by a qualified majority of the parliaments. It can be expected that the right to appoint ministers and other top officials will be turned over to the presidents with the right to dismiss them reserved for parliaments. The presidents will not be politically responsible but can be impeached by the parliaments for constitutional violations. They will be commanders-in-chief of their militaries and will be vested with a prerogative to impose martial law for a limited period of time in the case of grave danger to the state or of natural catastrophe. In short, their positions will, by no means, be ceremonial and it can be expected that their prerogatives will grow.

8. As far as the economic system is concerned, the direction is quite plain. The new constitutions will present the new democracies as market economies although the market system may be described as a “social one.”\textsuperscript{334} “Social” will mean a widespread support for a still large role played by the state in the relatively egalitarian distribution of wealth.

9. It can be expected that the catalogs of fundamental rights in the new constitutions will be relatively long and exhaustive. On the one hand, the current constitutional lists of rights will be supplemented by important political and civil rights and due process rights in criminal prosecution. However, on the other hand, the provisions on economic, social and cultural rights will be moved behind the declarations of political rights, although these rights will still receive constitutional protection.

10. Last, but not least, enforcement mechanisms will be built into the new constitutional texts. They will guarantee the independence of the judiciary and will introduce a system of judicial review of the constitutionality of legislative acts. It is predictable that the new democracies will adopt a so-called “centralized” or Austrian model, which reserves the right of constitutional review to one special judicial organ. This system favors “abstract review” which is initiated before the special court by special state organs or officials in special proceed-


\textsuperscript{334} The preamble to the HUNGARIAN CONST. OF 1949 as amended in 1989 and 1990. See also Zawadski, supra note 280, at 21.
ings; constitutionality of the normative act is the principle matter being reviewed, independent of any case.

In sum, it seems important to note that the new East-Central European model will be an embodiment of features commonly recognized as essential for Western constitutionalism: parliamentary and liberal democracy, limited government, an open society providing a broad coverage for human rights, legality or the rule of law, enforcement of constitutional principles, and guarantees for private ownership of property and market mechanisms. Yet, how this model will function is a question which remains open. Those who study the mechanisms of constitutional engineering should bear in mind that practice can depart considerably from the best constitutional theory. The legacy of socialist constitutionalism makes this reflection especially fresh and instructive. Hence, the practical value of the new constitutional model will be a function of many variables: the applicability of Western constitutional ideas in a new post-totalitarian political environment, their compatibility with socialist and pre-socialist Eastern European traditions, and the social and political compromise embodied by the new constitutions. The durability of the new constitutional model will depend both on the coherence of its essential components and on the political culture of the people who will apply constitutional principles in practice. The new constitutional model will only be as good and as firm as the will of the people to protect it and to observe its basic provisions. How mature this is still remains to be seen.