1989

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SOVIET CONSTITUTIONAL CHANGES OF THE GLASNOST ERA: A HISTORICAL PERSPECTIVE

RETT R. LUDWIKOWSKI*

I. INTRODUCTION

Glasnost is defined by Russian-English dictionaries as publicity or openness.¹ Glasnyi means “open” or “public.”² Both the Western and the Soviet press characterize glasnost as a policy of change that replaced a policy of stagnation typical of the Brezhnev era.³ The student of socialist law and politics who wants to find out what really changed in socialist domestic and foreign policy will, however, experience some difficulty.

If we were to assess glasnost from the thousands of inscriptions, leaflets and statements⁴ we would have to acknowledge that its most striking characteristic is a more open criticism of communism. In an

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2. Id.
4. For example, “Socialism,” argues Professor Leslaw Paga from the Catholic University of Lublin, Poland, “is a transitory period from capitalism to . . . capitalism.” Lecture by Professor Leslaw Paga, Catholic Univ. of Lublin, Poland, at Catholic Univ. of America, Department of Economics (Apr. 15, 1988); see also Remnick, supra note 3. Passing along streets of Polish cities one can easily notice large inscriptions on the walls of houses: “Proletarians of all countries, forgive me--Karl Marx.” See The Crisis of Communism: Its Meaning, Origins, and Phases, Inst. for Foreign Pol’y Analysis, Inc., Foreign Pol’y Rep., at vii (1986) [hereinafter The Crisis of Communism]. One Communist newspaper contains the cartoon strip showing a young boy talking to his grandmother. The boy is asking, “Grandma, please tell us again how long it was when long, long ago there was no equality but there was something to eat on the table?” Przeglad Tygodniowy, March 1988.

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article entitled "Sources," published in Novy Mir, even Lenin comes under criticism for abolishing private property and creating a system of forced labor camps. An article in Pravda, mostly a compilation of letters from readers, leveled serious charges against former Kremlin officials like Suslov and Brezhnev.

The real change, therefore, exists in the possibility of discussing problems that were for decades prohibited topics in the socialist countries. This change is often reduced to a criticism of key elements of socialist economy and social life, with current politics still being an almost taboo topic. The Western observer impressed by this change often confuses this "criticism from within" with "reform from within" and forgets to check to what extent the criticized core of the totalitarian system has really changed. The observer forgets that the mere possibility of exposing the distresses of the system from within does not change the system ipso facto. Glasnost has, however, new international implications that must be carefully analyzed in the West.

II. THE ECONOMIC, SOCIAL AND IDEOLOGICAL DISTRESSES OF PERESTROIKA

Even the most enthusiastic commentators of 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.

The success of the reforms is a function of a variable that is the sum total of many elements—social, ideological, economic, and political. Examination of these elements yields conclusions that are not optimistic for the prospects of the socialist economy. For example, it must be admitted that the system has forever destroyed the so-called collective mentality that was supposed to be a basic component of Communist political culture. Moreover, the crisis of Communist ideology is irreversible. The belief of the masses in Marxism-Leninism cannot be reconstructed, yet not even Gorbachev seems to be ready to relinquish obsolete dogmas because he hardly knows how to function without them. The ideological crisis has also undermined the rudiments of Communist morality and corroded all Marxist-Leninist values, including the key dogma of common ownership, and it has killed healthy incentives among workers.

5. See Remnick, supra note 3.
and managers. The double standard of morality, together with massive
economic dislocations, has created a black market and corruption, which
have been tolerated for so long that they are now irrevocably integrated
in the way of life of Communist countries.  

The need for creating a relatively open Party elite forced the Party
to build a system of "negative selection" that promotes compliant,
conformable, "yes" men, who care far more about their careers than
about the system of Communist values. Lack of competence, widespread
corruption, and unaccountability of decision-makers are factors that are
incompatible with the basic principles of economic efficiency. Lack of
information, coordination, "and proper control over the implementation
of [productive] decisions, coupled with a form of decentralization that is
more apparent than real, [cripple] the socialist system of central planning
and decision-making." These factors also work against the attempts to
introduce market mechanisms into the socialist system. The combination
of central planning and market economy, and the totalitarian power of the
Party and the socialist democracy, may be characterized as a person who is
"half pregnant, half not." This kind of reform may result in the
creation (using Kolakowski's expression) of a sort of "boiling ice."  

Furthermore, it is now quite obvious even for the Soviet leadership
that without the rudiments of democracy, people can be forced to work,
but not to work efficiently. On the other hand, democratic transforma-
tions are dangerous for the ruling elite. They are simply incompatible
with the totalitarian framework of the system. Glasnost already opened
the Pandora's box of social distress and resulted in a serious social
turbulence. Gorbachev's silent admission that Eastern Europe was an
economic burden the Soviet Union could no longer afford, gave a spur to

8. The trial of Yuri Churbanov, Soviet Deputy Interior Minister and Brezhnev's
son-in-law, before a military tribunal confirms only the existence of a vast Mafia-like
network of corrupt Communist Party officials in all levels of the Soviet power structure.
See Churbanov i inni (Churbanov and Others), Polityka, Oct. 1, 1988, at 1, and Jaki socjalizm
zbudujemy? (What Kind of Socialism Will We Build?), id., at 2.; Dobbs, Brezhnev Kin Admis
Abusing His Powers, Wash. Post, Sept. 9, 1988, at A1, col. 5. On the reports on the
corruption of East Germany's Party officials, see Diehl, E. Germany's Krenz Quits as Head


10. Soviet Finance Minister, Boris Gostev, reported in October 1988 on vast budget
deficits (36 billion rubles, the equivalent of $59 billion at the official exchange rate) which
would amount to 7.3% of the total budget next year. Also, he reported that 24,000 state
enterprises are economically inefficient. The grim picture of socialist economy was
confirmed by the Polish decision to close Gdansk shipyard as a deficit plant. Remnick,
Gorbachev Named New Soviet President, Wash. Post, Oct. 2, 1988, at A1, col. 5; see also N.
EBERSTADT, supra note 9.

11. See The Crisis of Communism, supra note 4, at x.

12. Id. at xi.
a sweeping tide of reforms that transformed the Communist leadership in Poland, Hungary, Czechoslovakia, East Germany, and Bulgaria. The collapse of communism in Eastern Europe resulted in a pluralization of the political life and dropping the constitutional clauses which guaranteed the vanguard status of the Communist parties. An irresistible process of a replacement of the East European communist leaders by non-communist governments had already triggered new ethnic protests in the Soviet Union.\(^{13}\)

The system created its own vicious circle because without the Party bureaucracy and nomenclature people, the Party cannot function; but with them, no reform is possible.\(^{14}\) Both are key ingredients of a system which can be crushed but not reformed; they are an inseparable part of the system.\(^{15}\)

III. CONSTITUTIONAL CHANGES: DECEPTION OR TRUE REFORM?

It seems that the socialist leaders have begun to notice that the restructuring of the system is a dramatic task. They have found out that successful perestroika requires time, funds, patience and social support, and that the Soviet leadership has run short of these goods. In the past, their predecessors attempted to conceal symptoms of internal crises. To stifle criticism and subordinate Communist countries' societies to the dictatorship of the Party, the leaders used several techniques which have been interchangeably employed: the strategy of terror used most effectively by Stalin, the appealing promise of Communist economic success used by Stalin's successors and the ideological or nationalist euphoria which was exploited during the post-revolutionary time and during the period of war. None of these strategies may be used as successfully as before. Ideological or nationalist cliches do not appeal to people who want to live on the level of civilized societies. Terror is still effective, but its blatant application does not fit the liberal disguise of Gorbachev's leadership during the glasnost period, and glasnost is a prerequisite to Soviet relations with the West. For the Soviet leaders, it has become quite obvious that without cooperation and technology from the West, the economies of the bloc countries will deteriorate further, just at a time when Western economies are on the mend. Continuation of detente and cooperation seems to be viewed by the Soviet leaders as a condition sine qua non of perestroika and glasnost as the price paid for the successful restructuring of the socialist economy.


15. For a more extensive examination, see id.
It must be admitted that glasnost has changed the style of life of the people in the Soviet Union. Henry Kissinger commented after his visit to the Soviet Union:

The seediness of the accommodations had not changed, nor the backwardness of what in the West are considered life's amenities. One remains amazed that a country subsiding on so marginal a standard of living should conduct so assertive a global policy. Yet the surface impression of stagnation is misleading. There is clearly unprecedented ferment underneath the gloomy surface of wintry Moscow. The new leadership is different. It displays a vigor, dynamism and flexibility inconceivable 10 years ago.\(^{16}\)

Even those experts on the Soviet domestic policy who believe in the seriousness of the reform program admit, however, that liberalization is only a by-product of perestroika and the achievements of glasnost should be checked carefully. "The purpose of that reform is not to spur democracy or freedom; it is to encourage efficiency and industrial progress, hence, to make the Soviet Union more powerful."\(^{17}\)

Gorbachev's critics also argue that his perestroika model is outmoded, and the Soviet Union lost its leading role in the sweeping tide of reforms, outpaced by several East European countries.\(^{18}\) It is frequently claimed that the core of the Soviet system stays almost unchanged. Gorbachev is unwilling to permit serious debate on the nature of socialism and still believes that Marxism-Leninism may be used as an ideological basis for perestroika.\(^{19}\) He rejects claims that the events in Eastern Europe signify the collapse of communism and defends the future mission of the Socialist Revolution. A widespread system of police control is not as effective and visible as before, but can be reanimated easily. The program of leasing land to the farmers is unsatisfactory, and the concepts of reprivatization and denationalization of the state property are still rejected, and the conservatives successfully defend the preservation of key elements of the centralized economy.\(^{20}\) Until recently, only an internal reform of the Soviet Communist Party and a heralded shift of power from the political to the legislative bodies, were generally received in the West as significant symptoms of diminishing totalitarianism within the Soviet system.\(^{21}\)

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17. Id.
19. Id. at A44, col. 4.
21. Remnick, Soviets Maintain Communist Party in the 'Vanguard', Wash. Post, Nov. 13,
Since May 1988, the Soviet and Western press have commented on the sweeping proposals for radical political reform that would reduce the Party's power and enhance the role of elected bodies.22 Addressing the Nineteenth Soviet Communist Party Congress in June 1988, Gorbachev supported an idea of multi-candidate elections in March 1989, a mandatory retirement age for Party leaders, and vast structural reforms of the rubber-stamp Supreme Soviet.23 The radicalism of the proposal to establish a more strict separation of powers between the Party and legislative bodies was dimmed by the suggestion that the Party's regional first secretaries should be chairmen of the local Soviets.24 It was also quite obvious that a declaration "to curb the [Party's control]" was inconsistent with the personal growth of the power of Gorbachev, who was expected to extend his Party post to the presidency of the Supreme Soviet.25

The Draft Law on Constitutional Amendments was published in October 1988.26 In light of the discussion on the process of "de-totalitarianization" of the Soviet system, the constitutional changes warrant special consideration. Their assessment, however, requires a careful study of the Soviet post-revolution constitutional development. The question as to whether they are a true reform, or only a deception conceived to divert attention from internal distresses of the system, must be examined in a historical perspective.

IV. THE CONSTITUTIONAL LEGACY OF TSARIST RUSSIA

Responding to the attempts to link Soviet totalitarianism to the traditions of Tsarist Russia, Aleksandr Solzhenitsyn wrote:

In their presentation of pre-revolutionary Russia, many Western historians succumb to a persistent but fallacious tradition, thereby to some extent echoing the arguments of Soviet propaganda. Before the outbreak of war in 1914, Russia could boast of a flourishing manufacturing industry, rapid growth, and a flexible, decentralized economy; its inhabitants were not constrained in their choice of economic activities, distinct progress was being

24. Id. at col. 4.
25. Watson, supra note 22, at 48.
made in the field of workers' legislation, and the material well-being of the peasants was at a level which has never been reached under the Soviet regime. Newspapers were free from preliminary political censorship (even during the war), there was complete cultural freedom, the intelligentsia was not restricted in its activity, religious and philosophical views of every shade were tolerated, and institutions of higher education enjoyed inviolable autonomy. Russia, with her many nationalities, knew no deportations of entire peoples and no armed separatist movements. This picture is not merely dissimilar to that of the communist era, but is in every respect its direct antithesis.27

Solzehintsyn's view is undoubtedly correct however, it must be supplemented. Russia at the turn of century experienced rapid westernization and remarkable industrial development.28 It is true that during this period, no other state approached the rate of Russian economic growth.29 Yet, the industrial countries of the West had experienced this period of rapid upsurge in the previous century and were able to help speed up the transformation of the Russian economy. Western producers and banks were vitally concerned with absorbing the Russian market. This scenario prompted an insurgence of foreign capital which controlled a significant part of Russian industry and the stock market.30

The process of industrialization was the result of combined factors: the activity of the Russian bourgeoisie, Western capital, and the Tsarist government. David Lane summed up this phenomenon in the following way:

The activity of the state was one of the most important factors in encouraging this economic growth. Protective tariffs supported the new industry: foreign investors were often purchasers of Russian industrial products. The state itself directly owned and managed many factories, particularly in brewing and armaments and by 1900 most of the railway system had been nationalized.31

It must be admitted, however, that this relative progress should not obscure the still existing backwardness of the Russian economy.

29. Id.
30. Id. at 24.
31. Id.
The same remains true regarding the constitutional development. The regime that attempted to control the development of industry also tried to remain in charge of other aspects of life. The Okhrana, the Tsarist secret police, certainly should not be associated with the K.G.B. or the N.K.V.D. But it is also true that its political function, activity, and the degree of penetration in daily life was exceptionally vast. It "had become notorious as an all-prevailing instrument of penetration and repression. Government and conspirators were locked in a never-ending battle, which became an integral part of Russian political life." The centralized autocracy of the Tsars would not tolerate any formal opposition. Prior to 1906 (except the brief period of activity of the "Zemsky Zabor"), popular dissatisfaction could not find any official representation before the tsar. The successive forced steps toward a democratic government were a failure.

The announcement of the general strike and the rise of peasants frightened 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 the inviolability of a person, freedom of conscience, 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 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, "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." The Emperor was vested with the legislative power

32. See Struve, Russia pod nadzorom politsii, 1 Osobbozdenie 357 (No. 20/21, Apr. 18 to May 1, 1903); see also Smith, The Okhrana: the Russian Department of Police, 33 HOOVER INST. BIBLIOGRAPHICAL SERIES 20 (1967). Smith wrote, "The Okhrana seemingly melted into oblivion after 1917; its organization absorbed into the various anticommunist armies or forces. Its methodology was another matter; the younger communist-police organization adopted many Okhrana techniques but went far beyond the Okhrana in numbers, ruthlessness, and terror." For a broad analysis of the confrontation between Okhrana and Cheka, see A. VASSILYEV, THE OKHRANA: THE RUSSIAN SECRET POLICE chs. XXII-XXV (1930).

34. Id.
35. II MODERN CONSTITUTIONS 181 (W. Dodd ed. 1909).
36. Id.
jointly with the Council of the Empire and the Imperial Duma. The initiative in all legislative measures belonged to the Emperor.\textsuperscript{38}

The Duma was instituted by the Imperial order of August 19, 1905, on the basis of indirect elections with a limited suffrage.\textsuperscript{39} The Duma has never acquired the functions usually associated with a genuine parliamentary legislature and was dissolved on July 21, 1906.\textsuperscript{40} The second Duma met on March 5, 1907.\textsuperscript{41} 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{42} The third Duma met on November 14, 1907.\textsuperscript{43} In violation of the Fundamental Laws, the Emperor issued election laws which made the suffrage even more unequal than before.\textsuperscript{44} The fourth Duma was called in 1912 and survived until 1917.\textsuperscript{45} Its legislative initiative was weak and it remained mostly an instrument of mild criticism of the government.\textsuperscript{46}

The Revolution did not bring about rapid constitutional changes. Even after the abdication of the Tsar and the victory of the Revolution, the Bolsheviks remained a small and relatively unpopular minority among other revolutionary parties.\textsuperscript{47} 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 Soviets and the Constituent Assembly. The Assembly, where the Bolsheviks gained only 25% of the vote (175 of the 707 seats) was promptly dissolved.\textsuperscript{48} "After one day, when they were unable to compel the constituent assembly to do their bidding, armed guards under their control closed the session. Thus ended the only genuinely elected legislative body during the whole period

\textsuperscript{38} Id. arts. 7-8.
\textsuperscript{39} II Modern Constitutions, supra note 35, at 181.
\textsuperscript{40} Id. at 192 n.4.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} D. Barry & C. Barner-Barry, Contemporary Soviet Politics: An Introduction 20 (2d ed. 1982) [hereinafter D. Barry].
\textsuperscript{46} Id.
\textsuperscript{47} Lenin admitted that insisting on "recognition of the fact that in most of the Soviets of Workers' Deputies our Party is a minority, so far a small minority, as against a bloc of all the petty-bourgeois opportunist elements, from the Popular Socialist and the Socialist-Revolutionaries down to the Organizing Committee." 24 V. Lenin, Tasks of the Proletariat in the Present Revolution, in Collected Works 22 (1964); see also J. Nettl, supra note 33, at 65.
of Soviet rule." Lenin used to comment that life and revolution pushed the Constituent 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, however, controlled participation under the leadership of the Party that took power by force.

These 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. Masters of the art of grasping power and of backstage manipulations, the Bolsheviks 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 altogether. 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 renounce its position without the risk of total defeat. The forced “education” of the masses appeared to be completely unsuccessful. In this sense, reality undoubtedly solidified Lenin’s theoretical totalitarian construction.

V. THE SOVIET REVOLUTIONARY CONSTITUTION OF 1918

Characterizing constitution-making process, Christopher Osakwe wrote:

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

49. D. BARRY, supra note 45, at 21.
50. “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 Assembly, in A DOCUMENTARY HISTORY OF COMMUNISM 133 (R. Daniels ed. 1960).
51. Id.
52. See Deutscher, Defeat in Victory, in THE SOVIET CRUCIBLE, supra note 48, at 92, 100.
53. Id. at 93, 100.
In Spring 1918, the All-Russian Central Executive Committee of Soviets excluded from its membership the representatives of “anti-Communist” socialist parties. 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 a part of a superstructure that was supposed to describe rather than prescribe the organization of power. Lenin himself 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.

On January 28, 1918, the Third All-Russian Congress of Soviets adopted a resolution “On the Federal Institutions of the Russian Republic” in which it announced that the Central Executive Committee (the “CEC”) would prepare draft principles of the Constitution. 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 such as 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. 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. The adoption of the Constitution was followed by the killing of the former Tsar with his wife, children, members of family, his personal physician and three servants on July 17, 1918 in Ekaterinburg. Two days later, on July 19, the Constitution, with its incorporated

57. See LEGAL SYSTEMS CYCLOPEDIA, supra note 54, at 423.
58. E. CARR, supra note 56, at 125.
Declaration of Rights of the Laboring and Exploited People (the "Declaration of Rights of People") approved in January 1918, was formally promulgated.\textsuperscript{61}

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 (Articles 13), and promulgated general free education (Article 17).\textsuperscript{62} 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).\textsuperscript{63} 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."\textsuperscript{64}

The Constitution vested the supreme power of the Republic in the All-Russia Congress of Soviets and, in periods between the convocation of the Congress, in the All-Russian Central Executive Committee.\textsuperscript{65} 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 counterbalance the considerable numerical preponderance 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)."\textsuperscript{66} In this way, the Constitution granted as much representation to one town dweller as to five country dwellers. The All-Russian Congress was to elect an All-Russian Central Executive Committee of not more than 200 members which had the supreme legislative, executive and controlling power between the convocation of the Congresses.\textsuperscript{67} "The general management of the affairs of the Republic" was vested in The Council of People's

\textsuperscript{61} W. CHAMBERLIN, supra note 60, at 60.

\textsuperscript{62} KONST. SSSR, reprinted in THE NEW CONSTITUTIONS OF EUROPE 385-400 (H. McBain & L. Rogers ed. 1922) [hereinafter KONST. SSSR (McBain ed.)]; KONST SSSR, reprinted in CONSTITUTIONS OF THE COMMUNIST PARTY-STATES 2-16 (J. Triska ed. 1968) [hereinafter KONST. SSSR (Triska ed.)].

\textsuperscript{63} KONST. SSSR (McBain ed.), supra note 62, art. 23.

\textsuperscript{64} Id. art. 18.

\textsuperscript{65} Id. art. 12.

\textsuperscript{66} Id. art. 25.

\textsuperscript{67} Id. arts. 28, 30.
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 practise [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.69

VI. 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 [C]onstitution for the entire Union of Socialist Soviet was framed."70

The consolidation of Communist power in the Soviet Union required the 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 Republic.71 The formal federate 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.72 "In fact as the sequel showed, the crucial decisions on the [C]onstitution 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."73 The new federal Constitution was adopted on July 6, 1923, and ratified on January 31, 1924, shortly after Lenin's death.74

The Fundamental Law began with the Declaration of the Union of the four republics: the Russian, the Ukrainian, the White Russian and

68. Id. arts. 35-37.
69. W. CHAMBERLIN, supra note 60, at 60.
71. ENCYCLOPEDIA OF SOVET' LAW, supra note 59, at 161.
72. Id.
73. E. CARR, supra note 56, at 399.
74. Id. at 409.
the Transcaucasion, which consisted of the Republics of Azerbaijan, Georgia, and Armenia. The supreme authority was vested in the Soviet Congress which still was composed of the representatives of the cities' Soviets (in a proportion of one deputy for each 25,000 electors) and provincial Soviets (one deputy for each 125,000 inhabitants). The sessions of the Congress were to convene once a year. The Central Executive Committee of the Union, moreover, was a bicameral organ. It consisted 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 ("RSFSR") had 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 Constitution of the USSR, (Union of the Soviet Socialist Republic) and in official documents relating to it, the words "federal" and "federation" were avoided. Yet the USSR was, in essential points, a federation.
VII. 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 to 1933 were stigmatized by the so-called "forgotten holocaust" — the famine in the Ukraine — when Stalin was dumping 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, i.e., seventeen human beings a minute.84 Seven to ten million people perished in a famine caused not by war or natural disaster, but by a ruthless decree.85 The famine was followed by period of purges in the Party and falsified trials which resulted in the arrest and execution of hundreds of thousands of people.86 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."87 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.88

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.89

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 to the forthcoming Seventh Congress of Soviets, a proposal to amend the Constitution.90 In February 1935, the CEC formed a constitutional commission.91 It was formally chaired by

84. See Harvest of Despair, film and documents collected by the Ukrainian Famine Research Committee (1981).
85. Id.
86. D. Barry, supra note 45, at 78.
87. Id.
89. See V. Chichkvadze, Soviet State and Law 218 (1969).
90. Legal Systems Cyclopedia, supra note 54, at 421.
91. Id.
Stalin and consisted of a thirty-one member panel.\textsuperscript{92} 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.'"\textsuperscript{93} In Spring 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, Stalin made preparations for the trial and execution of "Trotskyite-Zonovievite Terrorist Centre," but the Party of propaganda claimed that "\textquote{e}veryone was talking about the Stalin [C]onstitution."\textsuperscript{94} 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:

\begin{quote}
Let the balalaikas ring, Raise anew the chorus, Isn't it a happy thing — The road that lies before us?\textsuperscript{95}
\end{quote}

Article 1 of the Constitution declared that the Union of Soviet Republics was a "socialist state of workers and peasants."\textsuperscript{96} The Constitution introduced the concepts of a secret ballot and equal franchise to peasants and city dwellers. In addition, deputies to all Soviets of Working People were to be chosen on the basis of "universal, equal and direct suffrage by secret ballot."\textsuperscript{97} The Constitution recognized the right to work, rest and leisure,\textsuperscript{98} the right to maintenance in old age and sickness,\textsuperscript{99} the right to education,\textsuperscript{100} equal rights for women and for all citizens irrespective of nationality or race,\textsuperscript{101} freedom of religion,\textsuperscript{102} freedom of speech, press, assembly and demonstration,\textsuperscript{103} freedom of association,\textsuperscript{104}

\begin{itemize}
\item \textsuperscript{92} Id.
\item \textsuperscript{93} S. COHEN, BUKHARIN AND THE BOLSHEVIK REVOLUTION. A POLITICAL BIOGRAPHY, 1888-1938, at 356-57 (1973).
\item \textsuperscript{94} Id. at 366-67.
\item \textsuperscript{95} W. MUNRO, supra note 70, at 744.
\item \textsuperscript{96} KONST. SSSR, reprinted in CONSTITUTIONS OF NATIONS 262-82 (2d ed. 1956) [hereinafter KONST. SSSR (Peaslee ed.)].
\item \textsuperscript{97} Id. art. 134.
\item \textsuperscript{98} Id. arts. 118-19.
\item \textsuperscript{99} Id. art. 120.
\item \textsuperscript{100} Id. art. 121.
\item \textsuperscript{101} Id. arts. 122-23.
\item \textsuperscript{102} Id. art. 124.
\item \textsuperscript{103} Id. art. 125.
\item \textsuperscript{104} Id. art. 126.
\end{itemize}
and guarantees against inviolability of the person, domicile and correspondence. The Constitution substituted the Congress of Soviets and the Central Executive Committee with one bicameral organ of legislative power, the Supreme Soviet of the Union of Soviet Socialist Republics, 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 Supreme Soviet; between sessions it was to be responsible to the Presidium. The Presidium was composed of thirty-three members elected by a joint sitting of both chambers.

In the symptomatic way for 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" of Bolsheviks was executed: in 1936, Zinovev, Kamenev, Smirnov; in 1937, Radek, Pyatakov, Sokolnikov; in 1938, Bukharin, Rikov, 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

105. Id. art. 127.
106. Id. art. 128.
107. Id. arts. 32-33.
108. Id. art. 34.
109. Id. art. 35.
110. Id. art. 64.
111. Id. arts. 65, 70.
112. Id. art. 48.
113. See V. Kravchenko, supra note 88, at 198.
114. The Soviet Crucible, supra note 48, at 137-44.
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 by the [P]arty leaders in Moscow, would be accepted.115

VIII. POST-STALINIST CONSTITUTION OF 1977

Stalin's death resulted not only in a wave of popular unrest—revolt of East German workers in 1953, turbulence in Siberian camps soon afterward and upheavals of Hungarian and Polish workers three years later—but in attempts to reassess the significance of communism in the Soviet bloc. Thousands of political prisoners were released from labor camps; they had 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 constitution-making process, which this time 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

115. L. SCHAPIRO, supra note 60, at 482-83. See generally Pravda, June 16, 1938, at 1 (discussion of the XVIII Congress of the Communist Party); Pravda, Mar. 21, 1939, at 1 (editorial on dedication to Party work).
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 legitimate Stalinism and post-Stalin reform respectively.\textsuperscript{116}

There was 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 had to be drafted.\textsuperscript{117} The Constitutional Commission was set up in 1962 and originally consisted of ninety-seven members.\textsuperscript{118} 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.\textsuperscript{119} At the seventh extraordinary session of the Ninth Convocation of the USSR Supreme Soviet on October 7, 1977, the Constitution was adopted.\textsuperscript{120} 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 of this citizen involvement is questionable.\textsuperscript{121}


\textsuperscript{117} Between 1937 and 1974, the Stalin Constitution was amended 250 times, affecting 73 of the original 146 articles. \textit{Legal Systems Encyclopedia}, \textit{supra} note 54, at 508. For details on amendments, see S. Rusinova & V. Rianzhin, \textit{Sovetskoë Konsituzionnoe Pravo} 81-85 (1975).

\textsuperscript{118} In 1966, the size of the Commission was reduced to 75 members; in early 1977 to 54 members; and finally in April 1977 it increased by 21 new members. \textit{See R. Sharlet, The New Soviet Constitution of 1977}, at 1-4, 26 (1978); \textit{see also Legal Systems Encyclopedia}, \textit{supra} note 54, at 420.

\textsuperscript{119} Sharlet, \textit{supra} note 116, at 96.

\textsuperscript{120} \textit{Id}.

\textsuperscript{121} \textit{Legal Systems Encyclopedia}, \textit{supra} note 54, at 421.
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 "society of the whole people," "the unbreakable alliance of the workers, peasants, and intelligentsia." The Constitution emphasized the democratic foundations of the Soviet system. It declared that the Soviet state is organized on the principle of democratic centralism which "combines central leadership with local initiative and creative activity." The leading and guiding role of the Communist Party was formally recognized by the Constitution. The Constitution introduced separate chapters on "The Economic System," on "Social Development and Culture" and on "Foreign Policy." The chapter on the basic rights of citizens was extended, and the links between rights and duties were strongly emphasized. The Constitution declared that the "[e]njoyment 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," meaning that citizens' rights are constitutionally guaranteed only when exercised in a manner corresponding to the interests of society as defined by the Party, "the nucleus of the Soviet political system."

The Supreme Soviet of the USSR remained the highest body of state authority. The bicameral body of 1500 deputies was, as previously, composed of two chambers equal in numbers. Moreover, the Supreme Soviet remained the most effective 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 a permanent nucleus of the legislative body and


123. Id. arts. 1, 2, 19.

124. Id. art. 9.

125. Id. art. 3.

126. Id. art. 6.

127. Id. arts. 10-18.

128. Id. arts. 19-27.

129. Id. arts. 28-30.

130. Id. art. 39.

131. Id. art. 108.

132. 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. Id. art. 110.
IX. 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.134 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 followed by the emergence of a single leader who successfully reduced the number of rivals and introduced his clients to the highest Party bodies. This tendency may be traced through Stalin's triumvirates,135 Khrushchev's temporary readiness to share power with Anastas Mikoyan and Brezhnev's coalition with Aleksey Kosygin.136 The tendency to purge the Politburo and the Central Committee of potential rivals was not only typical of the pre-glasnost era: the full Politburo members and a substantial part of the Central Committee are Gorbachev's appointees. Gorbachev's position as primus inter pares (first among equal) was 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 Stalin Constitution and the Constitution of 1977, the media announced enormous involvement of the readers whose political maturity was assessed very highly. Pravda reported:

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133. Id. arts. 119-24, 128-36.
134. See Legal Systems CyclopediA, supra note 54, at 418.
136. 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.
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.137

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 and approved the USSR Draft Laws on Changes and Amendments to the USSR Constitution by 1344 deputy votes for, five against and twenty-seven abstentions.138

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 multiseat electoral districts on the basis of universal, equal, and direct suffrage by secret ballot.”139 Amended Article 100 provides for multiple nominations; it reads, “Ballot papers can include any number of candidates.”140

The reform inspires several observations. At first, the extent to which multiseat electoral districts are to be introduced is not clear. The Law on Elections of People’s Deputies provides that “elections of USSR people’s deputies take place in a single-seat electoral districts.”141 “One USSR people’s deputy is elected per electoral okrug.”142 Multiseat electoral districts will be tested instead in elections of local Soviet people’s deputies.143 Secondly, multicandidate 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

137. Denokratazatsiya nashay zhizni (Democratization in Our Time), Pravda, Oct. 25, 1988, at 1.
140. Id. at 50.
142. Id. art. 15, at 37.
143. See Democratization in Our Time, supra note 137; see also Constitutional Amendments, supra note 139, art. 95.
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in his Constitution of 1936. Until recently, however, only one person would run for each seat in an uncontested election with a high electorate participation. Vyshinsky wrote:

Under the new 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, 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 Soviets. 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.

The multi-seat districts were tested in other socialist countries. They were introduced in Poland where usually between four and six representatives are elected in one district, and in the German Democratic Republic 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 individual districts. The multi-seat system or system of multiple nominations did not democratize the electoral law of these countries 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 a lack of adequate and reliable public control of the elections' 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. The new Law on Elections of People’s Deputies provides that new representatives will be

145. Id. at 722.
147. Konst. SSSR of 1977, supra note 122, art. 100.
nominated by labor collectives, social organizations and servicemen's meetings. The change seems to be less significant in light of amended laws recently changed again, which provided that at least one-third of people's deputies had to be elected from the members of the CPSU, trade unions, cooperative organizations, the Komsomol, associations of women, war and labor veterans, and scientific workers, creative unions and other social organizations. In practice, the creative activity of an average citizen during the process of nomination was strongly limited, and thus, the results of the nomination process were well-prepared in advance. An average citizen was intimidated rather than encouraged to take part in this process, however, 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 Party committees or 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-Party 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.

In reality, the reports from the ten-week election campaign that commenced on January 10, 1989, confirm the reservations drawn from the initial examination of the text of the Law on Elections. The 100

148. See Constitutional Amendments, supra note 139, art. 100; Deputy Elections Law, supra note 141, art. 24.

149. Constitutional Amendments, supra note 139, art. 95; see also Democratization in Our Time, supra note 137.

150. Strogii Examen (Strict Examination), Pravda, Oct. 18, 1988, at 1.

151. A. Vyshinsky, supra note 144, at 724.

seats allocated to the Soviet Communist Party were filled by decision of the Politburo, which was endorsed by the Central Committee. 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 multicandidate 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 guaranteed 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 writes from Moscow:

Last week's nominating session of the philatelists' 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 as far as non-allocated seats are concerned. The observation of the initial phase of the election process confirms that despite the attempts to portray the campaign as Western-style, its outcome on March 26, 1989, which gave 80% of seats in the Congress to the Communist Party, was easily predictable.

The actual casting of ballots was usually another element that affected the democratic character of the socialist election process. The

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153. Id.
154. Id.
155. Id.
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 should 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 were 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 would be deemed voted on. The voting booths were usually located at the distant part of the electoral rooms. To vote secretly, the voter had to pass by the whole room in the full view of Party representatives present. 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. To illustrate this approach on the example of the Polish system (which nota bene provided for multiple-seat constituencies and recently was 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. For 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 tool serving exclusively to maintain power. The Minister is free.

A reform of the legislative structures which was 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.¹⁵⁹

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 Central Executive Committee, itself a bicameral body since 1924. The new Law vested the supreme power in the USSR Congress of People's Deputies.¹⁶⁰ The Congress was to consist of 2250 elected deputies who were 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).¹⁶¹ 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,"¹⁶² and was currently abandoned by the subsequent amendment which was adopted under the pressure of a group of progressivists in the Congress.

The Congress elects its nucleus body, a 450-person, bicameral, USSR Supreme Soviet which is "the standing legislative, administrative and

¹⁵⁹. *Democratization in Our Time*, supra note 137.


monitoring organ of the USSR state power." 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. The chambers are elected at the USSR Congress of People's Deputies by a general vote by the deputies. The Soviet of the Union is elected from among the USSR people's deputies from the territorial electoral districts and the USSR people's deputies from the social organizations. The Soviet of Nationalities is elected from among the USSR people's deputies from the national-territorial electoral districts and from 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.

X. CONCLUSION

Is the reform a major sign of the restructuring of the Soviet legal system? Given a kaleidoscope of political changes sweeping the Soviet bloc the answer hardly may be rendered at the moment. The well-balanced assessment of the constitutional changes requires time and examination of their application in practice. With the Soviet empire dissolving and crumbling, rather than reconstituting, each change begets some unpredictable change and requires a permanent evaluation of upcoming events. This situation allows only a few conclusions.

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

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 clearly in control of the forces he has unleashed.

163. Constitutional Amendments, supra note 139, ch. 15.
164. Id.
165. Id.
166. Id.
167. Id.
168. Trimble, Reform is Risky Business, U.S. News & World Report, June 19, 1989,
Gorbachev easily won unanimous nomination by the Party and was elected President facing only symbolic opposition of the Congress, which is composed of 80% of the members of the Communist Party. In the voting Gorbachev's word still prevails, however, the deputies voted down the government's candidates to the Supreme Soviet commissions. Jeff Trimble wrote from Moscow that "when it came to talking, arguing, shouting, criticizing and insulting, this Congress bowed to no one." Elected by the clear Party majority, the Supreme Soviet gave Gorbachev less clear control over the proceedings than was expected. The number of radical deputies, who occupied up to 30% of the seats in the Congress, was reduced to between 10 and 15 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.

The new laws raise an array of concerns, especially in the northern republics of the Soviet Union. The widely heralded, but vaguely implemented, shift of power 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.

at 27-28.


170. Id.

171. Trimble, supra note 168, at 28.


Under the pressure of grass-roots movements the Supreme Soviet granted them economic autonomy beginning January 1, 1990. The discussions on the democratization process in the Baltic Republics proved that the Supreme Soviet lost its old rubber-stamp character and may give Gorbachev a feeling of his own powerlessness.

The evolution of the electoral districts have been introduced only in the local elections, and the practice of other socialist countries demonstrates that they are not ipso facto a guarantee of democratization of the electoral process. Double and multiple nominations were theoretically possible under the old electoral Soviet laws. The practice showed, however, that either the candidates themselves, or organizations that had nominated them, would frequently drop their names. Finally, any alternative names were submitted and single candidates ran for each seat uncontested.

Soviet law adopted a rule that constitutionally guaranteed rights of citizens must not exist to the detriment of the interests of society or the state. Freedoms of speech, press, assembly, meetings, street processions and demonstrations are still guaranteed only if they are exercised in a manner not contrary to the interests of the people and are exercised in order to strengthen and develop socialist system. Until recently “interests of the people” and “needs of socialism” were defined only by the Party and the government. It was assumed that the legislative body itself 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 such as the Presidium of the parent body. Supervision over the observance of laws was vested in the Procurator-General who was appointed by, and responsible and accountable to, the supreme legislative body. It has already been proven that the Polish experience of judicial review contributed significantly to the liberalization of the legal system in this country. It has to be emphatically stated again that without the extra-parliamentary, namely judicial, means of constitutional control, the provisions of the Soviet electoral reforms still sound like political-philosophical declarations rather than legally binding norms. Without social and judicial control of the election

178. KONST. SSSR of 1977, supra note 122, art. 39.
179. Id. arts. 50-51.
180. Id. art. 121.
181. Id. arts. 164-65.
process, the slogan of a "free election" must be checked carefully against well-known socialist past experience.

The modified system initially did not introduce any elements of political pluralism. The Constitutional Amendments guarantee that one-third of the deputies would be elected from the all-union social organizations controlled by the CPSU. The remaining two-thirds of the candidates were nominated by labor collectives and there were weak indications that they could be selected from the non-Party-controlled electorate. In this situation, the new USSR Supreme Soviet might theoretically accept only nominal dissent and might be, in fact, an institution with the same profile as the old Supreme Soviet which was called to applaud the Party's decisions.

The practice proved, however, that the character of the Supreme Soviet is changing noticeably. The new vote on the election law, on October 24, 1989, was a startling victory for progressives, who voted to delete the provision that set aside one-third of the People's Deputies in the Congress for the Communist Party, unions, cultural organizations. The most recent comments from Moscow also demonstrate that the Kremlin is inclined to eliminate the law guaranteeing the Communist Party's monopoly on power. The practice will verify this new Soviet readiness to experiment with political pluralism.

The evaluation of the personal position of Gorbachev 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 limits the tenure for this position to ten years (two five-year successive terms), but extends the functions of the President as a head of the state who now chairs the powerful Defense Council and names candidates for the posts of Chairman of the USSR Council of Ministers, USSR General Prosecutor, 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 can hardly favor the announced "revival of the absolute power of the soviets." The practice proved, however, that the character of the Supreme Soviet is changing noticeably. The new vote on the election law, on October 24, 1989, was a startling victory for progressives, who voted to delete the provision that set aside one-third of the People's Deputies in the Congress for the Communist Party, unions, cultural organizations. The most recent comments from Moscow also demonstrate that the Kremlin is inclined to eliminate the law guaranteeing the Communist Party's monopoly on power. The practice will verify this new Soviet readiness to experiment with political pluralism.

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term by the USSR Congress of People’s Deputies. Further, elections for five-year terms will be by nationwide popular vote.186

Gorbachev’s strategy resembles the tactics employed in Poland before the declaration of marshall law in 1981 when the concentration of power was the first indication of possible confrontation with Solidarity.187 The appointment of General Jaruzelski to the principle post of the State (First Secretary of the Central Committee, Prime Minister, Secretary of Defense), suggested that some action against Solidarity was being prepared.188 The recent Gorbachev bill makes a similar crackdown on the growing Soviet opposition equally possible.

With all power vested in him, Gorbachev seems to be vulnerable and more exposed on the criticism of the Party’s conservatives and the Soviet workers.189 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 the control of his crumbling empire and most likely to 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 face “perestroika only from above.”190 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.


188. Id.
