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## Socialism and Federation

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# SOCIALISM AND FEDERATION

*John N. Hazard\**

Federal structures are often established by national founders to manage intractable problems created over generations, if not centuries, by the migration of peoples.<sup>1</sup> Military and economic pressures may stimulate union to assure survival, but ethnic, racial or religious tensions sometimes hamper draftsmen who sense the need for unity. Federation has often been the modern solution to the conflict between the need for unity and the desire for autonomy felt by groups fearing the loss of identity.

Federation has taken no standard form. Federal architects have constructed models incorporating varying degrees of unity and autonomy, depending upon their perception of the strength of competing pressures. If the pressure for unity is great because of fear of invasion or economic collapse, the balance of power is given to a central government. On the other hand, if the pressures for autonomy are great and can be accommodated without threatening the survival of the new state, the founders create a loose union. The dominant concerns among those who have chosen federal structures of government have been pragmatic rather than ideological, although in recent times ideology has been brought to the support of federal structure. For example, reformers in post-World War II Germany established a federal structure in the expectation that it would encourage the development of democratic procedures from the grass roots level up.<sup>2</sup>

Some legal theorists are now asking what impact socialist ideology has had on the law. One of the greatest, Wolfgang Friedmann, wrote two decades ago that "despite many differences between Soviet and other legal systems, no basically new concepts or legal relationships have developed."<sup>3</sup> The exploration of this thesis, as it may apply to federal structures, is particularly appropriate in a paper written to honor Eric Stein, who has concerned himself with the comparison of laws and notably with the study of federations. The exploration is made even more tempting by the fact that the Friedmann thesis is at such odds with the claims socialist jurists have made as to the novelty of their federal structures. One of the early writers on Soviet federation wrote in the late 1920's that it was impossible to use bourgeois theories to describe the Soviet federation because it was of a new

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1. For motivation of drafters of federal constitutions, see E. McWHINNEY, *CONSTITUTION MAKING: PRINCIPLES, PROCESS, PRACTICE* 75-80 (1981).

2. For the thinking of the occupying powers on restructuring Germany, see Loewenstein, *Political Reconstruction in Germany, Zonal and Interzonal*, in *CHANGE AND CRISIS IN EUROPEAN GOVERNMENT* 29-43 (J. Pollock ed. 1947).

3. W. FRIEDMANN, *LAW IN A CHANGING SOCIETY* (1959).

type.<sup>4</sup> The constituent states had not, in his view, lost their sovereignty by entering the federation. The first federal constitution reflected this position, by declaring in article 3 that each constituent republic preserved its sovereignty, and in article 4 that each had the consequent right to secede from the federation.<sup>5</sup>

This early position has been maintained by Soviet authors over the years. Indeed, it has been stated with greater emphasis: "The Soviet federation is a federation of a new, superior type, differing in principle from a bourgeois federation."<sup>6</sup> The claim is made because the Soviet federation is deemed to be a "voluntary union of socialist republics constructed on the base of the dictatorship of the working class."<sup>7</sup> More recently, the Soviet member of the International Association of Legal Science, Viktor M. Tchikvadze, has said at a round table devoted to federalism that "[t]he construction of the Soviet union state was a creative revolutionary process. . . . There has never existed a federation in history . . . as vital as the USSR . . . ."<sup>8</sup>

What does the record show? Does it support the claims being made for structural novelty because of the presence of socialist thought in the minds of those who founded socialist-oriented federations? Since the prototype of the socialist federation has been the Union of Soviet Socialist Republics, our focus will be upon it. Fortunately, Viktor Knapp in this testimonial volume gives his evaluation of socialist federalism as it has emerged in his native Czechoslovakia, in Yugoslavia and in the Soviet Union. Readers may thus compare the socialist-inspired federations and assess the evaluations made by authors looking at the socialist world both from the inside and the outside.

Tchikvadze in his 1970 paper concluded that the "[t]he fraternal cooperation of the soviet republics in military and economic fields paved the way for their uniting in the Union of the S.S.R."<sup>9</sup> This suggests the presence of classic pressures for creation of the first socialist federation. The documents bear out this suggestion, for they indicate that the pressure for unification came both from fear of invasion by hostile neighbors and fear of economic collapse following the devastation of World War I and the subsequent civil war in what had been the Russian Empire.<sup>10</sup> In this sense the genesis of the

4. See Cheliapov, *Federatsiia* [Federation], in 3 ENTSIKLOPEDIJA GOSUDARSTVA I PRAVA [Encyclopedia of State and Law] 1413-17 (P. Stuchka ed. 1925-1927).

5. For an English translation of texts of Soviet constitutions, see A. UNGER, *CONSTITUTIONAL DEVELOPMENT IN THE USSR: A GUIDE TO THE SOVIET CONSTITUTIONS* (1981).

6. See *Federatsiia* [Federation], in 2 IURIDICHESKII SLOVAR' [Juridicial Dictionary] 572-77 (P. Kudriavtsev ed. 1956).

7. *Id.*

8. Tchikvadze, *Soviet Federalism and the Development of the Legal System in the USSR*, in INT'L ASSN. OF LEGAL SCIENCES, *FEDERALISM AND DEVELOPMENT OF LEGAL SYSTEMS* 145, 149, 167 (1971).

9. *Id.* at 149.

10. The documents have been collected in AKADEMIJA NAUK S.S.S.R., INSTITUT SOVETSKOGO STROITEL'STVA I PRAVA, ISTORIJA SOVETSKOI KONSTITUTSII V DEKRETAKH I POSTANOVLENIJAKH SOVETSKOGO PRAVITEL'STVA 1917-1936 [Academy of Science of the USSR, Institute of Soviet Structure and Law, History of the Soviet Constitution in Decrees and Resolutions of the Soviet Government 1917-1936] 99-250 (S. Studentkin ed. 1936 & photo. reprint 1963).

Soviet federation of late December 1922 seems to have been traditionally motivated. Can one conclude, however, that the genesis was also in some way affected by the founders' commitment to socialism? If so, one might conclude that socialism had introduced a new element into the formation of federations.

### I. THE IMPACT OF LENIN

V.I. Lenin was, of course, the principal founder of the USSR, and his life provides a key to understanding the motives of those who gathered to create the USSR on that late December day of 1922. He had proved himself to be both ideologically oriented and pragmatic, not only in his writings but in his actions both before and after the Russian revolution of 1917. In general, he was not one to put aside socialist theory under pressures created by facts. To be sure, he showed himself willing to compromise on socialist theory to survive in the face of hostile pressures, but he seems never to have lost sight of his goal. He could bring himself to introduce a "New Economic Policy" (N.E.P.) in 1921 to aid in restoring an ailing economy even though it released capitalist forces from the socialist-inspired restraints created in 1917. His willingness to abandon his plans for the future was revealed during the first years of an era known to history as that of "war communism," when he sought to introduce a system of government that would be popular, simple in structure, and designed soon to "wither away" when no longer needed to restrain hostile forces carried over from the imperial period.<sup>11</sup> The N.E.P. was described as a step backward until the march toward socialism could be resumed.

The federation was formed in late 1922 a few months after the introduction of the N.E.P. In a sense the two innovations went together, although federation was motivated by more than a sense of need for revival. It was rooted in political theory as an extrapolation of Lenin's pre-revolutionary slogan of "self-determination of peoples."<sup>12</sup> Lenin had proclaimed his slogan in hope of gaining support for the revolution from the non-Russian peoples of the Empire by catering to their century-long desire to be free of the Tsar's policy of Russification. Self-determination was, therefore, a tactic in the struggle with Tsarism.

After victory in the "October Revolution," Lenin demonstrated his sense that promises had to be kept if he was to remain credible. He signed decrees authorizing the Finns, the Bielorrussians, the Ukrainians and the Baltic peoples to secede from the unitary state that had been the Russian Empire,<sup>13</sup> but his goal was not the permanent breakup of Imperial unity. Lenin's goal was reunification with the Russian core in a structure he called

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11. V.I. Lenin's plans for the future, as drafted before the revolution, were stated by him in his *STATE AND REVOLUTION* (1917). The speed with which the state is currently expected to wither has been slowed since Lenin's time. "The state as an organization embracing the entire people will survive until the complete victory of communism." For an English translation, see *SOVIET COMMUNISM: PROGRAMS AND RULES* 23, 98 (J. Triska ed. 1962) (translation of the 1961 Programme of the Communist Party of the Soviet Union).

12. Lenin expressed his view of self-determination in an article published in 1914. For an English translation, see his *On the Right of Nations to Self-determination*, in 4 *V.I. LENIN, SELECTED WORKS* 249-93 (1943).

13. For the view that Lenin envisaged the break-away of national groups as only a transi-

the Russian Soviet Federated Socialist Republic (RSFSR). Although "federated" in name, it followed no Western model. No structure other than a People's Commissariat of Nationalities was to give the minority peoples a voice through which to express their desires to the dominating Russians. There was to be no second chamber in which deputies would have equal representation with the Russians, nor was there to be a right to secede.

Lenin showed his colors as a unifier even more prominently in reaffirming his long-standing attitude toward the structure of his Communist Party.<sup>14</sup> Before the Russian revolution, when the Party was given the task of organizing for revolution, Lenin had established the rule of unity within the Party, even though some colleagues demanded recognition of ethnic differences through grants of autonomy. Lenin's position was inspired by the *Communist Manifesto* of 1848 in which Marx and Engels had stated categorically that "workingmen have no country."<sup>15</sup> Consequently, when his Jewish party comrades expressed a desire to create a separate Jewish revolutionary organization, the "Bund," Lenin insisted that there was no reason for an autonomous unit. All communists were expected to put aside their ethnic origin and their nationalist sentiments when enlisting under the working class banner. In the future the binding tie was to be but "class," and the strong nationalist currents on which Lenin was prepared to rely in dismembering the Empire were to have no recognition among communists.

Lenin reasserted his unification creed in 1915 in opposition to the Social Democrats, who had not objected to the entrance of their respective governments into the world war. Lenin perceived votes for the budgets necessary to pay for the war as betrayals of socialist faith. His response was to disavow the Second Socialist International and to initiate steps to create a new International eventually to be known as the Third or Communist International. Its mission would be to spread the experience of the Russian revolution around the world.<sup>16</sup>

With this creed of working class solidarity deeply implanted in communists tutored by Lenin during the long struggle for victory over the Tsar, the Finns, Bielorrussians, Ukrainians, and Baltic peoples were expected to rejoin the Russians in the RSFSR when the rationality of union became evident to the masses in general. In short, reunion was expected to become popular when the military and economic perils of attempting to survive as small states had become so universally obvious that, in spite of tradition, most minority peoples would accept leadership from communists toward reunification with the Russians.

Lenin's expectations were not to be disappointed. Several of the minority peoples returned under communist leadership, but the structure chosen

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tional stage on the road to reintegration under socialism, see L. SCHAPIRO, *THE COMMUNIST PARTY OF THE SOVIET UNION* 149 (1960).

14. *Id.*

15. K. MARX & F. ENGELS, *MANIFESTO OF THE COMMUNIST PARTY*, ch. II, para. 53 (authorized English trans. New York 1933) (1st ed. London 1848).

16. For an English translation of Lenin's report on a meeting of revolutionaries in Berne, see his *Conference of the Sections of the R.S.D.L.P. Abroad*, in 5 V.I. LENIN, *SELECTED WORKS* 131-37 (1943). The Zimmerwald Conference in the autumn of 1915 is chronicled by a Soviet historian. See P. KERZHENSTEV, *LIFE OF LENIN* 157 (1937).

for reunification was not the RSFSR. Lenin apparently realized that even his "federation" smacked of Russian domination, and he conceived the idea of a new type of federation with more trappings of autonomy for minorities, namely the Union of Soviet Socialist Republics (USSR).<sup>17</sup>

From what transpired at the founding congress of representatives from the previously independent republics joining together in the new USSR, it appears that Lenin had his eye on more than reunification of what had been the component parts of the Empire. He looked toward Asia and eventually the world. One of the delegates from his Third International rose on the floor of the congress to shout "Long live the USSR of the world."

Many minds perceived the new structure as a blueprint designed to attract like-minded peoples with hopes in socialism. It was not seen as a permanent structure, of course, for the theorists seem always to have kept in mind the evolution of a society knowing no traditional state forms. Fraternal peoples were expected eventually to join in an ill-defined unitary structure of worldwide dimensions. That structure would facilitate economic administration with no need to maintain an apparatus of compulsion to restrain dissatisfied recalcitrant peoples. It would be what Marx and Engels had called a nonstate, an "administration of things." Its remarkable innovation would be the total absence of police, prosecutors, courts, jailers and even of professional administrators. It would bind together the peoples of the world in a "self-administered" society.

This was the dream of 1922, a dream not yet officially discarded from textbooks proclaiming a goal of self-determination and the ultimate convergence of peoples. While the worldwide aspirations are muted today, first steps have been taken within the USSR to speed convergence of peoples by encouraging the subordination of national sentiments within a concept known as "Soviet man."

## II. THE IMPACT OF PLANNING ON FEDERATION

Lenin's federal structure must be seen as a compromise between idealism and pragmatism. It is a compromise that remains in place in the mid-1980's, although redefined to some degree in the two federal constitutions that have been promulgated since the original.<sup>18</sup> Still, in spite of this continuity of structure, there have been challenges, the most vigorous coming from the economic planners. This might have been expected, for socialists have long said that their major contribution to mankind's welfare is economic planning, from which they expect abundance eventually to flow. Their faith is demonstrated by the slogan "the plan is law," and at times administrators who have deviated from the plan have been prosecuted.

The planners' challenge to federalism has been straightforward. It is simply that federalism in the Soviet model is not economically rational.

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17. Lenin's thoughts on abandoning the RSFSR as the unit to which the Ukraine and other republics would return in favor of a broader concept of a USSR in which the RSFSR would share equally with the other republics, were set forth in a letter to L.B. Kamenev dated September 26, 1922. For text see Document No. 101 in *OBRAZOVANIE SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK: SBORNIK DOKUMENTOV* [The Formation of the Union of Soviet Socialist Republics: Collection of Documents] 297 (1972).

18. See generally A. UNGER, *supra* note 5.

The fact that in the great migrations of the past the Ukrainians had come by chance to rest where they are, with distinctly different peoples as neighbors, living in what planners define as the same "economic watershed," was thought to be no reason to refuse to integrate factories and farms located across republic boundaries but needing one another for economic viability. Planners since the 1920's have asked Communist Party officials whether they might disregard ethnic boundaries, but the answer has always been "No." The rationale for maintenance of an ethnically organized federal structure seems still to be compelling despite highly touted campaigns to develop an homogenized "Soviet man."

Although the federation is preserved with ethnic dividing lines, pressures for economic rationalization continue to be accommodated. This occurs in the structure of economic ministries. Since 1922 there have been three types of ministries: the all-union, the union-republic and the republic.<sup>19</sup> As originally conceived, the supremely important heavy industries, on which Stalin relied for development of the economy, would be directed by the federal government's ministry without regard to any desires of ethnic minorities in the republics to share in policymaking, as expressed through their Councils of Ministers. The less critical, although important, light industries, catering to the differing tastes created by geographical location or ethnic tradition, would be directed by administrators required to look for guidance in two directions: upward to the federal government for general planning and sideways to their republic legislature and Council of Ministers for direction in executing the plan in conformity with regional needs.

A third type, denominated the "republic type," would permit the local soviets, as representatives of the peoples of a republic, to create industries in their midst to draw upon local resources capable of meeting distinctly local needs and requiring no direction from above, except that provided by the vague indicative plan for local industry.

For all but two years — when Nikita Khrushchev departed from centralized ministerial control over heavy and light industry to shift the balance of administrative direction to locally oriented economic councils — the three-type structure of economic ministries has prevailed. Occasionally one or another industry, for example ferrous metallurgy, has been transferred from one category of ministerial structure to another, but the fundamental pattern remains.

Khrushchev tried another experiment to alter the balance between ethnic units and centrally directed planning. His scheme called for grouping small republics together into economic planning regions. This reduced the likelihood that local officials would attempt to retain for their own ethnic group raw materials in short supply. As with his economic councils, Khrushchev's regional groupings of republics did not outlast his ouster in 1964 by colleagues determined to restore what had come to be traditional structures.

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19. Article 50 of the first Soviet Constitution established the first two types in the federal system. The third type was established by the constitutions of the various republics. A. UNGER, *supra* note 5.

### III. TAXATION, BUDGET AND FEDERATION

Planning inherently requires taxation and budgeting to obtain and disburse funds to implement the plans. The impact of socialism upon federal structure is, therefore, as evident in this financial activity as it is in planning. The constituent members of the federation have no funds available to them for their distribution without regard to the provisions of the federal plan.<sup>20</sup> The manner of collection of taxes may suggest otherwise, for financial officers in each republic collect the taxes, but the tax rates and the distribution system are set by the federal budget law. While the republic authorities may hold for use within the republic those funds authorized by the federal law, they must remit the balance to the federal government.

In the interest of efficiency, and also to meet halfway the special desires of the peoples of a republic as expressed through the republic's legislature in its budget law, the sums allocated in the federal budget to a republic are established in gross only. The republic's budget law then distributes the sums allocated by categories in the federal budget to the specific units to be financed. The system is designed to accommodate both the traditional socialist goal of community welfare of the nation as a whole and the local pressures and preferences within the federal structure.

### IV. CULTURAL DEVELOPMENT

Socialism claims for itself not only economic rationality, as provided through national economic planning, but also advantages in mass cultural development. Its boast is that it serves the individual through the welfare of the entire community. Because many of the ethnic groups inhabiting the fringe regions of the USSR were illiterate and, therefore, unprepared to improve their lot after the revolution, the literate peoples at the core saw as one of their primary tasks the elevation of cultures of all peoples, especially those who were illiterate. Resources available only at the core were drawn upon to finance and direct the evolution of small cultural units. The federal government assumed the role of guardian over wards.

"Dirigisme," as the French have called the interventionist attitude of leaders at the core, became the hallmark of the soviet type of socialism as it has emerged in the USSR. One may argue that this aspect of the Soviet federation owes nothing to socialist thought in conception, since other federations have used resources from the federal treasury to contribute to the cultural development of peoples less advantaged than those at the core. Even the United States has long used a graduated federal tax system, the revenues of which are in part used for the cultural benefit of peoples in less populated states lacking in financial resources.

Outsiders find it difficult to draw a line between the concern for brothers in need shown by an individualistic society and the obligation sensed in a collectivist society to meet similar needs. Are the two comparable? To the socialists the commitment of the collectivist is seen as firmer and broader than that of the humanistic individualist caring for a disadvantaged fellow citizen. Be that as it may, there is no doubt that traditionally there has been

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20. For a summary of Soviet tax structure, see A. NOVE, *THE SOVIET ECONOMIC SYSTEM* 230-37 (1977).

a contrast between intervention by the federal government in cultural policies of the states in the United States and intervention in the cultural policies of republics by the federal government in the USSR. Not only does the USSR's federal government provide massive financing of the arts and education in the fringe areas, but it also directs curricula, chooses textbooks and specifies qualifications of teachers in the schools.<sup>21</sup>

Some of the interventionism evidenced by the Soviet Government is probably engendered by a desire to prevent emergence of nationalist fervor eventually likely to stimulate challenge to the central government. Yet, it may well be that some nationalism is stimulated by the socialist goal of convergence of peoples. Unless educational programs are structured to create a unity of outlook, the diversity of peoples may again emerge to cause disunity in line with the world-wide rebirth of nationalist movements. Soviet frontiers, although well protected, cannot separate totally the peoples of Central Asia from their Moslem coreligionists to the south.<sup>22</sup> This may explain why original patterns calling for control over education by republics have been shifted by degrees to the federal government. Ministries concerned with education and justice have been transferred from the republic to the union-republic type of ministry.

#### V. SOCIALISM AND CODES OF LAW

In no place has duality of control between federal and republic government been indicated so clearly as in the structure of codes of law. As legally independent republics before federation, the various ethnically defined republics of the early years promulgated their own codes of law. The record shows much similarity among the various republics' codes, because communists at the helm of each coordinated their thinking with that of the jurists of the RSFSR in expectation of ultimate union with the core republic. When federation was accomplished without absorption into the RSFSR, each constituent republic kept its own codes, although the new federal constitution provided for coordination of thought more formally than through meetings of jurists. The new constitution authorized the federal legislature to establish "fundamentals" of law to which republic codes were to be required to conform.<sup>23</sup> Such fundamentals were enacted slowly, but by degrees they were spread across the board, and republic codes were made to conform to the extent that they had departed from a federal norm.

Finally, in the second federal constitution of 1936 it was ordered that the republic codes be replaced totally by new federal codes of law.<sup>24</sup> Although three drafts were prepared, they were never promulgated, allegedly because Stalin preferred to operate through separate normative acts easily recognized as superior to the republics' codes. The constitution was

21. For the structure and policies of the Soviet educational system, see J. ZAJDA, *EDUCATION IN THE USSR* (1980).

22. For analysis of the impact of Islamic trends on the Central Asian republics of the USSR, see M. RYWKIN, *MOSCOW'S MUSLIM CHALLENGE: SOVIET CENTRAL ASIA* (1982).

23. USSR CONST. OF 1924, art. 1(o), reprinted in A. UNGER, *supra* note 5, at 61.

24. See USSR CONST. OF 1936, art. 14 (u), reprinted in A. UNGER, *supra* note 5, at 142. O. Ioffe, a participant in the drafting process of all-union codes, has set forth his thoughts on why it failed in O. IOFFE & P. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* 94 (1983).

amended in 1957 after Stalin's death to restore the structures of the first federal constitution, and the restored structure has remained in place to the present day.

Conformity has, however, been advanced by virtue of the fact that federal fundamentals were promulgated during the Brezhnev era of the 1970's not only in the principal branches of law but also in previously untouched areas.<sup>25</sup> Additionally, conformity was fostered by assembling in Moscow groups of jurists from the republics, before the enactment of new codes by the republics. Little variation is now left except in the designation of penalties for similarly defined crimes and in statutes of limitations for civil actions.

In spite of this trend toward uniformity, the codes contain rules to be applied in the event of conflict of laws.<sup>26</sup> But their applicability changes little in the way a crime or the status of a citizen is treated. Variations are not to be compared with those existing between states of the United States or of Australia, or between the provinces of Canada.

The outsider may ask whether socialism is actually responsible for these trends toward unification, since similar trends have been seen in the Benelux countries and in the Nordic Conference, where socialism plays no part in pressures for unification. A clue may be found in the arguments of a Ukrainian scholar who has written about what he sees happening in international public and private law.<sup>27</sup> He writes that the existence of socialist principles has brought the legal systems of the Eastern European socialist states closer together and he expects the trend to become manifest in states of socialist orientation in the Third World, and even elsewhere, as economic structures become somewhat similar. He looks at spreading nationalizations of productive property and at state, national and international economic planning. Perhaps the conclusion is justified that, while the Benelux countries or the Nordic Conference may seek unity as a matter of administrative convenience, the socialist states see it as imperative for doctrinal reasons, as well as for enhancement of the rationality of planning and the intermingling of citizens in marriage and employment.

## VI. FEDERAL VS. REPUBLIC COURTS

In establishing their court system, the founders of the Soviet federation faced a problem that is familiar to other federations. It is the one to which James Madison gave his attention in Philadelphia; namely, need there be a system of inferior federal courts for some purposes, or may all litigated

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25. These have been published in English translation as *LEGISLATIVE ACTS OF THE USSR* (2 vols. 1980 and 1982).

26. *See, e.g.*, Fundamental Principles of Civil Legislation of the USSR and Union Republics, Act of Dec. 8, 1961, art. 18; Fundamental Principles of Criminal Legislation of the USSR and Union Republics, Act of Dec. 25, 1958, art. 4; Fundamental Principles of Legislation of the USSR and Union Republics on Marriage and the Family, Act of June 27, 1968, art. 8, reprinted in *COLUMBIA UNIV. PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, THE SOVIET LEGAL SYSTEM: LEGISLATION AND DOCUMENTATION* 399, 661, 453 (W. Butler trans. 1978).

27. *See* V. BUTKEVICH, *SOOTNOSHENIE VNUTRIGOSUDARSTVENNOGO I MEZHDUNARODNOGO PRAVA* [The Interrelationship of Internal and International Law] 276-77 (1981).

matters go before the courts of the constituent states of the federation? Since the federation in the USSR was to unite republics that had been independent for several years and thus had created their own court systems, the federal architects would have had to uproot several established systems had they moved in the direction of total unification of courts under the federal flag.

The record shows that the decision went against upheaval, probably because the courts were close to culture, and at the time any attempt at unification in a federal system might have been interpreted by the minority peoples as reversion to Russification. In any event, the courts of the various republics were left in place, although topped by a new federal Supreme Court to perform the function, traditional in all federations, of providing unity in interpretation of the federal constitution.<sup>28</sup>

This left for decision the matter of creating some inferior federal courts to share jurisdiction in some manner with the courts of the republics. Models vary in their resolution of this question. The Indian drafters saw no need for inferior federal courts. Our founders in Philadelphia left the matter open for resolution by the federal Congress, and its members saw fit to create such courts, notably to lessen the likelihood of disputes with foreign states or between states of the federation who might conclude that their citizens were disadvantaged in the courts of a sister state.

Concerns like those in the United States seem to have been absent from Soviet minds as court structures were created, but inferior federal courts emerged nevertheless. The record indicates that the major anticipated problem was state security, for the courts created on the federal side were concerned with the critical areas of communication by transport, whether by water or on land, and military security.<sup>29</sup> All of these courts were made responsible to the federal Supreme Court to which there was a right of cassational appeal. In 1934 the security courts were supplemented by an administrative tribunal within the Ministry of Internal Affairs. These "Special Boards" were authorized to exile to work camps for terms of up to five years persons deemed by the tribunal to be "socially dangerous."<sup>30</sup> Naturally, this federal administrative tribunal was not required to follow the republic codes of criminal law and criminal procedure.

The inferior federal courts were reduced in number following the restructuring of the federal institutions by the second federal constitution of 1936. The railroad and water transport courts were abolished, and the military tribunal was limited in jurisdiction to actions concerning military personnel and prosecutions for espionage against civilians or military personnel. Finally, after Stalin's death in 1953 the Special Boards were abolished to leave the military tribunals in their new guise as the sole inferior federal courts.<sup>31</sup>

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28. For a history of the development of the judicial system, see J. HAZARD, *SETTLING DISPUTES IN SOVIET SOCIETY* 199-204 (1960).

29. These special courts as they existed at the time are described in A. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 523-24 (1948).

30. Decree of July 19, 1934, [1934] I Sob. Zak. SSSR No. 36, Item 283; Decree of Nov. 5, 1934, [1935] I Sob. Zak. SSSR No. 55, Item 84.

31. The decree of abolition was not published at the time but was revealed in articles by

Socialism seems to have no part to play in the division of competence between federal and republic courts, unless it be argued that the sacrifices demanded of citizens during the period when traditional ways of conducting private enterprise are being replaced by state enterprise intensify dangers to state security. To be sure, social revolutions have always stimulated strong opposition from those driven from power, and for a period of years security of the state has been of paramount concern. The introduction of socialist limitations on private ownership may conceivably have multiplied the number of citizens intent upon unseating socialist-minded leaders, but the relationship between socialism and the establishment of federal courts for security purposes is tenuous.

## VII. SOCIALISM AND THE LEGISLATURE

Lenin's determination to eliminate ethnic loyalties as an influence upon state structure was reflected in the RSFSR's constitution of 1918. He made its legislature unicameral with deputies distributed on the basis of population alone. No second chamber for the minority peoples brought within the Russian Federation was established. The concerns of minority peoples were to be met through the Ministry of Nationalities. Thus, the legislature stood as testimony to the fact that the focal point in the representational system was "class" and not ethnicity.

When the federation was restructured as the Union of Soviet Socialist Republics, Lenin authorized a compromise of sorts with the ethnic groups being rejoined to the Russians. The legislature was to remain a class legislature in that it excluded those not classified as "workers or peasants," and it was to include no second chamber to represent ethnic groups. There was, however, an interim body created to sit during the long intervals between meetings of the unicameral Congress of Soviets. This interim body, bearing the anomalous title "Central Executive Committee" in spite of being a policy-making and not an executive organ, was to be bicameral.<sup>32</sup> Representation in one of its two chambers was to be accorded to ethnic units on the basis of equality for the four constituent republics despite great differences in population. Even the smaller ethnic units within the RSFSR and the Transcaucasian Republic were to have representation, although with fewer deputies for those denominated "autonomous territories."

In structuring the legislature in this manner, Lenin followed generally the pattern in use in other federations where the constituent units are provided representation in a separate chamber. Unlike the United States, other federations have not found it necessary or desirable to represent all units equally,<sup>33</sup> but all find that federation suggests that representation shall not be solely on the basis of population.

Socialist thought in its Marxist variant can have played no part in the creation of the bicameral interim legislature, for a bicameral legislature

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law professors. For an account of the revelations, see Berman, *Law Reform in the Soviet Union*, 15 AM. SLAVIC & E. EUR. REV. 179, 183-85 (1956).

32. USSR CONST. OF 1924, arts. 8, 13-36, reprinted in A. UNGER, *supra* note 5, at 62-65.

33. For a concise summary of legislative structure in Australia, Canada, the Federal Republic of Germany and Switzerland, see Bowie, *The Federal Legislature*, in STUDIES IN FEDERALISM 3, 29-55 (R. Bowie & C. Friedrich eds. 1954).

based in part on representation of ethnic units rather than class unity could not have been countenanced, at least in doctrine, by the authors of the *Communist Manifesto*. Bicameralism can be seen only as a compromise, whose sharp edge was dulled to some extent by article 28 of the 1924 constitution, which declared "The Central Executive Committee of the Union shall be responsible to the Congress of Soviets of the Union of Soviet Socialist Republics."<sup>34</sup> In theory, at least, this clause gave class representation priority over ethnic representation at the highest level.

Even this token adherence to the *Manifesto's* principle vanished from the second federal constitution of 1936, and it has not reemerged with the promulgation of the subsequent constitution of 1977. The drafters of 1936 discontinued the Congress of Soviets and raised to the supreme legislative level the bicameral Central Executive Committee, entitling it the Union of Soviet Socialist Republics' Supreme Soviet. Recognition of ethnicity had triumphed over class, albeit not without some obeisance to purist thinkers on the educational front. The Communist Party has intensified its campaign against ethnic loyalties and preached in an ever louder voice the ultimate convergence of all ethnic groups into a single group to be populated by homogenized Soviet men and women.

#### CONCLUSION

The pragmatists of the common law systems are prone to conclude that expediency has triumphed across the board over ideology in the sixty-odd years of Soviet history. The record concerning the legislature and the judiciary, and the system of law codes, certainly supports such a conclusion. The evidence from the administrative structure is not so clear in its implications, but it appears that what is expedient in administration conforms in some measure to what Marxist ideology would indicate as desirable.

The distribution of administrative functions among the three types of ministries engaged in production has been based generally upon centralist motivation. Ethnicity is taken into consideration only when the satisfaction of consumer desires requires it. Industries are moved back and forth from one type of ministerial structure to another without regard to ethnic sensibilities. Only in the field of culture is there evidence of perception of a need to preserve policymaking within the republics, and even in this sphere policymaking has been passed increasingly to the central government, as with education and the administration of justice.

The haunting presence of ideological considerations in Soviet political literature and, seemingly, in the minds of Soviet jurists makes the common lawyer with his or her lack of concern for ideology wonder whether a conclusion is justified that socialist thought today plays no part in the creation and maintenance of federal structures. The experience of 1928, when the concessions to private enterprise represented by the N.E.P. were dropped, suggests that what may look like a permanent concession to ethnicity in the form of a federal rather than a unitary state is no more than a concession, perhaps of long duration but a concession nevertheless. The literature on "convergence of peoples," on the creation of a new homogenized Soviet

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34. USSR CONST. OF 1924, art. 28, reprinted in A. UNGER, *supra* note 5, at 65.

man, and on preservation of a working class base for a Soviet state (now explained as including the "whole people" (since no bourgeois elements remain), suggests that early goals have not been forgotten. If this be so, socialist concepts of the unity of peoples under the banner of class may eventually triumph over the concessions of today.

The arresting thought must linger in the subconsciousness of those who know Marxist tenets that with the achievement of communism there can be no state at all, whether federal or unitary. Marx and Engels told their disciples that the need for the state as an apparatus of compulsion would pass. The state would "wither away." To the non-Marxist such an expectation is utopian, an impossibility, or at least so remote as to be beyond the concern of those who try to manage the problems of these times.

For those who adhere to such a view, this paper must end inconclusively, but for those whose courage is supported by dreams of the good society, socialism provides the hope by which they live. Such persons cannot be expected to abandon efforts to achieve this dream.