The Common Law of Constitutions of the Communist-Party States

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The year 1917 saw the birth of the first durable socialist state in the world—the Russian Soviet Federated Socialist Republic (RSFSR). Within a matter of months the surrounding territories that had once made up the vast continental tsarist empire also embraced socialism, and socialist states sprang up all around the RSFSR. By 1922 all these Soviet socialist republics came together and formed what is today known as the Union of Soviet Socialist Republics (USSR). In the meantime the Asian continent saw the birth of its first non-Soviet socialist state with the creation of the Mongolian People’s Republic in 1921. Thereafter, what had started as a limited experiment in socialist construction spread to Eastern Europe and southeast Asia and witnessed the formation of the following socialist states: People’s Republic of Bulgaria, Hungarian People’s Republic, German Democratic Republic, Polish People’s Republic, Socialist Republic of Rumania, Czechoslovak Socialist Republic, Socialist Federated Republic of Yugoslavia, People’s Republic of Albania, Democratic Republic of Vietnam, People’s Republic of Korea, and People’s Republic of China. The last of the socialist states to evolve was Cuba.

These fourteen states which together constitute the socialist commonwealth of nations, for the sake of convenience, will be referred to as communist party-states because, even though some of them have a multi-party system (which permits the simultaneous existence of both the communist party and another non-communist political party), the communist party is invariably and unquestionably at the helm of affairs in these states.¹ Common to all of these countries is the official commitment to the construction of a full-fledged socialist state as a step toward the attainment of a communist society—a society in which, according to Marxist-Leninist doctrine, there will be no private property, no economic classes, no laws, and therefore, no government per se. The ideal communist society, therefore, is one in

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which all elements of governmental coercion will be eliminated, all social and economic inequities will be removed, and the “new man”—the new communist man—will live all to himself in a self-administering commune characterized by its monolithic tranquility. To help in the attainment of this ideal state of affairs and particularly in the upbringing of this “new man” whose presence will be a conditio sine qua non for the attainment of full communism, the socialist countries of today have fully mobilized their laws.² Within this legal order the state constitutions are looked upon, among other things, as the basic law; that is, as the supreme law of the land and therefore as the standard by which all other laws of the state shall be tested.³ A distinguishing feature of the constitutions of these communist countries is that these documents were never intended to be durable in the first place. Over the last nine years, at least nine of the communist countries have either adopted a new state constitution or are in the process of adopting a new one. This new generation of constitutions started when the GDR adopted a new basic law in 1968. During the same year Czechoslovakia, which up to this point was a unitary state, adopted a series of amendments to the Constitution of 1960. The effect of these constitutional amendments is so far-reaching (for example, the amendments reconstituted Czechoslovakia into a federal state of two friendly socialist republics) that it could be said that Czechoslovakia practically adopted a new constitution in 1968. The events in the GDR and Czechoslovakia were followed by the adoption of a new state constitution in Bulgaria in 1971, in Yugoslavia in 1974, in the PRC in 1975, and in Cuba and Albania in 1976. Poland significantly amended its constitution in 1976. Both the USSR and Vietnam are in the process of drafting a new state constitution as of the time of this writing. In discussing the law of socialist constitutions, many questions naturally arise among which are the following: what is the juridical status of socialist constitutions in the hierarchy of laws within the given state; what is the relationship between the state constitution and the communist party program; does the Supreme Court or any other court of competent jurisdiction have the authority to declare an act of the legislature to be unconstitutional if such act departs from or directly violates a provision of the state constitution; does the state constitution contemplate a separation of powers of the government into the three traditional departments of government and, if so,