To make a sound appraisal of the policy struggle behind the "making" of the Constitution of the USSR ratified in 1977, it is first necessary to clearly understand the role and function of a constitution in the Soviet state. In the Soviet Union, as in other socialist countries, the regulatory role of a constitution is not very significant. While the Soviet Constitution determines the structure of state's agencies of power and administration, the rights and duties of citizens, and the social and economic system of society, this is not its main function. The principal purpose of a constitution in the Soviet Union is not so much to demarcate the real system of power and administration as to disguise this system and conceal the fact that actual political power in the country is exercised by the apparatus of the Communist Party.

Of course, all of the state's machinery described in the Constitution exists in reality—as a cumbersome bureaucratic mechanism. But its real role does not correspond to the Constitution's provisions. There are no Soviets of People's Deputies which "direct all branches of state, economic, social and cultural construction" (Art. 93). It is not the Council of Ministers, which "is the supreme executive and administrative body of state power in the USSR" (Art. 128). In fact all of these functions are performed by different parts of the Party apparatus. Thus the primary function of a Soviet constitution is the function of mystification.

First the 1936 Constitution and now its successor, the Constitution of 1977, proclaims the citizen's social and political rights and liberties. However, these are phantom political freedoms while most of the social rights are not afforded legal protection; hence they cannot be secured through recourse to the courts. Thus, in this respect the Soviet Constitution performs not only a mystifying function, but a propaganda function as well. It is not possible to discuss the constitutional clauses in detail in this short note. I will only note that the fictitious nature of a great number of these clauses can be proven by a comparative analysis of these constitutional provisions with the corresponding legal regulations in force. For example, in Article 56 of the 1977 Constitution, the confidentiality of telephone conversations is provided for. But the 1972 statute on communications in the USSR introduced Art. 74, which pre-
supposes the existence of the system of eavesdropping.\(^1\) (Under the latter article the state’s communication agencies are empowered to terminate a call if someone is using a telephone contrary to the interests of the Soviet state and public order.) After the Constitution of 1977 was promulgated this regulation was reaffirmed in a 1978 regulation of the USSR Council of Ministers.\(^2\)

Between 1965 and 1975, no work was done on the draft of the Constitution. There are several reasons for this, but the basic reason was that the 1936 Constitution still adequately fulfilled the requirements of the ruling apparatus since the constitutional framework did not limit the Party’s actions. On this point, I would disagree with Robert Sharlet, who in his very interesting study wrote that after Stalin’s death “the rapid pace of reform and developmental change soon surpassed the [1936’s] Constitution’s structural capacity to reflect it through the usual piecemeal process of amendment and revision.”\(^3\) Yet Khrushchev altered the entire system of the administration through functional ministries and departments, replacing it with the system of territorial sovnarkhozy (soviet of national economy). It was a *de facto* constitutional reform carried out within the framework of the 1936 Constitution without formal constitutional change, but no one was troubled by this *ad hoc* reform.

Thus, I would argue, there was no compelling practical need to write a new constitution. However, in 1974 and the beginning of 1975 the staff of the All-Union Institute of Soviet Legislation became aware of an abrupt shift when the Institute was entrusted with the task of preparing the drafts for several sections of the new constitution: the sections on the state and individual (the rights and duties of citizens), the federal structure, the soviets and the procedure for election of their deputies, and the structure of the All-Union and Union-Republic bodies of state power and administration.

The drafting process proceeded in two stages in the Institute of Soviet Legislation. First, staff members prepared background material about how these problems had been addressed in the constitutions of the states of the West and the East. Then several leading experts in the field of constitutional law and general theory of state and law prepared the drafts of the corresponding sections. This entire process was directed by the Administrative Organ Department of the Secretariat of the Central Committee of the CPSU and personally supervised by the Chief of this department, Savinkin, and the First Deputy USSR Minister of Justice (formerly Savinkin’s deputy) Sukharev. This was still just the preliminary stage of the drafting process since the Politburo had not yet decided definitely to create a new constitution. However, it was precisely at this point in the constitution-making process that conflict between opposing constitutional tendencies and proposals emerged.

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2. Ibid., No. 21 (1978).