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THE NEW POLISH CONSTITUTION

STEPHEN GOROVET†

The political analyst, as well as the policy-maker, is interested in recent constitutional developments in Eastern Europe since they provide him with a unique opportunity for the evaluation of recent conditions and trends in a part of the world hardly penetrable by the Western eye.

On July 22, 1952, a new Polish constitution was promulgated. By the adoption of this fundamental law a chapter of the post-war political, economic and social development of Poland came to an end and the country, guided by "the historic experience" of the Soviet Union, entered the path of a new phase leading toward the establishment of a socialistic-communistic society.

The events which have led to this development are well-known in Polish history. Yet the purposes of analysis and evaluation make it imperative to put modern events in their historical trend-perspective by briefly tracing the major phases of this constitutional evolution.

RETROSPECT

The end of the First World War witnessed the emergence of Poland as a victorious country on the side of the Western allies and set the stage for her internal development. The first clarification concerning her post-war constitutional status took place on February 20, 1919, when the Constituent Diet approved the basic law of the land.

Observed as a provisional constitution, the document of 1919 was replaced two years later by a more permanent constitution. Based on the principles of Western democratic government, the Constitution of 1921 continued to operate as the fundamental charter throughout the greater part of the inter-war period. It was not until 1935 that an actual revision took place in the form of a new constitution superseding the old one.¹

† Former Research Associate, Department of Foreign Area Studies, Yale University and The Graduate School of Georgetown University.

1. For a brief summary of pre-war constitutional developments see 2 PEASLEE, *CONSTITUTION OF NATIONS* 813 *et seq.* (1950).

The Second World War and its aftermath brought about sweeping changes in the former pattern of power relations which, in turn, basically affected the internal structure of the East European countries bordering on the Soviet Union.² The increasing exercise of effective control in the newly extended sphere of Soviet influence became "the decisive element in determining the character of post-war régimes"³ in Eastern Europe.

Following the German occupation in 1939 and the "liberation" of Poland, the Russian inspired Lublin Manifesto of July 22, 1944⁴—in spite of the futile protests of the London Government-in-exile to base the legality of the post-war régime on the Constitution of 1935—denounced the Constitution of 1935 as an "illegal, Fascist Constitution" representing the totalitarian philosophy; at the same time it set up the Polish Committee for National Liberation,⁵ and the National Council of the Homeland, instructing them to act on the basis of the Constitution of 1921.

In line with the foregoing developments and under the impact of forceful political events and increasing Soviet influence, the Constituent Assembly, on February 19, 1947, adopted what is known as the "Little Constitution"⁶ incorporating most of the basic provisions of the Constitution of 1921⁷ with respect to the organization and powers of the supreme organs of the Polish Republic. Although the "Little Constitution" left no doubt as to its provisional character,⁸ it was not until May, 1951, that a Constitutional Committee was set up to prepare the draft of a new constitution.⁹ The final draft as it emerged after the approval of the Politbureau of the Polish Workers Party (Communist Party) was passed on to the Sejm (Legislative Assembly) and was accepted by the latter on July 22, 1952, the day that is now called "Constitution Day." By adopting the new basic document, Poland became the last East European satellite to produce a full-fledged post-war constitution.

Any discussion of recent constitutional documents or trends in Eastern Europe is futile and may become utterly misleading unless it is realized at the outset that the legal and political concepts referred to in these documents cannot be taken as the *prima facie*

2. See Black, *Constitutional Trends in Eastern Europe, 1945-48*, 11 REV. POL. 197-198 (1949).

3. See SHARP, *NEW CONSTITUTIONS IN THE SOVIET SPHERE* 5 (1950).

4. For text of Lublin Manifesto see ROSE, *POLAND OLD AND NEW* 334 (1948).

5. This Committee, known as the "Lublin Committee," on December 31, 1944 became the Provisional Government of Poland in Lublin; later in Warsaw.

6. For English text see 2 PEASLEE, *op. cit. supra* note 1, at 815.

7. See Articles 21, 22, 24, 40, 42-53, 56-63.

8. Art. 1 of the "Little Constitution" reads: "Until such time as the new Constitution of the Republic of Poland is duly established this Constituent Diet . . . hereby makes the following provisions. . . ."

9. See Art. 1 of the Act of May 26, 1952.

equivalents of seemingly similar concepts developed in Western democratic countries.

Furthermore, it should be borne in mind that an evaluation of constitutional provisions, if based purely on doctrine, interesting and useful as it may be, is bound to be limited in its scope and application. In this respect it is well to remember that a mass of rules and regulations, theory and doctrine, remain a dead letter separated from life and reality unless they are implemented by the establishment of appropriate institutions and conforming practices. This holds especially true in the satellite countries of Eastern Europe where political reality has further and further drifted away from the legal framework upon which formal authority rests. Any inference, therefore, that may be drawn from a single document concerning the exercise and distribution of political power must be tested against the patterns of effective control and respective practices.

Differences between the constitutions of Western democracies and communist-made constitutions are not confined to differences as to where the supreme formal authority rests or should reside, or how the executive and the judicial power should be exercised, or how the economic structure of the state should be organized; the two types of constitutions also embody fundamental differences as to their very meaning and general objective.

Unlike their Western counterparts, the constitutional documents of the East-European communist-dominated countries are not considered to be the supreme law of the land, and their interpretation and application are not determined by an independent judiciary but are left to the whims of governmental power to which they are always subordinate. Under the communist system of government there is, and there can be, no real constitutional limitation on governmental power, since the constitution in its interpretation and application is subject to governmental power. This is the very reason why under a communist system of government we cannot speak of a limited or restrained government or of constitutionalism in the sense that these concepts are understood in the Western democracies.

Further, it must be remembered that the communist-made constitutions are not intended to serve as guiding principles for a more or less distant future; they are rather looked upon as ephemeral phenomena which—so the communists claim—reflect prevailing conditions and which are designed to be replaced by new documents at the next major step on the country's journey toward a socialistic-communistic society.

Finally, it is well to keep in mind that in communist-dominated countries the actual decision-making takes place within the inner-

most circle of the Communist Party, an organization which is largely of an extra-constitutional nature.¹⁰

PREAMBLE

A glance at the new Polish Constitution reveals that it hardly contains any reminiscences of pre-war political tradition. Especially conspicuous is the strict adherence to the Soviet Constitution of 1936 from which have been copied, with little or no alteration, not only the most important provisions but also the general titles of chapters.

The Charter consists of a Preamble and Detailed Provisions.

In putting the Constitution in historical perspective, the Preamble pays tribute to the Soviet Union which "liberated Polish soil" and "made possible the rebirth of Poland."¹¹ It is unique, if not unprecedented, that the constitution of an 'independent' state should openly acknowledge that its 'independence' was achieved by the "historic victory" of another state, and should admit that its working class, "the leading class in the community," is supported by the Communist International and by the "historic experience" of another State.¹² This constitutional reference to the Soviet Union's role in supporting the establishment and internal structure of Poland is for all intents and purposes a clear-cut official acknowledgment of her satellite status.¹³

The Preamble also includes a brief enumeration of general objectives which are primarily designed to serve propaganda purposes both for actual domestic and potential foreign consumption. As one of its express purposes, the Constitution strives "to eliminate completely the exploitation of man by man" and "to put into effect the great ideals of Socialism."¹⁴ These two declarations clearly indicate that the so-called "exploitation of man by man" has not yet been abolished and that in Poland, unlike in the Soviet Union,¹⁵ 'full socialism' has not yet been achieved.

Another indication of the drafters' consciousness of the differences which exist between their country and the Soviet Union is the fact that Poland is designated in the Preamble as a "People's Republic,"

10. The Constitution of the Soviet Union is, of course, an exception.

11. See *Preamble* to the Constitution.

12. *Ibid.*

13. A similar and even more explicit statement can be found in the new Roumanian Constitution of July 18, 1952, which amended the former Constitution adopted in 1948. The new Constitution includes a provision that the foreign policy of Roumania is one of friendship and alliance with the Soviet Union. Thus Roumania, in an even more conspicuous fashion, has given up an important part of her sovereignty by limiting her freedom of action in the field of foreign relations.

14. *Preamble* to the Constitution.

15. See TOWSTER, *POLITICAL POWER IN THE USSR, 1917-1947* 12 (1948).

i.e., a state of "People's Democracy,"¹⁶ and not as a "Socialist Republic."

Finally, the Preamble is the clue to the interpretation of the people's democratic system. The concept of "People's Democracy" denotes a State where "as a result of the revolutionary struggles and transformations, the power of the capitalists and landlords has been overthrown" and "a new social system" is "taking shape and growing in strength."¹⁷ It also signifies a State in which "the foundation of the people's authority is the alliance between the working class" (proletariat) and "the working peasants," and where "the leading role belongs to the working class," the class supported by "the international working class movement" and by "the historic experience" of the Soviet Union.¹⁸

DETAILED PROVISIONS

The detailed provisions of the Constitution are subdivided under ten headings which include, *inter alia*, the political and economic structure of the State, the supreme organs of State authority and of State administration, the local organs of the State, the judiciary and the rights and duties of citizens.

Political Structure

In Article 1 of the Constitution, the Polish People's Republic is proclaimed to be a State of people's democracy where "the power belongs to the working people of town and country."¹⁹ This provision represents a noteworthy departure from some of the earlier satellite constitutions²⁰ which were satisfied with a general declaration that all power in the State emanates from and belongs to the people, that is, to the citizenry at large. Under the new Polish Constitution this is no longer the case, since the power is entrusted only and exclu-

16. Art. 1 of the new POLISH CONSTITUTION. (Hereafter, the new Constitution will not be referred to specifically by name, but by article alone).

17. *Preamble* to the Constitution.

18. A concise definition of a people's democracy is given by Neumann:

It is a State in which the classless society has not yet been achieved but in which the communist party has the upper hand and has begun the task of liquidating its opponents. It is also a State that follows the lead of the Soviet Union.

See Neumann, *Constitutional Documents of East-Central Europe*, 12 J. OF POL. 62 (1950). Compare Guins, *Constitutions of the Soviet Satellites*, 271 ANNALS 64 (1950) ("People's democracies represent a transitional form and are supposed to move from the 'bourgeois democracy' toward the 'highest' or 'perfect' type of democracy of the Soviet pattern."); Yakobson, *The Soviet Concept of Satellite States*, 11 REV. POL. 191 (1950) ("People's democracy is the forerunner to a socialist society."). See also, SHARP, *NEW CONSTITUTIONS IN THE SOVIET SPHERE* 17 (1950) (A people's democracy is "the dictatorship of the proletariat differing in form but not in essence from the Soviet model."). Compare Black, *Constitutional Trends in Eastern Europe*, 11 REV. POL. 199 (1949).

19. For a similar provision see Art. 3 of the Hungarian Constitution of 1949.

20. *E.g.*, in Art. 1, § 2 of the Czechoslovakian Constitution of 1948 the people as a whole were described as "the sole source of all power in the State."

sively to the 'working' people and rests upon "the alliance between the working class and the working peasants."²¹ At the same time, the Preamble leaves no doubt that the lion's share in the wielding of this power, "the leading role"²² in this alliance, belongs to the working class, and, in practice, we may add, it belongs to the 'vanguard' of the working class, the Communist Party.

The framers of the new Constitution seem to have been fully aware of the dangers of the existence of any type of opposition to the complete dictatorship of the proletariat. Accordingly, the Constitution considers that one of the primary tasks of the State is to safeguard and protect the power of the working people against hostile forces.²³ For the very same reason the State also "limits, ousts and abolishes those classes of society which live by exploiting the workers and the peasants."²⁴

Economic Structure

The incorporation of provisions in the Constitution concerning the basic economic order provides the formal legal framework for increasing state activity in the economic field.

The economic structure of the people's democracies is characterized by the gradual elimination of the remnants of the former private enterprise system and by the introduction of a State directed, controlled and planned economy. In following this general pattern the new Polish Constitution postulates that the State establishes "planned economy" founded on enterprises constituting social property.²⁵ Thus the development of the economic life of the country takes place in accordance with a "National Economic Plan," the execution of which is assured, in particular, by "the expansion of Socialist State industry."²⁶

The economic plan is not exclusively directed toward the achievement of economic goals such as "the development of the productive forces of the country" or the "continuous raising of the standard of living of the working masses," but at the same time, it is admittedly aimed at the "consolidation of power" of the present regime and at the building up of the "defense strength" of the country.²⁷

The supervision and direction of all economic activity by the State reaches its all-time high in the field of foreign trade where the State

21. See *Preamble* to the Constitution. Single quotation marks as used in this article signify phrases frequently used by the Communist.

22. "Leading role" would seem to mean a somewhat milder equivalent to complete dictatorship.

23. Art. 3, § 1.

24. Art. 3, § 4.

25. Art. 3, § 3.

26. Art. 7, § 1.

27. Art. 7, § 3.

enjoys absolute "monopoly" with the complete exclusion of private enterprise and initiative.²⁸

As to the means of production, communist doctrine teaches that they are in the possession of the people as a whole and are owned by the State. While the Polish Constitution seems to depart from this basic philosophy by allowing cooperative organizations and private individuals to have means of production in their possession, a closer examination of the constitutional provisions reveals that the most important means of production are part and parcel of the national wealth. Items in this category include mineral deposits, waters, State forests, mines, roads, rail, water and air transport and other means of communication, banks, State industrial establishments, State farms and State machine stations, State commercial enterprises and utilities.²⁹

We may notice that land, in general, apart from minerals, State farms and so on, is not listed among the items belonging to the State. The reason for this is to be found in the cautious communist tactics toward collectivization which take full account of the Russian experience and of the "incredible tenacity" with which the Polish peasant holds on to his land.³⁰ In line with these considerations the Constitution, in principle, protects the individual farms of the working peasants "against capitalist exploitation,"³¹ but, at the same time, it leaves the door open for collectivization by giving "special support and all-round aid to the co-operative farms set up on the principle of voluntary membership, as forms of collective economy."³² Considering that "the development of different forms of the co-operative movement in town and country"³³ is one of the primary tasks of the State, there can be little doubt that the present situation is viewed as a transitional phase which will eventually lead to the defeat of the peasants' resistance and to the complete abolition of individual farms.

The general trend toward nationalization and collectivization is also clear from the meagre protection accorded by the Constitution to 'individual' property. The Constitution recognizes individual property and the right to inherit land, buildings and other means of production,³⁴ yet it does this with three important restrictions. In the first place, the protection is granted only within the framework of "existing legislation,"³⁵ which, in effect, leaves the extent of individual

28. Art. 7, § 2.

29. Art. 8.

30. See Ulam, *The Crisis in the Polish Communist Party*, 12 REV. POL. 83, 94 (1950).

31. Art. 10, § 1.

32. Art. 10, § 2.

33. Art. 11.

34. Art. 12.

35. *Ibid.*

property rights to be determined by legislation or simple government decrees. In the second place, the text of Article 12 seems to suggest that the protection extends only to individual property, and the inheritance of land, buildings and other means of production of *peasants, craftsmen and persons engaged in domestic handicraft industries*.³⁶ In other words, all other individuals not belonging to the listed occupations are excluded from protection under this Article. In the third place, the Constitution permits the confiscation of property "in cases determined by law, by virtue of a final judgment" by the Court.³⁷

After a thorough scrutiny of the economic provisions of the Constitution it would seem that the economic structure of the Polish People's Republic has already passed the stage that characterized the Soviet Union during the era of the New Economic Policy where the shrinking remnants of capitalism still existed but "the commanding heights remained in the hands of the proletarian State."³⁸

In view of the fact that unqualified constitutional protection has shrunk to the narrow circle of "personal" property³⁹ and taking into account the full implications of a State planned, directed and controlled economy with its concomitants—the constitutional duty to work⁴⁰ and its necessary counterpart, the abolition of freedom to strike and of labor contract—it is not difficult to see that the new Constitution makes giant strides to follow the pattern set by the Soviet Union hastening "the full realization of the Socialist system."⁴¹

Supreme Organs of State Authority

Following closely the Soviet pattern, the new Constitution rejects the doctrine of the separation of powers and declares that the Sejm is "the highest representative of the will of the working people."⁴² Endowed with powers to pass laws and to exercise control over the State machinery, the Sejm is claimed to be "[t]he highest organ of State authority."⁴³ Thus, theoretically, the Sejm—composed of the representatives of the people and elected by the citizens in constituencies⁴⁴—would seem to be the supreme embodiment of national

36. The full text of Art. 12 reads:

The Polish People's Republic recognizes and protects, on the basis of the existing legislation, individual property and the right to inherit land, buildings and other means of production of peasants, craftsmen and persons engaged in home handicraft industries.

37. Art. 74, § 3.

38. Stalin's address before the Tenth All-Russian Congress of Soviets, cited in VISHINSKY, *THE LAW OF THE SOVIET STATE* 102 (1948).

39. Art. 13.

40. Art. 14, § 1.

41. *Ibid.*

42. Art. 15, § 2.

43. Art. 15, § 1.

44. Arts. 2 and 16.

sovereignty. A further examination, however, of the Constitutional document reveals that the 'Sejm supremacy' thus proclaimed hardly takes account of the actual distribution of formal authority among the highest organs of State. The constitutional reality is that the Council of State⁴⁵—an organ which has its counterpart in the Praesidium of the Supreme Soviet of the USSR⁴⁶—enjoys a unique, if not a paramount position, with respect to all other organs of State, including the Sejm itself. Its constitutional powers include the most important functions such as the ordering of elections to the Sejm, the exercise of the right to propose legislation,⁴⁷ the appointing and receiving of diplomatic representatives, the ratification and denunciation of international treaties, the appointment of the highest officers of State, and the right to pardon.⁴⁸

Moreover, the Council of State exercises ultimate supervision over the local People's Councils, the organs of State administration in the various localities,⁴⁹ and it elects the judges of the Supreme Court for a period of 5 years.⁵⁰ It appoints and can dismiss the General Public Prosecutor who is accountable for activities of his office to the Council.⁵¹ It may introduce martial law in either the whole or part of the Republic, should this be required by considerations of the defense or security of the State. For the same reason it may proclaim partial or general mobilization.⁵²

In addition, the Council of State has three functions of outstanding importance which even more emphatically indicate that the constitutional distribution of power fails to correspond to the principle of 'Sejm supremacy.'

In the first place, the Council of State is empowered to interpret the laws and its interpretation is "universally binding" on the entire community.⁵³ The courts are no longer free to interpret the laws independently but are bound to follow the official interpretation. Moreover, since the right to universally binding interpretation implies the power to annul or alter administrative orders and decisions of the government which, in the interpretation of the Council of State, do not conform to the constitution or the laws (decrees) of the land,

45. The institution of the President of the Republic has been abolished; instead a Council of State has been set up, consisting of a President, two Deputy Presidents, a Secretary and of eleven members. See Art. 24, § 1 of the new Constitution.

46. See VISHINSKY, *THE LAW OF THE SOVIET STATE* 102 (1948).

47. This right is shared with the Government and the Deputies; see Art. 20, § 1.

48. Art. 25, §§ 3, 6, 7, 8, 9, 11.

49. Art. 27.

50. Art. 50, § 2.

51. Art. 55, §§ 1, 3.

52. Art. 28, § 2.

53. Art. 25, § 1(4).

it is not difficult to see that through the interpretative function the Council assumes an all-important constitutional duty.

In the second place, during the Sejm recesses, which are frequent,⁵⁴ the Council of State wields all the powers of the Sejm, including the power of legislation (issuing of decrees with the force of law),⁵⁵ suspension of deputies, immunity from arrest,⁵⁶ declaration of war,⁵⁷ and appointment and recall of members of the Council of Ministers.⁵⁸

Finally, the Council of State is given exclusive authority to convoke sessions of the Sejm.⁵⁹ Although the Constitution specifies the instances in which the Council is bound to convoke a session,⁶⁰ nevertheless, there is no constitutional safeguard in case the Council of State does not comply with the provision. In other words, the Sejm is in no position to call itself into sessions but is, in this respect, entirely dependent on the Council of State.

The foregoing review of the distribution of formal power among the supreme organs of state authority in the constitutional document seems to indicate that the Council of State is the central constitutional organ of State authority. While it is true that theoretically the Council of State is elected by⁶¹ and accountable to the Sejm for all its activities,⁶² and submits its decrees⁶³ and decisions⁶⁴ at the next session of the Sejm for approval,⁶⁵ it is hard to see how this formal accountability to the Sejm could outweigh the paramount constitutional power position of the Council of State. A final argument against the principle of 'Sejm supremacy' lies in the fact that the members of the Council of State, unlike the individual representatives of the Sejm⁶⁶ and the other organs of State, are not subject to recall.

54. The Constitution envisages only two regular sessions yearly (Art. 17, § 1). The tenure of a session, however, is not prescribed, so that theoretically after convocation the session may be closed immediately.

55. Art. 25, § 1(5).

56. Art. 16, § 3.

57. Art. 28, § 1.

58. Art. 29, § 2.

59. Art. 25, § 2.

60. In addition to the two yearly sessions, the Council of State is bound to convoke a session on a written motion by one-third of the total number of deputies, and likewise within a period of one month from the date of the elections. See Art. 17.

61. Art. 24, § 1.

62. Art. 25, § 1(2).

63. Art. 26, § 1.

64. Art. 29, § 2.

65. Constitutional practice in Poland shows that the approval by the Sejm is invariably and unanimously given. See Ayars, *The Sovietization of Poland's Judiciary System*, 173 *CATH. WORLD* 22 (April 1951).

66. Art. 2, § 2 of the Constitution provides that the "people's representatives in the Sejm" are "responsible to their constituents and may be recalled by them."

It may be noted that the possibility of recalling the representatives from the Sejm serves as a sort of security-valve by which unwanted representatives can easily be replaced by new ones who are sufficiently subservient to the regime.

Supreme Organs of State Administration

Under the new Constitution, the Government is the highest executive and administrative organ.⁶⁷ It is composed of the Chairman of the Council of Ministers as its Head, the Vice-Chairman and the ministers, who together form the Council of Ministers.⁶⁸ The Council of Ministers or its individual members are appointed and can be recalled at any time by the Sejm or, in the intervals between the sessions of the Sejm, by the Council of State, to which they are accountable.⁶⁹ While the Constitution speaks of the Government explicitly as an executive and administrative body whose regulations and decisions are issued in pursuance of existing laws,⁷⁰ and while most of the constitutional functions of the Government seem to fall within the orbit of essentially executive jurisdiction,⁷¹ the third paragraph of Article 32 endows the Government with substantial quasi-legislative powers by providing for the adoption, by the Government, of the yearly economic plan. Whereas the long-term economic plan must be submitted for formal approval to the Sejm,⁷² there is no such obligation with respect to the yearly plans, the determination and adoption of which is left entirely to the discretion of the Government. In the above cited article there is a tacit constitutional acknowledgment of the fact that the Government has drifted away from its purely administrative-executive character and has increasingly assumed legislative functions. In practice, the general trend toward governmental legislation is also apparent from the increasing number of laws passed by the Sejm which hardly contain more than a bare frame of general authorization leaving the respective provisions concerning the subject matter to be filled in by Government decrees or ministerial orders.⁷³

The Constitution describes the People's Councils as the organs of State authority in rural localities, in towns, in boroughs of larger towns, in poviats (districts) and voivodships.⁷⁴ They are elected by the "population"⁷⁵ for a term of three years⁷⁶ and they elect their

67. Art. 30, § 1. "Government" is defined by this Article as the Council of Ministers.

68. Art. 31.

69. Arts. 29 and 30, § 2.

70. Art. 32, § 7.

71. The executive and administrative functions of the Government include the co-ordination, direction and supervision of the activities of Ministries, the surveillance of the execution of laws, the supervision of the execution of the budget and of the National Economic Plan, the protection of public order, the general guidance in the field of foreign relations and in defense matters, and the direction of the work of the Praesidia of the People's Councils. See Art. 32, §§ 1, 4, 5, 6, 8, 9, 10 and Art. 33, § 3.

72. Art. 32, § 2.

73. Arts. 32, § 7 and 33, § 2.

74. Art. 34, § 1.

75. Art. 34, § 2.

76. *Ibid.*

own Praesidia which act as their executive and administrative organs.⁷⁷

The People's Councils are designed to represent the "will of the working people"⁷⁸ (not of the citizenry at large), and we may add that in communist practice this means the will of the working people as expressed by its advance guard, the Communist Party.

The over-all objective of the People's Councils is described in lofty phrases. It includes the development of "creative initiative and activity in order to multiply the strength, prosperity and culture of the nation."⁷⁹ The People's Councils also strengthen the links between the State authority and the working people "by drawing ever broader masses of the working people into participation in governing the State."⁸⁰

Within the foregoing general spheres, the more specific task of the People's Councils extends to the direction of economic, social and cultural activities in the respective locality, the maintenance of public order and of the people's rule of law, the protection of social property, the safeguarding of civil rights, cooperation in building the defense strength of the State, and the adoption of local economic plans and budget.⁸¹

The well-known communist doctrine of democratic centralism also applies in relation to the People's Councils. The People's Councils of a higher level may rescind the decision of the People's Council of a lower level or of its Praesidium, if the decision is in conflict with the law or incompatible with the basic line of the policy of the State.⁸² The Praesidium, the executive organ of the People's Council, may also exercise this right and submit the case for decision at the next meeting of its own People's Council.⁸³ These provisions ensure, in accordance with the basic policy of State, *i.e.*, the Party line, the uniformity and the most centralized control from the lowest People's Council up to the Council of State which exercises the ultimate supervision over the People's Councils.⁸⁴

The preceding survey of constitutional provisions indicates the patterns of distribution of power on the formal level between the organs of State authority and State administration. Although the Constitution, unlike its counterpart in Soviet Russia,⁸⁵ makes no mention of the Communist Party,⁸⁶ it would be a mistake to overlook two

77. Art. 42, § 2.

78. Art. 35.

79. *Ibid.*

80. Art. 36.

81. Arts. 37, 39 and 41.

82. Art. 44, § 1.

83. Art. 44, § 2.

84. Art. 27.

85. See Art. 126 of the Soviet Constitution of 1936.

86. Among the satellite Constitutions, the Hungarian Constitution of 1949 is

specific references which dispel any doubt that one may entertain as to the political underpinnings of the various organs of State. For one thing, the Constitution enunciates that the right of nominating candidates for the Sejm and the People's Councils is delegated to the "political and social organizations uniting citizens in towns and in the country."⁸⁷ For another, it makes no secret of the fact that "the setting up of and participation in associations whose aims or activities are directed against the political and social structure or against the legal order of the Polish People's Republic"—a structure and an order characterized by the leading role of the proletariat⁸⁸ and its vanguard, the Communist Party—is forbidden. Thus it is obvious that the Constitution allows no room for political opposition and that all candidates to the Sejm and to the organs elected by the Sejm⁸⁹ and to the People's Councils must have the official endorsement of the advance guard of the proletariat, the Communist Party.

Extra-constitutional as it is, the Communist Party through its auxiliary organizations and transmission belts permeates every sphere of political, social and economic activity. It is the ultimate source of effective control over all organs of State. It is the clue to the understanding of the whole decision-making process; it is the driving, directing and controlling force in all major manifestations of human relationships.

The Judiciary

The exercise of the judicial power of the Polish People's Republic revolves around two distinct branches: the Courts; and the Office of the Public Prosecutor, an investigating and prosecuting agency.

The administration of justice is vested in the Courts, consisting of the Supreme Court, Voivodship and District courts, as well as special courts in extraordinary circumstances.⁹⁰ While the Supreme Court is the highest judicial organ,⁹¹ the investigation and prosecution branch is headed by the General Public Prosecutor.⁹²

In order to grasp the basic differences between Western democratic and communist judicial systems, it is extremely instructive to look at the constitutionally assigned functions of the courts. First of all, the courts are the custodians of the "structure of the Polish People's Republic." This structure, as it has already been pointed out, is based on the leading role of the proletariat and its vanguard, the Communist

the only one to hint at the "advance guard" of the working class; see Art. 56 of the Hungarian Constitution.

87. Art. 86.

88. *Preamble* to the Polish Constitution.

89. Council of State, Council of Ministers.

90. Art. 46, §§ 1, 2.

91. Art. 51, § 1.

92. Arts. 54, § 2 and 56.

Party. Since communist doctrine rejects the principle of the separation of powers and the concept of judicial review, it follows that the task of the courts is not to uphold the Constitution but to safeguard "the achievements of the working people,"⁹³ a task which is tantamount to protection from and punishment of the régime's political opponents.⁹⁴ In the second place, the courts and the prosecutor do not safeguard the rule of law in general but only the "people's rule of law."⁹⁵ This point may seem insignificant. In communist practice, however, it is tantamount to the fact that in applying the rules of law in a particular instance the judge (prosecutor) has to decide whether the application of a particular rule of law (prosecution of the crime) is in the interest of the working class as interpreted by its advance guard, the Communist Party. In other words, there is no positive legal rule that would have to be followed in all circumstances.

Another significant feature of the new Polish judiciary is revealed by the inclusion of lay or people's judges on the benches of the courts who, as a rule, participate in the hearing of cases and the pronouncement of judgments.⁹⁶ Under communist practice the old judges and lawyers are gradually eliminated. They are replaced by activists, that is, party members trained for specific purposes who go to the trials with prepared party instructions and a prepared verdict which they enforce in the court.⁹⁷

Still another characteristic of the Polish judicial system is that judges not only have no right to pass on the constitutionality of laws (complete absence of judicial review),⁹⁸ but have no power to declare *ultra vires* the orders issued by the Government or by the individual ministers.

In addition, the courts are deprived of one of the most important judicial functions, *i.e.*, the interpretation of the laws. As it has already been indicated the interpretative function is exclusively entrusted to the Council of State.⁹⁹ Since it is the interpretation of the

93. Art. 48.

94. See Art. 41, § 1, of the Hungarian Constitution of 1946, Published in 1949:

The courts of the Hungarian People's Republic punish the enemies of the working people, protect and safeguard the State, the social and economic order and the institutions of the people's democracy and the rights of the workers and educate the working people in the observance of the rules governing the life of a socialist commonwealth.

95. Arts. 48 and 54, § 1.

96. Art. 49.

97. See Ayars, *The Sovietization of Poland's Judiciary System*, 173 CATH. WORLD 22 (April 1951).

98. This was already expressly forbidden by the "Little Constitution." See Art. 24, § 3, of the 1947 Polish Constitution.

99. Art. 25, § 1(4).

laws that determines their application,¹⁰⁰ material justice becomes completely dependent on the whims of the Council of State.

If we also keep in mind that the justices of the Supreme Court are elected by the Council of State¹⁰¹ and the General Public Prosecutor is also appointed and recalled by the Council of State, and if we take into consideration the extensive and arbitrary administrative control over the bench and the prosecuting agencies, it is difficult to see in just what sense the independence of judges so eloquently affirmed by the Constitution¹⁰² could have any real meaning or justification, except in the sense of serving propaganda purposes.

The core of the new judicial system centers around the role of the Public Prosecutor, faithful servant of the communist cause. He safeguards "the people's rule of law" (social legality), "watches over the protection of social property and ensures that the rights of the citizens be respected."¹⁰³ In particular, he is entrusted with the supervision of the prosecution of offenses endangering the system, security and independence of the State.¹⁰⁴

The recognition of the increasingly important role of the public prosecutor in the administration of justice is also evident from the fact that he enjoys extensive powers that were previously granted only to independent judges. Thus, under the new Constitution, the public prosecutor has equal rights with the judge in detaining a person.¹⁰⁵

The foregoing provisions of the Constitution clearly indicate that under a communist régime justice, like the political police or the people's army, is only regarded as a tool of the dictatorship. The main objective of the administration of justice is not impartiality, legality, or justice, but the defense of the power of the Communist Party and the liquidation and punishment of its political opponents.

Rights and Duties of Citizens

For the superficial observer some of the constitutional provisions 'guaranteeing' civil rights and liberties would seem to be reminis-

100. See Gorove, *Hungary: International Aspects of the New Penal Code*, 3 AM. J. COMP. L. 82, 87 (1954).

101. Formerly the justices to the Supreme Court were appointed for life; under the new Constitution they are elected for a term of five years. See Art. 50, § 2.

102. Art. 52.

103. Art. 54, § 1. The "Little Constitution" contained no provisions concerning the organization and functions of the Public Prosecutor's Office. Up to 1950 the Public Prosecutor's Office was attached to the courts fulfilling primarily the functions of a State organ for the prosecution of crimes. On July 15, 1950 a law was passed transforming the former Office of Public Prosecutor from an organ to fight crimes into an organ to watch over the pursuit of social legality.

104. Art. 54, § 2.

105. Art. 74, § 1.

cent of the Bills of Rights generally developed in Western democratic countries. At least this is the impression one may get after glancing at the long list of fundamental rights of the citizens.¹⁰⁶ What is the constitutional reality and communist practice behind the high-sounding 'guarantees' of civil liberties?

One of the most significant achievements claimed by the communist propaganda is the right to work.¹⁰⁷ According to Article 58, Section 2, this right is assured

. . . by the social ownership of the basic means of production; the development of a social and co-operative system in the countryside, free from exploitation; by the planned growth of productive forces; by the elimination of the sources of economic crises; and by the abolition of unemployment.

In order to dispel any doubts about the meaning and scope of this right, it is appropriate to emphasize that under no circumstances is the individual left free to decide whether he wants to work or not. Under the Constitution he has no such right. On the contrary, there is an explicit constitutional obligation, the duty to work.¹⁰⁸ What the Constitution means by the right to work is the "right to employment paid in accordance with the quantity and quality of work done."¹⁰⁹ But neither the location, nor the amount, nor the kind of work is left to be determined by the individual worker. These will be decided by the communist-controlled employment agencies and trade unions.

Although the Constitution guarantees in lofty phrases "the right to rest and leisure," and "to health protection," it gives an inkling of the truth by specifically mentioning the "manual and professional workers" and the "masses of the working people" as beneficiaries of holiday, insurance and other schemes.¹¹⁰

Another constitutionally 'guaranteed' right is the right to education. From the respective constitutional provisions it would seem that this 'right' stands much nearer to the concept of a constitutional duty than to that of a privilege. Thus the Constitution speaks of a "compulsory," basic education,¹¹¹ a principle which in practice leaves little or no choice for the individual to determine the kind of education or the type of school he may prefer. On the contrary, since Article 70 of the Constitution only allows the churches and other religious bodies to exercise their "religious" functions, it is apparent that the whole educational system is dominated by the State and, in

106. The "Little Constitution" contained no Bill of Rights. The civil rights and liberties were embodied in a separate Declaration. For a text of the Declaration (Feb. 27, 1947), see ROSE, *POLAND OLD AND NEW* 340 (1948).

107. Art. 58, § 1.

108. Art. 14, § 1.

109. Art. 58, § 1.

110. Arts. 59 and 60.

111. Art. 61, § 2(1).

practice, it is placed under strong Party control.¹¹² The Constitution makes no secret of the fact that it stands on the basis of early communist indoctrination. Accordingly, it provides that the State "pays especially careful attention to the education of youth."¹¹³

Another striking feature of the educational system is that, although the State provides for the "constant development of secondary schools" and "of schools of university level,"¹¹⁴ in practice, it makes it increasingly difficult, if not impossible, for the descendants of the middle class to enter institutions of higher learning. In fact, the Constitution itself hints at the truth by admitting that "scholarships, development of hostels, boarding schools and students' hostels as well as other forms of material aid" are only open for the children of the workers and not to those of the citizenry at large.¹¹⁵

Under the pretext of guaranteeing "the right to benefit from cultural achievements,"¹¹⁶ the Constitution places art, science and culture under strict State control. By Articles 62 and 63 the State has the exclusive right to foster "the all-round development of science" and to take care of "the development of Arts and Letters." Although, in principle, the right to benefit from cultural achievements is guaranteed to every citizen, in its application it is constitutionally limited to the "popular masses" and "to the working people of town and country."¹¹⁷

The Constitution further enunciates the equality of women with men in all fields of public, political, economic, social and cultural life under the mottos of "equal rights with men to work and pay" and "equal pay for equal work."¹¹⁸ This provision in a way served to mitigate the reaction against the latest labor legislation designed to draw more women into the cadres of heavy manual laborers.

In line with the new Soviet policy towards marriage and divorce, the Polish Constitution declares the marriage and family to be under the protection of the State.¹¹⁹ The reason for this must be sought in the recognition by the communists of the fact that stable family relations are conducive to the focusing of interest and attention on public duties and activities.¹²⁰

Under the Constitution no discrimination is permitted among citizens on account of nationality, race or religion, and the "spreading of hatred or contempt, the provocation of disputes or the humiliation

112. See Art. 121 of the Soviet Constitution of 1936.

113. Art. 68.

114. Art. 61, §§ 2(2).

115. Art. 61, §§ 2(4).

116. Art. 62, § 1.

117. Art. 62, §§ 1, 2.

118. Art. 66, §§ 1, 2(1).

119. Art. 67.

120. See Gurian. *From Lenin to Stalin*, 12 REV. POL. 379, 385 (1950).

of man on account of national, racial or religious differences are forbidden."¹²¹ It is all too obvious from this provision that discrimination and spreading of hatred on account of other reasons, *e.g.*, political creed or opinion is permitted, and in practice, it is even encouraged.

The Constitution also reveals that the former safeguards of independent churches and the free exercise of religious instruction have been abolished completely.¹²² Consequently there is no longer any constitutional limitation on the nationalization or confiscation of Church property, denominational schools and charitable institutions. Moreover, by the very fact that it fails to guarantee the free exercise of religious instruction, the new Constitution not only does away with compulsory religious education but goes even further than the notorious Agreement of April 14, 1950, by which the Government at least guaranteed to permit religious instruction in schools. In the new Constitution there is no such guarantee.¹²³

The Constitution also proclaims the separation of the Church from the State.¹²⁴ The relationship, however, between the Church and the State is no longer determined on the basis of mutual consent but unilaterally and exclusively by the State. The former principles and laws concerning the Church and State relationship may now be altered unilaterally, by a simple decree of the Council of State, if the Sejm is not in Session, and the Church may entirely be disregarded. Accordingly, the Constitution postulates that the basis of the relations between Church and State, as well as the legal position of the confessional communities and their property, are determined by law.¹²⁵

Freedom of conscience and religion, in principle, are 'guaranteed' by the Constitution.¹²⁶ Although under Article 70 the Church and other religious bodies may freely exercise their "religious" functions, and, although it is forbidden to prevent citizens by coercion from taking part in religious activities or rites, the third paragraph of the very same article reveals that the scope of this freedom is extremely limited and suggests that the extent of its enforcement is entirely determined by political exigency. Thus, the latter clause provides for the punishment of those who, by exercising (abusing) their religious freedoms, endanger "the interests of the Polish People's Republic." In practice, the question whether the exercise of religious freedoms in a given situation does or does not endanger the interests of the Polish People's Republic is determined by the Party line.

121. Art. 69, §§ 1, 2.

122. See Arts. 70 and 113 of the Polish Constitution of 1935.

123. Under the new Constitution parents or priests who compel children to learn their religion or to go to church may be punished. See Art. 70, § 1.

124. Art. 70, § 2.

125. *Ibid.*

126. Art. 70, § 1.

Similarly, the following Article¹²⁷ raises serious doubts as to the general scope of application of the freedoms of speech, of press, of meetings and assemblies, and of processions and demonstrations. It says that the "granting to the working people and their organizations of the use of printing shops, stocks of papers, public buildings and halls, means of communication, radio and other indispensable material means," serves to put these freedoms into effect. This provision, then, very explicitly limits the application of the respective freedoms "to the working people *and* their organizations."¹²⁸ In other words only the *working* people can exercise these rights and only in conjunction with their organizations and not separately. For this reason, in communist countries, individual workers, not united in organizations or not acting in conjunction with their organizations, cannot obtain printing supplies or start publishing a paper in which their views will be expressed.¹²⁹ For the same reason, they cannot use radio facilities and other means of communication. They cannot organize public meetings, processions or demonstrations except in cooperation with their organizations. On the other hand, the "right to unite in public organizations" is strictly limited to associations whose aims and activities are not directed "against the political and social structure or against the legal order" of the State,¹³⁰ a structure and order characterized by the leading role of the proletariat and its vanguard, the Communist Party.¹³¹

The constitutional picture may further be supplemented by the well-known fact that the merger of the Workers' Party with the Polish Socialist Party in the communist controlled United Workers' Party eliminated the last potential focus of political opposition to the consolidation of communist dictatorship in Poland.¹³²

While the Constitution enunciates the principles of individual liberty and of inviolability of the home,¹³³ in both instances it provides for escape clauses by allowing the scope and extent of these rights to be determined by legislation or executive decrees having the force of law. Moreover, the fact that not only the judge but the public prosecutor as well is constitutionally authorized to issue warrants of arrests, clearly reveals the true nature of the 'habeas corpus.'

Finally, the Constitution 'guarantees' the right to vote "irrespective of sex, nationality and race, religion, education, length of residence,

127. Art. 71, § 2.

128. Italics added.

129. Freedom of press is interpreted not as freedom from State interference but as independence from capital or, more exactly, the "transfer of the instruments of printing from capital to labor as represented by its vanguard." See Timasheff, *The Soviet Concept of Democracy*, 12 REV. POL. 506. 513 (1950).

130. Art. 72, § 3.

131. See *Preamble* to the Constitution.

132. See Ulam, *The Crisis in the Polish Communist Party*, 12 REV. POL. 83. 99 (1950).

133. Art. 74, §§ 1, 2.

social origin, profession and property status.”¹³⁴ This enumeration in itself provides a conclusive proof of the fact that the right is not guaranteed irrespective of *political* belief and opinion. Under this clause the communist controlled election committees may disqualify voters whose political reliability or devotion to the communist cause is under the slightest suspicion.

The foregoing review of the fundamental rights and liberties indicates that the high-sounding rights to work, to health, to education and so on, hardly offer more than a series of principles which the constitutional provisions themselves repudiate.

Many articles enunciating fundamental rights are followed either by direct restrictions contained in subsequent provisions or by indirect limitations contained in clauses empowering the Sejm or the Council of State to determine or restrict the scope of these freedoms by law or by decrees having the force of law.

How can we talk about freedom of speech, of press and of association, and the right to unite in public organization if these rights are denied to any kind of political opposition against the government in power? How can we talk about the enforcement of any of these rights if the simplest guarantees of a truly independent judiciary are lacking and if the most elementary judicial function, the interpretation of laws, is left exclusively to the vagaries of the Council of State?

Some of these rights and liberties, indeed, reveal their truly propagandistic character. By Article 75 asylum is granted to citizens of foreign countries who are being persecuted “for defending the interests of the working masses, for struggling for social progress, for activity in the defence of peace, for fighting for national liberation, or for scientific activity.” This provision seems to give constitutional approval of and support to the world revolutionary aims of Soviet imperialism.

The thorough student, however, will discover no provisions in the Constitution guaranteeing some traditional civil rights common in Western democratic countries. Throughout the Constitution there is no reference whatsoever to the freedom to choose one’s own domicile and profession, and to the right of emigration. The constitutional duty to work eliminates the possibility of individual and collective bargaining and the right to strike. The ever increasing control of the State over economics and education prevents the individual from enjoying the benefits of the free enterprise system and deprives him of the right to establish and maintain denominational or other private educational institutions. In addition, the practice of imposing bans on travelling abroad and on free access to information constitutes

134. Art. 81.

another serious restriction on the individual freedom of ordinary citizens.

The Polish Constitution—like the Soviet—includes an extensive statement of duties: the duty to work,¹³⁵ to abide by the Constitution and the laws, to maintain the socialist labor discipline, to discharge the duties towards the State,¹³⁶ to safeguard and strengthen “social property”¹³⁷ and to defend the country.¹³⁸ In addition, it is the constitutional duty of every citizen to exhibit “[v]igilance against the enemies of the nation” and to exert diligence in the “guarding of State secrets.”¹³⁹ Persons who commit sabotage or economic subversion are punished with all the severity of the law.¹⁴⁰ High treason, espionage, impairing the armed forces and desertion to the enemy are described as “the gravest crimes.”¹⁴¹

CONCLUSION

The foregoing survey of fundamental principles and provisions governing the new Polish Constitution might be sufficient to convince us that limited government or constitutionalism, as understood in Western democratic systems, is non-existent in communist-dominated Poland. The supreme organs of State authority and State administration are, in reality and substantially, organs of the Communist Party from which they are delegated. The policy of the State is the policy of the Party.

Further, there can be little doubt that the articles concerning private property, individual freedom and other fundamental rights unsuccessfully attempt to veil the real situation and only contain propagandistic blandishments. The lack of concise expressions and precise legal terminology in the constitutional document seems to have been intended to serve as an additional means of providing sufficient leeway for interpretation in order to by-pass vaguely enunciated freedoms whenever political expediency would demand.

The close similarity between the new Polish Constitution and its Russian model may be taken as an indication of the fact that Poland today, in the view of the Kremlin, is one of the most sovietized people's democracies, a country well ‘advanced’ toward socialism. Otherwise she would not have been allowed to borrow so heavily from the Soviet system, more than some of the other people's democracies do. On the other hand, a number of significant differences exhibited by the

135. Art. 14, § 1.

136. Art. 76.

137. Art. 77, § 1.

138. Art. 78.

139. Art. 79, § 1.

140. Art. 77, § 2.

141. Art. 79, § 2.

two Constitutions¹⁴² reveal that the framers did not regard Poland as yet adequately qualified or sufficiently 'advanced' to have earned a full-fledged Constitution of the Soviet type.

Although the Constitution is flexible enough to provide for easy amendment,¹⁴³ there is every indication that it will be replaced by a more 'advanced' document as soon as full-scale socialization and collectivization have been achieved. In the meantime, the political, economic and social control under the direction of the Party will become increasingly tighter with a view to hastening "the full realization of the Socialist system."¹⁴⁴

The long-range constitutional trends and developments in Poland, as well as in other East European satellite countries, must be viewed in terms of the entire context of the world power process. So long as Soviet Russian influence remains a predominant factor in that part of the globe, the chances for the establishment of a less communistically inclined régime or for a Titoist deviation are hardly existent.

In conclusion, it should be pointed out that, although there seems to be a trend toward an eventual constitutional incorporation, this question will be determined by the Soviet Union according to the internal and international political exigencies at the time when Poland will have reached, in her political, economic and social 'advancement,' a stage essentially identical with that of the Soviet Union.

142. *E.g.*, Poland is claimed to be a people's republic and not a socialist republic; it is a State where the full socialization of the means of production has not yet been accomplished; it is a State where the Communist Party is still an extra-constitutional organization.

143. Art. 91.

144. See Art. 14, § 1.