

1-1-1963

Soviet Law as Model: The People's Democracies in the Succession States;Note

Helmut Slapnicka

Follow this and additional works at: http://scholarship.law.nd.edu/nd_naturallaw_forum



Part of the [Law Commons](#)

Recommended Citation

Slapnicka, Helmut, "Soviet Law as Model: The People's Democracies in the Succession States;Note" (1963). *Natural Law Forum*. Paper 97.

http://scholarship.law.nd.edu/nd_naturallaw_forum/97

This Note is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Natural Law Forum by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

SOVIET LAW AS MODEL: THE PEOPLE'S DEMOCRACIES IN THE SUCCESSION STATES

In half a century the countries of the former Habsburg monarchy have passed from a rule of law imposed by a nineteenth century bourgeois empire to a law patterned on a twentieth century Communist dictatorship. This note will survey the principal characteristics of this shift.¹

I. THE AUSTRIAN BACKGROUND

In no field more than law does the expression "Succession States" seem so justified in its application to Hungary, Poland, Czechoslovakia, and Rumania. In 1918 in almost all parts of social life the fledgling national states embarked upon separate developments. Their legal systems, however, for a long time remained alike, and when their laws underwent development, the development was

1. This article is a revised and shortened version of the original German manuscript. Readers without command of Eastern European languages may find references for the laws cited and other legal literature in the volumes of V. Gsovski and K. Grzybowski, *Government, Law and Courts in the Soviet Union and Eastern Europe* (London, 1959). Their attention should also be directed to competent technical magazines like *Highlights of Current Legislation and Activities in Mid-Europe* (Washington, D.C., 1953 to 1960), to *Osteuropa-Recht* (Stuttgart, since 1955), to *Law in Eastern Europe* (Leyden, since 1958), and to the *Jahrbuch für Ostrecht* (Munich, since 1960). Ever since 1957 the *Wiener Quellenhefte zur Ostkunde, Reihe Recht* has reported on current legislation in the People's Democracies. References to further sources and literature bearing on the first section of this article may be found in my *Der Untergang des oesterreichischen Rechtsraums: Zerstörte Ansätze einer mitteleuropäischen Rechtsvereinheitlichung*, in *ZEITSCHRIFT FÜR OSTFORSCHUNG* 161-179 (1957).

The following abbreviations will be used herein:

- B.Of. = Buletinul Oficial (Rumanian Official Law Gazette 1949-)
- D. V. = Durzhaven Vestnik (Bulgarian Official Law Gazette 1879-1950)
- Dz.U. = Dziennik Ustaw (Polish Official Law Gazette 1919-)
- G.Z. = Gazeta Zyrtare (Albanian Official Law Gazette 1944-)
- Izv. = Izvestiia na Prezidiuma na Narodnoto Subranie (Bulgarian Official Law Gazette 1950-)
- M.K. = Magyar Közlöny (Hungarian Official Law Gazette)
- M.Of. = Monitorul Oficial (Rumanian Official Law Gazette 1860-1949)
- Sb. = Sbírka zákonu (Official Law Gazette of Czechoslovakia 1918-)
- Sb.SNR. = Sbirka Nariadení Slovenskej národnej rady (Slovakian Official Law Gazette, 1944-1959)
- Sl.l. = Službeni list (Yugoslav Official Law Gazette 1945-)
- Sl.n. = Službene novine (Yugoslav Official Law Gazette 1918-1941)

- GSOVSKI = GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE, 2 vols. V. Gsovski and K. Grzybowski, general editors (London & The Hague, 1959). 2067 pp.
- HIGHLIGHTS = HIGHLIGHTS OF CURRENT LEGISLATION AND ACTIVITIES IN MID-EUROPE. (Washington)
- RABELS Z. = ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT.

gradual and with consideration of comparable law in the other states of the former empire.²

The constitutional law of the new nations, of course, was new. There were proposals for similar radical solutions in the other areas of law, such as a Czech plan to adopt at once the entire French system. But the realization of probable confusion resulting from such a quick shift led to the provisional retaining of former law in the regions that had once been part of the empire.³ This meant, for example, that Hungarian law remained in force in Slovakia, while Austrian law governed Bohemia; that in Poland there was Russian law in the East, German law in the former Prussian provinces, Austrian law in Galicia and Silesia, and French law (introduced by Napoleon in 1809 in the Duchy of Warsaw) in "Congress Poland." Each nation planned eventually to create its own legislation on a national basis. In the process of doing this, the Austrian examples remained dominant.

The history of the General Civil Code (the G.C.C.) may illustrate the effect of the Austrian example. The G.C.C. of the old empire, enacted in 1811, had merits which apparently recommended it over more contemporary codifications. The G.C.C., influenced by the philosophy of Kant, had a set of principles which were clearly outlined and dynamically presented in a way to permit development; and it had made a careful selection of the proven institutions of the different peoples of the Austro-Hungarian monarchy. Czechoslovakia kept the G.C.C. in the western half of the state, and as late as 1935 Czech commentaries on it were published. The former Austrian areas of Yugoslavia similarly retained the G.C.C., as did the former Austrian regions of Rumania. Poland introduced a law in 1932 which superseded part of the G.C.C.,⁴ but a large number of its provisions remained in effect in Galicia and Silesia till the end of World War II, and as late as 1938 there was a Polish publication of it. A large number of highly competent commentaries on the G.C.C. contributed to its retention. There were the Polish works of W. L. Jaworski, S. Wróblewski, E. Till, F. Zoll, and A. Górski; the Croatian works by Derenčin, Maurović, and Posilović; the Czech works by E. Tilsch.

In other areas of law the Austrian law was often formally replaced, but in fact copied. For example, the Yugoslavian Code of Civil Procedure which appeared in 1929 was an almost literal translation of its Austrian predecessor. By means of it Yugoslavia retained such advantages of the Austrian approach as

2. Cf. F. Korkisch, *Das Privatrecht Ost-Mitteleuropas in rechtsvergleichender Sicht*, RABELS Z. 201-230 (1958). The influence of Austrian law was less in Hungary than in Czechoslovakia, Poland, and Yugoslavia. It is debated as to whether Hungarian law resembles more closely a common law system or a German law system. Compare L. SZLEZAK, *DAS STAATSANGEHÖRIGKEITSRECHT VON UNGARN* (Frankfurt a.M., 1959), p. 11 (denying the common law analogy), with K. Grzybowski, *Reform of Civil Law in Hungary, Poland and the Soviet Union*, 10 AMERICAN JOURNAL OF COMPARATIVE LAW 253 (1961) (assuming the common law analogy).

3. Czechoslovakia: Law of October 28, 1918, Sb. No. 11; Rumania: Decree of December 12, 1918, M.Of. 1/1919; Yugoslavia: Decree of November 14, 1918, Uradni list No. 111.

4. Law of October 27, 1933, Dz.U. No. 82/598. Cf. Z. Nagorski, *Codification of Civil Law in Poland 1918-1939*, STUDIES IN POLISH AND COMPARATIVE LAW (London, 1945).

the publicity of proceedings to safeguard the regularity of all actions; the oral examination of parties by the court; the duty of inquiry into a case imposed upon the court *ex officio*; the principle of free evaluation of evidence which leaves the judge free to ignore the rules of evidence in the interest of justice.

Indeed, in the cases where national legislation was adopted, the effect was often to enlarge the sphere of the old Austrian law to parts of the nation which had hitherto been ruled by some other law. This was particularly true in Yugoslavia and Czechoslovakia. In Czechoslovakia the conformity of Czechoslovakian to Austrian law is particularly striking in that whole area usually characterized as "administrative law," that is, the rules governing executive agencies such as the police and the departments of social welfare and the relationships between different branches of the government. In 1938 a Czech estimate was that after twenty years of separate development, two thirds of Czech administrative law was a counterpart of existing Austrian rules.⁵

In Poland the influence of German law, effective in the former Prussian parts of the country, was still evident. Even there the conflict of law principles followed primarily the Austrian example, being based on a draft worked out in 1912 in the Ministry of Justice in Vienna.⁶ Poland retained the Austrian laws of local and county administration until 1933. The new Polish trade regulations were a mixture of the elements of Austrian and German trade regulations. Poland did abandon formally at least ninety per cent of all Austrian administrative law in the first decade of independence,⁷ but even such wholesale rejection did not mean the abandonment of basic Austrian approaches.

Why was there such a continuity of law in these newly independent nations? Two reasons may be suggested. The earlier Austrian legislation had attempted to recognize tested legal institutions and concepts from all parts of the monarchy. Representatives of all the nationalities involved took part in both the legislative and the judicial branch of the monarchy. Thus, in the six-member Commission of 1904 to amend the G.C.C., the Pole, Stanisław Madeyski (1841-1910), and the Czech, Antonín Randa (1834-1914), were members. Among Austrian Ministers of Justice were the Czechs, Karel Habietinek (1830-1915) and Alois Pražák (1820-1901). The multinational approach to the law was equally evident in legal literature. The only complete systematic presentation of Austrian civil law was made by the Slovenian, Josef Krajnc (1820-1875). An influential commentary on marriage law was written by the Pole, Edward Rittner (1845-1899). The author of the most popular textbook on commercial law was Antonín Randa, and the first important commentator on the law of limited liability companies was the Slovenian, Milan Skerlj. In addition to these authors writing in German, there was also a substantial development of legal literature in the languages of the individual peoples which was to be of major influence on the younger generation when they came into power in the Succession

5. V. Joachim, in *PRÁVNÍK* [The Jurist] 607 (1936).

6. F. KORKISCH, *OSTEUROPA-HANDBUCH* POLEN 346 (1959).

7. See K. Kumaniecki, *Stand der Vereinheitlichung des Verwaltungsrechts, in POLEN ZEITSCHRIFT FÜR OSTRECHT* 769 (1931).

States. Partly at least as a consequence of this multinational participation, there had come about a unification of legal thinking.

The unity of this approach, is, perhaps, best illustrated by the continuing effect of the Austrian example after all external compulsion or pressure was impossible. In 1925 Austria codified the administrative procedural provisions which had been scattered in numerous individual laws. This step was soon copied in the Succession States. Poland, Yugoslavia, and Czechoslovakia adopted a substantial number of the Austrian provisions literally, and all three in five years unified and codified their administrative procedural laws.⁸ Of the Succession States only Rumania gradually turned from the Austrian tradition and adopted a French legal approach.⁹ Poland fitted individual bricks from the Austrian structure into her own national order. Yugoslavia extended the substance of Austrian law over territories where it had not existed before. Czechoslovakia faithfully preserved Austrian law and developed its jurisprudence in the spirit of the Austrian approach. There was a continuing development of national law coordinated to a considerable extent with that of neighboring states, a coordination taking place without coercion or treaty obligation.

II. THE SOVIET MODEL

1. *Transition.*—In the six years of World War II, the Succession States were rapidly changed. Two new states, Slovakia and Croatia, made a brief appearance. New laws destroyed to a large extent the old Austrian character of law in the Succession States.¹⁰ With the end of the war in 1945, restoration might have been expected. Instead there followed a swift Sovietization in local governments, the judiciary, the basic laws of property, and the constitution of these states.

In the area of local government, for example, Czechoslovakia eliminated her city councils, county boards and provincial administrators and replaced them with committees having many of the features of ward, village and city soviets. The soviets, in distinction from the more traditional forms of local government, were frankly class organizations; moreover, they were regularly related to the central state administration and not considered autonomous bodies.¹¹ Poland in 1945 created People's Councils, which at first coexisted with older forms of government. In Hungary local committees were formed but did not immediately replace the organs of state administration. Yugoslavia followed most completely the Soviet example of People's Committees in villages, towns, districts, counties,

8. Czechoslovakia: Decree of January 13, 1928, Sb. No. 8; Poland: Decree of March 22, 1928, Dz.U. No. 36/341; Yugoslavia: Law of November 9, 1930, Sl.n. No. 93/271. Cf. ZEITSCHRIFT FÜR OSTRECHT 1331 ff., 1365 ff. (1928); 700 ff. (1931).

9. Criminal Code, Law of March 18, 1936, M.Of. No. 65; Code of Criminal Procedure, Law of March 19, 1936, M.Of. No. 66. Cf. V. Polinger, *L'unification législative en Roumanie*, in BULLETIN DE LA SOCIÉTÉ DE LÉGISLATION COMPARÉE 393 ff. (1928).

10. Cf. H. W. Baade, *Die Privatrechtsgeographie Ost- und Südosteuropas seit 1938*, 7 JAHRBUCH FÜR INTERNATIONALES RECHT 315-341 (1957).

11. R. MAURACH, HANDBUCH DER SOWJETVERFASSUNG 51, 263 (Munich, 1955).

and provinces. At the same time the older civil servants were replaced by politically dependent functionaries.¹²

Change in the judicial sphere took place chiefly through the creation of courts which were called "People's Courts" or "Extraordinary People's Courts." Unlike ordinary courts the People's Courts had lay judges, including lay presidents of the court; and they had no specific rules of procedure. These functioned in Bohemia and Moravia-Silesia from 1945 to May, 1947, and in Slovakia from May, 1945, till the end of 1947. In Hungary, the People's Courts, established by county, formed the backbone of the judiciary. In Poland, as early as September, 1944, special criminal courts were created to try war criminals. In Yugoslavia, the "People's Court" became the ordinary designation of the district, county, and supreme courts.¹³

In basic property legislation the three major steps taken by the new governments were agrarian reform, nationalization, and the expulsion of national minorities. In Hungary the Provisional National Government decreed the distribution of over six million acres of land among the peasants without indemnity to the old owners. In Yugoslavia over three million acres were confiscated by the Provisional People's Assembly. The Polish Liberation Committee in 1944 decreed the redistribution of agricultural estates of more than 250 acres, a law ultimately leading to the redistribution of fifteen million acres.¹⁴

In Czechoslovakia the nationalization of mines, power, large industry, and banking and insurance took place on October 28, 1945, the day of the foundation of the new state. Poland adopted similar nationalization decrees on January 3, 1946. In Yugoslavia by the end of the war over half of the industrial property had already been expropriated under a resolution of the Anti-Fascist Council of Popular Liberation of November 21, 1944. From the middle of 1946 to 1948 there was a series of nationalization laws which expropriated the remaining sectors of industry, trade, and finance. Hungary expropriated the mines, most of the

12. Czechoslovakia: Decree of December 4, 1944, Sb. 1945, No. 43; Poland: Law of September 11, 1944, Dz.U. No. 5/22; Yugoslavia: Law of May 15, 1946, Sl.I. No. 43, Law of June 6, 1949, Sl.I. No. 50, Law of April 1, 1952, Sl.I. No. 22. Cf. H. Slapnicka, *Der Aufbau der Verwaltung in der Tschechoslowakei*, *EUROPA ARCHIV* 5965-5972 (1953); G. Geilke, *Der Aufbau der polnischen Staatsverwaltung*, *ZEITSCHRIFT FÜR OSTFORSCHUNG* 443-459, (1954); HIGHLIGHTS 248-250 (1954), 121-133, 213-223 (1958); J. Rypel, *L'édification de l'organisation des comités nationaux*, *BULLETIN DE DROIT TCHÉCOSLOVAQUE* 168-190 (1960); Gsovski 228-230.

13. Czechoslovakia: Decree of June 19, 1945, Sb. No. 16, Decree of May 5, 1945, Sb. SNR No. 33; Hungary: Decree No. 81 of January 25, 1945, Law No. VII of 1945, Law No. XXXIV of 1947; Poland: Decree of September 12, 1944, Dz.U. No. 4/21, Decree of June 13, 1946, Dz.U. No. 30/192; Yugoslavia: Law of August 26, 1945, Sl.I. No. 67, amended by Law of June 21, 1946, Sl.I. No. 51. Cf. G. Geilke, *Die Entwicklung des polnischen Justizrechts seit Kriegsende*, *ZEITSCHRIFT FÜR OSTFORSCHUNG* 107-130 (1953); H. Slapnicka, *Die Organisation der Gerichte in der CSSR*, *7 OSTEUROPA-RECHT* 191-198 (1961); Gsovski 671, 711, 737, 812.

14. Hungary: Decree of March 18, 1945, No. 600, Law No. VI of 1945, Law No. IX of 1946, Law No. V of 1947; Yugoslavia: Law of August 23, 1945, Sl.I. No. 64; Poland: Decree of September 6, 1944, Dz.U. No. 4/17; Rumania: Decree Law No. 187 of March 22, 1945, M.Of. No. 68, Czechoslovakia: Law of July 11, 1947, Sb. No. 142. Cf. Gsovski 1762, 1787, 1809, 1854, 1882.

power plants, and a large number of larger industrial establishments in 1944, a national bank and ten other large banks a year later.¹⁵

The expulsion of peoples, which often accompanied expropriation, took place on a large scale. Poland expelled three and one-half million Germans and, under a law of May 6, 1945, confiscated their property. Czechoslovakia withdrew nationality from her German and Magyar minorities by law of August 2, 1945; deported three million of these people from her territories; and decreed the confiscation of their land on June 21, 1945, and their other property on October 25, 1945. The Hungarians expelled 240,000 persons under an ordinance of December 22, 1945. Yugoslavia expelled 300,000 Germans and, under a resolution of the Anti-Fascist Council of November 21, 1944, and a law of July 31, 1946, confiscated their property.¹⁶

These laws effecting basic changes were much alike. In the approach to other problems of legislation, there was some variety. Poland worked out and adopted an integrated civil law, which, as of January 1, 1947, effectively replaced the old G.C.C.¹⁷ Czechoslovakia concentrated on eliminating the legal differences that had resulted from its threefold partition during World War II.¹⁸ In Yugoslavia all the bourgeois past was at a stroke eliminated by a law declaring that all laws which had been in effect on April 6, 1941, the date of the beginning of the German occupation, were void.¹⁹ Yet as long as there were no laws to supersede the abolished ones the old law tended to be applied.

At a constitutional level Yugoslavia in 1946 adopted a structure much like the Soviet constitution of 1936. In Czechoslovakia it was only with the constitution of May 9, 1948, that the state was proclaimed a People's Democracy. Hungary was declared a People's Republic on August 20, 1949. In Poland

15. Czechoslovakia: Law of October 24, 1945, Sb. No. 100, 101, 102, 103; Poland: Law of January 3, 1946, Dz.U. No. 3/17; Yugoslavia: Law of May 24, 1945, Sl.I. No. 36, Law of December 5, 1946, Sl.I. No. 98; Hungary: Law No. XIII of 1946, Law No. XX of 1946, Law No. XXX of 1947, Law No. XIII and XXV of 1948. Cf. I. Seidl-Hohenveldern, *Communist Theories on Confiscation and Expropriation*, 7 AMERICAN JOURNAL OF COMPARATIVE LAW 541-571 (1958); S. Ćirković, *Les nationalisations en Yougoslavie et la gestion des entreprises par les collectifs ouvriers*, 2 LAW IN EASTERN EUROPE, 54-101 (1958).

16. Poland: Law of May 6, 1945, Dz.U. No. 17/97; Czechoslovakia: Decree of August 2, 1945, Sb. No. 33, Decree of June 21, 1945, Sb. No. 12, Decree of October 25, Sb. No. 108; Hungary: Decree No. 12330 of December 22, 1945, M.K. No. 211; Yugoslavia: Law of July 31, 1946, Sl.I. No. 63/450. Cf. DOKUMENTATION DER VERTREIBUNG DER DEUTSCHEN AUS OST-MITTELEUROPA, vols. 1-5 (1956-1961).

17. Decree on Persons of August 29, 1945, Dz.U. No. 40/223; Marriage Decree of September 25, 1945, Dz.U. No. 48/270; Family Decree of January 22, 1946, Dz.U. No. 6/52; Guardian and War Decree of May 14, 1946, Dz.U. No. 20/135; Decree of Marital Property Relations of May 29, 1946, Dz.U. No. 31/196; Decree of Property of October 11, 1946, Dz.U. No. 57/319; Inheritance Decree of October 8, 1946, Dz.U. No. 60/328; Provisions on Basic Principles of Civil Law of November 12, 1946, Dz.U. No. 67/369. Cf. G. Geilke, *Die Entwicklung des polnischen Justizrechts*, ZEITSCHRIFT FÜR OSTFORSCHUNG 107-130 (1953); Z. Nagorski, *The Legislation of the Polish People's Republic 1945-1957*, 2 LAW IN EASTERN EUROPE 6-53 (1958); Gsovski 1308 ff.

18. Decree of August 3, 1944, Sb. 1945, No. 30; Law of October 4, 1946, Sb. No. 195; Law of December 19, 1945, Sb. 1946, No. 12.

19. Law of October 23, 1946, Sl.I. No. 86. Cf. B. Eisner, *Das Privatrecht Jugoslawiens 1945-1951*, RABELS Z. 247 (1952).

a constitutional amendment of 1947 avoided such a declaration, and it was only the new constitution of July 22, 1952, that designated Poland a People's Republic.²⁰ Such changes in constitutional terminology mark significant dates. But what did it mean for a state to be a "People's Democracy" or "People's Republic"? An essential element, according to Communist theorists was a relationship of the new state to the Soviet Union. Yugoslavia could no longer be called a "People's Government" after 1948. "A breach of amicable relations with the Soviet Union," said Sobolev, "necessarily means the end of a 'People's Democracy.'" ²¹

According to G. M. Dimitrov, speaking before the Sixth Party Congress of the Communist Party (Bulgaria) in December, 1948, the Soviet regime and the Popular Democratic regime are two versions of the same power, the power of the proletariat. Similarly, Mankovskij maintains that the difference between a "People's Democracy" and the Soviet Union is not one of essence, but of degree.²² The Soviet Union, in official theory, is a classic and perfect version of the dictatorship of the proletariat. It is now undergoing the transition from socialism, which was attained in 1936, to Communism. The "People's Democracies" are now passing through the same development that occurred in the Soviet Union in its first phase. They are passing from capitalism to socialism, and the building of the socialist society is only under way. However, the support offered by the Soviet Union to this end makes it possible for them to approach socialism more quickly than was possible for the Soviet Union in its first stage. This support by the Soviet Union is also the reason why a "People's Government" can never be considered by itself but can be thought of only as a component of the "Socialist camp."

The difference between a "People's Democracy" and the present Soviet Union consists in these points: In the Soviet Union after the October Revolution only one party, the Bolshevik Party, remained; in the People's Democracy the Communist Party not only exists but it forms governments with other parties under the title of "the National Front" or "the Independent Front" or "the Democratic Bloc." The other parties remain in existence even if no one speaks any longer of coalition governments and if only unitary slates of candidates are proposed for election. In the economic structure of the People's Democracies,

20. Yugoslavia: Law of January 31, 1946, S.I.I. No. 10, amended by Law of January 13, 1953, S.I.I. No. 3/53; Czechoslovakia: Law of May 9, 1948, Sb. No. 150, repealed by Law of July 11, 1960, Sb. No. 100; Hungary: Law of August 18, 1949, No. XX; Poland: Law of February 19, 1947, Dz.U. No. 18/71, repealed by Law of July 22, 1952, Dz.U. No. 33/233. Cf. G. J. GUINS, CONSTITUTIONS OF THE SOVIET SATELLITES—MOSCOW'S EUROPEAN SATELLITES 64-67 (Philadelphia, 1950); A. Gyorgy, *Constitutional Developments in the Danubian Area*, CHANGE AND CRISIS IN EUROPEAN GOVERNMENT 17-28 (1947); BULLETIN DE DROIT TCHECOSLOVAQUE 229-292 (1956); JAHRBUCH FÜR ÖFFENTLICHES RECHT 367-397 (1954), 289-351 (1958), 267-398 (1959); GSOVSKI 252, 292, 339, 426.

21. A. SOBOLEV, DIE VOLKSDEMOKRATIE ALS FORM DER POLITISCHEN ORGANISATION DER GESELLSCHAFT 17 (East Berlin, 1952).

22. See M. H. FABRE, THÉORIE DES DÉMOCRATIES POPULAIRES (Paris, 1950); G. Stackelberg, *Die sowjetische Theorie der "Volksdemokratie,"* 5 OST-PROBLEME 676-687 (1953); L. Schultz, *Der sowjetische Begriff der Volksdemokratie*, 4 OSTEUROPA-RECHT 297-309 (1958); N. LOBKOWICZ, MARXISMUS-LENINISMUS IN DER ČSR 149-159 (1961); GSOVSKI, 339-367, 251-271, 293-319.

a small goods sector and a capitalistic sector remain.²³ In contrast again to the Soviet Union, where the entire land was decreed to be the property of the people in 1918, the People's Democracies as a matter of principle have not nationalized land but have protected the private properties of the peasants insofar as they cultivate the land. Section 7 of the Hungarian Constitution recognizes the right of working peasants to possess land. Article 12 of the Polish Constitution recognizes the individual property of peasants in land. Article 12 of the Czechoslovakian Constitution of 1948 declares that the land belongs to those who work it. Even the Czech Constitution of 1960, which declares itself to be the constitution of a socialist state, has not changed this situation, although it no longer guarantees ownership of the land but permits land to be governmentally taken by a simple change in law.

The notion of a People's Democracy is related to a controversy which has occurred among Soviet theorists as to the nature of the revolutions that led to them. Mankovskij has maintained that the revolutions of 1944 and 1945 were true socialist revolutions because they brought to power the working people, although there was bourgeois participation in the revolutions, solutions were given to some bourgeois problems, and there was a continued existence of a capitalistic sector.²⁴ Somewhat more flexibly, Sobolev in his article on People's Democracies in the Large Soviet Encyclopedia attacks any absolute distinction between democratic and socialistic revolutions and speaks of an uninterrupted revolutionary process in which the bourgeois-democratic revolutions gradually became socialist ones. Lakatoš has applied this notion to Czechoslovakia, arguing that the establishment of the dictatorship of the proletariat is a process, not a single act. The revolution of 1944 and 1945, he contends, was an imperfect, nonconsolidated dictatorship of the proletariat, while from February, 1948, onwards, a consolidated and perfect dictatorship of the proletariat has been taking shape. Lakatoš adds that there was no reason for the proletariat not to use part of the bourgeoisie for its purposes if there was a possibility of doing so and if, thereby, a civil war could be avoided and the socialist revolution brought about in a peaceful way.²⁵

2. *Adjustment to the Soviet Model.*—The continued existence in the People's Democracies of law in the form of codes makes it difficult to understand the change of contents of law which these countries have undergone. The legal systems of the world are often divided between code law systems and case law systems. This simple division would lead one to suppose that there was a

23. Cf. S. Kocvara, *Property Law of the Czechoslovak People's Democracy*, 7 AMERICAN JOURNAL OF COMPARATIVE LAW 267-276 (1958); DAS EIGENTUM IM OSTBLOCK (Munich, 1958); D. Loeber, *Rechtsvergleichung zwischen Ländern mit verschiedener Wirtschaftsordnung*, RABELS Z. 201-229 (1961); R. Lukic, *Notions de la propriété dans l'Europe socialiste et dans les états capitalistes*, RABELS Z. 238-254 (1961); L. Raiser, *Das Eigentum als Rechtsbegriff in den Rechten West- und Osteuropas*, RABELS Z. 230-237 (1961).

24. See *Sovetskoe gosudarstvo i pravo* (1949) no. 6, p. 7. Cf. 4 OSTEUEPORA-RECHT 297 (1958).

25. M. LAKATOS, OTÁZKY LIDOVÉ DEMOKRACIE V ČESKOSLOVENSKU [Problems of People's Democracy in Czechoslovakia] 53 (Prague, 1957).

greater difference between Anglo-American law and Continental law than between the law of Western Europe and the law enforced in Eastern Europe. This distinction, however, is a purely formal criterion and obscures the enormous difference between the Anglo-American and Continental European laws on the one hand and that of the Socialist camp on the other.

In the Socialist camp, law is frankly proclaimed to be a way for the ruling class to form and secure conditions advantageous to itself. While some theorists of law, and the Marxist theorists in particular, would assert that class advantage was always the purpose of law, it is apparent that a considerable practical difference is made when this advantage is deliberately sought, and the maintenance of political power, rather than an ideal of justice, is made the object of the legal system.^{25a} Any idea of obligation antecedent to the government or above the government is denied, and any "natural right" of man is denied. The unitary power of the state is asserted without any balancing or separation of powers such as has characterized Western European countries since at least the eighteenth century. In particular, the judge is part of the unitary administration and enjoys an essentially temporary office, which may be taken from him at any time. The constancy and the certainty of the law are given very little value, and frequent changes in the law, often politically motivated, are justified on the theory that the legal superstructure should continually adapt itself to the changing economic base. The power of the state is used in a discriminatory way to further the class struggle. This discrimination is evident in the tax law and its administration; in the intervention of the state in civil litigation; in the state's control and even manipulation of delivery dates for economic goods; and in the official position that *kulaks* and others regarded as unfavorable to the regime are to be treated differently in the administration of criminal law. Finally, the central economic plan is given a special place in law — its usual incorporation into the constitution is not merely symbolic. It has a significant effect in overriding private contracts and in forcing the state enterprises to enter into contracts with each other.²⁶

In the assimilation of the Succession States to the Soviet model, the period of transition was at first followed by a period of increasingly close adjustment to the Soviet system of law.

At the constitutional level, for example, parliamentary deputies were made subject to immediate recall.²⁷ The institution of lay judges was taken over from

25a. See JUSTICE ENSLAVED: A Collection of Documents on the Abuse of Justice for Political Ends (International Commission of Jurists, 1955).

26. See Grzybowski, *op. cit. supra* note 2; Mihaly, *The Role of Civil Law Institutions in the Management of Communist Economies: The Hungarian Experience*, 8 AMERICAN JOURNAL OF COMPARATIVE LAW 310 (1959).

27. Poland: Law of October 24, 1956, Dz.U. No. 47/210, Art. 76; Law of October 31, 1957, Dz.U. No. 55/270, Art. 74-82; Czechoslovakia: Law of March 3, 1954, Sb. No. 14, Section 86, repealed by Law of April 9, 1960, Sb. No. 39, Section 54; Law of May 26, 1954, Sb. No. 27, Section 51, amended by law of April 9, 1960, Sb. No. 37; Hungary: Law No. IX of 1954, Sections 53-54. Cf. S. ROZMARYN, THE SEYM AND PEOPLE'S COUNCILS IN POLAND (1958); BULLETIN DE DROIT TCHÉCOSLOVAQUE 14-27, 170-178 (1954); DAS WAHLRECHT DER SOZIALISTISCHEN STAATEN EUROPAS (Heinz Engelbert ed., Berlin, 1958); Gsovski 254, 300, 393.

the Soviet example, and judges were made elective and subject to recall.²⁸

In the field of criminal law, social deterrence was emphasized with provision made for holding criminal proceedings at the place of work or the place of residence of the defendant.²⁹ The defense counsel was considered to have no obligation or right to defend the interests of his client if they were counter to the interest of the state. Defense was to be rendered not by private offices but by collectives of defense attorneys.³⁰ Charges in cases involving "counterrevolutionary" crimes against the state or the national economy tended to be vaguely formulated. Following the Soviet model, there was considerable restriction on the right of the defendant, especially in preliminary proceedings.³¹ Sentences to hard labor for corrective and educational purposes were widespread. The Soviet practice of "criminal law without guilt and without punishment" tried during the years of war communism and then abandoned by the Soviet Union, was, however, avoided by following the more recent Soviet criminal codes.³²

28. On lay judges, see, for Hungary: Constitution of 1949, Section 37; Law of January 24, 1954, No. II; Decree No. 6 of February 28, 1960, M.K. No. 15; Rumania: Constitution of 1952, Art. 66; Decree No. 1014 of July 22, 1958, C.H.D. No. 29; Poland: Amendment to the Code of Criminal Procedure of 1949, Dz.U. No. 32/238; Constitution of 1952, Art. 49; Czechoslovakia: Constitution of 1948, Sections 140, 142; Law of December 22, 1948, Sb. No. 319, Sections 10-19, Law of October 30, 1952, Sb. No. 64, Sections 4, 5; Law of July 4, 1957, Sb. No. 36. Cf. HIGHLIGHTS 395-404 (1957); Gsovski 752. On election and recall of judges, see for Czechoslovakia: Law of October 30, 1952, Sb. No. 64, Section 5; Law of July 4, 1957, Sb. No. 36, abolished and replaced by Law of June 26, 1961, Sb. No. 62, Sections 35-46; Decree of July 6, 1961, Sb. No. 63. Cf. H. Slapnicka, *Richterwahlen in der Tschechoslowakei*, JURISTISCHE BLÄTTER 641-642 (1957); J. Jira, *Zwei Gesetze von 1957 über Richter und Schöffen bei den unteren Gerichten. Ein Beitrag zum Problem der Richterwahlen*, JAHRBUCH FÜR OSTRECHT 181-198 (1960); K. Kejzlar, *L'élégibilité des juges — l'un des principes fondamentaux de la justice populaire*, BULLETIN DE DROIT TCHÉCOSLOVAQUE 52-69 (1961).

29. Czechoslovakia: Law of April 18, 1961, Sb. No. 38; Bulgaria: Decree No. 244 of June 23, 1961, Izv. No. 50. Cf. V. Kabeš, *Die Gesellschaftsgerichte in der Sowjetunion und in der Tschechoslowakei*, JAHRBUCH FÜR OSTRECHT 77-110 (1961).

30. Czechoslovakia: Law of December 22, 1948, Sb. No. 322, abolished and replaced by Law of December 20, 1951, Sb. No. 114; Poland: Law of June 27, 1950, Dz.U. No. 30/275, amended by Law of November 19, 1956, Dz.U. No. 54/248 and by Law of November 5, 1958, Dz.U. No. 68/337, uniform text Dz.U. 1959, No. 8/41; Hungary: Decree No. 23 of March 20, 1955, M.K. No. 35, abolished and replaced by Decree No. 12 of March 30, 1958, M.K. No. 30. Rumania: Decree No. 281 of July 21, 1954, amended by Decree No. 102 of February 27, 1958 B.Of. No. 111 (with consolidated text). Cf. HIGHLIGHTS 32-33 (1954), 393-410 (1958), 293-313 (1959); L. Lovass, *Die Rechtslage der Anwaltschaft in Ungarn*, 2 OSTEUROPA-RECHT 202-206 (1956); DER RECHTSANWALT IM OSTBLOCK (Munich, 1958); Gsovski 697, 724, 770, 795, 1927.

31. Czechoslovakia: Code of Criminal Procedure of July 12, 1950, Sb. No. 87, amended by Law Sb. No. 67/1952, consolidated Text Sb. 1953, No. 1; repealed by Law of December 19, 1956, Sb. No. 64, abolished and replaced by Law of November 29, 1961, Sb. No. 141; Hungary: Law No. III of 1950, amended by Law No. V of 1954, by Law Decree No. 8 of 1957 and by Law Decree No. 34 of 1957, repealed by Law Decree No. 8 of May 13, 1962, M.K. No. 33. Cf. HIGHLIGHTS, 451-453 (1957); J. Urválek, *La nouvelle loi sur la procédure criminelle*, BULLETIN DE DROIT TCHÉCOSLOVAQUE 179-205 (1958); Gsovski 839 ff.

32. Czechoslovakia: Criminal Code of July 12, 1950, Sb. No. 86, amended by Law of December 19, 1956, Sb. No. 63, abolished and replaced by Law of November 29, 1961, Sb. No. 140; Hungary: General Part of the Criminal Code, Law No. II of 1950, abolished and replaced by the new Criminal Code, Law No. V of December 15, 1961, M.K. No. 97; Bul-

After the Twenty-first Congress of the Communist Party (USSR), which asked for the transfer of various state functions to "social organizations," the People's Democracies responded with somewhat similar programs. The trade unions were given large responsibilities in being given authority to make regulations with the force of law governing the conditions of work and the security of the plant.

In civil law generally, the Soviet example was followed. Thus, for example, the government procurator was given the right to intervene in any stage of pending civil litigation in the interest of the state.³³ The law governing family relations was separated from its traditional place in the civil code and given an independent development on the Soviet model.³⁴

In property law the Soviet approach to economic enterprise was followed, so that the nationalized plants were considered not as owners, but merely as administrators of the state property entrusted to them. At the same time such enterprises were held liable only for their obligations up to their capital. The state was not liable for their obligations.³⁵ In close imitation of the Soviet model, for example, Czechoslovakia used the legal form of a joint stock company for foreign trade organizations of the state, although joint stock companies no longer existed generally in the country, and fixed the number of such organizations at twenty-one as in the Soviet Union.

Much interest was shown in Soviet legal literature. The codifiers of Czechoslovakian law translated into Czech over two hundred works of Soviet legal literature. A periodical was published from 1951 to 1956 in Czechoslovakia, *Sovětská věda — stát a právo*, which contained only translations of Soviet literature on legal problems. This was followed by similar publications in Rumania and East Germany.

In the first years in Czechoslovakia there was insistence on exact copying. The Minister of Justice, A. Čepička, told Czech jurists that Soviet jurisprudence

garia: Penal Code of February 9, 1951, Izv. No. 13, amended by Decree No. 44 of February 11, 1953, Izv. No. 13, and Decree No. 25 of February 3, 1956, Izv. No. 12. Cf. BULLETIN DE DROIT TCHÉCOSLOVAQUE 237 ff. (1950), 8-14 (1954), 170-178 (1958); Gsovski, 983, 995, 1023.

33. Czechoslovakia: Code of Civil Procedure of October 25, 1950, Sb. No. 142, amended by Laws Sb. No. 68/1952 and 66/1956; Bulgaria: Decree No. 56 of February 6, 1952, Izv. No. 12; Hungary: Law of June 6, 1952, No. III, amended by Law of June 29, 1954, No. VI; Albania: Law No. 2625 of March 17, 1958, G. Z. No. 4; Poland: The Code of Civil Procedure of 1932 was substantially amended by Law of July 20, 1950, Dz.U. No. 38/349 (uniform text Dz.U. No. 43/394). Cf. Jodlowski, *Les principes de la procédure civile polonaise*, REVUE INTERNATIONALE DE DROIT COMPARÉ 369-384 (1960).

34. Czechoslovakia: Law of December 7, 1949, Sb. No. 265; Poland: Law of June 27, 1950, Dz.U. No. 34/308; Bulgaria: Law of August 9, 1949, D.v. No. 182; Hungary: Law No. IV of June 6, 1952; Rumania: Law No. 4 of January 4, 1954. For a German translation see A. BERGMANN, INTERNATIONALES EHE- UND KINDSCHAFTSRECHT (1953); FAMILIENGESETZE SOZIALISTISCHER LÄNDER (1959). Cf. E. Schmied: *Das Familienrecht der Volksdemokratien 1945-1951*, RABELS Z. 227-243 (1952); Luigi De Luca, *Il nuovo diritto matrimoniale cecoslovacco*, ANNUARIO DI DIRITTO COMPARATO 371-379 (1951); J. Barrère, *Le droit familial socialiste*, REVUE DE DROIT INTERNATIONAL ET DE DROIT COMPARÉ 87-106 (1956), 161-184 (1957); ANNALES DE DROIT ET DE SCIENCES POLITIQUES 313-334 (1956), 3-23 (1957), 291-305 (1958).

35. Czechoslovakia: Law of July 26, 1950, Sb. No. 103, Sections 102, 103; Law of October 24, 1955, Sb. No. 51, Section 10; Rumania: Decree No. 31 of January 30, 1954, B.Of. No. 8, Art. 34, 37; Hungary: Civil Code of August 11, 1959, Law No. IV, M.K. No. 82, Sections 28, 31.

was "the source of their knowledge."³⁶ His successor, St. Rais, declared that it was a smaller error to adopt Soviet provisions of law without investigation and adjustment than not to adopt it at all.³⁷ The idea was expressed less rigorously by President Gottwald in 1953 when he said that the basic law of legal development in the People's Democracies was the "law of continual approach to the Soviet model."³⁸

The desire to follow the Soviet model explains, in part, the rapid changes in law in some areas. Czechoslovakia, for example, has had three codes of criminal procedure since the old Austrian code became ineffective in 1950, and has had two codes of criminal law since 1950. The Czechoslovakian code of administrative procedure has been twice substantially changed since 1954.³⁹ The old (1869) Austrian law on education was abolished in 1948, and the law replacing it was superseded by new provisions in 1953, which were again superseded in 1960.⁴⁰ These rapid changes in basic laws may be contrasted with the durability of the French Civil Code enacted in 1804, the Austrian General Code enacted in 1811, and the German Civil Code enacted in 1896. A theoretical justification for this change is that the law during the transition from capitalism to socialism is supposed to be dynamic to keep pace with the development of other social conditions, and that the many bourgeois facets typical of the first laws of the People's Democracies have to be removed as a more perfect socialist society is achieved.

3. *Signs of Independent Development.*—Despite the insistence on the model, an increasing number of persons began to object to a mechanical adoption of Soviet legislation. Gottwald in his 1953 speech spoke of the respect which must be given to the different starting positions of the Soviet Union and the People's Democracies. Legislators were urged not to adopt the Soviet model uncritically, and to study not only present legislation, but the old development that had led to it. Only in this way, it was argued, could the experiences gained by the Soviet Union be used for one's own country.⁴¹

In fact, in a number of areas the Soviet model was not followed. In property law, as the People's Democracies still recognized the principle that land belonged to the person who tilled it, there was no Soviet example to follow. Accordingly, in Czechoslovakia, Poland, and Hungary there continues to exist a land register (*Grundbuch*), containing a record of titles, servitudes, and the equivalent of mortgages. Such a record of private ownership is unthinkable in the Soviet Union. Czechoslovakia even uses the Austrian land register of 1871.

36. PRÁVNÍK [The Jurist] 52 (1949).

37. O PRÁVU A JEHO TVORBĚ [On Law and its Creation] 125 (Prague, 1951).

38. Rudé právo [The Red Law], January 22, 1953.

39. Decree of January 13, 1928, Sb. No. 8, repealed by Decree of March 22, 1955, Sb. No. 20, repealed by Decree of June 24, 1960, Sb. No. 91.

40. Law of April 21, 1948, Sb. No. 95, repealed by Law of April 24, 1953, Sb. No. 31, repealed by Law of December 15, 1960, Sb. No. 186.

41. L. Bydžovský, *Pomoc sovětské právní vědy při tvorbě československého právního řádu* [The Assistance of Soviet Legal Science in the Creation of the Czechoslovakian Legal Order], PRÁVNÍK [The Jurist] 819; 824 (1957). Cf. H. Slapnicka, *Die Loslösung der tschechischen Rechtswissenschaft vom abendländischen Rechtsdenken*, 9 EUROPA-ARCHIV 7170 (1954).

Hungary adopted a new land registry law in 1960.⁴² In Poland a form of joint or fractional ownership of land has been recognized. In Poland, too, the new mining codes did not socialize the ownership of mines directly, but merely reserved the exclusive right of mining to the state.⁴³ The restrictions on inheritance have taken a variety of forms in the Bloc, with the Soviet Union itself recently revealing a remarkable willingness to revise its own restrictions on what would seem to be a traditional characteristic of private property.⁴⁴

In other areas of law, divergence from the Soviet model may be observed. These divergences, while not all of great substantive significance, are interesting in showing a departure from the ideal of exact copying. Poland has drafted a new civil code restoring family law to the general civil code as in countries in the West. In Russia in 1918, the codification of the labor law was the first of all codifications; and Hungary, Rumania, and Albania have also proclaimed labor codes. But to this day, Poland and Czechoslovakia have not adopted any code for labor.⁴⁵ The civil code of Czechoslovakia regulates relations between individual citizens and between citizens and socialist organizations, leaving the economic relations among socialist organizations to a separate economic code. This division is not recognized by the Soviet model, nor by the People's Democracies in Hungary and Poland, which are presumably facing the same economic conditions as Czechoslovakia.⁴⁶

The continuation of old terms for legal entities, instead of the Soviet terms, has probably considerable symbolic significance for "the peculiar way to socialism" of the Bloc. Both Poland and Hungary have retained the historical term for their administrative regions. In Czechoslovakia it was proposed that the district be named "oblasts" in accordance with Soviet practice, but the proposal was abandoned in favor of the familiar term "district." Czechoslovakia in 1960 abolished the term "People's Court" and reinstated "District Courts," the familiar Austrian term.⁴⁷

In parliamentary practice, the Soviet model is no longer closely followed. While in the Soviet Union the decrees of the Presidium make up 95% of the legislative acts, Czechoslovakia in the first seven years of its constitution permitting decrees by the Presidium of the National Assembly did not use this method a single time. Recently such legislative decrees have been no more than

42. Decree No. 54 of November 27, 1960, M.K. No. 107.

43. Decree of May 6, 1953, Dz.U. No. 29/113 (uniform text Dz.U. 1955, No. 10/65). On the contrary, Czechoslovakia, like the Soviet Union, nationalized the mines completely.

44. *The Law of Inheritance in Eastern Europe and in the People's Republic of China. A Symposium* by Z. Szirmai, A. Garnefsky, J. Němec, Z. Nagorski, V. Stoicoiu, A. Adamovitch, 5 LAW IN EASTERN EUROPE (1961).

45. Rumania: Law No. 3 of June 8, 1950, B.Of. No. 50; Bulgaria: Decree No. 544 of November 10, 1951, Izv. No. 91; Hungary: Decree No. 7 of January 31, 1951, amended by Decree Law No. 25 of November 28, 1953 (consolidated Text Decree No. 53 of November 28, 1953). Cf. HIGHLIGHTS 361-367 (1959); GSOVSKI 1463, 1478, 1561.

46. Cf. V. Knapp, *La réglementation juridique des rapports mutuels entre les entreprises nationales en droit tchécoslovaque*, REVUE DE DROIT INTERNATIONAL ET DE DROIT COMPARÉ 7-17 (1960).

47. Law of October 30, 1952, Sb. No. 64, Section 1, revoked by Constitution of 1960, Art. 98.

10% of the acts of the assembly.⁴⁸ Czechoslovakia has also abandoned the Soviet principle of parliamentary representation on the basis of one representative to so many thousand people, and returned to the rule of 1920 that the deputies should be 300 no matter what the number of eligible voters. The institution of a Presidency has been continued in Czechoslovakia instead of being replaced by a Presidium on the Soviet model — so vivid is the memory of the first president of the country — in spite of all attempts to exterminate "Masarykism."⁴⁹

In Poland there has been a gradual transition from reliance on the Soviet legislative model. In the period 1952-1956, the Sejm, or parliament, passed sixteen laws, while the State Council issued 165 decrees which were passed by the Sejm without debate. The new Sejm in its first two legislative terms has passed 53 bills, while not a single decree has been issued by the State Council.⁵⁰ Moreover, in Poland since 1955 it has been possible for a small minority of deputies to vote against the bill. It has also been possible and not rarely practiced for a Sejm to make partial changes in bills submitted by the government.⁵¹

Not only is there a number of legal institutions which have not been conformed to the Soviet model, but even text writers are stating that Soviet legislation is in some subjects obsolete and that in the field of Soviet legal literature there is a range from excellent to mediocre.⁵² The Soviet reform of its own criminal law, and the subsequent outlawing in the Soviet Union of the creation of analogous crimes and retroactive criminal law, have suggested to the least observant that the Soviet model could not have been perfect.⁵³ It is now becoming the position in the East European countries that what is meant by the Soviet example is not Soviet positive law, but the legal theories which have

48. 1955: 6 laws (Sb. No. 11-14, 43, 51) and 14 resolutions of the Presidium of the National Assembly (Sb. No. 1, 2, 9, 10, 21-23, 57-59, 61-64; 1956: 16 laws (Sb. No. 6, 40, 45-47, 54, 55, 58, 59, 63-69) and 13 resolutions (Sb. No. 11-14, 20, 25, 26, 30, 31, 43, 44, 60, 61); 1957: 31 laws (Sb. No. 10, 11, 13, 14, 17, 18, 23-26, 32-37, 39, 41, 53, 55-57, 68-71, 75, 76, 79, 81, 82) and 1 resolution (Sb. No. 6); 1958: 25 laws (Sb. No. 13-16, 18, 19, 22, 40-44, 62-64, 67, 69-72, 74, 83, 84, 87, 89) and 5 resolutions (Sb. No. 31, 32, 38, 88, 90); 1959: 29 laws (Sb. No. 8-10, 12, 16-18, 27, 37, 38, 41, 42, 46-54, 71, 72, 73, 76-79, 81) and 1 resolution (Sb. No. 64); 1960: 16 laws (Sb. No. 13, 35-37, 39, 40, 65, 67, 100, 101, 107, 108, 163, 165, 166, 186) and 5 resolutions (Sb. No. 75, 110, 111, 124, 138); 1961: 20 laws (Sb. No. 9, 31, 38, 40, 56, 60, 62, 65-67, 99, 100, 135, 140-143, 145, 147, 150) and 7 resolutions (Sb. No. 1, 25, 26, 85-87, 101).

49. Constitution of 1948, Sections 67-79; Constitution of 1960, Art. 61-65. Cf. L. Schultz, *Die neue Verfassung der Tschechoslowakischen Sozialistischen Republik*, 17 *EUROPA-ARCHIV* 49-58 (1962); J. Kalvoda, *Czechoslovakia's Socialist Constitution*, 20 *THE AMERICAN SLAVIC AND EAST EUROPEAN REVIEW* 220-236 (1961); R. Wierer, *Die tschechoslowakische Verfassung vom 11 July 1960*, 6 *DER DONAURAUM* 113-132 (1961).

50. M. Sobolewski, *Die verfassungspolitische Entwicklung in Polen seit 1952*, *JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART* 285 (Tübingen, 1959).

51. *Id.* at 289.

52. Cf. V. Knapp, *Význam sovětské právní vědy pro vývoj socialistické právní vědy a marxistického právního myšlení v Československu* [The Significance of Soviet Legal Science for the Development of Socialist Legal Science and Marxist Legal Thought in Czechoslovakia], *PRÁVNÍK* 814-819 (1957). At 816 he says: "We have, up until now, . . . perceived our model in every scientific Soviet work that has been published. It is, however, self-evident . . . that Soviet publications include and will include both middling and substandard works."

53. *The Federal Criminal Law of the Soviet Union* [with Russian text and English translation], 3 *LAW IN EASTERN EUROPE* (1959). Cf. K. Grzybowski, *The Soviet Reform of the Criminal Law of 1958*, *OSTEUROPA-RECHT* 108-122 (1960).

emerged through the application of Marxism-Leninism, such as the theory of ownership in a socialist state.⁵⁴

The former rigid turning of eyes to Moscow has been replaced by mutual contracts. A dense network of similar agreements about consular matters, citizenship, and the relationships between courts in Bloc countries has grown up.⁵⁵ The latest version of the Czechoslovakian criminal code provides that crimes against "another state of the working people" shall be punished as a crime against Czechoslovakia.⁵⁶ A kind of cooperation is developing within the Bloc which goes beyond the traditional concept of international law. "New, higher forms of mutual assistance and cooperation" are spoken of.⁵⁷ A new intersocialist law is coming into existence as the group law of the Socialist camp. This camp was defined by its members at the Moscow conference of June 7, 1962, as the "social, economic and political community of free and sovereign peoples progressing on their way to socialism and communism and bound to each other by durable bonds of international socialist solidarity."⁵⁸

As the former monolithic compactness of the law of the Bloc is replaced by polycentrism, it should not be forgotten that the entire legal order of the Succession States continues to be dominated by the principle of Socialist legality.

54. L. Bydžovský, *Pomoc sovětské právní vědy při tvorbě československého právního řádu* [The Helpfulness of Soviet Legal Science in the Creation of the Czechoslovakian Legal Order], *PRÁVNÍK* 819-824 (1957). At 824 he says, "... One cannot often depend on the text of the laws, which in many respects are already out of date. All the more must one depend on a scientific development. . . ."

55. Cf. WIENER QUELLENHEFTE ZUR OSTKUNDE, REIHE RECHT, 1958 *Allgemeine* section, p. 1; 1959 *Allgemeine* section, pp. 1, 3; 1962 *Allgemeine* section, p. 3. See also U. Drobnič, *Die Kollisionsnormen in den Rechtshilfeverträgen der Staaten des Ostblocks*, *OSTEUROPA-RECHT* 154-184 (1960); *HIGHLIGHTS* 3-30 (1960); J. Tallos, *Les traités d'assistance judiciaire de la République Populaire Hongroise*, *REVUE DE DROIT HONGROIS* 21-31 (1959).

56. Law of November 29, 1961, Sb. No. 140, Section 99; similarly Hungary: Law No. V of 1961, M. K. No. 97, Section 133; Rumania: Criminal Code, Section 227¹, amended by Decree No. 318 of July 21, 1958, B.Of. No. 27. Cf. H. FRITZSCHE, *STAAT UND RECHT* 1318 (1961).

57. M. M. BOGUSLAWSKI, *DIE ZIVILRECHTSVERHÄLTNISSE ZWISCHEN DEN SOZIALISTISCHEN LÄNDERN* 8-9 (Berlin, 1959):

In international private law of the countries which are People's Democracies, there are norms which are applied with respect to all countries, irrespective of their socio-economic structure. Generally such norms are contained in the domestic legislation of the People's Democracies. There are also norms in the Socialist countries which have validity only for relationships within the Socialist camp. They are mostly contained in such sources of private international law as bilateral or multilateral international agreements. They play a particularly important role in the regulations of legal relations between enterprises of different socialist states engaged in foreign trade. These legal norms are characteristic of the new type of international relationship which is being developed among the countries of the Socialist camp.

Cf. G. Tunkin, *Sozialistischer Internationalismus und Völkerrecht*, 51 *NEUE ZEIT* 10 (Moscow, 1957). International law has been expressed in "General conditions for the delivery of goods between foreign trade enterprises" of the Council of Mutual Economic Assistance which is intended to create a single commercial law in the Bloc. An English translation may be found in 7 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 665-690 (1958). Cf. also N. Spulber and F. Gehrels, *The Operation of Trade within the Soviet Bloc*, 40 *THE REVIEW OF ECONOMICS AND STATISTICS* 140-148 (1958).

58. *Pravda* (Moscow), June 17, 1962.

The combination in these countries of a desire to follow a "peculiar way" to socialism with the need to respect deep-rooted traditions and legal concepts prevented a complete adoption of the Soviet pattern. The law, however, of these countries still aims not at a realization of legal order in a Western sense, but to be an effective instrument of class warfare.

HELMUT SLAPNICKA

(Translated by HUBERT FEICHTLBAUER)