

GUEST EDITORS' FOREWORD

SERGEI BELOV,

Saint Petersburg State University (Saint Petersburg, Russia)

WILLIAM PARTLETT,

University of Melbourne (Melbourne, Australia)

ALEXANDRA TROITSKAYA,

Lomonosov Moscow State University (Moscow, Russia)

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The idea of this special issue of the Russian Law Journal was a result of the round table “Post-Soviet Constitutionalism and Peace Building” at the X World Congress of the International Association of Constitutional Law held in June 2018 in Seoul, Korea.

During the Cold War, socialist constitutions – first developed in the Soviet Union but later spreading to other parts of the world – formally stood for certain values, institutions, and concepts. These socialist ideas, institutions, and values along with those of Confucianism or Buddhism were an alternative to the constitutional ideas of the West. The collapse of the USSR and reforms in post-Soviet countries led many people to believe that the world had reached the end of history and that all of the values, institutions, and concepts found in Socialist constitutions were to be placed in the “dustbin of history.” But, despite the rise of market capitalism in much of the post-socialist (and still formally socialist) world, ideas from socialist constitutions have persisted in many post-socialist political systems. Moreover, other countries that were never socialist themselves have borrowed and continue to employ ideas and principles from socialist constitutions.



This Special Issue seeks to recover the neglected legacy of socialist constitutions. To do so, it will consider what socialist values, institutions, and concepts are and how different countries – with different political cultures and realities – have drawn on them.

The object of the book is to, first, describe socialist values, institutions, and concepts and, second, examine their role in the contemporary constitutional theory and practice. The aim is to show the ongoing relevance of the values, institutions, and concepts contained in socialist constitutions to constitutional development around the world and to show how this correlates with national political cultures and constitutional traditions, especially those outside Western Europe and Northern America.

One difficulty is that socialist constitutions were first written in the Soviet Union and then evolved during the 20th century. Marxist writings of 1920-30s were replaced with the constitutional theory and practice of the socialist states up to the end of 1980s. Some of the ideas, such as formal domination of the representative authorities or the system of procuratorial supervision in the system of government, were not really original. Others might have been more original. For the purpose of this research, the authors tried to stress the ideas, principles and values during the whole 20th century and which were strongly associated with socialist constitutions. This could, for instance, include the core ideas made in socialist constitutions in comparison with other approaches to constitutionalism in the world.

From a practical point of view, it was difficult to demonstrate evidences of borrowing of a principle or institution from the socialist system or to argue that specifics of a principle or institution demonstrate its socialist character. Direct evidence can be found in the materials of debates on constitution, practice of its interpretation (*inter alia*, by the constitutional or supreme court), scholarship and public debates in media, both in past and in present. Indirect demonstration of the socialist influence requires the comparative analysis of the ideas, notions and values in the socialist system and beyond – to demonstrate following the socialist path (at least in some dimensions) in the constitutional development.

If you choose to take a jurisdiction or a group of jurisdictions, special attention is to be paid to the context – in terms of values and conceptual identity of the country, the attitude to liberalism and to socialist ideas of social and political organization. You may also want to define which socialist principles (e.g. priority of public interests), notions (e.g. forms of property) or institutions (e.g. centralization of the system of government) could be traced in the contemporary constitutional system and what is the evidence of their Soviet origin.

The articles included in this Special Issue cover wide range of questions concerning the Socialist legacies as well as encompass different regions of the world.

The article, which opens the Special Issue, authored by the guest editors of this Issue, represents the basic methodological and values approaches to studying the Socialist constitutional legacies. Sergei Belov, William Partlett and Alexandra Troitskaya demonstrate the difficulties of methodology of study these issues



(briefly mentioned above), define socialist constitutional values, their relationship with socialist ideology and then address the links between socialist constitutional institutions and the Socialist values. The authors conclude that some socialist values can be used in the prospective development of world constitutionalism, widening the values range of the constitutionalism to make it more universal for the different cultures of the world.

Zdenek Kühn – a professor at Charles University in Prague and a judge at the Supreme Administrative Court of the Czech Republic – focuses on the value background of the courts and judicial practice in his home country and other post-socialist states of Central Europe. He argues that the post-socialist legal development bears some legacy from the old legal era, both socialist and pre-socialist periods. The judiciary in post-socialist countries of the Central Europe could be an example, still remaining specific of authoritarian model of judicial process. Professor Kühn describes some institutions to demonstrate this legacy of authoritarian justice.

This is the reader to judge how persuasive are the arguments of César Landa from Pontificia Universidad Católica del Perú and Isabel Sánchez from Peruvian Constitutional Court in favor of showing the socialist origins of some Peruvian constitutional principles, concerning the position of the state, protection of equality, land ownership, status of indigenous people and labor regulation. The authors argue that the socialist principles of social policy remained actual after adoption of the current Constitution of 1993, based on an economically neoliberal and politically conservative model, as well as in the course of its later interpretation by the Peruvian Constitutional Court. The article gives the explanations and proves of such conclusion from the legal acts of Peru.

Tomáš Gábriš, a scholar from Slovakia, found the legacy of socialist recognition of the principle of nations' self-determination in obtaining independence of Slovak republic in the early 1990s. Investigating the history of position of Slovakia within the united Czechoslovakia, author makes analysis of the concept of colonialism in socialist legal and political theory and concludes that today position of this republic goes back to the socialist constitutional system.

The socialist legacy in Asia is inquired by Pui-Yin Lo from Hong Kong, who addressed the complicated situation of combining socialist foundations of China's constitutional system and capitalist economic order in Hong Kong and Macao within the notion of "One Country, Two Systems." From his analysis, the author concludes that socialist principles and values prevail in the legal and political order of Hong Kong and Macao, safeguarding China's sovereignty, security and development interests. Therefore, the formal preservation of capitalism does not suppose or lead to a capitalist constitutional structure, which has remained socialist.

Jane Henderson of King's College London presented an analysis of the wording of the basic laws (constitutions and charters) of Russia's regions (the subjects of the Russian Federation), searching for legacies of socialist terminology in these laws.



The outcome of the research showed there were only a few situations where the regional constitutions and charters retained the language of the socialist past, for example in retaining Soviet names of some state authorities. The main substantive issue found by Professor Henderson of a socialist legacy in the federal subjects' constitutions and charters is the lack of any mechanism for their safeguarding – namely their own constitutional or charter court. These have existed in only minority of federal subjects and are due to be disbanded in the coming years, before 2023. The existence of these courts gave strong support to the rule of law principle, thus their dissolution may be evaluated as mimicking socialist times, when there was no judicial structure to oversee conformity to constitutionality.

Guest editors express the deep gratitude to all contributors of this Special Issue, who supported the idea and prepared the materials, giving a number of very different dimensions of the socialist legacies in the contemporary constitutions and do hope that this research will continue.