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NEW CONSTITUTIONS OF EUROPE, ASIA AND SOUTH AMERICA

HARROP A. FREEMAN

Introduction

Assume for the moment that you were in Europe or England in the late 1700's when America was framing its new constitution. What would you have recognized as of enduring value to world constitutional theory? Would you have ridiculed it as "idealistic" and "impractical"? The world is today witnessing another important stage in constitutional history. In Europe, Asia, and South America, adjustments to a new order have necessitated basic changes in fundamental law. It is utopian to expect that all of the new constitutions will survive these turbulent times or be fully carried out (our constitutional "rights" were not implemented for nearly 50 years). They are, however, extremely important as formulations of changing concepts of government.

This article does not pretend to give more than the kind of story that can be gleaned from a careful reading of the various constitutions, a rapid survey of some of the current books and articles and a general understanding of prior constitutional history. It is in no sense theoretical or critical.

I would urge your attention to provisions different from our constitution and not deny their validity solely because of the difference. For example, many political structures will more nearly follow the English than the American pattern; there are references to "rights" and also to "duties"; you will find our civil rights of equality before the law, due process, free elections, freedoms of assembly, speech, press, communication, and association, but also new economics and social rights pertaining to work, education, health, housing, social security, recreation, cultural opportunity, a fair share in the gains of civilization, etc.¹

France²

Of all the European countries adopting new basic political documents, France has tied its constitution most closely to the past. When DeGaulle

¹A good discussion of these "rights", not in terms of any constitution will be found in the January 1946 issue of the Annals of the American Academy of Political and Social Science, which is sub-titled "Essential Human Rights".

²The most valuable single item is A Constitution for the Fourth Republic, Foundation for Foreign Affairs, Washington, D. C., 1947. This contains historical material, the draft
proclaimed in August 1944 the annulment of the Vichy constitution, France could have reverted to the constitution of the Third Republic. But DeGaulle acted on the assumption that until the citizens could vote on the form of government they wanted, the country was without a constitution.

In the October 1946 election there was an overwhelming vote for a new constitution and for a decidedly leftist assembly, which drew up a constitution. The first draft gave elaborate attention to individual rights. The first section, entitled "Liberties" had 21 separate articles, and was followed by 18 additional articles under the heading "Social and Economic Rights." Although this was a radical document, it had firm basis in French tradition. The liberties were largely taken directly or with amplification from the Declaration of Rights of 1789 or from the constitutions of 1795, 1848, or 1895. The social and economic rights drew upon the Constitution of 1848 which provided assistance to the aged, infirm, needy and abandoned children, educational facilities for all, and stated that the base of the republic was family, work, property and the public order. In an elaborate political struggle this draft was rejected and a new constituent assembly elected. However, the rejection is interpreted by most commentators not as a refusal of the rights and liberties proposed, but as a rejection of a unicameral legislature.

A novel arrangement appears in the new (second) draft, which was accepted by the voters in November 1946. The statement of rights is placed in the preamble, setting the "tone" of the document, while

of the accepted constitution, and an appendix comparing provisions in former constitutions with those in the first and accepted drafts. The text of the accepted constitution is also contained in the February 1947 issue of Current History.

Benjamin H. Conner, The Trend of the Law in France, Wis. L. Rev., January 1947—a useful review with the thesis that the trend is toward increased regimentation.

Mario Einaudi, Political Change in France and Italy, American Political Science Review, October 1946—a good discussion of political parties.


Albert Guerard, French Constitution, 1946, Common Cause, a summary, which is critical of the second, as opposed to first, draft.


Marcel Poignard, L'évolution de la Constitution Française, Canadian Bar Rev., October 1946—good for historical material.

John E. Sawyer, Reestablishment of the republic in France; the DeGaulle era, 1944-1945, Political Science Quarterly, September 1947.

The French have no doctrine like ours that the preamble cannot create powers (or rights). There is much to prove that our rights are just as hortatory as any embodied in a preamble.
NEW CONSTITUTIONS

the body is devoted exclusively to the technicalities of the parliamentary system, social government, and the French union. The preamble covers the political liberties as "inalienable and sacred rights," and continues with 16 statements of political, economic and social principles. These establish equal rights of women, the rights to trade union activities, strikes, collective bargaining and participation in management; the right and duty to employment; the right to asylum, health protection, material security, rest and leisure, and equal access to education. The nationalization program is given a constitutional basis in the paragraph which reads: "All property and all enterprises that now have or subsequently shall have the character of a national public service or a monopoly in fact must become the property of the community."

Although the general pattern "is a republic, indivisible, secular, democratic and social"\(^4\) in which "sovereignty belongs to the French people", this actually seems a central government not of delegated powers as in the United States but of reserve powers, for the people exercise their sovereignty "by the vote of their representatives" and "through their deputies in the National Assembly"\(^5\), and there is no enumeration of legislative powers or restriction on the kind of laws the central government shall make.

The main body of the constitution is entitled "The Institutions of the Republic," and deals successively with Sovereignty,\(^6\) Parliament,\(^7\) the Economic Council,\(^8\) Diplomatic Treaties,\(^9\) the President of the Republic,\(^10\) the Council of Ministers,\(^11\) the Legal Responsibility of Ministers,\(^12\) the French Union, and Overseas Departments and Territories,\(^13\) the Superior Council of the Judiciary,\(^14\) Local Administrative Units,\(^15\) Revisions of the Constitution,\(^16\) and Temporary Provisions.\(^17\)

Though the parliamentary system and the multiple party system, which resulted in coalition cabinets with an average life of 8 months, remain in the Fourth Republic, the new constitution attempts to alleviate the situation. A vote of no-confidence requires "an absolute

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\(^{4}\) Art. 1.
\(^{5}\) Art. 3.
\(^{6}\) Arts. 1-4.
\(^{7}\) Arts. 5-24.
\(^{8}\) Art. 25.
\(^{9}\) Arts. 26-28.
\(^{10}\) Arts. 29-44.
\(^{11}\) Arts. 45-55.
\(^{12}\) Arts. 56-59.
\(^{13}\) Arts. 60-82.
\(^{14}\) Arts. 83-84.
\(^{15}\) Arts. 85-89.
\(^{16}\) Arts. 90-95.
\(^{17}\) Arts. 96-106.
majority of the Deputies in the Assembly." Dissolution of the National Assembly is prohibited for the first 18 months of the existence of a new Parliament, and thereafter requires two ministerial crises within an eighteen month period. The legislative branch is more important than in the United States. Parliament elects the President (largely a figurehead), and approves the choice of the Prime Minister, his policies, and his cabinet, which remain responsible to the Assembly. The Economic Council, a planning board which advises the National Assembly and Council as a Ministry on bills and proposed laws, is continued.

The court system is given practically no mention in the constitution. A Superior Council of Judiciary is established. It appoints the judges and "insure (s) the discipline of these judges, their independence and the administration of the courts." An American may be surprised to see a system for revision of the constitution to conform to legislation, rather than the striking down of legislative acts as out of harmony with the constitution. A permanent Constitutional Committee (political) determines not whether a new law is invalid because against the constitution but whether a law of the assembly requires revision of the constitution. Revision is not a formidable procedure. The National Assembly alone decides as to whether revision will take place, and draws up the necessary bill. Such a bill may be adopted on second reading solely by a two-thirds vote of the Assembly. Otherwise it requires a 3/5 majority of each house or a referendum to the people.

The French Constitution, like most of the new ones, pushes out a cautious 'feeler toward abolishing war and strengthening international law:

"The French Republic, faithful to its traditions, abides by the rules of international law. It will not undertake wars of conquest and will never use its arms against the freedom of any people.

"On condition of reciprocity, France accepts the limitations of sovereignty necessary to the organization and defense of peace." Furthermore, the constitution explicitly provides in Art. 26 that diplomatic treaties shall have the force of law even "superior ... to internal

18 Art. 49.
19 Art. 51.
20 Arts. 11, 12, 45, 48.
21 Art. 25.
22 Arts. 83-84.
23 Note the emphasis that the constitution should be revised rather than that the law be declared void:
  Article 93: "A law which, in the opinion of the Committee, implies a revision of the Constitution shall be sent back to the National Assembly for reconsideration. If the Parliament adheres to its original vote, the law may not be promulgated until the Constitution has been revised according to the procedure set forth in Article 90."
24 Art. 90.
25 Preamble.
legislation." Articles 27 and 28 require that "no cession, no exchange and no addition of territory shall be valid without the consent of the populations concerned" and that no treaty be denounced or suspended without formal renunciation, usually by the Assembly. Both the Assembly and the Council must concur in a declaration of war. 28

The constitution contains provisions of interest to the student of Administrative Law. Has the country of "Droit Administratif" frozen the doctrine of non-delegation of power by Art. 13: "The National Assembly alone shall vote the laws. It may not delegate this right." Ministers are made by Art. 56 "legally responsible for crimes and misdemeanors committed in the exercise of their functions," and by Art. 48, "collectively responsible to the National Assembly for the general policy of the Cabinet and individually responsible for their personal action."

There are anachronisms and hangovers from by-gone days, like Art. 44: "Members of the families that once reigned over France shall not be eligible for the Presidency of the Republic."

It is worth remembering that the constitution in France has never occupied the central place it does in the United States. Operations under it will constitute its surest test. Thus far it seems to have played as small a role as its predecessors.

Japan 27

The new constitutions of Japan and Bavaria, Hesse, and Wuerttemberg-Baden in the American zone of Germany are of particular interest because they may represent present American constitutional thinking. Whereas the German constitutions were clearly occupation documents though drafted by Germans, there is an effort to make it appear that the Japanese constitution is an indigenous document, albeit with allied guidance.

26Art. 7.

27Occupation of Japan. Policy and Progress, The Department of State, Publication 2671, Far Eastern Series 17. This is the most extensive item, containing texts or summaries of all the pertinent documents, as well as summaries of important events. Unfortunately, it is often not precise enough.

The Constitution of Japan, Department of State, Publication 2836, Far Eastern Series 22. This is the final draft of the Constitution.

Current History for May 1946 also carries a draft.

Hugh Borton, United States Occupation Policies in Japan Since Surrender, Political Science Quarterly, June 1947—summarizes the important diplomatic and legal documents.


David Nelson Rowe, The New Japanese Constitution, Far Eastern Survey, January 29 and February 12, 1947—a good interpretive article from the point of view that the constitution was forced upon an unreformed government.

The student will be forcefully reminded of the American constitution by phrases like "secure for ourselves and our posterity" and "do firmly establish," by reference to "of, by and for" the people, by the "separation of powers" theory and by some of the phraseology of the bill of rights.
The first hint that Japan was to have a new constitution came in the surrender terms which stipulated that the ultimate form of government would be established by the freely expressed will of the Japanese people. Apparently at first however, only liberalization of the old Meiji constitution was contemplated. A government formed Constitutional Problem Investigation Committee and the new political parties presented suggested reforms. The steps from this to the promulgation of an entirely new constitution are somewhat hazy. The State Department gives the impression that the draft was written by the Japanese government, in consultation with SCAP. Others consider it entirely a creation of the headquarters staff. In any case, a first draft was published March 8, 1946. Early the next month the elections were held, and the new Diet revised and approved the document. It became effective May 1947.

The constitution starts with a declaration of high principles which are sufficiently implemented in the document to be worth quoting:

"We, the Japanese people, . . . determined that we shall secure . . . fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this constitution is founded . . . .

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations."

The constitution then deals in successive chapters with the Emperor, Renunciation of War, Rights and Duties of the People, The Diets,

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28 Rowe, note 27.
29 Arts. 1-8.
30 Art. 9.

The Japanese Constitution moves farthest toward a peaceful world. By Chapter II "the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." This is supported by the provisions in Art. 9 that "land, sea and air forces, as well as other war potential, will never be maintained;" and by the provision in Art. 66 that the Prime Minister and other ministers must be civilians. Nowhere in the constitution is found any stated or tacit authorization for even "defensive war."

The chapter on Rights and Duties comprises 31 articles. The duties specified include paying taxes, seeing that children receive the education provided by law, working, refraining "from any abuse of these freedoms and rights" and responsibility "for utilizing them for the public welfare."

The "rights" guaranteed include: "life, liberty and the pursuit of happiness"; "no discrimination ... because of race, creed, sex, social status or family origin"; "universal adult suffrage" by secret ballot; civil and criminal "due process"; peaceful petition; freedom of thought, conscience, religion, assembly, association, occupation, residence, marriage; freedom from involuntary servitude, censorship, cruel punishments, double jeopardy; free, equal and universal education. It can be seen that these are almost wholly political and civil. Though more economic and social rights are set forth than in the American constitution, this document lacks the economic specifications of most European models. Guaranteed are the right of the people "to maintain the mini-
mum standards of wholesome and cultured living” (Art. 27, 28). “The right to own or to hold property” is specifically declared “inviolable” and property may only “be taken for public use upon just compensation.” (Art. 29).

In contrast to other constitutions which provide for suspension of rights in certain cases, Art. 11 of the Japanese document states that all are “eternal and inviolate.” It twice provides for suit against the government for “illegal act of any public official” or for arrest or detention if later acquitted. (Art. 17, 40).

The provisions setting up the form of government are rather curious. They were obviously written by one most familiar with the American system, trying to fit his ideas into a parliamentary system which is the Japanese tradition. In line with the separation of powers doctrine, the constitution vests the whole law-making authority in the bicameral Diet, the executive power in the Cabinet, and the judicial power in a Supreme and inferior courts. On the other hand, it concedes the essence of a parliamentary system by providing for collective ministerial responsibility to the Diet, which also chooses the Prime Minister from among its own members. Control is exercised in the usual way of requiring that the cabinet resign en masse upon a vote of no-confidence by the House of Representatives, unless the House is dissolved. The authors were evidently not worried about the problem of governmental stability, for there are no provisions comparable to those in the new French constitution to hinder either dissolution or a vote of no-confidence being taken. The constitution is certainly predicated upon the idea of multiple rather than two-party politics. It was written at a time when some 60 parties had already organized, and was finally adopted by a Diet of many parties and no absolute majority, from which had been formed a coalition cabinet. The usual provisions for non-liability for legislative action, for trying qualifications of members, for adopting rules, and conducting investigations are included.

Although the constitution places “sovereign power” in the people (of which the Emperor is the symbol), it is difficult to estimate the scope of this theory since no enumeration of powers of government exists. Administrative law plays an important, if not consistent, part in the constitutional scheme. Art. 73 specifically gives the Cabinet “general

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52 Art. 67.
53 Art. 69.
54 Art. 51.
55 Art. 55.
56 Art. 58.
57 Art. 62.
administrative functions” and sets forth a rule of administrative law which is found only in case law in America:

“The Cabinet . . . shall . . . enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.”

On the other hand, not as much delegation of the judicial function to administrative agencies seems to be contemplated as in the United States when Art. 76 provides: “nor shall any organ or agency of the Executive be given final judicial power.” Administrative ardor will surely be dampened by the provisions for liability for official acts. (Art. 17).

In line with American political thought, the Judiciary is very strong. The Supreme Court has the power to make rules for itself and the inferior courts, nominate the inferior judges and admit and discipline attorneys. It expressly has the all-important power of determining “the constitutionality of any law, order, regulation or official act.” However, the Supreme Court Judges are subject to control by the people under the provision that their appointments shall be reviewed at the first next general election and every ten years thereafter. This may be one of the clearest keys to the meaning of the people’s sovereignty.

Germany

In Germany constitutional developments are not exactly analogous to those elsewhere because they pertain to regions, called Lands, rather than to a whole nation. However, the constitutions of the three Lands in the American zone, Bavaria, Greater Hesse and Wuerttemberg-Baden have most of the characteristics of national constitutions.

All three constitutions give careful attention to fundamental rights and duties. In Bavaria, the first chapter is on governmental structure, the second on fundamental rights and duties, the third on community life, and the fourth on economy and labor. In Hesse, all these questions are considered in Part One under the heading Human Rights, and the governmental structure occupies the second part. This same division

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58 The language is almost identical to the American. Art. 76: “The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.”  
59 Arts. 77, 80.  
60 Art. 81.  
61 Art. 79.  
62 The typical included rights are: equality, freedom restricted only by freedom of others, due process, secrecy of communications, freedom of religion and conscience, peaceable assembly and association, residence and movement, and the right of property. Wuerttemberg-Baden, hereafter referred to as “W-B”, Arts. 1-15; Bavaria, hereafter referred to as “B”, Arts. 98-119; Hesse will be designated “H”, Arts. 1-26.
is followed in Wuerttenberg-Baden, only the first part is called Man and Society. In Bavaria and Wuerttenberg-Baden, the government can suspend civil liberties, but only for one week, with power in the Landtag (Legislature) to extend it for a month. In Bavaria, one can appeal to the Bavarian constitutional court, which is required to give an interim decision within one week. In Hesse, the Landtag alone can suspend civil liberties by a two-thirds majority.

Education and religion are bound together closer in these constitutions than elsewhere and play a very important role. In Bavaria, public elementary schools may be either confessional or non-denominational. In Wuerttenberg-Baden, the schools are Christian non-confessional. In both, religious instruction is part of the curriculum. The Hessian school system is non-denominational. The constitution provides for tolerance in all instruction, with due regard to the religious and philosophical-political ideologies of all students. The general tone of the constitutions may be gathered from the following Bavarian provisions:

"Article 131
(1) The schools shall not only impart knowledge and skill, but shall also form character and soul.
(2) Supreme educational aims are: respect of God, or religious convictions and of the dignity of man, self-control, responsibility, helpfulness, and a mind open to truth, goodness and beauty.
(3) The students shall be brought up in the spirit of democracy, to love the Bavarian homeland and the German people, and to favor the reconciliation of all nations.
(4) Girls are to be especially trained, besides, in the care of babies, the education of children, and the management of the household."

"Article 137
(2) For pupils who do not participate in religious instruction, a course in the generally recognized principles of morality is to be arranged."

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63W-B: Art. 79; B: Art. 48.
H: Art. 125. But see special provision for the interim period to December 31, 1950 in Arts. 157-158.
64B: Art. 135.
65W-B: Art. 37.
67This compares with like language in Wuerttemberg-Baden Art. 36: "In reverence for God, in the spirit of human brotherhood, and in love of country and its people, youth shall be educated for moral and political responsibility, for professional and social trustworthiness and for a democratic conception of freedom."
Also Hesse Art. 56: "Tolerance must be the basic principle of all instruction. . . . The object of education is to mold young people into moral persons and to develop their vocational effectiveness and political responsibility for independent and responsible service to the people and humanity in respect and neighborly love, esteem and tolerance, uprightness and truth. Historical instruction must be directed to truthful, undistorted representation of the past, whereby the great benefactors of mankind, the development
In economic matters Bavaria and Wuerttenberg-Baden are more conservative, providing for some state supervision and ownership. In Bavaria, only state ownership of electricity, railways and other public utilities is mentioned specifically, while in Wuerttenberg-Baden the state can acquire ownership wherever "economic policy can be better attained without private ownership." The draft constitution of Hesse provided for immediate socialization of mines, banks and insurance undertakings. The general economic spirit is stated in Article 36: "The national economy must serve the welfare of the entire people and fill their needs." All property which is in danger of being misused must be transferred to state ownership or supervision. It also provides in private enterprise for employees "participating on equal terms with the management in the solution of social, personnel and economic problems of the enterprise and in collaboration with the labor unions. The grant of labor and economic rights is generally broad, as can be seen from the footnote.

The Supreme power in the state, according to the Wuerttenberg-Baden constitution is in the citizens and the bodies chosen by them. This power is in three individual parts—legislative, judicial, and executive, which "may not be combined in one organ of government." All three Lands have a Landtag (House of Representatives) elected according to some method of proportional representation. In addition, Bavaria also has a Senate which represents the social, economic, cultural as well as the municipal corporations of the land. The Senators are apportioned amongst, and elected by, labor unions, cooperatives, universities, the free professions, municipalities, etc.

The executive power in all three places is really vested in the Cabinet, which is chosen and headed by a Minister-President elected by the Landtag. In Wuerttenberg-Baden and Hesse, he and his cabinet can be forced to resign by a vote of no-confidence, while in Bavaria he is

_of the State, economics, civilization and culture must occupy the foreground of interest and not generals, wars and battles."

68B: Art. 160.
69W-B: Art. 28.
70H: Art. 41. See also Art. 42 practically nationalizing "large landed estates."
71H: Art. 27. 72W-B: Art. 48.
73B: Arts. 34-42.
74W-B: Art. 73; H: Arts. 113-114.
somewhat stronger, although he must also resign "if political relation-
ship makes impossible responsible cooperative work between him and
the Landtag." In all three constitutions, the ministers are also indi-
vidually responsible to the Landtag.

The constitutions more reflect the European concept of judicial power
than the American. The Bavarian part entitled "Administration of
Justice" specifies that judges are subject only to the law, and that
extraordinary courts are prohibited. Administrative controversies are
to be decided by administrative courts, special provision being made
for labor courts. There is also a Bavarian Constitutional Court, whose
jurisdiction extends to cases of Cabinet and Landtag members charged
with violating the constitution, exclusions of groups of voters from
elections and referenda, the validity of elections of members of the
Landtag, constitutional disputes between the chief State authorities
or divisions, the constitutionality of laws, and complaints charging
violating of constitutional rights by any authority. In Wuerttenberg-
Baden there is provision for the establishment of a State Supreme Court
to examine the constitutionality of laws, ordinances, decrees, and ad-
ministrative acts. In Hesse similar powers are exercised by the
Staatsgerichtshof. Every person with the knowledge of a constitutional
breach has the duty of appealing to the court to compel prosecution of
the guilty party. The Superior and other existing courts are continued.

Though there are many other provisions worthy of detailed attention
we cannot do more than enumerate a few unique ones which reflect the
spirit of the three documents: an outlawry of war, international law
made a part of national law, a specific right to truthfully report legis-
latively proceedings, maintenance of a professional civil service,
amendment of the constitution by legislation, administrative law rules like
our case law, express provisions against dictatorships and "force
societies," and tax provisions actually prescribing the tax theory
(usually progressive taxation).
Some see in these constitutions at least five improvements on the Weimar Constitution: (1) independent judiciary, (2) impeachment of members of the government, (3) determination of constitutional questions by a special tribunal, (4) exclusion of anti-democratic parties, (5) amendment by parliament—plus referendum.

We cannot analyze the constitutions of the five states in the Soviet zone other than to say they provide for a responsible executive, wide social reforms, and economic and personal bill of rights and are centralistic, socialistic and adopted by legislatures chosen in elections from which the Social Democrats were banned and which the Soviet favored SED won easily. It is not surprising therefore that the constitutions bear similarity to the 1936 USSR Constitution in the light of the "new democracy" viewpoint of Russia to which reference will later be made. The draft constitutions for the four areas of the French zone follow the pattern of a socialist, cabinet-responsible-to-parliament, centralistic, reform state.

**Italy**

The new Italian constitution has its roots in the events of May-June 1946, when the King's abdication was followed by an election that decided on a Republican form of government and elected a Constituent Assembly to write a constitution. The usual freedoms of peaceful assembly, movement and emigration, free speech, press and due process are guaranteed except to those who "even indirectly, seek political ends through an organization having a military character" (Art. 8) or by "arms" (Art. 7). The constitution also goes farther than any others in the matter of resisting official violations of the fundamental freedoms, saying that in such cases "resistance to oppression becomes the right and duty of the citizen," (Art. 29) and imposing liability on the official (Art. 14). The death penalty is abolished and "re-education of the condemned" is made the aim of criminology (Art. 13). The rights of workers are strongly protected: social security, compensation, wages, unions, participation in management (Arts. 34-48). Both public and private enterprise are recognized but private enterprise must not endanger "social utility or human safety, liberty, and dignity" (Art. 44). Although the Italian document renounces war as an instrument of conquest (Art. 31) compulsory military service is provided, and Italy retains a minister of war (Art. 28).

Italy's political structure recognizes multiple parties, a bicameral legislature, a cabinet and a president. Though somewhat modified the

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Eastern and Central Europe
Yugoslavia, Bulgaria, Hungary

In considering the constitutions of Yugoslavia, Bulgaria and Hungary we are examining three “within the Soviet orbit.” It is therefore important, as an introduction, to recall the Russian constitutional structure and gauge the Russian view of these constitutions.91 The November 1947 American Perspective has done a real service by translating the recent appraisal of these “new democracies” by Eugene Varga, Soviet economist and editor of World Economics and Politics and by I. P. Trainin, Soviet legal authority in Soviet State and Law. Both view these republics as neither capitalist, socialist, or communist; neither proletariat nor bourgeoisie. They are coalition parliamentary republics wherein feudal land ownership has been liquidated, wherein large enterprises have become the property of the state while private ownership continues in other fields, wherein a transition is being made toward socialism and “fascist” organizations are banned, and wherein communists are willing to work in a coalition. Both stress the transitory character of the regimes.

The Yugoslavian constitution establishes Yugoslavia as a federation, with wide jurisdiction, of six people’s republics plus an autonomous province.

91 Although it is beyond the scope of this article to examine the Russian constitution (it is not “recent”), it is perhaps proper to give the most general type of summary and reference to more adequate material: The 1936 constitution guarantees “universal, direct and equal suffrage by secret ballot;” a right to own a home and personal belongings; the right to work, to leisure, to old age benefits, free medicine and free education; freedom of speech, press and assembly “to strengthen the socialist system;” freedom of religious worship and racial equality; freedom from arrest “except by order of the court or with the sanction of a state-attorney;” and privacy of homes and correspondence. A unique feature of the constitution is that almost every “right” is coupled with a corresponding “duty”. Legislation is by the Supreme Soviet of the Union. It chooses a Presidium (sort of collective presidency, 42 members) and Sovnarkom (cabinet). The commissariats for communications, transportation and heavy industry are exclusively federal (as in the U. S., Post Office and Interstate Commerce are) whereas those for agriculture, justice, health, light industry, etc., are joint union-republic commissariats. Less centralized than our own system, Defense and Foreign Affairs are joint federal-state problems. The plan follows the British more closely than the American system, the legislature being more supreme and the theory of separation of powers being lacking, there being no popular elected executive and the executive being responsible to the legislature. “Power belongs to the working people”; “the socialist system of economy” is in effect, with means of production in the state or cooperatives. The federal government is given broad powers including “establishment of the national economic plans.” The constitution is amended by the Supreme Soviet (legislature). See John Hazard, The Soviet Constitution: An Introduction 3 Lawyer’s Guild Rev. 27.
Articles 14 through 20 under Part I are entitled Social-Economic Organization. They form the basis of an economy which is basically collective, but which includes some degree of private enterprise. All natural resources and public utilities are owned by the state, which also controls foreign trade. The means of production may be owned either by the state, cooperative organizations, or private persons. Private property, initiative and inheritance are guaranteed. However, the private sector of the economy is subject to general state control, and harmful uses of private property and the existence of monopolistic organizations are prohibited. Private property may be expropriated in accordance with law, which will determine when and how much compensation will be paid. Redistribution of the land is a major part of the economic program (Article 19). Article 20 assists workers and protects their right to organize, proper working conditions, social insurance, housing, etc.

Articles 21 through 43 are entitled “The Rights and Duties of Citizens.” The duties are to comply with the Constitution and laws, to take the same care of children born out of wedlock as those born within, to work according to one’s ability, to perform conscientiously public duties which are entrusted to one, to pay taxes according to one’s financial ability, and to defend the fatherland. To citizens are guaranteed equality before the law, the freedoms of religion, speech, association, assembly, public meetings and demonstrations, inviolability of person, dwelling and private communication, and protection against irregular official action. These “rights” are restricted by provisions against profascist writings, against inciting national hatreds or overthrow of the government by force, against publishing anything opposed to a friendly state or financed abroad.

Part II of the Constitution deals with “Organization of the State.” Its outstanding characteristic is the predominant position of the legislative branch, the People’s Assembly, whose legislative powers are enumerated in Art. 44. The body analogous to the Cabinet elsewhere is called the Government of the FPRY. Elected by and responsible to the Assembly, it is the highest executive and administrative organ.

The judicial power is covered in Articles 115 through 123. Here also, the People’s Assembly holds the appointing and dismissing power on the federal level, and analogous local legislative bodies hold similar power over the other courts. The Presidium, chosen by the Assembly, can “annul or abolish the regulations, instructions, orders and decisions

\[92\text{Art. 14.} \]
\[93\text{Art. 18.}\]
of the Federal Government, if they are not in conformity with the Constitution and federal laws.\footnote{An English text of the Constitution of the Federal Peoples Republic of Yugoslavia, is published by the Embassy of the Federal Peoples Republic of Yugoslavia at Washington, D. C.}

The new Bulgarian\footnote{Constitution of the People's Republic of Bulgaria. Our source is a manuscript translation of the May 18, 1947 draft by Mr. Sharp of the Foundation for Foreign Affairs, Washington, D. C.} form of government is very similar to Yugoslavia in spirit, although it lacks the federal and similar Yugoslavian detail. A unicameral National Assembly is without question the "supreme organ of state authority." It elects the President of the Council of Ministers, the First President of the Supreme Court of Cassation, the First President of the Supreme Administrative Court and the Chief Prosecutor of the Republic, and all these are responsible to it. In addition to these and to the usual legislative powers, it also amends the constitution (subject to a plebiscite) and interprets the law. It cannot delegate any of these powers. It is in constant session (chapter 3).

Chapter 4 deals with the Fundamental Rights and Duties of Citizens. It grants the usual civil, political, social and economic rights. There is protection against individual as well as government intolerance, because "Every propagation of racial, national or religious hatred is punishable by the law." (Art. 62)

The 1946 act on Hungary's\footnote{Typewritten English translation furnished by the Foundation for Foreign Affairs.} form of government is very short. It starts with a statement on the foundation of the Republic and a listing of the "natural and unalienable rights of man." All citizens are assured these rights—political and economic—without discrimination "and to an extent both uniform and equal." The legislative power is exercised by a unicameral National Assembly, which elects the President of the Republic. The election procedure is regulated in detail. The President appoints the Prime Minister and other ministers. There is no mention in this act of a judiciary.


In South America, the most important recent constitution is that of Brazil. Commentators have made much of its superficial resemblance
to the American constitution, emphasizing its federal character and its separation of powers. It is, however, quite different from the American document in some fundamental aspects. One of the striking things about the Brazilian constitution is its attention to detail. There are 218 articles, usually each with several subdivisions. The article on civil rights has no less than 38 paragraphs. The subject matter varies from fundamental principles to small details, usually left to legislative acts.

As in the United States, the Federal government is one of delegated powers, most of which are stipulated in Art. 5. It is expressly prohibited in Art. 7 from intervening in state affairs except in certain cases, and intervention may be declared unconstitutional by the Supreme Court. Furthermore, Section 1 of Art. 10 expressly states "To the states are reserved all powers which are not implicitly or explicitly forbidden to them by this Constitution." However, the Federal government has much broader delegated powers than in America. They include the right to legislate on labor law, educational policies, production and consumption, subsoil wealth, conditions for practising the professions, and expropriation. In addition, Arts. 15-21 give it broad taxing powers, which include levying taxes on production, commerce, distribution, and consumption. As in many of the other constitutions, there is a limited prohibition of war.

The separation of powers follows the American rather than the European plan. But the make-up of the legislative branch follows neither. It is elected by proportional representation and though this may mean a body composed of various "splinter" political parties there is no cabinet to fall by a lack of confidence vote. The functional approach to law formation is typified by Art. 205, which established the National Council of Economy, with the duty of examining the country's economic life and suggesting necessary measures.

The judicial power is vested in a Federal Supreme Court, a Federal Court of Appeals, military judges and tribunals, electoral judges and tribunals, and labor judges and tribunals. The Supreme Court exercises jurisdiction over the same type of cases as does the American court. The labor courts are largely administrative and include a Superior Labor Court, Regional Labor Courts, and Boards of Conciliation. They have jurisdiction over both individual and collective grievances.

88Art. 5.  
89Art. 4.  
90Arts. 37-64.  
91Arts. 94-124.  
92Art. 101.  
93Arts. 122-123.
Titles Two and Three, short ones on State Justice and The Public Ministry, are followed by Title Four, the Declaration of Rights. The first part is on elections and substantially prevents self-succession or campaigning while already holding office. The second, on individual rights and guarantees, is apparently a limitation on both the Federal and state governments and on individuals. The list of rights include equality before the law, free thought and expression, secrecy of correspondence, liberty of conscience and creed, free assembly and association, right of property due process, habeas corpus, jury trial, etc. The death penalty is abolished. The exhaustive list has five interesting qualifications. Section 5 of Art. 141 provides that “propaganda for war, or violent processes to overthrow the political and social order or prejudices of race or of class shall not be tolerated.” Section 8 allows a citizen to be deprived of his rights on a refusal to fulfill armed service requirements or registration as a conscientious objector. Section 13 prohibits political organizations whose principles are opposed to plurality of parties and fundamental rights, and Section 11 attaches the important qualification to free association and assembly that it shall be “without arms.” Section 16 guarantees the rights of property except for cases of expropriation for public necessity or social interest, with just compensation.

This constitution goes further in protecting free thought than do others. Art. 203, under General Provisions, exempts the salaries of teachers and journalists, and the royalties of writers, from direct taxation. In more traditional veins, the constitution grants protection against highhanded government action in the form of writs of security where habeas corpus is not sufficient and Art. 88 makes it a crime for the President to attempt any restriction of political, individual and social rights.

Title Five is on “The Economic and Social Order.” It provides that the economic order “Shall be organized according to principles of social justice conciliating the liberty of initiative with increasing the value of human labor,” that the government may intervene in economic affairs and “monopolize certain industries or activities” and that law shall restrain abuse of economic power. There are several provisions designed to restrict the influence of foreign enterprise in Brazilian life. Subsoil wealth is regarded as distinct from surface ownership and Art. 153 provides that such wealth can only be utilized on federal concession

104 Arts. 138-140.  
105 Art. 141.  
106 Art. 141 sec. 24.  
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by Brazilians or concerns organized in Brazil. In Art. 160, the ownership of newspapers or other organs of public opinion is prohibited to foreigners. The percentage of Brazilians which must be employed in any enterprise is to be fixed by law.

The constitution is very explicit on the regulation of working conditions. Art. 157 provides that labor and social security legislation shall embody the following precepts: minimum salary to cover necessities; equal pay for equal work; premium for night work; profit-sharing by the workers; an eight-hour day; weekly holidays; annual leave; safety; prohibition of child labor; maternity leaves with pay; security in employment; recognition of collective agreements; medical aid; unemployment assistance and social security.

Title Six, on "The Family, Education and Culture," provides for free compulsory primary schooling, to be followed by free advanced schooling, where private funds are lacking. The Union is required to apply at least ten percent and the state and municipalities at least 25 per cent of their revenues to the maintenance and development of teaching.108

Venezuela109

Venezuela, with a history of fairly stable government, had a coup in October 1945 which promised a new constitution. Elections were held in 1946, and the new constitution promulgated in July 1947.

It is a long and detailed document, 253 articles in all, many of them embodying rather individual constitutional ideas. One outstanding feature is the determination to keep Venezuela free from foreign domination, an idea with widespread adherence generally in South America today. The Preliminary Declaration states that Venezuela shall be forever free and independent, working out her own destiny, and that she repudiates use of war and economic power as instruments of international politics. In the section on Individual and Social Rights, it is provided that all foreigners can have neither rights nor duties greater than those of Venezuelans.110 However, Venezuela in some ways is kinder to foreigners than is Brazil. There are no provisions barring foreigners from university professorships, or foreign corporations from owning media of communications. Indeed, foreigners with at least ten years of uninterrupted residence may be given the suffrage.

108Art. 169.
110Art. 21.
The protection of individual rights is very full, and is generally accorded to citizens and non-citizens alike. Any law, decree, ordinance, resolution or regulation attempting to diminish any of the rights is void. Typical rights are life, liberty, due process, freedom from unjustified arrest, cruel punishment or double jeopardy, freedom of travel, of expression, of thought, of religion, of assembly and association and equality before the law.\textsuperscript{111}

There are separate chapters dealing respectively with the family, education, health and social security, work, and the national economy.\textsuperscript{112} Labor legislation shall guarantee good work conditions and job stability and 16 specific labor rights: maximum hours, equal salary, minimum wages, paid vacations, employee compensation, notice and separation pay, job security for union leaders, collective bargaining contracts which may include union security clauses, conciliation, right to strike, special protection for women and minors, profit-sharing schemes, legal responsibility of the employers to fulfil social laws, and freedom from garnishment. The state guarantees the right of property, but the state may impose restrictions for the general welfare. This includes expropriation for agrarian reform and other purposes. Also the state may reserve certain industries for itself, and dictate to the others necessary economic measures. Most important is the provision for Council of National Economy (planning commission), composed of representatives of capital, labor, the professions, and the government.\textsuperscript{113}

The new constitution is preoccupied with trying to prevent future military coups and entrenched bureaucracy by directing all public employees to be at the service of the state rather than any political party, by making soldiers obedient and preventing their participation in elections, by punishment for any person usurping power, by preventing self-succession and holding of office by relatives of the chief executives.\textsuperscript{114}

In form, the Venezuelan government is a federation of states. They retain all powers not given by the Constitution to other entities. But they can never break the national unity, ally themselves with foreign governments, or cede any portion of their territory.\textsuperscript{115} The legislature has two branches. To enhance stability, members are elected together with alternates. The Judges of the Supreme Court have a voice in the discussion of procedural laws and the Ministers of Office also have a voice. During the recess of the Legislative Chambers, the Permanent

\textsuperscript{111}Arts. 29-45.
\textsuperscript{112}Arts. 47-78.
\textsuperscript{113}Art. 75.
\textsuperscript{114}Arts. 84-92, 97-100.
\textsuperscript{115}Arts. 86, 120-135.
Commission of the National Congress shall function.\textsuperscript{116} Composed of a President, Vice-President, and 21 members of the Congress, it has such powers as watching over the observance of the Constitution and citizenship guarantees, reporting on irregularities in public investments, preparing new bills, recommending which pending bills shall remain on the agenda, calling Congress into extraordinary session, etc.

The executive power is exercised by a President, who carries out his duties through ministers, liable individually for usurping authority, and responsible for decisions taken by the Council of Ministers unless they register a negative vote.\textsuperscript{117}

The ten Judges of the Supreme Court are elected by the Congress at the beginning of each constitutional period. The Court may declare the nullity or partial nullity of unconstitutional laws or ordinances or acts of executive branches. It has some original jurisdiction of charges against the President, diplomatic cases, cassation, and controversies between the states and nation.\textsuperscript{118} The judicial power is declared to be independent.\textsuperscript{119}

\textbf{China}\textsuperscript{120}

As China's new constitution goes into effect, the country theoretically enters the third and final stage of Dr. Sun Yat-Sen's three phase political evolution: a period of military unification, a period of political tutelage, which dates from the Provisional Constitution in 1931 and the Constitutional Period. Preparations for the third period were started in 1933, when scholars and legislators commenced working on a permanent constitution. The final draft was accepted by the Nationalist Party in 1936, and promulgated for final ratification by a National People's Congress. The Japanese invasion interfered with holding of the Congress. In 1946, the old draft was revised by a National Assembly and adopted after 40 days of deliberation to go into effect on December 25, 1947.

The two most striking things about the new constitution are the

\textsuperscript{116}Arts. 182-185.
\textsuperscript{117}Art. 203.
\textsuperscript{118}Arts. 218, 220.
\textsuperscript{119}Art. 211.
novel system of checks and balances and its claim to be the basic law of a united, nationalist China (in spite of civil war). Both of these appear again and again through the 14 Parts of the constitution, which are entitled respectively General Provisions, Rights and Duties of the People, the National Assembly, The President, Administration, Legislation, Judiciary, Examination, Jurisdiction of Central and Local Governments, Provincial and Hsien System; Election, Fundamental National Policy, and Enforcement and Amendment of the Constitution.

The system of checks and balances is based on a five-part separation of powers conceived by Dr. Sun Yat-Sen. He was a great admirer of Montesquieu's theories, but in adopting them, he added to the judicial, legislative, and executive branches two ancient Chinese institutions which had only been abandoned during the revolution: the civil service and the Board of Censors. The Examination Yuan of the new constitution is a very powerful civil service system. No person can be appointed to public office unless he has passed the examination, which is under the exclusive jurisdiction of the Examination Yuan. In addition, it has broad administrative powers in the government service, and also determines the qualifications for private practice in specialized professions and as technical experts. The new Control Yuan which is modelled after the Board of Censors, exercises the powers of confirmation, impeachment and control. It may appoint investigating committees and examine the papers of the various government bodies. Its powers apply to the Judiciary and to the Legislative, Executive and Examination Yuan.

The judicial power is vested in the Judicial Yuan, whose members are chosen by the President and the Control Yuan. This body attends to the adjudication of civil, criminal and administrative suits, interprets the Constitution, and unifies the interpretation of statutes and ordinances. The organization of the Judicial Yuan and of the inferior courts is to be determined by law. The Judicial and Examination Yuan members are to have no party affiliation.

The legislative power is in a unicameral Legislative Yuan, whose members represent Tibet, Mongolian leagues, racial groups in border regions, Chinese nationals residing abroad, occupational groups, provinces, and municipalities directly under the National Government.

The constitution sets up an Executive Yuan very similar to the familiar cabinet. The President of the Executive Yuan, who is analogous to a Prime Minister, is appointed by the President of the Republic

121 Arts. 83-87.
122 Arts. 90-106.
123 Arts. 77-82.
124 Arts. 62, 64.
125 Arts. 54-55.
with the consent of the Legislative Yuan. His responsibility to the latter is established by providing that he report to the legislature, and that if the legislature supports a policy resolution of statutory law a second time by a 2/3 vote, he must either submit or resign.\textsuperscript{126} There is no mention of concurrent resignation on the part of his ministers or Executive Members without portfolio.

Besides the five Yuans mentioned above, there is still another body, the National Assembly, which operates as a check on all of them because it is the constitution amending authority, at least once each six years elects the President and Vice-President and may recall the officers it elects. It consists of delegates from each administrative area (hsien), and the other groups represented in the Legislative Yuan.\textsuperscript{127}

One of the big questions in regard to the new Chinese constitution is, of course, its relation to and effect upon the current political struggle. The constitution, in posing as the basic law for the entire country, in specifying the territories included, in providing for elections, in abolishing private armies, ignores the civil war and the possession of huge territories by the Communists. To further promote national unity the national government is made supreme as against local units. Governmental power is divided into three kinds, that which is handled by the central government,\textsuperscript{128} that which may be handled by the central government, or delegated by it to the local units\textsuperscript{129} and that which is handled by the local units.\textsuperscript{130} Any dispute is settled by the Legislative Yuan of the Central government.

The relations of the individual to the state are governed by a variety of provisions. The Preamble includes as the purpose of the constitution, safeguarding the rights of the people, insuring social security and promoting the welfare of the people. Art. 1, under General Provisions, states that the Republic is founded on the Three People's Principles (of Sun Yat-Sen), Nationalism, Democracy, the People's Livelihood. Article 5, in the same chapter, states that all racial groups shall enjoy equality. Chapter 2, on Rights and Duties of the People, is concerned almost entirely with civil and political rights, plus education. The constitutional guarantees are given real force by Art. 24, which provides that any public functionary who violates the law and infringes on these rights shall be criminally and civilly liable, and the state civilly liable. There is also a general prohibition in Art. 23 against these rights being restricted by law, but it is surrounded by exceptions such as

\textsuperscript{126}Art. 57.  
\textsuperscript{127}Arts. 25-34.  
\textsuperscript{128}Art. 107.  
\textsuperscript{129}Art. 108.  
\textsuperscript{130}Arts. 109-110.
“reasons of preventing infringement on the liberties of other persons, averting an imminent crisis, maintaining social order, or advancing public interest.” These are so broad as to offer adequate excuse to cover any situation. This chapter also enunciated three duties—that of paying taxes, rendering military service, and receiving a citizen’s education.

The social and economic aspects of the relation of the individual to the state are not treated on the same plane with civil and political rights, but in the chapter on Fundamental National Policies. The subdivision on National Economy deals first of all with land, providing for equitable distribution of the land, with preference to those who use it themselves, public ownership of wealth beneath the surface, and taxation on unearned increment. Private ownership according to law is protected. It provides that public utilities and monopolies shall be in principle publicly operated, private financial institutions shall be state-controlled, and private wealth and enterprise generally may be restricted if they are deemed “obstructive to the balanced development of public economy and private livelihood.” The extensive sub-section on Social Security directs the state to provide employment, protect farmers and laborers, enforce a social insurance system, establish socialized medicine, and protect women and children.

The ten articles under Education and Culture, in contrast to many similar provisions in other constitutions, are very specific and concrete. They direct the government to supply free primary education and textbooks, supplementary free education to older people, extensive scholarships for advanced studies, national subsidization for education in the border areas and for important local projects. A large budget for educational purposes is assured by requiring that the central government spend at least 15% of its budget for such purposes, the provinces 25%, and the Hsien 35%. In addition the state is to subsidize educators, scholars, and scientists.

Indonesia

The new Indonesian Constitution represents the thinking of men who are socialists in their economic theories and extreme democrats in their political thinking. The general pattern in Southeastern Asia

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(including Burma, Malaya and Viet-Nam) begins with an independence movement existing before the war and encouraged by the Japanese. Either during or at the end of the Japanese invasion the revolutionaries proclaimed their countries to be independent of European imperialism and refused to reaffirm old allegiances when the European troops returned.

In Indonesia, after intermittent fighting and negotiating, the Dutch agreed to recognize republican control where it actually existed, and to grant it a large measure of autonomy as a member of the United States of Indonesia, which would be united with the Netherlands through the Crown. The Indonesian revolutionaries had apparently prepared a constitution beforehand, for a very complete document was promulgated within a week of the declaration of independence. It recognized its own undemocratic origin, and stipulated that a new one was to be provided within six months after the election of a People's Congress. Such a Congress has not yet been elected and government has been carried on by the National Convention created in the temporary constitution and composed of the members of the Council of Representatives, discussed below, and delegates from regional territories, corporations and other groups, to be provided by law. Meeting at least once every five years, it elects the President and Vice-President, amends the constitution, and determines the broad lines of national policy. The ordinary legislative power will be exercised primarily by the unicameral Council of Representatives.

The constitution envisaged a strong President, assisted by a ministry appointed and discharged by him. In practice the situation has been changing toward strengthening the National Convention and making the cabinet responsible to it. The interim cabinet was originally occupied chiefly with foreign affairs; recently the cabinet has been taking on administrative and executive duties in domestic affairs. This change is expected to be incorporated into the permanent constitution.

The judicial power is mentioned briefly as vested in the Supreme and such inferior Courts as shall be provided. The law will also deal with the organization and competence of the courts.

The provisions on civil and political rights are brief and to the point. Art. 27 provides for equal status under law and Art. 28 declares: "Freedom of assembly and the right to form unions, freedom of speech and of the press and similar freedoms shall be provided by law." Freedom of religion is added in the next article. Educational facilities for all and a national educational system are made obligatory in Art. 31,
and the government is responsible for the care of poor and neglected children. Art. 27 also gives the fundamental economic right to work and expect a reasonable standard of living. Art. 33 provides that the economy shall be organized cooperatively, that branches of production which are important to the state and effect most of the people and the land and water and natural riches therein shall be controlled by the state. In practise, the government now controls agriculture, the sugar industry, and the railways system through nationalization.

Southeast Asia Generally

The constitutions of the other new Asian republics are still in the preparatory stage. In India the work is under the direction of a Constituent Assembly which opened in December 1946. In January 1947 it passed an Objectives Resolution making India an Independent Sovereign Republic and Union of its various territories, in the manner of the American federation. Emphasis on rights (political and economic) and provisions against imperialism play an important role. The first can be illustrated by the following Indian Objectives Resolution: that the constitution will guarantee "to all the people of India justice, social, economic, and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action."

The Drafting Committee submitted a proposed constitution in February, 1948.138 It is a long document: 315 Articles and eight schedules. It establishes the constitution for the central government, the separate states and the trustee areas. It has eighteen parts: Union and its territory; citizenship; fundamental rights; directive principles of state policy; the Union president, parliament and judicature; the States—legislative, executive and judicial; the territories; relations between the Union and the States; finance and property; contracts and suits; emergency provisions; services (civil) under the Union and States; elections; minorities; miscellaneous; amendment; transition; commencement and repeal. It guarantees the usual free religion, speech, and similar rights139 and faces India's own special problems, abolishing Untouchability,140 titles,141 enforced142 and child labor.143 The form of government is a cross between British and American. The President is elected by an electoral college of Parliament and the state legisla-

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139 Arts. 9, 13, 14, 15, 19-22.
140 Art. 11.
141 Art. 12.
142 Art. 17.
143 Art. 18.
tutes, the ministers are appointed by the President but are responsible to Parliament. There is no provision for war or armed services. A provision not unlike our inter-intra state commerce distinction is found in Arts. 243-5, but all residual legislative powers are in the Union rather than in the states. While there is much emphasis on economic rights it cannot be said that this is a socialist constitution. One of the most interesting parts is the Directive Principles of State Policy which are not to "be enforced by any court," although it is "the duty of the state to apply these principles in making laws." The policy may be summarized as "a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

The Burmese leftist constitution of September 14, 1947 will illustrate the second, since the right of exploitation, development or utilization of natural resources of the Union or engaging in Public Utilities may only be granted "to citizens of the Union or to Corporations or Associations at least 60 per cent of the capital of which is owned by such citizens." Peasants and workers are to have a large share of the land; "there can be no large land holdings on any basis whatsoever. The maximum size of private land holding shall, as soon as circumstances permit, be determined by law." Agriculture land is also not to be granted to any person other than a citizen of the Union.

The writer has been unable to obtain a draft constitution of the Republic of Viet-Nam.

Conclusion

A few tentative conclusions suggest themselves, even from this limited review:

1. Many of the constitutions have higher sounding statements of principles than any of the 18th and 19th century models with which we are familiar. We have no right to discount these as visionary unless we discount many of the provisions of our own constitution.

2. These new documents are in great detail, containing much that we would leave to statute or court decision (e.g. rules of administrative delegation, creation of law revision commissions, statement of tax theory to be employed).

3. The English parliamentary system, with the executive chosen

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144Art. 43.
145Arts. 61-62.
146Intentionally left out. See note to Art. 281.
147Art. 223.
148Art. 29.
149Art. 30.
from and responsible to the legislature, is more consistently followed than the American system.

4. The "political" rights are, if anything, considered secondary and are supplemented by a long list of equally or more important "economic" rights. "Rights" are often coupled with corresponding "duties". The "services" to be performed by government receive as much attention as the "rights" to be protected.

5. A new doctrine of the state and war is developing with most of the constitutions denying or limiting the state's war-making function.

6. In varying ways the constitutions try to prevent fascist action without themselves becoming fascist in the process. They tend to embody the American "clear and present danger" concept.

7. The constitutions are frankly socialist and collectivist in philosophy.

8. Even in those countries where Americans have had a sizeable hand in formulating the documents, the constitutions are more leftist and advanced than the parent model. Perhaps socialism is an exportable rather than a consumable commodity.

9. It would seem that the Russian constitution at the point of "rights" and the British unwritten constitution at the point of structure have had the greatest influence.

10. Some unique elements of structure like the Control and Examination Yuans of China rise to challenge Montesquieu's tripartite classification of government functions.

11. Certain constitutional theories, generally accepted in Europe but foreign to American thought, are embodied: rights and powers in the preamble, authorization of constitutional amendment by ordinary laws, education as a national institution, some joint action of church and state.

12. Many of the constitutions are transitional documents and some are part of a political fight still in progress.

13. We would do well to watch more carefully these important constitutional experiments of our day.