

REISNER VS. STALIN: THE RSFSR CONSTITUTION OF 1918

SERGEY SHAKHRAY,

Lomonosov Moscow State University (Moscow, Russia)

KONSTANTIN KRAKOVSKIY,

Russian Presidential Academy of National Economy
and Public Administration (Moscow, Russia)

<https://doi.org/10.21684/2412-2343-2019-6-3-78-99>

In 2018, the centenary of the Constitution of the Russian Socialist Federative Soviet Republic (RSFSR) was celebrated. Scholarly debate over this legal and political document – Russia's first constitution – has continued across time up to the present day. The process of drafting the Constitution of 1918 has received very contradictory coverage in the historical and legal literature. Writers' assessments of the works on this topic have often been influenced by political circumstances. In particular, for a long time the role of the famous Soviet legal scholar and lawyer Mikhail Reisner in the preparation of the draft of the first Soviet Constitution was hushed up. This article examines Reisner's contribution to the creation of the draft of the first Soviet Constitution and his confrontation with Joseph Stalin over the issue of federation in the Constitutional Commission. These two men proposed diametrically opposed approaches to the principles and foundation of the Soviet Federation. If Stalin believed that the Soviet Federation should be built on the national-state principle, Reisner considered this principle bourgeois and offered to abandon the national principle and build a Federation of Russia as a multi-stage Federation of Soviets. The article then analyzes the content of the draft of the Constitution prepared by Professors Reisner and Goikhbarg (the "professorial project") and identifies its provisions, borrowed by the authors of the final text of the Constitution of the RSFSR of 1918. Additionally, the article describes a number of the provisions of the draft prepared by Reisner and Goikhbarg and distinguishes it from the final text of the Constitution of the RSFSR of 1918.

Keywords: legal history; Soviet constitutions; constitutionalism; Russia; federation; Reisner; Stalin.

Recommended citation: Sergey Shakhrai & Konstantin Krakovskiy, *Reisner vs. Stalin: The RSFSR Constitution of 1918*, 6(3) BRICS Law Journal 78–99 (2019).

Table of Contents

Introduction

1. Mikhail Reisner's Project on the Federal Form of Government in Russia

2. The "Professorial Project" (Reisner-Goikhbarg)

Conclusion

Introduction

After the October Revolution, well-known constitutional legal scholar and, at the same time, member of the Bolshevik Party Mikhail Reisner, at the suggestion of Vladimir Lenin, became the head of the department of legislative projects, a department which he himself created under his own initiative at the People's Commissariat of Justice. In 1918, it was precisely in this post that Reisner participated in the *drafting of the first Soviet Constitution*.

Questions about the preparation of the first Soviet Constitution have been analyzed in the literature quite widely, and not without criticism. Various aspects of the Constitution of 1918 were discussed shortly after its adoption¹ and debate over the document still continues to the present day.² Taking into consideration the fact that the historiography of the issues relating to the first Soviet Constitution is quite extensive,³ and the key subject of this article, we will appeal only to the history of the drafting of the first Soviet Constitution, Reisner's participation in this process and his

¹ Крупская Н.К. Конституция Российской Социалистической Федеративной Советской Республики [Nadezhda K. Krupskaya, *The Constitution of the Russian Socialist Federative Soviet Republic*] (Moscow: Publishing House of the All-Russian Central Executive Committee of the Councils of Workers, Soldiers, Peasants and Cossack Deputies, 1918); Глебов Н.П. Наш Основной Закон. Разъяснение Конституции Российской Социалистической Федеративной Советской Республики [Nikolay P. Glebov, *Our Basic Law. Explanation of the Constitution of the Russian Socialist Federative Soviet Republic*] (Moscow: Publishing House of the All-Russian Central Executive Committee of Soviets of Workers, Soldiers, Peasants and Cossack Deputies, 1918).

² Плотников А.А. Конституция РСФСР 1918 года (историко-правовое исследование): Дис. ... канд. юрид. наук [Andrey A. Plotnikov, *The Constitution of the RSFSR of 1918 (Historical and Legal Research): Thesis for a Candidate Degree in Law Sciences*] (Moscow, 2003); Земцов Б.Н. Конституционные основы большевистской власти (первая советская Конституция 1918 г.) // Отечественная история. 2006. № 5. С. 65–74 [Boris N. Zemtsov, *The Constitutional Foundations of the Bolshevik Government (First Soviet Constitution of 1918)*, 5 *The History of Russia* 65 (2006)].

³ Historiographical review is given in the work of O.I. Chistyakov (Чистяков О.И. Конституция РСФСР 1918 года [Oleg I. Chistyakov, *The Constitution of the RSFSR of 1918*] (Moscow: Moscow State University Publishing House, 1984)) and the dissertation of A.A. Plotnikov (Plotnikov 2003).

confrontation with Joseph Stalin over the fundamental issue of federation for the formation of the Soviet state. Up to now, this issue has remained in the background of the Russian literature.⁴

This article fills the existing historiographic vacuum.

1. Mikhail Reisner's Project on the Federal Form of Government in Russia

By one of the ironies of history, or maybe by just a historical accident, the real work on the draft of Russia's first constitution began on 1 April 1918. On that day, the chairman of the All-Russian Central Executive Committee Yakov Sverdlov, as tasked by the Central Committee of the Communist Party, presented to the Central Executive Committee (surprisingly, the meeting began at 10.50 p.m.) a report on the creation of a commission to draft a constitution.⁵

Let us direct our attention to the very mixed backgrounds of the sixteen members of the Constitutional Commission in view of their education. No more than nine members of the Commission had university degrees, and just five of those had degrees in law. Only Mikhail Reisner and Gregory Gurvich were experts in the field of *state law*. The Bolsheviks constituted a large majority (twelve out of sixteen) of the members of the Commission and they, of course, could not allow an uncontrolled discussion. This, in the end, predetermined whose projects and proposals were supported although it should be noted that the Commission held heated debates on many issues and above all about the dictatorship of the proletariat, the nature and functions of the Soviets, the principles of the Soviet Federation, etc. In the declassified memoirs of the members of the Constitutional Commission and the

⁴ In the scholarly works of the Soviet period, Reisner was presented in a negative light, almost as an enemy of the Soviet state. Гурвич Г.С. История Советской Конституции [Gregory S. Gurvich, *History of the Soviet Constitution*] 200–216 (Moscow: Socialist Academy Edition, 1923); Первая Советская Конституция (Конституция РСФСР 1918 года): Сборник документов [First Soviet Constitution. *The Constitution of the RSFSR of 1918: Collection of Documents*] XV–XVI (I.Ya. Vyshinsky (comp.), Moscow: Legal Publishing House of the People's Commissariat of Justice of the USSR, 1938); Ронин С.Л. Первая Советская Конституция (к истории разработки Конституции РСФСР 1918 г.) [Samuel L. Ronin, *The First Soviet Constitution (to the History of Drafting of the RSFSR Constitution of 1918)*] (Moscow: State Publishing House of Legal Literature, 1948); Филимонов В.Г. Первая Советская Конституция [V.G. Filimonov, *The First Soviet Constitution*] 27–28 (Moscow: State Publishing House of Legal Literature, 1960); Советские Конституции. Справочник [Soviet Constitutions. *Encyclopedia*] 114 (P.S. Romashkin (ed.), Moscow: State Publishing House of Political Literature, 1963). In modern works, this topic was touched upon by A.N. Medushevsky: Медушевский А.Н. Демократия и авторитаризм: российский конституционализм в сравнительной перспективе [Andrey N. Medushevsky, *Democracy and Authoritarianism: Russian Constitutionalism in a Comparative Perspective*] (Moscow: Russian Political Encyclopedia, 1997); Медушевский А.Н. Политическая история русской революции [Andrey N. Medushevsky, *Political History of the Russian Revolution*] (Moscow; St. Petersburg: Center for Humanitarian Initiatives, 2017).

⁵ Протоколы заседаний Всероссийского центрального исполнительного комитета 4-го созыва: Стенографический отчет [Minutes of Meetings of the Central Executive Committee of the Fourth Session: *Verbatim Report*] 66 (St. Petersburg: State Publishing House, 1919).

editor of the newspaper *Izvestia* (Известия) Yury Steklov, we can read that the work of the Commission nevertheless took place in a friendly atmosphere. Despite the heated debates, the conversations between the members of the Commission remained companionable – everyone was eager to find the most correct solutions to the numerous issues to be dealt with by the Commission.⁶

Later, when recalling the work of the Constitutional Commission on the development of the draft of the Constitution, Reisner noted that the material accumulated by the Commission “was embarrassingly diverse.” He wrote about this, without mentioning names:

Some brought to the Commission’s meeting the sacred books of bourgeois science – thick volumes of such state scholars as Jellinek. Others thought of creating a federation of labor syndicates in the form of Soviets, a kind of an anarchist union of professional associations. Still others took the extreme point of national liberation and were ready to turn the Federation of Soviets into an alliance of countless Russian nations from the first days. Some others sought to step over the era and to get closer immediately to the threshold of a communist society. Some others slavishly kept the already emerging division of the former empire into a mass of small, almost independent republics. Some others ...⁷

As we can see, the time of consensus had not yet come. However, the Central Executive Committee kept the Commission under constant control: the Commission had to report on its work on a weekly basis.⁸

We can see from the first protocol of the meeting of the Constitutional Commission of the All-Russian Central Executive Committee (5 April 1918) that some members of the Commission had only a remote idea of how to approach their work on the draft of the Constitution. The members of the Commission (Berdnikov, Pokrovsky, Avanesov, Bogolepov, Smirnov, Schreider, Steklov, etc.) who spoke during the general discussion on the work on the project proposed different approaches. In particular, the discussion revolved around the issue of the structure and basis of power: to construct first the local authorities (the bottom) and then to determine the structure of supreme power, or vice versa “starting from the top.”⁹

⁶ Данилевская И.Л. М.А. Рейснер о правовом государстве // Труды Института государства и права Российской академии наук. 2013. № 6. С. 160 [Inna L. Danilevskaya, M.A. Reisner on the Rule of Law, 6 Texts of the Institute of State and Law of the Russian Academy of Sciences 152, 160 (2013)].

⁷ Рейснер М.А. Я.М. Свердлов и Первая Советская Конституция. (Из личных воспоминаний.) Рукопись // НИОР РГБ. Ф. 369 (В.Д. Бонч-Бруевич). Картон 402. Д. 12. Л. 3 [Mikhail A. Reisner, Ya.M. Sverdlov and the First Soviet Constitution. (From Personal Memories.) Manuscript, Manuscript Research Department of the Russian State Library, F. 369 (V.D. Bonch-Bruевич), Card 402, D. 12, P. 3].

⁸ ГА РФ. Ф. Р-1235. Он. 19. Д. 3. Л. 50 [State Archive of the Russian Federation, F. R-1235, Op. 19, D. 3, P. 50].

⁹ ГА РФ. Ф. 6980. Он. 1. Д. 3. Л. 2–7 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 3, P. 2–7].

The meaningful and distinctive contributions of Mikhail Reisner and Joseph Stalin provide some clarity to the issue.

Reisner suggested that the drafting should begin with the definition of the supreme power, and only afterwards develop the regulation of its lower echelons (local councils).¹⁰ Stalin, referring to the decisions of the Third Congress, which adopted a number of documents on the federation, suggested first to define the key question as to how to understand the federal republic ("which is defined differently") and afterwards to determine the relationship between the central and local authorities.¹¹

After an exchange of views, it was proposed (by Sverdlov) to the members of the Commission that Reisner and Stalin present a report on the main issue of the Russian Constitution – the federation of the Russian Republic. It was assumed that each would write a report laying out his own vision of the issue.¹²

On 10 April 1918, Reisner presented his report on the main principles of the Constitution of the Russian Socialist Federative Soviet Republic (RSFSR) at the meeting of the Central Executive Committee. Stalin did not come to the meeting because he was otherwise busy, as it was said. Let us express the historical hypothesis that this absence of Stalin at the meeting on 10 April *was not accidental*. Stalin could not present a detailed report to the Commission by virtue of his knowledge and educational background. He understood that his three short theses would look inadequate compared to the professorial report by Reisner. Due to the fact that Reisner had kindly presented a hard copy of his report to the members of the Commission, one of the copies reached Stalin. At the meeting of the Central Executive Committee held two days later on 12 April, Stalin built his oral presentation on criticism of Reisner's report and presented his three short theses on the federation. In this form, Stalin's intellectual work had already acquired a certain conceptual image.

It is necessary to make two preliminary remarks before we set forth the essence of Reisner's project, unusual and even, at first glance, extravagant.

First, let us appeal to one important statement from an article by Steklov in which he wrote in particular:

The Soviet system as the first state-wide experience of socialist government features such *an original phenomenon in world history, that the approach to it with certain standards, borrowed from the theory and practice of traditional state law, is absolutely not necessary*.¹³ (emphasis added)

¹⁰ ГА РФ. Ф. 6980. Оп. 1. Д. 3. Л. 7–8, 9–10 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 3, P. 7–8, 9–10].

¹¹ *Id.* at 12.

¹² On 8 April 1918, Sverdlov reported to the Central Executive Committee at its regular meeting on the beginning of the work of the Commission and subsequently reported every week. ГА РФ. Ф. Р-1235. Оп. 19. Д. 4. Л. 1–2 [State Archive of the Russian Federation, F. R-1235, Op. 19, D. 4, P. 1–2].

¹³ Стеклов Ю.М. Конституция Советской России // Известия ВЦИК Советов рабочих, солдатских, крестьянских и казачьих депутатов. 1918. 4 апреля. № 72(336) [Yury M. Steklov, *The Constitution*

Indeed, why was it necessary then to focus on the concept of a federation, formed in the “bourgeois” state law?¹⁴ Did the “Soviet Federation” also represent a different order? In our opinion, Reisner proceeded precisely from such an assumption, which is why his project, in our view, should not be regarded as initially erroneous and simply extravagant or even avant-garde. It was a search by a *scientist for a form of the government adequate to socialism*, based precisely on Marxist theory. We believe that in his thoughts about the construction of a fundamentally new, and the first in world history, “socialist federation” he showed himself to be a more consistent Marxist than his opponents. As for the evaluation of his project, we will return to it after presenting Reisner’s project itself.

Our second remark is that the project, presented by Reisner before the Constitutional Commission of the All-Russian Central Executive Committee on 10 April 1918 was not spontaneous or made hastily in five days. It represented the core ideas of his long reflections. In the period between the two revolutions of 1917, Reisner published a number of works devoted to various aspects of the state structure of the new Russia, including the new principles of federation-building. Let us consider some of his ideas on the issue of federation.

In a small work titled “Revolution and Federation,” published shortly after the February Revolution,¹⁵ Reisner proceeded from the assumption that national feelings were fading, the proletariat was internationalizing. He wrote,

Nationality and territory are the words, which combination should truly be permanently erased from the life of people.¹⁶

He believed that in the new Russia there must be a different and more important basis for the structure of the state than nationality.

In line with the Marxist approach, he assumed that,

of Soviet Russia, News of the All-Russian Central Executive Committee of Soviets of Workers, Soldiers, Peasants and Cossack Deputies, 4 April 1918, No. 72(336)].

¹⁴ Яценко А.С. Международный федерализм: Идея юридической организации человечества в политических учениях до конца XVIII века [Alexander S. Yashchenko, *International Federalism: The Idea of the Legal Organization of Mankind in the Political Teachings Until the End of the 18th Century*] (Moscow: Printing House of Imperial Moscow University, 1908); Яценко А.С. Теория федерализма: Опыт синтетической теории права и государства [Alexander S. Yashchenko, *The Theory of Federalism: The Experience of the Synthetic Theory of Law and the State*] (Yuryev: Printing House of K. Mattisen, 1912); Яценко А.С. Что такое федеративная республика и желательна ли она для России [Alexander S. Yashchenko, *What Is a Federal Republic and Is It Preferable for Russia?*] (Moscow: Printing House of the Partnership of Ryabushinsky, 1917); Кокошкин Ф.Ф. Автономия и федерация [Fedor F. Kokoshkin, *Autonomy and Federation*] (St. Petersburg: Leshtukovskaya Steam Early Printing Press “Svoboda,” 1917).

¹⁵ Рейснер М. Революция и федерация [Mikhail A. Reisner, *Revolution and Federation*] 32 (St. Petersburg: I.R. Belopolsky, 1917).

¹⁶ *Id.* at 21–22.

The material culture precedes spiritual culture,

and he put the economic organization of the country at the forefront and proposed that,

For the division of Russia into regions, for the organization of self-government, the economic interests should be taken into account before everything else.¹⁷

Only after the decision on questions about economic self-determination is made can questions about national self-determination be raised. It does not matter if the boundaries of a region due to economic necessity will not coincide with the boundaries of national settlement. National rights should not be tied to a piece of land. Reisner believed,

If you create a national formation in the framework of resettlement, it would lead to a monstrous result – an agricultural Russia would be cut off from the seas – by Kyrgyzstan, the Cossack republic, Ukraine, Latvian and Estonian regions.

So, on the basis of an economic union, and where necessary the national principle, local political autonomy should be created, and in such a way the region, province, county creates for itself, within the framework of a general law, its own legislative, governmental and judicial institutions; with their help it issues the laws and its own special constitution, and it manages finances, public health, education, the police and all that is of local interest.¹⁸

We can find similar thoughts in his pamphlet “Revolution, Nationality, and Union System (Federation)” published in the same period.¹⁹ He emphasized that it must not be nationality that should come first, but freedom. The national question is resolved only by freedom. And freedom is impossible without a union structure, autonomy, self-government. “The Federal Republic sets free from nationality.”²⁰

Let us note that Reisner was one of the few legal scholars at the beginning of the 20th century who interpreted the principle of federation as limiting public authority in order to protect civil liberty.²¹ According to Reisner, under the federal structure “the

¹⁷ Reisner 1917, at 28.

¹⁸ *Id.* at 30–31.

¹⁹ Рейснер М.А. Революция, национальность и союзный строй (федерация) [Mikhail A. Reisner, *Revolution, Nationality, and Union System (Federation)*] [s.l.; s.n.].

²⁰ *Id.* at 31.

²¹ Лебедев А. Образы федеративной России в отечественной науке конституционного права досоветского периода // Сравнительное конституционное обозрение. 2011. № 6. С. 125–141

autocrat nation divides itself into a number of increasingly wider territorial unions," which means limiting the people's sovereignty and the "transforming of an absolute, unlimited sovereign into a moderate and limited governor."²²

The report by Reisner to the Constitutional Commission of the All-Russian Central Executive Committee became the apotheosis of *his theory of socialist federalism*.²³ Reisner, while developing his previously expressed ideas, stated that this "federation in the spirit of socialism" could not be based on the national principle, which, in his opinion, was already losing its value under capitalism, and even more so under the conditions of socialism. He said that

one can only speak about the cultural self-determination on the basis of the national principle, but not about the political one.²⁴

He also rejected the purely territorial principle, stating that,

Territorial organization and territorial federalism absolutely cannot serve as a basis for solving state issues in the Socialist Republic. For our federalism is not a union of territorial governments or states, but a federation of social and economic organizations.²⁵

He also named "the three main forces" that should be taken into account in the organizing of the Russian Federation:

1) *Social-economic unions* (professional, production associations, cooperatives, etc.) that acquire public-legal nature and state importance;

2) *Unions of a communal type* (such as the Kronshtadt and Petrograd communes), other "local territorial unions" that appeared in place of old country councils and local governments, some "small Soviet organizations";

3) *Pure political organizations* of a "revolutionary and class nature," leading the struggle for the dictatorship of the proletariat with the help of the court, army

[Anton Lebedev, *Images of Federal Russia in the Domestic Science of Constitutional Law of the pre-Soviet Period*, 6 *Comparative Constitutional Review* 125 (2011)].

²² Рейснер М.А. Государство. Ч. 3: Государственные формы [Mikhail A. Reisner, *State. Part 3: State Forms*] 259 (Moscow: Printing House of the Partnership of I.D. Sytin, 1912).

²³ Reisner's report was published in the newspaper *News of the All-Russian Central Executive Committee* on 12 April 1918 (No. 72). Five days later, in the same newspaper, Reisner published the article "Soviet Power and the Federation (on the Issue of the Constitution)," which opened discussions in the press about the Constitution. In the article, he outlined his views on the socialist federation as a federation of Soviets, previously published in a number of publications and a report to the Central Executive Committee Commission on the drafting of the Constitution.

²⁴ Report of a Member of the Commission M.A. Reisner on the Basic Principles of the Constitution of the RSFSR (ГА РФ. Ф. 6980. Он. 1. Д. 4. Л. 37 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 4, P. 37]).

²⁵ *Id.* at 48.

headquarters and the Red Army. In addition to this there are also “legislative, governmental, judicial bodies” since they are in charge of national tasks.²⁶

Reisner finalized his plan of the Russian Socialist Federation organization in the following provisions:

The RSFSR is a free socialist community of all working people united in *class, labor, professional, economic and political unions*. These unions should form local federative communes for social economy, the organization of public life and cultural activities. Such local community is called a *commune*.

According to Reisner, the commune should become the *basic unit of the federation*, which did not contradict the ideas of Marx, formed under the influence of the practice of the Paris Commune. At the head of each commune there is the Council of Labor Deputies (according to the figurative expression of Reisner “a living crystal of the proletarian dictatorship”) formed from the elected representatives, who are members of the communes of economic and social unions and formations.

Communities form a federal union – *a province* – which is headed by a congress of communal Soviets or a provincial Council of Deputies, consisting of representatives of communal Soviets, as well as representatives of major unions.

Several provincial federations form a *regional union* under the name of a *regional republic* (at the head of it there is a regional congress of Soviets, formed from the representatives of provincial federations and the most important economic and social unions of the region).

Finally, the regional republics form a *union* under the name of the Russian Socialist Federative Soviet Republic, headed by the council of workers, farmers, laborers and labor Deputies of the Russian Federation.²⁷

Reisner saw the future in the formation of the RSFSR with other socialist countries for the “universal triumph of socialism, prosperity, peace and brotherhood of nations” in the Union of the United Socialist Federative Republics.²⁸

At the meeting on 10 April, Reisner’s ideas were supported by Mikhail Pokrovsky, who recognized as “valuable” the rejection of the “national moment” by Reisner

²⁶ ГА РФ. Ф. 6980. Он. 1. Д. 4. Л. 41–42 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 4, P. 41–42].

²⁷ *Id.* at 49–50. The criticism of this anarcho-syndicalist idea of the federation, by the definition of Reisner’s opponents, was given in the literature of the “Stalin period” by G.S. Gurvich and others. Gurvich 1923, at 25–29. S.L. Ronin criticized the project by Reisner in a rather rough manner, using words in the spirit of the epoch, such as “with great swagger he spoke ...”, “ugly and dangerous anarcho-syndicalist tendencies,” “direct undermining and collapse of political power ...”, etc. Ronin 1948, at 76. It is interesting that some modern Russian researchers recognize the form of the territorial-state structure of Russia, proposed by Reisner, as quite acceptable. Скибина О.А. Государственно-правовые взгляды М.А. Рейснера: Дис. ... канд. юрид. наук [Olga A. Skibina, *State Legal Views of M.A. Reisner: Thesis for a Candidate Degree in Law Sciences*] 198 (Belgorod, 2015).

²⁸ ГА РФ. Ф. 6980. Он. 1. Д. 4. Л. 50–51 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 4, P. 50–51]. In fact, Reisner predicted the coming of a world socialist system, the CMEA, the Warsaw Pact.

as the basis for building a federation and the elimination of the nation's right to self-determination.²⁹ On the contrary, the Bolsheviks Smirnov, Steklov and Sverdlov criticized the ideas in Reisner's report and reminded him that the "transitional period" to socialism, which the country was undergoing, dictated the preservation of the national-territorial principle,³⁰ as well as the right of the nation to self-determination. Yet, the opponents of Reisner accepted that "under socialism," when it is built, the national principle will fade into the background, and the economic principle will rise to its full height. In other words, Reisner's opponents, in fact, accepted that his project was simply *ahead of its time*.

In the article "The Draft of the Constitution of the Russian Socialist Federative Soviet Republic," published in the *News of the All-Russian Central Executive Committee* (*Известия ВЦИК*) on 12 April, devoted to the review of the draft prepared by Reisner, it was predicted that, in connection with the objections of some members of the Constitutional Commission, the project, for certain, would undergo significant changes.³¹ And so it turned out.

The report by Stalin on the same issue was considered at a meeting of the Constitutional Commission of the All-Russian Central Executive Committee on 12 April. Stalin began his rather tongue-tied report, as it can be described from the transcript, with criticism of Reisner's position, and the main criticism of this position he saw in ignoring the transition period (in Stalin's words, "This Constitution is temporary, a thing, designed for a certain period").³² Stalin referred to the decisions of the Third Congress of Soviets, emphasizing their directive nature for the Constitutional Commission, which stated that the Russian Republic was the Federation of Soviet Republics of the *peoples of Russia*, and the regions that make it up are distinguished by a special spirit and *national composition of the population*.³³ He insisted on the idea that the adoption of Reisner's constitutional plan could create even more confusion in the state economy.

The principal provisions of Stalin's report were formulated in the document "On the Type of Federation of the Russian Soviet Republic":

1. The Constitution's plan, currently being drafted by the Commission, should be temporary, designed for a period of transition from the bourgeois system to the socialist system. Hence, questions about the dictatorship of the proletariat and the rural poor, about the organization of power as an expression of such a dictatorship, and so on, are questions that do not attach to the established socialist system, where there will be neither classes nor an apparatus of power.

²⁹ ГА РФ. Ф. 6980. Он. 1. Д. 4. Л. 5–7 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 4, P. 5–7].

³⁰ *Id.* at 8–22.

³¹ Известия ВЦИК. 1918. 12 апреля. № 72 [News of the All-Russian Central Executive Committee, 12 April 1918, No. 72].

³² ГА РФ. Ф. 6980. Он. 1. Д. 5. Л. 1–6 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 5, P. 1–6].

³³ *Id.* at 3.

2. The starting points of the Constitution should be: on the one hand, the decision of the Third Congress of Soviets on the Russian Soviet Republic as the “Federation of Soviet Republics,” “the peoples of Russia” and, on the other hand, the existence of areas, differing in their particular way of life and ethnic composition, in other words, the areas inhabited by different nations requiring broad autonomy on a federation basis.

3. In view of this, the subjects of the federation in Russia should not be the separate cities, resolving their affairs autonomously, and not all areas in general, the economic characteristics of which (if any) should be represented by the relevant autonomous bodies of the Supreme Council of the National Economy, but completely certain areas, characterized by life and national composition.³⁴

In a sufficiently substantive and emotional response to Stalin’s criticism (at that time it was still allowed and safe to do so), Reisner³⁵ first noted that he had always held the views of the Bolsheviks, even more, that in the spring of 1917 he had been against the Constituent Assembly, while the Bolsheviks supported it and only later changed to his viewpoint, and, additionally, that he realized the Constitution was designed for a transitional period. Reisner explained that he, like other members of the Constitutional Commission, stood for a strong central authority, but that he was concerned about the origin and the legitimacy of this authority. He insisted that the Bolsheviks had taken

power not on the basis of a fist... In order for this power to be strong, it must not only have a bullet, it must have sound principles and a historical, indisputable rationale. Essentially, these points, that I offered you, are nothing else, but an introduction to the reality of the constitution.³⁶

Reisner again rejected the “bourgeois principle of the national federation” proposed by Stalin and insisted on the *federation of the Soviets* as truly socialist, and he defined the representation in the Soviets as economic and professional.

For those who denied his construction of the Federation of Soviets, he threw the following words in a heated verbal attack:

You have no right to call yourself the Congress of workers and peasants, for where is it [i.e. the power] concentrated? – at the Congress of Soviets, and

³⁴ ГА РФ. Ф. 6980. Оп. 1. Д. 5. Л. 37 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 5, P. 37]. Published in the book, Gurvich 1923, Appendix X, at 146–147. It is interesting that, for unknown reasons, this document was not included in the collected works of J.V. Stalin.

³⁵ ГА РФ. Ф. 6980. Оп. 1. Д. 5. Л. 7–19 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 5, P. 7–19]. Not a single legal scholar of the history of the first Soviet Constitution has given attention to this vivid statement made before the Constitutional Commission of the All-Russian Central Executive Committee on the preparation of the draft Constitution. The authors of this article are the first to analyze these texts from the State Archive of the Russian Federation.

³⁶ *Id.* at 9 and the following.

from where are the Soviets? – they come from these organizations [*economic, professional*].³⁷

And further he threw in temper seditious words:

We have to state that the power, *that exists now, is a terrible power, despotic and this power, excuse me, is not the peasant's power*. Why? Because it is the power, that now, by way of the Federation, has accumulated from the places, came here, condensed at the top and performs common tasks.³⁸ (emphasis added)

In other words, in his angry polemic Reisner named one of the most important features of the new government – its ultracentralization, separation from the people. By analogy with the well-known thesis of the preamble to the U.S. Constitution of 1787, “We, the people of the United States ...,” Reisner insisted on the following construction:

We, the peasant and workers, labor people ... united in a socialist-economic organization, through our Soviets we execute this power in this way.³⁹

Further, he defended quite in the spirit of the theoretical statements of Marx the idea of a commune as a “living unit,” the most important basic unit of the Soviet state, “the atom of a socialist federation.” Reisner specified that as a lawyer he should tend to strive for a uniform form, but being a Marxist, he put real life and real interests in the first place. He saw the interests of the representatives of various Soviet organizations, professional associations, socialist farms, etc., in the representation at Congresses of Councils, and he saw the socialist essence of a new type of federation, *the Federation of Soviets*, in this union of different units (Stalin called this “chaos”). We admit that it was not at all a dogmatic approach.

Inspired by the speech given by Sverdlov on the freedom from party affiliation of views, the members of the Commission differed in their proposals for the structure of the Soviet Constitution. They criticized both reports. Schrader proposed his own report as opposing both points of view, and he called Stalin’s construction “typically imperialistic, typical fist”⁴⁰ (Samuel Ronin will later write about this episode of the discussions:

³⁷ ГА РФ. Ф. 6980. Он. 1. Д. 5. Л. 12 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 5, P. 12].

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 22.

In his immodest argument against the principle of the dictatorship of the proletariat Schrader stopped at nothing to call the provisions, put forward by comrade Stalin, neither more nor less than “imperialist constructions.”⁴¹

Ronin proposed basing the federation on an exclusively *territorial principle*: to preserve the former division into governorates, counties and townships (almost a century later this plan, touted as “original,” was put forward by the Liberal Democratic Party of Russia (LDPR) (ЛДПР) party leader Vladimir Zhirinovskiy).

Bogolepov supported the principle of centralization and clear borders of competence between the center and the local areas.⁴² Berdnikov declared himself a supporter of a unitary republic.⁴³ Latsis definitely supported Stalin.⁴⁴ Only the intellectual Mikhail Pokrovsky, in general, supported Reisner’s proposal.⁴⁵

At this meeting of the Constitutional Commission, Reisner put forward a new “draft resolution on the general debate.”

He sought recognition of the following key points:

1. The full authority of the supreme power in the Russian Socialist Federative Soviet Republic belongs to the union of all workers, peasants, laborers, labor Cossacks, etc.

2. In order to exercise this power, the workers create Soviets and Congresses of Soviets of workers, peasants and other labor deputies.

3. Soviets and Congresses are divided into rural, parish, county, city, provincial, regional and central or common for the entire Russian Socialist Federative Soviet Republic.

4. Each Soviet or Congress of Soviets exercises its power within the boundaries of a particular locality and within the limits established by this Constitution.

5. Soviets and Congresses of the Soviets form within the borders of the Russian territory a single and indivisible federation, which is called the Russian Socialist Federative Soviet Republic.

6. The central power of the federation is exercised by the All-Russian Congress of Soviets of Workers, Soldiers and Peasants Deputies, by the Central Executive Committee and by the Council of the People’s Commissars of the Russian Socialist Federal Soviet Republic.

7. If in other countries the Socialist Federative Soviet Republics would form, the Russian Socialist Federative Soviet Republic, for the purpose of the universal triumph

⁴¹ Ronin 1948, at 81.

⁴² ГА РФ. Ф. 6980. Он. 1. Д. 5. Л. 25–28 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 5, P. 25–28].

⁴³ *Id.* at 28–31.

⁴⁴ *Id.* at 35.

⁴⁵ *Id.* at 32–34.

of socialism, the prosperity of the world and the brotherhood of nations, is included in their highest federal union of the United Socialist Federative Soviet Republics as a full member, on the basis of equality and freedom.⁴⁶

At the next meeting of the Constitutional Commission on 19 April the debate on the projects of Reisner (seven points) and Stalin (three points) continued. Reisner's project was again supported by Pokrovsky and Berdnikov; Steklov favored the adoption of Reisner's project with several addendums from Stalin's project.⁴⁷ The same amicable position was demonstrated by Reisner himself, who said that it was possible to combine his project and some of the provisions of Stalin's project. But most importantly, Reisner referred to the authoritative work of Lenin – "State and Revolution" – wherein, as it turned out, the form of federation that he proposed is mentioned.⁴⁸

Stalin still desperately and adamantly defended his project through criticism of Reisner's project, calling its design a "bacchanalia of the federation."⁴⁹ V.A. Avanesov supported Stalin's project. Of Stalin's project he said that it "gives a completely definite answer, the answer to the question, what should the federation be that we are going to build, while the project of comrade Mikhail Reisner does not give such an answer," for it suggests the federation which essentially cannot include any national units.⁵⁰ Sverdlov supported Stalin's project in his speech. He stated that the draft prepared by Reisner was not acceptable as a basis for the general provisions of the Constitution, but some of its articles could be used in the relevant sections of the Constitution.⁵¹

Thus, following the discussion at the Constitutional Commission meeting of the All-Russian Central Executive Committee on 19 April 1918, a vote was taken on three projects: Stalin's, Reisner's and the project of the maximalist Socialist Revolutionaries.

⁴⁶ ГА РФ. Ф. 6980. Он. 1. Д. 6. Л. 42 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 6, P. 42]. It is interesting that maximalist Socialist Revolutionary Berdnikov supported Reisner's project, explaining that he had already freed himself from the "boundless federation." Berdnikov proposed including in Reisner's draft the first section of the draft Constitution developed by the maximalist Socialist Revolutionaries.

⁴⁷ *Id.* at 2–4.

⁴⁸ ГА РФ. Ф. 6980. Он. 1. Д. 6. Л. 6–7 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 6, P. 6–7]. Later (in 1948) S.L. Ronin will write that, "Comrade Stalin has most energetically exposed the arrogant attempt of Reisner to refer in support of his project of the 'communal federation' to the work of V.I. Lenin's *State and Revolution*." Stalin indicated a negative assessment given to the project by Reisner by Lenin as worthless and harmful. Ronin 1948, at 83. In fact, Stalin said the following: "Here [Reisner] refers to Comrade Lenin. I allowed myself to note that, as far as I know, and I know it well, Lenin said that this project [Reisner's] is useless." ГА РФ. Ф. 6980. Он. 1. Д. 6. Л. 10 (стенограмма заседания) [State Archive of the Russian Federation, F. 6980, Op. 1, D. 6, P. 10 (Transcript of the Meeting)].

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

⁵¹ *Id.* at 8–9.

Reisner's project received three votes; Stalin's project received five votes.⁵² *Mikhail Reisner lacked two votes to turn the history of Soviet Russia in a completely different direction.*

During the article-by-article discussion of the draft prepared by Stalin, structural and editorial amendments and clarifications were made, including the principal one: it was suggested not to use the word "federal" in the text at all (the vote was four in favor and four against, thus the suggested amendment did not pass).⁵³

Reisner saw the direction in which the discussion was going and made a desperate attempt to return to the normal order of work. He gave an impassioned speech, which we consider necessary to present virtually in full:

I have to say that I am immensely embarrassed personally by this order of discussion, which is currently going on, because the concepts that have now been voted for and were included in the draft that comrade Stalin presented, for the most part are not found there ... Now I must say that it is not completely clear to me, for example, I follow with the greatest tension and cannot understand the thoughts of the author who introduced these clauses. [It was Stalin.] Now I listen to his motivation and I clearly see a whole series of uncoordinated thoughts, where I don't find the slightest point of logic, which contradict from the beginning to the end, which all the time go back to the fundamental question, which I don't know, whether they decided or not. I must say that I cannot blame individual comrades, because now we are confronted with an issue of immense importance, I am afraid to say that we are not aware of the responsibility that we bear now, we don't cook this or that machine for practical purposes in a light kitchen. We faced an extremely important, serious task, the creation of the first socialist Constitution, the question of socialism and state power and the proletariat. In these articles we must establish the basic principle of the state, thereby establishing the workers' councils of deputies and congresses, and what happens? Now we confuse everything, being like the blind in a few ... [Here, there is an omission in the text.]⁵⁴

⁵² Not identified in the transcript of the meeting.

⁵³ At the same time, Stalin proposed to exclude Cossacks from the description of the social composition of society (workers and poor peasants), since they form a social category, not a class ("What are Cossacks – a special kind of social category; ... not necessary ..." *Id.* at 15). Reisner objected, pointing out that they do not form just a social category, that among the Cossacks there are many descendants of the ancient clans, and that this is an agricultural population. They were excluded. First, on paper, and in the 1920s the Soviet government carried out "work" to exclude them materially (mass repressions against the Cossacks in the mid-1920s). The ancestors of both of the authors of this article – Terek and Don Cossacks – suffered.

⁵⁴ *Id.* at 23–24.

The authors of this article believe that this was one of the best speeches made during the preparation of the draft of the first Soviet Constitution.

The text of the general provisions of the Constitution of the RSFSR, approved by the Constitutional Commission of the All-Russian Central Executive Committee, in particular, stated the following:

2. The Russian Republic is a free socialist society of all the working people of Russia, united in urban and rural Deputy Soviets.

3. Deputy Councils of the regions, differing in special way of life and national composition, are united in autonomous regional unions, headed by regional congresses of the Soviets and their executive bodies.

4. Regional Soviet unions unite on the basis of a federation into the Russian Socialist Republic, which is headed by the All-Russian Congress of Soviets, and in the period between congresses – the All-Russian Central Executive Committee.

This document, published on 25 April in the newspaper *News of the All-Russian Central Executive Committee*, was included in the final text of the RSFSR Constitution of 1918 (Arts. 9–12).

When evaluating the draft fundamentals of the Russian Socialist Federation proposed by Reisner, we consider it our duty, first of all, to put aside the unfounded accusations against Reisner which asserted that his project would mean the destruction of the Soviet power and was in practice an “anti-Leninist” project.⁵⁵

Fortunately, in recent years researchers have sought to understand calmly and objectively the essence of the project on the federation authored by Reisner. And there we see the range of opinions. So, according to S.F. Udartsev, the structure of Reisner’s project on the federation was reminiscent in some features of the projects on the federation of M.A. Bakunin and P.A. Kropotkin (i.e. anarchist, in essence). With all the differences in the views of Kropotkin and Reisner, they nevertheless in common believed *to organize a federation on the most decentralized basis and “bottom-up.”*⁵⁶ P.A. Ol and R.A. Romashov stated that Reisner spoke from the standpoint of the ethnocultural concept of the nation and pursued the idea of implementing national legal personality in an extraterritorial form.⁵⁷ To the contrary,

⁵⁵ For example, S.L. Ronin wrote: “In contrast to the Reisner project, the implementation of which would have meant a *direct undermining and collapse of the political power of the working class*, Comrade Stalin especially stressed the conclusion about the vital need for a strong and powerful dictatorship of the proletariat ...” (emphasis added). Ronin 1948, at 80.

⁵⁶ Ударцев С.Ф. Политическая и правовая теория анархизма в России: история и современность [Sergey F. Udartsev, *The Political and Legal Theory of Anarchism in Russia: History and Modernity*] 202 (Moscow: Graduate School of Law; Forum, 1994).

⁵⁷ Оль П.А., Ромашов Р.А. Нация (генезис понятия и вопросы правосубъектности) [Pavel A. Ol & Roman A. Romashov, *Nation (the Genesis of the Concept and Questions of Legal Personality)*] 80–81 (St. Petersburg: Law Institute Publishing House, 2002).

A.N. Lebedev⁵⁸ believed that, generally, Reisner fully shared the point of view of the outstanding pre-revolutionary Russian federal scientist A.S. Yashchenko, who stated that

any national, fragmenting federalism is only the extreme expression of provincialism, a relic of the stage of the political life of humanity ... to implement such a national program would turn back the entire historical course of humanity. Therefore, in every provincial-tribal federalism there is a certain share of anarchism, the denial of existing states.⁵⁹

First of all, in our opinion, it should be noted that Reisner's project fits into the principles of *Marxism*, as the author himself understood and interpreted it, and did not contradict the statements of Lenin, in particular, set out in his work "State and Revolution."⁶⁰ And although at the present time precisely these characteristics have turned into their opposite and are called accusations now, we try to evaluate objectively the doctrine and projects of Reisner. As the sad fate of the federations created on the basis of the national principle defended by Stalin (the USSR, Czechoslovakia, Yugoslavia) shows, the latter became a kind of "time bomb." It finally exploded, burying the named federations (they all fell apart).

2. The "Professorial Project" (Reisner-Goikhbarg)

In June 1918, the People's Commissariat of Justice began to work in parallel with the Constitutional Commission of the All-Russian Central Executive Committee on the draft of the Constitution. On 11 June, at the meeting of the People's Commissariat of Justice, under the report presented by the People's Commissar for Justice P.I. Stuchka, it was decided to entrust the collection of all the material on the Constitution to Reisner.⁶¹ Somewhat later, Stuchka pointed out that this work had begun under the instructions of Lenin. O.I. Chistyakov supposed that this decision was motivated by the desire to speed up the work on the project.⁶²

⁵⁸ Лебедев А.Н. Советские государственствоведы о проблемах и перспективах развития советской федерации (1918–1985 гг.) // Труды Института государства и права Российской академии наук. 2013. № 6. С. 25 [Alexander N. Lebedev, *Soviet State Scholars on the Problems and Prospects of Development of the Soviet Federation (1918–1985)*, 6 Texts of the Institute of State and Law of the Russian Academy of Sciences 24, 25 (2013)].

⁵⁹ Yashchenko 1912, at 767.

⁶⁰ Ленин В.И. Государство и революция. Гл. III.4 «Организация единства нации» / Ленин В.И. Полное собрание сочинений. Т. 33 [Vladimir I. Lenin, *State and Revolution*, ch. III.4. *Organization of the Unity of the Nation* in Vladimir I. Lenin, *Complete Set of Works*. Vol. 33] 51–54 (5th ed., Moscow: State Publishing House of Political Literature, 1969).

⁶¹ Gurvich 1923, at 82.

⁶² Chistyakov 1984, at 24–25.

On 4 July 1918,⁶³ the draft developed by the board of the People's Commissariat of Justice – specifically by the professors-editors Reisner and Goikhbarg – was published in *Izvestia*. Subsequently, Stuchka clarified that, in fact, these two professors were the *authors* of the project and the project was only discussed at the board of the People's Commissariat of Justice.⁶⁴

Gregory Gurvich was the first writer to criticize the “professorial project.” However, he allowed himself to moderate his criticism and noted graciously that everything good in the “professorial project” was connected with the influence of the project of the Constitutional Commission of the All-Russian Central Executive Committee.⁶⁵ This statement raises doubts in the minds of the authors of this article on the following grounds.

A particularly stinging objection of this critic was connected to the fact that there was no such term as “dictatorship of the proletariat” in the “professorial project.” Gurvich was not satisfied with the fact that already Article 1 of the Reisner-Goikhbarg project stated quite definitely that,

All power within the RSFSR belongs to the entire working population of the country united in the Councils of Deputies.

Let us suppose that Reisner and Goikhbarg, even if they were Marxists by their beliefs and romantic supporters of the socialist revolution, did not use the term, which was followed by “iron power, won by violence and supported by violence.”⁶⁶ Time and history have shown how right these two legal scientists were in their fears.

Sixty years will pass before A.I. Lukyanov will write that Reisner argued against the wording of Article 10 of the Constitution, reading that the power “belongs to the entire working population of the country, united in urban and rural Soviets,” stating that it can be interpreted as the transfer of state power only to those elected to the Soviets. *The failure of this position*, as Lukyanov noted, was convincingly proved by the Bolsheviks.⁶⁷ As we see, on the contrary, this criticism is *ungrounded*. The wording

⁶³ G.S. Gurvich was mistaken in pointing out that this project was published on 1 July (on that day, Monday, *Izvestia* did not come out at all). Later, this mistake was repeated in other publications on this topic.

⁶⁴ Стучка П.И. Учение о государстве и Конституции Р.С.Ф.С.Р. [Peter I. Stuchka, *The Doctrine of the State and the Constitution of the RSFSR*] 102 (Kursk: Agitation Department of the Provincial Committee, 1922).

⁶⁵ Gurvich 1923, at 78 and following.

⁶⁶ *Id.* at 84.

⁶⁷ Лукьянов А.И. Развитие законодательства о советских представительных органах власти. Некоторые вопросы истории, теории и практики [Anatoly I. Lukyanov, *The Development of Legislation on the Soviet Representative Bodies. Some Questions of History, Theory and Practice*] 58 (Moscow: Yuridicheskaya literatura, 1978).

of Article 10 of the Constitution of the RSFSR is “*fully adopted*” from the Reisner-Goikhbarg project (Art. 1).

Gurvich criticized the Reisner-Goikhbarg project in terms of the status of the Councils of Deputies because it contained the words, “...not so much, what the Congress can and should do, but what it has no right to do.”⁶⁸

However, it is necessary here to defend the legal construction proposed by Reisner and Goikhbarg. First, an entire chapter (3) of the “professorial project” was devoted to the rights of the central government, and the defining of rights was carried out in a “*positive form*.” All these questions could be solved both by the Congress of Soviets and by the All-Russian Central Executive Committee and the Council of the People’s Commissars. Secondly, in chapter 4 of the project, “in order to prevent potential restoration of the capitalist order and bourgeois property,” there were fixed “restrictions” that even the Congress of Soviets could not overcome⁶⁹ (twelve clauses concerning the prohibition of the annulment of the nationalization of land, industry, etc., the abolition of workers’ weapons, separation of church and state, etc.).

Later, referring to the issue of “restrictions” of the legislature of the highest authority, Reisner explained that his project with Goikhbarg proposed these restrictions in order to ensure the basic and sole right of the working people, namely the right for a social revolution and the establishment [as stated in the text] of the socialist order.⁷⁰ It is unlikely that, analyzing the content of these “restrictions,” the authors of the project can be suspected of “undermining Soviet power” and threatening the revolution, as Gurvich and other ruthless critics of the “professorial project” asserted. Moreover, we note that the consolidation of “restrictions on changes to the Constitution” is fairly common in constitutional law practice.⁷¹

The status of the All-Russian Central Executive Committee (fifteen clauses vs. six) and the status of the Council of the People’s Commissars (fourteen clauses vs. eleven) were more developed in the “professorial project” than in the Constitution of the RSFSR. There were separate chapters in the “professorial project” “On the People’s Commissariats” (ch. 7) and “On Revising and Changing the Constitution” (ch. 8) that were absent in the text of the Constitution of the RSFSR, and this sets the “professorial project” apart.

Let us note one more remarkable and undoubtedly positive feature of the “professorial project” which favorably distinguished it from all other projects:

⁶⁸ Gurvich 1923, at 85.

⁶⁹ According to a caustic remark made by G.S. Gurvich, these items “were put in the wrong place, in a completely inappropriate form, they lost all their impressiveness and aroused only sad thoughts.” *Id.* at 86. This criticism seems to us to be completely unfounded and simply spiteful.

⁷⁰ Рейснер М.А. Государство буржуазии и РСФСР [Mikhail A. Reisner, *State of the Bourgeoisie and the RSFSR*] 334 (Moscow: State Trust “Petropechat,” 1923).

⁷¹ “The provisions of chapters 1, 2, 9 of the Constitution of the Russian Federation cannot be revised by the Federal Assembly” (part 1 of Art. 135 of the Constitution of the Russian Federation).

it contained an entire chapter on legislation (ch. 9, "On Legislative and Governmental Acts," Arts. 72–79). Here, it stated the supremacy of the Constitution in relation to current legislation, the prohibition of "retroactive law" (except in cases specified by law), the hierarchy of laws, the procedure for resolving conflicts of acts of Soviets, etc. Today, there is *still* no special "law" in Russia about the laws.

Moreover, a little later, comparing his and Goikhbarg's project with the text of the adopted Constitution, Reisner marked the advantage of the first over the second from a formal legal point of view. He wrote that the adopted Constitution completely

*does not know the particular concept of constitutional law. Or, rather, it recognized only the moral value of it, that may be characteristic for the highest of socialist reorganization of society. Perhaps out of fear of return to the path of bourgeois constitutionality, the basic law of the Soviets deliberately denies special forms for its publication or revision: it is established in the same order in which other laws of the republic are passed through the supreme body – the Russian Congress of Soviets.*⁷²

To the contrary, the "professorial project" emphasized the constitutional act from the formal point of view and made it difficult to abolish it and change it by establishing special conditions and methods of revision, that should distinguish it from the ordinary legislation (Arts. 63–70 of the Reisner-Goikhbarg project).⁷³

Considering the text of the RSFSR Constitution of 1918 in connection with the drafting of the Constitution of the USSR (1936), Stalin wrote after the text of the last section (VI): "VII. On Amending the Constitution."⁷⁴ The need for this section was defined in 1918 by Reisner and Goikhbarg, but their idea was not accepted then.

Moreover, Reisner recognized this particular procedure for revising the Constitution not as a mere formality, but as a "*special guarantee of the rights for the entire working class as a whole.*" Reisner wrote that:

The current constitution takes the standpoint of recognizing and guaranteeing the rights of public groups and associations in only one respect, this is in the matter of proclaiming national self-determination to individual nations or nations (Article 8 of the Constitution of the RSFSR). The project of the People's Commissariat of Justice went much further in this respect. It was decided to give a formal expression to the guarantees of the rights of the working and exploited people and, moreover, in the most basic content of these rights – *the right for socialism*. Both the restrictions, written down in the draft, and the

⁷² Reisner 1923, at 335.

⁷³ Gurvich 1923, Appendix XVII, at 212–213.

⁷⁴ РГАНИ. Ф. 3. Он. 51. Д. 34. Л. 10–17 [Russian State Archive of Recent History, F. 3, Op. 51, D. 34, P. 10–17].

special requirement, that their cancellation could be made only by a special constitutional act, have precisely this meaning.⁷⁵ (emphasis added)

In other words, the authors of the “professorial project” proposed a system of defensive institutions of socialism, a number of formal and material guarantees against the restoration of the “old order.” But their proposals were not heard. Only in the subsequent constitutions of the country were these ideas, in fact, embodied.

The Constitution project developed by Reisner and Goikhbarg was reviewed on 3 July 1918 by a commission of the Central Committee of the Russian Communist Party of the Bolshevik, headed by Lenin. We could not establish the course of the discussion and its results, but it is obvious that a number of provisions of the “professorial project” were taken into account and “migrated” to the final text of the draft Constitution of the RSFSR, which was presented to the Fifth Congress of Soviets.

Despite his fierce criticism, Gurvich, nevertheless, had to admit that from this “professorial project” the final text of the Constitution borrowed the idea of paragraphs X and XII of Article 27 (Arts. 21 and 22 of the Constitution), Article 1 of the project is attached to Article 2 of the “General Provisions” and together they constituted Article 10 of the Constitution. We consider it important to note that a *description of the emblem and the flag of Soviet Russia* was borrowed from the “professorial project” for the text of the Constitution.⁷⁶ Our comparative analysis of the “professorial project” and the text of the Constitution shows that the developers of the Constitution used the text of the draft somewhat more widely although without the literal reproduction of certain provisions.

Conclusion

In concluding the story of the Reisner-Goikhbarg project, especially in light of the sometimes fierce criticism, which has been heard for decades and has not decreased in the modern literature, let us present the assessment of the project given by Ya.M. Sverdlov. After the completion of the procedure for adopting the first Constitution of the RSFSR, he, according to the memoirs of Mikhail Reisner, repeatedly told Reisner that,

The only mistake of the draft of the People’s Commissariat and his [Reisner’s] proposals was that the authors did not take into account the times and were too eager to come forward ...⁷⁷

⁷⁵ Reisner 1923, at 335.

⁷⁶ Gurvich 1923, at 91.

⁷⁷ НИОР РГБ. Ф. 369 (Бонч-Бруевич). Картон 402. Д. 12. Л. 5 [Manuscript Research Department of the Russian State Library, F. 369 (Bonch-Bruevich), Card 402, D. 12, P. 5].

In other words, as acknowledged by Sverdlov, the “professorial project” was not “a means for destruction of the Soviet power,” but was simply ahead of its time.

In 1993, Mikhail Reisner’s idea of abandoning the national principle of building a federation was used in the drafting of the current Russian Constitution. Its authors S.S. Alekseev and S.M. Shakhrai rejected the selfsame national principle.

References

Гурвич Г.С. История Советской Конституции [Gurvich G.S. *History of the Soviet Constitution*] (Moscow: Socialist Academy Edition, 1923).

Оль П.А., Ромашов Р.А. Нация (генезис понятия и вопросы правосубъектности) [Ol P.A. & Romashov R.A. *Nation (the Genesis of the Concept and Questions of Legal Personality)*] (St. Petersburg: Law Institute Publishing House, 2002).

Рейснер М.А. Революция и федерация [Reisner M.A. *Revolution and Federation*] (St. Petersburg: I.R. Belopolsky, 1917).

Рейснер М.А. Государство. Ч. 3: Государственные формы [Reisner M.A. *State. Part 3: State Forms*] (Moscow: Printing House of the Partnership of I.D. Sytin, 1912).

Ронин С.Л. Первая Советская Конституция (к истории разработки Конституции РСФСР 1918 г.) [Ronin S.L. *The First Soviet Constitution (to the History of Drafting of the RSFSR Constitution of 1918)*] (Moscow: State Publishing House of Legal Literature, 1948).

Ударцев С.Ф. Политическая и правовая теория анархизма в России: история и современность [Udartsev S.F. *The Political and Legal Theory of Anarchism in Russia: History and Modernity*] (Moscow: Graduate School of Law; Forum, 1994).

Чистяков О.И. Конституция РСФСР 1918 года [Chistyakov O.I. *The Constitution of the RSFSR of 1918*] (Moscow: Moscow State University Publishing House, 1984).

Information about the authors

Sergey Shakhrai (Moscow, Russia) – Vice-Rector, Professor, Lomonosov Moscow State University (1, Bldg. 13–14 (4th education building) Leninskie Gory, GSP-1, Moscow, 119991, Russia; e-mail: s9895929@yandex.ru).

Konstantin Krakovskiy (Moscow, Russia) – Professor, Department of State Studies, Institute of Public Administration and Civil Service, Russian Presidential Academy of National Economy and Public Administration (82 Vernadskogo Av., Moscow, 119571, Russia; e-mail: kp.krakovskiy@igsu.ru).