1. Post-colonialism and post-socialist constitutional change

This chapter will introduce the key concepts that will be used throughout this book. In so doing, it will also describe the peculiarities of post-colonialism in the former Soviet empire. This process has strongly influenced the development of these constitutions.

1 WHAT IS POST-COLONIALISM?

There is no universally accepted legal definition of post-colonialism, and there probably cannot be.¹ The UN have taken a formal stance and speak of post-colonialism as the achievement of freedom by ‘non-self-governing territories’.² For our purposes, we define ‘post-colonialism’ as the end of colonial dominance of one political entity over a territory with another political identity.³ Post-colonialism therefore involves two processes: first, the withdrawal of imperial dominance by the colonial power; and, second, the process of constructing independent statehood by the former colony.⁴ This naturally involves a process of decolonisation. This book will primarily be focused on the role of constitutional change in the second step.

Colonial dominance may adopt a wide variety of forms ranging from the formal direct dominance of the colonial power by incorporating the colonised

² General Assembly of the United Nations 1514 (XV), Declaration on the granting of independence to colonial countries and peoples of 14 December 1960. This definition has the disadvantage that it puts it into the hand of the colonial power whether the definition applies: if the metropolis does not create a ‘territory’ in the sense of an administratively identifiable entity, but incorporates the lands into its own structures, then the UN definition does not apply even if the situation in these lands is typically colonial.
³ In this sense, this term was coined by the German national economist Moritz Julius Bonn in 1932: Wolfgang Reinhard, Kleine Geschichte des Kolonialismus (Kröner 1996) 280–81. The Oxford English Dictionary (2nd edn, 1989 and updates) defines decolonisation as the ‘withdrawal from its former colonies of a colonial power; the acquisition of political or economic independence by such colonies’.
⁴ Dane Kennedy, Decolonization: A Very Short History (OUP 2016) 1–3.
The post-Soviet as post-colonial territory into its own political structures and formal sovereignty to a very indirect rule e.g. over a ‘protectorate’ that may keep its internal structures and is required to follow the colonial power only in foreign and military matters.  

In a historical perspective, all these constructions were and are interpreted as empires because they involve a colonial power that exercises political, economic and cultural domination over a subordinated periphery. Colonised territories need not be situated overseas but can also be adjacent to the colonial power if they have a political or ethnic identity different from the political centre and are subjected to some sort of domination, i.e. if they are ‘subaltern’. 

A decisive factor of the ‘colonial’ nature of political control, therefore, is whether or not the affected territories and their indigenous inhabitants become an equal part of the colonial power and its demos. Thus, even territories that are formally made part of the colonial power may have colonial structures if their inhabitants enjoy a lesser status than the inhabitants of the metropolis. For this reason, Ireland in the 19th century, French Algeria or the Caucasian and Central Asian possessions of Tsarist Russia or the Soviet Union were colonies because their formal incorporation into the empire primarily benefitted the British, French or Russian settlers, but not the local populations. 

Wherever such a colonial dominance comes to an end, we enter a period of post-colonialism. This process of withdrawal can also take place in a number of different ways, from peaceful to violent. But, once the colonial power has withdrawn and a new political entity must build its independence, the new polity is immediately presented with important decolonising challenges of building external and internal sovereignty as well as state-building and nation-building (see Table I.1). This post-colonial process takes place within an international system that ultimately privileges ‘the nation-state, with its claim to territorial integrity and sovereignty, along with the premise that that sovereignty derives in some fashion from “the people”’. For this reason, a key part of creating statehood and attaining nationhood is the drafting of a new constitution that asserts a new state apparatus and new national identity. 

There is no uniform way to build a post-colonial state. Post-coloniality is riven with tension. As David Chioni Moore writes, ‘the cultures of postcolonial lands are characterized by tensions between the desire for autonomy and

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5 Baxi (n 1) describing how there is always a conception of violence underpinning colonialism.
7 Kennedy (n 4) 1.
a history of dependence [...] between resistance and complicity, and between imitation (or mimicry) and originality. When the colonial power withdraws, the formerly subordinate territory faces a number of problems of becoming a full-fledged state. Depending on the forms that colonial rule had taken and on the condition that the withdrawing colonial power leaves its former colony in, this may require the creation of a personality in international law. It also requires establishing a state structure that can exert legitimate control over its territory. Apart from the needs of creating such a legal personality and building an effective state system, there also is the additional need to create an ‘identity’ for the new state. This may involve intensive nation-building and, as the case may be, overcoming or reacting to the legacy of colonial ethnopolitics which sometimes are based on the principle of divide and conquer. Especially in situations where the colonial power had exercised direct rule and reduced the colonial populations to mere wards of a paternalist colonial ruler, this population needs to learn how to deal with its own affairs without being led by an external agent. This process is aptly named emancipation – the root of this word being the institution of ‘emancipacio’ in Roman law which meant the formal act in which a father released his son from his paternal power. It also naturally involves coming to terms with and building official narratives of national history in the construction of a new post-colonial identity.

Depending on context, the new post-colonial state will strive to distinguish itself from the formerly colonial power and eliminate the mechanisms of domination. To take just one example, if the colonial power grants its colony independence without reducing its own economic or military influence or without taking its citizens back, the former colony may wish to do away with these remnants of colonial dominance in order to gain true sovereignty. This may include measures such as closing the military bases of the colonial power, expelling its citizens who reside in the former colony, or ending the property rights of the colonial power and its citizens over assets on the territory of the

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9 Where the colony had been a ‘protectorate’ or a similar construct it may have had a – though limited – personality in international law. In such cases, the process of decolonisation does not require the creation of a new international legal person, but it may want to obtain international recognition of the acquisition of full formal sovereignty. On this, cf. Jörn Axel Kämmerer, ‘Das Völkerrecht des Kolonialismus: Genese, Bedeutung und Nachwirkung’ [2006] VRÜ 397, 409–11; Alexander Orakhelashvili, ‘Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo’ [2008] 12 Max Planck Yearbook on International Law 1.
The post-Soviet as post-colonial colony, e.g. by way of nationalisation. It also can involve the adoption of particular symbols of independent nationhood—often which hark back to a prior period of independence.

The concrete tasks of creating state infrastructure depends on the structures that the colonial power has left behind. Where the new state can take over the old structures, all it has to do is to convert them into structures of the new state. Public officials, judges and military staff who served the colonial regime may be sworn to serve the new state. Taking over the old personnel may require some sort of political or professional lustration to guarantee the loyalty of these personnel. It also might require attempts at changing mentalities or modes of thinking inherited from the colonial past. Where, however, the former colonial power withdraws much of its power infrastructure at the end of colonial rule, the new state needs to create wider parts of its state infrastructure from scratch. That would involve the education of new functional elites for the state, the economy, and culture and science. Finally, it also involves the creation of new institutions—such as the office of the president or a national bank—to facilitate domestic rule.

2 POST-COLONIALISM AND CONSTITUTIONAL CHANGE

This part will turn to the relevant literature on post-colonialism and constitutional change. When analysing this relationship, we need to differentiate two situations. First, and the better explored example in the literature, the former colonised territories must cope with the constitutional questions that the acquisition of independence involves. Much of the existing literature focuses on the colonial constitutional experience of the ‘Global South’. Chief among these is building a legitimate system of public authority that can overcome the legacy of colonialism. This book will explore some of the similarities and differences between post-socialist Europe and Eurasia (what was once called the ‘Second World’) and this ‘Third World’ experience.

Second, the former colonial centre has to deal with the loss of its empire, of its power, of its economic and other prerogatives in other parts of the world. Most of the literature studies the relationship between post-colonialism and constitutional change in the formerly colonised and newly independent territories. It stresses how post-colonial constitutions were viewed as a means to both

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Post-colonialism and post-socialist constitutional change

‘modernise’ and overcome the ‘backwardness’ of the colonial rule while also establishing a new independent national identity. Others stress the way that new constitutions must seek to define the identity of the newly independent nation-state. There is less scholarly work on the impact of decolonisation on the constitutional development of a former colonial power. This book will therefore begin the process of seeking to understand the impact of the loss of empire on constitutional development in the former imperial centre.

2.1 Post-Colonial Constitution-Making in Formerly Colonised Territories

The literature on constitution-making in formerly colonised areas explores heavily what is often called the Global South. We do not propose to describe this entire literature. Instead, we seek to understand some of its basic concepts. First, this literature differentiates between two forms of the post-colonial constitution-making process. In the revolutionary scenario, a new elite seizes power, expels the former colonial elite and oversees decolonisation. In this situation, we can expect the new constitution to (at least formally) be radically different from its predecessor. In another scenario, the new elite negotiates the process of decolonisation. Although this negotiated process is not necessarily peaceful or even similar in every place, negotiated processes of decolonisation are marked by the consensual release of power by the former colonial power. A negotiated process of decolonisation is frequently characterised by more continuity, both in the elite as well as the constitutional practices of the former colonial power. In this situation, we can expect the constitution to bear more similarities to its colonial-era system of public power.

Decolonisation in many parts of the former British Empire is a good example of the negotiated constitutional change scenario. In Asia in particular, the British colonial centre negotiated its way out of empire. In these contexts, there was significant imitation of the political system of the former metropolis in

12 In detail: Brun-Otto Bryde, ‘Constitutional Law in “Old” and “New” Law and Development’ [2008] VRÜ 10. On the other hand, the reception of foreign constitutional models in order to ‘modernise’ its own system is not always a failure, as the South East European reception processes of the 19th and 20th centuries show: Herbert Küpper, Einführung in die Verfassungssysteme Südosteuropas (Verlag Österreich/Berliner Wissenschaftsverlag 2018).
13 Dann (n 11); Hailbronner (n 11).
15 Gordon Wood, The Creation of the American Republic (University of North Carolina Press 2011), describing how the United States Const. was an attempt to overcome the despotism of British colonial rule.
The post-Soviet as post-colonial

the constitutions of the new states. In the Asia Pacific region, Cheryl Saunders and Graham Hassell describe the continuing and significant influence of the ‘legal institutions and practices of those responsible for their bondage’. But this similarity should not be overstated, as detailed case studies show that there were also important changes even in the process of negotiated decolonisation. For instance, in South Asia, H. Kumarasingham’s concept of ‘Eastminster’ describes how the UK Westminster model of government was adopted but with particular changes. These changes in some cases reflected the peculiarities of colonial rule (such as executive centralism) as well as important ways to accommodate the vast diversity of the South Asian context.

In revolutionary situations, by contrast, we see a stronger – at least formal – rejection of the existing colonial model. In this context, Julian Go describes how post-colonial constitutions are viewed as instruments of emancipation and transformation, which themselves describe national projects led by powerful ideological parties. In the Latin American context, we see this in the creation of constituent assemblies that would write new constitutions seeking to correct the wrongs of poverty and colonial rule. In Asia and Africa, we saw this in the adoption of post-colonial constitutional systems in which all constitutional power was centralised in order to ensure the unchallenged, vanguard leadership of the new revolutionary leadership (frequently socialist in nature). Although this constitutional centralisation claimed formally to be a revolutionary break, it often recreated the centralisation of imperial governance. This is a key reminder that not all processes of decolonisation are themselves emancipatory – and is arguably a critical part of the ‘experience’ of many post-colonial nations. This is a major difference to the post-authoritarian lens which universally expects, after the end of a repressive system, a move towards constitutional democracy.

The literature also describes the heightened problems of state-building in post-colonial constitution-making. Post-colonial states must embody the idea of a ‘homogenous nation’ but this ideal often clashes with ‘the cultural, racial, and religious diversity of postcolonial societies, contributing to internal

16 Hassell and Saunders (n 14) 13; see also H Kumarisingham (ed.), Constitution-Making in Asia: Decolonization and State-Building in the Aftermath of the British Empire (Routledge 2016).
17 Kumarisingham (n 16).
19 Some of these are the ‘countries of socialist orientation’ mentioned in the introduction.
20 Dann (n 11) 16–17.
21 Baxi (n 10).
divisions, violent conflict, civil war, secession, and partition’. Furthermore, these challenges must be overcome in a compressed time as new countries achieve the formal attributes of statehood ‘practically overnight’. This can frequently lead to conflict and authoritarian constitution-making in which the ‘repressive and authoritarian instruments inherited from the colonial state’ are used to keep the state together.

A final key insight from the literature on decolonisation and constitution-making is that the influence of post-colonialism is not only present at the time of independence. Instead, post-colonial rhetoric can periodically recur throughout the independent polity in response to a perception that the current polity remains improperly in thrall to an old colonial master. For instance, in Latin America, the current trend towards breaking with neoliberalism and laissez-faire capitalism is described as a decolonising approach.

This book seeks to move the post-colonial lens to the post-socialist world in Europe and Eurasia, what some have called the ‘Second World’. Similar questions of state-building and identity creation are present. For instance, we will describe below how post-colonial rhetoric has appeared in Central Europe (most notably, Hungary) decades after the end of the Soviet empire (Chapter 6.). We identify four different fields of constitutional choices that take place during a process of decolonisation. Each are interrelated and affect one another but are important to analytically separate.

First requires the constitutional establishment and specification of external sovereignty. In a post-colonial situation, external sovereignty primarily aims at consolidating independence and at preventing a repetition of colonial dependence and external subjugation. This requires the establishment of an international legal personality for the newly independent state, and this new state needs to find its place in the international community including, if so desired, membership in international organisations and adherence to multilateral international treaties. The constitutional side of external sovereignty includes the rules that specify the relationship between domestic and international law.

Second, internal sovereignty encompasses the provisions which seek to ensure control over internal territory by building a legitimate state which the population(s) of the territory recognise(s) as authoritative. One goal of the rules on internal sovereignty is to reduce and, finally, abolish the factual influ-

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22 Dann (n 11) 24.
23 Dann (n 11) 17.
24 Dann (n 11) 27.
ence and sometimes legal control that the former colonial power may continue after independence. Aspects of this process may concern the economy (are citizens of the former colonial power allowed to retain property of economic assets, or are these nationalised or given to the citizens of the new state?), demographics (are citizens of the former colonial power allowed to continue their residence in the new state – and if so, what is their status? – or are they forced to leave the state?) or military questions (is the former colonial power allowed to keep some military presence or bases?). Another goal of the establishment of internal sovereignty is to create a public authority which has the factual capacity and the political legitimacy to control the state territory and its population. Factual control of the territory may face many challenges from building administrative and other infrastructure (traffic routes, schools, social services, etc.) to fighting back alternative and competing power agents (e.g. secessionist movements, traditional social entities such as clans and tribes, organised crime, religious leaders aspiring for worldly power, external economic agents, etc.), i.e. to create and maintain the new state’s monopoly of power over its territory.

Third is constitutional state-building, or the rules that create and arrange the institutions of the state in relationship to one another. This aspect therefore is a question of what some call ‘constitutional design’: what is the arrangement of power in the new decolonised constitution? In a post-colonial setting, the main question regarding constitutional design may not be whether it is sufficiently democratic and rights-based, but whether this arrangement of power can overcome state weakness and contribute to establishing and consolidating external and internal sovereignty.

Fourth is nation-building: the activities designed to forge the existing population(s) and society (societies) on the territory into one people that accepts the new state, in which the new state can be vested and founded. Colonial rulers often strive to divide the population of a colony into various groups and to ground their dominance in these antagonisms. They actively try to prevent the colonial population from becoming a force that may endanger the colonial rule. In such a situation, the newly independent state faces the challenge to overcome old antagonisms, to create a platform which allows the various groups and factions within a population to merge into a nation that both accepts the state and is the basis for mutual solidarity of its members. The differences the colonial masters instrumentalised – and sometimes introduced by ethnic engineering – to divide society must be converted into factors of cohesion. One constitutional means to achieve this cohesion is the use of constitutions to tell stories of national history and collective memory. As a consequence, many post-colonial constitutions include provisions on a (true, imagined or even manipulated) common past and on common factors of a national identity able to overcome the differences. Although the traditional perspective of the
nation-state favours a nation founded in ethnicity, nation-building is not necessarily ethnic. This approach touches upon the ‘identity’ of the population(s) of the new state, constitutional text on nation-building often includes important provisions on the official language as well as the status and autonomy of ethnic minorities. This process will have different challenges in different places and is frequently contested.

2.2 Post-Colonial Constitution-Making in the Former Colonial Power

Decolonisation has an impact of the constitutional development in the (former) imperial centre as well. One example is France where, in 1958, the parliamentary system of the 4th Republic was replaced by the hybrid presidential-parliamentary (or, less precise, ‘semi-presidential’) system of the 5th Republic. This transition had many reasons, but one major motive was that the general feeling that the parliamentary system was too weak both to retain the colonies and to grant them independence. The last years of the 4th Republic were the time of what Pierre Avril termed the ‘décolonisation tournante’ (oscillating decolonisation). Hopes were that a strong president could lead France out of this dilemma which culminated in the Algerian War. These hopes proved right: General de Gaulle was strong enough a figure to cut the Gordian knot, and the hybrid system of the 5th Republic provided him with the necessary constitutional background. We will show in various parts of this book that the centralisation of power is a strategy for the former colonies to consolidate their new independence. The French example shows that the

27 Traditionally, such mixed systems were classified as ‘semi-presidential’. There are many arguments to be said against this term, e.g. that it concentrates on the president and leaves aside parliament, i.e. that it carries a semantic bias. For this reason, we prefer ‘hybrid’ (parliamentary-presidential or presidential-parliamentary). This term, which is being used more and more in constitutional comparatist studies and political science, is neutral and better describes such a system: Andriy Tyushka, ‘Semi-Presidential Systems’ in R Grote, F Lachenmann and R Wolfrum (eds), The Max Planck Encyclopedia of Comparative Constitutional Law (OUP 2018).


imperial centre as well may take refuge to this strategy to muster the inner strength required to give up empire.

We argue in this book that the former colonial power also uses constitutional law to address the four interrelated categories mentioned above. A number of special issues arise in the former colonial centre in relation to these categories. With respect to nation-building, for instance, constitutions play an important role in the redefinition of the former colonial power’s political identity (self-contained instead of imperial) often amidst lingering bouts of imperial nostalgia.30 Second, in the constitutional rules regarding external sovereignty, constitutions frequently express a need to maintain a special relationship with the former colony or colonies, ranging from political and economic ties to questions of joint cultural heritage. This may also encompass compensation for colonial injustice. The constitution of the former colonial power may view international law as the proper post-colonial instrument to provide the special ties with a legal framework. Third, the fate of the dominant colonial nationality returning to the centre from the colonies or remaining in now independent former colonies might be addressed by the constitution. Fourth, constitutions might include provisions describing the fate of members of the formerly colonised peoples still residing in the colonial power. None of these questions needs to be formally addressed in the colonial centre’s constitution, but can frequently shape its development. Finally, constitutional law ideas can play a role in shaping the attempt to use international law to maintain or reconstitute the old imperial entity.

3 THE COLLAPSE OF THE SOVIET EMPIRE AS A PROCESS OF DECOLONISATION

The dissolution of the Soviet empire can be understood as beginning a process of decolonisation across the former Soviet bloc countries of East Europe and Eurasia. In Part 1, we discussed the criteria for defining the dominance of one political entity over another as colonial. The critical factor is not geographical

30 A good example for such imperial nostalgia is the German Const. of 11 August 1919, the so-called ‘Weimar Constitution’. Although Germany lost its colonies in 1918, and there was no prospect of regaining either them or other colonial territories, the – otherwise very democratic – Weimar Const., in its articles on the federal distribution of powers between the Reich and the federal states, declared colonial affairs (art. 80) and colony-related legislation (art. 6(1) no 2) to be the exclusive competence of the Reich. The contemporary literature on constitutional law argued that these colony-related provisions were irrelevant because of the Versailles Peace Treaty of 28 June 1919: Otto Meißner, *Die Reichsverfassung* (Reimar Hobbing Verlag 1919) 118. In arts 118–158 of that Treaty, Germany ceded all its colonial rights in overseas territories and states to the victorious Allied Powers.
remoteness, but a lack of equality in the distribution of power. If we can identify a dominant centre and a subaltern periphery which is reduced to serving the interests of that centre, this situation is colonial. We now will explain how the Soviet Union answered this definition.

3.1 The Soviet Union: Europe’s Last Empire

3.1.1 The colonial quality of Russian dominance

In Tsarist times, there was no question about identifying the Russian empire as colonial in its non-Russian parts. It might be argued that Russian dominance in Finland, the Baltics and Central Poland in the early 19th century was not unequivocally colonial, but with the tightening of Tsarist control and the unilateral abolition of these territories’ special status and guaranteed rights starting from the 1890s, the western rim of the Russian empire was more and more subordinated into a colonial periphery. In the years after the Bolshevik revolution, it could be argued that there was a real will to reshape the relationship between the centre and the periphery in the newly created Soviet Union. This was, however, only a short episode with few tangible results. Even if the revolution might have developed ideas of changing the periphery’s situation into a non-colonial form of participation in the Soviet Union, it is clear that the colonial power of the Russian centre (and Russian people) was firmly re-established in the Soviet Union during and after WWII.

There is an extensive literature describing the nature of this Soviet imperial rule and its collapse. The Soviet empire exercised two primary forms of imperial rule. First, it ruled through hard power (military and political supremacy). This included the political incorporation of the 15 republics of the Soviet Union through the top-down control of the highly centralised Communist Party. It also included military and political control over the formally independent Warsaw Pact satellites. Second, it also operated through the exercise

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31 In Tsarist times, the ethnic boundaries of Russian included Ukrainian, which only few intellectuals considered to be an ethnic entity politically different from the Russian one. Therefore, the Ukrainian lands were considered to be part of the ‘Russian’ heartland of the Tsarist empire. Belarusian was even less accepted as a language and an ethnicity separate from Russian.

32 Even formally, colonial structures were not abolished. The territories of Bukhara and Khiva, which had been defined as ‘protectorates’ in Tsarist times, were given a status of ‘people’s republics’ which was both ideologically and legally a lesser status than the ‘socialist republics’ within the Soviet Union: Herbert Küpper, *Einführung in die Rechtsgeschichte Osteuropas* (Peter Lang 2005) 472.

33 Chioni Moore (n 8); Helena Cervinkova, ‘Postcolonialism, Postsocialism and the Anthropology of East-Central Europe’ [2012] J. Postcolonial Writing 155 as well as the literature quoted in Introduction n 4.
of soft power (ideological supremacy and vanguardism). By making its ideology official in its satellites, the Soviet Union opened a channel to influence the satellites’ inner politics, e.g. by sending political ‘advisers’.34 The political attractiveness of the ideology was perhaps even more important beyond the empire as such: it bound the countries which followed a socialist path by their own decision to the historical centre and genesis of that ideology, i.e. Moscow. More often than not, this ideological influence was complemented by subsidies (military or economic).

The Soviet Union itself, of course, always officially denied having a colonial empire. Unlike the West European colonial powers that admitted the colonial nature of their dominance quite frankly, the Soviet Union would have delegitimised its dominance by admitting its colonial nature. For the Soviet Union, one of the pivotal instruments of colonial control was its official Marxist-Leninist ideology. This ideology very strongly advocated the equality of all individuals irrespective of their ethnic, social or other background, their sex, etc. Colonialism, on the other hand, always has a strong racist component that divides the ‘masters’ and the ‘subaltern’. This component was present in the Soviet colonial rule as well, as we will highlight in various chapters of this book, though not always with race as a factor. Qualifying Soviet rule as colonial shows that the Soviet Union did not adhere to its own official doctrine but used double standards, which ultimately helped to undermine the legitimacy of Soviet dominance.

In the inner empire, Soviet doctrine and propaganda stressed its federal quality, with all republics enjoying an equal status and the right to secession,35 therefore denying that there was a centre and a periphery within the USSR. In its outer empire, relations between the Soviet Union and its satellites were based on formal sovereignty, and the bonds between Moscow and the satellites took the form of treaties such as the Warsaw Pact treaty or the COMECON treaty which formally any signatory state was free to renounce.36 Some of

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34 Grzechnik (n 26) 1011 discussing Poland as part of the semi-periphery and therefore a ‘challenging’ example of post-coloniality.
35 One of the theoretical rights of every republic was to leave the union: art. 72 Const. Soviet Union (1977). Based on empirical studies, Beauséjour argues that a secession that is allowed ceases to be an attractive goal: Anthony Beauséjour, ‘Cases of Secession since 1900 and Their Governing Constitutional Frameworks towards Secession’ [2019] ICL Journal 237. In the case of the Soviet Union, however, it was clear that the republics’ right to secede was even less than theoretical and therefore could not compensate any wish for true independence.
36 In practice, this only happened once: Albania renounced its membership in the Warsaw Pact treaty in 1968, and it set its COMECON membership dormant in 1961, finally terminating its membership in that treaty in 1987. Albania could do so because it was not part of the outer empire but joined these treaties of its own free will and
the constitutions enacted during the 1960s and the 1970s in the outer empire awarded the Soviet Union a formal right to intervene in their internal affairs, but formally this was the free unilateral decision of the constitution-makers of those countries.\textsuperscript{37} Thus, according to the official point of view of the Soviet Union, its inner empire was based on federal equality and voluntary membership in the union and its outer empire on the free will of the states concerned. This Soviet self-definition, however, is immaterial because whether a given situation is colonial or not is not a question of whether the colonial power admits to the nature of its rule but whether the actual criteria of colonialism are fulfilled.

Taken as a whole, the dichotomy between centre and periphery in the Soviet empire was not so much geographical but much rather ethnic. Soviet colonialism can be distinguished from West European colonialism insofar as there was no geographical distance between the metropolis and the colonies. Instead, they all formed one geographical block, around which the outer empire was constructed. In this way, Soviet empire building was more analogous to the ‘manifest destiny’ empire building of the United States than to the overseas empires of e.g. Great Britain, France or the Iberian colonial powers.

3.1.2 The pillars of the Russian/Soviet empire

The first pillar of the inner Soviet empire was the dominance of the Russian people over non-Russian peoples. Particularly during and after WWII, the Russian people were increasingly styled the ‘leaders, core people, and generous patron of the other Soviet peoples’, thus creating a paternal conception of Russians as the ‘elder brother’ to the other Soviet peoples.\textsuperscript{38} Vyacheslav Molotov – the Foreign Minister of the Soviet Union – used imperial language to describe how ‘Stalin understood the great historical destiny and fateful mission of the Russian people: the heart of Russia, more than that of any other nation, is predestined to be the universal, all-embracing humanitarian union of nations’.\textsuperscript{39} A kind of racialised hierarchy therefore emerged, with Belarusians and Ukrainians being ‘junior partners’ in the growing Russian dominance over the empire’s non-Russian populations. The ideological justification of this manifest diversion from the official ideological dogma of equality was vanguardism: since the Russians (and to a lesser extent the Ukrainians and Belarusians) were most advanced on the path leading to socialism, they quite never integrated to an extent that made its renunciation politically or economically impossible.

\textsuperscript{37} For this codification of the so-called Brezhnev doctrine in the constitutions of the ‘outer empire’ see ch 5 n 1.
\textsuperscript{38} Lieven (n 6) 292–3, 317.
\textsuperscript{39} Quoted from Lieven (n 6) 295.
naturally became the teachers of the other peoples in the Soviet Union. In this argument, ethnic hierarchisation serves the ultimate goal of the ideology (to achieve a communist society) despite the fact that it violates one of the most fundamental principles of just that ideology. For this ideological reason, inter-ethnic relations were a taboo subject in the Soviet Union and could be addressed – if at all – only along the official lines.

In the multi-ethnic Russian Socialist Federative Soviet Republic (RSFSR), the ethnic dominance of the Russian people was operationalised by staffing most power positions with ethnic Russians. For the non-Russian republics, by contrast, pseudo-federal façades were created on various levels (republics, autonomous districts, etc.). In these ‘ethnic entities’, Moscow orchestrated a very careful ethnic balance. Usually, the top position was held by a person from the titular nation, followed by an ethnic Russian (or, in non-Slavonic entities, sometimes by an ethnic Belarusian or Ukrainian); the third in power was an ‘ethnic’ person again, and so forth. The effect of these special colonial cadre politics was the overall dominance of the ethnic Russians in the entire Soviet Union. This system was aided by the internal passport regime: every internal passport documented the official ethnicity of the citizen so that it was easy to discern a person’s ethnic belonging. This classification system was hereditary because children of parents of the same ethnicity were automatically classified as belonging to that ethnic group; only in the case of mixed parentship was there a certain administrative discretion in determining the child’s ethnicity. One – intended or unintended – result of this legislation was that assimilation of non-Russians did not lead to their acceptance as belonging to the Russian people, and many Soviet citizens whom their passport identified as German, Jew, Ukrainian, etc. were in fact ethnic Russians. This practice

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40 Lieven (n 6) 292.
41 The legal basis was the passport ordinances. The last of these acts was the ordinance of the Council of Ministers of the USSR on the passport system of the USSR of 28 August 1974, SPP SSSR 1974 no 19 pos 109; a German translation is published in (1976) 1 JOR 208–15. Point I.3. of that ordinance regulated the entry of ethnicity. The Committee for Constitutional Supervision declared this ordinance unconstitutional in several opinions: of 26 October 1990, VSND SSSR 1990 no 47 pos 1004, of 21 December 1990, VSND SSSR 1991 no 4 pos 89, of 11 October 1991, VSND SSSR 1991 no 46 pos 1307. For more detail on these decisions, see Alexander Blankenagel, ‘Das kurze Leben und der schnelle Tod des Komitees für Verfassungsaufsicht’ [1993] Der Staat 448, 454–6. Despite these opinions, Soviet authorities and the authorities of some successor states continued the practice of an ethnicity entry in the internal passports; this practice was abandoned in most of these states during the 1990s.
42 Hellmuth G Bülow (ed.), Länderbericht Sowjetunion (Bundeszentrale für Politische Bildung 1986) 69; FJM Feldbrugge in Martin Fincke (ed.), Handbuch der Sowjetverfassung (Duncker & Humblot 1983) vol 1 article 36 margin nos 9–10; Küpper (n 32) 521–2; Herbert Küpper, Kollektive Rechte in der Wiedergutmachung von
bears some parallels to the ethnic classification systems of European overseas colonies in the 19th and early 20th centuries. Administrative measures such as the resident permit system (propiska) (requiring administrative permission to change residence) often allowed ethnic Russians to move into non-Russian areas quite freely, whereas it was very difficult for persons with a non-Slavonic background to move into the Slavonic centre.43 Thus, the dominant population could migrate whereas the non-Russian peoples were kept in their place (or, in particularly problematic cases, subject to mass deportations).44

The second pillar was the Communist Party of the Soviet Union. Under the Leninist principle of ‘democratic centralism’, all important political decisions were made in Moscow by the Central Committee of the Communist Party. This centralisation of power meant that proximity to Moscow and the Central Committee was the ultimate determinate of power; the non-Russian republics were subordinated to Moscow. Central decisions were made in Moscow at the top and were then implemented by the political apparatuses in the particular republics.45

A third pillar of Russian colonial dominance in the Soviet Union was Russian language and culture. Russian was the only official language for the entire union; other languages were tolerated as a second official language only on regional or local levels. A career in all higher echelons of state, administration, economy, science or culture was possible only in the Russian language, even if that career took place outside the Russian centre. Russian was also promoted as the language of culture. This dominance of the Russian language met some of its strongest opposition in the western periphery of the empire: in Ukraine46 and the Baltic republics.

In the outer empire, the fourth principal pillar of Soviet dominance was the presence of the Soviet army. As the interventions in the GDR in 1953, Poland...

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43 On the Soviet and post-Soviet practice of the *propiska* system see Sebastian Pritzkow in Bernd Wieser (ed.), *Handbuch der russischen Verfassung* (Verlag Österreich 2014) article 27 margin no 2.

44 It has to be noted, however, that the *propiska* systems and other administrative measures to control movement were disadvantageous not only to non-Slavonic colonial populations but also to the farmers in the Russian centre whom it bound to their soil just as Tsarist law had done before the revolution. Thus, the *propiska* had more facets than just serving the colonial dominance of the ethnic Russians.

45 Lieven (n 6) 302, discussing the centralisation of political decision-making in the Soviet Union.

and Hungary in 1956 and Czechoslovakia in 1968, as well as the threat of an intervention against Poland in 1981 show, the Soviet army was used to bring those satellites back into line that tried to loosen their colonial bonds beyond what Moscow thought tolerable. The looming threat of military intervention was given a legal façade through the Warsaw Treaty. Furthermore, the sub-ordination of the satellites’ economic system under the economic interests of the Soviet Union happened partly through the coordination of the national plans in COMECON, but even more intensely through bilateral relations. The ideological façade of Moscow’s interventions in the satellite states and their communist parties were socialist internationalism and proletarian internationalism, respectively, which were praised as the guarantee that the non-Russian peoples would, should they stray from the path of socialism, be brought back on that path and thus would never lose their achievements on their way into a communist future.

A fifth pillar, characteristic of West European colonialism, was lacking in the Soviet empire: economic exploitation. Although Moscow planned the economies in the inner empire and through COMECON and bilateral treaties in the outer empire as well, the goal of this planning was not the strengthening of the economy of the centre. This planning served instead the goal of keeping each of these territories – the republics of the USSR and the satellites of the outer empire – economically dependent on the centre, thus making secession from the Soviet empire extremely costly.

Moscow did not withdraw substantial economic substance from the economies of the non-Russian republics and of the satellites to enrich the Russian centre. On the contrary, the inner Soviet redistribution decisions favoured at least to a certain extent the non-Russian republics, and Soviet oil and gas was delivered to the outer empire at a price far below the world market price, whereas Moscow imported agricultural and industrial products from the outer empire although they were of a quality which made them impossible to sell outside the empire. As a consequence, the average standard of living and availability of consumer goods were distinctly higher in some non-Russian republics (especially the Baltic republics) and in the outer empire – perhaps with the exception of Bulgaria, Mongolia and Romania – than in the Russian centre of the Soviet Union itself.

Russian colonialism was therefore distinct from West European colonialism: Russia used its colonies neither as a reservoir of commodities and a market for its products nor as a catch basin for its own surplus population. Russia’s colonialism was less economic and more ‘political’ than its Western counterpart, its motive was ideological and security-based. The economic interdependence of the various colonies was a tool to achieve this political goal but not an economic goal to enrich the centre.
In sum, Moscow’s dominance over the inner and outer empire was clearly colonial. The Soviet empire was not a ‘second class empire’ the analysis of which defies the post-colonial paradigm but an empire with strong *sui generis* traits (geographical proximity, ideology-based, neither exploitative nor settler colonialism). Thus, it makes sense to analyse the collapse of this empire and the subsequent constitutions through the lens of decolonisation and post-colonialism.

### 3.2 Decolonisation of the Soviet Empire

The Soviet empire was decolonised not just because of the concerted efforts of the colonised but also because of the collapse of Soviet ideology and the implosion of the Soviet Union’s central institutional pillar: the Communist Party of the Soviet Union. The reasons for the failure of Soviet ideology and the Party are manifold, and a comprehensive account is beyond the scope of this book. It is also important to note that the end of this empire was relatively bloodless in comparison with the end of other empires.

In the outer empire, there were significant resistance movements that sought to free their countries from Soviet, communist domination. For instance, in Poland, the Solidarność (Solidarity) movement was crucial in resisting and ultimately defeating Soviet domination of Poland. But the process of decolonisation was also the product of the fact that the colonial centre – and its leadership under Mikhail Gorbachev – suddenly lacked the will to continue to exercise its colonial and ideological dominance. This was a product in part of the collapse of socialist ideology. The negotiations that took place between some states of the outer empire and the Soviet Union and later Russia on the withdrawal of the Soviet/Russian troops did not concern the ‘if’ of the decolonisation, but merely its technicalities, the ‘how’. In fact, the post-colonial period in the former Soviet empire was triggered by what some call ‘velvet

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48 On this line of argument see Madina Tlostanova, ‘Towards a Decolonization of Thinking and Knowledge: A Few Reflections from the World of Imperial Difference’ [2019] *Decolonial Theory and Practice in Southeast Europe* 3 (special issue) 1; Trupia (n 47) 90.

49 There were exceptions of course. Perhaps the clearest is the bloody civil war in Tajikistan: Tim Epkenhans, *The Origins of the Civil War in Tajikistan: Nationalism, Islamism, and Violent Conflict in Post-Soviet Space* (Lexington Books 2016).
The post-Soviet as post-colonial revolutions\(^\text{50}\) which included only sporadic outbursts of violence (Romania) and very little elite change (with the exception of the Baltic states, the GDR and, partially, Czechoslovakia and its successor states).

In the inner empire, only the Baltic republics had strong independence movements. The remainder of the inner empire – particularly Belarus and the Central Asian republics – did not want full independence. The collapse of the Soviet Union – what we call the ‘inner empire’ – can be traced to decisions made by the central Soviet leadership as well as the Russian Soviet Republic.\(^\text{51}\)

The two key players were the General Secretary of the Communist Party (Mikhail Gorbachev) and the newly elected President of the Russian Soviet Republic (Boris Yeltsin). This centrally led imperial dissolution would profoundly shape the post-Soviet development of constitutions across the former Soviet Union.

### 3.2.1 Four steps towards the dissolution of the Soviet Union

The dissolution of the Soviet Union took place in four steps. The first step included top-down constitutional and electoral changes at both the Union and republic level. Two of these changes were most important at the republic level. First was the removal of the Communist Party’s monopoly on power and the creation of partially free elections for the nominally all-powerful legislative bodies (sovety).\(^\text{52}\) This change was initiated by the General Secretary of the Communist Party, Mikhail Gorbachev, as part of his perestroika (restructuring) plan that involved incremental democratisation of the political system. Second was the introduction of elected presidents at the republic level; these presidents played a powerful role in pushing for the dissolution of the Union level.

The second step stemmed directly from the new political forces that had been elected to republic-level legislatures (soviets). All constituent republics of the USSR and also some territorial units in the rank below a republic – now led by independent and democratic politics forces – began to issue ‘declarations of sovereignty’ over the course of the years 1989 and 1990.\(^\text{53}\)

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\(^{50}\) The term ‘velvet revolution’ first evolved in Czechoslovakia in late 1989; the reform forces themselves termed their change of system a ‘velvet revolution’ (Czech: ‘sametová revoluce’; in Slovak, the self-definition was ‘nežná revolúcia’ which literally means ‘tender revolution’) in order to express its non-violent character. Later, the term was used for other non-violent transitions in East Europe as well.

\(^{51}\) Lieven (n 6).


This ‘parade of sovereignties’ was grounded on Article 76(1) of the Soviet Constitution (1977) which declared that the republics were ‘sovereign’.54 These declarations were part of a strategy to gain wider powers and therefore to redesign the power structure within the USSR. Thus, many of these declarations did not envisage the end of the Soviet Union.55 Rather than calling for actual independence, these declarations were an attempt to create a looser kind of Soviet confederation. This was the intention of the Russian Republic, which issued a Declaration of State Sovereignty on 12 June 1990. The leader of the Russian legislature – Ruslan Khasbulatov – stated that ‘We didn’t declare ourselves a separate government from the U.S.S.R. We think our Russian fate should be within the framework of the U.S.S.R.’56

As political power and legitimacy began to move towards the republic level, the Soviet Union centre sought to preserve the Soviet empire in the face of these challenges, passing a Union law regulating the procedure in which a republic could secede from the USSR.57 The Union centre therefore held a referendum in March 1991, in which 9 of the 15 republics participated.58


54 Before perestroika, the official legal literature in the Soviet Union had held that the sovereignty of the republics was a consequence, a function or a constituent part of the sovereignty of the Union. The gist of these opinions was that the republics could not instrumentalise their sovereignty against the Union: Henn-Jüri Uibopuu in Fincke (n 42) vol 2 article 76 margin nos 8–11.

55 The one exception seems to be Belarus where the Declaration of Sovereignty of 27 July 1990 (Declaration no 193-XII of the Supreme Soviet of the Republic of Belarus, VVSRB 1991 no 31 pos 536) held, in its art. 5(3), that Belarus ‘was’ (not: ‘is’) a part of the USSR. It is unclear how this past tense is to be interpreted, but later developments made this document obsolete. On the declarations of sovereignty of the Baltic republics see ch 5 point 2.1.


57 Act of the Supreme Soviet of the USSR no 1409-I of 3 April 1990 on the procedure of the resolution of questions in relation to the exit of a union republic from the USSR, VSNД SSSR 1990 no 15 pos 252. The material right of the republics to secession had been enshrined in art. 72 Const. USSR (1977) but had remained unimplemented until 1990. The previous constitution of the USSR, the so-called ‘Stalin Constitution’ of 1936, granted the republics a right to secede in art. 17.

58 The participating republics were the RSFSR, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
Of those participating, 74.6 per cent supported the continued existence of the Soviet Union as ‘a renewed federation of equal sovereign republics, in which human rights and freedoms of any nationality will be fully guaranteed’. This included strong majorities in the Central Asian republics as well as in Belarus.

The third key step in the Soviet Union’s dissolution took place in 1991 when many of the Soviet republics (as well as some autonomous territories in the Russian Republic such as Tatarstan) formally declared their independence. These ‘declarations of independence’ were an attack on the Soviet Union and attempted to terminate the status of the republic as a federal member state of the Soviet Union. They installed the respective republic as a formally fully sovereign state with a personality in international law. Some of these declarations included reorganisations of a constitutional nature but their most important impact was the end of the colonial status. The clearest and most important were the declarations of independence by the three Baltic states. Technically, in fact, the Baltic states did not declare independence but instead restored their independent statehood. Lithuania was the first republic to declare a ‘restoration of statehood’ on 11 March 1991.

These declarations were given momentum with a failed coup in August 1991. As the Union centre sought to negotiate a Union treaty to place the Soviet Union on a more secure footing, a group of hard-line members of the Communist Party of the Soviet Union attempted to seize power. This coup was a last-ditch attempt to preserve the centralisation of power at the Union level; its failure, however, achieved the opposite and spelled the beginning of the end for the Soviet Union. The failure led quickly to international recognition of the independence of the Baltic states, including by the Soviet centre itself. Another consequence of the failed coup was the formal dissolution of the Communist Party of the Soviet Union in November 1991. Thereafter, key leaders – frequently the newly elected presidents – of the remaining Soviet republics began

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61 Alfred Senn, ‘Lithuania’s Path to Independence’ [1991] *Journal of Baltic Studies* 245, 247. For more detail on the Baltic republics see ch 5 point 2.1.
62 This Union treaty also weakened the position of the centre by allowing the republics to exercise a far higher degree of economic sovereignty: Mandelbaum (n 52) 168.
63 RSFSR Presidential Decree no 169 of 6 November 1991 ‘On the activities of the CPSU and the RSFSR Communist Party’ (Указ Президента РСФСР от 6 ноября 1991 года N 169 ‘О деятельности КПСС и КП РСФСР’).
Post-colonialism and post-socialist constitutional change

pushing for independence more actively. On 8 December 1991, the heads of the Russian, Belarusan and Ukrainian republics signed an Agreement on the Establishment of the Commonwealth of Independent States on the foundation of the constitution on the basis of democracy. This marked the demise of the Soviet Union (the Belovezha accords) because it declared in section 1 of its preamble that the ‘Soviet Union as a subject of international law and a geopolitical reality has lost its existence’.

This was followed by the Alma-Ata accords on 21 December 1991 which included the remaining non-Baltic Soviet republics except for Georgia in the Commonwealth of Independent States (Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan). Four days later, the Soviet Union had legally disappeared; the process of transferring real power to the republic level had finished. The republics now began to pass laws establishing themselves as independent international entities. On 25 December 1991, the Supreme Soviet of the RSFSR approved the Law of the RSFSR ‘On renaming the state of the Russian Soviet Federative Socialist Republic’, which took effect immediately. The Soviet Union had simply disappeared.

Alongside these declarations, formal constitutional change to the republic-era constitutions continued. In the republics that actively pushed for independence, these constitutional amendments happened at the same time as the declarations of sovereignty or even earlier. Thus, the Baltic republics were first: the first USSR republic to strike the leading role of the Communist Party out of its constitution was Lithuania with the constitutional amendment of 7 December 1989. Other Soviet republics were much slower to decommunise their constitutions; these countries were those that were more or less pushed into independence, i.e. the Central Asian republics.

The fourth and last step took place after the formal dissolution of the Soviet Union on 25 December 1991. This step included the drafting and adoption of new written constitutions. Some republics were quick to write a new constitution, others took years to replace the provisional situation of the third step by a final new order. Uzbekistan quickly replaced its constitution, passing a new one less than a year after formal independence on 8 December 1992. In other former Soviet republics, this fourth step led to multiple constitutional documents. In many cases, this flurry of constitution-making was part of a process of formal power consolidation by presidents in the region. In Kazakhstan, for

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65 In the entire Soviet empire, only Hungary was quicker. In Hungary, a constitutional amendment of 23 October 1989 did away with the leading role of the CP.
66 On the parallel process of decommunising the constitutions of the outer empire see ch 5 at point 4.1.
instance, the fourth step gave birth to two constitutions: the first constitution of fully independent Kazakhstan of 28 January 1993 was repealed by a new constitution on 30 August 1995 in order to increase the power of President Nursultan Nazarbayev. A similar process occurred in Belarus which drafted a new constitution in 1994 and then revised this constitution in 1995 and 1996 to centralise vast power under President Aleksandr Lukashenko. Finally, other countries like Ukraine continued under their pre-existing communist-era constitutions until 1996.

The four-stage pattern of dismemberment of the inner Soviet empire shares some similarities with the disintegration of another multi-ethnic socialist federation: Yugoslavia. Disintegration began with ‘declarations of sovereignty’ which asserted the ‘Kompetenz-Kompetenz’ of the republics over federal competencies. This triggered a ‘war of the courts’ between the constitutional courts of Slovenia and Croatia on the one hand and the Federal Constitutional Court in Belgrade on the other as the Soviet Union experienced between the supreme soviets and courts in Russia and the Baltic republics on the one hand and on Union level on the other. In the Northern Yugoslav republics, parallel amendments to decommunise the constitutions were enacted. When it became clear that these declarations were not enough, secession from Yugoslavia through ‘declarations of independence’ followed. In the end, all former Yugoslav republics enacted post-socialist and fully sovereign constitutions; only Montenegro remained some more years in a post-Yugoslav construct with Serbia before it gained full independence in 2006.

The similarities, however, end there. In Yugoslavia, the breakup was far more violent than the Soviet breakup. Furthermore, Yugoslavia was not an empire. Unlike the Soviet Union, Yugoslavia was, from the mid-1960s on, a relatively equally balanced ethno-federal state with no imperial internal structures. This began to change in the mid-1980s when Serbian dictator Milošević tried to usurp the federal level in order to instrumentalise it for his plans to convert a multi-ethnic Yugoslavia into a ‘greater Serbia’. As a result, the non-Serbian republics – particularly the rich republics of the north,
Slovenia and Croatia – moved for independence. The poorer republics of the south that had lived on inner-Yugoslavian transfers (Bosnia-Herzegovina, Montenegro, Macedonia) preferred to retain Yugoslavia but resented the Serbian plans for dominance; their positions and strategies to deal with sudden independence are similar to the Central Asian republics of the USSR. Thus, Yugoslavia’s collapse was not the collapse of an empire; its collapse was a reaction to an attempt to centralise. When the numerically dominant ethnic Serbian group tried to forge it into an imperial, colonial structure, the other republics declared themselves independent to prevent their being reduced to a colony. The only post-Yugoslav territory that may respond to the definition of a post-colonial existence is Kosovo. These parallel processes in the demise of the imperial Soviet Union and the multinational federal Yugoslavia suggest that the four-step process of converting a federal unit into a fully sovereign state is not only post-colonial in nature, but also post-socialist or perhaps post-federal. Still, the historical background of this four-step process in the former Soviet Union is an act of decolonisation.

3.2.2 Qualification of the Soviet decolonisation process

As we have shown above, the literature on post-colonialism differentiates between the revolutionary and the negotiated scenario when describing the process of a colony’s transition into independence. The end of the Soviet empire does not fit either of these scenarios but is clearly closer to the negotiated form of decolonisation.

As the description of the four steps shows, decolonisation in the Soviet empire essentially was the product of the internal collapse of the colonial power, of its will to dominate or even maintain its empire, of its imperial ideology and, ultimately, the end of its very existence. The colonies did not fight their way out of the empire, nor did they forcibly negotiate out of the empire. Instead, the constituent parts (including the imperial centre) decided to end the union. This catapulted the entire empire into an independence which some of them welcomed, some of them resented, but hit all of them quite suddenly. In sum, the Soviet Union collapsed not with a bang but instead with a whimper.

The negotiated nature of this imperial collapse is particularly true of the inner empire of the Soviet Union. It was mostly peaceful and driven in large part by an elite-led nationalist movement in Russia, its former colonial centre.

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71 Another important parallel is that in Yugoslavia, Macedonia and the Macedonian people were just as much a result of socialist ethnic engineering as were the Central Asian republics and their peoples in the Soviet Union.

72 See this chapter at point 2.1.

73 Lieven (n 6) 308–9, describing how Russian nationalists such as Alexander Solzhenitsyn saw the Soviet Union as an empire that was counter to traditional Russian identity rooted in Orthodox Christianity.
In fact, the President of the Russian Soviet Federative Republic – Boris Yeltsin – appealed to Russian nationalism in leading a process that ultimately led to an elite accord between the heads of the Soviet republics that dissolved the Soviet Union.\footnote{The most important was the Belovezha Accord signed by Russian, Belarusian and Ukrainian leaders in December 1991: Lieven (n 6) 379.} The collapse of the outer empire also bore some traits of a negotiated process, but in response to more organised popular uprisings in some parts of the outer empire.\footnote{The Solidarność movement in Poland led by Lech Wałęsa was one of the most important popular uprisings against Soviet imperial domination: Timothy Garton Ash, The Polish Revolution: Solidarity (Yale UP 2002).} In some cases, the process including negotiations between the Soviet Union and the states of the outer empire about the withdrawal of Soviet troops (or the threat to use them) triggered political change.\footnote{A detailed account on Hungary is given by Andreas Oplatka, Der erste Riss in der Mauer: September 1989 – Ungarn öffnet die Grenze (Zsolnay 2009).} The decisive moment, however, i.e. the end of the colonial dominance and the acquisition of independence, was the result not of a revolutionary appropriation of independence but a signing of a pact whereby the constituent elements dissolved the union.

Thus, the essence of the Soviet decolonisation process is that the centre and its imperial ideology collapsed and evaporated, leaving the former colonies without a partner to negotiate their transition into independence with. On a comparative basis, this is a \textit{sui generis} form of decolonisation. The Soviet example therefore adds a third scenario to the general theory on decolonisation: the implosion scenario.

In this book, we will show what this \textit{sui generis} scenario means to both the colonies and to a centre that – increasingly later on – becomes openly nostalgic about its former colonial glory.

### 3.2.3 Post-colonial challenges across the inner and outer empire

This imperial collapse led to a range of post-colonial challenges. In all parts of the former Soviet empire, the socialist party-state structure left a shared legacy of an executive-dominated state. The real constitutional system in the socialist world was largely ‘unwritten’ and centralised power in the leader of the Communist Party.\footnote{William Partlett, ‘Separation of Powers without Checks and Balances’ in Tatiana Borisova and William Simons (eds), The Legal Dimension in the Cold War Interactions: Some Notes from the Field (Martinus Nijhoff 2012) 114–16.} This was underpinned by the Leninist concept of ‘vanguardism’, in which all political power was centralised in the Party.\footnote{William Partlett and Eric Ip, ‘Is Socialist Law Really Dead?’ [2018] NYU J Int’l L & Pol. 463, 470–71.} The written constitutional system – contained in the formal state constitutions
created a centralised hierarchy of legislative bodies that in practice were
dominated by executive committees and used as ‘transmission belts’ for the
Party policy. 79 This executive centralism was underpinned by the Leninist
principle of ‘democratic centralism’ that fundamentally rejected the separation
of powers as hindering the will of the people. 80 For instance, deliberation in
the full legislature was largely decorative, as the full legislature normally
only gathered for a very short time (1–3 days) from two to six times a year. 81
This form of executive-dominated parliamentarism bore little resemblance to
West European parliamentarism and instead concentrated vast power in the
legislative chairman. 82 Post-colonial state-building, therefore, required coming
to terms with this legacy.

In other ways, the end of the Soviet empire involved different processes for
the inner and the outer empire. One of the best examples is the challenge of
state-building. The states of the outer empire had remained formally sovereign
during the colonial period despite Soviet domination. 83 As a result of the col-
lapse of that domination, they found themselves free to chart their own course
devoid of foreign pressure. The immediate tasks of state-building were there-
fore comparatively moderate and determined by overcoming the authoritarian
legacy rather than the need to construct the apparatus of a new state. Problems
did, however, emerge as nation-building was complicated in some parts of the
former outer empire because Soviet domination had suppressed ethnic disputes

79 The concept of ‘transmission belts’ was used by Lenin in a 1920 speech (and
borrowed from his ongoing fascination with mechanisation and focused development).
Vladimir Lenin, ‘Speech Delivered at a Joint Meeting of Communist Delegates to the
Eighth Congress of Soviets: The Trade Unions, The Present Situation, and Trotsky’s
Mistakes’ (30 December 1920).
80 The ‘democratic centralism’ was given a normative basis in art. 3 Const. USSR
Developments’ [1988] International and Comparative Law Review 89; AG Mayer,
Leninism (HUP 1957) ch 5.
81 Hans-Christian Reichel in Fincke (n 42) vol 2 article 112 margin nos 3–16 (dis-
cussing the constitutional law and the practice of the Supreme Soviet of the USSR);
1917–1923 (Palgrave Macmillan 1979) discussing how the Bolsheviks increasingly
exercised centralised power after the Russian Revolution.
82 Partlett and Ip (n 78) 482–3; Siegfried Lammich, Grundzüge des sozialistischen
83 Sovereignty in a material sense is a concept which is becoming more and more
blurred: François Ventner, ‘Globalization of Constitutional Law through Comparative
Constitution-Making’ [2008] VRÜ 16, 17–18. This makes it unsuitable for constitu-
tional analysis. When we speak of ‘sovereignty’ in this book, we understand it in its
formal sense: a state is sovereign if no other state has any formal rights to intervene in
that state’s inner or outer affairs.
which now came to surface. Perhaps the best example was the ethnic tensions between Hungary and its neighbours Slovakia and Romania in the early 1990s. The state-building challenges of decolonisation, by contrast, were far greater in the inner empire. For some of these republics, especially those in the Caucasus and Central Asia, the end of the Soviet Union came suddenly and catapulted them into an unexpected and not always welcome independence. In Central Asia, terminating its tutelage unilaterally without consulting the colonies can be interpreted as the last colonial act that Moscow imposed on the Caucasian and Central Asian periphery. In this situation, the suddenly independent republics were forced to create appropriate institutions very quickly. Other Soviet republics had fought for their independence and thus were better prepared when the end of the Soviet Union made their dreams come true. Nevertheless, having been republics of an overarching federal system, all newly independent states of the former inner empire were ‘incomplete states’, lacking certain parts of state infrastructure such as a diplomatic service, an army or institutions to regulate foreign trade, just to name some areas. Furthermore, the state organs of the republics that had existed under Soviet rule often were not much more than a façade designed to cover up the mechanisms of Moscow’s direct rule over and in its colonies. As a result, parliaments, governments and administrations from Estonia to Tajikistan suddenly had to learn to take responsible decisions instead of waiting to be asked to rubber-stamp orders sent from Moscow. For this reason, state-building was a much more comprehensive and urgent task in the inner empire than it was for the former satellites of the outer empire.

Nation-building was a common challenge for both the states of the inner and outer empire. But again, the challenges were far greater in the inner empire. These countries were forced to overcome the legacies of Soviet domination, including borders purposely drawn to ensure continued central control. The contested borders and identity of some of the states led to large-scale violence in the years before and after the collapse of the Soviet Union. This also presented vexed questions of national identity, which for the Central Asian states was particularly difficult as their national borders and nationhood were largely the invention of Soviet-era nationality policy.

85 Two good examples are the Nagorno-Karabakh dispute between Armenia and Azerbaijan, which turned from a more or less ‘frozen’ to a ‘hot’ conflict again in late 2020, and the bloody Tajik civil war.
86 Gregory Massell, The Surrogate Proletariat: Moslem Women and Revolutionary Strategies in Soviet Central Asia, 1919–1929 (Princeton UP 1974); Adrienne Edgar,
In the imperial centre, the Soviet leadership had initiated the process of dismantling its empire by – to cut a long story short – losing the imperial will to dominate and by no longer upholding the imperial ideology, Marxism-Leninism. The political and legal successor of the Soviet Union,\(^{87}\) the Russian Federation, had participated in the loss of that empire. This is reflected in the Russian Constitution of 1993 which embraces democratic constitutionalism and thus follows the foreign role model that the Soviet Union fought against, subordinates Russia to international law, integrates the country into the international community without claiming exceptions, is silent on the authoritarian and colonial past as well as on the relationship between the Soviet Union and Russia, and does not reflect imperial nostalgia. Treaty-based attempts at restoring some sort of Russia-centred structures in the post-Soviet space such as the CIS and other international organisations between Russia and one or more former Soviet republics were half-hearted\(^{88}\) and did not lead to restore Russian dominance because they were based on the voluntary participation of Russia’s partners. But as we will see, imperial nostalgia was always present and has shaped Russian constitutional change in recent years.

4 CONCLUSION: LOOKING FORWARD

The following chapters will apply these lessons and insights from the literature on post-colonial constitution-making to constitutional change in the former Soviet empire. Chapter 2 will analyse Russia’s Constitution of 1993 and especially its amendments of 2020 in the light of the constitution of a former colonial power. Chapters 3 and 4 will explore how post-colonialism is reflected in the constitutions of the states of the former ‘inner empire’. Finally, Chapters 5 and 6 will examine the constitutions of the Soviet Union’s ‘outer empire’ through the post-colonial paradigm.

One has to bear in mind two special traits of the decolonisation of the Soviet empire which will drive this analysis. First, the collapse led to very little violence.\(^{89}\) This non-violent nature meant there was considerable continuity in the elite. In the inner empire, former Communist Party chiefs ‘changed their clothes’ and became ‘democratic’ presidents. In the outer empire, key

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\(^{87}\) Only the constitutional amendments of 2020 declared the legal succession between the Soviet Union and Russia: ch 2 point 1.

\(^{88}\) Therefore, Gramatzki describes the CIS as ‘an institution to “unwind” the past’: Hans-Erich Gramatzki, ‘Ukraine: Politische Souveränität und wirtschaftliche Selbstständigkeit’ in Hausmann and Kappeler (n 46) 292, 293.

\(^{89}\) In detail see in this chapter point 3.2.
members of the Communist Party (no longer with a monopoly on power and often adopting the tenets of free market capitalism) played an important role in both post-socialist elections and constitution-making.

Second, there was a key factor at play in the nature of the Soviet empire: the ideological component. As we have described earlier, the Soviet Union – more so than many other empires – used political ideology as a key aspect of imperial control. The demise of the Soviet empire was also the collapse of an entire ideology, i.e. Soviet Marxist-Leninist socialism. The end of this Cold War ideological struggle was critical for post-colonial constitutional development. The Soviet model was no longer a model and tool for either legitimation or modernisation of the post-Soviet systems both in the former metropolis and the former colonies but a burdensome legacy which was to be overcome as quickly as possible. The new model for the new post-Soviet constitutions was now democratic constitutionalism. In fact, many states of the former Soviet empire were flooded with Western ‘experts’ trying to explain how to build constitutional democracy.

The democratic ideas had differing impacts. In some parts, the formal principles of constitutional democracy were given lip service but constitutional rules continued to centralise power in the executive. In fact, quite a few post-socialist constitutions, especially in the former inner empire, merged a formal commitment to democratic values with constitutional rules ensuring centralised presidential power. These contradictory constitutions therefore retained centralised dominance alongside the institutions of constitutional government and a parchment commitment to universal values. In other parts, these constitutionally guaranteed democratic values were critical in transforming political culture and practice. This kind of transformative constitutionalism was most clear in the Baltic states and parts of the outer empire in Central Europe.

Finally, the following chapters will show how constitutions play two roles in this post-colonial process. First, the constitutions themselves reflect ongoing

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90 This is in line with the fact that the constitutions of those states that continue to define themselves as socialist (PR China, North Korea, Vietnam, Laos, Cuba) refer to Marx, Engels and sometimes Lenin (together with local heroes of the socialist past), but are silent on the role of the Soviet Union as the first socialist state on earth and an exporter of socialist ideology.


debates about national identity and state construction. Second, as a document that embodies the nation-state, they help to resolve these questions shaping national identity. Glendon describes this dual role, explaining how constitutions ‘tell […] stories about the culture that helped to shape it and which it in turn helps to shape’. 93 Ruskola explains that ‘the law does not simply mirror “our” pre-given national identity but enacts that identity’. 94 This approach therefore requires engaging with the symbolic, expressive and emotional role of these constitutional orders. As Ruskola writes, ‘law is primarily a text in which we inscribe our ideals’. 95 Constitutions therefore emerge as important sites for both reflecting and enacting the dynamic and ongoing process of post-colonialism.

The quest for identity and the construction of a constitutional order overlap – just as the post-authoritarian and the post-colonial elements overlap in the post-independence constitutional dynamics. As we will show, no post-Soviet constitution-making and no post-Soviet constitutional change can be exhaustively explained under the post-authoritarian or the post-colonial paradigm exclusively. In the constitutional dynamics of the former Soviet empire, both elements intertwine and influence each other. The result is a wide variety of degrees of overlap, varying both in time and in space. Sometimes a more post-authoritarian perspective prevails, sometimes a more post-colonial. The following chapters will describe and analyse the special conditions of this overlap in Russia, the inner and the outer empire throughout the last 30 years of independence.

93 Mary Ann Glendon, Abortion and Divorce in Western Law (HUP 1987) 8.
95 Ruskola (ibid) 203.