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## The Constitution of North Korea: Its Changes and Implications

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Dae-Kyu Yoon

## Abstract

Though a departure from mainstream socialist States, a glimpse of North Korea's Constitution can still provide observers with an understanding of how North Korea has undergone and responded to social changes and vicissitudes. Hence, this Essay sets out to do a number of things. First, this study succinctly examines the nature and status of law in North Korea. Second, it reviews the country's constitutional history in sequence, and then, provides a more in depth look into the characteristics of the current Constitution. Conclusions are then drawn from this examination. The goal of this Essay is not to describe the principles or contents of North Korean Constitutions per se, but rather to look at how North Korea has responded to change from a constitutional perspective. However, our discussion will be mostly limited to the texts of the constitutions since there is no case known to outsiders that would afford us an understanding of its real operation in daily life. At the same time, constitutional processes including the North Korean amendment process does not deserve our attention either, as all constitutional processes in North Korea are, by design, endorsed without opposition and manipulated by the country's top leadership—an undisputable reality of the totalitarianism housed within the country's borders.

# THE CONSTITUTION OF NORTH KOREA: ITS CHANGES AND IMPLICATIONS

*Dae-Kyu Yoon\**

## INTRODUCTION

More often than not, a Constitution of a State acts as a prism that affords one an understanding of that State as a whole. This is possible since a State's Constitution is a manifestation of the State itself, and provides the fundamental principles of supreme law for State management. For the most part, this is also true of socialist countries, despite the different implications that law in socialist societies, governed by proletarian dictatorships, serve a different role than in pluralist, democratic societies which are governed by the rule of law. A Constitution derived under socialist governance still reflects, to some extent, the reality of the State and thus is still one of the best ways to understand its government's management of society and its responses to changes in its internal and external environments.

The Democratic People's Republic of Korea ("DPRK" or "North Korea") is no exception. Though a departure from mainstream socialist States, a glimpse of North Korea's Constitution can still provide observers with an understanding of how North Korea has undergone and responded to social changes and vicissitudes. Hence, this Essay sets out to do a number of things. First, this study succinctly examines the nature and status of law in North Korea. Second, it reviews the country's constitutional history in sequence, and then, provides a more in depth look into the characteristics of the current Constitution. Conclusions are then drawn from this examination. The goal of this Essay is not to describe the principles or contents of North Korean Constitutions *per se*, but rather to look at how North Korea has responded to change from a constitutional perspective. However, our discussion will be mostly limited to the texts of the constitutions since there is no case known to outsiders that would afford us an understanding of its real operation in daily life. At the same time, constitutional processes including the

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North Korean amendment process does not deserve our attention either, as all constitutional processes in North Korea are, by design, endorsed without opposition and manipulated by the country's top leadership<sup>1</sup> — an undisputable reality of the totalitarianism housed within the country's borders.

### I. *THE ROLE OF LAW IN NORTH KOREA*

Like many aspects of North Korea, the uniqueness of its law is derived from its political reality that is distinguished by the one-man dictatorship which has lasted for generations. North Korean leader Kim Il Sung consolidated and solidified his absolute power via Stalinist-style purges and eliminations of all those who opposed and all that which threatened his leadership. Confrontation with South Korea also contributed to sustaining and strengthening tensions for the sake of his domestic rule. Overall, much of his success in maintaining totalitarian dictatorship can be attributed to the build-up of pervasive intelligence mechanisms, strong military forces, indoctrination of the people with a cult of personality, and near inclusive isolation of the populace from the outside world.

Facilitating this totalitarian dictatorship has been the primacy of the Korea Workers' Party ("KWP"). Its supremacy over official government organizations and unlimited authority has allowed this one-man reign to thrive. Party control is reinforced by interlocking membership between party elites and chief governmental and military figures. Its grip over the populace is pervasive and reaches into the daily lives of residents through indoctrination and surveillance. Thus, the KWP has stood as one pillar of the leader's power as he reigns over the State in the uppermost position of the party, its General Secretary. In this regard, it is not unusual that the Constitution itself provides that "The DPRK shall conduct all activities under the leadership of

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1. The authority to adopt and amend the Constitution in DPRK has belonged to the Supreme People's Assembly since the first North Korean Constitution. See *N. KOREA CONST.* art. 104 (1948) [hereinafter 1948 CONST.]; *N. KOREA CONST.* art. 76(1) (1972) [hereinafter 1972 CONST.]; *N. KOREA CONST.* art. 91(1) (1992) [hereinafter 1992 CONST.]; *N. KOREA CONST.* art. 91(1) (1998) [hereinafter 1998 CONST.]. Predictably, Constitutions have been adopted or amended by a unanimous vote at the First Supreme People's Assembly ("SPA") without advance public debate. See, e.g., FUKUSHIMA MASAO, *ON THE SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA* 83, 90-91 (1975).

the Workers' Party."<sup>2</sup> It follows that the party directives, which know no limits, stand above the law.

The second pillar of his power is the *juche* ideology, the backbone of party guidance and State philosophy. *Juche* (or "self-reliance") was formulated to justify Kim Il Sung's dictatorship and succession of power to his son, Kim Jong Il, emphasizing peculiar aspects of the North Korean environment. Advocated as a creative application of Marxist-Leninist principles, the ideology also serves as a tool that justifies the leader's demand for the populace's unquestionable loyalty. It developed into a cult of personality surrounding Kim Il Sung and Kim Jong Il, officially supplanting all other philosophical and religious beliefs in the State. Consequently, as stipulated in the Constitution, *juche* ideology is the ultimate paradigm that guides State activities.<sup>3</sup>

In the Weberian sense,<sup>4</sup> North Korea can be characterized as a charismatic society where the supreme, *godlike* leader's words and directives are the principal governing norms that supersede all else, including the law. His word is considered the quintessential source of enlightenment capable of dispensing justice. Law, on the other hand, plays but a marginal role in the administration of justice and instead acts as a secondary instrument to enforce and realize the leader's directives, leaving its efficacy as a thing of ridicule. Thus, law in North Korea is naturally mobilized for political purposes; inherent justice or inviolable divine elements — i.e., the "spirit of the law" — for all intents and purposes, is sorely lacking.

The North Korean Constitution exists essentially as a political manifesto with a bulk of programmatic provisions rather than as a document written to ensure justice for the people. The discrepancy between the written laws and law in action is so pervasive that the issue of legal ground is entirely irrelevant on many occasions. Constitutional ground is not necessarily required to invoke State action since the State holds its legitimacy *ipso facto* with no procedure to challenge it.

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2. 1998 CONST. art. 11.

3. *Id.* art. 3.

4. Weber's "ideal types" make a distinction between 1) charismatic, 2) traditional, and 3) rational-legal authority. As it is, North Korean authority tends to fall under this first category. See MAX WEBER, *ECONOMY AND SOCIETY* 212-301 (Roth and Wittich eds., 1978).

## II. *THE FIRST CONSTITUTION OF 1948*

The first Constitution of DPRK was inaugurated in 1948, modeled after the 1936 Stalinist Constitution of the former Soviet Union ("USSR"). Despite constitutional revisions of a drastic nature both in 1972 and 1998,<sup>5</sup> since its 1948 original, the basic principles and characteristics of North Korea's Constitution largely have been preserved up to the present day. Therefore, much of the structure that exists today has its origins in the 1948 Constitution.

Drafted in April 1948, the Constitution of the DPRK was adopted at the First Supreme People's Assembly ("SPA") in September of that same year.<sup>6</sup> It consisted of ten chapters and 104 articles<sup>7</sup>, and held provisions on basic principles, rights and duties of citizens, central and local legislative and executive organs, courts, budgets, national defense, amendment procedures, and the State emblem, capitals, and so on. During its twenty-four year lifespan, it was amended only a handful of times on very minor matters (therefore, it is not worth elaborating on), all within the first fourteen years of its existence.<sup>8</sup>

Most significantly, the 1948 Constitution elevated the SPA as the highest organ of State authority, essentially succeeding the two interim bodies that previously functioned in such a capacity (the North Korean Provisional People's Committee of February 1946, which was dissolved a year later in February 1947 in order to create the People's Assembly of North Korea). The SPA became the legislative body of the Nation, modeled after the USSR's Supreme Soviet. According to the Constitution, the SPA

5. Although the 1992 revision was not extensive, this revision still holds significant meaning. Therefore, the 1992 Constitution will also be reviewed under a separate Chapter.

6. The 1948 Constitution is also referred to as the "People's Democratic Constitution."

7. The 1948 Constitution consists of ten Chapters of 104 Articles: 1948 CONST. Ch. 1 (Basic Principles); Ch. 2 (Fundamental Rights and Duties of Citizens); Ch. 3 (The Highest Organ of State Power); Ch. 3, § 1 (The Supreme People's Assembly (SPA)); Ch. 3, § 2 (The Presidium of the SPA); Ch. 4 (The Central Executive Organ of State Power); Ch. 4, § 1 (The Cabinet); § 2 (The Ministries); Ch. 5 (The Local Organs of State Power); Ch. 6 (The Court and the Procurator's Office); Ch. 7 (The State Budget); Ch. 8 (National Defense); Ch. 9 (State Emblem, National Flag and Capital); Ch. 10 (Procedure for Constitutional Amendment).

8. See DAE-SOOK SUH, *KOREAN COMMUNISM: 1945-1980*, at 499 (1981); see also DAL-KON CHOI & YOUNG-HO SHIN, *BUKHANBOP-IPMUM* [INTRODUCTION TO NORTH KOREAN LAW] 51-52 (1998); MASAO, *supra* note 1, at 121-24.

was to exercise exclusive legislative power and consist of representatives elected by the people (although this last point is somewhat misleading as SPA representatives *are* selected by universal, equal, direct, and secret vote as per the Constitution,<sup>9</sup> yet candidates are carefully screened and approved by the party).

Centralization of power onto it was made a constitutional principle, and thus the SPA was invested with vast legislative powers: the authority to enact basic domestic and foreign policies; create a Presidium to operate on its behalf when the Assembly was not in session; approve the laws and statutes adopted by the Presidium; revise and amend the Constitution; deliberate and approve the national budget; elect and recall a Prime Minister of the Cabinet and its members; appoint major officials such as the Chief Justice of the Supreme Court and Procurator-General of the Central Procurator's Office;<sup>10</sup> dispatch foreign service personnel; and so forth. All the constitutional organs were given their authority from the SPA. Division of labor among other government organs was, however, done for the purpose of governing the State; never was such a division intended to create a system of "checks-and-balances" on State authority via a separation or diffusion of powers — as is the case in most liberal democracies.

Notwithstanding, in all reality it was the Presidium of the SPA, comprised of a much smaller group of individuals (ranging from fifteen to twenty of the top party personnel and the same men who essentially dominate the KWP), which initiated action on almost all policymaking. Thus, in reality, the SPA's supremacy was a mere superficiality. As a government body, the SPA was — and still is — purely a quasi-independent agency, a façade erected to give the appearance of democratic representation, and a puppet whose strings are pulled to legitimize State action.

The Presidium of SPA also held the position of Head of State and exercised associated ceremonial authority concerning both foreign and domestic affairs. The Cabinet exercised executive authority empowered by the SPA. Kim Il Sung had been seated as top leader of the northern part of the Korean peninsula by the Soviet Union — since its occupation after liberation

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9. See 1948 CONST. art. 3.

10. See *id.* art. 37.

from Japanese rule in 1945, was now appointed as Prime Minister. In fact, the key players of government administration were members of the Cabinet who had concurrent positions in the Party as well as the SPA. The local sovereign organ was the People's Assemblies, whose members were elected by their respective local residents. People's Assemblies supervised the People's Committees, which were in charge of the administration of respective local districts.<sup>11</sup>

As far as the Constitution and North Korean citizens are concerned, the first Constitution stipulated that fundamental rights, similar to those in liberal democracies, be protected. For example, Freedom of Speech (Article 13), Equal Protection (Article 11), Right to Vote and be Elected (Article 12), Right to Religion (Article 14), Protection of Privacy (Article 21), Protection from Arbitrary Arrest (Article 24), Right to Petition (Article 25), etc. were all addressed in the Constitution. However, whether or not these rights were ever protected in practice remains highly suspect.<sup>12</sup>

Although North Korea adopted constitutional principles of the Soviet Union's political structure, the first Constitution could not avoid reflecting North Korea's inherent reality. Since North Korea was just beginning to construct a socialist system, many legacies of its previous system still remained. In a sense, it was inevitable that the new leadership, which had yet to establish a stable power base, compromised with existing non-socialist elements. Such compromises were found particularly in connection with the economic sector. For example, private ownership was broadly protected along with the freedom to run businesses.<sup>13</sup> Citizens were also required to pay taxes according to what they were financially capable of paying.<sup>14</sup> In order to rid

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11. *See id.* arts. 68-81. The 1972 Constitution additionally instituted Local Administrative Committees as the administrative enforcement agencies of local affairs. *See* 1972 CONST. arts. 128-32.

12. For a more in depth review of human rights protection in North Korea, see KOREA INSTITUTE FOR NATIONAL UNIFICATION, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA, (Jae Jean Suh et al. eds., 2003); Amnesty International, Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea), available at [www.web.amnesty.org/library/print/ENGASA240032004](http://www.web.amnesty.org/library/print/ENGASA240032004) (Jan. 17, 2004); State U.N. Commission on Human Rights, *Department of State Human Rights Reports for 2000: Democratic People's Republic of Korea*, available at <http://humanrights-usa.net/reports/dprk.html> (Feb. 2001).

13. 1948 CONST. arts. 5, 8, 19.

14. *Id.* art. 29.

the country of remnants of Japanese colonial rule, the Constitution provided clauses which confiscated assets and land owned by the Japanese and their collaborators, and deprived them of their civil rights.<sup>15</sup> Interestingly enough, however, Article 31 provided protection for ethnic minorities. This addition seems to have been blindly adopted from the Soviet Constitution<sup>16</sup> because the Soviet Union consisted of many different ethnic groups while the issue of ethnic minorities was by-and-large a non-issue in North Korea.<sup>17</sup>

### III. THE SOCIALIST CONSTITUTION OF 1972

The second Constitution of the DPRK was inaugurated in 1972 after a profound transformation of North Korean society. Here, two aspects in particular should be noted. First, Kim Il Sung ultimately came out on top in the struggle for absolute power over North Korea and consolidated his power into an undisputable one-man dictatorship. Kim Il Sung's unparalleled leadership and his critical role and contribution to the development of a socialist State were well described in the Preamble of the 1972 Constitution. Second, private ownership was totally eliminated, ushering in the completion of the Socialist central economic planning system as the principle of collectivism was broadly introduced and strongly emphasized. Thus, this new Constitution was called the "Socialist Constitution" of the DPRK as it epitomized North Korea's successful transition to a socialist system via the removal of non-socialist elements inherent in the Constitution of 1948. The 1972 Constitution provided that "class antagonisms and all forms of exploitation and oppression of man by man have been eliminated forever,"<sup>18</sup> and that "the historic task of industrialization has been accomplished successfully."<sup>19</sup> However, these expressions did not mean that socialist construction of the State had been completed, but would rather continue until North Korea reached the high phase of communism where it became "not only [a] classless society but also a highly advanced society where there is no distinction between mental and physical labor and each member of society works ac-

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15. *Id.* arts. 5, 6, 12.

16. *See* U.S.S.R. CONST. art. 123.

17. North Korea omitted this provision from the Constitution of 1972.

18. 1972 CONST. art. 6.

19. *Id.* art. 24.

ording to his ability and receives according to his needs.”<sup>20</sup>

The 1972 Constitution was drastically different from its 1948 predecessor, not only in formality and contents but also in its level of sophistication.<sup>21</sup> It claimed that the DPRK was an “independent socialist State representing the interests of all the Korean people,”<sup>22</sup> and based on proletarian dictatorship.<sup>23</sup> The *juche* ideology of the KWP was expressively incorporated in the Constitution as the guiding principle of the State and regarded as a “creative application of Marxism-Leninism to the conditions of [North Korea].”<sup>24</sup> The KWP’s status was thereby enhanced by its constitutional recognition. Democratic centralism was the basic principle of organization and activity of State organs.<sup>25</sup> According to this principle, once citizens elect their representatives, they should obey representatives’ decisions, and lower authorities should obey the decisions made by higher authorities. There is no checks and balances system among State organs, but rather only strict hierarchical domination and submission.

This Constitution also created the presidency position and made him Head of the State, a position that carried a four-year term with no re-election limitations.<sup>26</sup> Although the SPA was still the supreme sovereign organ and elected the country’s president, *de facto* State power was the President’s to exercise. Kim Il Sung, was of course, inaugurated as the first President and served in that position until his death in 1994. Furthermore, the Constitution created and renamed other specific government organs. Accordingly, the Central People’s Committee (“CPC”) was created, the Chairman of which was the President. It became the supreme guiding agency of State sovereignty and policymak-

20. *Id.* art. 25.

21. The 1972 Constitution consisted of eleven Chapters and 149 Articles. The Chapters are as follows: 1972 CONST. Ch. 1 (Politics); Ch. 2 (Economy); Ch. 3 (Culture); Ch. 4 (Fundamental Rights and Duties of Citizens); Ch. 5 (The Supreme People’s Assembly); Ch. 6 (The President of DPRK); Ch. 7 (The Central People’s Committee); Ch. 8 (The Administrative Council); Ch. 9 (The Local People’s Assembly, People’s Committee and Administrative Committee); Ch. 10 (The Court and the Procurator’s Office); and Ch. 11 (Emblem, Flag and Capital).

22. 1972 CONST. art. 1. The first Constitution does not mention the term “socialist State” at all.

23. *See id.* art. 10.

24. *See id.* art. 4.

25. *See id.* art. 9.

26. *See id.* arts. 89-99.

ing.<sup>27</sup> In addition, the Cabinet was renamed the “Administrative Council,” was led by the Prime Minister, and became the policy enforcement agency under the supervision of the President and the CPC.<sup>28</sup>

The Constitution also made changes in terms of citizens’ rights. The collectivist principle of “one for all and all for one” was adopted as the basis of the rights and duties of citizens.<sup>29</sup> Thus, “mass line” and “mass movement” were inserted as constitutional principles.<sup>30</sup> Collectivism became the basic orientation of education at all levels. Private ownership for means of production was eliminated along with individuals’ rights to run businesses;<sup>31</sup> private ownership of goods was limited to personal use items only.<sup>32</sup> As the State was responsible for providing the daily necessities people would need through a rationing and public distribution system, the system of taxation was abolished.<sup>33</sup> Even amid the beginning of dialogue between North and South Korea in the early 1970s, a peaceful unification clause was also inserted in the Constitution — although the victory of socialism was still the ultimate goal of the State.<sup>34</sup> This was an expression of North Korea’s confidence in its own made-for-Korea socialist system.

#### IV. THE 1992 AMENDMENT FOR POWER SUCCESSION

It was twenty years before another amendment to the 1972 document would be implemented. This revision, however, was a result of a build-up of external events in the 1980s culminating at the turn of the decade, which ushered in radical changes that would alter the geopolitical world order and signal the end of the Cold War. The Soviet Union and Eastern European States which formed the Communist bloc fell into decline and later

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27. *See id.* arts. 100-06.

28. *See id.* arts. 107-14.

29. *See id.* art. 49; *see also id.* art. 68 (providing that “[c]itizens must display a high degree of collectivist spirit . . . [and] cherish their collective and organization and develop the revolutionary trait of working interests of the homeland and the revolution”).

30. *See id.* arts. 12-13.

31. *See id.* art. 18.

32. *See id.* art. 22.

33. *See id.* art. 33 (providing that “[t]he State abolishes taxation, a hangover of the old society”); *see also*, 1948 CONST. art. 29 (providing that citizens should pay tax).

34. *See id.* art. 5. Interestingly, South Korea also amended its Constitution in 1972 to extend President Park’s rule under the pretext of legitimizing North and South dialogue for peaceful unification.

collapsed. Equally important, communist China continued on its path of transformation, incrementally enacting measures in order to adopt a market system. This new post-Cold War period that began in the 1990s thus drove North Korea into desperation as the country was forced to try and find its own way to survive in a new, radically altered foreign environment, *sans* reliance on its traditional trading partners for markets and contiguous allies for significant assistance and support. All of these external events had a huge impact on the North Korean economy and political survival.<sup>35</sup> Isolated, North Korea has for some time now been forced to attract foreign investment and boost trade in a desperate attempt to climb out of economic destitution. Dialogue with South Korea has resumed in this regard. All of these events came at a very bad time for North Korea, as preparation for the succession of power from the aging Kim Il Sung to his son Kim Jong Il required greater time for the latter to consolidate his power.

With these factors in mind, an amendment to the Constitution was made in 1992. First eliminated from the document was the expression of Marxism-Leninism in conjunction with *juche* ideology and instead the philosophical principle of *juche* ideology was constitutionalized by itself.<sup>36</sup> Second, the leading role of the Party was emphatically stipulated.<sup>37</sup> The proletarian dictatorship was replaced with a dictatorship of people's democracy,<sup>38</sup> although the Constitution still expressed that the DPRK was a socialist State in Article 1. However, it is unclear why such a change occurred when considering the socialist theory that a proletarian dictatorship is more developed than a dictatorship in

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35. For an in depth synopsis of the impacts of the collapse of the Communist bloc on the DPRK economy, energy, and agricultural sectors, see James H. Williams et al., *Fuel and Famine: Rural Energy Crisis in the DPRK*, 26(1) *ASIAN PERSP.*, Mar. 2002, at 111-40, available at <http://www.nautilus.org/DPRKBriefingBook/energy/pp46.html>; Andrew Natsios, *Special Report: The Politics of Famine in North Korea* (United States Institute of Peace 1999), available at [www.usip.org](http://www.usip.org); Marcus Noland, *Famine and Reform in North Korea* (Institute for International Economics Working Paper No. 03-5 2003), available at <http://www.iie.com/publications/wp/2003/03-5.pdf>; MICHAEL E. O'HANLON & MIKE MOCHIZUKI, *CRISIS ON THE KOREAN PENINSULA* (2003).

36. See 1992 CONST. art. 3 (providing that "[t]he DPRK is guided in its activities by the *juche* idea, a world outlook centered on people, a revolutionary ideology for achieving the independence of the masses of people").

37. See *id.* art. 11 (providing that "[t]he DPRK shall conduct all activities under the leadership of the Workers' Party of Korea").

38. Compare *id.* art. 12 with 1972 CONST. art. 10.

a people's democracy in the process of socialist revolution. It might have happened from the defensive sense of vulnerability which emerged after the collapse of the European socialist States. Third, North Korea's policy towards South Korea was also changed from an aggressive stance to a more receptive one for coexistence.<sup>39</sup> At least from the viewpoint of constitutional expression, North Korea seems to have renounced a North Korea-initiated revolutionary unification since 1992 as the 1992 Constitution supports the principle of peaceful unification. Thus, it was natural that the new revision removed the foreign policy clause of international cooperation with socialist States based on Marxist-Leninism and proletarianism by adopting independence, peace, and solidarity as the basic principles of foreign policy.<sup>40</sup>

The most important point of this 1992 revision was the enhancement of the National Defense Commission ("NDC") as a separate constitutional organ. Before this, the NDC was merely a subcommittee of the CPC.<sup>41</sup> However, the 1992 Constitution created a new Chapter for this commission with six Articles.<sup>42</sup> Before this revision, the President, as the Chief Commander of the State, held the Chairmanship of the Commission as *ex officio*, leading State military affairs.<sup>43</sup> The 1992 amendment separated the highest military leadership from the authority of the president and conferred it on the Chairman of the NDC. Now, the Chairman of the NDC became the Chief Commander of the State and exercised the highest military authority. As Kim Jong Il was elected as its Chairman, he solidified his status as the *de jure* and *de facto* successor.

In the economic realm, several provisions were also supplemented to emphasize an independent national economy and the development of science and technology.<sup>44</sup> The most notable change in this area was that constitutional ground was laid for the support of an "open-door" policy, something that could be inferred from the inclusion of Article 37 which established that "[t]he State shall encourage institutions, enterprises or associa-

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39. Compare 1992 CONST. art. 9 with 1972 CONST. art. 5.

40. Compare 1992 CONST. art. 17 with 1972 CONST. art. 16.

41. See 1972 CONST. art. 105.

42. See 1992 CONST. arts. 111-16.

43. See 1972 CONST. art. 93.

44. See *id.* arts. 19, 26, 27, 28.

tions of the DPRK to establish and operate equity and contractual joint venture enterprises with corporations or individuals of foreign countries." Although the Joint Venture Act had come into being in 1984, it lacked constitutional grounding at that time. The inclusion of Article 37 suggested a more positive attitude and active policy toward attracting foreign investment. Investment of this nature was possibly seen — as it is today — as a means to assist the country in surmounting its economic hardships. Prior to this amendment, North Korea's top leadership had already decided in 1991 to create the Rajin-Sonbong Free Economic Trade Zone. Soon after this 1992 amendment, Pyongyang promulgated a series of laws concerning foreign investment in North Korea.<sup>45</sup>

Two years after this revision, North Korean leader Kim Il Sung passed away. His death in 1994 heralded imminent change in the power structure of North Korea. However, in spite of his death, the presidency remained vacant for four years until the new 1998 Constitution finally abolished the position. The fact that there had been no political instability during the four-year absence of the presidency is proof that Kim Jong Il's control had already dug deep, unshakable roots. All that was needed was constitutional change fitted for his direct rule.

#### V. *THE NEW 1998 CONSTITUTION OF KIM JONG IL ERA*

The current Constitution, which was built upon the old version but refashioned in 1998,<sup>46</sup> was tailor-made by Kim Jong Il and designed to suit his personality and method of rule. First, although the junior Kim established and enjoyed formidable and unquestionable authority in his fiefdom, his authority was inherited, and thus his legitimacy bound to his father's legacy. To capitalize on his father's sacred reputation and superior charismatic leadership, Kim Jong Il ceremoniously credited the es-

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45. See, e.g., Foreign Investment Act (1992), Foreign Enterprise Act (1992), Contractual Joint Venture Act (1992), Foreign Economic Trade Zone Act (1993).

46. The 1998 Constitution has ten Chapters consisting of 166 Articles. The ten Chapters are as follows: 1998 CONST. Ch. 1 (Politics); Ch. 2 (Economy); Ch. 3 (Culture); Ch. 4 (National Defense); Ch. 5 (Fundamental Rights and Duties of Citizens); Ch. 6 (The Structure of the State) Ch. 6, § 1 (The Supreme People's Assembly), Ch. 6, § 2 (The National Defense Commission), Ch. 6, § 3 (The SPA Presidium), Ch. 6, § 4 (Cabinet) Ch. 6, § 5 (Local People's Assembly), Ch. 6, § 6 (Local People's Committee), Ch. 6, § 7 (Public Procurators' Office and Court); Ch. 7 (National Emblem, Flag, National Anthem and Capital).

establishment of North Korea to his father by elevating him to the position of Eternal President, where Kim Il Sung continues to reign posthumously. Rules based on Kim Il Sung's teaching have been professed in order to recruit public support and justify Kim Jong Il's rule. Nevertheless, overcoming the economic difficulty that the country has faced also became an urgent problem that threatened Kim Jong Il's legitimacy, and thus a problem for his regime to solve. Hence, existing principles in the economic sector required alterations to ensure a more pragmatic direction. If one looks closely, elements addressing these two concerns are reflected in the new Constitution.

In its preamble, the 1998 Constitution named itself the "Kim Il Sung Constitution," which legally embodies Comrade Kim Il Sung's *juche* State construction ideology and achievement. Kim Il Sung was idolized as "the founder of the DPRK and originator of the Socialist North Korea," and now the DPRK and its citizens have Kim Il Sung as "the Eternal President of the Republic." Essentially, this means that only Kim Il Sung was, is, and shall ever be worthy of the role of President of the DPRK, a position stipulated in the preface of the new Constitution. This leadership-affirmed truth thus justified the abolishment of the presidency. This rhetorical and structural change was, of course, a reflection of Kim Jong Il's character and motivations. The powers that seemingly went to the grave with the senior Kim were instead creatively transferred to the son. Kim Jong Il herein strengthened the authority of the NDC by adding "an organ for general control over national defense" to the existing "highest military leading organ of State power."<sup>47</sup> This thereby empowered the Chairman of the NDC to direct and command all of the armed forces and guide "defense affairs as a whole."<sup>48</sup> The NDC Chairmanship was elevated to the highest position of the State when Kim Jong Il was re-elected as the Chairman via the new Constitution. This amounts to delegation of State sovereignty to the Chairman of the NDC, since this phrase is interpreted comprehensively.<sup>49</sup> This also suggests that military force is the back-

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47. 1998 CONST. art. 100.

48. *Id.* art. 102.

49. The office of the Chairman of the NDC was exalted as a sacred position. According to the speech proposing to reelect Kim Jong Il as Chairman of the NDC at the first session of the Tenth SPA, the chairmanship was described as follows:

The NDC chairmanship is the highest post of the State with which to organise

bone of Kim's leadership, its means for both regime survival and overcoming the State crisis. Regarding the latter issue, Kim Jong Il himself even suggested the construction of a "prosperous and powerful [N]ation" as the goal of his new era. In sum, supremacy of military forces is the principle by which Kim Jong Il intends to rule, a principle that has aptly been coined "military-first politics."<sup>50</sup>

Accompanying change in tandem with the abolishment of the presidency was also made to vest more authority to the Presidium of the SPA and the Cabinet. The President of the SPA Presidium represents the Nation as the Head of State.<sup>51</sup> The authority of the President and the CPC, which was also abolished in the current Constitution, was distributed to the SPA Presidium and the Cabinet respectively.

Presidential authority concerning foreign and external affairs as the Head of State and the Chairman of the CPA was transferred to the Presidium of SPA, while his authority concerning government management as the head of the executive and the CPA was given to the Cabinet. Thus, the Cabinet is not only the highest executive enforcement organ but was also expanded to become the general State management organ.<sup>52</sup> Although the Constitution delegated many authorities — with the exception of military affairs — to other State organs, these designations have not undermined Kim Jong Il's invincible authority as top leader of the State. He is the General Secretary of the KWP, the Chairman of the NDC and the Chief Commander of the Korean People's Army.

The other component of constitutional changes is concerned with overcoming North Korea's grave economic difficulty. For example, social organizations were added to subjects

and lead the work of defending the State system of the socialist country and the destinies of the people and strengthening and increasing the defence capabilities of the country and the State power as a whole through command over all the political, military and economic forces of the country. It is also a sacred, important post which symbolizes and represents the honor of our country and the dignity of the [N]ation.

*Kim Jong Il's Election as NDC Chairman Proposed*, RODONG SHINMUN [KOREA WORKERS' PARTY DAILY], Sept. 6, 1998, at 1.

50. For a more complete discussion of "military-first politics," see Dae-Sook Suh, *Military First Politics of Kim Jong Il*, 26(3) *ASIAN PERSP.*, Sept. 2002, at 145-67.

51. See 1998 CONST. art. 111.

52. Compare 1992 CONST. art. 124 with 1998 CONST. art. 117.

that can own the means of production, in addition to the State and cooperative organizations.<sup>53</sup> On the other hand, the objects of State ownership were reduced, while those of private ownership as well as those of social and cooperative organizations were expanded.<sup>54</sup> Citizens can now earn income from legal economic activities, in addition to the products of individual sideline activities, including those from the gardens of cooperative farmers.<sup>55</sup> This means that citizens can make money through commercial activities, which has been tolerated after the collapse of the public rationing system and now legalized by the Constitution. This amounts to the initial reception of a primitive market economy. In this regard, creation of citizens' freedom to travel should be noticed.<sup>56</sup> Individuals can travel for business as long as constitutional expression is concerned, although residents still need licenses to travel.<sup>57</sup> Protection of patent rights, in addition to existing inventor's rights and copyrights, was newly included in consideration of the expanded protection of intellectual property rights.<sup>58</sup>

The new Constitution also strengthens the autonomy of individual economic entities. "The State shall introduce . . . [an] independent cost accounting system in the economic management system . . . [and] utilize such economic levers as prime costs, prices, and profits."<sup>59</sup> Expansion of an independent enterprises method will hopefully bring about expanded autonomy in the economic management of individual entities. The introduction of the concepts of costs, prices, and profits is concerned with the introduction of market economy, although constitutionalization of these concepts will not bring about a market economy automatically.

Under the previous Constitution, foreign trade activities were monopolized by the State. But the current Constitution al-

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53. See 1998 CONST. art. 20.

54. See *id.* arts. 21, 22, 24.

55. Compare 1998 CONST. art. 24 with 1992 CONST. art. 24.

56. 1998 CONST. art. 75.

57. This provision seems to be included to legalize residents' travel to seek food during the rampant food crisis since 1994, and the State could not but accept such travel because the crisis was out of control to those who were starving to death. Therefore, creation of the freedom to travel is the acceptance of *fait accompli*, but does not signify the automatic improvement in citizens' fundamental rights.

58. See 1998 CONST. art. 74.

59. See *id.* art. 33.

lows social and cooperative organizations to engage in them.<sup>60</sup> The Constitution also provides constitutional ground for creating a special economic zone,<sup>61</sup> where foreign investors can enjoy broader freedom of economic activities.<sup>62</sup> Although the new Constitution adopted some initial steps needed to begin the first stage of creating a market economy, retention of the general socialist principle of autarky, as well as the regime's seemingly ongoing political inflexibility, still inhibits the rapid growth toward a market economy. These changes were made within tolerable limits for the regime's survival without undermining the current *status quo*. The current Constitution manifests a dilemma which North Korean leaders still face.

### CONCLUSION

The Constitution of North Korea is no more than a character of the law of North Korea. In North Korea, where the rule of law does not govern, but the directives and words of leaders and administrative directives do, legal grounds for State actions are not sought for their justification. Although the Constitution is the highest law in form, it functions merely as a tool of propaganda. In other words, the Constitution in North Korea exists not for the protection of citizens' rights and interests, but merely as a tool to showcase the superiority of the State's system to its citizens and outside observers alike. In this regard, the mere existence of a provision for a fundamental right does not guarantee that right. The lack of constitutional ground also does not indicate the impossibility of action by the State either: the Joint Venture Act of 1984,<sup>63</sup> and widespread travel of residents — in search of food — before legal provisions were created for such actions in 1998 are cases-in-point. These situations allow the State a great deal of discretion in the exercise of its authority. In addition, the State neither finds any restraint to check its limitless exercise of public authority, nor do any such legal mechanisms exist.

However, North Korean leadership has tried to adjust itself

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60. *See id.* art. 36.

61. *See id.* art. 37.

62. On the basis of this provision, the special laws to create the Mt. Geumgang Tourist Zone, Gaeseong Industrial Complex, and Sinuiju Special Administrative Region were promulgated in 2002.

63. *See* 1992 CONST. art. 37 (providing constitutional ground for such law).

to the new environment via constitutional changes. They have tried to lessen the gap between law in the book and law in action. If an open-door policy is the inevitable option that must be chosen to overcome the country's current economic difficulty, law will be one of the most important vehicles to win over foreigners' trust in the North Korea's system. Relevance of law in managing a society should be enhanced in North Korea to draw foreign attention and entice economic cooperation. Therefore, the importance of examining the law in North Korea, including its Constitution, is a rising necessity for all North Korea observers.

The constitutional history of North Korea suggests that revisions are possible at anytime the country's leadership decides to change the direction of State management or keep in step with environments in flux. The wishes of citizens have not been at issue and are unlikely to be for some time. This is unfortunate, but in the perspective of Kim Jong Il's regime, this makes constitutional revision in North Korea straightforward once the top leadership makes up its mind.