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Volume 14 | Number 2

Article 5

2-1-1992

Seminar: The Bill of Rights and Emerging World Democracies

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, *Seminar: The Bill of Rights and Emerging World Democracies*, 14 Loy. L.A. Int'l & Comp. L. Rev. 327 (1992).

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SPEECHES

The Bill of Rights and Emerging World Democracies

To commemorate the bicentennial of the Bill of Rights, the Constitutional Rights Foundation¹ sponsored educational programs and cultural activities to mark two centuries of liberty and freedom, and to promote public awareness of the rights and responsibilities of United States citizens. As part of this celebration, Vaclav Havel, President of the Czech and Slovak Federal Republic, joined several advocates of world democracies at *The Bill of Rights and Emerging World Democracies* seminar.² The following are excerpts from this seminar.

WELCOMING ADDRESS

SHIRLEY HUFSTEDLER:³ The Constitutional Rights Foundation, and particularly the Bill of Rights Bicentennial Advisory Committee, is celebrating the birthday of the Bill of Rights to the United States Constitution. It is my pleasure to introduce to you our opening

1. The Constitutional Rights Foundation is a Los Angeles-based, non-profit organization that strives to teach students the spirit and principles of the United States Constitution. The Foundation, organized in 1962, involves students in active citizenship by sponsoring events and programs, such as the Los Angeles County Mock Trial, Law Day, Sports and the Law, and Youth Community Service. Constitutional Rights Foundation, Bill of Rights Bicentennial News Release (Oct. 24, 1991) (on file with the *Loyola of Los Angeles International and Comparative Law Journal*).

2. This seminar, sponsored by The Times Mirror Company and Unocal Corporation, took place on October 24, 1991, in Los Angeles, California. It was undertaken with the cooperation of the Los Angeles World Affairs Council and the International Law Section of the California State Bar Association. *Id.*

3. B.A., University of New Mexico, 1945; LL.B., Stanford University, 1949. Shirley Hufstедler is a partner of Hufstедler, Kaus & Ettinger. Ms. Hufstедler sat on the United States Court of Appeals for the Ninth Circuit for 11 years, until President Jimmy Carter appointed her United States Secretary of Education. After government service, Ms. Hufstедler returned to teaching and private practice. She was one of three co-chairpersons of the Bill of Rights Bicentennial Advisory Committee. Ms. Hufstедler has written numerous articles for professional journals, newspapers, and magazines in the fields of law, education, government, and national and international affairs. Constitutional Rights Foundation, Biographies of Participants in the Bill of Rights and Emerging World Democracies Seminar (Oct. 24, 1991) (on file with the *Loyola of Los Angeles International and Comparative Law Journal*) [hereinafter Biographies of Participants].

speaker, Lloyd Cutler. He is a founding partner of the law firm Wilmer, Cutler & Pickering in Washington, D.C., and has been a lawyer-statesman for many years, including years of service as counsel to President Jimmy Carter. Among his many other activities, he has been co-chairperson of the drafting committee for the new Czechoslovakian Constitution. With no further introduction, I present to you Lloyd Cutler.

OPENING ADDRESS

LLOYD CUTLER:⁴ The "Velvet Revolutions"⁵ around Eastern Europe had many fathers. One was the new generation of Eastern Europeans who had not lived through the euphoria of the original communist revolutions. Another was Mikhail Gorbachev. A third was the communications revolution around the world; and a fourth was the efforts of the United States and its North Atlantic Treaty Organization allies to confront the Soviet Union militarily. But, among these causes, I think of equal importance was the growing recognition, due largely to the efforts of groups like the Constitutional Rights Foundation around the free Western world, that basic individual liberties are internationally recognized and internationally enforceable human rights. This, of course, is a very new development, one that reverses the nineteenth and twentieth century tradition and history of non-intervention in the domestic affairs of other countries. President James Buchanan's comment when he declined to intervene in the mistreatment of a Jewish citizen by one of the former republics of Italy illustrates this tradition:

I have long been convinced that it is neither the right nor the duty of this government to exercise a moral censorship over the conduct of other independent governments, and to rebuke them for acts which we may deem arbitrary and unjust toward their own citizens

4. B.A., Yale University, 1936; LL.B., Yale Law School, 1939; LL.D. (Honorary), Yale University, 1983. Lloyd Cutler is a partner of Wilmer, Cutler & Pickering in Washington, D.C. He is currently co-chairperson of the Committee on the Revision of the Czechoslovakian Constitution and co-chairperson of the Committee on the Constitutional System. Mr. Cutler also serves as advisory counsel to the International Human Rights Law Group. In addition, he is a trustee of The Brookings Institution and Chairman of the Board of the Salzburg Seminar. Mr. Cutler served as counsel to President Jimmy Carter from 1979 to 1980. He has written extensively on the United States Constitution, constitutional reform, and secession issues. *Id.*

5. The revolutions in Eastern Europe, and particularly in Czechoslovakia, occurred so smoothly and nonviolently that the processes were dubbed "Velvet Revolutions." Lloyd Cutler & Herman Schwartz, *Constitutional Reform in Czechoslovakia*: E Duobus Unum?, 58 U. CHI. L. REV. 511, 521 (Spring 1991).

or subjects. Such a practice would tend to embroil us with all nations. We, ourselves, would not permit any foreign power thus to interfere with our domestic concerns and enter protests against the legislation for the action of our government toward our own citizens. If such an attempt were made, we should promptly advise such a government to return to confine themselves to their own affairs and not to intermeddle with our concerns.⁶

What else could a United States president say when slavery was still imbedded in our Constitution? Even as late as the depredations of Nazi Germany against its Jewish people—the Holocaust—most of the world, as we all know, stood silent.

The United Nations Charter, when it was finally adopted, firmly incorporated the principle of non-intervention in the domestic affairs of other countries. The Charter of the Organization of American States⁷ went even further in the direction of non-intervention. The first step in the opposite direction was the formation of the Council of Europe in the late 1940s. The Council of Europe, joined by most of the Western European democracies, established the European Convention on Human Rights.⁸ This convention is enforceable by appeal to the European Commission of Human Rights. Then, if necessary, and only after all domestic remedies have been exhausted,⁹ an individual citizen of a particular member nation can appeal to the European Court of Human Rights, if that citizen claims that his rights were infringed upon by his own country.¹⁰ Next came the United Nations resolutions relating to Namibia, Southern Rhodesia, and South Africa, which declared apartheid a violation of the fundamental human rights set forth in the United Nations Charter, and called upon all member states to impose boycotts.¹¹ The International Court of Justice actually ruled that apartheid in Namibia violated the fundamental

6. Letter from President Buchanan to Mr. Hart (Jan. 4, 1859), 49 MS. Dom. Let. 474, reprinted in part in 6 J.B. MOORE, *INTERNATIONAL LAW DIGEST* 350 (1906). Buchanan's letter was in response to resolutions adopted by "the representatives of the United Congregations of the Israelites of the City of New York" relating to the case of Edgar Mortara. Mortara was born to Jewish parents in Bologna in 1851, and subsequently detained from his parents under the authority of the Papal government.

7. CHARTER OF THE ORGANIZATION OF AMERICAN STATES (1948).

8. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

9. *Id.* art. 26.

10. *Id.* arts. 47-48.

11. See G.A. Res. 2879, U.N. GAOR, 26th Sess., Supp. No. 29, U.N. Doc. A/8429 (1971); G.A. Res. 2878, U.N. GAOR, 26th Sess., Supp. No. 29, U.N. Doc. A/8429 (1971); S.C. Res. 301, U.N. SCOR, 26th Sess., 1598th mtg., U.N. Doc. S/RES/301 (1971).

principles of the United Nations Charter.¹²

The most important of these developments, and the one that led to the freedom of the countries we are talking about today, was the series of "Helsinki Agreements" executed by the Council on Security and Cooperation in Europe,¹³ which led, in turn, to the formation of Helsinki watch groups all around the Western world. Even in the Soviet Union, a Helsinki watch group was formed under the direction of one of its leading nuclear physicists, Yuri Orlov. While the group was quickly suppressed, the idea spread throughout Eastern Europe and the rest of the world.

Charter 77, the opposition movement started in Czechoslovakia, derived directly from the "Helsinki Third Basket," and was adopted in 1977.¹⁴ Since that time, due largely to the efforts of then-playwright and now President of Czechoslovakia, Vaclav Havel, the notion that the prevention of human rights violations by the Communist states against their own people was an internationally enforceable right spread around the world. The protests around the world had to be recognized by all of the Communist-led nations at that time. When President Havel was tried and sent to jail for the last time, attorneys from Helsinki watch groups around the world filed briefs with the court and, in President Havel's opinion, persuaded the court to limit his confinement to a very brief period of only four months. This was just six months before the Velvet Revolutions.

All of you are aware of the activities of Amnesty International. It has observed twenty major human rights trials around the world, reported unfair results to a world audience, and has posted election watches over the former totalitarian nations as they moved towards free elections. Former President Carter, among others, observed the Nicaraguan elections and pronounced them fair.¹⁵ These watches played a major role in persuading Daniel Ortega, the former President of Nicaragua, to abide by the election results and give up his office. In addition, President Carter and other election watchers observed the Panamanian election, in which Manuel Noriega's hand-picked candi-

12. Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276, 1971 I.C.J. 16 (June 21).

13. See FROM HELSINKI TO VIENNA: BASIC DOCUMENTS OF THE HELSINKI PROCESS 8-9 (Arie Bloed ed., 1990).

14. Charter 77 Human Rights Movement in Czechoslovakia (Jan. 6, 1977) (unpublished manuscript, microfilmed on AMNESTY INT'L COUNTRY DOSSIERS, E.U.R. Fiche 2).

15. See Lori Grange, *2 Observers Praise Nicaragua Election*, L.A. TIMES, Mar. 8, 1990, at J1.

date won, and pronounced the results an outright fraud.¹⁶

Following all of these developments, the Velvet Revolution finally took place in most of the countries of Eastern Europe. In all of those countries, new bills of rights have been adopted. They contain all of the provisions of our United States Bill of Rights. Indeed, as many of you know, bills of rights of that kind were included in all of the Soviet and communist constitutions. But, of course, they were mere Potemkin villages.¹⁷ It took the new Velvet Revolution to introduce meaningful rights backed by independent constitutional courts charged with the enforcement of those rights.

These bills of rights are much more detailed than ours, and go beyond the fundamental rights with which we are familiar. They include what we would call "entitlements": the right to a job, an education, and good health, among others. These are rights some have fought, so far unsuccessfully, to have built into our Constitution. However, many defenders of our Bill of Rights would not like to see these rights included as fundamental rights, because these types of rights were invoked by Lenin and his followers to suspend basic human rights, ostensibly to achieve greater economic and citizenship rights for the ordinary proletariat.

These bills of rights also contain common European balancing qualifications. In Europe, generally the freedoms of speech and religion are modified by phrases such as "except as otherwise provided by law," and "except for measures necessary to maintain order or protect the rights of others in a democratic society." The rights of free speech and press that we are discussing today are balanced, in most of these countries, by a parallel constitutional right to a good reputation.

These bills of rights are also buttressed by new independent judiciaries for which we have high expectations. Of course, it will take a good deal of time for these judiciaries to come into place and do their work, because the existing judicial and legal systems were so entirely corrupted under communism, and because the people of these coun-

16. See Peter Eisner, *Opposition Candidate: I've Won by a Landslide*, *NEWSDAY*, May 10, 1989, at 5; Kenneth Freed, *Carter Calls Vote in Panama a 'Fraud'; Troops Fire on Anti-Noriega Demonstrations*, *L.A. TIMES*, May 9, 1989, § 1, at 1; see also Phillip Bennett, *Noriega Rivals Are Assaulted; His Supporters Injure Candidates, Runningmates*, *BOSTON GLOBE*, May 11, 1989, at 1; Lindsey Gruson, *3 Top Opponents of Noriega Assaulted in Street Melee; Disputed Election Nullified*, *N.Y. TIMES*, May 11, 1989, at A1.

17. The term "Potemkin villages" derives from the sham villages that Grigory Aleksandrovich Potemkin purportedly constructed in preparation for Empress Catherine II of Russia's tour of the Crimea in 1787. See 7 *THE OXFORD ENGLISH DICTIONARY* 222 (2d ed. 1989).

tries have so little confidence in their lawyers and judges. In addition to these independent judiciaries, these countries have decided, as an initial step, to join the Council of Europe, the European Commission of Human Rights, and the European Court of Human Rights. Therefore, even if their own courts fail them, citizens of Eastern European countries will have recourse to an international tribunal to protest claimed deprivations of rights by their governments.

Let me close by just mentioning two examples of problems that have not yet arisen in the United States, but are very real in Eastern Europe today. One problem is illustrated by a law recently passed by the Federal Assembly in Czechoslovakia that carries out the principle of "lustration."¹⁸ This law throws light on the files of the secret police and their informers. It deprives a person of the right to hold office or work for the Czechoslovakian radio system or newspapers if, at any time between 1948 and 1989, the individual was a member of the security police, a conscious collaborator with, or informer to, the security police, or a principal official of a national or local Communist party. While wide-sweeping, the law does allow an exception if the individual recanted and was jailed for his recantation by the Communist regime. However, if the individual simply recanted without punishment, the exception may not apply. This law also provides for secret hearings before a new commission, and requires that the findings of the commission cannot be made public without the permission of the particular subject. This seems to restrict newspapers, radio stations, and everyone else.

The second problem can best be described as the problem of self-determination. Self-determination is a human right that includes the right of an ethnic minority to be educated in its own language and to address the government in its own language.¹⁹ These rights are basic rights throughout most of Western and Eastern Europe today. Of course, here in Southern California, a similar issue may arise in the near future.

18. For a discussion of the Czechoslovakian law that carries out the principle of lustration, see *Dienstbier Speaks Out Against Screening Law*, CTK NAT'L NEWS WIRE, Oct. 11, 1991, available in LEXIS, Nexis Library, Omni File; *Examine Our Hearts Before We Vet Public Figures—Archbishop*, CTK NAT'L NEWS WIRE, SEPT. 11, 1991, available in LEXIS, Nexis Library, Omni File; *Law Excluding Former STB Collaborators from Some Posts Passed*, CTK NAT'L NEWS WIRE, Oct. 4, 1991, available in LEXIS, Nexis Library, Omni File; *Screening Law Does Not Jeopardise Functioning of CSFR Army*, CTK NAT'L NEWS WIRE, Oct. 18, 1991, available in LEXIS, Nexis Library, Omni File.

19. See Rupert Emerson, *Self-Determination*, 65 AM. J. INT'L L. 459 (1971).

HUFSTEDLER: Thank you. We will hear more from Lloyd Cutler a little later. It is now my pleasure to introduce to you Geoffrey Cowan, who will chair and open our first panel.

PANEL I

SEEKING NEW LIBERTIES: THE FREEDOM OF EXPRESSION

GEOFFREY COWAN:²⁰ To open this panel on new liberties and freedom of expression in the emerging world democracies, I want to make an observation that may help put the discussion in some perspective. In the United States, we herald and celebrate the Bill of Rights and our commitment to free speech, press, and assembly. Yet, it is hard to be proud of our record in protecting these rights during times of war or fear of domestic turmoil.²¹ In candor, I think that we can recognize at least four conditions that are important, if not essential, to the full protection of free expression: (1) a history, tradition, and legal framework to secure basic rights; (2) individuals and private institutions capable of reinforcing and utilizing those rights; (3) relative security from the realistic and imminent threat of foreign invasion, domestic insurrection, or civil war; and (4) enough economic stability to insulate our government from revolution and from the ravings of hate-filled demagogues.

Most interesting about today's topic is the effort of these emerging democracies to ensure free expression even though they have relatively little recent experience with freedom, possess little or no institutional infrastructure to sustain freedom, and are experiencing a time of economic hardship and an ever-present danger of war, rebellion, and ethnic conflict. Our panelists today will talk about free expression in four very different war zones: Eastern Europe, the Soviet

20. B.A., Harvard College, 1964; LL.B., Yale Law School, 1968. Geoffrey Cowan is an attorney who is of counsel at Hall & Phillips in Los Angeles, California, and a Senior Lecturer in the UCLA Communications Studies Program, specializing in free speech and the First Amendment. A past chair of California Common Cause, Mr. Cowan led the commission that drafted the ethics law for the City of Los Angeles. He currently serves on the National Board of the Fund for Free Expression, and is the co-author of *Top Secret*, a play about the Pentagon Papers, which was broadcast by National Public Radio in March 1991. Biographies of Participants, *supra* note 3.

21. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Dennis v. United States*, 341 U.S. 494 (1951); *Abrams v. United States*, 250 U.S. 616 (1919); *Debs v. United States*, 249 U.S. 211 (1919); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Schenck v. United States*, 249 U.S. 47 (1919); *United States v. The Progressive*, 467 F. Supp. 990 (W.D. Wis. 1979).

Union and Soviet republics, Colombia, and the Persian Gulf. I think we may learn as much from observing how the new democracies handle free expression under these conditions as they will learn from observing us.

MADELEINE ALBRIGHT:²² I think that Mr. Cowan has stated very clearly how important the press and freedom of speech are to the revolutions that have taken place around Central and Eastern Europe and the rest of the world. In the 1980s, the following statement was sprayed on the walls in Warsaw: *prasa klame*, which means "the press lies." The people were very used to the fact that the press was indeed "the handmaiden of the party," as Lenin had ordered. In 1968, when the Soviets invaded Czechoslovakia, they used freedom of the press as one justification for putting down the counter-revolution.

Freedom of the press and expression are clearly the touchstones of what has taken place in those countries. But, as with so many aspects of a period I call "post-euphoria," issues are much more complicated than they seemed during the revolutions themselves. The Czechoslovakian Ambassador to the United States stated it well: "Life was much simpler when all we were worried about was how to hide from the police."²³ The responsibility of a free press and the reality of freedom of expression are weighing heavily on these new societies, especially on officials trying to wend their way through this new situation and on a public that used to be silent.

Many of us have spent more time in Central and Eastern Europe recently than ever before, and there are many visitors to the United States from those countries. But, we still do not understand a great deal about the inner-workings of those societies. To shed light in this area, I was involved in conducting a survey, published by the Los Angeles Times,²⁴ which I think provides some understanding of the

22. B.A., Wellesley College, 1959; M.A., Columbia University, 1968; Ph.D., Columbia University, 1976. Madeleine Albright is President of the Center for National Policy in Washington, D.C. and a consultant to the Times Mirror Center for The People & The Press. Ms. Albright is also a professor of international affairs in the School of Foreign Service at Georgetown University, and the author of *Poland, The Role of the Press in Political Change* (1983). Bibliographies of Participants, *supra* note 3.

23. Ambassador Rita Klimova of the Czech and Slovak Federal Republic, Address at the National Democratic Institute's Annual Harriman Democracy Awards Dinner (Mar. 5, 1991); see also Chuck Conconi, *Personalities*, WASH. POST, Mar. 5, 1991, at B3; Roxanne Roberts, *Democracy, Up for the Count; Institute Honors Czechoslovakia's Havel*, WASH. POST, Mar. 6, 1991, at B1.

24. See *The Pulse of Europe*, L.A. TIMES, Sept. 17, 1991, at H1-H8.

basic attitudes of Central and Eastern European people, especially on the issues that we are discussing today; namely, the media and freedom of speech. The results present a fascinating picture of a combination of a socialist legacy, pre-communist political culture, and desire to be part of the democratic community. As might be expected, there is tremendous confusion. We surveyed 5000 people in Central and Eastern European countries and spoke with many of them personally. When we asked what they liked most about their respective revolutions, they volunteered political freedom, pluralism, and democracy. When we asked specifically about what effects radio, television, and newspapers were having in their countries, the people surveyed gave the press generally positive ratings. The Poles surveyed were the most favorably disposed toward newspapers, with sixty-one percent rating their work positively. Although still a plurality, only forty-three percent of the Czechoslovakians rated newspapers favorably. Notably though, people rated newspapers or media twice as highly as they did their parliaments or local authorities. Further, they rated newspapers on par with two highly favored groups, the church and environmentalists.

Interestingly, the Central and Eastern Europeans surveyed urged for less restraint on the press than did people in Western Europe. I think this indicates that they want their freedom. For example, fifty-four percent of British, forty-five percent of French, and fifty-two percent of Italians would approve restraints on the press, while only twenty-seven percent of Hungarians, twenty-six percent of Bulgarians, twenty-one percent of Poles, and seventeen percent of Czechoslovakians would approve such restraints. However, because of their socialist legacy, Central and Eastern Europeans do not believe in private ownership of the media. At best, they believe that the press should be owned jointly by private industry and the state. There are regions, however, such as Bulgaria, where the people believe that exclusive state ownership should continue.

Central and Eastern Europeans have some ambivalence about personal freedoms. If you probe beneath the surface, they all favor a multi-party democracy, but would outlaw any political party that rejects democracy. They also do not think that freedom of speech should be granted to fascists, which shows they have something to learn about democracy and free speech. In addition, along with many people in Western Europe, they would ban books dangerous to society, and would not allow homosexuals to teach in schools. Further, in

light of the point Mr. Cutler made about the lustration laws,²⁵ we asked one question about whether people should hold others accountable for their pasts, or whether people should look to the future and forget. These societies are totally divided on that particular subject.

So, there are a great number of contradictions regarding political and personal freedom that Central and Eastern European people still must resolve. As the Czechoslovakian Ambassador to the United States has said, there are great difficulties because, even though editors of newspapers have been changed, many of the same journalists are still employed.²⁶ According to the Czechoslovakian Ambassador, journalists neither know how to get enough print paper nor do they know in fact how to cover news at all. They have never been able to distinguish fact from opinion, and they are very concerned about yellow journalism and foreign ownership of their press.²⁷ To avoid what newspapers believe are mistakes of the past caused by reprinting their leaders' comments verbatim, newspapers now sometimes refuse to reprint their leaders' speeches at all. If you ask President Havel, he will tell you that he is having trouble getting his speeches reprinted in the newspapers, because the newspapers do not think that it is their duty to give any voice to the government.

Clearly, the transition taking place in Central and Eastern Europe is a very difficult one, and I think that the period of post-euphoria will be a trying one for those countries.

COWAN: Thank you Professor Albright. The next speaker is Robert Rosenfeld.

ROBERT ROSENFELD:²⁸ I am not an academic, a diplomat, nor a journalist. I am a lawyer, and, worse than that, I had the temerity to suggest to the Soviets that they had something to learn from *our* legal system. But, in the course of those dialogues, which started in 1983

25. See *supra* note 18 and accompanying text.

26. Ambassador Rita Klimova of the Czech and Slovak Federal Republic, Keynote Address at the International Women's Media Foundation's 1991 Courage in Journalism Awards (Oct. 21, 1991).

27. *Id.*

28. B.A., George Washington University, 1971; Honors B.A., Rhodes Scholar, Oxford University, 1971-73; J.D., Harvard Law School, 1976. Robert Rosenfeld is a partner of Heller, Ehrman, White & McAuliffe in San Francisco, California. Mr. Rosenfeld has participated in numerous seminars with Soviet judges, advocates, and professors, including a seminar on the First Amendment and the press. He has lectured at Moscow State University Law School and at the Soviet Legal Academy. Biographies of Participants, *supra* note 3.

and have continued to the present, three points struck me which bear on the chances for free expression to take meaningful hold in the Soviet Union.

First, in our initial discussions, it was clear that there was an inherent resistance—almost an inability—to understand the notion of pluralism. In the context of judicial systems, the contrast between an adversarial and an inquisitorial system illustrated that point. On the notion of competing versions of the truth, “fighting it out” was something that the Soviets thought made good theatre, but the concept had little to do with the notion of who was right and who was wrong. That was an objective issue, which, if you just looked hard enough, you could figure out. In addition, the Soviets had no understanding of competing private organizations. There was the government and there was everybody else, but they were not competing entities that might sponsor, support, or resist efforts to squelch the expression of certain ideas or notions. Those things have changed in the Soviet Union. Even within the legal community, there is experimentation with an adversarial process and jury system. The lawyers have organized into many different groups and espouse many different ideas. I think that bodes well for free expression taking hold.

The second point that struck me was the Soviets’ different conception of “rights.” In our first conference, it was plain that the United States and Soviet delegations were “two ships passing in the night.” The United States delegation had a conception of rights against the state—a belief that we needed to be protected against state power. The Soviets professed an inability to understand any such conception of rights. They juxtaposed freedom of expression with their constitutional right to rest or work. We literally could not engage in any dialogue or meaningful expression of competing points of view. But this too has changed. I cannot say it any better than Andre Fontain, editor of *Le Monde*, who said that when the Berlin Wall came down, Germany, Europe, and language were all reunified.²⁹ In the encounters I have had with Soviets, no longer do the Soviets have one notion of democracy and we another. They now understand us. We can talk about these concepts meaningfully, and can begin the process of sharing experiences as they move forward.

The third point that struck me was the hierarchy of rights. In virtually every encounter I had with the Soviets where individual

29. See RALF DORENDORF, REFLECTIONS ON THE REVOLUTION IN EUROPE 13-14 (1990).

rights such as free expression were discussed, there was always tension between economic and social rights on the one hand, and political rights on the other. In early encounters, when we would chide the Soviets about their human rights record, they would say we must give them time. The war did great damage. They could not afford the luxury of political rights until they dealt with their terrible economic and social problems. Later discussions have seen some reversal in this hierarchy. Political rights are certainly getting more attention from lawyers and judges. However, I think it is too soon to tell whether events in the Soviet Union will disprove Lenin's creed that no amount of political freedom will satisfy the hungry masses. It seems that the real test of whether free expression will take hold is whether, in these perilous economic times in the Soviet Union, the rights that have been granted will withstand the turmoil that will come with the solution to those economic problems.

COWAN: Thank you Robert Rosenfeld. Our next speaker is Francisco Santos Calderon, who has a fascinating experience to share from another part of the world.

FRANCISCO SANTOS CALDERON:³⁰ The world is experiencing an exhilarating explosion of freedom and democracy. In the past decade, we have seen not only the Iron Curtain fall, opening the door to new forms of popularly-elected governments, but have also seen democracy rise in Latin America, while military dictatorships, with notable exceptions including Haiti, fall. How long will it take for the pendulum of a region just a few miles south of here to swing back? It depends on how those new democracies will cope with the difficult tasks that lie ahead of them, and how responsive they will be to popular demands.

The outburst of freedom, liberty, and self-government in Latin America brings along a whole set of demands. These rights come with costs. When elected governments must decide where to "put their money," freedom of expression is not a popular alternative. Generally, it is up to the people of these countries to recognize that, in

30. B.A., University of Texas at Austin, 1984. Francisco Santos Calderon is the managing editor and a columnist for *El Tiempo* newspaper in Bogota, Colombia. He is currently a Nieman Fellow at Harvard University. In September 1990, Mr. Santos was kidnapped by members of the Colombian drug cartel to silence his editorial voice which urged public and government action against the cartel. He was released in May 1991. Mr. Santos is a graduate of the University of Texas at Austin, and has taught at both the University of Jorge Tadeo and Central University, in Bogota. Biographies of Participants, *supra* note 3.

a new political setting, organizations spring up, survive, and create a healthy, informed environment that allows society to understand and cope with reality. In addition, and more significantly, these people must understand that democracy permits citizens to take important political positions.

Freedom of expression is now a hard-won reality in Latin America, one of the most dangerous regions in the world for journalists. Latin American journalists have always been targets of those who dislike dissenting voices. As we see freedom of expression increasing in the region, due more to inaction than action by the state, we also feel the violent steps of extremists from right and left. These extremists include over-anxious guerilla groups, militaries, and bandits or drug barons who eliminate, or co-opt through violent pressure, those who do not concur with their views.

Colombia is a unique case due to the prevalence of two types of violence: guerillas and drugs. In the past ten years, seventy-three journalists have been killed and many more have been kidnapped, including myself. No one has been convicted for these murders, but the lack of justice is not the biggest threat to freedom of the press in Colombia. Our investigative units have been dismantled because it is obviously too dangerous to investigate and protect journalists when we too are targets. It becomes an impossible mission. Two newspapers have been bombed, and certain areas of our country are not safe for journalists to enter. Even as we speak today, our newsrooms are surrounded by armed soldiers, and our newspapers are barricaded to prevent a car bombing. It is a picture more like a war zone than a newspaper.

Nevertheless, Colombia's press can still hold its head up. We are here, we are not defeated, and we will continue to do our job. We are an essential part of a democracy, and we know that in a violent country like Columbia, we must pay a price for standing up against extremists and the corruption and violence the drug business generates. Even after my experience, I think it is a small price to pay to further the goals of a political system that allows the non-violent expression of even these extremists to exist and freely operate.

Although the situations in Colombia, El Salvador, and Peru are the most relevant, due to the level of violence that exists in those countries, they are by no means the general case in Latin America. With the advent of democracy in the Southern Cone³¹ and Central

31. The "Southern Cone" of Latin America consists of the following countries: Argen-

America, freedom of expression and of the press have been restored, although more so in some countries than in others. These freedoms are at levels we have never before seen. Latin America is certainly better than it was ten years ago, but there is great room for improvement. Literacy campaigns, better education, and the development of Latin American economies can lead to even stronger freedoms of the press and expression. In Colombia, we have paid a dear price to preserve freedom of the press, but our fight continues. We must prove that the blood those seventy-three Colombian journalists spilled over the last decade was not in vain. Colombia is, and will continue to be, a democracy.

COWAN: Thank you Francisco Santos Calderon. The last panelist is Alvin Shuster. While he is coming forward, let me thank our sponsors, the Constitutional Rights Foundation, the World Affairs Council, Unocal, and The Times Mirror Company.

ALVIN SHUSTER:³² In an ideal world, a foreign correspondent would pack, along with his laptop computer and expense account forms, a copy of the First Amendment.³³ As a reporter travels from country to country, the document would be pulled out and flashed as needed, and used as a high-powered pass allowing unlimited access. Doors and mouths would open. Officials would serve coffee. Information long under wraps would be uncovered, and our readers would be even better informed.

Alas, it does not quite work that way, and it does not work that way even in our own country. In fact, a revelation of sorts occurred

tina, Chile, Paraguay, and Uruguay. Thomas Buergenthal, *The Advisory Practice of the Inter-American Rights Court*, 79 AM. J. INT'L L. 1 (1985).

32. B.A., George Washington University, 1952; Nieman Fellow, Harvard University, 1966-67. Alvin Shuster has been a foreign editor of the *Los Angeles Times* since 1983. During his tenure, the newspaper has added 7 foreign bureaus and 11 foreign correspondents. From 1977 to 1983, Mr. Shuster served as assistant editor of the editorial pages of *The Times*. Prior to joining the *Los Angeles Times*, Mr. Shuster served as *The New York Times*' bureau chief in Rome, London, and Saigon. As a foreign correspondent, Mr. Shuster covered the Soviet invasion of Czechoslovakia, the war in Vietnam, and troubles in Northern Ireland. He has been a Nieman Fellow at Harvard University and President of the Foreign Correspondents Association. Biographies of Participants, *supra* note 3.

33. The First Amendment to the United States Constitution reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

to me during the coup crisis in Moscow.³⁴ Our reporters had more access to Soviet officials, more contact with the participants, and more leeway covering the events in the Soviet Union than our reporters had covering the Gulf War. In contrast, I might say that Moscow looked like an open society.

The United States Constitution may well say that "Congress shall make no law . . . abridging the freedom . . . of the press,"³⁵ but there are those in journalism who think the Pentagon certainly enacted some regulations that did just that.³⁶ I will not complain too loudly about that today, nor will I go into a lot of detail on the restrictions, the limited access to the military, or the successful efforts to restrict news flow, shaping the images of the more than 1000 reporters sent to cover the Gulf War. A very small percentage of reporters—perhaps ten percent—actually saw any part of it.

But that was a short war. The long-term conflicts involving the press take place everyday on all continents. Quite a few countries, in fact too many, make it difficult for their own reporters, as well as United States reporters, to operate freely. Of course, many nations, such as China, embrace the language of press freedom without embracing the practice of it. China's Constitution talks about freedom of the press, speech, assembly, and association.³⁷ It is nice-sounding fundamental legislation which actually means very little. China has no supreme court willing or able to forbid prior restraint or otherwise back up basic freedoms.

So where would we use that First Amendment pass these days? I will not survey the world, but let me touch on a couple of places at random. It would be nice to have it in China, in Africa, and in many parts of the world. It would be nice to have it at the Pentagon once in a while too. But, even in more advanced societies, concepts of a free press and the people's right to know are not always fully developed. These governments set the agenda and homogenize the coverage, regardless of existing laws or customs on press freedoms. For example, the British government and its Official Secrets Act³⁸ can have an in-

34. For a discussion of the coup crisis, see John-Thor Dahlburg, *Soviet Right Tightens Its Grip, Troops Deployed; Some Defy Coup Leaders*, L.A. TIMES, Aug. 20, 1991, at A1.

35. U.S. CONST. amend. I.

36. See, e.g., *The Media and the Military*, WASH. POST, Jan. 26, 1991, at A19.

37. Article 35 of the Constitution of the People's Republic of China reads: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." XIANFA art. 35 (1982) (P.R.C.).

38. Official Secrets Act, 1989, ch. 6 (Eng.).

hibiting effect unlike any experienced in the United States. In Mexico, the press has its problems, but the situation is improving. Japan, by United States standards, is not ideal.

What is often of concern to journalists in the United States—and I hate to even raise the issue with this audience—is the seeming lack of understanding among our own population about what the press is about, what it tries to do, and why the press complains when it cannot do it. During the Gulf War, for example, the polls in this country showed that a majority of the public thought the press was overly aggressive and probably had enough information as it was.³⁹ We all heard statements such as, “Why is the press harassing that nice sweet colonel during that briefing?” I think we must do better in communicating our message and what the First Amendment means. We must generate more confidence in our roles and duties. How much support could we get, for example, from some of the phrases used by Supreme Court Justice Hugo Black in the *Pentagon Papers* case?⁴⁰ Meetings such as this one today clearly help.

In closing, I must stress that, the Gulf War and other problems notwithstanding, United States journalists, compared to our colleagues around the world and particularly in Latin America as Mr. Santos described them, are indeed a fortunate bunch. We owe a deep debt of gratitude to the authors of the First Amendment. We do pretty well, and our success is catching overseas. The First Amendment, the idea behind it, and the sentiments it contains are rather important exports. How else can we explain the first internationally televised news conference held by the leaders of a Soviet coup where no one was required to flash his First Amendment pass?

COWAN: Thank you Alvin Shuster. I now ask that each of the panelists make a short closing comment, starting with Mr. Cutler.

CUTLER: Let me say only that, although there are many reasons to worry about what will happen in Eastern Europe, particularly about the treatment of human rights, there is a tremendous yearning in that part of the world for human rights as they are enjoyed in the Western world, and a great desire to emulate those Western systems. In practice, these rights are threatened by the dislike by majority groups for

39. See, e.g., Clarence Page, *When War News Is Bad, Is It Right to Kill the Messenger?*, CHI. TRIB., Feb. 16, 1991, at C13; *People Criticize News Media, But Value the News*, CHRISTIAN SCI. MONITOR, Apr. 12, 1991, at 19.

40. See *New York Times Co. v. United States*, 403 U.S. 713 (1971).

minority ethnic groups, and problems such as those we have heard about today: a preference for economic rights over political rights and an intolerance of other views. But we should remember that immediately after we adopted our own Bill of Rights, we passed the Alien and Sedition Laws,⁴¹ making it a crime for members of Congress and the press to criticize the actions of the government, regardless of the truthfulness of those criticisms.

ALBRIGHT: I think that what comes out of this discussion and the various work that we here have done is that we must have some humility when we claim to have the answer to everything. Clearly, our best exports are the Bill of Rights and human rights. But, in listening to Mr. Shuster, we see that we do not do everything exactly right here, and therefore we have a great deal to learn. The balance between political expression, freedom of the press, and the necessity of a government to respond to the wishes of its people is the magic of democracy. We are all learning as democracy progresses in this very complicated world.

ROSENFELD: We should not forget that free expression can serve two distinct purposes. John Stuart Mill, a century and a half ago, spoke of the intrinsic value of free speech in terms of personal and individual development.⁴² If you have been to Eastern Europe or the Soviet Union since the bounds have been loosened, you can see the benefits of free expression and free speech. Free expression and free speech also serve instrumental functions, as they are the means by which we accomplish much within the system.

From the perspective of our mature system, we may view the function of a free press differently than we would from an emerging system. I will echo what has been said: we ought to remember how long it took us to get to the imperfect state in which we are now.

SANTOS: I hope United States citizens realize how lucky they are to have a press as free as it is. Many countries and people are still fighting for the freedom of press, the freedom of assembly, and the freedoms to move, talk, and reunite. Even though violence can curtail the level of press freedom in a country, this freedom is essential to a democracy. I would rather see a totally anarchic freedom of the press than no freedom of the press at all.

41. Alien and Sedition Laws, 1 Stat. 596 (1798).

42. JOHN STUART MILL, *ON LIBERTY* (Prometheus Books 1986) (1859).

SHUSTER: Let me conclude with a short anecdote. I was in Prague after the Russian invasion for seven months, living in the Hotel Alcron. I received a call one night from a dissident who complained that the government was cracking down on the press and had additional plans to crack down and jail editors. The dissident had a statement he wanted to deliver to me and my paper, and wanted to see me. I warned him that the Hotel Alcron was surrounded by secret police, that it was not an ideal time to come, and that he must be aware of the dangers. But he insisted on coming. The dissident and a colleague came up to my room at the Alcron and handed me the statement. He said, "The reason why I'm giving you this statement is because things are so bad I cannot even get this published in my own papers these days." His name was Vaclav Havel.

Today we learn from Professor Albright that President Havel is having trouble, once again, getting his speeches published in papers. In a sense, maybe things have come full circle, but they are healthier that way.

COWAN: Let me conclude with this thought. If the whole world is watching how we deal with our Bill of Rights and First Amendment, we have one more reason to try to live up to our ideals. Thank you very much, and thank you panelists.

REMARKS OF VACLAV HAVEL

HUFSTEDLER: We are honored to hear next from a speaker who was first internationally acclaimed as a dramatist, but whose life and work came to symbolize to his country, and to millions all over the world, the indomitable intention to fight oppression. He became honored everywhere for his courage in challenging the state in the cause of civil liberties. How easy it is to recite platitudes about the value of liberty when one is free, or to praise courage when one is not at risk. Our speaker abjured silence when only silence was safe. Hear what he wrote in an open letter to the then-president of his country, predicting the results of the government's dangerous road of deadening life for the sake of increasing uniformity and ceaselessly degrading human dignity with, as he said, the "paltry objective of protecting your own power." He wrote:

[When] the crust cracks and the lava of life rolls out, there appear not only well-considered attempts to rectify old wrongs, not only searchings for truth and for reforms matching life's needs, but also symptoms of bilious hatred, vengeful wrath and a kind of feverish

desire for immediate compensation for all the endured degradation. Nothing is less tolerable to the despot than the truth. Nothing is more heartening to people living in darkness than a shaft of pure light reaching them.⁴³

Again and again, our speaker casts that light as a beacon to his people, and for that intolerable assertion of freedom of speech he was repeatedly imprisoned. But, he proved that although the body can be imprisoned, the spirit cannot. When the Communist regime collapsed, our speaker was unanimously elected President of his country in December 1989. Please join me in celebrating the pen, the courage, and the spirit of his Excellency Vaclav Havel.

PRESIDENT VACLAV HAVEL⁴⁴ [English Translation]: More than 200 years ago, representatives of the citizens of this country, who had newly-acquired freedom, decided to lay down the rights and responsi-

43. Letter from Vaclav Havel to Gustav Husak, the President of Czechoslovakia (Apr. 1975), reprinted in Craig R. Whitney, *Upheaval in the East; Czechoslovakia: Havel, Long Prague's Prisoner, Elected President*, N.Y. TIMES, Dec. 30, 1989, at A1.

44. Vaclav Havel, President of the Czech and Slovak Federal Republic, is Czechoslovakia's most prominent living playwright. He was a major force in the creation of the Civil Forum pro-democracy movement on November 19, 1989, and was its point man in subsequent negotiations with the beleaguered Communist regime. A longtime dissident, President Havel enjoys enormous popular support for his moral strength and courage during years of opposition activities and consequent police repression.

President Havel considers himself a reluctant politician, pushed into the political limelight by the need for a nationally known and trusted figure to lead Czechoslovakia as it sheds the remnants of the hardline Communist regime and reestablishes a democratic form of government. He was reelected in the free elections of June 1990.

A Czech, President Havel was born on October 5, 1936, in Prague. His grandfather was a wealthy real estate developer, and his father a famous restaurateur. However, the family's assets were seized after the Communist takeover in 1948, and President Havel worked as a laborer and attended night school to earn a high school diploma. He was denied admission to a university because of his "class origins," and found work as a theater stagehand. President Havel later attended the Academy of the Arts, and eventually became a writer and producer for a Prague theater. In May 1968, he visited the United States for the premiere of his play *The Memorandum*.

President Havel supported the Prague Spring reforms in 1968, and opposed the Soviet-led invasion that caused their reversal. His plays were banned, and he was dismissed from his theater post during the post-invasion return to orthodoxy. He subsequently worked in a brewery, and became active in the dissident community. In January 1977, he was instrumental in drafting the Human Rights Declaration Charter 77. During the following 12 years, he was the target of continual police harassment, interrogations, and detentions. His longest prison sentence was a four-year term running from 1979 through 1983. His most recent was from January to May 1989.

President Havel is not a member of any political party. He has received numerous foreign prizes, as well as honorary doctorates from foreign universities. In 1989, he was nominated for the Nobel Peace Prize. Biographies of Participants, *supra* note 3.

bilities of the state, and the rights of the citizens, in a written document. Since that time, this document has been a cornerstone underlying the stability of the state, giving assurance to the citizens of the United States of America, as well as providing a model for a number of similar documents in other countries. I am referring, of course, to the United States Constitution. Non-citizens of the United States do not know, however, that the birth of the document was preceded by a long and painful process, with discussions lasting over ten years, and with the threat that the newborn state might disintegrate before it could take effect. The *Federalists Papers* by Alexander Hamilton, John Jay, and James Madison recorded the dramatic nature of that process, and threw light on the basic issues that were then debated.⁴⁵

Despite the great difference in space and time, we in Czechoslovakia are now confronted with the same task, and are encountering the same problems that the Founding Fathers of the United States discovered at the end of the eighteenth century. We too are now debating about the constitutional form of our federation; about our division of jurisdiction between the central government and republic; about the ways in which a system of checks and balances between the executive, legislative, and judicial branches should be built; and about what powers should be vested in the head of state and in the parliament. It has become evident that even the United States Constitution can serve only as a source of inspiration. This lengthy and often educated discussion not only serves as a process leading toward a constitutional expression of democratic values and liberties, but also demonstrates the existence of these values. It is only through such a discussion that a constitution of truly free people, and a truly free state, can be achieved.

In one respect, however, we have learned a lesson from the authors of the United States Constitution. Even the best definition and division of jurisdiction among individual authorities does not give citizens an explicit guarantee of their rights and liberties. The first ten amendments to the United States Constitution, known as the Bill of Rights,⁴⁶ were ratified three years after the Constitution itself. In my country, developments have gone the other way. We have adopted a bill of rights and freedoms, based on the principle of inalienable rights of citizens, as the first building block of our new constitution. Like

45. See generally THE FEDERALIST.

46. See generally U.S. CONST. amends. I-X.

the original United States document, our bill embraces freedoms of expression, press, religion, assembly, and association, as well as the right to petition for grievances.⁴⁷ It protects private property and helps freedom.⁴⁸ It also grants our citizens safety from illicit prosecution, and guarantees them the right to due process of law.⁴⁹ It is in this bill that we find a guarantee that despite all the ongoing disputes, we shall ultimately create a constitution that will ensure a free and safe environment for all citizens. Where the citizen is free, the state is free as well.

PANEL II

THE CHALLENGE OF CREATING A DEMOCRATIC SOCIETY

HUFSTEDLER: What an extraordinary impact the document that we celebrate and take so much for granted has had. It was not the shot at Concord that was heard around the world; it was the words of our Constitution.

Now, it is my pleasure to present to you the chair of our next panel discussion, Professor Christopher Osakwe.

PROFESSOR CHRISTOPHER OSAKWE:⁵⁰ Many years ago, in my comparative constitutional law class at Moscow University, my students and I were comparing the United States Bill of Rights with the bill of rights contained in the Brezhnev Constitution.⁵¹ One of my students, a Russian native, said to me, "Professor Osakwe, democracy is in the eyes of the beholder." I asked him to clarify his statement, and he said, "We have our Marxist concept of democracy, and you have your idea of Western democracy." I pushed him farther: "Could you clarify for us what you mean by these statements?" In anger, he said to me, "Professor Osakwe, in our concept of democracy, it is not democ-

47. Cf. U.S. CONST. amend. I.

48. Cf. *id.* amends. V, XIV.

49. Cf. *id.* amends. V, VI, XIV.

50. LL.B., Moscow State University (Lomonosov) School of Law, 1967; Ph.D., Moscow State University (Lomonosov) School of Law, 1970; J.S.D., University of Illinois College of Law, 1974. Christopher Osakwe, a native of Nigeria and naturalized United States citizen, is a visiting professor at the Whittier College School of Law. In 1990, Mr. Osakwe was appointed special consultant on law reform to the Supreme Soviet of the Russian Federation. From 1989 until 1991, Mr. Osakwe was managing partner of the Moscow office of the law firm Riddle & Brown. A *summa cum laude* graduate of Moscow State University Law School, he was a fellow at Oxford University. Biographies of Participants, *supra* note 3.

51. KONST S.S.R. (1977).

racy to allow the Nazi party, in full regalia, to march through downtown Skokie, Illinois.”⁵² I asked if he had any other examples. He said, “Yes sir. In our concept of democracy, it is not democracy to allow the Ku Klux Klan, in full hood, to march through downtown Harlem; . . . and it is not democracy to allow the civil rights activists to hold protest marches through Forsythe County, Georgia.” I said, “Your point is well made. However, do you see anything at all in the Bill of Rights of the United States Constitution that perhaps appeals to you as a Marxist democrat?” He said he did. Even though there are many hyphenated democracies—Marxist, African, Islamic—there is what he called a “core democracy.” He did not want to use the term “Western democracy.” I asked the class, “Can we articulate the basic elements of this ‘core democracy’ that the world should strive to achieve?”

The class, within an hour, came up with what we thought were the four elements of this core democracy that the world should aspire to attain. The first element was a free market economy. This rings clear in the Bill of Rights. The second was the rule of law, which would guarantee a government of laws, not of men. The third and fourth elements were the sanctity of private property and the freedom of religion.

In this one hour of class discussions at Moscow University, we agreed that the document we celebrate today represents the best embodiment of the core democracy to which the world should aspire, whether one is a Marxist, African, or Islamic democrat. My students did not use the term “Western democracy” because they probably felt the term “Western” was unacceptable in selling the concept to their fellow Marxists. So, we agreed to remove the term “Western,” and call it “core democracy.”

The point here is that the beauty of democracy is its universal appeal. No country in the world today has bluntly stated that it rejects democracy as an ideal. Rather, countries accept democracy, but modify it to fit their local conditions.

This leads me to my theme today. Throughout the world, we have wrestled with different ways of trying to establish democracy, be it in the Middle East, Europe, Asia, or the Soviet Union. Today, we have assembled a distinguished panel that will address the challenge

52. See, e.g., *Smith v. Collin*, 439 U.S. 916 (1978); *National Socialist Party v. Skokie*, 432 U.S. 43 (1977).

of establishing democracy throughout the world. Our first speaker is Judith Kipper, a specialist on the Middle East.

JUDITH KIPPER:⁵³ I think it is appropriate that this panel on the challenge of democratization follows President Havel's remarks. Every era has its heroes, and he is perhaps the man who will symbolize the recent events following the fall of the Berlin Wall in Eastern Europe.⁵⁴

In the Middle East, the single most important event that has happened since the Second World War may be the end of the Cold War. The Iraqi invasion of Kuwait—an extremely negative event—and the Madrid Peace Conference⁵⁵ are direct results of the end of the Cold War. Parties in this part of the world who received many awards, but were terribly restrained by being surrogate cold warriors, can no longer play that game. They are beginning to realize, with much difficulty and confusion, that the name of the game is now self-sufficiency. Countries that are able to take care of themselves and develop viable, constructive relationships with their neighbors are the countries that will survive through systems of participation.

In the Middle East, we have two democracies. One is Islamic, and one is Jewish. I consider Turkey as much a part of the Middle East as it is of Europe. It became part of Europe as an ally of the North Atlantic Treaty Organization, but Turkey is an Islamic country. It is a secular country, and it is a democratic country. Israel, of course, also has a democracy, but the rest of the countries in the Middle East are not democratic. Nevertheless, there are democratic forces and movements in each and every country in the Middle East. In several countries, such as Algeria, Jordan, Tunisia, and Egypt, there have been quite fair and real elections in the last couple of years.

53. B.A., University of California at Los Angeles. Judith Kipper is a Middle East specialist at the Brookings Institution in Washington, D.C., and directs the Middle East Forum of the Council on Foreign Relations. Ms. Kipper is also a consultant on international affairs for the RAND Corporation and ABC News. She is the co-editor of *The Middle East in Global Perspective* (1991). In addition, a frequent traveler to the Middle East, Ms. Kipper visited five area countries during the Gulf Crisis. She returned to the Middle East several times in 1991, and traveled to the Soviet Union immediately following the coup attempt. Biographies of Participants, *supra* note 3.

54. See David Remnick, *Upheaval in Eastern Europe*, WASH. POST, Nov. 12, 1989, at A25.

55. The Madrid Peace Conference began October 30, 1991 and ended November 11, 1991. See Martin Sieff, *Likud Moderate Eclipsed*, WASH. TIMES, Dec. 3, 1991, at A1; *Palestinians Get Warm Welcome Home*, L.A. TIMES, Nov. 11, 1991, at A4.

So, we do see fledgling movements toward democracy and freedom of expression throughout the area.

One of the remarkable things in the Middle East, even in those places where there is still tremendous censorship of the press, is the presence of a fairly strong infrastructure. People are highly educated, and there is a high literacy rate. Basic health care is also very good. It is quite a developed area, though it is part of the Third World. Furthermore, everybody is informed. You cannot keep people down and out anymore. Everybody has a transistor radio. Half of the countries subscribe to Cable News Network or some other cable system in their homes. Consequently, it is impossible to keep people ignorant of what is happening in the world. They crave a different way of life that gives them some decency and civility.

Certainly, human rights and civil rights are the most important issues in the Middle East. Their goal is to develop a civil society, which will enable them to produce prosperous political and economic systems. Let me tell you what we are facing so you will have a better sense of what we are up against. Throughout the Middle East, sixty percent of the people are under the age of twenty. These people are coming into the workforce and into the life of society at a time of economic desperation virtually everywhere. No system offers these people a stake in it, nor do they have a stake in their existing system. There is no housing, no jobs, no opportunities, and very little hope. Some fifteen years ago, petro-dollars came into the area, creating wealth without work, wealth that failed to produce institutions, democratization, stability, or economic opportunities for these young people. I would also say that this generation, with sixty percent of the population under the age of twenty, is the generation most affected by the 1967 Arab-Israeli War. They are the children of Palestine. Questions about the kinds of westernization occurring in the Middle East in the mid-1970s, due to the petro-dollars that brought many westerners trying to make deals and influence the region, and, of course, the unsettled Palestinian question, are very important. One should not underestimate them at a time when, I repeat, sixty percent of the people are under the age of twenty. They have no jobs and no hope.

I will give you a very quick example that may interest you in relationship to the Madrid Peace Conference. About 250,000 Palestinians have come to Jordan from Kuwait, and another 150,000 are expected because Kuwait is expelling all the Palestinians. Meanwhile, some 300,000 to 400,000 Soviet Jews have arrived in Israel. Conse-

quently, in this terribly troubled area between the Mediterranean Sea and the state of Jordan, with the West Bank squeezed in between, 750,000 new people have been introduced in the last two or three years. This is an area characterized by poverty, economic mismanagement, and a lack of water, jobs, and housing. It is potentially a very explosive area.

The people of the Middle East want a piece of the democratic pie. They want a life of freedom—freedom of expression and the ability to vote and determine their destiny. I believe they look to us for this. While everyone would like to have a VCR, blue jeans, and a Chevrolet—a piece of the material pie, which they well deserve—these are not the real issues in the Middle East. No one is starving in the Middle East. Life is fairly comfortable there, though they too suffer from economic problems. The peoples of this region look to us in the United States because human dignity is not reserved for ruling elites. An individual life counts for something. Each and every one of us has a stake in the system in which we live. Good citizenship does have meaning beyond rhetoric.

When the United States sent 500,000 troops to the Middle East, it was for an important purpose: to liberate Kuwait because sovereignty, even for small states, is indivisible and non-negotiable. But we did not help the cause of democracy when the President implied that we did not go to Kuwait for democracy. It is true that we went to liberate Kuwait, but now an important force for democratic change in Kuwait has been discouraged. We left behind a sense of doubt in the region about United States support for democratization in the Middle East. We do have a stake in being the symbol, the standard bearer, for this system of democracy, imperfect as it is. We must always remember that our single greatest asset is the United States' commitment to human and civil rights and our belief that human dignity is not reserved for ruling elites.

OSAKWE: Thank you very much. We now turn from the Middle East to Europe. Our next speaker is Cornel Metternich.

DR. CORNEL METTERNICH:⁵⁶ When I was asked to speak as a Euro-

56. Baccalaureat in Classical Studies, Calvin College, Geneva, Switz., 1953; Ph.D., Gutenberg University, Mainz, Germany, 1956. Dr. Cornel Metternich is Consul General of Germany in Los Angeles, California. During his diplomatic career, he has served in Bonn, Moscow, Latin America, South East Asia, Africa (as Ambassador in Somalia), New York (for the United Nations), and Paris (as head of the United Nations office). Prior to his assignment

pean about the challenge of creating a democracy, I was reminded of the exercise we have been going through in Europe for 2000 years, the Greeks showing us the way with their early philosophical concepts of human individuality and dignity. Much has happened since: the Christian concept of man, the Magna Carta, Enlightenment, the Bill of Rights, and the Human Rights Convention are just a few examples. Let us turn to the last decade of the twentieth century. The demise of the Soviet Union as a world power has transformed the Soviet Union's zone of influence and domination in Europe into a zone of flux and incertitude, but also into a zone of hope. This change of regime was brought about by a tidal wave of peaceful revolutions and the will of the people to live in freedom and independence. The coming down of the Berlin Wall symbolizes these developments which, in their peaceful nature, are unheard of in European history.

The reasons leading to the revolution were manifold. Some of them were not articulated; all were triggered by opposition to occupation by a brutal and inefficient regime. The churches also played a large role, particularly in my home country of Germany, in Poland, and in the Baltic states. Also provoking the revolution was that the Soviet system, which claimed to be the best in the world, and Marxism, which claimed to be the philosophy and ideology of the future, proved to be fiascos. In contrast, the anathema of the Soviet Communist regime, Western Democracy, proved to be very successful in its practical implications. Although unknown, the concept of Western Democracy was a sign of hope and a goal to achieve. Another reason for the peaceful revolution was that democracy, in the Western sense, is the name of the game. Western Democracy stands for freedom, well-being, and power. The United States of America and the principles enshrined in the Bill of Rights are the rallying points of all democratic forces in the world today.

Of course, we know that the concept of democracy must be substantiated with achievements relevant to daily life. It is very difficult to be a democrat, in the pure sense of the word, on an empty stomach. We see this problem in Central and Eastern Europe. It takes enormous effort to secure a smooth transition from a command system to a free market economy, which in Germany we call a "social market economy." Let us not forget that besides material and psychological

in Southern California, Dr. Metternich was Consul General in Leningrad from 1986 to 1990, also covering the Baltic states. He pursued his law studies in Salamanca, Spain, and at Munich and Mainz universities. Biographies of Participants, *supra* note 3.

problems, those countries in transition must compete, literally overnight, with their neighboring countries' state-of-the-art economies.

In the eastern provinces of Germany we can see this development very clearly, although it is obvious that reunification has eased the problems considerably. It is a very hopeful sign of our times that the Western Democracies are dedicated to building bridges between west and east, and replacing the Cold War with a new system capable of securing equilibrium and peace in the areas hitherto under Soviet domination.

There are many ways to help these troubled and yet hopeful areas. We can help through financial arrangements, such as by remission of debts; by sending technical assistance; by helping re-create the legal and constitutional systems; and by providing experience to help rebuild the infrastructure. Most important, we must be the living example that democracy works and we must show that we are ready to share its benefits. I believe that if we can successfully help the central and eastern parts of Europe, we will have made a major step toward a democratic world order, which will give an incentive to other parts of the world that are struggling to realize our system of human rights and democracy.

OSAKWE: One of the basic themes of today's seminar is that democracy is a process in constant search for improvement. The fact that we are here today to discuss the challenge of democracy in Europe tells me that democracy is not only an issue for Third World countries. The fact that today we have heard from Europe simply tells us that we need to constantly search for ways to improve democracy. Now, we move from Europe to Asia, and for that we hear from Robert Oxnam.

ROBERT B. OXNAM:⁵⁷ It is an enormous privilege to stand on the same stage where President Havel stood just a moment ago. I can

57. B.A., Williams College, 1964; M.A., Yale University, 1966; Ph.D., Yale University, 1969. Robert B. Oxnam is President of the Asia Society and the author of *Cinnabar* (1990), *History and Simulation: The Ch'ing Game* (1972), and *Ruling from Horseback: Manchu Politics in the Oboi Regency* (1975). He has co-authored and edited many publications, including *Japan, Korea and China* (1979), *The United States and China: American Perceptions* (1977), and *The China Challenge: American Politics in East Asia* (1991). Mr. Oxnam served as host and moderator for the WCBS-TV 30-part series, *Asia: Half the Human Race*. In addition, Mr. Oxnam is a lecturer on China, Asia and United States-Asia relations, and is active in the development of secondary education in international affairs. Biographies of Participants, *supra* note 3.

think of no one who adds his signature more correctly to the Bill of Rights than President Havel. He reminds us, though, that the eyes of the world press have been focused on democracy in Europe. The question, for me at least, is what about the 2.8 billion people, over half the human race, who live in Asia?

If we look back over the last several years, two searing images are left in our minds. One is of a very courageous woman standing before yellow banners in February 1986, proclaiming the end of the Marcos era and the return of democracy to the Philippines.⁵⁸ The other is of a very courageous young man three years later, in June 1989, standing in Tian An Men Square before a tank.⁵⁹ Which image represents the direction in which Asia is going? I am a cautious optimist. I believe that over time Asia, too, will move in the direction of participatory government, protection of basic civil rights, and an independent press and judiciary. As we watch this process, however, we must be very careful. We must be particularly careful about how our own history influences the way in which we perceive democracy.

I would like to make six very quick points about the problems United States citizens face in perceiving democracy, which we must keep in mind in Asia and elsewhere in the world. First, we will not always see Western-style democracy. We will not always see democracy made on Capitol Hill in Washington, D.C. or Westminster in London. Japan is a marvelous case in point. Japan does have democracy, yet its system of one-party government and factionalism baffles many foreign observers. Although Japan needs rejuvenation and restructuring of its political system, as does the United States, we have very different approaches to a basically democratic system.

Second, some business people have said that only countries that are stable and authoritarian will grow rapidly in terms of economic development. I think Asia has disproved this point powerfully in the cases of Taiwan and Korea in the last three years. These two confucian, authoritarian states have developed into major democracies in the region. Although they have a long way to go, this is an enormous achievement.

Third, not only rich or small countries can become democracies. Too often we overlook India. The world's press traveled to India when Prime Minister Rajiv Gandhi was assassinated,⁶⁰ but did they

58. See Janet Cawley, *Manila Awash in Celebration*, CHI. TRIB., Feb. 26, 1986, at 5.

59. See *The Shattered Dream*, L.A. TIMES, June 25, 1991, at A1.

60. See Barbara Crossette, *Assassination in India: Rajiv Gandhi is Assassinated in Bomb-*

stay there to watch the Indian democratic election that took place afterwards? Are they still there to listen to what is happening in terms of a new economic plan trying to seek foreign investment? This is quite an achievement, and we should not overlook it.

Fourth, there is no simple path to democracy. There will be many back-eddies in a favorable current. A classic illustration is the Philippines. It had a democracy in the 1950s, which the Marcos administration raped and only slowly has it returned. In addition, we should not forget that Burma still wants democracy. I am absolutely delighted that the Nobel Prize has gone to one of the bravest women on earth; a woman whose voice sadly has been squelched in Burma, but has not been forgotten on the outside.⁶¹

Fifth, we should remember that democracy is not impossible in communist states. President Havel is living proof of this. I am hopeful that the recent settlement in Cambodia will lead to normalization between the United States and Hanoi, and that eventually we will have at least greater pluralization in that country. I think we must hold our breath about North Korea until Chairman Kim is no longer in power. About China, I am the first to say that I was shocked by what happened in June 1989.⁶² I think we should not forget, however, that there is one truth: octogenarians die. The current government in Beijing will not be the same government five to ten years from now. Many of the younger leaders—younger in China means you are in your seventies—have a very different style. Although it is certainly not Western democratic, it is indeed a more open, pluralistic style. I think we may well have a more optimistic view of China five years from now.

Finally, the United States can deeply influence the process of democracy elsewhere, through the Constitution and sometimes through the influence of our foreign policy. However, we must not overstate our leverage. We must not come to believe that democracy elsewhere in the world is created in Washington, D.C. Asia is part of a global trend. There are movements toward democratization, and those movements are shaped by various values, nationalisms, and cultures. There is a lot to be hopeful about. Half of Asia is moving in the right

ing at Campaign Stop; India Puts Off Rest of Voting, N.Y. TIMES, May 22, 1991, at A1; Steven R. Weisman, *Assassination in India; Rajiv Gandhi; A Son Who Won, Lost and Tried a Comeback*, N.Y. TIMES, May 22, 1991, at A12.

61. Burmese opposition leader Daw Aung San Suu Kyi received the 1991 Nobel Peace Prize. See *World Week in Review*, OTTAWA CITIZEN, Dec. 15, 1991, at B6.

62. See *The Shattered Dream*, *supra* note 59.

direction, but there is a long way to go, and all of us should pray for the people who continue to live under repression in places like Rangoon and Beijing.

OSAKWE: Thank you very much Mr. Oxnam. It is time for us to move from Beijing to Moscow, and for that we will call upon Hans Rogger to discuss the USSR.

PROFESSOR HANS ROGGER:⁶³ This is perhaps the worst possible time to talk about the prospects for democracy in Russia. Russia is undergoing a profound revolution, and it is difficult to know how easily, how quickly, and where the dust of that revolution will settle. Predictions about the outcome of revolutions are always risky, and for an historian like myself they are foolish. This is all the more true with regard to a country that has known harsh dictatorship for seventy years; a country that has broken most links with its usable past; a country where the institutions that kept it running, however badly, are crumbling; and a country that faces horrendous and perhaps intractable problems.

Reports today of a large demonstration of discontent underscore this point. The 30,000 demonstrators spoke for all those whose lives and livelihood have been disrupted by the revolution and change; for all those who face an uncertain future; and for all those who now, as a result, equate democracy with anarchy.

At least, these demonstrators say, under the old dispensation there was food, the streets were safe, and Russians did not have to fear for their positions and lives in non-Russian republics. The yearning of those demonstrators must be as strong as it is among some leaders to return to the firm rule that will bring bread and water. There is Boris Yeltsin who wants to postpone local and regional elections. There is the Moscow taxi driver who judges government by what is in the stores. He does not care much about ideologies or political systems. He needs peace, security, and full shelves to be happy. But, there is also the teacher who said that on August 21, 1991, democracy prevailed over dark despotism. There are also the drafters of

63. B.A., Sarah Lawrence College, 1948; Ph.D., Harvard University, 1956. Hans Rogger is the co-director of the RAND/UCLA Center for Soviet Studies, and professor of history at UCLA. He is the author of *Russia in the Age of Modernization and Revolution: 1881-1917* (1983) and many other books and articles on Russian history. Professor Rogger was a visiting scholar at the Kennan Institute for Advanced Russian Studies, and a member of the Academic Council. He is now a member of the editorial board of the *Slavic Review*. Biographies of Participants, *supra* note 3.

a Russian constitution who were much influenced by United States balance; and there is the Declaration of Human Rights and Freedoms that the now defunct Congress of People's Deputies adopted on September 5, 1991.⁶⁴

How is one to interpret such conflicting evidence? Polls which are now taken freely and frequently—another instance of the advance of democracy—are no sure guide. A Times Mirror survey in September 1991 concluded that the commitment to democracy among the respondents remained fragile.⁶⁵ Only half of those surveyed favored democracy, while a third wished for a strong leader to take charge. Should we be disheartened that only fifty percent affirm democracy, or should we be cheered by the fact that as many as fifty percent affirm democracy in a country that had only a very short pre-revolutionary tradition of political rights and liberties? Is the glass half full, or is it half empty? I am inclined—perhaps because of temperament, perhaps because of wishful thinking—to be optimistic. Those who are now trying to build democracy in Russia, like the ordinary people who embrace it, do so because it offers the best guarantee against the return of despotism and the opportunity to join the rest of the civilized world. Time and again, they have expressed their wish that Russia be a normal country, where the state and its ideology do not define collective and individual goals, but where the state serves the citizens and their autonomy. They have seized rights of assembly and speech; they have formed thousands of independent groups, ranging from environmental to cultural, from religious to political; and they have demonstrated in huge numbers, in January, March, and August 1991, against a return to the past. It is a far cry from only a few years ago, in 1974, when Solzhenitsyn said that Russia had not yet matured enough to march into the squares and shout the truth out loud.⁶⁶ This new maturity, this civic urge, is a decisive factor in the turn to democracy. It is the basis for my hope.

SUMMARY

CUTLER: There is very little else that needs to be said. We are in the morning after the euphoria of winning the Cold War. The idea of free

64. See *Declaration of Human Rights and Freedoms*, BRITISH BROADCASTING CORP. SUMMARY OF WORLD BROADCASTS, Sept. 10, 1991, pt.1, available in LEXIS, Nexis Library, Omni File.

65. See generally *The Pulse of Europe*, *supra* note 24.

66. See Michael Dobbs, *Solzhenitsyn Essay Printed in U.S.S.R.: Exiled Writer Appealed to Countrymen to Resist Communist 'Lie'*, WASH. POST, Mar. 20, 1989, at A12.

market democracy has clearly triumphed over the idea of totalitarian communism. Totalitarian communism has failed not only as an idea, but, as demonstrated in Eastern Europe, it has failed in practice, and a free market democracy has taken its place. But, we have yet to prove that in the societies that have lived under totalitarian communism for forty to seventy years, a free market democracy will work before the people become so disillusioned that they turn against it. One might say the same thing about the non-communist, non-democratic parts of the world, such as the Arab countries. We have yet to prove that the ideas of free market democracy will work there.

A great deal remains to be done. Groups like this are very important in seeing that what must still be done will be done. We have a very powerful weapon in the communications revolution. Very little can be hidden from people hungry for knowledge in any part of the world, and it is up to groups like this, the governments of which we are members, and the voters to see that the work that has to be done is carried out. In a very real sense, the idea of democracy may become indivisible.

Remember the words of John Donne:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main. . . . Any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.⁶⁷

To put that evocative expression into a twentieth century nutshell: if we stay silent while other people's rights are taken away, the denial of our own rights will not be far behind.

67. JOHN DONNE, *Mediation 17*, in DEVOTIONS UPON EMERGENT OCCASIONS (1624), reprinted in 1 THE NORTON ANTHOLOGY OF ENGLISH LITERATURE 1107 (M.H. Abrams et al. eds., 5th ed. 1986).