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FINAL

The Rule of Law: An Overview

BY

JOHN NORTON MOORE

Walter L. Brown Professor of Law
University of Virginia School of Law
and
Chairman of the Board of Directors
United States Institute of Peace

AS

Co-Chairman of the American Delegation
to the Seminar on the Rule of Law

Moscow and Leningrad

March 19-23, 1990

The views expressed in this paper are those of the author and do not necessarily reflect the views of the United States government, the United States Institute of Peace, the University of Virginia, or any other organization with which the author is or has been affiliated.

"[W]hile the laws shall be obeyed all will be safe."

Thomas Jefferson
Original draft of first Inaugural Address, March 4, 1801,
in 8 THE WRITINGS OF THOMAS JEFFERSON 1 (P. Ford ed. 1897).

The Rule of Law: An Overview

JOHN NORTON MOORE

I. Introduction

The world has long admired the rich cultural and artistic heritage of the peoples of the Soviet Union, a heritage including writers, poets, and composers such as Tolstoy, Chekhov, Pushkin, Dostoyevsky, Tchaikovsky and Brodsky, and the artistic brilliance of a Bolshoy Ballet. As has been most evident in the Helsinki process, however, there has been great international concern about the protection of fundamental human rights and freedoms within the Soviet Union as well as about maintaining and promoting world order and the principles of the United Nations Charter. For these reasons the ongoing international and structural changes broadly identified with President Mikhail Gorbachev and programs of "glasnost" and "perestroika" have been warmly received in the United States and elsewhere in democracies throughout the world. The peoples of these democracies profoundly hope that these programs will succeed—not simply endure—in transforming Soviet institutions to meet the concerns on which there has been continuing engagement within the Helsinki process. In this connection, no tenet of reform has seemed more promising than commitment to the rule of law, the subject of these discussions. As recently stated by Foreign Minister Shevardnadze:

> And surely no one can doubt that it [National strength] lies most of all in a renewed, democratic, rule-of-law society, in a free people, in the free man.[1]

Perhaps it is no coincidence that this focus on the rule of law—and indeed this welcome discussion on the rule of law—takes place under the first Chairman in recent Soviet history to be a lawyer.

The language of diplomacy is frequently a language of subtlety, indirection and omission. The language of friendship, however, is a language of candor. As you can see, I have chosen the language of candor and I deeply hope that this essential element of friendship will be a hallmark of this path-finding exchange on the rule of law. As the Helsinki Final Act affirms, the participating states "will respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations." It is for the people of the Soviet Union to make the choices about fundamental

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[1]Excerpt from an October 23 Foreign Policy Report of Soviet Foreign Minister E. A. Shevardnadze entitled "Foreign Policy and Perestroyka" reportedly delivered to a plenary session of the Supreme Soviet in Moscow.

institutions and legal structures for their own society, consistent, of course, with the fundamental commitments of the Helsinki process and international human rights covenants. Indeed, it is a certainty that no outside group can be sensitive to all of the factors affecting those choices. Nevertheless, I profoundly believe that the experience of the United States in implementing the rule of law—an experience recently proudly celebrated in the bicentennial of our Constitution—can be of great importance for the people of the Soviet Union as you open up issues concerning the rule of law in Soviet society—just as the international commitments made in the Helsinki process and in adherence to fundamental human rights covenants are of great importance. In that spirit, I hope that these discussions between American and Soviet experts will be followed by even more specific discussions on each of the components of the rule of law. And I hope that to be most useful for all parties these discussions will be full and frank.

The overview discussion which follows will first set forth what I believe to be major tenets of the rule of law. It will then consider some essential components of limited government and individual rights and freedoms in a representative democracy and some essential components of the rule of law within an independent and democratic judicial process. Finally, it will note the importance of the rule of law in international affairs and of a robust legal profession. Throughout, this paper is guided by a spirit of candor, irrespective of any possible philosophical differences perceived between and possibly even within delegations.

II. Major Tenets of the Rule of Law

The "rule of law" collectively symbolizes the most important features of democratic governance. Its core meaning is that governmental decisions must be rooted in the consent of the governed, acting only through structures and procedures designed to prevent individual oppression or governmental tyranny, which protect fundamental rights and freedoms, and which are subject to appraisal by an independent judiciary rendering judgments based on law. It stands in contrast to decisions based on naked power, arbitrary fiat, political expediency or personal gain. But most meaningfully, it encompasses much more than simply the opposite of these negative images. Individual judgments differ as to the core underpinnings of the rule of law, but I believe there are at least five principal tenets—each with a number of fundamental sub-tenets. These five highest-level tenets are:

- government of the people, by the people, and for the people;[2]
- separation of powers and checks and balances;

[2]For the origin of this phrasing, see President Abraham Lincoln's Gettysburg Address, November 19, 1863.

- representative democracy and procedural and substantive limits on governmental action against the individual (the protection of human freedom and dignity);
- limited government and federalism; and
- review by an independent judiciary as a central mechanism for constitutional enforcement.

Let us review each of these basic general tenets in turn.

government of the people, by the people, and for the people

Overwhelmingly, philosophers and political theorists have rooted the authority of *democratic* governance in the people—not in the few or an assumed elite. Thus, to Aristotle "... in democracies the people are supreme ...."[3] John Locke viewed government as being based on popular consent and wrote that governmental actions exceeding the laws are "without authority."[4] In a famous phrase discussing abuse of power, he concluded: "[w]herever law ends, tyranny begins ...."[5] Echoing these premises, the American Declaration of Independence provides:

> We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ....[6]

Adopted less than three weeks earlier, the Virginia Bill of Rights provides: "[t]hat all power is vested in, and consequently derived from, the people ...."[7] This is emphatically not the concept of the unchallengeable general will underlying the philosophy of Jean Jacques Rousseau under which "the public must be taught to know what it wants."[8]

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[3]ARISTOTLE, POLITICS (ca. 325 B.C.).

[4]J. LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT (1690).

[5]*Id.*

[6]The Declaration of Independence (U.S. July 4, 1776).

[7]From Article 2 of the Virginia Bill of Rights (June 12, 1776).

[8]J.J. ROUSSEAU, THE SOCIAL CONTRACT (1762). Needless to say, the Western democratic conception of "government of the people, by the people, and for the people" also is emphatically *not* the inverted social contract of Rousseau as reflected in his social contract

Corollaries of this first principle that the authority of law comes from the governed are:

- constitutions should embody the fundamental compact with the people—such constitutions should serve as the highest form of law to which all other laws and governmental actions must conform. As such, constitutions should embody the *fundamental* precepts of a democratic society rather than serving to incorporate ever-changing laws more appropriately dealt with by statute. Similarly, governmental structures and actions should *seriously* conform with constitutional norms, and constitutions should not be mere ceremonial or aspirational documents;
- legislatures and chief executives should be popularly elected under a system which will ensure frequent accountability. Elections must in practice be fully fair, open and meaningful. Mechanisms, such as initiative and recall, might be devised to keep elected officials close to the people;
- there should be no merger of a political party with the state or control of the electoral process by a political party. It is the freely elected representatives of the people, acting through *governmental* structures such as the legislative and executive branches, which should govern the state; and
- the constitutional system should provide for reasonable change and amendment as conditions and the popular will change.

separation of powers and checks and balances

A principal underpinning of much writing on democratic governance and the rule of law is that governmental structures should be constructed through a separation of powers and checks and balances to prevent governmental tyranny. Thus, Montesquieu wrote in *The Spirit of the Laws* in 1748:

> The political liberty of the subject is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.
>
> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the

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oath for his proposed Constitution for Corsica, which provides: "I join myself, body, goods, will and all my powers, to the Corsican nation, granting her ownership of me, of myself and all who depend on me." Printed in C.R. VAUGHAN (ed.), 2 THE POLITICAL WRITINGS OF ROUSSEAU 250 (2 volumes, Cambridge, 1915). *See also* Chapter 1 in P. JOHNSON, INTELLECTUALS (1988).

> legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.[9]

The connection between this principle of separation of powers and the rule of law was vividly reflected in the Constitution of the State of Massachusetts adopted in 1780:

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.[10]

And this principle was a major underpinning of the United States Constitution. As James Madison wrote in *The Federalist* papers, explaining the new Constitution:

> No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal constitution therefore really chargeable with this accumulation of power or with a mixture of powers having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.[11]

Similarly, this principle was a fundamental tenet of the 1789 French Declaration of the Rights of Man where it was said: "Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all."[12]

It should be noted that the principle of separation of powers does not stand in opposition to a strong legislature or a strong executive. Indeed, it is partly rooted in the functional attributes and efficiencies of each branch in respectively making, applying and enforcing the laws (as well as the executive role in foreign affairs). And it is critically complemented by checks and balances, such as, for example in the American system, the right of the Executive to veto legislation, the right of the Senate to withhold advice and consent

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[9]MONTESQUIEU, THE SPIRIT OF THE LAWS (1748).

[10]The Constitution of the Commonwealth of Massachusetts, "Part the First," art. XXX (1780), *reprinted in* M. CONNOLLY, THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS 3, 10 (1984).

[11]THE FEDERALIST No. 47, at 324 (J. Madison) (J. Cooke ed. 1961).

[12]Article 16 of the Declaration of the Rights of Man and the Citizen (August 26, 1789).

to a treaty, and the requirement that Congress rather than the Executive "declare War" and "raise and support Armies." It should also be noted that an independent judiciary is a major corollary of this principle of separation of powers. Moreover, the Framers of the United States Constitution, recognizing the potential great power of the legislature in making laws, provided checks and balances even within the legislature by providing for a bicameral legislature elected by differing constituencies and for different terms. Finally, it should be noted that if separation of powers and checks and balances are avoided by unitary party control of all branches of government then the benefits of this fundamental underpinning of the rule of law could be easily lost. This is yet another reason for avoiding a merger of a political party with the state.

representative democracy and procedural and substantive limits on governmental action against the individual (the protection of human freedom and dignity)

Every democracy faces the problem of how to protect fundamental human freedom and dignity against governmental action—whether arbitrary or mandated by a majority. The most important and recurrent answer to this issue has been to provide constitutional guarantees of basic human freedoms—frequently denominated as a "bill of rights." Other partial answers, however, involve building in checks against factionalism and hasty laws through *representative* democracy, *bicameralism* and *cautious modes of legislative deliberation and action*, as well as endowing government only with *limited authority* not extending to compromising such basic freedoms. Among other examples of a "bill of rights" approach, in 1215 the Magna Carta extracted a series of rights as pledges from a reluctant King John. This included the rights:

> No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.
>
> To no one will we sell, to no one will we deny, or delay right or justice.[13]

Similarly, following the revolution of 1688, the British Parliament extracted a "bill of rights" from the Crown. The State of Virginia adopted the Virginia Bill of Rights in 1776; in 1789 during the early months of the French Revolution, the National Constituent Assembly formulated a "Declaration of the Rights of Man and of the Citizen"; and following a major debate about the new Constitution, the first Congress of the United States formulated the Bill of Rights which was ratified by the states effective December 15, 1791. Next year America will celebrate the bicentennial of this Bill of Rights of fundamental freedoms. Time has confirmed

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[13]Magna Carta, nos. 39 & 40 (1215) (numbers omitted).

their importance to an enduring democratic government. It should also be noted that the protection of fundamental rights extends both to substantive and procedural rights, including essential procedural elements incorporated in American law in the concept of due process of law. The cornerstone of the criminal justice system, as well as of administrative law, is these concepts of procedural due process. Finally, it should be noted that protection of fundamental liberties is seen as sufficiently essential to democratic governance and the rule of law that many political theorists have stressed the protection of such freedoms as a fundamental objective of democratic governance without which no government can be just. Aristotle wrote in *Politics*: "The basis of a democratic state is liberty; which, according to the common opinion of men, can only be enjoyed in such a state;—this they affirm to be the great end of every democracy."[14] The Declaration of Independence speaks of securing "life, liberty, and the pursuit of happiness" as the very reason for government, and the preamble of the United States Constitution includes among the reasons for establishing the Constitution: to "secure the Blessings of Liberty to ourselves and our Posterity . . . ." Certainly there can be no meaningful rule of law which does not protect fundamental human freedom and dignity *as a very reason for government.*

limited government and federalism

Yet another underpinning of the rule of law is the related principles of limited government and federalism. As has just been discussed, the principle of a limited government of enumerated powers has been one partial answer to the protection of fundamental freedoms. Indeed, in *The Federalist* papers, Alexander Hamilton urged that the limited powers of the new federal constitution made a specific bill of rights unnecessary. Limited central government, however, serves another important function in the rule of law in maximizing regional and local control of governmental functions principally affecting peoples at a local level. In this context, limited government and federalism divide governmental authority between a central government, which should have authority in issues of defense, foreign policy, interstate commerce and other issues of governance affecting citizens on a national basis, and regional and local governmental authorities, which should have authority in issues of governance such as municipal services and education primarily affecting citizens on a more local basis. This principle simultaneously makes government more responsive to and controllable by the people and encourages a diversity in public policies adopted within different regions according to local conditions, needs, traditions and desires. It directly incorporates an insight of participatory democracy that groups affected by decisions should have a voice in those decisions. As correctly perceived, it does not detract from strong federal authority in the areas where authority must be and is centralized in a national government. Adjusting the boundaries between the federal and regional governmental units and

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[14]ARISTOTLE, POLITICS (ca. 325 B.C.).

maintaining a proper balance is necessarily the essence of a large body of law in any federal system. Federalism, of course, assumes an at least initial voluntary acceptance by constituent units.

judicial review by an independent judiciary as a central mechanism for constitutional enforcement

An independent judiciary is a critical component of the principle of separation of powers, as well as of an effective principle of constitutionalism in embodying and realizing the major conditions of the consent of the governed.[15] Because of the *great* importance of judicial review as a central mechanism for constitutional enforcement and for maintenance of the rule of law, however, I believe that it should be considered a fundamental principle in its own right. Indeed, no principle in the American experience has been more important in maintaining the integrity of the major constitutional underpinnings of the rule of law than has the principle of independent judicial review. Thus, the Supreme Court has in the 1962 reappointment decision of *Baker v. Carr*[16] sought to police the integrity of the "one person one vote" principle underlying government of the people, by the people, and for the people. In major decisions such as *INS v. Chadha*,[17] in which the Court in 1983 struck down the so-called "legislative veto," the Court has policed the critical workings of separation of powers and checks and balances. The Court has since its earliest days been repeatedly concerned with maintaining a proper balance in issues of federalism. And perhaps its most vital role has been in protecting the fundamental rights and freedoms of individuals against encroachment by federal and state action. As the Framers correctly foresaw, the judicial power could not be

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[15]The "Introduction" to Melone and Mace, *Judicial Review and American Democracy* (1988), roots judicial review in "... the belief that the Constitution is the Supreme expression of the people's will." Thus, it says:

> The ultimate and necessary foundation upon which judicial review rests is the belief that the Constitution is the supreme expression of the people's will. Since it results from the acts of the people in their constituent capacity, it is fundamental law embodying the people's determination of the proper division and extent of governing authority between the various branches of the national government; between the central government and the state governments; between the national government and individuals; and, especially under the expanded application of the Fourteenth Amendment, between state governments and individuals.

Id. at 3. *The Federalist* No. 78 (Hamilton) provides perhaps the strongest indication in constitutional history that the Framers contemplated judicial review concerning issues of constitutional consistency.

[16]Baker v. Carr, 369 U.S. 186 (1962).

[17]INS v. Chadha, 462 U.S. 919 (1983).

subsumed within the executive or legislative branches consistent with effective exercise of the judicial role in policing these principles of the rule of law. Indeed, judicial review by an independent judiciary may be the only way to *effectively* ensure the supremacy of the Constitution. The realization of this point was an essential element in the reasoning of Chief Justice John Marshall in the landmark decision of the Supreme Court in the 1803 case of *Marbury v. Madison*,[18] setting out the doctrine of "judicial review" by declaring for the first time an act of Congress unconstitutional. Thus, Marshall wrote:

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.
>
> This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.
>
> If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.
>
> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.
>
> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.
>
> If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.
>
> Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.
>
> This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which

[18]Marbury v. Madison, 5 U.S. 137 (1803).

> professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.[19]

A genuinely independent judiciary, of course, requires not only a doctrine of judicial review but also scrupulous protection of the independence of the judiciary in form and in fact. Details of appointment, tenure, salary, status, training and removal must all be resolved to preserve and strengthen that independence. Similarly, the selection of judiciary must not be on a partisan basis and should ensure the selection of the most qualified legal experts. And the legal profession, as well as the government and society as a whole, must internalize the independence of the judiciary and the important reasons for it.

III. Some Essential Components of Limited Government and Protection of Individual Rights and Freedoms in a Representative Democracy

As has been discussed, major tenets of the rule of law in a representative democracy include limited government and constitutional limits on governmental action against the individual. In turn, these tenets include a broad range of substantive and procedural components. Some such components widely regarded as essential include the following:[20]

preserving a climate of free discussion and opinion

Nothing is more essential to the proper functioning of representative democracy than maintaining a climate of free discussion and opinion. This requires maintenance of freedom of speech; freedom of assembly; free and vital television, radio and newspaper media; freedom to petition government for redress of grievances; a free and vital publishing industry; academic freedom in institutions of higher learning; protection of exchange in the legislative process and depoliticization of governmental information efforts. Ultimately, an informed and involved citizenry is the lifeblood of democracy. As Thomas Jefferson reminds us:

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[19] *Id.* at 176–78 (Opinion of the Court).

[20] The discussion which follows is emphatically *not* a complete list of fundamental components of the major tenets of limited government and constitutional limits on governmental action against the individual. The rights to travel and emigrate and the right to privacy, for example, are also fundamental.

> If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.[21]

Protecting the necessary climate of free discussion and opinion is a crucial role of the rule of law.

fairness in criminal process

An essential element in the relationship of government to its citizens is the maintenance and operation of a criminal process. Protection of the fairness and integrity of that process is an essential element of the rule of law. The Magna Carta and numerous bills of rights throughout human history attest to the importance of such fairness. Indeed, the fourth, fifth, sixth and eighth amendments in the Bill of Rights to the United States Constitution directly relate to the fairness of criminal processes, including requirements concerning search and seizure (the fourth amendment); protection against double-jeopardy and self-incrimination (the fifth amendment); the rights to a speedy and public trial by an impartial jury, to be informed of all charges, to be confronted with adverse witnesses, to have compulsory process for obtaining witnesses and to have the assistance of counsel in defense (the sixth amendment); and prohibition of excessive bail or fines and of cruel and unusual punishment (the eighth amendment). Perhaps the most important guarantee undergirding the protection of the individual against the state in criminal trials, however, is the presumption of innocence until proven guilty. Similarly, the right of *habeas corpus*, appellate review of criminal convictions, and fairness in sentencing and subsequent treatment are also vital. Also of great concern, the criminal process must not be politicized or used for the punishment of political dissidents.

Fairness in criminal process is not a monopoly of systems rooted in either common or civil law traditions. It is, however, a function of adherence to certain minimum standards such as advance promulgation of law, protection against unreasonable searches and seizures or unreasonable criminal charges, a high standard of proof by the finder of fact such as proof beyond a reasonable doubt, an impartial trial with an opportunity for an adequate defense, a right to independent advice of defense counsel, a strict separation of prosecutorial and judging functions, independent judges, and reasonable and proportional sentencing. While all traditions can be rooted in the rule of law, I prefer the adversarial process of the common law tradition as providing greater protection for an accused and a more vigorous search for the truth, among other advantages. Of possible interest, a growing body of empirical social

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[21] "Letter to Colonel Charles Yancey, January 6, 1816," in 11 THE WORKS OF THOMAS JEFFERSON 497 (P. Ford ed. 1905).

science evidence seems to support popular preference for an adversarial process involving a genuinely independent adversarial defense over an inquisitorial model.[22]

protection of religious freedom

The maintenance of religious freedom is one of the oldest and most important components of individual freedom. Thus, ensuring religious freedom is an essential component of the rule of law. Again, the importance of such freedom is attested throughout human history. It is a central component of, among other historic indicators, the Magna Carta in 1215, Roger Williams' "Bloudy Tenent of Persecution for Course of Conscience" in 1644, the Maryland Toleration Act of 1649, the Virginia Bill of Rights of 1776, Thomas Jefferson's masterful Virginia Statute for Religious Freedom in 1786,[23] and the first amendment to the United States Constitution as ratified in 1791. Religious freedom encompasses at least two vital and interrelated principles—the free exercise of religion and the non-establishment of religion. To avoid interference with the free exercise of religion, as well as to maintain consistency with the underlying purposes of non-establishment of religion, it would seem essential also that government not establish a doctrine of non-religion, just as it must not establish a particular religion. Finally, the full protection of religious freedom may require strong and effective civil rights laws to protect against discrimination on religious grounds.

protection of civil rights

A democratic society must ensure equality before the law and the protection of minority and even disadvantaged majority populations. The United States fought a civil war in the long struggle for effective realization of this principle, and with the Supreme Court leading the way in *Brown v. Board of Education*[24] in 1954, the Nation has taken this principle to heart. Today such civil rights, including protection against discrimination based on race, gender, or

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[22]*See, e.g.*, E.A. LIND & T.R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988). Cross-cultural aspects of this research indicate key findings are likely applicable to European conditions. *Id.* at 129–45.

[23]The importance in Jefferson's mind of the Statute of Virginia for Religious Freedom is reflected in the epitaph he chose for his tombstone:

Here was buried
Thomas Jefferson
Author of the Declaration of American Independence
of the Statute of Virginia for religious freedom
& Father of the University of Virginia

[24]Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

religion, are protected not only against abusive governmental action by constitutional principle, but also against both state and private action by a growing network of civil rights laws. Such laws are a vital component of the rule of law in a modern democratic society.

accountability of governmental officials and protection of governmental processes

Any modern democratic society must have a vital network of laws to ensure accountability of governmental officials and protection of governmental processes and rational decision. Such laws may include measures to facilitate petition of government for redress of grievances, "freedom of information" laws, "sunshine" laws, private suits against government or government officials in certain cases, agency inspectors general, "whistle blower" laws, "impact statements" required before decision (used particularly in the environmental area), ombudsman, conflict of interest laws, administrative remedies and appeals, and even independent counsel (though this check remains controversial in the United States).

protection of the rights of workers

Certainly every genuine democracy should seek to protect the rights of workers. Indeed, that is a major philosophical premise underlying the Soviet system. Yet, as the emergence of Solidarity in Poland illustrates, the rights of workers can be abridged by the state at least as thoroughly as by private employers. The developed nations have created a detailed labor law centering on the rights of workers to organize and bargain collectively and on the maintenance of a safe and healthy work environment. The development and enforcement of such a body of labor law would seem an important component of the rule of law in a modern democratic society.

civilian control of the military

Many democratic societies have stressed the essential nature of civilian control of the military. In the United States this is guaranteed not only by important constitutional provisions concerning legislative control over military appropriations and appointments, but is also an essential element of the military's own code of professionalism. Similarly, the military follows a tradition that is nonpolitical. And, of course, this principle of civilian control of the military also applies to civilian control of intelligence agencies.[25] Both military and intelligence agencies must operate under the rule of law and constitutional structures.

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[25] *See generally* Chapter 19 in NATIONAL SECURITY LAW (J. MOORE, R. TURNER AND F. TIPSON eds. 1990) for measures ensuring civilian control of intelligence agencies within the United States and the operation of such agencies within the rule of law.

protecting the environment

One major reason for governmental intervention in a market economy is protection against "externalities" such as environmental damage. Because of the potentially great societal cost of environmental damage, insuring that environmental costs will be adequately considered and that high standards of environmental protection are met is an essential role of modern democratic governance. Moreover, because governmental actions and projects, if not directly accountable and if identified with government itself, have an equal if not greater potential for ignoring environmental costs than private sector actions, vigorous protection of the environment is essential in all systems.

protecting economic freedom and entitlements

Perhaps no issue in the past has proceeded as thoroughly on different philosophical premises as the protection of economic freedom and property rights. The developed democracies, with a tradition of John Locke and market-oriented economies, have traditionally protected economic freedom and individual property rights. The Soviet system, however, has followed Marx and Engels in the abolition of many forms of private property. Thus, John Locke, in his *Second Treatise of Civil Government* in 1690, wrote at length in support "of property." And the breadth of support for this principle is illustrated by the 1789 French Declaration of the Rights of Man, which begins article 17 with the preamble "Property being a sacred and inviolable right . . . ." Yet the Communist Manifesto provides in relation to certain private property: "the theory of the Communists may be summed up in the single sentence: Abolition of private property."

Clearly, market-oriented economies are a major feature of the rule of law in developed societies based on Western democratic values. The economic success of those societies, not only in enhancing overall production of goods and services, but also in broadly delivering consumer goods and services, speaks with the normative force of facts. Increasingly, however, the literature in the West has also shown a powerful connection between economic freedom generally, including private property rights, and both individual freedom and overall societal levels of freedom and success of governmental structures. Thus, property rights and freedom in the economic sphere are increasingly recognized as essential components of human freedom. For if tight control of property enables pervasive state control of the individual, then freedom can be lost as effectively as through the denial of civil and political freedoms. Indeed, Professor Charles A. Reich writes in a famous article on "The New Property"[26] that

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[26]C. Reich, "The New Property," 73 YALE L.J. 733 (1964).

"[t]he institution called property guards the troubled boundary between individual man and the state."[27] And further:

> At the very least, it is time to reconsider the theories under which new forms of wealth are regulated, and by which governmental power over them is measured. It is time to recognize that "the public interest" is all too often a reassuring platitude that covers up sharp clashes of conflicting values, and hides fundamental choices. It is time to see that the "privilege" or "gratuity" concept, as applied to wealth dispensed by government, is not much different from the absolute right of ownership that private capital once invoked to justify arbitrary power over employees and the public.
>
> Above all, the time has come for us to remember what the framers of the Constitution knew so well—that "a power over a man's subsistence amounts to a power over his will." We cannot safely entrust our livelihoods and our rights to the discretion of authorities, examiners, boards of control, character committees, regents, or license commissioners. We cannot permit any official or agency to pretend to sole knowledge of the public good. We cannot put the independence of any man . . . wholly in the power of other men.[28]

And, of particular relevance in a system in which the individual must rely heavily on government "entitlements," a central thrust of this article by Professor Reich is the importance of protecting these state-controlled "entitlements" as "the new property" against arbitrary or politicized government denial. Moreover, the roles of private property in providing individual incentive and as a prerequisite for voluntary exchange which is the basic mechanism of decentralized market systems has long been recognized in the developed democracies. Indeed, of particular interest, there is a growing feeling among many in the West that political systems which broadly limit private property rights may not be able to adopt more open governmental processes without also adopting greater economic freedom—going far beyond efforts at greater decentralization of governmental planning. For the resulting inefficiencies in relatively centralized governmental setting of prices, as opposed to the decentralized actions of markets, may inevitably lead either to popular efforts at fundamental change in government structures or to massive emigration, as was most recently evident in the events in the German Democratic Republic following the courageous and internationally applauded dismantlement of the Berlin Wall. A discussion of this potential linkage between freedom in the economic sphere and freedom elsewhere appears in the *Economic Report of the President* transmitted to the United States Congress in February 1982. Chapter two of this report on "Government and the Economy" begins:

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[27] *Id.*

[28] *Id.* at 787.

Political freedom and economic freedom are closely related. Any comparison among contemporary nations or examination of the historical record demonstrates two important relationships between the nature of the political system and the nature of the economic system:

- All nations which have broad-based representative government and civil liberties have most of their economic activity organized by the market.
- Economic conditions in market economies are generally superior to those in nations (with a comparable culture and a comparable resource base) in which the government has the dominant economic role.

The evidence is striking. No nation in which the government has the dominant economic role (as measured by the proportion of gross national product originating in the government sector) has maintained broad political freedom; economic conditions in such countries are generally inferior to those in comparable nations with a predominantly market economy. Voluntary migration, sometimes at high personal cost, is uniformly to nations with both more political freedom and more economic freedom.

The reasons for these two relationships between political and economic systems are simple but not widely understood. Everyone would prefer higher prices for goods sold and lower prices for goods bought. Since the farmer's wheat is the consumer's bread, however, both parties cannot achieve all they want. The most fundamental difference among economic systems is how these conflicting preferences are resolved.

A market system resolves these conflicts by allowing the seller to get the highest price at which others will buy and the buyer to get the lowest price at which others will sell, by consensual exchanges that are expected to benefit both parties. Any attempt by one party to improve his outcome relative to the market outcome requires a coercive activity at the expense of some other party. The politicization of price decisions—whether of wages, commodities, or interest rates—tends to reduce both the breadth of popular support for the government and the efficiency of the economy. A rich nation can tolerate a good bit of such mischief, but not an unlimited amount. One should not be surprised that all nations in which the government has dominant control of the economy are run by a narrow oligarchy and in most economic conditions are relatively poor. In the absence of limits on the economic role of government, the erosion of economic freedom destroys both political freedom and economic performance.

Only a few dozen nations now guarantee their citizens both political and economic freedom. The economic role of government in these nations differs widely, without serious jeopardy to political freedom. Within the range of experience of the United States and the other free nations, the relation between the political system and the government's economic role is more subtle. Expansion of the economic role of the government tends to reduce both the level of agreement on government policies and the inclination to engage in political dissent. The link between political and economic freedom is important. Increasing economic freedom will also provide greater assurance of our political freedom.

A major objective of this Administration's economic program is to reduce the Federal Government's role in economic decisionmaking while strengthening the

> economic role of individuals, private organizations, and State and local governments. This shift will entail substantial reductions in the size and number of Federal spending programs, significant reductions in both personal and business Federal tax rates, major reforms of Federal regulatory activities, and a reduced rate of money growth. While an important element in this redefinition of the Federal Government's economic role is a political judgment about the appropriate relationship among individuals, the States, and the Federal Government, this redefinition also is supported by an extensive body of economic analysis.[29]

Similarly, Justice Antonin Scalia, now of the United States Supreme Court, wrote in a book published in 1987:

> I know no society, today or in any era of history, in which high degrees of intellectual and political freedom have flourished side by side with a high degree of state control over the relevant citizen's economic life. The free market, which presupposes relatively broad economic freedom, has historically been the cradle of broad political freedom, and in modern times the demise of economic freedom has been the grave of political freedom as well.[30]

Finally, quite apart from the considerable issues of whether it is necessary and of the costs to individual freedom and governmental systems from any such effort, questions are being raised in the West concerning the internal consistency of efforts to avoid exploitation of man by man through a denial of private property rights and economic freedom. That is, it has been argued that any thorough-going effort to ensure approximate economic equality requires the socialization of both economic success and economic failure. But, if so, does not this in turn

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[29]Chapter 2 "Government and the Economy," from the *Annual Report of the Council of Economic Advisers*, in ECONOMIC REPORT OF THE PRESIDENT, TRANSMITTED TO THE CONGRESS FEBRUARY 1982, at 27-28 (1982). This chapter also contains a good summary statement of the macro-economic case for limited governmental intervention in private markets. These include: "externalities" (positive and negative), "monopoly," "public goods," "income redistribution" and "macroeconomic stability." It also contains an interesting discussion of the theoretical reasons for "government failure" as opposed to "market failure" dealt with above as settings for limited government intervention. These include the political process as "overly responsive to special interest groups," inefficiencies in "supply by government agencies," a failure to maximize responses to "diversity of conditions and preferences," "limits on information" and the over-discounting by government decisionmakers of programs which impose costs today in return for future benefits. *See id.* at 29-42.

As these theoretical points illustrate, modern democratic governance in a market economy has ample latitude for taxation and regulatory intervention (exercise of the "police power") to protect workers, consumers, investors and the environment without banning or overburdening the market economy itself.

[30]A. Scalia, *Economic Affairs as Human Affairs*, in ECONOMIC LIBERTIES AND THE JUDICIARY 31, 32 (J. DORN & H. MANNE eds. 1987).

mean that inevitably there will be systematic exploitation of some groups (the economically successful) by others (the economically unsuccessful)? And, moreover, public officials, who have a major role in directing the economy in a non-market system, will have power, motive, and opportunity to do some exploiting of their own in a more direct way.[31] Whatever the answers to these questions, it is increasingly clear that the protection of economic freedom is an essential component of the rule of law in a modern democratic society. I believe that addressing this issue fully and progressively is as important as any in the overall process of "perestroika."[32]

IV. Some Essential Components of The Rule of Law Within an Independent and Democratic Judicial Process[33]

Just as the fundamental tenets of limited government and protection of individual rights and freedoms depend importantly on a number of essential components, so, too, the rule of law within an independent judicial process depends on a number of essential components. These include:

- the supremacy of constitutional guarantees within the judicial process;
- the principle, "*nullum crimen, nulla poena, sine lege*" (literally meaning that without a law, there can be no crime and no punishment), that there can be no penalty without prior, publicly known and reasonably specific laws.[34] It should be emphasized that

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[31]*See generally* S. ARNOLD, MARX'S RADICAL CRITIQUE OF CAPITALIST SOCIETY: A RECONSTRUCTION AND CRITICAL EVALUATION (1990).

[32]What is liberalized directly, of course, should not be banned indirectly through continuing criminalization of "profit," vaguely defined "speculation," or pervasive bureaucratic control.

[33]One can also speak of essential components of the rule of law within a democratic *legislative* process. These would certainly include a presumption of openness in publication of draft laws and debate before adoption and other measures concerning due process within the legislative process, and anti-corruption measures, among others. For a general discussion of the legislative process, see J. DAVIES, LEGISLATIVE LAW AND PROCESS (2d ed. 1986), W. ESKRIDGE & P. FRICKEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY (1988), C. NUTTING & R. DICKERSON, CASES AND MATERIALS ON LEGISLATION (5th ed. 1978).

[34]A seemingly similar statement was apparently made by President Mikhail Gorbachev at the Nineteenth Party Conference: "[W]e must adhere strictly to the principle that everything that is not prohibited by law is permitted." "Gorbachev Report Sizes Up Restructuring," 40:26 CURRENT DIG. OF THE SOVIET PRESS 7, 19 (Jul. 27, 1988).

secret laws and regulations, unknown to those to whom they will be applied, are fundamentally inconsistent with the rule of law;

- the principle of decisions based on law, stemming from an analysis of the functional intent of the lawmaker as opposed to political factors, party affiliation, personal gain or arbitrary fiat. The essence of an independent judicial process is judging based on rational analysis of the law and its underlying policies as applied in a specific case;
- the principle that "like cases should be treated alike";
- the principle that reasons should be given for decisions, that the reasons given should be candid for appraisal by others, and that such opinions should be published and made widely available to lawyers and in specialized libraries;
- the principle that judges should defer to clear higher authority within a system, whether it is a constitution, a legislative enactment, or a higher court within an overall judicial system. That is, in constitutional interpretation the judge is not superior to the Constitution, in statutory interpretation the judge is not superior to a clear intent of the legislature, and a judge is bound to follow a ruling on point of a higher judge within an overall judicial system.

These and other principles underlying the judicial process, including principles of interpretation, are not self-defining, and a rich body of jurisprudential writing addresses their meaning and effect. In particular, the legal realists have taught us that judicial decisionmaking is inevitably a process involving choice in rule selection, fact selection, and semantic and syntactic interpretation.[35] While opinions differ as to the precise content and effect of such principles, however, there is widespread agreement on their importance to the rule of law.

Professor John Jeffries of the University of Virginia says of the rule of law in the context of the "vagueness" issue in this tenet:

> The evils to be retarded are caprice and whim, the misuse of government power for private ends, and the unacknowledged reliance on illegitimate criteria of selection. The goals to be advanced are regularity and evenhandedness in the administration of justice and accountability in the use of government power. In short, the "rule of law" designates the cluster of values associated with conformity to law by government.

Jeffries, *Legality, Vagueness, and the Construction of Penal Statutes*, 71 U. VIRGINIA L. REV. 189, 212–13 (1985).

[35] *See, e.g.* Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897); CARDOZO, THE GROWTH OF LAW (1924); K.N. LLEWELLYN, THE COMMON LAW TRADITION (1960); Allen & Caldwell, *Modern Logic and Judicial Decision Making: A Sketch of One View*," 28 L. & CONTEMP. PROBLEMS 213–24 (1963).

See also for a discussion of "the inner morality of law" in the new natural law tradition, Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).

V. The Rule of Law in International Affairs

Just as the rule of law is an essential component in national life, so, too, it is an essential component in international life. As John Jay wrote in *The Federalist*:

> It is of high importance to the peace of America, that she observe the laws of nations . . . .[36]

And as Thomas Jefferson wrote in 1790:

> I think with others, that nations are to be governed with regard to their own interests, but I am convinced that it is their interest, in the long run, to be . . . faithful to their engagements, even in the worst of circumstances, and honorable and generous always.[37]

One fundamental principle in international affairs is, of course, that nations should follow the rules of treaty and customary international law binding on them. Perhaps the essential principle of world order, however, is that nations must adhere to the United Nations Charter obligation not to use force aggressively in international relations. In this connection the peoples of the democracies applaud the decision by President Gorbachev to repudiate the Brezhnev doctrine and to permit genuine self-determination in the countries of Eastern Europe. Perhaps one area for future discussion might be an approach to "world peace accountability" which would highlight the critical importance of strict adherence to the Charter prohibition against aggressive use of force in international relations and seek to raise public awareness of these issues much as the Helsinki process has raised public awareness of human rights issues. Indeed, one of the interesting paradoxes of beginning major international accountability with human rights accountability is that a whole network of practices and institutions has grown up around such human rights accountability, while there is no such network surrounding accountability for another central thrust of the United Nations Charter, the prohibition in Article 2(4) against the threat or use of aggressive force.[38] Accountability to this great principle, however, is, like human rights, of obvious concern to all nations as they struggle for a world free from aggressive use of force. Indeed, in an age in which legal scholars can debate the "death" of Article 2(4) of the Charter something badly needs to be

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[36]THE FEDERALIST No. 3, at 14 (J. Jay) (J. Cooke ed. 1961).

[37]"Letter to The Marquis De Lafayette, April 2, 1790," in 8 THE WRITINGS OF THOMAS JEFFERSON 12 (Mem. Ed. 1903).

[38]There is, of course, obviously a loose international network of claims and counterclaims and some degree of international institutions devoted to such accountability but, strikingly, nothing similar to human rights accountability as it has evolved in the Helsinki process.

done, if possible, to revitalize this fundamental principle. Moreover, the recent statement by President Mikhail Gorbachev before the United Nations, in which he emphasized the impermissibility of the use of aggressive force in international relations, thus verbally recognizing this Charter principle as a cornerstone of world order, suggests an important opportunity to strengthen this principle through enhanced accountability.

VI. A Robust Legal Profession

The rule of law inevitably requires a healthy and robust legal *profession*. This, in turn, requires high-quality legal education in a climate of academic freedom, a vital and independent organized bar, a tradition of understanding and protection for the lawyer's role in representing unpopular as well as popular clients and causes, an independent and learned judiciary, a code of professional ethics rooted in the independence and integrity of the judicial process, and a reliable and effective system of legal reporting and public dissemination of laws. Of necessity, the rule of law requires an adequate number of well-trained and professional lawyers and judges to provide defense counsel in criminal proceedings, to staff a genuinely independent judiciary, to provide advice on the law, and to carry out the myriad of other services performed by a professional bar. Resources, status, salaries and other incentives must be adequate to develop such a bar. A robust legal profession can also be assisted by enhancing support for institutions devoted to the recommendation and appraisal of individual laws and the operation of the legal system as a whole.

Burgess — 447-2112

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Classification: UNCL

MESSAGE DESCRIPTION: ABA Speech; Rule of Law Fact Sheets

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United States Department of State

Washington, D.C. 20520

"EVOLUTION OF U.S. POLICIES ON
HUMAN RIGHTS AND DEMOCRATIZATION"

Remarks by David Burgess, Director of Policy, Programs, Legislation and Public Diplomacy, Bureau of Human Rights and Humanitarian Affairs, at a Forum on "Elections and Democratic Transition: How Strong the Link?", sponsored by the American Bar Association Committee on International Human Rights and the Association of the Bar of the City of New York, New York City, April 27, 1990

I am pleased to be here, and I want to thank the American Bar Association and the Bar Association of the City of New York for giving me the opportunity to speak with you today. We in the Administration feel very strongly that U.S. foreign policy cannot have its intended effect and impact abroad unless it is understood and supported by the public at home.

I would like to share with you the Administration's approach to three key topics: Democracy, Human Rights and the Rule of Law. Of course, some people will tell you that a democracy is where you have the freedom to say whatever you please, but you don't have to listen to anybody else unless you want to. I do hope that you will listen today, and then ask yourselves how you too, as members of the legal profession, can help in promoting greater international respect for Democracy, Human Rights and the Rule of Law.

For the past six years or so the Bureau of Human Rights and Humanitarian Affairs has been working throughout the world to cultivate these three ideas. And, to be honest, at times it seemed that we were surely plowing our way through arid fields and sowing our seeds in the midst of a drought. Totalitarian dictatorships and communist oligarchies controlled a great deal of the world's population, and in too many societies "the Rule of Law" simply meant martial law. Rights were really privileges for the elites -- ordinary people were ordinarily denied even the most basic civil and political rights, and their other fundamental human rights were frequently at risk.

We also noted with irony that in so many cases, the states which so thoroughly repressed their people had a penchant for calling themselves "the Democratic People's Republic of Far Offistan" or comparable titles which reflected little of the reality faced by their citizens.

Our observations led us to the conclusion that while we had been pursuing the cause of human rights, often with some success -- and primarily through interventions on specific human rights cases -- we had nevertheless been neglecting some of the essential work on improving structures and systems upon which respect for human rights must be grounded.

At that point, some five or six years ago, we thus made a conscious decision to till the human rights soil, if you will, and to plant the seeds of democracy, rather than simply tending to the many individual cases of human rights violations -- as tragic and heart-rending as they might be.

So we continued our work, motivated, quite frankly, not only by our dedication to international human rights standards, but also by an ideological commitment to the principles that underlie American democracy.

This was the Reagan Administration, of course, and we were frequently accused of mixing politics, other foreign policies and human rights. Some said we were trying to promote American ideals of democracy throughout the world, not just for the sake of human rights, but also to promote President Reagan's entire foreign policy agenda -- especially his policies towards the communist world. If we had to go to court on this allegation, I think we would happily make an "Alford Plea" -- the evidence in support of the charge is certainly substantial.

We were also accused of using human rights policies to bash our ideological adversaries while giving our ideological friends a free ride. To this allegation we offer a mixed plea: On the one hand we firmly believe that there can only be one standard for international human rights, a universal standard which does not depend on race, culture, creed, form of government or level of social or economic development. On the other hand, we have clearly focussed greater attention both publicly and privately on our ideological adversaries, and we will continue to do so in the Bush Administration.

(Let me distinguish here, however, by pointing out that what we do publicly is the lesser part of our human rights efforts, both with our friends and our adversaries. One of our diplomatic operating principles is to give any government the opportunity to discuss human rights issues privately, and to tend its own fields without public embarrassment. If private discourse fails to improve the situation, though, we do not hesitate to speak out publicly. Let me also note that one of the reasons that our friends are our friends and our adversaries are not, is because of the different ways in which they treat their citizens, and the different prospects and opportunities they offer their people to attain full enjoyment of fundamental human rights.

We do this for one simple reason: Democracy is the only form of government that is founded on respect for the dignity of man. Democracy is essentially anti-authoritarian -- it does not tolerate dictators, oligarchs or despots, whether from the right or the left. And when we support the growth and development of democracy, we likewise support respect for human rights. Individual rights, group and minority rights, and the rights of the majority are all protected in democracies.

We do not adhere to these principles solely because they are the bedrock of American society and thus properly should be a core element of U.S. foreign and domestic policies. Rather, we firmly believe that these principles are part of U.S. foreign policy precisely because they are universal, and thus are not constrained by cultures, different economic systems or other societies' traditions. Fundamental human rights are just that: they belong to us because we are human, not because we may be Christians, Jews, Buddhists or Muslims; not because of racial, ethnic or tribal distinctions; and not because we may be democrats, socialists, communists, colonels or campesinos.

Nor does the entitlement to these rights depend upon the specific form of one's government. Obviously, the nature of the state has a lot to do with how human rights are respected and protected -- and that is exactly why we take great pride today in fomenting democracy.

President Bush has defined the State Department's new mission as the promotion and consolidation of democracy. We in the Human Rights Bureau welcome this approach and are enthusiastic that it will further solidify respect for both the Rule of Law and fundamental human rights throughout the world.

Secretary of State Baker has stated that our objective is democracy, and elections are the means to achieve that objective. Elections alone, of course, do not necessarily provide protection for human rights, anymore than planting a tree means that you can now harvest the fruit. But elections -- fair and free -- do lead to self-determination, participatory government, governmental accountability and the process of democratization.

This process also needs other ingredients, however. Newly elected governments and their leaders must tend to the transfer of power, a fundamental problem now facing numerous new democracies, including Romania, Guatemala, Nicaragua, El Salvador and Bulgaria.

Newly elected leaders must also assure the full range of human rights which help to make that government legitimate, among them the freedoms of speech, press and assembly. And these newly democratic states must also move affirmatively to assure justice for their people. For only with justice --

including an abiding respect for the Rule of Law -- will human rights be secure. This is today's daunting task, as much in Eastern and Central Europe as in Asia or Central America.

Let me close by recalling Reinhold Niebuhr's observation that "Man's capacity for justice is what makes democracy possible -- but man's inclination to injustice is what makes democracy necessary."

We are firmly convinced that democracy, and a commitment to the Rule of Law, are essential if individuals throughout the world are to have a chance to see their fundamental human rights fully attained and safely protected. Thank you.

# # # #

May 1, 1990

US-USSR COOPERATION ON HUMAN RIGHTS

I. NEW AGENDA

- During the Wyoming ministerial, the U.S. and the U.S.S.R. agreed on a New Agenda on Human Rights. The Rule of Law exchanges described below are an outgrowth of our discussions with the Soviets on that issue.

II. RULE OF LAW

-- U.S. legal experts and their Soviet counterparts met in Moscow and Leningrad in March 1990, where they conducted a series of public seminars on Constitutional law, due process, federalism and separation of powers.

-- Soviet trial and appellate judges attended a special program at the National Judicial College in Reno in late April and early May 1990, followed by several days of observation and practical legal discussions with judicial personnel and organizations in Washington, D.C. and New York.

-- Plans call for several senior Soviet legal reformers to participate in a series of individual programs to study selected aspects of the Rule of Law in the U.S.

-- Plans are underway for perhaps 50 post-graduate Soviet law students to come to the U.S. for in-depth study of our legal system.

-- Soviet authorities have expressed interest in having one or two U.S. law professors teach American law courses at Moscow State University Law School, perhaps as early as the 1990-1991 school year. The courses would be in American Constitutional Law, and possibly also American Commercial or Business Law.

-- The upcoming visit of a Soviet psychiatric delegation to the U.S. evolved out of last year's visit of an American delegation to the U.S.S.R. The Soviets reacted positively to the delegation's report on Soviet abuse of psychiatry and seem to be sincerely interested in coming here to learn modern psychiatric techniques, especially in forensic psychiatry. The visit has been postponed at this time, pending details on the U.S. program and the final composition of the Soviet team.

III. HUMANITARIAN PROGRAMS

- We have developed a number of exchanges in an effort to be responsive to a humanitarian request to assist in improving the quality of Soviet life, including the disabled, the aging, and occupational health and safety.

May 3, 1990

U.S.-U.S.S.R. JUDICIAL EXCHANGE

A two-week program was conducted from April 20-May 5, 1990. A summary of the program is presented below, and a detailed description of both weeks is attached.

Week 1 (April 21 - April 28)

Participants attended the National Judicial College in Reno, Nevada for a specially designed program on the U.S. legal system and the Rule of Law. The program also included professional and social events with 60-70 new American judges, who were attending the National Judicial College's "General Jurisdiction Course" at the same time. Field trips to judicial, penal and legal institutions were included as well.

Week 2 (April 28-May 6)

The first part of this week's program (April 28-May 3) occurred in Washington, D.C., where participants visited a variety of federal, state and local institutions connected with the law and the U.S. legal system. The judges met with members of the Supreme Court, the U.S. Court of Appeals, the D.C. Superior Court, Congress, and administrative and regulatory agencies, as well as with private attorneys. Other professional and social exchanges were arranged, including visits to American homes.

The second part of this week's program moved to New York City, with a focus on federal-state legal relations and the judiciary. The participants will depart from New York to the Soviet Union on May 6.

The State Department's Bureau of Human Rights and Humanitarian Affairs coordinated the visit, which was funded by United States Information Agency (USIA). The program itself was conducted by the National Judicial College and the International Programs Division of the U.S. Department of Agriculture Graduate School.

April 17, 1990

SENIOR SOVIET LEGAL EXPERTS PROGRAM

The United States plans to host three to eight senior Soviet legal experts for individual professional exchange programs during 1990. Each program will last approximately four weeks, and will be individually designed to meet the professional needs of the particular expert.

Suggested topics include:

1. U.S. family, inheritance, marriage, adoption and domestic relations law.

2. U.S. law and practice affecting foreign nationals, permanent resident aliens, foreign corporations, etc.; laws affecting diplomatic, consular and international organizations in the U.S.; international legal assistance agreements, relevant treaties and international conventions.

3. corporate and securities law; laws related to public and private education.

4. federalism, intrastate relations, local self-government, legislative construction and judicial interpretation.

5. separation of powers, the Rule of Law, and checks and balances among branches of government.

6. U.S. judicial system, roles of judges, juries, prosecutors, defense counsel, magistrates, etc.

7. U.S. maritime and admiralty law; insurance legislation, litigation and judicial practice.

8. immigration and naturalization law.

The programs will be designed for individual participants, and each will require about 60 days advance notice to arrange.

The first three Soviet participants have tentatively been identified and will include representatives from the USSR Supreme Soviet Institute of Planning and Legislation, the Supreme Soviet's Section on Constitutional Law, and the Soviet representative to the Geneva Human Rights Center.

April 17, 1990

U.S.-U.S.S.R. ACADEMIC LEGAL EXCHANGES

The program anticipates that perhaps 50 Soviet law students would study American legal systems at selected law schools in the United States. It is expected that each of the participants would pursue a course of study to be designed by the particular U.S. law school. Each program would last for an Academic Year (approximately nine months), and each participating U.S. law school might host one to three Soviet law students.

It appears that the program would be most beneficial if the Soviet participants were post-graduate law students, i.e., those who have already completed their basic legal studies in the U.S.S.R. It is expected that such post-graduate law students would represent a broad range of professional aspirants, including those intending to pursue careers in private legal advocacy, government service, law faculties and legal education, and legal research and scholarship.

It is proposed that this type of legal exchange program would be reciprocal, although it is understood there would probably be fewer (e.g., 20-25) U.S. post-graduate law students who would be able to study the Soviet legal system in the Soviet Union.

The State Department has informally approached a number of U.S. law schools (University of Virginia, Yale, Georgetown, Columbia, etc.) to gauge their interest in participating in such an exchange. All of the schools expressed strong interest, and they were hopeful that the proposed program be developed further in the immediate future so it might commence during the 1990-1991 Academic Year. These programs are unfunded, however, although some schools have indicated that they would consider waiving tuition costs if student living expenses could be provided.

An additional possibility would involve a U.S. law professor going to the Soviet Union to teach a course in U.S. Constitutional Law at the Law Faculty of Moscow State University. Perhaps a second American law professor could teach a course at the same institution on U.S. Commercial Law. The program might serve as a model for future exchanges in the field of education on American legal principles and practices, thus promoting replication of the teacher exchange in other law faculties elsewhere in the Soviet Union.

April 17, 1990

U.S.-SOVIET SEMINARS ON THE RULE OF LAW

Ten senior U.S. legal experts travelled to the Soviet Union in March 1990 (Moscow March 19-21; Leningrad March 22-23) and presented a series of seminars on the "Realization of the Rule of Law." These seminars involved a variety of legal topics, and were conducted jointly with Soviet counterparts. (A list of U.S. participants is attached.)

The seminars were conducted before public audiences in both Moscow and Leningrad, and each seminar was recorded on videotape for future dissemination within the USSR. The audiences generally consisted of Soviet government and legal officials, law faculty members, law students, and the media.

The seminars were enthusiastically received by the Soviet side, and generated much discussion and participation among both Soviet panelists and audience members. The U.S. and the Soviet sides both agreed that follow-up sessions in the U.S.S.R. would be beneficial, especially if they were smaller and focussed on one or two specific legal topics (e.g., the right to counsel; freedom of speech; administrative law and government actions; etc.).

The U.S. side was chaired jointly by:

o Donald B. Ayer, Deputy Attorney General
and
o John Norton Moore, Chairman of the Board of Directors of the United States Institute of Peace.

U.S. participants included the following legal experts, and officials from the U.S. Department of State and the Department of Justice:

o Mr. A.E. Dick Howard, the White-Burkett-Miller Professor of Law and Public Affairs, University of Virginia School of Law

o Mr. George P. Fletcher, Professor of Law, Columbia University School of Law

o The Honorable Hans A. Linde, Associate Justice, Supreme Court of the State of Oregon

o The Honorable Lowell Jensen, Judge, U.S. District Court, Northern District of California

o Mr. Burt Neuborne, Professor, New York University Law School

o Mr. Douglas Letter, Appellate Litigation Counsel, Civil Division, U.S. Department of Justice

o Mr. William C. Bryson, Deputy Solicitor General, U.S. Department of Justice

o Mr. Lawrence Robbins, Assitant Solicitor General, U.S. Department of Justice

o Ms. Nancy Ely-Raphel, Deputy Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs, U.S. State Department

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CENTRAL AND EASTERN EUROPEAN LAW INSTITUTE

An ABA Center for Law Reform and Comparative Law

The Central and Eastern European Law Institute ("CEELI"), a proposed project of the American Bar Association ("ABA"), is a cooperative effort to facilitate the process of law reform now underway in Central and Eastern Europe. Designed to be responsive to the priorities of the participating countries, CEELI will, through a variety of means, make available U.S. legal expertise and assistance to countries that are in the process of modifying or restructuring their laws or legal systems. It will also serve as a research forum and a source of timely information on legal projects and legal developments in Central and Eastern Europe.

The elements and structure of this project have been shaped by consultations with senior government officials, legal scholars, and practitioners throughout Central and Eastern Europe. Because circumstances vary from country to country, separate discussions have already taken place or are now occurring in Poland, Hungary, Czechoslovakia, Romania, Bulgaria, and Yugoslavia. The mix of project components described below is, in large part, a product of those consultations.

A premise of this project, clearly understood in the region, is that the existence of a legal infrastructure is an essential predicate to lasting economic and political reform. The rule of law, so basic a part of our cultural fabric, is an urgent objective of new governments in countries now moving away from communist and socialist systems. Of critical importance in many countries is the need to create a commercial legal infrastructure that will facilitate economic integration into the global economy. International trade, privatization, direct foreign investment, joint ventures, and other forms of commercial transactions depend significantly on an established legal framework that provides the rules of the game, predictability, legal protections, and compatibility with international commercial norms. As the Soviet and Chinese experiences show, the absence of such a legal structure will complicate and ultimately stunt the economic growth that many evolving non-market economies urgently seek. Moreover, the ability of many Central and Eastern European countries to sustain political reforms may in fact be dependent upon the viability of their nascent market economies. As the Minister of Justice of one East European country said, "If our economic reforms collapse, our other reforms will collapse."

CEELI will consist of multiple program components. Many will be solely ABA initiatives; others will be collaborations with other organizations and with on-going projects. CEELI will attempt to maintain an overview of legal assistance projects in Eastern Europe and, to a significant extent, serve as a coordinator for such initiatives.

The Institute

A central component of CEELI, of great importance to the participating countries, will be the establishment of an institute physically located in an East European capital. As the European home of CEELI, the Institute will be the location of conferences and workshops, the home of a comparative law library, the headquarters of CEELI's East European Director, and the coordination point for the participating countries. Its counterpart office in the United States will contain a library of Central and Eastern European laws and legal materials and will be the publication point of the newsletter. Both the Executive Director and the Project Coordinator will operate out of the U.S. office of the Institute. The Institute will be supported not only by this permanent staff, but also by Country Coordinators and advisory boards in each participating country.

Technical Legal Assistance

In a variety of program formats, U.S. legal expertise and experience will be made available to assist in law reform and development projects. Typically in the form of workshops, expert assistance and a dialogue among the participating countries will be focused on a large variety of substantive legal areas. The formats could include workshops to draft or revise particular statutes, to conduct case studies of experiences in other countries, to implement general statutes, or to anticipate and address typical problems of administration. Workshops, which would address issues based on the priorities of the participating countries, would address legal issues of common concern through the Institute and issues of special interest in individual countries. Such technical assistance would be a central focus of CEELI.

Conferences and Training

In both Eastern Europe and in the United States, educational programs could address a range of legal issues and concepts. From such general legal concepts as "private property" and separation of powers, to intellectual property and administrative due process, educational programs could address legal subjects that have generally been alien to communist and socialist regimes. Such legal training could take place either in the United States or in Central and Eastern Europe and could be in short intensive two or three day sessions or extended programs of several weeks' duration. An additional training component, which could be available in the Institute in Central Europe, would be video cassette programs or lecture series on various legal subjects.

Publications

Newsletter. The Institute will publish a monthly newsletter, Central European Law News, that will include a master calendar of events relating to legal developments or training in Central and Eastern Europe, an inventory of new laws adopted in any of the participating countries, a catalogue of publications available in the Institute's library, a listing of new articles or publications, and reports on developments in the sister law school program.

Law Journal. CEELI will publish, perhaps jointly with a U.S. law school, a law review focusing on Eastern Europe.

"A Legal Guide to Doing Business in _____." This pocket guide series, an ongoing project in the International Section of the ABA, consists of succinct compilations of key information relevant to doing business in particular countries. Different from most country guides by virtue of the amount of legal information contained, these guides will facilitate the efforts of U.S. companies and lawyers to understand the legal framework in Central and Eastern European countries. CEELI would publish such a guide for each participating country within the first six months of operation and revise them as needed.

Legal Exchanges

CEELI will sponsor the temporary placement of East European lawyers in law firms and corporations in the United States. A program for English-speaking Central and Eastern European lawyers, these placements would be designed to expose lawyers from countries that have had nonmarket economies to the commercial, legal milieu of U.S. law offices. As a counterpart, one week ILEX briefing trips for U.S. lawyers to particular Central and Eastern European countries could be organized under the existing International Legal Exchange program.

Sister Law Schools

CEELI will assist each law school in Eastern Europe in establishing a sister institution relationship with an American law school. CEELI will arrange exchange visits of the two deans, who will then further develop the relationship as the circumstances of the particular schools warrant.

Coordination

CEELI will, through its newsletter calendar, advisory boards, and country coordinators, attempt to maintain an overview of legal assistance projects and activities underway in Central and Eastern Europe. Once established, the Institute may tend to become a natural locus for such activities, having the advantages of a facility in Eastern Europe, a permanent staff, and an extensive network. As such, CEELI will be able to serve as something of an umbrella for a wide variety of legal assistance projects.

CEELI will also be well positioned to coordinate otherwise ad hoc efforts, collaborate with other initiatives, and identify both apparent overlap and opportunities for extending ongoing programs -- in short, to serve as something of a clearinghouse. CEELI may be able, for example, to offer support and continuity to such educational programs as the Commerce Department Legal Seminar planned for Hungary and Poland in May and the Cardozo Law School seven week Business Law Program scheduled for Budapest this spring. The ABA, in addition to being the largest U.S. legal organization, has immediate access to distinguished U.S. expertise in virtually all legal disciplines. It

is clear that many East European officials hope that the ABA, as an organization that does not have some of the mixed objectives that ad hoc offers of assistance sometimes carry, may be able to bring coherence to the currently uncoordinated scene and to serve as a neutral source of advice and assistance.

CEELI is a Goal VIII Project of the ABA Section of International Law and Practice, a project designed "to advance the rule of law in the world." CEELI will draw, however, upon the full resources of the ABA, including its Sections, which are organized along the lines of legal specialties, and its 365,000 members in the U.S. and abroad.

CEELI Co-chairs

Talbot "Sandy" D'Alemberte
President-Elect-Designate, ABA

Homer E. Moyer, Jr.
Chair-Elect, ABA Section of International Law and Practice

U.S. Advisory Committee

James R. Silkenat
Chairman, ABA Section of International Law and Practice

George C. Freeman
Chair-Elect, ABA Business Law Section

* * *

Mark S. Ellis
Executive Director, CEELI
202-638-0201 (Fax: 202-639-8238)

Mollie Miller
Project Coordinator
202-331-2295 (Fax: 202-331-2220)

March 28, 1990

Agency for International Development
Washington, D.C. 20523

→ Lawyers

John Mullen
AID GC
647-0556

Office of the
General Counsel

January 26, 1990
GC, John E. Mullen

A LEGAL PROJECT FOR EASTERN EUROPE

The idea of a legal project for Eastern Europe is based on the premise that the rule of law -- open, accessible, fair, and predictable -- is fundamental to a functioning market economy and political democracy. Without a rule of law to govern property rights and responsibilities and to settle disputes, capitalism becomes economic governance by permit. Without a rule of law to establish and protect individual rights and freedoms, a free and fair election can quickly become a dictatorship of the elected. The rule of law can be said to be the bridge between market economies and political democracies, the glue that holds them together, and the discipline that permits them to work efficiently.

A. The American Experiment

The United States has a great deal to offer. Chief Justice Marshall stated in Marbury v. Madison that,

> "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." 1 Cr. 137, 163 (1803).

Although our legal tradition is common law not civil law as is the case throughout Europe including Eastern Europe, the American experience is particularly relevant to the economic and political winds currently blowing there. Dean Pound quotes a "foreign observer" as saying about our legal tradition that its distinguishing marks are "unlimited valuation of individual liberty and respect for individual property."[1] Nothing could be more relevant to countries with the twin goals of building democracy and market-based economies.

Obviously the U.S. experience is but one that the Eastern European nations will want to consider. At the most basic level, the American concept of combining a written constitution that is

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[1]Pound, "The Spirit of the Common Law", Marshall Jones Co., 13 (1921).

Rumania

3-way convo - at one point
copy of lawst. - arrested on the spot
Rums not allowed go into US Embassy
w/out invit — didn't ~~[illegible]~~ receive
mail fr foreign entities

the sole source of individual rights and liberties,[2] a federal system with powers distributed between states and the federal government, and federal powers separated among three independent branches to check and balance each other, is unique in the world. A prominent feature of our separated powers, the "American development of the common law doctrine of supremacy of law, in our characteristic institution of judicial power over unconstitutional legislation"[3] is a concept not shared fully by other common law countries and at times in our history even has been attacked as undemocratic because it undercuts popular responsibility.[4] Nevertheless, "Since World War II, while Americans have continued to agonize over the justifiability of judicial review, more and more other nations have looked to courts to enforce constitutional norms. Judicial review has become especially important in Germany and Italy."[5] Above all, however, the unquestioned success and longevity of the American experiment in both creating wealth and protecting property rights and individual liberties make it a model that should be understood in its fullest dimensions by the people and leaders of Eastern Europe.

B. The Establishment of a Democratic Rule of Law; The Common Law v. Civil Law

Moving from a highly centralized, autocratic system to a popularly elected democractic system that respects individual and property rights is an extremely complicated process. It involves the kind of fundamental decisions the foregoing discussion implies about constitutions, judicial review and federalism. Many western states have undergone this process in modern times, especially since World War II, and most have created hybrid systems that themselves can provide guidance to East Europeans. The establishment of constitutional courts to provide judicial review in parliamentary systems is an important example.

But whether in modern times or in the periods in which the great western systems of law were established, the movement to a rule of law invariably has accompanied and nurtured the unification and welding of nations. This occurred in England as the common law

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[2]The question of whether the constitution is the sole source has been debated. It involves the issue of substantive due process and arguments sounding in concepts of natural law.

[3]Pound at 3.

[4]See Thayer, "The Origin and Scope of the American Doctrine of Constitutional Law," 7 Harv.L.Rev. 129 (1893), 1 Selected Essays 503 (1938), and Commager, Majority Rule and Minority Rights (1943).

[5]Gunther, "Cases and Materials on Constitutional Law." Foundation Press, 25 (10th Ed. 1980).

evolved from the 14th Century onward, in France in the period surrounding the adoption of the Code Napolean in 1804, and in Germany at the time of adoption of the Burgerliches Gesetzbuch (Civil Code) in 1896.[6] In America, not only was the establishment of the rule of law in the constitutional process the bedrock foundation of nationhood, it continued to be the cohesive element in American society and the American political process. As Chief Justice Taney commented on the role of the judiciary:

> "This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon their reserved rights by the general government . . . . So long . . . as this Constitution shall endure, this tribunal must exist with it, deciding in the peaceful forms of judicial proceeding, the angry and irritating controversies between sovereignties, which in other countries have been determined by the arbitrament of force." [7]

The move to a democratic rule of law also involves a process of choice among the variations of common law and civil law systems that have evolved in the West over time. The civil law concept, derived from Roman law, is that of a closed system of rules in the form of codes which judges may apply only in a mechanical fashion. The strength of the common law is in its treatment of concrete controversies, with judicial law-making through the decision of particular cases. The strength of the civil law is in its logical development of abstract conceptions.[8]

In practice, the systems merge to a substantial degree. Modern common law systems also have statutory law and codes in great abundance,[9] especially in fields relating to the efficient

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[6]Schlesinger, "Comparative Law", Foundation Press, 168-71 (2nd Ed. 1959). "In his 'History of the English Speaking Peoples', Winston Churchill again and again drives home an important point: the focal role which the common law played in the process by which England was welded into a nation." Id. at 179.

[7]Ableman v. Booth, 21 How. 506, 520-21 (1859).

[8]See Pound at 2.

[9]However, ". . . the very meaning of the word 'code' depends on whether it is used by civilians or by lawyers brought up in the common law tradition. In the eyes of the latter, a code is supplemental to the unwritten law, and in construing its provisions and filling its gaps, resort must be had to the common law. To the civilain, a code is a comprehensive . . . statement of the law. In its interpretation, the court is always conscious of the interrelation of all the provisions contained in the whole code,

functioning of a market economy such as commercial law, corporations, securities and antitrust law. Judges in both systems interpret the codes and even in civil law countries their decisions along with scholarly interpretation in effect create law. What we presume the Eastern European countries will want to do is consider the basic strengths of the many extant western legal systems, first in terms of how well they promote and protect liberty and property and then in terms of how well they permit and facilitate economic growth. As noted above, this will be a complex undertaking that goes far beyond whether the system is common law or civil law based. It will require consideration of how much power they are willing to entrust to government, how impatient they are to install a modern legislated system, and the extent to which they wish to commit power and decision-making to administrative bodies which proceed extrajudicially. It also will require the most sensitive consideration of history and demographics and how a foreign code or system will work within the history and customs of the country considering it.

When this framework thinking has been done, the East Europeans then will be able to consider the many successful market economy and democracy models. Japan, Germany and France, all civil law countries, are, like the United States, Britain, Canada and Australia, all capitalistic and all successful. They also are very different in their approach to regulation, taxation, and the relationship of the public and private sectors. The United States can and should help in this sifting and winnowing process. As is discussed in the following section, a law reform project may be the appropriate approach for that aspect of the establishment of the rule of law. As also is discussed in the following section, the issue involves institutions as well as laws.

C. The Role of the United States in Establishing a Rule of Law in Eastern Europe; the Role of Lawyers, the Legal Profession, and an A.I.D. Legal Project

If A.I.D. truly believes that its mission is development, growth, political pluralism, and economic and political stability, there can be no more important investment than an endeavor to assist the countries of Eastern Europe in their quest for a form of government and rule of law that permits free markets and individual freedom to flourish. It would be folly to attempt to transplant the American system in whole or in part; it would be greater folly to fail to provide them the opportunity to understand and learn

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and indeed in the entire code system. The intention of the legislator, where it can be ascertained, will not be disregarded. Primarily, however, code construction is grammatical, logical and teleological; in any event, it is free from historical reminiscences reaching back into the period prior to the preparation of the code." Schlesinger at 177-78.

from our experience.

This does not mean simply support for elections or efforts to ensure that their laws governing joint ventures are congenial to American investment, however valuable such efforts may be. Elections alone do not create democracies. The establishment of a democratic system is not a surface undertaking but one of the greatest seriousness and profundity. The process of American constitutional development was led by men of learning, wisdom, and great depth. It involved debate on the highest theoretical and most practical levels, among men trained in law or familiar with legal theory; men familiar with Aristotle, Montesquieu, and Locke, as well as the already centuries old system of British common and constitutional law, Roman Law, the Renaissance, and the Reformation. To the extent that A.I.D. can facilitate the availability of American constitutional and comparative legal scholars to the leaders of Eastern Europe, it will pay far greater dividends than exposure to current American methods of campaigning and conducting elections.

But however wise the selection and establishment of forms and systems of government and legal processes, it will fail if not well implemented. The choice of legislative and executive forms is an integral part of the establishment of the rule of law because those institutions create and carry out law. Wisdom and competence among the practioners in legislative and executive branches is essential if an open, accessible, fair, and predictable rule of law is to flourish. Training in these areas may be an important contribution that legal and other experts from the United States can make.

Apart from the fundamental process of establishing the forms and systems of government, a process in which those trained in law must participate, the concept of a legal project relates most directly to the judicial branch of government, the legal profession, and the process of law revision and reform. An efficiently functioning rule of law presumes a system of laws relevent to the modern world, that comprehend the technology and communications capabilities of the 1990s and how they relate to personal freedoms and competitiveness in a global economy. A law reform project, perhaps institutionalized in the form of a law institute, may ultimately be what Eastern Europe needs the most. It would permit the nations of Eastern Europe to consider systematically the variety of approaches to corporate and commercial law, taxation, trade, securities, antitrust, environmental, civil rights and criminal law that the West has to offer. In all probability, a survey of what now exists would be the first step. Pre-World War II laws may remain in effect. Modification rather than replacement might be in order. Consideration would have to be given to the benefits of a regional law reform or harmonization process given the multi-national nature of modern business and economic relationships.

Many other interventions to assist the legal infrastructure or the quality of the bar also might be possible and helpful. An efficiently fuctioning rule of law presumes a working court structure, accessibility to statutory and decisional law in libraries and other repositories, a skilled and independent bar, legal education and training, and broad accessibility to legal representation. A working court structure may require attention to the physical condition of the courts, the registries and dockets, the non-lawyer support personnel from stenotypists to para-legals, the facilities for gathering and preserving evidence in the criminal justice system, and whatever else permits courts to provide speedy trials and easy access to dispute settlement. Accessibility to law may require the refurbishing of libraries or more basically to printing and compiling laws and decisions. The establishment of an independent bar might require the forming of associations, attention to the estabishment of firms or other forms of group practice, and consideration of canons of ethics and rules of conflict of interest. Legal education and training may require not only exposure to modern codes and western legal thought and systems, but also a fundamental examination of how law is taught. The right to legal representation may require an expansion of the legal profession as well as provision for accessibility by all elements of society.

Although A.I.D. financing of legal projects has not been a consistently high priority over the years, the rule of law has long been seen as a key to development and all the foregoing elements except the fundamental discussion of constitutional theory have been touched on at some point in A.I.D. legal projects. On a small scale, most of them currently are included in one of the two legal projects being conducted in the English-speaking Caribbean islands.

Several considerations are absolutely critical. 1. The American experience must not be forced but must be heard, in conjunction with or apart from West Europeans and others who may be interested in this process. 2. The American offer of assistance must not be narrow. While help in the consideration of modern legal codes that would facilitate the establishment of an efficient market-oriented economy may be a high priority, a U.S. intervention designed simply to facilitate investment would be a mistake. 3. Because of the breadth of A.I.D.'s interest in development, it is the appropriate U.S. agency to participate. And because we represent the United States, it is appropriate for us to consider participation at any or all of the levels discussed in this paper, drawing on expertise in the many departments and agencies, such as Commerce, interested in this process. 4. The full resources of the diverse American academic and practicing legal profession must be brought to bear. An organization like the American Bar Association that comprehends all such elements could be an appropriate implementing vehicle. 5. Time is of the essence. An uncoordinated, ad hoc process of molding changes in law to meet

particular investments or other problems already is occurring. Individuals and firms from throughout the world are selling or donating their advice and other western nations and multilateral organizations are offering advice as well. The time of the key individuals in each country soon will be dominated by this ad hoc process. A coordinated effort in which the American voice is heard is paramount.

It is the consideration of all these myriad issues that A.I.D must now address.

John E. Mullen 1/26/90

FINAL

The Rule of Law: An Overview

BY

JOHN NORTON MOORE

Walter L. Brown Professor of Law
University of Virginia School of Law
and
Chairman of the Board of Directors
United States Institute of Peace

AS

Co-Chairman of the American Delegation
to the Seminar on the Rule of Law

Moscow and Leningrad

March 19–23, 1990

The views expressed in this paper are those of the author and do not necessarily reflect the views of the United States government, the United States Institute of Peace, the University of Virginia, or any other organization with which the author is or has been affiliated.

"[W]hile the laws shall be obeyed all will be safe."

Thomas Jefferson
Original draft of first Inaugural Address, March 4, 1801,
in 8 THE WRITINGS OF THOMAS JEFFERSON 1 (P. Ford ed. 1897).

The Rule of Law: An Overview

JOHN NORTON MOORE

I. Introduction

The world has long admired the rich cultural and artistic heritage of the peoples of the Soviet Union, a heritage including writers, poets, and composers such as Tolstoy, Chekhov, Pushkin, Dostoyevsky, Tchaikovsky and Brodsky, and the artistic brilliance of a Bolshoy Ballet. As has been most evident in the Helsinki process, however, there has been great international concern about the protection of fundamental human rights and freedoms within the Soviet Union as well as about maintaining and promoting world order and the principles of the United Nations Charter. For these reasons the ongoing international and structural changes broadly identified with President Mikhail Gorbachev and programs of "glasnost" and "perestroika" have been warmly received in the United States and elsewhere in democracies throughout the world. The peoples of these democracies profoundly hope that these programs will succeed—not simply endure—in transforming Soviet institutions to meet the concerns on which there has been continuing engagement within the Helsinki process. In this connection, no tenet of reform has seemed more promising than commitment to the rule of law, the subject of these discussions. As recently stated by Foreign Minister Shevardnadze:

> And surely no one can doubt that it [National strength] lies most of all in a renewed, democratic, rule-of-law society, in a free people, in the free man.[1]

Perhaps it is no coincidence that this focus on the rule of law—and indeed this welcome discussion on the rule of law—takes place under the first Chairman in recent Soviet history to be a lawyer.

The language of diplomacy is frequently a language of subtlety, indirection and omission. The language of friendship, however, is a language of candor. As you can see, I have chosen the language of candor and I deeply hope that this essential element of friendship will be a hallmark of this path-finding exchange on the rule of law. As the Helsinki Final Act affirms, the participating states "will respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations." It is for the people of the Soviet Union to make the choices about fundamental

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[1]Excerpt from an October 23 Foreign Policy Report of Soviet Foreign Minister E. A. Shevardnadze entitled "Foreign Policy and Perestroyka" reportedly delivered to a plenary session of the Supreme Soviet in Moscow.

institutions and legal structures for their own society, consistent, of course, with the fundamental commitments of the Helsinki process and international human rights covenants. Indeed, it is a certainty that no outside group can be sensitive to all of the factors affecting those choices. Nevertheless, I profoundly believe that the experience of the United States in implementing the rule of law—an experience recently proudly celebrated in the bicentennial of our Constitution—can be of great importance for the people of the Soviet Union as you open up issues concerning the rule of law in Soviet society—just as the international commitments made in the Helsinki process and in adherence to fundamental human rights covenants are of great importance. In that spirit, I hope that these discussions between American and Soviet experts will be followed by even more specific discussions on each of the components of the rule of law. And I hope that to be most useful for all parties these discussions will be full and frank.

The overview discussion which follows will first set forth what I believe to be major tenets of the rule of law. It will then consider some essential components of limited government and individual rights and freedoms in a representative democracy and some essential components of the rule of law within an independent and democratic judicial process. Finally, it will note the importance of the rule of law in international affairs and of a robust legal profession. Throughout, this paper is guided by a spirit of candor, irrespective of any possible philosophical differences perceived between and possibly even within delegations.

II. Major Tenets of the Rule of Law

The "rule of law" collectively symbolizes the most important features of democratic governance. Its core meaning is that governmental decisions must be rooted in the consent of the governed, acting only through structures and procedures designed to prevent individual oppression or governmental tyranny, which protect fundamental rights and freedoms, and which are subject to appraisal by an independent judiciary rendering judgments based on law. It stands in contrast to decisions based on naked power, arbitrary fiat, political expediency or personal gain. But most meaningfully, it encompasses much more than simply the opposite of these negative images. Individual judgments differ as to the core underpinnings of the rule of law, but I believe there are at least five principal tenets—each with a number of fundamental sub-tenets. These five highest-level tenets are:

- government of the people, by the people, and for the people;[2]
- separation of powers and checks and balances;

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[2]For the origin of this phrasing, see President Abraham Lincoln's Gettysburg Address, November 19, 1863.

- representative democracy and procedural and substantive limits on governmental action against the individual (the protection of human freedom and dignity);
- limited government and federalism; and
- review by an independent judiciary as a central mechanism for constitutional enforcement.

Let us review each of these basic general tenets in turn.

government of the people, by the people, and for the people

Overwhelmingly, philosophers and political theorists have rooted the authority of *democratic* governance in the people—not in the few or an assumed elite. Thus, to Aristotle "... in democracies the people are supreme ...."[3] John Locke viewed government as being based on popular consent and wrote that governmental actions exceeding the laws are "without authority."[4] In a famous phrase discussing abuse of power, he concluded: "[w]herever law ends, tyranny begins ...."[5] Echoing these premises, the American Declaration of Independence provides:

> We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ....[6]

Adopted less than three weeks earlier, the Virginia Bill of Rights provides: "[t]hat all power is vested in, and consequently derived from, the people ...."[7] This is emphatically not the concept of the unchallengeable general will underlying the philosophy of Jean Jacques Rousseau under which "the public must be taught to know what it wants."[8]

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[3]ARISTOTLE, POLITICS (ca. 325 B.C.).

[4]J. LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT (1690).

[5]*Id.*

[6]The Declaration of Independence (U.S. July 4, 1776).

[7]From Article 2 of the Virginia Bill of Rights (June 12, 1776).

[8]J.J. ROUSSEAU, THE SOCIAL CONTRACT (1762). Needless to say, the Western democratic conception of "government of the people, by the people, and for the people" also is emphatically *not* the inverted social contract of Rousseau as reflected in his social contract

Corollaries of this first principle that the authority of law comes from the governed are:

- constitutions should embody the fundamental compact with the people—such constitutions should serve as the highest form of law to which all other laws and governmental actions must conform. As such, constitutions should embody the *fundamental* precepts of a democratic society rather than serving to incorporate ever-changing laws more appropriately dealt with by statute. Similarly, governmental structures and actions should *seriously* conform with constitutional norms, and constitutions should not be mere ceremonial or aspirational documents;
- legislatures and chief executives should be popularly elected under a system which will ensure frequent accountability. Elections must in practice be fully fair, open and meaningful. Mechanisms, such as initiative and recall, might be devised to keep elected officials close to the people;
- there should be no merger of a political party with the state or control of the electoral process by a political party. It is the freely elected representatives of the people, acting through *governmental* structures such as the legislative and executive branches, which should govern the state; and
- the constitutional system should provide for reasonable change and amendment as conditions and the popular will change.

separation of powers and checks and balances

A principal underpinning of much writing on democratic governance and the rule of law is that governmental structures should be constructed through a separation of powers and checks and balances to prevent governmental tyranny. Thus, Montesquieu wrote in *The Spirit of the Laws* in 1748:

> The political liberty of the subject is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.
>
> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the

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oath for his proposed Constitution for Corsica, which provides: "I join myself, body, goods, will and all my powers, to the Corsican nation, granting her ownership of me, of myself and all who depend on me." Printed in C.R. VAUGHAN (ed.), 2 THE POLITICAL WRITINGS OF ROUSSEAU 250 (2 volumes, Cambridge, 1915). *See also* Chapter 1 in P. JOHNSON, INTELLECTUALS (1988).

> legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.[9]

The connection between this principle of separation of powers and the rule of law was vividly reflected in the Constitution of the State of Massachusetts adopted in 1780:

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.[10]

And this principle was a major underpinning of the United States Constitution. As James Madison wrote in *The Federalist* papers, explaining the new Constitution:

> No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal constitution therefore really chargeable with this accumulation of power or with a mixture of powers having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.[11]

Similarly, this principle was a fundamental tenet of the 1789 French Declaration of the Rights of Man where it was said: "Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all."[12]

It should be noted that the principle of separation of powers does not stand in opposition to a strong legislature or a strong executive. Indeed, it is partly rooted in the functional attributes and efficiencies of each branch in respectively making, applying and enforcing the laws (as well as the executive role in foreign affairs). And it is critically complemented by checks and balances, such as, for example in the American system, the right of the Executive to veto legislation, the right of the Senate to withhold advice and consent

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[9]MONTESQUIEU, THE SPIRIT OF THE LAWS (1748).

[10]The Constitution of the Commonwealth of Massachusetts, "Part the First," art. XXX (1780), *reprinted in* M. CONNOLLY, THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS 3, 10 (1984).

[11]THE FEDERALIST No. 47, at 324 (J. Madison) (J. Cooke ed. 1961).

[12]Article 16 of the Declaration of the Rights of Man and the Citizen (August 26, 1789).

to a treaty, and the requirement that Congress rather than the Executive "declare War" and "raise and support Armies." It should also be noted that an independent judiciary is a major corollary of this principle of separation of powers. Moreover, the Framers of the United States Constitution, recognizing the potential great power of the legislature in making laws, provided checks and balances even within the legislature by providing for a bicameral legislature elected by differing constituencies and for different terms. Finally, it should be noted that if separation of powers and checks and balances are avoided by unitary party control of all branches of government then the benefits of this fundamental underpinning of the rule of law could be easily lost. This is yet another reason for avoiding a merger of a political party with the state.

representative democracy and procedural and substantive limits on governmental action against the individual (the protection of human freedom and dignity)

Every democracy faces the problem of how to protect fundamental human freedom and dignity against governmental action—whether arbitrary or mandated by a majority. The most important and recurrent answer to this issue has been to provide constitutional guarantees of basic human freedoms—frequently denominated as a "bill of rights." Other partial answers, however, involve building in checks against factionalism and hasty laws through *representative* democracy, *bicameralism* and *cautious modes of legislative deliberation and action*, as well as endowing government only with *limited authority* not extending to compromising such basic freedoms. Among other examples of a "bill of rights" approach, in 1215 the Magna Carta extracted a series of rights as pledges from a reluctant King John. This included the rights:

> No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.
>
> To no one will we sell, to no one will we deny, or delay right or justice.[13]

Similarly, following the revolution of 1688, the British Parliament extracted a "bill of rights" from the Crown. The State of Virginia adopted the Virginia Bill of Rights in 1776; in 1789 during the early months of the French Revolution, the National Constituent Assembly formulated a "Declaration of the Rights of Man and of the Citizen"; and following a major debate about the new Constitution, the first Congress of the United States formulated the Bill of Rights which was ratified by the states effective December 15, 1791. Next year America will celebrate the bicentennial of this Bill of Rights of fundamental freedoms. Time has confirmed

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[13]Magna Carta, nos. 39 & 40 (1215) (numbers omitted).

their importance to an enduring democratic government. It should also be noted that the protection of fundamental rights extends both to substantive and procedural rights, including essential procedural elements incorporated in American law in the concept of due process of law. The cornerstone of the criminal justice system, as well as of administrative law, is these concepts of procedural due process. Finally, it should be noted that protection of fundamental liberties is seen as sufficiently essential to democratic governance and the rule of law that many political theorists have stressed the protection of such freedoms as a fundamental objective of democratic governance without which no government can be just. Aristotle wrote in *Politics*: "The basis of a democratic state is liberty; which, according to the common opinion of men, can only be enjoyed in such a state;—this they affirm to be the great end of every democracy."[14] The Declaration of Independence speaks of securing "life, liberty, and the pursuit of happiness" as the very reason for government, and the preamble of the United States Constitution includes among the reasons for establishing the Constitution: to "secure the Blessings of Liberty to ourselves and our Posterity . . . ." Certainly there can be no meaningful rule of law which does not protect fundamental human freedom and dignity *as a very reason for government.*

limited government and federalism

Yet another underpinning of the rule of law is the related principles of limited government and federalism. As has just been discussed, the principle of a limited government of enumerated powers has been one partial answer to the protection of fundamental freedoms. Indeed, in *The Federalist* papers, Alexander Hamilton urged that the limited powers of the new federal constitution made a specific bill of rights unnecessary. Limited central government, however, serves another important function in the rule of law in maximizing regional and local control of governmental functions principally affecting peoples at a local level. In this context, limited government and federalism divide governmental authority between a central government, which should have authority in issues of defense, foreign policy, interstate commerce and other issues of governance affecting citizens on a national basis, and regional and local governmental authorities, which should have authority in issues of governance such as municipal services and education primarily affecting citizens on a more local basis. This principle simultaneously makes government more responsive to and controllable by the people and encourages a diversity in public policies adopted within different regions according to local conditions, needs, traditions and desires. It directly incorporates an insight of participatory democracy that groups affected by decisions should have a voice in those decisions. As correctly perceived, it does not detract from strong federal authority in the areas where authority must be and is centralized in a national government. Adjusting the boundaries between the federal and regional governmental units and

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[14]ARISTOTLE, POLITICS (ca. 325 B.C.).

maintaining a proper balance is necessarily the essence of a large body of law in any federal system. Federalism, of course, assumes an at least initial voluntary acceptance by constituent units.

judicial review by an independent judiciary as a central mechanism for constitutional enforcement

An independent judiciary is a critical component of the principle of separation of powers, as well as of an effective principle of constitutionalism in embodying and realizing the major conditions of the consent of the governed.[15] Because of the *great* importance of judicial review as a central mechanism for constitutional enforcement and for maintenance of the rule of law, however, I believe that it should be considered a fundamental principle in its own right. Indeed, no principle in the American experience has been more important in maintaining the integrity of the major constitutional underpinnings of the rule of law than has the principle of independent judicial review. Thus, the Supreme Court has in the 1962 reappointment decision of *Baker v. Carr*[16] sought to police the integrity of the "one person one vote" principle underlying government of the people, by the people, and for the people. In major decisions such as *INS v. Chadha*,[17] in which the Court in 1983 struck down the so-called "legislative veto," the Court has policed the critical workings of separation of powers and checks and balances. The Court has since its earliest days been repeatedly concerned with maintaining a proper balance in issues of federalism. And perhaps its most vital role has been in protecting the fundamental rights and freedoms of individuals against encroachment by federal and state action. As the Framers correctly foresaw, the judicial power could not be

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[15]The "Introduction" to Melone and Mace, *Judicial Review and American Democracy* (1988), roots judicial review in ". . . the belief that the Constitution is the Supreme expression of the people's will." Thus, it says:

> The ultimate and necessary foundation upon which judicial review rests is the belief that the Constitution is the supreme expression of the people's will. Since it results from the acts of the people in their constituent capacity, it is fundamental law embodying the people's determination of the proper division and extent of governing authority between the various branches of the national government; between the central government and the state governments; between the national government and individuals; and, especially under the expanded application of the Fourteenth Amendment, between state governments and individuals.

Id. at 3. *The Federalist* No. 78 (Hamilton) provides perhaps the strongest indication in constitutional history that the Framers contemplated judicial review concerning issues of constitutional consistency.

[16]Baker v. Carr, 369 U.S. 186 (1962).

[17]INS v. Chadha, 462 U.S. 919 (1983).

subsumed within the executive or legislative branches consistent with effective exercise of the judicial role in policing these principles of the rule of law. Indeed, judicial review by an independent judiciary may be the only way to *effectively* ensure the supremacy of the Constitution. The realization of this point was an essential element in the reasoning of Chief Justice John Marshall in the landmark decision of the Supreme Court in the 1803 case of *Marbury v. Madison*,[18] setting out the doctrine of "judicial review" by declaring for the first time an act of Congress unconstitutional. Thus, Marshall wrote:

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.
>
> This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.
>
> If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.
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> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.
>
> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.
>
> If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.
>
> Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.
>
> This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which

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[18]Marbury v. Madison, 5 U.S. 137 (1803).

professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.[19]

A genuinely independent judiciary, of course, requires not only a doctrine of judicial review but also scrupulous protection of the independence of the judiciary in form and in fact. Details of appointment, tenure, salary, status, training and removal must all be resolved to preserve and strengthen that independence. Similarly, the selection of judiciary must not be on a partisan basis and should ensure the selection of the most qualified legal experts. And the legal profession, as well as the government and society as a whole, must internalize the independence of the judiciary and the important reasons for it.

III. Some Essential Components of Limited Government and Protection of Individual Rights and Freedoms in a Representative Democracy

As has been discussed, major tenets of the rule of law in a representative democracy include limited government and constitutional limits on governmental action against the individual. In turn, these tenets include a broad range of substantive and procedural components. Some such components widely regarded as essential include the following:[20]

preserving a climate of free discussion and opinion

Nothing is more essential to the proper functioning of representative democracy than maintaining a climate of free discussion and opinion. This requires maintenance of freedom of speech; freedom of assembly; free and vital television, radio and newspaper media; freedom to petition government for redress of grievances; a free and vital publishing industry; academic freedom in institutions of higher learning; protection of exchange in the legislative process and depoliticization of governmental information efforts. Ultimately, an informed and involved citizenry is the lifeblood of democracy. As Thomas Jefferson reminds us:

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[19]*Id.* at 176–78 (Opinion of the Court).

[20]The discussion which follows is emphatically *not* a complete list of fundamental components of the major tenets of limited government and constitutional limits on governmental action against the individual. The rights to travel and emigrate and the right to privacy, for example, are also fundamental.

> If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.[21]

Protecting the necessary climate of free discussion and opinion is a crucial role of the rule of law.

fairness in criminal process

An essential element in the relationship of government to its citizens is the maintenance and operation of a criminal process. Protection of the fairness and integrity of that process is an essential element of the rule of law. The Magna Carta and numerous bills of rights throughout human history attest to the importance of such fairness. Indeed, the fourth, fifth, sixth and eighth amendments in the Bill of Rights to the United States Constitution directly relate to the fairness of criminal processes, including requirements concerning search and seizure (the fourth amendment); protection against double-jeopardy and self-incrimination (the fifth amendment); the rights to a speedy and public trial by an impartial jury, to be informed of all charges, to be confronted with adverse witnesses, to have compulsory process for obtaining witnesses and to have the assistance of counsel in defense (the sixth amendment); and prohibition of excessive bail or fines and of cruel and unusual punishment (the eighth amendment). Perhaps the most important guarantee undergirding the protection of the individual against the state in criminal trials, however, is the presumption of innocence until proven guilty. Similarly, the right of *habeas corpus*, appellate review of criminal convictions, and fairness in sentencing and subsequent treatment are also vital. Also of great concern, the criminal process must not be politicized or used for the punishment of political dissidents.

Fairness in criminal process is not a monopoly of systems rooted in either common or civil law traditions. It is, however, a function of adherence to certain minimum standards such as advance promulgation of law, protection against unreasonable searches and seizures or unreasonable criminal charges, a high standard of proof by the finder of fact such as proof beyond a reasonable doubt, an impartial trial with an opportunity for an adequate defense, a right to independent advice of defense counsel, a strict separation of prosecutorial and judging functions, independent judges, and reasonable and proportional sentencing. While all traditions can be rooted in the rule of law, I prefer the adversarial process of the common law tradition as providing greater protection for an accused and a more vigorous search for the truth, among other advantages. Of possible interest, a growing body of empirical social

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[21]"Letter to Colonel Charles Yancey, January 6, 1816," in 11 THE WORKS OF THOMAS JEFFERSON 497 (P. Ford ed. 1905).

science evidence seems to support popular preference for an adversarial process involving a genuinely independent adversarial defense over an inquisitorial model.[22]

protection of religious freedom

The maintenance of religious freedom is one of the oldest and most important components of individual freedom. Thus, ensuring religious freedom is an essential component of the rule of law. Again, the importance of such freedom is attested throughout human history. It is a central component of, among other historic indicators, the Magna Carta in 1215, Roger Williams' "Bloudy Tenent of Persecution for Course of Conscience" in 1644, the Maryland Toleration Act of 1649, the Virginia Bill of Rights of 1776, Thomas Jefferson's masterful Virginia Statute for Religious Freedom in 1786,[23] and the first amendment to the United States Constitution as ratified in 1791. Religious freedom encompasses at least two vital and interrelated principles—the free exercise of religion and the non-establishment of religion. To avoid interference with the free exercise of religion, as well as to maintain consistency with the underlying purposes of non-establishment of religion, it would seem essential also that government not establish a doctrine of non-religion, just as it must not establish a particular religion. Finally, the full protection of religious freedom may require strong and effective civil rights laws to protect against discrimination on religious grounds.

protection of civil rights

A democratic society must ensure equality before the law and the protection of minority and even disadvantaged majority populations. The United States fought a civil war in the long struggle for effective realization of this principle, and with the Supreme Court leading the way in *Brown v. Board of Education*[24] in 1954, the Nation has taken this principle to heart. Today such civil rights, including protection against discrimination based on race, gender, or

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[22]*See, e.g.*, E.A. LIND & T.R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988). Cross-cultural aspects of this research indicate key findings are likely applicable to European conditions. *Id.* at 129–45.

[23]The importance in Jefferson's mind of the Statute of Virginia for Religious Freedom is reflected in the epitaph he chose for his tombstone:

Here was buried
Thomas Jefferson
Author of the Declaration of American Independence
of the Statute of Virginia for religious freedom
& Father of the University of Virginia

[24]Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

religion, are protected not only against abusive governmental action by constitutional principle, but also against both state and private action by a growing network of civil rights laws. Such laws are a vital component of the rule of law in a modern democratic society.

accountability of governmental officials and protection of governmental processes

Any modern democratic society must have a vital network of laws to ensure accountability of governmental officials and protection of governmental processes and rational decision. Such laws may include measures to facilitate petition of government for redress of grievances, "freedom of information" laws, "sunshine" laws, private suits against government or government officials in certain cases, agency inspectors general, "whistle blower" laws, "impact statements" required before decision (used particularly in the environmental area), ombudsman, conflict of interest laws, administrative remedies and appeals, and even independent counsel (though this check remains controversial in the United States).

protection of the rights of workers

Certainly every genuine democracy should seek to protect the rights of workers. Indeed, that is a major philosophical premise underlying the Soviet system. Yet, as the emergence of Solidarity in Poland illustrates, the rights of workers can be abridged by the state at least as thoroughly as by private employers. The developed nations have created a detailed labor law centering on the rights of workers to organize and bargain collectively and on the maintenance of a safe and healthy work environment. The development and enforcement of such a body of labor law would seem an important component of the rule of law in a modern democratic society.

civilian control of the military

Many democratic societies have stressed the essential nature of civilian control of the military. In the United States this is guaranteed not only by important constitutional provisions concerning legislative control over military appropriations and appointments, but is also an essential element of the military's own code of professionalism. Similarly, the military follows a tradition that is nonpolitical. And, of course, this principle of civilian control of the military also applies to civilian control of intelligence agencies.[25] Both military and intelligence agencies must operate under the rule of law and constitutional structures.

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[25]*See generally* Chapter 19 in NATIONAL SECURITY LAW (J. MOORE, R. TURNER AND F. TIPSON eds. 1990) for measures ensuring civilian control of intelligence agencies within the United States and the operation of such agencies within the rule of law.

protecting the environment

One major reason for governmental intervention in a market economy is protection against "externalities" such as environmental damage. Because of the potentially great societal cost of environmental damage, insuring that environmental costs will be adequately considered and that high standards of environmental protection are met is an essential role of modern democratic governance. Moreover, because governmental actions and projects, if not directly accountable and if identified with government itself, have an equal if not greater potential for ignoring environmental costs than private sector actions, vigorous protection of the environment is essential in all systems.

protecting economic freedom and entitlements

Perhaps no issue in the past has proceeded as thoroughly on different philosophical premises as the protection of economic freedom and property rights. The developed democracies, with a tradition of John Locke and market-oriented economies, have traditionally protected economic freedom and individual property rights. The Soviet system, however, has followed Marx and Engels in the abolition of many forms of private property. Thus, John Locke, in his *Second Treatise of Civil Government* in 1690, wrote at length in support "of property." And the breadth of support for this principle is illustrated by the 1789 French Declaration of the Rights of Man, which begins article 17 with the preamble "Property being a sacred and inviolable right . . . ." Yet the Communist Manifesto provides in relation to certain private property: "the theory of the Communists may be summed up in the single sentence: Abolition of private property."

Clearly, market-oriented economies are a major feature of the rule of law in developed societies based on Western democratic values. The economic success of those societies, not only in enhancing overall production of goods and services, but also in broadly delivering consumer goods and services, speaks with the normative force of facts. Increasingly, however, the literature in the West has also shown a powerful connection between economic freedom generally, including private property rights, and both individual freedom and overall societal levels of freedom and success of governmental structures. Thus, property rights and freedom in the economic sphere are increasingly recognized as essential components of human freedom. For if tight control of property enables pervasive state control of the individual, then freedom can be lost as effectively as through the denial of civil and political freedoms. Indeed, Professor Charles A. Reich writes in a famous article on "The New Property"[26] that

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[26]C. Reich, "The New Property," 73 YALE L.J. 733 (1964).

"[t]he institution called property guards the troubled boundary between individual man and the state."[27] And further:

> At the very least, it is time to reconsider the theories under which new forms of wealth are regulated, and by which governmental power over them is measured. It is time to recognize that "the public interest" is all too often a reassuring platitude that covers up sharp clashes of conflicting values, and hides fundamental choices. It is time to see that the "privilege" or "gratuity" concept, as applied to wealth dispensed by government, is not much different from the absolute right of ownership that private capital once invoked to justify arbitrary power over employees and the public.
>
> Above all, the time has come for us to remember what the framers of the Constitution knew so well—that "a power over a man's subsistence amounts to a power over his will." We cannot safely entrust our livelihoods and our rights to the discretion of authorities, examiners, boards of control, character committees, regents, or license commissioners. We cannot permit any official or agency to pretend to sole knowledge of the public good. We cannot put the independence of any man . . . wholly in the power of other men.[28]

And, of particular relevance in a system in which the individual must rely heavily on government "entitlements," a central thrust of this article by Professor Reich is the importance of protecting these state-controlled "entitlements" as "the new property" against arbitrary or politicized government denial. Moreover, the roles of private property in providing individual incentive and as a prerequisite for voluntary exchange which is the basic mechanism of decentralized market systems has long been recognized in the developed democracies. Indeed, of particular interest, there is a growing feeling among many in the West that political systems which broadly limit private property rights may not be able to adopt more open governmental processes without also adopting greater economic freedom—going far beyond efforts at greater decentralization of governmental planning. For the resulting inefficiencies in relatively centralized governmental setting of prices, as opposed to the decentralized actions of markets, may inevitably lead either to popular efforts at fundamental change in government structures or to massive emigration, as was most recently evident in the events in the German Democratic Republic following the courageous and internationally applauded dismantlement of the Berlin Wall. A discussion of this potential linkage between freedom in the economic sphere and freedom elsewhere appears in the *Economic Report of the President* transmitted to the United States Congress in February 1982. Chapter two of this report on "Government and the Economy" begins:

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[27] *Id.*

[28] *Id.* at 787.

Political freedom and economic freedom are closely related. Any comparison among contemporary nations or examination of the historical record demonstrates two important relationships between the nature of the political system and the nature of the economic system:

- All nations which have broad-based representative government and civil liberties have most of their economic activity organized by the market.
- Economic conditions in market economies are generally superior to those in nations (with a comparable culture and a comparable resource base) in which the government has the dominant economic role.

The evidence is striking. No nation in which the government has the dominant economic role (as measured by the proportion of gross national product originating in the government sector) has maintained broad political freedom; economic conditions in such countries are generally inferior to those in comparable nations with a predominantly market economy. Voluntary migration, sometimes at high personal cost, is uniformly to nations with both more political freedom and more economic freedom.

The reasons for these two relationships between political and economic systems are simple but not widely understood. Everyone would prefer higher prices for goods sold and lower prices for goods bought. Since the farmer's wheat is the consumer's bread, however, both parties cannot achieve all they want. The most fundamental difference among economic systems is how these conflicting preferences are resolved.

A market system resolves these conflicts by allowing the seller to get the highest price at which others will buy and the buyer to get the lowest price at which others will sell, by consensual exchanges that are expected to benefit both parties. Any attempt by one party to improve his outcome relative to the market outcome requires a coercive activity at the expense of some other party. The politicization of price decisions—whether of wages, commodities, or interest rates—tends to reduce both the breadth of popular support for the government and the efficiency of the economy. A rich nation can tolerate a good bit of such mischief, but not an unlimited amount. One should not be surprised that all nations in which the government has dominant control of the economy are run by a narrow oligarchy and in most economic conditions are relatively poor. In the absence of limits on the economic role of government, the erosion of economic freedom destroys both political freedom and economic performance.

Only a few dozen nations now guarantee their citizens both political and economic freedom. The economic role of government in these nations differs widely, without serious jeopardy to political freedom. Within the range of experience of the United States and the other free nations, the relation between the political system and the government's economic role is more subtle. Expansion of the economic role of the government tends to reduce both the level of agreement on government policies and the inclination to engage in political dissent. The link between political and economic freedom is important. Increasing economic freedom will also provide greater assurance of our political freedom.

A major objective of this Administration's economic program is to reduce the Federal Government's role in economic decisionmaking while strengthening the

> economic role of individuals, private organizations, and State and local governments. This shift will entail substantial reductions in the size and number of Federal spending programs, significant reductions in both personal and business Federal tax rates, major reforms of Federal regulatory activities, and a reduced rate of money growth. While an important element in this redefinition of the Federal Government's economic role is a political judgment about the appropriate relationship among individuals, the States, and the Federal Government, this redefinition also is supported by an extensive body of economic analysis.[29]

Similarly, Justice Antonin Scalia, now of the United States Supreme Court, wrote in a book published in 1987:

> I know no society, today or in any era of history, in which high degrees of intellectual and political freedom have flourished side by side with a high degree of state control over the relevant citizen's economic life. The free market, which presupposes relatively broad economic freedom, has historically been the cradle of broad political freedom, and in modern times the demise of economic freedom has been the grave of political freedom as well.[30]

Finally, quite apart from the considerable issues of whether it is necessary and of the costs to individual freedom and governmental systems from any such effort, questions are being raised in the West concerning the internal consistency of efforts to avoid exploitation of man by man through a denial of private property rights and economic freedom. That is, it has been argued that any thorough-going effort to ensure approximate economic equality requires the socialization of both economic success and economic failure. But, if so, does not this in turn

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[29]Chapter 2 "Government and the Economy," from the *Annual Report of the Council of Economic Advisers*, in ECONOMIC REPORT OF THE PRESIDENT, TRANSMITTED TO THE CONGRESS FEBRUARY 1982, at 27–28 (1982). This chapter also contains a good summary statement of the macro-economic case for limited governmental intervention in private markets. These include: "externalities" (positive and negative), "monopoly," "public goods," "income redistribution" and "macroeconomic stability." It also contains an interesting discussion of the theoretical reasons for "government failure" as opposed to "market failure" dealt with above as settings for limited government intervention. These include the political process as "overly responsive to special interest groups," inefficiencies in "supply by government agencies," a failure to maximize responses to "diversity of conditions and preferences," "limits on information" and the over-discounting by government decisionmakers of programs which impose costs today in return for future benefits. *See id.* at 29–42.

As these theoretical points illustrate, modern democratic governance in a market economy has ample latitude for taxation and regulatory intervention (exercise of the "police power") to protect workers, consumers, investors and the environment without banning or overburdening the market economy itself.

[30]A. Scalia, *Economic Affairs as Human Affairs*, in ECONOMIC LIBERTIES AND THE JUDICIARY 31, 32 (J. DORN & H. MANNE eds. 1987).

mean that inevitably there will be systematic exploitation of some groups (the economically successful) by others (the economically unsuccessful)? And, moreover, public officials, who have a major role in directing the economy in a non-market system, will have power, motive, and opportunity to do some exploiting of their own in a more direct way.[31] Whatever the answers to these questions, it is increasingly clear that the protection of economic freedom is an essential component of the rule of law in a modern democratic society. I believe that addressing this issue fully and progressively is as important as any in the overall process of "perestroika."[32]

IV. Some Essential Components of The Rule of Law Within an Independent and Democratic Judicial Process[33]

Just as the fundamental tenets of limited government and protection of individual rights and freedoms depend importantly on a number of essential components, so, too, the rule of law within an independent judicial process depends on a number of essential components. These include:

- the supremacy of constitutional guarantees within the judicial process;
- the principle, "*nullum crimen, nulla poena, sine lege*" (literally meaning that without a law, there can be no crime and no punishment), that there can be no penalty without prior, publicly known and reasonably specific laws.[34] It should be emphasized that

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[31]*See generally* S. ARNOLD, MARX'S RADICAL CRITIQUE OF CAPITALIST SOCIETY: A RECONSTRUCTION AND CRITICAL EVALUATION (1990).

[32]What is liberalized directly, of course, should not be banned indirectly through continuing criminalization of "profit," vaguely defined "speculation," or pervasive bureaucratic control.

[33]One can also speak of essential components of the rule of law within a democratic *legislative* process. These would certainly include a presumption of openness in publication of draft laws and debate before adoption and other measures concerning due process within the legislative process, and anti-corruption measures, among others. For a general discussion of the legislative process, see J. DAVIES, LEGISLATIVE LAW AND PROCESS (2d ed. 1986), W. ESKRIDGE & P. FRICKEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY (1988), C. NUTTING & R. DICKERSON, CASES AND MATERIALS ON LEGISLATION (5th ed. 1978).

[34]A seemingly similar statement was apparently made by President Mikhail Gorbachev at the Nineteenth Party Conference: "[W]e must adhere strictly to the principle that everything that is not prohibited by law is permitted." "Gorbachev Report Sizes Up Restructuring," 40:26 CURRENT DIG. OF THE SOVIET PRESS 7, 19 (Jul. 27, 1988).

secret laws and regulations, unknown to those to whom they will be applied, are fundamentally inconsistent with the rule of law;

- the principle of decisions based on law, stemming from an analysis of the functional intent of the lawmaker as opposed to political factors, party affiliation, personal gain or arbitrary fiat. The essence of an independent judicial process is judging based on rational analysis of the law and its underlying policies as applied in a specific case;
- the principle that "like cases should be treated alike";
- the principle that reasons should be given for decisions, that the reasons given should be candid for appraisal by others, and that such opinions should be published and made widely available to lawyers and in specialized libraries;
- the principle that judges should defer to clear higher authority within a system, whether it is a constitution, a legislative enactment, or a higher court within an overall judicial system. That is, in constitutional interpretation the judge is not superior to the Constitution, in statutory interpretation the judge is not superior to a clear intent of the legislature, and a judge is bound to follow a ruling on point of a higher judge within an overall judicial system.

These and other principles underlying the judicial process, including principles of interpretation, are not self-defining, and a rich body of jurisprudential writing addresses their meaning and effect. In particular, the legal realists have taught us that judicial decisionmaking is inevitably a process involving choice in rule selection, fact selection, and semantic and syntactic interpretation.[35] While opinions differ as to the precise content and effect of such principles, however, there is widespread agreement on their importance to the rule of law.

Professor John Jeffries of the University of Virginia says of the rule of law in the context of the "vagueness" issue in this tenet:

> The evils to be retarded are caprice and whim, the misuse of government power for private ends, and the unacknowledged reliance on illegitimate criteria of selection. The goals to be advanced are regularity and evenhandedness in the administration of justice and accountability in the use of government power. In short, the "rule of law" designates the cluster of values associated with conformity to law by government.

Jeffries, *Legality, Vagueness, and the Construction of Penal Statutes*, 71 U. VIRGINIA L. REV. 189, 212–13 (1985).

[35]*See, e.g.* Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897); CARDOZO, THE GROWTH OF LAW (1924); K.N. LLEWELLYN, THE COMMON LAW TRADITION (1960); Allen & Caldwell, *Modern Logic and Judicial Decision Making: A Sketch of One View*," 28 L. & CONTEMP. PROBLEMS 213–24 (1963).

See also for a discussion of "the inner morality of law" in the new natural law tradition, Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).

V. The Rule of Law in International Affairs

Just as the rule of law is an essential component in national life, so, too, it is an essential component in international life. As John Jay wrote in *The Federalist*:

> It is of high importance to the peace of America, that she observe the laws of nations . . . .[36]

And as Thomas Jefferson wrote in 1790:

> I think with others, that nations are to be governed with regard to their own interests, but I am convinced that it is their interest, in the long run, to be . . . faithful to their engagements, even in the worst of circumstances, and honorable and generous always.[37]

One fundamental principle in international affairs is, of course, that nations should follow the rules of treaty and customary international law binding on them. Perhaps the essential principle of world order, however, is that nations must adhere to the United Nations Charter obligation not to use force aggressively in international relations. In this connection the peoples of the democracies applaud the decision by President Gorbachev to repudiate the Brezhnev doctrine and to permit genuine self-determination in the countries of Eastern Europe. Perhaps one area for future discussion might be an approach to "world peace accountability" which would highlight the critical importance of strict adherence to the Charter prohibition against aggressive use of force in international relations and seek to raise public awareness of these issues much as the Helsinki process has raised public awareness of human rights issues. Indeed, one of the interesting paradoxes of beginning major international accountability with human rights accountability is that a whole network of practices and institutions has grown up around such human rights accountability, while there is no such network surrounding accountability for another central thrust of the United Nations Charter, the prohibition in Article 2(4) against the threat or use of aggressive force.[38] Accountability to this great principle, however, is, like human rights, of obvious concern to all nations as they struggle for a world free from aggressive use of force. Indeed, in an age in which legal scholars can debate the "death" of Article 2(4) of the Charter something badly needs to be

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[36]THE FEDERALIST No. 3, at 14 (J. Jay) (J. Cooke ed. 1961).

[37]"Letter to The Marquis De Lafayette, April 2, 1790," in 8 THE WRITINGS OF THOMAS JEFFERSON 12 (Mem. Ed. 1903).

[38]There is, of course, obviously a loose international network of claims and counterclaims and some degree of international institutions devoted to such accountability but, strikingly, nothing similar to human rights accountability as it has evolved in the Helsinki process.

done, if possible, to revitalize this fundamental principle. Moreover, the recent statement by President Mikhail Gorbachev before the United Nations, in which he emphasized the impermissibility of the use of aggressive force in international relations, thus verbally recognizing this Charter principle as a cornerstone of world order, suggests an important opportunity to strengthen this principle through enhanced accountability.

VI. A Robust Legal Profession

The rule of law inevitably requires a healthy and robust legal *profession*. This, in turn, requires high-quality legal education in a climate of academic freedom, a vital and independent organized bar, a tradition of understanding and protection for the lawyer's role in representing unpopular as well as popular clients and causes, an independent and learned judiciary, a code of professional ethics rooted in the independence and integrity of the judicial process, and a reliable and effective system of legal reporting and public dissemination of laws. Of necessity, the rule of law requires an adequate number of well-trained and professional lawyers and judges to provide defense counsel in criminal proceedings, to staff a genuinely independent judiciary, to provide advice on the law, and to carry out the myriad of other services performed by a professional bar. Resources, status, salaries and other incentives must be adequate to develop such a bar. A robust legal profession can also be assisted by enhancing support for institutions devoted to the recommendation and appraisal of individual laws and the operation of the legal system as a whole.

MON 10 am NRSC walk-thru

Natl. Salvation Front = old regime

Timisoara = Berkeley
→ Hung + Pol, RFE

elections May 20

if we lose these elections, you R looking @ the future pol prisoners Of Rum

before 12/22 - illegal for 3 people to have convo

4 churches in Bucharest, 3 were padlocked

election-day observers?

lack of morality - told to do for 45 yrs.

July 1987 - TV Guide U.S. Constitution

started for info

1936 cand, prison 10 → 4 yrs. - woman, running again

31 yr-old unemployed for 12 yrs.

They stole our revolution

Brasov - coal miner, imprisoned 4 yrs, 1948
now VP Ukr Party
Hist like stop in 1948

11:20

Chas Fried 495-3100 46636
Lloyd Cutler ~~Dan Marshall~~ CWP 663-6000

Asst Sec. ~~Dick Schifter~~ 647-2126

~~D~~ David Burgess 2112 State - Hum Rights

Don Ayer ~~dep~~ dep. atty gen.

secret regs - people not allowed to see, no one knows what they are

Hung Justice Minister = Jus Sup. Ct Justice, quit
~~Ed~~ Kalman Kulcsar (Kohl-jar)
been here several times
Anglo-Saxon law expert -

U.S. Dept of Peace - John Norton Moore
457-1700 also prof - UVA
rule of law programs 804/924-7441

Hung + SU locked onto Anglo-Saxon + common law system - court interpretation
not [Roman/Napoleonic/Continental code - law + reg for everything]

1. ind judiciary (Maryland)
- exec control
- independence
- pub participation

gov appts w/leg approval w/2 yrs. 2nd election cycle, ~~first~~ ~~dept~~ vote to retain for 15 yrs!

take credit for helping them

2. trial by jury
now - 1 judge w/2 laymen
our system w/2 Res - "sleeping judges"
odd # jurors (5 or 7)
smaller size

3. notion of habeas corpus
Hung. has it - dug it out from past
Magyar princes - "right to complain"

Hung embassy Dr. Istvan Pataki
Dep. Chief of Mission
362-6730

David Rivkin - Boyden's office
(Soviet emigré - as kid)

civil side = more justice, party not as involved

1. Hung
2. Czech
3. Poland (not as far to go - Cath Church) watchdog

Freedom of Rel - Sov Const.
freedom to be atheist / non-atheist
proselytize as atheist, not as

Prof. Moore

State, Justice, USIA

US Dept of Peace

1) outside consultant, survey field re: EE + SU

~~rol es~~

2) ree to do to enhance rol engagement

Charles ~~Smith~~

Prof. A.E. Dick Howard - UVA
Czech

- CSCE talks (Max Kampelman)
  Copenhagen Round 639-1000
  1) free elections
  2) rule of law

- Thornburgh (Foreign Affairs - Spring trip to SU 1990 - 36 + Rule of Law)

- Don Ayers - dept 6 + Prof Moore took fed judges,

UK + France

Namibia - law school

intro?

Chafee
~~Rep Jack Brooks~~
Bob Graham
Simpson

Cheney
Dorman
Cavazos

Jaime Escalante — May, Aug, Dec
Jimmy Stewart
Rev Robt Runcie
Pearl Bailey
Billy Graham
{ Bill Cosby May 86
{ Alex Hadley May 86
Lane Kirkland & Bill Buckley
Ron McNair
Carl Sagan
Walter Cronkite

Pope - only univ.
Numerical yr @ univ.

UNIVERSITY OF SOUTH CAROLINA

COLUMBIA, S.C. 29208

DATE 5/3/90 TIME 10:15 am

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The University Symphonic Band

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The University Faculties
The Platform Party

NATIONAL ANTHEM.....The University Concert Choir

INVOCATION.....His Eminence Archbishop Iakovos
Primate of the Greek Orthodox Church
of North and South America

MUSICAL TRIBUTE.....The University Concert Choir

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1st Bd. of Trustees, nom to be 1st Chair, but lost by 4 votes

early proponent of state univ, began efforts in 1770 –

31 yrs. later, univ chartered

guided bill to est. univ thru state Senate

THE WHITE HOUSE
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ABA –
Homer Moyer
626-6020
Molly Miller
298-6681

legal institute
ETC –
Long Admin.?

200+
36
1200
600
7200

what doing – out in process?

Pat
Hung
GDR
Czech
Rum

2878

Prof Human Relations
Communications
885-2648

Some of These
may be useful
either directly
or indirectly.

If you want
any more just
ask.

Steve

Laugh at your friends, and if your friends are sore,
So much the better, you may laugh the more.
POPE, *Epilogue to Satires.* Dial. i, l. 55.

1
He chastises manners with a laugh. (Castigat ridendo mores.)
JEAN BAPTISTE DE SANTEUL, *Motto,* of the Opéra-Comique, Paris.

Fight Virtue's cause, stand up in Wit's defence,
Win us from vice and laugh us into sense.
THOMAS TICKELL, *On the Prospect of Peace.* St. 38.

2
Let us not be laughing-stocks to other men's humours.
SHAKESPEARE, *The Merry Wives of Windsor* Act iii, sc. 1, l. 88.

3
There are few who would not rather be hated than laughed at.
SYDNEY SMITH, *Sketches of Moral Philosophy.* Lecture 11.

4
For still the world prevail'd, and its dread laugh,
Which scarce the firm philosopher can scorn.
THOMSON, *The Seasons: Autumn,* l. 233.

LAW

I—Law: Definitions

5
Law is a form of order, and good law must necessarily mean good order.
ARISTOTLE, *Politica.* Bk. vii, ch. 4, sec. 5.

6
There are two, and only two, foundations of law, . . . equity and utility.
EDMUND BURKE, *Tracts on the Popery Laws.* Pt. i, ch. 3.

Laws, like houses, lean on one another.
EDMUND BURKE, *Tracts on the Popery Laws.* Pt. i, ch. 3.

7
Law is whatever is boldly asserted and plausibly maintained.
AARON BURR. (PARTON, *Life and Times of Aaron Burr.* Vol. i, p. 149.)

8
The absolute justice of the State, enlightened by the perfect reason of the State: that is law.
RUFUS CHOATE, *Conservative Force of the American Bar.*

9
The laws place the safety of all before the safety of individuals. (Leges omnium salutem singulorum saluti anteponunt.)
CICERO, *De Finibus.* Bk. iii, ch. 19, sec. 64.

The safety of the people shall be the highest law. (Salus populi suprema lex esto.)
CICERO, *De Legibus.* Bk. iii, sec. 3. Derived by tradition from the Twelve Tables of Roman law.

Judges ought above all to remember the Conclusion of the Roman Twelve Tables: Salus populi suprema lex; and to know that laws, except they be in order to that end, are but things captious, and oracles not well inspired.
FRANCIS BACON, *Essays: Of Judicature.*

10
Law is founded not on theory but upon nature. (Neque opinione sed natura constitutum esse jus.)
CICERO, *De Legibus.* Bk. i, ch. 10, sec. 28.

Law is nothing but a correct principle drawn from the inspiration of the gods, commanding what is honest, and forbidding the contrary.
CICERO, *Philippicæ.* No. xi, sec. 12.

11
Reason is the life of the law; nay, the common law itself is nothing but reason. . . .
The law, which is perfection of reason.
SIR EDWARD COKE, *Institutes.* Pt. i.

How long soever it hath continued, if it be against reason, it is of no force in law.
SIR EDWARD COKE, *Institutes.* Pt. i.

Law governs man and reason the law.
THOMAS FULLER, *Gnomologia.* No. 3149.

Let us consider the reason of the case. For nothing is law that is not reason.
Sir JOHN POWELL, *Coggs vs. Bernard* (*2 Ld. Raym. Rep.* p. 911.)

12
The law is for the protection of the weak more than the strong.
SIR WILLIAM ERLE, *Reg. v. Woolley.* (4 Cox, C.C. 196)

13
The law groweth of sin, and doth punish it.
JOHN FLORIO, *First Fruites.* Fo. 32. (1578)

The law's made to take care of raskills.
GEORGE ELIOT, *Mill on the Floss.* Bk. iii, ch. 4.

14
The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.
ANATOLE FRANCE. (COURNOS, *Modern Plutarch,* p. 27.)

15
The Law is what it is—a majestic edifice, sheltering all of us, each stone of which rests on another.
JOHN GALSWORTHY, *Justice.* Act ii. It is the Judge speaking.

16
Law, licensed breaking of the peace.
MATTHEW GREEN, *The Spleen,* l. 286.

Law, grown a forest, where perplex
The mazes, and the brambles vex.
MATTHEW GREEN, *The Spleen,* l. 292.

17
Laws spring from the instinct of self-preservation.
R. G. INGERSOLL, *Some Mistakes of Moses.*

18
The law is the last result of human wisdom acting upon human experience for the benefit of the public.
SAMUEL JOHNSON, *Miscellanies,* i, 223.

Dorothy Baker → 5

Laws are not made for particular cases, but for men in general.
SAMUEL JOHNSON. (BOSWELL, *Life*, 1776.)

1
No law can possibly meet the convenience of every one: we must be satisfied if it be beneficial on the whole and to the majority.
LIVY, *History*. Bk. xxxiv, sec. 3.

The law is blind, and speaks in general terms; She cannot pity where occasion serves.
THOMAS MAY, *The Heir*. Act iv. (1620)

2
The Habeas Corpus Act . . . the most stringent curb that ever legislation imposed on tyranny.
MACAULAY, *History of England*. Ch. 6.

3
The man who does no wrong needs no law. (Ὁ μηδὲν ἀδικῶν οὐδενὸς δεῖται νόμου.)
MENANDER, *Fragments*. No. 845.

All laws are useless, for good men do not need them and bad men are made no better by them.
DEMONAX. (PLUTARCH, *Apothegms*.)

When men are pure, laws are useless; when men are corrupt, laws are broken.
BENJAMIN DISRAELI, *Contarini Fleming*.

Just laws are no restraint upon the freedom of the good, for the good man desires nothing which a just law will interfere with.
J. A. FROUDE, *Short Studies on Great Subjects: Reciprocal Duties of State and Subject*.

It is only rogues who feel the restraint of law.
J. G. HOLLAND, *Gold-Foil: Perfect Liberty*.

The good needs fear no law,
It is his safety and the bad man's awe.
MASSINGER, *The Old Law*. Act v, sc. 1.

4
Virtue alone is not sufficient for the exercise of government; laws alone carry themselves into practice.
MENCIUS, *Works*. Bk. iv, pt. i, ch. 1, sec. 3.

5
Law can discover sin, but not remove,
Save by those shadowy expiations weak.
MILTON, *Paradise Lost*. Bk. xii, l. 290.

So many laws argue so many sins.
MILTON, *Paradise Lost*. Bk. xii, l. 283.

6
Laws were made that the stronger might not in all things have his way. (Inde datæ leges, ne firmior omnia posset.)
OVID, *Fasti*. Bk. iii, l. 279.

7
The laws obey custom. (Leges mori serviunt.)
PLAUTUS, *Trinummus*. Act iv, sc. 3, l. 36.

With customs we live well, but laws undo us.
GEORGE HERBERT, *Jacula Prudentum*.

8
A law should be a voice, as it were, sent down from heaven; it should command, not discuss. (Velut emissa divinitus vox sit; jubeat, non disputet.)
POSIDONIUS. (SENECA, *Epistulæ ad Lucilium*. Epis. xciv, sec. 38.)

A law should be brief in order that the unlearned may grasp it more easily. (Legem enim brevem esse oportet, quo facilius ab imperitis teneatur.)
POSIDONIUS. (SENECA, *Epistulæ ad Lucilium* Epis. xciv, sec. 38.)

9
Law, in a free country, is, or ought to be, the determination of the majority of those who have property in land.
SWIFT, *Thoughts on Various Subjects*.

10
Law is the crystallization of the habit and thought of society.
WOODROW WILSON, *Lecture*, Princeton, 1893.

II—Law: Apothegms

11
The law is open.
New Testament: Acts, xix, 38.

12
The devil hath eleven points of the law against you, that is, possession.
THOMAS ADAMS, *Works*, p. 97. (1630)

Possession is nine points of the law.
THOMAS FULLER, *Holy War*. Bk. v, ch. 29.
Both these proverbs were in frequent use.

Possession is eleven points of the law and there are but twelve.
JOHN RAY, *English Proverbs*.

That possession was the strongest tenure of the law.
PILPAY, *Fables: The Cat and the Two Birds*.

Eight points of the law: 1. A good cause; 2. A good purse; 3. An honest and skilful attorney; 4. Good evidence; 5. Able counsel; 6. An upright judge; 7. An intelligent jury; 8. Good luck.
Attributed to GEORGE AUGUSTUS SELWYN, when a candidate for Chamberlain of the City of London, c. 1750.

13
Law Is a Bottomless Pit.
JOHN ARBUTHNOT, *Title of Pamphlet*, 1712.

He that goes to law (as the proverb is) holds a wolf by the ears.
ROBERT BURTON, *Anatomy of Melancholy: Democritus to the Reader*.

The worst of law is that one suit breeds twenty.
GEORGE HERBERT, *Jacula Prudentum*.

Lawsuits consume time, and money, and rest and friends.
GEORGE HERBERT, *Jacula Prudentum*.

Whoso loves law dies either mad or poor.
THOMAS MIDDLETON, *The Phœnix*.

14
There is no magic in parchment or in wax.
WILLIAM HENRY ASHURST, *Master v. Miller*, 1763. (4 T. R. 320.)

The mysterious virtue of wax and parchment.
EDMUND BURKE, *Speech on Conciliation with America*.

Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment; that parchment, being scribbled o'er, should undo a man?
SHAKESPEARE, *II Henry VI*. Act iv, sc. 2, l. 86.

1
Nowadays the law is ended as a man is friended.
HENRY BRINKELOW, *Complaint of Roderick Mors.* Ch. 11. (c. 1542)

Matters be ended as they be friended.
THOMAS STARKEY, *England in the Reign of Henry VIII.* Bk. i, ch. 3.

A friend in court is worth a penny in a man's purse.
JOHN RAY, *English Proverbs.*

Bon fait avoir ami en cour,
Car le procès en est plus court.
A French variant of the proverb.
See also under COURT.

2
Law and arbitrary power are in eternal enmity.
EDMUND BURKE, *Impeachment of Warren Hastings,* 16 Feb., 1788.

3
That which is a law to-day is none to-morrow.
ROBERT BURTON, *Anatomy of Melancholy: Democritus to the Reader.*

The law is not the same at morning and at night.
GEORGE HERBERT, *Jacula Prudentum.*

New lords, new laws.
JOHN RAY, *English Proverbs.*

And he that gives us in these days
New Lords may give us new laws.
GEORGE WITHER, *Contented Man's Morrice.*

4
Arms and laws do not flourish together. (Τὸν αὐτὸν ὅπλων καὶ νόμων καιρὸν εἶναι.)
JULIUS CÆSAR. (PLUTARCH, *Lives: Julius Cæsar.* Ch. 35, sec. 3.)

The law speaks too softly to be heard amid the din of arms. (Τοῦ νόμου διὰ τὸν τῶν ὅπλων ψόφον οὐ κατακούσειεν.)
GAIUS MARIUS. (PLUTARCH, *Lives: Gaius Marius.* Ch. 28, sec. 2.)

Laws are dumb in the midst of arms. (Silent enim leges inter arma.)
CICERO, *Pro Milone.* Ch. 4, sec. 11.

The clatter of arms drowns the voice of the law.
MONTAIGNE, *Essays.* Bk. iii, ch. 1.

5
Agree, for the law is costly.
WILLIAM CAMDEN, *Remains,* p. 316. (1605)

Agree, agree, says the old saw, the law is costly.
ROGER L'ESTRANGE, *Fables of Æsop.* (1692)

Come, agree, the law's costly.
SWIFT, *Polite Conversation.* Dial. i. (1738)

6
Who stood to gain? (Cui bono fuerit?)
LUCIUS CASSIUS LONGINUS, the judge, who used it as a maxim in instructing a jury to seek for the motive of a crime. (CICERO, *Pro Milone.* Ch. xii, sec. 32.)

For whose good? (Cui bono?)
CICERO, quoting from Lucius Cassius in the *Second Philippic.* "These two words," says Forsyth (*Life*), "have perhaps been oftener misapplied than any in the Latin language. They are constantly translated or used in the sense of, 'What good is it?' 'To what end does it serve?' Their real meaning is, 'Who gains by it?' 'To whom is it an advantage?'" Forsyth goes on to explain that in a trial for murder Lucius Cassius instructed the jury to inquire who had a motive for the crime, who would gain by the death, in other words, "cui bono fuerit?"

There was an ancient Roman lawyer, of great fame in the history of Roman jurisprudence, whom they called Cui Bono, from his having first introduced into judicial proceedings the argument, "What end or object could the party have had in the act with which he is accused."
EDMUND BURKE, *Impeachment of Warren Hastings.*

7
Laws go as kings like. (Allá van leyes do quieren Reyes.)
CERVANTES, *Don Quixote.* Pt. i, ch. 45.

She made what pleased her lawful. (Che libito fe' licito in sua legge.)
DANTE, *Inferno.* Canto v, l. 56. From the Latin, "Si libet, licet."

8
Who to himself is law, no law doth need,
Offends no law, and is a king indeed.
GEORGE CHAPMAN, *Bussy d'Ambois.* Act ii, sc. 1.

9
After an existence of nearly twenty years of almost innocuous desuetude these laws are brought forth.
GROVER CLEVELAND, *Message,* 1 March, 1886.

I used those words and thought they would please the Western taxpayers, who are fond of such things.
GROVER CLEVELAND, referring to "innocuous desuetude." (*Interview, New York Herald,* 9 June, 1886.)

The law hath not been dead, though it hath slept.
SHAKESPEARE, *Measure for Measure.* Act ii, sc. 2, l. 90.

10
The gladsome light of jurisprudence.
SIR EDWARD COKE, *Institutes.* Pt. i.

11
Law is the safest helmet. (Lex est tutissima cassis.)
SIR EDWARD COKE, *Inscription,* on rings which he gave to friends.

12
All things by Law. (Πάντα νομιστί.)
DEMOCRITUS. (MARCUS AURELIUS, *Meditations.* Bk. vii, sec. 31.)

13
A delusion, a mockery, and a snare.
SIR THOMAS DENMAN, an English judge, in his judgment in O'Connell vs. the Queen (11 *Clarke and Finnelly,* 351): "If it is possible that such a practice as that which has taken place in the present instance should be allowed to pass without a remedy, trial by

jury itself, instead of being a security to persons who are accused, will be a delusion, a mockery, and a snare." (4 Sept., 1894)

1
"If the law supposes that," said Mr. Bumble, "the law is a ass."
DICKENS, *Oliver Twist*. Ch. 51.

2
Any laws but those we make for ourselves are laughable.
EMERSON, *Essays, Second Series: Politics.*

3
Law makes long spokes of the short stakes of men.
EMPSON, *Legal Fiction.*

4
Laws too gentle are seldom obeyed; too severe, seldom executed.
BENJAMIN FRANKLIN, *Poor Richard,* 1756.

5
A penny-weight of love is worth a pound of law.
THOMAS FULLER, *Gnomologia*. No. 343.

In a thousand pounds of law there is not an ounce of love.
JOHN RAY, *English Proverbs.*

6
Much law but little justice.
THOMAS FULLER, *Gnomologia.*

Law cannot persuade where it cannot punish.
THOMAS FULLER, *Gnomologia.*

The more laws the more offenders.
THOMAS FULLER, *Gnomologia.*

7
Thou knowest a barley straw
Will make a parish parson go to law.
WILLIAM GODDARD, *Nest of Wasps*. No. 16. (1615)

8
Do law away, what is a king?
Where is the right of any thing?
JOHN GOWER, *Confessio Amantis*. Bk. vii.

9
Taken in flagrant violation of the law. (In flagranti crimine comprehensi.)
JUSTINIAN, *Corpus Juris Civilis Romani*. Codex ix, tit. 13, sec. 1. Usually quoted, "In flagrante delicto." Its English equivalent, "Caught red-handed," referred originally only to murderers.

10
The law is a sort of hocus-pocus science, that smiles in yer face while it picks yer pocket; and the glorious uncertainty of it is of mair use to the professors than the justice of it.
CHARLES MACKLIN, *Love à la Mode*. Act ii, sc. 1. (1759) This is probably the origin of the phrase, "The glorious uncertainty of the law," though there is a legend that it was used as a toast by a lawyer named Wilbraham at a dinner given to Lord Mansfield in London, in 1756. (See *Gentleman's Magazine*, August, 1830.)

11
Good laws are produced by bad manners. (Bonae leges ex malis moribus procreantur.)
MACROBIUS, *Saturnalia*. Bk. iii, l. 17.

Ill manners produce good laws.
CHARLES CAHIER, *Six Mille Proverbes*, p. 195.

As manners make laws, manners likewise repeal them.
SAMUEL JOHNSON. (BOSWELL, *Life*, ii, 419.)

12
As the case stands.
MIDDLETON AND MASSINGER, *The Old Law*. Act ii, sc. 1. (1626); MATTHEW HENRY, *Commentaries: Psalm* cxix.

Every case stands upon its own bottom.
SIR FRANCIS PEMBERTON, *Judgment*, Fitzharris case. (*8 How. St. Tr.*, 280)

13
No customer brings so much grist to the mill
As the wealthy old woman who makes her own Will.
CHARLES NEAVES, *The Jolly Testator.*

14
A famous case. (Cause célèbre.)
FRANÇOIS DE PETEVAL. Title of a work in 20 vols., Paris, 1734. The full title is *Causes Célèbres et Intéressantes.*

15
Where law ends, there tyranny begins.
WILLIAM PITT, *Case of Wilkes: Speech*, 9 Jan., 1770.

16
You little know how hazardous it is to go to law. (Nescis quam meticulosa res sit ire ad judicem.)
PLAUTUS, *Mostellaria*, l. 1101.

17
I will drive a coach and six through the Act of Settlement.
STEPHEN RICE, Chief Baron of the Irish Exchequer, 1686. (MACAULAY, *History of England*. Ch. 12; BURNET, *History of My Own Times.*)

I can drive a coach-and-six through any act of Parliament.
DANIEL O'CONNELL, *Speech.*

18
The law often allows what honor forbids. (La loi permet souvent ce que défend l'honneur.)
SAURIN, *Spartacus*. Act iii, sc. 3.

19
Ignorance of the law excuses no man: not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.
JOHN SELDEN, *Table-Talk: Law.*

Ignorance of the law excuses no one. (Ignorantia legis excusat neminem.)
UNKNOWN. A legal maxim.

'Tis a sluggard's part not to know what he may lawfully do. (Inertis est nescire quid liceat sibi.)
SENECA, *Octavia*, l. 453.

20
The rusty curb of old father antic, the law.
SHAKESPEARE, *I Henry IV*. Act i, sc. 2, l. 69.

A rotten case abides no handling.
SHAKESPEARE, *II Henry IV*. Act iv, sc. 1, l. 161.

1 Has he affections in him,
That thus can make him bite the law by the nose?
SHAKESPEARE, *Measure for Measure*, iii, 1, 108.

2
The laws, your curb and whip, in their rough power
Have uncheck'd theft.
SHAKESPEARE, *Timon of Athens*, iv, 3, 446.

3
Still you keep o' the windy side of the law.
SHAKESPEARE, *Twelfth Night*, iii, 4, 181.
Just to the windward of the law.
CHARLES CHURCHILL, *The Ghost*. Bk. iii, l. 56.

4
Abraham: Do you bite your thumb at us, sir?
Sampson: Is the law of our side, if I say ay?
SHAKESPEARE, *Romeo and Juliet*, i, 1, 54.
The laws are with us, and God on our side.
ROBERT SOUTHEY, *Essays: On the Rise and Progress of Popular Disaffection*.

4a
I will not say with Lord Hale, that "The law will admit of no rival," . . . but I will say that it is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.
JOSEPH STORY, *The Value and Importance of Legal Studies*. (*Miscellaneous Writings*, p. 523.) This was Justice Story's address at his inauguration, 15 Aug., 1829, as Dane Professor of Law at Harvard University. See *Dicta*, Nov., 1945. Often attributed to Blackstone. See *Illinois Law Review*, xxvii, 329.

5
A man must not go to law because the musician keeps false time with his foot.
JEREMY TAYLOR, *Worthy Communicant*. Ch. iv, sec. 4. Quoted from Schott, *Adagia*.

6
No man e'er felt the halter draw,
With good opinion of the law.
JOHN TRUMBULL, *MacFingal*. Canto iii, l. 489.

7
The Law: It has honored us, may we honor it.
DANIEL WEBSTER, *Toast*, at the Charleston Bar dinner, 10 May, 1847.

8
What we seek is the reign of law, based upon the consent of the governed and sustained by the organized opinion of mankind.
WOODROW WILSON, *Speech*, Mount Vernon, 4 July, 1918, referring to League of Nations.
The Reign of Law.
JAMES LANE ALLEN. Title of novel.

9
When the law shows her teeth, but dares not bite.
YOUNG, *Love of Fame*. Sat. i, l. 17.

III—Law: Varieties

10
For thus men say each country has its laws.
CHAUCER, *Troilus and Criseyde*. Bk. ii, st. 6. (c. 1374)
So many countries, so many laws.
UNKNOWN, *Politeuphuia*, 224. (1669) *See also under* OPINION.

Divine Law

11
There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity —the law of nature and of nations.
EDMUND BURKE, *Impeachment of Warren Hastings*, 28 May, 1794.

12 The ultimate, angels' law,
Indulging every instinct of the soul
There where law, life, joy, impulse are one thing!
ROBERT BROWNING, *A Death in the Desert*.

13
Our human laws are but the copies, more or less imperfect, of the eternal laws, so far as we can read them.
J. A. FROUDE, *Short Studies: Calvinism*.
The law of heaven and earth is life for life.
BYRON, *The Curse of Minerva*. St. 15.
EYE FOR EYE, *see under* RETRIBUTION.

14
Of Law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world.
RICHARD HOOKER, *Ecclesiastical Polity*. Bk. i.

15
All things obey fixed laws. (Legibus omnia parent.)
MANILIUS, *Astronomica*, i, 479.
In all things there is a kind of law of cycles. (Rebus cunctis inest quidam velut orbis.)
TACITUS, *Annals*. Bk. iii, sec. 55.
Things have their laws as well as men, and things refuse to be trifled with.
EMERSON, *Essays, Second Series: Politics*.

16
The first Almighty Cause
Acts not by partial but by gen'ral laws.
POPE, *Essay on Man*. Epis. i, l. 145.
Mark what unvaried laws preserve each state,
Laws wise as Nature, and as fix'd as Fate.
POPE, *Essay on Man*. Epis. iii, l. 189.

17
That very law which moulds a tear
And bids it trickle from its source,—
That law preserves the earth a sphere,
And guides the planets in their course.
SAMUEL ROGERS, *On a Tear*. Rogers is referring to the law of gravitation.

18
On a divine law divination rests.
SCHILLER, *Wallenstein*. Act i, sc. 9.

19
In the corrupted currents of this world
Offence's gilded hand may shove by justice,
And oft 'tis seen the wicked prize itself
Buys out the law: but 'tis not so above;
There is no shuffling, there the action lies
In his true nature; and we ourselves compell'd,
Even to the teeth and forehead of our faults,
To give in evidence.
SHAKESPEARE, *Hamlet*. Act iii, sc. 3, l. 57.

20
God is law, say the wise; O Soul, and let us rejoice,

For if He thunder by law the thunder is yet
His voice.
TENNYSON, *The Higher Pantheism*. St. 7.

1
Foul shame and scorn be on ye all
Who turn the good to evil,
And steal the Bible from the Lord,
To give it to the Devil!

Than garbled text or parchment law
I own a statute higher;
And God is true, though every book
And every man's a liar!
WHITTIER, *A Sabbath Scene*. St. 18.

The Law of Nations

2
The law of human society. (Jus humanæ societatis.)
CICERO, *De Officiis*. Bk. i, ch. 7, sec. 21.

3
Natural law; the law of mankind. (Jus hominum.)
CICERO, *Tusculanarum Disputationum*. Bk. i, ch. 26, sec. 64.

4
The bond of union is closer between those who belong to the same nation, and closer still between those who are citizens of the same state. It is for this reason that our forefathers chose to understand one thing by the law of nations (jus gentium), and another by the civil or common law (jus civile).
CICERO, *De Officiis*. Bk. iii, ch. 17, sec. 69.

In every matter the consensus of opinion among all nations is to be regarded as the law of nature. (Omni autem in re consensio omnium gentium lex naturae putanda est.)
CICERO, *Tusculanarum Disputationum*. Bk. i, ch. 13, sec. 30.

That which natural reason has established amongst all men is called the law of nations. (Quod naturalis ratio inter omnes homines constituit . . . vocatur jus gentium.)
GAIUS, *Institutione Juris Civilis*. Bk. i, sec. 1.

Against the law of nature, law of nations.
MILTON, *Samson Agonistes*, l. 889.

Miscellaneous Laws

5
I oft have heard of Lydford Law,
How in the morn they hang and draw,
And sit in judgement after.
SIR THOMAS BROWNE, *Lydford Journey*. St. 1. (1644)

First hang and draw,
Then hear the cause by Lidford law.
THOMAS FULLER, *Worthies of England*, i. 399. (1662)

I have had Halifax law—to be condemned first and inquired upon afterwards.
LEICESTER. (MOTLEY, *United Netherlands*. Vol. i, p. 444.)

Are you going to hang him *anyhow*—and try him afterwards?
MARK TWAIN, *Innocents at Home*. Ch. 5.

6
O king, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not.
Old Testament: Daniel, vi, 8.

The thing is true, according to the law of Medes and Persians, which altereth not.
Old Testament: Daniel, vi, 12.

Let it be written among the laws of the Persians and the Medes, that it be not altered.
Old Testament: Esther, i. 19.

7
Draco made his laws not with ink, but with blood.
DEMADES. Draco had made the least theft punishable with death. (PLUTARCH, *Lives: Solon*.) Hence "Draconian," in the sense of severe.

8
Connecticut in her blue-laws, laying it down as a principle, that the laws of God should be the law of the land.
THOMAS JEFFERSON, *Letter to John Adams*, 24 Jan., 1814.

9
There is a written and an unwritten law. Written law is that under which we live in different cities, but that which has arisen from custom is called unwritten law. (Νόμου διαιρέσεις δύο, ὁ μὲν γὰρ αὐτοῦ γεγραμμένος, ὁ δὲ ἄγραφος.)
PLATO. (DIOGENES LAERTIUS, *Plato*. Sec. 86.)

Dementia Americana; the unwritten law.
DELPHIN MICHAEL DELMAS. At the trial of Harry Thaw for the murder of Stanford White, in 1907.

Brain-storm, the paranoia of the millionaire.
WILLIAM TRAVERS JEROME. The district attorney who prosecuted Thaw.

The silver-tongued spell-binder of the Pacific Coast.
Sobriquet of Delphin Michael Delmas.

10
First Clown: Argal, he that is not guilty of his own death shortens not his own life.
Second Clown: But is this law?
First Clown: Ay, marry is't; crowner's quest law.
SHAKESPEARE, *Hamlet*. Act v, sc. 1, l. 21.

11
A sumptuary law. (Lex sumptuaria.)
TACITUS, *Annals*. Bk. iii, sec. 52.

12
For this is the law of the feudal days,
The law for one and all,
That whoso lives on the baron's land,
May feed as he will at the baron's hand,
But whoso feeds at the baron's hand,
Must answer the baron's call.
THOMAS F. WOODLOCK, *The Law*.

IV—Law: The Net of Law

13
Laws are like spiders' webs; they hold the

weak and delicate who are caught in their meshes, but are torn in pieces by the rich and powerful.

ANACHARSIS, to Solon, when the latter was compiling his laws. (PLUTARCH, *Lives: Solon.* Ch. 5, sec. 2.)

Men keep their engagements when it is to the advantage of both parties not to break them.

SOLON, Answering Anacharsis. (PLUTARCH, *Lives: Solon.*) See also No. 7, below.

1
Laws grind the poor, and rich men rule the law.

GOLDSMITH, *The Traveller,* l. 386.

2
The verdict acquits the raven, but condemns the dove. (Dat veniam corvis, vexat censura columbas.)

JUVENAL, *Satires.* Sat. ii, l. 63.

3
In vain thy reason finer webs will draw,
Entangle justice in her net of law,
And right, too rigid, harden into wrong,
Still for the strong too weak, the weak too strong.

POPE, *Essay on Man.* Epis. iii, l. 191.

4
The net of law is spread so wide,
No sinner from its sweep may hide.
Its meshes are so fine and strong,
They take in every child of wrong.
O wondrous web of mystery!
Big fish alone escape from thee!

JAMES JEFFREY ROCHE, *The Net of Law.*

5
Petty sacrilege is punished, but sacrilege on a grand scale is honored by a triumphal procession. (Nam sacrilegia minuta puniuntur, magna in triumphis feruntur.)

SENECA, *Epistulæ ad Lucilium.* Epis. lxxxvii, sec. 24.

All, look up with reverential awe,
At crimes that 'scape, or triumph o'er the law.

POPE, *Epilogue to Satires.* Dial. i, l. 167.

6
Laws are generally found to be nets of such a texture, as the little creep through, the great break through, and the middle-sized are alone entangled in.

WILLIAM SHENSTONE, *On Politics.*

7
Laws are spiders' webs, which stand firm when any light and yielding object falls upon them, while a larger thing breaks through them and escapes.

SOLON. (DIOGENES LAERTIUS, *Solon.* Sec. 14.)

One of the Seven [Wise Men of Greece] was wont to say: "That laws were like cobwebs; where the small flies were caught, and the great brake through."

FRANCIS BACON, *Apothegms.* No. 181.

Should I sigh, because I see
Laws like spider-webs to be?
Lesser flies are quickly ta'en
While the great break out again.

RICHARD BRATHWAITE, *Care's Cure.*

Laws like to cobwebs, catch small flies,
Great ones break them before your eyes.

BENJAMIN FRANKLIN, *Poor Richard,* 1734.

For the most part, laws are but like spiders' webs, taking the small gnats, or perhaps sometimes the fat flesh flies, but hornets that have sharp stings and greater strength, break through them.

SIR JOHN HARINGTON, *Orlando Furioso.* Bk. 32.

Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

SWIFT, *Essay on the Faculties of the Mind.*

8
The net's not spread to catch the hawk or kite
Who do us wrong, but for the innocent birds
Who do us none at all.
(Quia non rete accipitri tennitur neque milvo,
Qui male faciunt nobis: illis qui nihil faciunt tennitur.)

TERENCE, *Phormio,* l. 330. (Act iii, sc. 1.)

9
The law doth punish man or woman
That steals the goose from off the common,
But lets the greater felon loose,
That steals the common from the goose.

UNKNOWN. An 18th century epigram. (See *Notes and Queries.* Ser. vii, 6, 469; 7, 98. Ser. viii, 10, 273.) There are various versions, all prompted by the Enclosure Acts. The version given above was written when Sir Charles Pratt, First Earl of Camden, enclosed a common strip of land in front of Camden House, 7 Oct., 1764.

10
There is no law without a loophole for him who can find it. (Es giebt kein Gesetz was hat nicht ein Loch, wer's finden kann.)

UNKNOWN. A German proverb.

V—Law: Its Tyranny

11
Law is king of all.

HENRY ALFORD, *School of the Heart.* Lesson 6.

Law is King. (Lex Rex.)

SAMUEL RUTHERFORD. Title of book published 1644.

12
There is no worse torture than the torture of laws.

FRANCIS BACON, *Essays: Of Judicature.*

It is a hard thing to torture the laws so that they torture men.

FRANCIS BACON, *De Augmentis Scientiarum.* Pt. i, bk. viii, aph. 13.

13
We, like the eagles, were born to be free. Yet we are obliged, in order to live at all, to make a cage of laws for ourselves and to stand on the perch.

WILLIAM BOLITHO, *Twelve Against the Gods: Introduction.*

As soon as laws are necessary for men, men are no longer fit for freedom.
PYTHAGORAS.

1
People crushed by law have no hopes but from power. If laws are their enemies, they will be enemies to laws; and those who have much to hope and nothing to lose will always be dangerous.
EDMUND BURKE, *Letter*, to the Hon. C. J. Fox, 8 Oct., 1777.

Bad laws are the worst sort of tyranny.
EDMUND BURKE, *Speech*, Bristol.

2
Extreme law, extreme injustice. (Summum jus, summa injuria.)
CICERO, *De Officiis*. Bk. i, sec. 10. *See under* JUSTICE AND INJUSTICE.

3
Our sense of private dignity can survive the most oppressive man-despot, but the despotism of law corrodes it.
NORMAN DOUGLAS, *Good-bye to Western Culture*.

4
Shall free-born men, in humble awe,
Submit to servile shame;
Who from consent and custom draw
The same right to be ruled by law,
Which kings pretend to reign?
DRYDEN, *On the Young Statesman*.

5
All rights and laws are still transmitted,
Like an eternal sickness to the race.
(Es erben sich Gesetz und Rechte
Wie eine ew'ge Krankheit fort.)
GOETHE, *Faust*. Pt. i, sc. 4, l. 449.

6
O wearisome condition of humanity!
Born under one law, to another bound.
FULKE GREVILLE, *Mustapha*. Act v, sc. 4.

7
Law is the tyrant of mankind, and often compels us to do many things which are against nature.
HIPPIAS. (PLATO, *Protagoras*. Sec. 337.)

8
The law is laid down to you. (Dicta tibi est lex.)
HORACE, *Epistles*. Bk. ii, epis. 2, l. 18.

9
Then too [in law] there are a thousand causes of disgust, a thousand delays to be endured. (Tunc quoque mille ferenda Tædia, mille moræ.)
JUVENAL, *Satires*. Sat. xvi, l. 43.

10
The law is so lordly and loth to maken end.
LANGLAND, *Piers Plowman*. Passus iv, l. 199.

11
We have strict statutes and most biting laws.
SHAKESPEARE, *Measure for Measure*. Act i, sc. 3, l. 19.

12
God's blood! is law for man's sake made, or man
For law's sake only, to be held in bonds?
SWINBURNE, *Mary Stuart*. Act i, sc. 1.

VI—Law: Letter and Spirit

13
No man has ever yet been hanged for breaking the spirit of a law.
GROVER CLEVELAND. (RHODES, *History of the United States*, viii, 403; HIBBEN, *Peerless Leader*, p. 155.)

14
The letter killeth, but the spirit giveth life.
New Testament: II Corinthians, iii, 6. (Litera enim occidit, Spiritus autem vivificat. —*Vulgate*.)

Legality kills us. (La légalité nous tue.)
VIENNET, *Épîtres*.

15
We are lost by what is lawful. (Perimus licitis.)
SIR MATTHEW HALE, quoted from St. Gregory, *Morals*. Bk. v, homily 35, meaning, "We are demoralised by indulgence in things which are not contrary to law."

16
To the law and to the testimony.
Old Testament: Isaiah, viii, 20.

17
Exact laws, like all the other ultimates and absolutes, are as fabulous as the crock of gold at the rainbow's end.
G. N. LEWIS, *The Anatomy of Science*, p. 154.

18
But now we are delivered from the law, that being dead wherein we were held; that we should serve in newness of spirit, and not in the oldness of the letter.
New Testament: Romans, vii, 6.

19
Let him have all the rigour of the law.
SHAKESPEARE, *II Henry VI*. Act i, sc. 3, l. 199.

He . . . follows close the rigour of the statute,
To make him an example.
SHAKESPEARE, *Measure for Measure*. Act i, sc. 4, l. 66.

Is it so nominated in the bond?
SHAKESPEARE, *The Merchant of Venice*. Act iv, sc. 1, l. 259.

20
The bloody book of law
You shall yourself read in the bitter letter.
SHAKESPEARE, *Othello*. Act i, sc. 3, l. 67.

21
In bondage to the letter still,
We give it power to cramp and kill,—
To tax God's fulness with a scheme
Narrower than Peter's house-top dream,
His wisdom and his love with plans
Poor and inadequate as man's.
WHITTIER, *Miriam*, l. 97.

VII—Law: Precedent

See also Precedent

22
An argument derived from authority is of

the greatest force in law. (Argumentum ab auctoritate fortissimum est in lege.)
SIR EDWARD COKE, *On Littleton*, 144.

1
The mere repetition of the *Cantilena* of the lawyers cannot make it law.
SIR THOMAS DENMAN, *O'Connell v. The Queen.*

2
The acts of today may become the precedents of tomorrow.
FARRER HERSCHELL, Lord Chancellor, *Speech*, 23 May, 1878.

3
All the sentences of precedent judges that have ever been cannot altogether make a law contrary to natural equity.
THOMAS HOBBES, *Leviathan*. Pt. ii, ch. 26.

4
One precedent creates another. They soon accumulate and become law.
JUNIUS, *Letters: Dedication.*

5
A precedent embalms a principle.
WILLIAM SCOTT, BARON STOWELL, *Opinion*, while Advocate-General, 1788. (WILLIAM SCOTT, *Lord Stowell.*) BENJAMIN DISRAELI, *Speech*, House of Commons, 22 Feb., 1848; *Endymion*. Ch. 9.

6
It must not be; there is no power in Venice
Can alter a decree established:
'Twill be recorded for a precedent,
And many an error by the same example
Will rush into the state.
SHAKESPEARE, *The Merchant of Venice*. Act iv, sc. 1, l. 218.

7
Every law which originated in ignorance and malice, and gratifies the passions from which it sprang, we call the wisdom of our ancestors.
SYDNEY SMITH, *Peter Plymley Letters*. No. 5.

8
Mastering the lawless science of our law,
That codeless myriad of precedent,
That wilderness of single instances,
Through which a few, by wit or fortune led,
May beat a pathway out to wealth and fame.
TENNYSON, *Aylmer's Field*, l. 436.

VIII—Law: Obedience to Law

9
Where there are laws, he who has not broken them need not tremble. (Ove son leggi, Tremar non dee chi leggi non infranse.)
ALFIERI, *Virginia*. Sc. 2.

Who breaks no law is subject to no king.
CHAPMAN, *Bussy d'Ambois*. Act iv, sc. 1.

Fear God, and offend not the Prince nor his laws,
And keep thyself out of the magistrate's claws.
THOMAS TUSSER, *Five Hundred Points of Good Husbandry.*

10
Laws are not masters but servants, and he rules them who obeys them.
HENRY WARD BEECHER, *Proverbs from Plymouth Pulpit: Political.*

11
Law will never be strong or respected unless it has the sentiment of the people behind it. If the people of a State make bad laws, they will suffer for it. They will be the first to suffer. Let them suffer. Suffering, and nothing else, will implant that sentiment of responsibility which is the first step to reform.
JAMES BRYCE, *American Commonwealth*. Vol. i, p. 352.

I know no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution.
U. S. GRANT, *Inaugural Address*, 4 March, 1869.

12
He who holds no laws in awe,
He must perish by the law.
BYRON, *A Very Mournful Ballad on the Siege and Conquest of Alhama*. St. 12.

13
Let a man keep the law,—any law,—and his way will be strewn with satisfactions.
EMERSON, *Essays, First Series: Prudence.*

14
Good men must not obey the laws too well.
EMERSON, *Essays, Second Series: Politics.*

No law can be sacred to me but that of my nature. Good and bad are but names very readily transferable to that or this; the only right is what is after my own constitution; the only wrong what is against it.
EMERSON, *Essays, First Series: Self-Reliance.*

15
For the bond of all men's states is this,
When they with honor hold by law.
(Τὸ γὰρ τοι συνέχον ἀνθρώπων πόλεις
τοῦτ' ἔσθ', ὅταν τις τοὺς νόμους σώζῃ καλῶς.)
EURIPIDES, *Suppliants*, l. 313.

16
The laws of God, the laws of man,
He may keep that will and can;
Not I: let God and man decree
Laws for themselves and not for me.
A. E. HOUSMAN, *Laws.*

17
A strict observance of the written laws is doubtless one of the high virtues of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation.
THOMAS JEFFERSON, *Writings*. Vol. xii, p. 418.

18
Without a notion of a law-maker, it is impossible to have a notion of a law, and an obligation to observe it.
JOHN LOCKE, *An Essay Concerning Human Understanding*. Bk. i, ch. iv, sec. 8.

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A New DICTIONARY OF QUOTATIONS

ON *HISTORICAL* PRINCIPLES

FROM

ANCIENT AND MODERN SOURCES

Selected and Edited by

H. L. MENCKEN



NEW YORK : ALFRED A. KNOPF : 1976

Laughing has always been considered by theologians as a crime.
R. G. INGERSOLL: Speech in Chicago, Nov. 26, 1882

The mere possibility of employing laughter as a weapon shows that it involves the idea of power.
HARALD HÖFFDING: *Psykologiske Undersögelser*, 1889

He who laughs best today will also laugh last.
F. W. NIETZSCHE: *The Twilight of the Idols*, 1889

Laughter is not a bad beginning for a friendship, and it is the best ending for one.
OSCAR WILDE: *The Picture of Dorian Gray*, 1891

Man alone suffers so excruciatingly in the world that he was compelled to invent laughter.
F. W. NIETZSCHE: *The Will to Power*, I, 1896

The attitudes, gestures and movements of a human body are laughable in exact proportion as they make it remind us of a machine.
HENRI BERGSON: *Le rire*, 1900

Laughter is the bark of delight of a gregarious animal at the proximity of his kind. . . . Laughter is the female of tragedy. . . . Laughter is the mind sneezing.
WYNDHAM LEWIS: *Inferior Religions*, 1920

He was born with the gift of laughter and a sense that the world was mad.
RAFAEL SABATINI: *Scaramouche*, I, 1921
(This sentence is inscribed over the entrance to the Sterling Hall of Graduate Studies at Yale University, though without credit to Sabatini)

Progress is nothing but the victory of laughter over dogma.
BENJAMIN DECASSERES: *Fantasia Impromptu*, 1933

He who laughs, lasts.
MARY PETTIBONE POOLE: *A Glass Eye at the Keyhole*, 1938

Ef yo' take a cat to chu'ch, de folks gwine to laugh. AMERICAN NEGRO SAYING

We must laugh before we are happy, lest we should die without having laughed.
FRENCH PROVERB

Too much laughter deadens the mind.
HEBREW PROVERB

A man with a loud laugh makes truth itself seem folly. IRISH PROVERB

Laughter makes good blood.
ITALIAN PROVERB

He that laughs alane will mak sport in company. SCOTTISH PROVERB

One who is always laughing is a fool; and one who never laughs a knave.
SPANISH PROVERB

The laughter of a fool is like that of a horse.
WELSH PROVERB

[*See also* Anarchy, Anger, Comedy, Drinking, Fool, Jest, Man, Medicine, Merry, Mirth, Sorrow.

Laughter and Tears

Even in laughter the heart is sorrowful; and the end of that mirth is heaviness.
PROVERBS XIV, 13, *c.* 350 B.C.

Woe unto you that laugh now! for ye shall mourn and weep. LUKE VI, 25, *c.* 75

Learn weeping, and thou shalt gain laughing.
GEORGE HERBERT: *Outlandish Proverbs*, 1640

He who laughs on Friday will weep on Sunday.
JEAN RACINE: *Les plaideurs*, I, 1668

He can laugh and cry, and both in a wind.
JOHN RAY: *English Proverbs*, 1670

I am forced to try to make myself laugh that I may not cry: for one or other I must do; and is it not philosophy carried to the highest pitch for a man to conquer such tumults of soul as I am sometimes agitated by, and in the very height of the storm to quaver out a horselaugh?
SAMUEL RICHARDSON: *Clarissa*, LXXXIV, 1748

I laugh at everything, for fear of being obliged to weep.
CARON DE BEAUMARCHAIS: *Le barbier de Séville*, I, 1775

Laughter and tears are meant to turn the wheels of the same sensibility; one is a wind-power and the other water-power, that is all.
O. W. HOLMES: *The Autocrat of the Breakfast-Table*, IV, 1858

Laugh, and the world laughs with you;
Weep, and you weep alone.
For the sad old earth must borrow its mirth,
But has troubles enough of its own.
ELLA WHEELER WILCOX: *Solitude*, 1883

An onion can make people cry, but there is yet to be invented a vegetable that can make them laugh. Author unidentified

[*See also* Widow, Woman.

Lavender

Let's go to that house, for the linen looks white, and smells of lavender, and I long to lie in a pair of sheets that smell so.
IZAAK WALTON: *The Compleat Angler*, IV, 1653

Law

Ye shall have one manner of law, as well for the stranger, as for one of your own country.
LEVITICUS XXIV, 22, *c.* 700 B.C.

Laws, like cobwebs, entangle the weak, but are broken by the strong.
Ascribed to SOLON, *c.* 575 B.C.

The more mandates and laws are enacted, the more there will be thieves and robbers.
LAO-TSZE: *The Tao Teh King*, *c.* 500 B.C.

The safety of the people is the highest law.
The Twelve Tables, XII, 450 B.C.

Laws can never be enforced unless fear supports them. SOPHOCLES: *Ajax*, *c.* 450 B.C.

The commands of the law are conventional and have no root in nature.
ANTIPHON: *Orations*, *c.* 435 B.C.

The makers of laws are the majority who are weak; they make laws and distribute praises and censures with a view to themselves and to their own interests; and they terrify the stronger sort of men, and those who are able to get the better of them, in order that they may not get the better of them.
PLATO: *Gorgias*, *c.* 360 B.C.

The law is light.
PROVERBS VI, 23, *c.* 350 B.C.

It makes no difference whether a good man has defrauded a bad man or a bad man defrauded a good man, or whether a good or a bad man has committed adultery: the law can look only to the amount of damage done.
ARISTOTLE: *The Nicomachean Ethics*, V, *c.* 340 B.C.

The actions ordained by law are just actions only accidentally. IBID.

The law is reason free from passion.
ARISTOTLE: *Politics*, III, *c.* 322 B.C.

Ancient laws remain in force long after the people have the power to change them.
ARISTOTLE: *Politics*, IV

Good law means good order.
ARISTOTLE: *Politics*, VII

It is best that laws should be so constructed as to leave as little as possible to the decision of those who judge.
ARISTOTLE: *Rhetoric*, I, *c.* 322 B.C.

Law is a pledge that the citizens of a state will do justice to one another.
Ascribed to LYCOPHRON by ARISTOTLE: *Politics*, III, *c.* 322 B.C.

The law follows custom.
PLAUTUS: *Trinummus*, IV, *c.* 190 B.C.

According to the law of the Medes and Persians, which altereth not.
DANIEL VI, 8, *c.* 165 B.C. (Also in verse 12)

Law is nothing else but right reason, calling us imperiously to our duty, and prohibiting every violation of it.
CICERO: *Orationes Philippicae*, XI, *c.* 60 B.C.

The laws put the safety of all above the safety of one. CICERO: *De finibus*, II, *c.* 50 B.C.

The foundation of law is not opinion but nature. CICERO: *De legibus*, *c.* 50 B.C.

Time is the best interpreter of every doubtful law.
DIONYSIUS OF HALICARNASSUS: *Antiquities of Rome*, II, *c.* 20 B.C.

The purpose of law is to prevent the strong always having their way.
OVID: *Fasti*, III, *c.* 5

Law is deaf, inexorable, calculated rather for the safety and advantage of the poor than of the rich, and admits of no relaxation or indulgence if its bounds are transgressed.
LIVY: *History of Rome*, II, *c.* 10

No law perfectly suits the convenience of every member of the community; the only consideration is, whether upon the whole it be profitable to the greater part.
LIVY: *History of Rome*, XXXIV

What a slight foundation for virtue it is to be good only from fear of the law!
SENECA: *De Ira*, II, *c.* 43

The law is good, if a man use it lawfully.
I TIMOTHY I, 8, *c.* 60

The law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners, for unholy and profane, for murderers of fathers and murderers of mothers, for manslayers.
I TIMOTHY I, 9

Laws do not persuade because they threaten.
SENECA: *Epistulæ morales ad Lucilium*, *c.* 63

The law is open. ACTS XIX, 38, *c.* 75

The more corrupt the state, the more numerous the laws. TACITUS: *History*, III, *c.* 100

As physicians are the preservers of the sick, so are the laws of the injured.
EPICTETUS: *Encheiridion*, *c.* 110

Good men need no laws, and bad men are not made better by them.
Ascribed to DEMONAX OF CYPRUS, *c.* 150

The precepts of the law are these: to live honorably, to injure no other man, to render to every man his due.
THE INSTITUTES OF JUSTINIAN, 533

No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed, nor will we go upon or send upon him, save by the lawful judgment of his peers or by the law of the land.
MAGNA CARTA, XXXIX, 1215

Law is a regulation in accord with reason, issued by a lawful superior for the common good.
THOMAS AQUINAS: *Summa theologicæ*, I,

The law is lordly.
WILLIAM LANGLAND: *Piers Plowman*, 1377

Lawmakers ought not to be law-breakers.
ENGLISH PROVERB, traced by Apperson to CHAUCER: *The Canterbury Pilgrims* (*The Man of Law's Tale*), *c.* 1386

There is nothing more difficult to undertake, more uncertain to succeed, and more dangerous to manage, than to prescribe new laws. Because he who innovates in that manner has for his enemies all those who made any advantage by the old laws; and those who expect to benefit by the new will be but cool and lukewarm in his defence.
NICCOLÒ MACHIAVELLI: *The Prince*, VI, 1513

All laws are promulgated for this end: that every man may know his duty; and therefore the plainest and most obvious sense of the words is that which must be put on them.
THOMAS MORE: *Utopia*, 1516

The law of God, which we call the moral law, must alone be the scope, and rule, and end, of all laws.
JOHN CALVIN: *Institutes of the Christian Religion*, IV, 1536

Little money, little law.
Anon.: *The Parliament of Byrdes*, *c.* 1550

The law groweth of sin, and doth punish it.
JOHN FLORIO: *First Frutes*, 1578

It is the rule of rules and the general law of laws that every man shall obey that of the place where he is.
MICHEL DE MONTAIGNE: *Essays*, I, 1580

For law, king, people. (Pro lege, rege, grege.)
MOTTO OF WILLIAM OF ORANGE (1533–1584)

It would be better to have no laws at all than it is to have so many as we have.
MICHEL DE MONTAIGNE: *Essays*, III, 1588

Laws are now maintained in credit, not because they are essentially just, but because they are laws. It is the mystical foundation of their authority; they have none other. They are often made by fools; more often by men who in hatred of equality have want of equity; but ever by men who are vain and irresolute. There is nothing so grossly and largely offending, nor so ordinarily wrongful, as the laws. IBID.

No man is so exquisitely honest or upright but he brings his actions and thoughts within compass and danger of the laws, and that ten times in his life might not lawfully be hanged. IBID.

There is one law governing all things.
GIORDANO BRUNO: *De monade numero et figura*, II, 1591

For the most part laws are but like spiders' webs, taking the small gnats, or perhaps sometimes the fat flesh flies, but hornets that have sharp stings and greater strength break through.
JOHN HARINGTON: Tr. of LUDOVICO ARIOSTO: *Orlando Furioso*, XXXII (1532), 1591

I have perhaps some shallow spirit of judgment,
But in these nice sharp quillets of the law,
Good faith, I am no wiser than a daw.
SHAKESPEARE: *I Henry VI*, II, *c.* 1591

Law, logic and Switzers may be hired to fight for anybody.
ENGLISH PROVERB, traced by Apperson to 1593

Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world.
RICHARD HOOKER: *Of the Laws of Ecclesiastical Polity*, I, 1594

Laws they are not which public approbation hath not made so. IBID.

In law, what plea so tainted and corrupt
But being season'd with a gracious voice
Obscures the show of evil?
SHAKESPEARE: *The Merchant of Venice*, III, *c.* 1597

Old father antic, the law.
SHAKESPEARE: *I Henry IV*, I, *c.* 1598

In the corrupted currents of this world,
Offence's gilded hand may shove by justice;
And oft 'tis seen the wicked prize itself
Buys out the law.
SHAKESPEARE: *Hamlet*, III, *c.* 1601

Who to himself is law, no law doth need,
Offends no law, and is a king indeed.
GEORGE CHAPMAN: *Bussy D'Ambois*, II, 1604

We must not make a scarecrow of the law,
Setting it up to fear the birds of prey,
And let it keep one shape, till custom make it
Their perch and not their terror.
SHAKESPEARE: *Measure for Measure*, II, 1604

Some say men on the back of law
May ride and rule it like a patient ass,
And with a golden bridle in the mouth
Direct it into anything they please.
NATHANIEL FIELD: *A Woman Is a Weathercock*, II, 1609

New lords, new laws.
JOHN HARINGTON: *Nugæ Antiquæ*, *c.* 1610

The law is blind, and speaks in general terms.
THOMAS MAY: *The Heir*, *c.* 1620

He that goes to law holds a wolf by the ear.
ROBERT BURTON: *The Anatomy of Melancholy*, 1621 (Quoted as a proverb)

That which is a law today is none tomorrow. IBID.

Law is a pickpurse.
JAMES HOWELL: *Familiar Letters*, I, 1645 (March 20, 1621)

That law may be set down as good which is certain in meaning, just in precept, convenient in execution, agreeable to the form of government, and productive of virtue in those that live under it.
FRANCIS BACON: *De augmentis scientiarum*, VIII, 1623

The law obliges us to do what is proper, not simply what is just.
HUGO GROTIUS: *De jure belli ac pacis*, I, 1625

No freeman whatsoever ought to be imprisoned but according to the law of the land.
JOHN SELDEN: *Argument in Darnel's Case*, 1627

Extremity of law is extremity of wrong.
JOHN CLARKE: *Parœmiologia Anglo-Latina*, 1639

Here the great art lies, to discern in which the law is to bid restraint and punishment, and in what things persuasion only is to work.
JOHN MILTON: *Areopagitica*, 1644

The law is not the same at morning and at night.
GEORGE HERBERT: *Jacula Prudentum*, 1651

With customs we live well, but laws undo us. IBID.

Where there is no common power there is no law.
THOMAS HOBBES: *Leviathan*, I, 1651

A good law is that which is needful for the good of the people, and withal perspicuous.
THOMAS HOBBES: *Leviathan*, II

All the sentences of precedent judges that have ever been cannot altogether make a law contrary to natural equity. IBID.

Unnecessary laws are not good laws, but traps for money. IBID.

The law, being made, is but words and paper without the hands and swords of men.
JAMES HARRINGTON: *The Commonwealth of Oceana*, 1656

Law can discover sin, but not remove.
JOHN MILTON: *Paradise Lost*, XII, 1667

In a thousand pounds of law there's not an ounce of love.
JOHN RAY: *English Proverbs*, 1670

The common good of all is the supreme law.
RICHARD CUMBERLAND: *De legibus naturæ*, I, 1672

Too many matters have been regulated by laws, which nature, long custom and general consent ought only to have governed.
WILLIAM PETTY: *Political Arithmetic*, pref., *c.* 1677

Let not the law of thy country be the non-ultra of thy honesty; nor think that always good enough which the law will make good.
THOMAS BROWNE: *Christian Morals*, I, *c.* 1680

Law is nothing else but the will of him that hath the power of the supreme father.
ROBERT FILMER: *Patriarcha*, 1680

No written laws can be so plain, so pure,
But wit may gloss and malice may obscure.
JOHN DRYDEN: *The Hind and the Panther*, II, 1687

The pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal.
THE ENGLISH BILL OF RIGHTS, I, Dec., 1689

What are twenty acts of Parliament amongst friends? JOHN SELDEN: *Table-Talk*, 1689

If anything be imprinted on the mind of all men as a law, all men must have a certain and unavoidable knowledge that certain and unavoidable punishment will attend a breach of it.
JOHN LOCKE: *Essay Concerning Human Understanding*, I, 1690

Law is but a heathen word for power.
DANIEL DEFOE: *The History of the Kentish Petition*, 1701

The voice of nations and the course of things
Allow that laws superior are to kings.
DANIEL DEFOE: *The True-Born Englishman*, II, 1701

Law, in a free country, is, or ought to be, the determination of the majority of those who have property in land.
JONATHAN SWIFT: *Thoughts on Various Subjects*, 1706

Law is a bottomless pit.
JOHN ARBUTHNOT: Title of a pamphlet, 1712

A penny-weight of love is worth a pound of law.
JAMES KELLY: *Complete Collection of Scottish Proverbs*, 1721 (Cf. RAY, *ante*, 1670)

New laws are too apt to be voluminous, and so perplexed and mutable, from whence proceeds neglect, contempt and ignorance.
WILLIAM WARBURTON (BISHOP OF GLOUCESTER): *The Causes of Prodigies and Miracles*, I, 1727

Be you never so high, the law is above you.
THOMAS FULLER: *Gnomologia*, 1732

Ill kings make many good laws. IBID.

Law cannot persuade where it cannot punish. IBID.

Much law, but little justice. IBID.

The more laws, the more offenders. IBID.

Force first made conquest, and that conquest law.
ALEXANDER POPE: *An Essay on Man*, III, 1733

By length of time and continuance laws are so multiplied and grown to that excessive variety that there is a necessity of a reduction of them, or otherwise it is not manageable.
MATTHEW HALE: *History of the Pleas of the Crown*, 1736

Law [is] licensed breaking of the peace.
MATTHEW GREEN: *The Spleen*, 1737

Laws can have no further effect than to restrain men from an open violation of right, while what is done amiss in private, though equally tending to the public prejudice, escapes their animadversion.
WILLIAM WARBURTON (BISHOP OF GLOUCESTER): *The Divine Legation of Moses*, I, 1737

The laws of a country ought to bear reference to its physical character, to the climate, whether warm, cold, or temperate; to the quality of the soil, to its situation, to its size, to the kind of life led by the people, whether farmers, hunters, or laborers.
C. L. DE MONTESQUIEU: *The Spirit of the Laws*, I, 1748

Laws undertake to punish only overt acts.
C. L. DE MONTESQUIEU: *The Spirit of the Laws*, XII

Right is the rule of law, and law is declaratory of right.
BENJAMIN WHICHCOTE: *Moral and Religious Aphorisms*, 1753

Laws too gentle are seldom obeyed; too severe, seldom executed.
BENJAMIN FRANKLIN: *Poor Richard's Almanac*, 1756

The law is a sort of hocus-pocus science, that smiles in yer face while it picks yer pocket.
CHARLES MACKLIN: *Love à la Mode*, II, 1759 (Cf. HOWELL, *ante*, 1621)

Laws are always useful to persons of property, and hurtful to those who have none.
J.-J. ROUSSEAU: *Du contrat social*, I, 1761

Good laws lead to the making of better ones; bad ones bring in worse.
J.-J. ROUSSEAU: *Du contrat social*, III

Just to the windward of the law.
CHARLES CHURCHILL: *The Ghost*, III, 1763

Laws should be made by legislators, not by judges.
C. B. BECCARIA: *Trattato dei delitti e delle pene*, 1764

The law doth punish man or woman
That steals the goose from off the common,
But lets the greater felon loose
That steals the common from the goose.
Author unidentified, *c.* 1764

Laws grind the poor, and rich men rule the law.
OLIVER GOLDSMITH: *The Traveler*, 1764

How small, of all that human hearts endure,
That part which kings or laws can cause or cure!
SAMUEL JOHNSON: Inserted in OLIVER GOLDSMITH: *The Traveler*, 1764

Laws are generally nets of such a texture as the little creep through, the great break through, and the middle-sized alone are entangled in.
WILLIAM SHENSTONE: *Of Men and Manners*, 1764

Let all the laws be clear, uniform and precise: to interpret laws is almost always to corrupt them.
VOLTAIRE: *Philosophical Dictionary*, 1764

Let the law never be contradictory to custom: for if the custom be good, the law is worthless. IBID.

A rule of civil conduct, prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong.
WILLIAM BLACKSTONE: *Commentaries on the Laws of England*, I, 1765

Where law ends, tyranny begins.
WILLIAM PITT (EARL OF CHATHAM): Speech in the House of Lords, in defense of John Wilkes, Jan. 9, 1770

When any people are ruled by laws in framing which they have no part, that are to bind them to all intents and purposes, without, in the same manner, binding the legislators themselves, they are, in the strictest sense, slaves; and the government, with respect to them, is despotic.
ALEXANDER HAMILTON: *The Farmer Refuted*, 1775

Laws are formed by the manner and exigencies of particular times, and it is but accidental that they last longer than their causes.
SAMUEL JOHNSON: *Letter to James Boswell*, Feb. 3, 1775

Whenever the offence inspires less horror than the punishment, the rigor of penal law is obliged to give way to the common feelings of mankind.
EDWARD GIBBON: *The Decline and Fall of the Roman Empire*, I, 1776

Laws are not made for particular cases, but for men in general.
SAMUEL JOHNSON: *Boswell's Life*, 1776

People, crushed by law, have no hopes but from power. If laws are their enemies, they will be enemies to laws; and those who have much to hope and nothing to lose, will always be dangerous, more or less.
EDMUND BURKE: *Letter to Charles James Fox*, Oct. 8, 1777

The law is to us precisely what I am in my barnyard, a bridle and check to prevent the strong and greedy from oppressing the timid and weak.
ST. JOHN DE CRÈVECOEUR: *Letters from an American Farmer*, II, 1782

No man e'er felt the halter draw
With good opinion of the law.
JOHN TRUMBULL: *M'Fingal*, III, 1782

The law does not consist in particular instances, though it is explained by particular instances and rules, but the law consists of principles which govern specific and individual cases as they happen to arise.
LORD MANSFIELD: *Judgment in Rex* vs. *Bembridge*, 1783

Miserable is the condition of individuals, dangerous is the condition of the state, if there is no certain law, or, which is the same thing, no certain administration of law, to protect individuals or to guard the state.
LORD MANSFIELD: *Judgment in Rex* vs. *Shipley*, 1784

The first maxim of a free state is that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate.
WILLIAM PALEY: *The Principles of Moral and Political Philosophy*, VI, 1785

The law is the last result of human wisdom acting upon human experience for the benefit of the public.
SAMUEL JOHNSON: *Mrs. Piozzi's Anecdotes*, 1786

Ignorance of the law is no excuse in any country. If it were, the laws would lose their effect, because it can be always pretended.
THOMAS JEFFERSON: *Letter to M. Limozin*, 1787

The sober second thought of the people shall be law.
FISHER AMES: Speech in Congress, 1788

Law and arbitrary power are in eternal enmity.
EDMUND BURKE: Speech on the impeachment of Warren Hastings, Feb. 15, 1788

It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today can guess what it will be tomorrow.
ALEXANDER HAMILTON: *The Federalist*, 1788

The general object which all laws have, or ought to have, in common, is to augment the total happiness of the community; and therefore, in the first place, to exclude, so far as may be, everything that tends to subtract from that happiness: in other words, to exclude mischief.
JEREMY BENTHAM: *The Principles of Morals and Legislation*, XIII, 1789

The law ought to prohibit only actions hurtful to society. What is not prohibited by the law should not be hindered, nor should any one be compelled to that which the law does not require.
Declaration of the Rights of Man by the French National Assembly, V, 1789

The law is an expression of the will of the community. All citizens have a right to concur, either personally or by their representatives, in its formation. It should be the same to all, whether it protects or punishes.
Declaration of the Rights of Man by the French National Assembly, VI

No man should be accused, arrested, or held in confinement except in cases determined by the law, and according to the forms which it has prescribed. All who promote, solicit, execute, or cause to be executed, arbitrary orders, ought to be punished; and every citizen called upon or apprehended by virtue of the law ought immediately to obey, and not render himself culpable by resistance.
Declaration of the Rights of Man by the French National Assembly, VII

The execution of the laws is more important than the making them.
THOMAS JEFFERSON: *Letter to the Abbé Arnond*, 1789

One law for the lion and ox is oppression.
WILLIAM BLAKE: *The Marriage of Heaven and Hell*, 1790

A law not repealed continues in force, not because it cannot be repealed, but because it is not repealed, and the non-repealing passes for consent.
THOMAS PAINE: *The Rights of Man*, I, 1791

Laws, not blood!
M. J. DE CHÉNIER: *Caius Gracchus*, 1792

As new cases occur the law is perpetually found deficient. It is therefore perpetually necessary to make new laws.
WILLIAM GODWIN: *An Enquiry Concerning Political Justice*, 1793

Laws always lose in energy what the government gains in extent.
IMMANUEL KANT: *Perpetual Peace*, Supplement I, 1795

It is always justifiable, in examining the principle of a law, to inquire what other laws can be passed with equal reason, and to impute to it all the mischiefs for which it may be used as a precedent.
JOHN NICHOLAS: Speech in the House of Representatives, Feb. 25, 1799

The glorious uncertainty of the law.
ENGLISH PHRASE, not recorded before the XIX century

When I hear any man talk of an unalterable law, the only effect it produces upon me is to convince me that he is an unalterable fool.
SYDNEY SMITH: *Peter Plymley's Letters*, I, 1807

Every law which originated in ignorance and malice, and gratifies the passions from which it sprang, we call the wisdom of our ancestors.
SYDNEY SMITH: *Peter Plymley's Letters*, V

Laws are inherited like diseases.
J. W. GOETHE: *I Faust*, I, 1808

No man has a natural right to commit aggression on the equal rights of another, and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of society, and this is all the laws should enforce on him; and no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third.
THOMAS JEFFERSON: *Letter to F. W. Gilmor*, 1816

Laws were made to be broken.
JOHN WILSON: *Noctes Ambrosianæ*, XXIV, 1822

Laws are made for men of ordinary understanding, and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing, at pleasure.
THOMAS JEFFERSON: *Letter to William Johnson*, 1823

What are laws but expressions of the opinion of some class which has power over the rest of the community? By what was the world ever governed but by the opinion of some person or persons? By what else can it ever be governed?
T. B. MACAULAY: *Southey's Colloquies*, 1830

Laws exist in vain for those who have not the courage and the means to defend them.
T. B. MACAULAY: *Burleigh and His Times*, 1832 (Edinburgh Review, April)

Law is whatever is boldly asserted and plausibly maintained.
Ascribed to AARON BURR in JAMES PARTON: *Life and Times of Aaron Burr*, 1858 (*c.* 1835)

The law is a ass, a idiot.
CHARLES DICKENS: *Oliver Twist*, LI, 1838

Good men must not obey the laws too well.
R. W. EMERSON: *Politics*, 1841

The law is only a memorandum. IBID.

I am beginning to think with Horsley — that "the people have nothing to do with the laws but to obey them."
E. A. POE: *Fifty Suggestions*, 1845 (Graham's Magazine, May–June)

It is not desirable to cultivate a respect for the law so much as for the right.
H. D. THOREAU: *An Essay on Civil Disobedience*, 1849

The law is for the protection of the weak more than the strong.
MR. JUSTICE ERLE: *Judgment in Regina* vs. *Woolley*, 1850

I will have no laws. I will acknowledge none. I protest against every law which an authority calling itself necessary imposes upon my free will.
P. J. PROUDHON: *Idée générale de la révolution*, 1851

The clash between what the law forbids and what society not only tolerates but seeks after, is one of the essential features of a state of society which is on the verge of ruin.
LOUIS DE LOMÉNIE: *Beaumarchais and His Times*, 1855

We bury men when they are dead, but we try to embalm the dead body of laws, keeping the corpse in sight long after the vitality has gone. It usually takes a hundred years to make a law; and then, after it has done its work, it usually takes a hundred years to get rid of it.
H. W. BEECHER: *Life Thoughts*, 1858

The law does not generate justice. The law is nothing but a declaration and application of what is already just.
P. J. PROUDHON: *De la justice dans la révolution*, I, 1858

The laws and just restraints are to a noble nation, not chains, but chain mail — strength and defence, though something also of an encumbrance.
JOHN RUSKIN: *The Two Paths*, V, 1859

No laws, however stringent, can make the idle industrious, the thriftless provident, or the drunken sober.
SAMUEL SMILES: *Self-Help*, I, 1859

The lawless science of our law,
That codeless myriad of precedent,
That wilderness of single instances.
ALFRED TENNYSON: *Aylmer's Field*, 1864

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
CONSTITUTION OF THE UNITED STATES, Amendment XIV, July 28, 1868

The beginning of civilization is marked by an intense legality; that legality is the very condition of its existence, the bond which ties it together; but that legality — that tendency to impose a settled customary yoke upon all men and all actions, if it goes on, kills the variability implanted by nature, and makes different men and different ages facsimiles of other men and other ages.
WALTER BAGEHOT: *Physics and Politics*, 1869

Laws and institutions require to be adapted, not to good men, but to bad.
J. S. MILL: *The Subjection of Women*, II, 1869

Laws never would be improved if there were not numerous persons whose moral sentiments are better than the existing laws.
IBID.

I know no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution.
U. S. GRANT: Inaugural address, March 4, 1869

Numbers make the laws, but the good has nothing to do with figures.
H. F. AMIEL: *Journal*, June 12, 1871

All law has for its object to confirm and exalt into a system the exploitation of the workers by a ruling class.
M. A. BAKUNIN: *Dieu et l'état*, 1871

Laws are like medicines: they usually cure the disease only by setting up another that is lesser or more transient.
OTTO VON BISMARCK: Speech in the Prussian Upper House, March 6, 1872

The law is the true embodiment
Of everything that's excellent.
W. S. GILBERT: *Trial By Jury*, 1875

Men would be great criminals did they need as many laws as they make.
C. J. DARLING: *Scintillæ Juris*, 1877

Law is an alliance of those who have farsight and insight against the shortsighted.
RUDOLF VON JHERING: *Der Zweck im Recht*, VIII, 1877

In a criminal proceeding the question is not alone whether substantial justice has been done, but whether justice has been done according to law.
MR. JUSTICE COCKBURN: *Judgment in Martin* vs. *Mackonochie*, 1878

It is far more important the law should be administered with absolute integrity than that in this case or in that the law should be a good law or a bad one.
LORD COLERIDGE: *Judgment in Regina* vs. *Ramsey*, 1883

The law is an adroit mixture of customs that are beneficial to society, and would be followed even if no law existed, and others that are of advantage to a ruling minority but harmful to the masses of men, and can be enforced on them only by terror.
P. A. KROPOTKIN: *Paroles d'un révolté*, 1884

The law has no claim to human respect. It has no more civilizing mission; its only purpose is to protect exploitation. IBID.

The law condemns and punishes only actions that fall within certain definite and narrow limits; it thereby justifies, in a way, all similar actions that lie outside those limits.
LYOF N. TOLSTOY: *What I Believe*, 1884

Laws come before men live together in society, and have their origin in the natural and consequently in the eternal law.
POPE LEO XIII: *Libertas praestantissimum*, June 20, 1888

The authority of the law is grounded on the thesis: God gave it, and the fathers lived it.
F. W. NIETZSCHE: *The Antichrist*, LVII, 1888

Laws only bind when they are in accordance with right reason, and hence with the eternal law of God.
POPE LEO XIII: *Rerum novarum*, May 15, 1891

We know how laws are made — we who have been behind the scenes. They are the products of selfishness, deception and party prejudice. True justice is not in them, and cannot be in them.
LYOF N. TOLSTOY: *The Kingdom of God Is Within You*, 1893

The attempt to guard adult man by law is a bad education for the battle of life.
W. E. H. LECKY: *Democracy and Liberty*, 1896

The reign of law.
JAMES LANE ALLEN: Title of a novel, 1900

It is difficult to make our material condition better by the best laws, but it is easy enough to ruin it by bad laws.
THEODORE ROOSEVELT: Speech in Providence, R. I., Aug. 23, 1902

While there still is doubt, while opposite convictions still keep a battlefront against each other, the time for law has not come.
O. W. HOLMES II: Speech in New York, Feb. 15, 1913

Law is the expression and the perfection of common sense.
Ascribed to JOSEPH H. CHOATE (1832–1917) in G. J. CLARK: *Great Sayings by Great Lawyers*, 1922

The passing of an unjust law is the suicide of authority.
Pastoral Letter of the American Roman Catholic Hierarchy, Feb., 1920

A year ago, if I had $100 in gold in my pocket, I was a law-abiding citizen; if I perchance had a pint of whiskey I was a criminal. Today, if I have the whiskey, I am a law-abiding citizen; but if I have the gold I am a criminal violating the law.
L. J. DICKINSON: Speech at Cleveland, O., Jan. 5, 1934

Legal concepts are supernatural entities which do not have a verifiable existence except to the eyes of faith.
FELIX S. COHEN: *Transcendental Nonsense and the Functional Approach*, 1935

The law of blood (jus sanguinis); canon law (jus canonicum); the civil law (jus civile, *or* lex civile); the law for the government of the church (jus ecclesiasticum); the law of commerce (jus commercii); the common law (jus commune *or* lex communis); the law of contract (lex contractus); the divine law (jus divinum); the law divine and human (lex divina ac humana); the general law (lex generalis); the law of the Germans (lex Germanica); the law of God (lex Domini); the law of human society (jus humanae societatis); international law (jus inter gentes); the law of the land (lex terrae); the law of the majority (lex majoris partis); the law of mankind (jus hominum); the law merchant (lex mercatoria); the law of Moses (lex Moysi); municipal law (jus privatum); the law of nations (jus gentium); natural law (jus naturæ); the law of Parliament (lex parliamenti); the law of the place where a man has his domicile (lex domicilii); the law of the place where an action is brought (lex actus, lex fori, lex ordinandi, lex reisitae, *or* lex situs); private law (lex privata); public law (jus publicum, *or* lex publica); the law of religion (jus ponticium); the law of retaliation (lex talionis); sumptuary law (lex sumptuaria); the law of things (jus rerum); the unwritten law (lex non scripta); the law of war (jus belli); the written law (lex scripta).
LATIN PHRASES

The law protects everybody who can afford to hire a good lawyer. Author unidentified

The more by law, the less by right.
DANISH PROVERB

The law has a wax nose.
FRENCH PROVERB

New laws are followed by new tricks.
GERMAN PROVERB

The more laws the less justice. IBID.

Thus is the law written. (Ita lex scripta est.)
LATIN PHRASE

Laws are made by the conqueror, and accepted by the conquered. LATIN PROVERB

Law is king. (Lex rex.) IBID.

Let the people obey the magistrates, and the magistrates the laws. IBID.

The more law, the less justice. (Summum jus, summa injuria.) IBID.

No punishment without law. (Nulla poena sine lege.) LEGAL MAXIM

The later decisions are the stronger in law. (Judicia posteriora sunt in lege fortiora.) IBID.

The law forces no one to do vain or useless things. (Lex neminem cogit ad vana seu inutilia peragenda.) IBID.

The law looks forward, not backward. (Lex prospicit non respicit.) IBID.

The law regards the course of nature. (Lex spectat naturae ordinem.) IBID.

The laws are adapted to those cases which most frequently arise. (Ad ea quae frequentius accidunt jura adaptantur.) IBID.

The laws grow by litigation. (Litigando jura crescunt.) IBID.

The laws keep the vigilant, not those who sleep. (Vigilantibus, non dormientibus, subveniunt jura.) IBID.

The law will always furnish a remedy. (Lex semper dubit remedium.) IBID.

The niceties of the law are not the law. (Apices juris non sunt jura.) IBID.

Wherever there is society there is law. (Ubi societas ibi lex.) IBID.

Wretched is the slavery where the law is changeable or uncertain. (Misera est servitus ubi jus est vagum aut incertum.) IBID.

Like king, like law; like law, like people.
PORTUGUESE PROVERB

[*See also* Aggression, Arms, Ballad, Constitution, Court, Crime, Crime and Punishment, Criminal, Custom, Disciple, Equity, Error, Evil, Execution, Freedom, Golden Rule, Habeas Corpus, Hanging, Hell, Ignorance, Injustice, Judge, Judiciary, Jurisprudence, Jury, King, Law (Natural), Lawyer, Liberty, Litigation, Magistrate, Man and Woman, Manners, Maxim, Monk, Moving-picture, Nicety, Opinion, Possession, Precedent, Prince, Property, Punishment, Sin, Song, State, Supreme Court, Trifle, Tyranny, Vigilance, War.

Law-abiding

He that keepeth the law, happy is he.
PROVERBS XXIX, 18, *c.* 350 B.C.

Render therefore unto Cæsar the things which are Cæsar's. MATTHEW XXII, 21, *c.* 75

Fear God, and offend not the prince nor his laws,
And keep thyself out of the magistrate's claws.
THOMAS TUSSER: *Five Hundred Points of Good Husbandry*, 1580

Follow law, and forms of law, as far as convenient.
ABRAHAM LINCOLN: Instructions to U. S. Grant, Oct. 21, 1862

The observance of the law is the greatest solvent of public ills.
CALVIN COOLIDGE: Speech of acceptance, July 27, 1920

It is the duty of a citizen not only to observe the law but to let it be known that he is opposed to its violation.
CALVIN COOLIDGE: Message to Congress, Dec. 6, 1923

Lawbreaker

[*See* Criminal.

Law, Canon

The canon law is a body of Roman ecclesiastical law relative to such matters as that church either has, or pretends to have, the proper jurisdiction.
WILLIAM BLACKSTONE: *Commentaries on the Laws of England*, I, 1765

Law, Common

Reason is the life of the law; nay, the Common Law itself is nothing but reason.
EDWARD COKE: *Institutes*, I, 1628

The Common Law is the custom of the kingdom, and we are bound to know it, and must be all governed by it.
MR. CHIEF JUSTICE NORTH: *Judgment in Whitebread's Case*, 1679

I consider all the encroachments made on the Constitution heretofore as nothing, as mere retail stuff, compared with the wholesale doctrine that there is a Common Law in force in the United States, of which, and of all the cases within its provisions, their courts have cognizance.
THOMAS JEFFERSON: *Letter to Charles Pinckney*, Oct., 1799

The Common Law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified.
MR. JUSTICE O. W. HOLMES: *Dissenting opinion in Southern Pacific Company vs. Jensen*, 1916

A fortuitous concourse of atoms.
Author unidentified

At Common Law you are done for at once; in equity you are not so easily disposed of. The former is a bullet which is instantaneously and charmingly effective; the latter, the angler's hook, which plays with the victim before it kills him. Common Law is prussic acid; equity is laudanum. IBID.

[*See also* Christianity, Law.

Law, Divine

[*See* Law (Natural).

Law Enforcement

No man is above the law and no man is below it, nor do we ask any man's permission when we require him to obey it.
THEODORE ROOSEVELT: Message to Congress, Jan., 1904

Violations of law weaken and threaten government itself. No honest government can condone such actions on the part of its citizens. The Republican party pledges the full strength of the government for the maintenance of these principles by the enforcement of the Constitution and of all laws.
Republican National Platform, 1924

If the law is upheld only by government officials, then all law is at an end.
HERBERT HOOVER: Message to Congress, 1929

[*See also* Law.

Law, English

There is no pretense to say or insinuate to the contrary but that the laws and customs of England are not only good but the very best.
JOHN FORTESCUE: *De laudibus legum Angliae*, *c.* 1462

The law of England is the greatest grievance of the nation, very expensive and dilatory.
GILBERT BURNET (BISHOP OF SALISBURY): *The History of My Own Times*, 1724

Every man who comes into England is entitled to the protection of the English law, whatever oppression he may heretofore have suffered, and whatever may be the color of his skin.
LORD MANSFIELD: *Judgment in the case of James Somersett, a Negro*, June 22, 1772

There is no presumption in this country [England] that every person knows the law: it

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BOOK OF QUOTATIONS

A NEW COLLECTION OF FAMOUS SAYINGS, REFLECTING THE WISDOM AND THE WIT OF TIMES PAST AND PRESENT AND INCLUDING THE VIRTUOUS, HUMOROUS, AND PHILOSOPHIC COMMENTARY ON LIFE BY MEN AND WOMEN OF EVERY AGE TOGETHER WITH RICHES FROM THE PROFOUND WELLS OF THE BIBLE, PROVERBS, AND ANONYMITY AS SELECTED BY

FRANKLIN PIERCE ADAMS

[redacted]

I quote others only in order the better to express myself. — MONTAIGNE

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I laugh because I must not cry.
—ABRAHAM LINCOLN (1809-1865)

If you are wise, laugh.
—MARTIAL (*c.* A.D. 66) *Epigrams*

Laughter holding both his sides.
—JOHN MILTON (1608-1674) *L'Allegro*

He deserves Paradise who makes his companions laugh.
—MOHAMMED (570-632) *The Koran*

I'm made a laughing-stock.
—PLAUTUS (*c.* 254-184 B.C.) *Menæchmi*

He who laughs, lasts.
—MARY PETTIBONE POOLE (contemporary) *A Glass Eye at the Keyhole*

Laugh and grow fat.
—ENGLISH PROVERB

He laughs best who laughs last.
—ENGLISH PROVERB

Too much laughter deadens the mind.
—HEBREW PROVERB

Better to write of laughter than of tears,
Because to laugh is proper to a man.
—FRANÇOIS RABELAIS (1494?-1553) *Gargantua: To the Readers*

He who laughs Friday will cry Sunday.
—JEAN BAPTISTE RACINE (1639-1699) *Les Plaideurs,* Act I, sc. ii

He was born with a gift of laughter and a sense that the world is mad.
—RAFAEL SABATINI (1875-1950) *Scaramouche*

Everything gives cause for either laughter or tears.
—SENECA (4? B.C.-A.D. 65) *De Ira,* Bk. II, ch. x, sec. 5

I will laugh like a hyen.
—WILLIAM SHAKESPEARE (1564-1616) *As You Like It,* IV, i, 162

I shall laugh myself to death.
—Idem *The Tempest,* II, ii, 159

There are few who would not rather be hated than laughed at.
—SYDNEY SMITH (1771-1845) *Sketches of Moral Philosophy*

The pleasantest laughter is at the expense of our enemies.
—SOPHOCLES (495-406 B.C.) *Ajax*

The Horse-Laugh is a distinguishing characteristic of the rural hoyden.
—RICHARD STEELE (1672-1729) *The Guardian,* No. 29

In laughing whole-heartedly a man must attain a certain freedom from selfishness, a certain purity; and the greatest saints are the merriest-hearted people.
—MARY WEBB (1881-1927) *Spring of Joy: Laughter*

Laugh, and the world laughs with you;
Weep, and you weep alone.
For the sad old earth must borrow its mirth,
But has troubles enough of its own.
—ELLA WHEELER WILCOX (1855-1919) *Solitude*

Laughter is not a bad beginning for a friendship, and it is the best ending for one.
—OSCAR WILDE (1854-1900) *The Picture of Dorian Gray*

Woe unto you that laugh now! for ye shall mourn and weep.
—NEW TESTAMENT: *Luke,* vi, 25

As the crackling of thorns under a pot, so is the laughter of a fool.
—OLD TESTAMENT: *Ecclesiastes,* vii, 6

Laughed thee to scorn.
—*Ibid. Isaiah,* xxxvii, 22

Even in laughter the heart is sorrowful; and the end of that mirth is heaviness.
—*Ibid. Proverbs,* xiv, 13

He will laugh thee to scorn.
—APOCRYPHA: *Ecclesiasticus,* xiii, 7

A fool lifteth up his voice with laughter, but a wise man doth scarce smile a little.
—*Ibid.* xxi, 20

LAW

Taking the law into one's own hands.
—ÆSOP (6th C. B.C.) *Fables*

Who to himself is law, no law doth need,
Offends no law, and is a king indeed.
—GEORGE CHAPMAN (1559?-1634?) *Bussy D'Ambois*

The laws place the safety of all before the safety of individuals.
—CICERO (106-43 B.C.) *De Finibus,* Bk. III, ch. xix

The voice of nations and the course of things
Allow that laws superior are to kings.
—DANIEL DEFOE (1661?-1731) *The True-Born Englishman*

Time is the best interpreter of every doubtful law.
—DIONYSIUS OF HALICARNASSUS (d. *c.* 7 B.C.) *Antiquities of Rome*

Some say men on the back of law
May ride and rule it like a patient ass,
And with a golden bridle in the mouth
Direct it into anything they please.
—NATHANIEL FIELD (1587-1633) *A Woman is a Weathercock*

Possession is nine points of the law.
—THOMAS FULLER (1608-1681) *Holy War,* Bk. v, ch. 29

The law is laid down to you.
—HORACE (65-8 B.C.) *Epistulæ,* Bk. II, ep. ii

Taken in flagrant violation of the law.
—JUSTINIAN I (527-565) *Corpus Iuris Civilis Romani,* Code IX, tit. xiii, sec. 1

In law a man is guilty when he violates the rights of another. In ethics he is guilty if he only thinks of doing so.
—IMMANUEL KANT (1724-1804) *Lecture at Königsberg,* 1775

Not everything which the law allows is honorable.
—LEGAL MAXIM

Laws only bind when they are in accordance with right reason, and hence with the eternal law of God.
—POPE LEO XIII (1810-1903) *Rerum Novarum*

The man who does no wrong needs no law.
—MENANDER (342-291 B.C.) *Fragments*

The purpose of law is to prevent the strong always having their way.
—OVID (43 B.C.-A.D. 18?) *Fasti*

Law, lord of all, mortals and immortals, carries everything with a high hand.
—PINDAR (*c.* 522-442 B.C.) *Fragments*

There is a written and an unwritten law. Written law is that under which we live in different cities, but that which has arisen from custom is called unwritten law.
—PLATO (428-347 B.C.) attr.

Abundance of law breaks no law. . . . Do more than the law requires, rather than leave anything undone that it does.
—SCOTTISH PROVERB

The law of nations.
—FRANÇOIS RABELAIS (1494?-1553) *Pantagruel,* Bk. iii, ch. 44

No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it.
—THEODORE ROOSEVELT (1858-1919) Message, January, 1904

Let them have all the rigour of the law.
—WILLIAM SHAKESPEARE (1564-1616) *II Henry VI,* I, iii, 199

We must not make a scarecrow of the law,
Setting it up to fear the birds of prey,
And let it keep one shape, till custom make it
Their perch and not their terror.
—Idem *Measure for Measure,* II, i, 1

He will give you both the law and the prophets.
—GEORGE BERNARD SHAW (1856-1950) *Captain Brassbound's Conversation,* Act II

The common sense of most shall hold a fretful realm in awe,
And the kindly earth shall slumber, lapt in universal law.
—ALFRED, LORD TENNYSON (1809-1892) *Locksley Hall*

He gives laws to the peoples, and makes for himself a way to the heavens.
—VERGIL (70-19 B.C.) *Georgics,* iv, 562

The law of the past cannot be eluded,
The law of the present and future cannot be eluded
The law of the living cannot be eluded —it is eternal.
—WALT WHITMAN (1819-1892) *To Think of Time*

O king, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not.
—OLD TESTAMENT: *Daniel,* vi, 8

Ye shall have one manner of law, as well for the stranger, as for one of your own country.
—*Ibid. Leviticus,* xxiv, 22

He that keepeth the law, happy is he.
—*Ibid. Proverbs,* xxix, 18

The letter killeth, but the spirit giveth life.
—NEW TESTAMENT: *II Corinthians,* iii, 6

But now we are delivered from the law, that being dead wherein we were held; that we should serve in newness of spirit, and not in the oldness of the letter.
—*Ibid. Romans,* vii, 6

The law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners, . . . for manslayers.
—*Ibid. I Timothy,* i, 9

I. LAW: DEFINITIONS

Law is a pledge that the citizens of a state will do justice to one another.
—ARISTOTLE (384-322 B.C.) *Politics*

Law is not justice, but the sacrifice
Of singular virtues to the dull world's ease of mind.
—GORDON BOTTOMLEY (1874-) *The Riding to Lithend*

Law is whatever is boldly asserted and plausibly maintained.
—AARON BURR (1756-1836)

Law is nothing else but right reason, calling us imperiously to our duty, and prohibiting every violation of it.
—CICERO (106-43 B.C.) *Orationes Philippicæ*

The Law is the true embodiment
Of everything that's excellent.
It has no kind of fault or flaw,
And I, my Lords, embody the Law.
—SIR WILLIAM S. GILBERT (1836-1911) *Iolanthe,* Act I

The law is blind, and speaks in general terms.
—THOMAS MAY (1595-1650) *The Heir*

Law, the despot of mankind, often compels us to do many things which are against nature.
—PLATO (428-347 B.C.) *Protagoras*

The beginning of the law is benevolence, and with benevolence it ends.
—BABYLONIAN TALMUD: *Sotah*

II. LAW: ITS SHORTCOMINGS

Written laws are like spiders' webs; they hold the weak and delicate who might be caught in their meshes, but are torn in pieces by the rich and powerful.
—ANACHARSIS (*f. c.* 600 B.C.) in Plutarch's *Solon*

Agree, for the law is costly.
—WILLIAM CAMDEN (1551-1623) *Remains Concerning Britain*

Men would be great criminals did they need as many laws as they make.
—CHARLES JOHN DARLING (1849-1936) *Scintillæ Juris*

All laws are useless, for good men do not need them, and bad men are made no better by them.
—DEMONAX (*f.* 150) in Lucian's (2nd C.) *Demonax*

Laws too gentle are seldom obeyed; too severe, seldom executed.
—BENJAMIN FRANKLIN (1706-1790) *Poor Richard's Almanack*

Laws grind the poor, and rich men rule the law.
—OLIVER GOLDSMITH (1730-1774) *The Traveller,* l. 386

The attempt to guard adult man by law is a bad education for the battle of life.
—WILLIAM EDWARD HARTPOLE LECKY (1838-1903) *Democracy and Liberty*

Laws were made to be broken.
—CHRISTOPHER NORTH (1785-1854) *Noctes Ambrosianæ,* No. 24

The law for rich and poor is not the same.
—PLAUTUS (*c.* 254-184 B.C.) *Cistellaria*

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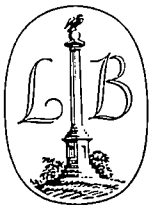
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REVISED AND ENLARGED

John Bartlett

Edited by EMILY MORISON BECK
and the editorial staff of Little, Brown and Company



LITTLE, BROWN AND COMPANY • BOSTON • TORONTO

es upon the deep.[9] *Ib. l. 89*

nes blessed![10] *Ib. l. 94*

Ib. l. 150

'orse things; God will so. *Ib. l. 199*

will be pleasant to re- *Ib. l. 203*

nan.[12] *Ib. l. 364*

ıer as a true goddess. *Ib. l. 405*

ıose walls already rise! *Ib. l. 437*

; of things; mortality *Ib. l. 462*

ɔn between Trojan and *Ib. l. 574*

s own rectitude.[14] *Ib. l. 604*

all run down to the sea, e mountain slopes, or ult of heaven, so long ur name, your praises *Ib. l. 607*

w and learned to aid the *Ib. l. 630*

ıeen, is the sorrow you *Ib. II, l. 3*

'ear Greeks even when *Ib. l. 49*

ıe know the nation. *Ib. l. 65*

.[16] *Ib. l. 204*

um home of the gods, O battle! *Ib. l. 241*

ext door.[17] *Ib. l. 311*

eati!
ıeminisse iuvabit.

et mentem mortalia tangunt.
rectitude, laughed to scorn the
ID [43 B.C.–A.D. 18], *Fasti, bk.*

ɔ Danaos et dona ferentis.

Ucalegon.
he ancient counselors who sat
His house was next to that of
as.

1 We have been Trojans; Troy has been. *Ib. l. 325*

2 There is but one safety to the vanquished —to hope not safety. *Ib. l. 354*

3 Our foes will provide us with arms. *Ib. l. 391*

4 The gods thought otherwise.[1] *Ib. l. 428*

5 Thrice would I have thrown my arms about her neck, and thrice the ghost embraced fled from my grasp: like a fluttering breeze, like a fleeting dream.[2] *Ib. l. 793*

6 O accurst craving for gold! *Ib. III, l. 57*

7 Rumor flies.[3] *Ib. l. 121*

8 I feel again a spark of that ancient flame.[4] *Ib. IV, l. 23*

9 Deep in her breast lives the silent wound. *Ib. l. 67*

10 A woman is always a fickle, unstable thing.[5] *Ib. l. 569*

11 Arise from my bones, avenger of these wrongs! *Ib. l. 625*

12 Thus, thus, it is joy to pass to the world below.[6] *Ib. l. 660*

13 Naked in death upon an unknown shore. *Ib. V, l. 871*

14 Yield not to evils, but attack all the more boldly. *Ib. VI, l. 95*

15 It is easy to go down into Hell; night and day, the gates of dark Death stand wide; but to climb back again, to retrace one's steps to the upper air—there's the rub, the task.[7] *Ib. l. 126*

16 Faithful Achates.[8] *Ib. l. 158 and elsewhere*

[1] Dis aliter visum.

[2] Virgil here translates HOMER, *Odyssey, bk. XI, l. 204.* See 60:8.

[3] Fama volat.

[4] Agnosco veteris vestigia flammae.
See Dante, 142:6.

[5] Varium et mutabile semper femina.
Woman often changes; foolish the man who trusts her. —FRANCIS I OF FRANCE [1494–1547], written by him with his ring on a window of the château of Chambord (BRANTÔME, *Oeuvres, VII, 395*)
La donna è mobile.—FRANCESCO MARIA PIAVE [1810–1879], *libretto of* Verdi's *Rigoletto, Duke's song*
See Scott, 431:2.

[6] Sic, sic, iuvat ire sub umbras.

[7] Facilis descensus Averni: / Noctes atque dies patet atri ianua Ditis; / Sed revocare gradum superasque evadere ad auras, / Hoc opus, hic labor est.
See *Matthew 7:13–14,* 38:15; Bion, 92:7; Shakespeare, 218:28 and 238:2; and Milton, 284:17.

[8] Fidus Achates. Proverbial for a trusty friend; Achates was the faithful comrade of Aeneas.

17 Death's brother, Sleep.[9] *Ib. l. 278*

18 The swamp of Styx, by which the gods take oath. *Ib. l. 323*

19 Unwillingly I left your land, O Queen.[10] *Ib. l. 460*

20 Had I a hundred tongues, a hundred mouths, a voice of iron and a chest of brass, I could not tell all the forms of crime, could not name all the types of punishment.[11] *Ib. l. 625*

21 That happy place, the green groves of the dwelling of the blest. *Ib. l. 638*

22 The spirit within nourishes, and the mind, diffused through all the members, sways the mass and mingles with the whole frame. *Ib. l. 726*

23 Each of us bears his own Hell.[12] *Ib. l. 743*

24 Others, I take it, will work better with breathing bronze and draw living faces from marble; others will plead at law with greater eloquence, or measure the pathways of the sky, or forecast the rising stars. Be it your concern, Roman, to rule the nations under law (this is your proper skill) and establish the way of peace; to spare the conquered and put down the mighty from their seat.[13] Aeneid, bk1 *Ib. l. 847*

25 Give me handfuls of lilies to scatter.[14] *Ib. l. 883*

26 There are two gates of Sleep. One is of horn, easy of passage for the shades of truth; the other, of gleaming white ivory, permits false dreams to ascend to the upper air.[15] *Ib. l. 893*

27 Prayed to the Genius of the place. *Ib. VII, l. 136*

28 We descend from Jove; in ancestral Jove Troy's sons rejoice. *Ib. l. 219*

29 If I cannot bend Heaven, I shall move Hell. *Ib. l. 312*

30 An old story, but the glory of it is forever. *Ib. IX, l. 79*

[9] See Homer, 58:20; Daniel, 182:4; Shakespeare, 238:6; and Shelley, 466:6.

[10] Aeneas to the ghost of Dido, who had killed herself when he left her.

[11] See Homer, 57:19.

[12] See Marlowe, 183:21 and 184:1; Browne, 274:15; Milton, 283:13 and 285:12; Eliot, 809:1; Sartre, 865:12; and Lowell, 893:7.

[13] See Milton, 281:17.

[14] Quoted by DANTE in *The Divine Comedy, Purgatorio, canto XXX, l. 21.*

[15] See Homer, 61:2.

April 24, 1990

MEMORANDUM FOR CHRISS WINSTON
DAN MCGROARTY
PEGGY DOOLEY

FROM: STEPHANIE BLESSEY SB

SUBJECT: USC COMMENCEMENT REMARKS

The following is information gathered from the pre-advance trip to Columbia, South Carolina.

Joke Material:

- When Louie, Louie is played at game upper decks of Coliseum rock. They say, "If it ain't swaying, we ain't playing." (USC fixed the upper decks, but they still say it.)
- Parking is impossible.
- A pretty girl at Clemson is a visitor.
- 144 Clemson students are gross ignorance.
- All dirt roads lead to Clemson.
- The USC versus Southern California
- Jokes written by USC attached.

Special Places:

- The Horseshoe is the center of campus.
- Russell House is central activity center.
- Thomas Cooper Library is underground. Students have to "go down" to study.
- throwing frisbee on the horseshoe, eating at Russell House"
- grabbing a sandwich at Andy's deli
- eating at Yesterday's
- going out in 5 points
- Late night eats: IHOP and Capital Cafe

Familiars:

- As freshmen, taking University 101
- As seniors, trying to sell back your books
- In between, reading the personals in The Gamecock
- Song: 'Carolina on my Mind'
- University Tree Lighting on Horseshoe after Community Service week.

School groups:

- NAACP
- Carolina Cares - community service
- CPU - Carolina Program Union

Famous teachers:

- Ambassador Walker (to South Korea)
- James Dickey - poet in residence

Trivia:

Mascot: Cocky the Gamecock
Colors: Garnet and black
12 schools in the University

Sports:

- Football is big sport, but they lost every game this year.
- Athletic director - King Dickson
- Football coach - Sparky Woods
- Together - The King and Sparky Show
- Cockfest is the homecoming pep rally.
- Play theme of 2001 at football games.
- Todd Ellis (q-back) and Harold Green were drafted for NFL.
- DO NOT mention George Rogers, the Heisman Trophy winner.
- Joe Morrison, the football coach, died last year; team was the "black magic" of Joe Morrison.

Famous Visitors:

- The Pope in '87. He said, "It's good to be young and a student at U.S.C." (Seniors were sophomores.)

- Henry Kissinger
- President Reagan
- Sicily Tyson

Volunteers:

- Huricane Hugo - hundreds of students started by packing supplies to be sent to the coast, and they continued their efforts through the year -- travelling from Camden to Sumner helping others get their lives back together.
- Classes would go help together.
-From Sister Care to Literacy programs to soup kitchens and shelters.

Attachments:

Yearbook
Binder of background including jokes

International

WEST MEETS EAST

Drawn by pure democracy, consultants are reborn in Eastern Europe, by James David Barber

At the invitation of numerous emerging political parties in Czechoslovakia, Poland, and Hungary, Campaigns & Elections exported its campaign training seminars to Eastern Europe for sessions March 6-16. One of the participants, James David Barber, was the designated scribe. This is his report.

We arrived as humble teachers. We left as activist allies, anxious to help make democracy—real democracy—happen in Eastern Europe.

Our conscience was off limits. We didn't come to preach at the democratic converts like some pontificating patriarch who drops in to straighten out his children. From the start, as our Canadian leader Gordon Robson put it, we were not in Hungary, Czechoslovakia, and Poland to instruct them on how to imitate us. Our American leader, Campaigns & Elections publisher James Dwinell, echoed Robson's sentiments when he said, "We are not here to teach but to learn. We will show you our ways but as with a menu, you need to choose the tactics and strategies that are right for you and your political culture and teach us."

We came stressing cool tolerance and open mindedness, and listened for their special needs and concerns. As Florida-based consultant Lee Miller put it, "We offered you hammers and nails."

We whirled around, spending a few days in each country, working seminars which started out sparsely populated in Budapest, and ended in Warsaw with more than 350 political party officials attending. On the way, we changed. We fell off the teacher's stool and took up the flag of freedom. We planed back to America eager to help democracy grow from the revolution.

There were surprises that awakened our jaded band. For instance, is there anything more vital to a campaign than lists of voters? Last fall, Hungary did a major national referendum, a vote which decided to delay the choice of a president until the new parliament was elected. Surely anyone gearing up for a parliamentary election would want that referendum list specifying thousands of available voters. But to Hungarians, person-listing had been a weapon of the secret police for more than four decades. Tear them up and throw them away, they said.

We thought the rock-bottom challenge of political journalism is going to be how to write the story. But over there, the biggest challenge is getting paper to print the story on. In Poland, the Communists bill their own newspapers 800 zlotys (about 8 cents) for a section of paper. Solidarity, the democracy movement, is charged 5,000 zlotys, per section. In Eastern Europe, newspapers are powerful campaign tools, not forums for unbiased reporting.

And, we thought, if you're running for office, surely you'd like to get your spouse on television or in the newspaper. But to them, that implies nepotism—that if you win, your spouse will get a special job.

The political scene in Eastern Europe is different from that in Eastern New Jersey. As Wayne Johnson observed, "We argue about zoning. They're deciding whether or not to legalize private property."

The upcoming elections are not like our 1988 model. They are more like 1788, when our democracy was being constituted in its basic fundamentals. Tony Quinn may be right in suggesting that "maybe we should encourage them to think of [Vaclav] Havel and [Lech] Walesa as playing the role of a Washington or DeGaulle as they get underway."

Argentinian pollster Felipe Noguera has it right when he says that "these countries are not just going though a change of administration, but of regime."

In Hungary we were scheduled to seminar in "Karl Marx University." By the time we got there, the name had been changed to "University of Economics of Budapest."

The big news from the three nations we visited is that democracy has stepped out onto the high wire, leaving behind the rigid communist platform, facing forward to a risky chance to establish freedom and justice for all. Now is the hour to guarantee non violence, citizenship for all, rational consent of the governed, genuine law to regulate the economy and society, and secure, democratically controlled foreign relations.



Democracy comes to Wenceslas Square, Prague

But to make it happen, leadership is necessary. In Hungary there is a revulsion against coming out for some new political star. In Czechoslovakia, the opposite occurred. The love for Havel, the playwright-president, is almost universal.

In Poland, Solidarity leader Lech Walesa has increasingly quiet respect, as if he were becoming yesterday's leader.

More importantly, what's needed is local leadership, from the village on up. In Poland, they need thousands of candidates for local and regional offices before the June election, an event unknown since World War II.



The Slovak organization "Public Against Violence" has become an umbrella for smaller Czech parties

Political parties have been born, but they have yet to pass through their identity crisis. Solidarity started as a trade union and is now an umbrella for all sorts of parties. As a Solidarity M.P. put it, "What unifies us is the will to fight the communists." But with the communists on the way out, Solidarity must begin to organize national unity.

Hungary, on the other hand, lacks a national umbrella. The Czechs have a broad-based "Civic Forum" and the Slovaks the rapidly broadening "Public Against Violence." When our professional consultants talked about how to build coalitions, eyes lit up. A new version of the Federalist Papers might make a hit.

Media politics is on a roll, but wobbling. Christine LaPaille says that "as democracy emerges in these countries, the press will emerge also." But virtually all the radio, television, and newspaper facilities are owned by the state. Harsh censors at the top have been replaced by permissive editors and producers. Reporters on the street are inventing their journalism day by day.

Democracy rests on citizens, which is why *Campaigns & Elections* seminars centered on the age-old questions of democracy. How do you activate voters? Where do you get money to buy the tools for campaign action?

As the long days went on, those of us who listened and looked began to experience a newness of life. When you have lunch with an aging fellow working hard in politics after being jailed for six years as a political prisoner; when you have supper with a beautiful 17-year-old gypsy girl who is emerging as a vivid volunteer among many who think a gypsy is an animal; when you breakfast with a reporter whose weekly magazine was underground and now going public; or you walk the street with a woman translator about to have a third child, who says she never joined the communists because "you have to look your children in the eye;" those happenings turn your mind.

Randy Gilliland, president of Gilliland & Co., a fundraising firm, put it this way: "After spending many years in the American political arena, I had grown cynical. I had tired of petty political arguments and in many ways lost my sense of political vision and idealism. This trip invigorated me. It made me turn back to the dreams and idealistic views of my younger years."

Such renewed dreams are sparking realities: Gilliland and Wayne Johnson are raising funds for six East European political organizations, working to get U.S. newspapers to support papers in Poland, and trying to have equipment contributed to party offices.

Lee Miller, has taken on projects in two countries for "organizational and communications opportunities."

C&E'S EASTERN EUROPE FACULTY

Chuck Adams
Adams and Co., Salem, OR

James David Barber
Duke University, Durham, NC

Robin Bell
International Center for Development Policy, Washington, DC

Scott Berkowitz
C&E, Washington, DC

Graham Bruce, M.L.A.
Government of British Columbia, Duncan, BC

James Dwinell
C&E, Washington, DC

Barry Fadem
Bagatelos & Fadem, San Francisco, CA

Andrew Frank
C&E, Washington, DC

George Gibault
Public Affairs Bureau, Victoria, BC

Randy Gilliland
Gilliland & Company, Midlothian, VA

Sal Guzzetta
Political Publishing, Alexandria, VA

Wayne Johnson
Wayne C. Johnson & Assoc., Sacramento, CA

Jennifer Kessler
C&E, Washington, DC

Kelly Kimball
Kimball Petition Management West Los Angeles, CA

Ginnie Kontnik
Harriman Communications Center Washington, DC

Jerry Lampert
Principal Secretary to the Premier Victoria, BC

Christine LaPaille
Agenda Communications Chicago, IL

Greg Lyle
Principal Secretary to the Premier of Manitoba, Winnipeg, Manitoba

Lindsay Mattison
International Center for Development Policy, Washington, DC

Lee Miller
Miller Consulting Group, Ltd. Fort Lauderdale, FL

George Gibault, director of research for the Public Affairs Bureau in British Columbia, linked himself to numerous agricultural enterprises, whose technical aid he will enlist for urgent training needs.

A stunning conversion from preaching to participating happened when Ginnie Kontnik, director of Harriman Communications Center in Washington, and professional consultants Kelly Kimball, Trish Whitcomb, Barry Fadem, and Grey Lyle struggled all night with "Public Against Violence," the major organization working for democracy in the Slovakia part of Czechoslovakia.



Collecting political party volunteers in Wenceslas Square, Prague

Kontnik and the rest see themselves as "volunteers who were asked to help." And help they will. They have formed the nonprofit volunteers for democracy to get donations of high-tech equipment and a supply of detailed strategic advice. The group already has put together a set of four-minute television ads for Public Against Violence to be used daily from April until the June election. The first one tells the Czech voter: "VPN took you to the revolution in Wenceslas Square. Vote on the ballot so we can finish the revolution!"

To finish the revolution is to found democracy. In the capitol of Poland, we visited the great hall of the national parliament. Up front, facing the elected representatives, is the symbol of Poland, a white eagle with outstretched wings. The communists left the eagle there in 1945, but smashed the crown off its head. When we were there, workers were putting on a new crown. Will the new crown of democracy hold firm on the head of the nation? The wonder and the uncertainty are still there. ❑

James David Barber is on the faculty of Duke University in North Carolina as a James B. Duke Professor of Political Science and Policy Studies.

Rev. James Noble
Decatur, GA
Phil Noble
The Palmetto Project, Charleston, SC
Felipe Noguera
Mora y Araujo Noguera,
Buenos Aires, Argentina
Beth Provinse
Conotabs, Bethesda, MD
Tony Quinn
Braun and Company
Sacramento, CA
Gianni Riotta
Corriere Della Sera, New York, NY
Gordon Robson
Robson and Assoc., Maple Ridge, BC
Mary Robson,
Robson and Assoc., Maple Ridge, BC
Cliff Scotton
New Democratic Party of Canada,
Nanaimo, BC
Amanda Smith
Sex Equity Consultant, Durham, NC
Patricia Whitcomb
Bates & Associates, Indianapolis, IN
Robert White
International Center for
Development Policy, Washington, DC

VOLUNTEERS FOR DEMOCRACY

Several participants in C&E's trip have formed a non-profit organization to provide support for VPN, the Slovak Democracy movement. If you would like to donate computers, faxes, copiers, your time, or anything else, please call (800) 237-7842.

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THE WHITE HOUSE
WASHINGTON

Bush spoke at
USC in 1985.

Maybe Emily
has it.

Whitehall (310 West Earle Street, private) is Greenville's oldest residence, built in 1813. It was constructed as the summer home of former South Carolina governor Henry Middleton, who served at another time as ambassador to Russia. His father, Arthur Middleton, was a signer of the Declaration of Independence. The **Bob Jones University Art Gallery and Museum** (1700 Wade Hampton Boulevard, 803–242–5100) has an important international collection of religious art, dating from the thirteenth to the nineteenth century, from Spain, Italy, France, Germany, and Holland, featuring works by Dolci, Rembrandt, Rubens, Titian, and Van Dyck.

In the town of **Conestee** is the **McBee Methodist Church Chapel** (Main Street), one of few octagonal churches remaining in America. The brick one-story structure with a pyramidal roof and an octagonal cupola was built around 1841.

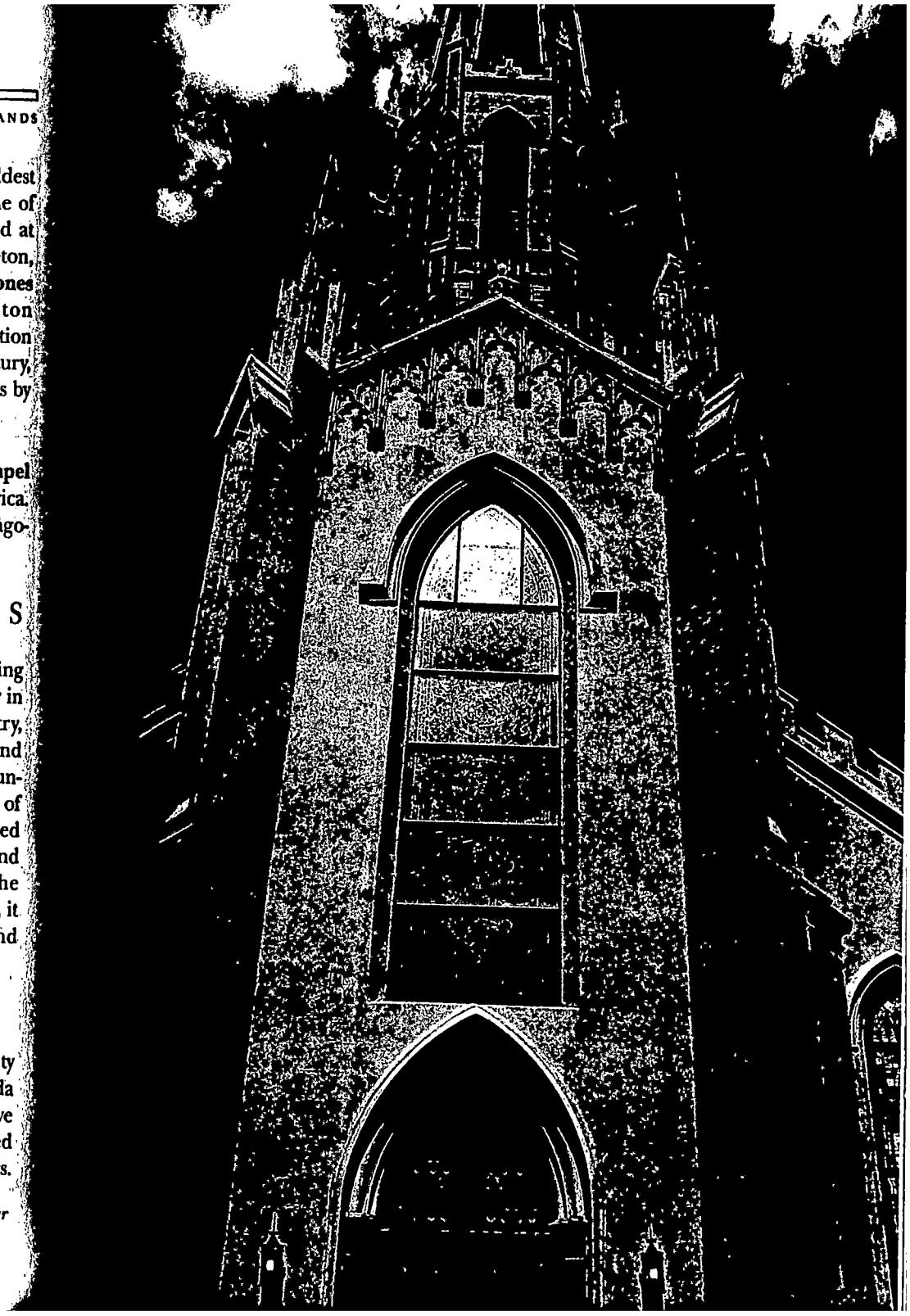
THE MIDLANDS

South Carolina was originally divided along the fall line stretching diagonally across the state from Aiken in the southwest to Cheraw in the northeast. The fall line thus divided the "civilized" low-country, including Charleston, from the "uncivilized" up-country north and west. Eventually the region that was not close enough to the mountains to be considered part of the up-country but too far north of Charleston to be claimed by the low-country began to be designated as the midlands. This tour begins in the capital city of Columbia and moves southwest toward Aiken and then southeast through the counties of Aiken, Barnwell, Allendale, and Bamberg. From there, it swings north to cover the midlands area south of Columbia and then turns northeast to the Pee Dee River country near Florence.

COLUMBIA

In 1786 the South Carolina legislature voted to establish a capital city near the geographic center of the state, where the Broad and Saluda rivers converge to become the Congaree River. The decision to move the seat of government from Charleston to the new site represented a compromise between up-country farmers and low-country planters.

OPPOSITE: *Columbia's First Prebyterian Church where Woodrow Wilson's father served as minister from 1870–1874, and where his parents are buried.*



The planned city was surveyed in 1787 on a two-mile-square plot. By laying out all streets 100 feet wide and main thoroughfares 150 feet wide, the planners created a spacious town where, they hoped, diseases would not spread rapidly from house to house. The city was named after Christopher Columbus.

James Hoban, later the architect of the White House, designed the first state house, where the South Carolina General Assembly met in 1790. When George Washington visited there in 1791, he described Columbia in his journal as "an uncleared wood with very few houses in it." Just west of the present State House, a granite **monument** marks the site of the first structure. The textile industry and other businesses were active in Columbia by the early 1800s. In 1801 the University of South Carolina (then South Carolina College) was chartered. The population grew and the economy thrived through the 1830s. A convention was held in Columbia at the First Baptist Church on December 17, 1860, to draw up the South Carolina Ordinance of Secession. The document was completed and signed in Charleston on December 20, after a smallpox epidemic caused the relocation of the convention. The First Baptist Church was the site of meetings of the South Carolina General Assembly during Reconstruction when the State House was under construction.

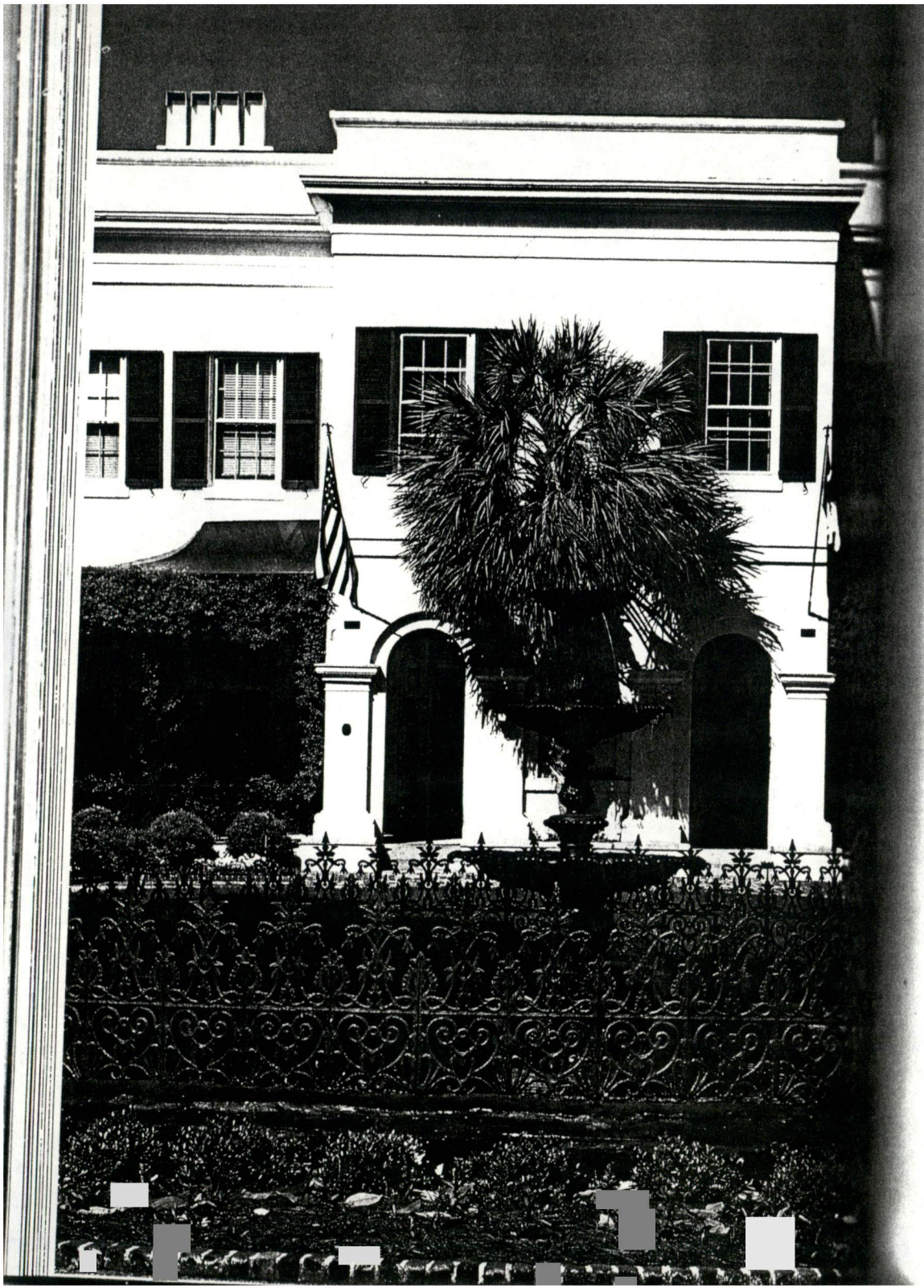
The **First Presbyterian Church** (1324 Marion Street) was organized in 1795. The present Gothic Revival building was built in 1853 and remodeled and enlarged in 1925. The **Ladson Presbyterian Church** (1720 Sumter Street) was organized in 1838 as a Sunday school for blacks by the First Presbyterian Church; the present building, the second on this site, was built in 1896. **Saint Peter's Catholic Church** (1529 Assembly Street) was first built in 1824 for Catholic immigrants who had moved to the area to construct the Columbia Canal; the present church was built in 1906. The High Victorian Gothic **Washington Street United Methodist Church** (1401 Washington Street) was rebuilt in 1866 and again in 1872 after it burned during Sherman's 1865 march through Columbia.

During the Civil War, hospitals, banks, a Confederate mint, and a weapons factory operated in the capital. As Sherman's army proceeded through the state, thousands of people took refuge here. Sherman and his Federal troops took the city on February 17, 1865, after shelling it from across the Congaree River on February 16. On the first night of Sherman's occupation of the city,

most of Columbia was destroyed by fire. Eighty-four blocks were left in ashes. Some historians have pointed out that the fires that destroyed much of Columbia were in part the responsibility of evacuating Confederate troops who set fire to cotton bales, piled in the streets, to keep the cotton from Yankee hands. Others point to the fact that whiskey left behind by the Confederates fueled the passions of some Federal soldiers, who did indeed set fires in Columbia. Later, Sherman insisted that he never wanted to burn Columbia and pointed out that he led the effort to put out the fires.

In the area known as **Arsenal Hill,** which includes the Governor's Mansion Complex and the surrounding nineteenth-century residential district, is the **Columbia City Hall** (1737 Main at Laurel Street), built in 1874 to serve as a federal courthouse and post office. The **Columbia Historic District** is a residential area that includes the Robert Mills House and other mansions of various architectural styles built for the city's bankers, merchants, and lawmakers. A notable example is the **Seibels House** (1601 Richland Street, 803–252–7742). The oldest home in Columbia, built in the late 1700s and renovated in the 1920s, it is now headquarters for the Historic Columbia Foundation. Many of the homes burned during Sherman's occupation in 1865. The **Old Campus District** of the University of South Carolina includes the campus buildings designed by Robert Mills, the 1805 Rutledge College, and the 1827 Maxcy Monument. **Allen University** (1530 Harden Street), with a small campus built between 1881 and 1941, is named for the founder of the African Methodist Episcopal Church, Bishop Richard Allen. The brick Georgian Revival **Chapelle Administration Building** was built in 1922 to designs by John Anderson Lankford, a leading black architect of the day. The school emphasized training for the clergy and also offered industrial and agricultural courses and a law curriculum, a feature distinguishing it from other southern schools for blacks. The **Saluda Factory Historic District** (along the Saluda River in West Columbia, southeast of the intersection of Routes I-126 and I-26) was a Confederate prisoner-of-war camp. The granite foundations of the factory complex are all that remained standing after the burning of Columbia.

Fort Jackson, named for President Andrew Jackson, was built in 1917. On the post is the **Fort Jackson Museum** (Jackson Boulevard, 803–751–7419) with collections relating to the history of the fort.



South Carolina State Museum

Beside the Congaree River is the 1895 **Columbia Duck Mill** (formerly a manufacturer of heavy cotton duck fabric); it was among the first cotton mills in America to be fully powered with electricity. The renovated factory building now holds the state museum complex. Each level of the massive, four-story brick mill highlights a different aspect of life in the state. An art gallery features works by artists with South Carolina connections. Natural history exhibits cover modern and prehistoric animals and the geology of the region. Science and technology exhibits include a section on the development of the laser and maser by the 1964 Nobel Prize winner in physics, Charles H. Townes, a South Carolinian. Cultural history exhibits display artifacts illustrating the region's history from about 12,000 B.C. to the present. The complex is also the headquarters for the **Greater Columbia Convention and Visitors Bureau** (803–254–0479).

LOCATION: 301 Gervais Street. HOURS: 10–5 Monday–Saturday, 1–5 Sunday. FEE: Yes. TELEPHONE: 803–737–4921.

Riverfront Park and Historic Columbia Canal (off Laurel Street, 803–733–8613) preserves a one-mile canal completed in 1824. It allowed barges to bypass the rapids that presented the only navigational hazard where the Saluda and Broad rivers join to become the Congaree. By 1895 the canal powered the Columbia Duck Mill, also called the Mount Vernon Mill. The park surrounds the city's original hydroelectric plant and restored waterworks facility, which is open to the public.

Governor's Mansion Complex

Two blocks north of the Canal Park is the nine-acre Governor's Mansion Complex, which comprises the Governor's Mansion, Lace House, and Boylston House. The **Governor's Mansion,** completed in 1855, is a two-story stucco structure with wrought-iron grillwork ornamenting the flanking porches. Originally the officers' quarters of the state arsenal's military academy, the building has been the governor's residence since 1868. Some rooms are open to the public. Also enclosed in a block-long area surrounded by a wrought-iron fence and gateway are the **Lace House** (803 Richland Street), built

OPPOSITE: *A palmetto, the South Carolina state tree, stands in front of the Governor's Mansion in Columbia.*

in 1854 with Greek Revival elements, and the **Boylston House** (829 Richland Street), built in the 1820s.

LOCATION: 800 block of Richland Street. HOURS: By appointment only. FEE: None. TELEPHONE: 803–737–1710.

Mann-Simons Cottage

This cottage was built around 1850 by Celia Mann, a freed slave from Charleston, one of 200 free blacks in Columbia. Mann established the First Calvary Baptist Church here, one of the earliest post–Civil War black churches in South Carolina. The structure, restored to the period of the 1880s, was also home to Bill Simons, a black musician and music teacher. It houses a museum of African-American culture, including personal items that belonged to Mann and other black Columbia residents.

LOCATION: 1403 Richland Street. HOURS: 10–4 Tuesday–Friday, 11–2 Saturday. FEE: Yes. TELEPHONE: 803–254–1450.

Hampton-Preston Mansion

The mansion, built around 1818 and originally owned by the wealthy merchant Ainsley Hall, was the townhouse of the Hampton family from 1823 to 1873. This well-known South Carolina family included three Wade Hamptons: The first was a veteran of the American Revolution and a general in the War of 1812; his son inherited his plantations and became even richer; the third, a Civil War general, served later as a South Carolina governor and U.S. senator. The house passed to State Senator John S. Preston with his marriage to Caroline Hampton, and in the 1840s, they changed the red brick to stucco and added a suite of twenty-four rooms. The two-and-a-half-story structure, with Jeffersonian Classical elements, has a full-width Doric portico with a full entablature and a wrought-iron railing over a high arcaded basement.

During the Federal occupation of Columbia, the house was the headquarters of General John Logan, who intended to destroy it upon his departure. However, it was saved by an Ursuline nun, Sister Baptista, who had known General Sherman before the war. She asked Sherman to provide a shelter for the girls in her care after her convent had burned. The general instructed her to choose "any of the houses left in the city" for her use. According to the historian

Burke Davis, "Logan swore fearfully when he was handed Sherman's order" but yielded the house to the determined nun.

The house is furnished with family pieces from three plantations of the Hamptons and Prestons, including photographs, crystal, and china from the family's Millwood Plantation. The Rococo Revival furniture in the drawing room reflects Caroline Hampton Preston's tastes. A centerpiece of the Manning Room, which features fashions of the 1800s, is a gold silk brocade wedding dress. Other family pieces include General Wade Hampton II's gold-handled umbrella and his father's ivory and ebony dominoes.

LOCATION: 1615 Blanding Street. HOURS: 10:15–3:15 Tuesday–Saturday, 1–5 Sunday. FEE: Yes. TELEPHONE: 803–252–1770.

Robert Mills Historic House

One of the ten or so documented residences designed by Robert Mills, this house was built for Mills's friend Ainsley Hall, a prosperous merchant who had lived in the house across the street until he sold it in 1823 to Wade Hampton I. The story goes that Wade Hampton took his new bride on a buggy ride around Columbia and told her he would buy her any home she wanted. When Mrs. Hampton chose Ainsley Hall's house at 1615 Blanding Street, Hall sold quickly at a good price, but without consulting his wife, who refused to move until her husband agreed to build her a new house, bigger than the first, across the street and looking down on the old one.

The brick two-story house, with a two-story Ionic portico built over a high, aboveground arcaded basement, is one of the most ambitious of Mills's Greek Revival structures. The house, with three-part Venetian windows with movable interior shutters, has a symmetrical floor plan: four rooms to each floor, with curved ends in two rooms and the main hall. Mills is best known as the designer of the U.S. Treasury Building, Patent Office, and the Washington Monument in Washington, DC, although his plans for the monument were not followed. The Halls never occupied the house because Ainsley Hall died before it was completed. His widow sold it to the Presbyterian Synod for use as the Columbia Theological Seminary. The restored brick townhouse now houses a decorative-arts museum of early-nineteenth-century furnishings.

LOCATION: 1616 Blanding Street. HOURS: 10:15–3:15 Tuesday–Saturday, 1–5 Sunday. FEE: Yes. TELEPHONE: 803–252–1770.

The brick Greek Revival **First Baptist Church** (1306 Hampton Street), with four Tuscan columns of molded brick, was the site of the first meeting of the South Carolina Secession Convention held in 1860. Legend has it that the church escaped burning during the Federal occupation when a black sexton of the First Baptist gave soldiers directions to an old wooden structure instead of this one.

Woodrow Wilson Boyhood Home

Built in 1872 by the Reverend Joseph Ruggles Wilson and Jessie Woodrow Wilson, the Tuscan-villa-style house was the home of Thomas Woodrow Wilson from the age of 14 to 17. Known as "Tommy" to Columbians, Woodrow Wilson lived here while his father was a professor at the Columbia Theological Seminary and the minister of Columbia's First Presbyterian Church. The house, with gas lighting fixtures, Wilson family photographs, period pieces, and some original furnishings, is a good example of a Victorian middle-class Presbyterian home during the period of Reconstruction in South Carolina. Furnishings include the bed where the twenty-eighth president was born when the family lived in Virginia.

LOCATION: 1705 Hampton Street. HOURS: 10–4, Tuesday–Saturday, 1–5 Sunday. FEE: Yes. TELEPHONE: 803–252–1770.

Also on Hampton Street is the **Chesnut Cottage** (1718 Hampton Street, private), the Civil War home of Confederate general James Chesnut and his wife, writer Mary Boykin Miller Chesnut, author of *A Diary From Dixie,* written during the Civil War but published posthumously in 1905. The white frame one-and-a-half-story house is a good example of the "Columbia cottage": It has a central dormer with an arched window above the central entrance; the small porch has four octagonal columns and an ironwork balustrade. Mary Chesnut described a visit from Jefferson Davis to the house in 1864: When Davis was recognized on the porch by a passerby, a crowd gathered, and "the President's hand was nearly shaken off." The **Horry-Guignard House** (1527 Senate Street, private), a two-story frame residence with square front columns, is believed to have been built around 1813 by Revolutionary War colonel Peter Horry.

OPPOSITE: *The west parlor of the Robert Mills House, completed in 1825, contains an Aubusson rug and a pair of sofas from the period.*



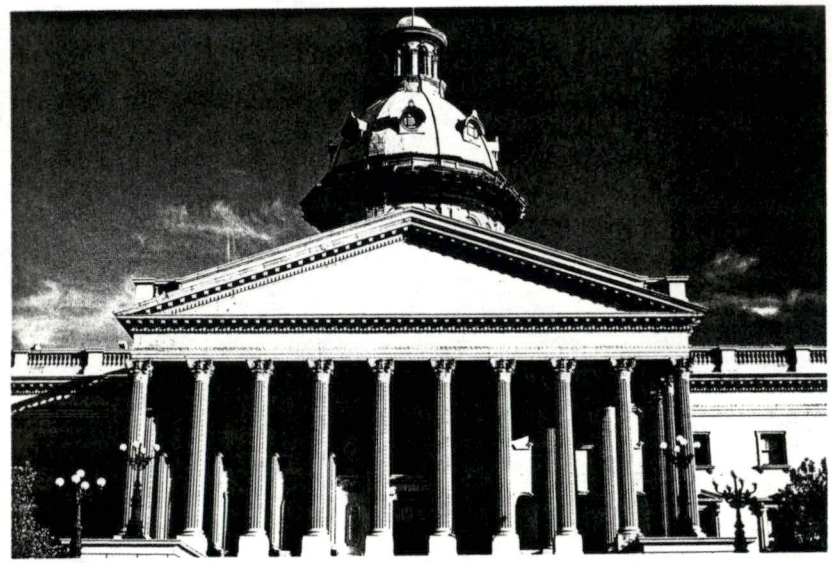
South Carolina State House

The three-story Italian Renaissance Revival State House of iron, native granite, and brick was designed by John R. Niernsee. It is the only structure on Main Street that predates the burning of Columbia. When General Sherman first glimpsed the unfinished building as his army arrived outside the city on February 16, 1865, he allowed that it was a "handsome granite structure." But when he noticed the Confederate flag waving defiantly above the building he authorized his batteries to fire on it from a distance of more than one-half mile. Bronze stars on the south and west exterior walls mark the spots where the shells hit. Begun in 1851, the State House was not completed until 1907. After Niernsee's death in 1885, Frank Milburn designed the central dome with a square base, octagonal drum, and cupola. In 1907 Charles Coker Wilson added the north and south porticoes. Impressive granite stairs lead to these columns and the second-floor entrances.

LOCATION: Main and Gervais streets. HOURS: 9–12 and 1:30–4 Monday–Friday. FEE: None. TELEPHONE: 803–734–2430.

University of South Carolina–Horseshoe

Founded in 1801 and opened in 1805 as South Carolina College, the original part of the campus was laid out in the shape of a horseshoe and surrounded by a brick wall. Located in the center of the Horseshoe is the **Maxcy Monument,** designed by Robert Mills in 1827 to honor the first college president, Dr. Jonathan Maxcy. **Rutledge College,** also designed by Robert Mills and completed in 1805, was the first of five college buildings constructed here before the Civil War. It was used as a Confederate hospital, as quarters for Union troops, and as a General Assembly meeting place during Reconstruction. In 1865 the school was rechartered as the University of South Carolina. The **South Caroliniana Library,** located in a three-story brick Greek Revival building built in 1840, holds a large collection of South Carolina manuscripts, personal papers, maps, and prints. The **McKissick Museum** features collections of antique silver and cut gemstones, as well as exhibits on Southern folklife, history, modern art, and science. A popular gallery here continuously shows selections from the museum's extensive



The South Carolina State House is constructed of blue granite from local quarries. To transport the stone, a special three-mile railroad was built from Columbia to the quarries in 1857. OVERLEAF: *The ruins of Millwood, the house where the Confederate General Wade Hampton spent much of his boyhood.*

Movietone News film collection, newsreels shot worldwide from 1919 to 1963.

LOCATION: 900 Sumter Street. HOURS: 9–4 Monday–Friday, 10–5 Saturday, 1–5 Sunday. FEE: None. TELEPHONE: 803–777–7251.

Near the campus is the **South Carolina Confederate Relic Room and Museum** (920 Sumter Street, 803–734–9813), where exhibits focus on all periods of South Carolina history, with the primary collection devoted to the period of the Confederacy. Relics include firearms made in South Carolina, sabers, flags, currency, newspapers, photographs, and uniforms from the colonial period to the present.

Built in 1846 and designed by Edward Brickell White after the design of England's York Cathedral, **Trinity Cathedral** (1100 Sumter Street) is one of the South's finest examples of ecclesiastical Gothic Revival architecture. The structure survived the burning of the city in 1865. It has old-fashioned box pews, hand-carved choir stalls, a marble baptismal font designed by Hiram Powers, and a ceiling with

associate of science in nursing at Beaufort in cooperation with Beaufort Technical College and at Sumter with Sumter Area Technical College and associate of science in general commerce and in secretarial science at Lancaster and Union and in criminal justice at Lancaster.

University of South Carolina-Beaufort had more than 700 students and a full-time faculty of 17 in the 1980s at a five-building campus that had been the site of the former Beaufort College. Student activities include the Student Government Association, an honor society, and a student newspaper. University of South Carolina-Lancaster had more than 700 students and a full-time faculty of 34 on a four-building campus. Among fifteen student organizations are the Student Government Association, *No Name Communicator* weekly newspaper, and *Excalibur/Synthesis* yearbook and magazine. University of South Carolina-Salkehatchie enrolled more than 700 students and had a full-time faculty of 34. There are seven buildings on the Allendale campus located on three separate sites. The thirteen student organizations include the Student Government Association, an honor society, and *Salkehatchie Literary Magazine*. There is an intercollegiate baseball team. The University of South Carolina-Sumter enrolled more than 1,200 students and had a full-time faculty of 43. The University of South Carolina-Union had more than 300 students and a full-time faculty of 14. It is located on a nine-acre campus with six buildings. Among student organizations is the Student Government Association, a student newspaper, and a yearbook.

The university system conducts the bachelor of arts in interdisciplinary studies degree program, which permits students to earn all but fifteen credits in the two-year colleges and in correspondence, television, or independent studies. Extension classes and graduate courses are conducted at the two-year campuses. The two-year campuses are administered by deans. Thomas Franklin Jones, Jr., president of the University of South Carolina from 1962, became the first president of the system in 1964; he also served as chancellor of the Columbia campus from 1964 to 1974. A twenty-member board of trustees governs the system; it is comprised of representatives from each of the state's sixteen judicial districts and four *ex officio* members: the governor, state superintendent of education, and the chairmen of the state senate and house committees on education. The board selects the president of the system, who also serves as president of the University of South Carolina at Columbia. James Bowker Holderman has been president of the system and of the University of South Carolina at Columbia since 1977.

South Carolina, University of. The Horseshoe, Columbia, South Carolina 29208 (803) 777–3101. The South Carolina legislature granted a charter for South Carolina College at Columbia, South Carolina, on December 19, 1801. A twenty-four-acre site was acquired, and South Building (later Rutledge College) was constructed in 1803. Jonathan Maxcy (BDAE) was appointed the first president in 1804; he served until his death on June 4, 1820. The college was opened on January 10, 1805, to nine students with a faculty of two. The first degrees were conferred on one student in 1806 and five male students in December 1807. North Hall (later De Saussure College) was completed in 1809. Thomas Cooper (BDAE) was president from 1820 to 1834. Robert Woodward Barnwell served as president from 1835 to 1841 and again from 1866 to 1873. The College of Engineering was established in 1848. College Hall was built in 1855. Cadet companies were organized in 1861, and the college was closed in June 1862 when the entire student body volunteered for service in the Confederate army. The college buildings were used as a Confederate military hospital during the rest of the Civil War. The Union Army took possession of the college buildings on May 25, 1865. Maximilian LaBorde, head of the school from 1861 to 1865, was credited with saving the college from destruction during the military campaign of William Tecumseh Sherman.

The institution was reopened as the University of South Carolina in 1865. Schools of Law and Medicine were established. Admission of a black student in 1873 led to resignation of the faculty; the school was reorganized and reopened with restrictions imposed on admission of black students. A normal school was opened in Rutledge Hall. Continued conflict led to the college being closed again in 1877. It was opened as the South Carolina College of Agriculture and Mechanic Arts in October 1880 with William Porcher Miles as president (1880–1882). He was succeeded by John McLaren McBryde (1882–1891) and James Woodrow (1891–1897). The Law School was established in 1884. The college was re-chartered in 1906 as the University of South Carolina. Samuel Chiles Mitchell (BDAE) was president from 1908 to 1913; he was succeeded by William Spenser Currell (1914–1922). The Students' Army Training Corps was conducted on the campus during World War I. The College of Education was established in 1906, the School of Commerce in 1919, and the College of Journalism in 1923. Leonard Theodore Baker (1931–1936) and James Rion McKissick (1936–1944) directed the university during the Great Depression and World War II. Naval V–5 and V–12 programs were conducted on the campus during World War II.

The School of Nursing was instituted in 1957. A regional campus system was organized in 1957 with opening of the first extension center in Florence, South Carolina. Additional branch campuses were established at Conway (1959) and Aiken (1961), South Carolina. The Conway branch had been organized as Carolina Coastal Junior College in 1954 in affiliation with the College at Charleston.* In 1958 the College of Charleston discontinued the affiliation, and in 1959 the junior college chose to become a regional campus of the university. The Aiken campus was initiated in 1961 as a two-year branch. Thomas Franklin Jones, Jr., served the longest term as president from 1962 to 1974. In 1964 the university was reorganized as the University of South Carolina System, the president of the university also serving as president of the system. The School of Medicine was opened in 1977. South Carolina College was reestablished as the honors college in 1978.

On the 216-acre main campus are more than 130 buildings, including South Caroliniana Library (1840), World War Memorial building, Old Observatory, Osborne Administration Building, Sloan College art building, Barnwell College psychology building, Humanities Classroom Building, Rutledge College Chapel,

Medical Sciences Building, Peabody College of Education, Carolina Coliseum (1968), Law Center (1973), Sumwalt College of Engineering, Gambrell Auditorium (1976), Russell House student center (1976), Earth and Water Sciences building (1981), Jones Physical Sciences Center, Coker Life Sciences building (1976), Thomas Cooper Library (1976), Callcott Social Sciences Center, Booker T. Washington Medical Center, Soloman Blatt Physical Education Center (1970), 32 student residence halls, and 4 apartment house complexes. The School of Medicine facilities are located at the Veterans Administration Medical Center. The university maintains the R. G. Bell Camp recreation facility thirteen miles south of the campus. Among graduates were Christopher Gustavus Memminger (BDAE); Confederate army generals Wade Hampton, Maxcy Gregg, and Thomas M. Logan; governors George McDuffie, John Peter Richardson, Robert E. McNair, and John C. West; Cardinal Joseph Bernardin; U.S. Senator Frederick Hollings; and industrialist John E. Swearingen. Among graduates who served on the faculty was Newton Edwards (BDAE); other faculty members included Edward Southey Joynes (BDAE) and Francis Lieber (BDAE).

University of South Carolina is a public, coeducational, residential and commuter university operating on the semester academic calendar with two summer sessions. In the 1980s there were more than 17,000 full-time and 8,000 part-time students with a full-time faculty of 980 and a part-time faculty of 265. The university is organized into colleges of Applied Professional Sciences, Business Administration, Criminal Justice, Education, Engineering, Health, Humanities and Social Sciences, Journalism, Nursing, Pharmacy, Science and Mathematics, Librarianship, and Social Work; Law School; School of Medicine; Graduate School; and South Carolina College. The College of Applied Professional Sciences offers bachelor of arts in interdisciplinary studies, science, and science in interdisciplinary studies and associate in science degrees. It includes a Hotel, Restaurant and Tourism Administration program. The College of Business Administration awards bachelor of science in business administration; master of business administration, science, and accountancy; and doctor of philosophy degrees. It conducts the Charles E. Daniel Center for Management Education and the Bureau of Business and Economic Research. The College of Criminal Justice confers bachelor of science and master of criminal justice degrees.

Degrees granted by the College of Education are bachelor of arts in education, science in education, and music education; master of arts, education, and arts in teaching; interdisciplinary master of arts in teaching; education specialist; doctor of education; and doctor of philosophy. It publishes the *University of South Carolina Education Report*. The College of Engineering offers bachelor of science in engineering, master of engineering, master of science, and doctor of philosophy degrees. The College of Health is organized into the School of Public Health and departments of Physical Education and Communicative Disorders. It awards bachelor of science in health education, arts in health education, and science in physical education; master of science, audiology, speech pathology, education, arts in teaching, public health, and science in public health; and interdisciplinary master of arts degrees. The College of Humanities and Social Sciences confers bachelor of arts, science, fine arts, music, media arts, and arts in interdisciplinary studies; master of arts; master of public administration; and doctor of philosophy degrees. The College of Journalism grants bachelor of arts in journalism, master of arts, and master of mass communication degrees. Located at the college are the South Carolina Press Association, South Carolina Broadcasters Association, South Carolina Scholastic Press Association, South Carolina Scholastic Broadcasters Association, and Southern Interscholastic Press Association. The College of Nursing offers bachelor of science in nursing, master of nursing, and associate in science in nursing degrees.

The College of Pharmacy awards bachelor of science in pharmacy and master of science degrees. The doctor of philosophy degree is offered jointly with the Medical University of South Carolina.* The College of Science and Mathematics confers bachelor of science, science in chemistry, and science in medical technology; master of arts, mathematics, and science; and doctor of philosophy degrees. The master of arts in teaching and interdisciplinary master of arts in teaching degrees are offered in cooperation with the College of Education. The College of Librarianship grants master of librarianship and specialist in librarianship degrees. There is a joint master of arts/master of librarianship degrees program with the Department of English. The College of Social Work offers the master of social work degree. The Law School awards the juris doctor degree. There are joint juris doctor/master of business administration, accountancy, arts in economics, and public administration degrees programs. Law student organizations include the Student Bar Association, two law fraternities, and an honor society. Students publish the *South Carolina Law Review*. The school conducts institutes of Law and Education, Criminal Justice, Legal History, and Continuing Legal Education.

The Medical School confers doctor of medicine and doctor of philosophy degrees. Affiliated with the school are Richland Memorial Hospital, William S. Hall Psychiatric Institute, and W.J.B. Dorn Veterans Administration Medical Center. South Carolina College conducts honors programs for the colleges of Humanities and Social Sciences and Science and Mathematics; it awards the *baccalaurens artium et scientiae* (bachelor of arts and science) degree. The university conducts the Belle W. Baruch Institute for Marine Biology and Coastal Research, Bureau of Governmental Research and Service, Center for Industrial Research, Earth Sciences and Resources Institute, Institute of Archeology and Anthropology, Institute of International Studies, Social Problems Research Institute, and Institute for Southern Studies. It operates the University of South Carolina Press. The university participates with Winthrop College* in the University Affiliated Facilities Program to improve the quality of life for the disabled and handicapped. It is a member of the National Student Exchange program.

Students may enroll in Air Force, Army, and Naval Reserve Officers' Training Corps program. Among more than 250 student organizations are the Student Government, professional associations, Phi Beta Kappa (1926) and 12 other

honor societies, 18 social fraternities, and 12 social sororities. Students publish the *Gamecock* triweekly student newspaper, the *Garnet and Black* yearbook, and *Portfolio* student magazine and operate WUSC-FM radio station. The university is a member of the Metropolitan Collegiate Athletic Conference and participates in men's football, track, cross-country, baseball, and soccer; women's softball and volleyball; and men's and women's basketball, golf, tennis, and swimming. The Thomas Cooper, Business, Law, Map, Medical, Music, and South Caroliniana libraries have more than 1.9 million volumes. The university is accredited by the Southern Association of Colleges and Schools. James Bowker Holderman has been president since 1977.

REFERENCES: John A. Bernardin, Jr., University of South Carolina; Daniel Walker Hollis, *University of South Carolina*, 2 vols. (Columbia: University of South Carolina Press, 1951 and 1956).

South Carolina-Aiken, University of. 171 University Parkway, Aiken, South Carolina 29801 (803) 648–6851. The South Carolina legislature granted authority to the University of South Carolina to establish a two-year, off-campus branch campus at Aiken, South Carolina, in 1961. In September 1961 the Aiken Center was opened in Banksia, a renovated mansion in Aiken, with 139 students and a faculty of 3, including Christopher S. Sharpe as director (1961–1963). He was succeeded by William Cecil Casper in 1963 who became chancellor in 1969 and served until 1983. In 1964 the college became a part of the University of South Carolina System. The campus was moved to a new 100-acre site in 1972 where the Classroom/Administration Building was completed. In 1973 the offering of junior level courses was approved, and in 1975 senior level courses and granting of baccalaureate degree programs were approved. In September 1976 the campus was granted academic autonomy, and the first bachelor's degrees were awarded in May 1977. The college gained regional accreditation in 1977. On the 144-acre campus are the Administration/Classroom Building (1972), Gregg-Graniteville Library (1975), Student Activities Center (1977), Classroom Building (1978), and Supply and Maintenance Center (1979).

University of South Carolina-Aiken is a public, coeducational, commuter college operating on the semester academic calendar with two summer sessions. In the 1980s there were 1,140 full-time and 600 part-time students with a full-time faculty of 80 and a part-time faculty of 50. The college is organized into divisions of Arts and Letters; Business Administration and Economics; Education; Mathematics, Computer Science and Engineering; Natural Sciences; Nursing; and Social and Behavioral Sciences. Degrees offered are bachelor of arts, science, and interdisciplinary studies; associate of arts; associate of science; and associate in science in technical nursing. The Office of Continuing Education offers a variety of noncredit courses and workshops. The Graduate Regional Studies Office provides credit toward graduate degrees offered by the University of South Carolina* at Columbia. Students may enroll in Reserve Officers' Training Corps programs at the University of South Carolina (Naval) and at Augusta College† (Army). There are more than fifty student organizations, including the Student Government, professional associations, and special interest groups. Students publish the *Hoof* student newspaper and *Broken Ink* literary magazine. The college participates in men's baseball and golf, women's volleyball, and men's and women's basketball. The Gregg-Graniteville Library has more than 78,000 volumes. The college is accredited by the Southern Association of Colleges and Schools. Robert E. Alexander became chancellor in 1983.

REFERENCE: Frankie H. Cubbedge, University of South Carolina-Aiken.

South Carolina Coastal Carolina College, University of. Post Office Box 1954, Conway, South Carolina 29526 (803) 347–3161. On July 23, 1954, a group of citizens of Horry County, South Carolina, met in the county library to discuss the need for a local college. The group formed the Coastal Education Foundation on August 6, 1954, and Coastal Carolina Junior College was opened on September 23, 1954, with 53 students under E. J. Woodhouse (1954–1955). The college was affiliated with the College of Charleston* as a branch campus with classes conducted in the Conway High School. The College of Charleston discontinued the affiliation in 1958. On August 1, 1959, the college signed a contract as a two-year regional college of the University of South Carolina.* Edward Marion Singleton became director of the school on July 1, 1963; he served until 1983. The college was moved in September 1963 into a new administration/classroom building on a 185-acre site that had been donated by Burroughs Timber Company and the International Paper Company. In 1964 the college became a part of the University of South Carolina System. In 1972 the South Carolina General Assembly granted the college the right to add a third year when enrollment reached 700 and a fourth year at 1,000 students; the third year was added in 1973 and the fourth in 1974. The first bachelor's degrees were awarded in 1974. On the campus are seven buildings: Administrative Building (1963), Williams-Brice physical education and nursing building (1972), Academic Building (1974), William A. Kimbel Library/Classroom Building (1977), College Center (1978), Fine Arts Building (1979), Wheelwright Performing Arts Center (1981), and Science Building (1982).

University of South Carolina Coastal Carolina College is a public, coeducational, commuter, liberal arts college. It operates on the semester academic calendar and conducts summer sessions. In the 1980s there were 2,300 students and a faculty of about 115. The college is organized into schools of Business Administration; Health, Physical Education, and Recreation; Humanities; Mathematics, Computer Science, and Statistics; Nursing; Science; Social and Behavioral Sciences; and Teacher Education. Degrees offered are bachelor of science in business administration, science in physical education, arts, science, arts in education, and science in education; associate in arts; and associate in science in nursing. The School of Science operates the M/S *Coastal* research vessel. It maintains a close relationship with the University of South Carolina's Belle W. Baruch Marine Field Laboratory at nearby Georgetown, South Carolina. Among forty student organizations are the Student Government Association, five honor