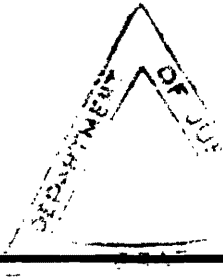




# Department of Justice

REFERENCE



"CIVIL RIGHTS AND THE COLD WAR"

ADDRESS

By

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Center for Study of Democratic Institutions

of the

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First I want to congratulate President Hutchins and the Board of Directors of the Fund For the Republic for the imagination and the initiative that have gone into the preparation of this Tenth Anniversary Program -- Challenges to Democracy in the Coming Decade.

Secondly, I wish to express my appreciation for being asked to consider with you the question of individual rights and privileges in this troubled time. It is a time of hope as well as we have seen in recent months and even days.

But bright as we believe the world could be, we must face it as it is, a world of nation states seeking public solutions to what are inherently personal questions. This is the dimension of the time we live in and which we call the Cold War -- a struggle very grand in scope but very personal in importance. For this reason an examination of those personal questions -- the rights and interests of individual human beings is as timely as ever before.

Some of you may be familiar with the recent classroom scene in a Russian elementary school. A little boy, when asked to describe the United States, said, "The United States is a sad country where workers and peasants are starving under capitalist exploitation by the cynical ruling classes." "Correct," said the teacher, "and what is the major goal of the Soviet Union?"

"To catch up with the United States," was the sober reply.

Throughout our parallel histories, I believe the United States, as a whole, has lagged behind Russia in the exploitation of one class by another.

The comparison is an old one. De Toqueville concluded his treatise on America with these prophetic words:

"There are at the present time two great nations in the world which started from different points ... I allude to Russia and America ..."  
"The principal instrument" of America he went on, is "freedom" and of Russia, "servitude."

"Their starting point is different and their courses are not the same; yet each of them seems marked out by the will of heaven to sway the destinies of half the globe."

In today's terms this may seem a generous oversimplification. We have only to look at the growing power of free Europe, or the snarling giant tiger that is Red China, or the awakened democracy of India, or the rising nations of Africa and Latin America, to know that there are other handholds on the globe, other forces capable of swaying its destiny. It would be quite wrong, and quite unlike a group such as the one assembled here, to become mesmerized by the present confrontation of the Soviet Union and the United States. Yet in this brief moment in time we can see some polarization of allegiance -- some to the Communist way -- some to the way of freedom.

This is the tug of the Cold War. We should be excused if we venture the opinion we are winning. As the President said last week in his State

of the Union Message: "Not a single one of the nearly fifty United Nations members to gain independence since the Second World War has succumbed to Communist control." In one case, a wall has gone up to prevent a great people from accepting the tug of freedom. History will record that while the Great Wall of Old China was built to keep barbarians out, this brooding ugliness by the Brandenburg Gate was built to keep civilized people in. And men may speculate on the current Soviet proficiency in the high jump.

But overall, we are winning -- Why? What is it we have that others will reach for, run for, die for? Surely, it is more than houses, cars and dishwashers. Even Communism, with some rearrangement of production priorities and a few other sacrifices by the New Class, could provide these things. No, the attraction of the so-called "Materialist" West is more a thing of mind than of matter. Why then do young foreign students become disaffected with Iron Curtain curricula and seek out our consuls? What is it that brings tears to the eyes of new Americans as they take the oath of citizenship? What is it they sought? What is it men want? Isn't it freedom of conscience and action conditioned only by the legitimate needs of private and public security?

Our civil rights laws and actions are founded on that premise. No recitation of them should be necessary. Observance of them is entirely necessary. Encouraging lip service is paid also in Articles 124 and 125 of the Soviet Constitution to the principles of freedom of religion, speech, press and assembly. But they have gone the way of many a New Year's Resolution. The British have proved a Constitution needn't be written. The Soviets have proved a Constitution must be more than written.

This discussion deals primarily with the United States and the Soviet Union -- not because we are the only nations involved, but because there is still some reason to believe we are the leaders respectively of the free and communist worlds.

Our Bill of Rights -- particularly in the first nine Amendments -- holds out a series of personal promises. The addition of the Fourteenth Amendment increased the commitment of the National Government to insure that those promises are kept. In most respects, our legislatures have followed with the greatest care the mandates implicit in the Bill of Rights and the Fourteenth Amendment. An independent judiciary has served well to correct misconstructions of those principles. And while the matters affected have ranged from freedom of speech and press to questions of search and seizure, and right to counsel -- most of these protections were well established from our early times and are invoked today not at all with regard to their validity -- which is certain -- but to their vitality in a modern society.

But the matter which the very term "civil rights" brings most immediately to mind in our time is the position of the American Negro in American Society and the treatment accorded him in all walks of life.

In this respect I would like to glance at the record.

For the headline hunter the violence at Mississippi has been the most noticeable event of the current period. The historian, however, will record the progress made -- not only in the unflinching commitment of the Federal Government to civil rights -- but more importantly, and more notably in the amount of voluntary compliance by southern officials and citizens in this area. For example over the past year in VOTING: -- In 29 counties in Georgia, Alabama, Mississippi and Louisiana, officials have voluntarily made voting records available to us without need for court action.

-- In about 50 counties in the same states, discriminatory practices have been abandoned voluntarily, avoiding the need for suit.

Where voluntary action was not forthcoming, however, we have brought suit.

Under the 1957 Civil Rights Act, the Department of Justice has undertaken 32 suits and 82 voting record inspections.

In TRANSPORTATION: -- Discrimination in interstate travel has disappeared. Virtually all bus and rail terminals were desegregated in 1961 pursuant to ICC regulations sought by this administration. In 1962 we surveyed 165 airports and found 15 still segregated. All are now desegregated, 13 voluntarily and the other 2 after suit.

At present, the only such segregated facilities in the country are bus and rail terminals in Jackson, Mississippi, and there we took successful legal action, which is now on appeal.

In EDUCATION: -- In 1962, 28 more Southern school districts desegregated voluntarily and peacefully, many after consultation with the Department of Justice.

As chairman of The President's Committee on equal employment opportunity in the Federal Government, Vice President Johnson, pointed out in November that Negro employment in the Federal Government stood at 28,986 at Grades GS-5 through GS-11, an increase of 18.3% over the previous years -- although the increase in such job vacancies was only 4%.

In Grades GS-12 through GS-18, the number of Negroes increased from 343 to 1380 -- a 33.1% increase, as compared with a raise in the total number of such jobs of 7.8%. In the private sector 104 major national business firms have signed equal employment pledges under the Plans for Progress Program.

The right to travel, to share public facilities and accommodations, together with the right to equal education -- these rights have been given Federal impetus as never before -- but again -- more importantly, they have received wide public acceptance in a quiet, normal way that hasn't hit the headlines.

The President's Order last November prohibiting discrimination in Federally assisted housing -- together with the actions of some 17 states and 55 cities barring discrimination in that area is a milestone on the march. And on this march the American Negro himself has walked well. Much depends on the scope and dignity of Negro leadership; and it is equal to the test.

The trail is long -- we've crossed rough terrain; and there's more ahead -- much more to do for the American Negro, the American Indian, the migrant worker -- minorities yes, as the American people themselves a minority in this world.

Meanwhile, back in the Kremlin's shadow, what do we find? We find over 100 persons executed in the past year for economic crimes -- most of them Jews. We find Christian faiths harassed and Christian peoples persecuted. We find a statement last year by Roman Rudenko, Soviet Public Prosecutor, that the very causes of crime in capitalist countries are absent in the Soviet Union. Then we find a complaint in PRAVDA that Muscovites removed daily without paying -- 77,000 bus tickets from help-yourself dispensers. We find a law branding as treason any unauthorized departure from the country -- and the unhappy story of a Jewish woman sentenced to be shot last February for "currency manipulation," after a prior three-year sentence in Siberia for trying to escape to Israel, and long after seeing her two daughters murdered by the Nazis. And we find a 1961 commentary on lawyers in a Soviet Paper as follows:

"There are two groups of lawyers. One: Modest, quiet, unobstrusive, who will acknowledge guilt (if his client is guilty) and refer to mitigating circumstances.

The other -- working with his vocal chords and elbows, even shedding some tears. His voice going through the whole courtroom--My client's arrest is due to a mistake. When the case was retried at the Public Prosecutor's demand, the same man was found guilty when another lawyer took his defense."

Another unobstrusive lawyer no doubt. Save us from them!

What is the difficulty here? What's missing in Communism's instant Utopia?

An appreciation for the natural rights of man? I should think so. It suffers from an overdose of Marxism - Leninism and a deficiency of Lockism - Jeffersonism. It would benefit so much from just a little exposure to First Amendment principles.

If freedom is to thrive in any corner of the world, there must be communication and a sense of law. There can be no meaningful discussion of civil rights until these concepts have been examined.

Turning first to communication, if our Constitution had followed the style of St. Paul, the First Amendment might have concluded -- "But the greatest of these is speech." In the darkness of tyranny, this is the key

to the sunlight. If it is granted, all doors open. If it is withheld, none. But a truth unheard is as much a social force as a tree falling in the lonely forest is sound. Truly free speech implies a guarantee of the right to listen, in passing, it was my impression that it was to prevent truth from going unrevealed that the Center itself was established on Eucalyptus Hill. There's no such hill in Russia.

Those matters which a government tries to conceal from the outside world are guides to its personality -- but what it would hide from its own people is a reflection of its character. Thus, the secret speech denouncing Stalin in 1956 - hidden from the public - told as much about its authors as its subject. More recently--in the past year-- mobs of angry people have tested the laws of many nations. We read about the Walloon-Flemish differences in Belgium, violence in Paris and Mississippi. But what did we hear of the wage and price riots in southern Russia - that left hundreds of dead and wounded - what beyond vague references to "rowdiness" - while during that same week both Pravda and Izvestia highlighted the following earthshaking events:

The stock market dropped in New York.

A group of New Jersey students protested U.S. atomic tests.

Two unknown persons slipped into the Soviet sector of Germany.

This is the fact of Soviet news policy. What is the doctrine?

I take it we can still look to Lenin for guidance on Soviet doctrine.

In 1903 he wrote indignantly:

"Until freedom of speech and of the press is declared there will not disappear the shameful Russian inquisition which persecuted profession of unofficial faith, unofficial opinions, unofficial doctrines."

Later he wrote:

"The periodical and non-periodical press and all publishing enterprises must be entirely subordinated to the Central Committee of the Party."

Thus, today's Soviet leaders have a fairly wide latitude of "Leninist" press policies to draw on.

There is, of course, freedom in the USSR to say the right thing. This was brought home to a young American visitor to Moscow who was earnestly explaining how any American could openly denounce the life and morality of the United States -- even ridicule the President.

"It is the same here," said the guide. "A Soviet citizen may also denounce life and morality in the United States and ridicule your President."

Freedom of communication involves both information and expression. I have touched on information. It is crucial to a dynamic society -- which Communism claims to be. But expression is no less so. Thus we read with concern the Soviet Party's reply last month to Russian intellectuals who had claimed that "without opportunity for different artistic directions, art is condemned to death." The reply said that the Party does not tolerate experimentation in the arts, and "is determining the tasks and directions of artistic creativeness." What sad rebuff! but what a fine claim!

And we shall wait to see if and how a young Soviet poet changes a now famous poem of protest - particularly so since it concerns racial persecution.

The Soviet government seems to have good working relations with the Soviet press. If the Soviet chief of state should take exception to the editorial policies of a paper, he needn't cancel his subscription; he just cancels the paper. But that is hardly necessary at present.

Soviet papers serve their Party well, rewriting human history even as it rolls off the presses of human endeavor. As the great hand writes, and having written, moves on -- the agitation that follows is a team of Soviet historians with erasers. Someone should tell them to relax.

I have tried to explain how difficult it is for me at least to picture the struggle for civil rights where there is a limit on communication. What about limits on law?

It seems to be recognized by some Soviet authorities that terror is inefficient. The so-called Special Board of Ministry of Internal Affairs has been abolished -- and with it, its function -- which was to send people to labor camps without a hearing, in secret procedures without right of counsel or appeal. Confessions must now be corroborated by other evidence. And all in all there seems to be a growing appreciation for what the Soviet call "legality" -- and a growing awareness among the Soviet legal profession itself of the obligation of law to society, and of lawyers to the law. The outcome of this trend remains uncertain. You may recall that after a great deal of noisy pride about "abolishing" the death penalty -- the Soviet Union in 1961, reinstated it for crimes described as "economic" and specifically for illegal transactions in foreign currency. Subsequently, two men were executed under an ex post facto application of the currency law.

From Harvard's expert on Soviet law, Professor Harold Berman, I learned of a conversation he had on this incident with a leading Soviet jurist. Berman had remarked on the unusual nature of the trial and sentence and suggested it violated the 1958 Soviet Principles of Criminal Procedure. The jurist replied, -- "we lawyers didn't like that" -- a response, Berman noted, which was no less remarkable for its "we lawyers" as for its "didn't like that."

I suppose what is needed is more lawyers who don't like things.

The law's slow progress in the Soviet Union may be due, in large part, to the lack of public debate. Thus the recent "anti-Parasite" laws by

which people not doing "socially useful work" -- may be exiled to remote areas for two to five years -- went into effect as quietly as the falling tumblers of a combination lock.

All great questions must be raised by great voices, and the greatest voice is the voice of the people -- speaking out -- in prose, or painting or poetry or music, speaking out -- in homes and halls, streets and farms, courts and cafes -- let that voice speak and the stillness you hear will be the gratitude of mankind. Man giving thanks -- Jews thanking the God of Abraham for their lives -- Siberian Christians thanking the Lord for their children -- people giving thanks. It is a good sound.

And the world is listening, watching, weighing, deciding . . .

Latin Americans listen to the stifled sounds of Cuba. Macao and Hong Kong receive the gaunt refugees of Red China and hear the unspeakable. Europeans watch what they hope is the final chapter in subjugation on that continent.

Africans can see these things -- and there is much to occupy their own moralists on their own vast continent.

There is ample evidence that dictatorial conduct is not confined to societies ruled by whites. South Africa's Sabotage Bill, and restrictive laws on voting and free speech, are no less encouraging than the Preventive Detention Act of Ghana, which empowers the government to imprison without trial for up to five years all persons suspected of subversion, or Ghana's Dignity of the President Bill passed last year which subjects Presidential detractors to 500 pound fines or 3 years' imprisonment. (If there is a Ghanaian Vaughn Meader -- he's laughing on the inside.)

Wrongs that passed as white no color can make right.

A nation, it is true, must work its own evolution in its own way and at its own pace. Time and tide have favored ours. The best hope we can have perhaps is that governments may listen to the voices of their people -- American governments have tried to do that. We have found that when people find a willing ear they are more disposed to lend a willing hand. We think with Jefferson that our government is, "The world's best hope; -- the only one where every man at the call of the law would fly to the standard of the law and would meet invasions of the public order as his own personal concern." This is a Virginian's answer to the demagogues of today, both foreign and domestic. It is the answer of thousands of Southern citizens and of the U. S. Marshals, most of them Southerners, who held the line at the Lyceum in Oxford.

It is clear that the standard of law in America flies to protect the civil liberty of all American citizens from private as well as public invasions. Thus the Sherman Antitrust and Interstate Commerce Act give protection from excesses of the business community. Other legislation guards the public and the working man from the abuses of labor. And today we face in this country a conspiracy which could be extremely



erosive of the rights and liberties of our citizens -- organized crime. So when we move against these excesses, we do so on behalf of all our people, and at their call. And the agencies and bureaus of government which answer this call, with the patience and care their work requires, deserve the respect of all Americans.

Finally, we have found that man's handhold on the globe is a precarious one. But we had always believed that. We always thought that our destiny was cradled in another Hand. And when Mr. Khrushchev reported that the Cosmonauts -- like the Bolshevik pilots of the early twenties -- reported seeing "no signs of God," we can only suggest that they aim -- with the rest of mankind -- a little higher. In the meantime, there is work to do here on earth -- to that day when Caesars render unto man what is man's.