

REMARKS OF THE ATTORNEY GENERAL  
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CHICAGO, ILLINOIS  
FEBRUARY 5, 1984

A century and a half ago a famous observer of American life wrote: "There are now two great nations in the world which, starting from different points, seem to be advancing toward the same goal . . . . Each seems called . . . one day to hold in its hands the destinies of half the world."

Alexis De Tocqueville was, as usual, remarkably prescient. The two great nations he had in mind were Russia and the United States. Both have continued to advance to the point where they are the most powerful nations in the world. And today the destinies of men and women around the world are indeed closely related to those of the United States and the Soviet Union.

It is thus with more than casual interest that people throughout the world wish to know what life is like in the Soviet Union and in the United States. And when we ask, "What is the human destiny in a communist state?" and, "What is the human destiny in a democratic state?" we must be ready to address a most fundamental subject -- the respective legal systems of the Soviet Union and the United States.

That is my subject today. I will begin by noting some similarities between the two systems. Then I will consider the historical origins of the two systems to show their vastly different foundations. Finally, I will consider the manner in which the Soviet legal system treats political dissidents. I believe that its treatment of dissidents best demonstrates the ultimate philosophical difference -- indeed the yawning philosophical chasm -- that exists between the two systems and indeed the two societies.

The point I wish to emphasize is that however much legality there is in the Soviet Union today, the legal system itself is merely the instrument of the Soviet leaders, theirs to do with as they will. In the Soviet Union, what ultimately rules is not the law, but men -- the leaders of the Communist Party.

The similarities between the two systems are structural. The elements I will touch on are not

precisely the same in structure nor do they function in the same way. But the elements resemble each other enough for one to say there are at least rough similarities between their system and ours.

Consider, for example, the courts. While the Soviet Courts cannot review legislative or executive actions, as ours can, they do, as ours do, hear criminal cases against citizens and civil disputes between citizens.

The Soviet Union has four levels of courts that are similar to ours. The Soviets have a Supreme Court, and so do we. They have the supreme courts of the Soviet republics -- we have state supreme courts and circuit courts of appeal in our federal system. The Soviets have regional or provincial courts -- we have county courts in our state systems and district courts in the federal system. The Soviets have what are called the people's courts, which generally are limited to disputes between individuals. We have similar courts -- though let me hasten to add it's not the "People's Court" you see on television. Ours are the courts of limited jurisdiction -- small claims courts, for example.

The Soviet system has due process rules at each stage of a criminal proceeding. So does the American system. The Soviets have pre-trial rules on such issues as warrants for arrest, warrantless arrests, expungement of arrest records, pre-investigative detention, preventive detention, search and seizure, probable cause for various criminal enforcement actions, the privilege against self-incrimination, and protection against adverse pre-trial publicity. We also have rules on these matters. And Soviet law, like ours, guarantees the right to counsel.

At the trial stage, the Soviet system, like ours, provides a general procedural due process. The defendant is presumed innocent until proven guilty. The burden of proof is on the prosecution. And guilt must be proved according to what is called "inner conviction."

The Soviet system provides for the defendant's rights to a trial, a speedy trial, and a public trial, and his right to confront adverse witnesses. We provide the same. After trial, the Soviet system generally has due process protections regarding appeal -- so do we. And the Soviet system has a prohibition against cruel and unusual punishment. Our prohibition, of course, is found in the Eighth Amendment.

These, then, are the similarities. But they exist within legal systems that both in terms of historical origins and political philosophy are vastly different.

Our legal system draws on the English common law and on the Western tradition of codifying law that is two millenia old. Our legal system represents a proud development of its rich heritage.

The Soviet legal system, however, is not even supposed to exist. The Bolsheviks of 1917 expected law to wither away as the state withered away. Glancing ahead to our time, they saw only the existence of a classless society, of true communism, where the need for law has been completely eliminated.

By the Thirties this early thinking had become obsolete as Soviet leaders decided that the establishment of sophisticated legal structures could serve their ideology. They believed that the rule of men could well be accomplished through a seeming rule of law. So they built a legal system from Roman and traditional Russian law -- a legal system inspired by expedience, not sincere belief in the rule of law.

Ironically, despite its hypocritical origins, the Soviet legal system, as developed and expanded in recent decades, seems to have had some good effects. Apparently, it has managed to achieve some degree of justice for the Soviet people. Ordinary citizens charged with ordinary -- that is, non-political -- crimes seem to be treated fairly.

Just how fairly, however, and just how much justice is achieved for the Soviet people, is unclear. And as for the political dissidents who pass through the Soviet legal system, it is clear that they are denied justice.

The Soviet legal system seems to be merely a paper entity when political dissidents stand trial, for the presumption of innocence and the procedural guarantees are quickly tossed aside.

Dissidents in the Soviet Union are typically charged with conduct that allegedly violates a criminal statute. Assuming there is no dispute about the facts, a Soviet defense attorney usually will argue that the law doesn't cover the conduct at issue.

We in America do not regard argument over the meaning of statutory language as somehow exceptional. Such argument is part of a tradition that permits judicial interpretation of the scope of legislation. Yet as a former Soviet defense attorney now living in exile explains in a recent book, this kind of argument is unavailing in the Soviet Union. [Dina Kaminskaya, Final Judgment: My Life as a Soviet Defense Attorney].

For a court to decide that a criminal statute does not reach the conduct in question, two conditions must be present. One is an underlying understanding that government may not exercise power in an arbitrary manner. The other is a clear recognition that the court has enough independence and power to weigh the rationality of the government's claim.

These conditions exist in our nation. But they do not in the Soviet Union. And the reason they do not is that the Soviet legal system is merely an extension of the Communist Party leadership. Accordingly, the fate of a dissident is not determined by the impartial application of law, but by the very partial determination of those who run the Soviet state. Because Soviet leaders cannot tolerate challenges to their ideology, they believe they must deal harshly with political dissidents, and so they tell the courts what to do.

The trials of dissidents thus cannot result in acquittal; they must result in conviction. There is no real trial, only a charade -- and then the punishment.

The Los Angeles Times recently reported the astonishing story of the most recent Soviet dissident to experience one of these charades.

In a single day, a former Soviet schoolteacher [Tatyana Trusova] was detained by authorities, tried, convicted, sentenced to 18 months in a labor camp, and then carried away to serve her sentence. This woman's crime? She was convicted under an old provision of the criminal code for the offense known as "habitually not working." But this was not really her crime. Authorities were upset that she might have been helping channel Western aid to families of political prisoners within the Soviet Union and that she might have been helping collect information about Soviet human rights abuses.

This case is interesting for the compression into one day of events that normally are drawn out for

six to nine months. It shows the degree to which Soviet authorities can manipulate their so-called legal system.

Plainly, there is no check on the Soviet leaders. There is no restraint on their decisions -- whether the traditional restraint supplied by a belief in God or in natural law, or the modern restraints supplied by democratic political institutions that draw their legitimacy from the consent of the governed. Unrestrained, the Soviet leaders are free to do as they please.

The distinguishing characteristic of the Soviet legal system thus is not the rule of law, but the rule of men. Whatever degree of justice has been achieved by the Soviet legal system, this is the most important fact about that system.

Two hundred years ago James Madison wrote: "The accumulation of all powers . . . in the same hands may justly be pronounced the very definition of tyranny."

A tyrannical nation uses any and every thing it wishes to use. Nothing is important in itself but only as a means to achieving the ends of the state. If much has changed about the Soviet Union since the time of Stalin, this tyrannical character of the state has remained the same. Whereas Stalin murdered political dissidents -- millions lost their lives this way -- Soviet rulers now deal with them in ways that are less bloody, but no less effective.

The Soviets have developed a sophisticated technology of repression to deal with dissidents. In addition to the incarceration that can be achieved through the legal system, they have perfected techniques for inducing the migration of dissidents to the West, sending dissidents to mental hospitals -- although they are mentally healthy -- and also having dissidents fired from their jobs.

One Soviet historian tells how he was fired from his job at a publishing house. He went to court to contest the bureaucratic maneuver by which he was dismissed -- but to no avail. He reports that the judge privately admitted being ready to decide the case in his favor until word came from higher up to rule against him. Now, whenever he takes a new job, the political police catch up to him, and he is fired. He faces a lifetime of unemployment.

When a state has so much power, and knows no bounds, it is the people of that state who unhappily must live under the constant possibility that if they step out of political line, the state will use whatever means it can, including the legal system, to repress them.

In the same part of Democracy in America that I quoted from earlier, Tocqueville also wrote that the organizing principle of society in America is "freedom," while in Russia it is "servitude." We are 150 years removed from Tocqueville's era, and Russia is now the Soviet Union. Yet Tocqueville was more enduringly prophetic than anyone then living could possibly have guessed. America today is indeed a land of freedom, a democracy. The Soviet Union, however, is a land of servitude, a totalitarian society. Whatever features the Soviets' legal system may appear to have in common with ours, the respective systems are as different, in the final analysis, as night and day.

Under a communist state, dread and fear mark the life of any person living under it who loves freedom. It is a life that sharply contrasts with the life of an individual in a democracy such as ours, where a genuine Constitution protects freedom, and where government is limited. The choice between the two possibilities -- between the two destinies of mankind -- is self-evident.

To choose freedom over servitude, however, must not be merely a mental exercise. Not for us, not for any of the world's peoples. Such a choice also requires commitments of heart and will. It may even require the sacrifice of body. The blessings of freedom, as Thomas Paine wrote two centuries ago, require the "fatigue of supporting it." Fatigue, in my dictionary, is the tired feeling that comes from hard work.

I wish each of you the very best as you leave De Paul. You have every reason to be proud of yourselves and this outstanding university. And you have every reason to be proud of the freedom in which this nation was born and which has given birth to your opportunities -- the freedom that, I hope and pray, is indeed the destiny of nations everywhere.