



# Department of Justice

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REMARKS

BY

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It is a special honor for me to speak before you as Attorney General of the United States. I am sure you will be greatly relieved to know that it is not my intention to speak to you today like a lawyer -- at least, not only like a lawyer. Instead, I wish to offer my views and that of my government on some of the compelling issues of our day. I am the first to admit, however, that lawyers often have a good deal of interest to say -- including one graduate of your own law faculty who now works across town in the Kremlin, Mikhail Sergeevich Gorbachev.

Let me start by telling you what the U.S. Attorney General does. Some years ago, it is said, the American actress Marilyn Monroe was introduced to a predecessor of mine, Robert Kennedy. She had a tiny black purse, and out of it, she took a folded piece of paper. It was a list of questions she had prepared to ask Bobby Kennedy, all written out in bright lipstick. The first one was: What does an Attorney General do?

Well, to put it simply, I am the person whom Congress has designated to tell the government, and in particular the President of the United States, just what the law is.

Since 1789, when my job description first was spelled out under the Judiciary Act, seventy six people have grappled with that formidable assignment.

The scope of the job has widened greatly over the past two centuries -- the first Attorney General had to do it on his own. He didn't even have a law clerk! Today, I run a Department that is served by some 75,000 men and women in all -- about 5,000 of them are lawyers. Some personnel work for the Federal Bureau of Investigation and the Drug Enforcement Administration, agencies which investigate criminal acts that violate U.S. federal laws. Others are employed by the Immigration and Naturalization Service, which supervises the entry into the United States of more than 100,000 refugees each year. Still others work for the Marshal's Service, which protects the integrity of our courts and the judicial system and for the Bureau of Prisons, which runs the federal prison system. Finally, we have dedicated public servants working in the Community Relations Service, an agency which helps localities across the country peacefully to resolve ethnic, religious and racial tensions.

Yet as much as the office of Attorney General has changed over two centuries, the essential requirements of the work remain the same. The Attorney General must be learned in the law, but also must be a person suited and attuned to the times, if he or she is to do justice. He or she must uphold the law at this very moment in history, while respecting the fundamental tenets of a two hundred year-old Constitutional system.

I find it at once fascinating and reassuring that many of the most timely and pressing issues of our own day -- in the United States, in the Soviet Union and elsewhere all over the world -- are the same questions which so preoccupied the framers of the U.S. Constitution two centuries ago.

Today, we of the Information Age still grapple with the questions central to democratic government -- fundamental questions that stirred the great figures of the Age of Reason.

What is the proper relationship between the citizen and the State? What are the merits of the rule of law over the rule of men? What is the nature of just and responsive government? How should local and regional authorities interact with the central government? What is the link between respect for human dignity and ensuring societal advancement? How can we protect the rights of minorities while respecting the will of the majority? How do we balance the protection of individual rights against the need to preserve public order? What are the proper roles of Church and State in a society? How should domestic law relate to internationally recognized standards of conduct?

These questions, like all great questions of political philosophy, are so elemental that they are impossible to answer for all times, all places, all peoples and all circumstances. In my own country, these age-old issues are constantly posed and examined anew -- by the courts, by the press, by the public, by lawmakers and the government.

I believe deeply that it is precisely in this rigorous and passionate search for answers that America draws its identity and its dynamism as a democratic nation from generation to generation.

American legal culture, like our nation, has been shaped by this same dynamism. Our legal culture is constantly evolving through constant re-examination of the very issues I've mentioned above. Indeed, one of our most eminent jurists once observed, "The spirit of liberty is the spirit which is not too sure that it is right." Our legal culture has perhaps its deepest origins in Judeo-Christian ethics, where just laws -- beginning with the Ten Commandments -- seal God's covenant with mankind, and in the precepts of natural law that were generated during the Age of Enlightenment.

But it draws its life blood from the common law -- precedents set forth by judicial decisions within our courts -- and not from codes or caveats. The life of the law, as another of our great jurists has said, has not been logic, but experience.

In light of these traditions -- and our own democratic experience -- the law, and not man, must be considered supreme in society. And the society where law is supreme, we think, is a society where the individual can live in greatest freedom.

I believe that when lawyers pursue their profession with this commitment -- to the supremacy to the law -- they can make a critical difference in the quality of their nation's life. That is what drew me to my profession in the first place, and later to the job of Attorney General.

I came to my present position after serving as a private lawyer, a prosecuting attorney, and then twice as Governor in my home state of Pennsylvania. Pennsylvania is where our Declaration of Independence was adopted and where our Constitutional Convention was held, in the city of Philadelphia.

We are very proud of one of Pennsylvania's distinguished delegates to that convention, a world citizen of the Enlightenment, Benjamin Franklin. On the last day of that convention, Franklin made this appeal to stubborn critics of the long- and hotly-debated draft Constitution: "I consent, Sir, to this Constitution, because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good."

Franklin's words show that from the beginning, our Constitutional democracy was an experimental, rough and tumble affair -- a very American process of give-and-take, conflict and compromise, but above all, one of general consent. The framers of our Constitution knew that the document they drafted and the legal system they established could never be perfect.

After all, both were the work of human beings who were inherently fallible even as they were endowed with certain inalienable God-given rights. And, if I may paraphrase our Constitution, we continue to hold both these truths to be self-evident.

So, the framers of our Constitution, knowing they could not accomplish what was perfect, took great care to launch what was perfectible. Ever and always -- but never ultimately -- perfectible. They set in motion a political system that would remain stable enough to withstand the harrowings of subsequent history, yet flexible enough to permit corrections and adjustment through legal processes. What is our Constitutional democracy, if not a legal framework ensuring our society's peaceful adaptation to the unexpected -- to irreversible, but welcome, change?

The framers of our Constitution believed that while human evils could never be completely eradicated, they can and should be checked -- neutralized -- without disruption or violence within a properly organized society. So, they wrote into the Constitution political limitations on governmental authority that drew the outermost bounds of our system of laws. Within those bounds, the Constitution establishes a republican form of government, operating by the consent of the people, given through periodic, free, and open elections.

The Constitution created a federal system, designed to harmonize the existence of a central authority to deal with matters national in scope, yet permitting regional and local initiatives by the states. Indeed, the states have been called "laboratories of democracy," for they have served as crucibles for innovation and change over the years. The Constitution further provides for the balanced division of governmental power among three coordinate yet independent branches: the executive, the legislative and the judiciary. This comprises our famous system of "checks and balances" that works so splendidly whenever our society is faced with crisis. Finally, the Constitution incorporates a set of legal reservations and guarantees -- the Bill of Rights -- that are designed to keep the government from infringing on individual liberties.

These arrangements have worked well for us in the United States. And while our democratic system has some characteristics that are ours alone, other aspects have proven to have universal appeal and application. There are many variations on the theme of democracy in the world today, but the irreducible conditions of democracy, embodied in our Bill of Rights, are clear: irreversible guarantees of the rights of the individual through restraints on government power. Where these guarantees are absent there is no true democracy. Indeed, where they are absent, you can very easily have dictatorship.



Which leads to the notion, widespread in the days when the American system of government was taking shape, that the government is best which governs least. And it is true in the sense that we think government should not constrain human creativity or enterprise, nor intrude on the citizen's fundamental rights of conscience, religion, expression, assembly and movement.

But there still is great scope for government to act. Under the guidance of both the electorate and the law, government has an obligation to ensure that citizens enjoy maximum freedom of thought, action and opportunity in their daily lives. In its preamble, our Constitution charges the government not only to "insure domestic tranquility" and "provide for the common defense," but to "promote the general welfare" as well.

We believe that democracy begins and ends with the citizen and his or her rights. If a democratic political system is to work, it must have an informed and engaged citizenry. Indeed, the greatest societal advances in our country in this century -- from suffrage for women to the rise of organized labor, from the concept of due process to the civil rights movement -- all these have come from the channeling of popular pressures for justice into enforceable legal norms, whether through the legislative process, through the court system or through executive action.

Recourse to the rule of law, and strengthening the institutions designed to uphold it, aid us even today as we cope with America's unfinished agenda -- concerns about the homeless and health care, about how we can continue our economic dynamism in today's integrated global markets, and about how we can engage actively and constructively in the community of nations as we enter the next century.

That is why we in the United States are keenly interested to hear that you consider establishing a legal society -- a more democratic society -- in the Soviet Union to be critical to the success of perestroyka. Democratizatsia has led to the creation of the Congress of Peoples' Deputies, a revitalized Supreme Soviet and a President invested with significant, though limited, power. All this represents unprecedented movement toward a system of government that is more accountable to the people and more subject to the rule of law.

We understand that elections are scheduled for this winter to select local and regional representatives. Meanwhile, the Supreme Soviet's legislative calendar is full. Nationality issues, economic reform, legislation concerning freedom of conscience, freedom of religion and movement, changes in the criminal and criminal procedural codes, the right of assembly and demonstration -- all are pending before the Supreme Soviet. Moreover, that reconstituted body is tackling these challenges while creating its own precedents.

We can only marvel at a legislative body which is establishing the bounds of its authority and, at the same time, dealing with the pressing needs of the day. In hindsight, our country's early experiments with the law came in a simpler time. This is not to say that our first Congress did not face problems. But it dealt with a country of less than four million people, living along our Atlantic seaboard.

We are encouraged to hear from Soviet officials that those engaged in the drafting of the new legislation are taking care to ensure that it is in conformity with Soviet obligations under international instruments, such as the Helsinki Final Act.

In the meantime, we also have seen beneficial changes in past practices that have adversely affected human rights. The release of political, religious and psychiatric prisoners, and increased emigration, are encouraging signs that redress is now possible for many victims of illegal or extralegal actions by the state.

I understand that here in the Soviet Union, you used to have a joke about an American who meets a Soviet. They have a discussion about freedom in their countries. The American boasts, "We in America enjoy real freedom. I can stand in front of the White House and shout 'The President is a no good crook!' and nothing will happen to me." The Soviet replies, "So what? I can stand in the middle of Red Square and yell 'The President of the United States is a no good crook' and nothing will happen to me either!"

These days, because of glasnost, that punchline loses some -- but not all -- of its irony and punch. The Soviet press and public are freer to speak out about things they don't like, even voicing their concerns about erring government and the proper administration of justice. But glasnost alone can go only so far in achieving the rule of law. Reforms will last only if the government and the justice systems themselves are subject to the rule of law and to checks that create a balance of civic power.

In my country, we have jocular expressions like: "You can't fight city hall. You can't win an argument with a policeman. You can't sue the government." Well, I don't pretend that it's always prudent or ever easy to do these things, but in our country, all of them still are possible. In fact, as Attorney General, I find myself, often enough, the official defendant in such law suits. Every time I enter my office in the Department of Justice, I pass under a rotunda. On it, an inscription is engraved that I take very much to heart. It says: "The United States wins its point whenever justice is done to its citizens in the courts" -- even if that means the government sometimes loses its case!

As Dr. Sakharov has said, democratic change must be accomplished through democratic means -- peacefully, through legal processes. Institutions of integrity must have credibility in the eyes of the people, and the people's consent to their legitimacy.

Such institutions -- once themselves integrated into a reformed economic and political system -- will ensure that the important gains you have made in the last several years endure.

As President Bush and Secretary Baker have stated repeatedly, the United States would very much like to see perestroyka succeed. We want it to succeed because we believe that a more democratic Soviet society, one more respectful of human rights and legal norms, will engage in more mutually beneficial and constructive behavior abroad.

Experience again tells us that countries which observe the rule of law at home, and respect the rights of their citizens, are the countries which observe international law and respect the rights of others in the international community.

With its increasing emphasis on building a legal society at home, and with its increasing reliance on diplomacy rather than the use of force abroad, perestroyka has helped to open prospects for lasting improvements in U.S.-Soviet relations.

As U.S.-Soviet engagement broadens and deepens, it is inevitable that our legal interaction also will grow. Already, we have organized a number of programs on rule of law questions. One will bring Soviet judges to the U.S. National Judicial College. Others will permit U.S. and Soviet specialists to come together, both here and in the United States, to discuss topics such as federalism, administrative law and labor relations.

And we had the great pleasure last month to host a group of seventeen Soviet lawyers at the 200th anniversary celebration of the Office of Attorney General.

We have also undertaken wider cooperation on matters of mutual interest and concern. Together, our two countries are already pressing ahead on what we call our five part agenda. It includes not only arms control, human rights and bilateral issues, but also discussion of regional conflicts and cooperation on transnational issues such as terrorism, the environment and narcotics trafficking.

There are specific legal implications arising from this transnational agenda. Here I would like to focus on two areas of concern in particular, which we in the United States believe are closely tied to the functioning of democracy: narcotics control and protection of the environment.

Let me explain. In a democracy, every person is considered a free and responsible citizen whose vote and say in public affairs is essential. An individual caught in the despair and degradation of a drug habit soon becomes a slave of that habit -- no longer a free person or a free citizen or an informed citizen. Similar devastating effects can be visited upon entire nations -- those that become dependent on illicit trade as well as those indulging the massive appetite for drugs. Drug profiteers can sap the institutions of government until democracy itself becomes the issue.

Our two countries have already agreed that what President Bush properly calls "the scourge" of drugs knows no political or geographic boundaries. We are both signatories to the United Nations Convention drafted last year by over 100 nations in Vienna to enhance cooperative anti-drug law enforcement efforts. In January, we signed a joint Memorandum of Understanding between the U.S. Drug Enforcement Administration and the Soviet Customs Administration. And, we look forward to exploring ways we might expand cooperation even further and perhaps engage in exchanges on the treatment of addiction and abuse prevention.

With respect to the environment, I understand that ecological groups have mushroomed in the Soviet Union with the advent of glasnost. Interestingly, one of the greatest success stories for grassroots democracy in the United States has been the history of environmental activism. Today, the enforcement of environmental legislation is one of the U.S. Justice Department's greatest challenges. And when I assumed the job of Attorney General, it was already a high priority on my list.

You see, I was Governor of the Commonwealth of Pennsylvania during the crisis at Three Mile Island back in March of 1979. We learned a lot of lessons -- again from experience. We got a crash course in emergency management. We came to appreciate the expertise that can only come from the folks on the spot, the necessity for state and federal authorities to work together, the importance of solid information and reliable communications.

We also learned how to deal with the complex legal, economic and social problems in the aftermath of the accident.

You may be interested to know that in December 1979, I was part of a delegation that visited the Soviet Union and met in Moscow with top governmental and scientific leaders to share the lessons we had learned from Three Mile Island. The response we received from the Soviet side was that nuclear safety was a solved problem in the Soviet Union, that the United States had over-dramatized the dangers of Three Mile Island, that Soviet reactors "would soon be so safe one could be installed in Red Square."

The rest is history. Times changed. Chernobyl served to reinforce the arguments of those in the Soviet Union who believe that everybody would be a lot safer if Soviet citizens and press were as free to question their authorities as Americans were following Three Mile Island. And it strengthened the convictions of those who believed that authorities would be far more responsible for the public health and safety of the people if they were elected.

Democratic processes make it more difficult, if not impossible, for states to ignore or suppress problems such as those both our nations faced at Three Mile Island and at Chernobyl.



One final matter deserves note. We have focused on the worth of what we Americans characterize as "a government of laws, and not of men." But we must realize that it takes good men and good women to make such a system work. Nearly three centuries ago, William Penn, the founder of my home state, put it this way: "Governments, like clocks, go from the motion men give them. Let the government be bad and good men will correct it. But let the men be bad and no government can survive."

Many of you here today will have the opportunity to participate in the exciting changes taking place within your own country, to shape the future for the good of your fellow citizens, to provide the leadership to accomplish the goals of perestroyka. Seize that opportunity. Help to sustain the spirit of constructive change. Replenish the stores of selfless public service with your own career commitments. Do this for your own deep satisfaction as well as for the benefit of your nation.

When I began my speech I mentioned Benjamin Franklin -- an intellectual disciple of the Age of Reason and a father of democracy. But Franklin was so much more -- publisher, printer, essayist and author, businessman, scientist and sage. A walking encyclopedia of knowledge, who himself founded our University of Pennsylvania.

As I stand in this hall now, I also think of Franklin's contemporary -- a fellow genius and polymath, Mikhail Vasilyevich Lomonosov, the founder of this University. Lomonosov, like Franklin, was also a product of his time, though under different circumstances. He was a chronicler and admirer of Peter the Great, a poet, chemist, physicist, linguist, artist.

The only things Franklin and Lomonosov weren't, were lawyers.

Though the two never corresponded directly, they knew of one another's work. Indeed, Lomonosov's great friend and colleague, Richmann, heard about Franklin's ideas about proving the electrical nature of lightning. Though he had not yet seen Franklin's book with a description of the necessary safety precautions, Richmann attempted to conduct Franklin's experiment and was fatally electrocuted. Both Lomonosov and Franklin eulogized poor Richmann. And both men clearly thought that the scientist had died a most splendid death!

Lomonosov and Franklin shared a passionate curiosity about the world, a respect for the integrity of facts, and the conviction that the unfettered human mind and enlightened government could open new horizons for their peoples and all mankind.

On his deathbed in 1765, Lomonosov said that he regretted he was unable to bring to completion everything he undertook for the benefit of his country. And he feared that all his good intentions would vanish with him.

A quarter of a century later, and four months before his own death, Franklin wrote: "God grant that not only the Love of Liberty but a thorough Knowledge of the Rights of Man may pervade all the Nations of the Earth so that a Philosopher may set his foot anywhere on its surface and say, 'This is my country.'" "

Let us, gathered here today, resolve to do all we can to prove Lomonosov's last fears to have been unfounded and Franklin's last hopes to have been prophetic.