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CRITICAL CHOICES OF RUSSIA'S DEMOCRACY

by Svetlana A. Chervonnaya*

Winds of change are sweeping across the land known for seventy-four years as the Union of Soviet Socialist Republics (U.S.S.R.). The umbilical cord has finally been cut. The newborn nation-states face critical choices about nation-building and, more specifically, about developing constitutions and economies.

Painfully shedding the vestiges of imperial heritage, the people of Russia must choose between democracy and authoritarianism. Six years ago the U.S.S.R. proclaimed its desire to return to the mainstream of civilization, rejecting its totalitarian past and launching a chain reaction of democratic revolutions in Eastern Europe. This promise of a new democratic world is still far from being realized in Russia. In the midst of economic chaos, political disintegration, and ethnic strife, there is a growing popular sentiment that this turmoil is the price to be paid for the freedom of expression brought by Gorbachev's *glasnost* and *perestroika*. This freedom and value of openness are increasingly viewed as benefitting only the intellectual elite with no practical benefit for the "man on the street."

Why has democracy not become as indispensable as bread and potatoes? Is it not evident that Stalinist genocide, Brezhnev's morass, and the present inability to effectively use Russia's vast resources are all attributable to the absence of democracy?

Though democracy is as necessary as fresh air, it is evident that Russian society is not ready for the highly developed forms of democracy. Despite declarations to the contrary, no real democratic power, where power is based on respect for the individual and rule of law, has yet emerged in Russia as a result of communist opposition. In some republics this opposition emerged on the wave of pure nationalism, and in others it grew on the wave of populism. Everywhere, however, even the most zealous democrats ignore some of the elemental notions of human rights and the existing laws.

This disparity between the words and the deeds of the new Russian democratic leadership reveals that six years of attempted democratic reform have not achieved the expected results. Democratic reform is hampered not only by the stubborn resistance of the entrenched bureaucracy, but also by the underlying absence of democratic patterns of thinking, attitudes, and behavior. It is difficult to comprehend how alien such notions as "natural law," "inalienable rights," "personal sovereignty," and "privacy" appear to the Russian public consciousness without understanding some of the tragic features of Russian history.

What were the historical obstacles to the emergence of sound democratic traditions? What circumstances formed the features and attitudes that still stand in the way of democratic development? In our quest for answers to modern problems, it is necessary to turn to Russia's torturous history, which continues to punish us for forgetting its lessons.

I. "YAZ CHLOP TVOY" ["I AM YOUR SLAVE"]

The basic problem in establishing a democracy is determining the relationship between an individual and the authorities, between a citizen and the state. Russia has

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always prioritized the state above the individual. It is difficult to understand the crux of the choices now facing Russia without understanding this fundamental tradition. In this sense, the burden on Russia, its law, and public morale is too great.

One of the first European travelers to Russia was Sigismund Gerberstein, the Hapsburg Empire's ambassador who visited in 1517 and 1526. In his letter to Emperor Ferdinand, Gerberstein wrote about the "northern country" where "[t]he power that he [Tsar Basil III] has over his subjects is far greater than the power of all the monarchs of the world. . . . Everybody suffers under an equal burden of vicious slavery."¹ Gerberstein was surprised to learn that "everybody call[s] themselves *chlopi* — that is slaves of the sovereign. . . . These people find much more pleasure in slavery than in freedom."² The relationship between the Russian monarch and his subjects differed greatly from the European feudal system in which the power of the monarchy was limited by granting certain rights and privileges to a variety of social strata.

One of the most important influences in the formation of the Russian sovereign-subject relationship was the Tatar-Mongol occupation of northeastern Russian lands from the early thirteenth century to the end of the fifteenth century. The Tatar-Mongol yoke turned the Russian dukes into the vassals of Mongol khans, creating generations of subservient rulers. In becoming the khan's servants, the Russian dukes could not avoid being influenced by the rigid ethic of subordination and submissiveness that permeated the Mongol society. Under the khans, the Russian dukes did not enjoy even the limited privileges their own men-at-arms experienced before the occupation.

The substantial destruction of Russia's ruling class during the Mongol invasion also affected Russia's future social and political development. The differences between the Russian nobility that emerged from the rigid structure of the Mongols and its European counterparts partially resulted from the lack of legal guarantees of their rights and privileges. The Russian nobility never experienced the Western-European "pledge of faith" system which included a general assembly and accountable functionaries. Even their name, "*dvoryane*," deriving from the word "*dvor*," or court, referred to an obligation of service and subjugation. The European names for the feudal class, nobility, gentry, barons, and seniors did not connote servitude. A chain reaction of subservient psychology made the peasants even more subservient than their masters.

The Mongols also restricted the already limited liberties that Russian towns enjoyed before the invasion. The freedoms and privileges achieved by European towns as far back as the twelfth century remained unknown to their Russian counterparts.

More than two centuries after the Mongol invasion, the deep changes in the internal structure of the ruling class were expressed in the standard address of the feudals to their suzerain, "I am your slave." The emergence of this address during the reign of Ivan III, the first Russian monarch to take the tsar's title, marked the final triumph of the slavish monarch-servant relationship in the northeastern part of Russia. This victory was linked to the success of the centralizationist policy pursued by the Moscow grand dukes. The grand dukes unified the Russian lands around Moscow, preserving the special brand of feudal relationship taking shape in northeastern Russian lands. The despotic features of the Moscow sovereigns took root in the special character of accelerated unification.

The conversion of Russian nobility into slaves, or "*chlopi*," of the tsarist autocracy was completed in the second half of the sixteenth century during the reign of Ivan IV, also known as Ivan the Terrible. Convinced that the only moral and Christian

¹ SIGIZMUND GERBERSTEIN, *ZAPISKI O MOSKOVSKIH DELAH, ROSSIA XV-XVII W. GLAZAMI INOSTRANTSEV* [NOTES ABOUT MOSCOW AFFAIRS, RUSSIA OF XV-XVII CENTURIES THROUGH THE EYES OF THE FOREIGNERS] 32, 51-2 (1986).

² *Id.*

duty of his subjects was in service to the tsar, Ivan IV did not concern himself with the notions of caring for the welfare of his subjects and his country as a whole.

The deep-rooted tendency to identify the person of the autocrat with state power reached its climax during the reign of the great Russian reformer Peter I (1697 to 1725). European thinkers of this era envisioned the state as a purely human establishment subject to change at man's discretion. Peter I took these ideas and molded them to serve his own purposes. His idea of the state as an ideal instrument of social transformation required the strengthening of various forms of patronage over society, expanding the role of the state in governing the nation and its people.

The tsar-reformer treated the state as a navy vessel and its agencies as military units. The state took on a police-like character through organization of a "regular" life for its subjects. This change started with an authorized draft for construction of houses and finished with thorough control over the moral and spiritual lives of the people.

The lives of the subjects of this "regular" state were controlled by government imposed limitations. Peter I introduced a passport system which curtailed the people's mobility. Neither peasant nor town-dweller could leave his place of residence without a passport. Violating the passport regime by losing the passport, using it after it had expired, or traveling beyond allowed territorial limits were criminal offenses for which one was arrested and deported to his place of residence. People had limited social mobility and choice of occupation. The state intruded into the affairs of the church and the realm of religious faith. The church was widely used for police functions — everyone was required to attend church and confession or be subjected to enormous fines. Likewise, the clergy were compelled to report all misdeeds learned through confession. The church was transformed into a bureaucratic office which safeguarded the interests of the autocratic regime and deprived the people of a spiritual outlet free of government influence.

While European thinkers propounded political theories based on "public treaty" and "natural law," the principal theoretician of Peter's autocracy, Pheophan Prokopovich, worked to justify the power of one person over millions of subjects. He rationalized the right of an autocrat to command with unlimited authority through his peculiar interpretation of natural and divine law. Russian pre-revolutionary historian Vasily Kluchevsky recognized in Peter's reformatory epoch "a simultaneous effect of despotism and freedom, enlightenment and slavery," and called it "an enigma that has been resolving for two centuries and still has not found its resolution."³

Half a century later, the enlightened tsarina Catherine II (1726-1796) relied on the theories of natural rights and popular sovereignty in proffering the autocratic monarchy as the best form of government. She believed the sovereign was the source of state and civic authority, and her supreme task was providing for the interests and natural rights of her subjects. Under her political formula, the achievement of the common good resulted in the achievement of the individual good. She argued that "[t]he aim and end of the autocratic government is the glory of its subjects, the state and the autocrat himself."⁴ In her view, the real welfare could be achieved only if everyone subjugated himself to the state's supreme authority. No one could limit the sovereign, and its subjects could not dare to "disdain the sovereign's orders without fear of punishment."⁵

³ 4 VASILY O. KLUCHEVSKY, *SOCHINENIA V DEVIATI TOMAKH* [WORKS IN NINE VOLUMES] 203 (1989).

⁴ *Nakaz Eya Imperatorskogo Velichestva Ekateriny Vtorya Samoderdzitsy Vserossiyskoy Dannuy Comissii O Sochinenii Proekta Novago Ulodzeniia* [Direction of Her Imperial Majesty Catherine II Sovereign of all Russia to the Commission Preparing New Statute Draft] 5 (1893).

⁵ *Id.*

In 1791, Polish politicians authored the world's second written national constitution, echoing the Americans' claim that "[g]overnments are instituted among men, deriving their just powers from the consent of the governed."⁶ Catherine II, who for years had corresponded with the greatest French thinkers in an attempt to present herself to the world as an "enlightened" tsarina, perceived the Polish experiment as a threat. The Russian invasion of Poland in 1792 destroyed the constitutional plan before it could be implemented.

Why could Catherine's Russia not follow the road mapped by the enlightened thinkers? Peter Chaadaev, a Russian thinker of the first half of the nineteenth century, commented that "[t]alking about Russia, people constantly think that they are talking about a nation like all others; in fact it is far from being true. Russia is a whole special world, subject to the will, desire and fantasy of one person. It is not important whether he is called Peter or Ivan; in all cases it is tyranny incarnated."⁷

Is there some manifest destiny in Russia's historic development? Is Russia's political future predetermined despite its repeated attempts to join the mainstream of Western civilization? Adopting a Marxist view of history as a continuous tunnel does not inspire great optimism for the future of Russia's democracy. Perhaps a more hopeful view is that the historical road has a number of interlacing paths. History suggests that a country has the recurring choice of abandoning a given path and beginning another. This is the case with respect to the history of Russia.

II. SIX CHANCES LOST

We have already discussed the deep impact of the Tatar-Mongol invasion upon the socio-political development of the Russian lands. Another factor to consider is the unification of the eastern Slavic lands during the fourteenth through the sixteenth centuries. These lands were unified around their northeastern center and became the cradle of the servant-like relationship between the sovereign and his subjects. This type of unification and the victory of the servant-like relationship, however, was not predetermined.

Until the middle of the sixteenth century, there remained a possibility of territorial unification under the political program of the Great Dukedom of Lithuania and Russia which incorporated the western and southern Slavic lands. For several centuries, this state was a home not only to Lithuanians, but also to Russians, Ukrainians, and Byelorussians. This state offered a different development path for eastern Slavic people, one in which the authority of the sovereign was considerably limited by representative institutions, with highly developed law and a certain amount of self-government allowed to the cities. Given another historical layout, the eastern Slavic lands might have experienced not only the Asiatic despotic regime of Ivan the Terrible, but a multi-national state governed by a rather effective system of representative institutions.

Similarly, the so-called "Troubled Times" during the end of the sixteenth and early seventeenth centuries can be considered a period of lost opportunity when the chance for a more favorable mode of development was not realized. The period was characterized by internal revolts, foreign intervention, and the disintegration of the old power structures.

In 1611, Duke Vasily Shuysky occupied the previously vacant Russian throne. The Duke was the first to be elected to the throne when the highest nobility of the country voted him into power. Ascending to the throne, Shuysky swore to his subjects by making a "record," secured by kissing the cross. It was the first treaty of a tsar with his subjects.

⁶ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁷ PETER CHAADAEV, *STATII I PIS'MA* [ARTICLES AND LETTERS] 369 (1989).

Historian Vasily Kluchevsky wrote that "out of the sovereign of the cholopi, Vasily Shuysky was turning into a lawful tsar of his subjects, ruling according to laws."⁸ Shuysky's "record" was the first hesitant step towards a state ruled by law. His political failure signified another lost opportunity, and the path of the rule of law state was forgotten for a very long time.

The concept of the rule of law state reemerged two centuries later when Emperor Alexander I initiated plans to transform Russia's political structure. Europe strove to limit autocratic power by constitution, and the first results were rather promising. In 1815, a constitutional monarchy was established in France and in some German kingdoms, and Sweden confirmed its constitution. In the same year, Russia's Alexander I gave a constitution to the Polish tsardom which became a part of Russia after the victory over Napoleon. Speaking in Warsaw in 1818 at the opening of the first Polish Parliament, Alexander I showed his support of the constitutional system by publicly suggesting that a constitutional system be introduced in Russia.⁹

In less than a year, work on drafting a Russian constitution started with great secrecy. A general review of the 1820 model reveals that the Russian constitution was the most conservative constitution of its time. Russia was to be a federation divided into vicegerencies with two-chamber parliaments. However, the fundamental principle of the American and European constitutions, the sovereignty of the people, was replaced by the sovereignty of the emperor as "the only source of all civilian, political, legislative and military authorities."¹⁰ Despite the establishment of a two-chamber parliament, the legislative initiative belonged only to the emperor, who was also the chief executive. A special article proclaimed civil liberties but denied them to the peasant serfs. The draft and accompanying manifestos were finished in 1820, but neither the manifestos nor the constitution were ever enacted.

Why was an autocratic power with its mighty bureaucratic machine unable to carry out an act which it considered vitally necessary? By enacting the constitution, the autocracy would have stopped being an autocracy. Involving society in governance and sharing the tsar's powers was an obstacle neither Alexander I nor his successors could overcome.

The idea of limiting autocratic power by a constitution was revived in the early 1880s as a logical continuation of reforms after the 1861 peasant emancipation. The Russian "perestroika" of 1861-1874 produced a constitutional model that provided for local elected representative bodies (*zemstvo*); city municipal governments; independent, impartial, public courts; an independent bar; and trial by jury. The model also reformed the educational system, censorship regulations, the military, and government spending.

On the morning of March 1, 1881, Tsar Alexander II appeared ready to approve the constitutional draft prepared by his Minister, M. Loris-Melikov. That afternoon, however, he was assassinated by revolutionary terrorists. With his death, the liberal reformist policy also perished.

The counterreforms that followed the assassination are testimony to the tenacity of autocratic political culture. On March 8, 1881, the Council of Ministers buried Loris-Melikov's constitution. On April 29, 1881, the new tsar issued a manifesto entitled "On

⁸ 3 KLUCHEVSKY, *supra* note 3, at 37.

⁹ Sergey V. Mironenko, *Kak Rossiya v Nachale XIX Veka Chut Ne Stala Konstitutsionnoy Monarkiey* [How Russia in the Early 19th Century Had Almost Become a Constitutional Monarchy], in ISTORIA OTECHESTVA: LUDI, IDEI, RESHENIYA [HISTORY OF THE NATIVE LAND: PEOPLE, IDEAS, DECISIONS] [hereinafter HISTORY OF THE NATIVE LAND] 254, 265 (1991).

¹⁰ *Id.* at 267.

Immovability of Autocracy.”¹¹ On August 14, 1881, the tsar approved the “Provisions for Measures for Safeguarding the National Security and Public Order,” which allowed a state of emergency to be declared in any territory. Any person residing in that territory could be arrested, subjected to a five-year exile without trial, or brought before a court martial. The local administration was given broad powers to close schools and businesses and to suspend the press.¹² This “temporary” provision remained in effect until 1917.

The revolution of 1905-1907 raised the issue of constitutional development for the fifth time. The constitutionalism grown on the Russian autocratic soil was much more limited than that of the West. The constitution’s proponents strove to limit the tsar’s authority, establish representative institutions, and proclaim democratic rights and liberties.

In the words of Prime Minister S. Vitte, the pressure of the popular revolution forced the autocracy to “step on the road of concessions to the public opinion . . . [that is] on the constitutional road of development.”¹³ On October 17, 1905, a manifesto was published that granted the people of Russia “the basics of civil freedom” with the accompanying civil liberties and the first legislative institution, the State Duma. Thus, an absurd and unprecedented structure, the “constitutional autocracy,” was created.¹⁴

Political parties promptly emerged to participate in the 1906 elections to the State Duma. The majority of the seats were won by leftist parties and groups. The liberals concluded that Russia was not far from achieving a normal constitutional development. The government, on the other hand, appointed by the tsar and responsible solely to him, was determined to curtail the activity of the first popularly-elected legislators. The first seventy-two days of Russia’s parliament were a bitter duel between the legislative and executive powers, ending with the Duma’s defeat. The government made no attempt to give this act a semblance of legality. Arriving for their morning session, the deputies discovered that the gates were locked and stamped with the tsar’s order that the Duma be dissolved. The official explanation cited the deputies’ attempts to investigate the actions of the central and local government and their “criticism of the existing laws.”¹⁵

Thus, the first struggle for parliamentarianism failed, and the autocratic regime remained unshattered. Article 4 of the Basic Laws of the Russian Empire passed in 1906 said, “The supreme autocratic authority is vested in the Emperor of Russia.”¹⁶ He understood that “Russia has outgrown the existing governmental structure and strives towards the rule-of-law structure based on the civil liberty.”¹⁷ The three State Dumas that followed were elected through severely limited election laws and only served to give the government a semblance of constitutionalism.

¹¹ O Nezyblemosti Samoderdgiya, Manifest Gosudarya Imperatora Vseya Rusi Alexandra III ot 29 Aprelya 1881 [On Immovability of Autocracy, Manifesto of his Majesty Emperor of All Russia Alexander III of April 29, 1881] reprinted in HISTORY OF THE NATIVE LAND 323 (1991).

¹² Polodgenie o Merah k Sohraneniyu Gosudcerstvennoy Vezopasnosti i Obtshestvennogo Spokoystviya ot 14 Avgusta 1881 [Provisions for Measures for Safeguarding National Security and Public Order, Adopted Aug. 14, 1881], reprinted in HISTORY OF THE NATIVE LAND 323 (1991).

¹³ 3 SERGEY J. VITTE, VOSPOMINANIYA [MEMOIRS] 5 (1960).

¹⁴ Konstantin F. Shatsillo, *Nickolai II: Reformy ili Revolyutsiya?* [Nicholai II: Reforms or Revolution?], in HISTORY OF THE NATIVE LAND 357 (1991).

¹⁵ 21 MICHAEL GLAZUNOV & BORIS MITROFANOV, SUD’BA PERVOGO PARLAMENTA ROSSII: “SOVETSKAYA JUSTITSIYA” [THE FATE OF THE FIRST RUSSIAN PARLIAMENT: “SOVIET JUSTICE”] 22-24 (1989).

¹⁶ SVOD OSNOVNYH GOSUDARSTVENNYH ZAKONOV (IZDANIE 1906 GODA) [CODE OF THE BASIC LAWS OF THE STATE (PUBLICATION OF 1906)], art. 4, reprinted in 1 SVOD ZAKONOV ROSSIYSKOY IMPERII [CODE OF LAWS OF THE RUSSIAN EMPIRE], Book 1, (A.A. Dobrovolski ed., 1913).

¹⁷ *Id.*

When the autocracy failed to evolve into a constitutional monarchy, the people reacted. In February 1917, the 300-year old Romanov dynasty was destroyed by popular democratic revolution.

The tragedy for Russian democracy was in the timing; Russia was exhausted after three years of fighting an unpopular war. Several opportunities for the establishment of Russian democracy occurred in the nineteenth and early twentieth centuries. If the democracy had been successfully established, it would have gained experience, developed an elaborate agenda, produced mature leaders, and nurtured democratic habits in its people. However, history did not let an exhausted Russia acquire even a minimal amount of freedom. Eight months of existence did not give Russian democracy sufficient time to gain experience and produce necessary human potential. Overnight, democracy fell at the first blow of the Bolsheviks.

The October 1917 coup should not be viewed as a logical conclusion to the February democratic revolution. Quite to the contrary, it was an anti-democratic counterrevolution dispensing with the first light of freedom. Having dissolved the popularly elected Constituent Assembly in January 1918, the Bolsheviks restored unlimited power to the power-holders and the absolute servility of their subjects. Russia's history of tsarist autocracy simplified the Bolsheviks' task of labeling the most basic rights and liberties as "bourgeois prejudices" and of establishing a repressive totalitarian regime.

III. SUBJECT OR CITIZEN?

The essential difference between a subject and a citizen enabled the Bolsheviks to stamp out the feeble democracy. A subject is responsible to the state, serves it, and obeys its orders. A citizen is responsible to himself and to the nation, not to whatever administration happens to be in power. To a subject, the state is an irrational, external force. To a citizen, the state is an understandable mechanism used to administer the country, established with the citizen's active participation and operating under the citizen's control. A subject depends upon the state for the satisfaction of basic needs and is expected to feel grateful for the very right of existence. A citizen provides for personal needs and, in exchange for benefits from the state, relinquishes some rights.

Throughout history, Russians have been deprived of any real sense of citizenship, and thus an understanding of the inalienable nature of their rights. Despite this lack of understanding of citizenship, there have been great Russian citizens such as nineteenth century thinkers Peter Chaadaev, Alexander Herzen, and academic Andrei Sakarov. These citizens demonstrated heroic resistance to tradition, and heroism is a fate of the few. Citizenship has never become a natural habit in Russia. In Western democracies, civic values are deeply rooted in the people's subconscious behavioral attitudes. Peter Chaadaev emphasized this disparity with his comment: "We have to hammer into people's heads what for other nations has become a habit."¹⁸ Citizens born in a kingdom of subjects have always been rejected as dissident and alien.

The personality of the subject is cemented with fear. Until recently, it was the great state fear, the fear of totalitarian tyranny and ideological oppression. There is hope that this fear has finally been overcome, but great fear is always surrounded by a host of smaller fears. One of these fears is the childhood fear of independence. A subject does not like to remain alone without the elder's supervision and the peer's example. He is a collectivist not only by his upbringing, but by his fear. A fear of falling out of a group

¹⁸ CHAADAEV, *supra* note 7, at 47.

or "collective" is a generic fear of a Soviet person. However, the erosion of the "ideological superstructure" of this fear, the myth of the beneficial power of a collective and the inherent powerlessness of the individual, has already started giving way to the hope for a free individual, conscious of his independence.

What are the prerequisites of becoming a citizen? The major prerequisite is freedom, a space within which a person can function without facing unreasonable interdictions and regulations. The international community has long defined the dimensions of this free space based on established standards of human rights.

Memorizing a list of one's inalienable rights does not guarantee an understanding of those rights. In the United States, this understanding took two centuries to formulate, even with a background of democratic tradition dating to the Magna Carta. For Russians, an understanding of the citizen with a simple, clear-cut, and rational relationship with his country is still incomprehensible. Real-life problems and opportunities are changing this, however. Will Russians realize the historic chance of finally becoming full and equal citizens of their country and not the subjects of their state? To a great degree the answer will depend on Russia's progress toward the rule-of-law state.

IV. RULE OF LAW OR RULE OF FORCE?

As late as 1864, Russia started its movement toward a rule of law state by undertaking a large-scale judicial reform. In October 1917, the movement was interrupted for more than seventy years by the Bolsheviks and their rejection of the rule of law as "bourgeois trash."

By its very nature, Bolshevism is incompatible with the rule of law. The Bolsheviks used decrees, government decisions, and a constitution to serve propaganda purposes. These "laws" affirmed the imperativeness of the so-called proletarian power and legalized the Red Terror. For more than seventy years, the "law of the land" was not "a law which proceeds upon inquiry, and renders judgment only after trial."¹⁹ Instead, the law was looked upon as a major weapon of political and class dominance.

In the course of constructing the foundation of the Soviet state, the state's architects hastily discarded not only the idea of the rule of law but also the entire concept of constitutionalism which encompasses the rule of law. In place of the values of constitutionalism, Bolsheviks substituted public property and the "dictatorship of the proletariat" in the form of an almighty Soviet power. The socio-political system of the country was made to serve the Bolsheviks' demands. The system of public administration was based upon the principle of unification of the legislative and executive powers. The economic system stipulated one "who doesn't work doesn't eat," and the social system applied the principle of "democracy only for the working and exploited masses."

The Russian experience has demonstrated that mere presence of a constitution does not bring about rule of law. Since October 1917, more than 100 constitutions and constitution-type laws have been adopted. None have reflected the will of the people and thus were declarative. Vladimir Lenin called a constitution "a sheet of paper the rights of the people are written on."²⁰ He did not cover the fact that the Bolsheviks "had not

¹⁹ DANIEL WEBSTER, *Argument in the Dartmouth College Case*, in DANIEL WEBSTER READER 131, 131-52 (Bertha M. Rothe ed., 1956).

²⁰ 39 VLADIMIR I. LENIN, *Zaklyuchitelnoe Slovo po Dokladu VTsIK i Sovnarkoma ot 6 Dekabrja 1917* [Final Remark on the Report of All-Russia Central Executive Committee and Council of People's Commissars of December 6, 1917], in COLLECTED WORKS 415 (5th ed. 1970).

promised that the constitution would provide freedom and equality in general. Freedom — but for which class and for what usage?”²¹

Despite its rejection of the principles of constitutional protections, the young Soviet state failed to develop substitute principles. Given its own doctrine of the primacy of political expediency over the rule of law, the state was drawn inevitably to totalitarianism.

In the totalitarian system, Soviet constitutions were deprived of legal supremacy and reduced to an ideological and political function addressed to the subjects of the political system. The constitutions were viewed as political-legal acts of primarily propagandistic and educational significance. The dominant view of the law as a political instrument and accompanying legal nihilism resulted in frequent constitutional reforms.

The declarative character of the Soviet constitutions was most apparent in the sphere of civil rights and liberties. A major feature of Soviet constitutional provisions for civil rights and liberties was a definition of the major goals. However, these definitions limited the realization of civil rights and liberties. For example, the Constitution of the Russian Federation of 1918, having proclaimed the socialist restructuring of society, deprived the so-called “exploitative classes” of civil and political rights.²² The Constitution of 1936, officially touted as a “constitution of victorious socialism,” possessing all the formal democratic attributes, was in fact designed merely to create a democratic image for the totalitarian-repressive regime.²³ The Constitution of 1977,²⁴ spearheaded by the desire of the Brezhnev clique to “enter into history,” was based on the myth of creating “developed socialism,” or a “people’s state” of allegedly achieved “social progress.” This constitution confirmed the principles of “socialist law” and “socialist law and order,” and declared the sovereignty of the people as realized by the Soviets of People’s Deputies. Compared to the Constitution of 1936, the number of articles devoted to civil rights and liberties had almost doubled. At the same time, the Constitution of 1977 stated that all those rights and liberties were given only “for the purpose of strengthening and developing the socialist order”²⁵ and “should be used in accordance with the interests of the people.”²⁶

It is noteworthy that no Soviet constitution mentioned such elemental notions of human rights as the freedom of expression, security from political persecution, or the observance of religious tolerance. Until 1988, a number of articles of the Republican Criminal Codes used some of the constitutionally proclaimed liberties as criminal offenses. Article 70 of the Criminal Code of the Russian Soviet Federated Socialist Republic (RSFSR) provided a prison term of six months to six years and a two to five year exile for distributing information detrimental to the “Soviet state and social structure.”²⁷ In the “Commentary” to the Criminal Code published in 1984, “anti-Soviet advocacy and propaganda” were understood as the “circulation of ideas of an anti-Soviet content among a more or less broad circle of people . . . without regard to their number.”²⁸ “Conversations, presentations, reports, demonstrations of anti-Soviet films or cassettes, hanging bourgeois-nationalist flags, insignias, etc.”²⁹ were treated as criminal offenses.

²¹ *Id.* at 424.

²² KONSTITUTSIIA RSFSR [Constitution of the Russian Soviet Federated Socialist Republic] [KONST. RSFSR] (1918).

²³ KONSTITUTSIIA SSSR [Constitution of U.S.S.R.] (1936).

²⁴ KONSTITUTSIIA SSSR [Constitution of U.S.S.R.] (1977).

²⁵ *Id.* art. 50.

²⁶ *Id.* art. 51.

²⁷ UGOLOVNYI KODEKS RSFSR [CRIMINAL CODE] [UK RSFSR] art. 70 (1986).

²⁸ UK RSFSR cmt. at 157 (1984).

²⁹ *Id.* at 158.

Article 190, part 1, provided a prison term of up to three years for the "systematic circulation in an oral form of false ideas slanderous to the Soviet state and social structure."³⁰ The Commentary to the Criminal Code, *supra*, explained that "different sayings such as information a guilty person made or gave in the presence of other citizens" with the aim of "giving a negative interpretation to the whole Soviet state and social order or . . . to its separate . . . agencies or . . . elements," could be interpreted as such "circulation" and be criminally punishable.³¹ For many years, these articles served to repress dissidents and non-conforming minorities.

Also indicative of the declarative character of Soviet constitutions was the lack of "direct action," legal and political mechanisms for the enforcement of constitutional principles. A constitutional declaration of the "freedom of conscience" was practically nullified by an accompanying provision for the "right of atheistic propaganda."³² All constitutions of the Soviet period were legally weak; their provisions were not supported by the necessary legal guarantees or legislation. Any mechanism of constitutional control was absent. At the same time, the constitutional effect was further limited and distorted by quasi-legal norms and regulations.

Until 1987, there was no law permitting a private appeal of official government action. A rather narrow law that did provide for the appeal of the actions of government agencies and institutions was passed in 1987 but did not go into effect until 1991.³³ The right to compensation for damages caused by unlawful acts of government agencies, functionaries and public organizations was recognized only recently.³⁴

The Soviet constitution was weakest in the sphere of human rights. The problems of enforcing and supervising the civil rights provisions are still far from being solved. The legislation of the period of "perestroika" introducing authorizational instead of registrational procedure for the realization of political liberties such as freedom of association, assembly, and peaceful mass protest is incompatible with the very nature of constitutional liberties.

Constitutions have too often been used as screens for concealing the abuse of power, the suppression of democracy, and the destruction of the moral fabric of society. Constitutional norms showing respect for the individual and defending civil rights and liberties are ignored on a daily basis by the government, public agencies, and their officials. Bureaucratism still stands in the way of the practical realization of democratic rights and liberties.

Thus, the Soviet constitution, instead of being a legal document, was merely a political manifesto used for the political mobilization of the people and as an ideological justification for the "political line." The constitution also served a super task: to coerce the populace into approved ways of thinking and living, and to practically outlaw all other attitudes and lifestyles.

The declarative character of the Soviet constitution is also portrayed through the absence of "constitutional law" in Soviet law schools, and predominance of the notion of "state law." For several generations of Soviet-trained lawyers, such notions as

³⁰ UK RSFSR art. 190, part 1 (1986).

³¹ UK RSFSR cmt. at 392-93 (1986).

³² KONSTIT. S.S.S.R. art. 52 (1977).

³³ Zakon SSSR o Poryadke Obdgalovaniya v Sud Nepravomernykh Deystviy Organov Gosudarstvennogo Upravleniya y Doldnostnykh Lits Utshemlyautshykh Prava Gradgdan ot 2 Noyabrya 1989 [The Law of the U.S.S.R. about the Procedure of Judicial Redress of Unlawful Actions of the Government Institutions and Government Officials Curtailing the Rights of the Citizens of November 2, 1989], *reprinted in* IZVESTIYA, Nov. 3, 1989.

³⁴ Articles were added to preexisting laws. *See, e.g.*, The Law on Property in the RSFSR of Dec. 24, 1990, art. 3, §3 and A Law of Damage Compensation for Unlawful Imprisonment of 1991.

constitutionalism and constitutionally-defended rights are alien. Until the past school year, the courses in state law, taught instead of constitutional law, stressed the "advantages" of the "socialist statehood" and the "socialist legal order." Likewise, the only "civics" course studied in high school is entitled "The Basics of State and Law" and emphasizes the primacy of the state.

In this situation, the low public image of the Soviet constitution, despite annual official celebrations of "Constitution Day," is quite understandable. Seventy years of hollow "constitutionalism" have left a bitter heritage. The Russian people lack constitutional awareness, a practicable understanding of the autonomy of civic society and the necessity of limiting state interference in people's lives. They have difficulty in understanding that human rights are not granted by the state, but are supreme values that no authority can abridge. Why should the subject of a "socialist" state attempt to comprehend his inalienable rights when there is no mechanism for the realization of these rights and the omnipotent state rules by force rather than by law?

Democratic development and the establishment of real freedom and a free market economy is obstructed by the deep penetration of statist thinking in Soviet law. One way to reduce law to a role as a true servant of the totalitarian state is to exclude private law relationships from the sphere of civil law and substitute public law relationships. We cannot underestimate the importance of Lenin's attitudes in destroying the highly-developed civil law culture existing in Russia before the October Revolution. In drafting the Soviet Civil Code in 1921, Lenin secured the state's intervention into the sphere of civil laws, "We don't recognize anything 'private.' For us *everything* in the economic life belongs to the sphere of the public and not private law."³⁵ Lenin's words served for decades as a general and indisputable directive.

Private law, reflecting a certain legal order based upon a firm foundation of freedom and natural, inalienable, individual rights was alien to a state that declared war on everything "private." The dominance of public law principles resulted in a deep-rooted notion that the state and its laws are the only source of all legal relationships, with a judge as a government instrument defending state interests.

Can the existing corps of judges, accustomed to considering themselves instruments of the state, serve as the highest authority in all conflicts and as a substantial counterforce to the legislative and executive branches? In a society still reducing the law to criminal punishment and administrative control, only the fundamental dismantling of the existing public law stereotypes will restore law to its rightful place.

V. EQUALITY IN SLAVERY OR INEQUALITY IN FREEDOM

Probably the greatest misfortunes and failures of twentieth century Russia precipitated from the idea of equality in its Bolshevik realization. The Marxian social utopian ideal was attractive to a peasant country that until the second half of the nineteenth century had not known private peasant land ownership and, hence, was unhampered by a deep-rooted understanding of the inalienable character of individual rights and liberties that accomplishes property ownership. The trend of social thinking was toward strong idealism with a pronounced desire for social justice and equality.

This idealistic public consciousness served as a fruitful soil for the vulgar Bolshevik understanding of equality as a leveling to be achieved through the forcible redistribution of power and wealth according to the principle "those who were nothing would become everything," an attractive formula for the dispossessed masses.

³⁵ 44 LENIN, *supra* note 20, at 396-98.

The realization of this formula on one sixth part of the Earth demonstrated the greatest temptation of the idea of equality. If thought of not as liberal "equality of opportunity" but as a socialist "outcome equality," it may place people in a situation of a terrible alternative: either equality or freedom. Unconstrained human activity, be it manual or intellectual labor, business or art, inevitably brings social differentiation and income division. The natural inequality of human talents and capacities makes any attempt at social and income leveling result in limitations on human freedom. Our experience proved that leveling is incompatible with individual freedom. Freedom finds itself behind the bars of inequality.

The choice between freedom and equality has been recognized throughout history. Its reflection can be found in the Biblical parable of bread turned to stone.³⁶ Early in this century, the choice was formulated by the great Russian thinker Nikolai Berdyaev, "Freedom is the right for an inequality."³⁷

Unfortunately, Russia's contemporary history confirmed Alexis de Tocqueville's warning of a perverted inclination toward equality when the weakest desire to downgrade the strongest, when people "call for equality in slavery," and when they cannot obtain "equality in freedom."³⁸ Among the "evils that extreme equality may produce," de Tocqueville recognized "poverty, servitude, [and] barbarism."³⁹

The Bolsheviks unleashed the people's instinct to demand equality before anything else. The impoverished masses were inspired by the Bolshevik slogan, "rob what has been robbed," instead of beginning the prosaic work of reconstructing a country destroyed by war. They divided wealth accumulated by the "exploitative classes," a category not limited to landowners, clergy, and capitalists but randomly augmented with representatives of the middle class. It is this preoccupation with social equality that resulted in the unprecedented destruction of the nation's economy.

Ten years later, Stalin exploited this preoccupation with social equality by forcibly eliminating individual farming efforts through use of the seemingly appealing principle of "collectivization" of agriculture. The destruction of individual farming and physical annihilation of farmers repeatedly brought large-scale famines. Official efforts to establish price ceilings and maximum wages, ignoring educational and skill differences, subjected the people to semi-poverty. This leveling blocked the realization of Russian human potential as well as its spiritual and physical talents. Russia's pre-revolutionary statesman Peter Stolypin's warning that one can level only to the lowest level proved prophetic.⁴⁰

The facelessness of total leveling was ideal for the Soviet power holders. Cleverly supported semi-poverty was easier to manage and manipulate through guards and watchmen disguised as "beneficiaries of the people" than was a society of free and independent individuals capable of providing for their own needs. In the West, one's merits, efforts, and welfare were interrelated. Soviet people, by contrast, learned from kindergarten that wealth was criminal and poverty was honorable. For decades, the leaders encouraged the popular scorn of those who by virtue of talent, hard work, or inspiration were "grabbing money." Generations of people were constantly scared by wealth, inequality, and the allegedly accompanying "exploitation of one person by another." The

³⁶ *Matthew* 7:11-18.

³⁷ NIKOLAI A. BERDYAEV, *PHILOSOFIYA NERAVENSTVA* [PHILOSOPHY OF INEQUALITY] 170 (1990).

³⁸ 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 101-103 (Henry Reeve & Francis Bowen trans., Phillips Bradley ed., 1945).

³⁹ *Id.* at 103.

⁴⁰ See e.g., PETER A. STOLYPIN, *NAM NUZSHOA VELIKAYA ROSSIA* [WE NEED A GREAT RUSSIA] (1991).

inevitable result was the formation of a people who were psychological lumpen, suspicious of any person emerging from the monolithic ranks ready and able to work. Multitudes of lumpen automatically tried to dump any upstarts into the morass of faceless "equality."

In the recent past, these people enviously counted up the earnings of their neighbors and their savings account sums, wasting energy to expose those living on unearned income. The populace suspected not only the corrupt employees of the state-owned retail trade network, but also prominent scholars, writers, artists, and entertainers. Any person whose lifestyle did not conform to the officially imposed and popularly accepted standards was a target.

Today this lumpenized consciousness picks its enemies from the emergent class of business people who arose from the socialist leveling to reap the first fruits of economic freedom. Having obtained this freedom, an individual no longer needs the support of the compulsory "just distribution" of meager social benefits. All one needs are established fair rules of the game to provide equal opportunities. The failure of this seventy-four year long experiment in outcome equality clearly manifests the impasse that results if the laudable concept of justice is carried to the extreme of economic outcome equality for everyone.

VI. NATIONAL SOVEREIGNTY OF THE INDIVIDUAL?

As struggles for national determination tear apart what used to be the Soviet Union, very few ask whether the realization of ethnonational ambitions correlate with the obligation of a civic society to protect the rights and liberties of its citizens. The term "pluralism," a recently popular term, has been given only political and cultural interpretation. Few understand that pluralistic political and cultural thinking should have an ethnic counterpart that guarantees the rights of minorities.

Several decades ago, the official Soviet propaganda declared that the nationalities problem in the U.S.S.R. had been finally and completely settled. Claiming the "triumph of the Leninist theory of nations and national relations," Soviet leaders tried to judge, and often teach, other nations and peoples, arrogantly disregarding other international experiences with inter-ethnic and minority relations. For decades, Soviets zealously criticized the American approach to ethnic problems, focusing on racial animosity and the remaining social and economic disparity between various racial groups, without considering underlying principles of American nationhood.

In the wreckage of the Leninist-Stalinist tower of Babylon, one cannot stop thinking of prophetic wisdom of George Washington and the other Founding Fathers objecting to the development of the country as a multi-national entity with large ethnic enclaves (like "New Germany") that could turn into ethnic-territorial entities⁴¹ with their own administrations. The more than 200-year history of the United States has proved the vitality of a state model based upon the integration of all ethnic and racial elements into a single nation. In the absence of any form of ethnic sovereignty, ethnic-territorial structures, or ethnic political representation, individual rights have been prioritized over group right and ethnic and cultural pluralism.

A fundamental principle of the system Russia inherited was Stalin's definition of a nation as an ethnically homogenous community with exclusive rights to a territory with fixed borders. This definition resulted in a rigid hierarchy of ethnic communities with a corresponding hierarchy of administrative-territorial divisions. The top place in this

⁴¹ 12 GEORGE WASHINGTON, *THE WRITINGS OF GEORGE WASHINGTON* 489 (F. Ford ed., 1989).

elaborate system belonged to the "nations" entitled to a union republic statehood. The "second-class" nations were entitled to autonomous republics, and the "third" and "fourth-class" nations could have autonomous regions and territories. The lowest groups in the system were left with no statehood or autonomy. This same fate was left for millions of ethnic group members residing outside their indigenous territories.

In the first twenty years after the October Revolution, a giant territorial demarcation of the country on an ethnic and often pseudo-ethnic basis was realized. In the 1940s, this was supplemented with a forced relocation of many ethnic groups. The U.S.S.R. was broken into fifteen union republics, including three Baltic republics occupied in 1940. Most of the union republics had four underground floors and several dozen autonomous republics, regions, districts, and territories.

Some union republics and most autonomies were artificially constructed with "native" ethnic groups comprising less than half their population. According to the last population census, the "native peoples" comprised the majority of the population in only four out of sixteen autonomous republics.⁴² Consequently, mono-ethnic autonomies exist in multi-ethnic territories. Consistent with Lenin's idea of "national self-determination," most ethnic groups were allocated "national corners."

The people of the Soviet Union were deliberately separated into these "national corners." The old Russia's non-ethnic identity, where anyone who defined himself as "Russian" was considered "Russian," was substituted with a compulsory definition of "nationality" understood as an ethnic origin. The practice of defining nationality in the internal passports according to the ethnic origin of one of the parents was unprecedented, but still exists today. At the age of sixteen, when internal passports are issued, citizens must define their "nationality." Even those who are uncertain of their nationality must decide whether they are Russian, Ukrainian, Armenian, Georgian, or Jewish. In some cases, as when an individual may have taken in multiple cultures or have adopted the language and culture of the people, that individual is not associated with by "bonds of blood."

According to the 1922 Union Treaty, only the nations that had formed their quasi-sovereign nations in the form of union republics enjoyed the right to national self-determination.⁴³ These were the subjects of the federation and had direct relations with federal structures. The more than one hundred nations remaining could only communicate with the federative bodies through the republican structures. As a result, some groups became subordinate to others with unequal status of different ethnicities in the federal structure.

It is bitter to realize that the historic choice made for people living in the territory of the former Soviet Union had predetermined their ethnic and not socio-political consolidation. A system of establishing ethnic-territorial nations cannot adequately settle the problems of a multi-ethnic state, especially in regions where the title group does not comprise the majority.

The constitutional provision for "national determination" also poses an unsolvable problem of incompatible and mutually exclusive ethnic loyalties. Against the background of the difficult legacy of imperial oppression and individual powerlessness, it is understandable why a "national sovereignty" is seen by many as the only path

⁴² FINANSY Y STATISTIKA, NATSIONALNY SOSTAV NASELENIYA SSSR [FINANCE AND STATISTICS, ETHNIC COMPOSITION OF THE POPULATION OF THE U.S.S.R.] 34-49 (1991).

⁴³ Dogovor ob Obrazovanii Soyuz Sovetskikh Sotsialisticheskikh Respublik [The Treaty of the Establishment of the Union of the Soviet Socialist Republics], Dec. 30, 1922, *reprinted in* OBRAZOVANIE SOYUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK [THE REESTABLISHMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS] 381-86 (1972).

toward equality and the solution of social and economic problems. Hence, a national movement appears to be the most readily available form of action.

Having discarded the myth of the "proletarian state," many people cling to the myth of the "nation-state," thinking that one ethnic group can serve as the basis of a nation. It is necessary, however, to mention the basic inaccuracy of the term "nation" as used by Russian leaders and authors. In Russian, the word "nation" is a combination of two notions: "ethnicity" as a racial, biological, and cultural unity and "population" as a political and civic unity. This combination gives ample room for political dirty tricks.

What is the right to "national self-determination?" Is it a right of the entire population of a country or territory to determine its future democratically, or is it a right to racial or ethnic separatism? Today the ethnic and racial notions of the word unfortunately prevail, giving discussions of "national rights" ethno-biological overtones.

Mistaking the self-determination of republics with the self-determination of ethnicities is one of the most serious failures of the present prevailing approach to solving the "national problem." It creates an illusion that imperial totalitarian structures can be dismantled solely through "nation-state" arrangements without resulting in real freedom for regions, communities, and individuals. The power of the party bureaucracy is thus replaced with the power of the ethnocracy.

What is the future of ethnonationalism in "nation-states" where the "native" population constitutes less than a majority? Can the sovereignty of the Tatar Republic be interpreted as the result of self-determination of the Tatars when eighty percent of its members reside outside this republic? What will be the price of social peace in the Baltic republics with the rights of their sizable "non-native" populations, almost forty percent of Estonia and fifty percent in Latvia, severely abridged? What will happen if the most alarming Russian ethnonationalism becomes realized so that a "Russian republic" is created on the territory of the current Russia despite the existence of more than one hundred ethnic groups? Can a civil society evolve within the limits of ethnic nationhood when the state becomes a vehicle for just one ethnic group?

The centrifugal forces being unleashed lead us to demand sovereignty rights that may mean political and national break-up and economic disintegration. Ethnonational structures may play a positive role in the struggle for sovereignty and the destruction of imperial structure, but are far from being adequate for the task of building civil society and securing the rights of its members.

Is there a way out of the destructive maelstrom of "national" problems? Can the problems be solved by the further expansion of public sovereignty and the further creation of ethno-territorial entities? Russians have lived too long in the totalitarian wonderland where the individual was lost in the collective, where class consciousness and Communist Party affiliation were substitutes for personal and civic responsibility. Although totalitarian ideology has retreated, the inertial force of collectivism is still sufficiently strong for ethnonationalism to replace the class and the Party. The degradation of a personality squeezed into the "national unity" happens even quicker than in the "class unity" or in the monolithic party ranks. Ethnocracy inevitably works against democracy and social and economic welfare, finally depriving the people of their civil rights.

The experience accumulated by the international community indicates that the only escape from this stalemate is the recognition of the primacy of human rights over ethnic group rights. Any discussion of the rule of law state is futile without recognizing the limitations superimposed upon the national sovereignty by the inalienable rights of individuals.

Russia's democracy today faces a hard choice: whether to repeat the dangerous Soviet experience by solving the explosive national problem with its inevitable conflicting result or to model Russia's future after a system similar to that of the United States,

which prioritizes individual rights over structural and group rights, and gives equal rights and opportunities to all ethnic groups. Can this time-tested self-government of regional communities ever become the basis of Russia's national structure in place of the ill-fated ethnically based quasi-federalism? Can the concept of the nation-state finally be combined with the concept of a democratic government with limited powers, checks and balances, and an obligation to protect the rights of minorities? Can Russia make this long overdue decision after its recent and tragic experiences?

VII. AT THE END OF THE TUNNEL?

In the distant autumn of 1921, with the flames of the Civil War still blazing in faraway Russia, the commander-in-chief of the defeated counter-revolutionary forces, General Anthon Denikin, wrote in exile: "Out of blood, dirt, spiritual and physical poverty the Russian people will rise full of energy and reason."⁴⁴ Through the bitterness of military defeat and the chaos of fratricidal war, the general finally managed to come to the same conclusion as philosopher Nicolai Berdyaev who saw the only hope for Russia in the long and natural process of the "internal overcoming the Bolshevism."⁴⁵

The realization of this hope took long decades: Its first gleam flashed in the stifling atmosphere of the late 1960s to early 1970s when the idea of human rights plunged into spiritual somnolence after the short-lived thaw during the Krushchev administration. Of course, in discussing the self-generation of the human rights defense movement in the U.S.S.R., one should not discard such external factors as the Prague Spring, the Helsinki process, and the efforts of American administrations at turning the human rights issue into the primary criterion of international politics.

Yet, the idea of human rights was not an imported product. It began with the actions of individual persons. Then it united a small but socially influential group of people and quickly became a factor in the life of society. The years of the emergence of the rights-defense movement were also the years of an emerging legal consciousness. Taking the stand for human rights inevitably meant coming into conflict with the system. Each new political arrest, trial, and exile, and each new official campaign against dissidents opened the eyes of more and more people, making them question the very foundations of the system.

One cannot say that the rights-defense movement, ruthlessly suppressed by the Soviet apparatus, was a strange seed brought by the foreign wind, if a decade later this seed had sprouted on the seemingly barren soil of the Communist Party nomenclature itself. The perestroika begun by Mikhail Gorbachev started the process of the "internal overcoming of Bolshevism" whose development inevitably broke down Communist ideology and Communist regimes around the world.

From our short rights-defense history, one can marvel at the speed with which, beginning in 1989, the freedom of expression and the press, the right to assembly, free elections, political pluralism, the freedom to leave one's own country, and some due process protections took root in the barren soil of the totalitarian state. The task is to prevent the political battles that shake the nation from destroying this new consciousness, and to allow this consciousness to strengthen so that the understanding of the inalienable

⁴⁴ Anton I. Denikin, *Ocherki Russkoy Smuty: Krushenie Vlasti y Armii: Fevral' - Sentyabr' 1917* [Essays on the Russian Turmoil: The Collapse of Power and the Army: February-September 1917], in 1 OCHERKI RUSSKOW SMUTY [ESSAYS ON THE RUSSIAN TURMOIL] 120-21 n.3 (1990).

⁴⁵ See, e.g., NICKOLAI A. BEZDYAEV, ISTOKI Y SMYSL RUSSKOGO KOMMUNISMA [THE SOURCES AND IDEA OF THE RUSSIAN COMMUNISM] (1990).

nature of human rights becomes universal. This understanding is the only solid foundation for a civil society.

One of the fundamental questions presently facing Russia and other nation-states formed on the ruins of the Communist empire is whether a direct transition from totalitarianism to democracy is possible without going through an authoritarian stage. In Germany, Italy, and Japan, this transition was direct but followed after a military defeat and was facilitated by the assistance and active cooperation of the United States. The countries of Eastern Europe also experienced the direct transition from totalitarian communist regimes to democratic forms of government, even in countries with weak democratic traditions, such as Bulgaria and Romania.

After August 1991, a scholarly debate about the necessity of a transitional authoritarian stage moved onto a practical plane. The failure of the post-communist leadership to stop the nation from sliding into economic and political chaos is increasingly interpreted as an argument in favor of a "strong hand." Some scholars and politicians, like the ex-mayor of Moscow, Gavriil Popov, argue that democracy was adequate for the destruction of totalitarianism, but it is not fit for the task of social and economic restructuring due to the absence of a truly democratic foundation.⁴⁶ They conclude that in the transitional period, the leaders of the executive branch should play the leading role. The position is questionable, however, because the expansion of the executive branch occurring after August 1991 was accompanied by an explosive growth of bureaucracy on all levels of government. In the absence of a system of checks and balances on government, this results in an imbalance which undermines the foundations of nascent democracy.

Another persuasive criticism of the pro-authoritarian argument is skepticism about whether a free market economy can be built by efforts "from the top" without the active participation of the subjects of the economy. Real market reform cannot be carried out by the simple "distribution of property" by government agencies. Instead, the government needs to introduce time-tested economic regulations and necessary safeguards and then step aside. Thus, movement toward a market economy would inevitably mean narrowing the sphere of government domain and establishing a normal balance between the state and the civic society emerging in the process of market-oriented restructuring.

Unlike European businesses that dealt only with weak states after the revolutions of the seventeenth and eighteenth centuries, Russia's emerging businesses face a mighty and antagonistic state machinery whose source of power is not only in the administrative force but in the monopoly of state ownership. Instead of presenting new circumstances, the lack of counterbalance to government power combined with the threat of authoritarianism logically points to an extension of the Imperial-Soviet tradition.

Thus, the choice between democracy and authoritarianism is the choice between slow and painful return to the mainstream of human civilization and a tragic movement away from the road to democracy. The only way to democracy can be through democracy itself, by gradual accumulation of its norms, habits, and attitudes.

In all successful revolutions, constitutional consolidation of the revolutionists' achievements served as a prerequisite to further democratic development. In the constitutional and legal vacuum remaining after the disintegration of the U.S.S.R., confusion reigns both in the republican centers and locally. Parliaments are claiming powers beyond their authority. Governments are unable to tolerate the legal limits of their authority. Finally, a growing army of presidents is eager to rule without hindrance.

⁴⁶ Gavriil X. Popov, *God Posle Avgusta [A Year After the August]*, IZVESTIYA, Aug. 1992, at 17, 19, 24, 26.

If left without the protection of a constitution and detailed legislation, democratic reforms dissipate or reverse. Further preservation of the outlived provisions of the 1977 Constitution can be used easily for counteracting the reforms, disputing the legality of their results. Despite this, the Supreme Soviet of Russia for the second year has declined consideration of a proposed constitution of Russia. Drafted by a group of democratic deputies and progressive lawyers, these provisions are generally free from traditional ideological clichés and would radically transform the social structure.⁴⁷

For the first time in Russian history, a proposed constitution is based upon the idea of social contract and people's sovereignty. More than 200 years after the great words, "We the people . . ." were written in the preamble of the United States Constitution,⁴⁸ they are repeated by Russia's democrats in affirming the idea of the people as a sole source of sovereignty and state power. The civilizational approach to the modern state-building secured in the constitutions of all democratic countries is finally clear.

In the laws and constitutions of the Soviet period, the rights and freedoms of the subjects were granted by the state according to the formula, "A citizen has a right to . . ." No one understood that the purpose of law is to protect human rights from government infringement. Never before has a Soviet law ascended to the formula, "No one has a right to deprive an individual of the right to . . ." The proposed constitution unequivocally prioritizes personal rights and freedoms over the general interest of society, putting civic society over state.⁴⁹

Why did the majority of democratically elected deputies prefer mending the old Brezhnev Constitution to discussing the existing constitutional drafts? True — adoption of the basic law of such a complex state as the Russian Federation calls for careful elaboration of basic principles and complex procedures that will allow to coordinate different interests of its units; it takes patience and time. And, most importantly, it takes representatives of the people eager to act as a constitutional convention. Also, neither of the several proposed constitutional drafts is ideal.⁵⁰ They all have important deficiencies. At the same time, at least three of them — the official, Sobchak's, and Shakh-ray's drafts — represent an important step in the development of Russian constitutionalism. What is the obstacle to making a final choice in favor of the civilizational principles of constitutionalism that could become an integrating and stabilizing factor in a society with an under-developed legal culture?

Having made a decisive choice between Communist totalitarianism and democracy in August 1991, Russia's young democracy has not yet overcome the Bolshevik syndrome in its own ranks. Revolution from the top has not been supported by a revolution of overcoming ourselves. On the ruins of the collapsing paternalistic-distributive, prohibitive-permissive ideology, we are still waiting for the ideology of a new society to take hold. The purpose of government is to give each individual equal opportunities for lawful self-realization and to refrain from limiting the individual in this self-realization. Acceptance of this seemingly simple "ideology" is a major choice now facing Russia's democracy.

⁴⁷ PROEKT KONSTITUTSII ROSSIYSKOY FEDERATSII [DRAFT CONSTITUTION OF THE RUSSIAN FEDERATION], Oct. 11, 1992 at 22.

⁴⁸ U.S. CONST. pmbl.

⁴⁹ PROEKT KONSTITUTSII ROSSIYSKOY FEDERATSII [DRAFT CONSTITUTION OF THE RUSSIAN FEDERATION], Oct. 11, 1992 at 22.

⁵⁰ The official draft prepared by the Supreme Soviet's Constitutional Commission; Sobchak-Alekseev draft (Sobchak, Mayor of St. Petersburg, Professor of Law, Alekseev, Professor of Law, ex-chairman of the USST Supreme Soviet's Commission on Constitutionality); Shakh-ray's draft (Shakh-ray, close associate of President Eltsyn, currently Minister of Nationalities) providing for a presidential republic with separation of powers that is considered Eltsyn's inspired; and the communist draft.