
REMARKS OF FORMER SENATOR AND SECRETARY OF STATE

Edmund S. Muskie, Ground-breaking Ceremony,
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I am deeply honored and touched to have been asked to participate in these proceedings. This occasion is a uniquely happy one, for it has three dimensions. It gives us an opportunity to pay homage to a friend of all of us, a great American. It enables us to be present at a significant moment of institution building in a time when many institutions, even those in higher education, are on the defensive. And it invites us to view both our honored friend and this splendid new Dean Rusk Law Center in the current world perspective of the concept to which both are dedicated—the rule of law.

First, the man. The fact that I am here should tell you something about my feelings for Dean Rusk. I suspect that our mutual regard for each other springs from an appreciation of each other's beginnings. Although I come from about as far north as one can get in these United States, and he hails from pretty far south, we both began life by being spared the burdens of a silver spoon. Dean began on a hardscrabble farm in Cherokee County in this state; I began in the paper mill town of Rumford in Oxford County, Maine. In a way I think I was better off. Dean's father managed to grow several bales of cotton a year and he and his siblings had to make their own clothing. My father was a tailor and if he didn't actually make our clothing, at least he could tell us how.

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You all know the great road Dean Rusk travelled from Cherokee Davidson College, then "the poor man's Princeton" as Dean called it (it reminds me of my own Bates College); Oxford University as a Rhodes scholar, where he found himself supporting the League of Nations; then Mills College; the China-Burma-India theater in World War II; then to the State Department where he worked with George Marshall, Dean Acheson, Robert Patterson; a halcyon interlude with the Rockefeller Foundation; and his record breaking length of service as the Secretary of State in the Kennedy and Johnson Administrations. Then, finally, over two decades of a quieter but equally fruitful life enriching the students and faculty of this school and the citizens of this state.

The themes of his beliefs, which have remained consistent through the years, were a comprehensive inclusion of all of the human race in his quest for collective security and peace, anticolonialism, anti-communism, a belief in the durability of liberal democracies, and an abiding hope for the United Nations and the increasing sway of international cooperation and law. That he was one of the most thoughtful, decent, broad-minded, and steady of our top public servants is agreed to by all. But the conversation I cherish, as a miniature painting sometimes captures the essence of a larger reality, is that which Dean and I had in the tense days of the Iran hostage crisis in late 1979 and early 1980, when I occupied the post of Secretary of State. We were discussing the endless complexities, and all the if's, and's and but's. Then Dean paused and said, "Ed, if it would do any good, I'd gladly substitute myself for the hostages." With most people, this would have been hyperbole, an extreme comment to underline the pitiful quandary we were in. But I knew that Dean Rusk was absolutely serious; if he were accepted as a fair exchange, he would go.

Today you honor this university, this law school, and yourselves by breaking ground for this Dean Rusk Law Center. You also strike a blow for believing in and strengthening institutions which have proven themselves useful in helping us move to a more just and rational society. I am not thinking merely of the architectural and technological features, the electronic courtroom, the state-of-the-art classrooms, the marvelous library with its priceless collections. I am thinking of the varied levels of service for which this Center is constructed: the students first of all, then the trial judges of this state, having as their invaluable resource the Institute of Continuing Judicial Education. And last but not least, the Graduate International

Law Studies Program, reaching out, year after year, to visiting lawyers and scholars from all over the world.

I understand that this university, now over two centuries old, was the first state chartered university. In making the sacrifice and effort to build this new Law Center, serving such a varied clientele, you are—to use a phrase that, I am afraid, is suffering from overuse—sending a message that continued efforts to enable a noble profession to deal with the new problems of the times are the worthiest of objectives.

The timing of this ground breaking ceremony could not be more appropriate. For it comes at a time of a wracking and traumatic change in the approach to governance by a score or more of important nations. It was, after all, only several years ago that Eastern Europe and the Soviet Union subscribed to the principle that law was a political instrument to be wielded by a dominant political party in what that party deemed to be in the interest of the state. This was rule of party, to be distinguished from rule of law. The state was dominant; the individual, and minorities, were of little concern. Consistency of rulings was impossible. The procurator not only selected the cases for prosecution, prosecuted them, but, through what has become known as “telephone justice,” ordained the final court judgment. Separation of powers, an independent judiciary, acknowledged individual rights, and more than one political party were unknown.

Now think what has happened in two or three short years. I was in Moscow in September of 1990, at an unprecedented Conference on Law and Bilateral Economic Relations, cosponsored by United States and Soviet Union organizing committees, with an amazing agenda including the rule of law, the role of lawyers, balancing the rights of society and the individual, and global issues of legal concern. I opened one of the sessions by singling out an agreement reached at the recent meeting in Copenhagen of the Conference on Security and Cooperation in Europe, arrived at by the Soviet Union and thirty-four other nations. This is what they agreed on: “The rule of law does not mean merely a formal legality . . . but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.”¹ Mind you, not just a recognition of rights but a guarantee of those rights through institutions.

¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension* of the CSCE at para. (2), *reprinted in* 29 I.L.M. 1305, 1307.

But there has been far more than the Copenhagen Convention. Professor Herman Schwartz has described the phenomenon in these words: "Since the overthrow of the Communist regimes in East Central Europe in 1989, a wave of constitution writing has swept the region, once known for its authoritarian rule and disregard for constitutional rights as known in the West. This constitution writing has several common themes: the establishment of the rule of law, effective protection of basic human rights, creation of a multiparty parliamentary democracy and reinstatement of private property."²

I can't help but think back 200 years to that "Miracle in Philadelphia" when, in 1787, our Founding Fathers, thirty-nine of them, spent a very hot summer reviewing what had gone wrong under the old Articles of Confederation, and how to make a stronger, fairer, and more effective union. Think of the differences in challenges! We were a small, relatively homogeneous nation; the nations of eastern Europe and the former Soviet Union are not only populous, but composed of a multitude of ethnic strains and dissident groups. And their cleavage with the past is not only over economic relations but over completely warring views toward the nature of society and its governance. Moreover, the constitution writing has to be done under great pressure, while they are in the toils of wrenching economic adjustment.

When we realize what a maelstrom this is, we can better appreciate what have already been monumental achievements, even though awesome hurdles lie ahead. At the risk of saying things that will have been outpaced by events, I can report the following. In Romania, after Ceausescu's ouster, work has been done on a draft of a new constitution. In Bulgaria drafts have been discussed in a conference between Bulgarian and American experts. Albania has produced a draft for an interim constitution with plans to adopt a more comprehensive one later. In Poland a draft has been readied by experts.

In Czechoslovakia—now, after "the Velvet Revolution" of 1989, renamed the Czech and Slovak Federative Republic—the first post-Communist government has adopted basic amendments to its existing constitution, in preparation for a new constitution. Its very achievements highlight its problems: its reallocation of powers between Czech and Slovak has exacerbated problems of centrifugalism; and its Constitutional Court, equally divided between Czech and Slovak judges,

² Herman Schwartz, *Constitutional Developments in East Central Europe*, 45 J. INT'L AFF. 71 (1991).

who are limited to seven year terms, needs further strengthening.³ In Hungary, amendments have been adopted in 1989 and 1990, with a complete revision by 1994 waiting in the wings. Its new Constitutional Court faces a vast jurisdiction. Not only can anyone challenge a law he thinks is unconstitutional but he can also challenge the legislature for negligence in failing to enact legislation, if the failure results in a situation believed to be unconstitutional. The Court has found itself embroiled in controversy arising out of the issue of compensating former landowners and out of countervailing constitutional provisions concerning the death penalty. It is still seeking its proper role.⁴

The rule of law is given high priority in the new charters. The draft Polish Bill of Rights allows limitations on liberty only if "defined by statute," not an ideal provision from our point of view, but an improvement over what had existed. The Czechoslovak Charter allows anyone who claims his rights have been violated by official action to go to court and even seek monetary compensation. Poland has created the office of ombudsman who has already been effective in prisoners' rights cases. Hungary has created a parliamentary commissioner of citizens' rights and the draft Romanian Constitution provides for a "defender of the people."

Unlike our own Bill of Rights, which is directed to saying what government may *not* do, the new European charters are not only phrased in positive but in expansive terms. For example, the Czechoslovak, Polish, Hungarian, and Romanian documents enumerate the right to choose a profession, to form trade unions, to fair remuneration, to material security in old age, to protection for health, to free basic education, and to a healthy environment.⁵

Some of these, it is only fair to say, have been made conditional on implementing legislation; they have been "downgraded from rights to aspirations and exhortations to the legislature."⁶

With memories of high-sounding phrases concerning human rights that have appeared in other charters, whether Fascist or Communist, we may not be overly impressed by such provisions. We have come to appreciate what our own Founding Fathers did in 1787. True, there was dissatisfaction that the Constitution itself did not have a

³ Lloyd Cutler & Herman Schwartz, *Constitutional Reform in Czechoslovakia: E Duobus Unum?*, 58 U. CHI. L. REV. 511 at 521-25, 538-40 (1991).

⁴ Judith Pataki, *The Constitutional Court's Search for Identity*, REPORT ON EASTERN EUROPE, June 21, 1991, at 5.

⁵ Schwartz, *supra* note 2, at 82.

⁶ Cutler & Schwartz, *supra* note 3, at 536.

bill of rights. And it is true that Madison's hard work in gathering, sifting, and finally presenting what became our own Bill of Rights was vital to the harmonious launching of this nation. But the hard underpinning, the *sine qua non*, of those rights was the sound structure, that amazing mix of checks and balances and separation of powers that made the recognition, protection, and enforcement of rights possible.

What gives us a deeper basis of optimism about the eventual emergence of the rule of law in at least eastern Europe than the rhetoric is the fact that all the nations we have been discussing want very much to join the European Community and the Council of Europe. When they do so, they will have to accept as binding on them and their own courts and governments not merely the European Convention on Human Rights but two increasingly vital and authoritative institutions, the European Commission and the European Court of Human Rights. These institutions have already compiled an impressive track record of ensuring that nations under their aegis, such as France, Germany, and the United Kingdom, respect human rights, even when their own jurisprudence may not.

If everything I have said sounds bullish on the prospects for the rule of law, let me temper my optimism. There probably never was and never will be a Golden Age, economically, socially, or legally. Each generation in each country must redefine its own goals, including those of its justice system, and rededicate itself to achieving them. There are too many imponderables that could affect the countries of eastern Europe and the Republics of the former Soviet Union to be complacent. Not only will those countries face challenges, but so will we. The very developments in western Europe that I have mentioned as exercising a lodestone effect on eastern Europe will exert some kind of a force on us. The unification of the European market, scheduled for completion at the end of this year, will force us to pay more attention to foreign law. Europe's civil law systems may, as one practitioner has prophesied, "undergo a renaissance as Europeans harmonize and unify their laws."⁷

In the meantime, whatever the future, the present is an exciting one, particularly so for lawyers and legal institutions. As a German legal scholar recently observed, United States law schools have become

⁷ James R. Maxeiner, 1992: *High Time for American Lawyers to Learn from Europe, or Roscoe Pound's 1906 Address Revisited*, 15 *FORDHAM INT'L L.J.* 1, 3-4 (1991-1992).

the "Bologna of the present."⁸ Just as Bologna was the center of study and inspiration for all Europe in the Middle Ages, so is academia in this country today. And this Center will play its part.

All of what I have been talking about was foreseen by Dean Rusk in the last chapter of the fine memoir, *As I Saw It*, by Dean as told to his son Richard. I can do no better than leave you with his words:

[T]his is no 'victory' for American foreign policy. I have no doubt that the presence of NATO, the patience of the West, and the success of our political and economic systems have contributed to these developments and pointed out alternative models to Marxism-Leninism. We can take a quiet satisfaction in that and in having survived these past forty-five years without general war, no small achievement in this twentieth century. But these changes came about through developments within the Soviet bloc itself. If there is a 'victory,' it is a victory not for Western democracy but for the entire human race.⁹

To the Dean Rusk Law Center and the University of Georgia Law School: may you become a vital contributor to the continuing reign of the rule of law and cherish the quiet wisdom and noble character of the man in whose lengthening shadow you stand.

⁸ Maxeiner, *supra* note 7, at 2 (quoting Professor Rolf Stürner, *Die Rezeption U.S.-amerikanischen Rechts in der Bundesrepublik Deutschland*, in *FESTSCHRIFT FÜR KURT REBMANN* 839 (Heinz Eyrich et. al. eds., 1989)).

⁹ Dean Rusk as told to Richard Rusk, *As I Saw It* 615-16 (1990).

