Democratization in Ukraine: Constitutions and the Rule of Law

Gregory H. Stanton

The essential attribute of democracy, defined as government of, by, and for the people, is the assertion of popular sovereignty, normally expressed through free, fair, and regular elections. Thomas Jefferson called this fundamental basis for democratic government the Electoral Principle. He believed it is ultimately more important than even written constitutions in securing the liberties of the people and popular control over government.

The framers of the U.S. Constitution believed that republican government, democracy through elected representatives, would provide better and more stable government than direct democracy (which is limited to polities the size of small towns) or plebiscitary democracy through referenda on public issues.

Because republican government requires the election of a governing elite, an elite that can itself become a threat to the people's fundamental liberties, the framers believed that a written constitution should set the limits of government. The constitution should structure government so that checks and balances within the system set limits on the human will to power. Perhaps the best evidence of the framers' wisdom is the fact that the U.S. Constitution with amendments has now endured for 200 years. It was the first written constitution and is now the oldest written constitution that is still the fundamental law of a nation.

On the surface, constitutional limits on law-making by elected representatives of the people would seem to be anti-democratic. They stand in the way of full control by elected legislatures. But in reality, constitutions are a vital safeguard of democratic processes, which human experience has shown will inevitably be subverted by unlimited government. Constitutions set the objective principles, the structural

---

Gregory H. Stanton is a professor at The American University's Department of Justice, Law and Society of the School of Public Affairs. He has been advising members of the Ukrainian opposition Rukh on legal and constitutional issues, and was named 1991 "Man of the Year" by the Ukrainian Congress Committee of America. He also served as defense counsel to Ukrainian people's deputy Stepan Khmara.

rules, that restrict the government. They are the fundamental law regulating political decision.

Durable democratization requires the rule of law. Law may be defined as generalized obligations effectively enforced by authoritative decision. Law has four attributes: generality (similar application to similar cases), the expectation of obligation, effective enforcement through sanctions, and processes of decision-making accepted as authoritative. The rule of law requires that those who govern are themselves subject to the law.

Law is objectivated political decision. Like architectural structures, law is created to house and to contain human activity. Like all human culture, law therefore has a double aspect: it is created by political decisions, but once built, it becomes an objective structure within which political decisions must be made.

Constitutions establish the fundamental law within which future political decisions by government must be made. They are thus essentially conservative. But a constitution that protects fundamental human rights--that provides limits on government actions and thus reserves large spaces for human freedom--is also a key institution of liberal democracy.

The rule of law requires three key institutions:

1. Constitutional supremacy enforced by an independent judiciary, usually with the power of judicial review of legislation. For law to rule even over those persons who govern, there must be a separation of powers, at least through independent judicial interpretation and application of the law. Judicial independence may be protected by lifetime appointment or by direct election of judges; by protection of judicial remuneration through constitutional prohibition against salary reductions during a judge's term in office; by laws prohibiting bribery, political pressure and other corrupt practices; and by the physical and political protection of judges against intimidation.

2. Protection of individual rights against the government, normally through constitutional bills of rights enforced by the judiciary. The most important individual rights in a democracy are those intellectual and political rights that permit citizens to challenge and change their government. Constitutional protection must be afforded to freedom of conscience and religion, and to the rights of free speech, association, assembly, and organization.

Experience has shown that Locke and other political theorists were correct that protection of private property and private enterprise by law is necessary for political freedom to remain secure. Especially important is a free press not owned by the government, free to expose and criticize the government, protected from the government by law. Rights against governments must be enforced whenever governments (often acting through the police) violate them. Methods to restrict and punish police violations include rules excluding evidence obtained illegally (e.g. through torture), private damages against the government, administrative discipline of the police, and the right of habeas corpus review of detention.

3. Civilian control of the military and police power. For civilian control to be effective, the commander-in-chief should be an elected civilian, the money to support the military and police must be controlled by the elected legislature, and the power to declare war or national emergencies must be held by elected officials, preferably with checks by the legislature on executive decisions and with review by the judiciary of the lawfulness of executive actions.

The first reason for a republican constitution should be to **limit the government**. It has been the history of mankind, and most recently of the former Soviet empire, that unlimited government is the most tyrannical enemy of human rights. A constitution has four basic purposes:

1. It should **limit the government** by defining what rights the government may not take away from the people even by law.
2. It should define how the people are to **control the government**, particularly how the people will elect those with powers to make, enforce, and interpret the laws.
3. It should define the **structure of government** and the distribution of powers within that structure.
4. In a federal government, it should define the **distribution of powers** between the states (or other entities) and the national government.

A constitution must be the only **fundamental law** of a nation. It must leave most policy and law-making to the legislature, because changing times require changing laws. But it must strictly limit the legislature's power to encroach on fundamental civil and political rights.

Any statement in a constitution that does not define fundamental rights or the distribution of powers goes beyond the fundamental structural role that a constitution should play.

Ukraine has taken the first steps toward democracy. It has elected a parliament (formerly called the Supreme Soviet), a president, and has voted in a referendum (December 1, 1991) to ratify the Parliament's August 24, 1991 declaration of independence from the former USSR. The current Parliament was elected when the Communist party still dominated Ukrainian political life, so a majority of its members are former Communists, as is the president of Ukraine, Leonid Kravchuk. Members of the opposition coalition, Rukh, led the movement for Ukraine's independence and some were still being held in prison by the Communist authorities less than a year ago. Today, though their movement has won Ukraine's independence, their second goal--establishment of a durable democracy--is far from accomplished. They seek new parliamentary elections to be held in the new atmosphere created by independence and genuine political freedom. The Electoral Principle has not yet been fully implemented in Ukraine.

The old Soviet Communist system was the antithesis of the rule of law. Those in power were generally immune from application of the law. Judges were far from independent--their decisions were dictated by "telephone justice," by decisions made by the elite of the Communist party and the secret police. The Constitution was ignored because it had no legal effect--judges did not have the power of judicial review to strike down laws that violated the Constitution. Much of the old Soviet law is still in effect in Ukraine. There are few legal protections for civil liberties except for self-restraint by the police and procurators. There are still no legal protections for private property ownership or for private commercial enterprise.

The history of totalitarianism has shown that without private property and private enterprise, the economic basis for effective opposition to governmental tyranny is absent. Economic freedom is the only sound basis for political freedom. People can be economically coerced into obedience when the state owns all the property. Ukraine still has very little private enterprise because the laws to distribute state property and protect private ownership have not yet been passed.

Comments on the Draft Constitution of Ukraine

In the first year of its independence, Ukraine is now laying the constitutional and legal foundations for democracy and the rule of law. Legal scholars from Europe and the United States are advising Ukraine's Parliament in drafting Ukraine's new constitution and laws. I was recently asked to comment on the still unpublished draft of the new Constitution of Ukraine.

The proposed draft Constitution of Ukraine is a dangerous vehicle pieced together from the wreckage of Ukraine's Communist past. In this article I shall focus on sections of the proposed Constitution of Ukraine that would be dangerous to democracy, especially to fundamental political and civil rights.

The draft Constitution of Ukraine is full of policy statements that create no legal rights or powers. The source of much of the unnecessary verbiage in the draft Constitution is the old thinking that has been inherited from old Soviet constitutional law. The old Soviet Constitution did not have the force of law. There was no judicial review of laws that were not in harmony with the policies of the Constitution. The Constitution was filled with platitudes expressing aspirations for social policy that had no legal effect. The draft Constitution for Ukraine still contains many such aspirational statements that define no powers, circumscribe no rights, construct no immunities, and otherwise create no legal relations. Such legally ineffective policy statements are a common feature of many new constitutions in the former Soviet empire.

But the draft Constitution of Ukraine is much more dangerous than that. The problem is not simply that it says much that is unnecessary. The problem is that it explicitly grants the government powers to use law to infringe many fundamental civil rights.

The old Marxist-Leninist jurisprudence wrongly purported to *create* human rights by constitutional law, which no constitution in the world can pretend to do, since human rights are natural and innate, as the drafters of Article 23 of the draft Constitution (and the framers of the United States Constitution) rightly hold. Since the Universal Declaration of Human Rights, it can be said, at the least, that human rights are universal and are protected under international law that precedes any national constitution. A Constitution should only declare and protect those rights. It must not grant any government legitimate power to deny or abridge fundamental rights.

The old Soviet Constitution is full of "claw-back clauses," so that a Constitution which ostensibly protects human rights actually explicitly permits the legislature to abridge those rights. The Constitution giveth but the legislature hath the power to taketh away. Claw-back clauses must not be permitted in the new Constitution. Rights should be defined by the Constitution so that the power of the legislature is strictly and precisely limited. With rights as fundamental as the right to protection against warrantless searches and seizures, the rights to free speech, free press, free assembly, freedom of religion, freedom from torture and from cruel and unusual punishment, no exceptions should be permitted at all. But if exceptions are to be permitted to other civil rights, they should be strictly defined by the constitution itself, not left up to a future legislature.

The proposed Constitution of Ukraine is quite dangerous. Important sections of it are products of the old thinking, modeled on the Soviet model, shaped by the Communist past. It is full of platitudinous declarations of "rights" qualified by claw-back clauses that give the legislature the power to take those rights away. The powers it gives to the procurator allow the continuation of arbitrary state repression of fundamental freedoms. If the National Assembly decides to pass laws narrowly restricting civil and economic liberties in the name of "state or social security," "health," "morality," "the common good" or "the interests of society," the Constitution will legally permit the continuation of the state's heavy-handed bureaucratic repression of the Ukrainian people. The provisions on public associations are particularly dangerous, writing into the Constitution itself vague prohibitions on "undermining state security," "encroaching on human rights," "divulging of state secrets or other secrets protected by law," and "arousing social hatred" like the catch-all provisions of the old Soviet criminal code used for seventy years by the Communists to crush all opposition.

There are some particular provisions that are especially dangerous to fundamental civil and political rights that are crucial to the protection of democracy:

Article 26: The second and third sentences write into the Constitution itself vague reasons why constitutional rights and freedoms may be curtailed by law: "**Constitutional rights and freedoms of citizens may not be curtailed with the exception of cases defined by the Constitution with the purpose of protecting state or social security, health and morality or the rights and freedoms of other persons. All such**

limitations are established by law." Thus empowered by these sentences, any National Assembly that decides to curtail fundamental rights needs only to declare that it needs to protect state security, or even more vaguely, morality. Every repressive government in history has used these justifications for repression. These two sentences must be **deleted.**

Articles 34 and 36: By continuing to allow the procurator to issue warrants for arrest, detention and search, these articles (along with the articles on the procuracy, **Articles 212, 213, and 214**) continue the Soviet and Tsarist authoritarian tradition of a much too powerful procuracy. The office of procurator should be reduced to directing investigations and prosecutions. All warrants for arrest, detention or search should be issued only by judges. By separating the procurator's powers of investigation and prosecution from the powers to arrest, detain, and search, the procurator will be brought under legal control. His recommendations for arrest, detention, and search will be subjected to judicial scrutiny and decision. By placing the decision in the hands of a judge, the procurator will no longer be able to ignore or violate the law, particularly the constitutional rights against unlawful arrest, detention, and search that are central to the fundamental rights of citizens of a free society. The words "**or a warrant issued by a procurator**" should be changed to "**or a warrant issued by a judge**." In **Article 36**, "**or a procurator's warrant**" should be changed to "**or a judge's warrant**."

Article 36, which ostensibly forbids warrantless searches of dwellings, also contains a "claw-back clause," designed to allow the legislature to place limits on this fundamental right: "**with the exception of cases specifically provided for by the law.**" This clause should be **deleted.** What if a legislature passes a law decreeing that dwellings of members of organizations deemed subversive by the State Security Service or the president may be searched without a warrant? What clearer threat to political liberty could there be? Yet, if this "claw-back clause" remains in the Constitution, such a law would be constitutional. It must be **deleted.**

Article 37 purports to guarantee privacy of mail, telephone, and telegraph correspondence. But it, too, contains a claw-back clause: "**Exceptions are allowed only in furtherance of a court order or a**

procurator's warrant solely in cases and under procedures specifically provided for by the law." Not only does this clause permit the legislature to pass laws permitting spying on opposition groups or others not in political favor with the majority, it again gives the procurator power to order the surveillance. The result will surely be continuing surveillance of the correspondence of Ukrainian citizens by the State Security Service and other secret police agencies. This clause should be substantially narrowed. Wire-tapping and mail surveillance must only be permitted by judicial warrant when there is strong probable cause to suspect ongoing criminal activity, defined by a new criminal code that does not include the many vague crimes against state security of the old Communist criminal code. Since that is the only exception that should be permitted, it should be written into the Constitution as narrowly as possible, not left to the discretion of future legislatures.

Article 38 purports to guarantee freedom of travel, but it, too, is qualified by a claw-back clause: "The citizens of Ukraine...have the right to freely travel from Ukraine abroad and to return to it **on conditions specified by the law.**" The right of a Ukrainian citizen to travel abroad and return to Ukraine at any time should be absolute, without qualification. The law should never be permitted to limit that right. "**On conditions specified by the law**" must be **deleted**.

Article 39 seems to prohibit the police-state dossier keeping so typical of Communist regimes. But it does not prohibit such record keeping "**in furtherance of a prior court decision in such cases and in accordance with such procedures as are specifically provided by law.**" This exception looks narrow until one realizes that it would again permit the legislature to set up a secret police apparatus and pass laws requiring courts to order secret record keeping on anyone considered a danger to "state or social security." It is a power still far too broad. As recommended for Article 37, this exception should be constitutionally limited only to cases where a judge has issued a warrant determining that there is strong probable cause to suspect ongoing criminal activity. All other record-keeping by the government should be open to inspection and correction by the person about whom the records are kept. This exception should be substantially narrowed or **deleted**.

Article 40 contains another dangerous claw-back clause. Article 40 supposedly guarantees the right "to conduct any religious or atheistic

activities **that do not contradict the law.**" That clause permits the outlawing of any religious activity the legislature doesn't like. "**That do not contradict the law**" must be **deleted.**

"**The rousing of hostility and hatred on religious grounds is punishable under the law.**" This dangerous sentence is fraught with peril for religious freedom. Whose hostility? Whose hatred? And who decides if hostility or hatred have been aroused? Many religions preach that they are the only way to salvation, and that other religions are wrong or their adherents are lost. Would such preaching constitute "rousing of hostility and hatred on religious grounds"? Many religious messages are offensive to those who disagree with them. If they disagree publicly and arouse the hostility of believers in the religion, would such public disagreement constitute "rousing of hostility and hatred on religious grounds"? The vagueness and overbreadth of this sentence demand that it be **deleted.**

"**No one may be exempted from discharging one's duties toward the state or refuse to obey laws on religious grounds.**" Does this mean that if the law requires all people to pledge allegiance to Ukraine or the national flag, that Jehovah's Witnesses (who take literally the Biblical commandment to pledge allegiance only to God) could be imprisoned for disobedience to the law? No one should be required by any constitution to place their obedience to the law above their obedience to their religion. Criminal acts cannot be excused on religious grounds (human sacrifice is still murder even if committed to fulfill some primitive religious rite). But to constitutionally lump together all "duties toward the state" as though saluting the flag is the legal equivalent of obeying the criminal laws is to ignore the fundamental distinction between symbolic action, which is a form of religious expression, and ordinary acts. The legislature should be permitted to exempt people from some duties toward the state and from obedience to some laws on religious grounds. This sentence makes such exemptions unconstitutional. It will also be the pretext for repression of minority religious sects. It must be **deleted.**

Article 41 contains the most dangerous claw-back clause of all. After purporting to guarantee the right of freedom of speech and free expression, the second sentence says: "**Any abridgement of this freedom is, as an exception, established only by the law.**" The legislature is thus empowered to destroy the right of freedom of speech by calling the laws destroying it "exceptions," most probably to promote "health" or

"morality" or the "rights and freedoms of other persons" or "state or social security." History is replete with such "exceptions" that have crushed freedom of expression in every Communist state and in countless other state tyrannies.

Freedom of speech and expression is the most fundamental of the civil and political rights of man because it is so directly linked to that freedom of the mind and of the spirit that is the inborn definition of our humanity. Only we, of all creatures, have this gift of speech, this freedom to invent new worlds with the power of our symbols.

Freedom of speech is also the most important restraint on tyrannical governments and is their greatest enemy. They fear it most. They tolerate it least.

That is why this is the first freedom, and why it is enshrined in the first amendment in the Bill of Rights of the United States Constitution. And in that Constitution it is expressed as absolutely as any right can be: "Congress shall make no law...abridging the freedom of speech, or of the press." There is no claw-back clause permitting the legislature to abridge this, the most basic of political liberties.

"**Any abridgement of this freedom is, as an exception, established only by the law**" is the greatest threat to fundamental civil rights in this draft Constitution of Ukraine. It must be **deleted**. If it is not deleted, this sentence alone is sufficient reason to oppose adoption of this draft Constitution.

Article 42 demonstrates just how dangerous this draft Constitution is to freedom of the press and to political freedoms in general. After the first sentence declares the right to seek, obtain, keep and disseminate information, and the second sentence establishes the citizen's right to obtain and disseminate information from the government, the third sentence takes it all back: "**Arrest and seizure of information materials and technical means used in their preparation and transmission are allowed only in furtherance of a court order or a procurator's warrant.**" So whenever the procurator issues a warrant, the political leaflets or the newspapers may be legally confiscated, the printing presses or the photocopiers or the fax machines may be seized, and the political opposition's publications may be destroyed. Can such an obvious dagger pointed at the heart of political liberty in Ukraine remain in this Constitution? This sentence must be **deleted**.

Article 43 contains another fatal claw-back clause that destroys the right that is allegedly being protected. After declaring the right to freedom of association, Article 43's third and fourth sentences take that freedom away: "**Associations of citizens may be banned and dissolved by a judicial order if their purposes and activities violate the law. Pending a court ruling, the activities of an association may be suspended by a procurator.**" So not only can the legislature pass laws banning many kinds of associations, but the organizations can then be forcibly disbanded. And this violation of the basic right of free association need not wait even for a court order. The procurator may suspend the activities of the association at any time he determines. Suppose an association was established to monitor compliance with the Helsinki Accords, but the legislature passed a law outlawing such activities as contrary to state security. The procurator could suspend the organization's activities immediately, and a court could ban and dissolve the organization permanently. Does this remind one a little of events of the very recent past--the Communist past? Under this draft Constitution, such outrageous state violation of the freedom of association would be completely constitutional. These sentences must be **deleted**.

Article 44 completes the destruction of civil and political liberties in Ukraine. After vapidly declaring the right of citizens to assemble peaceably and unarmed, the rest of Article 44 makes it clear that the only assemblies that must be permitted are those not obstructed by the state. The second sentence requires: "**State agencies must be informed not later than three days prior to the holding, in public places, of meetings, rallies, street marches and demonstrations.**" The meetings may be banned if the state agencies cannot "**secure proper conditions for the assembly in question and guarantee public order and safety. Bans affecting the exercise of this right may be appealed in the courts.**" This is called prior restraint, and it is one of the oldest tactics to obstruct political assembly. It is incredible that the draft Constitution of Ukraine would legitimize such restrictions on the fundamental right to peaceably assemble. All but the first sentence of Article 44 should be **deleted**. An alternative to the first sentence is the clear statement in the United States Constitution: "Congress [The National Assembly] shall make no law...abridging...the right of the people peaceably to assemble."

The Constitution and the Military Power

Among the greatest problems in creating durable democratic systems has been the tendency of newly democratic governments to be overthrown by military coups d'état. The framers of the United States Constitution deeply distrusted standing armies. They knew how often monarchs had used military power to rule by force. So the U.S. Constitution places the army and navy under the president, an elected civilian commander-in-chief. To limit the president's power (lest he become a monarch by a different name), the Constitution requires that all money to pay for the armed forces must be appropriated by the Congress and that war may only be declared by the Congress.

Recent U.S. presidents have carried on wars without formal declaration by Congress, but in most cases (including the Vietnam War), Congress did authorize the use of U.S. forces either directly by resolution or indirectly by appropriating the money to carry out the military actions ordered by the president. The recent U.S. participation in the United Nations police action to repel Iraqi aggression in Kuwait was explicitly authorized by Congress.

Can the military power be kept under civilian control in Ukraine? Throughout the former Soviet empire, the Red Army, now under the Commonwealth of Independent States, could pose a major threat to democratization. There are, however, two facts which lead me to hope that it will not become such a threat:

1. The Red Army will probably be broken up into national armies. Most of the commanding officers and a majority of the soldiers in Ukraine are Ukrainians. They voted heavily for Ukrainian independence in the referendum on December 1, 1991.

2. The Ukrainian president and the Ukrainian Parliament will have control over the Ukrainian armed forces under the proposed Constitution of Ukraine. The Red Army has been under Communist party control since 1917, so in a perverse sort of way, the USSR had a tradition of civilian control of the military.

The army is also a conscripted army, not a professional standing army except for its officer corps, providing some limit on the chances of a successful military putsch.

Nevertheless, the forces of Ukrainian nationalism could be turned against democratic government by a skillful man-on-horseback. Indeed the statue in the plaza outside St. Sophia's Cathedral in Kiev is of such a national hero, Bogdan Kmelnitsky, the military man on horseback who founded the first Ukrainian state. Whether Ukraine can overcome its authoritarian past and institute an effective democracy remains to be seen.

Will Ukrainian Democracy Succeed?

Few predicted that Ukraine would become an independent nation so soon. Few predicted that communism in the Soviet Union would be so quickly overthrown. In making predictions about the future of democracy in Ukraine, we should begin by examining some of the factors that have led to Ukrainian independence and the overthrow of communism.

One reason that totalitarianism is doomed is the triumph of the ideas of human rights. The Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights have been accepted and made international law by most of the nations of the world, including the former Communist states. The Helsinki Accords provided procedures for review of human rights that were lacking in the Soviet empire before they were signed. A new generation of Soviet leaders led by Mikhail Gorbachev proclaimed the goal of a state ruled by law and dedicated to human rights. We thus have entered an era in which the universality of international human rights no longer has credible ideological opposition.

Coupled with that triumph of ideas has been the demonstrated triumph of democratic capitalist economies, which have proven that economic freedom leads to remarkable economic productivity. As Friedrich A. Hayek and other theorists of modern capitalism had predicted, centrally planned state-owned economies cannot match the adaptability and energy of free-market capitalist or mixed capitalist economies. And as Milton Friedman has argued, capitalism and private property are the best foundation for political freedom. Marxism-Leninism has proven to be an economic as well as a moral failure.

We now live in a global village where modern communication technologies and transportation render futile attempts by totalitarian regimes to isolate their people from the world. Even the Albanias and

the Democratic Kampucheas eventually fall. The democracy movement has become world-wide, linked by fax and television, telephone and photocopier, and by a new confidence that democracy is the future of mankind.

These modernizing forces are all still present in the world, despite the efforts by Islamic fundamentalists and unrepentant Communists like Peru's Shining Path and the Philippines' New Peoples' Army to stop their march.

In Ukraine there are also two Ukrainian cultural factors that portend a hopeful future for democracy:

1. Ukraine has a highly educated population. Jefferson rightly believed that an educated population is the best guarantee of democracy, and he therefore founded America's remarkable system of public higher education when he founded the world's first public university, the University of Virginia. The new democracies of Ukraine, Russia, Poland, Hungary, and Czechoslovakia have the most highly educated populations that any new democracies have had since West Germany and Japan became democracies after World War II. Fervor for democracy is broad based in Ukraine and rooted in the deep, fertile soil of an educated population.

2. The recent struggle for democracy in Eastern Europe, Russia, and Ukraine has developed political and organizational skills that will prove useful in developing political parties and durable democratic institutions. The extraordinary courage shown by ordinary Ukrainians and the commitment of the key leaders of Rukh to non-violent resistance against totalitarian tyranny are indicators that the democratic revolution in Ukraine is based on a solid foundation.

What Must Be Done?

In March of 1991, I stood in the center of Kiev's Square of the October Revolution beneath a statue of Lenin, the father of Soviet Communist tyranny, and I read the American Declaration of Independence to a cheering rally of 5000 people. I had gone to Ukraine to defend Stepan Khmara, a Ukrainian independence leader and member of Parliament whom the Communists had arrested and imprisoned (they even had the gall to arrest him on the floor of Parliament). Only six months later, in October, 1991, I stood with Stepan Khmara in that

same square, now renamed Independence Square, and we watched as that statue of Lenin was taken down block by granite block. And now the Soviet Communist system that Lenin built must also be dismantled block by granite block, and replaced with a living democracy.

What can we in the United States do to help build democracy and the rule of law? To borrow a phrase from Lenin: What must be done?

We should not be deluded into believing that totalitarianism is dead. It is still very much alive in Iraq, North Korea, Iran, the Peoples' Republic of China, and Vietnam. And it still lurks in the dark subterranean cells of the Ukrainian secret police, though they have been renamed and "restructured." But totalitarianism is weakening, and it cannot withstand the light of the new day.

We should open every opportunity for contact with Ukraine and with other former Communist societies. For it is in open contact that the superiority of democracy and economic freedom will win the minds of the new generation. That is what is happening even where communism still rules, but with a loosened grip. In China, Gwangdong province is becoming a model of free enterprise development, and even Vietnam has enacted a liberal investment code.

The world's democracies should continue to promote free trade and free contact between the world's peoples. We must not succumb to the forces of isolationism or protectionism. The new democracies of Eastern Europe and the Commonwealth of Independent States must be welcomed into the democratic world with open arms, as the long lost brothers and sisters they are.

We should put our money where our mouth is. We should financially back the new democracies--not just in Eastern Europe, but also in Asia, Africa, and Latin America. But we should support them wisely. We should not just give money to central government bureaucracies to support their anti-democratic habits. We should financially support two economic revolutions especially:

1. Support land reform. Communism is the final stage of feudalism. It has never taken over a capitalist democracy, except by military conquest. The countries that communism still threatens are the feudal societies of the world, where a small oligarchy controls all economic and political power, usually through ownership of the land. In Ukraine, Stalin imposed monopoly land control by the state and murdered Ukraine's small farmers in the genocidal Great Famine. Private ownership must now be transferred to those who till the land. In

Ukraine, where the state owns the land, that can be accomplished by state action. But privatization must then be supported by loans to those who produce, so they can buy the capital equipment they need to produce.

Similarly, the Western democracies should provide a fund to finance land reform with full compensation in Latin America and the Philippines and other nations that are still overcoming the legacy of neo-feudal land tenure systems. Just as land reform opened the way for Japanese democracy, so will economic justice bring a stable base for democracy in Latin America and Asia.

2. Finance private enterprise. The world's democracies should provide a fund for private investment loans to Ukrainian entrepreneurs, assist Ukrainians in establishing a stable private banking system, back currency convertibility, and provide guarantees to encourage investments by Western capitalists in Ukraine.

We should teach and promote human rights. The teaching of human rights should become part of the curriculum of every secondary school and every university in the world. Jefferson was right about the central role of education in forming a firm foundation for democracy. Education and literacy should become the first priority of every government. For it is in the development of human beings--in the unleashing of the powers of the human mind--that democracy and economic security will become possible for all people.

Our governments and foundations should support educational exchanges and assistance between lawyers in the Western democracies and Ukraine. Ukraine needs to develop an entire legal code to support private property, free enterprise, and democratic government. This legal structure is an essential precondition for economic development and should be given top priority in our programs of assistance.

The torch of democracy has passed to a new generation of nations. The last of the great colonial empires has finally fallen. Democracy is not an imperial conspiracy by the West. Among the most important developments of the last fifty years is the world-wide acceptance of fundamental democratic ideas embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The ideals of democracy are sweeping the world. The winds that began blowing in Philadelphia in 1776 have circled and recircled the

globe. And combined with the aspirations of the peoples of scores of newly free nations in Eastern Europe and Africa and Asia, those winds have become a jet stream that has changed the climate of the world. The global warming that has melted the ice of communism in Eastern Europe and the former Soviet Union has also broken up the cold authoritarianism of the military regimes of Latin America and southern Asia. A new springtime of freedom has come. The sunlight of liberty has broken through the grey clouds of communism and is warming the world.

This dark century--this terrible time when tyranny so often seemed triumphant--this century of colonialism, world wars, totalitarianism, genocide, and nuclear terror--is nearing its end. We are entering a new century. Let us make it the century of democracy.

In this springtime of 1992, the ice of totalitarianism is melting. Flowers of freedom are springing up on every hillside, from the Namibian desert to the steppes of Central Asia.

What will the coming summer bring? Will there be enough rain to nourish the new life, these new democracies? Or will this greening of the earth be trampled under the boots of new dictatorships?

I, for one, will bet on democracy.