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HOW IDEAS TRAVEL: RIGHTS AT HOME AND ABROAD

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Neither time nor place can cabin ideas. In 1987 Americans celebrated the 200th anniversary of their Constitution, and in 1991 they marked the bicentennial of their Bill of Rights. At just the same time — as if history were a creative choreographer — the peoples of central and eastern Europe were proving the resilience of old ideas about freedom, human dignity, and democracy. After living for so many years under oppressive one-party regimes, people in central and eastern Europe and the Soviet sphere now find themselves questing for choices long denied them.

New times require new constitutions. Nearly every country, even the most repressive, has a “constitution.” We are all too familiar with constitutions (such as the Soviet Union’s 1936 constitution) whose glowing promises of justice and human dignity have little relation to reality. Such documents must be discarded, and authentic constitutionalism planted in their place.

Thus, as Americans reflected on the 200-year odyssey of their Bill of Rights, Russians, Poles, Bulgarians, and others began to write new constitutions. At the core of each of these new documents lies a bill of rights. Indeed, in January 1991 the National Assembly of the Czech and Slovak Federal Republic gave priority to the adoption of a

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new bill of rights; meanwhile debate continued on other constitutional provisions (in particular, those effecting a division of powers between the federal government and the two republics).¹

Those who draft a bill of rights must understand the history and traditions of the country for which the document is being created. One who sought to write a bill of rights for Hungary, for example, would want to know something about the great Golden Bull of 1222 (which is to Hungarian history what Magna Carta is to that of England), the impact of Enlightenment thought on eighteenth-century Hungary, and the reformist thrust of the 1848 revolution. Likewise, a Polish drafter would wish to recall the legacy of Polish constitutionalism, including the notable Constitution of May 3, 1791 — the world's second national constitution (after the Philadelphia Constitution of 1787).²

Stating a people's rights is not, however, a parochial exercise. Drafters of bills of rights look not only to their own country's experience but also to that of other countries. Professors and scholars who work with constitutional commissions in central and eastern Europe are well read; they know the Federalist Papers and the writings of western theorists such as Locke and Montesquieu. Drafting commissions invite experts from other countries to pore over drafts and to offer comments and advice.

Traffic is heavy between the United States and the emerging democracies, as well as between those countries and the capitals of western Europe. Americans who travel to consult on new constitutions are sometimes dubbed "constitutional Johnny Appleseeds." Western European experts are equally in demand. The president of France's Conseil Constitutionnel, Robert Badinter, and Heidelberg professor Helmut Steinberger (formerly a justice of the West German Supreme Court) have been frequent guests in Prague and Bucharest.

This international traffic in thinking about rights and constitutions is nothing new. Drafters of the early American constitutions, like their modern counterparts in central and eastern Europe, looked to both home-grown and imported ideas for inspiration. Indeed, the colonies' original charters linked rights in the Old World to those in

1. The effort to agree on a federal structure came to a halt with the division of the country into two independent republics, Czech and Slovak, in January 1993. See Jiri Pehe, *Czechoslovak Parliament Votes to Dissolve Federation*, RFE/RL RESEARCH REPORTS No. 48, Dec. 4, 1992, at 1.

2. Mark F. Brzezinski, Note, *Constitutional Heritage and Renewal: The Case of Poland*, 77 VA. L. REV. 49 (1991).

the New. Each charter had a provision like that of the Virginia Company's charter of 1606 guaranteeing settlers "all liberties, franchises, and immunities . . . as if they had been abiding and born within this our Realm of England."³

America's heritage from the British Constitution traces back for centuries. Magna Carta (1215) carried a guarantee of proceedings according to the "law of the land" — the forerunner of the principle of due process of law. Magna Carta's assurance that there should be no sale, denial, or delay of justice anticipated modern constitutional guarantees of equality before the law.⁴

The struggles between Parliament and the Stuart kings in seventeenth century England produced other "liberty documents" that influenced American thinking about constitutional rights. Sometimes the precedents are exact. England's Bill of Rights (1689) has the precise counterpart of the First Amendment's guarantee of the right to petition for redress of grievances, the Second Amendment's assurance of the right to bear arms, and the Eighth Amendment's ban on excessive bail, excessive fines, and cruel and unusual punishment.⁵

The framers of early American documents were also influenced by the writings of the great European political theorists. Madison drew upon Montesquieu in declaring, in the *Federalist* No. 47, that allowing legislative, executive, and judicial powers to fall into the same hands "may justly be pronounced the very definition of tyranny."⁶ From John Locke the American founders gleaned notions of a social compact and citizens' retention in civil society of the inherent rights of life, liberty, and property.⁷

To British and European ideas, American drafters during the founding period added the fruits of thinking about rights during the colonial period. Responding to complaints about the lack of an established body of laws protecting rights in Massachusetts Bay, the colony's magistrates adopted, in 1648, the *Laws and Liberties of Massachusetts*.⁸ Pennsylvania's founder, William Penn, drafted that

3. See A.E. DICK HOWARD, *THE ROAD FROM RUNNYMEDE: MAGNA CARTA AND CONSTITUTIONALISM IN AMERICA* 15-23 (1968).

4. See A.E. DICK HOWARD, *MAGNA CARTA: TEXT AND COMMENTARY* 14-15 (1964).

5. For the text of the Bill of Rights of 1689, see *SOURCES OF OUR LIBERTIES* 245-50 (Richard L. Perry ed., 1959).

6. *FEDERALIST* No. 47 (James Madison).

7. See GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* 282-91 (1969).

8. This document has been called "the first modern code of the Western world," antedating Colbert's project in France by 20 years. GEORGE L. HASKINS, *LAW AND AUTHORITY IN EARLY*

colony's Frame of Government (1682), containing such guarantees as open courts, jury trial, and moderate fines.⁹

1776 brought revolution, independence, and the opportunity for Americans to declare those rights they deemed fundamental to a free society. In May 1776 a convention, meeting in Williamsburg, instructed Virginia's delegates in Congress to move to declare the united colonies free and independent states. At the same time, the convention appointed a committee to prepare a declaration of rights and a frame of government for Virginia.¹⁰

The first state constitutions differed in some specific provisions. For example, some states provided for a bicameral legislature, others for a single chamber. On many major issues, however, there was general agreement among the early state drafters. The state constitutions reflected the general theme of republicanism, including a belief in limited government, the consent of the governed, and frequent elections.¹¹

How were rights to be protected? Not every state constitution had a bill of rights. Moreover, the courts' power to declare legislative acts unconstitutional — a powerful device for enforcing rights — was still embryonic in the states (Chief Justice John Marshall's decision in *Marbury v. Madison* still lay in the future).

The state drafters looked to democratic modes of government to guard against incursions upon the people's rights. Associating tyranny with kings, governors, and courts, the drafters relied upon a Whig tradition that emphasized direct, active, continuing popular control over the legislature in particular and of government in general. Thus, despite declarations about the separation of powers, the early state constitutions in fact made the legislature the dominant branch of government. State governors were, by contrast, cyphers; only in New York and Massachusetts was the governor not elected by the legislature.¹²

Americans' experiments with self-government, and their efforts to devise ways to articulate and protect rights, excited intense inter-

MASSACHUSETTS 120 (1960).

9. William Penn, *Frame of Government of Pennsylvania — 1682*, reprinted in 8 SOURCES AND DOCUMENTS OF U.S. CONSTITUTIONS 253 (William F. Swindler ed., 1979).

10. See PAPERS OF THOMAS JEFFERSON 290-91 (Julian Boyd ed., 1950).

11. See WILLI P. ADAMS, *THE FIRST AMERICAN CONSTITUTIONS* 63-99 (Rita Kimber & Robert Kimber trans., 1980).

12. On efforts to achieve republicanism in the early American republic, see WOOD, *supra* note 7, at 430-67.

est across the Atlantic. During his time as the American envoy in Paris, Thomas Jefferson took great delight in sharing with his French friends the latest political or constitutional idea from the United States. When the General Assembly of Virginia enacted that commonwealth's Statute for Religious Freedom, Jefferson had the statute translated into French, and it found its way into Diderot's *Encyclopédie*.¹³

Benjamin Franklin was an exceptionally popular figure in Paris. (On Franklin's death, Mirabeau introduced a memorial resolution in the National Assembly.) Franklin's personal wit and charm drew particular attention to the Constitution of Pennsylvania. Robert Badinter tells the story of how, during the mob's sacking of a palace during the French Revolution, a book flew out of a window and struck an American bystander on the head. The book was a bound copy of the Constitution of Pennsylvania — an uncommonly palpable example of the way constitutional ideas travel.¹⁴

American ideas about rights proved a frame for much of the debate about rights in revolutionary France. George Mason's Declaration of Rights for Virginia (1776), which furnished a model for other American states and for the Bill of Rights of the United States Constitution, also influenced those who framed France's Declaration of Rights of Man and the Citizen in 1789.¹⁵

Popular sovereignty, grounded in Rousseau's notion of the "general will," was a powerful force in revolutionary France. Having stated a theory of rights in the Declaration of 1789, Frenchmen then turned to drafting a new constitution. French intellectuals were divided over the extent to which democratic institutions should be checked by devices such as a bicameral legislature or an executive veto.

The Abbé Mably, a friend of John Adams, liked the American idea of the separation of powers — a principle embodied in the United States Constitution. In the debates in the National Assembly over a new constitution, J.J. Mounier argued for a balance of powers — two chambers and an executive veto.

Condorcet wanted the nation to be represented in a single assembly. His formula for avoiding tyranny was to have frequent elec-

13. On the Virginia Statute and its influence, see *THE VIRGINIA STATUTE FOR RELIGIOUS FREEDOM* (Merrill D. Peterson & Robert C. Vaughan eds., 1988).

14. Mr. Badinter recounted this anecdote to the author on a recent visit to Paris.

15. HELEN HILL MILLER, *GEORGE MASON: GENTLEMAN REVOLUTIONARY* 301 (1975).

tions and to spell out the people's rights in a declaration of rights. Those who agreed with Condorcet could point, for precedent, to the American state constitutions.

Ultimately the National Assembly chose to have a single house and only a limited power of veto. Thus, in the early years of the respective countries France and the United States chose divergent approaches to protecting rights. There was considerable common ground in the articulation of rights; one need only compare Mason's 1776 declaration and that adopted in France in 1789. The framers of the United States Constitution, however, sought structural means — separation of powers, checks and balances, and federalism — to protect rights by limiting government's power. By hewing closer to notions of popular sovereignty, the French chose quite a different path — as the unhappy course of events in France after 1789 made abundantly clear.¹⁶

The United States Constitution inspired liberal reformers both in Europe and in Latin America. A Venezuelan who had travelled to Philadelphia translated the 1787 Constitution into Spanish in time for it to be available to the framers of Spain's Cadiz Constitution (1812).¹⁷ American constitutional ideas were especially strong in Central and South America during the era of liberation from Spanish rule. Examples include the Constitutions of Venezuela (1811), Mexico (1824), and Argentina (1826).¹⁸

The United States Constitution and Bill of Rights, written in the eighteenth century, were shaped by men steeped in Enlightenment ideals. They lived in a time when reason was the avenue to understanding and when intellectuals in various lands could agree with Condorcet about there being a "common core of human happiness" that transcended differences of nationality and ethnicity.¹⁹ Thus liberal reformers in many lands could see American constitutional principles as proper models to emulate.

16. On the relevance of the American constitutional experience, especially the state constitutions, in the eyes of those who debated constitutional arrangements in France, see R.R. PALMER, *THE AGE OF THE DEMOCRATIC REVOLUTION* 263-82, 489-500 (1959).

17. A Spanish scholar told the author this anecdote during a visit to Madrid. See also *CONSTITUTIONS THAT MADE HISTORY* 115 (Albert P. Blaustein & Jay A. Sigler eds., 1988) [hereinafter *CONSTITUTIONS THAT MADE HISTORY*].

18. Robert J. Kolesar, *North American Constitutionalism and Spanish America: "A Special Lock Ordered by Catalogue, Which Arrived with the Wrong Instructions and No Keys"?* in *AMERICAN CONSTITUTIONALISM ABROAD* 41 (George A. Billias ed., 1990).

19. On Condorcet, see ELISABETH BADINTER & ROBERT BADINTER, *CONDORCET: UN INTELLECTUEL EN POLITIQUE* (1988).

The nineteenth century brought a reaction that undermined common notions flowing from the Age of Reason. On the political front, reaction took the form of settlements like the Holy Alliance and the Congress of Vienna. Nationalism and nationality began to be the battle cry, as in the revolutions of 1848 (Verdi's operas give us a window on the world of Italian nationalism). European intellectuals looked increasingly to their own national roots — what German philosophers such as Savigny called the *Volksgeist*.²⁰

As more and more constitutions were written for European states, the influence of American documents became less direct. More immediate models appeared on the scene. Especially influential was the Belgian Constitution of 1830, a font of much constitutional drafting in nineteenth-century Europe.²¹ American ideas hardly became irrelevant; they simply became one thread in a much richer constitutional tapestry.

In the years immediately following World War II, it was possible to speak of the "American century." With much of Europe in ashes, and Asia yet to become a major economic force, the United States enjoyed immense influence. In Japan, the staff of General Douglas MacArthur's headquarters literally drafted a new constitution in seven days for that defeated country.²² Similarly, the mark of American ideas on West Germany's postwar constitution is evident.²³

Even in the period after World War II, however, the influence of American constitutionalism was a sometime thing. In Africa, for example, it was British barristers and scholars who were called upon to work on constitutions for British colonies, such as Ghana, that were becoming independent nations.²⁴

The upheavals in central and eastern Europe in the winter of 1989, and the August revolution in the Soviet Union in 1991, have brought a burst of attention to constitutions and bills of rights. An American who reads the draft of a bill of rights or constitution for one of the region's fledgling democracies will find much that is famil-

20. On the roots of nationalism, see LIAH GREENFELD, *NATIONALISM: FIVE ROADS TO MODERNITY* (1992).

21. *CONSTITUTIONS THAT MADE HISTORY*, *supra* note 17, at 182.

22. KYOKO INOUE, *MACARTHUR'S JAPANESE CONSTITUTION* 9-36 (1991).

23. William Safran, *The Influence of American Constitutionalism in Postwar Europe: The Bonn Republic Basic Law and the Constitution of the Fifth French Republic*, in *AMERICAN CONSTITUTIONALISM ABROAD* 101 (George A. Billias ed., 1990).

24. For a discussion of the use of the "Westminster Model" in post-colonial Africa, see L.C.B. GOWER, *INDEPENDENT AFRICA* 14-19 (1967).

iar but also much that is not.

Two hundred years after their drafting, the United States Constitution and the Bill of Rights are widely recognized as furnishing paradigms of the fundamental principles that define constitutional democracy. These principles include:

(1) *Consent of the governed*. "We the People" — the first three words of the United States Constitution — embody the principle of consent of the governed. But American constitutionalism has also worked out the modes by which genuinely representative government can exist, including freedom to form political parties, fair apportionment of legislative seats, a liberal franchise, and free and fair elections.

(2) *Limited government*. Constitutionalism pays special attention — through devices such as separation of powers and checks and balances — to preventing power from being concentrated in such a way that it becomes a threat to individual liberty.

(3) *The open society*. Central to American precepts of individual liberty are the rights to believe what one will, to embrace what religious beliefs one chooses, to engage in free and robust debate, to oppose the orthodoxy of the moment. No part of the Constitution is a more powerful beacon than the First Amendment.

(4) *Human dignity and the sanctity of the individual*. It is no accident that the Bill of Rights accords such detailed attention to criminal procedure. A good measure of the respect accorded human rights is how the state treats those charged with or suspected of criminal activity. The sanctity of the individual also connotes aspects of personal privacy and autonomy — zones of private life into which the state may not intrude at all or only for demonstrable and pressing public needs.

(5) *The rule of law*. The principle of due process of law — an idea as old as Magna Carta — requires fairness and impartiality in both criminal and civil proceedings. A corollary of fairness is equality. Constitutionalism's moral fabric is put to special test by discrimination turning on race, religion, or like factors. Liberty and equality may, at times, seem to be in tension with each other, but by and large they go hand in hand.

Bills of rights being drafted in central and eastern Europe parallel, in some respects, the principles flowing from the Bill of Rights of the United States Constitution and from American constitutionalism. Every draft bill of rights contains, in one form or another, assurances of free speech, freedom of conscience, and the right to form political

parties. No draft fails to include some version of the anti-discrimination principle — bans on discrimination on the basis of nationality, ethnicity, religion, or other enumerated grounds. Procedural protections for those accused of crime are invariably included.

Other provisions of bills of rights being proposed or adopted in central and eastern Europe will strike the American observer as less familiar — indeed, in some cases disturbing. There are respects in which the bills of rights in the region go beyond the requirements of American constitutional law. There are other ways in which they fall short.

To illustrate central and eastern European drafters' enlarging the meaning of "rights": The Bill of Rights of the United States Constitution declares what government may *not* do; it is what Justice Hugo L. Black once called a list of "Thou Shalt Nots." The document reflects the view that the function of a bill of rights is to limit government's powers.

A legacy of the twentieth-century notion of positive government — an age of entitlements — is bills of rights that declare affirmative rights. Such bills include, of course, the traditional, negative rights, but they also spell out claims upon government, such as the right to an education, the right to a job, or the benefits of care in one's old age.

It may well be that, notwithstanding the language of the United States Bill of Rights, judicial gloss upon the Constitution has brought American jurisprudence closer to the idea of affirmative rights than theory might suggest. The United States Supreme Court has rejected the argument that education is a "fundamental" right under the Fourteenth Amendment.²⁵ Yet one who reads the many cases (especially those in lower courts) regarding school desegregation, education for the children of illegal aliens, and other school cases may well conclude that, in many respects, education is indeed a protected constitutional right. Be that as it may, bills of rights in the newer nations make explicit rights (such as education) that can be, at most, implicit in American constitutional law.

Thus the Charter of Fundamental Rights and Freedoms of the Czech and Slovak Federal Republic, adopted in January 1991, declares that workers "are entitled to fair remuneration for work and to satisfactory working conditions."²⁶ Other sections decree free medical

25. See *San Antonio v. Rodriguez Indep. School Dist.*, 411 U.S. 1 (1973).

26. CHARTER FUND RTS. FREEDOM CZECH SLOVAK FED. REPUB. art. 28 (workers' rights).

care, material security in one's old age, maternity benefits, and assistance to assure the needy of "basic living conditions." At the same time, some new bills of rights promise less than they seem to. Free speech will enjoy only qualified protection. While stating that one may speak freely, the typical draft bill of rights goes on to list significant exceptions. Drafts commonly state that advocacy of "fascism" or "communism" is excepted from the constitution's protection, or that speech may be forbidden if it conflicts with "public morality" or with the "constitutional order." Such exceptions swallow up the rule, especially when a draft (as always seems the case) does not require some finding of "clear and present danger" or a like standard to justify a restriction on speech.

For example, the Romanian Constitution, adopted in 1991, declares the "freedom to express ideas, opinions, and beliefs" to be "inviolable." But the constitution goes on to add that the law "prohibits defamation of the country and the nation; provocation to war or aggression; and to ethnic, racial, class, or religious hatred; incitement to discrimination, territorial separatism, or public violence; and obscene acts, contrary to good morals."²⁷ What ethnic Hungarian, inclined to complain about conditions in Transylvania, would care to rely on his right to speak freely as being "inviolable" in the face of such sweeping and malleable exceptions?

Draft bills of rights, in addition to banning various forms of discrimination, often declare affirmative rights of culture, language, and education. The Czech and Slovak charter, for example, guarantees national and ethnic minorities the right to education in their language, the right to use that language in official settings, and the right to participation (form unspecified) in the settlement of matters concerning those minorities.²⁸ But left unaddressed in most drafts is the explosive question whether rights of national minorities are simply rights of the individuals who make up those minorities or take on the character of group rights — an issue of utmost gravity wherever, as in so much of central and eastern Europe, disparate racial and ethnic groups are involved.

A constitution must, of course, be planted in a country's own soil to take root. One should not expect that a Bulgarian or Pole drafting a constitution or bill of rights will copy the American model — or any other model. Moreover, one should not be surprised that central

27. ROM. CONST. art. 30, §§ 1, 7.

28. See *id.* art. 25, § 2a-c.

and eastern Europeans will draft documents that, in their specific provisions at least, bear more resemblance to fundamental laws in western Europe than to American documents.

Several forces pull central and eastern European drafters and lawmakers into the European orbit. After decades of an Iron Curtain, the people of the region yearn to rejoin the "family of Europe." There are ties of tradition, such as the strong appeal of French ideas in some intellectual circles and the longstanding custom of legal scholars in many countries to think of German scholarship as offering the highest and most rigorous standards.

New bills of rights also reflect the hope of the emerging democracies to be fully accepted as members of the civilized community of nations. Drafters thus study such documents as the Universal Declaration of Human Rights and the European Convention on Human Rights.²⁹ Lofty aspirations are also coupled with more practical considerations: countries aspiring to membership in such regional arrangements as the European Community want to be seen as having fundamental laws in line with principles accepted in western Europe.

Increasingly in this century, bills of rights have come to resemble political party platforms that appeal to this or that constituency — though in the Third World such rhetoric inevitably confronts the hard realities of poverty and privation. The revolutionaries who drafted Mexico's 1917 constitution paid special attention to labor and social welfare, decreeing the rights to an eight-hour day, a minimum wage, and workers' compensation — subjects on which constitutions are commonly silent.³⁰ That document's Article 123 is considered so important that a street in Mexico City is named for it.

India's 1950 constitution reflects the ethos of a Gandhian state. Its "Directive Principles of State Policy" point India toward the goal of a welfare state, the creation of a "casteless and classless society," and India's promotion of world peace.³¹

Perhaps the most baroque use of a bill of rights to legislate public policy is found in Brazil's 1988 constitution. Rather than convene a constituent assembly, Brazil's leaders asked their Congress to draft a new constitution. All 559 members of Congress participated, dividing

29. U.N. UNIVERSAL DECL. HUM. RTS., G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948); EUR. CONVENTION HUM. RTS., 213 U.N.T.S. 222, signed Nov. 4, 1950, entered into force Sept. 3, 1953.

30. MEX. CONST. art. 123, § I (eight hour day), §§ VI, VIII, IX (minimum wage), § XIV (workers' compensation).

31. INDIA CONST. art. 38 (welfare state); *id.* art. 51 (world peace).

themselves into eight committees, each with three subcommittees. These twenty-four subcommittees worked without any master plan.³² The resulting document is unrivaled among constitutions for conferring favors upon special-interest groups. There are, for example, thirty-seven sections dealing with just the rights of workers. Some provisions, such as one day off in seven, were found in Brazil's 1946 constitution; others, such as a forty-four hour work week, had not been legally mandated before the adoption of the 1988 constitution.³³

In South Africa, delegates to the drafting table will consider proposals to use the bill of rights to make up for past inequalities. An African National Congress draft provides for diverting resources from richer to poorer areas "[i]n order to achieve a common floor of rights for the whole country." The judiciary would be "transformed in such a way as to consist of men and women drawn from all sectors of South African society." The nation's land, waters, and sky are declared to be "the common heritage of the people of South Africa," and the state's agencies and organs are admonished to take measures against air and water pollution and other kinds of environmental harm.³⁴

The use of a bill of rights as an affirmative tool presents special problems. The traditional rights, such as expression or assembly, tell government what it *cannot* do and may be enforced through injunctions and other familiar judicial remedies. Affirmative rights tell government what it *must* do. Here enforcement is more problematical. Affirmative rights commonly entail legislative implementation or decisions about allocation of resources — tasks for which courts are often ill-suited. Anyone familiar with cases in which American judges have become administrators of school systems, prisons, and other public institutions will understand the skewing effect that decreeing affirmative rights have on public budgets.³⁵

The fortunes of Americans and peoples in the new democracies intertwine in many ways. Bills of rights — verbal declarations of fundamental aspirations — are a visible reflection of a shared legacy and common concerns. Much more than paper, however, is required to

32. See ABDO I. BAAKLINI, *THE BRAZILIAN LEGISLATURE AND POLITICAL SYSTEM* 157-77 (1992).

33. CONSTITUICAO FEDERAL art. 7 § 13 (44 hour week); *id.* § 14 (six day week).

34. African National Congress, *Working Draft of a Bill of Rights for a Democratic South Africa*, 7 S. AFR. J. HUM. RTS. 110, 116-17, 119, 121 (1991).

35. For an argument against the inclusion of affirmative rights in the constitutions now being drafted, see Cass Sunstein, *Against Positive Rights*, 2 E. EUR. CONST. REV. 35 (1993).

make constitutional democracy work.

Constitutionalism, to flourish, requires skillful political leadership, viable political parties, a healthy press and media, an independent bench and bar, a sound economy, and a system of education in which young minds will prosper. A good constitution and bill of rights can foster these things but cannot assure them. Ultimately, respect for rights stems from a mature civic spirit on the part of ordinary citizens. A people who do not understand the basic precepts of free government are unlikely to keep it alive and vibrant. Describing his Bill for the More General Diffusion of Knowledge, Thomas Jefferson called for "rendering the people the safe, as they are the ultimate, guardians of their own liberty."³⁶

This lesson is as cogent in Washington or Albany as it is in Moscow or Warsaw. Americans have good cause to celebrate 200 years of the Bill of Rights. They likewise have every reason to hope for the principles of that document to take root in the lands now free of tyrannical rule.

Neither East nor West can take liberty for granted. Witnessing the making of constitutions in the emerging democracies is an occasion for probing the lessons implicit therein: the nature and meaning of rights, the means by which they are enforced, and the habits of mind that keep them alive.

36. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 148 (William Peden ed., 1954).

