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Freedom vs. Non-Freedom: A View from Russia

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The following is adapted from a speech delivered on October 3, 2006, at a Hillsdale College National Leadership Seminar at the Drake Hotel in Chicago, Illinois.

Constitutionalism in the Western political tradition does not mean—as it does in my own country, Russia—simply having a written constitution, regardless of its content. Rather, true constitutionalism requires the limitation of government by law. A government can be considered genuinely constitutional only if it operates under the following minimal constraints: (1) The legislature cannot be dismissed by any body or person other than itself. (2) The courts are independent of the legislative and executive branches. (3) The executive branch cannot appoint ministers without the approval of the legislative branch. (4) Only the legislature can pass laws.

It is not easy to find indications of such constitutionalism in my country. Our legislative branch, the Parliament, was dissolved in October 1993 by presidential decree. And for those who did not fully understand or immediately agree with that decree, some quite convincing tank shells were fired on the Parliament building. Russian courts are probably independent of the legislative branch, but they are completely subordinate to the executive. Ministers are simply appointed by the president. And while it is true that the legislature formally makes laws, the fact is that in the last seven years, there has not been a single executive desire that the Parliament has not passed into law. Thus it is not quite right to say,

► **INSIDE THIS ISSUE: Andrew Napolitano**



as some do, that constitutionalism is failing in Russia. In truth, Russia has yet to attempt it.

Why is this important? The answer is simple: constitutionalism is the best way, the most efficient way, and in fact the only way, to secure freedom.

“Freedom is not a luxury”

It is always worth pausing to refresh our memories—as well as the memories of our friends, colleagues, and even our adversaries—concerning the reasons why freedom is better than non-freedom.

Freedom is not a luxury. It is a very powerful instrument, without which no person and no country in the world can have sustained prosperity, security, development or respect. Free countries are certainly more prosperous than non-free countries. The Heritage Foundation’s *Index of Economic Freedom*, the Fraser Institute’s *Economic Freedom of the World*, and Freedom House’s *Freedom in the World* all provide overwhelming evidence that economically and politically free countries are much richer than non-free countries—with a GDP per capita, on average, between \$28,000 and \$30,000, compared to approximately \$4,000 per person in non-free or repressed countries.

In addition, the economies of free countries grow faster. During the past 30 years, completely free countries doubled per capita income, and partially free countries increased per capita income 40 percent on average. By contrast, non-free countries *reduced* per capita income roughly 34 percent. Over the same period, several countries changed their status from political freedom to political non-freedom, and others from political non-freedom to political freedom. The former change leads inevitably to economic degradation, resulting in a negative GDP per capita growth rate. The transition from non-freedom to freedom, on the other hand, speeds up economic growth, resulting in a GDP per capita growth rate higher than the world average.

Freedom also provides security. This is true for external security, because economically and politically free countries are less likely to fight each other than are non-free countries; it is also true for domestic security, as free countries usually have lower mortality rates from violent crime committed by criminal gangs or by the government. Compare the United States, Western

Europe, Canada, and Japan on the one hand, and non-free countries like Rwanda, Afghanistan, Iraq, Somalia, and North Korea on the other. Which countries are more secure? Where is the life expectancy higher? Where is there a greater risk of robbery, kidnapping or murder?

Related to this, freedom enhances economic, political and military strength. Let’s compare countries with similar population sizes but different levels of freedom. Which are economically more powerful? Spain or Sudan? Australia or Syria? Belgium or Cuba? Canada or Myanmar? The Netherlands or Zimbabwe? Taiwan or North Korea? Finland or Libya? Freedom also leads to greater international respect: Which of these countries is considered more attractive and more respected in the world? To which do people immigrate? From which do people emigrate? People vote for freedom with their feet.

The lack of freedom, on the other hand, creates an insurmountable barrier to prosperity and economic growth. For instance, there are no examples in world history of non-free countries that in a sustained way overcame a GDP per capita barrier of \$15,000. Countries that have been able to cross this barrier did so only when they became free, politically and economically. Spain, Portugal, Greece, Taiwan, South Korea and Chile are among the best known examples of such a transition. Relatedly, countries that were rich but became non-free, also became poor—even oil-exporting countries in years of high energy prices. In Iran, Venezuela, Saudi Arabia and Iraq, the GDP per capita today is lower than it was three decades ago, by 10, 30, 40 and 80 percent, respectively. The lack of freedom always destroys wealth.

The Destruction of Freedom in Russia

The story of the destruction of freedom in my own country, Russia, is sad. But this story should be told, should be known, and should be remembered—to avoid repeating it and in order one day to reverse it.

First, there was an assault on the people of Chechnya. Many Russian people thought that it was not their business to defend the freedom of the Chechen people. People in Chechnya lost their independence, their political rights and—many of them—their lives. Many Russians lost their lives as well.

Then there was an assault on the Russian

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media. This time many Russian people thought that it was not their business to defend the freedom of the media. As a result, the media lost its independence—first television channels, then radio stations and newspapers. And now the censors are turning their attention to the Internet.

Then there was an assault on private business. Many Russian people thought that it was not their business to defend the freedom of private business. So private business has lost its independence and has become subjugated to the caprice of the executive power. This has been accomplished through so-called PPPs or public-private partnerships, but it would be more correct to call what is happening CPC—*coercion* of private business by the corporation in power.

Then there was an assault on the independence of political parties. Many Russian people thought that it was not their business to defend the independence of political parties. As a result, independent national political parties ceased to exist.

Then there was an assault on the independence of the judiciary. Many Russian people thought that it was not their business to defend the independence of the judiciary. Now, there are

no more independent courts or judges in Russia.

Then there was an assault on the election of regional governors. Many Russian people thought that it was not their business to defend free elections of regional governors. Today, regional governors are appointed by the president, and there are no more independent regional authorities in the country.

Then there was an assault on the independence of non-governmental and religious organizations. Finally, some people tried to defend the freedom of these organizations, but it was too late. And now even those who want to resist have neither the resources nor the institutions required to fight back.

As a result, Russia has ceased to be politically free. For 2005, Freedom House's *Freedom in the World* ranks Russia 168th out of 192 countries. Transparency International's *Global Corruption Report* ranks Russia 126th out of 159 countries. The World Economic Forum calculates that Russia is 85th (among 108 countries) in avoiding favoritism in government decisions, 88th (also of 108) in its protection of property rights, and 84th (of 102) when measured by the independence of the judicial

system. The Russian government could form another G-8 with countries that destroyed the fundamental institutions of modern government and civil society as quickly as it did over the past 15 years by partnering with Nepal, Belarus, Tajikistan, Gambia, the Solomon Islands, Zimbabwe and Venezuela.

What is the Russian government doing now, when it has destroyed freedom and achieved next to full control over Russian society? Is it stopping its assaults? No. It continues them, both within and beyond Russia's borders. Inside the country, the government has started a campaign against human rights. It has created and financed detachments of storm troopers—the movements “Nashi” (“Our Own”), “Mestnye”

(“Locals”), and “Molodaya gvardiya” (“Young Guard”)—which are being taught and trained to harass and beat political and intellectual opponents of the current regime. The days for which these storm troopers are especially trained will come soon—during the parliamentary and presidential elections in 2007 and 2008.

Beyond Russia's national borders, the government provides economic, financial, political, intellectual and moral support to new friends: leaders of non-free countries such as Belarus, Uzbekistan, Venezuela, Myanmar, Algeria, Iran, and Palestinian Hamas. At the same time, Russia is attempting to destroy hard-won freedom and democracy in neighboring countries. Ukraine, Moldova and Georgia find themselves in a new cold war as Russian authorities pursue hostile policies involving visas, poultry imports, electricity, natural gas, pipelines, wine, and even mineral water. The Russian government has just started a full-scale blockade of Georgia. Meanwhile, the state-controlled Russian media has launched a propaganda war against Ukraine, Moldova, Georgia, the Baltic countries, Europe and the United States.

What do non-free countries have in common? What unites such disparate countries as Nepal, Belarus, Tajikistan, the Solomon Islands, Gambia, Venezuela, Zimbabwe, North Korea, Sudan, Turkmenistan, Cuba, Myanmar, and yes, now Russia? Only one thing: war, in which governments take away property and destroy society, in which they send people to camps or kill them solely because they have a different perception of the world, of faith, of law, and of their homeland. Only through hatred, fear, and electoral violence can these governments hold on to what is dearest to them—absolute power.

Without freedom there can be no open discussion of topics of national and international importance. There is an exclusion from public life of conversation about the most important matters. This primitivizes public life, degrades society, and weakens the state. The politics of non-freedom is the politics of public impoverishment and of the retardation of the country's economic growth.

The greatest practical lesson of Russia's recent history is that freedom is indivisible. The failure of freedom in one sphere makes it harder to defend freedom in other areas. Likewise, the fall of freedom in one country is a blow to global freedom. The inability to defend freedom yesterday comes back to haunt us at a great price today and perhaps an even greater price tomorrow.

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Looking Ahead

What position should the United States and other free countries take regarding Russia's growing internal authoritarianism and external aggression? There was a real opportunity over the last several years: Concerted efforts by the West could have slowed significantly, if not stopped, the degradation of freedom in Russia. But nothing was done. One of the West's last chances was to deny access to its capital markets for the sale of assets stolen from the large private company Yukos; but this did not happen, and the sale of those assets occurred at the Rosneft IPO on the London Stock Exchange. The July 2006 G-8 summit in St. Petersburg could also have been used to emphasize the clear distinction between leaders of the free world and those of non-free Russia. But in the end, nothing was done.

As I wrote in the *Washington Post* in April 2006:

The G-8 summit can only be interpreted as a sign of support by the world's most powerful organization for Russia's leadership—as a stamp of approval for its violations of individual rights, the rule of law and freedom of speech, its discrimination against nongovernmental organizations, nationalization of private property, use of energy resources as a weapon, and aggression toward democratically oriented neighbors.

By going to St. Petersburg, leaders of the world's foremost industrialized democracies will demonstrate their indifference to the fate of freedom and democracy in Russia. They will provide the best possible confirmation of what the Russian authorities never tire of repeating: that there are no fundamental differences between Western and Russian leaders. Like us, Russia's leaders will say, they are interested only in appearing to care about the rights of individuals and market forces; like us, they only talk about freedom and democracy. The G-8 summit will serve as an inspiring example for today's dictators and tomorrow's tyrants.

The West squandered both of these opportunities. None of the G-7 leaders had enough courage to raise the issues of freedom and democracy, or to

discuss the principles of true constitutionalism and their absence in Russia. Everyone pretended that nothing special was going on in Russia. Indeed, the G-7 leaders agreed *de facto* with the Russian authorities' approach to energy security. Instead of liberalizing and privatizing energy assets, Russia is moving in the opposite direction both internally—by nationalizing private companies and asserting state control over the electricity grid and pipeline system—and internationally, by using non-market methods to manage supply and even demand for the world's energy resources.

Several months after the summit, the bill for this policy of appeasement is due. Now the Russian authorities are revoking the licenses of American and British energy companies in Sakhalin. BP has found itself under pressure to exchange its partner in TNK-BP in favor of the government-owned Gazprom. Otherwise, it will not have a chance to explore the giant Kovykta gas field in eastern Siberia. The billion dollars it spent on the purchase of Rosneft shares in July 2006 did not help BP much. And there is no doubt that, after the G-8 summit, the free world can expect more of the same. In truth, it should consider itself in a new Cold War-like era.

* * *

Let me conclude these remarks with words spoken by Winston Churchill about another great war for freedom:

I would say to the House, as I said to those who have joined this government: "I have nothing to offer but blood, toil, tears and sweat." We have before us an ordeal of the most grievous kind. We have before us many, many long months of struggle and of suffering. You ask, what is our policy? I can say: It is to wage war, by sea, land and air, with all our might and with all the strength that God can give us; to wage war against a monstrous tyranny, never surpassed in the dark, lamentable catalogue of human crime. That is our policy. You ask, what is our aim? I can answer in one word: It is victory, victory at all costs, victory in spite of all terror, victory, however long and hard the road may be; for without victory, there is no survival.

That war for freedom was won. We may yet win, indeed we must win, this current war. But to win, we must work together.





Property Rights After the *Kelo* Decision

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The following is abridged from a speech delivered on the same day and at the same event as the preceding speech by Mr. Illarionov.

When teaching law students the significance of private property, we tell them that each owner of such property has something called a “bundle of rights.” The first of these rights is the right to use the property. The second is the right to alienate the property. The third and greatest is the right to exclude people from the property.

With this in mind, let me pose a question: Can the government force a property owner to *sell* his property? James Madison argued that the government could do so as long as it paid the owner a fair market value and as long as the property was purchased for a public use, such as a road or a highway or a bridge. Thomas Jefferson was opposed even to that, arguing that the essence of owning property is the right to exclude everybody—even the government—from that property, and that no one could force a sale. But Madison's ideas prevailed and were incorporated in the Fifth Amendment, which allows the government to take property for “public use” if it pays the property owner “just compensation.”

The “public use” requirement of the Fifth Amendment is now no more. A 1959 court case entitled *Courtesy Sandwich Shop, Inc. v. Port of New York Authority* arose when the owners of a lower Manhattan deli refused to sell out to the Port Authority in order to make room to build the World Trade Center. The Court of Appeals of the State of New York, which is the highest state court, held that because the World Trade Center would enhance the area's economy, the owners of Courtesy Sandwich Shop could be forced to sell in return for the property's fair market value. When the U.S. Supreme Court refused to hear the shop owners' appeal, this became settled law. From that point on, there have been tens of thousands of takings of property for a non-public use. Thus “public use” as found in the Fifth Amendment was re-defined by the courts as “public purpose.”

I thought these property takings would finally come to an end last year when the Supreme Court agreed to hear the case called *Kelo v. City of New London*. I was wrong. We all know what happened: Suzette Kelo and her neighbors, on their own and with their own money, turned a slum neighborhood in New London, Connecticut, into a sparkling, lovely little village on the Long Island Sound. The City of New London decided that it wanted to condemn that property and turn it into a parking lot for Pfizer Corporation. I should point out that Pfizer was not a party to the case, and Pfizer said many times that it would build a parking garage in a different location, allowing Suzette Kelo and her neighbors to live where they wished. In response to this proposal, the City of New London said no, a trial court in Connecticut said no, an appellate court in Connecticut said no, the Connecticut State Supreme Court said no, and the U.S. Supreme Court said no. In doing so, the latter went even further than the Court of Appeals of New York had gone in the *Courtesy Sandwich Shop* case: It ruled that if the local tax collector collects more money as a result of the taking of property by government and its sale to another *private* owner, that is a *public* use!

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Like a nation of sheep, we continue to allow government to violate our natural rights, of which the right to own property is an essential one. Thinking about the *Kelo* decision, I am reminded of one of Thomas Jefferson's favorite quotes from William Pitt the Elder:

The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England cannot enter. All of his forces dare not cross the threshold of the ruined cottage.

In short, the natural right to exclude others, including the government, from one's property—a right enshrined in the Fifth Amendment—has now been eviscerated by the courts. But our natural

rights don't come from the government. They spring from our very humanity, which is why Jefferson called them *inalienable* in the Declaration of Independence. Thus government has no legitimate power to take them away from us. Of course, if one is a criminal and violates the natural rights of others, the government may use due process through the mechanism of a fair trial and take one's rights away. But Suzette Kelo was no criminal, and due process was not observed in allowing the City of New London to take what was hers.

One encouraging sign is that, since the *Kelo* decision, numerous states have fought back by passing legislation or amending their constitutions to prohibit such takings. One can only hope that this movement will continue.



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