

BUILDING A CIVIL SOCIETY

by
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The use of the word "building" in the title suggests a metaphor: building an edifice or a car. But those activities start and *end* — there is a moment when the object is *completed*. Unlike those, in building a civil society, the object is *never* completed. We are, instead, talking about an ongoing *process*. What matters most, then, is the nature of the process.

The entire Western world is watching Russia to see what sort of process . . . what sort of governance . . . will emerge. We are not merely interested, we are deeply concerned. In my view, it is *not* the current turmoil that should concern us. After all, our own country was created by a revolution (and war) against despotism; it required another war to keep it from subdividing into regional factions; and — within living memory — we effectively impeached a popularly-elected president (at least, only his resignation avoided that consequence). No, in my view, it is not turmoil that should worry us. We should instead focus on the nature of the process by which Russia is transforming herself.

I believe that no form of government can long endure without the consent of the governed. In a democracy, the will of the people is heard regularly through the election process. History teaches, however, that democracy takes time to take root and grow. My topic today deals with a vital aspect of that rooting and growth: the role of independent nongovernmental organizations.

Let me examine that from another focus: Russia's recent march toward a market economy. From one point of view, the demise of communism was a loss. Communism, in *theory*, offered an ideal in which the communal interest would flourish and self-interest and greed would vanish. By contrast, capitalism is squarely based on

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economic self-interest. Its foundation is private property — which, indeed, together with life and liberty — is guaranteed by our constitutional due-process protection. Note that *process* is the weapon chosen to ensure the private rights in question.

How then can we explain the enormous vigor and scope of charitable activities in the U.S., where over \$100 billion is voluntarily given away to more than 600,000 charitable organizations each year? I suggest that permitting (indeed encouraging) "greed" is critical to the answer. In theory, Communism would permit no private property. If I have nothing of my own, I cannot give anything away. Generosity must *follow* from private ownership; it cannot precede it. Our society places no limit on private wealth . . . nor should it. Our constitution protects private wealth . . . as it should. Our government does not attempt to provide all . . . or even most . . . of the necessities of life. In the U.S., most medical care and most higher education is provided by independent NGO's . . . as is much of our cultural life, through museums, orchestras, ballet and theater companies, and the like. Indeed, it is quite common for our government to *support* those institutions rather than trying to provide such goods and services itself. Not only does that help to invigorate the third sector, it adds diversity and pluralism to our society. It perhaps also promotes efficiency in the delivery of the desired goods and services.

There is much room for variation in this model. There is no reason to think that the U.S. pattern is appropriate for Russia. Indeed, I think no one here . . . and probably no one in the entire U.S . . . would admire and approve all of our ways of dealing with our society's needs.

My five theses — somewhat overstated for purposes of rhetoric — are these:

- (1) Greed should be permitted, protected, and encouraged.

- (2) Government should not attempt to provide *all* necessary and desirable services . . . although I hasten to add and *emphasize*, there is a vast range of different models which could be adopted.
- (3) The rule of law should protect citizen action by guaranteeing freedom of assembly, freedom of association, freedom of petition, and freedom of speech.
- (4) The rule of law should encourage and empower the formation and operation of NGO's.

And then, *finally* —

- (5) private citizens will have the framework within which to add generosity, altruism, and charity to the mix. It will be through such private action that greed may be transformed into caring.

The greatest need for *us* is to focus on the *fourth* thesis: how can the rule of law encourage and empower the formation and operation of NGO's. Several points seem important to me:

- 1. Although it may be useful to learn from the U.S. experience, the system should be *Russian*.
- 2. In all societies, there are examples of abuse of charitable status, by these seeking only profit, hoping to avoid taxes, preying on others, etc. A healthy third sector needs scrutiny and accountability. Appropriate legal forms of registration, reporting, and supervision need to be created. But *caveat*: too much regulation could cripple the sector. A very careful touch is needed, I think, particularly when a quite young and timid independent sector is just emerging in a country where fear and dictatorship for generations punished independent action.

3. The most important legal rule should address the problem of private inurement. The U.S. and most other countries *permit* NGO's to carry on at least some activities for profit. It is not profit-seeking which is wrong, so long as the profits are used for otherwise benevolent or charitable purposes. Rather, the main problem is distribution of the profits to private individuals. Drawing lines here is both vital and complex.
4. I would not predict, in the near term, any dramatic amount of giving from within Russia. The economic straits of most citizens makes me somewhat pessimistic. My point here is *not* that such giving should be ignored. I think it would be wise to do a great deal to *encourage* giving from within Russia. My point here is that it is even *more* important to encourage giving into Russia from outside of Russia. And there is much that easily could be done, quite quickly I would think, to eliminate various obstacles that now seriously impede U.S. and other foundations in making grants into Russia. I think it would be helpful to discuss the details during the course of our meeting.

In summary, I believe that democracy and free markets are the soil in which charity can grow. There is much room for variations from country to country in the design of each of those three — but it is critical to cultivate all of them together. The third sector needs particular nurturing — and the rule of law — *process* — is the best tool for that nurture.