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Mark Leonard is a Columbia College junior and an Associate Editor for *Helvidius*.

It's Time to Reinvigorate American Democracy By New York Attorney General Robert Abrams

The following is an edited version of Mr. Abrams's commencement address to the graduating class of Pace Law School on 9 June 1991.

This year marks the 200th anniversary of our Bill of Rights, a landmark document in the history of human freedom. Defending and protecting the Bill of Rights is the responsibility of every citizen of this democracy.

The founders of our nation understood from the beginning that democracy means much more than just voting for one candidate over another. The real substance of a democratic society lies in the basic protection of individual and political rights that are so eloquently expressed in our Bill of Rights; the right of every

American to speak his or her mind without fear of political reprisals; the right of every individual to practice openly the religion of his or her choice; the freedom to publish and to read newspapers, magazines, and books that are not subjected to government-imposed censorship; the right of

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people to hold rallies and marches to lobby the government on behalf of political causes they believe in; and the right to a fair, public trial when a person is accused of a crime. It is these guarantees of freedom of thought, expression, and political participation which have made this nation a beacon of hope and opportunity to people around the world.

In visits to Eastern Europe and the Soviet Union over the past year, I was able to witness first hand the role of our Bill of Rights and our constitutional system of government as models for newly emerging democracies and democratic forces in that part of the world.

In meetings with lawyers, government officials, and ordinary citizens in Hungary, Poland, and Czechoslovakia, our delegation of State Attorney Generals were met at every turn with intense interest in all aspects of our legal system, from its overarching principles and structure to its most mundane practical details. The power of our Constitution as a symbol of freedom can never be more powerfully expressed than through the hope it inspires in the hearts and minds of people who are emerging from years of tyranny and oppression.

In every country we visited, people were deeply and urgently concerned with precisely the kinds of questions that motivated the founders of our nation to establish a constitutional government 200 years ago. In Poland, our delegation had dinner with a group of young professionals who were engaged in a lively debate and discussion on the appropriate relationship between church and state. While they had high praise for the role of the Catholic Church in helping them to break the shackles of communism, they were also concerned about the extent to which the beliefs of the Church should be allowed to determine the new government's social policy in sensitive areas such as a woman's right to choice. In Czechoslovakia, the issue was federalism—how to achieve appropriate checks and balances between the central, local, and regional governments. This is a critical issue due to Czechoslovakia's ethnic diversity and strong desires for regional autonomy. The Czech lawyers and officials we spoke with were extremely interested in our

governmental structure, the careful allocation of power between the federal and state governments, the separation of powers among our different branches of government, and the limits placed on the powers of our federal government under the Tenth Amendment of our Constitution. In Hungary, we met with a special constitutional committee of the Hungarian parliament, whose members received our gift of copies of the United States Constitution with keen interest and extraordinary gratitude. This surge of interest in our Bill of Rights among government leaders and everyday citizens alike has led to a wave of constitution writing across Eastern Europe, with the majority of these new charters drawing heavily upon our example.

In the Soviet Union, democratic forces face a much more difficult situation, and the prospects for realizing enduring reforms are much more problematic than in Eastern Europe. The remarkable gains of recent years in religious freedom, the right to emigrate, and other areas of political and social life have been counterbalanced in recent years by harsh crackdowns against democratic movements in the Baltics and other Soviet republics. But I am convinced that this time, the people of the Soviet Union will not be intimidated—not by guns, not by tanks, and not by secret police.

When I visited Riga, the capital city of Latvia, I was impressed and inspired by the level of popular outrage and resistance to government repression. Farmers and peasants from the countryside had driven their trucks into the center of the city and created a protective cordon in front of the major government buildings of the Latvian Republic, to serve as a symbolic shield against

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Soviet troops. Citizens were keeping a 24-hour vigil on behalf of democracy, sleeping in their trucks, and huddling in sub-zero weather around six-foot-long fires. A few blocks away, a similar set of barricades had been set up in front of the local radio station, as citizens in white arm bands stood guard in hopes of keeping Soviet troops from taking over this vital communication link. As one of the protesters told me, "This morning, I said to my wife and children, 'Look at me. This may be the last time you see me.' I have no weapons. I will lift my hands and be shot. I am prepared to die." These courageous people were willing to give their lives, if necessary, to defend freedom of the press, freedom of association, and other democratic

rights that have long been established in this country—and that frankly, too many of us take for granted.

The courageous response of the Soviet people to the attempted coup d'etat in August of 1991 was just the latest indication of their determination to move forward on the road toward freedom and democracy, regardless of the obstacles.

Although our democratic system rightly serves as an inspiration and an ideal for the people of Eastern Europe and the Soviet Union, that does not mean that we can rest on our laurels. No democracy can continue to flourish without the active engagement of its citizens. While the establishment of democracy in Eastern Europe and the Soviet Union is threatened by the legacy of totalitarianism and the threat of military repression, the continuing vitality of our own democracy is imperiled by a much more mundane threat: complacency. We need look no further than our last presidential election, in which barely half of the electorate even bothered to go to the polls to vote, to see that our own democratic system is in need of renewal and reform if we are to sustain it into the next century. The most important force for reinvigorating our democracy to confront the challenges of the 21st century must be an engaged citizenry, poised to give meaning to the principles inscribed in our Bill of Rights, both in their work and in their day-to-day activities.

We need the active involvement of citizens from all walks of life to keep our democratic traditions alive and well. There are three areas where the talents and commitment of a new generation of citizen activists are urgently needed: securing equal access for all citizens of this country to our system of justice; combatting discrimination and prejudice in all of their manifestations; and protecting and preserving our precious natural environment.

Our nation has more lawyers—both per capita and in absolute terms—than any other country in the world. It is a troubling irony that we have over 700,000 lawyers, one for every 430 Americans, yet many of our fellow citizens can't get legal help when they need it. Three years ago, New York State's Chief Judge Sol Wachtler appointed a panel to study this pressing issue. The Committee's findings were a shocking indictment of the inadequacy of current measures for providing legal counsel to the poor. Their final report concluded: "our society has evolved so that the poor need legal help to obtain basic human requirements and to an appalling degree cannot get it." They found that three million households in New York have no legal help in dealing with basic problems like the threat of eviction or qualifying for essential government benefits. In New York City's housing court, to cite one particularly stark example, landlords are represented by lawyers more than 80 percent of the time, while tenants have legal representation only

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15 percent of the time.

At the same time that most low-income individuals are being routinely denied access to adequate legal representation, many middle-class individuals have been priced out of the market for legal services as well. To borrow a phrase from Robert Raven, the former President of the American Bar Association, we simply cannot afford to let justice become a luxury good. What good is the greatest justice system in the world if large numbers of poor and middle class people are denied meaningful access to it because they cannot afford a lawyer? This situation can and must be changed.

First, all citizens of good will must speak out in support of restoring adequate government funding for legal services for the poor, which was battered by an unrelenting series of federal budget cuts throughout 80's. But in addition to making sure the government does its

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part, lawyers must also be encouraged to take it upon themselves to engage in *pro bono* activities that expand access to our justice system. That means representing indigent clients, providing volunteer assistance to public interest and social service organizations, and crafting reforms in the legal system itself to make it more accessible to the public. These are the kinds of activities that every lawyer must be involved in if we are to fulfill the promise of our remarkable system of justice.

Another area in which citizen involvement is urgently needed is in the ongoing battle to eradicate prejudice and discrimination in our society. While we have made enormous progress in the wake of the civil rights movement and the landmark civil rights legislation it helped to spark, we are still far from realizing Dr. Martin Luther King's dream of a colorblind society. One hundred and twenty-five years after the abolition of slavery, and nearly three decades after the passage of the Civil Rights Act of 1964, people are still discriminated against in this nation simply because of the color of their skin. As an agency charged with enforcing our civil rights laws, we the Attorney General's office have seen the countless ways in which discrimination persists in our society.

We have seen ongoing discrimination in housing, through the pernicious practice of "racial steering," in which real estate brokers refuse to even show homes or apartments in predominantly white communities to qualified minority customers. A black couple of similar income and employment history will all too often simply not be shown properties that are routinely be made available to a white couple. This shameful vestige of racial dis-

crimination must be eliminated once and for all.

We have also seen continuing discrimination in employment, in which minority applicants are denied access to well paying jobs or promotions. A few years ago there was a blatant example of this in the operations of several New York City employment agencies in which interviewers placed secret codes on the files of minority applicants as a signal that they should not be offered the opportunity to interview at certain major corporations.

Finally, and perhaps most startling of all, people in this nation are still subjected to violence and even death simply because of their race, religion, ethnic background, sex, or sexual orientation. Surveys by organizations such as the Anti-Defamation League and government agencies like the New York State Department of Criminal Justice Services indicate that these hate crimes are on the rise in New York and nationwide. We need stronger criminal penalties to deter these profoundly anti-social acts, which are a stain on our society. But beyond tougher law enforcement, we need every citizen of good will, every government official, every religious community, and business leader to speak out forcefully against this tide of prejudice and bigotry. We must drive home the message that such behavior is simply unacceptable in a democratic society.

Finally, at this stage in our history it is everyone's responsibility to take steps to ensure that we don't destroy the environment. Acid rain is killing our lakes and forests, the garbage crisis is overflowing our landfills. Global warming threatens the very habitability of the planet. These are just a few of the warning signs indicating that we must act now to stop pollution of our air, our water, and our soil.

We have to recognize once and for all the essential truth that we do not own this fragile planet—we are merely trustees charged with maintaining and preserving it for the generations yet to come. If we don't act now to reverse a long history of environmental neglect and degradation, the ability of the earth to sustain life itself may be undermined, resulting in a tragedy of epic proportions. The actions we take in the next few decades could well determine the fate of the earth for generations to come. Every citizen has a role to play in this essential battle to save our precious natural environment.

The law is a powerful tool in the battle to preserve and protect our environment. That has been my own experience as Attorney General. Over the past decade, New York has used all of the legal tools at its disposal to go after polluters large and small, from small fly-by-night toxic dumpers to Fortune 500 corporations: lawsuits, injunctions, court-ordered cleanups worth hundreds of millions of dollars, and even criminal sanctions that have put violators in jail.

But punishing polluters with penalties, fines, or

even imprisonment, is not enough. We need to change the

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way we live, work, and do business in order to prevent pollution.

A preventive approach can be applied to resolving each of our major environmental problems, from hazardous air pollution to the solid waste crisis. In curbing air pollution, a preventive approach means, encouraging companies to follow the lead of firms like Dupont and IBM by committing themselves to drastic reductions in toxic emissions and elimination of toxic substances from their production processes. In resolving the garbage crisis, a preventive approach means promoting the three R's of solid waste management—recycling of as much of the waste stream as possible; reduction of unnecessary packaging and other sources of garbage; and reuse of as many products as possible, rather than using throwaway items.

In these and many other areas of environmental concern, changing our industrial practices, our habits, and our very lifestyles is the key to preventing pollution in the first place. This approach is not only better for the environment, it is better for the corporate bottom line. It will be up to a new generation of legal practitioners to forge innovative strategies for using the law to encourage pollution prevention.

These are just a few of the issues that can and must be addressed if this nation is to survive and prosper in the 21st century. There are many others—the need for affordable housing; the provision of quality health care for all; reproductive freedom for all women; the need to carry on the quest for arms control; the need for a real war on drugs, not one waged with rhetoric alone—and the list could go on and on. As Robert Kennedy said a generation ago, "the future may be beyond our vision, but it is not beyond our control." It is time for a new generation of citizen activists to put their skills to work in addressing the fundamental issues of our times. By doing so, they will be giving continued life and meaning to the principles underlying our Bill of Rights.

THE ASSAULT RIFLE CONTROVERSY

By Glen Morgan

The gun control debate rages in America today, as it has since the early 20th century. After the assassination of President John F. Kennedy in 1963, this debate increased in urgency and ferocity. In the years since that tragedy, the debate has often been a major domestic issue, one that refuses to quietly go away. Huge lobbying interests on both sides of the issue have recently been locked in political and ideological battle in the legislature, in the courts, and in the media. The focus of these arguments has ranged from the definition of the rights provided by the Second Amendment to the ownership of "Saturday Night Specials," but nothing in this debate has captured the imagination and the focus of national attention more than the recent "assault rifle" controversy.

This new twist in the gun control debate revolves around whether people should be allowed to own "assault rifles." Before entering into an analysis of the controversy, the term "assault rifles" must be defined. Handgun Control Inc., as the chief lobbyist for the prohibition of these weapons, defines assault rifles as any automatic rifle designed to be spray-fired in combat. According to the Department of Defense (105), an assault rifle is a selective-fire military rifle, capable of firing on fully-automatic, burst, or semiautomatic, at the option of the shooter. True assault rifles are thus machine guns, which have been heavily restricted since 1934. The gun prohibition lobby, however, has managed to capture the media's

In approaching the problem this way, one avoids the fact that governments do not give people rights^ the people give the government power in order to protect their preexisting rights.

attention by expanding the "assault rifle" category to encompass any weapon they see fit. The firearms upon which this article will focus are these semiautomatic rifles that have been targeted.

The weakest aspect of the prohibitionist argument is the question of the constitutionality of this type of regulation. Handgun control literature usually avoids this