

THE RULE OF LAW AND ECONOMIC PROSPERITY

By

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The Rule of Law and Economic Prosperity are indivisible. No one will disagree with the proposition that economic growth is a starting point for encouraging investment, whether internal or external, and for achieving wealth and prosperity of any nation state and the better provision for its population. What I wish to argue is that the rule of law is of equal importance. If a country does not have a legal infrastructure to settle disputes then lawyers who advise investors will caution against direct investment. No bank, investor or business will wish to become involved in a country where disputes are the subject of lengthy expensive or possibly corrupt processes. Worst still, no investor will wish to become involved in a country where disputes are settled not by the rule of law but by violence, oppression, tyranny or force. Right not Might must be the key to creating international confidence.

I will further argue that just as it is important for the investor to have confidence that any country in question has a rule of law which can be relied upon and a system of justice whose integrity is not in question, it is equally important that the rights of individual citizens are safeguarded and regulated such that the country demonstrates and reflects a stable and peaceful well ordered society. The economy of every country depends upon a proper system of law and justice. It also depends upon a structure of the law and dispute resolution which recognises that all countries are inextricably linked by investment and obligation and, as such, each country must provide, through their legal system, a recognition of decisions and judgements made in each other's jurisdiction such as to provide a basis of confidence for the wider international community.

Throughout everything I have to say I will stress that for every protection sought by a foreign investor equally important is the recognition and protection of the position of the individual citizen within any country. The rule of law and the preservation of Human Rights are the two safeguards of a democracy and are both essential foundations for human well being of the individual and vital for the ordinary conduct of an organised society as a whole. Only when both are present will the vital ingredients for economic growth and success be said to be present.

Conflict and dispute are a universal truth in every society irrespective of political structure or social diversity. This is equally true for commercial and business interests, whether disputes arise from contract, the ownership of land or assets, the regulation of obligations in debt, performance of contract or for the individual who may suffer economic or personal loss arising out of the fault or failure of others whether personal, corporate or government.

It is a pre-requisite for economic stability and growth that each country provides a universally recognised form of conflict resolution which, although it may reflect the history, traditions and influences of the individual country, would nonetheless adhere to internationally recognised standards and precepts which guarantee both the integrity of the system and the efficacy of the system. Justice delayed is justice denied.

The Rule of Law is important beyond protecting investors. In the complex world of international investment and Multinational Corporations where national boundaries no longer define economic activity, the Rule of Law provided mechanisms to control foreign based Corporations or individuals who live outwith national boundaries. Civil Judgements from Courts in your own Country or in other countries can bring home to Multinationals responsibility for negligence and

wrongdoing and compensate those who suffer a loss. Whether it is Oil Rigs exploding in the North Sea, negligent Airlines or sinking ships under a foreign flag which pollute your waters, the Rule of Law by international enforcement civil judgements or by litigation which takes the case for compensation to the home country of the wrongdoer, those who lose can obtain just settlement. Thus seeking money damages, in a way, which is enforceable across borders, brings about what I have called the “economic imperative”. This means there can be no hiding place for the wrongdoer and the ultimate requirement to compensate will force change and improvement so as to avoid future penalty. From the introduction of seat belts in cars to smoke detectors in Hotels and emergency lighting in planes we have seen the economic imperative produce real and meaningful changes for the good. Lockerbie is yet another example of this in action. Pan Am 103 was blown up using semtec. At the time, the only way to detect it was by use of colour scanners. This technology was available but rarely used due to expense and the airline industry “made do” with black and white despite knowing this to be ineffective. Within days of the Public Inquiry making this fact know, the Airline Insures, knowing the litigation which would now follow, insisted that colour scanners be installed at every airport. To pay out for the loss of life on Pan Am 103 was bad enough but they would not suffer this cost again. The Economic Imperative worked again.

The rule of law as a concept seeks to ensure that government power is limited and that individual rights are protected. The essence of the rule of law is the sovereignty or supremacy of law over people and governments. The rule insists that every person, regardless of position or status in society, will be subject to the law and will be dealt with equally. The rule of law is more than your regulation by law but a guarantee of freedoms, human rights and equal treatment before the law. It requires the country in question to be committed to the principles of justice in that there should be the peaceful settlement of disputes without recourse to violence, armed force or

terrorism. Whilst human rights are commonly discussed against a background of freeing individuals from oppression, harm, unjust punishment and torture, the same human rights apply to the world of commerce and the foundations of economic growth. Only where disputes are settled according to well understood and regulated principles of law and settled free of corrupt or totalitarian influence will investment flow and individual and corporate prosperity follow. It was this which underpinned the declaration of Delhi issued under the auspices of the International Commission of Jurists who are dedicated “to the primacy, coherence and implementation of international law and principles that advance human rights” which affirmed the rule of law and its value in promoting the protection of civil and political rights and linked to the development and protection of social and economic rights. This declaration provided:

“...the rule of law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realised.”

It is meaningless to speak of the rule of law as some abstract concept limited to insisting on decent or even minimal standards of living within the context of poverty and disease and basic human rights. In order to secure the economic and social standards which will provide growth, prosperity and quality of life, a sufficient level of economic wealth must be achieved.

At the very heart of these noble concepts lie the rule of law and the role of the lawyer. It is through the courts and the use of lawyers that individuals, corporations, businesses, whoever, assert their claims, seek resolution of their disputes and seek, where they have been wronged and where they have lost out or have suffered injury, compensation.

In 1985 some basic principles were adopted by the United Nations Congress on the prevention of crime and the treatment of offenders. The General Assembly of the United Nations has endorsed these principles. One of these states:

“Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special time should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and, where necessary, call upon the assistance of lawyers.”

There is therefore a necessary and inevitable linkage between human rights, the rule of law and economic prosperity. In all countries where men and women of talent are free to exercise their skills in the knowledge that wrongs against them or their property will be prevented and punished by free courts, business needs may be promoted, protected and rewarded by a democratic or elected governments then prosperity will flourish. Where there is lawlessness and corruption the converse is the case.

It follows therefore that the primary function of the courts within any society is the resolution of disputes. At the heart of the judicial system lies the premise that self help by force is unacceptable so that parties who are unable to solve their disputes amicably may and indeed must bring those disputes before the Court for impartial settlement against well recognised and universally respected rules of law. This basic idea of dispute resolution promotes good government, orderly society and a sense of confidence and integrity in that society.

The courts perform an important function in both educating and regulating the conducts of individuals and organisations. The impact of such a judicial system goes far beyond the immediate parties in the case in question. The very knowledge of the existence of such a judicial

system will influence the conduct of members of that society, businesses and corporations and investors both internally and from abroad and will assist in regulating their relationships.

The rule of the law sometimes called the “shadow of the law” helps to shape society and ideas as well as resolving specific disputes.

Whilst the decisions of courts in any country should be internationally recognised and there should be mechanisms for enforceability as between countries, before this can be achieved each system of justice must adhere to basic principles and enjoy respect internationally. I touch upon these briefly.

The courts must be capable of challenging legislation to ensure that governments do not exceed their powers.

Those who have become Judges must reflect high personal and professional standards. Justice must be fair but it must also be expeditious. The courts are under a duty to provide fair and expeditious justice. Whilst fairness and efficiency can be in conflict at times, it is the role of the courts to resolve this conflict. Judges must be independent of government influence and those with power who would seek to distort the process. Justice must be flexible in that the court system and justice should be able to develop, evolve and adapt to meet the needs of society and business.

Just as each country must have a system of dispute resolution, it must have a rule of law which regulates the activities of individuals and organisations. The same principles apply nation to

nation. It is against this background that international commerce, investment and the economic growth of nations is guaranteed.

Article 2(3) of the United Nations Charter provides that ***“all members shall settle their international disputes by peaceful means in such a matter that international peace and security and justice are not endangered”***.

The 1970 Declaration on Principles of International Law concerning friendly relations and co-operation among states developed this principle and provides:

“States shall accordingly seek early and just settlement of their international disputes like negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.”

Finally, this brings me to a useful example of how all of this can be seen in action. On 21 December 1988 Pan Am 103 blew up over the skies of Lockerbie, Scotland and a whole raft of problems followed. On a personal level, families from many different parts of the world had suffered the loss of their loved ones. Many others were injured. This tragedy had been brought about by an act of international terrorism over the southern skies of Scotland but its effects were felt throughout the international community by all countries who had lost citizens.

Investigations revealed the involvement of Libya and the placing of a bomb on Pan Am 103.

Powerful nations had seen the rights of their citizens violated and had seen loss and destruction visited upon the families involved. These nations could have resorted to resolving their claims and the demands for justice by the use of force. This was not the course they followed. The UN

passed Resolution 731 on 21st January 1992 which demanded just settlement. When two Libyan citizens were identified as having been involved demands were made that these individuals would be made available for trial. Protests were made by Libya that no fair trial could be obtained in the United Kingdom, including Scotland, or the United States and the judicial system in Scotland was seen to innovate and develop. Laws were altered and a special court under special rules was created which sat in Holland in Camp Zeist. This is an example of a judicial system able to evolve, develop and change to meet the needs of those who seek justice whilst protecting the concerns of those who were to be tried.

The United States passed a domestic law known as The Foreign States Immunities Act which allowed American citizens to sue a foreign nation state who had caused them harm, damage or loss. This Statute was used by the US, and ultimately by UK and other families, to raise proceedings against the Libyan Government in a New York Court. Assets were frozen belonging to Libya and international and bilateral sanctions through the auspices of the UN and other countries brought pressure upon Libya to address the demand for just settlement and so it was that Libya entered the judicial process and through that process into negotiation and ultimately to reach settlement with the relatives who had suffered loss. Compensation was agreed and the mechanisms for settlement were created which recognised the unique features of such an extraordinary case.

What is important in all of this is that no matter how unusual, how unique and how difficult the circumstances were, those who had suffered loss found justice and resolution of their claims through the rule of law and by legitimate and peaceful conflict resolution. The rule of law was supreme in dealing with the consequences and aftermath of a random and pointless act of violence.