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ESSAYS

THE RULE OF LAW IN AN EMERGING WORLD ORDER

WILLIAM WEBSTER

Consider the often used words "rule of law". The people of our country consider these to be magic words for lawyers steeped in Anglo Saxon jurisprudence and tradition. Indeed, our country's great documents proclaim the supremacy of law over individual authority. We say we are a government of laws and not men. Included in the penumbra of this concept are "individual rights" and these rights are sometimes expanded in international terms to "human rights."

The Magna Carta subjected the Monarch to the rule of law, and pointed the way to a Constitutional monarchy, the precursor to a modern democracy. Indeed, the rule of law is the core value of democracy as we know it. We find it in words of the Declaration of Independence,¹ in the Bill of Rights,² and in the Gettysburg Address.³ We take it for granted that our leaders act with authority, including the authority to make laws, because the people have given them that power.⁴

Is it therefore, fair to assume that all the emerging democracies think as we do about this important subject? Or even more importantly, is it fair to assume that emerging democracies act as we like to think that we do, under the rule of law? The concept "rule of law" does not mean the same thing to the vast numbers of people in the many different societies throughout the world. The rule of law operates differently in each individual country due to differing environments, traditions, and degrees of stability.⁵

It is fundamental that the rule of law cannot function in countries which are unable to protect their judges and justice officials.

1. DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776).

2. U.S. CONST. pmble., amend. I-X.

3. Abraham Lincoln, Gettysburg Address (1863), *in* THE LINCOLN READER 447 (Paul M. Angle ed., 1947).

4. It is interesting to note that the constitution of the former Soviet Union granted rights to individuals. This is the opposite of how the people of the United States perceive the origin of individual rights.

5. For example, the grand jury system, enshrined in our Constitution, is largely unknown outside the united States.

For example, in Columbia, a Minister of Justice was assassinated⁶ and eleven Supreme Court justices were murdered when the Palace of Justice came under artillery fire.⁷ Italy provides another example. There, the government attempted to control members of the Mafioso in Sicily. As a result, it was necessary to construct a fortress to protect the judges from retaliatory physical attack. The magistrates lived on the compound for over one year. This called for major sacrifices and great courage, characteristics not readily found in many parts of the world. Again, individuals in other societies attempted to subvert the rule of law.

Fortunately, our country has a much better tradition of protecting its judges and thus, upholding the rule of law. In fact, Judge Roy Harper used to take a nightly walk in Little Rock, unattended, when he was trying cases arising out of *Brown v. Board of Education*.⁸ The risks are greater today, but do not compare to the situations in the countries previously described.

America has demonstrated its resoluteness to bring to justice all those who injure or threaten its judges. When Judge John Wood of San Antonio was shot to death in San Antonio, he was the first United States federal judge to be assassinated in this century.⁹ There were no eyewitnesses and no crime scene evidence pointing to a suspect, although logic pointed to a group of drug dealers, one of whom was about to be sentenced. It was a case that had to be solved. I visited the scene with agents and officials and supported every effort to bring this case to solution. Several hundred thousand bits of information were entered into dedicated FBI computers and informants were developed. The case was solved after three years of investigation.

The quality of justice often is measured by the rational nature of punishment, and the degree and impartiality with which it is imposed under the rule of law. For example, in our own society the rule of law attempts to impartially impose justice through sentencing guidelines. The sentencing guidelines were promulgated primarily to eliminate the wide disparity in sentences imposed for similar offenses committed by similar offenders.¹⁰

6. *Columbia Presidential Candidate Slain; Cocaine Barons Admit Drawing Lots on Who Was to be Killed*, L.A. TIMES, Apr. 26, 1990, at P2.

7. *Id.*

8. 347 U.S. 483 (1954) (stating that segregation in the public education system is unconstitutional).

9. See *A Judge Is Murdered*, *Wash. Post*, Dec. 20, 1989, at a24 (stating that the murder of public officials "assault[s] a system that provides security, order and justice").

10. UNITED STATES SENTENCING COMMISSION, SENTENCING GUIDELINES MANUAL 2 (1991).

We must also recognize that the judicial process in some countries can be a facade, only adding to the disillusionment and disorder. For example, democracy in this hemisphere received a setback when President Fujimori of Peru dissolved the legislature and the judiciary and suspended all parts of the Peruvian Constitution inconsistent with his actions.¹¹ His excuse was fear of the Shining Path: a vote for order rather than the rule of law. In addition, we are all familiar with Edmund Burke's concept of liberty with order, but in many countries the perceived necessity of order transcends any cultivation of liberty. Remember Tianamen Square.

Yet another example is Liberia. Liberia had a Constitution nearly parallel to ours in construction, but not in practice. When I arrived in Monrovia three years ago, I was scheduled to meet with the Liberian National Security Council. At the start of the meeting, I was informed in a matter of fact manner, that the Minister of Defense would not be presiding because he had just been arrested in connection with a ritual killing. At that time, the Minister of Justice commented that civil rights were counter-productive in a country like Liberia. Thus, the Liberian constitution, while sound in theory, failed to protect human rights. Therefore, in countries like Peru, China and Liberia human rights protected by the rule of law have unjustly been made insubordinate to the necessity for order.

However, before we are too self-righteously indignant, it is well to remember what Margaret Chase Smith said on the floor of the Senate in the dark days of the 1960's: given a choice between repression and anarchy Americans would reluctantly choose repression. Other countries have made promising steps toward becoming societies truly governed by the rule of law. The Soviet Union has recently made major moves toward the rule of law. Gorbachev referred to the rule of law constantly. However, his concept was somewhat different. His concept referred to rule by law: the duty to follow laws on the books until changed. Thus, it lacks the majesty of rule *of* law, but it is nevertheless a step in the right direction. Time will tell how the Commonwealth of Independent States will emerge. Presently, the States are still struggling to define rights under law within the context of their own separate cultures. However, the judiciary is not yet independent, and until it is, the States will continue to engage in "telephone justice" and the law will not be supreme.

Eastern European countries, which are reaching out to us for help, provide new hope. For example, our bar and our State Department provided assistance in framing a Constitution for Czecho-

11. See Don Podesta, *Peruvians Discount Foreigners' Concerns: Fujimori Keeps Rapport With Constituents*, *Wash. Post*, Mar. 14, 1993 (noting that Fujimori "broke Latin America's trend toward democracy").

slovakia¹² and in assisting privatization there and elsewhere in Eastern Europe and the Baltics. Indeed, this is an important contribution. Another encouraging initiative has come through the Conference on Security and Cooperation in Europe (CSCE) which in 1990 sponsored what has become known as the Copenhagen Document. Thirty-five states, including the United States and the then USSR, joined in approving a statement about the human dimension.

CONCLUSION

The world has turned away from Communism; it has failed. As we move to assist emerging democracies in economic and political matters it is important, vital in fact, that we devote substantial energy and resources to helping them nurture, care for and feed that root core of democracy, the rule of law, and with it the independent judiciary. Failure to do so is likely to result in anarchy or repression, as desperate people turn from law to despots in an effort to restore order.

There is a hunger in the world for what we preach but do not always practice. Currently, translations of the Federalist Papers are being widely read in the Soviet Union. The Internationalization of the rule of law is an important beginning.

We must search for ways to safeguard the integrity of the judicial process in countries where corruption and cooptation have too long dominated the landscape. There is hope. It is not too simplistic to observe that public resistance at the time of the attempted coup in the Soviet Union was not for love of Gorbachev personally, but rather for outrage that the promise of democracy under law had been so crudely challenged. The Spirit of Liberty that Learned Hand so eloquently described will live in the hearts of men and women in countries of freedom in the years to come.

12. See Margret Cronin Fisk, *Profiles in Power 100 The Most Influential Lawyers in America*, NAT'L L.J. Mar. 25, 1991, at S2. (noting group of American and West German advisers that are drafting a new constitution for Czechoslovakia).