The Rule of Law: A Practical Approach for Capitalistic Enterprise

How did you become interested in the Rule of Law?

Having been a working lawyer for over two decades and then having become general counsel for a very international company with 15,000 employees. Being in charge of a couple hundred lawyers and compliance people, we needed some sort of organizing principle for the culture of the group, for the definition of our role with regard to the rest of the corporation, and to some degree with regard to the role of the corporation with regard to the world.

A few years into my tenure ... there was a very barely emergent trend of some thought being given to the phrase “rule of law” as its own thing. It had not really existed before. And that became an organizing principle for me unto itself.

What is your philosophy on the Rule of Law and why does it matter?

I get into debates with people all the time about what is the working definition of the rule of law as we should use it in various endeavors. My definition was a very stark, stripped down version that was extremely practical for a capitalistic enterprise of that size working in all these countries around the world. It has to do with having a functional dispute resolution system, and an order to society in which people understand with some clarity what the rules of behavior are. Those rules are enforced without regard to the social, ethnic, gender identity of the people. So it’s very basic, it does not capture a lot of questions about what the content of such laws should be. It’s rather an organizing principle that simply says you need something that people understand that is reasonably, fairly enforced, in order to get started on the project of society construction.

That philosophy, as stripped down as it was, was very helpful when you had operations in Thailand and Russia and China and Indonesia, and in some places where there is even more dysfunctional, non-rule of law. A company like that can’t effectively do business within the parameters set by the Western world, including the various anti-corruption guidelines and rules of the road, where the local environment is completely corrupt and does not adhere to something as sensible and reliable as rule of law. So it seemed to be a natural coalescing point for the lawyers, for the compliance people, for
senior management, for local and international management to say, 'we are neither liberal nor conservative on this project. What we are is trying to galvanize an attempt to look at the rule of law as its own thing, and to try to move the whole society so we can make little inroads that might be considered progress.'

Is there a role for all lawyers to play?

It's a matter of intensity, but I find that lawyers take for granted the basic common culture that we as lawyers share. The profession is somewhat unique. If you think about it as I've tried to get my lawyers at my company to do, you have to not forget that our entire existence as a profession, our livelihoods, depend on our belief and society's belief that we really can transcend ourselves and try to do the right thing.

I think lawyers have to re-remember what makes us different, and be proud of it. Lawyers spend more time on public interest and pro bono work than any other profession. Maybe certain parts of medicine are right up there with their pro bono work, but it's mandated by law. It's not to say that we are so special or public interested, but we are the keepers of the rule of law. If we diminish it or corrupt it, we don't even have a professional corpus on which to do our work. My message to every lawyer would be that we're better than that.

What is the role of large corporate capitalism in the promotion of the rule of law?

Many large corporations understand that their existence as a legal entity depends on the rule of law; that their prosperity as an economic entity depends on the properly functioning rule of law. I think corporate capitalism is the great untapped resource for the promotion of the stripped-down version of the rule of law.

However, many corporations have thrived by undermining the rule of law in certain developing nations. Other developing nations have brutally punished corporations who have attempted to do anything about the rule of law. So the tradition has been, over some decades, to lay low, use the government to promote rule of law, be a sort of neutral observer and try to follow whatever rules of the road emerge. But that's changed a little bit with these extraterritorial regulations like FCPA and the British anti-corruption law, that make it in your own interests, in your own survival interests, to not let your peripheral operations around the world corrupt. Which creates a moment in which it is possible to coalesce corporate capitalism around the basic notion of the rule of law, to make them together, not one by one by one, but together.

I think it's way past time for the in-house corporate legal community to say we are members of the bar, we are interested public servants, we can help with the rule of law. Maybe we can't represent indigent defendants in court for a whole bunch of technical reasons, but surely we can support efforts to solve the crisis in Columbia through a peace treaty, to write a telecommunications law for Egypt, all the things that you and I would include within the apolitical, stripped-down version of the rule of law.

We've seen some of that, and we're going to see a lot more. That's what I've been trying to do, waving around my little flag, for the last half a decade. It's funny to think — bedfellows of major corporations and the ACLU. A year ago, you wouldn't have thunk it. But now you've got a coalition without a banner name, between Silicon Valley [with their] need for international talent, and the ACLU [with their] their drive to be fair to immigrants. It's an interesting turn of the prism.