



Theme: The Rule of Law

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Freeway

Three Little Words

Rule of Law is just three little words, but the topic itself is far from simple and few non-lawyers understand it. Yet we need to make the effort, for the well-being of every Zambian depends upon the effectiveness of the rule of law in our country. That is why ZIPPA approached legal scholars, and asked them to explain the concept to our readers, and to do so as simply and as clearly as possible.

Persuading ‘legal eagles’ to write for members of the public who lack legal training is not easy. The Law Association of Zambia was not interested. Despite that, three high powered lawyers kindly offered to oblige. The results are before you in this journal, and those who are interested, and who are prepared to concentrate for half an hour X 3 can learn a lot. But

there is also a fourth article, which deserves close attention. It reports on a World Bank study, but it is full of information we can all understand, without even an iota of legal training. It explains in simple terms how it is that a country’s wealth – and the wealth of its people – depends, not on that country’s raw materials, or on its water resources, or on its access to trade routes, or even on the business sense of its people, but chiefly – you guessed it –on the ‘Rule of Law’. That is why the Swiss, with no raw materials to speak of, are very wealthy, and why the Congolese, and also – you guessed it – we Zambians, are miserably poor.

Do read the writings of the legal eagles. They have done their best to write simply, and they have much to teach us. But don’t overlook the article by Ronald Bailey entitled ‘The Secrets of Intangible Wealth’. It explains why those three little words are so crucial to creating the wealth for which we all long, but which continues to elude us.

The rule of law in a democracy: the case of Zambia

By Elias Chipimo

It is tempting to begin this article by rushing into a technical definition of “rule of law”. This would be a mistake. A sterile definition of a complex term that can mean different things to different people helps few unless it is presented within a framework that provides insight into why such a concept is both relevant and important in people’s lives. I therefore begin with a question rather than a definition: “Why should any society seek to establish the rule of law”?

To answer this question, let us start with the oldest story known to man – the epic of Gilgamesh, written some 4,000 years ago. Gilgamesh was king of Uruk (modern day Iraq) in Mesopotamia. Being two thirds god and one third man, Gilgamesh’s physical might and power was unrivalled and he used it to terrorise the citizens of Uruk, demanding, for example, to sleep with every virgin on her wedding night. The people of Uruk could do nothing to stop these practices and cried out to the great goddess Aruru. In time, Aruru made a man out of clay – Enkidu – whose power equalled that of Gilgamesh. Although Enkidu was not able to defeat Gilgamesh he removed the terror from Uruk by providing an effective counterforce. This ancient story provides the rudiments for understanding the importance of the rule of law – balancing power in society so that no one person is above reproach and ordinary citizens have a right to air and have their grievances addressed.

In 1951, celebrated psychologist Elsie Lincoln Benedict co-authored a fascinating book with her husband entitled “How to Analyse People on Sight”. Mrs. Benedict makes a surprising claim: human beings are not very good thinkers and are primarily driven by two things: instinct and emotion. She further asserts that whatever “work” human beings tend to do is usually motivated by the desire to satisfy one or both of these natural inclinations.

What does this have to do with the rule of law? Well quite a lot. You see, law is all about how human beings regulate their interactions with one another

and with the world they inhabit. At its very core, law provides the mechanisms through which people resolve natural differences that reflect our primary motivations as human beings to undertake pursuits that feed our instincts and emotions. Law is therefore nothing more than the rules and regulations by which we coordinate our interactions and resolve our differences and disputes.

The rule of law is a set of principles that provides objective standards for applying laws so that: (1) no one is disadvantaged by being denied access to a known and documented set of laws and (2) no one can acquire the means to circumvent laws whether as a result of the wealth they possess or the position they hold in society. To ensure this, laws must not only be well articulated but they must also be fair – they must be based on established societal norms that do not otherwise discriminate against any member of society. The application of the law must also be protected and this requires people to have unrestricted access to the law. This is ultimately only possible if there is an independent judiciary that can interpret the laws in a fair and objective manner and without the biased influence of any governing authority.

According to the American Bar Association, under the rule of law, “governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process.” The rule of law therefore acts as a safeguard against arbitrary governance, whether by a totalitarian leader or by societal groups that happen to have the power to influence even democratically elected leadership.

The rule of law can therefore be summarized as a set of objective principles intended to promote societal order and prevent the arbitrary use of power. However, to assess the extent to which Zambia can be said to operate under the rule of law, we can isolate three underlying principles:

- (a) Rule according to law: can government order individuals to pay civil damages or suffer criminal punishment other than in strict

accordance with well-established and clearly defined laws and procedures?

- (b) Rule under law: is any branch of government or any public official or group above the law?
- (c) Rule according to a higher law: do laws conform with universal principles of fairness, morality, and justice?

From 1973, for a period of eighteen of former president Kaunda's twenty-seven year rule, Zambia operated as a one-party state. During this time, alternative political associations were proscribed –no party other than Kaunda's United National Independence Party could legally operate in the country. The denial of the basic freedoms of association and assembly fell short of the principle of "rule according to a higher law". This was reversed in 1990 with the political upheaval that saw the removal of the constitutional restriction on alternative political associations and resulted in the landslide victory of the main political opposition, Movement for Multiparty Democracy (MMD) during general elections in 1991.

Following the reintroduction of pluralism, Zambia had generally operated in accordance with the principles underpinning the rule of law. However, in a trend that has its roots in the second term of the MMD and that has become more pronounced since the Patriotic Front came to power in 2011, there has been a noticeable reluctance on the part of the law enforcement officials to curb criminality perpetuated by those claiming to be members of the political party that happens to be in power. Public order laws are frequently applied in a manner that disadvantages the political opposition and law enforcement officials have until very recently turned a blind eye to illegal land invasions by groups that publicly pledge their loyalty to the Patriotic Front. Under such conditions, there can be no rule of law.

In addition to this, a growing concern voiced by the political opposition and civil society groups is the extent to which rights under the law can be objectively adjudicated. For all the perceived threats against it, however, the judiciary appears so far to

have been able to assert its independence. This could be more severely tested by the current litigation surrounding the tenure of the acting chief justice. A court petition has been filed on behalf of the Law Association of Zambia challenging the legality of her continued stay in office following the unanimous decision of its members. This action is testing the very limits of the rule of law.

In a democracy, the rule of law is important for the simple reason that democracy is about the freedom of individuals in society to strive to attain their full potential through the pursuit of any activity that is not contrary to law. Democracy provides a platform for the competition of ideas. This entails the freedom to assemble and associate; the freedom to demonstrate peacefully; the freedom to criticize those in power. It is these very freedoms that give democracy its essential character and help to promote transparent governance and balance competing interests in society. The more transparent the actions of government, the better their decisions will tend to be and the more successful that nation will be in promoting broad-based prosperity and sustainable national development. The rule of law provides that essential balance of power that can allow even ordinary citizens to oppose the Gilgameshes of our time.

Elias Chipimo, President National Restoration Party

The Rule of Law in a Democratic State

By Muna Ndulo

Introduction

This article discusses one of the most important political and legal concepts - that of the "rule of law" in a democratic state. In today's world nations from virtually every region recognize that the rule of law and the protection of human rights are critical factors in nation-building, development and good governance. In this short article we discuss the following issues: (a) the meaning of the "rule of law"

concept; (b) the courts and the rule of law and (c) monitoring the rule of law.

(a) The Rule of Law Concept

A discussion on the rule of law and its relationship with good governance must start with an understanding of the concept. What exactly is meant by the “rule of law” and in what ways can it assist in nation-building, development, the promotion of good governance, and the protection of human rights? At the outset it is important to point out that “*rule of law*” does not mean “*rule by law*.” The latter concept has no value. In fact even the worst dictators and violators of human rights use the law to organize and perpetuate repression. The rule of law eliminates wide discretionary authority from government processes. It specifies formal rules which do not involve a choice between particular ends and particular people. The concept assumes the existence of inalienable rights and liberties with which the people are born, and which governments should not infringe or violate. Predominant among such rights are property rights, freedom of expression, freedom of association, freedom of religion, personal liberty, equality before the law, due process, and protection against discrimination. To some extent, the essence of the rule of law lies in its juxtaposition to the “rule of men.” This aphorism is not meant to express the utter absurdity that laws are capable of governing society without the help of men and women. Rather, it seeks to state the following basic principle: *that all state power ought to be exercised under the authority of law*, and there should be rules of law governing the election and appointment of those who make and execute policy, as well as the manner in which such policies are made and executed, so as to ensure rationality and fairness. Contrast this state of affairs with a regime of caprice or arbitrariness in which acts or omissions are traceable to the whims of the particular person who happens to control state instruments of coercion, such as the police and the army. The rule of law connotes the use of state power through constitutionally sanctioned representative institutions, such as parliament or acceptable surrogates. It entails a government that lives up to

its responsibilities by ensuring the safety and liberty of its people, effective delivery of public goods and services, the maintenance of law and order, and access to justice, with fair and speedy administration. It also involves the creation of an efficient and dynamic market that secures economic growth and property, as well as a vibrant civil society.

In every country a national constitution articulates the vision of the society, defines the fundamental principles by which the country is organized, distributes power within it, and plays an important role in nation-building. The idea of a constitutional democratic government, or constitutionalism, and the rule of law connote a government strictly defined, regulated and limited by a constitution. Constitutional democracy is founded upon the notion of checks and balances, to ensure: the legislature, the judiciary, and the executive act to check each other’s operations and balance each other’s powers. In essence, all three institutions are duty bound to uphold the rule of law. All three derive their power from the constitution. In this sense, a national constitution is a charter of government and the source of all authority. *It is a body of fundamental principles by which a society organizes a government for itself, defines and limits the powers of the government, regulates the relations between various government organs and defines the relations of the state with its citizens.* The rule of law implies a measure of predictability in the conduct of state officials through a basic law covering their fields of operation. It defines the roles and status of such public officials by law, and it ensures that public officials abide by these, and if they do not, their actions are rendered invalid, since they are devoid of legality. It ensures openness and fairness in the adjudication of disputes, and the application of sanctions or other remedies. The rule of law demands equal treatment of all persons by the application of a general rule to all cases where, according to its content, the rule should be applied. Unifying all elements of the juridical quest for legitimacy are legal barriers to governmental arbitrariness. This means that the government, in all its actions, is bound by rules fixed and defined beforehand. This makes it possible to foresee with

certainty how an authority may use its coercive power in any given circumstances, and thereby allows an individual to plan his or her affairs on the basis of this knowledge.

The aim of the rule of law is to limit and check the arbitrary, oppressive, and despotic tendencies of power, and to promote accountability and ensure the equal treatment and protection of all citizens irrespective of race, tribe, class, gender, status, religion, place of origin, or political persuasion. It implies a legal framework that is fair and impartial, and that legitimizes state actions.

(b) The Courts and the Rule of Law

The rule of law is enforced by the judiciary and by watchdog institutions such as the Human Rights Commissions and the Ombudsman. In order to uphold and advance the rule of law there has to be an independent judiciary. This entails judges who can make decisions independent of the direction in which the political winds are blowing. A constitutional democracy should ensure that the appointment and tenure of judges are guaranteed, so as to secure their independence. The judiciary, in accordance with the constitution and the nature of its functions, is the one and only government body constitutionally called upon to protect human rights, to interpret the law and to ensure the observance of the rule of law, accountability and transparency in government operations and the criminal justice system. The rule of law is effective when laws are impartially and effectively applied. Where the Executive or Parliament disagrees with a court decision the recourse is to appeal to a higher court, not to disregard the court order. The essence of the rule of law is that a government operating under a written constitution has no more power that is granted to it by the constitution.

The principle of legality embedded in the rule of law concept needs to be extended to the discharge of services and the regulation of economic processes. It is essential to the development process that the legal system enables and supports efficient public and private entrepreneurial activities. The law can

further contribute to development and reform by conferring impersonality, legitimacy and stability on the political structure of the nation state. The strengthening of the state is an important indirect contribution of the legal order to the development process, because the state provides at once: (a) a national market; (b) a centralized source of general decision making and long range planning, (c) a more impersonal and less restrictive center of social gravity than the primary group to which an individual belongs. A formal system guaranteed by the rule of law is indispensable to the growth and working of a modern economy.

(c) Monitoring the Rule of Law

A challenge that faces the rule of law is how to monitor it and ensure its observance. A number of mechanisms can be used to monitor the rule of law. These include: examining the extent to which in any given country there exists political representation and inclusivity in state institutions, including the political system, whether there is a fair distribution of power, the extent to which a government is accountable to its people and what mechanisms exist to further this objective. This should include an examination of the electoral process and the extent to which it guarantees a competitive environment for all political parties. It should further include an examination of the independence and effectiveness of the judiciary and watchdog institutions. It is also important to develop a mechanism to examine institutional effectiveness and accountability, which should cover all three branches of government. In Zambia government agencies and economic development tend to suffer, not just from lack of adequate budgets, but also from administrative log jams, incompetence, corruption and failure to recognize institutional needs. There should also be an examination of respect for human rights, including gender rights, and of respect for the rule of law by law enforcement agencies. In addition, civil society and the media must be free to operate without hindrance from state agencies. The role of security agencies to uphold the rule of law is also crucial. Law enforcement agencies that are not well grounded in the underlying values of the rule of law

cannot guarantee the rule of law. Other things to be measured include: civil service transparency and the efficiency of government services. One should also look at economic management and corporate governance, together with integrity of the monetary system and auditing systems.

It is important to emphasize that the rule of law can only operate where there is a clear commitment by leaders to operate within the law. The leadership must embrace the concept for it to have its proper place in national life. Where the rule of law applies no one is above the constitution, not the President, not Parliament, not the Executive.

Clearly in Zambia the rule of law and constitutionalism are at present gravely threatened and need to be strengthened. Lack of appreciation of the rule of law by the police and government officials is manifested by open disregard of the law by the ruling political party in matters affecting its perceived economic and political interests, and by arbitrary Government decisions when citizens do not belong to the ruling party. Also by the disregard of court decisions with impunity, and by police harassment of opponents of the Government, and their denial of permits to opposition parties wishing to exercise freedom of assembly. Yet they hold arrested persons for long periods of time without charge, in total disregard of the right to bail and the presumption of innocence. On the other hand, land invasions by perceived government supporters are commonly condoned by those in authority.

Muna Ndulo, Professor, Cornell Law School and Director, Cornell Institute for African Development

A Note on the Rule of Law and Judicial Review

By Ernest M Beele

Introduction

Zambia has experienced headline reports of citizen assertions to be governed in accordance with the rule of law in recent years. Judges Musonda, Mutuna

and Kajimanga's protestations before the courts against the President's decision to bring them before the Chikopa tribunal is still very fresh in minds of the general public. There has been a reported case of three senior police officers who have commenced judicial review of the decision of the President to dismiss them from the service contending that he had no powers in law to do so. Indeed, judicial review applications have come from all angles. The late President Chiluba challenged by way of judicial review the decision of the National Assembly to remove his immunity from prosecution. Dr Mbita Chitala sought judicial review of the decision of President Chiluba and his cabinet to adopt changes to the Constitution of Zambia using other mechanisms than the Constituent Assembly and Referendum recommended by the citizens through the Mwanakatwe Constitutional Review Commission. The Zambia Federation of Employers challenged the decision of the Minister of Labour and Social Security regarding the manner in which he introduced the last review of minimum wages. Also a group of safari companies led by Nyampala Safari (Z) Limited took judicial review proceedings to question the decision of Government and the Zambia Wildlife Authority allocating hunting concessions.

This note does not intend to discuss these cases and many others similarly situated. Its purpose is to expose, for general information, the connection between the concept of rule of law and judicial review proceedings.

The Concept of Rule of Law

The expression Rule of Law is a rallying slogan to some and a concept of profound meaning and import to others. In it are wrapped ancient ideas about ordinary people's desires and aspirations against tyrannical rule and subordination. The earlier rulers in history who combined legislative, executive and judicial functions tightly monitored at the centre created an atmosphere of suffocation to the governed that needed space for self-actuation limited only by predetermined rules of engagement in politics, economics, religion and family life. Although the aspiration to be ruled according to law rather than by the wishes of men goes very far back,

the concept of rule of law only found scholarly elaboration in the last quarter of the 19th century, and much more in the 20th century as struggles against all forms of subjugation intensified.

Professor A V Dicey at the University of Oxford in the last years of the 19th Century outlined three distinct but connected conceptions of the rule of law. First, absence of arbitrary power- meaning no person is punishable except for a distinct breach of law, the law having been established in the ordinary legal manner and the accused tried before the ordinary courts of law. In public administration this means that a public authority should be able to point to a rule of law authorizing the decision he or she has taken and that must go for both substantive law and procedural requirements. Second, equality before the law- meaning every person whatever his rank or station in life is subject to the ordinary law and jurisdiction of ordinary courts. Therefore, when our judges, former commanders and former presidents appear before ordinary courts, it is a powerful testimony of the force in the idea of rule of law. Third, the protection of the freedoms and liberties of citizens in the ordinary courts of law- protection of freedoms of assembly, association, speech, movement, life, limb and property by the courts of law is the hallmark of the rule of law, at least in its western conception. For Anglo-Saxons, it is a matter of nostalgic celebration that these important liberties were won to citizens purely by judicial activism without the mediation of parliament as happens in countries with elaborate bills of rights.

The International Commission of Jurists, a gathering of eminent lawyers, has since elaborated the concept of rule of law to include requirements of modern good governance and citizenry empowerment. Therefore, a free and independent judiciary, regular elections, accountable executive authorities, equality of treatment between men and women, promotion of literacy levels and general encouragement of economic well-being and scientific exploitation are good attributes of a state under the rule of law.

Rule of law and judicial review

What then is the connection between the rule of law and judicial review? This is a broad question which

cannot be answered satisfactorily without introducing other concepts like separation of powers. Briefly, it is the role of the executive to run state administration in its various offices and institutions. Powers of administrators are granted invariably by laws, rules and regulations at various levels. Many times such powers are granted with the comfort of discretion. Administrators seek efficiency and effectiveness and therefore tolerate little interference in their decisions if order and systems have to run.

On the other hand, it is the constitutional role of courts to adjudicate disputes between citizens and between citizens and organs of the state. When a citizen is not satisfied with a decision of an administrator, there must be a way of channeling that grievance administratively and judicially. Adherence to separation of powers means that courts have no powers to question the correctness of decisions of administrators. It is the duty and responsibility of administrators to make decisions.

Courts, however, are entitled to check and ask whether powers of administrators or decision making bodies have been exercised as provided for by the laws, rules or regulations in place. This is necessary; otherwise administrators would have a field of operation without checks and balances. Therefore, the tenets of the rule of law demand that powers be exercised in accordance with limits set by the law and only for those specific purposes for which powers were granted. Anything done beyond that is said to be *ultra vires*. Decisions and actions which are *ultra vires* are a nullity in law, meaning devoid of any legal effect. Such decisions are quashed or cleaned off by the courts.

The channel for challenging the legality of power both substantively and procedurally is through a procedure in the High Court called Judicial Review. Judicial review, allowed on well-defined grounds, is circumscribed in order to strike a balance between the need to confine power and curb arbitrariness and thereby extend the liberties and freedoms of citizens, and the desire that those authorised to make decisions are given the space and leeway to do so. This explains the peculiar position that judicial review

applications begin with an application for leave of the court to commence judicial review.

Conclusion

The prospect that the courts of law will annul or clean off a decision made pursuant to illegality, unreasonableness, breach of rules of natural justice, abuse of power, bad motive, irrelevant considerations and the same explain the current popularity of judicial review. Favorable judicial review decisions are a powerful countervailing force against the power of authorities and a practical implementation of the rule of law. Therein lies the intimate connection and the reason why victims of adverse decisions of administrators and other authorities seek the rule of law through applications for judicial review.

Dr. Ernest Beele, School of Law, University of Zambia

The Secrets of Intangible Wealth

**Ronald Bailey
September 29, 2007**

A Mexican migrant to the U.S. is five times more productive than one who stays home. Why is that?

The answer is not the obvious one: This country has more machinery or tools or natural resources. Instead, according to some remarkable but largely ignored research -- by the World Bank, of all places -- it is because the average American has access to over \$418,000 in intangible wealth, while the stay-at-home Mexican's intangible wealth is just \$34,000.

But what is intangible wealth, and how on earth is it measured? And what does it mean for the world's people -- poor and rich? That's where the story gets even more interesting.

Two years ago the World Bank's environmental economics department set out to assess the relative contributions of various kinds of capital to economic development. Its study, "Where is the Wealth of Nations?: Measuring Capital for the 21st Century,"

began by defining natural capital as the sum of nonrenewable resources (including oil, natural gas, coal and mineral resources), cropland, pasture land, forested areas and protected areas. Produced, or built, capital is what many of us think of when we think of capital: the sum of machinery, equipment, and structures (including infrastructure) and urban land.

But once the value of all these are added up, the economists found something big was still missing: the vast majority of world's wealth! If one simply adds up the current value of a country's natural resources and produced, or built, capital, there's no way that can account for that country's level of income.

The rest is the result of "intangible" factors -- such as the trust among people in a society, an efficient judicial system, clear property rights and effective government. All this *intangible capital* also boosts the productivity of labor and results in higher total wealth. In fact, the World Bank finds, "Human capital and the value of institutions (as measured by rule of law) constitute the largest share of wealth in virtually all countries."

Once one takes into account all of the world's natural resources and produced capital, 80% of the wealth of rich countries and 60% of the wealth of poor countries is of this intangible type. The bottom line: "Rich countries are largely rich because of the skills of their populations and the quality of the institutions supporting economic activity."

What the World Bank economists have brilliantly done is quantify the intangible value of education and social institutions. According to their regression analyses, for example, the rule of law explains 57% of countries' intangible capital. Education accounts for 36%.

The rule-of-law index was devised using several hundred individual variables measuring perceptions of governance, drawn from 25 separate data sources constructed by 18 different organizations. The latter include civil society groups (Freedom House), political and business risk-rating agencies (Economist

Intelligence Unit) and think tanks (International Budget Project Open Budget Index).

Switzerland scores 99.5 out of 100 on the rule-of-law index and the U.S. hits 91.8. By contrast, Nigeria's score is a pitiful 5.8; Burundi's 4.3; and Ethiopia's 16.4. The members of the Organization for Economic Cooperation and Development -- 30 wealthy developed countries -- have an average score of 90, while sub-Saharan Africa's is a dismal 28.

The natural wealth in rich countries like the U.S. is a tiny proportion of their overall wealth -- typically 1% to 3% -- yet they derive more value from what they have. Cropland, pastures and forests are more valuable in rich countries because they can be combined with other capital like machinery and strong property rights to produce more value. Machinery, buildings, roads and so forth account for 17% of the rich countries' total wealth.

Overall, the average per capita wealth in the rich Organization for Economic Cooperation Development (OECD) countries is \$440,000, consisting of \$10,000 in natural capital, \$76,000 in produced capital, and a whopping \$354,000 in intangible capital. (Switzerland has the highest per capita wealth, at \$648,000. The U.S. is fourth at \$513,000.)

By comparison, the World Bank study finds that total wealth for the low income countries averages \$7,216 per person. That consists of \$2,075 in natural capital, \$1,150 in produced capital and \$3,991 in intangible capital. The countries with the lowest per capita wealth are Ethiopia (\$1,965), Nigeria (\$2,748), and Burundi (\$2,859).

In fact, some countries are so badly run, that they actually have negative intangible capital. Through rampant corruption and failing school systems, Nigeria and the Democratic Republic of the Congo are destroying their intangible capital and ensuring that their people will be poorer in the future.

In the U.S., according to the World Bank study, natural capital is \$15,000 per person, produced capital is \$80,000 and intangible capital is \$418,000.

And thus, considering common measure used to compare countries, its annual purchasing power parity GDP per capita is \$43,800. By contrast, oil-rich Mexico's total natural capital per person is \$8,500 (\$6,000 due to oil), produced capital is \$19,000 and intangible capita is \$34,500 -- a total of \$62,000 per person. Yet its GDP per capita is \$10,700. When a Mexican, or for that matter, a South Asian or African, walks across our border, they gain immediate access to intangible capital worth \$418,000 per person. Who wouldn't walk across the border in such circumstances?

The World Bank study bolsters the deep insights of the late development economist Peter Bauer. In his brilliant 1972 book "Dissent on Development," Bauer wrote: "If all conditions for development other than capital are present, capital will soon be generated locally or will be available . . . from abroad. . . . If, however, the conditions for development are not present, then aid . . . will be necessarily unproductive and therefore ineffective. Thus, if the mainsprings of development are present, material progress will occur even without foreign aid. If they are absent, it will not occur even with aid."

The World Bank's path breaking "Where is the Wealth of Nations?" convincingly demonstrates that the "mainsprings of development" are the rule of law and a good school system. The big question that its researchers don't answer is: How can the people of the developing world rid themselves of the kleptocrats who loot their countries and keep them poor?

Mr. Bailey is Reason Magazine's science correspondent.

Quotations

Universal Declaration of Human Rights:

"It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

Most people say they believe in the rule of law, yet few can define it coherently. High rule-of-law scores are the single biggest contributor to national prosperity, peace, liberty and freedom from corruption. Virtually nothing is more important for us to understand and uphold than the rule of law. - Leon Louw

Minimum Wage - Angel or Devil?

Posted: 20 Oct 2013 on Don Boudreaux's Blog in the USA

Aaron writes to me yesterday morning by e-mail, in a great huff:

You, Boudreaux, misrepresent the minimum wage. It's not government telling workers to be unemployed if they're not paid the minimum wage. It's government ordering businesses to pay all workers at least what the minimum is.

Here's a project for all unemployed young people – say, ages 18 through 21 – in America today. Go to a nearby supermarket or restaurant or lawn-care company or pet store and ask for a job at the minimum wage. If you are denied, offer to work for \$4.00 per hour. The owner or manager will almost surely decline, saying that it's against the law.

"Would you *like* to hire me at \$4.00?" you ask.

"*Well yes I would*" is the answer you're likely to get in reply.

"So, hire me at that wage. I'm an adult, I'm sober, and I have no mental issues. I'm willing to work for \$4.00 per hour."

"*You don't get it, kid. I can't hire you at that wage. I'll get fined, or worse. Go away.*"

"Ok, I'll leave. But no one – including you – will hire me at \$7.25 per hour. What am I supposed to do?"

"Look kid. That's your problem. I'm sorry. I don't make the laws, but I gotta follow them. Go away now."

I suspect that some such conversation as the above would be rather common. It highlights the fact that Mr. Aaron is factually mistaken to assert that the minimum wage is a policy by which "government orders businesses to pay all workers at least what the minimum is." The young man or woman in the above little fictional dialogue is a worker – just one without work. He or she is, as a consequence of the minimum wage, paid an hourly wage of \$0.00. The government does not, and practically cannot, order employers to pay unemployed workers the minimum wage.

A legislated minimum wage unambiguously orders that all workers who cannot produce for employers value-per-hour at least equal to the legislated minimum wage must remain unemployed, without incomes and without the job experiences that would be gained from working at hourly wage rates below the stipulated minimum. *That is the explicit means chosen by its champions to further their stated goal of improving the welfare of low-skilled workers.*

Minimum wage legislation is for this reason, and for many others, a devil camouflaged as an angel.

Topic for January 2014 Issue

The January 2014 issue topic is yet to be decided. Readers who wish to contribute are invited to contact the Editor at <zipa@zippamail.com>

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