

IBA Rule of Law Symposium
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Good morning and welcome. Thanks to Sarah and Stephen for inviting me to begin by sharing a few ‘big picture’ thoughts about the rule of law and what may lie ahead.

In the 1990s, after the fall of the Berlin Wall, as two dozen countries declared independence from Soviet control, we talked mostly about ‘the absence of the rule of law’. Since then, there have been impressive efforts to develop affirmative definitions of the term. We now know that ‘the rule of law’ is not a self-defining term; rather, it is a short-hand phrase that references essential characteristics of rule of law societies.

We have also learned, from the Magna Carta, the US Constitution and the French Declaration of the Rights of Man, that the underlying premise of the rule of law is that the ultimate power of a society rests not with the government, but with its people. It is the people who delegate powers to their government, who can limit those powers, or replace their government altogether.

This means – **by definition** – that countries with authoritarian governments are **not** rule of law societies, regardless of what they may claim. In his classic book, ***The Rule of Law***, Tom Bingham describes arbitrary government power as ‘the antithesis’ of the rule of law.

Bingham and others have given us helpful definitions. Most include that:

- government powers are limited – by a variety of mechanisms – and the government itself is not above the law;
- laws are developed openly, are accessible, and protect fundamental human and individual rights;
- courts are independent with judges who are ethical, impartial and apolitical; and
- official corruption is not tolerated.

These characteristics all show us that defining ‘the rule of law’ takes more than one short sentence. And we have learned other lessons.

We know that in the 1990s we often under-appreciated the enormous complexities of transitioning from autocratic rule to the rule of law. It is not simply a matter of writing a new constitution and new laws. It requires new institutions, new roles for government officials, different public attitudes and expectations, new traditions and mutual trust – political and cultural changes that can take years, if not a generation or more.

Transitions are even more difficult if a country's citizens have not previously lived under the rule of law, or if reforms bring fundamental changes to a country's economy, as they usually do. And if an existing government is authoritarian and determined to retain power by any means necessary, fighting for change can be life-threatening.

Finally, we have also been reminded that consistently living up to rule of law principles is a tall order. Ensuring that, in fact, laws apply equally to all and protect basic freedoms, that courts operate impartially, that elections are fair and final – these can be demanding goals, for any country.

In short, implementing rule of law values is not a simple task. Transitions predictably entail uneven progress, backsliding and cycles of reform. Slippage can occur in the best of countries.

So, what lies ahead? We have all seen reports showing net declines in the rule of law worldwide. But these surveys often ignore critical factors that suggest, instead, quite a bright future.

Consider the following:

- Although annual fluctuations can be important, a longer view sometimes tells us more. For example, before the fall of the Berlin Wall in 1989, 24 Central European and Eurasian countries were under authoritarian communist rule. Today, two thirds of those countries rank in the upper half of the global Rule of Law Index. Four are ranked higher than the United States, three higher than France. All 24 rank above Russia.
- Moreover, two of the five countries in the world whose rankings improved the most over this last year were Bulgaria and Slovenia. Three of the five that have improved the most since 2016 are also in Central Europe and Eurasia: Kazakhstan, Moldova and Uzbekistan. And Poland's recent election may suggest more to come.

- Also remember that rule of law surveys rank countries by how they are performing, not by the aspirations of their people. Public demonstrations against government abuses and suppression of dissent are most common in authoritarian regimes.
- A telling indicator of popular sentiment is international immigration, which is driven worldwide by people fleeing countries in which the rule of law does not exist, headed for countries that respect the rule of law and enjoy its economic benefits.
- And most enduring is the powerful appeal of rule of law principles. The universal allure of personal freedom, basic human rights, honest courts and accountable government is irrepressible. We don't see demonstrations calling for fewer liberties, corrupt courts, government-controlled press, or greater power for repressive rulers.

The appeal and resilience of the rule of law are undeniable.

But, also undeniable is that implementing and sustaining noble rule of law principles requires intensive, constant effort. So, what can we, a roomful of lawyers, do to help? Let me close with a few suggestions – and by asking you to compose your own lists, for your own countries.

One thought is that in our increasingly diverse societies, we must avoid extreme polarisation. In their book, *How Democracies Die*, Professors Levitsky and Ziblatt state, without qualification, that 'extreme polarization can destroy democracies'. And if polarisation becomes hateful or violent, it becomes even deadlier. Ideological intransigence frustrates problem-solving and can gridlock legislatures. Governance requires listening skills, respectful dialogue and seeing that creative compromise can be both a sign of strong leadership and a practical necessity. We might all ask ourselves: when did we last invite someone with whom we strongly disagree for a meal so that we could better understand each other's views?

Second, we must all understand rule of law concepts and appreciate their many benefits. In my country, this will require a renaissance in civics education. The privilege of self-government requires that we be informed and involved, individually and collectively. If we are not, then self-government becomes an oxymoron. As Richard Haass reminds us, we cannot leave politics just to the politicians. As lawyers, we must be knowledgeable educators on the practical, daily benefits the rule of law affords us.

Third, in an age of social media and artificial intelligence, we must become skilled at recognising misinformation. False distortions of reality – once called propaganda – have for some become a style of advocacy. Issues governments must deal with are complicated enough without multiple versions of the facts. Truth is even more elusive when countries, like Russia, use disinformation not only against adversaries, but also to manipulate their own citizens. Misinformation is a challenge of our time, one that may best be confronted, not by trying to censor falsehoods, but by identifying, verifying and publicising the truth.

Fourth – and then I will stop and urge you to continue on your own – is defending independent media and courageous journalists. Journalism’s goals of objectivity and fairness are themselves challenging, but a free and diligent press is an immensely valuable safeguard for rule of law societies.

These are among the reasons that make today’s Symposium and our being here important. And after we leave today, we must remember that we lawyers are the ones who are the custodians and guardians of the rule of law. Like Ukrainian lawyers documenting war crimes or American lawyers opposing a ban on Muslim immigrants, we lawyers must be the first to speak up. When the rule of law is threatened, we must be the first responders. The rule of law needs us.