

Dig Deep for Rule of Law

The United States shouldn't scrimp on its investments in justice.

BY PRESS MILLEN

How much is the rule of law worth? Until recently, this has been a largely theoretical question without the possibility of a specific answer. Undoubtedly there's a value in being able to enforce a contract, to pass on property to the next generation, or to know that a burglar will be punished. Placing a dollar value on the rule of law, though, seemed an impossible task.

Now the World Bank, in its report "Where is the Wealth of Nations?," has actually calculated some hard numbers seeking to place a value on the rule of law. The World Bank's report analyzes the three basic components of every nation's wealth—natural resource wealth (farm land, oil reserves, etc.), produced wealth (machinery, urban land, infrastructure, etc.), and a residual, catch-all category, "intangible wealth," which embodies human capital (things like education and know-how) as well as the value of good governance and the rule of law.

The overall conclusions of the report may surprise some. The biggest surprise is that the wealthiest nations are rich in intangible wealth, while produced wealth and especially natural resource wealth make up only a small share of the overall wealth of most wealthy nations.

Fundamentally, it makes sense. Machinery rusts and infrastructure crumbles. Natural resources are consumed and depleted. But intangible wealth tends to persist and to pass from generation to generation in those countries fortunate enough to have it.

Compare a country like Japan with virtually no natural resource wealth to an oil-rich country like Nigeria. Japan is in the top 10 wealthiest countries while Nigeria is an economic basket case. Why? Because of the huge disparity in each country's intangible wealth. What's missing most in Nigeria—and in other resource-rich but actually poor countries—is the rule of law.

Economists have even identified a "resource curse,"

which is the counterintuitive situation that prevails when a resource-rich country—because of poor governance and the absence of the rule of law—achieves extremely low rates of return on its natural and produced capital. In addition to Nigeria, the World Bank report puts Russia and Venezuela in that sad category.

UNDERINVESTING IN LAW

It would be all too easy for us in the United States to be smug about our place at the table of wealthy countries—No. 4, behind only Switzerland, Denmark, and Sweden—and with a very hefty share—82 percent—comprising our intangible wealth.

Yet the World Bank's report ominously suggests that we might be underinvesting in the rule of law, an important component of our intangible wealth.

Investments in the rule of law are diffuse and subject to different measurements. They obviously include spending for police and prisons.

They also include investments in the judicial system. Dilapidated and overcrowded courthouses can potentially be viewed as a sign that our country is underinvesting in the rule of law. Understaffed and overburdened clerk's and registrar's offices are another area in which we may not be putting enough into the rule of law.

Yet the most stark example of failing to invest in the rule of law, in my view, is the simmering national scandal concerning the salaries of judges.

Federal district court judges currently make an annual salary of \$169,300. While that is not an insignificant amount, it has to be compared to the rest of the profession. For lawyers straight out of law school who practice at America's biggest firms, the going rate is \$160,000 annually. Thus, the market rate for totally inexperienced (albeit bright) young lawyers who couldn't find the courthouse without a map is only a bit less than what we pay our most prestigious trial judges. Those judges are the ones handling some of the most important criminal and civil cases facing our country.

If there were any doubt that the market rates for top lawyers and our rule of law investment were out-of-whack, consider the fact that the salary of Chief Justice John Roberts Jr.—\$217,400—is less than his former Washington, D.C., firm pays associates scant years out of law school.

A colleague of mine recently took a massive pay cut to become a federal district court judge. Although his public spirit is commendable, the public is right to question a system in which the services of an accomplished lawyer in middle age (with children heading for college) is valued as functionally equivalent to the most inexperienced lawyers who appear before him.

ELECTORAL POLITICS

The largest part of the problem of judicial salaries lies in the intersection of the issue with politics. Although a separate branch of government, Congress is the paymaster of the judicial branch. Legislators, whose own salaries are fraught with electoral implications (when they raise their own salaries they get attacked by election opponents), are reluctant to raise judicial salaries.

The situation in many state systems is even worse. In North Carolina, where I practice, state court judges make significantly less than federal judges. Judges in New York are actually suing its legislature and governor after the fourth annual failure to include a pay raise in the budget.

A bill is slowly moving through Congress that would

raise the pay of federal trial judges to \$218,000 and pay the chief justice more than his former firm's associates. The total costs are miniscule in the context of the federal budget.

It would be wrong, of course, to isolate salaries as the sole value our society attributes to judges.

Federal judges get life tenure as a result of Article III of the Constitution, as well as generous retirement benefits. The respect accorded judges by society is unlike anything most other lawyers receive. Lawyers—as opposed to judges—rarely wield anything that could be characterized as power. And, as far as I know, judges don't fill out daily time sheets.

No one contends, moreover, that low salaries of judges in the United States cause the acute problems seen in countries where the failure of the rule of law detracts from prosperity. America has a rich inheritance in the rule of law that many other countries lack, and indeed, many talented lawyers like my colleague uphold this tradition by joining the judiciary despite the financial sacrifices.

Nevertheless, low judicial salaries could be an early warning sign that we are failing to invest sufficiently in the rule of law. America has prospered more than many other nations partly because of our historical commitment to the rule of law. For the sake of our future, let's not scrimp on such investments now.

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