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The *Just* Rule of Law[†]

AARON SCHILDHAUS, CHAIR OF THE SECTION OF INTERNATIONAL LAW OF THE AMERICAN BAR ASSOCIATION*

It is true that the Rule of Law is at risk in times of economic difficulties. Of course, the Rule of Law is always at risk, but it is much more so when times are tough. It was in a global economic crisis that the Nazis took power in Germany. Unfortunately, there are many, indeed most, people in the world who are always living in an economic crisis. But when the middle classes get caught up in it, when despair sets in among all segments of the population, demagogues often appear, offering their own brand of salvation. While the population suffers, the rulers set their own laws. Theirs is not the *Rule of Law*; theirs is the *law of the ruler*.

As lawyers, we are the first line of defense against the erosion of personal liberties, always. Not just in times of economic crisis, but always. When times are tough, our job is tougher. We are the defenders of the just Rule of Law. What do I mean by the “just Rule of Law”?

December 10, 2008, marked sixty years from the signing in Paris of the Universal Declaration of Human Rights. It is appropriate to refer to it once again. The Preamble to the Universal Declaration of Human Rights states that “it is essential . . . that human rights should be protected by the rule of law”. The Declaration goes on to list those precious rights of all persons. Without all of the rights, and without the mechanisms in place to make them reality, there can be no “just” Rule of Law.

We reiterate our support for a Rule of Law that is fair, equitable, and itself universal—in other words, a Rule of Law that is just; not just the Rule of Law—the *just* Rule of Law.

† This paper is based on the keynote address which Mr. Aaron Schildhaus, as Chair of the Section of International Law of the American Bar Association, gave on 19th December 2008 at the Nigerian Bar Association annual dinner in Lagos.

* Mr. Schildhaus is Chair of the Section of International Law of the American Bar Association. He received a Bachelor of Arts from the University of Vermont and his J.D. from the Washington College of Law, American University. Mr. Schildhaus is an expert on contract negotiation and international corporate strategy, and he has used his expertise in his nearly forty years of work in Europe and Africa advising corporate entities and investors. He has also devoted considerable effort to UNDP and World Bank legal reform programs in more than forty-five countries. Mr. Schildhaus is the only male to have received the Mayre Rasmussen Award for advancing opportunities for women in international law. He is dedicated to the promotion of the defense of human rights as an integral part of the *just* Rule of Law.

The “just Rule of Law” stands upon four pillars: just laws, just application of those laws, a free and fair justice system, and access to an independent bar.

Throughout history, tyrants and bullies, and those acting through them, have justified the most despicable acts, claiming their “law” and requiring obedience to it. Nazi Germany and South African Apartheid provide frightening examples of people bending to the will of their country’s laws, no matter how horrific, how inhumane those laws may have been. Immoral laws justifying immoral acts are examples of the Rule of Law gone wrong.

Any law that discriminates against, humiliates, or demeans segments of the population is the Rule of Law gone wrong. It is the Rule of Law gone wrong where slavery is allowed; or where acts of torture or cruelty are permitted; or where degradation of the human spirit, mind, and soul are justified. The Rule of Law gone wrong destroys anything positive in the lives of those victimized—it destroys life itself.

In a world that would guarantee human rights to all, the perversion of the Rule of Law into the law of the ruler is unacceptable. Yet we see it far too often: it’s the law because the ruler says it is. Therefore, the phrase “Rule of Law” needs clarification; it must be a “just Rule of Law”.

Law must be just in its application and enforcement. Even where the laws are fair on their face, even where the laws provide for the dignity of the individual and guarantee the human rights of the citizens, the failure to enforce the law, and worse, the failure to enforce the law equally to all people, is a failure of the Rule of Law—the Rule of Law gone wrong.

For there to be a “just Rule of Law,” the uniform and equitable application of just laws is essential. Two more elements are necessary. A system of justice must be in place that is universal, independent, and fair, and to which all people have access. And it must be accompanied by an *independent* corps of advocates—lawyers—upon whom all individuals can rely to guarantee their access to justice and to defend them in an unbiased, open, and transparent process free from influence and manipulation, and who speak out against injustice and tyranny.

Whenever and wherever there is a failure of the “just Rule of Law,” we, the lawyers, must continue to speak out and to fight back. Where the Rule of Law is perverted, as it was in the United States these past years; we must continue to speak out. The lawyers of America have spoken out. The American Bar Association is on record, and we have repeatedly spoken out, against the human rights violations of our own government at Guantanamo and Abu Graib. Guantanamo *will* be shut down. Before he was President, Mr. Barack Obama made that promise.

We must, and we will, remain vigilant, and we, as lawyers who believe in the Universal Declaration of Human Rights, as lawyers all around the world, must and will speak out whenever and wherever the just Rule of Law is violated. It is our sacred duty as lawyers, all of us, to defend the principles set out in this magnificent Universal Declaration of Human Rights.