

We Don't Know How Good We Have It

It's easy for Americans to take for granted all we have in this country. Take something as simple as tap water. I can remember visiting Uganda in 2007 and watching children trekking to the village well to gather water for their families. But it's more than just drinking water. We have a seemingly endless variety of food and consumer products—from apparel to shoes to kid's toys—available at affordable prices. We have affordable cars with the latest safety features, a complex network of roads to drive our cars on, and gasoline at a price that is half of what gas sells for in Europe. And most of us live in neighborhoods where we feel safe at night and have the freedom to avoid high crime areas in cities such as Detroit or Baltimore. These are the tangible benefits of living in a modern American society.

We have these benefits because we have commercial laws and institutions that create an environment for investors to invest in businesses with relatively low risk and decent returns on investment. These commercial laws and institutions are provided for by our federal and state legislatures who pass the laws, and our judges who fairly and efficiently resolve disputes that arise in a market economy.

But market economies are not created in a vacuum. They simply don't exist until laws and institutions are created to facilitate the conduct of business. The historical evolution of commercial laws has had its share of failures.

Take the system that prevailed in the Soviet Bloc of countries until the collapse of the Soviet Union in 1991. Suddenly, Poland, East Germany, Czechoslovakia, Romania, Bulgaria, Hungary, Albania, and Yugoslavia found themselves cut off from the Soviet legacy of a central economy run by bureaucrats rather than market forces.

These former Soviet Republics and Bloc countries suddenly found themselves adrift—with neither a central economy nor the laws and institutions needed to conduct commerce in a free market economy. The United States considered it in its national self-interest to assist and support these countries in their transition to market economies.

Initially, these efforts were conducted by the U.S. Agency for International Development (“USAID”), only to later be joined by the U.S. Department of Commerce's Commercial Law Development Program (“CLDP”). USAID then called for technical assistance from our bankruptcy judges, who are experts on commercial laws that are the foundation for any working economy: contracts, secured transactions, mortgages, and bankruptcy.

Not long after taking the bench, I was asked to provide such assistance as part of a team of commercial law experts that was helping develop commercial laws and

institutions in the former Soviet Republic of Azerbaijan. It was fascinating work and fulfilling to bring modern commercial laws to such an interesting place. Since 2002, I have worked on similar projects in other former Soviet-controlled countries: Russia, Macedonia, Bosnia-Herzegovina, and Georgia.

The former Soviet countries, however, are not the only ones that have needed help creating or modernizing a commercial law system. In Africa, for example, a number of countries have 19th and 20th century legacies of colonialism, repressive governments, and antiquated commercial laws. So, from 2007 to 2009, I went to Rwanda, Uganda, and Zimbabwe to assess the existing commercial laws and institutions in those countries and to recommend USAID-sponsored programs that could help those countries develop or modernize their commercial laws.

But most of my work has been in the Islamic countries of Afghanistan and Bahrain. Since 2007, I have been to Afghanistan nine times, initially to provide USAID with an assessment of Afghanistan's secured transactions and bankruptcy laws, and then later to actually draft a bankruptcy law for the country. After numerous trips over a 10-year period, and what seemed like countless "stakeholder meetings" of local leaders, judges, and business owners in Kabul, Jalalabad, Mazur-e-Sharif, and Herat, the bankruptcy law was finished and signed by President Ashraf Ghani in March of this year. I'll be returning to Kabul in a couple of weeks to start the process of training the professionals and judges that will be implementing their new law.

What all these experiences have confirmed to me is the stature that our American system of commercial laws enjoys worldwide. It is the "gold standard" for an efficient, working system that can be relied on to create and enforce contracts that underlie every aspect of our world economy. And I'm pleased to point out that the heart of our system is the team of "experts" in the Clerk's office and chambers who create, implement, and manage our caseload with incredible efficiency.