

LEGAL AND JUDICIAL REFORM AT THE WORLD BANK

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Mr. Chairman, distinguished guests, ladies and gentleman. Good morning, I am delighted to be with you today on such a special occasion.

Je suis très heureux de vous souhaiter la bienvenue de la part de la Banque mondiale et d'ouvrir ces débats placés sous les auspices de l'Esprit des Lois de Montesquie. (I am very happy to welcome you on behalf of the World Bank and to open these debate placed under the auspices the spirit of the law of Montesquie.)

This year is the bicentennial celebration of the French Civil Code. And there is indeed much to celebrate. There is virtually no other comprehensive legal code that has survived this long, and has been exported, in one form or another, to so many other countries. So the *Code Civil* must have got something right; the question is what? The answer, I suggest, is important for those of us, at the World Bank and elsewhere, concerned with the development agenda and poverty alleviation.

Let us recall for a moment why the *Code Napoleon* was, for its time, such a remarkable achievement. It was drafted quickly; it was comprehensible to laymen, not just lawyers; and it brought legal unity and certainty to a country previously riven by a patchwork of differing laws, conventions and customs. A masterstroke of simplification, clarity and conciseness, the *Code Civil* is undoubtedly an important part of the response to de Gaulle's query about how a nation with some 248 cheeses can possibly be governed.

The *Code* established, in part, the legal development of France as a modern nation state. In the place of a myriad of legal regimes in different regions, the Code offered simplicity, uniformity and predictability. The economic development of France throughout the nineteenth century was exponential and France's post – war recovery was sound and vibrant; and I want to suggest to you that the *Code Civil*, as amended from time to time, provided the principles upon which such economic growth was predicated. I want also to invite you to draw some lessons from the French experience when examining how to recreate that growth in the developing world at the beginning of the twenty-first century.

There are some that claim that the only people who benefit from law are lawyers; that the law is unnecessarily complex; that it is unfair, costly, and cumbersome. Without doubt, legal systems are imperfect edifices; in the words of Michel de Montaigne, there is nothing so grossly or ordinarily faulty as law. But every developed country - be it France, Japan, the United States or England - has detailed sets of laws and with good reason. Laws provide a means of organizing complex affairs, resolving disputes and offering justice. The *Code Civil* has provided a comprehensive regime by which French citizens for 200 years have clearly expected their relations with one-another to be governed.

Uniformity and predictability of laws – all attributes of the Code Civil – are a precedent to complex business transactions. In the absence of predictability and assurance of the enforceability of private agreements, economic actors will not enter into a contract to do something tomorrow or across a distance like buying any item over the internet, because they have no assurance that the counterpart will perform its side of the bargain. A predictable legal system, that enforces obligations, changes all that. It encourages people to rely on each other, because they know they can seek redress and the enforcement of their private agreements. This is why legal and judicial reform is a critically important factor in encouraging economic growth in the developing world.

The themes we emphasize are simple.

In the first place, the Bank's 2005 Doing Business Report teaches us that laws should be simplified. For instance, forming a company should take no more than a couple of hours at minimal cost, but all too often can take months or years, hundreds of forms and thousands of dollars in official costs. The message is simple but powerful: over regulation stifles development, simplification facilitates it.

Second, law should encourage investment while ensuring that there are protections against the abuse of private economic power.

Third, a law can be used to empower the poor. Effective systems of land registration are necessary to enable the poor to recognize and use the value of their assets. Legal reform, is of course, only a part of this story – the poor need also to be educated to make prudent decisions about borrowing and investing. But law can create the institutions that give the poor control over their lives by unlocking the value of their land and goods.

Fourth and last, where legal convergence is possible and sensible, we support that trend as we have, for example, in the work of modernizing and harmonizing the business law applicable in the 16 African countries that belong to OHADA.¹

¹ These are Benin, Burkina-Faso, Cameroon, Central African Republic, Chad, the Federal Islamic Republic of the Comoros, Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.

Allow me a personal observation. Like many of you, I am fortunate to have studied and practiced in two great legal traditions. I was formed as a lawyer in Peru in a civil system country and later on pursued post graduate studies in this country. I have practiced law for 15 years in Peru and for 15 years in the US. And my own experience tells me that no one system is better than the other. Furthermore, the days of “pure” legal systems are over. There has long been codification in leading common law jurisdictions and the US Uniform Commercial Code is but one example. Also, the securities laws and related regulatory institutions and antitrust laws, for instance, of many so-called “civil law” jurisdictions have successfully been local adaptations of US and Canadian models. And I pride myself on leading an extraordinarily diverse group of talented World Bank lawyers who come from all continents, represent all major legal systems and appreciate these facts. Indeed, we are making a deliberate effort in recruiting attorneys with a wide diversity of “legal origins.” All of us recognize the immense value in our broad juridical diversity and we nurture this.

We of course also understand that legal reforms are most likely to be effective if they are undertaken with due regard for existing legal traditions and the principles of sovereignty that contribute to the diversity of systems that comprise the international community. That said, the globalization of commerce requires us also to help facilitate a workable convergence of diverse systems. Motivated by these concerns, the Bank helps client countries assess the effectiveness of their legal and institutional frameworks for commerce and trade, infrastructure development and financial sector health. We help to analyze these systems so as to catalyze efforts on the part of our client countries towards

legal reform in these and other areas that are essential to growth in the investment climate and to the alleviation of poverty. The Bank recognizes the importance of each country's own initiative and leadership in the area of legal reform, not only as a matter of sovereign prerogative but also to support a deliberative legislative process which involves the reasoned balancing of competing interests and sometimes of legal traditions.

In what we do, it is important that we identify core principles, taken frequently from various existing systems, that advance the goals of fairness, transparency, predictability, consistency, impartiality, reliability and efficiency. And in addressing our task, we look beyond existing constraints and anticipate the benefits of modern technologies in the administration of laws and legal institutions.

None of these ideas asks us to use the model of any particular legal system or legal philosophy in our work with developing world countries. We certainly do not propose the "transplant" theory of legal and judicial reform, in which the developed world arrives at the doorstep of the Ministry of Justice of a developing country with a "one-size fits all model" and a pre-wrapped set of laws and institutions for the national Parliament to rubber stamp and enact. The essential starting point of legal reform is rarely theoretical academic analysis, but an understanding of how the laws that already exist work (or don't work) on the ground.

Efforts in the area of law reform must be led by the countries themselves, and must have broad societal consensus to be sustained. Multilateral organizations like the Bank can offer assistance in close partnership with local lawyers to see why the laws on the books may not have the effect that was originally intended. Only with this detailed practical knowledge can they offer valuable advice in local efforts to reform any legal system with a view to promoting the economic benefits everyone is looking for.

Why does a case take 5 years or more to be decided? Is it the clerks, the judges, the paperwork, the rules of civil procedure? Will computers help? Will fixed timetables help? How can speed be achieved without compromising fairness? These are questions of detail, and they arise in every area of the law, be it land registration, company formation, debt collection or government regulation. It is these issues that make all the difference in terms of economic effectiveness and we are poised to address them.

Law, as we know, is a delicate social construct, and it is no easy task to strike the balance between culture and efficiency. But French legislators certainly got it right for France two hundred years ago, and I hope I have given you a brief impression of what the World Bank is doing to help countries seeking to get it right today. The Bank has taken the view that the rule of law in the developing world is a precondition for sustained economic growth and social equity. That is why the World Bank strongly supports country-driven efforts in legal and judicial reform.

Ladies and Gentlemen, you are about to hear from a dazzling array of speakers of the highest reputation and caliber, and you can be proud they are here with us today. Like you, I very much look forward to hearing what they have to say.

Merci beaucoup. (Thank you very much.)