

## **The Rule of Law and Current Events in the US**

A “ridiculous” order being made by a “so-called judge” that “[thwarts] the legal effect of the public’s chosen representative.” These are all direct quotes from either the President of the United States or the US Justice Department in response to the US courts having stayed the application of the President’s Executive Order relating to immigration. A very bright light is being shone on the rule of law and it is currently being severely tested in the United States.

To the extent that the executive branch of the government of the United States is suggesting its orders not be subject to a review by a judge to ensure their legality, it is wrong. Being democratically elected does not mean you are provided with untrammelled authority. Rather, it means that you are given authority to implement policy through law in accordance with the law and Constitution of the country in which you govern. Principle 4 of the Rule of Law as described by the former Lord Chief Justice of England, Tom Bingham, in his book “The Rule of Law” says it directly: “ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.” The courts therefore have a crucial role to play, as the law places limits on the authority of the other branches of government.

This is the way the law works. As the Washington State Attorney General said “In our country, no one is above the law and that includes the President.” It does no-one any good for the President, or for anyone else, to call court orders “ridiculous,” or to attack the qualifications of the judge, simply because they disagree with the order made. Doing so undermines the role of the courts in the balance of governance. All citizens of countries governed by the rule of law must place faith in the courts to do their job, which includes considering the limits of the authority of the executive branch of their government.

Recent events in England also raised rule of law issues. The High Court ruled that the UK Executive (cabinet) did not on its own have the power to trigger Article 50 of the Lisbon treaty to start Britain’s exit from the European Union. That was a matter for Parliament. Despite upholding centuries old principles in England, the decision was pilloried in the UK press as the court thwarting the will of the people as expressed through a referendum where a slim majority voted in favour of leaving the EU. The judges were called enemies of the State. The Lord Chancellor was slow in coming to the defence of the judges and through them, the rule of law. Fortunately, passions in England have calmed and reason seems to be reasserting itself. The recent decision of the UK Supreme Court upholding the High Court decision seems to be viewed as an example of the courts doing their job holding in check the untrammelled exercise of power, even if based on popular majority, by the wrong branch of government.

The rule of law is a crucial element in the protection of rights and freedoms against excesses of state power. The hallmarks of a state that violates the principles of the rule of law are ones that we need to ensure we avoid. Those that govern, whether it be in the US, the UK, Canada, Australia or anywhere else, must recognise the fundamental benefits that the rule of law brings to our democracies, and do everything that can be done to support it rather than taking steps, in the furtherance of political goals, to undermine it.

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