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Equality, Order, and the of the Rule of Law

Democracy is the rule of the people, and its very nature mandates that all people are equal before that which rules. That then raises the question: what is it that rules? It cannot be any singular person, for if anyone reigns with unchecked power, the rule ceases to be democratic, and becomes a dictatorship. Then when rules? The law itself. As Samuel Rutherford titled his book on the subject, *Lex, Rex*: the law is king. That is the fundamental principle behind the Rule of Law, from which two secondary principles can be derived: all individuals are equal before the law, and the preservation and maintenance of the law allows for the existence of order in human society. In recent months; however, there have been two major news stories involving the Rule of Law that have been shaking Canadian media: the Huawei extradition case and the SNC-Lavalin affair.

Lady Justice is blindfolded—that is the first principle one must derive from the Rule of Law. Each person, the private individual and government official alike, is subject to the law. In his essay, “On Judicature,” Sir Francis Bacon has given one of the most lucid images for the understanding of this principle. Bacon wrote that judges work at “raising valleys, and taking down hills... to make inequality equal; that he may plant his judgement as upon an even ground” (Bacon 176). That is exactly what they do, and that is the function that the Rule of Law serves.

The second principle to be derived from the Rule of Law is less intuitive than the first, but is just as essential. In response to a reference question regarding the Manitoba Act, the Supreme Court found that “the Rule of Law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order” (Re Manitoba Language Rights, [1985] 1 S.C.R. 721). That is to say, the Rule of Law requires the existence of laws which people then follow, preserving order in society, in

avoidance of anarchy and its many conflicts. Paradoxically, this reasonable restriction of individual liberties then allows people to live their lives more freely, by restricting the disorders of the world around them. Thanks to the Rule of Law, one can walk the streets of Canada without fear.

In recent months, there has been a spectre casting its shadow over Canadian politics: the SNC-Lavalin affair. The former justice minister, Jody Wilson-Raybould, has claimed that the Prime Minister and his cabinet have attempted to assert influence over her, so that the Montreal based company—SNC-Lavalin—would be given a deferred prosecution agreement, instead of facing a trial and potential criminal conviction. The inherent gravity of such claims is catastrophic, for if proven true, they undermine the judicial independence of our country by infringing on the judiciary's ability to decide the case according to their own discretion. If this has indeed occurred, the prime minister's intervention would upset the Rule of Law with its preferential treatment of SNC-Lavalin, simply for the fact that the company is beneficial for the Canadian economy. Despite possible government interference, the courts have been following the due process for this case, and Canada's director of public prosecutions has made the "preliminary decision not to negotiate a special plea agreement on the criminal charges" (Bronskill, CBC News). Any potential crisis of the Rule of Law, in this case, has been averted, but that is not to say that the crisis had never existed at all.

The second major event of 2019, regarding the Rule of Law, is the case for the extradition of Meng Wanzhou, the chief financial officer of the Chinese technology giant Huawei. In the United States, Wanzhou is wanted on fraud charges, and they have requested her extradition from Canada. She was arrested by Canada last year on the first of December and is currently under house arrest. Her case is remarkably demonstrative of the Rule of Law, as it is

vital for understanding the proceeding events in the three countries involved: Canada, the United States, and China.

In this case, Canada is following the Rule of Law immaculately. Despite her wealth and influence, she is going through the due process, and is scheduled to have an appearance in the Supreme Court of British Columbia on the sixth of March “to confirm that an Authority to Proceed has been issued and to schedule the date for the extradition hearing” (Department of Justice Canada). The next step is for the courts to determine “whether the fraud accusations against Ms. Meng by the United States constitutes a crime in Canada” (Bilefsky, The New York Times). Once that is finished, Canada will act accordingly.

Though Canada is following the due process for the case, there are concerns that the United States might not adhere to it so strongly if Wanzhou is extradited there. The American president, Donald Trump, has been under scrutiny for a remark that he had made to Reuters regarding the extradition. He said that “if I think it’s good for what will be certainly the largest trade deal ever made... I would certainly intervene if I thought it was necessary” (Mason, Reuters). His statement is concerning for a myriad of reasons. First, it threatens America’s judicial independence. Second, it diminishes the Rule of Law’s principle of equality before the law, by giving Wanzhou special treatment for the potential economic gain of America. Third, it threatens the Rule of Law’s other principle of order. If Huawei and Wanzhou are guilty, and she is set free, then that will allow for further disorder and conflict from Huawei.

For this case, in Canada, the Rule of Law is being upheld, in America, it is threatened, and in China, it is nearly absent. In an article, the researcher Emi Mifune wrote that “China has been faced with metamorphosing from the system of “renzhi” (ruled by men) to the system of fazhi (ruled by law)” (Mifune). Note that fazhi is translated as “ruled by law” not “Rule of Law,”

the difference in wording is minuscule, but the difference in meaning is substantial. “Ruled by law,” lacks the values—such as the protection of rights and freedoms, and to orderly society—implied by the Rule of Law. In addition to this is the fact that the Chinese courts are not independent from the Chinese government. This is important because shortly after Canada’s arrest of Wanzhou, the Chinese courts sentenced the Canadian—Robert Schellenberg—to death for a drug-related crime. It was reported that Schellenberg was “writing his own letter to ask a higher court to examine his case” (Vanderklippe, The Globe and Mail). This, in turn, caused Global Affairs to release a notice encouraging Canadians to “exercise a high degree of caution in China due to the risk of arbitrary enforcement of local laws” (Global Affairs Canada). It is believed that these enforcements are China’s retaliation for the Wanzhou arrest. This is made possible because “some of the internal "renzhi" systems still remain unchanged” (Mifune). These scenarios are the things risked when the Rule of Law is not adhered to: the arbitrary enforcement of laws, the sense of disorder and peril, and even—as an extremity—death.

The Rule of Law is what keeps us safe. It makes individuals equal before the law, and it shapes the laws in such a way as to be useful and good. It is the principle that brings order to our country and to our lives. Our country’s adherence to it is the source of our rights and freedoms, and our rights and freedoms are the very things at risk when it is abandoned. It is our nation’s duty to maintain it at whatever cost, for next to it everything else diminishes in importance.

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