

Support for the Rule of Law in the World and in the New U.S. Administration

by Brian C. Murphy



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With a new U.S. administration and a return to one-party U.S. government, it seems appropriate to look ahead to the state of the rule of law in the United States and in the world.

First, we should define what is meant by “the rule of law.”

I know of no universal definition (although the United Nations has crafted a working definition), but I feel that it should mean adherence to a set of principles enshrined in law, regulation and/or state practice that apply above the personal whim of a particular set of government operators. The law is to serve the people, equally, without preference, and it must be transparent, accessible, and be seen as fair by its audiences. There must be no “means” or other criterion-driven test for the equal application of our laws, for all, without reference to race, religion, or relative wealth. That, of course, is the ideal, but it is often honored in the breach.

The president of the United States has suggested that the U.S. government may distance itself from certain treaty obligations (such as the North American Free Trade Agreement, or NAFTA) and other international agreements (such as the Iran Nuclear Deal). If so, it needs to do so in accord with the treaty and agreement provisions that provide for lawful and orderly derogation.

Should the use of military force be deemed necessary, as has been suggested by the administration for Syria and Yemen, it must be after appropriate and thoughtful deliberation by relevant governmental authorities (*viz.*, the executive branch in consultation with the Congress). Unilateral executive branch military action has often wrought lamentable divisiveness to our republic. (One need look only to the experiences of the Vietnam “conflict.”)

Adherence to the rule of law begins with adherence to legal principles that are respected and considered fair, transparent, and equitably applied to the affected populace. Justice must be meted out with fairness and appropriate expedition. Only when domestic legal regimes have won the respect of the affected parties can fealty to the rule of law be effec-

tively and fairly maintained.

Of course a new administration has every right to assert its own politically driven “slant” on the application of U.S. law, regulation, and practice. Equally, however, the new administration must not ignore treaty obligations, legally entered into. It cannot permissibly—or fairly and effectively—threaten to round up and deport foreign visitors who are lawfully in the United States, based on their religion or race. U.S. federal district courts have repeatedly and recently affirmed this, in Washington State (as affirmed by the U.S. Court of Appeals for the Ninth Circuit), Hawaii, and Maryland. Few will be surprised if these opinions are appealed to the U.S. Supreme Court.

It is not my intention to criticize unduly the announced proclivities of the new administration, but I can and do support and promote respect for, and adherence to, the rule of law in the United States and the world.

We would be pleased to hear from you, and we encourage you to become actively involved in the International Law Section, and to let your light shine clearly and brightly, with the section’s help! ☺

Endnote

¹So, please join the FBA International Law Section! It’s easily done via the FBA website: www.fedbar.org.