

C.V. Starr Lecture

Nation Building and Exporting the Rule of Law: Lessons Learned from Russia and Egypt November 3, 2004

At the end of 1994, Richard P. Bernard had resigned his law firm partnership in order to assist the newly-formed Russian Securities and Exchange Commission to create a securities market infrastructure in Russia. A year earlier, he had opened the Moscow office of the law firm Milbank, Tweed, Hadley & McCloy. In 1995, at the request of the Russian government, he helped Russian companies to list on the New York Stock Exchange – only to see that government vilify him for doing just that. By Thanksgiving 1995, he had been fired.

In his C.V. Starr lecture organized by the Law School's Center for International Law on November 3, 2004, Bernard, who is now Executive Vice President and General Counsel of the New York Stock Exchange, recounted his efforts to inculcate the rule of law in countries – such as Russia and his recent advisory work in Egypt – where “getting a dial tone can be a triumph of will.” He described some of the bureaucratic difficulties he experienced in trying to carry out economic and democratic reforms in post-socialist countries. Bernard said that “post-socialist countries have a way of enveloping all reform in bureaucratic Jell-O or of decapitating every flower that sticks its head above the weeds.”

Bernard also recounted how he told a high-level Russian official that in order to support a securities market in that country, his government would not only have to implement securities laws but also a variety of other laws such as bankruptcy and banking laws. “Whatever you are trying to do with an economic system,” he said, “you must have the rule of law and other pieces in place. You need all of them. It’s like building a boat. It won’t float until you put the last board in. You have to do it all.” Alluding to the work that lies ahead for U.S. efforts to rebuild Iraq, Bernard pointed to the program book which contained guidelines for helping countries trying to set up a securities infrastructure. “If you want to run off to Iraq to set up a securities industry, the memo is a blueprint of all things you have to do such as setting up stock exchanges and writing securities laws,” he explained.

Bernard also criticized efforts where some advisors simply tried to transplant to Russia those legal ideas and concepts that were idiosyncratic only to the U.S. experience. He said that “trying to move to an environment like the former Soviet Union and implant concepts drawn from American lives and institutions is a very difficult thing to do because we don’t have a shared vocabulary.” Bernard noted that after the disintegration of the Soviet Union, the successor Russian Federation didn’t have any securities laws, and that he had to explain the functioning of a securities market from scratch to many Russian government officials.

Bernard also argued that the most the United States can do is teach and empower these countries in reforming their own systems of governance. “The most you can do is to go over there, work with the people in government who are trying to build these institutions, and try to help them decide what you can transfer from your own experiences into their own unique systems,” he said. “You can’t remake their system in the image and likeness of the United States.”