

Chapter 4 The Rule of Law and Economic Freedom

Two Sides of the Same Coin for Purchasing Economic Prosperity

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Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his own *person*: this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. (John Locke, 1689/1980, §27)

Definition and philosophical basis for economic freedom

Freedom is basically the absence of constraint or coercion through force, fraud, or theft. Anyone who roots for freedom generally has, of necessity, to do the same for economic freedom specifically. If not for anything—at least for the mere fact that economic freedom is a great enabler and root of all other freedoms.

In the liberal sense, the regulation of human affairs is only legitimate when it is not born of force, fraud, or manipulation. This as well is the case for economic freedom, which connotes many things to different people but for the purpose of this article the definition by the Fraser institute is most appropriate and adopted:

Individuals have economic freedom when property they acquire without the use of force, fraud, or theft is protected from physical invasions by others and they are free to use, exchange, or give their property as long as their actions do not violate the identical rights of others. (Fraser Institute, 2022)

This follows both the classical and modern conceptions of freedom, but most profoundly, the historical proposition by John Locke, the English philosopher who gave us the premise that individuals own, and should own, themselves (Rule of Law Working Group, 2007: 101). This was and is a critical basis for the global frowning at slavery, servitude, and forced labor, among others, which place a person at the whims of other people's interests, but also the violation of someone's ownership through deprivation of what is legitimately theirs.

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Aware that there are always people who are happy to employ force and fraud to acquire property, how then can a society guarantee this protection of rights to personal property? This is where the rule of law comes in—to protect the individual's life and property from force, fraud, and theft by laying out the rights, obligations, and boundaries of each individual, including the State, and aid in enforcing the contracts he/she enters (Bufford, 2006). This is how, as we shall see in greater detail, the rule of law becomes critical for economic freedom. Why should we, however, care about economic freedom beyond philosophizing?

Whereas scholarly debates have raged for centuries and still do on whether economic freedom is a necessary precursor to economic prosperity, and in effect human flourishing, it is safe to say there has grown a great body of knowledge, especially in the last three decades, that offers enough empirical evidence to correlate, keeping other factors constant, economic freedom and the prosperity of a country and its citizenry in their individual capacities.

The evidence is embedded in all the economic stories and fortunes of countries all over the world. Even just a cursive comparison of any country will easily reveal that the freer economically a country is, the more prosperous it is and inadvertently the greater the standard of living for the people of such a polity (United Nations, n.d.). In other words, one can correctly conclude that the rule of law enhances economic freedom, which in turn does so for economic prosperity.

The relationship, however, is not as simplistic as the foregoing statements might suggest. It is also observed that the relationship between the rule of law and economic freedom is one of mutual or symbiotic benefit rather than of parasitic dependence. Granted, there can only be economic freedom if there is rule of law, but it is also true that economic freedom enhances the rule of law. In short, when one of the two is threatened, the other is too.

The rule of law

We have already briefly seen that one of the major anchors of economic freedom is the rule of law. For a people that desire prosperity, therefore, and in the face of converging crises around the world like COVID 19, climate change, and wars, which are all exacerbated by the old-time catalyst, poverty, it becomes a worthy pursuit, as they seek economic prosperity, to understand what then really comprises not just the relationship between economic freedom and the rule of law, but what these concepts mean in different contexts. For this chapter, the rule of law is discussed in the libertarian context. This is particularly important, beyond scholarship, for countries that are still economically backward and whose peoples still struggle to afford basics like food, and primary social services like shelter, education, and access to health care.

Several studies have highlighted many strands to economic freedom including the size of government, the independence of the judiciary, peace and stability among others (Fraser Institute, 2022). It is easily discernible that all these strands are interconnected, and discussing one out of the rest may definitely not bring out the whole picture. They all, however, apparently have a strong relation with the rule of law.

If we return to the definition of economic freedom by the Fraser Institute, clearly there are among others two discernible components from the definition: on one hand, the control over one's labor, trade, and access to the market (the basic forms of legitimate acquisition of property); and, on the other, control over

such property upon acquisition and freedom to deal with it through trade or donation as one chooses, and protection from expropriation, theft, or being defrauded.

I would add that the reverse is true when, that is to say if, unfortunately, as reality always has it, a person loses property through force, fraud, or theft, economic freedom is only guaranteed if there is a mechanism to ensure the same is recovered, and returned to them as the rightful owners, with the possibility of payment of the necessary damages and interests to return them to the position they would be in if it were not for the deprivation.

The relationship between economic freedom and the rule of law has become a very popular subject among scholars especially in the wake of the world economic freedom index, and is relatively well covered all the same (Zywicki, 2003). However, at a policy level, many countries around the world still seem to focus more on the role of law as seen in the passing of legislation than on the rule of law, which are different though intertwined. To better understand this, we have to take recourse to the scholars who have shaped the global philosophical foundations and debate on economics, some of whom have had significant impact on how we view the rule of law or at least its constituting parts.

Adam Smith, Daron Acemoglu, and Johan Galtung set the ground for primacy of rules or the law if you like, in shaping an economy (Waldron, 2020). Whereas the law is a constituting part of the rule of law, the two should not be confused to mean the same. The presence of laws in itself does not guarantee economic freedom. In the liberal sense, there is a further step needed for such laws to beget the kind of the rule of law that promotes and enhances economic freedom, economic growth, and development. This is in, first, the nature of the rules, and whether or not they are enforced equally (Bufford, 2006: 309).

This is why, whereas all societies have laws, they all rank differently when it comes to the rule of law and ultimately economic freedom. This is because some of the laws inherently lead to deprivation of property while others are supportive of economic freedom but are either not enforced or, if they are, not enforced equally. Further, and for example—as will be discussed later in this work when dealing with an assessment of the correlations between rule of law and economic freedom in Africa—some countries have laws but these laws are neither transparently enacted nor implemented, which affects their effectiveness, applicability, and acceptance. Thus, they end up being integrally inhibitive to economic freedom. This sometimes is seen through undue regulation that cedes too much power to public institutions and officials, that are oft corrupt or levying unreasonable taxes, creating cumbersome bureaucracies that make it hard to do business, instituting subsidies for some products, thereby distorting the market, and levying taxes, and/or fines that make it hard to do business (Wa-Kyendo and Kemboi, 2021). In such countries, therefore, individuals and private business players find ways to thrive not through the laws but in spite of the laws, which undermines not just the rule of law, but economic progress.

For the rule of law to thrive, the rules applicable must be clear, the processes of adjudication transparent, and then the enforcement of judicial decisions by institutions fair and certain. This calls for, among other factors, the rule of law to ensure separation of powers, with the law making, implementation, and adjudication roles clearly distributed, and executed.

Let us dive a little deeper, then, into what the rule of law is. Simply and literally put, the rule of law (as contrasted with the role of law) is a situation where a

given society transparently and in a participatory manner promulgates and pronounces rules or laws, that in their nature promote freedom and are supreme over all, including the state and its officials, applying to everyone in the society without discrimination. Needless to say, such rules must be just, understandable, and alive to the realities of the members of the subject society for them to promote the rule of law, which in turn promotes economic freedom. Elsewhere, the rule of law has been otherwise precisely defined as the principle in which all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated and consistent with international principles of human rights (United States Courts, 2019).

At the risk of repetition, it should be noted carefully that the rule of law, as discussed in this paper is not just a case of the state and individuals being constrained by law (rule by law or rule of law), as the classical definition of rule of law would suggest, but a situation where such law is not bound up with principles that threaten freedom. This means there are inherent values like human rights, less state intervention, promotion and protection of property rights, among others, which should be built into the laws to qualify for the rule of law herein described. The main aim of the laws should be the protection of individual freedom and property rights so they are able to promote economic freedom.

Where, then, is the relationship between such a system and economic freedom? Several studies over the years have consistently shown that there are strong correlations between the rule of law, and economic freedom (Gwartney, Lawson, Hall, and Murphy, 2022). Countries that score higher points on the *Rule of Law Index*[®] (World Justice Project, 2022) also rank highly on the index of economic freedom published in *Economic Freedom of the World* (EFW index), subject to other variables or keeping other factors constant. As shown in **table 4.1** and **table 4.2**, the concentration of countries with a higher ranking in *Rule of Law Index*[®] are the very ones that rank highly for economic freedom, save a few whose deviations are easily explainable. By contrast, the countries with a lower ranking on the *Rule of Law Index*[®] also rank poorly on the economic freedom front. The majority of these are characteristically in the third world, where apparently most Sub-Saharan Africa countries lie.

Tables 4.1 and 4.2 of the latest global rankings for rule of law and economic freedom offer some insights. From the two sets of rankings, even when each of the values (rule of law and economic freedom) have many variables, correlations between the two are still glaring. For instance, the following can easily be observed:

- 1 For both indexes, the lowest ranking country is Venezuela. This is a testimony of the relationship between the presence or absence of the rule of law and economic freedom.
- 2 Related to the above, it is also observed that when the first and last twenty countries are extracted from both indexes, ten of the first twenty countries on the rule of law index, also appear among the first ten. These are Singapore, New Zealand, Denmark, Australia, Estonia, Ireland, Japan, Lithuania, Canada, and Netherlands.
- 3 Further, seven of the lowest ranking countries on the *Rule of Law Index*[®] also appear among the lowest 20 on the EFW index. These are Gabon, Egypt, Ethiopia, Democratic Republic of Congo, Zimbabwe, Sudan, and Venezuela.

Table 4.1: The first and last 20 countries in the *Rule of Law Index 2022*[®]

Country	Overall score	Global rank	Country	Overall score	Global rank
Denmark	0.90	1	Congo, Republic	0.41	120
Norway	0.89	2	Honduras	0.41	121
Finland	0.87	3	Mozambique	0.40	122
Sweden	0.86	4	Ethiopia	0.39	123
Netherlands	0.83	5	Zimbabwe	0.39	124
Germany	0.83	6	Sudan	0.39	125
New Zealand	0.83	7	Gabon	0.39	126
Luxembourg	0.83	8	Bangladesh	0.39	127
Estonia	0.82	9	Uganda	0.39	128
Ireland	0.81	10	Pakistan	0.39	129
Austria	0.80	11	Bolivia	0.38	130
Canada	0.80	12	Mauritania	0.37	131
Australia	0.79	13	Myanmar	0.36	132
Belgium	0.79	14	Nicaragua	0.36	133
United Kingdom	0.79	15	Cameroon	0.36	134
Japan	0.79	16	Egypt, Arab Republic	0.35	135
Singapore	0.78	17	Haiti	0.35	136
Lithuania	0.76	18	Congo, Dem. Republic	0.34	137
Korea, Republic	0.73	19	Afghanistan	0.33	138
Czech Republic	0.73	20	Cambodia	0.31	139
			Venezuela	0.26	140

Source: *Rule of Law Index* [®] 2022 (World Justice Project, 2022)

Table 4.2: The first and last 20 countries in the 2022 EFW index

Country	Overall score	Global ranking	Country	Overall score	Global ranking
Hong Kong SAR, China	8.59	1	Gabon	5.72	146
Singapore	8.48	2	Burundi	5.67	147
Switzerland	8.37	3	Yemen, Republic	5.67	147
New Zealand	8.27	4	Guinea- Bissau	5.64	149
Denmark	8.09	5	Egypt, Arab Republic	5.61	150
Australia	8.04	6	Ethiopia	5.58	151
United States	7.97	7	Chad	5.55	152
Estonia	7.95	8	Iraq	5.51	153
Mauritius	7.88	9	Lebanon	5.45	154
Ireland	7.86	10	Central African Republic	5.40	155
Armenia	7.84	11	Congo, Dem. Republic	5.36	156
Japan	7.82	12	Algeria	5.12	157
Lithuania	7.82	12	Congo, Republic	5.36	158
Canada	7.81	14	Iran, Islamic Republic	4.96	159
Georgia	7.78	15	Libya	4.95	160
Latvia	7.77	16	Argentina	4.87	161
Czech Republic	7.75	17	Syrian Arab Republic	4.63	162
Netherlands	7.75	17	Zimbabwe	4.48	163
Romania	7.74	19	Sudan	4.21	164
Iceland	7.73	20	Venezuela	3.32	165

Source: *Economic Freedom of the World, 2022 Annual Report* (Gwartney, Lawson, Hall, and Murphy, 2022)

It should be observed that there would probably be more overlap between the indexes if several countries that ranked among the lowest 20 on the EFW index were ranked on the *Rule of Law Index*[®]. These include Syria, Libya, Central African Republic, Iraq, Yemen, and Burundi.

It is easy to see why a country that adheres to the rule of law easily achieves economic freedom and ultimately prosperity. One cause of this is that predictability and certainty of the economic systems which, as already highlighted is a precondition for economic freedom, is a great contributor to an economy as it infuses investor confidence and facilitates business operations. In explaining this, Fred McMahon, in his article *Rule of Law, Limited Government Key to Economic Freedom in the U.S. and around the World* (McMahon, 2018), explains how the index published in *Economic Freedom of the World* offers some empirical evidence to prove this. This is to the effect that the least economically free countries embrace a weak or biased rule of law, which allows governments and greedy elites to attack the economic freedom of the weak, poor, and unpopular while rich advanced industrialized countries typically establish and enforce a sound rule of law.

To further illustrate this point, Mr McMahon offers the case of the Nordic countries of Sweden and Norway, which respectively rank 43rd and 27th overall in the 2022 EFW report: while they rank low in size of government (Sweden at 161st, Norway at 153th—meaning they have large governments relative to the other 162 ranked countries and territories), they score well in rule of law (Sweden at 15th, Norway at 3rd), which partly accounts for their high overall rank. This is in contrast with other advanced industrialized countries such as France and Italy, which also have large governments (ranking 152nd and 122nd, respectively on size of government) but perform relatively poorly on the rule of law (23rd and 60th), a partial explanation of their low overall ranking (France 57th, Italy 54th). Nearby Switzerland, which has a relatively small government and sound rule of law, ranks 4th overall.

The rule of law and other factors that facilitate economic freedom

We now look at how the rule of law relates to the other strands of economic freedom. *Economic Freedom of the World* highlights several aspects that guarantee the rule of law. These include the size of government, which speaks to expenditures, taxes, and state enterprises; the legal structure and protection of property rights; the means of access to sound money by the citizens; the level of protectionism or freedom to trade internationally; peace and stability; and the nature of regulation of credit, labor, and business. We discuss some of these and how they relate back and forwards to the rule of law.

Peace and security

The mechanism of enforcing societies' dos and don'ts (the law) must be just to ensure that the members of the society do not resort, as they often eventually do in the face of injustice, to other means of fighting for or protecting their rights, which often leads to political and social unrest. This is achievable through ensuring the rule of law, which then becomes a condition precedent for peace and stability.

As already stated, there will always be people who pursue unjust enrichment through the employment of violence, fraud, or theft. To stop them, a society

needs to have not only laws against the practices but also the means through competent legal institutions (which we shall discuss further in this article) to determine disputes arising out of such actions, but also settling claims of misunderstandings or breach of contracts, fraud. This in itself provides a peaceful mechanism of conflict resolution.

Checking the state and/or those in authority against arbitrary regulation

Historically, the greatest sources of confiscation and expropriation have always been the state, state officials or private but powerful individuals enabled by the state's actions or inactions. This comes in form of, for example, arbitrary grabbing of property or laws that seem fair in the short term but ultimately lead to abuse of individual property rights.

The former sometimes happens through outright expropriation of property as happened in Uganda in 1972 with Field Marshal Idi Amin Dada expelled Indians and caused their property to be expropriated and arbitrarily distributed to Ugandans, or in Zimbabwe under Robert Mugabe, who took land from white farmers and redistributed it to natives capriciously without compensation.

The other way is through a government of large size that in turn requires higher taxation to fund, thereby depriving citizens of their property and capital for investment, or running state enterprises that compete with the private sector, or offering subsidies in favor of certain enterprises against others in the market place, which takes away from citizens in favor of other entities or individuals.

Generally speaking, the state and state actors often wield a lot of power, susceptible to abuse. Left to their own devices, there are many ways state institutions can be abused to limit economic freedom. This can also come about through over-regulation by trade-creating monopolies engaging in predatory business practices, implementing tax regimes that illogically take away the fruits of people's labor, ingenuity, and investment, among others.

The practical way to protect ordinary citizens, and private business entities from the possibilities of abuse of this power by the state and state actors is in having rules, through which the actions of all, including the state are checked. This means protection from arbitrary conduct, making state moves predictable, with recourse to adjudication in case there are disputes. Law enforcement and adjudication must be independent enough to also check the state, and the cost of administration should be kept at a minimum through smaller governments meant basically to ensure security and mechanisms of enforcement of contracts.

How a state ranks on the rule of law is therefore critical to economic freedom because it speaks not only to the administration of justice and the regulatory framework for business and investment, but also to the protection of tangible and intellectual property rights. The rule of law means, as demonstrated, there will be clear regulations for trading, and starting businesses, and government agencies and officials have well spelled-out responsibilities and functions, which reduces room for corruption, bureaucracy, and the time taken to start and run a business.

Interestingly, governments that have inhibitive mechanisms often do not realize that in the long run, if business is hampered, this will lead to a government not being able to collect enough revenue to run itself, which is a recipe for state failure. Cumbersome and costly processes and bureaucratic requirements to start and run a business end up delaying and/or inhibiting running businesses, and blocking

new entrepreneurs from operating in the formal sector. These entrepreneurs will resort to operating informally or bribing government officials to get the necessary licenses, creating alternatives to beat the rules and operate, as earlier discussed, hence undermining the rule of law. This, however, also undermines the development of such enterprises because operating outside the formal legal framework impedes them from access to formal credit and contracts from well-structured institutions that require formal licenses.

It is, therefore, in the interest of every society and economic system to apply the rule of law by having laws that are understood by all, in which they all participate in making and that facilitate rather than hamper trade, labor, and investment. Tools like reduction of licensing fees and processes might look like they reduce government revenue in the short run, but actually by making it easy to start and run a business eventually increase revenue, bringing improvement in the standards of living thanks to gainful enterprise—great feats in the long run for both the business and the government. This is besides attracting foreign direct investment that is always on the lookout for favorable investment environments.

Enforcement of contracts and adjudication of disputes

The other measure of economic freedom is whether or not there is a competent, independent, transparent, and quick judiciary. This is precisely what the rule of law is equally about. What does it serve if a country has very good laws, as indeed many do, if there are no effective mechanisms of interpretation and enforcement? Where the judiciary is not independent from the influence of the executive, where the decisions of the judiciary are procured by corruption or ignored by the executive enforcement agencies, then it becomes very hard to do business as contracts cannot be enforced and capital will be very shy about entering such a country.

Production and exchange among individuals happen through contracts. A contract is merely an exchange of promises. Many a time, people do not meet their obligations and commitments in contracts. When this happens, one can only hope for a competent, timely, and independent adjudication process to resolve the conflict. Basically, there is no contract in the absence, on one hand of clearly defined and consistent rights and obligations, and on the other of predictable and systematic means to ascertain those rights and obligations in case of disputes, and consequences in case of a breach.

A society therefore needs clear contracting laws, that encourage rather than curtailing the freedom to transact, but very importantly, that also create structures of the state like Courts that can hear and determine cases expeditiously on their merit. There is no better guarantor of investor confidence than an independent judiciary and functional systems of enforcing contractual obligations.

The law should therefore be clear on how judicial officers are to be appointed, their qualifications, competences, the basis of promotion, and security of tenure such that their decisions are credible and dependable. Further, individuals should have easy access to the Courts—both literally and figuratively, that is, in terms of physical reach but also in the actual dispensation of justice—, have timely and transparent adjudication of their commercial disputes, and guaranteed enforcement of the decisions eventually made by the Courts (Rule of Law Working Group, 2007). Such a system benefits all but especially smaller enterprises that may not have the resources to bribe their way through ambiguous contracting arrangements but, more importantly, provides access to capital that is often attracted by efficient enforcement mechanisms.

It has also been shown that countries with robust adjudication systems also extend effectiveness to alternative dispute-resolution mechanisms like international commercial arbitration, which are often more confidential, quicker, and less adversarial than the ordinary Court-based dispute-resolution methods through ordinary resolution (Rule of Law Working Group, 2007).

The rule of law, protection of property rights, and use of natural resources

John Locke in his theory of the social contract explained that the obligation of individuals to submit to a civil government under the social contract is based on the assurance that the government through the state agencies is duty bound to protect their natural rights including the right to private property (Locke, 1689/1980). The state protects natural rights and private property rights by ensuring there is rule of law where it is clear how property is acquired, traded, donated, and protected with a view of averting theft, fraud, or force in these processes. Fundamental as these individual property rights are, many countries around the world, especially those in the Third World, still struggle with guaranteeing property ownership.

In sub-Saharan African countries like Uganda, it is very difficult and expensive for one to process a land title or a copyright license. This makes many citizens who otherwise would have property that they could use to secure credit unable to do so because proving ownership is hard, and those who deal in credit cannot trust their collateral, which is of less worth than it would ideally have. This in turn restricts the participation of these citizens in the economy, reducing investment and production to alleviate poverty and spur economic growth and development (Gombya-Ssembajjwe, Banana, and Bahati, 2001).

This ties into the status of intellectual property rights in a given country. Where innovators, creatives, artists, and authors are compensated for their works, they are encouraged to create more. This is to say, where an economy has a robust legal framework for protection of trademarks, copyright, and patents allowing exclusive benefit—at least for a given time limit—and guaranteeing enforcement of intellectual property, people will invest their resources in production, knowing they will recover the same with profit.

The absence of such is a clear indicator that differentiates modern knowledge-based economies and those that still rely on rudimentary means of production, basically because there are no incentives for innovation from compensation by the market. Suffice it to say that the products of a market that guarantees intellectual property are also usually secure, more competitive, accessible, and safer for the laborer and final consumer thanks to competition and motivation of the creators.

Some countries that have realized this have embarked on campaigns to enforce property rights both in real and intellectual property. There are reports from South America of hitherto struggling countries like Peru and Brazil that have carried out accelerated campaigns to offer land titles to all, especially those who only owned the same customarily. Further, Brazil mounted a campaign to ensure enforcement of property rights but, beyond enforcement, to sensitize the public such that the citizens understand the laws for the protection of intellectual property, and the nature of such property rights (Rule of Law Working Group, 2007).

On property, the rule of law is also extended to the question of use of natural resources. Many countries appropriate natural resources in the name of being a

trustee for the people and in the process dispossesses them not just of the natural resources but also the accessory property like land, among other items. Through the rule of law, the human rights of the persons affected by the exploitation of the natural resources are catered for: where they have ownership in the resources, they are not deprived of their stakes in the resources or accessory property. Where there is inclusive utilization of natural resources, the rule of law ensures safety of the investments and alleviation of poverty.

Countries that observe the core foundations of the rule of law in dealing with natural resources realize economic transformation while the resources become curses and lead to the Dutch disease where there is arbitrariness in exploitation of the resources plundered for the benefit of a few members of especially the ruling classes.

The rule of law in Africa

We have already seen that to guarantee the rule of law the cycle starts with transparent and participatory promulgation of laws, then the liberal nature of the laws in the protection of property, and the just, equal, and efficient enforcement of the laws. Many African countries struggle at all these levels.

A majority of nations or, more appropriately, political regimes in Africa, perhaps out of necessity to hold political power and, in some cases, through pressure from development partners, seem to have appreciated the role of law. This is seen through the enactment of constitutions and laws across the board, which for the most part acknowledge and establish free-market economies, at least on paper.

Despite having laws in place, however, the majority of them struggle with not just arbitrary legislation but lack of public awareness, and the implementation, and effectiveness of these laws. Application of the law often suffers from political and affluence expedience. So, in almost all cases, the laws are neither democratically promulgated, equally enforced, independently adjudicated, nor binding on the state and state actors thanks to their impunity. This is evident in table 4.1 where, among the 21 countries that score the lowest, 11 are from Africa: Republic of Congo, Mozambique, Ethiopia, Zimbabwe, Sudan, Gabon, Uganda, Mauritania, Cameroon, Egypt, and the Democratic Republic of Congo.

The majority of African countries grapple with poverty, war, hunger, disease more than other countries on earth. The rule of law would therefore be critical because it enhances the much-needed economic growth and development in various ways like establishing peace and stability already highlighted in this article. The United Nations General Assembly has highlighted, among other things, the importance of access to justice for all and in this regard encouraged the strengthening and improvement of the administration of justice; and emphasized respect for the rule of law and property rights and the pursuit of appropriate policy and regulatory frameworks as primers to encourage business formation, including entrepreneurship that contribute to poverty eradication (United Nations, n.d.). African countries therefore would have a chance for prosperity, if the governments promote the rule of law with a view of enhancing economic freedom.

In the last six decades, there has been heightened regard for the rule of law in African countries born either of pressure from development partners or from internal agitation. The indicators from various studies, however, show that whereas there have been advances, a lot is still desired to be done especially given

that the societies are enthralled to extractive institutions and legal frameworks rooted in an oppressive governance history and colonialism (Guest, 2004). No wonder the indexes of the rule of law and of economic freedom both show that they all remain a challenge despite these advances.

For most African countries, formalization of laws and efforts geared towards the rule of law took shape in the early 1960s when they gained independence and later in the 1990s with the liberalization movement at the end of the Cold War, which came with establishment of constitutional democracies across the continent (Iqbal and Khan, 1998). However, there has been retrogressive movement in countries like Somalia, South Sudan, Mali, Democratic Republic of Congo, and Nigeria among others caused by war, terrorism, and civil strife. In situations of war, the institutions of the state are not effective and therefore contracts cannot be enforced. Capital, especially for foreign direct investment, being shy flies away, and there is no credit to speak of for those interested in entrepreneurship to start small and medium-sized enterprises (Fang, Kothari, McLoughlin, and Yenice, 2020).

Further, even for countries that are stable, rooting separation of powers remains a challenge as appointment of judicial officers is still fettered with corruption, nepotism, and other factors, leading to judiciaries that are not independent. This is worsened by poor funding that avails few officers, leading to a case backlog. Cases take as much as two decades, thereby holding up capital and other factors of production. According to a 2020 World Bank report, the Land Division of the Ugandan High Court alone has over 10,000 cases to be handled by only seven judges. Some of these cases date as far back as 1990 (World Bank Group, 2020). This means commercial disputes can take up to decades before resolution, which makes business difficult.

Uganda, for example, which has been relatively stable, has its ranking on the *Rule of Law Index*[®] worsened by corruption and abuse of fundamental rights, despite improvements on the front of an open government, regulatory enforcement, and constraints on government (World Justice Project, 2022). There are also cases of non-implementation of judicial decisions by the executive arm of government. So, beyond just influence peddling, even where Courts make decisions, these sometimes are ignored and not implemented rendering them nugatory (Okakwu, 2017). It still remains difficult to win and implement cases against powerful members of the ruling elite who engage in grabbing of property. Cases of corruption, which subverts money that would be useful for investment, are not prosecuted as the corrupt possess unprecedented levels of impunity.

Governments in many African countries also ignore their liberal policy positions and act contrary to them with abandon. They profess to having free-market economies but go ahead and create monopolies, increase the tax burden, and throw around cash gifts to their hangers-on; and they continue to create parastatal organizations to compete with the private sector (Masaka, 2013).

This is not to say to there are no positive strides for the rule of law on the continent. Some countries like Kenya have seen significant reformation of not just their economies along free-market principles but also specific reforms of sectors like the judiciary by way of changes in the funding models, more transparent appointment of judicial officers, expansion of staff, and creating facilities for training and access to justice with a view of spurring access to justice and economic development (Open Government Partnership, 2020: 25).

There has also been a lot of work done by civil-society organizations to promote the rule of law by sensitizing the citizenry to create awareness about their rights and obligations. These have also been pivotal in calling for and causing the passage of legal reforms through parliaments.

Global, regional, and sub-regional agreements and reforms have also been able to open up space for trade, and the rule of law, as countries share and benchmark from one another, and make commitments to multi-lateral arrangements that foster trade across boundaries. These support standardization of contract regimes, mechanisms for alternative dispute resolution like international commercial arbitration and mediation, among others. The African Continental Free Trade Area (AfCFTA) for example describes itself on its website as:

The world's largest free trade area bringing together the 55 countries of the African Union (AU) and eight (8) Regional Economic Communities (RECs). The overall mandate of the AfCFTA is to create a single continental market with a population of about 1.3 billion people and a combined GDP of approximately US\$ 3.4 trillion. The AfCFTA is one of the flagship projects of Agenda 2063: The Africa We Want, the African Union's long-term development strategy for transforming the continent into a global powerhouse. As part of its mandate, the AfCFTA is to eliminate trade barriers and boost intra-Africa trade. (AfCFTA, 2023)

The shift towards free trade born of these international and regional arrangements has been very critical. The AfCFTA, for example, is key in dismantling trade barriers and implementing competitive regulatory regimes and principles of justice that foster investment and free trade, protection of intellectual property, the rule of law, and removal of barriers to investment and trade. They also facilitate the enforcement of decisions born out of alternative dispute resolution like commercial dispute arbitration.

Globalization has been another indirect driver of the rule of law among African countries. The necessity of trading with other countries, and competing for the global market has forced many African countries to make progressive reforms especially in their judiciaries and mechanisms for enforcement of contracts. As already highlighted, however, many African countries still have a long way to go before realizing the rule of law that makes significant impact on their levels of economic freedom.

Conclusion

It is clear that the rule of law has a great bearing on economic freedom, which in turn fosters economic prosperity. This therefore means any country that seeks to prosper economically must pay attention to the rule of law as discussed here and any study on the economic development or the lack of it of any country is incomplete without studying the status of economic freedom and its pillar, the rule of law. Attention, however, has to be paid to the nature of "laws" before their "rule" can be beneficial to economic freedom.

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