There oughta be a law . . . Or maybe not?

There used to be a comic strip that showed a puzzled citizen confronting an absurd or unfair situation. The refrain was always the same: there oughta be a law . . . Over-reliance on legal fixes can lead to regulatory gridlock. We tend to think of law as a ready-made solution to all our problems, and forget that law is basically a codification of the habits, mores and aspirations of a society. But, of course, it's more easily said than done.

Actually, law-making is a very complicated process anywhere. Even in well-settled societies with long traditions of self-governance, it's hard to make good, informed policy decisions. It takes time and resources to choose the appropriate economic theory and political theory for the prevailing values, culture and economic conditions, and constant maintenance thereafter to keep the laws in synch with evolving realities. It is even harder to encode them into rules that are understandable and produce the intended results. Indeed, the law of unintended consequences is the one law that has no exceptions. Add to this that the law-making process is political with all the trade offs, ambitions, and interests that entails with results that are predictably, unpredictable. And then add one more layer of complexity: the laws must be implemented by people and institutions, in both the public and private sectors, that have the skills and resources and commitment to achieve good results.

Usually the creative tension between evolving reality and existing law gives rise to new legislation. Law is usually "catching up with reality." In the case of Armenia and the post-soviet states of Eurasia, because of the effort to transform these countries into free-market democracies, reality is trying to catch up with law. Like any mismatch, it has its awkward moments. As Thomas Carothers pointed out in his study, entitled *Aiding Democracy*, democracy and the rule of law are not easily transplanted and can't be imposed. They must arise from the mores of the people. This is an old insight into human nature and law, but one more easily forgotten than learned.

Transition has produced many incongruities between the unwritten and written laws. It's a bit like trying to run Windows XP on a 1982 DOS PC. It doesn't work very well, if at all. The idea was that if the code is changed, the system will adapt. And adapt it has. But like all adaptation, there is no change without pain. On one level, it was like taking an old car with 3 wheels and putting on the spare, regardless of the size. In an emergency, any spare wheel is better than none, and a vehicle with 3 wheels couldn't move at all, whereas even with a poorly fitting 4th wheel, it was at least mobile again. Now, Armenia is in its second, and in some cases, 3rd generation of laws. It's an opportunity to get the wheels aligned and assure that they match, that they are the right size.

Getting it right is important. It's as simple as "do you want to be rich or poor?" As Robert Barro of Harvard Business School has shown, the rule of law is the single factor that always correlates with economic growth. But getting it right is not easy. Countries with extensive resources like the United States or the EU are prone to create a patch work
of laws, one encrusted on the other. The results are gaps, conflicts and ambiguities. Sometimes the incongruities are so stunning, that they prompt pointed criticism, such as the popular 1990s study of the American regulatory system called, "The Death of Common Sense." Even in the best of circumstances, it's hard to get good results. Armenia's situation is substantially more complex. It is in transition, has scarce resources, and its customs and mores are in flux. The result is a legal system that's improving, but not really fast enough to make Armenia more attractive than many countries it competes with for investment and jobs.

So why doesn't this same misfit have a similar detrimental effect on advanced economies? Actually it does. It's just that these economies and systems are large enough and wealthy enough to absorb the inefficiencies or create overlay systems of courts, civil service, and private sector professionals to make the system work, most of the time. In countries, like Armenia, without the luxury of this overlay system, the malfunctions are not as easily absorbed, so the ride is bumpier.

Even in a perfect system, economic rewards may not justify the effort to learn and understand the laws and institutional idiosyncrasies of a small, relatively poor country. Armenia, is not, after all, a large potential market like Russia or China that not only compensates the effort, but also supports an army of highly specialized consultants - accountants, attorneys, investment bankers, who make it intelligible to the rest of the world. Thus, a good option for Armenia would be, at a minimum, to make all of its laws available in reliable English translation. This would not only facilitate access and understanding of the laws for foreign investors, including diaspora investors, but would also multiply several fold the number of qualified experts who could suggest ways of adjusting Armenia's laws to fit Armenia's needs and conform to international best practices in order to achieve better results.

Rule of law is largely a matter of voluntary compliance, growing out of practices and customs. It is not possible to enforce a society into compliance. It would be a costly, cumbersome police state, inefficient, stifling creativity and freedom, resulting in forced conformity to less than perfect rules.

Perhaps there's no more graphic depiction of this truism than the worn paths on the lawns of parks found within nearly every city in the world. We have some of those paths in Yerevan as well. Laws are often like the nice squared off sidewalks that people bypass in favor of the well-worn path through the lawn. The short cut is efficient and takes people where they want to go. A square corner, while aesthetically pleasing to some, may not necessary be more efficient or even aesthetically justified.

What these paths show is that it is not possible to impose order from without and expect the system to adapt. People will cut corners to take the easiest, most direct route. Like the paths in the grass, these shortcuts are almost impossible to legislate or enforce out of existence. On the contrary, it may more appropriate and efficient to encode habits and then improve on them. As the Robert Frost poem says of two diverging roads, one apparently fairer than the other, "but as for that the passing there had worn them really
about the same." In short, it may make more sense to look seriously to what people have actually found necessary and practical to do.

While corruption is a complex phenomenon, in Armenia and many post-soviet countries, a major portion of corruption, is a kind of cutting corners. When the laws don't fit established expectations and realities, and when people in both public and private sectors lack the wherewithal to comply, corruption ensues. It is, therefore, fair to hypothesize that corruption is one of the causes and one of the consequences of the incongruence between law and habit, aspirations and means. If so, a first step toward relieving this tension would be to reduce the size of government and the complexity of laws to a level that Armenia can afford. *Corruption cannot be significantly reduced without reducing the size of government and sphere of government regulation to a level that society can afford, assuring efficiency, high quality service and reasonable civil service salaries.*

This runs contrary to our impulse to use law as a kind of public poetry recitation - talking about the way things should be instead of doing things the way they should be done. Changing laws and regulations is distinct from changing mentalities and behaviors. Private and public self-restraint and voluntary compliance with the law are the keys to the rule of law in any society. When we see injustice or abuse, our tendency is first to want to stop the abuse and to punish it. There is a knee-jerk reaction to enact draconian penalties on the theory that these will have a deterrent effect. Yet this pattern often causes yet more abuse. Like a toothpaste tube, you press one place and it causes a bulge elsewhere. Often, the more draconian the penalty, the greater the incentive to circumvent.

The Armenian legal system is still in transition. Currently, Armenian law strikes the balance in favor of preventing abuse rather than economic efficiency. This bias toward declaratory rigidity and over-specificity is part of the prosecutorial mentality inherited from Soviet law and continues to impede Armenia’s achieving internationally accepted legal standards. The requirements of Armenian law are often overbroad and punitive, burdening everyone, instead of targeting specific abuses. This may give foreign investors the impression that there is a presumption of guilt in Armenia, whereas investors are used to expecting a presumption of innocence. That can be a jarring experience, a kind of legal culture clash.

A lot of course depends upon the way that officials explain the demands of the law. If this is done in a polite, lenient manner, the investor will have one impression, and if it is done in a rude, nitpicking manner, it will likely leave a negative impression.

A good first step to promoting the rule of law and achieving prosperity is to streamline and simplify laws and institutions so that people do not circumvent them. It's time to apply the principle of “legal efficiency”:

<table>
<thead>
<tr>
<th>Laws and regulations should be no more complex than</th>
</tr>
</thead>
<tbody>
<tr>
<td>• necessary to achieve a legitimate state end</td>
</tr>
<tr>
<td>• the ability of the people and the system to understand and apply them</td>
</tr>
</tbody>
</table>
• the ability and willingness of the people and system to pay for them

This is a minimum standard to which the Armenian will need to aspire in order to achieve economic prosperity and societal fairness. A first step toward this goal is to re-evaluate each of the more than 40,000 pages of laws and regulations against these standards. The soviet era was a controlled, theory-driven experiment. The democratic, global, free market era demands experience-driven measures, and punishing those who choose theories over real results.