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Challenging the Rule of Law

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IRS takes an exemption for itself

Do you think the General Electric Co., which owns NBC, should have freedom of speech, but not FedEx, which does not own a media company? Over the last two weeks, the rule of law has been strengthened in a couple of major cases, one in the United States and one in Switzerland, but has been undermined in an action - surprise, surprise - by the IRS.

The rule of law, as contrasted with arbitrary actions by individuals or governments, is necessary both for civil society and economic prosperity. For the rule of law to have meaning, the laws must be clear and reasonable - thou shalt not kill and thou shalt not steal are examples of clear and necessary laws. The laws and rules must also be few enough in number so that most people can be expected to be aware of them (unlike the 77,000-plus pages in the IRS Code, which no one understands).

On Jan. 22, the Supreme Court struck down limits on corporations running ads for or against a particular policy or candidate. However, this ruling did not allow domestic or foreign corporations to contribute directly to a candidate or foreign corporations to run ads for or against a candidate, which the president incorrectly asserted in his State of the Union address. The Constitution clearly states: "Congress shall make no law ... abridging the freedom of speech, or the press." Most newspapers (like the New York Times) and radio and TV news organizations are owned by corporations. Left-wing commentators, such as Chris Matthews and Rachael Maddow who have television shows on MSNBC (which is owned by GE), are perfectly free to act as shills for the Obama administration. They do this despite the obvious conflict of interest because GE is a major government contractor, and the CEO of GE (Jeffery Immelt) serves on at least one of President Obama's advisory boards.

As would be expected, most newspapers editorialized against the decision (major exceptions being the Wall Street Journal, which is owned by NewsCorp, and The Washington Times). Other corporations will now have the same rights that media corporations enjoy. One overlooked aspect of the ruling is that in the Internet age, almost any company can create a low-cost electronic newspaper, making it easy to get around the restriction if the Supreme Court had left the old rule intact. (One does have to wonder about the four justices who voted against freedom of speech in the ruling - it appears they are unable to understand the clear language of the Constitution as well as the new technologies.)

Also on Jan. 22, a Swiss court upheld the rule of law by saying that an agreement between the U.S. and Swiss governments to turn over UBS files on private bank clients to U.S. authorities violated Swiss law. Switzerland has different laws than the United States regarding financial privacy and what parts of the tax law are felonies and which are not. Just because the Swiss law is different does not make it inferior to U.S. law. (In fact, Switzerland has direct democracy and a very long tradition of upholding human rights.) The United States considers it a felony not to file a W-9 tax form, while the Swiss do not consider the failure to file the appropriate form a felony.

An IRS official said, "We expect the Swiss government to continue to honor the terms of the agreement" - despite the agreement having been deemed unlawful. Of course, the IRS has a long

tradition of ignoring the law and the Constitution when it suits its purposes. As an example, IRS Commissioner Doug Shulman, in a Jan. 26 speech, said some "taxpayers would be required to annually disclose uncertain tax positions in the form of a concise description of those positions and the maximum amount of U.S. income tax exposure if the taxpayer's position is not sustained." The Fifth Amendment to the Constitution clearly states: "No person ... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law." Perhaps Mr. Shulman and his colleagues have never read the Constitution.

The 16th Amendment to the Constitution states: "The Congress shall have power to lay and collect taxes on incomes," yet the IRS routinely assesses taxpayers for taxes on "imaginary" income, such as the portion of capital gains that are solely a result of inflation. For instance, if you paid \$1,000 for 100 shares of stock in a company in 1983, and sold the stock for \$2,000 in 2006, the IRS would claim you had "income" of \$1,000 and tax you on that. In fact, the consumer price index more than doubled in that period and you would not have been able to buy as much with the \$2,000 in 2006 as you could have bought with the \$1,000 in 1983. By any economic or dictionary definition of "income," you had none - yet the IRS lays what is, in effect, an unlegislated wealth tax on the inflation, which was caused by the government (i.e., the Federal Reserve).

The United States would be both freer and more prosperous if the officials at the IRS, Congress and the courts took their constitutional responsibilities more seriously. The Washington-based political class has put its lust for evermore tax revenue and power above the liberty of the people and the rule of rule.

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