

Tom Glocer Blog Compilation

Source: <http://www.tomglocer.com/>

Credits: Hassan Bhatti

The Covid-19 Pandemic, Bank Runs and Public Trust

During a crisis such as the one in which we are experiencing with Covid-19, we learn (or perhaps rediscover) how much of our world functions on the basis of trust. Individuals also reveal their best and worse selves, but I promise not to make this another blog post about President Pinocchio.

In his widely read *Sapiens: A Brief History of Humankind*, Yuval Noah Harari explores how belief in ideas such as the nation state, religion and money have permitted humans to develop at a far faster pace than would have otherwise been possible through natural selection working its magic via pure biochemistry. Harari refers to these cultural artifacts as “myths” — they are really just shared beliefs.

This got me thinking in my coronavirus-driven isolation of the institutions and services upon which we rely that may be equally intangible. Examples unfortunately abound in today’s news flow: the availability of hospital beds and ventilators for the very sick in the medical world and liquidity (ultimately cash) in the financial world. Banks and other financial institutions exist to intermediate cash flows and desired maturities between borrowers and lenders, and companies and investors. Bank panics occur (and they used to occur frequently) when, typically, depositors lose faith that their bank has enough cash to satisfy all withdrawal requests and begin frantic withdrawal attempts.

The financial system and the world’s economies could not function if banks held 100% of their deposits in cash-on-hand. When we borrow, we rely on banks to lend us money on a longer-term basis — how many of us would take out a 30-day revolving mortgage? However, when we deposit money in our checking or short-term savings or money market accounts, we expect to be able to spend or withdraw those funds on short notice. The US Federal Reserve, in close coordination with central banks around the world, is doing an excellent job in this health crisis to ensure adequate liquidity in the system and prevent a public health crisis metastasizing into a financial crisis.

Until Covid-19 I had not focused on how much of our public health system also functions like a bank. It would be prohibitively expensive for any nation to maintain sufficient hospital capacity to meet a “run on the bank” type demand for medical services. Obviously, the US could not and should not maintain 320 million ICU beds and ventilators or the trained professionals to staff them. However, what is the right number? Financial regulators and the boards of responsible banks spend a lot of time and thought (and stress test their conclusions) to establish what is a safe amount of capital and liquidity to maintain. Good hospitals do the same for the communities in which they operate; however, I believe that the US, Italy, Spain and other nations have discovered this month that they have not done a good enough job mandating sufficient resources at the national level.

Continuing this analogy of the pandemic virus qua bank run, health authorities need to introduce sufficient liquidity into the system by blunting demand (through social distancing and additional hygiene measures) while rapidly increasing supply (through providing additional hospital beds, ventilators, personal protective equipment and testing capacity). These measures are now, belatedly, underway but precious time has been wasted.

Trust is a vital social good when it comes to our health and our finances. When the immediate crisis abates, health authorities and governments around the world need to learn the lessons bank regulators did post-2008 to restore confidence in a system that can only function on a basis of trust.

Why We Hate Lawyers (but Respect the Rule of Law)

I delivered the following remarks at Yale Law School on the occasion of my 35th class reunion. I found the school to be in robust health under the leadership of a great new(ish) dean, Heather Gerken. I wish I could say the same about the state of our republic.

Good morning. This may be the earliest hour I have ever been in this classroom during my three years at Yale Law School. Harkening back to my law school form, I have also chosen to ignore the instruction I was given to focus my talk on a topic relevant to my area of expertise.

You see I did not go to Harvard Law School – and therefore I have no area of expertise.

Instead I plan to talk today about a mystery that has confounded me since my arrival on campus an incredible 35 years ago:

Namely, why do people despise lawyers in general, but often admire their own counsel? And while one can hate lawyers but still respect the rule of law, I will go on to offer some thoughts on why it has never been more urgent that we act as a nation of laws, not of men.

At best, lawyers are ridiculed for being small-minded, risk-averse and pedantic scriveners. At worst, we are deceitful ambulance chasers seeking high fees, who prey upon our fellow citizens during their weakest moments.

This is not at all how I see my Yale classmates or even lawyers in general. Of course, I see the occasional moral failure (Rudy Giuliani comes easily to mind these days), but I mostly see decent human beings who were once inspired by a sense of fairness and justice, who believe in high-minded concepts like the rule of law, the dignity of hard work and the belief that we are better off solving our differences via fact-based debate following an agreed set of rules, rather than through physical violence.

There are many obvious reasons why society does not often recognize these finer qualities. Some stem directly from our representation of unpopular defendants and the vigor of such defense that can sometimes verge on the abuse of process; others are driven by a focus on minutiae and a tendency to follow form over substance; and, finally there is the fee system that rewards hours worked rather than, sometimes, value added.

A classic example is divorce proceedings. It is not at all uncommon for an aggrieved spouse to declare that he hates the other's lawyer for stoking the flames of marital discord, but ignore or even praise the similar action by his own counsel. How to explain this inconsistency?

One reason I believe is that lawyers are truly able to argue either side of a case and are adept at making their opponent look not only incorrect but also morally wrong.

However, I believe there is another deeper or more subtle reason why Americans don't like lawyers: We ask the question best left unsaid — What could go wrong? What could possibly go wrong? — And thereby we lay bare fuzzy thinking, half-baked business plans and conduct one might prefer not to appear on the front page of the New York Times.

-

Let me give you an example. Two big-picture, public company CEOs are meeting to agree upon an important merger. They agree on a price per share at which Company A will purchase all the shares of Company B. Delighted, the CEO of Company A returns to headquarters to brief his sycophantic senior team, when the General Counsel pipes up: “What happens if Company B’s stock falls by 20%, shouldn’t we have a formula price adjustment or at least a collar below which we can walk away?” When Company A and Company B lawyers meet to flesh out the details of the merger, unsurprisingly, the deal craters. The big picture CEOs are furious and tell all their golf buddies that everything was going swimmingly until those damn lawyers got involved.

Now this is clearly an intentionally exaggerated example, and there are many shrewd and detail-oriented CEOs; however, this perception of the lawyer-as-naysayer or asker of uncomfortable questions is common and not limited to corporate law.

This in turn reminds me of an episode from my Yale years. Many years ago I sat in a classroom down the hall listening attentively to Guido Calabresi teach his then current book, *Tragic Choices*. I recently re-read the book (yes, I did read it the first time as well), and I can say that it remains highly relevant and readable. Most of the book is dedicated to the economics of social choice – for example, why we as a society opt to spend tens of thousands of dollars and scramble coast guard helicopters to save a lone offshore canoer in trouble, but we do not allocate the same dollars to build railroad grade crossings that we know (at least statistically) could save more lives per dollar spent. Guido’s answer is, in part, that there are choices that we avoid making simply to reaffirm our own humanity and avoid laying bare the implicit decisions that we would prefer not to confront.

As practicing lawyers, whether in litigation, doing deals or counseling clients, we do not have the luxury to avoid asking tough questions and I believe lawyers should be more explicit in acknowledging and celebrating this function.

This is not to say that lawyers should abandon the many roles we undertake for the public good, such as judging, teaching, representing pro bono clients and the like, but we should not be embarrassed about our role of asking the tough questions and testing propositions in detail.

These last three trying years of the Trump presidency have caused me to ask many tough questions concerning the fundamental soundness of our constitutional democracy, and, in particular, the actual effectiveness of our system of checks and balances and separation of powers. Many features I believed (even after a pretty decent legal education!) were elements of positive law, have turned out just to be behavioral norms or ineffective levers of social suasion.

For example, that a presidential candidate should release his or her tax returns and divest of conflicting business interests. The ongoing daily assault on truly American values from this defective President has only strengthened my belief in the fundamental decency of those who believe in and champion the rule of law; those who believe in telling the truth and arguing on the basis of facts and not deceptions and lies.

And again there are Yale Law School ties to these noble sentiments.

During my student years here, the Federalist Society was created, and it will come as no surprise to those of you who know me that their politics were and remain substantially to the right of mine. However, it gives me great pleasure to see a Federalist and fellow Yale, George Conway, attack this criminal president and defective human being on nearly a real-time basis on Twitter.

I have never before been such an overtly political person. I was proud to be counted among the millions of Americans who elected the intellectually-gifted and morally-upright Barack Obama to two terms, but I was not embarrassed to call George Herbert Walker Bush my president. I am socially liberal and economically conservative, and would vote for the seemingly unelectable Mike Bloomberg over most of those in the current polarized field if I could.

But what we are living through now goes well beyond personal politics. Our great nation of laws has been taken over by a corrupt and criminal con man who leads a daily assault on our institutions of government, the free press and the very truth itself.

George Conway is hardly a flaming socialist seeking to ban all hunting rifles and abolish Christmas. There is probably not much we would agree on other than impeaching this President and the other's right to advocate his position freely.

This month another arch conservative graduate of this august law school, John Bolton, has also joined the Dump Trump bandwagon. And when Bolton, Conway and I see things the same way, there must be a national interest above politics.

And herein also must lie our road back to a well-functioning democracy in which we can have heated policy debates within the framework of a respect for the institutions of government, respect for the rule of law and a respect for the truth.

These are principles of good government and good citizenship that I found 35 years ago in my professors and classmates here at Yale, and they remain ever so relevant today.

Can American Exceptionalism Outlive the American Century?

Americans have long enjoyed (or suffered from, depending on one's perspective) a belief in our own exceptionalism. Many nations and cultures believe in their own superiority despite empirical data suggesting that citizens of the Nordic countries are the most fulfilled^[1]. However, the United States is, perhaps, unique in believing that the history of the US is inherently different from that of other nations and that the US has some special mission to transform the world.

While the assertion of American Exceptionalism never rang true to me despite my pride in the many achievements of the United States over the past 240+ years, my travels to and knowledge of other countries, coupled with a decent grasp of world history, suggests (i) the United States is hardly the only country to excel and (ii) if we would like this long period of American dominance to continue we had best not take this role and status for granted.

The world has known multiple flowerings of great civilizations, each of which has believed itself to be unique: Ancient Egypt enjoyed preeminence in the Mediterranean world for 30 centuries, commencing around 3100 B.C.; Ancient China flourished from the Shang Dynasty (c. 1700 B.C.) with some long interruptions to 1901 (and it could be argued that a new period of Chinese dominance has already begun); Ancient Greece enjoyed its centuries in the sun from the 8th century B.C. until it was eclipsed by the great Roman Republic and then Empire which survived until the fall of Rome in the 5th century A.D.; and, finally, but by no means exhaustively, the Mayan Civilization endured for some 95 centuries closer to home. By comparison, the "American Century" has lasted just that.

American Exceptionalism not only largely ignores world history — what I think of as vertical blindness — it also myopically focuses on what occurs in the admittedly large, but by no means global, US landmass — what I label as horizontal blindness. During the last century we have seen Britain lose and hand over one of the great empires in the modern world, and in this hemisphere, Argentina fall from one of the wealthiest countries in the world at the turn of the last century to the 24th by per capita GDP today. None of Modern Egypt, Greece, Italy or Argentina should give us confidence in our own immortality.

The point I am trying to make beyond this litany of declining statistics is that if we wish to maintain this self-proclaimed exceptional experiment in democracy, Americans need to look backwards across history and outwards across other nations (which each seek their own form of greatness) to preserve what makes us special. I would argue that this goes well beyond the economic and military might of the country, although these are intertwined to preserve global relevance, to the *idea* of America. It is the “shining city upon the hill” in the often-borrowed words of John Winthrop. It is the land of freedom and opportunity; of religious belief but also religious tolerance; it is a country that opens its doors to immigrants and the oppressed; and it is a country that embodies the rule of law, aspires to equality among peoples; and looks hopefully to a better future.

It is the anthesis of all that is Donald J. Trump.

[1] See, e.g. *World Economic Forum Report, Finland is the World’s Happiest Country – again, 21 March 2019*

A Life Well-Lived

My mother Ursula died two weeks ago at age 97. What follows is an adaptation of the remarks I delivered at her memorial service.

Ursula often said that she outlived all of her friends other than Helga. This not unreasonably troubled my mom, but as I often reminded her it beat the most likely alternative.

The approach of death tends to bring out faith among closet believers, but my mom did not have much time for organized religion. She was not in the least anti-religious; she was just anti-zealot of any stripe. This was one of her finer points as a human being – she was very tolerant and welcomed difference before it was woke to do so. She was delighted that my best friend in elementary school, Matthew, was black but she had a true German embrace of decorum and custom.

Ursula was born in September 1921 in Hamburg to a sturdy family who could have walked out of Thomas Mann’s *Buddenbrooks*. She could until last week tell you the name of the local butcher they frequented and the course she rowed on the inner Alster. She had an amazing memory and a remarkable gift for languages as I will describe later .

Had Herr Hitler not broken-up this decorous childhood, Ursula would no doubt still be living in Germany and I would not be at all. Rather tragically for her but fortunately for me, the family escaped to Cleveland in late ’37. While grateful to be safe, my mother, rather like the Queen

whom she resembled in later years, was not amused by the Ohioan intelligentsia. Undoubtedly this forced migration at an early age contributed as much as her German heritage to her desire for custom and routine. More about this too later.

As soon as she could, Ursula split Cleveland and moved to a West Village apartment she was ultimately to share with her life-long friend Helga. My mother LOVED New York. Not just as one among many great cities, but above all others. She loved the pace, the glamour, the architecture, and the museums, theatres and opera halls. Years later, when I told her that Cleveland had greatly improved she would have none of it.

After a couple of other jobs, Ursula eventually became my father's secretary in the textile machinery import business my father Walter started from scratch after the War. When Walter, Sr. had the good business sense to expand to Brazil which was rapidly industrializing in the mid-1950s he asked my mother to move with him to Sao Paulo. As the family story goes, Ursula replied that she would only move as his wife, and my father, recognizing the value of a smart, multilingual secretary, said "I do."

I showed up in 1959 as somewhat of a mistake – a status that I have successfully strived to maintain all these years. While I was still young, 14, when my father died, I recall that our Manhattan apartment was sort of a cross between the UN and Katz's Deli. My mother used to complain about the Eastern European emigrants and hangers-on who had a tendency to show up at 11:00 AM Sundays expecting to be well fed; however, she was surrounded by a whirl of company and languages that I know she enjoyed.

Later, after my father died, Ursula's social life contracted to bridge, international cinema and a handful of friends, of whom only Helga survives. She did not complain but reassembled a borrowed posse of staff at her beloved beach in Cannes and an assortment of favored doormen, supers, waiters and concierges around the world.

My mother was a creature of habit. Not like "I enjoy going regularly to my favorite restaurant," but more "I want to eat there every single night." As Steve likes to observe, I have certainly inherited some of this DNA, but not like Ursula! Every year from when my father died in 1973 until her broken hip in 2015, my mother stayed for two months every summer in the same French resort town, in the same hotel and in the very same room!

A word about Ursula's remarkable gift for language. She spoke her native German, and English and French and Spanish and Portuguese FLUENTLY, and could hold her own in Russian, Polish and Hebrew – which she set about learning "for fun" in her 80s. I used to, rather uncharitably, tell her that she had nothing to say in 10 languages, but this was, of course, very unfair, as she had a lot to say, often repeatedly. It frustrated Ursula greatly that she could not understand Finnish since other languages came to her so easily. Whereas, I am happy to take a relaxing mental snooze while my Finnish wife Maarit speaks her inscrutable language to her parents, it frustrated my mother no end.

This brings me to Maarit. My wife routinely asks me to mention her in my talks or blog posts which, like my appearance at the 2019 Consensus Blockchain conference, involves major oratory gymnastics. Not so here. I can confidently tell you that the single best thing I ever did for my

mother in my life was to marry Maarit. She was not only incredible at the end of Ursula's life; she was incredible day-to-day over their 33 years together.

I will end this remembrance of my mother with a relatively recent episode that captured both her playful spirit and her secret for a long healthy life. Four summers ago, Ursula broke her hip in a fall in the street in France and thereafter her cherished independence but also her loneliness ended. After excellent orthopedic surgery my mother was admitted to a rehab facility behind the town of Antibes to regain mobility. I, of course, was only too happy to volunteer to stay for the month of September to perfect my tennis, skiing and cycling, not to mention rosé drinking. My friend Joe, being the mate he is, spent a week with me. On one of my daily, but admittedly brief, visits to Ursula at the Maison de Re-education, Joe and I smuggled a bottle of good vodka and three shot glasses into the otherwise dry rehab facility. This permitted my mother to maintain her nightly custom of a full shot of vodka before dinner — a potion to which she ascribed miraculous medicinal powers. This episode may have been the second nicest thing I ever did for my mom, as even in her last days on earth she was telling this story to the nursing staff in the hospital.

A life well-lived.

Civility and the Heisenberg Principle

With civility and civil discourse under such assault these days — from none less than the President of the United States — I've been thinking a lot about how to be a better listener and how to hear other, even disagreeable points of view.

When I was a practicing lawyer and I would read a trial complaint or an appellate brief, I often marveled at how clear cut the case appeared — until at least I read the responding submission. This perhaps obvious realization continues to influence my approach to business today. Whether listening to an investment case or simply one manager's complaint about another, I try to reserve judgment until I have heard the other side. I also try (with admittedly less success) to employ the same strategy in my use of Twitter, although I often think that the platform is perfectly designed to hear only the like-minded users one follows.

A related challenge is remaining open-minded when a banker is defending the ethics of modern financial markets, or a pharma executive is proclaiming the societal benefits of the drugs her company markets. Here the challenge is more subtle than simply hearing the other side; the problem verges on the mysticism of quantum mechanics. Let me explain: The Heisenberg Uncertainty Principle teaches us in, simple form, that you can measure the position of an object

or its velocity, but not both at the same time. The parallel I see in debating the ethics of banking or pharma is that these are complex subjects that few of us take the time to study in depth and those who do tend to be industry insiders. When these insiders seek to respond to criticism of their industry or just participate in the debate, they are often met with cries of “Well, they would, wouldn’t they?” Thus, the individuals with the most knowledge are disqualified from the debate, while those free of inside knowledge carry the day. This seems sub-optimal to me.

Fortunately, there are exceptions to this “scientific” rule. Academics, think tank scholars, and long-form journalists sometimes dedicate the effort to become quasi-insiders and join the debate from a knowledgeable but industry-independent position. These efforts should be supported with our attention and dollars. We should also seek out opposing viewpoints and listen to individuals who may very well be captive to their vantage points but who nonetheless have important knowledge to contribute to the debate. Returning to law and science one final time, I cite Albert Einstein, a greater fan of freedom of speech than of quantum mechanics: “Laws alone cannot secure freedom of expression; in order that every man may present his views without penalty, there must be a spirit of tolerance in the entire population.”