

Siobhan Moriarty – Bingham Centre Talk – 18 January 2017

Thank you and Good Morning,

I was at the World Economic Forum annual meeting yesterday in Davos and attended the opening address given by Xi Jinping, President of China, his first ever attendance at Davos. His talk has got a lot of publicity in today's media, with, for example, the FT's headline: "Xi Jinping delivers robust defence of globalisation at Davos".

What the papers didn't report was that he opened his speech with a quote from Charles Dickens' *A Tale of Two Cities*. He quoted "*It was the best of times. It was the worst of times.*" as describing the aftermath of the Industrial Revolution. He talked about how we are now at a similar inflection point, which he referred to as the Fourth Industrial Revolution. I am not sure if he includes the Cultural Revolution as amongst the previous Industrial Revolutions.

This reference was, in fact, a nod to the theory postulated by the economist Professor Klaus Schwab, founder of the WEF, who believes that we have an opportunity to shape this Fourth Industrial Revolution, which will fundamentally alter how we live and work. Schwab argues, in a book published in 2016, that this revolution is different in scale, scope and complexity from any that came before, that it is characterized by new technologies that are fusing the physical, digital and biological worlds, affecting all disciplines, economies, industries and governments, and (he believes) even challenging ideas about what it means to be human – heady stuff indeed!

So with all this change, call it revolution or evolution, what are the implications for governments?, for the legislature (which can act as a brake on the executive)?, for the Courts? for international / transnational bodies (like the IMF, the UN, the WHO, the WTO), for Corporates? and especially for Humans, the World of Work and Society? We have to believe that the implications are potentially profound and far-reaching.

And, most importantly, what does the Rule of Law need to do to also evolve, or to even try to keep up?

Well, I don't have a crystal ball, so I don't know the answer. I suspect that many of you don't either.

We only have to follow the recent (and, I would argue, chaotic and contradictory) efforts of legislatures to try to keep up with the evolution in the digital world by enactment of various data privacy and cyber-security laws and regulations to acknowledge that it is not easy to match the pace of change that is all around us.

There might be a natural tendency (for governments and corporates) to try to pretend that all this change is not happening – to metaphorically go away and lock ourselves into a dark room. But as Xi Jinping said yesterday about that dark room "*the wind and rain will be kept outside, but so will the light and air...*". He was talking about Protectionism (a not-so-veiled barb at the current US President Elect), but the analogy still stands.

So the role of the Bingham Centre, in fulfilling its purpose of being “*devoted to the study and promotion of the rule of law worldwide, defining and implementing the rule of law as a universal and practical concept that upholds respect for human dignity and enhances economic development and political stability*” might rightly be described as performing the role of bringing “*light and air*” to the debate, by bringing a critically independent voice on the Rule of Law and expanding its remit to work collaboratively with companies facing common challenges in many countries in which they do business.

Now of course, this is not just about trying to anticipate the future state in the Fourth Revolution, but the here and now is about providing a framework for business to operate with a level of certainty in the current environment.

It is perhaps a statement of the obvious that companies face many and varied challenges. In a recent survey conducted by The Economist Intelligence Unit for the Bingham Centre, the majority of executives surveyed had in the past 5 years experienced several failures of the rule of law in countries in which they had invested, including:

- Expropriation by governments of key assets
- Absence of protection for intellectual property rights
- Retrospective taxation

Our ability to conduct our business can be adversely impacted by various risk factors, including uncertain inward investment environments, regulatory unpredictability, discriminatory treatment of FDIs, challenges with supply chain integrity, environments where prevalent business practices are rife with graft, as well as contractual and intellectual property rights enforceability challenges.

A perhaps extreme example of the latter, in what should have been a very simple trade mark case, where in a trade mark “troll” had registered “VAT 99” as a mark in the spirits category in India. We have a scotch whisky brand called VAT 69 which has existed for over 100 years. We brought proceedings to have the mark removed from the register, lack of use, passing off (all the usual claims), but the case took 19 years to eventually get to a final judgment, which we won.

These challenges are reflected in the risk registers of companies and, although they will rarely be explicitly described as such, these are essentially Rule of Law issues.

It is becoming increasingly obvious that building rule of law capacity and creating a more certain environment for inward investment is really the only sustainable way of addressing these challenges and mitigating the risks of doing business. It is also clear that individual companies find it extremely difficult to find ways of eliminating or even mitigating these risks on their own. Collaborative action by corporates is one of the few ways of effectively countering these challenges.

So this is where the Business Network of the Bingham Centre comes in.

I am, and I think I can also speak for the other corporate partners who are here today, really looking forward to partnering with the Bingham Centre as one of the founding members of its new global Business Network.

Diageo is a truly global business, operating in over 180 countries and with more than 200 brands. This global reach demands a significant understanding of the complexities of different legal frameworks the world over.

Diageo is committed to building on our long tradition of contributing to society. Our 2020 Sustainability and Responsibility Targets shape the programmes and initiatives we support and invest in, which enables us to support our ambition to be one of the best performing, most trusted and respected, consumer products companies in the world.

Those Targets aim to address issues that are most material to our business and all our many and varied stakeholders. These include, building thriving local communities, creating a positive role for alcohol in society and reducing our environmental impact.

As signatories to the UN Guiding Principles on Business and Human Rights, our commitment to, and respect for human rights throughout our entire value chain is fundamental to who we are and how we do business, from sourcing (the farms where barley is grown) to selling (the bars at which our great products are enjoyed). It is far from just our own employees.

Our commitment to delivering the Guiding Principles is embodied in our Human Rights Policy, which also includes our commitment to diversity for which we are recognised as a leading FTSE player empowering women leaders, both in the company and in the communities where we do business.

Our Sustainability and Responsibility goals are a long-term programme, based on our values, and they seek to encourage empowerment and entrepreneurs in the knowledge that, with core rights ensured, the communities that we work with will thrive, and therefore so will we.

For Diageo effective rule of law provides the clarity and structure enabling us to carry on business in an environment that mitigates the risks and challenges I referred to earlier and also works for the greater good.

We know that a key way to achieve greater impact is to work with partners who add value to our programmes and initiatives, including with government, policy makers, suppliers, NGOs and local communities.

We look forward to adding the Bingham Centre and the Business Network to this, so that we are able to strengthen the quality and consistency of application of the laws that apply to us.

We are not naïve in thinking that this will be achieved overnight, or even on anything that resembles a short-term timetable. But I am confident that through the Bingham Centre's Business Network we will together be able to generate the right outcomes in the longer term.

As a company that is essentially made up of brands, we recognise that we are mere custodians of those brands, some of which have been around for over 250 years, and we recognise that we are in this for the long-term.

I would hope, in the current state of change in the world (back to the Fourth Revolution), that together we can persuade those who are ultimately accountable for delivery of an effective rule of law to work with a level of alacrity that makes it more likely that we will be saying, sooner rather than later, that we are facing into “the best of times”.

Thank you for listening.