Interesting correlation between economic freedom and freedom of press, civil liberty, democratic rights, longer life, less corruption, and less violence.

# Karen Selick: ‘Pursuit of one’s trade’

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Postmedia News

Justice Antonio Lamer rejected ­economic liberty as a U.S. concept.

***Economic rights are inseparable from civil liberties***

Bad legal reasoning — especially when it comes from the country’s highest court — is similar to an urban legend. Once launched into the world of legal precedent, bad reasoning gets stripped down to a pithy slogan, then repeated over and over again until everyone accepts it as a truth beyond questioning, even when it’s fallacious.

That’s what happened to the concept of “economic liberty” 22 years ago, when Canadian courts were first wrestling with the then relatively new Charter of Rights and Freedoms.

In a 1989 case, three justices of the Supreme Court of Canada raised doubts about whether economic liberty should be considered part of the “life, liberty and security of the person” guarantee of the Charter. However, they said it was too early in the history of Charter jurisprudence to decide the issue definitively.

A year later, Justice Antonio Lamer (writing only for himself and not for the other five members of the Supreme Court) roundly rejected economic liberty as an American concept.

Although the court never explicitly decided the issue, the stripped-down mantra, “Canada’s Constitution doesn’t protect economic liberty,” was launched. It has been repeated time and again in Canadian courtrooms over the past 22 years, especially in cases denying individuals the right to pursue their chosen occupations free from onerous regulations. Judge Lamer’s urban legend fits in well with the prevailing mythology that Canada has always been a more collectivist, less individualistic country than the United States.

But some Canadians have recently started re-examining both the historical record and the logical rationale for this position. It turns out that a few members of the 1989-90 Supreme Court may have overlooked some interesting precedents and historical facts.

Way back in 1909, for instance, the B.C. Supreme Court said, in a case called R. v. Chong: “Among the normal rights which are available to every British subject against all the world are … the unmolested pursuit of one’s trade or occupation and … to one’s own property.” (Emphasis added.)

This paragraph was quoted approvingly by other B.C. courts in 1939 and 1949. Apparently, the notions of economic liberty and property rights were viewed by some Canadians, through at least four decades, as integral components of our law.

In his 1999 book Globalization and the Meaning of Canadian Life, economist William Watson points out that virtually every major incursion by the state on a free economy was implemented first by the United States, then mimicked by Canada much later. The United States enacted its first income tax law in 1862, versus Canada’s in 1917. The United States established a government-controlled central bank 22 years before we did. Social Security preceded the Canada Pension Plan by 31 years. Protectionist tariffs, unemployment insurance and major public works projects, such as railway building, were all pioneered by the Americans and copied later by Canadians.

Brian Lee Crowley’s bestselling 2009 book Fearful Symmetry points out that U.S. president Franklin Roosevelt’s New Deal, which Judge Lamer characterized as virtually rescuing the United States from its “controversial” history of economic liberty, was denounced by the Liberal premier of Quebec, Louis-Alexandre Taschereau, as “a socialistic venture bordering on communism.” Other Canadian politicians and opinion-makers of the New Deal era likewise deplored the idea of social programs, preferring to foster the traditional culture of individual self-reliance.

Laissez-faire, far from being alien to the Canadian scene, was actually the predominant philosophy for most of the country’s first century.

But deference to tradition is not the only reason why economic liberty deserves re-examination by Canada’s courts. In the 22 years since interpreters of the 1989-90 Supreme Court decisions began crossing economic liberty out of Canadian law, empirical evidence has accumulated establishing that economic liberty goes hand in hand with all the other liberties that Canadians hold dear.

Several international organizations publish indexes ranking the countries of the world according to the degree of freedom their citizens enjoy. Some, like Canada’s Fraser Institute, focus on economic freedom. Others, like Reporters Without Borders, focus on freedom of the press. Still others focus on political rights and civil liberties. Readers can see four major indexes charted, side by side, in a Wikipedia article entitled [*List of freedom indices*](http://tinyurl.com/4fsymxu).

The correlation is unmistakable. The countries that have the greatest economic freedom also overwhelmingly have the greatest freedom of the press, the greatest civil liberty, and the most democratic rights.

It’s not hard to understand why this happens. Economic freedom promotes prosperity. For instance, in the 2010 index Economic Freedom in the World, countries in the top quartile of economic freedom had an average per-capita GDP that was more than eight times the average per-capita GDP of the countries in the lowest economic freedom quartile. The economically free countries also had significantly longer life expectancy, less corruption, and even lower murder rates than the unfree countries.

People want prosperity. Consequently, they want economic freedom. If a government tries to deprive them of it, they will protest vociferously; they will try to vote the bastards out; if all else fails, they will leave. A government can maintain economic regimentation only by quashing freedom of expression, stifling democracy and prohibiting emigration.

Compare the communist state of North Korea, whose people are starving, walled in, hushed up and brainwashed or intimidated into worshipping their dictator, with economically free South Korea whose people are prosperous, free to emigrate, free to vote, and (relatively) free to speak.

Anyone who values the other rights and freedoms protected by Canada’s Charter should realize that denying economic liberty jeopardizes all the rest.

The Canadian Constitution Foundation hopes to debunk the urban legend by bringing claims for economic liberty back into Canada’s courts. The Supreme Court in particular needs a fresh opportunity to reconsider its troublesome historical musings and to clarify that liberty does — indeed, must — include economic liberty.

Financial Post
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