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ECONOMIC NEWS UPDATE

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Economics drives the law. Globalization is about more than cheap sneakers and Indian call centers. It is about pressures forcing the legal systems of every nation to take account, somehow, of what is going on in the rest of the world.

Ken Lay, Enron's former boss, a friend and one-time client, was buried last week, free at last from the prosecutors who made the last five years of his life hell. Years ago, his alleged crimes would have been of no interest outside of the US. But the stepped-up globalization of the energy industries in which Enron operated, and of the capital markets on which it relied, make its history of great moment to investors around the world, and to lawyers, investment bankers and others engaged in financing the activities of enterprises that increasingly operate across national borders. In Britain, three investment bankers, the so-called NatWest Three, are accused of complicity in the crimes that

brought Enron down, and have been issued tickets for travel to a Texas jail, sending chills down the spines of bankers wherever they may be plying their trade. In the old days, when energy companies were primarily local operations, providing gas and electricity within narrowly defined local franchise areas, the NatWest Three would never have crossed paths with American law, or with Enron.

It also would have been unlikely that a single political prisoner, isolated and rotting in a Siberian prison as a guest of Russian president Vladimir Putin, could have any effect on a share offering in London, and stock prices in New York. But Mikhail Khodorkovsky, whose Yukos oil company was bankrupted by Putin, and its assets transferred to Rosneft oil, is casting a shadow that reaches to the world's financial markets, and has thrown the issue of Rosneft's \$80 billion IPO into courts around the world.

So potential investors in Rosneft, which swept up Yukos' assets, have to factor Russia's special version of the rule of law into the price they are willing to pay for a Kremlin-dominated company unlikely to put shareholder interests at the top of its priority list.

Then there are the antitrust laws. American law has affected the lives of British executives in the posh world of London's

auction houses, preventing some from visiting the US lest they end up teaching art classes to the NatWest Three in surroundings far less pleasant than the posh auction rooms of New Bond Street. Meanwhile, American companies are learning to live with the European Commission's rules governing the behavior of dominant companies. Microsoft found that an alien concept, and last week was fined several hundreds of million dollars for thinking that Brussels is as hospitable to anticompetitive behavior as America's courts proved to be. And the business practices of Intel are being challenged in Germany by another American company (and client), AMD – two US companies squaring off before the German Cartel Office, as well as in Korea.

Just as Europe's regulators increasingly dictate the rules of the game for foreign companies doing business in the EU, America's regulators are giving companies the world over something to worry about – Sarbanes-Oxley. That Act's corporate governance rules are allegedly proving burdensome for foreign companies listed on American stock exchanges, even though the directors of those companies never had an opportunity to vote for or against the two congressmen who wrote the law.

We now live in a world in which the rules of one nation govern activities in another. One of my friends, a successful New York criminal lawyer, until recently visited Europe only to sample

the output of the chefs of France. But now he finds himself in arbitrations in Britain. Another, whose far-flung itinerary once took him only from Washington to the American Midwest, with occasional forays to New York, now finds himself in Berlin and London, handling cartel cases that involve companies domiciled in America, Europe and Asia. Washington-based lawyers and government relations experts are now as familiar with the finest restaurants in Brussels as they are with the best watering holes in the District.

Add this: President Bush visits Germany and gets a lecture on the legal status of Guantanamo from chancellor Angela Merkel; the G-8 convenes in St. Petersburg and its members beg Putin to relax Russian laws and regulations that preclude foreign takeovers of that nation's energy infrastructure companies; an Israeli general dares not leave his plane after landing at Heathrow, lest a warrant drawn in Europe allows British police to arrest him on charges of war crimes. The laws of each nation impinge on the inhabitants of others.

Perhaps most important to Americans, the Supreme Court has taken to referring to foreign law in its decisions in domestic cases, most recently two death penalty cases and one sodomy case. Justice Ruth Bader Ginsburg earlier this year traveled to South Africa to give an address entitled, "The Value of a

Comparative Perspective in Constitutional Adjudication”. Her goal: to defend herself and those of her colleagues who have joined her in citing foreign cases in support of their interpretations of the US Constitution.

All of this adds up to what those on Left see as a welcome codification of the laws of nations, with the United Nations eventually fashioning a one-size-fits-all suit of clothes for the world’s businessmen and statesmen. Marie Slaughter, dean of the Woodrow Wilson School at Princeton University calls this “global governance”, to be achieved by a network of judges.

America’s conservatives see things differently. In the view of Jeremy Rabkin, who teaches international law at Cornell University, the Supreme Court, “is shifting its perspective from America to the world at large, so that positions with less support in the United States can still be viewed – in a global context – as majority or dominant positions.... The Court, in effect, takes a poll – on an international basis,” and substitutes European for American standards of justice.

Except in the case of the unfortunate NatWest Three, when the substitution works the other way ‘round, and could lead to a long stretch in a foreign prison, rather than to the modest fines generally meted out in such cases in Europe. Guilty or not, they

find themselves in a position earlier generations of investment bankers need never have contemplated.

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