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Transnational Legal Intervention in Theory and Practice

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With the fall of the Berlin Wall still fresh in 1991, I drove to Prague, just to see what it looked like. Beautiful and drab at once, it was a city that preserved a copious history, both ancient and recent, and a sensibility quite unlike any I had come across before: erudite, yearning and

which the field of rule of law promotion deviates from the tradition it lays claim to. Three other examples quickly became apparent. First, rule of law is classically conceived as describing the normative base or legitimacy of the law in force, a legitimacy derived, in turn, from the community itself that is subject to that law. That is, the rule of law is intended to express a minimal societal consensus or 'deal' about 'the rules of the game'. In development work, however, local laws and procedures are consistently perceived as problematic – as, for example, informal (customary), discriminatory, outdated, or corrupt – with a notional 'rule of law' imported from outside as solution. Persistent attempts to promote 'local ownership' of rule of law projects, as I had witnessed, merely underline this structural reality.

Second, the existence and pursuit of a procedurally rigorous legislative process grounded in a representative and legitimate legislature are generally regarded as fundamental to most conceptions of the rule of law. However, funders are typically impatient with these processes, preferring to push through legislative templates developed elsewhere with the help of 'reform-minded' executives and elites, bypassing legislative process where possible. In this, the programmes rep

all with a view to allocating and safeguarding economic and political capacities. Like colonial authorities, rule of law promotion prefers expedient legislative processes, working with small groups of 'reform-minded' locals to achieve lasting effects. There are clear differences of course, dictated at least in part by the quite different conditions of operating in post-independence states. But the similarities are nevertheless striking.

And yet, while the continuities between contemporary rule of law promotion and the colonial legal intervention that preceded and indeed laid the foundations for it are stark, if often o

Ambitious though the programme literature – to which I turned for detailed accounts of the field – is, it rarely expresses the full implications of its own presuppositions. These larger claims, hopes and intentions are rarely openly acknowledged or proclaimed, indeed, they are perhaps not always fully appreciated, as I could myself attest. And yet they are pervasive. They are indicated by, and necessary to, a consistent narrative which is thoroughly embedded in the body of programmes wherever performed. They are staged rather than stated. (I will come back to this idea of ‘staging’ in a moment.) Furthermore, the extraordinary scale of ambition behind this work is, unsurprisingly,

Taking account of all this – the repeated narrative tropes, the moral overtones, the ambiguous or contradictory motives and reflexes, the recurring set of principal actors and motifs – it gradually struck me as most appropriate to characterise rule of law promotion as a kind of theatre or performance. As the staging, in the way I suggested earlier, of a certain story or morality tale about the good life – about state and society, law and economy, about the appropriate way to set priorities and the appropriate priorities to set. As pedagogical: rule of law promotion is theatrical in its mode of persuasion: it does not attempt to demonstrate the rightness of its propositions through empiric i

indeed clarifies, private firms and investors large enough to operate in multiple states. Can the interest of these relatively powerful actors really be understood as equivalent, or indispensable, to the 'public interest' of host countries? Does the mismatch of boundaries between state and public not distort the principles supposedly underpinning rule of law work? Or does it point to the emergence of something quite novel: a nascent public body at the global level to match the public sphere to which it is to respond? If the latter, such a global public sector might be

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