# WORKING PAPERS

# PROMOTING THE RULE OF LAW ABROAD

## The Problem of Knowledge

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## EXECUTIVE SUMMARY

Although the current rule-of-law promotion field is still expanding as it approaches the end of its second decade, it still faces a lack of knowledge at many levels of conception, operation, and evaluation. There is a surprising amount of uncertainty, for example, about the twin rationales of rule-of-law promotion—that promoting the rule of law will contribute to economic development and democratization. There is also uncertainty about what the essence of the rule of law actually is—whether it primarily resides in certain institutional configurations or in more diffuse normative structures. Rule-of-law promoters are also short of knowledge about how the rule of law develops in societies and how such development can be stimulated beyond simplistic efforts to copy institutional forms. And the question of what kinds of larger societal effects will result from specific changes in rule-of-law institutions is also still open. Although aid institutions engaged in rule-of-law assistance do attempt some "lessons learned" exercises, many of the lessons produced are superficial and even those are often not really learned. Several substantial obstacles to greater knowledge accumulation in this field persist, including the complexity of the task of promoting the rule of law, the particularity of legal systems, the unwillingness of aid organizations to invest sufficient resources in evaluations, and the tendency of both academics and lawyers not to pursue systematic empirical research on rule-of-law aid programs. Whether rule-of-law aid is on the path to becoming a well-grounded field of international assistance remains uncertain.

When rule-of-law aid practitioners gather among themselves to reflect on their work, they often express contradictory thoughts. On the one hand they talk with enthusiasm and interest about what they do, believing that the field of rule-of-law assistance is extremely important. Many feel it is at the cutting edge of international efforts to promote both development and democracy abroad. On the other hand, when pressed, they admit that the base of knowledge from which they are operating is startlingly thin. As a colleague who has been closely involved in rule-of-law work in Latin America for many years said to me recently, "we know how to do a lot of things, but deep down we don't really know what we are doing." Though some practitioners harbor no doubts and promote the rule of law abroad with a great sense of confidence, most persons working in the field openly recognize and lament the fact that little really has been learned about rule-of-law assistance relative to the extensive amount of on-the-ground activity.

This fact raises an interesting puzzle. The current rule-of-law promotion field—which started in the mid-1980s in Latin America and now extends to many regions, including Eastern Europe, the former Soviet Union, Asia, and sub-Saharan Africa—is already older than its precursor was, the law and development movement of the 1960s and early 1970s, when that earlier movement ran out of steam and closed down. The law and development movement died out above all because of a too-obvious gap between its ambitions and its achievements. Yet the current rule-of-law field—which has some important similarities to but also differences from the law and development movement—is still expanding as it approaches the end of its second decade, despite an apparent lack of knowledge at many levels of conception, operation, and evaluation.

The answer to the puzzle may lie not so much in differences between the substance of the two movements—though those differences are real—than in differing contexts. The law and development movement was launched in the optimistic days of the early 1960s when hopes for democracy and development were high for the newly decolonized states of Africa and Asia, and for the developing world as a whole. Yet as the law and development movement unfolded, that broader context of optimism deteriorated quickly. Democratic experiments failed in many parts of the developing world in the 1960s and the broader hope for rapid developmental gains ran into contrary realities in many countries. By the end of that decade, the modernization paradigm on which U.S. foreign aid of the 1960s, including the law and development movement, had been based was already in serious doubt and a pessimistic assessment of foreign aid caused much retooling and retraction.

In contrast, the optimistic context of the crucial early years of the current rule-of-law aid movement—the heady period of the end of the Cold War—has held up somewhat longer. Though simplistic thinking about the ease and naturalness of the many dual transitions around the world to democracy and market economics has met with many disappointments, the international aid community has not (yet) experienced a major disillusionment with the underlying assumptions about aid for democracy and market economics from which the rule-of-law aid movement operates.

It may be then that a still-favorable, though increasingly shaky context holds together the rule-of-law assistance movement. This should not prevent us, however, from pushing at this question about knowledge: What is the problem of knowledge that aid practitioners allude to in private? What is it that practitioners do not know that they feel they should know as they engage in rule-of-law promotion projects around the world? What about the many "lessons learned" that are dutifully reported in institutional documents? And to the extent there really is a problem of knowledge, what causes it and what might ameliorate it?

## SELF-EVIDENT BUT UNCERTAIN RATIONALES

The problem of knowledge in rule-of-law promotion can be considered as a series of deficits at various analytic levels, descending in generality. To start with, there is a surprising amount of uncertainty about the basic rationale for rule-of-law promotion. Aid agencies prescribe rule-of-law programs to cure a remarkably wide array of ailments in developing and post-communist countries, from corruption and surging crime to lagging foreign investment and growth. At the core of this burgeoning belief in the value of rule-of-law work are two controlling axioms: The rule of law is necessary for economic development and necessary for democracy. When held up to a close light, however, neither of these propositions is as axiomatic as it may at first appear.

It has become a new credo in the development field that if developing and post-communist countries wish to succeed economically they must develop the rule of law. One form of this economic rationale for rule-of-law work focuses on foreign investment: If a country does not have the rule of law, the argument goes, it will not be able to attract substantial amounts of foreign investment and therefore will not be able to finance development. Leaving aside the first question of whether foreign investment is really always a requirement for development (since it is not clear, for example, that the economic success of a number of the major Western economies, such as the American and Japanese economies, was based on substantial amounts of inward foreign investment), there is a notable lack of proof that a country must have a settled, well-functioning rule of law to attract investment. The argument has an undeniable common sense appeal—investors will want predictability, security, and the like. Yet the case of China flies squarely in the face of the argument—the largest recipient of foreign direct investment in the developing world happens to be a country notorious for its lack of Western-style rule of law. It is clear that what draws investors into China is the possibility of making money either in the near or long term. Weak rule of law is perhaps one negative factor they weigh in their decision of whether to invest, but it is by no means determinative. A recent study of the rule of law and foreign investment in post-communist countries points to a similar conclusion. Weak rule of law is not a major factor in determining investment flows, and the more important causal relationship may be in the reverse direction: The presence of at least certain types of foreign investors may contribute to the development of the rule of law through their demands for legal reforms.[1]

A broader form of the argument about the relationship between the rule of law and economic development emphasizes an array of rule-of-law components—such as the need for legal predictability, the enforcement of contracts, and property rights—as necessary for the functioning of a modern market economy. Again the appeal of this argument is obvious and probably contains elements of truth. But as Frank Upham has argued in a study of the supposed relationship between an idealized

apolitical, rule-based system of law and the economic development of the United States and Japan, the relationship is by no means as clear-cut as many might hope.[2] Similarly, a review by Rick Messick of studies that attempt to find causal relationships between judicial reform and development notes that "the relationship is probably better modeled as a series of on-and-off connections, or of couplings and decouplings," in other words the causal arrows go both directions and sometimes do not appear at all.[3] It is not possible here to survey all the literature on what is in fact an extremely complex, multifaceted question about the relationship of the rule of law and economic development. The central point is that simplistic assertions such as have become common among aid agencies to the effect that "the rule of law" grosso modo is necessary for development are at best badly oversimplified and probably misleading in many ways. The case of China again points to some of the shortcomings of the assertion. Many countries being told that they must have Western style of rule of law before they can achieve significant economic growth look with envy at China's sustained economic growth of the past twenty years and wonder why the prescription did not apply there.

Things are similarly murky on the political side of the core rationale. Unquestionably the rule of law is intimately connected with liberal democracy. A foundation of civil and political rights rooted in a functioning legal system is crucial to democracy. But again, the idea that specific improvements in the rule of law are necessary to achieve democracy is dangerously simplistic. Democracy often, in fact usually, co-exists with substantial shortcomings in the rule of law. In quite a few countries that are considered well-established Western democracies—and that hold themselves out to developing and post-communist countries as examples of the sorts of political systems that those countries should emulate—one finds various shortcomings: (1) court systems that are substantially overrun with cases to the point where justice is delayed on a regular basis; (2) substantial groups of people, usually minorities, are discriminated against and unable to find adequate remedies within the civil legal system; (3) the criminal law system chronically mistreats selected groups of people, again, usually minorities; and (4) top politicians often manage to abuse the law with impunity, and political corruption is common.

Of course one can interpret this to mean that because of the deficiencies in the rule of law these countries are imperfect democracies. This is true enough, but the point is that they are widely accepted in the international community as established democracies. Yet their aid agencies are telling officials in the developing and post-communist world that well-functioning rule of law is a kind of tripwire for democracy. It would be much more accurate to say that the rule of law and democracy are closely intertwined but that major shortcomings in the rule of law often exist within reasonably democratic political systems. Countries struggling to become democratic do not face a dramatic choice of "no rule of law, no democracy" but rather a series of smaller, more complicated choices about what elements of their legal systems they wish to try to improve with the expectation of achieving what political benefits.

In short, the axiomatic quality of the two core rationales of the current wave of rule-of-law assistance efforts—that the rule of law is necessary for economic development and democracy—is misleading when used as a mechanistic, causal imperative by the aid community. Rule-of-law aid practitioners can probably prescribe rule-of-law programs with a safe belief that these initiatives may well be helpful to both economic development and democratization, but they really do not know to what extent there are direct causal connections at work and whether similar resources directed elsewhere might produce greater effect on economic and political conditions.

## THE ELUSIVE ESSENCE

Rule-of-law aid providers seem confident that they know what the rule of law looks like in practice. Stated in shorthand form, they want to see law applied fairly, uniformly, and efficiently throughout the society in question, to both public officials as well as ordinary citizens, and to have law protect various rights that ensure the autonomy of the individual in the face of state power in both the political and economic spheres. Their outlook on the rule of law can certainly be criticized for its narrowness. They do not have much interest in non-Western forms of law, in traditional systems of justice, or, in the case of some American rule-of-law experts, even in civil law. But it is important to go beyond that fairly obvious weakness to a different aspect of the problem of knowledge: Rule-of-law aid practitioners know what the rule of law is supposed to look like in practice, but they are less certain what the essence of the rule of law is.

By their nature as practitioners intent on producing tangible, even measurable changes in other societies, rule-of-law aid specialists need to concretize the appealing but inevitably somewhat diffuse concept of "the rule of law." In the broader field of democracy assistance, the pattern has been for democracy promoters to translate the overarching idea of democracy into an institutional checklist or template that they can pursue through a series of specific aid intiatives.[4] Similarly, rule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.

The emphasis on judiciaries is widespread in the rule-of-law field, with the terms *judicial reform* and *rule-of-law reform* often used interchangeably. The emphasis derives from the fact that most rule-of-law promotion specialists are lawyers and when lawyers think about what seems to be the nerve center of the rule of law they think about the core institutions of law enforcement.

Yet it is by no means clear that courts are the essence of a rule-of-law system in a country. Only a small percentage of citizens in most Western rule-of-law systems ever have direct contact with courts. In a certain sense courts play a role late in the legal process—it might well be argued that the making of laws is the most generative part of a rule-of-law system. Yet rule-of-law programs have not much focused on legislatures or the role of executive branch agencies in law-making processes. The question of which institutions are most germane to the establishment of the rule of law in a country is actually quite complex and difficult. Yet for the last ten to fifteen years, rule-of-law programs have given dominant attention to judiciaries, without much examination of whether such a focus is really the right one.

The uncertainty goes beyond the question of "which institutions?" Indeed, doubt exists about whether it is useful to conceive of and attempt to act upon rule-of-law development in primarily institutional terms. Clearly law is not just the sum of courts, legislatures, police, prosecutors, and other formal institutions with some direct connection to law. Law is also a normative system that resides in the minds of the citizens of a society. As rule-of-law providers seek to affect the rule of law in a country, it is not clear if they should focus on institution-building or instead try to intervene in ways that would affect how citizens understand, use, and value law. To take a simple example, many rule-of-law programs focus on improving a country's courts and police on the assumption that this is the most direct route to improve compliance with law in the country. Yet some research shows that compliance with law depends most heavily on the perceived fairness and legitimacy of the laws, characteristics that are not established primarily by the courts but by other means, such as

the political process. An effort to improve compliance thus might more fruitfully take a completely different approach.

In sum, the question of where the essence of the rule of law actually resides and therefore what should be the focal point of efforts to improve the rule of law remains notably unsettled. Rule-of-law practitioners have been following an institutional approach, concentrating on judiciaries, more out of instinct than well-researched knowledge.

## HOW DOES CHANGE OCCUR?

Even if we leave aside the problem of where the essence of the rule of law resides and accept the institutionalist approach that has become the norm, we see that rule-of-law aid providers face a problem of knowledge with regard to the very basic question of how change in systems actually occurs. Aid providers know what endpoint they would like to help countries achieve—the Western-style, rule-oriented systems they know from their own countries. Yet, they do not really know how countries that do not have such systems attain them. That is to say they do not know what the process of change consists of and how it might be brought about.

In launching and implementing the many rule-of-law programs of recent years, rule-of-law aid specialists have blurred this lack of knowledge by following what has been the approach to achieving change in the broader field of democracy assistance: attempting to reproduce institutional endpoints. This consists of diagnosing the shortcomings in selected institutions—that is, determining in what ways selected institutions do not resemble their counterparts in countries that donors believe embody successful rule of law—and then attempting to modify or reshape those institutions to fit the desired model. If a court lacks access to legal materials, then those legal materials should be provided. If case management in the courts is dysfunctional, it should be brought up to Western standards. If a criminal procedure law lacks adequate protections for detainees, it should be rewritten. The basic idea is that if the institutions can be changed to fit the models, the rule of law will emerge.

This breathtakingly mechanistic approach to rule-of-law development—a country achieves the rule of law by reshaping its key institutions to match those of countries that are considered to have the rule of law—quickly ran into deeply embedded resistance to change in many countries. The wave of judicial and police reform efforts in many Latin American countries sponsored by the United States in the second half of the 1980s, for example, initially bounced off institutions that had deep-seated reasons, whether good or bad, for being the way they were and little inclination to accept the reformist ideas brought from the outside.

The sobering experience with the early wave of efforts to promote institutional change produced two responses in the rule-of-law aid community. The first was a great deal of attention to what quickly came to be called "will to reform."[5] The new wisdom held that absent sufficient will to reform on the part of key host country officials, efforts to reform judiciaries, police, and other key institutions would be futile. It was up to rule-of-law aid providers to find and support "change agents" in the institutions, with the predominant assumption being that such agents would reside in the leadership of the institutions in question.

The sudden focus on will to reform was a way of restating the problem of how change occurs—aid providers should not presume change will naturally occur once institutions are introduced to the right

way of doing things. Instead, change will occur when some of the key people inside the system want it to occur and those persons are given enabling assistance that allows them to carry out their will.

Though taken within the rule-of-law aid community as a crucial new insight, the focus on will to reform was a smaller step forward than it initially appeared. Major questions abound, still unanswered. For example, how does will to reform develop? Can it be generated and if so how? Should we assume that institutions change through gradualist reform processes willed by persons inside the system? Does public pressure play a major role? What about abrupt, drastic change provoked by persons outside the institutions who are dissatisfied with their function or who have their own goals about what institutions to have?

The other response to the initial wave of disappointments was the introduction within the rule-of-law aid community of the concepts of incentives and interests. After bouncing off a number of reform-resistant institutions, rule-of-law aid providers began saying that it was necessary to understand the underlying interests of institutional actors and to try to reshape the incentives to which these actors responded. This represented progress and allowed some analytic insights, which while rather basic were at least better than completely technocratic approaches. Aid providers began confronting the unpleasant fact, for example, that poorly performing judicial systems in many countries served the interests of powerful actors in various ways (for example, not serving as a means of justice for poor persons seeking to uphold land claims) and that the persons in those systems had no incentives to change their ways and had some significant incentives not to. But it was hard to go beyond new insights to new methods to produce change. Realizing that incentive structures are distorted is one thing; doing something about it is another. To some extent, casting the problem of change in terms of interests and incentives has ended up being more a restatement of lack of knowledge about how change occurs than an answer to it.

## WHAT EFFECTS WILL CHANGE HAVE?

Although rule-of-law aid providers lack knowledge about what might produce broad-scale change in the role and function of law in a society that seems to lack the rule of law, they nevertheless do succeed in helping produce change in some specific areas. When they do, however, they often do not really know what effects those changes will have on the overall development of the rule of law in the country.

Consider several examples. A focus of many judicial reform programs has been to speed up the processing of cases by slow, inefficient courts. Such programs highlight administrative reforms, usually featuring the much-favored tool of case-tracking software. The aid providers' assumption is that efficient processing of cases is one small but vital element of the rule of law and improving that processing will improve the rule of law. Yet even in this well-defined, circumscribed area there is a surprising amount of uncertainty. For example, it is possible that if the processing of cases speeds up in a country where justice has long been quite poorly served, the number of cases filed with the courts might skyrocket, clogging the courts anew and effectively negating the reform achieved. Or, if the system has significant unfairness built into it, such as political bias or control, does increasing the speed of cases through the system actually represent a gain for the rule of law? This question arose vividly in Egypt in the second half of the 1990s where the United States devoted significant resources to helping the Egyptian judiciary improve its case management and speed up its processing of cases.

Another example concerns the spillover effects of improvement in one part of the system to other parts. A key belief animating some programs of commercial law reform in authoritarian or semi-authoritarian contexts is that if international aid efforts can help improve the quality of justice on commercial matters, this will augment justice in other domains and thus represent a kind of stealth method of promoting the rule of law in a broader political sense. The Western aid organizations supporting rule-of-law reforms in China and Vietnam regularly invoke this argument. It is of great appeal to donors who on the one hand seek to pave the way for business reforms that will facilitate commerce but on the other hand want to defend themselves against charges that they are assisting authoritarian regimes. Though attractive, the argument is not grounded in any systematic research and represents a typical example in the rule-of-law world of an appealing hypothesis that is repeated enough times until it takes on the quality of a received truth.

One more example concerns means of increasing judicial independence. Rule-of-law aid providers have given considerable attention to trying to find ways to increase judicial independence in Latin America and now are tackling the issue in other regions. Believing that one of the stumbling blocks is the hold on the process of judicial selection and promotion by politicized, corrupted ministries of justice, they have pushed for and supported efforts to establish semi-autonomous judicial councils to take over these functions. The idea has common sense appeal, but despite an accumulating record of experience there has been little effort to date to examine in any systematic fashion whether the various new judicial councils have improved the situation. The first such study indicates that the results are not impressive.[6] Anecdotal evidence from Argentina and other countries suggests that as often happens with institutional solutions to deeper problems, the underlying maladies of the original institutions end up crossing over and infecting the new institutions.

These are just several of many possible examples that indicate that even when aid programs are able to facilitate fairly specific changes in relevant institutions, it is rarely clear what the longer-term effects of those changes are on the overall development of the rule of law in the country in question.

## LIMITATIONS OF LESSONS LEARNED

In analyzing the levels and extent of the problem of knowledge in the field of rule-of-law assistance, I do not mean to imply that no learning is taking place. Aid practitioners, especially those who are close to the field efforts and have extensive experience in projects in at least several countries, often accumulate considerable knowledge about how to go about promoting the rule of law. Yet the knowledge tends to stay within the minds of individual practitioners and not get systematized or incorporated by the sponsoring institutions.

Aid institutions do seek to come up with "lessons learned" and to present them in official reports as evidence that they are taking seriously the need to reflect critically on their own work. Yet most of the lessons learned presented in such reports are not especially useful. Often they are too general or obvious, or both. Among the most common lessons learned, for example, are "programs must be shaped to fit the local environment" and "law reformers should not simply import laws from other countries." The fact that staggeringly obvious lessons of this type are put forward by institutions as lessons learned is an unfortunate commentary on the weakness of many of the aid efforts.

There is also the persistent problem of lessons learned not actually being learned. Experienced practitioners have consistently pointed, for example, to the fact that judicial training, while understandably appealing to aid agencies, is usually rife with shortcomings and rarely does much good.[7] Yet addicted to the relative ease of creating such programs and their common sense appeal, aid organizations persist in making judicial training one of the most common forms of rule-of-law assistance. Similarly, it has become painfully clear on countless occasions that trying to promote the rule of law by simply rewriting another country's laws on the basis of Western models achieves very little, given problems with laws not adapted to the local environment, the lack of capacity to implement or enforce the laws, and the lack of public understanding of them. Yet externally supported law reform efforts in many countries, especially those efforts relating to the commercial domain, often continue to be simplistic exercises of law copying. The problem of reforms being blocked by underlying interests and incentives turns out not only to apply to institutions in the aid-recipient countries but to the aid agencies themselves.

## OBSTACLES TO KNOWLEDGE

Confronted with the lack of systematic, well-grounded knowledge about how external aid can be used to promote the rule of law in other countries, aid officials have usually responded by arguing that the field is relatively young and still in the early stage of learning. As the years pass, however, this explanation is losing force. If one takes together the law and development movement and the current rule-of-law promotion field, over thirty years of activity are now under the bridge, surely enough time for real learning to take place. It is apparent therefore that some embedded obstacles to the accumulation of knowledge exist below the surface. At least five can be identified at a quick glance.

First, there is the unavoidable fact that the rule of law is an area of great conceptual and practical complexity. Understanding how law functions in a society, the roles it plays, and how it can change is extremely difficult, especially in societies that are not well understood by aid providers from many points of view. Foreign aid providers have found it hard enough to develop effective ways of analyzing and acting upon much more delimited challenges, such as increasing the supply of potable drinking water or vaccinations in poor societies. Grasping the problem of the shortcomings of law throughout the developing and post-communist worlds is an enormous intellectual and practical challenge.

Related to this is a second problem—the tremendous particularity of the legal systems, or perhaps better stated, the functioning of law, in the countries of Latin America, Asia, Africa, Eastern Europe, and the former Soviet Union where rule-of-law promoters are at work. A rule-of-law aid provider traveling to Guyana, Yemen, Madagascar, or some other country to set up an assistance project is faced with the daunting challenge of understanding the realities of law in that particular society. He or she is unlikely to be able to draw much up-to-date, detailed, comprehensive, and insightful information about the problem because the availability of such knowledge tends to be highly sporadic. Even to the extent that some such information exists, drawing the connection between it and the question of "what to do?" is akin to stringing a very long, thin line between two distant points.

The third obstacle is that aid organizations have proven themselves to be ill-adept at the task of generating and accumulating the sort of knowledge that would help fill the gap. They profess great

interest in lessons learned but tend not to devote many resources to serious reflection and research on their own efforts.[8] They are by nature forward-looking organizations, aimed at the next project or problem. Personnel tend to change positions regularly, undermining the building up of institutional knowledge. They are criticized by others if they are seen as devoting too much time to study and not enough to action. And they work in a context of broader doubt about the value of aid, which has led to a tremendous set of conscious and unconscious defensive walls being built up around their activities, including rule-of-law work.

Fourth, if aid organizations are themselves not sponsoring the kind of applied policy research that would build knowledge in the rule-of-law promotion domain, neither are political science departments or law schools. This kind of research is eminently applied in nature and thus tends not to attract scholars, who have few professional incentives to tackle questions that arise from and relate to aid activities. Remarkably little writing has come out of the academy about the burgeoning field of rule-of-law promotion in the last twenty years. And only a small part of that existing literature is written by scholars who have had significant contact with actual aid programs.

A fifth obstacle is the fact that many lawyers—who tend to dominate the operational side of rule of law aid—are not oriented toward the empirical research necessary for organized knowledge accumulation. They often have relatively formalistic views of legal change and are slow to take up the developmental, process-oriented issues that have come to inform work in other areas of socioeconomic or sociopolitical change. Also, lawyers working on rule-of-law aid programs sometimes feel in tension with the aid organizations of which they are part. They are a minority legal subculture in organizations unfamiliar with and often not wholly comfortable with legal development work. This leads the rule-of-law aid practitioners to feel they lack the space necessary for searching studies of rule-of-law aid and to be wary of other development specialists attempting to raise hard questions about this work.

## WHEN IS A FIELD A FIELD?

The rapidly growing field of rule-of-law assistance is operating from a disturbingly thin base of knowledge at every level—with respect to the core rationale of the work, the question of where the essence of the rule of law actually resides in different societies, how change in the rule of law occurs, and what the real effects are of changes that are produced. The lessons learned to date have for the most part not been impressive and often do not actually seem to be learned. The obstacles to the accumulation of knowledge are serious and range from institutional shortcomings of the main aid actors to deeper intellectual challenges about how to fathom the complexity of law itself.

Thus far the field of rule-of-law assistance has expanded less because of the tangible successes of such work than because of the irresistible apparent connection of the rule of law with the underlying goals of market economics and democracy that now constitute the dual foundation of contemporary international aid. With a recognizable set of activities that make up the rule-of-law assistance domain (primarily judicial reform, criminal law reform, commercial law reform, legal education work, and alternative dispute resolution), a growing body of professional specialists, and a consistent place on the international aid agenda, rule-of-law assistance has taken on the character of a coherent field of aid. Yet it is not yet a field if one considers a requirement for such a designation to include a

well-grounded rationale, a clear understanding of the essential problem, a proven analytic method, and an understanding of results achieved. Doubtless many types of work with law in developing and post-communist countries are valuable and should be part of the international community's engagement with these countries. However, whether rule-of-law promotion is in fact an established field of international aid or is even on the road to becoming one remains uncertain.

## NOTES

1. See John Hewko, "Foreign Direct Investment: Does the Rule of Law Matter?" Carnegie Endowment Working Paper no. 26 (Washington, D.C.: Carnegie Endowment for International Peace, April 2002).

2. See Frank Upham, "Mythmaking in the Rule of Law Orthodoxy," Carnegie Endowment Working Paper no. 30 (Washington, D.C.: Carnegie Endowment for International Peace, September 2002).

3. Rick Messick, "Judicial Reform and Economic Development: A Survey of the Issues," *The World Bank Research Observer*, vol. 14, no. 1 (February 1999), pp. 117–36.

4. On the democracy template, see Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999), ch. 5.

5. The first major shift to a focus on will to reform came after a review in the early 1990s by the U.S. Agency for International Development (USAID) of its own rule-of-law programs. See Harry Blair and Gary Hansen, *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*, USAID Program and Operations Assessment Report no. 7 (Washington, D.C.: USAID, 1994).

6. See Linn Hammergren, "Do Judicial Councils Further Judicial Reform? Lessons from Latin America," Carnegie Endowment Working Paper no. 28 (Washington, D.C.: Carnegie Endowment for International Peace, June 2002).

7. See, for example, the critical analysis of judicial training programs in Linn Hammergen, *Judicial Training and Justice Reform* (Washington, D.C.: USAID Center for Democracy and Governance, August 1998).

8. One noteworthy exception is the study of legal and judicial reform by Linn Hammergren, sponsored by USAID and released as four papers in 1998.

## ABOUT THE CARNEGIE ENDOWMENT

The Carnegie Endowment for International Peace is a private, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. Founded in 1910, its work is nonpartisan and dedicated to achieving practical results.

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Through its Carnegie Moscow Center, the Endowment helps to develop a tradition of public policy analysis in the states of the former Soviet Union and to improve relations between Russia and the United States. The Endowment publishes *Foreign Policy*, one of the world's leading magazines of international politics and economics, which reaches readers in more than 120 countries and in several languages.

**The Democracy and Rule of Law Project** analyzes efforts by the United States and members of the international community to promote democracy worldwide. The project also examines the state of democracy around the world, looking at patterns of success and failure in transitions to democracy. Most recently, it has launched a special effort to analyze the problems of democracy in the Middle East and the challenges the United States faces in its new attempt to promote democracy in that region.

The Democracy and Rule of Law Project is part of the Endowment's **Global Policy Program**, which addresses the policy challenges arising from the globalizing processes of economic, political, and technological change. The program recognizes that globalization, though by nature a universalizing phenomenon, extends around the world unevenly, producing sharply varied effects, both positive and negative. The program focuses on integrating the emerging global policy agenda with traditional security concerns, and also seeks to increase public understanding of globalization.

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