

BOOK REVIEW:
**The International Rule of Law Movement:
A Crisis of Legitimacy and the Way Forward**
Edited by David Marshall

Akhila Kolisetty¹

In recent years, international institutions and organizations have transformed the reform of rule of law, particularly in post-conflict and fragile states, into an industry in its own right. Indeed, over 1,300 rule of law organizations have formed to address this problem, and over forty UN entities provide rule of law expertise in more than 15 countries.² Despite the money and time invested, experiments in rebuilding the rule of law have been attempted and failed in Afghanistan, Iraq, Haiti, and South Sudan – among others.³ A new volume, “The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward,” edited by David Marshall, examines this industry with a critical eye, considering ways in which this ‘field’ is currently structured and operating, the flaws and failures in its performance to date, and what measures could possibly move the sector forward in a positive way.

An initial question for the uninitiated reader might be: what exactly is rule of law, and why is the international community investing so much money in it? James Goldston answers these questions in the first chapter, “New Rules for the Rule of Law,” in which he details the history of rule of law after the end of World War II and to the present day.⁴ He does, however, note the definitional problem: rule of law is also attractive to institutions because it is conceptually so broad as to be almost limitless.⁵ Despite the challenge, he advances possible definitions for the rule of law, and emphasizes the importance of culture in determining its varying interpretations.⁶ Ultimately, rule of law, according to Goldston, is important because the lack of it “produces more violence, less security, and diminished economic capacity.”⁷

¹ Akhila Kolisetty is a student at Harvard Law School, J.D. 2015. She has worked for and volunteered with a range of legal empowerment organizations, including Timap for Justice, BRAC’s Human Rights and Legal Services Program, and Namati.

² David Marshall, *Introduction* to THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD xiii, xiv (David Marshall ed., 2014).

³ *Id.* at xiii.

⁴ James A. Goldston, *New Rules for the Rule of Law*, in THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD 1, 1–2 (David Marshall ed., 2014).

⁵ *Id.* at 3–4.

⁶ *Id.* at 5–11.

⁷ *Id.* at 3.

And further, even if we know what rule of law is, we may wonder: is it really a ‘field’? Deval Desai explores this in the second chapter, which seeks to define, understand, and organize the field in light of the fact that ‘rule of law’ is so broad and lacking in definitional clarity – a fact that is indeed embraced by some who are themselves within this field.⁸ Ultimately, Desai urges that this field be determined more by the ability to tell stories and share knowledge than the substance of the rule of law.⁹

A number of contributors expose the rule of law’s problems and suggest a rethinking of current practices as well as potentially promising new approaches. David Marshall, in the third chapter, draws from his own experiences with the UN in South Sudan and critiques the institution’s current lack of clarity, narrow focus (particularly, an overemphasis on criminal justice systems), lack of introspection, and insufficient contextual knowledge when it comes to reforming the rule of law in fragile and post-conflict states.¹⁰ Moreover, the emphasis on rapid deployment is seen as impractical, considering the fact that reforming rule of law and justice systems realistically requires a serious, long-term investment.¹¹ Ultimately, Marshall suggests a return to the human rights approach to rule of law, fewer objectives, a common vision for its work, and an emphasis on developing deeper contextual knowledge.¹²

In a similar vein of examining problems and suggesting improvements, in the fourth chapter, Haider Ala Hamoudi explores the flaws with the dominant centralist assumptions inherent within the rule of law field and suggests a move towards acknowledging and incorporating legal pluralism – including nonstate, customary, and religious law and actors.¹³ Indeed, the state is often not the dominant player in the legal space; the vast majority of disputes around the world are resolved outside of court; unfortunately, this reality is not accurately captured in most rule of law work.¹⁴ Building on this, Marieke Schomerus uses a case study of South Sudan’s Western

⁸ Deval Desai, *In Search of “Hire” Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 43, 43–46 (David Marshall ed., 2014).

⁹ *Id.* at 73.

¹⁰ David Marshall, *Reboot Required: The United Nations’ Engagement in Rule of Law Reform in Postconflict and Fragile States*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 85, 85–88, 118 (David Marshall ed., 2014).

¹¹ *Id.* at 104–05.

¹² *Id.* at 118–19.

¹³ Haider A. Hamoudi, *Decolonizing the Centralist Mind: Legal Pluralism and the Rule of Law*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 135, 135–37 (David Marshall ed., 2014).

¹⁴ *Id.* at 140.

Equatoria to illustrate the challenges of considering “context” in rule of law programming, particularly where local notions of democracy, rule of law, and justice can be vastly divergent from those in the dominant rule of law discourse.¹⁵ Vivek Maru adds to the discourse in the sixth chapter by emphasizing the importance of focusing rule of law efforts on community struggles to claim rights to their land and natural resources – often using innovative tools such as paralegals. His underlying assertion is that without supporting communities and social movements in upsetting existing power imbalances, the rule of law remains a narrow concern focused on elites.¹⁶

In the ninth chapter, Louis-Alexandre Berg, Deborah Isser, and Doug Porter assert that justice reform efforts are failing in large part due to donors’ narrow focus on justice institutions and ‘law and order,’ prioritizing criminal justice over broader issues such as land and property rights. Further, donors assume that technical and organizational changes in these institutions increase their effectiveness, resulting in a top-down emphasis on formal state institutions and filling organizational deficits.¹⁷ To move away from this conventional paradigm, the authors suggest three questions to examine contexts and suggest where assistance would be useful: What is the justice problem? How are justice problems being governed? And what is the appropriate role for external assistance?¹⁸

Next, even if we implement new programs and approaches in the rule of law, how do we know these measures and shifts in strategy are effective? Todd Foglesong discusses, in chapter seven, the value of utilizing indicators to concretely measure progress – and the varying value indicators may have for different actors within this space.¹⁹ His piece further emphasizes that even modest changes can have a positive impact on developing rule of law and local justice, and also urges those in the field to think practically than expect immediate transformational change.²⁰ Margaux Hall, Nicholas Menzies, and Michael Woolcock further argue in chapter eight that

¹⁵ Marieke Schomerus, *Policy of Government and Policy of Culture: Understanding the Rules of Law in the “Context” of South Sudan’s Western Equatoria State*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 167, 186–87 (David Marshall ed., 2014).

¹⁶ Vivek Maru, *Legal Empowerment and the Land Rush: Three Struggles*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 193, 193, 203 (David Marshall ed., 2014).

¹⁷ Louis-Alexandre Berg, Deborah Isser & Doug Porter, *Beyond Deficit and Dysfunction: Three Questions toward Just Development in Fragile and Conflict-Affected Settings*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 267, 270–72 (David Marshall ed., 2014).

¹⁸ *Id.* at 272–82.

¹⁹ Todd Foglesong, *The Rule of Law in Ordinary Action: Filing Legal Advice in Lagos State*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 215, 232–33 (David Marshall ed., 2014).

²⁰ *Id.* at 234–35.

international rule of law and justice efforts must build in systems to better promote learning. An underlying problem is that of the separation of design, implementation and evaluation, and the fact that current programs often begin with expectations of certain development outcomes.²¹ Using Sierra Leone as a case study, the authors suggest an experimentalist approach be employed, including iterative design and testing of alternatives; deployment of interventions that engage actors and address accountability problems at numerous levels; and measurement of impact of a broad range of outcomes, utilizing multiple methods.²² The adoption of an experimentalist mindset in justice reform forces the field to humbly put aside assumptions about what we think we know, embraces uncertainty and the possibility of failure, and thus may be deeply instructive in helping us move towards better programs and outcomes.²³

This volume accurately captures the complexity and breadth of rule of law and justice reform efforts, and diagnoses many of the problems inherent in existing and common approaches today. Maru's call to put the needs of ordinary people and the justice problems they face first is particularly compelling; he demonstrates how law can concretely be used to support community struggles. Perhaps this volume could be aided by writing and contributions from local organizations around the world, rather than largely international organizations and rule of law experts. Ultimately, improving rule of law may be about figuring out how justice systems and the law can work better to support ordinary people's needs and to promote their voice in policies and laws that affect them. In such a context, more perspectives directly from those working closely with people at the community level could only add to the analysis. A greater emphasis on beginning *with* affected people, understanding their needs, and prioritizing not only voices from the community level but also their genuine leadership in the national and international stage is also much needed in rule of law efforts, and could have been explored in greater detail. Finally, there is room to more deeply examine the possibilities of legal empowerment approaches to mobilize communities to change policies, institutions, and broader structures themselves. Regardless, the volume remains an incredibly timely call to action to international rule of law industry, exhorting those in the field to reexamine their work with a critical eye, and consider solutions to move forward if their efforts are to result in long-lasting change.

²¹ Margaux Hall, Nicholas Menzies & Michael Woolcock, *From HiPPOs to "Best Fit" in Justice Reform: Experimentalism in Sierra Leone*, in *THE INTERNATIONAL RULE OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD* 243, 245–47 (David Marshall ed., 2014).

²² *Id.* at 254–56.

²³ *Id.* at 259.

**The International Rule of Law Movement:
A Crisis of Legitimacy and the Way Forward**

Edited by David Marshall.

570 pp. Human Rights Program Series, Harvard Law School. 2014.