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Renewal And Development of Academic Legal Research

Arabic and global legal spaces are crowded with many of raised issues and topics, represented in the faculties of law, courts, lawyers associations, judges, paralegals and others, which deserves to be highlighted in this corner of the journal, however we have chosen to devote it to this issue, Which coincides with the beginning of the new academic year, to discuss the requirements to renew and develop the legal academic research, given the importance of this sector and its strategic role in the development process and renaissance within societies, so as to assist in providing solutions and effective legal diligences to the problems faced by Political , constitutional institutions , Executive and administrative authorities in the public and private sectors, which would contribute towards cooperation and stability and providing an integrated environment for development in human societies. There is no doubt that reality and the role of academic research in Western societies is a successful evidence of what we have referred to in this introduction, and is a catalyst and an example that can be used for the pioneers and officials of legal academic research in the Arab world and developing countries to seek to renew and develop the system of this type of research to take the place it deserves and the role entrusted to it .

We have already established a system for legal academic research in our practical ,academic Arabic societies over the past decades, has already produced many productions and diligences, some of them are distinguished, both at the level of capacity building, cadres and graduates, or at the level of institutions and mechanisms which its features, by the publishing of legal book which Increased significantly and active research centers which organize Almost regularly conferences and seminars , In addition to the launching of specialized academic journals, whether by colleges or universities or by professional bodies such as lawyers' associations or judges, or even by government agencies such

as the In the case of the ministries of justice in a number of countries, as well as the organization of seminars, conferences and workshops to discuss the problems and emerging issues and others.

These mechanisms, instruments and institutions formed and still an important source for academic research, but require objectively to renew and develop does not exclude any aspect of limited impact and results during the recent period, in the framework of a comprehensive vision of the reform of the academic legal research sector, in We believe that this approach must take into account the following elements:

1- Renew the emphasis on the importance of academic legal research sector, particularly in natural incubators represented in colleges and universities and specialized research centers, through increasing allocations budgets and activating its comprehensive community, legal and institutional form, meaning that arise in specialized institutions in Supporting and development of academic research.

2- Review the curricula and courses of Arabic faculties of law and integrates theoretical and practical developments, focusing on training and practical aspects, encourages research, investigation, and critical and practical thinking.

3- Urging and encouraging faculty in colleges and universities and researchers to continue in new and effective researches, of applied and effective impact, and relationship to the emerging legal issues, and the creation of the Best Researchers Award could be an incentive in this context.

4- Increasing the activation of symposia and seminars that bring together researchers and practitioners, legislators and others in emerging issues, and publish it to expand the discussion.

5- Encourage professional associations of judges and lawyers to encourage its members to continue to research, dissemination and awareness of legal updates and local and global professional in their field of specialty.

6- Activate the publishing of legal academic research through

periodicals or books and specialized versions, these versions have to comply with the standards of quality and excellence, or through well chosen research programs and topics, that arise from the facts and the requirements of everyday problems and legal challenges In local communities, these research programs and studies gain practical importance and gives it a characteristic added value to academic research areas and necessary accumulation and needed excellence.

7- The establishment and consolidation of cooperation and partnership and initiative as fundamental values in the areas of development of the academic research and, which allows the delivery of extensive, quality and wide-ranging research programs.

Despite the comprehensiveness of the previous elements in relation to the development of the academic research subjects, it may cover more general institutional aspect, but the initiative of individual researchers remain with important and significant impact in terms of good selection of vital topics related to legal issues , contemporary community problems , and discussed it with the adoption of analytical methods, and critical comparing, both in individual method or through specialized teams complement each other. There is no doubt that that would achieve concrete results evolve with continuity revising, evaluation and development, echoed in local and global communities.

Prof. Badria A.Al-Awadhi

English Abstracts of Published Articles

The Flagrant Crime and its Impact on the Demise of Parliamentary Immunity: Study in the Kuwaiti Legislation Compared with its Egyptian Counterpart

Dr. Fares Menahi Al-Mutairi - Assit. Prof. - Criminal Law

and Dr. Ghazi Obeid Al Ayash - Assit. Prof. - Pubic Law

Department of Law - School of Business Studies

General Authority for Applied Education - Kuwait

Abstract:

This study addresses several questions, some of which fall within the scope of constitutional law, while others fall within the scope of procedural criminal law: What is the concept of immunity? What are the various types of immunity? What is the defect of immunity? What are the measures to waive the immunity as stipulated by law? What is the concept of the Flagrant Crime? What are the procedural implications of the Flagrant Crime? What is the impact of that crime on parliamentary immunity? This study adopts the analytical approach in answering the above mentioned questions in the framework of comparison with the Egyptian legislation. This study is the first of its kind in terms of linking the two questions in Kuwait. Therefore, we will divide the study plan into two sections:

The first topic: parliamentary immunity in terms of concept, type and procedures for waiving the immunity.

The second topic: the Flagrant Crime and similar cases and their impact on immunity.

The Criminal Responsibility of Parents To Expose Their Children To The Dangers of Using Social Media In Light of The Recent Legislation of The Child In Kuwait

An analytical and comparative study in some aspects With the French and Egyptian legislations

Dr. Moath Soliman Al Mulla
Assist. Prof. - Criminal Law –
Saad Al Abdullah Academy
for Security Sciences - Kuwait

Abstract:

Penal responsibility is a legal liability incurred by persons as a result of committing a punishable action by penal law or supplementary legislations. This responsibility arises when a person violates one of criminal and punishment rules in a manner that harms society or puts it in jeopardy. Everyone knows that family–being the initial core of the society – has been given multiple responsibilities. The most significant of them is sound and appropriate nurturing and upbringing of individuals in a manner by which individuals serve their societies efficiently. Unfortunately, this responsibility became very weak–in our present time–due to the massive revolution in information and communication technology as the gap between parents and their children became wider which led to increasing the difficulty of parental control and monitoring of the use of information and communication technology. Therefore, we find that some parents may abandon their social commitment in following-up their children and seeking to impose actual control over them claiming that they do not know how to use these tools, or that they are granting their children the chance to develop their talents, or their scientific or intellectual horizons. In that sense, what we aim to achieve from our participation in this conference is to determine how parents can be questioned from penal perspective in case their children are at risk while using Social Network Sites pursuant to the new legislations in the State of Kuwait such as Child's Rights Act No. 21 of 2015, the Juvenile Act No. 111 of 2015 and Cybercrime Law No. 63 of 2015.

The Principle of Equality and the Access of Naturalized Persons to Public Functions: A Comparative Study

Dr. Ashraf al-Rifai
Associate Prof.
International Private Law - KILAW

Abstract:

The principle of equality in general and the principle of equality in the exercise of public functions in particular are among the most important humanitarian principles that nations and peoples are keen to uphold and are a priority among human rights. Every protection of these rights must be decided in the principle of equality, otherwise, its execution without the realization of this principle violates the same right. An establishment of rights cannot be rectified with the exclusion of a group of citizens for any reason. This principle first appeared with the notions of the French Revolution, including declarations, charters, international conventions and constitutions of states as one of the most important pillars of a legal state. The exercise of public functions is also a political right that is restricted to citizens only.

The researcher presented the subject in three sections, the first of which dealt with the principle of equality in general, and this included the definition of the principle of equality and the legal basis of this principle in the declarations of rights, covenants and international conventions, in some Arab and foreign constitutions. The second section deals with naturalization and the principle of equality in public service. This guarantees equality in public service in the declarations of rights, covenants, international conventions and in the constitutions and laws of the civil service of some countries. The third section discusses the position of comparative legislations regarding the naturalization of public functions. This includes a presentation of some of the legislations of countries that have adopted the principle of full equality in public service between the naturalized citizen and

the original citizen, and some legislations that have issued a ban on naturalized citizens in the constitutions to hold certain positions such as a Prime Minister, his deputies, ministers and their deputies, while other constitutions did not include this prohibition, but rather included it in the laws of nationality by setting a time limit on the naturalized citizens to hold certain positions that varies from a country to another, ranging from five to twenty years from the date of naturalization. This section also includes holding certain positions governed by specific laws by naturalized citizens. These positions are those of the diplomatic and consular corps and judicial functions. There is no problem in the Arab legislations in these positions being held by naturalized citizens after the expiration of the period stipulated in the Nationality Law, except for the Egyptian legislator which posed a conditions in holding a position in the diplomatic corps stipulating that both parents of the position holder should be Egyptian, and it also prohibited appointing naturalized citizens in the army and police forces ranging from a police officer to a watchman. The rest of the Arab legislations, in particular the legislation of the GCC countries, did not prohibit this on the naturalized citizens except in relation to the function of the Officer only.

The research concluded that there is a need for full equality between the naturalized citizen and the original citizen in public service by amending the constitutional provisions that prohibit naturalized citizens of holding political positions and the provisions of the nationality laws of some countries that impose time restrictions on holding certain public jobs in the special laws of some States which prohibit assuming the functions in the diplomatic corps and positions in the army and the police force.

The Joint Debtor's Defenses in Accordance with the Provisions of the Jordanian Civil Code: Comparative Study with the Qatari Civil Law

Prof. Abdulrahman Ahmed Joma'a
Professor of Civil Law
School of Law
University of Jordan

Abstract:

Solidarity between debtors means that multiple debtors have a single obligation which can be divided stating that each of them on the basis of a special agreement or a provision of the law is obliged to perform all debt at the request, that is, the creditor has the right to require all or any of them to fulfill the full debt, and that the debtor cannot claim the partial execution in proportion to his/her share. The Jordanian and Qatari Civil Law recognizes that the debt owed by one of the debtors to the creditor acquires the debts of the rest of the debtors. The Jordanian civil law, like the Qatari, Egyptian, Syrian and Iraqi civil law, differs in determining the sources of solidarity between the debtors from the Moroccan obligations and contracts Law and from the Lebanese obligations and contracts law, which added other sources to those mentioned in the said laws. Solidarity between debtors results in multiple links between the creditor and the debtors, since all of them are bound by the solidarity bond, as well as with each of them with a special association that differs from that of other debtors. In application of the multiplicity of links, the legislator allowed the debtor to adhere to its own defences, and other debtors could not abide by them. The legislator authorized any debtor to uphold the common defences of debtors. The legal requirement relating to the subject in question, which was presented to the legislator, raises many problems, which led us to discuss it and, as a result, we wish to intervene to amend the legal requirements that we have referred to in this paper.

A Review of the Issues Relating to the Multiplicity of Legal Rules Protecting the Title of Literary and Artistic Work:
Where Identical Protection Stems from Different Regulatory Rules

Dr. Nazzal Mansour Al Kiswani
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School of Law - Qatar University

Dr. Basem Mohammad Melhem
Associate Prof. - Commercial Law
Police College - Qatar
School of Law - Jordan University

Abstract:

The research discusses the issue of multiplicity of legal rules governing the protection of the title of the literary and artistic work. Similar protection is also equally available from a wide range of other laws.

The phenomena of theft of titles of literary and artistic work is not a new phenomena. Despite this, the impact on how it is now starting to threaten the entire literary and artistic work industry is becoming more of an issue. This may be due to such literary and artistic works' titles becoming more in demand and their financial value becoming significantly more substantial. However, this becomes an issue when the sentimental and financial value exceeds the actual value of the item in question when linked to the commercial valuation.

Currently, copyrights laws (author's rights) provide the legal protection of literary and artistic works nationally across the board. Having said so, there seems to be a discrepancy in the laws providing such protection to literary and artistic works between the Arab and the Western legal systems. That is to suggest, some countries provide

such legal protection via copyrights laws, whereas others provide protection via trademarks laws or even unfair competition laws. Indeed, some countries provide protection via more than one legislation. Thus, due to such differences in the shape of legal protection, the effect can be different based on the diverse approaches that are available and ultimately taken by the national legislator via the different laws. Such diverse options may or may not result in achieving the best interests in terms of protecting the literary and artistic works. The author contends that such discrepancy of legal protection occurs because of the different conditions of such diverse laws, in addition to the impact of the different court's rulings.

Keywords: title of literary and artistic work, the protection of titles, copyright, trademark, unfair competition, multiplicity of rules.

Code of Ethics of the Legal Profession and its Position of the Argument: "The Accused's Right to Lie"

Dr. Mustafa Abu El-Enein
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Ajman University of Science and Technology- UAE

In the name of Allah, the most Gracious, the Most Merciful:

((They only invent falsehood who do not believe in the verses of Allah, and it is those who are the liars.)) [Surah Al Nahl , 105.]

Abstract:

The search discusses the Code of Ethics of the Legal Profession and its position of the argument of "the accused's right to lie," through a comparative study. It concluded with the non-validity of this argument, whether according to the Sharia or Law, and confirmed that the accused cannot be forced to confess to a crime since the law gives the accused the right to provide his/her free statement without being put any kind of pressure, and the judge shall make the decision based on the presented evidences. Meanwhile, the lawyer must not be involved, by any means, in the delivery of lies.

In the comparative legal systems, the Code of Ethics to the Legal Profession obliges the lawyers to be frank in their relations towards their clients, as well as the Judiciary organs. It is keen to avoid all that is contrary to the moral practices that might cause harm to the reputation of the lawyers and their noble profession. It is a breach of the Code of Ethics for a lawyer to lie, which is considered a subject-matter for disciplinary procedures and could lead to the cancelation of a lawyer's license.

The search ended by adopting recommendations to highlight the importance of establishing a Unified Model of Code of Ethics of the Legal Profession for Arab countries which include the moral standards that go along with the rules of the Islamic Sharia and the authentic Arabic tradition, in order to prohibit such practices to be performed in the Legal profession.

The Role of Electronic Signature and Certification in the Protection of Electronic Transactions Security

Dr. Hawalef Abdulsamad
Head of Private Law Department – Lecturer in Section "B" School of Law and Political Sciences – University of Tlemcen - Algeria

Abstract:

The Electronic (confidentiality) signature and certification plays an important role as a measure of transaction security procedures, which could affect electronic devices and systems used in the field of e-payment and e-commerce in general way.

This is achieved thanks to the technique of confidentiality and privacy of correspondence, data and communications used in the transactions.

In addition, the various uses of electronic signature in the electronic trading system are all intended to provide confidence in the banking transactions and electronic commerce.

The Algerian legislature has recognized the role that can be played by this technique to achieve the protection of electronic means of payment as well. Therefore, the e-marketing is stated as a special law related to electronic signature and certification by Law number 1504-.

International Organizations, Rule of Law and Development

Dr. Ardit Memeti[1]
Professor David Morgan[2]

ABSTRACT:

International organizations including the United Nations (UN), the World Bank (WB) and the European Union (EU) stress the importance of the rule of law as a prerequisite for economic, political and social development. On this basis, these organizations spend a good deal of money and dispose of a lot of influence. However, the rule of law is a much-disputed concept and the causality between rule of law and development is difficult to determine.

Against this background, this paper first provides a discussion for the various definitions of the notion of rule of law from the perspective of international organizations and rule of law practitioners (Part 2). However, here we have opted to focus mainly, though not exclusively, on the EU, from whose practice each of our case-studies (Part 3 and 4) is drawn. Part 5 offers Concluding Comments as to how the use of the term 'rule of law' actually helps (or not) in the field.

Key terms: international organizations, rule of law, development, United Nations, European Union, World Bank, Poland, Kosovo

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PART 1 - INTRODUCTION

International organizations (IOs)[3] have made the promotion of the Rule of Law (RL) an integral part of their policies.[4]Often, the opportunity to promote RL arises where money is transferred from an international organization to developing countries as a grant or assistance. Another example would be where the European Union is considering whether to recognize a new country;[5] to admit a new member;[6] or even as in case study two, in Part 4, to discipline an existing member[7]. In each of these situations, the IO will usually insert conditions as regards the improvement of the governance of the country. Almost invariably, the IO will provide a mission of

(3) The term "international organization" for the purpose of this paper refers only to international governmental organizations. This is in line with the Vienna Convention on the Law of Treaties of 1969, Article 2, paragraph 1, (i), and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, 1975, Article 1, paragraph 1, (1).

(4) The Resolution adopted by the General Assembly on 24 September 2012 on the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels provides that 'the rule of law applies to all States equally, and to IO's, including the UN and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities…'. In addition, the Declaration invites (among others) IOs 'to provide, at the request of States, technical assistance and capacity-building, including education and training on rule of law-related issues'.

(5) See the EC Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union of December 1991 which adopts a common position on recognition of new States. The Declaration has respect for the 'rule of law, democracy and human rights' as one of its main requirements.

(6) Every applicant country should satisfy EU accession eligibility criteria, including among others the requirement to have stable institutions that guarantee democracy, the rule of law and human rights, see the Copenhagen criteria adopted by the EU at the European Council meeting in Copenhagen in June 1993.

(7) The requirement to respect rule of law also applies to the Member States. See Part 4 of this Paper; Also V. Reding, "The EU and the Rule of Law: What Next?", speech delivered at CEPS, 4 September 2013.

international experts to work with local staff, it maybe for a period of months or years, to try to accomplish these improvements. Commonly, the conditions on good governance are captured under the arresting head-line of the RL. And, as we shall demonstrate, expressions like: 'Promoting the RL', 'RL practitioner' or 'RL Index' have become common in the vocabulary and, presumably, thinking of IOs.

The history of this development is rather recent: up to the 1990s, the major conditions for loans and grants imposed by the international funding agencies centred on desirable substantive policies, for instance, improvements in water quality or female education. But this often proved ineffective, because, several beneficiary-states, paid only lip- service and failed to honour the conditions.(8) The conclusion, drawn by the international organizations, was that in order to get any condition put into practice, the first priority was to establish a machinery of government which could be relied on and trusted.(9) In short, the funding agencies turned their attention to the machinery of government, on the basis that without a (more or less) effective system of government, trying to make substantive reforms would be like beating the wind.Given the centrality of the governance system in every aspect of a state's progress, this seems to us to be a sensible change.(10)But here our focus is not so much on what is happening as such, but on the unquestioned use of the term, RL.

(8) See for example the case studies from Kosovo and Poland, in Parts 3 and 4 below.

(9) 'Anon., Economics and the Rule of Law: Order in the Jungle', The Economist, Printed Edition, March 13, 2008.

(10) Apart from this practical motivation, the two parallel developments, the 'Fall of Communism' and the globalization of the human rights movement no doubt gave added momentum to the rise of RL.

This question, could be discussed, in relation to a number of international organizations.(11) To take one example, the UN Secretary General has stated that the 'rule of law at the international level is the very foundation of the Charter of the United Nations' and much of the UN's efforts at the national level are related to RL capacity-building.(12)

(11) For example, the Council of Europe, the African Union, the and Organization of American States, have the rule of law as one their main values and provide for suspension of membership rights in cases of disregard of the rule of law. See Aust and Nolte, International Law and the Rule of law at the National Level, in Rule of Law Dynamics, Eds. Zurn, Nollkaemper, Peerenboom, Cambridge University, 2012, pg. 5759-.

(12) The United Nations is currently assisting more than 150 countries and their national authorities to strengthen the RL. Having in mind the multilayered efforts of the various organs and bodies of the United Nations dealing with rule of law, a Rule of Law Resource and Coordination Group chaired by the Deputy Secretary General was established. See UN Website on United Nations and the Rule of Law for an update at:https://www.un.org/ruleoflaw/.

PART 2- PROBLEMS OF DEFINITION:

Since it is really an ancient but still vital term from political philosophy, it is not surprising that many diverse meanings have been attracted by the RLand there is no generally accepted definition of the concept. Given the focus of this Paper, on the practice of IO's, we shall be concentrating on their official definitions as opposed to makingan examination of the many definitions offered by generations of scholars.

Surprisingly late in the day, after decades of RL promotion, the EU has set down a definition and we shall return to this in Case Study Two. For the moment, in order to have one example of the difficulties on the table, we take the UN definition. This states that the RL:

"…refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency." (13)

In the first place, this definition contains substantial repetition (two references to accountability to the law and one to its supremacy, whatever the difference; also the enigmatic phrase, 'procedural and legal(?)'transparency'). More significantly, the second line uses the phase, '...public and private...'(our italics). Does the word 'private' mean that the RL has been cast beyond its traditional bounds as a limit on government so that this definition brings, say, big business

(13) Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, S/2004616/, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004616/, accessed August 2017.

equally within its scope? We can think of good reasons for such an extension. But surely such a radical change warrants more preliminary argument and discussion. Finally, the second of the two overlong sentences meanders a good deal into the 'thicker' areas (see below) of the RL and, moreover, even drags in the separation of powers. Is this the classic three-fold concept, including separation of the legislature, executive and judicature. Or does it go even further and bring in modern notions of the autonomy of other institutions, such as census, taxation, or anti-corruption state agencies?

Not surprisingly, there have been various attempts, (14) mainly by academic writers, to bring order to this legal and ideological thicket. Notable contributions are two sets of distinctions that we review here.

a. Thick or Thin Rule of Law:

The first sensible attempt to introduce some clarity and definiteness centered on a straightforward distinction between 'thin' and 'thick' forms of the RL.At its thinnest, in previous centuries, the RL was mainly a principal to protect property rights of citizens, especially against the Ruler.(15) By the Seventeen Century, it had become the principle of 'limited government', associated with John Locke. (16)This thin end of the RL spectrum embraces the three classic ideas:

-That everyone and especially the state including politicians and officials should be 'under the law' (not necessarily the same law as for a private individual, but some definite law). This idea is sometimes expressed as 'equality before the law';

-That the law should be open and accessible to all;

(14) See Tom Bingham, The Rule of Law, Penguin Books, 2010, pg. 39-; Trebilcock and Daniels, Rule of Law Reform and Development, Edward Elgar, 2008, pg. 1228-.

(15) Van Dorem, A History of Knowledge (Random House, 1991), pg. 21828-. Professor Van Dorem refers to J. Locks Treatise on Government.

(16) See Van Dorem, A History of Knowledge (Ballantine Books, 1991) 218228-.

-That there should be an effective, efficient and above all impartial machinery by which the law is enforced. This usually means independent courts and investigation and prosecution systems.

Certainly even and perhaps especially today the thin form of the RL would form a substantial component of any system of good government. But as has been said, nothing succeeds like excess and increasingly, the RL is taken in the thick form. (17)In this form, a large number of other elements of good government is added to the traditional elements identified above. Accordingly the thick form usually includes: accountability, openness, democracy, empowerment of individuals. And beyond this, even wider ranging policy additions, such as substantive equality and positive discrimination, environmental responsibility or social and economic rights may be brought in.

Furthermore, many of the elements of the thick form call for intrusive intervention, by the state, to correct unequal power relations, in the interest of some disadvantaged persons (for instance members of a minority, uneducated or landless people). And to restrain big business, employers and landowners. But this is the antithesis of the thin form of the RL, with its emphasis on state authorities. It is surely unhelpful to yoke such divergent concepts, under the same rubric. (18) It is preferable to use a neutral and comprehensive term. For want of better, we suggest and use, throughout this chapter, 'Legal and Institutional Reform'. (19)

(17) And in the case of the World Bank, the RL is defined as one of the components of good governance. See Worldwide Governance Indicators available at http://info.worldbank.org/governance/wgi/index.aspx#home.

(18) This problem is well-captured, in the context of US developments, in an article which charts the development of Administrative Law, from before the New Deal to President O>Bama>s struggle with Congress, See De Muth, Can the Administrative State be Tamed?, Journal of Legal Analysis, (Spring 2016) 8 (1):121190-.

(19) The choice of title is one among the issues on which discussion between RL practitioners and academics could be useful: Faundez, The Rule of Law Enterprise: Towards a Dialogue

b. Output and outcome:

The second distinction, commonly used in this context (particularly in RL promotion by IOs) is between the 'output' of RL assistance projects and 'outcomes'. (20) The outputs are legal and institutional structures and processes, which are intended then to lead on to consequences which amount to improvements in governance. These consequences are characterized as outcomes.

To give some examples, there may be non-discrimination laws enforced by an anti-discrimination commission or Ombudsman (output) which makes it more likely that a member of the minority will not be discriminated against (outcome). Or take a second example: establishing a legal framework by which the education, and training, selection, promotion and disciplining of judges is removed from the control of the Executive (output). This makes it more likely that the judges will be more independent (outcome). While the clarity and definiteness of this distinction may be questioned in borderline cases, it has been fairly generally accepted. (21)

Different RL programmes have to make the choice of focusing either on outputs (making the assumption that in due time the outcomes will follow); or directly on outcomes. On the whole, in their definition

Between Academics and Practitioners Democratization, Vol 12, No 4, 2005.

(20) A Memeti, 'Rule of Law Through Judicial Reform: A Key to the EU Accession of the Western Balkans', Contemporary Southeastern Europe, 2014, pg. 62.

(21) What is the comparison between these two pairs of contrasting categories: thick-thin rule of law and outcome-output? The answer is that the thick-thin distinction draws a difference as between values which come within the rule of law; whereas the output-outcome distinction is between methods which are applied at earlier or later stages of the same process. For example, at the earlier stage of the process, the outputs looks at the factors, such as training or security of salary which makes the judges independence more likely, whilst the outcome looks directly whether there is an independent judiciary. But this is not a difference in values, since in each case the objective is the same. In contrast, the thick-thin distinction represents a major substantive difference, in that the thick rule of law embraces a wider range of often positive social and legal values.

of the RL, legal scholars have preferred to emphasize the outcome because after all, this is the closest point that one can get to the central concept in the RL. (22) In contrast, in the promotion of RL by IOs, the RL practitioners have primarily focused and highlighted the outputs, that is, the legal and institutional attributes believed to lead on to the desired outcome. They do this for the very practical reason that outputs are easier to identify and assess than the more elusive factors which make up the outcomes.

There is no easy answer to the dilemma as regards which of these (outputs or outcomes) is preferable. In favour of outputs, it can be said that the best is the enemy of the good and, if there is no meaningful way of assessing the outcome, then it is better than nothing to settle for the output, as a way of setting objectives and measuring results. The assumption being made here is that, if one examines the outputs realistically, one should be able to make a fair prediction of the likely outcomes.

But this assumption, of course, is critical. It depends very heavily upon that elusive factor 'culture', in particular, whether in the beneficiary state, there is a culture of obedience to law and institutions. This will vary much from one beneficiary State to another and from one programme to another. It seems that to us that this point of doubt ought to be acknowledged. And where it is outputs which are being relied upon, there should be some attempt to anticipate the likely outcome and, after an appropriate period for results to occur, to evaluate them. Alternatively, if this cannot be done, perhaps because sufficient information is not available, then this weakness should be acknowledged and taken into account in programming and evaluating the mission.

(22) Kleinfeld, Rachel. Competing Definitions of the Rule of Law: Implications for Practitioners. Washington: Carnegie Endowment for International Peace, 2005, pg. 3. For a brief discussion see: Ardit Memeti, 'Rule of Law through judicial reform: a key to the EU Accession of the Western Balkans', Contemporary Southeastern Europe, 2014, 1 (1), pg. 6263-.

But, frequently this nettle is not grasped. Take an example, in the EU's assistance to RL development in the Western Balkans, there is particular focus on fighting high-level corruption. The designated output which was accomplished, consisted of a comprehensive legal and institutional framework. But when one looks for an outcome, after assistance which lasted years, it is said by the EU itself that: 'countries need to build up credible track records of investigations, prosecutions and final convictions in cases of organized crime and corruption, including at high-level, with adequate sentencing and confiscation of assets'. (23) The EU's (earlier) assessment reports dealing with whether the money was well spent, focus only on improvements of law and institutions (outputs):as is typical in such reports, there are only very vague references to whether any high level cases have been taken or are anticipated (outcome). And no machinery has been setup to check whether any such cases would follow in the future.

The difficulties with these two classifications (thin-thick and output-outcome) illustrate our main theme, that the use of the rubric RL serves to distract attention from the practical specifics of a mission. As has been said: 'in the end, it may make sense for donors and policy makers to eschew the ambiguous rhetoric of the rule of law in favour of the articulation of more specific reform goals'. (24)

(23) See Enlargement Strategy, European Commission, Brussels, 10.11.2015, pg. 56-, available at:http://ec.europa.eu/enlargement/pdf/key_documents/201520151110/_strategy_paper_en.pdf. In addition, the Individual Progress Reports for the Western Balkan Countries is available at: http://ec.europa.eu/enlargement/countries/package/index_en.htm.

(24) M. Stephenson, 'Rule of law as a Goal of Development Policy', a brief developed for the World Bank, 2005, available at: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20763583~menuPK:1989584~pagePK:210058~piPK:210062~theSitePK:1974062,00.html.

c. 'Rule of Law and Development':

The issue briefly discussed here is the perceived linkage between Development and the RL. Such a relationship has been identified by, amongst others, the World Bank when stating that' without rule of law, economic growth or poverty reduction cannot be sustainable or equitable. Empirical studies show that there is a strong correlation between rule of law and development indicators such as gross national income and infant mortality.' (25)

This linkage warrants brief discussion here. In the first place, there are, indisputably, many different types of 'development', economic, political, social, educational, cultural, and environmental. The inter-action and interrelationship between these is itself extremely complex and controversial. (26)To take easy examples, there are conflicts between economic development and environmental protection or promotion of equality.

Secondly, on the opposite side of the equation, there, is, as we have shown, in earlier sections of this Part, a wide range spanning the possible meanings of the RL.

Let us consider this marriage of convenience between Development and RL, in the context of the example give in the above quotation from the World Bank. History shows that the thin form of the RL was probably a pre- condition for the Industrial Revolution, in Western Europe. (27) And thus, it may be accepted that it could, as the World Bank says, help to promote an increase in national income. This in itself might, assuming that there is a 'trickle down' effect, eventually help to reduce infant mortality. But if infant mortality is the goal then a thicker version of the RL, including greater equality, gender or

(25) Dakolias, Freestone, and Kyle, 'Legal and judicial reform: observations, experiences, and approach of the Legal Vice Presidency'. Washington DC: World Bank, 2002.

(26) See Sen, <The Role of Legal and Judicial Reform in the Development Process < World Bank Legal Conference, Washington DC, June 5, 2000.

(27) For example, Morris, Why the West Rules for Now (Profile Books, 2010), ch. 10.

otherwise, with reform of family law, would probably have a more potent and immediate effect.

In line with this analysis, a survey of the World Bank's practice in effect asks the questions 'what do they mean by the Rule of Law and Development'? It reaches the conclusion that:

'…although law is today correctly seen as part of governance, the governance agenda, as currently conceived is aimed mainly at promoting the Washington Consensus. Within this conceptualization of governance, designed largely by economists and statisticians, the place of law is largely restricted to restraining governments and facilitating commercial intercourse. Under these circumstances it is unlikely that the Bank's much-flaunted objective of strengthening the rule of law to empower citizens and ensure their effective participation in development has any chance of success. (28)

In the context of the present paper, our response to this is that the World Bank's choices are political. They may (or may not) be appropriate political choices. But the use of the term RL obscures the fact that a political choice has been made. This obscuring is unhelpful to the clear design, implementation, and evaluation, of the Bank's development projects.

But apart from this question, there is a preliminary issue, which warrants a brief mention, namely whether RL does indeed lead on to development. On this point, there are two views. The first of these is that of the UN General Assembly which, like the World Bank states that:

'We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for

(28) See J. Faundez, <Rule of Law or Washington Consensus: the evolution of the WB's approach to Legal and Judicial Reform, in (ed) Perry-Kesaris, Law in the Pursuit of Development, (Routledge, 2010). This quotation is taken from the abstract for this paper.

sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger…'. (29)

But there is a contrary view. For it is empirically quite difficult to find the causality between law (subsequently rule of law as well) and development. The existing evidence for the relationship between them is 'multi-faceted, complex and sometimes contested'. (30) Moreover, '…at the moment, there is very little empirical work of any kind on the role of law in developing countries, yet the whole law and development enterprise requires such knowledge. That will include developing tools to diagnose problems and measure the results of reforms'. (31)

Our feeling is more in agreement with the second of the two views just summarized. But even more strongly, we take the common-sensible view that improvements in RL (or whatever name is to be used)are a virtue in themselves. (32) Accordingly, they do not have to be justified by any supposed linkage to the additional bonus of development.

(29) Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/67/L.1*, 19 September 2012, p. 7.

(30) UNDP Issue Brief, Rue of Law and Development, Integrating Rule of Law in Post 2015 Development Framework, January 2013, pg. 1.

(31) David M. Trubek, Law and Development 50 Years On (October 15, 2012). Univ. of Wisconsin Legal Studies Research Paper No.1212, pg. 7. See to similar effect, the European Commission, Support to Justice and the Rule of Law, Review of Past Experience and Guidance for Future, Tools and Methods Reference Document, No.10, 2012, pg. 4.

(32) There is an echo here of the point made in Briony Jones' paper 'Resisting Transitional Justice: Connecting Historical Struggle with Contemporary Calls for Justice'. One of the minor points in this paper is that sometimes peace and reconciliation commissions are presented as being desirable because they are likely to lead or to promote economic development. This is also a rather problematic proposition. In particular, important point is surely that peace and reconciliation are desirable goals in themselves. See the Paper presented in the Conference Beyond Development? New Imaginaries of Law and Social Justice, 2123- April, 2016, University of Warwick Law School, United Kingdom.

PART 3- CASE STUDY FROM KOSOVO [33]:

Our two case-studies each involve the EU. However, they are chosen deliberately, because they are at opposite ends of the spectrum. While Kosovois considered a potential candidate to join the EU[34], it is being assisted principally as part of the EU's endeavor to assist a country recovering from trauma, especially since this may encourage stability near to the EU's own borders. In contrast, the second case-study, on Poland, involves the treatment and possible disciplining of a State which has been a member since 2005.

Given our particular focus here, the background to the Kosovo mission may be sketched very briefly as follows. Serbia was one of the six republics originally making up Yugoslavia, a state which ceased to exist in the 1990s. Within the former Yugoslavia, Kosovo was formally an autonomous province in the Republic of Serbia. Kosovo had an ethnic Albanian majority and a Serb minority. During the 1980s ethnic tensions mounted and in 1989, Kosovo's autonomy was revoked by the nationalistic Serbian government of Slobodan Milosevic. Throughout the 1990s, repression by the Serbian Government increased and an estimated10,000Kosovo Albanians were killed. Eventually, Serbian armed forces were driven out by NATO and in 2008 Kosovo unilaterally declared independence from Serbia, notwithstanding that many ethnic Serbians, in Kosovo, wished to remain part of Serbia.

The outcome was a strife-torn society exploited by organized crime, both, within and outside Kosovo. The EU responded by agreeing to provide substantial funding in order to ensure the stability of Kosovo, the wider Western Balkans region and Europe as a whole. [35]

(33) The facts in this section are taken from the European Court of Auditors European Union Assistance to Kosovo related to the Rule of Law>, Special Report No 18//2012. [The Report]. The comments are ours.

(34) In the conventional hierarchy, a candidate country such as Albania, FYR of Macedonia, Montenegro, Serbia and Turkey is considered ahead of a potential candidate, such as Kosovo and Bosnia and Herzegovina. Kosovo signed the EU Stabilization and Association Agreement (SAA) onlyin October, 2015. For an update on the current status on the EU accession of these countries see http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm.

(35) The mission is financed by the EU's Common Foreign and Security Policy (CFSP) budget…'.

Plainly, there were almost overwhelming difficulties besetting Kosovo. But our focus here is on the design and definition of the mission and in particular the use of the phrase, RL. Two formulations of the purpose of EULEX's (European Union Rule of Law Mission in Kosovo) were offered. First, the following overall statement of the mission seems acceptable, at para 68:

'To assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further strengthening and independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices.'

But unfortunately another formulations is offered which is less clear. According to para. 14, the mission's central aim is to help Kosovo authorities 'to strengthen the rule of law specifically in the police, judiciary and customs area.' But this addition of RL, almost as a catch-phrase seems to add little.

Next, take a more specific example, from paras. 5661-. This section of the Special Report which deals with the northern part of Kosovo primarily controlled by the Serbian minority is headed: 'the north of Kosovo: EU interventions have been very limited and there has been almost no progress in establishing the rule of law'. Yet,in fact, the text under this heading turns out to be a statement that there has been little success in enforcing criminal law and customs requirements in the northern part of Kosovo. Most people would characterize this most unfortunate situation as a security problem involving organized insurgents. It is quite a stretch to drag in the rule of law in this context.[36)]

At its maximum, at the end of 2011, EULEX had 2500 staff. And in fact, the EU financial assistance per capita to Kosovo, for wider RL activities amounted to €400 per head of population (1.7 million). Expenditure on RL, during 200711- totalled around 680 million euro or 56% of all EU Assistance to Kosovo. See, Report, paras. 1213-, table 1 and annex 1.

(36) For a third example, take para 910- (we have inserted the roman numeral in italics):

...the collapse of the (i) rule of law in the 1990s created a vacuum which has been exploited by organized crime both from within and outside Kosovo. At the same time, the clientelism =

Why do such vagueness and shifting usages matter? In the first place, the need for coordination of the tasks, which is reliable and cannot be disputed after the event, is important and thus, especially, with participants from different cultures, speaking many different mother-languages, it is vital for the text to be as clear as possible.

Secondly, it is important for those working on the ground to know what is the priority to be given to (the various and sometimes divergent) elements of a mission. Especially since adjustment will need to be made in the light of 'events' on the ground, this is naturally very difficult. In the particular circumstances of Kosovo it was noted that (para 69): 'EULEX pursues its mission both through the exercise of certain executive powers...and also through capacity building activities based on MMA (Monitoring, Mentoring and Advising) actions. The relative priority to be given to these actions is not clearly defined'. Now, in relation to this assessment, one may add that the over-arching use of the term RL militates against the sort of tough decision which is necessary, when personnel on the ground having to take evenly–balanced decisions, often in unexpected situations. (37) Often under pressure, they must decide, for instance: how to divide resources, say allocating armored

= prevalent throughout Kosovo society and the traditional recourse to a clan-based customary law hinder building up the (ii) rule of law…Strengthening the (iii) rule of law in Kosovo is generally considered a prerequisite for economic development. Given the international nature of organized crime, the strengthening of the (iv) rule of law in Kosovo is also important for the internal security of the EU'. Our comment on this passage is that it leaves it unclear how the use of the central phase, RL, is to be understood since it seems to be used in four different senses, namely: (i) an attempt to fight organized crime (not usually regarded as an element of rule of law since even dictators customarily do not like gangsters); (ii) establish an open, fair system of government or (the classic thin type of rule of law identified earlier in Part 2); (iii) economic development (the problematic linkage between which and the RL have already been discussed in Part 2); (iv) perhaps a bow in the direction of the international usage dimension of the rule of law mentioned in Part 1.

If the answer is that the RL means 'all of the above', this hardly helps.

(37)Take a specific example: the Court of Auditor>s Report includes the criticism that: 'the EU's programming of assistance to Kosovo has not adequately taken the EU's internal security priorities into account'. (paras. 71). The use of the RL in the mission statement would usually have the effect of enabling the diplomats drafting the mission's statement to dodge this choice and to leave it to the hard pressed officials on the ground.

vehicles as between police, judges or customs officials; or to weigh respect for civil liberties in questioning suspects against rigorous investigation of serious crime.

Thirdly, the last stage in respect of a mission is the assessment of its success. This calls for specific and detailed bench-marking. Yet, according to the Report, para 68: 'the basic planning documents do not contain clear benchmarks and objective viable indicators to assess progress...' (38) Here too the use of the term, RL,adds nothing.

(38) A convenient example of such an assessment is provided in Annex III of the Report which gives several detailed questions organized under various subheads.

PART 4 - EU - POLAND CASE STUDY:

Recently, the EU has had reason to be concerned with 'Rule of Law issues' actually arising in some of its own Member States. Here, it is sufficient to mention, by way of example, the incidents that are receiving most attention at the moment. These centre on the (Polish) Law and Justice Party Government's (2015-) alleged lack of respect for the independence of its judiciary and of the State Broadcaster. These alleged infringements are explained below.

We are not concerned with the substance of this situation nor with any disciplinary measures which the EU may take; nor directly with the carefully-weighted and gradated procedural machinery which has been designed to investigate and deal with the alleged transgressor(s). (39) All we need say is that, when in 2014 the EU was faced with an increasing number of 'rule of law crises', a 'New EU Framework to strengthen the Rule of Law' (40) was established, which included the law and definition summarized in the following paragraph.

The Treaty basis for the developments mentioned in the previous paragraph is Arts2 and 7 of the Treaty of the European Union which states: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights…'

In addition, for the first time and significantly, the EU gave a definition of the RL. The European Commission's Communication laid it down again in 2014 that the concept essentially involves compliance with the following six principles:

(39) However, for an excellent, up to date treatment of the RL in the particular context of the European Union and alleged backsliding by Member States, see Bard, Carrera, Guild and Kochenov, An EU mechanism on Democracy, Rule of Law and Fundamental Rights, Annex II, PE 579. 328-April 2016. See also: Kochenov and Pech, 'Upholding the Rule of Law in the EU: On the Commissions' Pre-Article 7 Procedure' as a Timid Step in the Rights Direction', EUI Working Papers, RSCAS 201524/; Kochenov and Pech, 'Better Late than Never?: On the Commissions Rule of Law Framework and Its First Activation', submitted to the special 2016 issue of the Journal of Common Market Studies, on the RL in the European Union.

(40) See European Commission Communication from the Commission to the European Parliament and Council COM, 158 final (19 March, 2014).

'1) Legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws;

2) Legal certainty;

3) Prohibition of arbitrariness of the executive powers;

4) Independent and impartial courts;

5) Effective judicial review including respect for fundamental rights;

6) Equality before the law.' (41)

'Horses for courses' is no bad guide and it is plainly no coincidence that this definition, was adopted only when the EU had it in prospect, to launch, on the basis of this definition, proceedings which could have serious consequences for some of its member states or even for the organization itself.

The first point of comment here is that the Rule of Law is not the only governance virtue identified (in the list from the TEU quoted above) a persistent or systemic breach of which will lead to a sanction. However the other values which are identified– "human dignity, freedom, democracy…'- are stated in the form of abstract words, without definition. This perhaps is inevitable since any definition one could conjecture would be too broad to be useful. By contrast, the RL is given a definition. It seems probable likely, therefore that in any legal or 'political- dressed-up-as-legal' proceedings, it would be the concept of the RL which would be the main component on which an orthodox judge would choose to base their verdict. We do not yet know how any proceedings which may be initiated to possibly impose sanctions on Poland might go. However, given the importance of the issue, even if no court is involved, it seems reasonable to anticipate that international public opinion would expect some level of formal due process to be observed.

On that assumption, the big question here is whether it is wise for the procedures sketched above to rest all this weight on the RL. Our view is

(41) See European Commission Communication from the Commission to the European Parliament and Council COM, 158 final (19 March, 2014), Annexes 1 and 2. Significantly, a little later in this publication the Commission gives a five to seven line elaboration of each of these headlines.

that, given the sensible definition of the RL which has been set down, it does seem to be a sound legal- political decision. In testing this assertion, the most convenient examples to take are the actual infringements which are alleged, in the case of Poland. Thus, the first incident involved annulling nominations to the Constitutional Tribunal that had been made by the previous legislature and shortening the terms of office of its President and Vice President. This allegation could reasonably be considered under the heading of: '4) Independent and impartial courts' (using the wording of the Commissions Communications, just quoted). Secondly, the incoming government in 2015, enacted a new law which puts the appointment of the management and supervisory boards of the public service broadcasters under the control of the Treasury Minister, rather than an independent body; and also provides for immediate dismissal of existing management and supervisory boards. The appropriateness of this new law could be considered under the rubric of '3) Prohibition of arbitrariness of the executive powers'. This would probably be augmented by the value of respect for human rights, specifically, since broadcasting was involved, free expression. In short, the RL, with the definition which it has been given by the EU, affords some element of objective solid ground here.

Finally, again, we ought to emphasize the particular context in which the RL may be used in the case of Poland. This context concerns the possible sanctioning of a State which is already a member and, moreover, a member of a most highly - integrated group of states. In these circumstances, different from the situation in Kosovo, our comment is that the Poland case may come to show that the RL is of use in a particular context, provided that, it is defined reasonably narrowly and also in a thinish form.

PART 5- CONCLUDING COMMENT:

Probably, the best general book on the RL published in recent years, in the common law world is that of the late Lord Bingham.(42) This surprise best-seller, is a masterly summary of the uses of the RL, in the contemporary world, including: 'the War on Terror'; international law and the use of armed force; dispute resolution; and human rights. But what is notable for present purposes is that the material on RL and development sits uneasily, cuckoo in the nest-like, in the rag-bag chapter entitled 'The accessibility of the Law' and takes up less than a page (38). The reason for mentioning this (partial) omission here is to point up the fact that, there are limits to the extent to which the RL may be stretched and when IOs seek to link up the RL with economic (or other) development, they are trying to wrench it into a mould for which it is not designed.

There is another excellent recent book called Rule of Law in China: A Comparative Approach.(43) Here the author indicates without actually saying so that among the governing authorities in China, possibly in reaction to the shocks and arbitrariness of earlier decades the preference is for a thin form of the RL. In a system which produces regulations in huge numbers, emphasis is given to: instance to certainty and accessibility of laws; a ban on official corruption; a requirement that laws do not change with changes of leadership; and even democratic centralism. The concordance between two books written from such different directions is striking and underscores the fact that the apparent consensus in IOs in using the concept of RL undiscerningly in a thick form is not unanimously shared.

The strongest point that emerges from Part 2, on the various approaches to definitions, is that RL can have so many different meanings that it is not useful as a guide.(44) Indeed, what the case

(42) Tom Bingham, The Rule of Law, (Penguin Books, 2010).

(43) By Katrin, Blasek, Rule of Law in China: A Comparative Approach (Springer, 2015).

(44) Brian Z. Tamanaha writes that: 'Amidst this host of uncertainties there appears to be widespread agreement, traversing all fault lines, on one point, and one point alone: that the "rule of law" is good for everyone' and that 'this apparent unanimity in support of rule of law is a feat unparalleled in history. No other single political ideals has ever achieved global endorsement.' The author also makes the point that while everyone is in favor of rule of law, for =

studies in Parts 3 and 4 show is that the purpose of and the criteria by which the success of any RL is judged must necessarily depend on the detailed mission statement. It is there, if anywhere, that the lawyers who are trying to make an RL programme work on the ground will look for guidance.

At this point, we ought to draw attention to practical difficulties which inevitably arise with such programs (irrespective of the title). The work usually has to go on at two levels, probably several thousand kilometers (or miles) apart: at the international 'Headquarters' where the mission is conceived and the drafting done; and 'in- country' where the work on the ground is carried out and the unexpected is to be expected.

There are other difficulties. First, where the IOs naturally have participants from different legal systems and culture from each other and/or the beneficiary state. The consequence may be that their approaches as to how to get the best results and even recognition of what these are, will vary. Secondly, in contrast to a national legal profession, there is no profession of 'rule of law practitioners' with common language, standards, training, or reputation. Those recruited, often for a short 'contract' are unlikely to be successful practitioners in mid- career. Thirdly, it is peculiarly difficult to screen international recruits for 'soft skills', such as: cultural sensitivity, competence in the local language, respect for local experts (who may be paid a fraction of the salary of the international consultant).(45)

A basic point in this paper is that the RL was developed in Western Europe or those states, like the US, which have grown from it. It is now being promoted(46) by way of IOs in societies, at a very different level

= some, it is considered to mean a 'rule by law' and represents a tool for government oppression. Tamanaha, On the Rule of Law: History, Politics, Theory, (Cambridge University Press, 2004), pg. 1, 3.

(45) For further discussion see: Simon and Taylor, 'Professionalizing Rule of Law- Issues and Directions', (Folke Bernadotte Academy, 2015); Carothers, 'Promoting the Rule of Law Abroad', Carnegie Endowment for International Peace, Rule of Law Series, No. 34, 2003.

(46) There are various metaphors that capture the process of rule of law promotion, including: legal transplants, legal translation, legal transformation, legal transposition, legal irritant etc. See, W. Merkel, 'Measuring the Rule of Law', (eds.) Zurn, Nollkaemper, Peerenboom, in Rule of Law Dynamics, (Cambridge University, 2012), pg. 6.

of development and with different values.

To take some examples of the likely effect of this bias: there are many different paths to economic development. There are basically two major and divergent options: the free market model and the state planning economy. Which of these is appropriate, in any particular case, is best be determined by focusing on the circumstances of the particular beneficiary state, including both existing systems and the future objective it is hoped to achieve. Yet, the use of the RL concept and vocabulary is likely to provide extraneous pressure skewing the choice in favor of the free market model. To take a more detailed example, it has been said in respect of electrification in Indian villages, that there should be formal negotiation involving public representatives, to protect the interests of local people. This is by no means a classic RL concept, yet, it maybe very apt in that particular context.(47)

Another example concerns a major choice which has often had to be made in the field of RL programs. This involves the type of criminal trial model to be introduced in the post-communist states, following the fall of communism. In many states, this has been done by way of international consultation and with assistance from IO's. The choice has usually fallen on the common law model of the adversarial trial, including a strong and independent prosecutor (even in some cases jury trial) and a more passive judge. In making this choice it may be overlooked that the adversarial trial presupposes that the accused has a competent lawyer, who speaks the language of the court. Yet, perhaps, following public expenditure cuts, this condition may not be satisfied. This is in preference to the civil legal tradition, which favors the inquisitorial model. Again, we are not commenting on the merits of this choice. But merely noting that some critics have said that the common law model has been championed by lawyers from common law jurisdictions, simply because it is the model they know best. The undefined and indiscriminate use of the term RL also supports this.

One line of criticism which might be advanced to this suggestion would

(47) For this negotiation, see Adithya Chintapanti, Reimagining Electricity Sector Regulation in India- Towards a Socially Responsive Regulatory Framework, paper presented in the Conference Beyond Development? New Imaginaries of Law and Social Justice, 2123- April, 2016, University of Warwick Law School, United Kingdom.

be that if the RL were replaced by 'Legal and Institutional Reform', as a headline, it would be necessary to choose from a number of different models of reform, against which to evaluate a particular improvement, which, it is suggested, should be promoted by the mission. We would, however, contest the assumption that a model of good governance is necessary. In most situations, there will be certain obvious and often urgent needs. For example, an end (or amelioration) of: strife, official corruption; or oppression of a minority group. In principle, these are not controversial and so there is no need for a complete model of good governance, as is substantially demonstrated by the Kosovo case study.

A second objection(48) is that whatever the deficiencies of the RL for the role which is being forced upon it, this usage has now been in existence for a quarter of a century. IO staff, diplomats, RL practitioners or informed members of the public have become used to it. In short, the caravan has already left the oasis and it is now too late to do anything about it.

But this is perhaps too glib. An important fact for the future is that the imposition of internationally accepted standards by IOs, supposedly representing a consensus of foreign nations, has only started. The need for concerted practices and common standards in fields like combating tax avoidance or currency transfers, control of climate change or transnational migration, with increase. The imposition of common standards is bound to cause controversy or even resistance. In meeting such difficulties, it is certainly helpful, as noted throughout this paper, that each mission will have a more or less detailed mandate and this would be more influential than the heading at the top of the paper. However, this heading is of some influence: if a more neutral term than RL, which is not freighted with the cultural history of one part of the globe, this means that it carries a significant advantage.

Our case- studies were deliberately chosen for the difference between the fora involved. The Poland case-study, affords, we think, an unusual example of how in the right situation, the thin version, at any rate, of the RL, could be of some service. But, on the other hand, the

(48) Equally, we reject what may be regarded as the reverse line of criticism, that either way the title is unimportant. In a media driven-world head-lines matter.

Kosovo mission, which is likely to be the more typical of the two Case Studies seems to show that the phrase RL may lead to obfuscation and possibly legal- cultural bias, in a situation where there are already ample inherent difficulties. In general, it would seem to be useful to address these difficult choices directly and not through the murky prism of the RL.

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