

Methodologies in the Promotion of the Rule of Law

Lessons from Reform Projects in
New or Restored Democracies

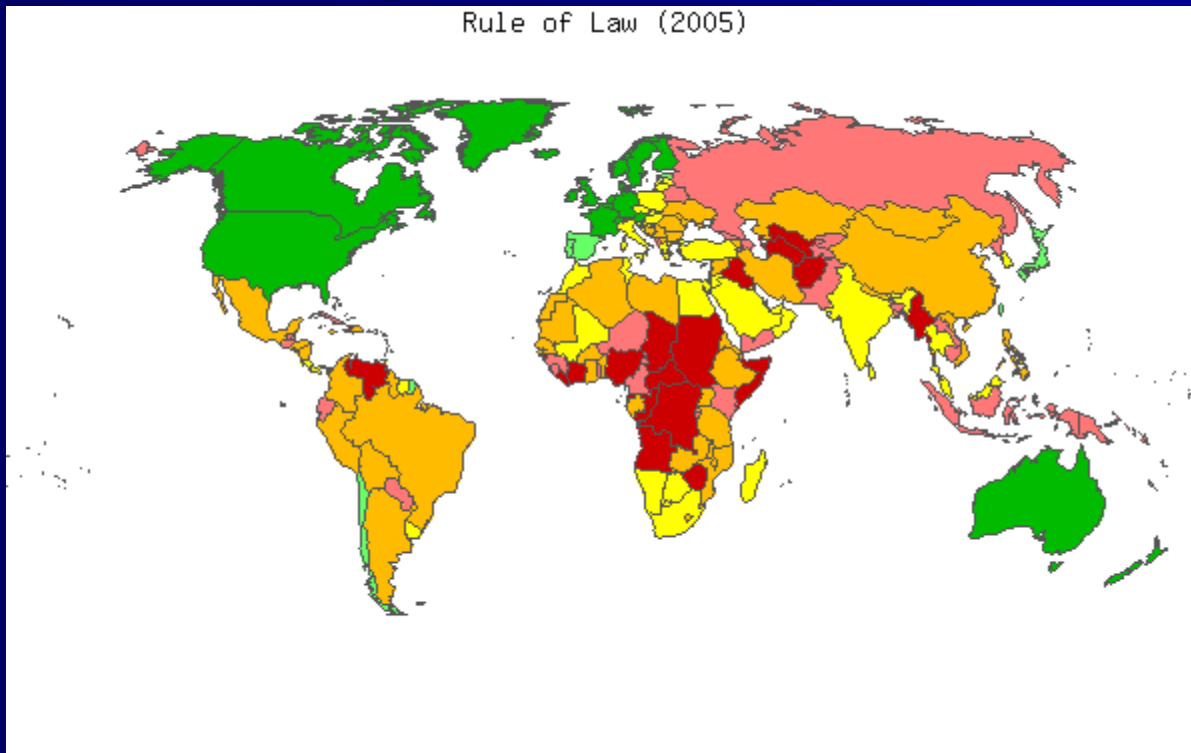
Overview

1. General Observations
2. History of the Promotion movement
3. The Problem of Definition
4. What has been tried ?
5. Problems identified
6. What could have been learned

Rule of Law World Map

World Bank

green: top quartile orange: middle low
yellow: middle high red: bottom quartile



ROL:

A new/modern/western concept ?

- People should have “certainty of being governed legally in accordance with known rules” (Solon)
- The right of the citizen is to “be guided and governed by the certain ROLand not by any uncertain and arbitrary forms of government”...
(1610)



RULE OF LAW is ABOUT POWER

- The ROL is about both
 - limiting the power of the state
 - empowering it to protect the rights of the citizens against law breakers

Methodology/Promotion - History

- 1960s-early 1970s **Law and Development Phase**
 - US endeavor (i.a.USAID)/ethnocentric
 - Strategy: judicial and legal system reform
 - End goal: economic development
 - Assumption: Spillover: legal change/ social change ;economic growth/democracy and HR
 - Countries: i.a. El Salvador, Guatemala, Africa

From 1980s **Rule of Law Promotion Phase**

- intergov. org (i.a. UN, EC, OSCE), developm. banks (i.a. WB), bilater. actors (i.a. USAID, CIDA, DIFID)
NGOs (HR Org, Unis, Policy TT, Inter.Dev. NGO)
- Strategy: various
- End goal: Democracy, Peace, Good governance, Econom.Devel.
- Countries: i.a. East Timor, Ex Jugosl., Afganistan, Iraque
- Money spent in the last 20 years: 1 Billion dollars+

Docs

- 1993:UN "ROL is an essential factor in the protection of HR"
- 2004:1.UN report on "ROL and trans.justice in conflict and post conflict societies"
- 2004: EU welcomes the Report and urges all countries to implement the recommendations

Rule of Law

Source: Secr.Gen. Report on Rule of Law 2004

a principle of governance in which all

- a) persons,
- b) institutions and
- c) entities ,

public and ***private*** , including the ***state*** itself , are

accountable to laws that are

- a) publicly promulgated ,
- b) equally enforced
- c) independently adjudicated
- d) consistent with international human rights norms and standards

Rule of Law

- 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 the decision- making,
 - legal **certainty**,
 - avoidance of **arbitrariness** and
 - procedural and legal **transparency**.

What has been tried ?

Was it successful?

- Exclusive Focus on Legal change (i.a.Eastern Europe)
- Institutional support
 - (Reform **in** institutions)
- Exclusive focus on criminal law and justice (East Timor,)
- Exclusive support of police (i.a.Haiti, Panama)
- ROL Support in states without functioning basic democratic institutions : Afganistan, Iraque,
-
- Case of Kosovo
- International tribunals

Problems

- Lack of knowledge (ROL is an area of great conceptual and practical complexity(how does law function in a society, traditional mechanisms, what role does it play, how can it change)
- Lack of Strategy (What is ROL reform?)
- Lack of coordination, sequencing, prioritization
- Focus on short term support instead of long term planning and capacity building

- Lessons are not learned
- A prevailing formalistic view of legal change: form over function
- Local ownership (of process / outcome)
- Poorly designed training and Legal Education programs

What could have been learned ?

- Confusion between definitions of ROL by end goals (purposes it is to serve in society) on one hand and definition through its "institutional attributes" on the other hand leads to insufficient ,ill focused strategy
- End goals need to be identified as a precondition for strategic planning

- They need to be balanced
- Techniques: Reform *across* institutions
- Political and cultural change is needed and inherent
:Ultimately the ROL is enforced by the expectations of the people under its dominion
- Reform efforts have to be coordinated
- Measure the right things when evaluating success
- Some assumptions are Myths and motifs are questionable

“ROL” through “imperfect” bodies ??????

- Informal Justice Systems
- Justice vacuum
- The Healing Potential
- Shortcomings
- Role of Informal systems in
(re) construction of ROL (Burundi,
Ruanda, Somalia etc)



Pal. Basic Law Art 6

- The principle of the ROL shall be the basis of governing in Palestine . All authorities, powers, agencies, institutions and individuals shall be subject to law.

Accountability mechanisms

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- Vertical accountability (elections, media, civ.society)
- Horizontal accountability (system of checks and balances between the govern. branches : courts, investigation commissions)

