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## Performing the Rule of Law

O perilous mouths,  
That bear in them one and the self-same tongue,  
Either of condemnation or approval;  
Bidding the law make court'sy to their will ...

—*Measure for Measure*, II. iv. 186–9

### 4.1 Introduction: Presenting Expert Ignorance

It is 2015. I am sitting in DfID's airy atrium in London. Across the Bakelite table from me, Greg nervously sips a coffee. He is back from his stint in the field and has found a new rule of law job here. We catch up. He tells me his plan to develop a course on rule of law reform that can be taught at law faculties and public policy schools. He's worried that there are 'too many amateurs getting into the field [of rule of law reform]'. He pauses; '... or our group of people.' Amateurs bring good will, bad work, and bad results. His solution is to draft an academic syllabus that provides 'some basic knowledge ... or rather some basic practical tools' for people interested in working on rule of law reform. Without them, he fears that 'we'll keep forgetting faster than we learn'.

According to Greg, rule of law reformers are professionals, not amateurs. How can we tell one from the other? He tries a few different approaches. Professionals have specialised knowledge and skills (rather than dabbling in rule of law reform on the basis of their training as lawyers or economists) ... although that substantive knowledge slips away, blurring into a set of practical tools or approaches to a problem. Professionals belong to a field of practice ... although that field quickly decomposes into a collection of people. Or perhaps professionals emerge from a process of professionalisation, or the accumulation and accretion of learning through time ... and yet this too collapses, into collective forgetfulness.

A rule of law reformer knows she is a professional of sorts. She has many ways of articulating it and just as many ways of denying it. Her

professional identity is wrapped up in self-qualification. Greg offers several different accounts at once of what distinguishes a rule of law reformer – a body of knowledge, a field, a professional memory. Yet none appear to stick. He ends up simultaneously projecting his anxiety onto his proposed syllabus (thus bounding and limiting anxiety between the four corners of the document) and deferring the resolution of his anxiety to the classroom (thus embedding his anxiety in the concrete and stable institution of a law faculty or public policy school).

Greg produces rule of law reform as a potential object – it is something that professionals do – and cycles through several accounts of it as an actual object, all of which offer different images of the reformer's structure and agency. At the same time, he is already in the process of pulling those images apart. In Greg's hands, being a rule of law reformer seems to entail the Sisyphean task of rolling his expert self up the professional mountain over and over again.

How does that task relate to reformers' efforts to produce the rule of law in the world? In this chapter, I place those efforts in a theoretical and methodological framework to understand how the rule of law has – and continues to – become a thing that defines reformers, a thing that they do, and a thing that emerges from their activities.

I proceed in four parts. First, theoretically, I argue that, in the context of rule of law reform, the rule of law cannot be disentangled from the efforts of reformers to make and unmake it, aware of and asserting their own ignorance about it. As a result, I theorise rule of law reform as an aesthetic artefact and its politics as a contest over the trajectory and modality of the encounter between the reformer (as an embodied and particular person) and the rule of law (as a universal reference). I theorise rule of law reform as a shadow of reformers' fantasy of attaining the rule of law.

Second, methodologically, I go on to sketch out a method to analyse rule of law reform. I begin with the proposition that, even at their most self-denying, reformers remain fundamentally embodied. I thus draw on insights from phenomenologies of performance, performance studies, and Stanislavski's System to study them. I show this method at work through two cases, which I stage and analyse through specific plays. The plays are not necessary components of my proposed performance analysis of expert ignorance. Instead, they work here as heuristic devices: they are readily available to be analysed as performances, and in doing so, they provide a route to, and an index for, analysing the cases in the same way. Moreover, the plays are chosen for how they speak to the effects of the characters' express denial of their own ability to make meaning.

Third, I set out the first case study – which extends the project detailed in the previous chapter. I focus on two moments: the workshop and the village meeting. Instead of beginning the analysis *ex nihilo*, I anchor it in a reading of Beckett's *Ohio Impromptu*, a play that deals with silence, repetition, and the instability of time, space, identity, and meaning. In my analysis, I show what my approach contributes to our understanding of rule of law reform when compared to the three ways of writing about rule of law reform in the previous chapter: the ability to capture the movement reformers produce between the universal and particular, subject and object, and knowledge and action, as they critique themselves and each other.

Fourth, I introduce and discuss a second case. I look more closely at the specific operations of expert ignorance in a global expert workshop convened to develop rule of law indicators for the Sustainable Development Goals. I analyse the workshop through a reading of Miller's *The Archbishop's Ceiling*, a play concerned with temporal encounters with the sublime, and the problems of meaning and subjecthood that result. This analysis shows how expert ignorance destabilises the distinction between global and local governance, along with the distinction between the knowing subject and 'doing' object.

#### 4.2 Theory: Shadows of a Fantasy of Attaining the Sublime

In this section, I argue that rule of law reform should be understood as the shadows that rule of law reformers cast on the world when they try to enact their fantasy of attaining the rule of law. This is because the rule of law (in the context of rule of law reform) should be understood as a political sublime. I will take these terms in reverse order – sublime, fantasy, shadow – to explain the theoretical traditions I am working with and through as well as the limits of my claims.

In brief, I talk about the rule of law as a sublime or aesthetic thing, understood through Kantian traditions and their reworking and critique in Frankfurt School thought. However, I focus not on the immanent conditions of transcendence contained within the sublime rule of law. Rather, I focus on the reformers who try (and fail) to produce and unmake that sublime thing, how that process of production and unmaking creates an unattainable fantasy of the rule of law, and how the effects of reformers' efforts to attain and unmake that fantasy produce both themselves and the rule of law as fuzzy shadows. Thinking in terms of shadows expresses a fundamental set of stakes of rule of law reform as I see it: it is a process

by which the autonomy of law and of its reformers – their constitutive boundaries – are constantly shifting and reworked.

#### 4.2.1 *The Sublime*

I understand the rule of law as a political sublime. As illustrated throughout this manuscript, rule of law reformers' commitment to the rule of law can be expressed through ignorance claims – various forms of which were surveyed in the previous chapters. When rule of law reformers express their commitment to rule of law reform in this way, reformers are expressing the possibility that the rule of law is a political reference that is beyond mere representation. The rule of law is instead, following Kant, 'to be found in a formless object', representing 'limitlessness', and a source of aesthetic judgement.<sup>1</sup> And following Adorno, 'Kant's theory of the sublime ... only art can actualize'.<sup>2</sup>

There is a long pedigree to studies of law, and the rule of law, as aesthetic phenomena. Various traditions of law and aesthetics, often drawing on some mix of German idealism and post-structural thought, approach law as an aesthetic artefact in order to produce three effects. First: to critique a schematic view of law by unpicking or reclaiming law's ability to transcend its social, economic, and political conditions – hopefully in an emancipatory fashion.<sup>3</sup> Second: in launching such a critique, to offer a broader critique of the Kantian separation of reason and judgement that underpin the modern exercise of power, arguing instead for governance that takes transcendence seriously and avoids the false necessity of reason.<sup>4</sup> Third: to place law at the centre of these critiques of modern governance

<sup>1</sup> Immanuel Kant, *Critique of the Power of Judgment*, ed. Paul Guyer, trs. Paul Guyer and Eric Matthews (Cambridge University Press, 2000), p. 128.

<sup>2</sup> Theodor Adorno, *Aesthetic Theory* (University of Minnesota Press, 1998), p. 136. For Adorno, the sublime does not reaffirm the noumenal nor the worldly ego (as Kant asserted); it instead is realised in 'authentic' art – that is, art with the capacity to reflect *and thus radically negate* the existing social totality (72).

<sup>3</sup> See, for example, Peter Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (Routledge, 2002); Peter Goodrich, 'Specula Laws: Image, Aesthetic and Common Law', *Law and Critique*, 2:2 (1991), 233–54.

<sup>4</sup> Adam Gearey, *Law and Aesthetics* (Hart Publishing, 2001); Roberto Mangabeira Unger, *Law in Modern Society* (Simon and Schuster, 1977), p. 22. See more generally Bernstein: 'for German Idealism and Romanticism, it was precisely the domain of art and aesthetics that was the Archimedean point that allowed for the overcoming of modernity, then there was also a natural temptation to regard the provision of a new aesthetic, a post-aesthetic philosophy of art, as the political means through which modernity was to be reconstituted'. J. M. Bernstein, *The Fate of Art: Aesthetic Alienation from Kant to Derrida and Adorno* (Polity Press, 1991), p. 6.

precisely because it is by definition one of the privileged institutional sites for the entanglement of Kantian judgement and reason.<sup>5</sup>

These studies of law and aesthetics are concerned with the critical potential of law when understood as an aesthetic artefact or source of aesthetic experience, since 'aesthetic discourse contains concepts and terms of analysis, a categorical framework, which, if freed from confinement in an autonomous aesthetic domain, would open the possibility of encountering a secular world empowered as a source of meaning beyond the self or subject'.<sup>6</sup> That is, they are concerned with analysing or experiencing the immanent conditions of law's own transcendence. They do so in the hope of embedding a fertile imagination – creativity, novelty, things not as they are – in the cold reason of law.

For some, of course, there is nothing aesthetic about the rule of law. They know exactly what it is: it is the UN Secretary General's edicts, or common law procedural principles, or rules for the constraint of executive power, and so on. For others, they might not know what it is, but they can work it out – it is subject to the powers of reason, discourse, and inquiry. I do not wish to intervene in these debates. I make no ontological claim about whether the rule of law is politically transcendent and transformative. It might be, of course.

I am instead interested in how understanding the rule of law as an aesthetic artefact might help us understand the work reformers undertake to produce it as such – and as a result, rule of law reformers' aesthetic subjectivity, their power, and their effects. More specifically, and as I now develop, I think that understanding rule of law reform as an aesthetic artefact reveals something of the stakes of rule of law reformers' work: the specific possibility of reimagining the relationship between the autonomy and social embeddedness of law.

Also writing of transnational or international legal policymaking processes, Riles argues that networks of activists, technocrats, and putative lawmakers are bound together not by norms, processes, or projects, but by an aesthetic, which she understands as a shared sensibility to form.<sup>7</sup> She,

<sup>5</sup> See, for example, Costas Douzinas and Lynda Nead, 'Introduction' in Costas Douzinas and Lynda Nead (eds.), *Law and the Image: The Authority of Art and the Aesthetics of Law* (University of Chicago Press, 1999).

<sup>6</sup> Bernstein, *The Fate of Art*, p. 9.

<sup>7</sup> Annelise Riles, *The Network Inside Out* (University of Michigan Press, 2001), pp. 185–86. Her cybernetic account of an aesthetic is heavily influenced by Latour and forms the basis of follow-up work on the circulation of documents as a technology of administrative power: Riles, *Documents: Artifacts of Modern Knowledge*.

too, urges scholars to study the aesthetics of policy networks and the policies they produce. However, her formalist view of aesthetics is appropriate for the work of authoritative experts – these experts are subjects who are individuated nodes in a network. And like Nietzsche's Apollonians, they seek in aesthetics a 'wise calm' and 'higher truth ... in contrast to the only partially intelligible reality of the daylight world'.<sup>8</sup> Rule of law reformers, by contrast, have different aesthetics. Their self-erasure intimates a negative power in their aesthetic, creating radically blank spaces that disrupt forms such as a network.

Adorno argues that works of art are distinctive because they go beyond the 'barbar[ism]' of social realism and mere representation.<sup>9</sup> They imitate existing social patterns of domination, but in doing so, they denaturalise and challenge them: 'The opposition of artworks to domination is mimesis of domination. They must assimilate themselves to the comportment of domination in order to produce something qualitatively distinct from the world of domination'.<sup>10</sup> As a result, 'radical negativity [of the social order] ... has become the heir of the sublime'.<sup>11</sup>

Rule of law reformers might produce a mere representation of existing patterns of domination (in legal transplants, for example). However, their ability to deny the form and content of the rule of law can be understood as producing the possibility of radically negating existing legal and institutional orders. Doing so allows (but does not necessarily lead) them to imagine multiple legal or administrative 'fictions' (as Lant Pritchett describes legal and institutional reform), meaning different visions of institutional orders.<sup>12</sup> Ambivalent to the content of those fictions, and in full knowledge that they don't know how to make them real, rule of law reformers still work to turn these fictions into legal or administrative 'fact' – that is, to try and give that fiction life by making it appropriate to the context, with enough autonomy to engage with the radically unanticipated dimensions of social life. The thing towards which they work is the moment when administrative fiction and fact merge – the concrete instantiation of the sublime rule of law.

Thinking about the sublime rule of law is thus another way of expressing the political potential of reformers' denial of the form and content of

<sup>8</sup> Friedrich Nietzsche, *Nietzsche: The Birth of Tragedy and Other Writings*, eds. Raymond Geuss and Ronald Speirs, tr. Ronald Speirs (Cambridge University Press, 1999), p. 15.

<sup>9</sup> Adorno, *The Transformative Power of Performance*, 56.

<sup>10</sup> Adorno, *Aesthetic Theory*, p. 289.

<sup>11</sup> Adorno, *Aesthetic Theory*, p. 284.

<sup>12</sup> Lant Pritchett, 'Folk and the Formula: Pathways to Capable States' (Annual Lecture, UNU-WIDER, 2012).

the rule of law. This account of the rule of law reformer is akin to Keats' 'negative capability': 'when a man is capable of being in uncertainties, mysteries, doubts, without any irritable reaching after fact and reason'.<sup>13</sup> Furthermore, when reformers seek (and fail) to organise, discipline, and delimit that potential – for example through drafting syllabi or establishing a shared set of conceptual reference points<sup>14</sup> – they are undertaking a form of political work in an attempt to determine the nature of law's autonomy or to shape the horizons and contest the sublime rule of law's 'radical negativity'. I am concerned with how to analyse that work.

#### 4.2.2 *Fantasy*

I further understand reformers as embodying a fantasy of attaining the sublime rule of law. That is, rule of law reformers' commitment to the rule of law can be expressed not only by saying that they do not know what the rule of law is but also by saying they do not know how to do it. My use of 'fantasy' reflects a specific doubledness: the reformer's desire for attaining the sublime rule of law as well as their simultaneous acquiescence to the inevitability of not attaining it. As Nick Cheesman says of rule of law reform in Myanmar, the rule of law operates as a 'signifier of desire', motivating reformist action with no programme and towards conflicting ends.<sup>15</sup>

In invoking the rule of law as a formless object, reformers produce themselves as fragile agents, self-consciously struggling and failing to

<sup>13</sup> Walter Jackson Bate, *John Keats* (Harvard University Press, 2009), pp. 248–49. Negative capability has become a much-abused term, with brief Keats quotes inspiring a cottage industry of well-cited work as wide-ranging as management theory and psychoanalysis: Robert French, "'Negative Capability": Managing the Confusing Uncertainties of Change', *Journal of Organizational Change Management*, 14:5 (2001), 480; Mitchell Wilson, "'Nothing Could Be Further from the Truth": The Role of Lack in the Analytic Process', *Journal of the American Psychoanalytic Association*, 54:2 (2001), 397. It was famously taken up by Unger as a matter of social philosophy: Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Cambridge University Press, 1987), pp. 36–37. My use of it has much more in common with a reading of Keats that sees negative capability as a special capacity to be nurtured and which describes not a human faculty but a shared sensibility across a group of aesthetes: see further Walter Jackson Bate, Maura Del Serra and Dominic Siracusa, *Negative Capability: On the Intuitive Approach in Keats* (Contra Mundum Press, 2012).

<sup>14</sup> Amanda Perry-Kessaris, 'Introduction' in Amanda Perry-Kessaris (ed.), *Law in Pursuit of Development: Principles into Practice?* (Routledge, 2009), p. 4.

<sup>15</sup> Nick Cheesman, 'That Signifier of Desire, the Rule of Law', *Social Research: An International Quarterly*, 82:2 (2015), 267.

give form to something beyond their reach. A crisis of representation is not a terminus but a starting point for them (although they might choose not to proceed beyond it, of course: ‘the field of rule-of-law reform has remained in its conceptual infancy’, laments Kleinfeld<sup>16</sup>).

I draw on Ferguson’s Burkean idea that in fantasising about realising the sublime rule of law, the individual reformer is ontologically ambivalent, caught between multiple understandings of herself as a subject and socially induced object.<sup>17</sup> This, in turn, provides a theoretical frame for rule of law reformers’ efforts to reconfigure their accounts of their professional structure and agency, as can be seen in Greg’s efforts to articulate rule of law through a syllabus.

Of course, some might argue that, even if the rule of law is sublime, attaining it is no fantasy – the rule of law can be a reality. We may not know what it is, but we know how to do it, whatever it may be – we can transplant institutional forms from the Global North, we can develop indicators of progress and regress, we can accumulate experience in constitution-drafting from Eastern European transitions, and eventually, we will know it when we see it.

I do not contest the validity of specific efforts to build the rule of law. Instead, I am concerned with how these efforts necessarily slip away from attaining an ideal of the rule of law, from the perspective of reformers. In doing so, I open space to identify the political work that minimises and shapes that inevitable slippage as well as how that slippage can work to further the interests of one party or another. That is, where thinking of the rule of law as a sublime draws attention to the political work of trying to shape law’s autonomy, thinking of the rule of law as a fantasy of its attainment points out how that political work shifts and moves, as reformers posit, negate, and reformulate each other’s ideals of the rule of law. This reflects Peerenboom’s summary of contemporary rule of law reform: ‘As

<sup>16</sup> Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Carnegie Endowment for International Peace, 2012), pp. 2–3.

<sup>17</sup> Frances Ferguson, *Solitude and the Sublime: Romanticism and the Aesthetics of Individuation* (Psychology Press, 1992), p. 7. I avoid the language of aesthetic alienation here, as it presupposes a modern unity (whether false or true) – or untroubled subjecthood – that precedes an aesthetic encounter: Lawrence J. Biskoivski, ‘Politics versus Aesthetics: Arendt’s Critiques of Nietzsche and Heidegger’, *The Review of Politics*, 57:1 (1995), 59. My point here also begs the following question: does the reformer produce the conditions of her own alienation, or do those conditions exist *ex ante*? This is not a debate in which I seek to engage, nor does it affect the gravamen of my theoretical argument. I do provide a historicizing sketch of the emergence of self-denying expertise in Chapter 6, but I express that sketch as a self-contained political intervention.

the field has expanded, so have definitions of rule of law and the normative goals that rule of law is supposed to serve ... It is time to give up the quest for a consensus definition or conception of rule of law and to accept that it is used by many different actors in different ways for different purposes'.<sup>18</sup>

### 4.2.3 *Shadow*

Finally, I posit that both the rule of law and its reformers emerge from, rather than precede, the constant possibility of negating and reformulating ideas about the rule of law. And the forms that emerge are shadows. By this, I mean that reformers continue to pursue the rule of law even when they don't know what it is or how to do it. And in knowing that the rule of law is unattainable, reformers' persistent pursuit of their fantasies about attaining it produces fuzzy refractions and approximations of the sublime rule of law – and, in turn, of rule of law reformers themselves.

Theoretically, I am influenced here by Benjamin's exploration of phantasmagoria – a product of a nineteenth-century form of entertainment: 'Using a movable magic lantern called a phantoscope, it projected for its spectators a parade of ghosts' on smoke, wall, or movable screen.<sup>19</sup> In *The Arcades Project*, Benjamin adopts phantasmagoria as a metaphor for the phenomenal and socio-political experience of commodification. The phantasm in the smoke masks the process of its production – the lantern and its operator are also lost in the smoke. At the same time, it is not a mere representation of the objective world but an imaginative and unpredictable expression of it. For Benjamin, the phenomenological experience of phantasmagoria stands in for a modern sense of spectating society and suspending one's disbelief in the conditions of its production; at the same time, experiencing a phantasmagoria is a synecdoche for the immediate experience of fantastical yet recognisable things such as commodities made of natural stuff.<sup>20</sup>

<sup>18</sup> Randy Peerenboom, 'The Future of Rule of Law: Challenges and Prospects for the Field', *Hague Journal on the Rule of Law*, 1:1 (2009), 5, 7.

<sup>19</sup> Margaret Cohen, 'Walter Benjamin's Phantasmagoria', *New German Critique*, 48 (1989), 87, 90.

<sup>20</sup> See, for example, Benjamin's account of World's Fairs as a mode of producing modern capitalist subjects: 'World exhibitions glorify the exchange value of the commodity. They create a framework in which its use value becomes secondary. They are a school in which the masses, forcibly excluded from consumption, are imbued with the exchange value of commodities to the point of identifying with it: 'Do not touch the items on display.' 'World exhibitions thus provide access to a phantasmagoria which a person enters in order to be distracted'. Walter Benjamin, *The Arcades Project* (Harvard University Press, 1999), p. 18.

So understood, The Arcades Project could be extended as a humanistic methodology to understand how the rule of law emerges as a phantasmagoria from the relationship between the fantasies of its attainment (which might, for example, be rooted in colonial rule) and the ongoing subversion of rule of law-building efforts, as Shane Chalmers has done with rule of law reforms in Liberia.<sup>21</sup> This would be to place emphasis on the dialectic between the oppressive seduction of the rule of law's fantastical qualities, and the immanent potential within the rule of law to reveal and transcend that oppression. This is, then, of a kind with efforts to work through law's aesthetics to find within it law's alterity. By contrast, I am concerned with unpicking the production of those phantasmagoria, or sequence of shadows, as part of the phantasmagoria itself – without trying to transform the process of production into a backstage process that can then be alienated and studied as a social-scientific object.

There are limits to the available theory on the work it takes to produce these shadows (at least in the traditions of aesthetic theory within which I am working). For Kant, a genius produces a sublime – someone with 'a talent for producing that for which no determinate rule can be given'.<sup>22</sup> That talent can thus neither be taught nor learned.<sup>23</sup> For Benjamin, the artist, too, is a contemplative individual in the guise of various ideal types.<sup>24</sup> For Adorno, authentic art emerges not from the 'productive artist'<sup>25</sup> but from the material dialectic between the autonomous artist and the raw material of the artwork as she works through the creative process. 'Only the autonomous self is able to turn critically against itself and break through its illusory imprisonment' and into a productive relationship with that material.<sup>26</sup> On the whole, these theorists are concerned with the relationship between the individual artist and the work of sublime or authentic art. Put otherwise, if something resembling art was the subject of a backstage process of

<sup>21</sup> Shane Chalmers, 'Law's Imaginary Life on the Ground: Scenes of the Rule of Law in Liberia', *Law & Literature*, 27:2 (2015), 179, 183–84.

<sup>22</sup> Kant, *Critique of the Power of Judgment*, p. 186.

<sup>23</sup> Kant, *Critique of the Power of Judgment*, p. 188.

<sup>24</sup> Benjamin variously reproduces Emile Faguet's account of Baudelaire ("Benediction": the artist here below is a martyr'. "L'Albatros": the artist flounders in reality'. "Les Phares": artists are the beacons of humanity); the Larousse Dictionary's definition of 'flâneur', a central term in his account of the Parisian arcades ('Most men of genius were great flâneurs – but industrious, productive flâneurs [...] Often it is when the artist and the poet seem least occupied with their work that they are most profoundly absorbed in it'); and refers to Haussman as an 'artist-demolitionist'. Benjamin, *The Arcades Project*, pp. 653, 419, 128.

<sup>25</sup> Adorno, *Aesthetic Theory*, p. 171.

<sup>26</sup> Adorno, *Aesthetic Theory*, p. 160.

production or fabrication, it would cease to be authentic art, and instead be inauthentic art, or perhaps craft.

Instead, I am interested in how the sequence of shadows enfolds its shadowy production into its phantasmagoric effects. That is, the approximations of the fantasy of the rule of law that reforms produce in the world are hazy, unstable, and potentially evanescent (in contrast to Adorno's take on mimesis, which is inflected with a formal clarity that can depict and denaturalise 'domination'). These shadowy approximations reflect different fuzzy views on the attainment of the rule of law, producing in turn a fuzzy account of the reformer and her structure and agency – both emerging from the ways that the reformer denies that she knows what the rule of law is and how to do it, even as she pursues it. Of course, some might argue that rule of law reformers operate in the light, as true believers in the sublime. However, Greg's reflexive anxiety about his professional expertise, both at the beginning of this chapter and in earlier chapters, suggests otherwise.

As Park suggests in his study of anti-HIV treatment in Uganda, there are real consequences to the ways in which reformers take fuzzy form. (For Park, they are to do with the politics of 'hope'.) He examines the distribution of anti-retrovirals (ARVs), pursuant to the Millennium Development Goal (MDG) indicator on access to treatment for HIV. For local primary healthcare posts, the resupply chain for ARVs ended up being not simply unpredictable but radically uncertain – with the fragmentation of suppliers and donors, the capture of supply chains, poor stock records, and so on. There was no way of knowing if, how, and when the indicator would be met. Instead, the indicator formed an as-if baseline against which local staff improvised the rationing of treatment in their circumstances and against which the sick understood just how sick they were (and thus contextualised their claims to treatment).<sup>27</sup> As Park puts it, staff and the sick improvised, driven in the circumstances by the importance of sustaining each other's hope (which he understands as an expression of mutual ethical obligation): '... [A]ctors are carefully trying not to undermine the level of care necessary to keep hope alive in the improvisation of therapy. Being careful expresses the reflexivity necessary for adjusting measures, redefining rules, and other practices of improvisation in living with uncertainty as a condition.'<sup>28</sup> Shared ignorance about

<sup>27</sup> Sung-Joon Park, "Nobody Is Going to Die": An Ethnography of Hope, Indicators, and Improvisations in HIV Treatment Programmes in Uganda' in Richard Rottenburg, Sally Engle Merry, Sung-Joon Park, and Johanna Mugler (eds.), *The World of Indicators* (Cambridge University Press, 2015), pp. 189–90.

<sup>28</sup> Sung-Joon Park, "Nobody Is Going to Die", p. 192 (citation omitted).

attaining the MDG led to shared improvisation in the distribution of ARVs. In Park's telling, this improvisation was guided by a shared sense of hope among local patients and staff. This hope thus kept the MDG fuzzy – meaningful enough to make real, and meaningless enough to continually reinterpret.

How is it possible to describe the nature of the fuzzy and shifting rule of law reformer and the rule of law that emerge from these shadows – and the effects of rule of law reform that result? As noted above, the theoretical traditions I draw on do not provide an immediate methodological framework. In the next section, I offer performance as a means of showing and studying the reformer and her reforms.<sup>29</sup>

### 4.3 Method: To Act, to Do, to Perform

I begin with the simple point made by Greg at the beginning of this chapter – that whatever else we might not know about rule of law reformers, they are professionals, in that they are not amateurs. This assertion has two components. The first is the material discussed in the previous section on theory – the manifold ways that reformers might distinguish themselves from amateurs and the similarly manifold ways that they might collapse and unmake those distinctions, all of which might come to be understood as the substance of their professional work. The second is the basis on which they can continue this work. Recall Greg's feelings of 'worry' about amateurs getting into the field, his 'anxiety' in Chapter 2 about his skills, or Jackie's assertion that she wanted to find 'the right person' for her team. Reformers, for all their efforts to deny or make slippery their professional selves, are irreducibly embodied – physical and affective.

By way of example, one piece of advice I continually received from colleagues and bosses was always to know my 'exit strategy'. We enjoyed telling each other what we are 'actually' good at and what we would thus do when we eventually got fed up and gave up on rule of law reform. I have heard about bakeries, gardening, and – in my case – doing voiceovers.

<sup>29</sup> A turn to performance fits with my theoretical influences. It is woven into the fabric of Frankfurt School aesthetic thought, including deep engagement with theatrical practice: Will Daddario and Karoline Gritzner, 'Introduction to Adorno and Performance' in Will Daddario and Karoline Gritzner (eds.), *Adorno and Performance* (Palgrave Macmillan UK, 2014), pp. 9–10. It would be theoretically tendentious for me to claim that studying the process of aesthetic production through performance is an extension of this tradition; instead, I develop a methodological apparatus that can stand on its own while being influenced by my theorisation of rule of law reform here.

This may be cathartic, but it is no idle musing. One former colleague actually pulled the trigger and left to run a hotel – a fact we referred to when talking about our own potential exits. Of note, the activities are generally crafty: imagining a life in which we are individual craftspeople, our bodies in physical communion with materials under our control. Whatever we are – whether rule of law reformers or not – we think of ourselves in bodily terms. The body is the site of the ongoing project of reinterpreting – and potentially erasing – our professional selves.

There are, of course, sociological methods that grapple with bodies in mundane action. In pursuing a deeper understanding of ‘the theory of social action, the nature of intersubjectivity and the social constitution of knowledge’,<sup>30</sup> an ethnomethodological tradition ‘treat[s] practical activities, practical circumstances, and practical sociological reasoning as topics of empirical study, and ... pay[s attention] to the most commonplace activities of daily life’.<sup>31</sup> Yet at heart, the ethnomethodological tradition is based on a belief in the ‘inherent intelligibility and accountability’ of social action, as produced and parsed by social agents.<sup>32</sup> People do not negotiate their subjecthood in an encounter with a sublime; rather, they are meaning-making subjects, through common sense knowledge and activities.<sup>33</sup>

Similarly, one might turn to theories and methods that draw on Goffman’s social dramaturgy. Theatre is a powerfully productive metaphor for Goffman to explain the structures of intersubjective communication. For him, micro-social interactions are constitutive of social identities, as people engage in ‘performances’ of ‘roles’ on social frontstages and backstages and deliver ‘lines’ from social ‘scripts’.<sup>34</sup> People strategically inhabit and negotiate those roles to generate a particular impression among an ‘audience’; in doing so, people and roles mutually constitute and redefine. Thus, for Goffman, as for Garfinkel, people have a specific type of agency: they seek to produce meaning about the world and themselves. Goffman further draws our attention to the strategic dimensions of this agency, pointing out how people signal meanings on the social frontstage through actions whose effects they have calculated from backstage. Moreover, meaning is communicated in the ways that people take up rituals and conventions – or deliver ‘lines’ – and the extent to which others are willing to

<sup>30</sup> John Heritage, ‘Ethnomethodology’ in Anthony Giddens and Jonathan Turner (eds.), *Social Theory Today* (Stanford University Press, 1988), p. 225.

<sup>31</sup> Harold Garfinkel, *Studies in Ethnomethodology* (Polity, 1991), p. 1.

<sup>32</sup> John Heritage, *Garfinkel and Ethnomethodology* (Polity, 1984), p. 5.

<sup>33</sup> Garfinkel, *Studies in Ethnomethodology*, pp. 43–44, 75.

<sup>34</sup> Erving Goffman, *The Presentation of Self in Everyday Life* (Anchor Books, 1959).

accept that delivery.<sup>35</sup> Here, again, people are not engaged in making and unmaking themselves in an encounter with a sublime.

I draw a contrast to expert ignorance, in which meaning is not the only thing that is sought, and experts themselves point to the exhaustion of available conventions for their professional roles by pointing out that they do not know what they are doing. I turn instead to traditions of theatre and performance analysis as a means of understanding rule of law reformers and their activities. My take is resolutely 'postdramatic'.<sup>36</sup> That is, I am concerned with performance as a staged material practice (in contrast to metaphorical uses of the idiom of performance such as Goffman's). At the same time, I am concerned with performance as a conceptual, structural, and experiential rupture with dramatic theatre, troubling formal and institutional priors such as the stage, the 'text' (or the ability to read theatre as literature), and character/actor/audience distinctions.

Such a postdramatic view entails focusing on the body of the performer and her real-time actions (in contrast to, say, the text or the stage) as a means of bringing into focus the aleatory and transitory dimensions of the 'reality' she tries to produce for the audience, as well as its political consequences.<sup>37</sup> Relevant to my inquiry, by emphasising bodily practices of reality-making, it foregrounds the contingent physical production of space, time, and (self-)identity by rule of law reformers. Postdramatic performance is thus not 'a domain of artistic activity or [...] an extensive metaphor of human life, but rather [...] as a means of inducing the audience to watch themselves as subjects which perceive, acquire knowledge and partly create the objects of their cognition'<sup>38</sup> – helpful in trying to capture how rule of law reformers move between and reflect on subjecthood and objecthood over time.

My methodological intervention is thus modest: rather than generate a whole new methodological architecture, I seek to reintroduce existing traditions of theatre and performance analysis to the study of this particular and contemporary form of expertise that is capable of denying its own existence. I draw in particular on two types of postdramatic performance analysis: structural performance analysis and phenomenologies of performance.

<sup>35</sup> Erving Goffman, *Interaction Ritual: Essays in Face to Face Behavior* (Aldine, 1982).

<sup>36</sup> Hans-Thies Lehmann, *Postdramatic Theatre* (Routledge, 2006).

<sup>37</sup> Sara Jane Bailes, *Performance Theatre and the Poetics of Failure*, 1st edition (Routledge, 2010), p. 9.

<sup>38</sup> Malgorzata Sugiera and Mateusz Borowski, 'Introduction' in Mateusz Borowski and Malgorzata Sugiera (eds.), *Fictional Realities/Real Fictions: Contemporary Theatre in Search of a New Mimetic Paradigm* (Cambridge Scholars Publishing, 2009), p. 9.

Together, these foreground the experience of bodily action (as opposed to, say, a style of performance analysis that foregrounds the affective dimensions of rule of law reform),<sup>39</sup> which allows me to think about the experiential dimensions of embodiment as well as its structural effects.

#### 4.3.1 *Structural Performance Analysis and Phenomenologies of Performance*

The early twentieth-century antecedents of a structural performance analysis are twofold. The first: a pragmatic strand of aesthetic criticism focused on how – or the internal mechanisms through which – a work of art has effects (drawing in particular on Dewey, Frye, and Burke). This strand rejected the abstract formalism of New Criticism while also challenging a contemporary tendency to ‘attach criticism to one of a miscellany of frameworks outside it’, such as Marxism, existentialism, Freudian analysis, and so on.<sup>40</sup> It offered the possibility of an internalist mode of analysis without fetishising the form of the object of study. The second: an overlapping neo-Aristotelian strand of theatre criticism that reasserted action rather than the text as the object of study.<sup>41</sup>

In drawing on structural performance analysis, I do not dismiss the value of a ‘miscellany’ of frameworks of interpretation. However, for present purposes they are of second-order importance, providing productive assumptions about the reformer’s context rather than offering tools to elucidate it. As Schechner argues in his seminal 1965 account of this sort of performance analysis, ‘[t]he interpretive critic’s weakness (which, when he is perceptive, is also his strength) is to go on about the play while avoiding going into it’.<sup>42</sup> Drawing on the work of Stanislavski and Brecht, he continues: ‘It is by examining and understanding the event – the action – that one learns about plays; and, if one’s concentration is fixed on the event, there is little danger that the play will dissolve in a discussion of secondary matters, no matter how interesting or revealing’.<sup>43</sup>

This analysis takes action as the starting point of its inquiry. It is structural in a loose sense. As Schechner argues, ‘[t]he modern theatre critic ...

<sup>39</sup> Jothie Rajah, ‘Rule of Law Lineages: Heroes, Coffins, and Custom’, *Law, Culture and the Humanities*, 13:3 (2015), 369.

<sup>40</sup> Northrop Frye, *Anatomy of Criticism* (Princeton University Press, 2015), p. 6.

<sup>41</sup> Francis Fergusson, ‘The Notion of “Action”’, *The Tulane Drama Review*, 9:1 (1964), 85.

<sup>42</sup> Richard Schechner, ‘Theatre Criticism’, *The Tulane Drama Review*, 9:3 (1965), 13, 15 (emphasis original).

<sup>43</sup> Schechner, ‘Theatre Criticism’, 19.

should take as his major occupation the elucidation of the play's structure'.<sup>44</sup> The structural analyst's questions are very simple: 'Why does this scene follow that one? What is the shape of the entire play? Why does this character say or do that now? [...] Although he may find himself working with texts alone, he constantly reminds himself [...] that the text is not the play, but its scripted representation'.<sup>45</sup> That last reminder is salutary: this form of criticism is not structural in a semiotic sense. It does not reduce action to script or to code.<sup>46</sup> Rather, it thinks through the order of action and contextualises how acts subsequently redistribute agency through time (as Schechner notes, 'Why ... do that now?'), space (why do that here?), and character or identity ('Why does this character ... do that?').<sup>47</sup>

While structural performance analysis offers analytical tools to understand action, performance phenomenologists provide an effective account of the body in action. They begin with 'how theatre feels to us [...] to keep the life in theatre [...] To return perception to [...] its encounter with its environment'.<sup>48</sup> In the context of rule of law reformers, they turn our attention to the phenomenal experience of embodying a professional – and not just any old body.

The relevant phenomenal experience is neither of the actor nor the spectator but of the performance as a whole. Everyone is entangled in the production of the performance (in the context of rule of law reformers, the fuzzy image of the rule of law). As Fischer-Lichte writes of Marina Abramović's 1975 performance *Lips of Thomas*, in which the latter intermittently cuts and flagellates herself, the audience did not know where to turn nor how to react – to observe, to intervene, to recoil. '[B]y being forced to independently prioritize their sensorial impressions, the spectators actively joined in creating the performance'.<sup>49</sup> In doing so, "[s]ubject" and "object" no longer form an opposition but merely mark different states or positions of the perceiving subject and the object perceived which can occur consecutively or, in some cases, simultaneously'.<sup>50</sup> Distinctions between inside and outside collapse, and participants relationally (but

<sup>44</sup> Schechner, 'Theatre Criticism', p. 20.

<sup>45</sup> Schechner, 'Theatre Criticism', p. 22.

<sup>46</sup> Richard Schechner, 'Approaches to Theory/Criticism', *The Tulane Drama Review*, 10:4 (1966), 20, 27.

<sup>47</sup> Schechner, 'Theatre Criticism', p. 22.

<sup>48</sup> Mark Fortier, *Theory/Theatre: An Introduction*, 3rd edition (Routledge, 2016), pp. 28–29 (citations omitted).

<sup>49</sup> Erika Fischer-Lichte, *The Transformative Power of Performance: A New Aesthetics*, tr. Saskya Iris Jain (Routledge, 2008), p. 33.

<sup>50</sup> Fischer-Lichte, *The Transformative Power of Performance*, p. 181.

not necessarily collaboratively nor antagonistically) produce the performance through their physical reactions and their engagement with, or cool remove from, or unmaking of, their surroundings. 'The ephemerality of the event ... became a focal point'<sup>51</sup> for what Alice Rayner more coolly calls a 'mutual leap into the void of meaning and the play of style'.<sup>52</sup>

This 'ephemerality' or 'leap' is one of those moments Schechner refers to when he demands that the critic ask 'Why does this scene follow that one?' Approaching it phenomenologically allows the critic to understand the powerful and contingent potential of that moment, contained in the bodies of those who comprise the scene. Rayner offers an analytic to grasp that potential and how it shapes subsequent action. She repurposes Hamlet's dictum: 'an act hath three branches: it is, to act, to do, to perform'.<sup>53</sup> From this, she ambitiously builds an edifice to dramatically comprehend human action.

She suggests that Hamlet proposes a trinity, whose unity forms the essence of action. First, an act. She renders 'act' as nominal reasoning in that it is produced by an epistemic subject. That is, acting refers to things done by the thinking, mediated, social, and sympathetic actor, who parses the world through his mental and linguistic models. In drawing on those models, his action always already re-represents a past act, thereby producing a determinate relationship between the past and the present. Second, to do. Doing is a verb, done by the physical or bodily subject, who exists in the irreducible present. Third, perform. For Rayner, Hamlet's 'perform' is adverbial, replacing the already-constituted 'act' with a style or object in the process of being bodily enacted. Performance is produced by a fragile social being, who has an immediate bodily eros as well as a social context. Performance underdetermines the linear temporality of the 'act' but provides a social-temporal structure to the pure present-tense 'do', in which 'doing' can be socially interpreted and judged.<sup>54</sup>

Rayner's analytic deepens our understanding of the structure of action. Recall that she dissolves the distinctions between audience and actor; both come together in the 'mutual leap' that produces the performance – that is, the 'doing' and the conditions of its judgement. Moving beyond the audience/actor distinction, Rayner offers us the 'performer', who is 'continually moving outside itself into new relational positions with others in

<sup>51</sup> Fischer-Lichte, *The Transformative Power of Performance*, p. 171.

<sup>52</sup> Alice Rayner, *To Act, to Do, to Perform: Drama and the Phenomenology of Action* (University of Michigan Press, 1994), p. 122.

<sup>53</sup> *Hamlet*, V. i. 11–12.

<sup>54</sup> Rayner, *To Act, to Do, to Perform*, pp. 107–29.

the play of self-representation. It is constantly showing differences ... and denying singularity'. In doing so, the performer produces 'possibility', not mere 'actuality'.<sup>55</sup> The shadowy rule of law reformer, denying and reproducing her own structure and agency, might be understood as such a performer, producing shadowy images of the rule of law.

The rule of law reformer's efforts to attain the rule of law might be understood in Rayner's register of 'doing' (from 'to do'): the effort to occupy the same space as the boundless or formless thing, which cannot be intellected. That effort erases, brackets, or identifies the radical limits of the thinking subject. The bodily object, moving and doing, remains. Her production of the fantasy of attaining the sublime rule of law might be understood in Rayner's register of 'acting' (from 'an act'). In the face of the sublime, she produces herself as a fragile thinking subject, working out how to produce representations of the sublime while acknowledging the impossibility of doing so.

Her production of shadows of that fantasy – shadowy, fuzzy, moving, evanescent, and reappearing – might be understood in the register of 'performance' (from 'perform'). That is, the rule of law reformer's 'style' (to use Rayner's term) of producing and unmaking fantasies of attaining the rule of law is an account of both herself as a reformer/performer and the rule of law as a reform/performance.

Her performance is not simply an entanglement of acting and doing, or subject and object, that produces a stable and intelligible act, as an ethnomethodological account might have it. Performance occurs through, and always bears the traces of, both radical or absolute 'doing' (or pure bodily action) and 'acting' (or pure symbolic or reasoned action). In Fischer-Lichte's analysis, Abramović's performance was constituted in part by the simple movement of the bodies of the 'spectators', and in part by Abramović's invocation of strong religious symbolic orders associated with self-flagellation and cutting. The performance emerged from the various movements through time of the participants as actors and doers.

Rayner's analytic thus offers a means of understanding performance as the relationship between body and structure. The structure of performance produces and is a product of both the aleatory and the deliberate dimensions of bodily action. But concretely, how does performance emerge? Fischer-Lichte suggests that the performer is engaged in

planning (including chance operations and emergent phenomena in rehearsal), testing, and determining strategies which aim at bringing forth the performance's materiality. On the one hand, these strategies create

<sup>55</sup> Rayner, *To Act, to Do, to Perform*, p. 103.

presence and physicality; on the other, they allow for open, experimental and ludic spaces for unplanned and un-staged behavior, actions, and events ... [These strategies] thus always already include[] a moment of reflection on [their] own limits.<sup>56</sup>

An analysis of rule of law reform might productively focus on these ‘strategies’ that create, relate, and oscillate between openness and materiality and thus produce performances.

### 4.3.2 Stanislavski’s System

I turn to Stanislavski’s *An Actor’s Work* to understand what these ‘strategies’ might look like in practice. I read the text as a practical account of how to produce a performance as well as a disciplinary account of how to train or induct performers in a certain aesthetic. Stanislavski’s account of his System is famously rendered as a fictional diary of a participant in a drama class. Through repetitive accounts of the class, Stanislavski variously asserts and shows that acting ought to be ‘experience’ rather than ‘representation’. At the heart of this is the subconscious, which is key to the performer embracing his part.

Stanislavski’s ‘subconscious’ is not the Freudian subconscious but simply the repository of an actor’s past experiences that can be channelled through the embodied performer to constitute the part or character. The challenge for the performer is to draw on the subconscious without controlling it and thus destroying its creativity:

It is always best when an actor is completely taken over by the play. Then, independent of his will, he lives the role, without noticing how he is feeling, not thinking about what he is doing, and so everything comes out spontaneously, subconsciously. But, unfortunately, this is not always within our power to control ... It is the indirect, not the direct influence of the conscious on the subconscious mind. Certain aspects of the human psyche obey the conscious mind and the will, which have the capacity to influence our involuntary processes.<sup>57</sup>

As a result, the part is created not by submerging oneself completely into the character but by ‘experiencing feelings that are analogous to it, each and every time you do it’.<sup>58</sup>

<sup>56</sup> Fischer-Lichte, *The Transformative Power of Performance*, p. 189. See also Adorno, *The Transformative Power of Performance*, p. 292.

<sup>57</sup> Konstantin Stanislavski, *An Actor’s Work: A Student’s Diary*, ed. Jean Benedetti, tr. Jean Benedetti (Routledge, 2008), p. 17.

<sup>58</sup> Stanislavski, *An Actor’s Work*, p. 19.

This relationship between the conscious and subconscious means that every action on stage has a purpose and a history, even if not explicitly expressed, such history being derived from the repository of the individual's experiences. The imaginative faculty is crucial: to imbue every action of the character with a purpose and past (i.e., subtext), you have to tap into your experiences and sensations associated with that action. Memories of emotions enable their recreation on stage, sometimes fuelled by memories of sensations. As a result, you play yourself, 'but always with different combinations of Tasks, Given Circumstances, which you have nurtured, in the crucible of your own emotion memories'.<sup>59</sup> This allows for genuine improvisation, for an ability to adapt to or even want the new or unforeseen: 'Frequently a mere accident unconnected to the play ... bursts [onto] ... the stage ... [such as] a chair falling over ... The actor [should] make it part of the play ... [as it] leads the actor to his natural, subconscious creative powers'.<sup>60</sup> Indeed, 'something impromptu, a detail, an action, a moment of genuine truth' can engender a response in your 'representations, in mental images, in appraisals, in feelings, in wants, in tiny mental and physical actions, in new small details created by your imagination'.<sup>61</sup> As the passage's use of the second-person pronoun suggests, the excitement of this means that 'the life of the character and your own unexpectedly and totally fuse. You will feel parts of yourself in the role and of the role in you'.<sup>62</sup>

At the same time, the performer and character exist within the interpretive bounds set by the characterisation of the character (a performer always feels more or less 'at war with the author'<sup>63</sup>), the institutional and physical limits of the theatre or performance space (a character only emerges 'as soon as the curtains open[] and the auditorium gape[s] wide before' the performer<sup>64</sup>), and of the performer herself (acting requires an 'exceptionally responsive and outstandingly well-trained voice and body, which must be able to convey hidden, almost imperceptible inner feelings instantly in a distinct and accurate manner'<sup>65</sup>).

Those bounds are reinterpretable with every performance. Take Stanislavski's 'magic if', which he uses as a means to stimulate and train

<sup>59</sup> Stanislavski, *An Actor's Work*, p. 210.

<sup>60</sup> Stanislavski, *An Actor's Work*, p. 338.

<sup>61</sup> Stanislavski, *An Actor's Work*, p. 331.

<sup>62</sup> Stanislavski, *An Actor's Work*, p. 331.

<sup>63</sup> Stanislavski, *An Actor's Work*, p. 9.

<sup>64</sup> Stanislavski, *An Actor's Work*, p. 11.

<sup>65</sup> Stanislavski, *An Actor's Work*, p. 20.

an actor's creative response. The 'magic if' is in essence the act of asking a provocative 'what if ...?' question – 'what if you had a gun?'; 'what if the door was too hot to touch?' – as a means of stimulating creativity and responsiveness on the part of the performer.

The secret of 'if', as a stimulus, lies in the fact that it doesn't speak about actual facts, of what is, but of what might be ... This word is not a statement, it's a question to be answered. The actor must try to answer it.<sup>66</sup>

Trying to answer such questions implicates the bounds on the performer; however, the bounds are themselves cast as 'ifs' or denaturalised. Limits are made potentially contingent until they reassert their materiality. Stanislavski thus enrolls a range of 'ifs' in the creative process:

But in complex plays, there are a huge number of possible 'ifs', created by the author and others, so as to justify this or that line of behaviour in the leading characters. There, we are dealing not with single-storey but with multi-storey 'ifs', that is, with a considerable number of hypotheses and the ideas complement them, all of which are cleverly intertwined.<sup>67</sup>

Stanislavski presents a performer as a person who draws on her creative faculties to provide an account of a thing, rooted in real experience but infinitely reinterpretable. There is no distinction between the self and the world she produces – all are similarly reinterpretable, subject to negotiation with material and institutional limits. The performance thus entails all the performers producing the ever-unfurling relationship between the material and the ludic that Fischer-Lichte sets out.

At the same time, Stanislavski argues that the specific type of performance that emerges will be a product of how the performer is trained to organise and relate her autonomous creativity and her responsiveness to circumstances or material conditions – that is, her 'style'. (Stanislavski then offers the disciplining of the 'subconscious', or the accumulation and transformation of personal experience, as the most desirable way of training the performer's style.)

Understanding rule of law reformers as dramatic performers draws our attention to the power of radically denaturalising or deconstructive statements about the rule of law, or 'ifs', as a mode of professional practice. In doing so, we can see the profession of rule of law reformers take shape through their embodiment as much as their intellect and reason – that is,

<sup>66</sup> Stanislavski, *An Actor's Work*, pp. 50–51.

<sup>67</sup> Stanislavski, *An Actor's Work*, p. 49.

their roles or performances. As Stanislavski indicates, role-playing is not an act of bad faith; it is the genesis of action – in this case, building the rule of law. Performance reveals the fuzzy concreteness of the rule of law and rule of law reformers. It also draws our attention to the particular school of performance or efforts made to train and discipline the performer's creative faculties, as exemplified by the use of particular denaturalising or deconstructive statements.

This excursion through performance criticism and dramatic practice provides a scaffolding to make a distinction between two modes of analysing rule of law reformers. One is to analyse the rule of law expert. In this mode, the expert is imagined to be a figure of authority, either fulsome or chastened. Her work is interpretive, providing others with conditions to understand the world (e.g., what the rule of law is or might be). Critics understand her to be a social or relational figure and study her as such, uncovering the contextual conditions that produce her particular view of the rule of law.

Another mode that I have attempted to set out here is to analyse the rule of law performer. In this mode, the expert is understood to deny her own authority. Her work is radically critical, undermining her and others' claims to understand the world. Critics should understand her to be an embodied figure of action and study her as such, uncovering her specific style of reform, and then inquiring into the contextual factors that condition or discipline that style.

### 4.3.3 *Style*

This mode of analysis requires a different style of writing. This is in response to a methodological challenge posed by writing about the theatricality of rule of law reform. The act of writing about a rule of law performer and her style risks itself training or disciplining the creative dimensions of a reformer's work – especially if the writing draws on the authority of social-scientific style, and the ways that it produces subjects, objects, agencies and structures.

When studying rule of law reformers, style exists in action, not only on the page. Rather than recounting my encounter or entanglement with an object, I seek to give a sense of its patterns of concretisation and evanescence in action – an endeavour only possible in Schrödinger-like fashion. There is no 'outside' or Archimedean position; instead, I reproduce and analyse my professional experiences dramatically to help the reader experience them as concrete and particular phenomena animated by the fragile possibility of their momentary sublimity.

Here again, Stanislavski is useful. His text takes a highly practical tone and is lightly theorised. As Sullivan points out,

much of what [Stanislavski] had to say was transmitted by example, personal contact, and the notes of his students. He often set up situations illustrating, rather than saying specifically, what he meant. In fact, he seems to have been unable to say anything directly at length about his perceptions; his few direct statements are made when he plays the role of Director Tortsov talking to a group of young actors.<sup>68</sup>

This is no fault in Stanislavski's work. He seeks to exemplify the movements between materiality and openness through a rendering of action (for him, a fictionalised account of training in a theatre school; for me, a traverse through my activities as a rule of law reformer; for both, a rendering of a sort of professional subconscious, in Stanislavski's terms) while drawing out some of the key characteristics of performance.

In the next two sections, I put the method and style discussed here into practice. I first return to the agricultural reform project (an instance of local implementation), reading it through the action of Beckett's *Ohio Impromptu*. I then introduce a rule of law indicators workshop (an instance of global knowledge) and read it through Miller's *The Archbishop's Ceiling*. By both staging these cases and reading them through the action of specific plays, I reflect Stanislavski's approach to learning by rendering performances in action. I do so to draw lessons about the performance of the rule of law reformer and in particular to show how a range of 'ifs' make the distinction between knowing and doing, subject and object, fluid and contingent, such that the shadowy rule of law and its reformer emerge. In doing so, I strive for 'a rough – and I hope generative – homology between form and content ... an openness to ambiguity ... [immanent in] the dramatic and dialogic structure of a play'.<sup>69</sup>

## 4.4 Performing the Project: Staging Rules and Regulations

### 4.4.1 *Ohio Impromptu*

#### 4.4.1.1 Overview

*Ohio Impromptu*, one of Beckett's later plays, consists of four short pages, written for an academic conference held in honour of his seventy-fifth

<sup>68</sup> John J. Sullivan, 'Stanislavski and Freud', *The Tulane Drama Review*, 9:1 (1964), pp. 88–89. Sullivan continues: 'Although I have no intention of minimizing Stanislavski's stature, it must be said that in the history of ideas he is only a sensitive performing artist': *ibid.*

<sup>69</sup> A strategy reflected by Pachirat in his ethnographic theory textbook-cum-script: Timothy Pachirat, *Among Wolves: Ethnography and the Immersive Study of Power*, 1st edition (Routledge, 2017), p. xiv.

birthday. The play is minimalist. It opens with a 'fade up' of light, revealing a tableau held for 'ten seconds'. Two men of unknown age sit next to each other at the corner of a table, one facing the audience from behind the table, the other in profile at its side. They are 'Listener' [L] and 'Reader' [R], both 'as alike in appearance as possible', with long black coats and long white hair. L's '[b]owed head [is] propped on right hand. Face hidden'. R's 'Bowed head [is] propped on right hand ... Book on table before him open at last pages'. The setting is formal, minimal, and stark: a black stage with a white table and chairs; long black coats and white hair; a '[b]lack wide-brimmed hat at centre of table'.

The plot, such as it is, centres on R reading from the book a story about a man who sought comfort following the loss of someone 'dear' to him. In the story, the grieving man went to the Isle of Swans, 'pacing the islet ... in his long black coat ... and old world Latin Quarter hat ... paus[ing] to dwell on the receding stream' and then retracing his steps. Suffering and unable to sleep, another man – sent by the ghost of the grieving man's 'dear [one]' – arrives to offer solace. The visitor sits and reads to the grieving man from 'a worn volume' every night. The plot of the story and the play end with R telling L that the visitor tells the grieving man that, per instructions from his 'dear', this will be 'a last time' he reads him the volume and that he will not visit again. The story-cum-play ends with R recounting to, or telling, L: 'Nothing is left to tell', a phrase which L indicates he should repeat. The phrase is a progression from 'little is left to tell', a sentence which R reads from the book on two earlier occasions.

The action of the play is structured around R's occasional pauses, and from time to time, L's fist knocking on the table (twelve times in all). Each knock, with two exceptions, follows a pause by R. These knocks trigger either repetition of certain passages from the book or sanction continuation of the narration. They function to reconfigure the plot; the pauses operate as openings for L to do so, some taken, some not. The play concludes with R closing the book, after which L and R 'raise their heads and look at each other' for the first time in the play. Mirroring the opening to the play, they hold the tableau for ten seconds before a fade out.

#### 4.4.1.2 Analysis of the Play

The action of the play emerges from 'the tension between the visual and the verbal, the staged action the narrated text'.<sup>70</sup> Using formal gambits, it

<sup>70</sup> Elizabeth Klaver, 'Samuel Beckett's "Ohio Impromptu, Quad," and "What Where:" How It Is in the Matrix of Text and Television', *Contemporary Literature*, 32:3 (1991), 366.

begs and holds in productive tension questions about the identities and relations of L and R, of the stage and book, and of playwright, performer and audience. The first gambit is the tension in the relationship between L and R. Are they, in fact, the same person? Split selves? And how does their relationship evolve through both the action and the plot (of the story and of the play)? Beckett suggests some formal unity: 'With never a word exchanged they grew to be as one'. The play remains ambivalent as to whether this unity is figurative or literal, an ambivalence echoed in the symbolic conversion of the acts of listening and reading into the characters L and R. This ambivalence between figurative and literal is central to the production and motor of the play's action: whether the story is fictional or real; whether the characters represent or live their loss; and so on. Indeed, this profoundly theatrical and quintessentially modernist ambivalence expresses the multiple and tensile relationships between acting (figurative) and doing (literal, in the sense that L and R are reductions of a listening and reading whole, sat next to each other) modes of experience and action.

The second gambit is the relationship between the action on stage, the book being read, and the text of the play. The text, its reading, and the book are enacted on the same stage. They are enacted by a generic Reader and Listener – named as such in the script, acting as such on stage, and performing as such with respect to the book. The men, the 'long black coat ... and old world Latin Quarter hat', and the book all appear on stage and are described in the book. The Reader and Listener in the book and on stage are linked and leave open the question of the relationship between the audience and the actor – a question posed intensely through the audience-like spectating stillness of the opening and closing tableaux. Again, the play invokes the experience of the tension between shared and individuated being, or intersubjective acting and bodily doing.

The third gambit is the relationship between the playwright, actor, and audience – or script, enactment, and reception. This relationship is also called into question – the separation between the three roles as well as their structure. The Listener, for example, spectates, watching and listening to the Reader. At the same time, he acts, a co-protagonist. And he orders the text and action: in terms of the plot, he seeks solace, driven by his loss; formally, he reorders the language and rhythm of the action through his inhabiting of the Reader's pauses, choosing to continue listening or to knock and seek some striking repetition. At the same time, the Listener's agency is limited by the text: the repetition of words written into the book and into the script. The tension between these three roles

emerges clearly in the final line, 'nothing is left to tell': the book ends, the play continues for ten seconds, the characters watch each other, and the audience watches the stage. Beckett hints at the idea that this body of tensions can be productive. There is an 'impromptu' moment in the play – R 'looks closer' and re-reads a section; he prefaces it with 'yes'. The 'yes' is trivially an affirmation of what he sees; it is also the only moment at which R departs from the text of the book he is reading. Novelty is found in the affirmation of the content of a text that is being re-read repeatedly. This suggests the consummation of the playwright–actor–audience tension: a brief moment of origination is possible, but it is a tightly scripted moment of affirmation to the Listener and audience. This reflects the very title of the play: *Ohio*, a reference to the high-school joke (a high between two zeroes – or life between birth and death); *Impromptu*, a reference to the tensions and structures that enchain but enable to short possibilities of creative origination in that life.

This third gambit thus reproduces the tension between the 'inside' and 'outside' that plagues the analysis of self-denying expertise and ignorance. That tension, emerging from an acceptance of the tight scripts that surround action (e.g., the bureaucratic strictures that limit development programming), embraces the possibility of the 'impromptu' only when those strictures have been recognised, our fantasies of genuine agency have been denied, and yet the possibility of genuine novelty remains. In other words, the 'outside', from which the 'inside' can be perceived, would be analogous to the position of the playwright; in *Ohio Impromptu*, Beckett calls on us to recognise that we all possess that agency and that our claims to that agency are highly circumscribed. We occupy the roles of playwright, actor, and audience; of subject, performer, and object. In doing so, our attention inevitably turns to the question of motivation that sits behind agency. This question is weighed in the rhythm of action – the structure of the acts of writing, reading, and listening, of pausing and knocking; all call on the viewer to assess (if not resolve) why agency is exercised and how much agency actors have.

This, too, reflects an orientation towards the tensions between acting and doing in a reform performance. The opening suggests acting: readings which may encompass the being of the Listener; the act of spectating which may position the audience at the table on the stage. The closing of the play suggests a moment of doing: the last reading before final closure or death; the particularisation of the experience of the Listener and Reader through a recognition that the reading, and the play, are for them imminently over.

The three gambits express tensions between separation and relation, which are materially present on stage through the actors' bodies (indeed, as Bailes writes of her experiences performing Beckett, the 'actors suffer the exposed conditions of the encounter itself'<sup>71</sup>). The tensions emerge in particular in the Reader's pauses. Those moments are charged with the possibility of agency, to be interpreted through performance. They are junctures through which the text of the book and the action of the play are to unfurl, in particular on the part of the Listener's reconfiguring knocks, the Reader's impromptu moment(s), and the spectator's awareness of her own sounds as the aural action on stage freezes. Less apparent, but similarly charged with agency, are the moments of repetition on the part of the Reader. Repetition reinscribes the primacy of the text while occurring at the behest and under the control of the Listener's knocks and which further incorporate the audience in a ritualised process of memory and mourning. Silence and repetition are, for Beckett, vehicles to express the deep entanglement of what I am calling acting and doing – to track their changes, recognise and be humble about the possibilities of agency that come with them, and relate their changing relationship to the ensemble of actions that constitute the play.

#### 4.4.2 *The Project in Two Scenes*

How do reformers' practices of self-denial lead to decisions being taken? The analyses in the previous chapter have, with varying degrees of care, turned to external sources to answer that question. Social relationships, discourses, practices – these all reinscribe an image of the authoritative expert (or authoritative expertise) onto reformers' efforts to deconstruct each other and their positions. Rendering the project as performance, by contrast, shows how these efforts can accumulate to produce decisions.

In light of my reading of *Ohio Impromptu*, I suggest that we could understand decisions through silences and repetition during the action of the project, analysing how they structure why decisions are impossible in some moments and why participants take action in others. To do so, I reflect on two specific and stylised scenes that provide mundane moments of action: my decision to provide a figure for 'global best practice' on the percentage of revenues that should go into ADAs, and the selection of community representatives at the community meeting.

<sup>71</sup> Bailes, *Performance Theatre and the Poetics of Failure*, p. xv.

**SCENE 1**

YAHYA, an official for the National Agricultural Agency, based in Country

DEVAL, an official for the Development Agency, based internationally

TED, an official for the Development Agency, based in Country

BETTY, an official for the Other Donor, based in Country

EMMANUEL, an official for the NGO, based in Country

A large wooden table is centre stage. Eight chairs, black leather. Y sits at the head of the table. The others are seated around it.

Y [BY WAY OF FORMAL INTRODUCTION TO D AND T]: We are glad to have your team back here – it has been a long time!

D: Thank you (T is silent).

Y: You are an expert in the profit-sharing rate – can the DA guide us in the global best practice? What have other countries done?

D: Well ... it depends. What are the concessions worth?

E: We must know the rate first. How can we talk to people about the ADA without it?

D: Well, different countries – different countries use different numbers. There's a whole range of numbers. Papua New Guinea, you might see a figure of 3 per cent. But in the Philippines, it's around 1 per cent. That works because the countries are different politically – you know, local farmers feel the impact of big agriculture differently. And the type of agriculture changes, too.

Y: But you must have a right figure based on your experience all over the world.

T [INTERJECTING]: It's very interesting. Like I said at our last meeting, each of our districts for the project is very different. You have to be contextual. You want to go to the Chief of Upper Nyasa and say his people should get the same profit as the people of Lower Nyasa? When most of the effects from these companies are in his Chiefdom? Come on! You know these Chiefs better even than I do.

B [PAUSING]: Look, for this project to go forward, we need a number! It is not fixed, but we need one now so that we can begin this work.

[They turn to stare at D and T.]

[A long beat. D and T look at each other.]

D: It is usually between 1 per cent and 3 per cent. But it will depend on the circumstances of each agricultural project ...

Y: We'll have to learn more about these circumstances, then. [T nods.]

T [TO D]: I'm surprised you gave them a figure in the end ...

**SCENE 2**

D and T stand downstage left, facing the audience. Next to them, a tall rusted metal sign. Hand-painted on it in black letters: 'Built with the generous support of. Underneath that, the European Union flag and AC logo.

A group of crisply dressed VILLAGERS sit on the floor centre stage, looking at D and T.

E, Y, and the CHIEF sit upstage on coloured low plastic chairs.

The villagers move around D and T. Some step forward and interact with them silently.

Snatches of distorted hip-hop play from time to time.

E leads D and T to the Chief. The Villagers watch them.

Y stands and walks up to the Villagers. As he does so, E arranges the chairs to face the Villagers directly. D and T sit, while E stands behind them. Y stands in front of the Villagers and points to D and T.

The Villagers stand and walk as a group to up-stage right. They form a crowd with everyone facing inward. There is movement and jostling. Hands are raised from time to time.

During this E blocks D, T, and the Chief's view of the Villagers. D and T watch centre stage, where Y is watching the Villagers. From time to time, E, D, T, and the Chief engage each other in whispered conversation.

D and T stand and peer over E. The Villagers turn to face centre stage. They return to sit on the floor; one villager first walks up to E and hands him a piece of folded paper. E opens the piece of paper, nods, and hands it to Y.

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OK, fine, but this all feels pretty decontextualized. It doesn't really explain why Chief or the NGO reps act the way they do, or the types of land conflicts that the concession has brought. Do the locals trust each other or not? How has the concession shaped what they think about the Chief? And the NGO? This really doesn't seem like a substitute for a good ethnography.

#### 4.4.3 *Analysis of the Action*

As *Ohio Impromptu* reminds us, silence and repetition foreground patterns of separation and relation, or doing and acting. Take the 'long beat' that functions as the hinge of Scene 1. This is a moment of ignorance, pregnant with the phrase 'I don't know'. Subsequently, 'Deval' gives a concrete range of figures for the ADA percentage threshold. One might debate the source and validity of the figures (e.g., by thinking about an epistemic community from which they emerge) or the idea that a technocrat can give such a figure to constrain and resolve what should be a highly politically contested matter, thereby legitimating minimal corporate social investment (e.g., through a discourse analysis). One might also contextualise the pause and answer as contingent artefacts, gleaned from the use of pauses and interim documents in the implementation process that such moments are designed to be placeholders for a decision while bearing all the hallmarks of decision-making.

A performance analysis of this silence offers a different insight. First, it too reminds the viewer of the contingency of the answer I provided. While the answer recalls a script – a 'best practice' – from elsewhere, the pause inflects the answer with uncertainty. At the same time, however, the pause and answer motivate action: the percentage threshold may subsequently

be reconsidered, and/or Yahya may go on a learning trip abroad, and so on. A performance analysis makes the silence and answer a moment of structural consequence for the project, as it asks 'why give the answer now?', 'why give the answer here?', and 'why did this character give an answer?'. The different ways that the pause and answer are enacted suggest different possible future consequences and in doing so provide the viewer with a different sense of the motivations of the actors. For example, one interpretation of Yahya's question might be his concern with the political economy of the distribution of ADA funds locally; another would be his concern with the possibility of a lucrative study trip and the political economy of implementation funds more broadly.

Now take the second scene. It is an elongated moment of silence, also leading up to the possibility of a decision – the list of people to be appointed to the committee. It is another moment of structural consequence. Action unfolds directly through physical movement. The scene is physically oriented around and structured by different gazes, which generate action – gazes that emerge from the eyes of those present on stage, but also from the sign on stage, as the AC and European Union symbolically overlook the action.

The gazes are, trivially, attempts by the gazer to contextualise her own position – people look around to work out what is going on. They are also deconstructive. As the accounts earlier in this chapter, and in Chapter 3, established, the various characters leverage the open-endedness of the ADA to undermine each other's assertions of what should be done – for example, pointing to lacunae in the Act during the workshop to challenge assertions that Chiefs should be involved in the ADA-implementation process, or perhaps that they should not be, or even that anyone even knows the answer to that question. The gazes on stage are thus able to cancel out each other's authority – as well as their own if needs be. They are strong and competing claims about how the various participants are separated (through their discrete assertions about the ADA) and related (through their shared ignorance about the ADA), yet to be resolved.

At the same time, something was resolved at the courthouse. How? Emmanuel set it up in the NAA's boardroom. In line with the general practice of the working group, he produced a provisional outcome: he resolved calls for a clear decision about the MC stakeholder group by suspending and deferring resolution through time and into another contextual space (the Chiefdom). He imagined a politically complex present and a deferred, indeterminate future in which tensions have all been resolved.

Implementation – the movement between the two moments – remained undefined, for all the participants.

Emmanuel produced a particular type of non-definition. Having deferred a definition of the MC and its stakeholder group to the Chief's courthouse, he then used non-definition against itself. He was able to produce the community's side meeting by putting different authorities in one space together (the Chief, the NAA, the DA), where their gazes might cancel each other out. Take the rather ridiculous image of Ted and myself wandering around the village in our shirts, believing it to be 'the field'. We glide over the hinted-at political tensions between the Chief, villagers (noting the possibility of historic grievances dating back to the conflict), and the NGO (which may be emerging as a local broker of power and resources). We recognise the possibility that everything we will see will be artificial – and thus set ourselves up to reify and unmake it after seeing it.

Yet rather than arrogating ourselves agency – for example, producing the other actors as part of a *mise-en-scène* that lends our presence depth, both visually and sociologically<sup>72</sup> – our efforts to contextualise ourselves instead turned us into objects. It produced a reified image of us that was leveraged by Emmanuel in his NGO's power struggle with the Chief. Emmanuel seemingly did so by instrumentalising the Chief's public obligation to welcome outsiders such as the 'white' guests, leveraging the fact that Ted and Deval, as decontextualised actors, were unlikely to strike a deal with the Chief, and building on his portrayal to the taskforce of the NGO as the fit and proper body to organise the local consultations (making the NGO the immediate intermediary between the taskforce and the village, and giving them a role in calling and designing the meeting).

At the same time, his local activist convened the side meeting so that there was a physical wall of bodies blocking the gazes of other authorities from the process of local nomination. Explaining the side meeting in provisional terms (a 'pre-meeting' to stop things from 'getting too hot'), Emmanuel justified an action that was, in the end, not provisional. It in fact finally took a bureaucratic form of a list of names that might provide him with an alternative set of patron–client relations outside of the immediate control of the Chief.

Emmanuel thus leveraged the openness and fluidity of the ADA-implementation process, using it as a framework to couple a dense set of

<sup>72</sup> Deval Desai and Mareike Schomerus, "‘There Was a Third Man...’: Tales from a Global Policy Consultation on Indicators for the Sustainable Development Goals", *Development and Change* 49:1 (2018), 89–115.

local institutions (a historically embedded Chieftaincy significant among them) with a series of transnationally implicated gazes. He did so to produce a space in which governance could happen, bringing together the things that the ADA process lacked: a polity (the locals), a governor (the NGO representative), a spatiality (within the closed circle of locals), and a temporality (an urgent discussion before the main meeting was to take place). Significantly, the Chief was embedded in these times, spaces, and politics. This is in contradistinction to the critical discourse analytic account of ADA implementation, where the institution of the Chieftaincy was able to reinvent itself following the conflict and draw political strength from having an undefined role in ADAs, thereby not yet being in time and place.

In more general terms, the scene hosts a dense array of gazes. As in *Ohio Impromptu*, the lines between spectating and acting are blurred. Each gaze tries to cast light and shadow to produce a fuzzy image of attaining the rule of law. Little coheres as these gazes interfere with each other, save when an actor can arrange them such that their light and shadow can pattern into an image – in this instance by creating a wall of bodies to block the gazes. A performance analysis thus shows how the actors produce themselves and each other as different subjects or objects and then strive to arrange themselves – and the scene that emerges as a result. Such an analysis thus consists of mapping the complex movement of space, time, and relational subjecthood/objecthood that produces that image. Other modes of writing about experts, by contrast, refract that movement – whether through a specific image of the expert subject, a precise material assemblage, and so on.

## 4.5 Performing the Workshop: Painting the Rule of Law by Numbers

### 4.5.1 Introduction

This section deepens the insights of the previous section in two ways. It stages in more detail some of the ‘ignorance work’ that reformers undertake to make the rule of law meaningless; it also sets out how actors in the wings also structure the action – here, the ‘local community’, whose on-stage gaze in the previous scenes turns into off-stage but shadowy presence here. Substantively, I recount my experiences participating in a workshop to develop global indicators for the rule of law, which was held in a large hotel near the UN Headquarters in New York. The case of the workshop serves three purposes, each further elucidating how action

happens through participants' efforts to produce ignorance as well as the conditions that give rise to expert ignorance in rule of law reform work.

First, it is an exemplar of international 'knowledge work' that (in a weak form) underpins – or (in a strong form) constitutes – global governance.<sup>73</sup> Second, it stages contested distinctions between 'knowledge' or 'policy' on the one hand and 'action' on the other. Two distinctions, in particular, are implicated here, and they structure much development work: a spatial distinction (where policy is a floating or travelling global, and implementation is localised); and a division of labour (between policy/planning and implementation). Third, the workshop reflects the challenges of writing about a process that enrolls ethnographic knowledge.<sup>74</sup> I aim to enact these three purposes and rethink them through drama and performance.

The workshop had been convened by one of the forty-some UN agencies purporting to work on rule of law reform. The purpose of the workshop was to gather twenty-five or so 'experts' to develop indicators and targets about the rule of law for the proposed Sustainable Development Goals (SDGs). I had been part of similar efforts in London and Vienna a few months earlier (as had some of the other participants) – although what the outcomes of those workshops were, and their relationship if any to this one, were unclear. As I will demonstrate below, the workshop staged not 'knowledge work' but 'ignorance work'. The workshop formed an apt stage: the literature on indicators is exemplary of the range and robustness of work that assumes and critically engages with the image of the authoritative expert.<sup>75</sup>

The debates and struggles at the workshop over the indicators mirror in many ways the ones during project implementation in Country – to keep the space of implementation fluid while structuring the patterns of the moments of decision that indicators might trigger. The means of the

<sup>73</sup> David Mosse, 'Notes on the Ethnography of Expertise and Professionals in International Development', *Ethnografeast III: 'Ethnography and the Public Sphere'*, Lisbon (2007), 9; Emanuel Adler and Steven Bernstein, 'Knowledge in Power: The Epistemic Construction of Global Governance' in Michael Barnett and Raymond Duvall (eds.), *Power in Global Governance* (Cambridge University Press, 2004).

<sup>74</sup> Paul Sillitoe, 'What, Know Natives? Local Knowledge in Development', *Social Anthropology*, 6:2 (1998), 203–20.

<sup>75</sup> Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton University Press, 1995); Kevin Davis et al. (eds.), *Governance by Indicators: Global Power through Classification and Rankings* (Law and Global Governance) (Oxford University Press, 2012); Sally Engle Merry, Kevin E. Davis, and Benedict Kingsbury, *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law* (Cambridge University Press, 2015); Richard Rottenburg, Sally Engle Merry, Sung-Joon Park, and Johanna Mugler (eds.), *The World of Indicators* (Cambridge University Press, 2015).

debate are familiar, too: a series of assertions and radical critiques about the rule of law; a set of deferrals and provisional decisions. By the end of the workshop, we hadn't actually come up with a list of indicators. The convening UN agency did subsequently circulate a list, based on some of the discussions; however, they referred to it as provisional or heuristic, a basis for ongoing conversation.

The main outcome of the workshop was an agreement among several of the participants on the importance of pilot schemes – meaning efforts to work out how to develop national or local rule of law indicators – and from there to work out how to link them to the SDGs. In other words, the outcome was an agreement to explore how to develop yet another process – this one to engage with and think about the messy political links between local contests over the form and content of the rule of law and rule of law's global role in the SDGs. These pilots were not funded; however, several participants committed to seeking funding, which would be worth a couple of million dollars all told. Where the project showed how reformers arranged ignorance to stage a concrete project decision, the workshop showed how reformers use ignorance to set the stage for future decisions – that is, to set out a hazy future process through reaffirmations of the rule of law's open-endedness.

Thus, while the workshop looked and felt like a place of knowledge work, with similar tropes and forms, it was anything but. The specific ignorance work through which indicators turned into the deferred implementation of pilot programmes was the language and notion of 'context'. In the workshop, 'context' worked in two ways. First, like other types of ignorance work, it destabilised and reconfigured the spatio-temporality of reform and the identity of reformers. Specifically, it collapsed proposals for indicators by invoking images of local communities; it destabilised the identities of the people around the table as they played up different roles to justify what they wanted to do and in terms of that image of the local community; and it enrolled the image of the local community as a player or participant – and not just an audience – in the indicator process. Second, it was used to refer to a process that could be operationalised and implemented itself through, for example, a future pilot or research programme. 'Context' thus offered the possibility of ongoing deferral or collapse of ideas as well as the possibility of future decisions.

As in my account of the project earlier, the rhythms of deferral and decision were a product of how reformers produced themselves and each other as 'acting' subjects and 'doing' objects. In this instance, however, the 'community' was absent, yet their gaze remained as powerful as ever. That gaze

was mediated by participants in the workshop playing the role of a formal or informal ethnographer of community experiences. If this ethnographic role is understood as entailing a type of knowledge work, it imbues the ethnographer with a significant amount of political agency, both within the room and over the community. By contrast, if this role is understood as entailing a type of ignorance work, it turns attention to the dynamics of mutual enrolment between policymaker, ethnographer, and research subject – meaning how they turn each other into subjects and objects.

I demonstrate here that, even when absent, the community produced the workshop participants as subjects and objects and vice versa, with all parties structuring the future moment of their encounter during the implementation of the indicator. I do so by reading and writing my experiences through the lens of Arthur Miller's *The Archbishop's Ceiling*, – a play about people mutually enrolling each other to produce a performance, despite none of them trusting a word the other says.

### 4.5.2 *The Archbishop's Ceiling*

#### 4.5.2.1 Overview

First produced in the USA in 1977 to poor reviews and subsequently shelved until 1984, *The Archbishop's Ceiling* takes place in an unidentified Eastern European capital city that resembles post-Spring Prague. Adrian, a seemingly well-meaning American liberal writer, has returned to finish a novel he began two years prior. He stays at the house of Marcus, a former political prisoner who now writes novels and has stopped directly opposing the regime. Also at the house are Sigmund, a brooding anti-government novelist whose latest manuscript – a magnum opus – has been impounded by the police and used as leverage to force him to flee the country, and Maya, the original muse for Adrian's novel and formerly the mistress of all three men, although at different times.

The action revolves around the titular Archbishop's ceiling. The characters are aware that Marcus's house, the government-owned former residence of the Archbishop, may have microphones hidden in its Baroque, centuries-old ceiling. The fact of the matter is never established; rather, the action is structured by the actors' efforts to play a multi-level game. They struggle with what they should and should not say, whether others are playing to the microphone, manipulating each other, or doing nothing of the sort, and which spaces – if any – might be safe.

The play begins in Marcus's house but with a clear idea about the world outside it: Adrian flirts with Maya by telling her he was inspired to return

and revivify his novel following a 'blinding vision of the inside of [her] thigh' while in 'Paris ... in the middle of a discussion of Marxism and surrealism'. In response, she 'laughs, immensely pleased'. This brief exchange foreshadows and initiates the play's slide into mistrust, role-playing, and the gradual erasure of the boundaries between the figurative and the literal. Adrian sets the scene by recounting an unverifiable story which is clearly an effort to enrol Maya into 'mak[ing] love tonight'; his desire is sexual and aesthetic – he aims to enrol Maya into returning as his muse for the novel. He seeks to possess her, even as, two lines later, he distances himself, mentioning that he 'may ask [Ruth, his girlfriend] to marry him'. This he elaborates into a general statement of principle: 'I want my own fireplace, but with a valid plane ticket on the mantel'. He flirts, and narrates himself, to enrol others while seeking to control the hopes of the enrolled and the rhythms of enrolment. This relies on the existence of outside spaces to escape to and enter from – Paris, the destination on the airplane ticket.

However, as the play evolves, those outside spaces evanesce, and all the characters begin to suspect the roles that each other might be playing. Maya is pleased by Adrian's flirtation and plays along. At one point, Adrian attempts to have what appears to be an authentic conversation with Marcus in a corridor outside the room. Yet Marcus implies that the corridor is also bugged and also that both of them are playing up to the microphones.

Nevertheless, the play is at first about Adrian and his decision to drop in on the lives of his Eastern European friends. He is somewhat aware of the possibility of listening devices in the apartment – indeed, as the play opens, he is alone, lifting the chattels, poking around the piano, and staring at the ceiling. Yet he seems barely concerned. He instead spends his time with Maya grandiloquently pontificating on a parochial view of freedom and thought (e.g., Ruth is seemingly on anti-depressants; she has 'come alive', but Adrian wonders 'What is lost? ... Knowledge is power ... so what is wrong with gaining power without having to suffer at all?'). Maya notably has long sections with no more than one-sentence responses to Adrian's long-winded excursions.

This dynamic is punctured by the arrival of Marcus and Sigmund to the house. The three men discuss the confiscation of Sigmund's manuscript the previous day and the potential political fallout. The play's focus broadens to the other characters; as they take flesh, Adrian becomes increasingly concerned by the possibility that the room is being surveilled. Adrian reveals that he had heard from a mutual, and gossipy, acquaintance that Maya and Marcus held orgies for writers in the house; the writers were then 'compromise[d] ... with the government' on the basis of

secret recordings of the activities. Marcus does not react to the suggestion – they are, after all, still under the Archbishop’s ceiling. We, and Adrian, wonder whether Marcus and Maya’s private house is in fact a public space for the consumption of the state – and the audience. If so, where, if anywhere, might a private space exist?

As Adrian becomes more aware of the circumstances of the other characters, the audience is dislocated from a comfortable association with Adrian to a sympathy with his confused efforts to grasp the truth – a sympathy that establishes a metaphorical relationship between his experience and that of the spectator. At the same time, it distances and separates the two, as the spectator must imagine him as one of four characters playing impenetrable roles. Adrian himself emerges as plausibly smug and naïve and also as conniving and calculating. He speaks to Maya about an op-ed he has written for the *New York Times* blasting the country’s government; Maya tells him ‘[i]t was interesting. I partly don’t remember’. He ‘waits’ for more praise; she says ‘nothing more’. Perhaps she finds the liberal American overweening, or perhaps she is protecting him from the microphones. Marcus subsequently describes the piece as ‘stuffed with the most primitive misunderstandings of what it means to live in this country. You haven’t a clue, Adrian’.

Later in the play, Marcus, Sigmund, and Adrian argue about whether Sigmund should leave the country. Marcus accuses Sigmund of laying his story on thick all evening, trying to paint himself as morally superior to Marcus – a resistor, not a collaborator. Marcus, while ‘pointing towards Adrian’, accuses Sigmund of playing his narrative up for ‘the eyes of the world’. He goes on to allege that Adrian himself is planning on penning a ‘*New York Times* feature on Socialist decadence’. Given that Adrian has already penned a *Times* feature, it is left wholly ambiguous whether Marcus is speaking hyperbolically or literally. Marcus goes on to say, ‘To whom am I talking, Adrian – the *New York Times*, or your novel, or you?’ This implies that Adrian may be egging the others on, a ‘scientist observing the specimens’; moreover, he may be playing up to the microphones, hoping to spur a reaction from Marcus that he can write about from his place of privilege.

All four characters, then, inhabit a theatrically charged space, playing up to listening devices, mistrusting each other, and incapable of telling whether they are living their lives for private good, public good, or virtue. As Sigmund points out shortly afterwards: ‘Is [sic] like some sort of theatre, no? Very bad theatre – our emotions have no connection with the event’. Such a theatre is destructive: it destroys the possibility of

interpersonal recognition and collective action; as a result, it leads to a collapse of accountability. After Marcus challenges Adrian's intentions, Adrian asks: 'Marcus, are you asking me to account for myself?' Marcus responds: 'By no means, but why must I?'

As the play moves to a close, it develops into a meditation on Miller's ideas about the relationship between truth, power, and fiction. Miller reflects on the role of fiction as a mediator between truth and power, between objectivity and subjectivity. Adrian came to the house wanting to 'sit down again with writers who had actual troubles' and wanting to rediscover his passion for writing. He speaks in an open and expansive mood, laden with metaphor. He is still 'trying to get up off the floor'; Maya is 'creamy'; he analogises his condition to Hamlet and Socrates. But in the totalising and overwhelming presence of the Archbishop's Ceiling, his faith in others, and in the power of writing, is shaken. It is 'hard for anyone to know what to believe in this country'. Marcus reminds Adrian that 'each knows the other is lying. We must lie, it is our only freedom. To lie is our slot machine – we know we cannot win, but it gives us the feeling of hope'. The speech of all the characters has become expository, didactic, indifferent. Metaphors, when used, work to explain rather than to invoke. Thus, Adrian ends up wondering whether the four of them are 'just some sort of ... filament that only lights up when it's plugged into whatever power there is?' (ellipsis original; emphasis added). This point is reinforced by the commingling of sacred and profane sovereign power: paintings of cherubim and statues of angels that 'the government [who own the old palace] spends a lot keeping ... in repair' – and, perhaps, bugging.

The question is unresolved by the close of the play, for the characters as well as for the audience. As Schuleter points out (in an analysis that pre-dates the fall of the Berlin Wall):

The Archbishop's ceiling becomes a powerful world-stage metaphor, transforming all human action into performance and endorsing the false even as it precludes the possibility that anything but the false can exist [... E]ach of the characters creates, interprets, and revises the truth, lying or not lying in order to shape an accommodating and an effective reality. The visitors do not know for certain whether the room is bugged or not ... Yet Marcus operates confidently beneath the cherubed plaster, using his power, which rests either in knowledge or in naivete, to orchestrate action.<sup>76</sup>

<sup>76</sup> June Schuleter, 'Power Play: Arthur Miller's *The Archbishop's Ceiling*', *The CEA Critic*, 49:2–4 (1987), 134, 137.

In this world, the relationship between motive, action, and accountability cannot be established; as a result, no one is potentially absent from blame for the results of action, the audience included. Donald Costello extrapolates this concern across some of Miller's oeuvre:

In *After the Fall*, *Incident at Vichy*, *The Price*, and *The Archbishop's Ceiling*, the consequences of responsibility are ambiguous, the moral landscape has become murky ... How can we decide where the moral circles are drawn? How much responsibility finally does the self owe to others? Perhaps one could even violate the self precisely by not violating the other codes? But then how could one escape the consequent guilt?<sup>77</sup>

The simple suggestion in the play is that consequences produce power, power produces consequences, and devil take the hindmost.

#### 4.5.2.2 Analysis of the Play

The play provides a dramatic framework that elucidates the dynamics of ignorance, movement, and mutual enrolment which occurred during the workshop in New York. I begin with a challenge outlined earlier in this chapter: how to write ethnographically about the enrolment of ethnographic knowledge in producing ignorance. The play suggests that it is possible to retain a studied ambivalence about the value of one's medium, especially if one makes the object of study the way that the medium enrolls and is enrolled by others. Moreover, the play is helpful formally. It has been chastised for being overly verbose: 'it remains a diffused play, too often filled with didactic speeches, awkward exposition and melodrama'.<sup>78</sup> Didactic speeches and awkward exposition are the lifeblood of workshops; the one in New York was no exception, replete with the self-exposition of participants. I produce my performance account of the workshop with Miller's style in mind.

Moving to the challenges of capturing ignorance work, the play points to the importance of the potential but absent presence of a scrutineer. More specifically, it asks a spectating audience to consider itself one of the characters. Having done so, all the characters are asked to explore who and what they imagine is observing them and the way that imaginary observer is constructed out of sacred and profane materials (the sacred and profane being quite literally juxtaposed in the titular ceiling of the

<sup>77</sup> Donald P. Costello, 'Arthur Miller's Circles of Responsibility: A View from the Bridge and Beyond', *Modern Drama*, 36:3 (1993), 443, 451.

<sup>78</sup> Frank Rizzo, 'Review: "The Archbishop's Ceiling"' (*Variety*, 29 August 2006), <http://variety.com/2006/legit/reviews/the-archbishop-s-ceiling-1200513920/>, accessed 17 January 2017.

play). Subsequently, the audience is asked to consider how that imaginary observer produces, on the part of the characters, a doubled consciousness of performance and reality, and how characters grapple with the fact that the idea of self-conscious strategising underpins that doubled consciousness, even as the strategising itself cannot be observed. Flowing from these inquiries is an analysis of the structure of the play in terms of the movement between inside and outside and between subject and object, of how reflexive suspicion shape role-playing and structure space and time; and of the ways, if any, that motivation can be understood.

Such analyses are based on a view of the human condition as a series of struggles with the ubiquitous possibility of being observed. Miller's observer is not ontological, as in Beckett's *Ohio Impromptu*. It is sociological.<sup>79</sup> Miller asks the audience both to be enrolled in the play (as one of many audiences to which the characters play) and to observe the plot, on stage that the act of observation produces. In doing so, Miller suggests tools by which one might emplace and emplot the global while participating in and emerging from it.

Thus, in my analysis of the workshop, I consider the extent to which the governed – often envisaged as some form of local community – are produced, enrolled, and function as that imagined observer. And in linking the workshop to the project, I suggest that enrolment is not purely figurative – the functional or justificatory invocation of an image of the 'local', as many have lamented – but also agentic and material. Local actors do, after all, instrumentalise global actors and the power of their gaze, such power emerging from workshops like these. I am, in the final analysis, using the play to study how the action is 'orchestrated' (to use Schuleter's term) as well as to study the collective and mutually distrustful production of the conductor.

#### 4.5.3 *Plotting Implementation*

The workshop began with a welcome from Elisa, the mid-level UN official convening the group, followed by three short presentations to set the scene, after which we all got down to the hard work of (not) developing indicators. The rest of the morning was spent discussing what sorts of goods we might actually want to measure. After lunch, we proposed and debated some concrete indicators for those goods, but no one pressed for a final list.

The introductory presentations were brief. I gave the opening presentation on how to frame the rule of law. Huang, an eminent statistician who

<sup>79</sup> C. W. E. Bigsby, 'A View from East Anglia', *American Quarterly*, 41:1 (1989), 131.

had worked for the UN and his country's national statistics office, presented on what and how to count when counting the rule of law. Finally, Rose, a leader of a grassroots women's NGO in sub-Saharan Africa, presented alongside a traditional Chief from her country on the role of traditional and customary institutions in upholding the rule of law. Elisa had solicited the three presentations, and we had kept in touch with her and her team about their content<sup>80</sup>:

A large dark wooden table is centre stage. Twelve chairs, black leather. ELISA, in profile, stands at a lectern downstage left, addressing the table.

E: In sum, we are at an exciting moment. The rule of law is essential to sustainable development. We know that we need justice – access to justice and legal empowerment – and security. So the possibility of including the rule of law in the proposed SDGs is of vital importance. Today, we must be realistic about what we think we can accomplish in terms of shaping the SDG agenda. But we should also be bold. We should aim to measure what we treasure, and not just treasure what we measure. Thank you.

[Sits. DEVAL takes his place at the lectern and places a piece of paper on it. Refers to it throughout.]

D: I'm here today having spent time researching and working on rule of law reform projects in places like Country, Nigeria, and Sierra Leone, as well as some higher-level policy stuff for the DA, the World Bank, DfID, and the UN. In these places, everyone talks about the rule of law in very different ways. They care about their human rights principles, or an independent judiciary, or equality before the law. But what do they mean in the real-life experiences of the people on the other end of them? We have to consider indicators of the rule of law in the real world, in their local context, through the eyes of those affected. This does not simply mean adding context X to indicator Y. It involves choices. Context might mean taking informal justice systems seriously. Or it might mean deciding to do the opposite in contexts where those institutions marginalise and exploit. Context might mean reforming laws to enable local service delivery and redistribution. But that might conflict with supporting private property rights. When we are discussing indicators, we are engaged in a really political process of working out what trade-offs we are comfortable making and to what extent the indicator should be driven by realities on the ground. The rule of law is really a way of describing the structure of political contests over a series of policy choices. And if we are going to intervene in these choices through the pretty blunt instrument of indicators, we ought to do it with a robust understanding of local politics and local struggles. Thank you.

[Sits. HUANG takes his place at the lectern. No paper.]

H: Thank you, Deval. It's a great reminder that we're dealing with politics and choices. And I think that we can get some guidance about those choices from the huge

<sup>80</sup> The text of the presentations is an accurate and slightly abbreviated version of notes I was making for my own reference if there was to be any follow-up activity. The action is stylised.

variety of data already out there. Of course, this stuff is heuristic. But the World Justice Project measures things like limited government powers, regulatory performance, civil justice performance, and criminal justice performance. What can they tell us about development and the sorts of indicators that might go into the SDGs? Well, if we look at their statistical relationship to the Human Development Index, limited government powers and regulatory performance correlate strongly with HDI outcomes. However, their respective relationships are subtle. Regulatory performance affects development not directly but via the sub-indicator on the absence of corruption. Limited government power operates to improve development outcomes via the sub-indicator on fundamental rights and transparency. All of this is to say that we have material available to us to give us a place to start when thinking about rule of law indicators.

[Sits. CHIEF, wearing a wide-brimmed hat and leather jacket over his traditional garb, takes his place at the lectern. He places a piece of paper on it. Takes reading glasses out of his jacket pocket. Refers to paper throughout. ROSE, wearing a traditional dress, stands next to him.]

C: Traditional structures are the oldest in Africa. Traditional leaders remain influential in both urban and rural areas. To us, they are not informal. Traditional leaders wield influence and command much respect in their communities. Yet traditional leaders' potential to actively participate in rule of law and justice activities and projects remains untapped and our contribution unrecognised. We confront violence in all its forms including rape, which we do in partnership with police, and community violence including land and property rights issues, which we do with grassroots women. Traditional leaders are also able to enforce customary and constitutional laws in traditional courts. In addition to this, we have a wide reach in our communities. There are so many injustices faced by community people. Traditional leaders can help you understand their priorities and provide them with support. Traditional leaders can also be used to inform community members of the need for peace and development as a contribution to the SDG agenda. Thank you.

[CHIEF takes off his glasses, picks up his paper, and changes places with ROSE.]

R: Our grassroots women's organisation has stopped domestic violence altogether in Chief's town. We have used a combination of grassroots mechanisms, the power of traditional leaders, and courts to uphold women's rights. Since our organisation began its work, 600 women have come to us – the same number as go to traditional leaders. Only 100 go straight to the courts. And women who come to us and then use the traditional leader or statutory courts are twice as likely to be satisfied with the outcome of land disputes than if they went straight to the leader or court. Thank you.

[ELISA stands.]

E: Thank you, all. We'll take a break for coffee before the next session.

E walks over to the podium to speak with C and R. D and H stand and walk downstage right.

H: So you've worked at the DA? Did you ever run into Minny Cha?

D: Oh yeah. We've chatted on a few occasions. Do you know each other?

H: Oh, a long time back. We joined the faculty at National University back home at the same time. We actually ran a weekly Marxist theory reading group together back

in the '70s. Had a great deal of fun introducing the students to Althusser. We both had to leave when the junta came to power, and we fell out of touch.

D: [A beat.] How did you go from Althusser to measuring stuff like the rule of law?

H: One thing I've learned over the years is that you use whatever ideological tools are available to you. Numbers are pretty powerful ones.

E begins to approach people and indicates that they should sit. People begin to move.

D [LOOKING AROUND THE ROOM]: I would never have guessed ... I wonder how many others there are here?

H: Ah, we're not always that hard to spot.<sup>81</sup> Pass on my best to Minny, would you?

#### 4.5.3.1 Analysis of the Action

The whole workshop began with three presentations that tried to undermine the very value of producing an indicator on rule of law, destabilising the discussions that would follow. These represented different types of ignorance work, articulated in the idiom of 'context'.

The presentations occurred against a very different type of context: Elisa's thickening of the workshop itself. Material in our presence around a table, she addressed us as a group and situated us temporally in a moment of opportunity to make rule of law reform more real or more concrete in a policy sense. Just as numbers are highly tangible symbols of real phenomena, so we became a concrete instantiation of the possibility of rule of law's instantiation through indicators.

At the same time, the presenters engaged in different types of ignorance work. I appealed to conceptual and political modes of ignorance (what is the rule of law, and who are we to determine it anyway?). My appeals to relativism and politics were met with Huang's notion that there might be a starting point for the rule of law, asserted in conceptual and epistemological terms. He subsequently destabilised that assertion through a normative and teleological suggestion of a longer ideological game that he may have been playing.

The Chief and Rose then physically enacted an image of context – concrete in its institutional specificity, broad in its view of legal functions (for what did not go through traditional leaders, in his view?), and produced to be amenable to enrolment in the SDG implementation process. The ignorance work was teleological, to be sure, attempting to unsettle and shift assertions we might make about who the beneficiaries of our indicators should be (National or local? Urban or rural? Formal or informal institutions? Gender reform, property rights, or violence?). It was also sociological – arguing that we should go to local communities to understand their conceptions of the

<sup>81</sup> This exchange is recounted pretty much verbatim, despite how on-the-nose it sounds.

rule of law, it was an effort to radically pluralise our vision of the relevant social and legal institutions that should be transformed into indicators (even though most of us were already on board with that).

Together, these presentations had the effect of creating a highly malleable spatio-temporality within which our indicators might emerge. We were caught between the urgency of the moment and the need to look cautiously into the future at political trade-offs. We were similarly spatially ill-defined, caught between the global 'here' of the room in New York where we might put indicators down on paper and the highly contextual and variable 'there' in which any indicator might play out.

One might imagine that this fluid spatio-temporality would be resolved as participants got down to the hard work of indicator development. It was not. The opening presentations made ideas about local context present in the room, observing us – figuratively in my remarks (the eyes of the end user of justice institutions), literally through the Chief. In *The Archbishop's Ceiling*, the microphones – the omnipresent yet secular state – exemplify a totalising observer, outside of which the characters cannot escape. The dynamics of power are hegemonic and oppressive. In New York, context emerged as a relativising observer – one that we participated in the production of, even as we brought its gaze to bear on us.

Take my position around the table as an example. Among other things, my in-country work got me there. Whenever I would head out to spend time in concessions or among communities, I would capture communities' anonymised accounts and share them in venues just like New York. A conscientious sort, I also often ended my interviews by asking my interlocutors whether others had come by asking the same sort of questions. Yes, they overwhelmingly replied: The same questions. And time after time, we get nothing in return. It did not stop most of them from trying their luck and talking with me anyway. In New York, I was, of course, self-aware, politically aware, and humble (who isn't, these days?)<sup>82</sup> in my efforts at representing their experience. I figured that I might be able to shape the trade-offs in places like New York by bringing my contextual knowledge to bear against abstract and universal claims. When I or others talked in terms of local realities, 'their' concerns became concrete.

My interlocutors thus functioned as a placeholder for our future engagement with them, one which we could in good faith imagine might actually produce good and reasonable outcomes for them. Under their

<sup>82</sup> Amanda Coffey, *The Ethnographic Self: Fieldwork and the Representation of Identity* (SAGE, 1999).

gaze, we could collapse, reconfigure, reimagine, and collapse again our role in their lives. They allowed us to produce ourselves as fragile subjects, and them as very real but fragile objects of governance, mediated by us in a self-aware manner. Their gaze travelled to New York through their efforts as well as ours: their self-aware participation in interviews, the political economy of their community meetings with the Chief in Country, and so on. Indeed, the presence of another Chief in New York physically wove an image of those who might experience and condemn the effects of our consultations into the consultation's justificatory fabric.

It would be possible to understand the consultation as described so far as a good faith effort by all involved to provide some content to a highly complex phenomenon – the rule of law. The participants might further invoke 'context' in good faith, sensitive to charges of neo-imperialism and realities of unintended consequences. There is some truth to this, a truth that might be debated through discourse analysis, and material and ideal sociologies of the participants. However, the emptiness of the rule of law, and its concomitant ability to be relativised through invocations of context, delinked the participant from his articulation of the rule of law.

As *The Archbishop's Ceiling*, points out, if one instead views the workshop as a set of actions under the gaze of 'context', it becomes a stage for the playing of roles, the boundaries between which are fluid and the motivations for which are hard to ascertain without a certain predisposition on the part of the viewer towards cynicism or good faith. The exchange between myself and Huang, for example, raises Huang's doubled consciousness (an ideological versus a bureaucratic actor), which he tries to enact in two different spaces (the lectern and the side conversation), both of which Elisa later scrutinises. Even as we try to play new roles, traces of other roles and the gazes of other actors disrupt them: my links to Huang's friend suggest the possibility of triangulation; by looking at the lectern and reading from the paper, the Chief physically delimits the extent to which the context he is supposed to symbolise might permeate the room.

The emptiness of the rule of law, coupled with the concreteness of the indicator, means that participants could credibly and in good faith invoke the indicator's contextuality. That, in turn, established the indicator as an empty stage in which participants reconfigured the time and place of implementation and their role in it. They did so by invoking different pre-existing modes of implementation – a research programme, a technocratic project, a human rights implementation programme, and so on – and imagining how they would be embedded into it. In doing

so, they reobjectified themselves, imagining themselves and others in the room as 'doing' people executing a process. I call this 'implementation work'. The combination of implementation and ignorance work – doing and acting, assertion and collapse – led to the ongoing reconfiguration of times, places, and roles of implementation: the indicator as a performance.

#### 4.5.4 Analysis

Many other studies of indicator production assert that indicators are overdetermined, anti-political, or governmental technologies of global governance.<sup>83</sup> Unencumbered by the challenge of producing indicators for an idea with determinate content, the workshop in New York was no mere exercise in anti-politics.<sup>84</sup> Rather, it was an exercise in producing a fluid and interim spatio-temporality of indicator implementation through ignorance work and implementation work.

While the combination of ignorance and implementation work produced many competing shadows of the rule of law, the participants arranged them in such a way that our place in that spatio-temporality would be assured, hopefully to the greatest advantage to ourselves – material or otherwise. We would be in place to take the decisions that we wanted and disclaim the decisions that we did not want to make, pushing responsibility for them onto others, whether in or outside the workshop room.

We may have been reflexive about our position around the table (whether wanting to avoid neo-imperialism or a crisis of representation) and may even have striven to act in good faith. Yet there was no space for a systematic political challenge to our own position in the fluid time and space of future implementation we had produced. As Marcus suggests in *The Archbishop's Ceiling*, 'by no means' is the actor being asked to account for himself, nor indeed 'must' anyone ask him to do so. Both governor and governed were part and parcel of this production. And I have used performance studies as a means of showing this mutual enrolment – the fluid evanescence, reimagination, and entanglement of an 'inside' and 'outside' position to the production and future circulation of rule of law indicators.

<sup>83</sup> c.f. Davis et al., *Governance by Indicators*.

<sup>84</sup> James Ferguson, *The Anti-Politics Machine: Development, Depoliticization, and Bureaucratic Power in Lesotho* (University of Minnesota Press, 1994).

## 4.6 Denouement

This chapter has used aesthetic theory, dramatisation, and performance analysis to capture the fluidity of rule of law reform and the fuzziness of the rule of law and its reformers through it. I have produced an account of subjects and objects as a performance: mutually constituting, fluid, entangled and disentangled through time. I have done so to show the contingency of action as well as its concreteness. The first example – the project, read through *Ohio Impromptu* – demonstrated how performance analysis can show how specific actions emerge from expert ignorance: through the contingent arrangement of performers. The second example – the workshop, read through *The Archbishop's Ceiling*, – demonstrated how performance analysis can also capture the effects of these actions. At the same time, taking the two examples together, we see how a seeming decision in one locale – the identification of a community group in the previous chapter – can be underdetermined by another – the enduring provisionalisation of the rule of law indicator. The scenes must work separately and together.

Returning to Rayner's terminology, the performance – the ways that acting and doing work together, or in tension with each other, or even independently from each other – has the potential to shape reformers' identity (such as the nature of domestic administrators and regulators) as well as the future time and space of implementation. That is, unlike sociological analyses of rule of law reform, performance analysis imports neither a spatio-temporality nor an identarian politics; rather, that is the stuff of its analysis of the action.