CAMBRIDGE STUDIES IN TRANSNATIONAL LAW

Expert Ignorance

The Law and Politics of Rule of Law Reform

DEVAL DESAI

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EXPERT IGNORANCE

Today, a transnational constellation of 'rule of law' experts advise on 'good' legal systems to countries in the Global South. Yet these experts often claim that the 'rule of law' is nearly impossible to define, and they frequently point to the limits of their own expertise. In this innovative book, Deval Desai identifies this form of expertise as 'expert ignorance'. Adopting an interdisciplinary approach, Desai draws on insights from legal theory, sociology, development studies, and performance studies to explore how this paradoxical form of expertise works in practice. With a range of illustrative cases that span both global and local perspectives, this book considers the impact of expert ignorance on the rule of law and on expert governance more broadly. Contributing to the study of transnational law, governance, and expertise, Desai demonstrates the enduring power of proclaiming what one does not know. This title is available as Open Access on Cambridge Core.

DEVAL DESAI is Lecturer in International Economic Law at the University of Edinburgh. He is a Fellow of the Royal Society of Arts and the Young Academy of Scotland, and was an inaugural International Rule of Law Fellow at the Bingham Centre.

CAMBRIDGE STUDIES IN TRANSNATIONAL LAW

Transnational Law establishes itself as a unique area of legal research, practice, and education, domestically and internationally. As a label for the norms governing border-crossing commercial exchange, it has long been considered as central to a globalizing legal profession. Today, as a conceptual framework that captures the interaction of law with a host of human sciences, from anthropology to geography, from sociology to political science, Transnational Law illustrates the inescapable openness of law and legal norms. Implicated in fundamental societal transformations, law is both driver and driven. Transnational Law as such functions as a methodological perspective through which to identify and conceptualize the emergence, contestation and diffusion of law through newly emerging constellations of actors, norms and processes. Established in 2017, the series will publish monographs in a range of doctrinal areas as well as on the intersection between law, legal theory, and the humanities.

Series Editor
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A list of books in the series can be found at the end of this volume.

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For Noah

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This is a text with unreliable narrators. But not yet.

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And, as the movement stops,

To Rebecca: Little is to be said; For that would get in the way of Our curiosity	**To Sharad, Minaxi, and Monica:** હવે તમે શાંતમાં છો!

IN LIEU OF AN ABSTRACT

To the Reader

This is an account of rule of law practitioners – their activities, beliefs, and intentions – myself included. It argues that who they are and what they do is much less certain and full of meaning than others might assert. And yet their work is no less relevant for it.

The action of this book emerges from what I have experienced over a decade as a rule of law reformer: I am an encounter with and recounter of this action. 'I myself am the matter of my book: it is not reasonable that you should employ your leisure on a topic so frivolous and so vain.'[1]

But if you wish to so employ your leisure, this book is neither apology for nor utopia from the work of these practitioners (although you might find fragments towards both). It offers an analytic account of self-denying expertise, or what I have termed expert ignorance. Expert ignorance refers to the form of expertise of experts – here, rule of law reformers – for whom it is a legitimate professional position to deny that they know anything about the object of their expertise.

Ignorant experts are neither inside nor outside their field of expertise, for one blurs into the other. And the audience for this book is thus neither this lawyer nor that critic, for one too blurs into the other. It is you, for as long as you wish. And if your wish is to speak truth to the power and hubris of global governors, this book engages you on problems of style and methods – for when some experts are neither inside nor outside that which you seek to study, how can you position yourself against them and the material, social, and discursive conditions they may represent? If your wish is to lament the democratic (or other) deficit of political legitimacy and accountability of global technocratic governance, this book commends to you a change in political emphasis – for what can be more

[1] Michel Montaigne, *The Essays: A Selection*, New ed., tr. M. A. Screech (Penguin Classics, 1993), p. 53 ('To the Reader').

democratic than shared conditions of ignorance between expert and lay? If your wish is to fulminate against the global juridification and depoliticisation of human activity, this book argues that ignorant experts produce the inverse – for how can experts divide the world into law and politics when they do not know what the rule of law is? And if your wish is simply to understand how expert ignorance works and the sort of ignorance it produces, the book exemplifies an approach to studying it.

Expert ignorance fundamentally destabilises the relationship between knowledge and action. The text thus moves between what Alice Rayner calls styles of 'acting' (rooted in the mind – the thinking subject) and 'doing' (rooted in the body – the doing object), stitching them together into an exemplary 'performance'.[2] This performance reflects ignorant experts' anxious efforts to collapse, reconfigure, and stitch together knowledge and action into a whole artefact: rule of law reform composed of actions that reformers have put in motion through their own self-negation.

This motion spans space. It takes place at a global level, moving between places where practitioners develop ideas, theories, policies, programmes, ways of speaking and arguing, and styles of writing and acting (from Malta to London to Washington, DC). It also takes place at other levels, including extremely local encounters in sub-Saharan Africa between practitioners and community members (the latter often ending up practitioners of a sort themselves). This motion spans time, too; it is embedded in different moments of experience as well as an authorial 'now'. And it spans identity: recounted through different versions of myself, blurring the boundaries between private and professional, an emplaced observer and a global technocrat, both writer and written.

The text is thus methodologically and stylistically varied, 'so far as respect for [academic] convention allows.'[3] The book consists of scholarly analysis, case studies, stylised facts, and fictionalised retellings. It explicitly moves and works through different genres – sociology, performance studies, history, policy analysis, international relations – to explore how its claims play out under their rubrics.

The movement in the text, as well as the recurrence of theatre and performance as both motif and analytic, is intended to commend to you a dramatic – or performance – analysis of the movement produced by expert ignorance. That is, the text understands rule of law reformers to

[2] Alice Rayner, *To Act, to Do, to Perform: Drama and the Phenomenology of Action* (University of Michigan Press, 1994).
[3] Montaigne, *Essays*, p. 53.

be engaged in an aesthetic practice when they deny that they know what the rule of law is and what it looks like, even as they try to build something from that position of ignorance. Furthermore, that aesthetic practice is fundamentally embodied in the irreducible figure of the rule of law reformer. Performance, stagecraft, theatricality – these do not simply function as explanatory metaphors for ignorant experts' development activity. They are the gravamen of their work. This text embraces that dimension of experts' work, writing and reading it as a dramatic text.

'You have here, reader, a book whose faith can be trusted …'[4] But in a world of expert ignorance, faith and motivation are secondary to and emerge from the moving patterns of expert action. Thus, the form of the text – its organisation and the way it moves among styles – aims to exemplify the actions it describes as well as my motivations for describing them.

[4] Montaigne, *Essays*, p. 53.

EXECUTIVE SUMMARY

Today, the rule of law is axiomatically central to global governance. Yet the rule of law is more radically contested than ever before. This book studies the theory and practice of rule of law reform in this context to tackle three questions:

Through what theories and methods can we understand rule of law reform (and perhaps expert ignorance more generally)? Rule of law reformers can, and often do, deny the form and content of their own expertise. In doing so, they collapse or make fragile a relationship between knowledge and action that other experts strive to produce and stabilise. This means that rule of law reformers' policies, projects, and practices are often more underdetermined than might otherwise be assumed (for example, through interpretive social science methods). Studying rule of law reform requires a theoretical and methodological apparatus that can make expert self-denial visible and analysable, without doing so from a position of superior knowledge – for to do so would entail a claim that the scholar knows what the rule of law is, even as the reformer denies that possibility, thereby artificially limiting what is to be analysed. I then draw on aesthetic theory and performance studies to see and study expert self-denial – or expert ignorance – as it unfolds in rule of law reform. I conclude by suggesting that expert ignorance might be identified, studied, and evaluated in other domains of global governance that pursue institution-building projects.

If rule of law reform emerges from reformers' efforts to radically critique their own and others' ideas, how does it work? And with what legal and political effects? This argument is concerned with the operationalisation of expert ignorance, through the workings of rule of law reform. Rule of law reform consists of reformers' embodied efforts to remain open to reinterpreting the rule of law, even as they perform concrete moments of expert action, from programme implementation to indicator development. Their efforts entail 'implementation work' – well-established ways

of taking expert action, like conducting research – and 'ignorance work' – or efforts to radically undermine or collapse the possibility of taking action. This book shows the importance of attending to different types of ignorance work, and how they relate to different types of implementation work. Next, understanding rule of law reform as a radically open-ended embodied practice, I argue that rule of law reform should be understood as dramatic 'action', entailing the accumulation of embodied implementation and ignorance work over time. This work makes the space of reform, its temporality, and the identities of its participants, highly fluid and reconfigurable. Its consequence: the 'rule of law' emerges as a provisional and contingent phenomenon, marked by the continual return to and reworking of first-order issues such as the nature and location of law's autonomy from politics.

What are the political stakes of rule of law reform for development practice or expert governance more broadly? This argument is concerned with the social organisation of expert ignorance. Describing rule of law reform in terms of the dramatic structure of its action turns it into a phenomenon capable of sociological analysis. In particular, I argue that rule of law reform might be studied in terms of the social limits placed on its reconfigurability. I focus on efforts to professionalise expert ignorance; they shape the dramatic action of reform by trying to predetermine what sort of implementation and ignorance work the reformer undertakes, thereby affecting the legal and political consequences that reformers produce. They also shape rule of law reformers' relationship to other expert domains (like development economics) – with potentially depoliticising effects.

TABLE OF CASES

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ABBREVIATIONS

AA	Agriculture Act
AC	Agricultural Concessionaire
ADA	Agricultural Development Agreement
APW	Andrews, Pritchett and Woolcock
CDA	Community Development Agreement
DA	Development Agency
DFID	Department for International Development
IFI	International Financial Institution
MC	Main Community
MoFEP	Ministry of Finance and Economic Planning
NAA	National Agricultural Agency
NGO	Non-Governmental Organisation
NIE	New Institutional Economics
OD	Other Donor
OECD	Organisation for Economic Co-operation and Development
PDIA	Problem-Driven Iterative Adaptation
RAF	Red Army Foundation
SAVI	State Accountability and Voice Initiative
SDGs	Sustainable Development Goals
SJHR	Security, Justice, and Human Rights
STS	Science and Technology Studies
SU	Stabilisation Unit
TJ	Transitional Justice
ToR	Terms of Reference
UN	United Nations
WDR	World Development Report

1

Introduction

1.1 From Disenchanted to Self-Denying Expertise

I first read Ross Coggins' poem 'The Development Set' on the bus back to Boston from New York in 2015 (Figure 1.1).

I had taken to scrolling through Facebook every so often – an effort-efficient way to keep in touch with friends and colleagues also working on international development in far-flung places. One colleague or another had posted a link to the poem.

The poem struck a chord. I had just attended an expert workshop in an upscale hotel in New York. The workshop had convened rule of law reformers of various stripes – development practitioners, NGO activists, members of the judiciary from the Global South, statisticians, and the like. I was one of them (and had been since 2009-ish). We had spent the workshop trying to come up with global indicators through which developing countries could show that they were making progress towards the rule of law as part of their participation in the UN's Sustainable Development Goals (SDGs).

We were not particularly successful.

Arranged around red baize tables, and under unsubtle fluorescent illumination, we spent two days wandering nomadically from our sedentary positions. We veered from 'perceptions of corruption' in the legal system to 'number of judges per capita' to 'number of violent deaths' to 'number of people killed in dangerous driving incidents'. At caffeinated oases, we promised ourselves that we would make more progress in the afternoon, the evening, the next day. And we ended up without any indicators – along with some slightly less-empty promises that we would meet again to try and hash some out. My fellow experts and I were supposed to marshal the majesty of the law to help govern the world and uplift the masses. Yet we couldn't even put numbers down on a piece of paper.

This was certainly not the first time I had felt this way, nor was it the last. Coggins' poem provided some balm, albeit with a cynical odour.

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7

ADULT EDUCATION AND DEVELOPMENT

Half-yearly Journal for Adult Education in Africa, Asia and Latinamerica

EDUCATION DES ADULTES ET DEVELOPPEMENT

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EDUCACION DE ADULTOS Y DESARROLLO

Revista semestral para la Educación de Adultos en Africa, Asia y Latinoamérica

Instead of an editorial
Au lieu d'un éditorial
En vez de un editorial

The Development Set

Excuse me, friends, I must catch my jet
I'm off to join the Development Set;
My bags are packed, and I've had all my shots
I have traveller's checks and pills for the trots!
The Development Set is bright and noble,
Our thoughts are deep and our vision global;
Although we move with the better classes,
Our thoughts are always with the masses.
In Sheraton hotels in scattered nations
We damn multi-national corporations;
Injustice seems easy to protest
In such seething hotbeds of social rest.
We discuss malnutrition over steaks
And plan hunger talks during coffee breaks.
Whether Asian floods or African drought,
We face each issue with an open mouth.
We bring in consultants whose circumlocution
Raises difficulties for every solution –
Thus guaranteeing continued good eating
By showing the need for another meeting.
The language of the Development Set
Stretches the English alphabet;
We use swell words like "epigenetic",
"Micro", "Macro", and "logorithmetic".
It pleasures us to be esoteric –
It's so intellectually atmospheric!
And though establishments may be unmoved,
Our vocabularies are much improved.
When the talk gets deep and you're feeling dumb
You can keep your shame to a minimum:
To show that you too are intelligent
Smugly ask, "Is it really development?"
Or say, "That's fine in practice, but don't you see:
It doesn't work out in theory!"
A few may find this incomprehensible,
But most will admire you as deep and sensible.
Development Set homes are extremely chic,
Full of carvings, curios, and draped with batik.
Eye-level photographs subtly assure
That your host is at home with the great and the poor.
Enough of these verses – on with the mission!
Our task is as broad as the human condition!
Just pray Good the biblical promise is true:
The poor ye shall always have with you.

Ross Coggins

Figure 1.1 Image of Ross Coggins, 'Instead of an Editorial'
Source: Ross Coggins, 'Instead of an Editorial', Adult Education and Development, 7 *(1976), 1.*

Our 'vision' was indeed 'global', but when the 'talk' got too 'deep' into an indicator (trying to measure the rule of law by counting road deaths, for example), it was always easy to ask, 'Is that really the rule of law?' (I'm not sure if any of us were 'admire[d] as deep and sensible', though.) We reminded each other, over and over again, how indicators were too technical and didn't reflect the real and most pressing rule of law issues. And in the end, all we ended up with was the 'need for another meeting'. What sort of expertise was that?

***

It is trivially true today to say that knowledge rules the world. Important things are done by people with 'detailed, specialized knowledge about those [things]'[1] (although as debates about knowledge and rule proceed, the location of the word 'important' tends to move around that sentence to modify different nouns). The relationship between knowledge and power – or perhaps expertise and policy – might be blurry, co-productive, and populated by the narcissism of small (but significant) differences; but in general, if policy is a set of ideas about what a particular world should look like, contemporary global policymaking is supposed to be the art of knowing what to do to get there. So what does that art supposedly look like?

In constituting a vision of the world, global policymaking produces visions of the global ('a world free of poverty' is the motto of the World Bank), and, as its counterpart, of the world that policymakers strive to globalise. This is not simply a spatial arrangement. The work of expertise is to pinpoint fragmented actors, locales, and moments and to map out how to tie them together into a functioning global order (and avoid overreach by leaving some things properly in the domain of local rule). An expert may point out that the oil business is shadowy because of the many different actors in the many different places who have different stakes along the 'value chain' from extraction through refinement to sale. She will worry about the pernicious impacts of the fragmentation of actors, places, and stakes on the poor, or on a developing nation's macro-fiscal governance, and then task herself with building a (sufficiently context-specific) administrative regime to manage oil extraction, production, and sale.[2]

[1] Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press, 2004), p. 24.

[2] See, for a comprehensive example, World Bank, 'EI SourceBook: Best Practice in Key Activities in the International Oil, Gas & Mining Industries' (*EI SourceBook*), www.eisourcebook.org/, accessed 6 July 2022.

For these policymakers, global governance is everywhere, labile and (yet) authoritative, mobile and (yet) fragmented. It cuts across domains from global trade to local Chiefs and from global Chiefs to local trade. Local governance is global governance and vice versa. For example, the same complex of legal orders tells mining companies, the state, Chiefs, and communities how to talk and think about property rights.

At the same time, this technical triumph is a source of anxiety. That which makes governance global also makes it socially disembedded. The flexibility and authority of global policymaking, often given form through law, come at the expense of its sociality. Indeed, for some scholars of global governance, 'society emerges in a strong sense as a foil'[3] to global structures of knowledge-power. So how should we navigate between the technical and the social? Although this question might be reductive of the nuances of much scholarly work and popular commentary, it frequently seems to be a way of expressing an important view of the contemporary political stakes of global governance. There are those who want more expertise, to be sure. Order and rule, no matter how disenchanted, are modern goods. Yet many – expert and lay, left and right, North and South – are concerned about those social realities, those people and values, that expertise leaves behind.

These concerned people's most common critical posture might be as follows: the very qualities that allow expertise to tie together and govern a series of fragmented spaces – lability coupled with analytic authority – produce long and dispersed chains of accountability that impact people's buy-in to a governance regime.[4] Legal arrangements have enabled oil companies to extract and pollute Nigerian villagers' water for decades; legal arrangements also broaden and lengthen villagers' attempts to hold that company accountable, moving their struggle from local protests to the US Supreme Court and back.[5]

For these critics of expertise, how legal expertise ties together and governs a series of fragmented spaces is particularly problematic. These critics argue that this particular way that legal expertise works is a source of both the false necessity of expert governance (the ring of justice slipped over a finger of the iron fist), and one of its defences against

[3] Marilyn Strathern, 'Robust Knowledge and Fragile Futures', in Aihwa Ong and Stephen J Collier (eds.), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems* (John Wiley & Sons, 2008), p. 466.

[4] Craig N. Murphy, 'Global Governance: Poorly Done and Poorly Understood', *International Affairs*, 76:4 (2000), 789–803.

[5] *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

alternative or non-expert modes of governing (by redefining who, where, and when the 'problem' to be governed is, often in a technocratic fashion, such that those modes don't fit all that well).[6] These critics then call for renovation: how can we construct an alternative politics of global governance that is accountable to non-elites?[7] Turning back to law, we see these political stakes play out in critical debates about the rule of law itself: how to build legal architectures through the expert application of some range of techniques, which might nevertheless claim some broad social warrant.

Indeed, much academic writing on rule of law reform conceives of it as an essential but somewhat depoliticised technology of rule, eliding political contest. For the charitable, this elision is justifiable or necessary in the pursuit of accountability, justice, restraints on power, and the like – often in the name of strengthening the hand of non-elites; for the critical, it produces false, and frequently neoliberal, necessity – often in the name of weakening said hand.[8]

***

The imagined expertise lurking behind this writing on rule of law reform is authoritative, is assertive, and has a bias towards order (and drawing boundaries around disorder).[9] I didn't find this expertise in New York. That was pretty disorderly and ineffective, and it favoured indecision over decision.

[6] Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Polity, 2007); Stephen Hopgood, 'Reading the Small Print in Global Civil Society: The Inexorable Hegemony of the Liberal Self', *Millennium*, 29:1 (2000), 1–25.

[7] To take two notable examples, this question explicitly animates Held's call for renovating the foundations of global governance and implicitly animates Castells' concern with imagining new public spheres: David Held, 'Reframing Global Governance: Apocalypse Soon or Reform!', *New Political Economy*, 11:2 (2006), 157–76; Manuel Castells, 'The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance', *The Annals of the American Academy of Political and Social Science*, 616:1 (2008), 78–93. This concern is not purely academic: Philip Stephens, 'The End of the British Establishment', *Financial Times* (24 February 2015), www.ft.com/cms/s/0/590bc480-bb6e-11e4-a31f-00144feab7de.html#axzz4HWjMu7A0, accessed 6 July 2022.

[8] See, for example, Martin Krygier, 'Why the Rule of Law Matters', *Jurisprudence*, 9:1 (2018), 146–58; Sundhya Pahuja and Shane Chalmers, '(Economic) Development and the Rule of Law', in Martin Loughlin and Jens Meierhenrich (eds.), *Cambridge Companion to the Rule of Law* (Cambridge University Press, forthcoming).

[9] Robert Pierson, 'The Epistemic Authority of Expertise', *PSA: Proceedings of the Biennial Meeting of the Philosophy of Science Association*, 1994: 398; Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed. (W. W. Norton & Company, 2011), p. 13: all policymaking 'is a constant struggle over the criteria for classification, the boundaries of categories and the definition of ideals that guide the way people behave'.

For some, New York might stand for expertise at its limits. We didn't really know how to turn the rule of law into an indicator. Perhaps we didn't know enough about the rule of law; perhaps we didn't know enough about the world; perhaps we didn't know enough about how to fit the two together. But damned if we weren't going to keep trying.

Of course, this view is not new. Many have focused on the extraordinary ability of global experts not just to cope with root-and-branch critiques that point out their limits but also to internalise those critiques.[10] Take those who find the limits of global governance in the irreducible complexity and vitality of the world. Here, global governors will inevitably meet an 'ungovernable surplus'[11] – perhaps a product of a changing global environment that generates new and contingent circumstances, presaging new and fluid forms of governing power that can move across scales, times, and social relationships. As these circumstances generate or intensify governance failures, they give rise to, or breathe new life into, critiques of expert governance. Experts must then play catch-up to govern what they have wrought: they produce tomorrow by internalising yesterday's critiques today, whether working hard to undermine them, straightforwardly responding to them, incorporating them at the margins, or exploiting them to produce a degree of strategic uncertainty about the projects of one's competitors.[12] Governance is perpetual (but has to be

[10] See, for examples of the internalization of critique in order to provide non-radical responses, Paul Krugman, 'Cycles of Conventional Wisdom on Economic Development', *International Affairs (Royal Institute of International Affairs 1944–)*, 71:4 (1995), 717–32 (arguing that economists have fashions, based in rhetoric and social responsiveness, and calling for the rigorous use of economic theory and empirical evidence in response – and notably doing so immediately preceding the Asian financial crisis); Henry Farrell and John Quiggin, 'Consensus, Dissensus, and Economic Ideas: Economic Crisis and the Rise and Fall of Keynesianism', *International Studies Quarterly*, 61 (2017), 269–83 (tracing the neutralisation of Keynesian ideas in the immediate aftermath of the 2008 financial crisis through the person of tame dissenters); Robert J. Shiller, 'Narrative Economics', *American Economic Review*, 107:4 (2017), 967–1004 (recognising the performative idea that narratives about the market then begin to influence people's behaviour and thus shape the market – and then arguing for an econometric analysis of narratives, in stark contrast to social-theoretical accounts of the performativity of economic markets such as Callon).

[11] Lara Montesinos Coleman, 'The Making of Docile Dissent: Neoliberalization and Resistance in Colombia and Beyond', *International Political Sociology*, 7:2 (2013), 170–87. In a Foucauldian register, Cooper reminds us of the constitutive nature of this encounter with a 'surplus' to both expert governance and the production of surplus value: Melinda E. Cooper, *Life as Surplus: Biotechnology and Capitalism in the Neoliberal Era* (University of Washington Press, 2011); Miguel Vatter, 'Biopolitics: From Surplus Value to Surplus Life', *Theory and Event*, 12:2 (2009).

[12] Jacqueline Best, 'Bureaucratic Ambiguity', *Economy and Society*, 41:1 (2012), 84–106.

asserted); resistance is futile (but intermittently possible, depending on the time and place).

These authors share a similar intuition: that experts respond to complexity and concomitant critiques of their work as an effect of a changing world. In this view, the fact that my colleagues and I were in New York to discuss rule of law indicators was itself telling. The Millennium Development Goals, the precursor to the SDGs, had been roundly criticised as depoliticised, in part because of the absence of measures of political and institutional factors such as the rule of law.[13] Indeed, for some, this was a fatal flaw.[14] And so we gathered in New York, at the very frontiers of efforts to work out what a development indicator should be about, to discuss how to transmute messy politics into neat rule of law numbers. For these scholars, our failure to deliver would simply be a stuttering step in the direction of a new form of global governance that endogenised some sort of politics into its techniques – and which would subsequently be critiqued on the grounds of the politics it left out, or the unintended consequences it produced, or the narrow cadre of elite interests it really served. And so the cycle begins again. Techniques of rule eventually confront politics and adapt.

Another set of authors focus instead on the practices of experts themselves. For these authors, governance failures are not a result of a changing world but an inevitable product of the governing limits of expertise. They do not seek to map a dynamic of the decomposition and recomposition of expertise in the face of the world. Rather, for these scholars, expertise is intrinsically entropic. The phenomenon to be explained is how it nevertheless holds together on its own terms. Showing the ad hoc and partial way that experts' professional and argumentative practices engage with and co-opt critique reveals the backstage interests and biases of these tartuffes. For example, Séverine Autesserre notes how peace-building practitioners and aid workers simultaneously believe in the power of their expertise to change war-torn areas and are disenchanted by its organisational failure to live up

[13] David Satterthwaite, 'The Millennium Development Goals and Urban Poverty Reduction: Great Expectations and Nonsense Statistics', *Environment and Urbanization*, 15:2 (2003), 179–90; Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals', *Human Rights Quarterly*, 27:3 (2005), 755–829; Jeffrey D. Sachs, 'From Millennium Development Goals to Sustainable Development Goals', *The Lancet*, 379:9832 (2012), 2206–11.

[14] See, for a summary of these arguments, Sakiko Fukuda-Parr, *Millennium Development Goals: Ideas, Interests and Influence* (Routledge, 2017).

to those promises.[15] Ros Eyben similarly studies development practitioners in the Global South and sets out some of the strategies they use to cope with that disenchantment (a familiar litany of sex, alcohol, and cynicism).[16]

Tania Li[17] and David Mosse[18] adopt science and technology studies ('STS')-inflected approaches to show how different development projects are composed not of authoritative plans but of fragile, provisional, and often chaotic attempts to construct things like 'knowledge', 'constituencies', and 'policies' that can stimulate action. David Kennedy goes one step further, suggesting that – for global governance experts in general and legal ones in particular – disenchantment is baked into the social and semiotic structure of their expertise (rather than its specific organisation). For him, expertise is all about how individual experts simultaneously strategise the gap between the promise and failure of their expertise to their advantage, and cope with the inevitable resultant duplicity and disenchantment regarding their own authority.[19]

This set of authors imagine that expertise is fundamentally doubled. It has a frontstage on which it enacts its authority to the world – and is pretty committed about it. It also has a backstage in which it recognises that its authority is a bit of sham and from which it goes about producing it anyway.[20] For these authors, experts internalise critique to sustain, or even strengthen, the authoritative façade of their expertise, whether or not the world itself demands it. Here, the relevant politics are found in the hidden techniques that experts use to make sense of the failings of their expertise to govern the world, and/or to elide those failings – such as lonely irony, nihilism, instrumentalism, cynicism, and casuistic self-enrichment.

Coggins' poem shows one such technique. Written '[i]n lieu of an editorial', it is itself a failure of authoritative form. In fact, Coggins began his

[15] Séverine Autesserre, *Peaceland: Conflict Resolution and the Everyday Politics of International Intervention* (Cambridge University Press, 2014).

[16] Rosalind Eyben, *International Aid and the Making of a Better World: Reflexive Practice* (Routledge, 2014).

[17] Tania Murray Li, *The Will to Improve: Governmentality, Development and the Practice of Politics* (Duke University Press, 2007); Tania Murray Li, *Land's End: Capitalist Relations on an Indigenous Frontier* (Duke University Press Books, 2014).

[18] David Mosse, 'Is Good Policy Unimplementable? Reflections on the Ethnography of Aid Policy and Practice', *Development and Change*, 35:4 (2004), 639–71.

[19] See generally David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016), pp. 5–20.

[20] See generally David Mosse (ed.), *Adventures in Aidland: The Anthropology of Professionals in International Development* (Berghahn Books, 2011); Anne-Meike Fechter and Heather Hindman, *Inside the Everyday Lives of Development Workers: The Challenges and Futures of Aidland* (Kumarian Press, 2011).

professional life as a man of devout faith, serving as a Baptist minister and missionary, before beginning a career at the US Agency for International Development (USAID).[21] It is not hard to juxtapose the cynicism of 'The Development Set' with another poem he wrote twenty years earlier while serving in the church. Entitled 'Send Me, O Lord, Send Me', it is a paean to a sincerely felt will to serve.[22]

Indeed, the use to which other development professionals put 'The Development Set' evinces a similar personal disenchantment with the realities of service for the secular good. For Owen Barder, a development guru and former vice president of the Center for Global Development, the poem is therapeutic – a tool of personal growth in the face of the contradictions of development work: '[In light of Coggins' poem,] I have made myself a personal promise. I do not want to travel around the world telling poor countries what they should do and how they should change'.[23] For Jennifer Lentfer, a veteran of development work with grassroots NGOs, it served as a personal warning and part of her orientation in this unhappy new profession she entered: 'I remember first reading this poem as I was waiting for an appointment with my adviser in graduate school. It was taped to his door. The second time, it was read to a group of us at our fellowship orientation as we officially entered the … aid world'.[24]

For Coggins, like Kennedy, Autesserre, and others, experts will inevitably encounter the limits of their expertise and deal with them as best they can, backstage. The political potential of critique fragments and decomposes into personal ethics, as disenchanted experts internalise critiques made of them and translate them into naïve optimism, pragmatic muddling, individual tragedies, arch ironies, and alcoholic hazes.

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Whether focused on a changing world or disenchanted experts, authors who study how global governance experts internalise critiques share a

[21] Bob Allen, '"Send Me, O Lord, Send Me" Author Ross Coggins Dies', *Baptist News* (9 August 2011), https://baptistnews.com/article/send-me-o-lord-send-me-author-ross-coggins-dies/, accessed 6 July 2022.

[22] William N. McElrath, *Bold Bearers of His Name: Forty World Mission Stories* (Broadman Press, 1987), p. 7.

[23] Ravi Kanbur, 'Poverty Professionals and Poverty', in Andrea Cornwall and Ian Scoones (eds.), *Revolutionizing Development: Reflections on the Work of Robert Chambers* (Earthscan, 2011), pp. 212–13.

[24] Jennifer Lentfer, 'Friday's Poetic Pause: "The Development Set" by Ross Coggins' (10 February 2012), www.how-matters.org/2012/02/10/the-development-set/, accessed 6 July 2022.

concern that expert governance – expressed through law or otherwise – is stretched beyond its limits in the service of governing the world, whether inevitably (as a result of the internal constraints of its expert structure), or as a result of external conditions. This in turn produces governance failures, such as ignorance, fragmentation, and politicisation. These failures could be the precursors of renovation – of accountable governance with politically engaged legal systems at its service. And yet the expert status quo somehow persists, in spite, or because, of its limits.

For all of these authors, governance failures are refracted through an existing architecture of authoritative expertise – expert practices, expert discourses, the profession of the expert, the expert herself. This architecture represents a series of negotiated (and contested) borders between expert and lay, technical and social, knowledge and politics, fact and value. These authors thus share an assumption that experts seek to assert their dominion, that policies can still tell the world what to do, and that the rule of law coheres. If critiques of expertise hollow out some aspects of expert governance, those gaps are inevitably filled in, somehow.

Returning to New York, our claims that we couldn't turn the rule of law into an indicator could be interpreted as momentary expressions of doubt that drove us to redouble our efforts to produce precise indicators.[25] Or they might be interpreted as bad faith or rhetorical proclamations that we offered as disclaimers to limit our responsibility – to be ignored or elided by those seeking to make sense of the consultations, who might instead focus on the ways in which we objectively looked, sounded, and acted expert.[26] Or they might be interpreted as a performative contradiction (the expert proclaiming the lack of her expertise!) to be resolved – for example, through an expert affect that is disenchanted and cynical (and all the more casuistically effective for it).[27] And so on. Common across these explanations is a view that experts exercise forms of knowledge-power through their interpretations of their limits.[28] So experts remain committed to giving authoritative meaning to the concept of the rule of law, even as they proclaim that they cannot.

[25] Karin Knorr Cetina, *Epistemic Cultures: How the Sciences Make Knowledge* (Harvard University Press, 1999).

[26] Jothie Rajah, '"Rule of Law" as Transnational Legal Order', in Terence Halliday and Gregory Shaffer (eds.), *Transnational Legal Orders* (Cambridge University Press, 2015).

[27] Kennedy, *A World of Struggle*.

[28] Sundhya Pahuja, 'Power and the Rule of Law in the Global Context', *Melbourne University Law Review*, 28:1 (2004), 232–52.

This assumption is the point of departure for this book. What if critiques of expert governance – the constant reflections on its failure – take their own discrete place within the architecture of expertise? More specifically, what if some experts are professional critics, mostly concerned not with making meaning but with refusing it – thereby hollowing out the expertise of themselves and others, and keeping the gaps in authority unfilled? And what if these experts are particularly prevalent in the rule of law field? In the workshop in New York, my colleagues asked, 'Are we really talking about the rule of law?' neither as a cynical aside nor as a rhetorical nod to the inadequacy of their expertise. It was a commonplace expression that was part of doing rule of law reform.

This set of questions is akin to many that animate a range of studies of experts. Such studies might similarly stake out space between pragmatic explanations of the exercise of power (here, disenchantment) and material-structural ones, turning to fields, professions, networks, communities, and any number of other social analytics.[29] Indeed, in this vein, one might simply assert that radical critiques (in the sense of root-and-branch, or anti-foundational, ones) are no different from any other expert assertion, and they could be studied as such. Such negative assertions might have a common argumentative structure, a series of prior normative assumptions, and ideological orientation, or a shared disciplinary language, or they might emerge from a field of practice or be a product of a specific set of material relations, and so on. Other projects have risen to this task, resolving the seeming contradictions in rule of law reformers' self-critique by arguing that the critical sophistication of reformers masks the same old exercise of governing power by authority-seeking experts.[30]

Moments of crisis, from this methodological perspective, are seductive. If an orthodoxy is disrupted, its contingent structures and practices might become visible to (scholarly) engaged outsiders. Law, labile as it is, might offer ample opportunity for such reappropriation of critical efforts. The task of legal critics, then, would be threefold. First, identify moments of crisis. Second, support institutional reinvention while guarding against attempts to defang this support. Third, do the analytical

[29] Luc Boltanski, *On Critique: A Sociology of Emancipation* (Polity, 2011), p. 7.

[30] See, for a recent example, Maj Lervad Grasten, 'On the Politics of Translation in Global Governance' (PhD Thesis, Copenhagen Business School 2016), https://research.cbs.dk/en/publications/rule-of-law-or-rule-by-lawyers-on-the-politics-of-translation-in-/, accessed 6 July 2022.

work of keeping a wary eye on how others treat reinvention – a study of their hidden structures and motivations, undertaken from a zealously guarded outside position.[31]

As the *New Scientist* archly wrote of Coggins' poem, 'The sentiments are not new, of course, but as they are those of an insider, perhaps there is hope for [development] organization[s]'.[32] The critic, on the outside looking in, warily spied a potential ally. Flowing from this view is a political mode for critical engagement with authoritative experts as they internalise critiques of their work: develop big critiques and reinventions of ideas about law and governance, ready to be deployed as things fall apart; and conduct the social and intellectual endeavour of engaging with the 'insiders', or going from individual to individual to see if they might be a lost cause, a good ally, a solipsistic irrelevance, or a dangerous false friend in moments of crisis.

This book argues that this methodological and political posture and allied version of politics – the critic as a more or less engaged outsider to the authoritative expert – is misguided. It is methodologically misguided in that a particular group of experts – some rule of law and governance reformers who sort of work in the domain of development policy – seem to be playing the professional role of radical critics. It is professionally commonplace for them to say that they know neither what the rule of law is nor how to build it. Moreover, I argue that such claims are neither simply a recognition of the limits of their knowledge nor a frontstage façade. Rather, such claims are constitutive of their expertise. And if these experts frequently deny their epistemic authority, an analytic posture towards them is no longer clearly 'outside' or 'inside' them; it is neither clearly 'critical' nor 'pragmatic'.[33] This politics is then misguided in the sense that it misses out on the techniques and professional dynamics of this group of experts; the performative effects of the denial of their expertise on the

[31] For a recent example of a critique of the ideology of the frontstage of rule of law expertise – its assumptions, its normative commitments, its form – see Tor Krever, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense', *Third World Quarterly*, 34 (2013), 131–50. For a detailed attempt to leverage project documents and other representations of the minutiae of the mundane practice of rule of law reform as a means of uncovering the ideologies and projects *behind* rule of law reform, see Stephen Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge University Press, 2010).

[32] 'Ariadne', *New Scientist*, 112 (1989).

[33] Simon Susen, 'Is There Such a Thing as a "Pragmatic Sociology of Critique"? Reflections on Luc Boltanski's "On Critique"', in Bryan S. Turner and Simon Susen (eds.), *The Spirit of Luc Boltanski: Essays on the 'Pragmatic Sociology of Critique'* (Anthem Press, 2014), p. 174.

people, projects, and practices that make up rule of law reform; and the implications of their form of expertise for law, development, and governance more generally.

In this book, I argue for and undertake a study of the productive power of this expert self-denial (rather than resolving its seeming contradictions). I focus on these experts, their expertise, and its legal and political effects; their place within the architecture of development expertise; and (more speculatively) the possibility of this form of expertise in other expert domains of global governance. At the heart of my approach is a change in focus from authoritative expertise on to expert ignorance about the rule of law.

1.2 Expert Ignorance

Why ignorance? The word provokes and seduces. We apparently live in a 'golden age of stupidity' and an 'age of ignorance' … if certain countertribunes are to be believed.[34] More prosaically, ignorance appears to be associated with a set of political anxieties about the difficulty of ever holding anyone accountable for the consequences of their decisions. After all, if no one knows anything, on what basis can someone be judged to be responsible, save through the exercise of power, as one individual asserts another's culpability?[35]

This case for ignorance is, I think, overstated. I imagine ignorance to be much more mundane than breathless. I argue here that ignorance is already part of the everyday functioning of contemporary global governance, operating at once as pillar of today and prophet of tomorrow. My use of ignorance is not pejorative; rather, it is an anormative means of describing experts' denial of their own expertise. That is, the word does not connote anxiety about faith or motivation, about whether the expert is falsely humble or strategically disenchanted.

At the same time, the word 'ignorance' captures the radical possibility of expert self-denial – for example, when Thomas Carothers, a rule of law reform grandee, says that most practitioners 'openly recognize and

[34] David Rothkopf, 'America's Golden Age of Stupidity', *Washington Post* (25 July 2017), www.washingtonpost.com/news/global-opinions/wp/2017/07/25/americas-golden-age-of-stupidity/, accessed 24 August 2022; Myisha Cherry, 'Trump and the Age of Ignorance', *Huffington Post* (16 November 2016), www.huffingtonpost.com/entry/trump-and-the-age-of-ignorance_us_582ca2d1e4b0d28e5521493d, accessed 6 July 2022.

[35] Linsey McGoey, *The Unknowers: How Strategic Ignorance Rules the World* (Zed Books, 2019), pp. 306–13.

lament' the fact that 'we know how to do a lot of things, but deep down we don't really know what we are doing'.[36] It also captures the fogginess that results from such systematic self-denials. 'After all, how can a researcher know what an individual or an observed group of actors do not know?'[37] These self-denials blur the distinction between inside and outside, expert and critic, and, eventually, subject and object.

For a book that draws inspiration from the concept of ignorance, I do not dwell on it. This is by necessity. Defining ignorance is a fraught business, as is any effort to define a negative concept on its own terms. For example, a literature on ignorance studies synthesises classic strands of sociology and social theory, which foreground the importance of ignorance for contemporary social and political life, critically assessing the limits of knowledge and expertise in modernity.[38] Chief precursors include Frankfurt School scholars' critique of the will to knowledge as structuring modern society, as well as Beck's analysis of how late capitalism has internalised the limits of knowledge as 'risk', among others.[39] 'Ignorance studies' develops this tradition by focusing on the production and circulation of ignorance and meaninglessness as autonomous phenomena, rather than as objects understood through their relationship to knowledge. These scholars have thought about the conceptual boundaries of ignorance, trying to convince the reader that they are talking about a clear and distinct category, albeit one whose edges slip from their grasp (uncertainty?

[36] Thomas Carothers, 'Promoting the Rule of Law Abroad: The Problem of Knowledge', *Carnegie Endowment for International Peace*, 34 (2003), 5.

[37] Matthias Gross and Linsey McGoey, 'Introduction', in Matthias Gross and Linsey McGoey (eds.), *Routledge International Handbook of Ignorance Studies* (Routledge, 2015), p. 7.

[38] Key contributions include Proctor and Schiebinger's seminal edited collection and Gross and McGoey's field-convening handbook: Robert Proctor and Londa L. Schiebinger (eds.), *Agnotology: The Making and Unmaking of Ignorance* (Stanford University Press, 2008); Matthias Gross and Linsey McGoey (eds.), *Routledge International Handbook of Ignorance Studies* (Routledge, 2015).

[39] Theodor Adorno and Max Horkheimer, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford University Press, 2007); Ulrich Beck, *World at Risk*, tr. Ciaran Cronin (Polity Press, 2008); Ulrich Beck, 'Reflexive Governance: Politics in the Global Risk Society', in Jan-Peter Voß, Dierk Bauknecht, and René Kemp (eds.), *Reflexive Governance for Sustainable Development* (Edward Elgar, 2006); Ulrich Beck and Peter Wehling, 'The Politics of Non-Knowing: An Emerging Area of Social and Political Conflict in Reflexive Modernity', in Patrick Baert and Fernando Domínguez Rubio (eds.), *The Politics of Knowledge* (Routledge, 2012); Matthias Gross, 'Risk as Zombie Category: Ulrich Beck's Unfinished Project of the "Non-Knowledge" Society', *Security Dialogue*, 47:5 (2016), 386–402.

Knightian uncertainty? Radical unknowns? Or simply something that lurks where knowledge is not?).[40]

In their recent *Handbook of Ignorance Studies*, Gross and McGoey point out that 'the registration and observation of what is not known is often a challenging and politically unpopular field of research'.[41] This challenge has given rise to interminable definitional debates and a cottage industry of taxonomies, two-by-twos and matrices further filleting different types of ignorance. 'Meta-ignorance', 'unknown unknowns', 'ignorance of ignorance', 'unspecified known ignorance', 'specified known ignorance', 'openly reducible personal ignorance', 'non-knowledge', 'negative knowledge', 'nescience'. The list goes on.[42]

I sidestep these debates by talking about expert ignorance as a specific phenomenon in which experts can systematically deny their own expertise in a way that is constitutive of it. I am heuristic in my use of the terms 'expert', 'expertise', and 'reformer'. People are reformers because they are engaged in rule of law reform activities – although, as we shall see, the spatio-temporal and identarian boundaries of those activities are made hazy by reformers' self-denial. Reformers are experts and part of a system of expertise because they emerge from a background context of governance in which the image of an authoritative expert looms large. And as we shall also see, when experts systematically self-negate, the self that they risk erasing is neither their physical nor their spiritual self but their expert one. Thus, when I talk about 'expert' ignorance, I mean that the domain on which experts' self-negation plays out is their expertness.

Expert ignorance is doubly contradictory. First, it imagines an expert whose expertise is explicitly the inverse of authoritative and knowledgeable. Second, it imagines a group of experts organised not around a concept or some positive knowledge but around a negative or absent concept. These contradictions enable me to think about the people, projects, practices, and institutional effects of expert ignorance without assuming that they are merely waypoints in the struggle to turn ignorance into truth or fact. At the same time, they enable me to take seriously the sociological and phenomenological weight of having someone embody the role of an expert – even as she denies her authority.

[40] Michael Smithson, *Ignorance and Uncertainty: Emerging Paradigms* (Springer Science & Business Media, 2012), pp. 1–10; Mark Hobart, 'The Growth of Ignorance', in Mark Hobart (ed.), *An Anthropological Critique of Development: The Growth of Ignorance* (Routledge, 2002).

[41] Gross and McGoey, *Handbook*, p. 7.

[42] This summary draws on Matthias Gross, 'The Unknown in Process: Dynamic Connections of Ignorance, Non-Knowledge and Related Concepts', *Current Sociology*, 55:5 (2007), 744.

In terms slightly more theoretical than methodological, these contradictions provide for a study of ignorance-power rather than Foucauldian knowledge-power. Where knowledge-power produces forms in the world through the ordering functions of knowledge – subjects and objects that are produced as such through knowledge and its practices – ignorance-power performs a chiaroscuro of sorts, focusing on the exhaustion of order and thus drawing our attention to how such forms are reflexive and negotiated. An administrative order might take form not only by deploying the techniques of scientific rationality but also by raising the possibility of exhausting its own rationality in the face of its inevitable antinomies.[43] Deliberative liberal parliamentarianism might do the same by raising the possibility of exhausting language to resolve the indeterminacy of meaning.[44] And so on. In this view, expert ignorance might describe a set of mundane professional encounters with the exhaustion of order per se.[45] Understanding how precisely expert ignorance might work and the sorts of encounters with the exhaustion of order it thus produces might provide some useful insights into its political and legal consequences.

Turning to rule of law reformers specifically, I view their claims to ignorance as important to those concerned with law, development, and global governance. Rule of law reformers are a specific subset of global policymakers. Every year, on aggregate, they spend many billions of dollars on legal and institutional change in a wide range of peacekeeping, security, humanitarian, human rights, development, and other global governance activities, usually in the Global South. As noted, the nature of their expertise is unusual: it is a legitimate professional position for them to deny both the form and content of their expertise. In any debate about the nature and direction of rule of law reform, they can – and often do – say that they don't know what the rule of law is or how to do it. Relatedly, they can also say, as one major study of the profession did, that the field is marked by 'the absence of any baseline data about the

[43] Peter L. Strauss, 'Teaching Administrative Law: The Wonder of the Unknown Administrative Law in the '80s', *Journal of Legal Education*, 33:1 (1983), 1–12.

[44] Bill Scheuerman, 'Is Parliamentarism in Crisis? A Response to Carl Schmitt', *Theory and Society*, 24:1 (1995), 135–58.

[45] This resonates with Leander's identification of experts who 'provizionaliz[e] expertise', although Leander understands them doing so through personal strategies of hedging rather than the professional substance of their work – which I argue marks expert ignorance as a distinct phenomenon worthy of study. Anna Leander, 'International Relations Expertise at the Interstices of Fields and Assemblages', in Andreas Gofas et al. (eds.), *The SAGE Handbook of the History, Philosophy and Sociology of International Relations* (SAGE, 2018), p. 392.

professionals, both local and international, who are engaged in justice reform work worldwide'.[46]

As a result, it is not easy to identify who is a reformer and who is not, how widespread 'ignorance' might be for rule of law reformers, or where the limits of rule of law expertise can be found. Reformers might reside in a range of institutions or networks, hold any number of ideas about the rule of law, work on all sorts of projects, move between global, national, and local, and so on. At the same time, I am not making the claim that rule of law reform has no boundaries. Not all rule of law reformers would claim to be ignorant (indeed, many would certainly contest the claim). And my account clearly has conditions of production. I draw on my experiences with the World Bank, the UN, think tanks, conferences, and other venues for doing rule of law reform. They all have their conditions of entry and patterns of (spatial, racial, economic, class …) exclusion, which I discuss at the end of the next chapter and which I write into the background of my stories of rule of law reform. And they do not anchor the reader in the experiences of rule of law reform of a government official, an NGO activist, a rural labourer – although all are members of the dramatis personae in the book, conducting all manner of development work.

So, instead of sociologising some cadre of rule of law reformers or a body of rule of law expertise, my argument is that rule of law expertise is shaped by the possibility that its mavens can adopt a posture that denies their expertise, as a legitimate professional position. Moreover, I argue that such claims to be ignorant have effects, both performatively and materially. Such claims are part of the everyday practice of rule of law reformers and constitute an element of self-analysis and professional organisation. And yet claims of ignorance do not lead to paralysis in the face of indeterminacy. Acts occur, laws and institutions are reformed, policies drafted, indicators drawn up, money spent, and worlds made. In the end, decisions are taken, gradually accumulating into projects, programmes, policies, and ultimately, contributing to endeavours of global governance. This book is an attempt to show that the accumulation of these acts or decisions might produce some forms of the 'rule of law'. These forms are highly provisional, and continually return to first-order questions about law. In particular, they under-demarcate acts that are political from ones which are legal.

[46] Kristina Simion and Veronica Taylor, *Professionalizing Rule of Law: Issues and Directions* (Folke Bernadotte Academy, 2015), p. 23.

Analysing these forms is, however, a challenge. Ignorance is difficult to hold onto and analyse on its own terms. The scholar no longer guards a position of critical insight while casting about for individual allies. She floats among fragments of inside and outside, knowledge and action, frontstage and backstage, bumping into others every so often. Her normative projects, particularly her political commitment to refashioning global governance to be more accountable, fair, or legitimate, dissolve into impossible-to-prove allegations of bad faith, ill intent, or structural bias. What is she to do?

The answer, I suggest, is found in the theatre – and in a performance analysis of expert ignorance. Embedded in my turn to performance is an argument that expert ignorance should be understood as an aesthetic encounter with a sublime (here, the rule of law, understood as a specific way of talking about contemporary complexity) rather than as a phenomenon of 'keeping expertise controversial'[47] or underdetermined, which would then be empirically described and politically parsed through social-scientific knowledge. Put simply, studying dramatic action provides a platform from which to imagine expert ignorance such that we might judge, or reflect on, the relationship between ignorant experts and governed groups. Questions about characters' becoming, intent, agency, and their relationship to powerful structural forces are the meat of performance analysis.

In the book, I draw on three specific plays as indices to understand the action of rule of law reform: Beckett's *Ohio Impromptu*, Miller's *The Archbishop's Ceiling*, and Shakespeare's *Measure for Measure*. The plays are useful for my purposes, as they are germane to my themes. As I develop in Chapters 4 and 5, from its title to its action, the second play enacts the effects on meaning-making in secular encounters with the sublime – crucial to understanding the operations of expert ignorance in the field of rule of law reform. And the first and last of those plays unfold in cities (Vienna, and perhaps Columbus, Ohio) that come to stand, in their staging, for no place, no time, and no sense of who people are. This indeterminacy of space, time, and identity, I go on to argue, is an important consequence of expert ignorance in rule of law reform.

More broadly, the plays, and my analysis of them, give form to a relentlessly self-critiquing authority (in both the social-scientific sense of power

[47] Anna Leander, 'Essential and Embattled Expertise: Knowledge/Expert/Policy Nexus around the Sarin Gas Attack in Syria', *Politik*, 17:2 (2014), 30.

and right, and the humanistic sense of authorship) and the structures of power that it continually dissolves and produces. *Measure for Measure*, in particular, serves as an interpretive device in the book – it frames each of the chapters and merits a full discussion in Chapter 5.

1.3 Argument

> You speak unskillfully: or if your knowledge be more, it is much darkened in your malice (Measure for Measure, III. ii. 140).

In Shakespeare's Vienna, Duke Vincentio has disappeared from his office and walks the streets in disguise. In the absence of the lawgiver, others seek to govern. 'Of government the properties [they] unfold' (I. i. 3): the play is driven by these other putative lawgivers and their efforts to negotiate and assert different visions of the rule of law, from rigid rule application to appeals to principles of justice. In these negotiations, the characters 'play with reason and discourse,/ And well [they] can persuade' (I. ii. 183–4). Government has vanished, and governance strives to take its place.

Yet the characters' efforts to govern are unstable. Throughout the play, the Duke himself prowls the streets in different dress, meeting and manipulating his citizens and lieutenants. As the other characters negotiate the content of the rule of law in Vienna, he negotiates the other characters themselves, using not the power of his office but his own, more shadowy, 'reason and discourse'. Indeed, in one pivotal moment of the play, the Duke delivers an eloquent speech to convince another character that the only just course of action would be for the man to commit suicide – a conviction from which the character eventually resiles but which drives the action of the play.

Measure for Measure depicts the rule of law as layers of reason and power, with neither layer any less or more real: mise en abyme after abyme. In doing so, it questions whether any interaction is not such a layer. The final deus ex machina entails the Duke returning to his office, thereby restoring the lawgiver in his place. This conclusion is jarring: the Duke rapidly discards his disguise and profits from a bed trick. The Duke appears to be negotiating with the expectations of the audience and the comedic genre itself.[48]

[48] Harold Bloom, *Shakespeare: The Invention of the Human* (Riverhead Books, 1998), pp. 358–82.

In the quote at the start of this section, the Duke, disguised as a Friar, chastises Lucio, one of the more foolish characters in the play. Lucio has claimed that he knows the Duke personally despite never having met him. The dramatic irony is absurd; the Duke's response is anything but. Rather than goad or mock Lucio, he dramatises him. That is, the Duke pinpoints the authority (notably blurring skill and knowledge, techne and episteme) with which Lucio speaks, and produces a backstage of hidden intent behind it (as implied by 'malice'). In doing so, he hollows out the very distinctiveness of knowledge, rather than asserting the truth. The Duke is at once the motor of action in the play and the dissolver of meaning; he denies all knowledge, masks himself, and produces hidden motivations behind action. Everything in the play is contingent – indeed, whether various characters live or kill themselves. Not for nothing does Lucio call him 'the old fantastical Duke of dark corners' (IV. iii. 169–70).

The Duke returns to these pages in subsequent chapters. For now, he chastens us. The reader, or writer, might purport to re-entangle knowledge and ignorance in the pursuit of better understanding the import (or otherwise) of rule of law reformers' self-denials. But what does she know? Everything is already blurry and shifting. In attempting to uncover others' backstage, she either speaks unskilfully or through malice. Her zealously guarded outside position is part of the process of governance. Tu quoque.[49] In doing so, the Duke points out just how hard it is to meaningfully analyse governors clothed in self-denial. Governing is done through overt, not just covert, rulership; in ignorance, these governors may possess the will to submit, even as they also retain the will to govern.

This challenge is the point of departure for my main interventions. First, theoretically, I argue that we should take expert ignorance seriously. The content of any rule of law reform activity can be justified or redefined again and again from first principles given that no one really knows what the rule of law is. Rule of law reformers are skilled at critiquing each other from universal and particular perspectives, often oscillating between the two, and thus proving slippery objects of study. Drawing on Kantian aesthetics and their reworking through the Frankfurt School, I go on to theorise rule of law reform in aesthetic terms, as a shadow of reformers' fantasy of attaining the rule of law.

Thus, methodologically, I argue that this view of the rule of law demands a different form of critical engagement. I propose a different way

[49] Malcolm Ashmore, *The Reflexive Thesis: Wrighting Sociology of Scientific Knowledge* (University of Chicago Press, 1989), pp. 87–110.

of studying experts' claims to ignorance about the rule of law. Reformers remain irreducibly embodied, and onto their bodies is inscribed the labour of organising and disorganising knowledge and action in the shadow of self-denial – expressed in terms of anxiety, resignation, subversion, and other generally marginal sentiments. Those sentiments emerge as reformers oscillate between two modes of producing the rule of law. The first is 'acting': reformers speak in thoughtful terms of their own humility, their lack of knowledge, their empathy, and their willingness to listen. The second is 'doing': reformers speak in active terms of their own assertiveness, decisiveness, commitment to act, and willingness to respond to demands. Together, these constitute a 'performance' of rule of law reform, found in words, actions, and bodies. I argue that we should take rule of law performances seriously. They reveal how there is no moment in which the rule of law is necessarily given concrete meaning without that meaning being underdetermined at the same time. This, in turn, renders the spatiotemporality of reform, and the identity of its players, fluid. I go on to sketch out a method to analyse these performances, drawing on insights from performance studies.

Second, analytically, I argue that it is not sufficient to provide a sociological account of the background interpretive and political contests that produce the settled surface of authoritative claims about what the rule of law should look like. The surface is anything but settled; rule of law reformers continue to perform anew their context, including the relationship between their expert form (a profession, a field, a social movement, a group of institutional entrepreneurs, etc.) and their expert content (reform of state legal institutions, transitional justice, family planning, etc.). Yet at certain moments, decisions happen – indicators are produced, project funds allocated, and so on. Reformers do so by combining 'implementation work' and 'ignorance work'.

We are familiar with implementation work. It entails situating the reformer within particular patterns that affirmatively lead to policies: a set of bureaucratic incentives that act upon her, an ideology to which she is beholden, and so on. Ignorance work, however, entails situating the reformer within particular patterns that negate policies: ignorance on the basis of inadequate philosophical tools, or norms, or epistemologies, and so on. We should take ignorance work and its relationship with implementation work seriously. Implementation and ignorance work structure rule of law performances by shaping the movement between acting and doing, the experts they invoke, the audience they imagine, and the institutions they rely on to have meaning. The relationship between the two types

of work describes a style of reform. Such an account of style provides a novel analytic to understand rule of law reform as the operationalisation of expert ignorance, and identifies ways in which expert ignorance might be the object of social-scientific study – in particular, efforts to shape or limit the style of reform. It also opens the possibility that expert ignorance might be found in other domains of global governance concerned with institutional reform, where specific expertise is constituted by both types of work in meaningful relation (a point to which I return in the 'Conclusion').

Third, politically, I argue that rule of law performances (that combination of implementation and ignorance work) produce provisional, fluid, and reconfigurable forms of the rule of law. They do so by continuing to return to first-order questions about the rule of law – in particular, the nature and location of the divide between law and politics (or another of law's Others). Performances thus raise – but do not resolve – fundamental legal and political matters such as the autonomy of law, and the identity and nature of the social body that has some constitutive relationship with some sort of law. I also argue that rule of law performances position these fundamental matters within the broader architecture of development expertise in ways that might eventually be depoliticising – by recognising but never resolving them.

At the same time, rule of law performances are by their nature manifold and hard to predict. Attempts to organise, shape, and limit the available repertoire of performances are thus worthy of study: efforts to make ignorant experts an epistemological collective, a group of institutionalised actors, a community of practice, and so on. For example, some scholars and experts currently seek to inculcate a sense of humility in their colleagues in the face of ignorance (empowering ignorance work), others loyalty to an institution's mandates (empowering types of implementation work), others still an aspirational sense of insurgent creativity. Such efforts give reformers social form – for example, turning them into 'design thinkers', or even 'randomistas' committed to pursuing rule of law reforms on the basis of randomised control trials of their effectiveness. This social form, in turn, shapes the legal and political effects of rule of law performances. I thus argue that we should take the social organisation of rule of law performances seriously.

1.4 Organisation of the Book

Chapter 2 presents the field of rule of law reform as the context for the study of expert ignorance. It argues that a range of transnational legal scholarship could productively focus not just on the meaning of key legal

concepts as they circulate transnationally but also on how they are made meaningless. Thus, for some rule of law experts, the rule of law is underdetermined in a radical way. Analysing the scholarly and practitioner literature on rule of law reform, it shows that expert ignorance is meaningfully widespread in the field. It contrasts this view with that prevailing in the literature on rule of law reform, which imagines that rule of law experts seek to derive their authority from their knowledge about how to do rule of law reform, leading to effects like the poor transplantation of laws and institutions. I also introduce some of the stylistic and methodological problems this question raises and point to my responses: fictionalised and plurivocal reflections on my rule of law reform work. This entails a particular form of authorial presence that reflects who I understand a rule of law reformer to be – someone who can tell enough of a story to bring the reader along while fragmenting, shifting, and making fragile the story, the author, and her authority. This sets the stage for the methodological and empirical exploration of expert ignorance in the following chapters.

Chapter 3 then shows expert ignorance in action. I focus on three common methods to understand development expertise: organisational sociologies, Foucauldian discourse analysis, and ethnographies of practices. I develop a case study of a fictionalised agricultural reform project in sub-Saharan Africa, in which I advise on the project's rule of law component. I analyse the project using these three different methods to show their contributions and limitations to understanding expert ignorance. I argue that all three approaches have some methodological assumption that experts claim epistemic or practical authority to give form and/or content to the rule of law. The politics of a rule of law reform project is embedded in the form and substance of accounts of that project; this assumption thus inhibits these accounts from showing how expert ignorance works in practice. I then introduce what they cannot adequately capture – 'ignorance work' and its operations.

Chapter 4 offers a novel theoretical and methodological apparatus to reinterpret rule of law reform. I draw on aesthetic theory to reimagine rule of law reform as an aesthetic practice, in which efforts to build the sublime 'rule of law' produce both shadows of the rule of law, and the shadowy figure of the rule of law reformer. I go on to argue that this aesthetic remains irreducibly embodied in the body of the reformer and that rule of law reform is thus, in a very real sense, performance. I turn to performance studies, as well as Stanislavski's system of training actors, to analyse these performances, and discuss precisely how they complement the methods in Chapter 3.

I then put this new method into practice. Drawing on *Ohio Impromptu*, I return to the agricultural project, this time writing and analysing it as dramatic performance. I then apply these same techniques to a second case to further explore the method's efficacy – my experience as a member of a UN consultation to develop rule of law indicators, as read through *The Archbishop's Ceiling*. Synthesising insights from the two cases, I show how expert ignorance might productively be understood through the dramatic structure of ignorant experts' action: in the context of rule of law reform, what I call rule of law *performances* rather than attending to the relationship between knowledge and that action.

Chapter 5 looks deeper into the components of that dramatic structure. Returning to the cases in the previous chapters, it shows that these claims are made through 'ignorance work', which destabilises the structures of space, time, and identity that might otherwise give shape to a rule of law reform. The chapter goes on to show that ignorance work has patterned relationships to 'implementation work'. For example, experts might base a project on the claim that the very concept of the rule of law is incapable of being known or that the rule of law is too empirically complex to be understood, even while trying to develop global indicators about measuring the rule of law.

Turning to their effects, the chapter argues that these patterns are ways by which a rule of law expert produces provisional forms of the rule of law in the Global South – for example, through well-funded and continuing pilot projects to implement indicators in various contexts. At the same time, key questions about those forms are repeatedly raised and never resolved – for example, the location of the law/politics divide.

Chapters 6 and 7 extend the insights from Chapter 5. These chapters show that efforts to shape the rule of law performances can be studied using social-scientific methods (broadly understood). Chapter 6 asks whether expert ignorance can be understood as an historically contingent phenomenon to clarify how and why ignorance work has come to be autonomous rather than something always already an effect of 'knowledge work'. I make two arguments. The first is methodological: experts' ignorance about the rule of law makes it extremely difficult to develop an authoritative historical account of expert ignorance. Having made that caveat, I turn to the second argument: expert ignorance about institutions can be understood as a product of the limitations of institutional reform in the late 1990s when it came to be recognised that institutions themselves are as complex as the economic, social, and political lives they are supposed to regulate. Here, we can see the internalisation of the

overwhelming complexity of institutional reform into the professional apparatus of development – reflected in the fragmentation and proliferation of incommensurable historical accounts of the place of the rule of law in development. This perhaps marks a shift from rule of law reforms to rule of law performances.

Building on Chapter 6, Chapter 7 sociologises contemporary efforts to organise rule of law performances into formalised practices, showing these efforts to be historically embedded social forms given to expert ignorance. Using the example of 'problem-driven iterative adaptation' (PDIA), I show how experts might try to create their own social organisations (such as a network or social movement) to limit the legitimate types of ignorance work. This has two sets of effects. First, it shapes the provisional forms of the rule of law that rule of law reforms produce. Second, it places these performances in relation to the broader expert apparatus of development – for example, enabling them to be mainstreamed into specific development projects. This, I suggest, could be depoliticising: rule of law reforms might function as a repository for contentious political and legal issues that projects raise, enabling the rest of the project to continue without much fuss.

The final chapter concludes the book by summarising its argument. It then explores whether, how, and to what extent expert ignorance might be a useful way of thinking about fields of governance beyond development. It proposes that expert ignorance may be relevant to projects of institutional reform, wherever they may be found. It also argues in favour of the scholarly use of informed dramatic fictions to establish some critical purchase over expert ignorance in action.

2

Ignorance and the Practice of Rule of Law Reform

> O gracious duke,
> Harp not on that, nor do not banish reason
> For inequality; but let your reason serve
> To make the truth appear where it seems hid,
> And hide the false seems true.
>
> —*Measure for Measure*, V. i. 73–77

2.1 Introduction: Thomasistic Critique

In 2011, Chantal Thomas published an article in the Cornell Law Review entitled 'Law and Neoclassical Economic Development in Theory and Practice: Toward an Institutionalist Critique of Institutionalism'.[1] The article traces the evolution of thought and practices about law's role in economic development from the post-war period to the neoliberal moment. In particular, Thomas traces the rise and fall of old and new economic institutionalism in development thinking (or the move from 'modernization to neoclassicism'),[2] the ideas about law embedded in each paradigm, and the practices of legal and institutional reform the paradigms engendered (the basis for her 'institutionalist' critique of the work of the World Bank and European Bank for Reconstruction and Development).

Methodologically, the article is a series of thoughtful analyses of a variety of texts, with a heavy emphasis on scholarly writing about development, a secondary emphasis on International Financial Institutions' (IFIs') accounts of themselves, and a tertiary use of grey literature.[3] Together, these analyses produce a plausible account of a particular contemporary conceptual articulation of rule of law reform (new institutional

[1] Chantal Thomas, 'Law and Neoclassical Economic Development in Theory and Practice: Toward an Institutionalist Critique of Institutionalism', *Cornell Law Review*, 96 (2011), 967.
[2] Thomas, 'Law and Neoclassical Economic Development', p. 973.
[3] See, for example, nn. 277–84.

economics (NIE)-inflected), an account of its historical evolution, and a slightly thinner account of its deployment in a particular form of contemporary practice.

Its contribution is rich. It argues that the NIE went hand-in-hand with the emergence of the Washington Consensus (unlike late-1990s critiques of the Consensus, which argued that it did not have a robust account of institutions)[4] and that the policy turn in the 1990s to a 'governance' agenda, heavy on anti-corruption rhetoric and measures, marked the consolidation rather than the revision of the Consensus.[5] In Thomas' telling, efforts to articulate a 'post-Washington Consensus' based on the insight that 'institutions matter' – and thus 'context matters' – are not 'post-' at all. They are really ways of reinforcing the neoclassical view of development in their attenuated understanding of what constitutes institutions and contexts. Development agencies, despite their efforts to move beyond one-size-fits-all and transplantation-based modes of legal and institutional reform, are stuck reproducing those same old ways of working. In a neat move, Thomas turns an institutionalist way of thinking back on the World Bank. She suggests that the Bank cannot renovate its ways of doing reform because of information and bargaining asymmetries between different factions at the Bank, and a prevailing set of neoclassical mental models among staff that the Bank is not well-equipped to shift.[6]

In this chapter, I use it for slightly different purposes than its exposition of the logics of institutional reform. It stands for a concise and effective example of a dominant genre of critical writing on rule of law reform. And in this chapter, I argue that this genre, for all its diversity, rests on a common trope of the rule of law expert: she tries to produce more or less authoritative maps of and interpretive frameworks for the rule of law in order to guide action. I go on to show the limits of this genre. Using the

[4] See, for example, Dani Rodrik, 'Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's "Economic Growth in the 1990s: Learning from a Decade of Reform"', *Journal of Economic Literature* 44:4 (2006), 973–87; Joseph E. Stiglitz, 'Is There a Post-Washington Consensus Consensus?', in Narcís Serra and Joseph E. Stiglitz (eds.), *The Washington Consensus Reconsidered: Towards a New Global Governance* (Oxford: Oxford University Press, 2008), pp. 41–56.

[5] Thomas, 'Law and Neoclassical Economic Development', pp. 970–71; 992 (arguing that institutional reform efforts were part of the theoretical architecture but not the initial practice of the Washington Consensus as they needed legal opinions from the World Bank finding that such efforts would not breach the prohibition in the Bank's charter against activity affecting the political affairs of borrowing states).

[6] Thomas, 'Law and Neoclassical Economic Development', pp. 1018–23.

example of rule of law reform at the World Bank, I show how these studies cannot account for reformers' efforts to unmake, and not just make, meaning out of the rule of law. Furthermore, reformers' ability to deny that they know what the rule of law is and how to do it – whether mere rhetoric or not – has effects. I show that reformers defang and co-opt critique while shaping how the World Bank talks about, organises, and funds rule of law reform.

I go on to offer some initial steps towards constructing an alternative critical position on rule of law reform that takes these efforts to deny the rule of law's form and content as the key problem to be explained. I then close the chapter with some reflections on the importance of form and style when writing about this sort of expert as a means of introducing the subsequent chapters of the book that describe rule of law reform work as expert ignorance.

2.2 Genres of Critique of Rule of Law Reform

I begin with what I am calling a dominant genre of critical writing on rule of law reform. It begins with the idea that reformers have a particular vision of the relationship between knowledge and action that entails, in some way (global, universal) knowledge disciplining (local, particular) action. Thus, rule of law reforms and reformers tend to imagine the object of reform as 'lacking' the rule of law or as marked by 'deficit and dysfunction'.[7] The dominant genre goes on to argue that this lack or deficit is articulated by reformers' efforts to measure the laws and institutions of a place against a normative-technical standard.

The next step in the story is to uncover that standard through a study of reform and reformers. The standard is understood in the context of broader critiques of development, including its linear epistemologies biased towards universalising knowledge, embedded in institutions that are concerned with best practices, project time cycles, and risk and political aversion; all of these are in some ways related to histories of colonialism and modernisation.[8] Alternatives that scholars propose to this putative

[7] Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law Is Illegal* (John Wiley & Sons, 2008); Doug Porter, Deborah Isser, and Louis-Alexandre Berg, 'The Justice-Security-Development Nexus: Theory and Practice in Fragile and Conflict-Affected States', *Hague Journal on the Rule of Law*, 5:2 (2013), 310–28.

[8] Jean-Pierre Olivier de Sardan, *Anthropology and Development: Understanding Contemporary Social Change* (Zed Books, 2005); James Ferguson, *The Anti-Politics Machine: Development, Depoliticization, and Bureaucratic Power in Lesotho* (University

mainstream tend to embrace epistemological complexity, alternative modes of claim-making, and nuanced sociological realities of development practitioners.

These scholarly accounts run the gamut from ideology critique, to anthropologies of development, to sociologies of knowledge. Clearly, they differ. Yet they all share a commitment to a particular view of expertise: that expert work involves producing authoritative maps and/or interpretive frameworks about the world that then guide action. Whether expert authority masks ideological priors, theoretical commitments, sociopolitical power, or the micro-politics of actor networks, scholars try to take the context of authority into account. Whether expert authority has effects through its (distorted) representation of the world or its performative production of it, scholars' interventions consist of showing how expertise makes its map meet the terrain.

I do not offer a full survey here of the critical literatures with which I am engaging. Table 2.1 offers a brief typology of some that I have most frequently encountered in work on rule of law reform. The typology indicates the 'contextual analytic', or background assumption, through which the scholar pinpoints the conditions of possibility or nature of reformers' structure and agency; the methods by which the scholar uncovers the specific context of the reformer; the politics of reform; and the agents of reform in their account. Of the six I identify, 'critical discourse', 'social organisation', and 'practices' are the most common methods by which I have found scholars depict the social production of expert authority.

Common across all these avenues of critique is the assumed 'thinginess'[9] of, or ontological stability of knowledge and action about, the rule of law: the notion that the rule of law is capable of existing as a cohesive project or plan that can then be mapped, interpreted, translated, or deviated from. To be sure, Thomas and others recognise the flexibility of definitions of the rule of law, but in their argument, that flexibility is part of the work of producing the rule of law's thinginess. It provides some politically charged ambiguity of knowledge, and discretion of action, about the

of Minnesota Press, 1994); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press, 1995); John Kelly, 'Time and the Global: Against the Homogeneous, Empty Communities in Contemporary Social Theory', *Development and Change*, 29:4 (1998), 839–71.

[9] van der Geest, J. D. M., A. P. Hardon, and S. R. Whyte, 'The Anthropology of Pharmaceuticals: A Biographical Approach', *Annual Review of Anthropology*, 25 (1996), 153–78.

Table 2.1 *Generic characteristics of some different contemporary modes of critiquing rule of law reform*

Knowledge and action are a product of … (contextual analytic)	Evidence, data	Ideas, ideology, imagination	Discourse, assertion, argument	Social and institutional organisation	Practice(s), action(s)	Charisma
The task of the critic is … (method of articulating context)	Critiquing methods, data adequacy	Sensitive and informed reading	Discourse analysis; genealogy; mapping of argument and assertion through time; etc.	Sociological analysis of organisation of knowledge and/or experts, and their historical and material conditions (e.g. Empire)	Observing specific practices and their immediate effects in constituting knowable objects and relating them to other things	Knowing the charismatic power-holder (biography, sycophancy, etc.)
Reform happens by … (giving effect to the contextual analytic)	Inductive refinement of the rule of law as a social-scientific concept	Encounters between ideas	Diffusion; expert struggle; etc.	Changes in the underlying material or sociopolitical dynamics of experts or knowledge	Translation, circulation, practices of assembly, performative acts, etc.	Acts of will
The agents who relate knowledge and action are … (agent of reform)	Empirically inclined researchers	Anyone who can shift ideas	Discourse; the winners of arguments or assertions; etc.	Socially authorised or legitimate experts; expertise	Anything within the network, participating in the production of the object, etc.	Charismatic actors

Source: Author

rule of law that can be instrumentalised for good or ill by different actors.[10] But at the end of the day, that ambiguity is circumscribed by – and indeed might enrol people into – the very real backstage forces that set the horizons of knowledge and action, producing rule of law reform efforts. If the rule of law does not seem like a 'thing' at first glance – for example, if it appears to be a muddle or 'hodge-podge'[11] – it is the scholar's task to take more of the reform's context into account until she can explain how that muddle is actually a series of things – ideas, networks, social or bureaucratic struggles, and so on.

***

I think that the genre of critique I map above overstates its case. Reformers are not necessarily constructive or authoritative. And insofar as the rule of law is an object of development policymaking, it is less determined than this genre suggests, in important ways. For this reason, in this manuscript, I do not offer a definition of what constitutes rule of law reform and then explore what lies beneath it. Nor do I offer a looser definition of rule of law reform such that I have a starting point to explore the specifics of how it comes to be an object in the world. I focus instead on how rule of law reform might be understood as more or less 'thingy' or plastic, not simply by studying how the rule of law is assembled or composed but by studying what reformers claim to (not) know and actually (not) do about the rule of law.

In this section, I examine texts by rule of law reformers about their enterprise. I point out that many reformers continually remark on the indeterminacy of what they know and do about the rule of law – even as they then go on to try to reconstruct a relationship between knowledge and action. I subsequently consider counterpoints to my interpretation and suggest that a more robust critique of rule of law reform might be founded on a study of reforms and reformers who see the rule of law as highly plastic.

But let us begin not by reading texts, but in medias res: my first day at the World Bank, in 2009.[12]

[10] Jacqueline Best, 'Bureaucratic Ambiguity', *Economy and Society*, 41:1 (2012), 84–106; Jacqueline Best, 'When Crises Are Failures: Contested Metrics in International Finance and Development', *International Political Sociology*, 10:1 (2016), 39–55.

[11] Alvaro Santos, 'The World Bank's Uses of the "Rule of Law" Promise in Economic Development' in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge University Press, 2006), p. 256.

[12] The World Bank is not only relevant to my story in a situated sense. In the critical genre I'm setting out and engaging with in this chapter, the World Bank's approach often functions

Soft shards filter through the glass ceiling of the World Bank's sterile atrium. I cannot shake a persistent, low-level narcissistic excitement that someone here read my piece on local communities and mining companies and wanted to know more. I am somewhat displeased at my own pleasure. My master's thesis had traipsed from inbox to inbox until it ended up on the screen of Jackie Campbell,[13] a Counsel in the World Bank's Legal Department who worked on rule of law reform. She emailed me, asking about my work on the impacts of mining on indigenous groups, and my critique of the fondness of development agencies and human rights practitioners for legal formalism. I was surprised by her curiosity and apparent openness to my critique.

I suggested meeting up, thinking that it would be pleasant to talk about my own work – and of course, because I would soon need a job. But I also went with some scepticism. During university, I had been armed with ideas about development planners – lawyers in particular – as technocratic, apolitical, and neoliberal. At the same time, I had been taught to be savvy. Thanks to Alvaro Santos, I was sensitive to the idea that World Bank rule of law people – like Jackie – were not technocratic cyphers. They knew that they were really doing political work and used different definitions of the rule of law to fight strategically with each other in support of their particular ends.

I planned to be open to what Jackie had to say; I also planned to hold onto a bit of anthropological reserve. At the very least, I could gain a bit of insight into who these World Bank rule of law people were, and leave the conversation with some intellectual trophies pilfered from the belly of the beast to bring back to my master's professors.

Jackie proved to be a bespectacled Canadian. She shook my hand and bought me a tea. We sat down to chat at a once-white Bakelite table. She spoke in hushed words, slowly drumming her fingers. We exchanged pleasantries and background notes and then discussed what interested her about her work. We moved on.

She is excited about my research. She tells me how she shares similar ideas, in particular how law has its limits. At the World Bank, she tries to channel some money to mitigate the social impacts of mining. She is wary

as a synecdoche for broader trends in development thinking about the rule of law, meaning scholars attempt to explain the Bank's approaches to rule of law indicators, projects, policies, and other instruments. The scholar might assert the World Bank's fondness for legal transplantation, pointing to texts such as its annual Doing Business report – which ranks countries based on controversial standardised metrics of the capital-friendliness of their legal environment – and its publications on its broader investment climate reform work. Tor Krever, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model', *Harvard International Law Journal*, 52 (2011), 287; Stephen Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge University Press, 2010); Santos, 'The World Bank's Uses of the "Rule of Law" Promise in Economic Development'; Amanda Perry-Kessaris, 'Introduction', in Amanda Perry-Kessaris (ed.), *Law in Pursuit of Development: Principles into Practice?* (Routledge, 2009), pp. 1–9.

[13] Jackie is a stylised amalgamation of several bosses I have had through the years.

> of lawyers and economists in other departments of the Bank – in the name of working on the rule of law and justice, they draft policies and documents in consultation with experts, politicians, and local civil society groups. These documents promote legal institutions that support the rights of women and the marginalised, environmental protection, and property rights. They also have almost no bearing on local realities in the places where she worked. She wants to 'knock law off its pedestal'. Local power and politics are everything – for only on that basis could one work out and try to tackle some of the power imbalances between mining companies and communities. Her fingers beat an up-tempo, staccato rhythm.
>
> Jackie's work involves trying to build a convincing evidence base about local lives to undermine best practices about law and legal institutions. I am surprised – even thrown off balance. There is something heady and seductive about a department within the World Bank thoughtfully pushing back against its excesses, injecting a politicised counterweight into its neoliberal technocracy. By the end of the hour, she mentions a live project she is managing. She is looking to get the right person on board to do some upcoming research and to express in a clear and simple fashion some of the critical ideas we have just been discussing.[14]

During that meeting, for Jackie, law was politics, and the rule of law was local realities. The rule of law was not a policy or body of knowledge to be (imperfectly) implemented. It expressed how she and her colleagues chose to engage with the intense political battles between development experts over the institutions that govern people's lives. The rule of law dissolved into a set of present and future skirmishes rather than any particular view held by reformers on the rule of law itself.

2.3 The Anxious Rule of Law Reformer

This view is far from unusual among rule of law reformers. However, it is often expressed as a set of anxieties on their part about the viability of their own enterprise. Take Kratochwil's lament about the difficulties of even studying rule of law 'professionals':

> The initial bewilderment caused by this brief historical reflection [on the meaning of the rule of law] has some methodological implications. It casts doubt on the viability of our usual means of clarifying the meaning of concepts, that is of ascertaining to which events, objects or actions this term 'refers.'[15]

[14] Jackie will reappear throughout this manuscript as a character in, as well as a commentator on, my reflections.

[15] Friedrich Kratochwil, 'Has the "Rule of Law" Become a "Rule of Lawyers"? An Inquiry into the Use and Abuse of an Ancient Topos in Contemporary Debates' in Gianluigi Palombella and Neil Walker (eds.), *Relocating the Rule of Law* (Hart, 2009), p. 172.

For Kratochwil, we cannot work out who we are studying or what they are doing because both the scholar and professional are shrouded in conceptual confusion.

This idea finds echoes in Thomas Carothers' famous lament for rule of law reform, its coherence, and its aspirations: '[The rule of law] is not a field if one considers a requirement for such a designation to include a well-grounded rationale, a clear understanding of the essential problem, a proven analytic method, and an understanding of results achieved'.[16] Or take Brian Tamanaha, another grandee of law and development studies:

> Many who write on law and development appear to consider it a 'field.'… Conceiving of law and development as a field, I will argue, is a conceptual mistake that perpetuates confusion. The multitude of countries around the world targeted for law and development projects differ radically from one another. No uniquely unifying basis exists upon which to construct a 'field'; there is no way to draw conceptual boundaries to delimit it.[17]

For Perry-Kessaris, the challenge is not the absence of conceptual clarity but of the formal organisation or rule of law – or law and development – people:

> [D]o we – practitioners and academics at the intersection of law and development – have an ABC, an index or a map for our field? If we do, it has not yet, to my knowledge, been articulated. We address the same well-trodden paths, circling around issues such as the rule of law … But we do not have a systematic way of classifying our discussions [citation omitted] … Might we not be more effective if we were better organised?[18]

For Kleinfeld, writing a serious enough review of rule of law reform to be named one of Foreign Affairs' best foreign policy books of 2012, the problem is epistemological: 'the field of rule-of-law reform has remained in conceptual infancy, unaware of its own history, and as the saying goes, bound to repeat it'.[19]

These authors, exploring rule of law reform in practice, are at best ambivalent about the thinginess of the rule of law. The rule of law cannot be a set of formal policies to be implemented if no one knows what it is or how to do it. In their overviews of rule of law reform, these authors

[16] Thomas Carothers, 'The Problem of Knowledge' in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006), p. 28.

[17] Brian Tamanaha, 'The Primacy of Society and the Failures of Law and Development', *Cornell International Law Journal*, 44:2 (2011), 220.

[18] Perry-Kessaris, 'Introduction', p. 4.

[19] Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Carnegie Endowment for International Peace, 2012), pp. 2–3.

suggest that the content of rule of law reform is vacuous and that the form is marked by 'the absence of a shared … set of reference points'.[20]

In turn, a veritable cottage industry of dirges has sprung up, decrying the inadequacies of reform efforts while remarking on the persistent allure of building the rule of law. By contrast, some, deploying the same diagnosis of indeterminate content and inadequate form, see that diagnosis as a marker of the success and potential sophistication of rule of law reform. In inaugurating *The Hague Journal on the Rule of Law*, the first journal dedicated to the rule of law and rule of law reform, Randall Peerenboom argued:

> As 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. But rather than seeing this as a disadvantage, we should turn this into an advantage by using the different definitions and ways of measuring rule of law to shed light on more specific questions.[21]

This approach is reminiscent of Jackie's desire to knock law off its pedestal and instead focus on the concrete realities of local power and politics through the language of law.

This contextual plasticity of rule of law reform and its reformers can be seen in programmatic form in policy work from the World Bank. Take the Bank's flagship *World Development Report* (WDR) from 2017. WDRs are supposed to set research agendas for the Bank and other development institutions, spark friendly and critical commentary from academics, and solidify ideologies that development agencies then operationalise. The WDR 2017 focuses on governance and law.[22] It builds an account of the rule of law that has power as its core problematic: how law can constitute, enable, and constrain the exercise of power in ways conducive to some vision of development. Per the report, law is little more than 'a device that provides a particular language, structure, and formality for ordering' power.[23]

In its final chapter, 'International Influence: Governance in an Interconnected World', the Report refuses to articulate a vision of how

[20] Perry-Kessaris, 'Introduction', p. 3.

[21] Randy Peerenboom, 'The Future of Rule of Law: Challenges and Prospects for the Field', *Hague Journal on the Rule of Law*, 1:1 (2009), 7.

[22] I was part of a set of external advisors with whom the Report's drafting team discussed ideas: World Bank, *World Development Report 2017: Governance and the Law* (World Bank, 2017), xvii.

[23] World Bank, WDR 2017, p. 72.

knowledge and action – or policy and implementation – are organised and rule-bound in ways that would generate a vision of the rule of law in practice.[24] As the title suggests, the chapter engages with the role of global actors in producing and shaping power. Their role manifests in what might otherwise appear to be self-contained local or national bargaining processes that decide what policies should be implemented. '[I]nternational actors enter directly into the policy arena … Foreign states, multinational corporations, development agencies, or transnational [NGOs] can gain a seat at the domestic bargaining table … [or] shape the arena in which policy making and contestation occur by creating alternative spaces in which actors can bargain'.[25] However, it also points out that '[t]ransnational networks of technical experts can play an important role in changing preferences and internalizing new norms through the diffusion of evidence and authoritative expertise'.[26] The rule of law, then, becomes little more than a way of talking about concrete power arrangements in concrete contexts, in ways that incorporate the power effects of global experts themselves.[27] The WDR 2017 thus does not stabilise, or give form or content to, the rule of law. Programmatically, the rule of law entails evermore detailed ways of expressing where and how power arrangements might produce, and be managed by, norms and rules – including the role of experts in producing them.

The upshot for critics, I argue, is twofold. First, the rule of law, as an object, project, or programme of reform, is less determined than scholars might think. The rule of law could instead be understood as a suspended set of debates over what the rule of law is, embedded in a way of talking and thinking about power. Second, and as a result of the first, it may be plausible to argue that in certain circumstances rule of law reformers imagine the rule of law as 'thingy' – and that reformers' self-denying words are merely rhetorical. But reformers now talk about their reform in such a way that moments of overdetermination may reflect a (misguided, or perhaps strategic) intervention in specific power arrangements in a specific reform context, rather than a statement of policy to be implemented, or

[24] World Bank, WDR 2017, p. 257.
[25] World Bank, WDR 2017, pp. 257–58.
[26] World Bank, WDR 2017, 259. At p. 273, the report cites Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, 46:1 (1992), 1–35. At p. 264, it also cites Keck and Sikkink's work on epistemic communities and international norm spirals: Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).
[27] World Bank, WDR 2017, pp. 271–73; 72 (see especially Figure 2.2).

a set of ideas about the rule of law that emerges out of commonalities in practice.[28] Money and projects do not necessarily proceed from an idea about what the rule of law is – whether clear or a hodge-podge. Rather, they proceed alongside its suspension.

2.4 Counterpoints

There are four counterpoints to my account above. The first two are methodological. First, documents such as a WDR – and the litany of reflections that remark on the plasticity of rule of law reform – represent an increasingly sophisticated rhetorical device that shows a surface-level self-awareness on the part of rule of law reformers about their overdetermined practice. A strong version of this critique would argue that such rhetoric changes very little in terms of what reformers do. It simply serves to justify their actions, inoculate them against critiques, and distract others from hidden background structures of domination.[29] A more nuanced version would argue that the rhetoric is a manifestation of a doubled structure to their expertise; for example, experts recognise the limits, or even the indeterminacy, or their own expertise, even as they continue to use and inhabit it. In both views, the scholarly or critical task would be to dig ever deeper into the vocabulary, ideas, social worlds, and practices of reformers, using a range of methodological strategies to come up with reality behind the surface. For the strong critic, the purpose would be to debunk the rhetoric. For the nuanced critic, the purpose would be to explain how deep the doubt goes, from where the commitment to act comes, and so on.

The second critique is similar: I have developed the same flaw as the critics, relying overly on text and not enough on practices. In this view, reformers' efforts to write about the plasticity of what they do are well-intentioned and perhaps even reformist. Yet in practice, rule of law reform adheres to patterns, routines, frameworks and best practices. After all, reformers don't just act at random – they must continue in these patterns for a reason.

[28] Recall also that the Bank itself has set up its qualitative research steering committee to take into account its own practices in institutional reform, appointing to it the Bank's own critics, including Jean-Pierre Olivier de Sardan and James Ferguson.

[29] Sarah G. Phillips, 'The Primacy of Domestic Politics and the Reproduction of Poverty and Insecurity', *Australian Journal of International Affairs* 74:2 (2020): 151–52; Andrea Cornwall, 'Historical Perspectives on Participation in Development', *Commonwealth & Comparative Politics* 44:1 (2006): 62–83; Ashwani Saith, 'From Universal Values to Millennium Development Goals: Lost in Translation', *Development and Change* 37:6 (2006): 1167–99.

I respond in more detail to these two counterpoints in my later methodological and stylistic discussions. For now, I want to argue that studies of rule of law reform should not assume that there must be some 'there' there, behind reformers' denials of the form and content of reforms, as long as one looks hard enough. I am suggesting that scholars should not begin with the question of whether reformers' self-critique is rhetorical or meaningful. Reformers should instead be understood as producing shared conditions of ignorance about what the rule of law is – and thus who rule of law experts are, whether to take them seriously and why. Neither I nor they are arguing that the rule of law can be absolutely anything at all; however, I am suggesting that we should examine the effects of the argument that it might, on the structures of expertise that it produces, and the worldly effects it generates.

Moreover, as already noted and detailed further below, rule of law reformers have internalised how to make allegations of their own bad faith, hopeless faith, or charity, themselves. This form of enquiry thus not only asks the wrong questions but also in doing so contributes to the reproduction of that which the scholar seeks to hold up to scrutiny. I am arguing that scholars should instead begin by trying to understand the effects of reformers' capacity for radical self-critique.

The third and fourth counterpoints are contextual. Third, rule of law reformers' articulation of their work as highly plastic may be a recent phenomenon. Thomas' critique may have been an apt summary of NIE-inflected law and development thinking for its time, after which the phenomena I observe take place. I discuss the temporality of rule of law reformers' self-denial in Chapter 6. However, literature expressing anxiety about the lack of content or organisation to rule of law reform goes back at least to the early 2000s, while Peerenboom's claim that self-denial is a feature and not a bug of rule of law reformers' expertise was made back in 2009.

Fourth, my account of rule of law reform is not mutually exclusive to critics' accounts of rule of law reform. They can exist side-by-side, with some reformers seized of the thinginess of the rule of law and others its plasticity. This is the tack taken by several contemporary studies of rule of law reform at both the practical and conceptual levels.[30] They argue that reformers concerned with plasticity are part of a broader social, practical, or intellectual

[30] Martin Krygier, 'The Rule of Law: Legality, Teleology, Sociology' in Gianluigi Palombella and Neil Walker (eds.), *Relocating the Rule of Law* (Hart, 2009), pp. 45–70; Kristina Simion and Veronica Taylor, 'Professionalizing Rule of Law: Issues and Directions' (Folke Bernadotte Academy, 2015); Martin Krygier, 'Four Puzzles about the Rule of Law: Why, What, Where? and Who Cares?', *Nomos* 50 (2011): 64–104.

collective of rule of law reformers. Some reformers in particular institutional or practical milieus adopt a professional position marked by their belief in the plasticity of the rule of law, just as other rule of law reformers believe that rule of law reform is a matter of transitional justice, or a check on arbitrary power, or legal empowerment programmes, and so on. In this view, over time, and through interactions between reformers, some loose consensuses about the rule of law will emerge, evolve, and adapt.

On the face of it, the fourth counterpoint is subject to similar methodological challenges to the first two counterpoints: to know the universe of rule of law reformers, the scholar must take some view on what the rule of law and its expert are. However, I believe that a version of this counterpoint is promising. We might adopt a partial gaze, examining rule of law reform from the perspective of self-denying reformers, mapping their relationship with other reformers, and capturing how their effects on rule of law reform and development more broadly.

2.5 Disordering Rule of Law Reform

How might we instead understand rule of law reform through self-denying reformers? I reconstruct the critical dimensions of Thomas' argument and scrutinise her moves from the perspective of these reformers. I then argue that those moves are already part of the professional existence and identity of rule of law reformers – they help reformers move between universal and particular understandings of the form and content of their expertise. This movement, and its effects on rule of law reforms as well as on development more broadly, are politically salient objects of study.

As noted, Thomas articulates for the reader the incoherence of the rule of law as imagined by the World Bank and other IFIs. She implies that this incoherence is functional, masking the real operations of a set of neoclassical ideas about institutions, which she argues have a strong, if not immediately apparent, hold on the relationship between theory and practice:

> For those progressively-minded proponents of 'the social' in the more recent, Sen-inflected development reforms, […] such goals end up being incorporated in only a superficial way. [T]heoretical incoherence leads to programmatic incoherence which, due to its low testability, further entrenches theoretical incoherence[…] This variety in theoretical perspectives is not just an academic question; it also leads to different policy and programming choices.[31]

[31] Thomas, 'Law and Neoclassical Economic Development', pp. 1004–5 (citations omitted).

Thomas accuses rule of law reformers of creating incoherence through sloppiness, which serves to muddy the waters of reform without diverting the neoclassical stream. They suffer from sloppy thinking, as evinced by their poor and eclectic engagement with theory (for which Thomas points to Santos' characterisation of rule of law thinking at the Bank as a 'hodge-podge' on the one hand, and to the NIE's fetishisation of property rights protection on the other).[32] They suffer from sloppy scholarship, overloading their conceptual frameworks through reliance on just one or two sources: '[Two key papers on law and development at the Bank] ultimately base the assertion of the causal relationship between institutional quality and economic output on a single study published by the American Economic Review in 2001'.[33] And they suffer from sloppy empirics: 'One potential empirical weakness [of these key papers] lies in the soundness of the data and therefore of the asserted correlation. Specifically, the data are based entirely on surveys and therefore on subjective perceptions … This methodology opens up the possibility that preconceptions and biases regarding different levels of corruption in different countries or regions will simply become self-reinforcing'.[34]

These critiques are not new to rule of law reformers. Indeed, they critique each other's sloppy thinking and scholarship. Thomas refers to the World Bank's Doing Business reports and the stream of legal origins literature as examples of reformers' poor theory (and poor scholarship). So too did then-Bank economists Hallward-Driemeier and Pritchett, in the same year as Thomas.[35] More generally, as noted above, reformers can talk about the whole enterprise of rule of law reform as marked by radical under-conceptualisation as well as overly assertive heuristics. Reformers can critique those who talk about the rule of law in terms of text and discourse for being inattentive to practice and its sociology,[36] and vice versa.[37] They critique each other's sloppy empirical work: they might dismiss it for its lack of contextuality or particularity; however, they might

[32] Thomas, 'Law and Neoclassical Economic Development', pp. 1002–7.
[33] Thomas, 'Law and Neoclassical Economic Development', p. 1012 (citations omitted).
[34] Thomas, 'Law and Neoclassical Economic Development', p. 1011 (citations omitted).
[35] Mary Hallward-Driemeier and Lant Pritchett, 'How Business Is Done in the Developing World: Deals versus Rules', *Journal of Economic Perspectives*, 29:3 (2015), 121–40. The authors summarise earlier critiques of *Doing Business* from within and outside the Bank.
[36] Richard Sannerholm, Shane Quinn, and Andrea Rabus, 'Responsive and Responsible: Politically Smart Rule of Law Reform in Conflict and Fragile States' (Folke Bernadotte Academy, 2016); Lant Pritchett and Michael Woolcock, 'Solutions When the Solution Is the Problem: Arraying the Disarray in Development', *World Development*, 32:2 (2004), 191–212.
[37] Krygier, 'The Rule of Law: Legality, Teleology, Sociology'.

also critique its lack of external validity and potential to produce reforms that scale up.[38] They can move between the rule of law as universal and particular, such that any position might be expressed as lacking the other.

The point is not simply to offer a criticism of Thomas' efforts; rather, it is to reiterate that a view of rule of law reform as constituted by this enduring movement between universal and particular is in tension with critical takes on rule of law reform such as hers. These takes use a contextual analytic to stabilise how the particular and universal are linked – from node to network, or idea to ideology, and so on. The contextual analytic may be broadened or made more labile (say, through the use of fuzzy sets or inhabiting a role as insider-outsider). For example, in studies of other expert-produced phenomena, such as security, anaemia, and atherosclerosis, science studies scholars have suggested that their objects of study are more than one (i.e., not universal), but fewer than many (i.e., not simply an agglomeration of particularities).[39] Experts' practices and speech acts constitute these phenomena and make them hang together dynamically through time, as an assemblage, a network, an attitude, and so on. The content of the phenomenon emerges from the form that the accumulated practices take.

In rule of law reform, however, both the form and the content of reform and reformers are subject to the movement between the many and the one. Take efforts to recruit rule of law reformers. One of the functions of recruitment documents is to expediently state what a rule of law reformer is – the agency she has and the structures and strictures within which she works. A recruiter for the European Union noted the following:

> Sometimes I don't understand what rule of law connection the position has, and sometimes they want a rule of law/Human Rights/gender person; sometimes they just put so much in the job description—like if they try to fit everything in … For some missions and actors, rule of law is only the police, so they always look for police officers.[40]

[38] Michael Woolcock, 'Using Case Studies to Explore the External Validity of "Complex" Development Interventions', *Evaluation*, 19:3 (2013), 229–48; Michael Bamberger, Vijayendra Rao, and Michael Woolcock, 'Using Mixed Methods in Monitoring and Evaluation: Experiences from International Development' in Abbas Tashakkori and Teddlie Charles (eds.), *SAGE Handbook of Mixed Methods in Social & Behavioral Research*, 2nd ed. (SAGE Publications, 2010), pp. 613–42; Duncan Green, *How Change Happens* (Oxford University Press, 2016).

[39] See, for example, Rita Abrahamsen and Michael C. Williams, 'Security Beyond the State: Global Security Assemblages in International Politics', *International Political Sociology*, 3:1 (2009), 1–17; Annemarie Mol and John Law, 'Regions, Networks and Fluids: Anaemia and Social Topology', *Social Studies of Science*, 24:4 (1994), 641–71; Annemarie Mol, *The Body Multiple: Ontology in Medical Practice* (Duke University Press, 2002).

[40] Simion and Taylor, 'Professionalizing Rule of Law', p. 44.

For those providing the job description, in the first instance by putting 'so much in' it, they produce and rely on a capacious idea of the rule of law. This gives them a great deal of discretion in hiring. In the second instance, they provide a narrow definition (the rule of law as police), limiting the pool of applicants they can consider and thus restricting discretion in hiring. Both options lead to the desired result of hiring who they want but with different stories about discretion or agency that stem directly from radically different articulations of the rule of law.

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Some years, and several institutions, after my first day at the World Bank, another colleague described the process of finding a new job as a rule of law reformer. Greg[41] had worked at a multilateral development bank, and then at a think tank which subsequently decided to scale back its rule of law work. He found the job search anxiety-inducing:

> Finding a [rule of law] job is emotionally quite hard. It leaves me feeling unmoored, which makes me anxious. It would be easier if I had a calling card [like economists, or other specialists]. But [in rule of law reform] I have to tell a different story of what I bring to the table to different people. I need to line each card up so they fall into place. I don't want anyone to say 'no' [to my application] and collapse the whole thing. But at the same time, other people who have their calling cards are moving quickly, so I don't want to get left behind … [It's not enough to say] 'we're all lawyers'. [Project managers] don't want lawyers! […] There's not just an unalloyed demand for our skills. We have to go out and present [them each time].

Here, Greg expressed concern with the substance, or 'calling card', of his work. He also expressed concern with the form of his skills – he could not just present himself as a lawyer but had to come up with a form for his calling card for each interview or professional encounter. He reflected that those who have a defined calling card can move quickly; however, he did not want to overdetermine the form and content of his expertise for fear of being rejected.

Living the freedom to keep moving one's expertise between universal and particular can be heady. For Greg, it was seductive to imagine having unalloyed demand for his skills even though the formal signifiers of his value (e.g., his qualifications as a lawyer) could be seen as unhelpful.

[41] Like Jackie, Greg is a stylised amalgamation of several colleagues I have had through the years. The quotations and context are accurate. See my discussion on methods and style below.

At the same time, this movement destabilises the sense of belonging that comes with a clear division between an 'inside' and 'outside' to an expert community.

Greg was in a state of individualised anxiety, 'unmoored' from the anchor of a profession or expertise. This sentiment is not a generic disenchantment with the inability of his expertise to live up to its promises. He was already aware of that fact. Instead, as with my first day at the Bank, there is seduction, anxiety, and political power in being able to collapse and reconfigure the form and content of one's own expertise in an effort to articulate them in relationship to broader institutional structures in development that one partially perceives. Is the rule of law reformer's endeavour neo-colonial? Sure, she says … sometimes.[42] And sometimes, she brackets big structural questions to get specific things done, all the while asserting full knowledge of the implications and recognising the potential need to resile from the inevitable marginalisation she produces.[43] In doing so, new colleagues are brought in – from 'authentic' locals to savvy global political players, and vice versa – and old ones marginalised.

The problematic of rule of law reform for which I am arguing is thus more than just producing an account of its overdetermination, of its underdetermination, or of its collapse. It is an inquiry into how the spectre of the meaninglessness of the rule of law – invoked as a part of exercising rule of law expertise – shapes the construction of rule of law reformers and the rule of law itself.

2.6 A Note on Style and Form

Trying to conduct such an inquiry, however, begs a methodological question: how can a scholar take the reformers' assertions about the radical contingency of the rule of law seriously, as well as the fact that they do real things in the world, without asserting a contextual or meta-framework for

[42] Robert E. Klitgaard, *Tropical Gangsters* (I. B. Tauris, 1991), p. 12; Kleinfeld, *Advancing the Rule of Law Abroad*, pp. 60–74.

[43] Kleinfeld, *Advancing the Rule of Law Abroad,* pp. 31–35. Kleinfeld, very much a rule of law reformer, speaks of the 'tortured colonial history that lies beneath the surface of rule-of-law reform today' (61). Yet she also writes, of reform in post-conflict states, that '[o]utsiders [i.e. external actors] must marshal their own resources [to support rule of law reform in support of post-conflict reconstruction], both by locating supporters of reform and considering the best lever[s] for change. Rule-of-law reformers, whether from the United States or elsewhere, must be realistic, as well as humble, regarding their likelihood of significant impact' (32).

analysis? As Wood suggests, this produces a methodological 'theatre of difficulty'.[44] I step into this theatre first through the form and style of my accounts of rule of law reform.

In subsequent chapters of this monograph, I write about rule of law reform by reflecting on and lightly fictionalising a decade of my own experience as a rule of law reformer and governance reformer. I have worked in East and West Africa as well as at the global level. I have moved between institutions and roles, working as a staff member, a consultant, and a researcher at the World Bank, the UN, the UK's then-Department for International Development (DFID), and several think tanks and NGOs in the Global North.

My experience is undoubtedly partial. It is Northern – although it contains several long stints 'in the field' (and living in areas outside Southern cities – one of the many vernacular markers of experiential authenticity rule of law reformers use in the particular economy of their field). It is governmental – although it has entailed working alongside grassroots movements (note how prepositions become another weapon in the expert struggle for authenticity) as well as with or over legislators, state agencies, Chieftains, and any number of public authorities. It is institutional – although much of it was spent establishing networks, communities, and relationships that might operate as a counterweight to those steering the ship of supra-state towards the rocks of socially and politically decontextual reform. It has been biased towards efforts to produce order in the world – although as I show in subsequent chapters, much of my work entailed unmaking and complicating others' efforts to govern.

Reflective modes of academic writing are tricky. At their worst, they are narcissistic and self-indulgent – or their cousin, journalistic voyeurism.[45] At their best, they offer partial insight into partial things, reproducing and reinforcing the partiality of insight, thing, and the entanglement between the two.[46] As a genre, reflective writing builds a tension between the authority

[44] David Wood, *Philosophy at the Limit* (Unwin Hyman, 1990), pp. 149–50.

[45] While it is far beyond my remit to pinpoint examples of these genres, you do not need to go far to find warnings of this risk: Andrew C. Sparkes, 'Autoethnography: Self-Indulgence or Something More?' in Arthur P. Bochner and Carolyn Ellis (eds.), *Ethnographically Speaking: Autoethnography, Literature, and Aesthetics* (Rowman Altamira, 2002), p. 209; Bruno Latour, 'The Politics of Explanation: An Alternative' in Steve Woolgar (ed.), *Knowledge and Reflexivity: New Frontiers in the Sociology of Knowledge* (SAGE Publications, 1988), pp. 155–76.

[46] As is evident from scholarship in feminist international relations and science and technology studies traditions: Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist*

of academic prose and the doubly subjective act of reflecting on the self in the world. Its effect is to call into question objectivity and to put into motion authority through authorially representing the acting self.

In the context of rule of law reform, I see no other way to recount it. Reformers themselves question the very basis of their objectivity and authority. It would be misleading, not to mention clunky in the extreme, to explore the functioning of their ignorance by treating them as a field site, selecting cases, designing research protocols, conducting interviews, and making claims bounded by the admonishments of internal and external validity. Instead, I draw on the totality of my experiences as a rule of law reformer. At the same time, my particular reflective mode is not an effort to recount the exact nature of my relationship to the object under scrutiny, the better for the reader to see it with – what Latour calls 'meta-reflexivity'.[47] It is instead the only effective way of recounting an object that denies its own existence while still having real-world effects.

This requires a particular type of authorial presence – one that can tell enough of a story to bring the reader along while fragmenting and making fragile the story, the author, and her authority. Rooted as the story is in my memories of and notes from the past, it could be described as Ricœurian, in the sense that it both relies on and destabilises the authority of historical narration. 'The typical formulation of [historical] testimony proceeds from this passing: I was there', a 'mode of truth belonging to historical knowledge', which, while on the surface complete and authoritative, in fact 'consists in the play between [historical] indeterminacy and its suppression'.[48] The task of reading history – and of historiography – is to treat encounters with written (or writing) history as a process of reflection on that space 'between the self-transcending powers of the imagination and the always limiting character of perspectival, fragmented experience'.[49] And happily for my performance studies-inflected approach, Ricœur imagines these reflections through a dramatic sensibility, influenced by

Sense of International Politics (Berkeley: University of California Press, 2014), 327–28; Donna Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Durham: Duke University Press Books, 2016). I have ended up working through form and style in traditions more associated with modernist theatre and performance owing to their explicit embrace of the problem of representing contingency and meaninglessness in action.

[47] Latour, 'The Politics of Explanation', p. 166.

[48] Paul Ricœur, *Memory, History, Forgetting* (University of Chicago Press, 2004), p. 341.

[49] Paul Ricœur, *Figuring the Sacred: Religion, Narrative, and Imagination* (Fortress Press, 1995), pp. 3–4.

theories of action (as seen in the reception of Ricœur by theatre and performance scholars).[50]

When trying to write about and reflect on expert ignorance, however, those Ricœurian tensions are not hidden in the processes of archive and testimony, there to be recovered. They are on full display: for if I do not and did not know what the rule of law is and how to do it, how could I know whether I am producing a complete picture of the rule of law reforms I have participated in, fully accounting for their complexity and the complex agency and structural constraints of my own position? My accounts of rule of law reform are thus shifting and provisional. They draw on my recollection of my experiences, notes that I took as part of my work (e.g., to produce reports about the meetings I sat in on or fieldwork I conducted for development projects), and notes that I scribbled to myself – often in the margins of official documents – reflecting on what I was seeing. This book does not thus claim to contribute a novel empirical base – an archive, a body of interviews, a survey, and so on – that enriches our stock of knowledge about rule of law reform.[51] Instead, I invite and enjoin the reader to encounter the 'empirical' material in the text in a shifting, fragmented, and partial light.

This is not simply a post hoc textual strategy of recounting my experiences such that form follows the substance of my argument about expert ignorance. It destabilises the distinction between past experience and present reflection, thereby recognising that I had a reflective consciousness even as I participated in rule of law reform.[52] The questions I explore in this manuscript, and the broader phenomenon of expert ignorance that I analyse, were not developed through the hidden workings of an academic or analytic consciousness injected, double-agent-like, into my work as a rule of law reformer. As I discussed earlier in this chapter, from my first day as a rule of law reformer, I was struck by how self-reflexive my colleagues were. They did not use ignorance defensively, as a disenchanted means to stay one step ahead of their critics; rather, they used it productively, to find a practical, social, and ethical position as a

[50] Thomas Postlewait, review of *Review of Time and Narrative; Time, Narrative, and History; Historical Understanding*, by Paul Ricœur et al., *Theatre Journal*, 41:4 (1989), 557–59; Dudley Andrew, 'Tracing Ricœur', *Diacritics*, 30:2 (2000), 43–69.

[51] Dimitri Van Den Meerssche, *The World Bank's Lawyers: The Life of International Law as Institutional Practice* (Oxford University Press, 2022), pp. 13–19.

[52] See, for example, Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond', *Annual Review of Law and Social Science*, 11:1 (2015), 155–74.

sophisticated and complexity-sensitive actor within the broader endeavour of development. They, and I, have embraced an academic mien and mentality at some moments and distanced ourselves from it at others. My ideas in this manuscript have thus taken shape through my participation as a rule of law reformer and have in turn shaped the practice of rule of law reform to some extent. This is neither a methodological bug nor a feature of myself as a special informant about this field to the world. Most of my colleagues shared this multiplicity of consciousness (although fewer tend to write about it). The manuscript should thus be understood as part of an ongoing set of conversations with rule of law reformers. These reformers appear as characters in the margins of the manuscript, commenting on my interpretation of their ideas through Microsoft Word comment bubbles, mainly in the next chapter.

My use of plurivocity is in the tradition of producing texts as encounters, in contradistinction to texts as unities. The purpose is to show reformers' subjecthood and objecthood in motion, initiated by ignorant experts' efforts at self-denial, my own included. 'As a living, socio-ideological concrete thing, as heteroglot opinion, language, for the individual consciousness, lies on the borderline between oneself and the other. The word in language is half someone else's'.[53] My tales of rule of law reform are thus 'populated – overpopulated – with the intentions of others'.[54] I am engaged in a ventriloquist's act, albeit one whose multiple voices surpass my ability to control them. These voices gesture to dialogue, even if it is attenuated through the reader's suspicion or my limitations as a writer.[55] 'Taylor', the copyeditor of this text, also appears, commenting on the *form* of my interpretation, and opening it, too, to dialogue.

The next chapter delves into a specific, fictionalised account of my work on a rule of law reform project. Fictionalising the project is a means of exemplifying provisionality, plurivocity, and partiality. My specific use of fiction simultaneously employs and destabilises an authorial voice – providing enough verisimilitude to allow the reader to explore the effects of polyphony,[56] without being drawn into an effort to contextualise the authorial voice and the adequacy of her description of the Real.

[53] Mikhail Bakhtin, *The Dialogic Imagination: Four Essays by M. M. Bakhtin*, ed. Michael Holquist, tr. Caryl Emerson (University of Texas Press, 1981), p. 294.
[54] Bakhtin, *The Dialogic Imagination*, p. 294.
[55] David Carroll, 'The Alterity of Discourse: Form, History, and the Question of the Political in M. M. Bakhtin', *Diacritics*, 13:2 (1983), 72.
[56] Mikhail Bakhtin, *Rabelais and His World* (Indiana University Press, 1984).

I write the project as three different sociological accounts: a mapping of the social organisation of experts; a discourse analysis; and an ethnography of practices. They are mutually complementary in detail and contradictory in their accounts of the context of reformers. The cumulative effect is not to produce an authoritative account of the project as a sociological formation. Rather, it produces an account of movement between these different visions of reformers' structure and agency. And it is this movement that I intend the reader to come to know, rather than an account of the specifics of a rule of law reform project. For as I argue in subsequent chapters, reformers themselves are concerned with turning institutional fictions into institutional facts – by which they mean they seek to move between different accounts of reformers' structure and agency until they find ones that stick enough to take a decision or get something done.

My specific approach to fictionalising the project is to blend actual and stylised accounts of my experiences. Greg, Jackie, and the other characters described in these pages are amalgamations of people I have worked with and experiences I have had through the years. This blend is an ethical posture in favour of my colleagues and interlocutors. It is also a methodological posture. Genre and fact – form and content – are mutually sticky. Stylising them allows them to remain in the background so I can focus on the movements between structure and agency as well as the spatio-temporal and identarian waves they leave in their wake. I clearly signal stylised facts in the text and stick to a rule: any direct quotes come from my notes. Doing so is an effort to be honestly partial, and – in my use of stylisation and fictionalised accounts – partially honest.

3

Projecting the Rule of Law

> Of government the properties to unfold,
> Would seem in me to affect speech and discourse;
> Since I am put to know that your own science
> Exceeds, in that, the lists of all advice
> My strength can give you
>
> —*Measure for Measure*, I. i. 3–7

3.1 Introduction

In this chapter, I offer a fictionalised example of a rule of law reform project I conducted in sub-Saharan Africa. I focus on the project, the 'privileged particle of the development process'.[1] The project stages two dimensions of governance by expert ignorance. The first is to show how expert ignorance works: a rule of law reform project destabilises, disassembles, and reconstructs the spatio-temporality of reform (it might be local or transnational, imminent or deferred, and so on) as well as the identities of the relevant players (they might be Chiefs one moment, citizens the next, and shareholders a moment later). Its boundaries are thus fluid. Participants may just be the small group of elites convened in a boardroom; however, with an ill-defined ambit, its potential participants are vast, from local villagers to global chief executives. The second is to show a broader development function that reformers play. Economic expertise in development policymaking, for example, produces social conundrums that it cannot regulate. These become the material for a rule of law reform project. The project, in turn, rarely produces an objective 'solution'; in fact, it enables economic experts to proceed as if they have been dealt with.

This chapter also explores the effects of form and method in framing and limiting the project's practices and processes of ignorance. I recount the project three times, analysing and explaining it through three genres

[1] Albert O. Hirschman, *Development Projects Observed* (Brookings Institution Press, 2014), p. 1.

of critical analysis that I touched on in the previous chapter: a mapping of the social organisation of experts; a Foucauldian discourse analysis; and an ethnography of practices. These three genres have been central to evolving social critiques of expert knowledge – although in that tradition they can perhaps be just as easily entangled as distinguished, for example in the continuities between critical discourse analysis and ethnomethodology.[2] Nevertheless, the three have readily been deployed as distinct approaches to the critical study of development work, and so I take them up here for the purposes of my broader argument, as they exemplify some of the methodological issues with which I am concerned.

3.1.1 Context

The particular project I recount here is a stylised amalgamation of projects I have encountered while in the employ of multilateral donors, bilateral donors, implementing actors, and universities. The project takes place in Country, a stylised small country on a coast of sub-Saharan Africa (reflecting a mix of my experiences across West and East Africa).[3] My position in this project is as an employee of the 'Development Agency', or 'DA', itself a synthesis of my work with the World Bank, the UN, DfID, and other such organisations. I work for the DA's rule of law department. Counterparts include:

- a government agency (the National Agricultural Agency or 'NAA');
- a bilateral donor who was one of the other major aid providers to Country (the Other Donor, or 'OD');
- a mid-sized agricultural multinational with an early-stage large agricultural concession in Country (the Agricultural Concessionaire, or 'AC'); and

[2] Michael Lynch, *Scientific Practice and Ordinary Action: Ethnomethodology and Social Studies of Science* (Cambridge University Press, 1993), 40–69.

[3] It is intrinsically fraught to turn coastal post-colonial sub-Saharan Africa into a fantasy onto which metropolitan neuroses might be projected. I do so to foreground how different ways of telling the project entail different invocations of Country's history and context, which can function as different ways that savvy bureaucrats might articulate their own structural constraints when trying to do something desirable. I am indebted for this particular textual strategy to Richard Rottenburg, *Far-Fetched Facts: A Parable of Development Aid*, tr. Allison Brown and Tom Lampert (MIT Press, 2009). It also establishes a contrast with the global indicators consultation in the next chapter. In an inversion of the usual spatial arrangement, the global is grounded in a particular context (there, New York), while sub-Saharan Africa is not. This reinforces the point that expert ignorance disrupts predictable arrangements of space.

- a national NGO with a focus on development and human rights and experience as an implementer of development research and projects ('the NGO').

The thematic substance of the project is agricultural reform, specifically the provision of market access and capital to smallholder farmers. Participants in project implementation span donors, researchers, project staff, national administrators, NGOs, local communities, and companies. My reflections on and representation of the project's substance – the legal frameworks, the financial state and macroeconomic importance of the sector, and so on – are faithful to the specific country contexts in which I have done this work. My reflections on and representation of the project process are similarly faithful.

Throughout the chapter, Jackie, Greg, and Ted provide commentary on my accounts of the project in comment bubbles in the margins of the text – a common modality of asserting one's knowledge in development work, with an aesthetic that is literally marginal. At the same time, it invokes the 'humanist legal tradition', in which the law as such emerges from the conversations, contestations, and accretions of marginal engagement with the text and which works to interrupt social-scientific studies of law through an engagement with law's forms and open-ended textures – in line with one of the themes of this book.[4]

Jackie, now working for the DA, oversees the project as a whole from the DA's headquarters as part of the portfolio of projects she manages. Greg, by now working for a smaller European bilateral donor with an interest in Country, observes the project from a distance through our chats about it as well as information refracted through his colleagues working on other issues in Country. In Country, I work with Ted, a Country national with a doctorate from the USA who has joined our team to lead on-the-ground implementation of the work.

Through the three different accounts of the project – as well as the comments by Greg, Jackie, and Ted – the chapter as a whole concretely represents how ignorance about the rule of law destabilises a set of stable positions: the participants are each other's' experts and laypeople, insiders

[4] The law emerges from the 'the margins and the between the lines or interlinear spaces of the text. Lawyers were … trained to write in the margins and between the lines and at the top and the bottom of the page … The lateral and the interlinear are the nodal spaces in which the text encounters the living. They are the moments and the maps of law application': Peter Goodrich, 'A Fragment on Cnutism with Brief Divagations on the Philosophy of the Near Miss', *Journal of Law and Society*, 31:1 (2004), 135.

and outsiders (to the project), subjects and objects. At the same time, it shows how each account structures and limits such representations, since the form of each one affords the project a particular type of coherence (thence my understanding of the accounts as genre pieces). In doing so, I show how each account overlays experts' willingness to be ignorant onto the contours of expert authority. Thus, in the organisational sociological account, I focus on the expert social structures that make ignorance of the rule of law stick: epistemic communities, bureaucratic constraints, and so on. In the critical discourse analysis, I focus on the discursive conditions that offer hidden closure to open-ended ignorance about the rule of law – and which inflect experts' ignorance with ideology and hidden aspirations of world-making. Finally, the ethnographic account of expert practices is not so wedded to an underlying order that makes ignorance analytically possible. Instead, it focuses on the routines and socio-material networks in which experts are entangled, such that the project slowly coheres. As such, in this account, experts' ignorance meets real practices.

For each account, I introduce the genre, write a generic account of the project, and offer a conclusion about the project from within the genre. At the end of the chapter, I reflect on and contrast the genres. I explore how each form regulates the content of projects, their protagonists, their spatial and temporal boundaries, their function, and how they couple with and shape local political economies. I argue that, in doing so, these different genres give shape to expert ignorance and thus might not fully capture its workings and effects.

3.2 Organisational Sociology

This form of narrating a project identifies experts as a somewhat distinct category of actor (and thus expert knowledge as a somewhat distinct type of knowledge) and explores how experts and their knowledge influence (policy) decisions in the world. In other words, it is not an epistemological enquiry into the distinctiveness of expert knowledge per se but rather its social organisation into authority (which of course incorporates the former to some extent). Examples might include the 'first wave' of science and technology studies, or sociologically inspired international relations scholarship that examines epistemic communities, transnational professions, or transnational expert networks.[5]

[5] Respectively, H. M. Collins and Robert Evans, 'The Third Wave of Science Studies Studies of Expertise and Experience', *Social Studies of Science*, 32:2 (2002), 235–96; Emanuel

These approaches have made their way into studies of the rule of law and its projects.[6] These studies suggest that the meaning of the project emerges and concretises over time – a gradual process of closure. This closure happens through the social and discursive interactions between decision-making agents; their social organisation shapes the content of their interactions and the hierarchies of decision-making power between them. Dubash and Morgan, in their stream of work on the regulatory state in the Global South, offer a nuanced version of this form of analysis.[7] Their main gambit is to unpack domestic regulation in the global South as intrinsically transnational and social: technocratic agencies are arenas of social contestation, and governance-reform projects are important specific sites of the contest. Urueña, summarising their approach and applying it to court reform and service delivery, sets out the analytical form and content:

> The challenges that regulation poses to the delivery of essential services can be better understood if the analytical unit is the space where interaction between institutions takes place. In this regulatory space, institutions are dynamic; they change and adapt to their interactions, defining the regulatory framework that impacts delivery of essential services.[8]

In my description of the project here, I reflect this general approach. I show the different social formations and institutions that intersected within the bounds of the project (epistemic communities, development institutions, state regulators, and so on, the literature for which I set out in the footnotes) and how I and other participants in the project both reflected and adapted the social constraints placed on our decision-making by those social formations.

Adler and Peter M. Haas, 'Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program', *International Organization* 46:1 (1992), 367–90; Marion Fourcade, 'The Construction of a Global Profession: The Transnationalization of Economics', *American Journal of Sociology*, 112:1 (2006), 145–94; Anne-Marie Slaughter, 'Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks', *Government and Opposition*, 39:2 (2004), 159–90; Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2009).

[6] See, for example, Joost Pauwelyn, 'The Rule of Law without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus', *American Journal of International Law*, 109:4 (2015), 761–805.

[7] Navroz Dubash and Bronwen Morgan (eds.), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies* (Oxford University Press, 2013).

[8] Rene Urueña, 'Courts and Regulatory Governance in Latin America: Improving Delivery in Development by Managing Institutional Interplay' in *The World Bank Legal Review, Volume 6. Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (World Bank, 2015), p. 348.

3.2.1 *The Project*

A few years ago, a colleague at the DA asked me to participate in a project designed to support smallholder farmers in Country. The project, then in the planning phase, was designed to provide loans totalling tens of millions of dollars to local smallholder farming cooperatives. Agriculture contributed over 50 per cent of Country's GDP and had done so for the past decade; it employed over two-thirds of the workforce and was dominated by the production of staple crops. Cash crops constituted less than a quarter of agricultural output. Country's government had decided, following broad multi-stakeholder consultation (funded by the World Bank and some bilateral donors), to make commercial agriculture the main engine for socio-economic growth. The project was intended to support the scaling-up of smallholder farming in a sustainable and socially sensitive way; it would be linked to market access, technology improvement, and value chain integration projects run by other donors and the government.

My colleague, an agricultural economist, went on to explain that some cooperatives had already been constituted as part of smaller projects by other donors, including the OD. Others were in the process of being set up (although he did not know by whom or in what form). My colleague explained that he had visited some of these cooperatives in the field; he knew that these financial flows would boost productivity and increase scale when paired with another component of the project to build roads to local markets. The cooperatives were thus a key component of the project – allocators of the capital inputs that should spur growth. Choosing them, then, was an extremely important moment of decision within the project cycle. The problem, as he put it, was 'politics' – the risk of local elite capture of the funds, inappropriate or inefficient selection of beneficiaries, and land conflicts between cooperatives and non-coop farmers, to name a few.

My colleague claimed that for the project to be successful, the choice of cooperatives would have to be locally contextual, locally embedded, fair, and legitimate (although he did not specify what that meant). As a result, he figured that the cooperatives should be chosen by as-yet-unconstituted local multi-stakeholder committees. Would I (and my rule of law team back at DA headquarters) support the project by helping to design the multi-stakeholder committees to mitigate capture and contain conflict? In particular, he hoped that we could incorporate social accountability and grievance redress mechanisms into the functioning of the local

multi-stakeholder committees – so that they could monitor cooperatives, hear peoples' grievances about them, and hold them accountable. He was asking me because one of my old teammates in the rule of law reform unit had worked with him in the past and 'opened his eyes to the fundamental importance' of law and accountability. He would allocate project funds to support our work.[9]

I discussed this with my rule of law colleagues upon returning to HQ. We didn't really know what he meant by multi-stakeholder, social accountability, and grievance redress. But this sounded like a good opportunity to demonstrate how we could add value to big projects – and secure a bit of a reputational boost for our team across the DA (and perhaps a financial one, if he would pay for our work). We had long been working on the 'community' dimensions of natural resource extraction in the region – including some limited work in Country itself. The use of natural resources as a driver of development – oil, mining, forests, agriculture, and the like – changed the nature and distribution of land and rights over it (from ownership rights, to usufruct rights, to the political power of Chiefs that emanate from their symbolic stewardship of land use). We had long-standing concerns about the local effects across the region of struggles emanating from the changing valence of land – and how those effects might accumulate and intersect with national political and developmental trajectories, undermining development objectives, transforming governance, and potentially increasing the risk of violent conflict. As a result, we believed that our role was to grapple with social and legal accountability and dispute resolution institutions that might (fail to) manage the evolving political struggles over land and farming and the consequent patterns of social, economic, and political marginalisation.

We also knew that there was a clear space for this sort of work in Country. An instrument called an 'Agricultural Development Agreement' (ADA) was enshrined in a section of broader agricultural legislation passed a few years earlier (the Agriculture Act, or 'AA'). The AA was funded and driven by a group of bilateral and multilateral donors including the OD

[9] This argument reflects those of scholars who see the shape of development projects emerging from the personal or private networks that development experts construct within their own institution and between different institutions. See, for example, Kenneth King, 'Knowledge-Based Aid: A New Way of Networking or a New North-South Divide?' in Simon Maxwell and Diane L. Stone (eds.), *Global Knowledge Networks and International Development* (Routledge, 2005), pp. 72–88; Diane Stone, 'Transfer Agents and Global Networks in the "Transnationalization" of Policy', *Journal of European Public Policy*, 11:3 (2004), 545–66.

and the DA – a standard piece of 'technical assistance' aimed at modernising the agricultural laws (the precursor legislation dated from British colonial times and had been updated in the 1970s) and facilitating inward investment in the sector. Country had been marked by sporadic – and frequently, but not exclusively, ethnic – civil conflict, in particular a protracted and brutal civil conflict in the fertile north that had ceased five years earlier. Its government was keen to show that it was open for business and had determined that agriculture would be a key sector to attract foreign investors. The AA had been drafted by a Western consulting company, which had copied some of the language from similar legislation in countries such as Sierra Leone, Nigeria, Australia, and Canada. Not simply an investment law, it contained various provisions for the governance of the social, environmental, and labour impacts of agricultural investment, of which ADAs were one.[10]

The AA specifically required that agricultural companies establish ADAs with the main communities whose land played host to the investment (to be determined in the first instance by an agreement between the local government and the company); companies would have to contribute a minimum of 0.1 per cent of annual revenue to a community development fund, whose governing board and scope of activities would be governed by the provisions of the ADA. The general thrust of the ADA provisions was that the participatory governance of agreements was an end in itself (although not stated explicitly, in contrast to ad hoc or local elite-captured corporate redistribution of rents at the community level). The law mandated that the fund be governed by a local multi-stakeholder group, which would act 'transparently' and in the interests of the community. The group was required to reserve positions for the local government and community representatives.

The legislation also gave the National Agricultural Agency – an executive offshoot of Country's agriculture ministry – the power to supervise the implementation of ADAs. Subsequent regulations also mandated that the

[10] This particular combination of facts reflects the work of organisational sociologists who argue that knowledge is arranged through the organisational imperatives to mimic, rather than to know (e.g., as a result of bureaucratic risk-aversion or the rents available from mimicking state forms): Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields', *American Sociological Review*, 48:2 (1983), 147–60; Pierre Englebert, *State Legitimacy and Development in Africa* (Lynne Rienner Publishers, 2002); Pierre Englebert and Denis M. Tull, 'Postconflict Reconstruction in Africa: Flawed Ideas about Failed States', *International Security*, 32:4 (2008), 106–39.

governance board be gender-sensitive, suggested – but did not require – that funds be distributed to communities on the basis of small project proposals that they would prepare and submit to the board, and listed a number of things the fund's money could not be spent on (like private vehicles). Beyond that, the AA provided little detail. For example, it did not specify the process to determine who the 'main' community (or 'MC') was. Should the discussions between the local government and the company involve community representatives of some sort? What should the involvement of local Chiefs (key traditional power-holders) be? And what role would landowners play? In general, Country's government had not yet worked out how to implement the ADA provision but had convened a taskforce (funded by the OD) to do so. The group had begun to meet and was hammering out a document that, depending on who in the taskforce you asked, contained 'model' ADA provisions, or a 'framework', or 'principles' for ADAs. The first question they needed to tackle – but had yet to do so – was how to identify the MC, who would then go on to negotiate the substance of the ADA.

Because of the broader scope of our work, we had seen similar provisions in natural resource governance legislation across the subcontinent. Indeed, there was a loosely ordered global community of natural resource governance professionals and policymakers.[11] Many among them were interested in the effectiveness of such instruments across the world in promoting socially responsible resource investment, sustaining 'good' governance in the sector (usually taken to mean a combination of transparency of resource flows, accountability for their expenditure, and procedures to mitigate the social and environmental impacts of sector activities), and reducing conflict risk around investments.

[11] Here, I am suggesting that this global community constituted an epistemic community intersecting at the instrument of the ADA. The component groups 'exert[ed] influence on policy innovation by (1) framing the range of political controversy surrounding an issue, (2) defining state interests, and (3) setting standards': Adler and Haas, 'Conclusion', p. 375. This paragraph and the subsequent one show that this community has '(1) a shared set of normative and principled beliefs, which provide a value-based rationale for the social action of community members; (2) shared causal beliefs, which are derived from their analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible policy actions and desired outcomes; (3) shared notions of validity that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise; and (4) a common policy enterprise'. Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, 46:1 (1992), 3.

The causal ideas about the benefits of local development agreements held by this community emerged from experiences in the Global North, particularly Australia and Canada, which have developed a significant body of policy experience in and academic analysis of their implementation.[12] According to these ideas, agreements are 'a means of resolving disputes, delivering government programmes, or establishing common understandings …' between main communities and companies.[13] They do so by 'i) [addressing] the adverse effects of commercial mining activities on local communities and their environments, and ii) [ensuring] that [communities] receive benefits from the development of mineral resources'.[14] These, in turn, are the products of four new governance ideas this community holds about the functioning of agreements. They 'respond flexibly to local conditions', 'achieve lower regulatory costs by stimulating collective action', 'reduce transaction costs associated with fragmented service delivery', and 'increase legitimacy through increased participation in decision making'.[15]

As a result, agreements had become a key part of the natural resource governance policy toolkit. The World Bank, the UN, and private and public donors of many other stripes commended them and have pushed for their implementation.[16] The enforceable legal form of these local development agreements is, in the view of this global community, key; at the same time, scholars and policymakers clearly recognise the importance of the gap between the law on the books and the law in action. Indeed, this

[12] Australia's Northern Territory, for example, mandates agreements between aboriginal groups and mining companies in the Northern Territory under ss. 40–42 *Aboriginal Land Rights (Northern Territory) Act 1976*, while similar agreements are voluntary but commonplace per ss. 24–44 *Native Title Act 1993* (a Commonwealth statute), Marcia Langton and Odette Mazel, 'Poverty in the Midst of Plenty: Aboriginal People, the "Resource Curse" and Australia's Mining Boom', *Journal of Energy & Natural Resources Law*, 26:1 (2008), 42.

[13] Maureen Tehan and David Llewellyn, '"Treaties", "Agreements", "Contracts", and "Commitments": What's in a Name? The Legal Force and Meaning of Different Forms of Agreement Making', *Balayi: Culture, Law and Colonialism*, 7 (2005), 7.

[14] Irene Sosa and Karyn Keenan, 'Impact Benefit Agreements between Aboriginal Communities and Mining Companies: Their Use in Canada' (Mining Council of BC, Canadian Environmental Law Association and Cooper Acción: Acción-Solidaria para el Desarrollo, 2001), 2, https://cela.ca/impact-benefit-agreements-between-aboriginal-communities-and-mining-companies-their-use/, accessed 24 August 2022.

[15] Mark Considine, 'Partnerships and Collaborative Advantage: Some Reflections on New Forms of Network Governance' (Center for Public Policy, University of Melbourne, 2005), 13, http://apo.org.au/node/8139, accessed 24 August 2022.

[16] For a summary, see World Bank, 'Mining Community Development Agreements: Source Book' (World Bank, 2012).

implementation gap has become the central object of study by this global community. As a result, they have produced a wealth of loosely social-scientific case studies to accumulate knowledge about the validity of their normative and causal ideas.[17]

We had contributed to the discussions among this group by participating in global conferences and writing papers and blog posts. We did so having adopted a marginal perspective, claiming to integrate insights into the debate over local development agreements from the experience of our other community: rule of law reformers. Specifically, we drew on insights from a group of reformers who believed like us that rule of law reform was a type of policy change that provided the basis to produce other policy changes – it was both a distinct means of social organisation and a cross-cutting good that shaped the procedures and allocations of rights through which development occurred. This community was geographically diverse, including practitioners from various donors, state actors, and NGO members in Country. The community was avowedly mixed-methods in its assessment of how and why the rule of law mattered and comprised lawyers and social scientists. Community members shared a fundamental belief in producing legal change that emphasised bottom-up and contextual perspectives on what the law should do rather than approaching the rule of law as a policy object to be deductively designed and centrally implemented.

ADAs, then, were a good hook to engage with my economist colleague's concerns about 'politics'. They were expressly concerned with the social changes wrought by agricultural reform. They were a pre-existing instrument that was not overly prescriptive and had not yet been implemented; they might thus function to fix the 'political' challenges our economist colleague had mentioned. The participatory governance mechanism might help in setting up a process to pinpoint beneficiaries, disburse funds, and reveal and mitigate land conflicts. At the same time, domestic ADA implementation in Country furthered and contributed to a broader global agenda that meant we would not just reactively be dealing with the specific political problems of this project – indeed, we could make use of the comparative experiences and legitimacy of the global natural resource governance people in turning a component of a project into a globally relevant experience.

[17] See, for example, Ciaran O'Faircheallaigh, 'Implementing Agreements Between Indigenous Peoples and Resource Developers in Australia and Canada', Aboriginal Politics and Public Sector Management Research Paper (Centre for Australian Public Sector Management, Griffith University, 2003).

Greg Glass July 04, 2022

This was the most important part to me when you took this project on. I wanted to use it to show my bosses the successes of this sort of work – that we don't just have to be responsive to other people's projects. We can be pro-active, with a specific product we're working on.

Our institutional setting, however, was still oriented around projects as 'privileged particles'. It would not be easy to turn a component of the project into something semi-autonomous and globally relevant. On my return to headquarters, my team discussed our approach. We decided we should begin with the problems our economist colleague was trying to solve. Did we know what sort of land conflicts might arise and what local elite capture of funds really looked like? Between us we had only spent about six months in Country (in contrast to the economist, who had lived there for many years); we would have to conduct some research. This, of course, might be challenging in an institution whose core function was to develop and implement projects.

Jackie Campbell August 02, 2022

Of course – we have to be credible with all the people you've talked about up to now. But from my perspective, we were really trying to respond to the pressures of the DA. We got funding for this through the economist's project. Sure, we thought the work would be important. But we really wanted to show that we could work along with and influence other DA projects. Getting this sort of work done means we don't just tell people in comments in their project docs about how our work could complement theres. We can point to results, based on real money someone else gave us to help make his project better. We were thinking programmatically, not just about projects.

We decided in the end that our fundamental aim would be to find someone intelligent, credible, and entrepreneurial who we could install on the ground.[18] That person could build relationships within the project team – so we would be team players within the context of the DA. They

[18] This argument reflects those of scholars who see development activity as an effect of institutional entrepreneurs, who leverage the appearance of their expertise as a political tool: Rosalind Eyben, 'Hiding Relations: The Irony of "Effective Aid"', *The European Journal of Development Research*, 22:3 (2010), 382–97. See generally Jens Beckert, 'Agency, Entrepreneurs, and Institutional Change. The Role of Strategic Choice and Institutionalized Practices in Organizations', *Organization Studies* 20:5 (1999), 777–99.

could also network with members of the DA's country team in Country to see if we might be able to support the DA's work in Country more broadly (and make its projects more sensitive to the local governance issues we cared about). At the same time, that person could use some of the agriculture project's funds to support (and also try to steer) the implementation process for ADAs: as it stood, the NAA was being funded by the OD to implement ADAs. For the OD, implementation meant getting an ADA on the books – they simply wanted the NAA to design a model draft agreement and then have a handful of agricultural investors sign versions of it. Finally, that person could also network with other donors in Country, like the World Bank and the Swiss government, who might be interested in the process and who generally have a greater propensity to fund research that would support both that person's job and potentially a couple more local hires.

We hired a Country local named Ted shortly afterwards – a former long-term consultant with the British government with a PhD from an American university, who knew the sector and was also a strong field researcher.[19] He began participating in the ADA taskforce, bringing with him the promise of some project money for ADA implementation. The taskforce was considering how to set up a multi-stakeholder process to determine the identity of the 'main' community, which included working out and engaging the broader universe of communities affected by agricultural concessions, from which the main communities would be drawn. This also involved working out who the key local powerbrokers might be on whom the success of ADA implementation might rest (e.g., how important were the local Chiefs, and in what ways might they be engaged without risking wholesale capture of the process?).

I then travelled to Country for a three-week trip. Ted had organised an initial workshop in the NAA's offices in the capital for the members of the ADA taskforce. This included NAA officials, the OD, the NGO, and the AC. After the workshop, I would travel 'outland' (the local term for the further-flung non-urban regions) to observe the elections of community representatives who might negotiate the terms of the ADA. I would then spend a couple of weeks in the field with Ted doing some scoping research

[19] This reflects scholarship on professionalisation, in particular the use of symbols and qualifications as markers of status and as a means of limiting entry to the relevant coterie of experts: Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (University of Chicago Press 2014).

around a few potential agricultural concessions to give me a basic sense of some of the ADA-implementation challenges as well as the challenges we might face in executing a research programme (and thus some insight into the quality of data we might generate).

We developed the agenda for the workshop in collaboration with the taskforce participants. The OD, NAA, AC, and NGOs wanted to focus on global best practices on community engagement, the lessons from which would flow through the identification of main communities to the establishment of governance boards to the implementation of projects. My team had developed a set of briefing documents for the taskforce, circulated in advance, that set out comparative practical examples from other experiences of local development agreements (mainly from Australia and Canada). At the same time, the documents stressed that these experiences were not prescriptions and that the best approach would be contextual; in particular, they raised the importance of the context of each concession when identifying the specific beneficiary or 'main' communities and the exact amount or percentage of an ADA.[20]

At the workshop, the participants asked Ted and me, as 'technical experts' on ADAs, how they might best structure ongoing community engagement. We referred back to the briefing notes: lessons from rule of law reform suggested that community engagement was socially contextual and could take the form of consultations, public forums, dialogues, village-by-village negotiations, and so on. However, a common set of process norms should be put in place to ensure the meaningful participation of marginalised and vulnerable groups. Lessons from natural resource governance reform suggested the importance of quickly putting in place a community engagement process to make communities feel like they had a voice with respect to the project. The challenge would be to work out the right balance between flexibility or responsiveness, and the urgency of providing a determinate structure for dialogue, in the particular context of each potential concession. The AC's concession would be an important testing ground.

The other participants provided their views. The main NGO representative talked about the NGO's wealth of experience engaging with

[20] This reflects scholarship that emphasizes material sites around which experts might socially organise – a meeting or workshop; a set of documents; a research trip. These material sites provide a stage for group formation and inter-group conflict and dynamics; in doing so, they determine the direction of a project or activity. See, for example, Robert Hunter Wade, 'Making the World Development Report 2000: Attacking Poverty', *World Development* 29:8 (2001), 1435–41.

communities and helping communities assert their rights against companies and the government. They argued forcefully that they would be best placed to run and manage community engagement as they had the scope (they had chapters in every local district in the country) and depth (they had built a significant community trust over the years) to ensure that engagement would be meaningful. The representative from the OD agreed. She asserted that the taskforce should fund the NGO to conduct outreach to communities and help them establish representative committees so that companies could negotiate and sign ADAs with each one. The AC said they would defer to the NAA, as they held firm to the view that it was the NAA's responsibility in law to manage community consultations.

Ted and I expressed some concern. From a natural resource governance perspective, did we know which communities were MCs? And from a rule of law perspective, what would the process and threshold be to determine the answer to that question (and could they be derived from the context of each concession)? Both the NAA and the OD referred immediately to the law but with differing interpretations. The NAA asserted that the 'main community' meant the people impacted by the concession. The OD said that 'main' referred to geographic proximity to the boundaries of the concession.

By contrast, the NGO representatives argued that we should not get too hung up on the law. Another said that we should focus instead on the 'participatory method – where everybody is informed and involved'. The law didn't capture the key local actors anyway – the local councils, traditional Chiefs, local landowners' associations, smallholder farmers' groups, and so on. Moreover, the NGO had a long history of working with these actors to come up with locally sustainable decision-making processes. They pointed to discussions that had already begun around the AC's concession area. The discussions focused on who the main community would be for the ADA. A local Chief, whose chiefdom was closest to the concession, had asserted that his chiefdom was the only main community. However, his chiefdom included half – but not all – of a major town in the area. The other half of the town belonged to another chiefdom. The NGO had convened an informal stakeholder meeting between the AC, the two Chiefs, and the head of the town council to begin discussions over how to divide up the main community (although they had not yet developed a standard to determine 'main'). This, they said, would continue, an example of the 'pragmatism that must come in [implementation] as well'. Involving communities and local powerbrokers in the identification of ADA beneficiaries would guard against local elite capture and at the same time against

those who would 'take the law and ride it' by 'pick[ing the choice of main communities] and tak[ing] it to court'.

All the members of the taskforce agreed that the taskforce should build on the NGO's existing work and proceed with community engagement. We should bracket definitional questions and not let them inhibit us; the engagement process would lead to some sort of consensus (whether practical or legal) on the identity of the community. And the multi-stakeholder committees should be designed in such a way that their membership and constitution could be revised as different communities came forward to stake a claim for inclusion and as the impacts of the concession evolved. For the OD in particular, the most important thing to do was to get something signed and then keep revisiting the definitional questions throughout implementation.[21]

The taskforce members were also not concerned by the risk of conflict between communities fighting to be defined as ADA beneficiaries, nor were they altogether concerned about the cost of the community engagement process with respect to the actual value of the ADAs. Ted asked the taskforce members what they estimated the value of the ADAs might be per year so that we could contextualise how much would be expended in implementation (and how much might be left for development projects). No one was able to answer his question, although the NAA and NGO representatives asked if we might provide technical input on the global best practice on the amount that concessionaires should put into the local development fund – and whether 0.1 per cent of revenue was too low.

I subsequently met for a drink with our main counterpart at the NAA to discuss how to relate the ADA implementation work to our agriculture project, such that the project's funds could be used to support the implementation of ADAs. We began with what he wanted the ADAs to achieve. He spoke of their 'beautiful potential' to ensure that companies would remain committed to supporting the people it affected most, through good and bad economic times, and through a process driven by those people. He rejected a vision of local development in which ad

[21] This reflects the views of pragmatic scholars for whom experts organise around concepts (like rule of law reform or governance), and over time produce content for that concept through practices and arguments that support different conceptions of it. These conceptions accrete or become synthesized over time into clearer concepts; experts in turn become more organised as the schools or conceptions become clearer and more reified – see, for example, Brian Bix, 'Conceptual Jurisprudence and Socio-Legal Studies Symposium: Law, Social Science, and Pragmatism', *Rutgers Law Journal*, 32 (2000), 227–40.

hoc corporate social responsibility investments by concessionaires or the desires of captured local elites like some Chiefs dictated the benefits local communities received. That vision, he said, was the contemporary status quo: it was disordered and gave life to below-the-surface conflicts (e.g., between Chiefs and local councils). I asked him how to move from the status quo to realising the potential of ADAs; he said that ADAs needed to be implemented in such a way as to get the 'buy-in' of communities so they would have 'ownership' and wouldn't become 'disenchanted with the potential' of the ADA. I asked him for more detail about his vision of implementation; he did not provide any, instead amicably reiterating his belief in the potential of ADAs.

A few days later, I travelled to the town that the NGO had discussed. Each chiefdom had decided to elect community representatives to negotiate the terms of the ADA as and when that process began. I attended the elections, held in the respective Chief's courthouse. At both, a small group of community members was in attendance. The Chiefs provided transportation money for the select few. Ted and I were seated at the top of the hall next to the Chief and NAA representatives. We were both introduced as 'white men' (in the local language) here to observe the elections to the local ADA committee. Voting proceeded without controversy with almost all of the representatives being unanimously confirmed. We returned to the capital that evening.[22]

3.2.2 Analysis

This account offers insights as to how the social organisation of expertise structured and limited the horizons of implementation, including bureaucracies, epistemic communities, social hierarchies, and organisational interests. Within these structures, the project should be understood as a series of actions and interactions by experts with the power to shape the form and substance of the project. As the project was decentralised, participating experts were not just technical actors at the global or national level; locals could lay claim to expertise based on their embedded, emplaced, or tacit knowledge about what the community struggled with and needed.

[22] This briefly reflects arguments about the social organisation of local brokers as being determinative of the direction of development projects and activities (i.e., rescaling the site of inquiry to the social and political economies of local implementers of development aid): see generally David Lewis and David Mosse (eds.), *Development Brokers and Translators: The Ethnography of Aid and Agencies* (Kumarian Press, 2006).

To begin with, the DA chose to engage with the project and had an interest in sustaining it owing to the instrumental role it would play in the larger, longer-term agricultural industrialisation project. Some of the ADA's form thus took shape as a result of both broader bureaucratic incentives within the DA (rewarding larger projects; the importance of cross-departmental work; the availability of larger pots of funding in non-governance departments) and interpersonal networks within the DA. Similarly, the OD and NAA clearly manifested their own set of bureaucratic incentives in pushing the ADA taskforce to prioritise the signing of the ADA despite concerns over its contextual appropriateness.

Next, the project took shape at the nexus of the natural resource governance and global rule of law epistemic communities. The OD and NAA were clearly influenced more by the former than the latter; the DA team attempted to introduce more of the sociological and contextual approach of the latter into the project. This conflict was staged in a series of material sites: reports, the workshop, and the identification meeting. The conflict manifested itself through instantiating different interpretive approaches to the meaning of the AA, in particular how to identify the MC (with impact requiring a more nuanced, socially oriented policy analysis than proximity as the MC identification criterion).

Similarly, the project took shape around the social markers of professional power. The DA team ('white men' to their local interlocutors, despite being African and South Asian males) were given the platform to provide 'best practice' input as a result of their institutional position and Ted's qualifications. Indeed, in spite of their efforts to talk about contextual lessons, they continued to be treated as global purveyors of universal knowledge (with respect to the percentage of revenues that should have gone into the ADA). At the same time, the DA team sought to weave itself into the project informally by establishing informal relationships with key brokers in the process, specifically the NAA representative.

The project also took shape through the conflicts between the background agendas or interests of the participants, whether the DA's desire to incorporate the multi-stakeholder groups into a different project, the NGO's desire for ADA implementation to build on and expand its existing work, or the Chief's attempts to stack the room in the selection meeting. Finally, the project took shape through the strategies available to participants to manage and resolve conflicts within and between their different modes of organisation. For example, the NGO representative used deferral (of MC identification) to manage what was simultaneously

an interpretive conflict between the NAA and OD (impact versus proximity); and an interest-based conflict between the DA and OD (to slow down or speed up implementation).

> **Ted Keita** May 14, 2022
>
> Really, it's a lot more personal than that. I know these guys. I taught most of them at university. Almost none of these guys are from the north. They're usually from the capital.
>
> Private companies are hiring a lot of the NAA and NGO guys. They want to show that they understand business pressures, while still talking about "community benefits" and redistribution – the agriculture and mining companies love that.

In sum, the project was socially structured through the organisation of its expertise. At one level, the project was thus a function of the conditions that structured those social structures, both internal (like the bureaucratic incentives in the DA) and external (like racialised hierarchies of development knowledge). At the same time, the project was dynamic – as it concretised, it came to shape the social structures that produced it. Thus, Ted and myself were ensconced as providers of global best practices for the project even as we sought to embed the project in its local context.

> **Taylor** November 01, 2022
>
> Not sure if the publisher will retain these page breaks; I assume they'll be removed but will leave them in, for now, to help demarcate the various sections of this chapter.

3.3 Critical Discourse Analysis

Where studies of social organisation assume that expert knowledge is distinctive and that the task of the scholar is to distinguish experts from non-experts, this form of narrating a project in turn problematises the distinctiveness of knowledge. The version of critical discourse analysis I have in mind is most closely associated with a methodological strand of Foucault's work.[23] It focuses on how discourse frames or produces certain phenomena – for example, imagining sub-Saharan Africa as 'lacking'

[23] Michel Foucault, 'Orders of Discourse', *Social Science Information*, 10:2 (1971), 7–30; Michel Foucault, *The Archaeology of Knowledge* (Vintage, 2012).

the rule of law.[24] Its approach is to explicate these structures of meaning. It seeks to apprehend and demonstrate their contingent character and socio-political structure and effects of knowledge – in other words, that knowledge is not an autonomous domain with intrinsic claims to truth but rather is constructed by discourses socially and politically imbued with the power of truth. This has been a powerful method for those seeking to understand why the historically contingent notion of the rule of law has come to have any transnational authority whatsoever.[25]

In the context of a project, this genre of discourse analysis suggests that a series of discourses give rise to the project and structure its implementation and outcomes. The meaning of the project is produced and limited by these discourses; it unfolds over time as the discourses interact in the project. The work of discourse analysis is to recover these discourses and analyse these interactions and their effects. In this view, expert ignorance functions as a means of arranging these discourses for political effect.

3.3.1 Context

The stakes of agriculture governance in Country are high: Country is one of sub-Sahara's larger palm oil and cocoa producers. Country is also ripe for a rapid expansion and industrialisation of cash crop agriculture, given that agriculture has constituted over 50 per cent of national GDP over the last decade, but cash crops constituted less than a quarter of agricultural output over the same period. The government has promoted an agriculture-driven growth programme since the end of the civil conflict, liberalising foreign investment laws and seeking foreign investors in the sector. The AC purchased a large concession, which the government hopes will be successful enough to function as proof of concept for other multinationals. As a result, social expectations for near-term agricultural job creation are high, even as around half the population still lives in poverty and lacks the skills necessary for many of those putative jobs.

[24] I distinguish this form of critical discourse analysis from other forms, which might imagine discourse analysis as organising and mapping utterances (e.g., by sorting them semantically) or as explicating the social relationships and interactions that give them meaning: Malcolm Coulthard, *An Introduction to Discourse Analysis* (Routledge, 2014), p. ix. See, for example, Franco Moretti and Dominique Pestre, 'Bankspeak', *New Left Review*, II:92 (2015), 75–99.

[25] Jothie Rajah, '"Rule of Law" as Transnational Legal Order' in Terence Halliday and Gregory Shaffer (eds.), *Transnational Legal Orders* (Cambridge University Press, 2015).

At the same time, social and communal tensions are high in a context marked by memories of sporadic civil conflict, especially the long-lasting northern conflict. The northern conflict, in particular, was rooted in a set of socio-economic local struggles over the control of land, agriculture, and agricultural labour. These struggles began and ended in the particular institution of the traditional Chief or ruler. The Chiefs' authority was reified and constitutionalised in the mid-nineteenth century during British indirect rule as a counterweight to an increasingly assertive domestic urban mercantile elite. At this time, Chiefs claimed – and the British formalised – authority over their Chiefdoms on the basis of their 'guardianship' of Chiefdom land (including land actually owned by others). While there were ethno-regional variations, Chiefs could in effect regulate or even veto investment or other activities that touched their land – whether agriculture, natural resource extraction, or construction – through their position as tribunals of first instance for land disputes,[26] their ability to bureaucratically obstruct investment by refusing to provide their assent where required, and their capacity to rabble-rouse.

Furthermore, the political authority of the Chiefs was not simply a cultural phenomenon but a socio-economic one as well. Prior to the British abolition of slavery in Country, Chiefs relied on slave labour to tend their land-holdings. Following abolition, they leveraged their power of assent to marriages of women within the Chiefdom to indenture young men to years of free labour in exchange for the ability to marry. This latter tradition in particular, and the concomitant frustration of young men's ability to achieve their ideals of masculinity, led to a broad-based revolt in the north against Chiefs and their political patrons in Country's ruling party headquarters, a revolt that eventually took on an ethno-regionalist (and sometimes separatist) bent, as well as a natural resource rentier dimension (with illegal mining and logging funding warring groups). After quashing the revolt (and widespread atrocities and retribution on both sides), a fragile Chiefly authority has returned. Chiefs have managed to promote themselves to the government and international donors as sources of solutions to a problem that they helped cause: as locally legitimate authorities, ripe to be trusted with a post-conflict agenda of

[26] Chiefs in Country continue to apply ethnically inflected customary law in a form of legal pluralism that is weak with respect to criminal law and security matters (especially in the north, where the state's military retains a strong presence and state security officers have little tolerance for violent crime) and strong with respect to land matters.

administrative decentralisation (sponsored by donors as a means of producing accountable governance to disaffected northern citizens). As putative local administrators and continuing 'guardians' of the land, they hold a great deal of power when it comes to distributing benefits from agricultural investments.

Greg Glass July 08, 2022

I found this introduction so much more convincing than the previous section. Your story about donors and experts described the process of what we do, but you can't understand why things happen in a project without knowing the local context well.

The government, while supporting Chiefly authority insofar as it helps stimulate aid revenues into Country as donors fund decentralisation programmes, remains wary of their local power. Country's political economy is dominated by major ethno-regionalist political parties, with the largest forming rotating alliances with one or two of the smaller ones to dominate the political scene, having held power for most of the post-independence era. Resources and power travel through party networks. The relationships between local party bigwigs and Chiefs are important and fragile nodes in those networks, especially given a Chief's capacity to rabble-rouse. Large-scale inward investment focused on local land thus places pressure on those nodes, simultaneously making them more important relative to other bits of the party system and more volatile as the stakes of the party–Chief relationship increase. The only exception to this pattern is in the post-conflict north, where the ruling regime's central apparatus informally bargains directly with Chiefs to ensure investment and maintain physical control.

This political legacy and contemporary political economy give rise to three discursive frames of natural resource governance in Country:

(1) government and donor-driven development discourses of growth on the basis of industrialised private agriculture;
(2) donor-driven post-conflict political economy or state-building discourses based on administrative decentralisation, which are intended to reduce conflict risk; and
(3) a prevalent property-based local administrative or governance discourse, in which traditional Chieftaincy plays a central role in managing the pressures and resources that come with inward investment and intensive land use.

The confluence of these three discourses is not uncommon in natural resource-rich environments, from Papua New Guinea to Sierra Leone.[27] They underpin arguments in favour of local development agreements for land, agricultural, and natural resource extraction. The discourses share an orientation towards the concession, rather than the state, as the object of policy. As a result, the success or failure of policy in this mode is contingent on the company–community(–state), rather than company–state, relations. This means that policy must be contextualised to the specific social and political dynamics of the community and concession area.

I argue that, although the text of ADAs and related documents in Country on their face require context specificity and responsiveness to local needs, they actually attempt to discipline the politics of natural resource governance. ADAs, like other natural resource local development agreements, provide a framework for company–community relations and offer some promise of immediate resource redistribution from the company to the community. The framework is not completely reconfigurable; it is limited by its form. Furthermore, the redistribution of resources enabled by the framework has embedded in it a view of what constitutes matters of public and private concern. Specifically, communities around concessions must articulate their own preferences privately; companies' social obligations are to be met through private negotiation, and the state's governance, conflict, and development roles are supervisory at best. In doing so, ADAs facilitate inward investment, produce a pliant participatory public, and support a legal imaginary of the state as a regulator of the private sphere.

3.3.2 Ambiguity in the Law

The legislative and regulatory framework for ADAs in Country is extremely ambiguous.[28] Indeed, according to officials at the OD, DA, and other donors who funded the drafting, and officials at Country's agriculture ministry, this is supposed to be one of its strengths: an ADA is supposed to be adapted to the specific needs of the particular company–community relationship around the concession. Part XV of the Act sets

[27] See, for example, Deval Desai, '"A Qui l'homme Sauvage?" The Text, Context and Subtext of Agreements between Mining Corporations and Indigenous Communities' in Amanda Perry-Kessaris (ed.), *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge, 2013), pp. 153–66.

[28] The law and its broader legal frameworks discussed here are based on legislation and regulation across several sub-Saharan countries.

out the main legislative provisions giving rise to and regulating ADAs; pursuant to other provisions in the Act, the NAA has the responsibility to implement ADAs. A set of regulations required by the Act were adopted a short while later (the Agricultural Administration Regulations, or 'AA Regs'); scattered throughout the regulations are some further provisions about ADAs. Both the AA and AA Regs were funded by donors and drafted by international consultants.

The AA and AA Regs provide some guidance as to the form and process of ADAs but little as to their purpose and substance. The holder of a large-scale agricultural concession (defined in the Act as larger than 200 hectares) is required to have and implement an ADA. Per the AA Part XV(i), ADAs should 'promote development, enhance the welfare and the quality of life of inhabitants, and recognise and respect the rights, customs, and traditions of local communities'. Part XV gives no further guidance as to the purpose of this provision. The AA and AA Regs are similarly unclear with respect to the amount and use of ADA funds. The AA provides that at least 0.1 per cent of gross revenue should be spent on each ADA per annum (Part XV(v)), a figure which several potential concessionaires in Country themselves have suggested is too low to both avoid conflict and foster local development. It also provides that the ADA funds should be governed and spent through a local multi-stakeholder process (giving the example of a 'board': AA Part XV(v)). The Act and Regs are silent on whether other funding streams between companies and communities (e.g., private trusts or charitable foundations) should be included in the ADAs. These would be a means of increasing development funds but through channels with different standards and mechanisms of governance to ADAs. Finally, Part XV(iii–iv) of the AA list things that may be included and must not be included, respectively (e.g., apprenticeships for community members may be included; the purchase of passenger cars must not), but the guidance is extremely limited.

Crucial to both process and substance, the terms of the ADA are to be directly negotiated between the concessionaire and the 'main community' ('MC'; AA Part XV(ii)). Most of the ambiguities in the law and regulations are meant to be resolved through this negotiation and spelled out in the final document. There is thus much at stake with respect to who is in and out of the MC. The AA Part XV(ii) provides the following definition:

> the community of persons established through mutual agreement between the holder of the large scale agricultural licence and the local government, but if there is no community of persons residing within twenty kilometres of any defined boundary of the large-scale licence area, the main community shall be the local government.

At the same time, AA Part XV(i) provides that the ADA 'shall assist in the development of communities affected by [the concessionaire's] operations' (emphasis added).

Clearly, the concessionaire and local government have the initial authority to determine who is eligible to be part of the MC. Moreover, in requiring that the local government be one of the two initial parties, the legislation suggests that ADAs should be designed on the basis of local context rather than a central mandate. At the same time, the Act leaves open significant questions. Specifically, to what extent should MC determination be a matter of pure discretion and agreement on the part of the concessionaire and local government, and to what extent should that discretion be fettered by principles and processes? As for those principles, is 'affected[ness]' the most relevant criterion to determine MC membership, or (given the reference to 'twenty kilometres' in the Act) proximity to the concession (whereby proximity may exclude those who are far away but affected by infrastructure, transport, and processing activities)? And what is the nature of a 'community of persons' as a single unit – might it be administrative, such as a village, town, Chiefdom, some other kinship grouping, and so on, or might it be a generic descriptor of a collectivity? As for processes, should other participants be included in the determination process (e.g., the NAA or traditional Chief as the arbiter of the fairness of the process)?

The Act and Regs thus present a challenge to implementers of ADAs. They must work out the scope, content, and purpose of each ADA according to the concession's local context; however, they are provided with no clear means of determining exactly who and what are 'local'. These are no mere lacunae in the law, to be filled either through policy pragmatism or principles of statutory construction. They are products of deliberate vagueness in drafting (along with poor drafting) designed to produce ADAs that can be context-responsive. In doing so, these lacunae produce a first-order set of policy questions that must be answered clearly before the legislation can be implemented. To take a simple example, if an MC is a specific administrative unit, like a village, we may see hundreds of potential MCs for one concession. Even if we assume that many MCs can be a signatory to one ADA (to avoid a scenario in which a company has to sign hundreds of ADAs, each worth 0.1 per cent of revenue), must each MC be represented on the ADA's governance board? Moreover, the fashion in which such questions are answered will shape the implementation of the Act. For example, if the initial determination of the MC is taken to be contingent and open to challenge or revision, the ADA itself may

be understood more as a policy framework than as a private contractual arrangement between two predefined parties.

> **Jackie Campbell** August 02, 2022
> I'm not sure how helpful any of this legal stuff is. Imagine if there wasn't a provision in the Act, and our colleague had still come to us asking us to set up multi-stakeholder groups? Couldn't we have just worked out how to design them based on the specific political context at each concession?

The Act's ambiguity is a product of ideas about Country's decentralisation and industrialisation, ideas which emerge from Country's current policy environment and which are part of the global natural resource governance toolkit. As I argue in the next section, interpretive limits on this ambiguity can be derived from the same sources in a way that reproduces those ideas in the name of local contextualisation.

3.3.3 Discourses of Conflict, Development, and Governance in ADAs

ADAs are stablemates of several types of natural resource company–community agreements. Deriving from experiences in the Global North, particularly Australia and Canada, these agreements are new governance-inflected instruments through which global policymakers seek to frame the company–community relationship (through redistribution and the discipline of deliberation)[29] to minimise conflict, improve governance, and promote local development around the concession.

As a result, ADAs are embedded in a set of discourses about their purpose and implementation, covering conflict, development, and governance. These discourses suggest some assumed content to ADAs along with the limits of how they might be implemented. These discourses clearly overlap but draw on different ends and discursive resources. I treat them separately here.

3.3.3.1 Conflict

The risk of company–community conflict emerges from a growing body of scholarly and grey literature at the nexus of global thought on development, business studies, and natural resource governance. Scholars have

[29] World Bank, 'Mining Community Development Agreements: Source Book'; Kendra E. Dupuy, 'Community Development Requirements in Mining Laws', *The Extractive Industries and Society*, 1:2 (2014), 200–15.

used case studies, deductive logic, and now accounting techniques to frame these conflicts in terms of private business risk. They argue that local disputes can generate large losses for natural resource concessionaires. For example, Davis and Franks focus on mining as a specific example of the 'costs of company–community conflict' in the natural resources sector. They write on behalf of the Harvard Kennedy School Corporate Social Responsibility Initiative, Shift (an NGO focusing on the implementation of the UN's business and human rights agenda), and the Center for Social Responsibility in Mining – all organisations concerned with 'enhance[ing] the public contributions of private enterprise'.[30] They find that

> [l]ost productivity in the form of temporary delays in operations was the most frequent cost cited by all interviewees. A major, world-class mining project with capital expenditure of between US$3–5 billion will suffer costs of roughly US$20 million per week of delayed production in Net Present Value[…] terms, largely due to lost sales. This figure was confirmed by multiple interviewees and supported by an analysis of project financial data writing a policy report for corporate social responsibility.[31]

This is to say nothing of the broader costs – in terms of lives lost and development stymied – when local discontent develops into violent conflict, as seen in Papua New Guinea and elsewhere.[32]

ADAs, then, can provide a framework for company–community dialogue such that the risk of conflict is diminished. Yet they must thus be implemented in a fashion that enables investment to proceed while reducing local political tensions. Take the identification of MCs. In Nigeria's natural resources sector, 'a long history of experience in [the] oil and gas sector has shown that the drawing of arbitrary lines between communities – and across clan or ethnic boundaries – can create conflict between qualified (i.e., beneficiary) and nonqualified communities, even where relations have previously been peaceful'.[33] In the very different environment of Georgia,

> [T]he Baku–Tblisi–Ceyhan[…] pipeline project had similar problems when it defined beneficiary communities as those within 2 km of the

[30] Rachel Davis and Daniel Franks, 'Costs of Company–Community Conflict in the Extractive Sector', Corporate Social Responsibility Initiative Report (Harvard Kennedy School, 2014), p. 4.

[31] Davis and Franks, 'Costs of Company–Community Conflict in the Extractive Sector', p. 19.

[32] Colin Filer, 'The Bougainville Rebellion, the Mining Industry and the Process of Social Disintegration in Papua New Guinea', *Canberra Anthropology*, 13:1 (1990), 1–39; Anthony J. Regan, 'Causes and Course of the Bougainville Conflict', *The Journal of Pacific History*, 33:3 (1998), 269–85.

[33] World Bank, 'Mining Community Development Agreements', p. 19.

> pipeline; this buffer was later modified to include communities farther away if they were part of the same clan as a village within 2 km, in a deliberate attempt to ensure that groups of villages remained cohesive and peaceful, and to avoid conflicts related to project benefits.[34]

The foregoing quotes come from a World Bank report on the design and implementation of natural resource community development agreements. Thus, even the Bank agrees that natural resource investment, by its nature, entails 'the drawing of arbitrary lines between communities' and the production of conflict – from the division of shared land owing to concession boundaries, to the differential distribution of rent and environmental harm, to land pressures on locals as a result of inward labour migration. As Collier, Hoeffler, Humphreys and other political scientists have argued, there is a deep connection between resource rents and the emergence and continuation of conflict.[35] This argument is intertwined with arguments in favour of company–community dialogue; such dialogue is, for example, a key principle of Collier's Natural Resource Charter, a set of principles and model policy packages aimed at promoting such local dialogue, supporting good local governance of natural resources, and thus – in his view – reducing resource conflict risk.[36]

In conflating the communal tensions intrinsic to natural resource extraction with the communal tensions that might emerge from the identification of beneficiary communities in a community development agreement, the Bank attempts to make community development agreements a forum or platform through which latent conflicts between investors and communities might be channelled. The Bank then goes on to suggest that the process of identifying MCs (and by extension implementing agreements) should function flexibly and pragmatically – like a regulatory framework rather than a contract – so as not to interfere with project benefits.

Yet there is at best a fine distinction between reducing political tensions and depoliticising community grievances by proceduralising them. For example, is it possible for an ADA to grapple with conflicts rooted in communities' desire to contest the concession's right to exist? The pedigree of

[34] World Bank, 'Mining Community Development Agreements', p. 19.

[35] Paul Collier and Anke Hoeffler, 'Resource Rents, Governance, and Conflict', *Journal of Conflict Resolution*, 49:4 (2005), 625–33; Ian Bannon and Paul Collier, *Natural Resources and Violent Conflict: Options and Actions* (World Bank Publications, 2003); Macartan Humphreys, 'Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms', *Journal of Conflict Resolution*, 49:4 (2005), 508–37.

[36] 'Natural Resource Charter', Natural Resource Governance Institute, accessed 19 October 2017, https://resourcegovernance.org/approach/natural-resource-charter.

ADAs suggests that, insofar as they are to be implemented with conflict mitigation in mind, they may well be a depoliticised instrument favouring the furtherance of private interests rather than a contextualised public platform for the resolution of community grievances.

3.3.3.2 Governance

At the same time, agreements are also justified as giving communities a greater say in their own governance. In this view, agreements shift local social investment from top-down 'corporate social responsibility' to locally driven arrangements that reflect the existing organisational forms of community social and power. Take the following example (from the mining sector):

> What CDAs [Community Development Agreements] look like and what they involve in practice can vary greatly, and one model is not necessarily better than [an]other. The design of a CDA needs to be context-specific, which also implies that they can vary in complexity. If there are, for instance, existing local institutions and structures that the CDA can build on, the CDA itself may just have to provide additional elements that are necessary to share mining benefits. In other contexts, the CDA may have to build such structures from scratch, making it a more complex undertaking. Complexity also depends on the vision of a CDA and the funding available to it.[37]

As this quote from development donors suggests, the local development agreement is in part justified as a mechanism to build some form of a public platform for dialogue and resource distribution; the form of the platform will be contingent on the specific social and institutional context of the relevant communities.

Yet behind this openness to context lie some clear ideas about form as well as the sort of issues the platform can regulate. That is to say, as context-specific as policymakers might articulate local development agreements to be, policymakers have a clear idea about which 'public' these agreements serve and just how 'public' the agreements are. In doing so, policymakers produce an image of the state as a light-touch regulator of the area around the concession, with limited powers to directly distribute its rents.

The legal forms of an agreement provide a clear indication of their formal limits. Local development agreements emerge out of a private

[37] Multi-Donor Note on 'Community Development Agreements: Setting a Framework for Engagement and Benefit Sharing between Mining Companies and Local Communities', p. 6, on file with author.

law tradition of negotiated settlements between local communities and resource companies. As Solomon points out in a study anchored in Australian experiences with natural resource concessions: 'One key shift is the expectation that companies will form direct relationships with communities, where previously this relationship was mediated by government'.[38] It would be incorrect to categorise mining agreements as private law agreements simply because they are formed by negotiation between private parties. Various jurisdictions operate within legal frameworks that combine elements of public and private law in different proportions. Some retain distinct public law regulations, operations and enforcement. Others are simple contractual agreements, while still others take the form of memoranda of understanding. The state is a party to company–community resource negotiations in the Philippines and must sign off on aspects of them in South Africa. Australia either requires or provides for privately negotiated agreements under public law (depending on the territory or state). However, across all jurisdictions, they have clear private law characteristics, even in the context of remedies for breach. For example, Australian statute provides for an arbitration body to deal with breaches of mining agreements. And most local development agreements have choice of law clauses as agreed between the parties.[39]

In Country, even though ADAs are mandated by legislation and regulation, the model or 'framework' ADA is silent on the law that governs it (meaning that a choice of law clause can be inserted in the future). Furthermore, the terms of ADAs are a product of direct negotiation between companies and MCs, both of whom become parties to an agreement they have bargained for and execute.

Ted Keita May 15, 2022

Look, Country is neopatrimonial. Everything goes through the political parties at the local level and the state guys at the national level. The formal laws just don't matter that much. You have to put them in the context of politics. The government will use the agreements as an excuse not to do things when it wants and will tell its client Chiefs to ignore them when it wants. The identity of the MCs doesn't really matter – it's the identity of the local party guy and his relationship with the Chief.

[38] Roy Lovel, Fiona Solomon, and Helen Cheney, 'People, Power, Participation: A Study of Mining – Community Relationships', Mining, Minerals and Sustainable Development Project (2002), 2.

[39] Desai, '"A Qui l'homme Sauvage?"'.

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While it may be possible to change the identity of the MC, it becomes a single bargaining unit through the signing of the ADA, whatever its intra-communal politics of representation. This is in spite of the fact that:

> The relationships between [resource] companies and communities are complex. They are enacted in diverse ways, are experienced differently both within and across communities and companies … there are 'a multitude of relationships with varying types, intensity, direction, duration and degree between individuals … [and] in the sense that individuals in the company and the community … have different perspectives on what 'the relationship' should be and what it actually is.'[40]

Thus, in Ghana, Newmont Mining established a CDA following a three-year community capacity-building and negotiation process. By contrast, in the Liberian forestry sector and Papua New Guinean gas sector, a template local development agreement was typically just presented to the Chief of rural communities for signature.[41]

The MC emerges in ADAs as a single unit, eliding its internal political contests. This is a unit capable of being an agent of, and subject to, public regulation pursuant to the AA and AA Regs. In other words, intra-communal collective action problems are not an object of state regulation – unless, of course, they threaten to spill over into conflict. By implication, the state – and the NAA in particular – is not expected to drill down into intra-communal tensions, such as those between a Chief and local farmers. Rather, the state will regulate the channels of communication and resource distribution between the community representative(s) and the company.

3.3.3.3 Development

As their name suggests, ADAs are an instrument for the local development of communities around a concession. Different types of community development agreements (from the same family of natural resource governance instruments) have proliferated since the mid-1980s; for example, a total of thirty-two countries have adopted provisions in mining codes with the express aim of setting up agreements to support community development.[42] The various legal provisions and instruments share the

[40] Lovel, Solomon, and Cheney, 'People, Power, Participation', p. 8.

[41] Liz Alden Wily, 'So Who Owns the Forest: An Investigation into Forest Ownership and Customary Land Rights in Liberia' (FERN, 2007); Norimitsu Onishi, 'Papua New Guinea Is Little Prepared for Gas Wealth', *The New York Times* (25 October 2010), www.nytimes.com/2010/10/26/world/asia/26papua.html, accessed 24 August 2020.

[42] Dupuy, 'Community Development Requirements in Mining Laws', p. 201.

same idea: the communities that bear the brunt of the economic, social, cultural and environmental changes wrought by a concession should receive a share of the benefits over and above that accruing to the general population. For example, in Afghanistan, natural resource laws require companies to enter into CDAs for the socio-economic development of 'affected communities', which can mean

> [A]ppropriate sustainable development and social protection programs and structures, taking into account international best practice … [as well as] economic development, employment and job creation in local communities.[43]

In Peru, a series of laws from 1992 to 2011 has established that mining-affected communities must directly receive a percentage of royalties due to the local government for use in community development initiatives.[44]

However, as with the legislation in Country, the laws in other countries are unclear about what exactly constitutes a benefit (is it revenue, assets, infrastructure, or employment?) and what purpose a benefit has (is development a measure of economic well-being, 'welfare', social cohesion, or something else?). The approach taken by international and national policymakers in Country is to draw on the discourses and strategies of community-driven development to place decision-making power for those two questions in the hands of the community itself. In this view, the community's immediate experience with the harms of the concession makes it best placed to decide what to do with a share of its revenues. The AA Regs thus suggest that communities produce their own project proposals. In this way, communities will articulate their own vision of development. As Cooke and Kothari point out in their critique of participation in development, this has two dimensions: a moral valorisation of local knowledge (and modes of knowing) coupled with a governmental turn that transforms local communities into reified sites of development decision-making and planning.[45]

Yet neither global nor Country policymakers theorise the local political economy with respect to ADAs. For them, the local economy is neither a market nor a set of economic inputs and outputs. Indeed, local development agreements do not directly tackle the economic ills associated with

[43] Dupuy, 'Community Development Requirements in Mining Laws', p. 213.
[44] Dupuy, 'Community Development Requirements in Mining Laws', p. 213.
[45] Bill Cooke and Uma Kothari, *Participation: The New Tyranny?* (Zed Books, 2001), pp. 1–35.

resource dependency, such as Dutch disease, fiscal imbalances, economic volatility or labour concentration. Nor are agreements linked to national or

Taylor November 01, 2022
Do any of these terms need to be explained at all?

local development plans, as the World Bank has pointed out.[46] In Country, there are no legal or policy provisions to link ADAs to development activities in neighbouring communities, making the potential struggles over MC identification all the more intense. This is also no clarity on the potential value of ADAs; the government has not released any projects regarding the potential revenue from concessions. The ADAs cannot be about the use of a percentage of revenue for local economic development. Rather, the development benefits that accrue from agreements are expressed by global policymakers in terms of local conflict avoidance, participatory local governance, and reduced local regulatory and transaction costs.[47]

In eschewing links between agreements and development plans, policymakers produce the local economy as a site for the social organisation of collective action; moreover, as agreements do not provide for links between the development projects proposed by MCs and their impacts on non-MCs, this collective action is only relevant to the space of and actors within the concession area. Thus, while communities may be able to propose development projects, the underlying notion of 'development' in local development agreements is a shorthand for the local distribution of power and resources, whether in terms of avoiding conflict (and thus buying off potential combatants) or producing locally functional institutions that can interface with the company (and thus buying off potential spoilers).

3.3.4 Analysis: Re-Contextualising the Contextualisation of ADAs in Country

On their face, the AA and AA Regs leave much of the form and content of ADAs to implementation, from the identity of MCs, to the nature and multi-stakeholder composition of its governance board, to the content of the very idea of development that ADAs will enable. However, in exploring and connecting the discourses of conflict prevention, local

[46] World Bank, 'Mining Community Development Agreements', p. 56.
[47] Considine, 'Partnerships and Collaborative Advantage', p. 13.

governance, and local development that frame ADAs, I have argued that ADAs contain clear ideas about the form and content of implementation:

- ADAs, while creatures of legislation and regulation, draw on private legal forms. These forms presume that the parties have private preferences and bargain over them to produce an agreement. The set of preferences with which the ADA is concerned is not a vision of development but rather a vision of company–community communication and resource distribution that avoids violent conflict and spoilers.
- With respect to ADAs, intra-communal power dynamics, especially the relationship between the Chief and communities, are a private matter, neither subject to public regulation nor a matter of public concern.
- Preferences and intra-communal contests can become a matter of public concern if they escalate to the level of conflict. However, the AA and AA Regs recognise the process of MC identification as a key site of conflict – meaning that contests over the decision to sell a concession, policy preferences, or representation have to be translated into contests over MC eligibility.
- The process of determining the MC is also the moment where the state's regulatory role is most clear; the law provides that the local government negotiates with the company to identify the MC. As a result, this specific issue can be treated as an ongoing policy concern, subject to renegotiation or reinterpretation. Other matters, such as the adequacy of community representation, are the object of unclear but light-touch state supervision, as communities are supposed to use the deliberative platform of the ADA to regulate their own collective action.

Placing these ideas in Country's specific context immediately raises the following concerns, emerging out of the political economy of land and Chieftaincy:

- As the history of Country demonstrates, local power structures are attuned to quashing incipient resistance to them. An emphasis on conflict avoidance, while well-meaning, may result in legitimate contests and conflicts – such as strikes and blockades – being suppressed by local leaders who claim the right to represent the community in the ADA. In other words, the participatory and collective action dimensions of the ADA may be a means of producing a pliant or quiescent public whose Chiefs will not allow them to interrupt agricultural operations.

- The executive state is produced not as a development planner but as a light-touch regulator of a limited set of engagements between company and community as well as a provider of violence to enforce bargains and suppress violence by others. In doing so, the state is supposed to ensure the continuity of business operations and facilitate inward investment while leaving economic and social matters to bilateral negotiation between company and community – or more properly, company and Chief.
- Chiefs hold a quasi-public role as protectors of the land. In containing no provision for the participation of Chiefs in the ADA process but rather leaving that to implementation, policymakers have left open the possibility that Chiefs will instrumentalise how the ADA has drawn the public/private divide. For example, Chiefs may exercise their public power in the ADA's private space to influence the community's choice of a representative to the ADA governing board.
- In leaving the question of Chiefly participation ADA implementation, the ADA process takes no clear position on the politics of Chiefly involvement in the causes of Country's civil conflict and their proper position in the post-conflict political settlement. Instead, it keeps that question open and defers its resolution.

ADAs, then, have particular politics. They are identity politics in the sense that they do not interrogate intra-community political dynamics, seeing them instead as a function of local collective action based on cooperation and not coercion. They are power political in the sense that they produce the company–community relationship in deliberative terms rather than as a power struggle (and thus power disparities as a matter of unequal speech). Finally, they are politically instrumental in the sense that they enable the bracketing of certain types of communities' political claims in the name of conflict avoidance and good governance. They thus frame the state's role as a light-touch regulator of deliberative interaction rather than as an articulator or enforcer of political claims. These politics serve to discipline the identities of both the state and the community in favour of continuing business activity, thereby serving the interests of capital and the Chiefs (as key translators of financial capital into local political contexts).

3.4 Ethnography of Practices

Studies of practices explore the very practical work of continually producing and asserting knowledge from context to context. While 'practice'

itself is a highly malleable and polysemic term, in general, these studies are concerned with the pragmatic and material aspects of producing knowledge, focusing on what people do and say, the ways they make those activities look like knowledge and the things they use to circulate those forms of knowledge (e.g., documents). This might take an 'outside' perspective, concentrating on the observed patterns and regularities of practices that enable their repetition, and/or an 'inside' perspective, recounting how they become meaningful through their enactment or performance – or how they become imbued with 'temporality and processuality, as well as the emergent and negotiated order of the action being done'.[48]

By focusing on things done, these studies are agentic. Unlike discourse analysis, they

> treat technological complexes not as metaphors for a 'dominant discourse' characteristic of an historical episteme. Instead, they investigate the varieties of contemporaneous complexes of technology and human actions … The massive congruencies among diverse representational modalities, architectures, and regimes that Foucault discusses are simply not validated by ethnomethodology's investigations of the local-historical production of practical actions.[49]

And unlike the studies of social organisation – in which knowledge remains something of a black box and the actors have causal influence – it is the doings themselves that have causal influence.

Methodologically ethnographic and descriptive, examples include studies inspired by Bourdieusian field theory (in which the rule of law might be the effect of practical struggles for power between participants in certain fields),[50] Foucauldian studies of practices of governmentality (in which the rule of law might be an effect of a set of expert practices aimed at producing a specific type of state and governance),[51] and studies of arrangements such as socio-technical networks or assemblages (in which the rule of law might be an effect of a concerted effort of highly dispersed agents to build a thing called the rule of law in a highly specific context).[52]

[48] Silvia Gherardi, 'Introduction: The Critical Power of the "Practice Lens"', *Management Learning* 40:2 (2009), 117.

[49] Lynch (n 111) 131.

[50] Yves Dezalay and Bryant Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (University of Chicago Press, 2002).

[51] Kara Brisson-Boivin and Daniel O'Connor, 'The Rule of Law, Security-Development and Penal Aid: The Case of Detention in Haiti', *Punishment & Society*, 15:5 (2013), 515–33.

[52] Bruno Latour, *The Making of Law: An Ethnography of the Conseil D'Etat* (Polity 2010).

To describe the project in this way, I focus on the last of these types of study to draw the sharpest distinction between this genre and the other two canvassed earlier. I draw in particular on the styles of the work of Latour, Mol, and Law, to understand the project as a series of practices that agents that cohere into an artefact that we might call the 'project' through the work of various human and non-human agents. It thus looks at how something called the 'rule of law' is made meaningful in a context (and the concomitant contingency of that meaning).

3.4.1 Boarding

This is an account of a trip. More precisely, it is an account of several trips, each nested within, and reaching out far beyond, the others. The purpose of writing about the trip is not a solipsistic exercise in autoethnography, nor is it an extended paean to travel writing. Rather, I seek to analyse a specific quality about the trip that, I will argue, makes it both a valuable metaphor and a synecdoche for a particular type of development work.[53] That quality is fluidity or movement – that is, how the 'trip' becomes shorthand for the fragmentation and reorganisation of space and time endemic to development work, and in doing so, the identities of the trip-taker and those she encounters.

The particular type of development work I am concerned with is a set of contextually minded governance or institutional reform projects, the ones that are concerned with claiming and producing their own contextual embeddedness even as they seek to reorganise power in a polity. The trip is a vehicle for describing – as well as a means for doing – those projects that are concerned about the conditions and limits of their own ability to travel from place to place.

A trip is, trivially, travel. How does a trip cohere and distinguish itself from everyday movement? I focus in this chapter on the materiel – objects, artefacts, techniques – of the trip that give its fluidity shape, direct and channel it, and create eddies or spatio-temporal moments of experience. Given the trip's central role in doing development work, this materiel is a key component of making development projects cohere as well as a metaphor for how an agreement over a specific level of contextuality is reached or stabilised such that a project activity can occur. In contrast to others' accounts of projects as particles (bounded by and invested with money,

[53] I draw inspiration here from Marianne de Laet and Annemarie Mol, 'The Zimbabwe Bush Pump: Mechanics of a Fluid Technology', *Social Studies of Science*, 30:2 (2000), 225–63.

work, and time), through my dual use of the 'trip' I show how 'projects' are enacted as cognisably project-like while still remaining multiple, misshapen, and overflowing.[54] The project is, in that sense, trippy – an accumulation of movements, anchored in materiel, that produce moments of space-time, a hazy totality emerging from disjointed and uncanny experience.

Given that the question of contextualisation is central to the project I am describing, my account of the project rests on how the actors and objects that constitute the project contextualise themselves and each other. My account of the trip is not immune to this dynamic: the form of narration is a strategy of implementation, of an attempt to place an order on a trip while keeping a sense of its fluidity.

3.4.2 On-Board[55]

A small, upholstered screen intrudes into my peripheral vision, then the hard membrane of a laptop screen flattens my fingers and a keyboard presses into my stomach. I lift my knees to the folded tray table and attempt to keep typing. I give up and save the document. I place the laptop in the seatback pocket and clamber out of liveried claustrophobia into the relative freedom of the aisle. The cabin offers up a chiaroscuro landscape. Scattered flecks illuminate white and black chins; next to me, those lights resolve into screens full of memoranda, research reports and briefing notes. They shed enough light to make out the contours of the scenes to either side of them – blankets draped over heads, fingers lazily assaulting the back of the headrest in front. I walk up to the business class cabin. It contains a more diverse set of crowns – Chinese, West African, white, South Asian. They otherwise look the same as their compatriots behind the iron curtain: some embrace the trappings of boredom, others wield laptops. Their screens display yet more bulleted lists, pie charts, executive summaries. I try to spy the logos at the top of the documents. I recognise a mining company, the World Bank, and Oxfam. A loud warble emanates from a nose in their midst, at the same

[54] Annemarie Mol and John Law, 'Regions, Networks and Fluids: Anaemia and Social Topology', *Social Studies of Science*, 24:4 (1994), 641–71.

[55] As Le Corbusier reminds us, 'l'avion accuse': Le Corbusier, *Aircraft: The New Vision* (The Studio, 1935), p. 3. The airplane is the paradigmatic object of modernity, reconfiguring our sense of space and time. It enables and constitutes a free-floating international sphere. 'No door is closed. Life goes forward … Everything is relative. If a new factor makes its appearance, the relation alters.': ibid 5.

frequency as the hum of the engines. A screen at the front of the cabin shows a collection of pixels (a large, dark bat?)[56] that hovers above the legend: 'Time to Destination: 2:56'.

I return to my cocoon. I am drafting the agenda for our workshop with the ADA taskforce in a few days' time, focusing on community engagement and identifying the MC: 'Community engagement workshop draft agenda v7_TC_TK_DD.docx'. We drafted Version 1 at the behest of the NAA, who then circulated it to the taskforce members, including donors, NGOs, and representatives from the AC. Versions 2 to 6 reflected

> **Greg Glass** July 08, 2022
>
> It would have been helpful to loop us into this process and let us read and comment on the documents, even if we couldn't be at the meeting! We need some shared messaging on doing adaptive community engagement.

their priorities: a kaleidoscope of Track Changes with coloured strikethroughs, underlines, and comment bubbles. For the sake of clarity, Ted ('TK') had just accepted all the changes up to and including Version 6 (creating 'v7'), inserted his own Track Changes ('TC'), and emailed it over for my thoughts ('DD') (Figure 3.1).[57]

The other taskforce members, including the NAA, had initially asked that we – along with the OD – present them with examples of 'best practice' in community engagement from other parts of the world. The OD was quite happy with this language. However, we had pushed back against the idea of 'best practice' for something as complex as structuring dialogue and resource redistribution between companies and communities: what purchase would our templates and analytics have when power was structured so differently from place to place and from moment to moment? Ted rejigged the schedule to spend more time on lessons from Country itself; we had also proposed the alternative language of 'lessons learned' from other places. The NAA quickly adopted – or appropriated – our terminology, along with variations on the word 'context'. Whenever

[56] Hunter S. Thompson, *Fear and Loathing in Las Vegas: A Savage Journey to the Heart of the American Dream* (Knopf Doubleday Publishing Group 2010).

[57] Geiger, R. S. and D. Ribes, 'Trace Ethnography: Following Coordination through Documentary Practices' in *2011 44th Hawaii International Conference on System Sciences* (2011), 1–10; Ramah McKay, 'Documentary Disorders: Managing Medical Multiplicity in Maputo, Mozambique', *American Ethnologist*, 39:3 (2012), 545–61; Annelise Riles, *Documents: Artifacts of Modern Knowledge* (University of Michigan Press, 2006); Tom Boellstorff et al., 'Words with Friends: Writing Collaboratively Online', *Interactions*, 20:5 (2013), 58–61.

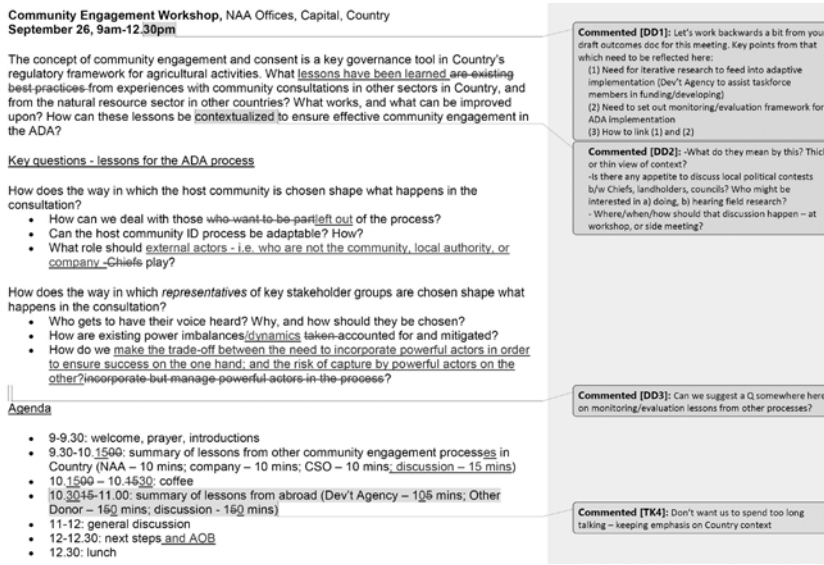

Figure 3.1 Community engagement workshop draft agenda v7_TC_TK_DD.docx
Source: Author

they changed the agenda to reflect this language, they added a comment bubble proposing study trips for themselves and the NGO representatives to learn these lessons – for example, to Ghana and Canada.

We had hoped to use this workshop to emphasise to participants the contextual complexity of community engagement and set up an agreement among the taskforce members to treat the ADA as a fluid process rather than a fixed, signed contract. The questions and bulleted sub-questions in the draft agenda gave an analytic framing to the proposed discussion; however, we had tried to ask them at a level of generality that meant we would probably spend time talking about the contextual differences between all the different potential concession areas (similarly, removing the word 'Chiefs' promised to focus our discussion on local power-holders more generally rather than participants' old and well-trodden views of Chiefly conduct).[58] Nor had anyone pushed back against the substance of the workshop being on MC identification and local representation – the two most contentious and locally politicised aspects of the ADA.

[58] Riles shares an account of the formal characteristics (or aesthetics, in her terms) of similar efforts to reshape the potential scope of bureaucratic memoranda: Riles, *Documents*.

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In the end, we hoped that we could find ways to help the taskforce conduct and incorporate long-term qualitative research of local conditions around the concession into the implementation process of the ADA. In fact, Ted had already prepared a draft workshop outcome document for the workshop; he had included these research activities in his provisional list of next steps.[59] Ted's draft document influenced our edits to the

> **Ted Keita** May 15, 2022
>
> It was more a set of bulleted possible "next steps" that we might want to take to help answer the workshop questions – e.g., the DA would propose some research; NGOs would share their research on the concession conditions; we might fund study trips; etc. It wasn't as clearly defined as you suggest.

agenda. We tried to make the agenda and the plan match up; for example, by suggesting in the agenda that we have a discussion about monitoring and evaluation, I was hoping to initiate discussions on the relationship between ongoing research and ADA implementation. At the same time, the outcome document remained interim. We were concerned that we did not know how much the ADAs would actually be worth and so did not want to propose an implementation process whose costs far outstripped the value of the ADA itself to main communities.

'Time to Destination: 1:31'. The cabin fills with the smell of bread and hot salt. I cross-reference the agenda with the draft outcome document again. I close my laptop, finally finishing and emailing the document when I have a wi-fi connection at the hotel that night.

3.4.3 Boardroom

The National Agricultural Agency's offices are on the top three floors of a five-story building in the commercial district of Capital. The first two floors house a commercial bank. The building is squatter than its neighbours but hard to miss, its façade a dirtying mustard yellow punctuated by rows of circular cabin windows. The NAA's executive boardroom sits behind several of those windows. It is bounded by a whitewashed floor and walls of black-flecked beige plastic, the prima essentia of anonymous

[59] Ted had prepared the document and shared it with our team before I left. We knew that the NAA would inevitably ask him to prepare a draft outcome document immediately after the workshop, which they could adopt, perhaps adapt, and then circulate to taskforce members. Preparing a pre-workshop draft meant that our team could provide timely input.

cubicles. In the middle resides an expanse of walnut and black leather, surrounded by matching deep recliner chairs. At one end sits a vast flat-screen TV; its virtual meeting space is dark, all the participants for this meeting coming in person.

Ted and I arrive a few minutes early, clambering out of our shared Nissan taxi with our laptop bags wedged under our arms. We weave through the white Toyotas 4×4s surrounding us and climb up the stairs to the third floor. The air conditioning is running, but the boardroom is empty. Schwartzman argues that meetings give an organisation 'a form for making itself visible and apparent to its members', thereby 'provid[ing] individuals with a place for making sense of what it is that they are doing and saying … and what their relationships are to each other in this context'.[60] In other words, meetings are 'the organization or community writ small'.[61] If this is the case, our relationship with the other members of the taskforce is not looking great.

This is, of course, part of the dance of bureaucratic status.[62] As we gaze out of a porthole, more Toyota pick-ups park alongside the front wall of the building. We recognise the vehicles as those of the other taskforce members, even if their inhabitants remain obscured behind peeling window tints. Eventually, a little more than half an hour after our allotted start time, white doors swing open. At that same moment, the door to the boardroom opens, and Yahya, our director-level counterpart at the NAA, steps in. He wipes sweat from his thin brow with a handkerchief. He greets us with a warm smile and deep handshake, welcoming me back to Country. He has missed me!

The others arrive moments later. Seats are taken, laptops and paper notebooks are discharged from bags. Despite the fact that we know each other well and greet each other as old friends, business cards are passed around. Each recipient recognises the giving of each one, makes some show of inspecting it and places it in his notebook. Yahya then calls loudly for a secretary seated outside the door and demands that she print and circulate copies of the agenda immediately. By 9:45 or so, the copies arrive.

Yahya apologises for the late start of the meeting. He welcomes us, invoking the name of the President, Minister, and Director of the NAA

[60] Helen B. Schwartzman, *The Meeting: Gatherings in Organizations and Communities* (Plenum Press, 1989), p. 9 (citation omitted).

[61] Schwartzman, *The Meeting*, pp. 40–41.

[62] See the contributions to Jen Sandler and Renita Thedvall (eds.), *Meeting Ethnography: Meetings as Key Technologies of Contemporary Governance, Development, and Resistance* (Routledge, 2017).

in turn. As is customary in Country, he requests that we bow our heads in prayer before beginning any business. He thanks God for His guidance and asks Him to steer our conversation today so we can help His children 'outland' [out in the rural areas, where the concessions are found]. What we discuss and decide today will be His will.

Kennedy suggests that expertise is a 'terrain of struggle'[63] precisely because it deals in strategy, not faith; shades of grey, not clear totalities; (antinomian) reason, not charisma: as an expert, '[y]ou cannot say God has authorised your victory …'[64] Recent anthropological accounts of bureaucracies and meetings have similarly reasserted the legacy of the Weberian frame of bureaucratic rationality, counterposing it to charismatic authority.[65] They even pinpoint routinised moments of exception in meetings that express and contain matters that go beyond an organisation's bureaucratic rationality – for example, 'Any Other Business' – and thus act as a bulwark against charismatic authority.[66]

Yet Kirsch, studying meetings in Protestant and evangelical churches in sub-Saharan Africa, has pointed out how such meetings in fact comfortably syncretise bureaucratic and charismatic authority – specifically divine will and bureaucratic routine – through preparatory fasting, the interjection of casual prayer or religious metaphor, breaking into song, and so on.[67] This is part of the meeting's power. The meeting might ordinarily be understood as an attempt to order uncertainty and specify a sequence of actions that structure the present and the future.[68] However,

[63] David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016), p. 2.

[64] David Kennedy, 'Introducing a World of Struggle', *London Review of International Law*, 4:3 (2016), 446–47.

[65] Matthew S. Hull, 'Documents and Bureaucracy', *Annual Review of Anthropology*, 41:1 (2012), 251–67; Laura Bear and Nayanika Mathur, 'Introduction: Remaking the Public Good', *Cambridge Journal of Anthropology*, 33:1 (2015), 18–34.

[66] See, for example, Catherine Farrell, Jonathan Morris, and Stewart Ranson, 'The Theatricality of Accountability: The Operation of Governing Bodies in Schools', *Public Policy and Administration*, 32:3 (2017), 8; Clive Harber and Alex Dadey, 'The Job of Headteacher in Africa: Research and Reality', *International Journal of Educational Development*, 13:2 (1993), 147–60.

[67] Thomas G. Kirsch, 'Performance and the Negotiation of Charismatic Authority in an African Indigenous Church in Zambia', *Paideuma*, 48 (2002), 57–76; Thomas G. Kirsch, *Spirits and Letters: Reading, Writing and Charisma in African Christianity* (Berghahn Books, 2008), pp. 183–246.

[68] Annelise Riles, 'Outputs: The Promises and Perils of Ethnographic Engagement after the Loss of Faith in Transnational Dialogue', *Journal of the Royal Anthropological Institute*, 23:S1 (2017), 182–97.

Yahya's prayer does not seek to manage uncertainty and ignorance; rather, it embraces and expresses them. The taskforce participants are asked to be passive vessels of faith even as we sit down to the hard struggle of argument.

Who are these passive vessels of faith? I know most of the faces: government officials, AC officials, OD officers and NGO representatives. Still, a tour de table; we introduce ourselves, our institution and our official position. One person is new – a middle-aged Caucasian woman sat next to me. I recognise her name: she is a well-known anthropologist of Country and its civil war. She participates as part of the delegation from the OD. Her role, she mentions, is to provide contextual insight to the OD on issues of land and the political role of the Chiefs. She is in the meeting 'to observe'. I know her work well; I wonder if the workshop itself is part of her fieldwork.[69] I cannot resist glancing over at her notebook on the desk to get a sense of what she is writing. I see a list of names and institutional positions. Would we end up alongside the young rural Country men whose economic lives she has so diligently chronicled?[70]

We begin the initial discussion on lessons from various community engagement processes in Country. The NAA speaks about its aspirations for, rather than experience in, 'context-specific' community engagement (referring to those study trips again). Emmanuel, the flamboyant main representative of the NGO cohort, then takes the floor. Who knows the context better than his organisation? he asks. It has a long history of 'going down to communities outland' and helping them speak with companies. He is concerned that the DA is side-tracking the taskforce by talking about research and local power dynamics. The NGO knows that no one in potential concession-area communities has a major problem with local Chiefs. Emmanuel tells us that he has just come back from outland and has seen it himself; as he does so, he pulls out his mobile phone and dabs at the screen. A video begins to play. He brandishes the phone; the video is too small for anyone to see. He talks over its faint sounds. There is no need for all the research and reports, he tells us: the NGO has videos. It has been videotaping testimonials of community members (including women and youth), Chiefs, and landholders in the potential concession areas.

[69] Ray Friedman, 'Studying Negotiations in Context: An Ethnographic Approach', *International Negotiation*, 9:3 (2004), 375–84.

[70] Helen B. Schwartzman, 'Representing Children's Play: Anthropologists at Work' in Anthony D. Pellegrini (ed.) *The Future of Play Theory: A Multidisciplinary Inquiry into the Contributions of Brian Sutton-Smith* (SUNY Press, 1995), p. 243.

He reports that this very video shows a Chief saying that he doesn't want to be in charge of the ADA – proof that we have nothing to worry about. All that community members are concerned with are the imminent impacts of large industrial agriculture – 'This is what we hear whenever we go down to the community'. The NGO, Emmanuel says, has been trying to tell them that they should not be concerned, that the ADA will bring investment into their communities; for that to happen, the NGO has stressed that communities have to 'get the [concession] space open'. (By this, he means that communities should show investors that the area is conflict-free, meaning their investment can proceed without the threat of protests or violence.)

Ted expresses concern. How can we realistically say that no one wants to control the process, and that everyone should avoid conflict, if we don't even know who the MCs are or how much they might get from the ADAs? Yahya immediately interjects: 'Of course we know who the MCs are. They are the ones most impacted by the concession'. Betty, the OD representative, immediately disputes this: 'As a [Country] lawyer', she knows that the law does not refer to impact. She opens her laptop; its internet dongle lights up. The meeting pauses as everyone proceeds to open theirs. I scroll through my hard drive until I find the text of the Act. In the very first word, it proclaims its status – 'ACT'.

Black and white, clearly organised, with a table of contents, it is reassuring. As I press 'Ctrl+F' and search the document for 'Part XV', Betty reads out Part XV(ii) of the Act.

> The Main Community shall be the community of persons established through mutual agreement between the holder of the large scale agricultural licence and the local government, but if there is no community of persons residing within twenty kilometres of any defined boundary of the large-scale licence area, the main community shall be the local government.

She then turns her laptop around on the table to face the other participants: 'See?' Yahya reads out the exact same provision from his screen, emphasising the word 'community' a bit more. This seems to be probative of his position. The AC representatives point out that Yahya's interpretation matters most to them. Others cut in, reading out the same provision again and again, over the top of each other, with mildly different emphasis. I join in. The Act becomes noise; its sheet music is notebook pages with circles, radii and '20km' scribbled on them.

Emmanuel interrupts. We need not worry about setting out rules just yet to avoid conflict or capture. 'You have very clever people in the

community. People take the law and ride it … They go to court and want to clarify this [the exclusion of some communities from the MC] … This will come in implementation … for some people will pick this and take it to court'. To that end, there is a 'pragmatism [i.e., flexibility] that must come in [implementation] as well' – something the NGO has a track record in. He says we must follow a 'participatory method – where everybody is informed and involved' – to identify the MC and its representatives.

This would require immediate sensitisation meetings at the community level so all community members could be made aware of the forthcoming ADA, its content, their right to lobby to be an MC, and their right to choose their representatives to the ADA governing body. This would also require specifically sensitising Chiefs about ADAs – after all, nothing can really get done in their Chieftaincy without their say-so, especially on issues related to land. The next step, he suggested, would be for the NGO and the NAA to draw up and circulate a sensitisation plan and budget as soon as possible. Betty continues to point to her laptop screen, saying that nowhere does the law provide for Chiefly involvement or community sensitisation. Emmanuel retorts that the law does not prohibit it, either. The AC demands that we get have an official discussion on how to interpret the law at some point in the near future, with government lawyers, AC lawyers, and others participating.

We move on without agreement. Ted and I discuss our briefing notes, which participants pull up on their laptops. Our research suggests the importance of regular and long-term local dialogue regulated by some process norms to ensure that the marginalised and vulnerable are not left out. However, we point out that such a process could be very costly to implement, especially if it involves ongoing research and the proposed local sensitisation. We have not seen any revenue projections for the potential concessions but presume the NAA have them. What will the actual value of the ADAs be each year?

The Act becomes noise again – the participants proceed to read from their screens the provision specifying that companies place a minimum of 0.1 per cent of annual revenue into the ADA. The AC reminds everyone that they intend to provide more than that – the exact percentage depends on the circumstances of the concession. We repeat that we are wondering about a dollar value but to no avail.

Yahya and Emmanuel instead ask us how 0.1 per cent of revenue compares to international best practice for local development agreements. It is our turn to return to our screens. Our briefing notes show that the context of each concession varies dramatically; the amount should vary by impact,

the robustness of the local economy, and the local power dynamic. The best practice is unhelpful in such a complicated environment. I eventually come up with a range of about 1–3 per cent and a promise of more research on the matter. We move on again.

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> Fine, but what about the meetings at the DA country office? These guys all have existing relationships with our other teams – the decentralization team, the social protection team. Didn't you triangulate with them so you could approach these guys strategically?

Later, in another Nissan taxi, Ted expresses surprise that I gave them any figure at all. Using Track Changes, I subsequently add a request for more research on the percentages in the draft outcome document.

3.4.4 Back-Room

WeCountry Lager is Country's bestselling, domestically produced, beer. It is a sour, thick, pinkish-brown suspension, brewed from a malted mix that is 60 per cent sorghum and 40 per cent maize.[71] Its texture is close to that of gruel,[72] and for good reason. As with the indigenous beer in many other countries on the subcontinent, it contains enough carbohydrates to provide between roughly 1–5 per cent (per Food and Agriculture Organization estimates) or 6–12 per cent (per more targeted studies) of total national caloric intake.[73] It is consumed rather than drunk: indeed, in the dialects in the north of Country, one asks whether one may 'eat' a glass of beer.

WeCountry Breweries Inc. began life as a small northern brewer during British colonial times. It grew through a series of mergers into the main national brewer and was nationalised at independence. Losses mounted, and it was privatised during structural adjustment. Having solicited investment from Diageo (the global drinks conglomerate) in the late 1990s, it embarked on efforts to expand regionally. It purchased

[71] On the reasons behind the emergence of this sort of mix in the subcontinent, see Justin Willis, 'Drinking Power: Alcohol and History in Africa', *History Compass*, 3:1 (2005), 1–13.
[72] Steven Haggblade and Wilhelm H. Holzapfel, 'Industrialization of Africa's Indigenous Beer Brewing' in Keith Steinkraus (ed.), *Industrialization of Indigenous Fermented Foods*, 2nd ed. (Marcel Dekker, 2004), p. 271.
[73] Haggblade and Holzapfel, 'Industrialization of Africa's Indigenous Beer Brewing', p. 282.

large-scale agricultural concessions and modernised its supply chains. Its efforts failed. Sorghum-based beers spoil rapidly (within one to five days), since they are 'consumed while [they are] still fermenting … The resulting beer is thus microbiologically unstable, i.e. infected at varying levels with yeasts and bacteria'.[74] WeCountry Breweries attempted to develop pasteurisation techniques as the basis for its expansion strategy; however, pasteurising malted sorghum produced a reaction that changed the taste and texture of the beer, making it viscous, stringy, and flat.[75] Their supply chains were also unable to keep up with the short spoliation period. WeCountry Breweries declared their attempts to balance indigenous taste with modern efficiency a failure, until such time as scientific research developed an effective way to pasteurise sorghum-based beers. They scaled back production, reduced agricultural capacity, and left their concessions; many young men who had moved into new Chiefdoms in the hope of employment found themselves with no jobs, no income, and enduring obligations to Chiefs or creditors that they could not pay off or could discharge through labour.

WeCountry remains a bestselling beer in Country. Its labels display a hand holding a mug of cold beer – an image of the future ideal currently bottled up. More often than not, the labels fall off; robust adhesives are expensive. Bar floors are littered with labels and bar tops with naked bottles. Right now, the label on my beer comes off in my hands as I sip from a bottle. Yahya's has already fallen off.

We are meeting for an 'informal drink' (at my request) a few days after the workshop and before my trip outland. There might be some funds at the DA to support ADA implementation – from my colleague's agriculture project or from some technical assistance funds from our rule of law department. However, at the workshop, the OD, NAA, and NGO were pushing for an elaborate ADA-implementation process without weighing the costs and benefits. So I want to get a sense of Yahya's ambitions for ADA implementation and the direction in which he imagines implementation going.

He is, he says, no fool. He does not want ADA implementation to 'be a cost centre'. As 'a professional', he has to make the most effective use of

[74] François Lyumugabe et al., 'Caractéristiques Des Bières Traditionnelles Africaines Brassées Avec Le Malt de Sorgho (Synthèse Bibliographique)', *Biotechnologie, Agronomie, Société et Environnement*, 16:4 (2012), 524.

[75] On the many efforts across sub-Saharan Africa to tackle this problem, see L. Novellie and P. De Schaepdrijver, 'Modern Developments in Traditional African Beers', *Progress in Industrial Microbiology*, 23 (1986), 73–157.

resources. He will look bad to the donors and the head of the NAA otherwise. But he is passionate about the ADA. As 'the law' [legal instrument], it 'chains' companies [they are bound to their obligations]. It is at moments of shock and reversal in particular that communities need protecting – for example, if grain prices plummet. I take another swig of my beer.

He 'rejects local development where CSR [corporate social responsibility] money' is paid in an ad hoc fashion to quell those who shout loudest or to capture local elites. The ADA has 'beautiful potential' to bring about benefits to communities that they truly want and need. At the same time, as it stands, potential concession areas are politically charged, complex, full of conflicts, and rent-seeking. It is imperative that community people do not become 'disenchanted with the law' [the ADA], seeing it as a vehicle to further the interests of corporate and local elites. For him, this is the importance of the ADA taskforce's task: not to implement the ADA but to ensure the 'buy-in' of community members. I ask him how buy-in will happen and how it will be sustained such that the current levels of cynicism and conflict might transform into the realisation of 'beautiful potential'. What, in effect, will implementation look like? He repeats that all we need to do is ensure buy-in, for Country's 'future'.

I cannot help thinking that this feels nothing like 'project time', which is supposed to be regimented and ordered by project plans, terms of reference, logical frameworks, and the like.[76] Instead, I hear that there *will* be a modern, socially responsible industrial agriculture sector; there *is* a concession riven by competing land claims, a traditional political economy of Chieftaincy and a legacy of conflict. There is no imaginary of the terrain in between.

WeCountry Breweries tried to use science to chart a 'food'-producing path between tradition and modernity, between an emplaced now and an expansionary future. Science failed it, contributing to the conflict and mistrust that constitutes the contemporary now in potential concession areas. Despite the requests for 'best practice' percentages and practices, Yahya seemed to have no desire to call on technocratic 'science' to work out the course between the present and the future – nor did my team have to be so worried about pushing back against that view of our role and advocating for contextualised, locally driven solutions. There is a void between the ADA as a vessel of the present and a fantasy of the future – they are two

[76] David Craig and Doug Porter, 'Framing Participation: Development Projects, Professionals and Organisations', *Development in Practice*, 7:3 (1997), 229–36.

scenes, juxtaposed. A neatly legally-packaged future and a concession-based present; a label in one hand and a bottle in the other.

3.4.5 *Back-and-Forth*

The driver of our battered Nissan taxi presses his right foot down to the floor. The car trundles to a halt next to two bright white Toyota pick-up trucks. I see Betty's outline through one of the tints. A little further ahead stands the Chief's courthouse, a concrete canopy resting on four pillars, bounded by a waist-high wall but otherwise open to the elements. Emmanuel and Yahya are already there, greeting people. Emmanuel is also arranging the speakers and microphone. We are here to observe the elections of some local community representatives who might negotiate the terms of an ADA. Emmanuel mentioned that this community had been 'sensitised' by his NGO to the impending ADA-implementation process and had decided to try to organise themselves.

Like two cheerful explorers, Ted and I are keen to get out of the car and look around. We enjoy the intrepid feeling of being out in the field; indeed, Ted has made his bread as a field researcher in Country for many years. We are, of course, well aware that we might be on the receiving end of a well-choreographed kabuki of research responses, as with many foreign visitors whose research pretensions are in short-term trips to rural sub-Saharan Africa.[77] Yet we figure we'll see what we can glean from observing local Chiefs and subjects in action.

We walk around the courthouse, pausing by a small metal sign at its entrance that displays a battered European flag and proclaims that it was built thanks to European Union funding as well as the generosity of the AC. It is hot, and soon our shirt collars are a province of dirt and sweat. We retreat to the concrete shade of the courthouse. Some locals offer us plastic chairs; we decline and perch on the low wall in the back corner of the building where other villagers are lounging. Hip-hop blares out of their tinny phone speakers. Ted and I chat with them about their livelihoods, their Chief, their attitudes towards the concession. I practice my smattering of local dialect; they are nonplussed. Together, we watch a

[77] See, for example, Susan Thomson and Rosemary Nagy, 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts', *International Journal of Transitional Justice*, 5:1 (2011), 11–30; Sarah M. H. Nouwen, '"As You Set Out for Ithaka": Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict', *Leiden Journal of International Law*, 27:1 (2014), 227–60.

group of what appear to be locals, congregated in the middle of the courthouse. They are a mix of men and women, young and old; some bear what I assume are scars from the civil conflict.

Emmanuel walks across the courthouse to chat with us. We ask him about the group. He tells us they are from the surrounding villages; the Chief has paid for their transport to the meeting. Emmanuel escorts us over to the far side of the courthouse to meet a man wearing leopard-print loafers. He is the Chief. We shake hands, and he bids us all sit on the plastic chairs next to him. Emmanuel proceeds to facilitate a discussion between us, asking questions and translating when necessary. At the same time, the group in the middle of the courthouse suddenly leaves the building to the left. As we continue talking, I can just about see them form a crowd, their backs facing us. Following some jostling, they return. As they do, Emmanuel pauses the conversation and walks over to Yahya. A member of the group joins them and hands Yahya a piece of paper. They confer, and Emmanuel and Yahya join us again next to the Chief.

The Chief grasps the microphone and says 'Hello' repeatedly until everyone is seated. He formally welcomes all those who are present and passes the microphone to Yahya, who introduces the four of us at the front to the community. Eventually: 'The two white men sitting next to the Chief are here to observe'. I smile awkwardly. 'They are with the DA'. Everyone applauds. Yahya then proceeds to read names from the piece of paper; as he does, people stand and are confirmed by acclaim.

On the way back to the cars, I ask Emmanuel what had happened just before the meeting. People 'didn't want to air their dirty laundry in public' or 'let the meeting get too hot', he explains, so they had a 'pre-meeting' to decide who would be nominated. I couldn't help but notice that our 'white' gaze created a space that was beyond the Chief. I ask Emmanuel who the man with the list of names was. One of their local activists, he replies.

3.4.6 Trip Report

What does the trip reveal about the substance of the ADA-implementation project? My account of the trip shows the project as an accumulation of struggles over the contingent concretisation of the project and distribution of its resources. On its face, the ADA-implementation project consists of bilateral and multilateral donor support and technical assistance to a government agency, influencing a multi-stakeholder process to govern a community-driven development programme. It should thus be straightforward and mundane; one might imagine the reified project emerging

out of the bureaucratic contests between the objectives and process preferences of different stakeholders as well as the ideational orientations of their broader epistemic communities.[78]

In fact, my team imagined and attempted to push back against this type of ADA implementation. We sought to counter what we presumed would be an overdetermined implementation process by invoking the importance of the context of implementation and then setting up structures to incorporate that context into the project (such as iteratively incorporating field research into an adaptive ADA-implementation process). However, it turned out that no one involved in implementation was committed to overdetermined best practices. From the openness of the legislation to the fluid composition of the ADA working group, everything remained fluid, and the ADA emerged as a nested series of provisional determinations. Who is the MC? Perhaps this Chiefdom. Should the Chiefs be involved? Maybe. What is the amount of the ADA? We don't know yet. And so on. Notably, it turned out that the provisional nature of the ADA persisted well beyond this trip and through a crash in the price of cocoa and palm oil – that had it been expected would have changed the AC's tolerance for ADA implementation. And yet, something did happen in the courthouse – a decision was taken, with people nominated (although for what purposes remains unclear).

What can be gleaned from this trip in terms of how decisions happen and their governance effects? At a general level, those ways will differ from those we assume to be part of ordinary bureaucratic work – the work of rationalising, developing processes, meeting, and making lists, which mark bureaucracies and whose form, function, instrumentalisation, and hybridisation are the stuff of much ethnographic inquiry into sub-Saharan administration. The relevant techniques in rule of law reform are negative: denying assertions about who should participate in the ADA by referring to the many lacunae in the Act; or rejecting the validity of any knowledge about what should be the relevant royalty rate. These are used in the service of collapsing someone else's pragmatic provisional suggestion and establishing your own.

The techniques are also material-political: leveraging the materiality of surroundings to give greater weight to your provisional suggestion. Those

[78] Damian Hodgson and Svetlana Cicmil, 'The Politics of Standards in Modern Management: Making "The Project" a Reality', *Journal of Management Studies*, 44:3 (2007), 431–50; Piers Blaikie, 'Development, Post-, Anti-, and Populist: A Critical Review', *Environment and Planning A*, 32:6 (2000), 1040–46.

who can pull the text of the Act up on their screen in the workshop can most effectively contest and recontextualise its meaning. Those who can arrange a side meeting by producing a bodily barrier between themselves and other authorities can isolate and concretise a moment of decision. Yet this should not be overemphasised. To take a trivial example, the decision about community representatives is not a direct product of the financial influence that donors brought to bear on the ADA process, even though the DA and OD sought to leverage their finances to shape implementation down to the level of local governance. Nor is it directly influenced by the AC, even though their sign bears watch over the Chief's courthouse. This sort of open-ended bureaucratic work thus does not take place in what we might imagine governance reform to be: a legal or institutional framework for political struggles over policy and implementation. The ADA is a series of deferrals of those struggles as well as of the legal or institutional framework in which they take place.

How can one narrate these struggles – the recursive, reflexive, and antagonistic relationships between policy and implementation or acting and doing? I begin with the trip itself: it is at once a means of writing about the project and a mode of constituting it. For example, my trip to the selection meeting was undertaken as a means of getting out to the field, observing local political dynamics, and linking the global, national, and local political endeavours involved in implementing the ADA. It produced the opposite effect – enabling the creation of a space invisible to global, national, and local actors (including the Chief).

More formally, the language of place appears throughout: 'terrain', 'emplaced', 'situated', and so on. The scenes also have a beginning and end. All the scenes are thus bounded physically and spatio-temporally, yet they are described through a narrative that seeks to surpass those bounds. The end of the first scene, for example, projects the closure of the scene forward to the hotel that evening – yet another place and time. Movement between and beyond the scenes is further sustained through the ordering of subjects and objects within the narrative. Subjects become objects, and vice versa: Ted independently comments on my interpretation of his outcome document; I imagine the anthropologist and myself mutually narrating each other. That relationship is one of struggles between subjecthood/objecthood as well as contextualisation/decontextualisation. The draft agenda is clearly interim, invoking its blank past and its eventual, clean future; at the same time, it sits within the text as an image, which appears as an uneditable object with clear visual boundaries.

To contextualise and concretise the project, actors must contextualise and concretise their role within it: as knowers of local spaces (like Emmanuel); guardians of the process (Yahya); funders and thus priority setters (Betty); contextualisers who determine the relevant frame and map the landscape upon which the debate will be held (Ted and myself). Practices make reformers' ignorance authoritative – both the material practices of reformers themselves as well as the formal practices of writing about them. In an effort to describe the politics of the antagonistic and mutually constitutive movement of reformers between acting and doing, or subjecthood and objecthood, the scholar must both analyse and visually enact that movement as hazy – for example, Betty appears through a car's window tint, while people appear partially lit by their laptop screens. Our strategies of writing about projects – of breaking them into objects and moments and stitching them together again – are strategies of implementation. We are already a part of the anthropologist's story, and she a part of ours.

3.5 Analysing the Project

In this section, I draw together the substantive and formal insights offered by the three accounts of the project. The project itself was, from the DA's perspective, highly plastic. My team and I sought to implement the ADA responsively, to create empirical feedback loops, and to work alongside partners who had the political space to make things happen. Our funding envelope was flexible – some combination of ad hoc project funds and core funds available to our team in headquarters. Finally, the project itself was not a standalone endeavour. In each of the three analyses above, it is clearly part of a broader project – on the part of my team to continue working in Country on the part of the DA to implement agricultural reforms, and on the part of the global natural governance community to implement what it sees as good sector governance across sub-Saharan Africa.

Synthesising the accounts in this chapter, the political substance of the project's implementation can be understood as follows:

- The project emerges from ignorance: The project is in part structured by the deliberate absence of content in the legal and regulatory framework, as well as the efforts of my team – along with other participants – to deny that they know how ADAs work or how they can be implemented. This often relates to invocations of 'context'. This ignorance exists in

relation to others' assertions of epistemic authority – for example, my DA colleague arguing that politics was a 'problem' for his otherwise well-designed model of capital inputs for the local agricultural economy.

- The relationship between knowledge and ignorance is up for grabs: As a corollary to ignorance, the project does not have a clear plan or script. In participants' discussions, they reach out for established protocols that determine how knowledge and action should be related, for example, turning to legal form in the ADA workshop. While the formal characteristics of law offer some comfort in the face of debates (e.g., over the MC identification criteria), they ultimately offer no resolution. Instead, participants draw on legal and non-legal scripts to assert a position, undermine another's, defer decision, and collapse the possibility of decision. These other scripts include community-driven development, conflict deterrence, local governance, good natural resource governance, and so on. Actors attempted to provide them at different times (e.g., Betty's assertion that MCs are communities proximate to the mine or Emmanuel's assertion that community sensitisation is essential).
- As a result, the substance of the project is determined by its implementation: The project cannot fully be understood from its design documents or legal framework. The AA and AA Regs are of limited use in understanding the project. The project is instead best understood as an account of its implementation process. Law is not 'slow' here[79]; it is a capacious framework for implementation, within which decisions are taken or deferred at different speeds.
- The ongoing implementation of the project shapes the characteristics of administrative actors, institutions, and processes that will persist beyond the lifetime of the project narrowly conceived: Institutionally, the ADA was a major component of the NAA's social workstream; as such, the NAA's form and function on social matters are shaped by how it responds to the actions of donors, in a way that has long-lasting effects. Personally, Yahya, in producing an image of a project that leaves implementation wholly blank, evinces a highly discretionary attitude towards implementation (one which the DA might support). Ideologically, the DA, in using the language of lessons learned and responding to 'study tour' requests, hopes to shift other actors' views on implementation to reflect an adaptive or flexible approach.

[79] Sheila Jasanoff and Hilton R. Simmet, 'No Funeral Bells: Public Reason in a "Post-Truth" Age', *Social Studies of Science*, 47:5 (2017), 763.

It is clear that the three genres offer insights into the operations of ignorance in the project. In particular, they give life to the scrambling of the relationship between knowledge and action, or between policy and implementation, that results from expert ignorance, as well as the political space expert ignorance produces for future political and regulatory struggles.

I now turn to the formal characteristics of each of the accounts, in turn, to draw out their methodological implications. In recounting the project, each has a means of mapping subject-object relationships, a temporality, and a stylistic mode.

- Social organisation: This analysis takes a schematic view of the relationships that constitute the project. It describes the ADA project as a space of contest over the meaning of rule of law reform that is gradually filled through interactions within and between different forms of social closure. By this I mean that epistemic communities, development organisations, bureaucracies, and the like have their own (internally contested) predispositions towards the meaning of a project; the project emerges as the resolution through time of the conflicts between their predispositions. The temporality of the project is thus a predictable one. Stylistically, this sort of account is analytic, objectively recounting actors and act and inferring the nature and quality of social relationships.
- Discourse analysis: A discourse analysis can be understood as producing a synecdochal view of relationships. Temporally (and spatially), the movement in this analysis is unidirectional and relentless, moving from the local particulars of a regulatory text to a global view of a coherent governmentality. It is less concerned with who or what is inside and outside the analysis: its object is not the expert but 'expertise' qua discourse. Stylistically, it is analytic but also a powerful vehicle for historical and structural context – this context often forms the empirical basis through which the scholar shows the movement from the particular to the broader political effects of a project.
- Practices: An analysis of practices produces an account of the entanglement between subjects and objects in a project, through their mutual contextualisation and concretisation. Temporally, the scholar often produces a series of tableaux within which a thing is 'enacted' – how the workshop participants produce the notion of the ADA, for example. The temporality of the account is staccato: it is the work of the scholar to juxtapose the tableaux; the temporality is hers, not immanent to the object or project. Stylistically, the scholar often uses a combination of

deep contextualisation coupled with ironic turns in an attempt to introduce the author as participating in the construction of the thing that she is tracking.

The politics of a rule of law reform project are embedded in the form and substance of accounts of that project. This goes beyond the trivially true observation that form always already has substance and vice versa. The scholar's choice of a mode of analysis always already brings with it a way of limiting the extent of expert ignorance and with it produces a political account of the project, in the sense of emphasising some of its effects and deemphasising others.

3.6 Conclusion

In this chapter, I have shown expert ignorance in action. Destabilising a meaningful distinction between knowledge and action, ignorance produces a fluid contingent of project participants and reconfigures the project's spatio-temporality. This fluidity – its patterns and how it is layered – produces political effects, as decisions are taken in its wake.

At the same time, I have shown how genres of writing and methods of analysis about the project capture this fluidity. I have worked through three methods that scholars often use to analyse reform as a sociological object. Each relies on an image of the rule of law reformer as someone who tries to concretise her image of the rule of law in the world. As such, she is a subject; the methods differ in their conception of her subjecthood – social, discursive and materially entangled. Each of these types of subjecthood describes different ways in which the reformer distinguishes between the domains of knowledge and action. She might know what ought to be done as a result of her epistemic community or the taken-for-granted ideas about the world embedded in her discourses; that knowledge might be chastened through her encounters with the unyielding limits of a material world or of the routines and practices of meetings.

Whatever the type and quality of subjecthood, in assuming that the reformer is an authoritative expert subject of some sort, these methods limit the scope of the effects of expert ignorance that the scholar can show. The methods presume a distinction between knowledge and action rather than allowing for the collapse and re-erection of that distinction. Most pertinently, there is restricted scope to depict the expert as an object or as a passive thing with no concrete view of the rule of law towards which to strive. There is even less room to track the movement that expert

ignorance produces between the expert's subjecthood and objecthood over time, along with the political effects of this movement.

In the next chapter, I develop a theoretical and methodological apparatus that might be better equipped to capture the effects of the fluidity and movement that expert ignorance produces. I draw on aesthetic theory and dramatic and performance analysis to argue that, in the context of rule of law reform, scholars should seek to analyse not only rule of law reforms but also rule of law performances.

4

Performing the Rule of Law

> O perilous mouths,
> That bear in them one and the self-same tongue,
> Either of condemnation or approof;
> 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.[1] And following Adorno, 'Kant's theory of the sublime … only art can actualize'.[2]

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.[3] 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.[4] Third: to place law at the centre of these critiques of modern governance

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

[2] 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).

[3] 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.

[4] 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.[5]

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'.[6] 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.[7] She,

[5] 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).

[6] Bernstein, *The Fate of Art*, p. 9.

[7] 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'.[8] 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.[9] 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'.[10] As a result, 'radical negativity [of the social order] … has become the heir of the sublime'.[11]

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.[12] 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

[8] 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.
[9] Adorno, *The Transformative Power of Performance*, 56.
[10] Adorno, *Aesthetic Theory*, p. 289.
[11] Adorno, *Aesthetic Theory*, p. 284.
[12] 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'.[13] 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[14] – 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.[15]

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

[13] 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).

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

[15] 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[16]).

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.[17] 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

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

[17] 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'.[18]

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.[19] 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.[20]

[18] 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.

[19] Margaret Cohen, 'Walter Benjamin's Phantasmagoria', *New German Critique*, 48 (1989), 87, 90.

[20] 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.[21] 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'.[22] That talent can thus neither be taught nor learned.[23] For Benjamin, the artist, too, is a contemplative individual in the guise of various ideal types.[24] For Adorno, authentic art emerges not from the 'productive artist'[25] 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.[26] 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

[21] 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.

[22] Kant, *Critique of the Power of Judgment*, p. 186.

[23] Kant, *Critique of the Power of Judgment*, p. 188.

[24] 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 'flaneur', a central term in his account of the Parisian arcades ('Most men of genius were great flaneurs – but industrious, productive flaneurs […] 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.

[25] Adorno, *Aesthetic Theory*, p. 171.

[26] 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 antiretrovirals (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).[27] 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'.[28] Shared ignorance about

[27] Sung-Joon Park, '"Nobody Is Going to Die": An Ethnography of Hope, Indiators, and Improvizations 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.

[28] 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.[29]

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.

[29] 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',[30] 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'.[31] 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.[32] People do not negotiate their subjecthood in an encounter with a sublime; rather, they are meaning-making subjects, through common sense knowledge and activities.[33]

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'.[34] 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

[30] John Heritage, 'Ethnomethodology' in Anthony Giddens and Jonathan Turner (eds.), *Social Theory Today* (Stanford University Press, 1988), p. 225.
[31] Harold Garfinkel, *Studies in Ethnomethodology* (Polity, 1991), p. 1.
[32] John Heritage, *Garfinkel and Ethnomethodology* (Polity, 1984), p. 5.
[33] Garfinkel, *Studies in Ethnomethodology*, pp. 43–44, 75.
[34] Erving Goffman, *The Presentation of Self in Everyday Life* (Anchor Books, 1959).

accept that delivery.[35] 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'.[36] 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.[37] 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'[38] – 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.

[35] Erving Goffman, *Interaction Ritual: Essays in Face to Face Behavior* (Aldine, 1982).
[36] Hans-Thies Lehmann, *Postdramatic Theatre* (Routledge, 2006).
[37] Sara Jane Bailes, *Performance Theatre and the Poetics of Failure*, 1st edition (Routledge, 2010), p. 9.
[38] 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),[39] 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.[40] 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.[41]

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'.[42] 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'.[43]

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 …

[39] Jothie Rajah, 'Rule of Law Lineages: Heroes, Coffins, and Custom', *Law, Culture and the Humanities*, 13:3 (2015), 369.
[40] Northrop Frye, *Anatomy of Criticism* (Princeton University Press, 2015), p. 6.
[41] Francis Fergusson, 'The Notion of "Action"', *The Tulane Drama Review*, 9:1 (1964), 85.
[42] Richard Schechner, 'Theatre Criticism', *The Tulane Drama Review*, 9:3 (1965), 13, 15 (emphasis original).
[43] Schechner, 'Theatre Criticism', 19.

should take as his major occupation the elucidation of the play's structure'.[44] 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'.[45] 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.[46] 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?').[47]

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'.[48] 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'.[49] 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'.[50] Distinctions between inside and outside collapse, and participants relationally (but

[44] Schechner, 'Theatre Criticism', p. 20.
[45] Schechner, 'Theatre Criticism', p. 22.
[46] Richard Schechner, 'Approaches to Theory/Criticism', *The Tulane Drama Review*, 10:4 (1966), 20, 27.
[47] Schechner, 'Theatre Criticism', p. 22.
[48] Mark Fortier, *Theory/Theatre: An Introduction*, 3rd edition (Routledge, 2016), pp. 28–29 (citations omitted).
[49] Erika Fischer-Lichte, *The Transformative Power of Performance: A New Aesthetics*, tr. Saskya Iris Jain (Routledge, 2008), p. 33.
[50] 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'[51] for what Alice Rayner more coolly calls a 'mutual leap into the void of meaning and the play of style'.[52]

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'.[53] 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.[54]

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

[51] Fischer-Lichte, *The Transformative Power of Performance*, p. 171.
[52] Alice Rayner, *To Act, to Do, to Perform: Drama and the Phenomenology of Action* (University of Michigan Press, 1994), p. 122.
[53] *Hamlet*, V. i. 11–12.
[54] 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'.[55] 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, evanescing, 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

[55] 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.[56]

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.[57]

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'.[58]

[56] Fischer-Lichte, *The Transformative Power of Performance*, p. 189. See also Adorno, *The Transformative Power of Performance*, p. 292.
[57] Konstantin Stanislavski, *An Actor's Work: A Student's Diary*, ed. Jean Benedetti, tr. Jean Benedetti (Routledge, 2008), p. 17.
[58] 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'.[59] 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'.[60] 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'.[61] 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'.[62]

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'[63]), 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[64]), 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'[65]).

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

[59] Stanislavski, *An Actor's Work*, p. 210.
[60] Stanislavski, *An Actor's Work*, p. 338.
[61] Stanislavski, *An Actor's Work*, p. 331.
[62] Stanislavski, *An Actor's Work*, p. 331.
[63] Stanislavski, *An Actor's Work*, p. 9.
[64] Stanislavski, *An Actor's Work*, p. 11.
[65] 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.[66]

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 enrols 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.[67]

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,

[66] Stanislavski, *An Actor's Work*, pp. 50–51.
[67] 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.[68]

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'.[69]

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

[68] 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.

[69] 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'.[70] Using formal gambits, it

[70] 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'[71]). 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.

[71] 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, gleaning 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[72] – 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

[72] 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.[73] 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 enrols ethnographic knowledge.[74] 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.[75]

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

[73] 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).

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

[75] 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 predates 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 revisions 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.[76]

[76] 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?[77]

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 enrols 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'.[78] 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

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

[78] 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.[79] 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

[79] 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[80]:

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

[80] 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.[81] 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

[81] 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?)[82] 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

[82] 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.[83] 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.[84] 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.

[83] c.f. Davis et al., *Governance by Indicators*.

[84] 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.

5

Law and Politics of Rule of Law Performances

> My haste may not admit it;
> Nor need you, on mine honour, have to do
> With any scruple; your scope is as mine own
> So to enforce or qualify the laws
> As to your soul seems good. Give me your hand:
> I'll privily away. I love the people,
> But do not like to stage me to their eyes
>
> —*Measure for Measure*, I. i. 72–78

Previous chapters have traced how what I have called ignorance and implementation work shape rule of law reform within the mundane moments of projects and policymaking. In this chapter, I provide further develop ideas about ignorance and implementation work that might be applied to rule of law reform and expert ignorance more generally.

I begin with a brief analytic interlude. I return to *Measure for Measure*, thus far an allusive companion to the manuscript. In this chapter, I provide a reading of it that emphasises its staging of governors and government. Duke Vincentio the 'old fantastical duke of dark corners' who has temporarily stepped down from his sovereign seat in Vienna to wander disguised among his citizens, is a governor whose governing power emerges from his ability to manipulate the form of dramatic action and shift the genre and plot of the play. The play thus operates as a shortcut to a performance analysis of the operations and effects of self-denying governors in general.

The genre and plot are notoriously hard to study – Harold Bloom describes the play as 'rancid'[1] – as it moves between tragedy, comedy, and romance, between allegory and historical representation. In my view, the play stages the law of Vienna and does so as no more and no less than the accumulated actions and machinations of the Duke as well as other

[1] Harold Bloom, *How to Read and Why* (Simon and Schuster, 2001), p. 113.

putative governors acting in his wake. These machinations are struggles between the characters to implement their imagined order, both for Vienna (in the guise of lawmaking) and for the play (in the guise of directing the action of the play and trying to give it a coherent genre). For when it is founded on an absent, self-denying governor, law – the rules of the city and the rules of the play – is fragile in its substance and emerges out of the form that these accumulated struggles to govern take. The law of Vienna thus emerges not through a moment of founding or extra-legal violence but through a founding self-denial or abdication that leads inexorably to the dramatisation of various efforts to govern.

Following on from this interlude, I look back over my experiences as a rule of law reformer from the previous chapters to synthesise some ideas about how rule of law reform works. I argue that rule of law reform is a combination of ignorance work and implementation work by reformers. This combination is not a positive statement about what law or institutions should look like. Instead, it is better understood as a style of bringing about laws or institutions: through specific types of implementation and specific versions of ignorance.

As my reading of *Measure for Measure* suggests, this style should be understood dramatically. External expectations about genre and character, or procedure and expertise, are destabilised by ignorance work. Instead, the action of the play is the way that law comes about. Ignorance work is akin to Rayner's idea of 'acting', and implementation work to her idea of 'doing'; together, they produce a rule of law performance. Performance analysis shows how the performance takes form. As in all three plays I use – *Ohio Impromptu, The Archbishop's Ceiling*, and *Measure for Measure* – a performance is the layering of different types of 'acting' and 'doing' (Rayner again), in which different assertions and deconstructions (or Stansilavskian 'ifs') about the rule of law interplay in complex and emergent ways. Here, the rule of law becomes the way that law unauthorises and reauthorises itself – in this instance, in the face of the sovereign's unexpected absence and disguise. The rule of law is thus made provisional, a product of ongoing ignorance and implementation work.

5.1 Interlude: *Measure for Measure*, Rule of Law Reformers, and 'the Duke of Dark Corners'

Measure for Measure is a play doubly and directly relevant to rule of law reform since it is in substance concerned with assertions of good governance and in form with the operations of an absent governor. Set in

Vienna, and in an early modern European tradition of political allegory, it is in the grips of twinned crises of public health and public morality: endemic wantonness resulting in endemic pestilence. The play does not stage the challenges associated with the delivery of basic or remedial primary healthcare, however. Duke Vincentio, setting the scene, primes us to the public policy manifesto of the play: these crises are governance challenges, that can only be resolved through a deep understanding of 'government', 'the nature of [Vienna's] people', '[Vienna's] institutions', and 'common justice' (I. i.). He then promptly disappears from Vienna and the stage.

In his absence, competing notions of governance, justice, and law drive the plot, as do their exhaustion. The Duke nominates Angelo, his deputy, to be his regent just before he disappears; Angelo is advised by Escalus, of whom the Duke says to Angelo '[t]hough first in question, is thy secondary' (I. i. 48). The Duke then disguises himself as a friar to observe, and meddle in, the action, which begins with the arrest and arraignment of Claudio, a young townsman and brother to Isabella. Having impregnated his fiancée Juliet, Claudio has violated Vienna's strict laws against extramarital sexual activity. It is precisely these laws that the Duke believes he has been too lax in enforcing and which Angelo says he will uphold to the letter of the law. Claudio is thus swept up in Angelo's counter-sexual revolution and is sentenced to death for his crimes despite Escalus's attempts to urge Angelo to mercy.

Angelo's judgement draws Isabella into the action. She reflects a moralistic attitude to governance. About to take the habit (and with a pious and chaste character to match), on receiving the news of her brother's arrest she makes personal representations to Angelo for Claudio's freedom. Angelo, succumbing to the temptation he will not countenance in others, counters: he will free Claudio if Isabella sleeps with him. She refuses but eventually begins to weaken. At this point, the disguised Duke intervenes and informs Isabella that Angelo was once married to a lady, Mariana, whose dowry was lost at sea. On hearing the news, Angelo annulled his union; Mariana continues to pine for Angelo. Vincentio suggests a bed trick: Isabella will verbally submit to Angelo, but in the dead of night Mariana instead will go to him to do the deed. Claudio will thus be pardoned, and Angelo, caught in the law he upholds, will have to marry Mariana anew.

Isabella accedes to the plan. Although the trick succeeds, Angelo still decrees that Claudio be killed. Isabella arrives at the prison, expecting to see her brother freed. The disguised Duke falsely informs her that her

brother has been killed and that she should seek justice from the Duke on his return the next day. Isabella weeps and raves before giving herself up to the vagaries of whatever justice might eventually be dispensed by the Duke and others: 'tis a physic/that's bitter to sweet end' (IV. vi. 8).

The Duke, abandoning his disguise, returns triumphantly to the gates of Vienna to the sound of trumpets (despite having expressed his dislike of 'stag[ing himself] to [the public's] eyes' – I. i. 74). He hears all grievances and strings Isabella along, feigning incredulity at her account. He appoints Escalus as his deputy to hear the matter and makes off to disguise himself anew as the friar. Again in disguise, he is accused of having slandered the Duke, which he further foments by alleging that as 'a looker-on here in Vienna', he has 'seen corruption boil and bubble' under the rule of a Duke who is so ineffective that 'the strong statutes/stand like the forfeits in a barber's shop' (V. i. 360–61). The disguised Duke is sentenced to prison and is un-cowled as a result, thus revealing his true identity. Angelo then confesses and is married off to Mariana, Claudio is pardoned and rejoins Juliet, other licentious characters are married off to bawds, and the play closes as the Duke begins to proposition Isabella.

Based on this summary, it is no surprise that *Measure for Measure* has been described as one of Shakespeare's 'problem' plays.[2] The problem appears to be hermeneutic. How should a reader or spectator interpret the action, and with what tools? The genre of the play is hard to determine. It has elements of a tragic structure; at the same time, Bloom finds it 'a comedy that destroys comedy', arguing that within the structural shell of a comedy is a nihilist emptiness, lacking a hero.[3] It is organised around political, personal, and dramatic casuistry – the characters 'play with reason and discourse,/And well [they] can persuade' (I. ii. 183–84). Its symbolism is fragile. The play takes the form of an allegory – with the Duke as Christ or perhaps as James I – yet its moral and political resolution is too nihilistic to sustain such interpretations. The final scene 'pil[es] outrage upon outrage, leav[ing] us morally breathless and imaginatively bewildered',[4] while the play itself is permeated by a 'dark and corrupted sexual atmosphere'.[5]

[2] Ernest Schanzer, *The Problem Plays of Shakespeare: A Study of Julius Caesar, Measure for Measure, Antony and Cleopatra* (Routledge, 2013).
[3] Harold Bloom, *Shakespeare: The Invention of the Human* (Riverhead Books, 1998), p. 380.
[4] Bloom, *Shakespeare*, p. 359.
[5] Nicholas Marsh, *Shakespeare: Three Problem Plays* (Palgrave Macmillan, 2002), pp. 262–63.

Bradbrook exhorts readers of the play to encounter it as a map of a problem.[6] And he, like others, sees the play as a map of the many different styles of producing law and governance in the presence of a self-denying ruler, who unmakes the form and substance of rule as he goes.[7]

In Vienna, government has shifted to governance, albeit the latter shaped by the relic of the former. In the terms of my theoretical framework, the Duke is a sublime. In the absence of Vienna's sovereign, many people become putative governors, all with a fantasy of what a new ruling order might look like – Angelo's legalism, Escalus's pragmatism, and so on. These fantasies produce shadows of governance, which the Duke both stimulates and inhabits. The Duke has vanished but disguised, he roams the stage, sewing chaos as well as order, often at the same time. 'Staying to spy and plot in Vienna then, watching over his deputies, the disguised Duke enacts a primary fantasy of imperial power: the capacity to remain present in absence, to see unseen "like pow'r divine" (V. i. 369): ultimately, that is, to project one's eye and sway into distant theaters without relinquishing hold of the center'.[8]

These shadows of governance are both long and ephemeral. For example, the Duke delivers an eloquent speech to convince Claudio that the only just course of action would be for him to 'be absolute for death' such that he should find both death and life to be naught but simple 'things' that are but matters of 'a breath' (III. i.) – in other words, to commit suicide. This is a conviction from which Claudio eventually resiles but which drives the action of the play. So death itself becomes destabilised: Claudio can purport to govern the terms of his own death, albeit egged on by the shadowy sovereign. The law of Vienna emerges not through domination and control but through self-denial or abdication that leads inexorably to the arrangement and destabilisation of various efforts to govern.

Duke Vincentio thus shapes the limits and effectiveness of his lieutenants' attempts to give law in his stead, as they stretch to breaking point their own efforts to imprint their style of governance on Vienna. The Duke, in disguise, encourages Angelo's entrapment, dismantles Claudio's

[6] M. C. Bradbrook, 'Authority, Truth, and Justice in Measure for Measure', *The Review of English Studies*, 17:68 (1941), 385–99.

[7] Kenji Yoshino, *A Thousand Times More Fair: What Shakespeare's Plays Teach Us about Justice*, Reprint edition (Ecco, 2012), pp. 59–88.

[8] Richmond Barbour, '"There Is Our Commission": Writing and Authority in "Measure for Measure" and the London East India Company', *The Journal of English and Germanic Philology*, 99:2 (2000), 199.

punishment, and marginalises Escalus in the final Act. In the end, it is 'the Duke [who] engineers the confessions of fault and expressions of pardon by the other characters. Corresponding to his former disguise as confessor, it is the Duke himself who grants the only other instances of pardon' in the play – and as Bloom points out, he does so with no real moral foundation to those pardons.[9]

Duke Vincentio is no straightforwardly 'murderous Machiavel', however, destabilising others to ensure the triumphant restoration of his rule.[10] One by one, Duke Vincentio destabilises all expectations about the regimes of rules that surround both Vienna and the play itself. The allegorical allusions to James I suggest that his efforts are for the benefit of the people, whether the audience can see it or not. Yet 'even as the duke's layers of disguise – his masks of holy father, "good doctor," and clever dramaturge – are revealed to the audience and his motives articulated, there remains at the centre an unfathomable mystery'.[11] Why has he chosen Angelo as substitute sovereign, 'a self-interested person, lacking divine sanction, one unused to the princely arts of equitable judgment?'[12] Angelo's 'first appearance as presiding judge reveals that he administers the law in exactly the way Christ forbade. He is, in Calvin's words, desirous, overthwart, and malicious in his judgments of fellowmen'[13] – meaning Duke Vincentio's choice of Angelo is similarly troublesome for those who read the play as a Christian allegory since no Christ figure would devolve dominion over His people to such a ruler.

This breeds suspicion: 'the duke appears to have broken faith with his people. This … would make many spectators wary of … Vincentio's … mysterious arts of governance'.[14] Indeed, we might suspect that he has

> employ[ed Angelo as] an agent to regain by sneak attack the public order he had failed to maintain and, by the agent's taking the blame for the aggression, to permit him to preserve his own popularity. He has 'imposed the office' on Angelo, 'Who may in th'ambush of my name strike home,/ And yet my nature never in the fight/ T'allow in slander' (I. iii. 40–43).[15]

[9] Claire Griffiths-Osborne, '"The Terms for Common Justice": Performing and Reforming Confession in Measure for Measure', *Shakespeare*, 5:1 (2009), 46.
[10] *Henry VI, Part 3*, III. ii., 193.
[11] Catherine I. Cox, '"Lord Have Mercy Upon Us": The King, the Pestilence, and Shakespeare's Measure for Measure', *Exemplaria*, 20:4 (2008), 440.
[12] Cox, 'Lord Have Mercy Upon Us', p. 440.
[13] Darryl J. Gless, *Measure for Measure, the Law and the Convent* (Princeton University Press, 1979), p. 174.
[14] Cox, 'Lord Have Mercy Upon Us', p. 440.
[15] Ira Clark, '"Measure for Measure": Chiasmus, Justice, and Mercy', *Style*, 35:4 (2001), 676.

In any event, Vincentio himself tells us that he is hiding his motives from our gaze, justifying his monastic disguise to the friar supplying it: 'I will, as 'twere a brother of your order,/Visit both prince and people: therefore, I prithee,/Supply me with the habit and instruct me/How I may formally in person bear me/Like a true friar. More reasons for this action/At our more leisure shall I render you' (I. iii. 48–53). Reasons which are, or course, never divulged, miring spectators further in murk.

Vincentio's destabilising force goes further than Vienna, troubling the conventions of genre by simultaneously transgressing them (is this a comedy, a tragedy, or a historical allegory?) and hollowing them out. He even disturbs the form of his own eventual return to power: while the play has aspects of tragic characterisation, the Duke instigates a set of comedic genre tropes, including a bed trick and mistaken identities, meaning that his reappearance in the final act takes the uncomfortable and dissonant form of a comic deus ex machina. And finally, he turns on the audience. '[T]he audience is positioned in the final trial scene, aligned with the confessor-Duke whose omniscience it shares, to be in a position of judgement. Yet it is the confessor-Duke who engineers the final scene to demonstrate his possession of ultimately superior knowledge gained from confession with which to exercise judgement'.[16] As he reminds the audience at the very start of the play, 'I'll privily away. I love the people,/But do not like to stage me to their eyes:/Though it do well, I do not relish well/Their loud applause and Aves vehement' (I. i. 73–76). The final enjambment removes all doubt as to whom he refers: the staged character of the Duke tells the audience that he will proceed to avoid staging himself before it.

Vincentio thus systematically undermines the authority of all the governors in the theatre. He begins with self-negation, effacing the godhead or the symbol of the unity of law and fragmenting the process of rule.[17] In doing so, he causes others to come to the fore to organise and impose their version of rule in his absence. The self-negating sovereign then 'sp[ies]' and 'plot[s]'[18] to undermine the efforts at governance made in his absence, from Vincentio's own final act of pretence at enforcing lex talionis ('An Angelo for Claudio, death for death' – V. i. 465), to Escalus's principles of equity, to Angelo's formal law.[19] Vincentio clouds those other visions of governance and casts shadows over their rule.

[16] Griffiths-Osborne, 'The Terms for Common Justice', 44.
[17] Gless, *Measure for Measure, the Law and the Convent*, pp. 214–56.
[18] Barbour, 'There Is Our Commission', p. 199.
[19] Yoshino, *A Thousand Times More Fair*, p. 64.

Vincentio's self-negation further unmakes the sources of formal authority of the play. His disappearance is abrupt, arbitrary, and unpredictably incomplete (given his continued lurking in the dark corners of the play). It does not fit any genre convention – the tropes of the action provide no succour to those seeking some sort of predictability or order. And finally, the remaining source of authority – the spectatorial gaze[20] – withers on the vine as Vincentio surpasses it, leaving spectators unsure of the truth of what they witness as well as their role in it. Vincentio thus systematically strips the play down to bare theatricality. The sovereign absents himself and throws both the play on stage and governance in Vienna into chaos.

In doing so, he throws into the air the relationship between knowledge and action. In its place is left confusion and caprice – through which the 'Duke of dark corners' drives the action of the play and somehow produces governance of a sort by the end. The play itself becomes a form of politics. It is an organisation of governance, in which characters, spectators, and the form of governing are enrolled to exercise power. It is produced and driven by a governor who effaces himself and others such that nothing can be known. Yet things happen nonetheless.

5.2 The Legal and Political Effects of Rule of Law Reform

Measure for Measure provides a map to understand how rule of law reformers govern using expert ignorance. In this section, I fill in some of the details based on my experiences set out in the previous chapters.

As *Measure for Measure* suggests, expert ignorance produces forms of rule not simply by producing closure or a decision. It would be a mistake to simply focus on uncovering the sources of closure, whether the analytic of an expert, the concreteness of an indicator, the identity politics of participation in a community meeting, the materiality of a laptop, or the shared episteme of an epistemic community. That would entail a mapping of what I am calling 'implementation work' – akin to explaining the action of *Measure for Measure* by focusing only on Angelo's strict law or Escalus's sense of justice. Nor should we simply try to account for the sources of indeterminacy, whether the open-endedness of law or the absence of a community in indicator deliberations. That would entail a mapping of what I am calling 'ignorance work' – akin to explaining the action of *Measure for Measure* by focusing on the Duke's few scenes alone.

[20] Stacy Magedanz, 'Public Justice and Private Mercy in Measure for Measure', *SEL Studies in English Literature 1500–1900*, 44:2 (2004), 326.

Rather, rule is a product of the arrangement of ignorance and implementation work. How can this be mapped? In this section, I argue that in the absence of the authoritative expert, many reformers might attempt to take the mantle of governing, asserting what the rule of law is and what should be done – in other words, determining a relationship between knowledge and action. This is implementation work. However, I argue that implementation work is inherently unstable, as it rests on a foundation of ignorance. Ignorance work then collapses the discussion, assertion, policy, or indicator in question.

Let me flesh this out through anti-corruption efforts in newly independent South Sudan in 2013. Larson, Ajak, and Pritchett used these reforms as a case study arguing in favour of highly contextualised approaches to law and governance reform in development – approaches that I discuss more broadly in Chapter 7. They claim that the Ministry of Finance and Economic Planning (MoFEP) was unable to stop '[a]n estimated $4 billion [from being] stolen by former and current officials, as well as corrupt individuals with close ties to government officials'.[21] In response, the US government funded a new position in MoFEP – the 'Director General of Procurement'. This was not well-received by the World Bank's procurement expert. He thought it 'meaningless' in the context of South Sudan's legal systems.[22] Importantly, his response was simply to note that the legal and institutional complexity of South Sudan made it meaningless. He did not have some other model in mind. Pritchett and his co-authors endorse the World Bank's view. They then go one step further, advocating for 'indigenous processes' to displace development agencies as determiners of good local governance. They specifically discuss the 'Red Army Foundation' (RAF), a local NGO concerned with reforming 'governance capability at the subnational level'.[23]

I want to draw attention here to a particular feature of the structure of Larson et al.'s argument. The example is fundamentally about governance and legal change. These phenomena are taken to emerge through a process of adaptation and self-effacement by those who once were the mandarins of good governance. This process is predicated on the denial by

[21] Greg Larson, Peter Biar Ajak, and Lant Pritchett, 'South Sudan's Capability Trap: Building a State with Disruptive Innovation' (United Nations University, 2013), Working Paper 120/2013; Hereward Holland, 'South Sudan Officials Have Stolen $4 Billion: President', *Reuters* (4 June 2012), www.reuters.com/article/us-southsudan-corruption-idUSBRE8530QI20120604, accessed 9 February 2017.

[22] Larson, Ajak, and Pritchett, 'South Sudan's Capability Trap', p. 19.

[23] Larson, Ajak, and Pritchett, 'South Sudan's Capability Trap', pp. 28–31.

reformers – such as the World Bank official and certainly Larson et al. – of their ability to affirm the rule of law, instead foregrounding the indigenous efforts of those, such as the RAF, who might instead define governance. Here, the RAF does not function as a local mask for a universal standard. Rather, the RAF is simply to be understood through its potential ability to bring about governance in a legal and political context that is otherwise too complex and overwhelming to understand. And, of course, its implementation role is ever conditional. It is always susceptible to the critique that it may not do so, that other actors might be more authentic, more legitimate, more efficient, and so on.[24] By affirming the complexity of the rule of law and denying that development actors have any notion of what the rule of law should be, here the World Bank recuses development actors while continually leaving space open for other notions of the rule of law to emerge.[25] And these patterns of recusal, affirmation, and contingency over time add up to a rule of law performance.

Key to my argument is the observation that such collapses are not completely open-ended. While they do not have a formal structure, they do have contours in terms of the future collapsing moves that can be made. These contours can be reworked by further ignorance work. Rule of law reformers work to produce a present set of acts that are fragile; these fragile acts continually set up the possibility of a future set of concrete acts, thereby justifying more fragile acts in the present. Over time, the accumulation of these fragile acts becomes reform, in the same way, that the bare theatricality of dramatic action becomes governance in *Measure for Measure*.

This combination of ignorance and implementation work makes the spatio-temporalities of and participants in reform quite fluid. Anyone – audience and actor alike – can be enrolled into producing the rule of law because everyone shares conditions of ignorance over what the rule of law is. In the final analysis, rule of law reform and its reformers take fuzzy and provisional form through the constellation of fragile acts.

5.2.1 Ignorance Work

Beginning with ignorance work, rule of law reform is in part constituted by reformers attempting to use radical critiques in a particular way. For

[24] Peter Finkenbusch, 'Governing through Critique: Post-Conditionality and Bottom-Up Governance in the Merida Initiative', *Globalizations*, 14:6 (2017), 896–910.

[25] Peter Finkenbusch, 'Expansive Intervention as Neo-Institutional Learning: Root Causes in the Merida Initiative', *Journal of Intervention and Statebuilding*, 10:2 (2016), 162–80.

example, in the ADA project, my team highlighted how no one knew enough about people's specific legal experiences, thereby emphasising the importance of always doing more research. In the indicators workshop, the Chief pointed out that local people were themselves best placed to say what the rule of law is, thereby suggesting that we in the room should always have more conversations with locals.

Table 5.1 maps common types of ignorance work I have encountered in my work as a rule of law reformer. It is not exhaustive but details certain 'types' of ignorance work. I derive each type of ignorance work by identifying critical questions that experts ask. These questions are akin to Stanislavski's 'magic ifs', discussed in Chapter 4. They destabilise the foundational assumptions of a rule of law reform and do so in a specific way that might beget further action. For rule of law reformers, in choosing to question an assumption, they determine it to be fundamentally unknowable (unlike authoritative experts, who would eventually be able to work it out, for example through research). This unknowable foundation renders the emergent rule of law a fantasy – a thing which cannot be known and yet promises the key to the rule of law, along with a set of ideas about how to approach that fantasy.

To see ignorance work in action, consider the indicators workshop. The Chief argued that participants should focus on the 'many injustices faced by community people'. Participants should go to local communities and, with the support of the Chief, understand their conceptions of the rule of law. This was a sociological form of ignorance. The rule of law was, in the Chief's telling, other people's lived experiences as they recount them. Those were the grounds he set on which he and others could unmake anybody's assertions about the rule of law.

In the Chief's telling, the 'community' could not be defined or known, and thus we participants were necessarily ignorant of it. The challenge we faced was not that we had insufficiently researched the community but that we did not have the means to encounter the community, find out its needs, and partner with it. This type of ignorance work conjured a particular fantasy in which the workshop participants were fundamentally irrelevant. Instead, the form and content of the rule of law resided in the experiences of the governed – the people who would supposedly be subjected to the indicator. The Chief invoked a fantasy in which the community was an unmediated group, directly articulating the content of the rule of law. By exercising this type of ignorance work, the Chief established the conditions to marginalise the workshop participants, making them passive objects and conduits for community knowledge.

Table 5.1 *Some types of ignorance work*

Type of ignorance →	Conceptual	Epistemological	Phenomenological and political	Teleological and normative	Sociological
Foundational question	What do we mean by the rule of law?	How can we know what the rule of law is?	Who are we to say what the rule of law is?	Why and for whom are we doing rule of law reform?	Who else can say what the rule of law is?
What's the thing reformers are ignorant of?	Theory and analysis	The Real – as an object of research	The professional self	The relevant political community	The relevant knowledge community
As a result of the limits of …	Philosophical and analytical tools	Research tools	Professional legitimacy	Normative consensus	Hierarchies of participation and knowledge
Who or what thing is insufficiently known?	Disembedded thinker or reasoner	The researched	*Demos*	God, nature, right, the state …	Those on the receiving end of expert governance
What is lacking in the relationship between reformers and the governed?	Spaces for theoretical debate ***'We should have an academic conference … including some global Southern participants'***	Research design and methods ***'We should set up an empirical research programme … with the right mix of qualitative and quantitative methods'***	Social formations to establish and perform 'professional' norms and epistemologies ***'We should set up a training/ Masters programmes'***	Argument, debate, injustices ***'We should convene debates/ focus groups'***	Partnerships ***'We should help all of these people convene debates and focus groups … including some global Southern participants'***

Source: Author

This fantasy of passivity recalls Rayner's account of 'doing', referring to how a performer might leap into the unknown through bodily, mechanical experience. Workshop participants might not be able to reach the Chief's fantasy of passivity; nevertheless, the Chief's ignorance work made their expert subjecthood fragile. In that sense, the ignorance claim functioned like Stanislavski's 'magic if'. Like the 'magic if', no substantive issues were taken off the table (from road safety to inequality). The blind spots and biases of the performance would not in the first instance be found through a critique of the ideology or framing of the substance of the discussion (although that might come subsequently). Indeed, the Chief was urging the participants to be radically open in their ideas about the rule of law.

In doing so, the Chief's ignorance work had identarian and spatio-temporal effects. This work suggested that, at any moment, anyone could be enrolled in the project who might have some sort of idea about what the rule of law is – whether they were state or non-state, local, national, or transnational. More generally, ignorance work meant that the project's boundary – the people, places, and moments not part of the project – was not predetermined but constantly up for negotiation.

This ignorance work did, however, entail a view of the relationship between the reformer and the community. The Chief suggested that reformers, as fragile subjects, find ways to partner with communities to understand and more effectively mediate the community's concerns. This is a statement of governance. He also suggested that the community functions as a kind of polity, in the sense that the community can articulate the rule of law, and thus provides legitimacy to the governor's efforts to uncover their views. This is a statement about the governed; in a sociological ignorance claim, the community is imagined as a storytelling political subject, and the most effective political subject will be the best storyteller.

Finally, when the Chief claimed sociological ignorance on the part of participants at the workshop, he imagined the participants as partnership makers. In Rayner's terms, partnership making would be participants' 'style' of performance. The jurisdiction of the governor over the governed community took the form of convening and organising focus groups or debates. The modality of governance was primarily listening.

The image of the governor, the governed, and governance – and its provisionality: these were the stakes struggled over as participants invoked different ignorance claims. While the Chief was on the sociological end, my speech was an example of epistemological ignorance work. My

imagined governor was a research designer, my governed are the people being researched (that is, the Real). My imagined form of governance was research design and methods; its modality was the execution of that research.

During his speech, Huang showed how someone might try to shift from one type of ignorance to another:

> 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 variety of data already out there. Of course, this stuff is heuristic. But …

Here, he sets out a move from epistemological ignorance (my argument about being informed of our 'politics and choices' by doing more research) to conceptual ignorance (focusing on the limits and value of existing analytical tools, including how to analyse the World Justice Project's data).

In general terms, the shared quality of ignorance means that ignorance work itself was potentially available to anyone participating in reform. The local NGO in the ADA project was just as able to mobilise sociological ignorance – and dismiss epistemological ignorance by arguing that more research wasn't necessary – as could various global elites in the indicators workshop. Ignorance work thus destabilises the boundary between the inside and outside of reform; it also seems to give the tools to continue to destabilise the boundary – or collapse negotiations over it – to anyone, as long as they conform themselves to the specific identity of the governor embedded in the ignorance claim.

5.2.2 Implementation Work

During the indicators workshop, ignorance work existed in relation to what I have called implementation work. Implementation work involved, in essence, asking 'OK, but what do we do?' It was actionable and operational, concerned with feasibility, and thus giving an account of the structural constraints on action – donor incentives, human rights rules, conflict risk, and so on. There were many different flavours of this: What can we get into SDGs? What about building on a consensus about human rights? What data do we actually have that we can build on?

Table 5.2 attempts to map some common types of implementation work I have encountered. Again, it is not exhaustive.

Like ignorance work, implementation work configures the space, time, and identity of reform by producing images of the governor, governed,

Table 5.2 *Some types of implementation work*

Type of implementation work →	(State) law	Administrative	Market-based	Technocratic	Rights	Security	New governance	Evidence
What gets debated?	National formal politics; rule of law	Bureaucratic or organisational	Utility; efficiency; innovation; disruption	Expertise	Human rights; property rights; formal legality	Threat	Participation and negotiation	Method
What organisations matter?	Constitutions Legislatures Courts	Bureaucracy/ administrative agency Policy networks	The firm	University qua disciplinary training Accreditation institutions IFIs Epistemic communities	Courts HRIs Advocacy networks	Security/ violence institutions	Multi-stakeholder or deliberative 'spaces'; civil society organisations	Universities qua methods training Research institutions/ think tanks Grant funders/ research donors
Vocabulary of critique (how to shift to another type of implementation work)	Critique of formalisation	Organisational sociology	Behavioural/ social; distributive	Sociology of knowledge	Critique of rights	Securitisation	Identity politics and structural power	Politics of method

Source: Author

and governance. It does it in a more assertive way. It takes the fragile subject of the reformer, produced through ignorance work, and slots her back into a set of background institutions that get things done. In other words, implementation work provides that fragile subject with a role within an existing reform process.

The reformer is a lawyer, a bureaucrat, a market leader, an expert, and so on. Her modality of governance is providing solutions or forms of closure – through law, administration, efficiency, expertise, etc. The background organisations that structure her relationship with global governance are constitutions, bureaucratic agencies, firms, universities, etc. These organisations also have embedded in them an image of the governed – the legal subject, the administrative subject, the consumer, the lay-person, etc. In this image, the governed are subject to the authoritative assertions of rule of law reformers, channelled through those organisations. This is in contrast to ignorance work, in which governor and governed are bound together in a project of exploring their shared ignorance.

Implementation work imagines governance as a process of responding to problems, in contrast to ignorance work's emphasis on listening to problems. Participants in the project and workshop struggled over the specific type of response such that everyone would support a particular course of action. Thus, in Country, the people trying to implement Agricultural Development Agreements debated the language of the Act (what I term 'state law' in the table above). That was, until Emmanuel launched a critique of formalisation (referring to how the law will play out in the context of 'very clever people in the community' – or the law in action) in an attempt to shift the debate over implementation to a new governance register (or how to follow a 'participatory method' of determining the identity of the Main Community).

5.2.3 Action as Ignorance and Implementation; Reform as Performance

In my examples (and indeed throughout my work as a rule of law reformer), the action of reform resulted from the relationship between ignorance and implementation work. Implementation work is certainly the ordinary structure of assertion, counter-assertion, and critique. However, I argue that implementation work should now be understood against the backdrop of ignorance work, which deconstructs, cancels assertions out, and refuses to give meaning to the rule of law. As they are collapsed and re-erected, ideas about implementation become fuzzy, with unclear content and limits.

My account of the indicators workshop, for example, staged a debate over what indicators ought to measure; it also showed how that contest was framed by ignorance work, so no one produced a concrete set of indicators or action plans. Instead, they helped produce the conditions for future pilots and structured the time and space of their implementation and the identity of their implementers.

Similarly, in my account of the agricultural project, Emmanuel employed ignorance work to struggle with Ted and me. He made sociological ignorance claims, exhorting us to go to the community. Ted and I made epistemological ignorance claims, advocating for contextual research. Against that backdrop, participants made implementation claims – that the ADA should be understood in legal terms, or new governance terms, or on the day of the meeting in the courthouse, security terms (recall Emmanuel wanting to stop the meeting from 'get[ting] too hot'). And when participants wanted to reject implementation claims, they turned to ignorance. Thus, Emmanuel and Betty debated Chiefly participation in ADAs in terms of duelling interpretations of the law. The AC then claimed normative ignorance about the purpose of the ADA – perhaps concerned that it would be trapped by a legal interpretation rather than being able to work flexibly with Chiefs in some contexts and without them in others. Its ignorance claim made Emmanuel and Betty's implementation work fragile by deferring its resolution to a future debate among state and corporate lawyers, stewarded by the ADA working group. Fragile implementation work recalls my theoretical claim that rule of law reform produces fuzzy images of the rule of law – the path to the rule of law persists but is vague and uncertain.

The scene at the Chief's courthouse shows how action can emerge from such fuzzy images. It is the result of the interaction between multiple types of ignorance work. Cancelling each other out, they leave open a space in which a decision can occur and some provisional closure can take place. In gathering at the courthouse, participants had already succumbed to Emmanuel's sociological ignorance work. Yet in terms of how to select the MC and its representatives, participants were well-practiced at cancelling out each other's implementation work, as well as in conducting ignorance work. As an example of implementation struggles, Emmanuel challenged Yahya's possible new governance or administrative account of the community meeting – a participatory and transparent voting process – accompanied by a securitised narrative. At the same time, Ted and I arrived with a radically critical gaze, well aware that what we were about to see would likely be kabuki theatre.

Ignorance and implementation work in the courthouse were arranged in such a way that Emmanuel could engineer some unchallenged implementation work off to one side, in which community members were 'doers', producing a bodily wall between the courthouse and their deliberations, and 'actors', participating in the deliberations and nominations. Yet even as the courthouse produced some type of decision, it remained fragile, subject to consequent ignorance work. This might be at an indicators workshop, in a subsequent scene. Yet even at the courthouse, we see the AC's sign overlooking the action, and reminding us that the AC might try to engineer a national-level legal consensus over the identity of the MC and its representatives that could undermine the fragile outcomes of the community's deliberations.

This scene suggests that ignorance work does not just negate implementation work; it can neutralise other types of ignorance work, too. And if these various types of ignorance work are layered together in the right way, they can interfere with each other, enabling some sort of action. This gives lie to the possibility that there is a truth in and real motivation to what happens in a rule of law reform process, to be discerned using the right set of empirical methods and conditions to work it out. As *The Archbishop's Ceiling*, suggests, that sort of empirical work is impossible in a setting where everyone is performing to everyone else. Rather, the action of reform is complex – a product of interactions between multiple layers of implementation work and ignorance work, each with different images of governors and governed, together producing a fuzzy shadow of the rule of law.

As in Shakespeare's Vienna – or Beckett's table in *Ohio Impromptu*, or Miller's Eastern Europe in *The Archbishop's Ceiling*, – these images do not become real in any simple, representational sense on stage. Rather, they resolve in the accumulation of the physical arrangement of bodies in time and space (Rayner's 'doing') and in how people express their condition (Rayner's 'acting'). In other words, governance is not the accumulation of arguments between expert people; it is the accumulation of performances (to use Rayner's term), or ignorance and implementation work, that constitute the contours of action. This comes with two methodological corollaries. First, performance analysis helps us analyse and understand action itself in ways that social-scientific enquiry does not. Second, efforts to shape and limit rule of law performances – that is, to train and discipline reformers' styles of performance – can instead be productive objects of social-scientific enquiry.

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I want to highlight two stakes of rule of law reform that performance analysis helps us understand: what sort of 'rule of law' emerges from these performances; and relatedly, how it reconfigures and keeps open first-order questions about the rule of law. Turning to the first, I have suggested that the action of rule of law reform is the rule of law. I want to further suggest that the action of rule of law reform produces the rule of law as a provisional and contingent set of legal and institutional forms.

Take the pilots that emerged from the workshop. One of the dominant modes of ignorance work was sociological. While there were many modes of implementation work, we might focus here on the administrative (for example, considering what data could feasibly be collected and still be acceptable in the SDG process) and evidentiary (imagining future research projects). Together, they produce an image of the reformer as a partnership builder, subject to bureaucratic politics and methodological constraints. And this image affects how subsequent indicator pilot projects would happen. On the one hand, the implementation work meant the relevant context for reform was participants' relationships with global powerbrokers (to try and get those powerbrokers to fund the pilots) as well as participants' methodological soundness. On the other hand, the ignorance work meant that the relevant context was the participants' ability to work with civil society and local public authorities to organise local deliberative groups.

This being the case, consider the position of national statistics agencies. They might arrange themselves not to deliver indicators, or maybe to deliver them in a thin, formal way, but to manage their relationships with global and local powerbrokers.[26] And within this framework, they might choose to leave relationships with global powerbrokers to global structures (such as the UN) and focus on acting on local governance or vice versa.

The institutional forms produced by rule of law reform will have spillover effects. The National Agricultural Agency in Country, for example, adapts to the process of project implementation. It becomes a facilitator and enabler of the process, notably avoiding handing down an authoritative interpretation of the relevant provisions of the Agriculture Act. In other words, the substantive nature of legal arrangements that reforms produce may be subject to constant revision; at the same time, they may tend to highly provisional forms – pilots, trials, proofs of concept, and so on.

[26] Morten Jerven and Deborah Johnston (eds.), *Statistical Tragedy in Africa? Evaluating the Database for African Economic Development* (Routledge, 2017).

Second, this provisionality extends to fundamental issues about the law. In particular, it implicates the boundary between law and politics. On one view, law adopts forms to positively assert its own domain, autonomous from politics, the boundaries of which are contested. Rule of law reform, when pursued by authoritative experts, leverages their expertise to assert exactly where and how law should be autonomous – for example, an autonomous check on executive power and upholder of property rights.

By contrast, as detailed above, rule of law reform, when pursued by ignorant experts, is an attempt to build legal institutions on the basis of a foundational moment of denial – the fragmented sovereign's self-negation. The legal order that emerges is not self-authorising but self-denying. Rules do not emerge through the exercise of authority (or vice versa); rather, in displacing and effacing their own normative authority, rule of law reformers transform constitutional questions regarding the principles and rules for politics, and the identity of the polity they relate to and emerge from, into the epiphenomena of their ongoing practices.[27] This is a version of law as a product of continual encounters between jurisgenerative groups – but as an ongoing open-ended performance rather than a jurisdictional account of encounters between existing laws.[28] Here, law denies its own domain, constantly renegotiating the boundaries between law and politics. Zumbansen calls this the inevitable 'replay' of this fundamental constitutional question, from context to context and moment to moment.[29]

Whether pursued by authoritative or ignorant experts, rule of law reform is certainly concerned with the autonomy of law. However, we should not conflate the two. The former stabilises the divide, the latter makes it continually provisional and contingent. The mechanisms by which each draws the divide are also different: one the one hand, assertions, arguments, and appeals to common sense; on the other, an intense movement between denial and assertion, in which assertions are inchoate and fragile. Similarly, the nature of the expert and the resultant politics of reform are extremely different: on the one hand, assertions of one's authority; on the other, contestation over the extent and nature of one's lack of authority.

[27] Deval Desai, 'The Politics of Rule of Law Reform: From Delegation to Autonomy', *The Modern Law Review*, 83:6 (2020), 1168–87.

[28] Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law', *London Review of International Law*, 1:1 (2013), 63–98.

[29] Peer Zumbansen, 'Law & Society and the Politics of Relevance: Facts and Field Boundaries in "Transnational Legal Theory in Context"', *No Foundations,* 11 (2014), 12.

5.3 Conclusion

How do governors who 'love the people,/but do not like to stage [themselves] to their eyes' (I. i. 73–74) actually govern? This chapter has argued that they do so precisely by staging themselves but in such a way that they undermine others' claims to stage and enact governance as well as their own claims. These governors are ignorant experts, who struggle to relate, disarticulate, and re-relate knowledge and action to stimulate institutional change in the face of a complex and ever-changing world of interconnected institutions.

As *Measure for Measure* helps us understand, ignorant experts turn governance into the structure of action. They thus make the theatre not a metaphor for governance[30] but rather a mode of describing it. The structure of action arranges the spatio-temporality and identity of reform, producing the rule of law as a provisional set of legal forms, and continually renegotiating the law/politics divide. This can have lingering effects beyond the lifetime of the project.

As I discuss in the next chapters, these efforts might be externally conditioned. In Chapter 6, I consider whether they are historically contingent. In Chapter 7, I go on to argue that they are sociologically disciplined. However, we must first understand exactly what we seek to discipline. As I have shown here, it is not the evolution of legal or institutional structures, but the bare theatricality of reformers' actions.

[30] Stephen Hilgartner, *Science on Stage: Expert Advice as Public Drama* (Stanford University Press, 2000); Erving Goffman, *The Presentation of Self in Everyday Life* (Anchor Books, 1959).

6

Historicising Rule of Law Performances

> We must not make a scarecrow of the law,
> Setting it up to fear the birds of prey,
> And let it keep one shape, till custom make it
> Their perch and not their terror.
>
> —*Measure for Measure*, II. i. 1–4

Thus far, I have argued in favour of performance analysis as a way of understanding the fragility of rule of law reform. But what of historical method as a means of turning rule of law reform into an object of analysis and critique? It is both plausible and powerful to suggest that, even if the radical edge of rule of law reformers' critical efforts may not be wholly socially constrained, it is historically structured and contingent.

In this chapter, I contextualise expert ignorance in rule of law reform as a historical phenomenon. I argue that efforts to historicise rule of law reform require the historian to make an ex ante determination of what the rule of law is such that it can be understood historically. Given the caveat, I frame this historical account as a self-contained intervention, seeking to articulate how rule of law performances have emerged as a way of doing rule of law reform as well as how actors have concurrently sought to discipline and organise those performances.

I focus on the historical emergence of rule of law reform as an aesthetic artefact instead of a sociological object, in particular in its contemporary manifestation of 'experimental' rule of law reform.[1] I suggest that a standalone profession of ignorant rule of law reformers emerged in the late 1990s or early 2000s. Earlier understandings of legal and institutional reform – in which institutions were ways of framing, limiting, and giving form to the sublime complexity of global economic and political life – had encountered their practical limits. Institutional arrangements themselves

[1] Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond', *Annual Review of Law and Social Science*, 11:1 (2015), 155–74.

came to be imagined as a complex sublime – an ever-more elastic container for policymakers' deepening anxieties about administering the world. At some moment, 'institutions', including legal ones, became wholly elastic, capable of being imagined as having enough form to be intervened on while being formless enough to adapt to an ever-more complex world.

6.1 Rule of Law Reform: A History of Many Histories

At first blush, historicising rule of law reform offers a powerful complement to a performance analysis of rule of law reformers. As Bourdieu argues, history is inscribed on and produces the professional body. Critiquing Jean-Paul Sartre's sketch of a café waiter's mauvaise foi in Being and Nothingness, Bourdieu writes:

> [T]he agents [in a field]—who do not thereby become actors performing roles—enter into the spirit of the social character which is expected of them and which they expect of themselves (such is a vocation) … The café waiter does not play at being a café waiter, as Sartre supposes. When he puts on his white jacket, which evokes a democratized, bureaucratized form of the dutiful dignity of the servant in a great household, and when he performs the ceremonial of eagerness and concern, which may be strategy to cover up a delay or an oversight, or to fob off a second-rate product, he does not make himself a thing … His body, which contains a history, espouses his function, i.e. a history, a tradition which he has only ever seen incarnated in bodies, or rather, in those habits 'inhabited' by a certain habitus which are called café waiters … He cannot even be said to take himself for a café waiter; he is too much taken up in the job which was naturally (i.e. sociologically) assigned to him (e.g. as the son of a small shopkeeper who needs to earn enough to set up his own business) even to have the idea of such role-distance.[2]

History reaches beneath the skin, offering an account of the conditions of possibility for inhabiting a role – that is, history reveals the evolution of an embodied structure as well as a chronicle of the structural scars of battle that result from agents struggling over the direction of the field.

Unlike the café waiter, however, a rule of law reformer can 'take himself for a [rule of law reformer]' – that is, to know that he is a professional without a clear substance to that profession. He is already seized of the contingency of his profession. What history can be told of such a person?

[2] Pierre Bourdieu, 'Men and Machines' in K. Knorr-Cetina and Aaron Victor Cicourel (eds.), *Advances in Social Theory and Methodology: Toward an Integration of Micro- and Macro-Sociologies* (Boston: Routledge & Kegan Paul, 1981), p. 309 (emphasis added).

Consider some alternative histories to rule of law reform. Histories of ideas about the rule of law are of course numerous and prominent. They tend to encompass Western traditions of the rule of law – including Greco-Roman; common and civil law; Enlightenment and post-Enlightenment political philosophy across the UK, France, and Germany; and modern analytic and Continental philosophy. Some spread further, encompassing non-Western historical and contemporary traditions.[3] These histories range from tracts to synthetic summaries.

Jeremy Waldron argues that the concept, in its social and historical context, is 'essentially contested'.[4] This contest remains when rule of law reform is translated into a history of practices. Dezalay and Garth, drawing on Bourdieu, attempt to recount the history of the field and its contemporary manifestation in their story of the 'palace wars' between human rights lawyers and economic technicians in Latin America. They detail struggles between these actors over the political role of law in their home countries. Dezalay and Garth suggest that the rule of law concretised through the struggles for supremacy between different experts asserting different ideas of what the rule of law meant, drawn predominantly from ideologies prevalent in a few universities in the United States.[5]

Yet not long after their study, Maru provided a different account of rule of law reform's history, demonstrating that social accountability (rather than political contests over the state) was central to rule of law reform's domain. He did not simply argue that rule of law reformers should now engage with social accountability (whatever that might be). He instead takes the reader back to Aristotle and Locke to argue that the rule of law

[3] Arguments in favour of pluralism in our accounts of the rule of law are widespread, as many authors – postcolonial and otherwise – stress the importance of pluralising or provincialising the philosophical parochialism of that oeuvre. Tamanaha summarizes those arguments, after giving a detailed recounting of a history of Western debates on the rule of law: Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004), pp. 1–73. However, actual efforts to provincialise the rule of law are perhaps less widespread. See, for example, Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (Profile Books, 2011); John L. Comaroff and Jean Comaroff, *Civil Society and the Political Imagination in Africa: Critical Perspectives* (University of Chicago Press, 1999); Samuli Seppänen, *Ideological Conflict and the Rule of Law in Contemporary China* (Cambridge University Press, 2016).

[4] Jeremy Waldron, 'Is the Rule of Law an Essentially Contested Concept (in Florida)?'. *Law and Philosophy*, 21:2 (2002), 137.

[5] Yves Dezalay and Bryant Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (University of Chicago Press, 2002).

and social accountability had always been engaged. However, as 'allies unknown', they just didn't know it yet.[6]

Maru's project entails producing a completely new history of rule of law reform to incorporate and focus on social accountability. It is not merely a reinterpretation of shared history but a new record of a wholly different set of ideas, practices and people that can just as easily be rule of law reform as those in Dezalay and Garth. And yet other recountings of the content and history of rule of law reform can be seen in the work of others writing about rule of law reform at the turn of the century in Latin America. Lutz and Sikkink, for example, focus almost exclusively on processes of transitional justice, political impunity, and truth-telling driven by transnational advocacy networks.[7] These incommensurable accounts of the identity and history of rule of law reform can coexist without having to be in conversation with each other.

Contemporary efforts to tell a history of rule of law reform often do two things. They rehash a sketch of rule of law reform's history, frequently beginning with Trubek and Galanter's 1974 piece Scholars in Self-Estrangement, a lament for the failings of the law and development movement of the 1960s and 1970s.[8] This article is a touchstone for many

[6] Vivek Maru, 'Allies Unknown: Social Accountability and Legal Empowerment', *Health and Human Rights*, 12:1 (2010), 83.

[7] Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America', *Chicago Journal of International Law*, 2:1 (2001), 1–33.

[8] David M. Trubek and Marc Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States', W*isconsin Law Review* (1974), 1062–102. Although even this starting point can be bypassed by an alternative history of rule of law reform. Brown, for example, begins his history of rule of law reform itself in colonial times:

> Part of the problem, however, is that … rule-of-law scholars and practitioners alike hold a highly truncated view of their own discipline and its history. For the most part, rule-of-law programming is something imagined to have developed solely in the wake of World War II, and not truly in earnest until at least the late 1980s or early 1990s. The putative lessons to be learned are therefore very short-term ones … Quite absent from [rule of law reform] discussion[s] is the long history of the introduction of laws in colonial and imperial contexts … Many of those same systems remain in place today. There is thus a much longer history to rule-of-law reform than many contemporary scholars would allow.' (Mark Brown, '"An Unqualified Human Good"? On Rule of Law, Globalization, and Imperialism', *Law & Social Inquiry*, 43:4 (2018), 1391–1426, 1393, citations omitted)

Brown does not feel the need to make even a token reference to Trubek and Galanter. They are absent from his history of the field, which revolves instead around Thompson's *Whigs and Hunters*.

histories, marking the 'death' of rule of law reform (from which its theory has never really recovered).[9] Authors then recount an emergence from Trubek and Galanter's ashes of whatever strand of work they are focused on (constitutional reform, property rights, police reform, civil service reform, and so on), often parsed through differently historicised 'waves' of rule of law reform.[10] This is an exercise in creating rule of law reform's history anew, producing fragments that will simultaneously be over- and under-inclusive – with too much focus on IFIs and not enough on the 'microsuccesses' of paralegals and social movements, or too much focus on court reform and not enough on family planning.[11]

Kleinfeld captures this dynamic of historical erasure and reconstruction. She writes about rule of law reform as 'twenty years of … fevered activity toward ambiguous ends' while noting that it is difficult to identify an 'easy start date' for rule of law reform activities, suggesting that we might go as far back as 'the era of Rome, or even ancient Greece' to see how developed countries affected reforms of weaker states, or that we start with the law and development movement of the 1960s or post-Soviet transitions in the 1980s.[12]

[9] In late 2015, the *Law and Development Review* had a special issue attempting to set out 'New Directions for Law and Development Studies', in which '[m]any of the legal scholars contributing to this volume take as their point of departure a reaction to the celebrated 1974 article of David Trubek and Marc Galanter in which they suggested the failure and death of the law and development enterprise in the United States': Colin Crawford, 'Redefining and Analyzing "Development" and the Role and Rule of Law', *Law and Development Review*, 8:2 (2015), 244.

[10] Amichai Magen, 'The Rule of Law and Its Promotion Abroad: Three Problems of Scope', *Stanford Journal of International Law*, 45:1 (2009), 51–115; John Henry Merryman, 'Law and Development Memoirs I: The Chile Law Program', *The American Journal of Comparative Law*, 48:3 (2000), 481–99; Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Carnegie Endowment for International Peace, 2012); Alvaro Santos, 'The World Bank's Uses of the "Rule of Law" Promise in Economic Development' in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge University Press, 2006), pp. 253–300; Jane Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law after Military Interventions* (Cambridge University Press, 2006).

[11] Erik Jensen, 'Postscript: An Immodest Reflection' in David Marshall (ed.), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard University Press, 2014), p. 300; Aparna Polavarapu and Joel Samuels, 'Initial Reflections on an Interdisciplinary Approach to Rule of Law Studies', *Law and Development Review*, 8:2 (2015), 277–92.

[12] Rachel Kleinfeld, 'Competing Definitions of the Rule of Law' in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006), pp. 64, 73. This ability to erase and refound rule of law reform perhaps helps explain why '[a] disproportionate volume of scholarship [exists that] critiques the rule of law industry'. Jensen, 'Postscript', p. 301.

History is enrolled in the ongoing project of remaking and rearticulating the context of rule of law reform and institutional reform more generally. Moreover, so are historians. Woolcock, Szreter, and Rao, in an edited volume arguing for a deeper interaction between historians and development policymakers, suggest that historians are essential to development policymaking. This is because they provide thick accounts of the context and emergence of local institutions with which policymakers wish to engage, in contrast to the thinner accounts of new institutional economics.[13] Not only does an authoritative history of rule of law reform appear impossible; historians and the historical method offer no outside to rule of law reform either.

Rather than try to rescue or rehash such histories, I attempt something different, in line with my understanding of contemporary rule of law reform as an aesthetic phenomenon. I ask: when and under what conditions did rule of law reform emerge as an aesthetic artefact instead of a material, or sociological, or historically embedded one? That is, what were the historical circumstances that led to rule of law reform becoming a continued negotiation of law's autonomy rather than an effort to provide a schematic account of that autonomy?

In doing so, I reflect the efforts of the aesthetic theorists I drew on earlier in the manuscript to understand how and the extent to which art became autonomous in modernity rather than an object of reason or social control. As Bernstein argues, these efforts are yet another attempt to give form to a formless sublime, albeit clothed in historical method:

> [T]ranscendent perspectives approximate in one way or another to the very thing they are attempting to twist free from and overcome. In positing, through whatever means, a history as the specific determinant of our fate they … take up a position outside history and unify it, giving it the very unity and transcendence they are otherwise writing against.[14]

Nevertheless, they emerge from political or ethical commitments on the part of the authors.[15]

[13] C. A. Bayly et al., *History, Historians and Development Policy: A Necessary Dialogue* (Manchester University Press, 2011).

[14] J. M. Bernstein, *The Fate of Art: Aesthetic Alienation from Kant to Derrida and Adorno* (Polity Press, 1991), p. 10.

[15] For example, Bernstein understands Adorno's efforts to historicise art's autonomy as Adorno's ethical commitment: Bernstein, *The Fate of Art*, p. 10. O'Connor, by contrast, suggests that this historicisation (an account of the shift from archaic to modern art) is for Adorno a methodological necessity: Brian O'Connor, *Adorno*, 1st edition (Routledge, 2012), pp. 182–84.

In that vein, I offer this historical excursus as a self-contained intervention. This is not an authoritative account of the historical contingency of the global institutional or political economy that gives rise to rule of law reform. I rather seek to recover a sense of the contingency of the sublime rule of law – in other words, to provide a basis for recognising that the radical contingency of rule of law reform may be a false contingency, in that it is itself not necessary.[16] This, I hope, destabilises the totalising potential of an overextension of my broader argument, which might simply reduce critiques of rule of law reform to tracing its reconfiguration through time by different performers. Instead, I try to trace the emergence of rule of law reform as an aesthetic artefact, whose styles can be engaged with as objects of social-scientific study.

6.2 From a Sociology of Rule of Law Reform to Self-Denying Rule of Law Reformers

I begin with an observation. Something changes in rule of law reform around the late 1990s or early 2000s. I bracket talk of rule of law reform's 'waves', 'fashions', 'movements', and 'moments' for a moment, voluble though it is, and focus on laments. As noted in Chapter 1, contemporary rule of law reform is beset by anxieties about its formal status – is it a profession, a field, a network, a sham? These anxieties manifest themselves in laments about rule of law reform: it is no field, has no coherent programme to speak of, has no professional norms, and so on. Laments then offer some suggestions for the formal organisation of reform: 'a set of ABCs',[17] an increased investment in knowledge and training, and so on.

Garth puts his lament in a temporal context:

> All this activity, however, comes with a strong current of disappointment [citation omitted]. We are trying hard, but the results are not what we had hoped. So far this disappointment is attributed mainly to the relative immaturity of the field, implying that we need more practice and more learning.[18]

[16] Susan Marks, 'False Contingency', *Current Legal Problems*, 62:1 (2009), 1–21.

[17] Amanda Perry-Kessaris, 'Introduction' in Amanda Perry-Kessaris (ed.), *Law in Pursuit of Development: Principles into Practice?* (Routledge, 2009), p. 4.

[18] Bryant Garth, 'Building Strong and Independent Judiciaries through the New Law and Development: Behind the Paradox of Consensus Programs and Perpetually Disappointing Results', *DePaul Law Review*, 52:2 (2002), 384.

For Garth, if rule of law reform is a field, it is a field of stasis, not struggle; of history repeated, not accreted; of reproduction, not learning. Yet in another sense – Garth's suggestive use of 'immaturity' when describing the field – we are presented with the beginnings of a story of its transformation, a story not of the evolution (or otherwise) of rule of law reform as a series of disjointed practices or interventions but of the emergence of a profession.

Garth draws a sharp distinction between the 'old' law and development of the 1960s and 1970s and the 'new' one of the 1990s. In his view, the former was the product of a series of conversations between 'lawyers and developers' (in Trubek and Galanter's terms).[19] The latter, by contrast, achieved consensus among a range of transnational actors from different disciplines – economists, political scientists, lawyers, and development practitioners – around 'reform and the legal approaches identified with the United States, including the core idea of a strong and independent judiciary'.[20] Dezalay and Garth expand on this point, suggesting that (rule of) law reform became a field in which actors from different disciplines (particularly 'gentlemen lawyers' and economic 'technopols') brought the political, social, cultural, and intellectual capital that their backgrounds and disciplines afforded them in order to struggle for position.[21] In their story of the field, we would understand the turns to the rule of law as a facet of governance and development, of democracy promotion and human rights, and of state-building as different vernaculars in which participants in the rule of law field might seek to implement this 'consensus' in national contexts.[22] From the 1950s to the 1990s, we might understand contests over rule of law reform sociologically, that is, as struggles over the range and influence of disciplines orbiting around a core set of ideas: from lawyers and developers, to comparative lawyers and human rights practitioners, to (new institutional) economists and political scientists.

However, today this story seems to have been inverted: in place of disciplines orbiting a set of ideas, we now see a self-articulated rule of law profession confronting its core lack of ideas about the rule of law. Take David Trubek's forty-year retrospective on Scholars in Self-Estrangement. He argues that the article did not kill law and development efforts. Rather,

[19] Trubek and Galanter, 'Scholars in Self-Estrangement', p. 1066.
[20] Garth, 'Building Strong and Independent Judiciaries through the New Law and Development', p. 385.
[21] Dezalay and Garth, *The Internationalization of Palace Wars*, pp. 17–30.
[22] Dezalay and Garth, *The Internationalization of Palace Wars*, pp. 163–86.

'disappointment with initial results, the loss of key supporters in [development] agencies, and the emergence of new 'hotter' alternative agendas … really led to the decline'.[23] Law and development's resurgence in the 1990s was driven by on the one hand a resurgence in money ('L & D bec[ame] big business'[24]) and on the other hand an intellectual pluralisation (Trubek pinpoints the entry of economists in particular into law and development efforts as a stimulus for their revivification[25]). As for 'twenty-first-century law and development',[26] Trubek argues that funding persists, while the 'field' is now marked by 'proliferation and fragmentation' of ideas and practices.[27] This fragmentation was generated by

> [a] strong critical tradition … sparked by scholars from the developing world. The discussion of the role of law in development was influenced by other trends in the social sciences. These provided support for a move away from one-size-fits-all recipes based largely on stylized accounts of US and UK experiences … At the same time, the concept of development expanded to embrace social and political dimensions and even the rule of law itself. This meant that law and development overlapped not only with law and economics but with other academic traditions including human rights, feminist legal theory, critical theory, and social welfare law. Indeed, by the dawn of the twenty-first century, law and development was becoming as much – if not more – a component of other academic movements and subfields as it was a free-standing enterprise of its own.[28]

It is hard to discern any sort of core to law and development here. Certainly, we have come a long way from a conversation between lawyers and developers. It is no longer clear what role there is for lawyers as distinct from a generic social scientist.

Trubek thus remarks on the twin dynamics of increased funding and fragmenting intellectual trends but does not go further and connect the two. If we do so, we might contextualise the figure of the professional rule of law reformer: someone who can mobilise and dispense funds while inhabiting many areas of development concern. Garth's strong sense of ideational consensus has been replaced by the idea that 'we know how to do a lot of things, but deep down we don't really know what we are doing',

[23] David M. Trubek, 'Law and Development: Forty Years after "Scholars in Self-Estrangement"', *University of Toronto Law Journal*, 66:3 (2016), 310.
[24] Trubek, 'Law and Development', p. 312.
[25] Trubek, 'Law and Development', pp. 311–12.
[26] Trubek, 'Law and Development', p. 316.
[27] Trubek, 'Law and Development', pp. 322–26.
[28] Trubek, 'Law and Development', p. 314.

even as we can speak of 'rule-of-law aid practitioners' implementing the significant increase in aid allocated to the rule of law.[29] It is this change on which I focus: alongside or within a sociological understanding of the rule of law, the emergence of an aesthetic one, through a profession that specialises in 'other academic movements and subfields' as much as their own, that produces their own incommensurable histories based on those encounters, and, in doing so, that creates the foundations to keep accessing resources and operationalise those encounters.

6.3 A History of the Free-Floating Institutional Reformer

I argue that this type of professional rule of law reformer emerged in the late 1990s or early 2000s in response to one continuity and three changes in aspects of development thinking and practice:

(1) the history and role of law in development continuing to express a profound concern with administering a complex world – like its global economy, or collective memory, or violence, or whatever else development policymakers might care about. This might be understood as identifying a political sublime, and thus making the struggle to give it form and administer it the salient political terrain for global governance;
(2) the fragmentation of the available forms of the administration of human affairs, in the global shift from government to governance;
(3) a resultant conceptual change with regards to 'institutions', from an essential means of giving form to global political sublimes, to a sublime in itself; and
(4) given other means of giving form to institutional sublimes (such as scientific knowledge) are themselves institutional effects, a new effort to give form to institutional sublimes in institutional terms – simultaneously imagining institutions as elastic enough to express 'governance' or the 'rule of law' while concrete enough to be the object of intervention.

I am arguing, in essence, that the tension in point (4) eventually surpassed the ability of a field (or other forms of institutionalised social organisation) to contain it. Institutions can now be imagined as free-floating and potentially existing anywhere and anywhen (a formless object or administrative

[29] Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006), p. 15.

sublime in development policymaking). The tension between elasticity and concreteness was instead inscribed into the person of the individual reformer as a means of maximising the elasticity of governance or the rule of law (through expressions of ignorance) while retaining its concreteness (in the reformer's body).

I begin with the simple notion that ideas about law in development express various concerns with the ordering of society. It is a description of social and political order, refracted through the practice of governance (rather than, say, declarations of constitutional and legislative frameworks).[30] David Kennedy, in his historical survey of law and development ideas since the 1950s, thus argues:

> We might think of development policy asking two sorts of questions of law and legal theory: instrumentally, how can I translate my policy objectives into action, and what limits must I observe in doing so?[31]

We might add to this 'how can I translate my ideas into policy objectives and what limits must I observe?'. This is because law is central to articulating and prioritising development problems – whether a disparate group of scholars and activists interested in human rights and conflict choose to articulate their institutional programmes in the legal terms of transitional justice, or the international community uses humanitarian law to pinpoint a deficit in the administration of violence in a place, or local elites capture a constitution-drafting process to ensure specific economic and social objectives are reflected in the text, and so on.

The second part of my argument draws on another simple notion: that if the history of law in development tracks the currents and eddies of broader concerns with administration in development, then that history will be entangled with shifting attitudes and fashions towards the state in development thinking. Too much has been written on the place of the state, and state law, in development to fruitfully recap it here. From the 1950s to 1970s, the state was either the naturalised unspoken context or explicit foreground assumption for the effectiveness of the work of development policymakers. Hirschman's Hiding Hand, for example, sketches

[30] See generally World Bank, *World Development Report 2017: Governance and the Law* (World Bank, 2017); Kim Lane Scheppele, 'Administrative State Socialism and Its Constitutional Aftermath' in Susan Rose-Ackerman and Peter L. Lindseth (eds.), *Comparative Administrative Law* (Edward Elgar Publishing, 2010).

[31] David Kennedy, 'The "Rule of Law," Political Choices, and Development Common Sense' in Alvaro Santos and David M. Trubek (eds.), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press, 2006), p. 103.

out an ideal of the evolving and adaptive planning process. The evolution of a plan rests on the adaptive capacities and risk-taking appetite of the policymaker as well as the stock of knowledge available to him. Hirschman makes absolutely no mention of laws and institutions: the development policymaker is already in place, authorised by, and held accountable to an institutionalised relationship between the state and development bank.[32]

Trubek and Galanter, by contrast, are much more explicit in using law as a vehicle for attitudes towards the state. They problematise their own past ethnocentric assumptions that state law is both good and functional law. They suggest that law in theory has an important functional role to play in promoting development, but the right combination of actors may never be found to realise it. Indeed, law may always be turned to undesirable ends by actors more immediately situated in the local legal context. At the same time, the authors give a short but potent paragraph on 'the possible irrelevance of law':

> Let us look first at the assumption of legal potency. The normative underpinnings of liberal legalism rested in part on the assumption that law reform could promote development, and that investments in the improvement of legal systems would yield high developmental payoffs. But experience has shown that law may have little effect on society.[33]

Trubek and Galanter then immediately dismiss this possibility: the subsequent paragraph discusses the potential 'badness' of the law (i.e., its instrumentalisation and capture by local actors). Law thus continues to mean something. Force is organised into some form of stateness, which is occupied and controlled by some local actors to administer their polity. That form is simply non-Eurocentric and not easily legible to interfering outsiders.

By contrast, come the 1980s, development policymakers were increasingly cognisant of the administrative limits of state laws and institutions. The causes of this are manifold. Rather than survey them, I simply want to emphasise here that policymakers' attitudes towards the state's limitations were not simply dismissive of state bureaucrats or hostile to its institutions. The 1981 *World Development Report* evinces a deep anxiety on the part of the World Bank about the complexity and effects of

[32] Albert O. Hirschman, 'The Principle of the Hiding Hand', *The Public Interest* (Winter 1967), 10.

[33] Trubek and Galanter, 'Scholars in Self-Estrangement', p. 1083.

the globalisation of financial capital. The Report summarises the central development legacies of the 1970s thus:

> [T]he 1970s may be remembered for giving a new shape to the world economy. This is not the product of the search through negotiation for greater equality of economic opportunity among nations which the developing countries have pursued; little progress has been made along that route. Rather, what has evolved is a different pattern of economic power, with new centers of production, finance and trade, and new forms of interdependence.[34]

In the history of the then-present sketched by the Report, the cumulative effect of global dependence on oil as a motor for industrialisation – and the volatility in oil prices during the decade – was the development of complex new financial instruments to realise and recycle oil profits, as well as to manage exposure to price movements in this essential commodity. The 'different pattern of economic power' was thus financial in nature:

> Slow growth and fast inflation in the industrial countries, major increases in oil prices, the breakdown of the fixed-exchange-rate system, the changing pace and character of international trade (with its acute contrast between the rapid export growth of manufactures and the much slower growth of exports of primary commodities), the steep rise in the flow of commercial bank loans to developing countries.[35]

This global challenge required a solution beyond the state. 'Developing countries have to adjust to new circumstances; their effectiveness in doing so depends critically on their domestic management as well as on the industrial and oil-exporting countries' domestic and international policies'.[36] Indeed, industrialised countries offered no model.[37] We can see the contours of the idea of a global regulatory system here. And yet, the Report notes, developing countries were no equal participants, and their policymakers were in a tough spot:

> The developing countries' [space for policy] adjustment [to the vagaries of globalized finance] is more constrained: they depend heavily on the growth and openness of industrial-country markets for their exports and on the aid and credit institutions of the industrial countries for their external financial needs. The main force of world growth still flows from the developed to the developing world, even if today the new trade and

[34] World Bank, *World Development Report 1981* (World Bank Publications, 1981), p. 7.
[35] World Bank, *World Development Report 1981*, p. 1.
[36] World Bank, *World Development Report 1981*, p. 1.
[37] World Bank, *World Development Report 1981*, pp. 1–4.

> financial links make the transmission of economic activity in the reverse direction ever more important.[38]

The Report is not trying to articulate a justification for the disciplining of a deviant or inefficient public sector. The Report is concerned – somewhat sympathetically – with making the case for transnational and international responses to the development challenges posed by globalised finance.

This is no momentary anxiety. The 1989 *World Development Report* repeats similar themes, albeit with a narrower focus on financial systems and development.

> In the past, governments have allocated credit extensively. In a world of rapidly changing relative prices, complex economic structures, and increasingly sophisticated financial markets, the risk of mismanaging such controls has increased. Many countries could allocate resources better by reducing the number of directed credit programs, the proportion of total credit affected, and the degree of interest rate subsidization.[39]

The Report argues that this complex systemic challenge requires interconnected but heterogeneous policy solutions, cognisant of the capacities and limitations of developing countries:

> Most developing countries have a long established informal financial sector that provides services to the non-corporate sector households, small farmers, and small businesses. Although family and friends are usually the most important source of credit, pawnbrokers provide a substantial amount of credit to those with marketable collateral, and moneylenders to those without … The scale of lending is small, the range of services is limited, markets are fragmented, and interest rates are sometimes usurious. Nevertheless, these institutions help clients that formal institutions often find too costly or risky to serve. Some countries have recognized this and have established programs to link informal markets more closely with formal markets.[40]

Both *World Development Reports* suggest that development policymakers' encounters with the limits of the state in the 1980s were not the product of anxieties about public administration but about administration writ large (formal markets and informal markets, central banks and pawnbrokers) – that is, social ordering in the face of the power and complexity of global capital.[41]

[38] World Bank, *World Development Report 1981*, pp. 2–3.
[39] World Bank, *World Development Report 1989* (Oxford University Press, 1989), p. 3.
[40] World Bank, *World Development Report 1989*, p. 4.
[41] Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press, 2017), pp. 251–57, 262–74.

This anxiety reflects a specific current of thought and policy from the 1970s to the 1990s, which was concerned with theorising and implementing a global welfare project that relied on institutional change – that is, a global governance project. Its core contention was to understand the global economy as a sublime, and its core concern was how to administer it or give that sublime a form:

> [B]y the end of the 1930s [… early neoliberal thinkers] concluded that the world economy was sublime, beyond representation and quantification. This conclusion turned them away from the documentation and analysis of the economy as such and toward the design of institutions necessary to sustain and protect the sacrosanct space of the world economy.[42]

This concern was predicated on a strong sociological and epistemological critique of scientific knowledge and planning. For example, drawing on the perspective of complex systems, Hayek analogised his aspirations for economic governance to the conditions for emergent phenomena in natural complex systems – say, creating the laboratory conditions through which atoms might arrange themselves into a crystalline form.[43] Institutions were to be the instruments guaranteeing the insulation of the market from political interference, such that information could effectively and efficiently be transmitted through the medium of price signals, and in response people might spontaneously arrange their economic activity to crystallise maximum welfare.

The institutional project was fundamentally and overtly political. As reflected in the *World Development Reports* of the 1980s, the state form was no longer considered adequate to administer the sublimely complex economy. To give institutional form to that sublime, one would have to reach within and beyond the state to create adequate institutional arrangements. This

> would have to be a project of redesigning the state and, increasingly after 1945, of redesigning the law. The essence of this project was multitiered governance or neoliberal federalism. In the wake of the mystification of the world economy, the […] most important field of influence was not in economics per se but in international law and international governance.[44]

[42] Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018), p. 18.
[43] F. A. Hayek, *Law, Legislation and Liberty, Volume 1: Rules and Order* (University of Chicago Press, 1973), pp. 39–40.
[44] Slobodian, *Globalists*, p. 18.

If there must be technicians in the world, let them be institutional ones.

Thus, if the fantasy of the sublime of the state had been a 'deus ex *machina* [… consisting of] a prescient bureaucracy independently moving the levers of government',[45] the 1980s evinced the need for a new fantasy. As has been well-established, the fantasy of the state was 'hollowed out' as government gave way to governance.[46] The state and state law were no longer a precondition for, but became a challenging object of, administration, to be built from the ground up when the situation, and the exigencies of markets, demanded.[47]

Thus, following the collapse of the Soviet Union and '[c]rises in Bosnia, Rwanda, Kosovo, East Timor, and Sierra Leone',[48] an 'explosion of rule-of-law assistance'[49] – potentially 'a neocolonialist or neoimperialist enterprise'[50] – was 'designed to rebuild (or at times build up from scratch) legal institutions, restore functioning governments, provide accountability for abuses and war crimes, and permit gradual economic recovery'.[51]

Stromseth, Wippman, and Brooks – former American defence and foreign affairs policymakers writing as chastened liberal interventionists post-Iraq and post-Afghanistan – reflect on this shift:

> Until the mid-1990s, rule of law assistance generally involved aid packages designed to encourage governmental law reform initiatives undertaken by indigenous authorities and to support law-related NGOs. In recent years, however […] there have been more and more situations in which the United States, UN, and other key actors […] have ended up wholly or partially administering a society in crisis.[52]

[45] Charles F. Sabel, 'Learning by Monitoring: The Institutions of Economic Development' (Center for Law and Economic Studies, Columbia University School of Law, 1993) Working Paper 102, 27, https://charlessabel.com/papers/Learning%20by%20Monitoring.pdf, accessed 24 August 2022.

[46] R. A. W. Rhodes, 'Understanding Governance: Ten Years On', *Organization Studies*, 28:8 (2007), 1243–64; R. A. W. Rhodes, 'The Hollowing Out of the State: The Changing Nature of the Public Service in Britain', *The Political Quarterly*, 65:2 (1994), 138–51.

[47] The subject of the 1997 *World Development Report* was on how to reimagine the forms and functions of the state to keep pace with a 'changing world' of global flows: World Bank, *World Development Report 1997: The State in a Changing World* (Oxford University Press, 1997).

[48] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, p. 62.

[49] Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Carnegie Endowment, 2011), p. 165.

[50] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, p. 64.

[51] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, p. 62.

[52] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, p. 63 (citations omitted).

Concerns with administration were thus disentangled from the state to the extent that policymakers might decide to build – or ignore – a state. State-backed law was no longer a container or repository for broader anxieties about administration; it became a further source of those anxieties. The rule of law provided no fantasy template of a fantasy state, never to be reached but constantly to be desired. It became instead a means of articulating the complexity of governance. Stromseth, Wippman, and Brooks again: 'If most rule of law projects so far have been disappointing, we think it is in part because of the sheer (yet often underappreciated) complexity of the task'.[53]

The third part of my argument thus suggests that the idea of institutions emerged in practice as an alternative object to the state to contain policymakers' anxieties about administration. The various intellectual, practical, ideological, and material currents leading to the primacy of institutions have been well-canvassed. I seek neither to rehash them nor to take a position on the particular conception of institutions that may or may not have emerged as hegemonic. I simply remark on the work the term was and is called on to do with respect to administration. As the World Bank argued in 2002, reflecting on its reform experience in the 1980s and early 1990s,

> [Our] experience suggested that reform efforts could not stop with policies designed to shrink the state and liberalize and privatize the economies [… Rules] had to be established first and institutions capable of regulations also needed to be established. It turned out that a lack of attention to institutions generally, especially legal ones, placed substantial limits on the reforms as a means to promote economic development and poverty reduction.[54]

Writing of the evolution of governance reform, the OECD notes of the early 2000s that

> [T]his was the period in which a 'typical' governance practitioner was no longer a specialist in public finance, elections, rule of law or capacity development – but more likely a political scientist, hopefully with a good knowledge of all of the above. Certainly by the close of the decade the debate had also brought an epiphany that Weberian concepts of governance could be a hindrance. Indeed perhaps non-Weberian systems work better than

[53] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, p. 69.

[54] World Bank Legal Department, 'Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency', The World Bank (31 July 2002), 17–18, https://documents1.worldbank.org/curated/en/639721468028843406/pdf/multi0page.pdf, accessed 24 August 2022.

> anybody had realised – enabling a management of power that served the purposes of the leaders involved (if not necessarily those of their people). Ideas of neopatrimonial development now made sense.[55]

Institutions might be needed not just because the state could not manage or would be antithetical to the governance of a sublime economy but because it might (also) fail to regulate or establish a monopoly over violence, or to govern complex and contradictory political preferences through elections, and so on.

From both the World Bank and OECD's experiences, it may be that this proliferation of the possible forms and functions of institutions could be understood as an effect of the results of the Washington Consensus-era efforts to reform institutions – a realisation through practice that institutions themselves are radically complex and sublime. I am cautious in this claim as there is limited historical scholarship on the particular ways in which such governance reforms were applied globally.[56] But whatever the specific cause, we might say that institutions came to stand in for administration, not necessarily tethered to government – in other words, institutions themselves came to be understood as complex or sublime.

And in such a view, law becomes a way of talking about institutions, although policymakers have remained ambivalent about the particular and distinctive characteristics of law ever since. Returning to Stromseth, Wippman, and Brooks:

> '[P]romoting the rule of law' is an issue of norm creation and cultural change as much as an issue of creating new institutions and legal codes[…]
>
> [The rule of law] is adaptive and dynamic in that it aims to build upon existing cultural and institutional resources for the rule of law and move them in a constructive direction, but it recognizes, at the same time, that the rule of law is always a work in progress, requiring continual maintenance and reevaluation.[57]

Here, the rule of law is everything: culture and norms and institutions; it comes to express as well as restrain 'existing cultural and institutional resources'.

We might understand the absence of boundaries to this notion of institutions as follows: where previously institutions were a means of giving simple form to other complex sublimes, here, institutions are self-reflexive,

[55] Alan Whaites, 'Memo to Lucy' in Alan Whaites et al. (eds.), *A Governance Practitioner's Notebook: Alternative Ideas and Approaches* (OECD, 2015), p. 22.

[56] Liat Spiro, 'Global Histories of Neoliberalism: An Interview with Quinn Slobodian – Toynbee Prize Foundation', https://toynbeeprize.org/posts/quinn-slobodian/, accessed 24 August 2022.

[57] Stromseth, Wippman, and Brooks, *Can Might Make Rights?*, pp. 75, 80.

giving form to the sublimity of institutions themselves. In other words, Stromseth, Wippman, and Brooks might be trying to articulate institutional sublimes in institutional terms – and concomitantly, cannot reach outside institutions to find an authoritative way of talking about them.

Thus, fourth, I argue that a recognition of institutions as complex has led to two forms of elasticity through which policymakers express anxieties about administration. The first is elasticity in the term 'institutions', and the second is elasticity in the relationship between 'institutions' and the rule of law (and thus governance reform and rule of law reform). That 'institutions' have no clear meaning in development practice is well-established. Jütting, in a review of the term for the OECD, argues that

> [T]he literature has not settled on an overall accepted definition of institutions. Quite divergent definitions and concepts of 'institutions' are given, ranging from the narrow definition proposed by Douglas North—i.e. rules and norms that constrain human behaviour—to definitions that include organisational entities […] The impact of social norms, values and traditions on the current governance structure and vice versa is one of the important questions [for development research].[58]

As a consequence, Portes and Smith point out that there is

> [A] state of confusion about the definition of the concept itself. [North offers] a vague definition that encompasses everything, from norms introjected during the socialization process to physical coercion. From this statement, all that can be said is that institutions exist when something exerts external influence over social actors, exactly the same notion that Durkheim termed 'norms' more than a century ago. In the current institutions and development literature, we encounter quite different theoretical and operational definitions – ranging from laws to safeguard property rights to meritocratic bureaucracy to actual organizations like central banks.[59]

For Chang, such definitional incoherence leads to significant endogeneity problems when trying to conceive of institutions in development. At some level, development is now institutions is now development.[60] This offers some context for a contemporary pluralisation and fragmentation of

[58] Johannes P. Jütting, 'Institutions and Development: A Critical Review' (OECD Publishing, 2003), 210, 9–10 https://ideas.repec.org/p/oec/devaaa/210-en.html, accessed 24 August 2022 (citations omitted).

[59] Alejandro Portes and Lori D. Smith, 'Institutions and National Development in Latin America: A Comparative Study', *Socio-Economic Review*, 8 (2010), 586 (citations omitted).

[60] Ha-Joon Chang, 'Institutions and Economic Development: Theory, Policy and History', *Journal of Institutional Economics*, 7:4 (2011), 473–98.

methodological orientations in development practice: the ability to turn to new institutional economics, behavioural economics, sociology and political science, history, film, and literature – as the circumstances demand – is a means of containing, filleting, and reframing this endogeneity.[61]

This is in turn reflected in rule of law reform. Just as institutions are conceptually elastic in practice, so is the distinctiveness and autonomy of the rule of law from mere institutionhood. As Tamanaha points out,

> Legal institutions and cultural attitudes toward law exist inseparably within a broader milieu that includes the history, tradition, and culture of a society; its political and economic system; the distribution of wealth and power; the degree of industrialization; the ethnic, language, and religious make-up of the society (the presence of group tension); the level of education of the populace; the extent of urbanization; and the geo-political surroundings (hostile or unstable neighbors) – everything about a particular society matters.[62]

This provides some context for the intellectual fragmentation in rule of law reform on which Trubek remarked.[63]

Other vocabularies arose in the 1990s to provide elastic ways of speaking about administration, most notably 'networks' (of new governance) and 'indicators' (of the new public management). They achieved no small degree of success, and their legacy persists. Yet the indicator has come under attack for being an overdetermined epistemological technology of governance and the network for being an overdetermined social technology of the same.[64] I do not dismiss their importance here; I simply suggest that 'institutions' and the 'rule of law' have emerged as an extremely robust, and circular or self-reflexive, contemporary means of expressing anxieties about, or framing as complex and sublime, administration in global governance.

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[61] World Bank, *World Development Report 2011: Conflict, Security, and Development* (World Bank, 2011); World Bank, *World Development Report 2015: Mind, Society and Behavior* (World Bank, 2015); Bayly et al., *History, Historians and Development Policy*; David Lewis, Dennis Rodgers, and Michael Woolcock, 'The Fiction of Development: Literary Representation as a Source of Authoritative Knowledge', *The Journal of Development Studies*, 44:2 (2008), 198–216; David Lewis, Dennis Rodgers, and Michael Woolcock, 'The Projection of Development: Cinematic Representation as A(nother) Source of Authoritative Knowledge?', *The Journal of Development Studies*, 49:3 (2013), 383–97.

[62] Brian Tamanaha, 'The Primacy of Society and the Failures of Law and Development', *Cornell International Law Journal*, 44:2 (2011), 214.

[63] Trubek, 'Law and Development', pp. 322–26.

[64] Davis et al., *Governance by Indicators: Global Power through Classification and Rankings*; Amy Cohen, 'Negotiation, Meet New Governance: Interests, Skills, and Selves', *Law and Social Inquiry*, 33:2 (2008), 501–62.

It is against this backdrop that I remark on the emergence of a group of self-denying rule of law reformers. My own career has spanned some of its evolution. I argue here that the contemporary moment – at least since the early 2000s – has been marked by a proliferation of the aesthetic rule of law reformer, as well as efforts to discipline and organise her.

Some rule of law reformers, of course, simply adopt their particular method, idea, or niche as a means of orienting themselves within their increasingly elastic professional domain. They draw on pre-constituted articulations of the rule of law. Or they understand institutions as belonging to some functional silos or semi-autonomous domains and choose to work on those. Or they understand rule of law reform as a function of local elite agendas, or global flows of aid money, or efforts by rule of law reformers to make themselves marginal to mainstream development practice. And so on.

But others contain this elasticity in themselves, embodying it and enacting it through radical recursive self-questioning. When exactly they came to be is impossible to tell, for their existence erases the possibility of their history. As noted earlier in the chapter, they always already have multiple and incommensurable histories, in a field that does not progress beyond first-order questions. It is, however, plausible that their history begins and ends at the End of History, whether Fukuyama's, or the emerging market sovereign debt crises of the 1990s, or some other singularity.

6.4 Conclusion

This chapter has grappled with the possibility that a historical account of rule of law reform might provide both context and insight into reformers' own attempts to radically critique rule of law reform. I have made two arguments. The first is methodological: reformers' ignorance about the rule of law makes it impossible to conduct an authoritative historical sociology, genealogy, or historicised immanent critique of reformers. The second is historical: I have offered an historical account of rule of law reform but framed it as a specific and standalone political intervention. I argue that a standalone profession of ignorant rule of law reformers emerged in the late 1990s or early 2000s, when development ideas about the form and function of institutions shifted from a neoliberal understanding of institutions as a means of giving form to the sublime complexity of the world, to being a complex sublime themselves. The following chapter sociologises these insights. It begins not with rule of law reform or its reformers as an object of sociological study but with the production and disciplining of its aesthetic, or orientation towards the sublime complexity of institutions, along with its social form.

7

The Sociology of Rule of Law Performers

> What figure of us think you he will bear?
> For you must know, we have with special soul
> Elected him our absence to supply,
> Lent him our terror, dress'd him with our love,
> And given his deputation all the organs
> Of our own power
>
> —*Measure for Measure*, I. i. 17–22

In this chapter, I consider efforts to imagine – and perhaps try to produce – ignorant experts as part of some sort of social form. The form might be more or less loose – a group of brokers and translators, a network, a community of practice, a social movement, a field, and so on. These efforts are also organised around socialising a style of reform, or an imagined relationship between ignorance and implementation work. These efforts thus limit the use of ignorance work, frame the horizons of ignorance claims, denote preferred types of ignorance and implementation work, and produce relationships between the two.

There are many such efforts. They range from the imagined 'wear[y]' and 'cynical' solo practitioner exasperated with the knowledge 'that next year they may well have to adapt again to the latest fad' that papers over the empty spaces where rule of law should be (here, ignorance work is in a relation of non-relation to implementation work); to her imagined cousin, the solo practitioner committed to ongoing 'critical reflection and learning' about the rule of law (here, ignorance work and implementation work are coterminous and coextensive); to her imagined foil, the zealous normative or technical missionary for the rule of law, altogether committed to her institutional mandate (here, implementation work subsumes ignorance work); and beyond.[1]

[1] Craig Valters, 'Theories of Change in International Development: Communication, Learning, or Accountability?' (London School of Economics, 2014), JSRP Paper 17, 4, 18–19, https://assets.publishing.service.gov.uk/media/57a089c5ed915d3cfd00040a/JSRP17.Valters.pdf, accessed 21 August 2022.

These efforts appear to me to be as yet inchoate – they seem to have a quality of perpetual emergence and not-quite-consolidation, perhaps unsurprisingly given their subject matter. I focus in this chapter on 'problem-driven iterative adaptation' (PDIA) as a specific effort to systematically organise and contain expert ignorance. I argue that the politics of PDIA lies in how it categorises legal questions or problems as more or less open-ended and contingent on extra-legal context, or more or less technical and closed. This is ultimately an attempt to shape the ongoing negotiation of the extent to which law is autonomous to politics.

PDIA, and other efforts like it, are not concerned with substituting or replacing law-giving sovereigns (with experts, for example). Rather, through expert ignorance, they recognise and reinforce the absence of the sovereign through a foundational act of self-denial and then cobble polities, governors, and governance together in an ad hoc fashion as the circumstances demand. At the same time, they are attempts to discipline and organise that ad hoc-ery. PDIA, for example, attempts to get reformers to continually redraw the law/politics divide and to do so in certain places and in certain ways, structuring polities, governors, and governance. It does so through a mode of social organisation that tries to influence reformers' styles or sensibilities – that is, how they might relate ignorance and implementation work. This, in turn, negotiates experts' social relationships with other domains of development.

To summarise: in previous chapters, I have argued that a performance analysis of action reveals the forms and autonomy of law emerging out of specific reforms. This can now be coupled to a sociological study of how reformers arrange themselves to be ignorant, ask questions, and structure contingency. In this chapter, I show the sociological relevance of PDIA projects, and terms of reference to hire rule of law reformers within development agencies: such arrangements shape and limit the legal and political consequences of rule of law performances, as well as the relationship of ignorant experts to the broader apparatus of development policy and practice. This opens these objects up to social scientific study (for example, through qualitative observation).

7.1 Problem-Driven Iterative Adaptation

Picking up where the previous chapter left off, it is my sense that the contemporary moment has been marked by a proliferation of the rule of law performer. Her means: a predilection for that self-questioning, coupled

with a ferocious and tenacious instrumentalism. She might ask what the problem is (and how do we know?) and whether we can do anything about it (and how can we tell?). Or as Jackie would remind me for as long as I have worked with her: 'As if there is something like "rule of law"… Start with the problem, see what you need' and then work out what you can do. In Jackie's comments, we can see a version of Fischer-Lichte's openness (what is the problem?) and materiality (what, concretely, can we do?) coming together in a performance.

Today, we can see efforts to socially organise, frame, and discipline reformers' self-questioning and their reform efforts. I focus here on PDIA, which has been influential on my work and will appear in subsequent chapters. PDIA and similar approaches have generated much academic and policy literature as well as donor action. They have shaped donor policies, programmes, and the allocation of funds: tens of millions of dollars of development aid from Britain and Europe have been spent using these approaches.[2]

The key theorists of PDIA are Matt Andrews (a public administration specialist), Lant Pritchett (a former but long-time World Bank economist), and Michael Woolcock (a World Bank sociologist) – henceforth APW. APW are professors at the Harvard Kennedy School with long-standing relationships with the World Bank and other leading aid agencies. They place themselves as inheritors of a long line of pragmatic thinking since the 1950s:

> In recent decades, a long line of venerable thinkers—Charles Lindblom in the 1950s, Albert Hirschmann [sic] in the 1960s and 1970s, David Korten in the 1980s, Dennis Rondinelli in the 1980s and 1990s, 'complexity' theorists in recent years (among others)—have argued [as we do] for taking a more adaptive or experimental approach to engaging with vexing development challenges.[3]

Andrews has engaged directly with ignorance and makes explicit the place that it takes in his vision of development practice. He frames and shapes ignorance by typologising it analytically: there are, in his telling, six 'types' or 'degrees' of 'unknowns' for development policymakers to

[2] Richard Sannerholm, Shane Quinn, and Andrea Rabus, 'Responsive and Responsible: Politically Smart Rule of Law Reform in Conflict and Fragile States' (Folke Bernadotte Academy, 2016).

[3] Matt Andrews, Lant Pritchett, and Michael Woolcock, *Building State Capability: Evidence, Analysis, Action* (Oxford University Press, 2017), p. 1. They go into more detail about this inheritance at pp. 135–36.

grapple with.[4] He goes on to argue how only some of them are amenable to existing forms of what I have called implementation work – 'plan and control policy processes', in his terms.[5] The rest, he suggests, must be embraced in their unknowability: 'Ignoring our ignorance and pretending we know what we do not know may help us define and sell a project or policy today, but it will also ensure we are still working on the same policy challenges in years to come'.[6] In this vein, they want to think about action and its relationship to the limits of knowledge.

APW's contribution to this inheritance is to 'suggest that the ingredient missing from previous efforts has been the failure to mobilise a vibrant social movement of citizens, researchers, and development practitioners in support of the necessary change'.[7] Theirs is thus expressly an organisational and political project to shape the place of ignorance in development practice. This makes PDIA a useful object of analysis for my purposes, as APW seeks to give form to the formless object of expert ignorance while respecting its formlessness. More specifically, APW see themselves as building a movement to innovate responses to the practical and social challenges of institution building.

They take the following basic approach:[8]

(1) they aim to solve particular problems in particular local contexts, as nominated and prioritised by local actors, via
(2) the creation of an 'authorising environment' for decision-making that encourages experimentation and 'positive deviance', which gives rise to
(3) active, ongoing, and experiential (and experimental) learning and the iterative feedback of lessons into new solutions, doing so by
(4) engaging broad sets of agents to ensure that reforms are viable, legitimate, and relevant – that is, they are politically supportable and practically implementable.

They seek to sustain momentum and political commitment towards a goal while keeping open the space to constantly reinterpret and revise that goal (in their terms, they 'iterate' between action and deferral).

[4] Matt Andrews, 'Getting Real about Unknowns in Complex Policy Work', (Harvard Kennedy School, 2022), CID Faculty Working Paper 406, pp. 16–19.
[5] Andrews, 'Getting Real about Unknowns in Complex Policy Work', pp. 6–12.
[6] Andrews, 'Getting Real about Unknowns in Complex Policy Work', p. 23.
[7] Andrews, Pritchett, and Woolcock, *Building State Capability*, pp. 1–2.
[8] Matt Andrews, Lant Pritchett and Michael Woolcock, 'Escaping Capability Traps through Problem Driven Iterative Adaptation (PDIA)', *World Development*, 51:C (2013), 237.

The substance of PDIA work is thus to reconfigure the temporality of institutional reform, by deciding how quickly to iterate, and, in each iteration, to reassess whether to go fast or slow. It is also to reconfigure the spatiality of reform, by deciding in each iteration exactly where the problem is, where the solution might reside, and how to link the two (for example, by beginning with a problem of drug delivery to a primary healthcare post and over time articulating the problem as in fact about monopoly pricing of drugs leading to misappropriation along the supply chain). Finally, it is also to reconfigure the identity of participants in the reform process, reconsidering at each iteration the 'broad set of agents' relevant to the work, engaging new ones and detaching from older, less relevant ones. All of this is done in a 'politically smart' fashion, sensitive to the 'authorising environment', or extant distribution of power, that places limits on how fast reform can go, where it can take place, who might participate, and to what ends.[9]

PDIA and rule of law reform share a denial of the content of its proponents' expertise.[10] There is no specific set of tools, skills, or knowledge that outside agents bring; rather, reform proceeds on the basis of '[b]road-based local agency with only very specific and 'humble' support by external agents'.[11] Reform is a collaborative effort between outsiders and insiders using their social and institutional positions instrumentally or politically to realise their collaborative goal rather than using those positions to produce an authoritative answer to a problem. '[PDIA] requires taking calculated risks, embracing politics and being adaptable (thinking strategically but building on flexibility). Crucially, one needs the humility to accept that we do not have the answers and to accept, discuss and learn from failure'.[12] Indeed, PDIA people are meant to be

[9] Andrews, Pritchett, and Woolcock, *Building State Capability*, pp. 194–214.

[10] Woolcock, one of the main theorists of the PDIA approach, initially co-founded *Justice for the Poor*, the World Bank's largest rule of law reform group: Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond', *Annual Review of Law and Social Science*, 11 (2015), 155–74.

[11] Richard Batley, 'The Limits of Institutionalism: How Do Organizations and Institutions Interact in Theory and in Development Practice?', *Beyond Good Governance and New Public Management: Alternative Frameworks for Public Management in Developing and Transitioning Nations* (2015), 6, www.academia.edu/11925888/The_Limits_of_Institutional_Reform, accessed 21 August 2022.

[12] Matt Andrews et al., 'Building Capability by Delivering Results: Putting Problem-Driven Iterative Adaptation (PDIA) Principles into Practice' in Alan Whaites et al. (eds.), *A Governance Practitioner's Notebook: Alternative Ideas and Approaches* (OECD, 2015), p. 126 (emphasis added).

simultaneously humble and savvy enough to know when they are not wanted; professional death is part of their professional repertoire. The distinction between the inside and outside of a reform process is thus simply the product of the reformer's calculation of the risks involved in the project and the likelihood of success.[13]

The only distinction between insiders and outsiders is thus their institutional position. Otherwise, for reform to be a success, everyone must cultivate a similar, doubled sensibility. Green, writing in alliance with APW[14] and arguing for a 'power and systems approach', asserts a set of

> [C]haracteristics that activists should cultivate in order to flourish in complex systems, like curiosity, humility, self-awareness, and openness to a diversity of viewpoints. People become activists not to analyse the world, but to change it. We are impatient of anything that smacks of navel-gazing (one Oxfam head of advocacy dismissed my job as head of research as 'beard stroking'). Consequently, we often fail to understand the history that lies behind the system we are facing, and thus we fail to 'dance with' the system. A PSA encourages us to nurture a genuine curiosity about the complex interwoven elements that characterize the systems we are trying to influence, without abandoning our desire to take action. We need to be observers and activists simultaneously.[15]

These characteristics are reflected in much contemporary writing on PDIA.[16]

Furthermore, within APW's project are specific ways to organise a PDIA sensibility or style. There are other such projects, many of which emphasise the individual reformer's sensibility, whether a humble and ethical bearer of expert office, a doubled 'double-agent' straddling the 'inside' and 'outside' of reform, or a charismatic leader.[17] PDIA is rooted in

[13] According to APW, the political quality of an authorising environment matters to the success of PDIA reforms. The absence of one might otherwise 'signal the death-knell for PDIA-type initiatives': Andrews, Pritchett, and Woolcock, *Building State Capability*, p. 197. See also Clare Manuel, 'Delivering Institutional Reform at Scale: Problem-Driven Approaches Supported by Adaptive Programming' (DfID, 2016), Second Synthesis Paper, https://assets.publishing.service.gov.uk/media/591c525ce5274a5e4e00002c/laser-second-synthesis-paper-delivering-institutional-reform-at-scale-final-feb-2016.pdf, accessed 24 August 2022.

[14] Duncan Green, *How Change Happens* (Oxford University Press, 2016), p. 250.

[15] Green, *How Change Happens*, p. 240.

[16] Andrews, Pritchett, and Woolcock, *Building State Capability*, pp. 183, 189, 190.

[17] Sheila Jasanoff, 'Technologies of Humility: Citizen Participation in Governing Science', *Minerva*, 41 (2003), 223–44; Rosalind Eyben, *International Aid and the Making of a Better World: Reflexive Practice* (Routledge, 2014); Matt Andrews, 'Going Beyond Heroic Leaders in Development', *Public Administration and Development*, 36:3 (2016), 171–84.

humble and ignorant experts confronted with highly complex institutions and systems that are free-floating and disentangled from the state. But it moves beyond the individual, envisaging 'network[s]',[18] classes of 'innovators, pioneers, visionaries',[19] and, more broadly, a 'global social movement' of creative individuals who are highly politically self-aware and can navigate political and contextual complexity.[20] APW want to show that '[adaptive] work is not haphazard and informal. It actually requires a lot of structure and discipline, and needs formal sanction and support'.[21]

In sum, APW are concerned with what I have termed the production of the 'shadows': the creative work that reformers conduct to (re)produce and evanesce approximations and provisional determinations of the rule of law. PDIA is a political effort to recognise and organise an aesthetic sensibility towards the conduct of this work.

7.2 Reform and the Social Organisation of Reformers

To explore the consequences of this political effort, I turn back to one of the precursor texts to PDIA. In 2004, Pritchett and Woolcock wrote an article that analyses modes of decision-making in public service provision, as shown in Table 7.1.

In their analysis, decisions 'are discretionary to the extent that their delivery requires decisions by providers to be made on the basis of information that is important but inherently imperfectly specified and incomplete, thereby rendering them unable to be mechanised. As such, these decisions usually entail extensive professional (gained through training and/or experience) or informal context-specific knowledge'.[22] Transaction intensiveness 'refers simply to the extent to which the delivery of a service (or an element of a service) requires a large number of transactions, nearly always involving some face-to-face contact'.[23] In simple terms, a spectrum between 'discretion' and 'non-discretion' is a way of talking about the contingent circumstances of the thing being reformed (i.e., its determinability). A spectrum between 'transaction-intensive' and

[18] Andrews et al., 'Building Capability by Delivering Results', p. 127.
[19] Lant Pritchett, 'Folk and the Formula: Pathways to Capable States' (Annual Lecture, UNU-WIDER, 2012), p. 40.
[20] Andrews et al., 'Building Capability by Delivering Results', p. 131.
[21] Andrews, Pritchett, and Woolcock, *Building State Capability*, p. 183.
[22] Pritchett and Woolcock, 'Solutions When the Solution Is the Problem', p. 194 (citations omitted).
[23] Pritchett and Woolcock, 'Solutions When the Solution Is the Problem', p. 194.

Table 7.1 *'Classifying modes of decision-making in key public services'*

	Discretionary	Non-discretionary
Transaction intensive	Practice	Programs
Non-transaction intensive	Policies	(Procedures, rule)

Source: Lant Pritchett and Michael Woolcock, 'Solutions When the Solution Is the Problem: Arraying the Disarray in Development', World Development, 32:2 (2004), 194.

'non-transaction-intensive' is a way of talking about the contingent circumstances of the reformer's authority.

The top left of their table – 'practice' – involves intense movement between ignorance and implementation work (in their terms, listening to context and responding using knowledge), with repeated ('transaction-intensive') efforts to adapt the relationship between the two as the circumstances demand. 'Policies' are less amenable to ignorance work, stabilised by the authority of the expert. 'Programmes' and 'procedures' are also less amenable to ignorance work, stabilised by shared clarity around the goals being pursued.

These distinctions are meaningful in a political sense. For example, Pritchett and Woolcock assert that policies, rules and legislation tend to require less contextual humility and more commitment to act: 'lowering (or raising) the interest rate, devaluing (or not) the currency, setting a fiscal deficit target. These are all actions that intrinsically involve assessing the state of the world and taking appropriate action, but the implementation itself is not transaction-intensive…'[24] They continue: 'The politics of policy reform may (or may not) require mass support, but "10 smart people" can handle the actual mechanics of policy reform'.[25]

Yet this assertion is a product of an assumption about the underlying institutional architecture that makes implementation 'not transaction-intensive': a body of '10 smart people' who have the power and institutional backing to determine that interest rate setting falls under the jurisdiction of their technical expertise. Doing so is a political choice. It is a means of distributing ignorance by ordering the relationship between ignorance work (the contextual 'politics of policy reform') and implementation work (its 'actual mechanics'). For example, as Jacqueline Best points out,

[24] Pritchett and Woolcock, 'Solutions When the Solution Is the Problem', p. 194.
[25] Pritchett and Woolcock, 'Solutions When the Solution Is the Problem', p. 194.

interest rate setting, currency valuation, and fiscal deficit targets are beset by ambiguities that could entail constant political adjustment and thus transaction-intensive implementation.[26]

A way of thinking about this political choice is to imagine Pritchett and Woolcock's classification of modes of decision-making as an analytic of where to draw different types of boundaries between law and politics – without being able to rely on a politically agreed-upon exercise of, fetters on, and suspension of regulation of arbitrariness. Pritchett and Woolcock are trying to build institutions, which will draw a set of boundaries between laws and politics; to do so, Pritchett and Woolcock try to draw boundaries between law and politics for the institution-reforming process. That process in turn relies on a background set of political assumptions about the underlying institutional architecture of reform.

To be clear, Pritchett and Woolcock are up-front about the specific institutional architecture that they inhabit as well as the politics of their analysis. For my purposes, they provide broader support for the proposition that analytic attempts to categorise certain rule of law reform decisions as more or less technical are in reality political interventions. I analogise their attempt to schematise modes of decision-making to a vocabulary to organise 'ifs'. Like Stanislavski, they offer a way of framing decisions as more or less amenable to ignorance work, as well as an idea about the relationship between ignorance and implementation work. Where for Stanislavski that relationship was unidirectional (ignorance residing in the 'subconscious', which is then applied in and refracted through the materiality of the stage), for Pritchett and Woolcock, it is iterative – imperfect knowledge produces an imperfect decision, which changes the world while producing more knowledge to pursue the subsequent decision, and so on.

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What does this attempt to give social form to ignorant experts look like? A full account would entail staging PDIA reforms within the context of APW's efforts to build a global social movement. Here, I focus on the sociology of the latter to draw attention to some specific effects.

[26] Jacqueline Best, 'Hollowing out Keynesian Norms: How the Search for a Technical Fix Undermined the Bretton Woods Regime', *Review of International Studies*, 30:3 (2004), 383–404; Jacqueline Best, 'Bureaucratic Ambiguity', *Economy and Society*, 41:1 (2012), 84–106; Jacqueline Best, 'When Crises Are Failures: Contested Metrics in International Finance and Development', *International Political Sociology*, 10:1 (2016), 39–55.

Table 7.2 *Image of Lant Pritchett, 'Folk and the Formula', slide 40*

Activity		Internal folk culture of accountability	Embeddedness	External folk culture of accountability
Policy or concentrated elite		Elite status, duty as elites	Professional networks inside and outside public	Little pressure (too complex)
Logistics		Hierarchy, compliance culture—just doing our job	Respect for "officials" (e.g. post men)	Complaint if not process compliant (service delivery standards)
Implement Intensive	SD	Professionalism	Professional networks	Thick—in pro-active way
	IO	Professionalism	Professional networks	Thin—in defensive way
Wicked Hard		Innovators, pioneers, visionaries		Social Movement

Source: Lant Pritchett, 'Folk and the Formula: Pathways to Capable States' (Annual Lecture, UNU-WIDER, 2012), 40. 'SD' means service delivery; 'IO' means imposition of obligations (on reformers from outside actors).

Lant Pritchett imagines the social relations that underpin PDIA in Table 7.2.

The 'activity' in this table is a typology of problems that reform is trying to tackle; 'embeddedness' refers to the social structure in which the reformers tackling those problems are embedded; and the 'folk culture[s] of accountability' express the norms that tie reformers together within that social structure (the 'internal' culture) and that relate that structure to the outside world (the 'external' culture). I read internal culture here to be like the 'backstage' of expertise and external culture the 'frontstage'. 'Embeddedness' would then describe the social structures that divide the frontstage from the backstage and shape the two. The empty space in the table above is thus suggestive of an absent sociology of PDIA as a form of expertise.

How might we describe the contours of this sociology? One set of contours might be the collapse of the relationship between the 'internal' and 'external' culture of reform; or the front- and backstage. Brinkerhoff and

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Brinkerhoff, convening a special journal issue of Public Administration and Development on recent experiences with PDIA, explore the relationship between PDIA reformers and the organisational cultures of donors. They discuss Eyben's work on aid practitioners[27]:

> Eyben … discusses surreptitious approaches to reconciling such adaptation with donor requirements, what she calls 'hiding relations.' Her analysis describes how many local donor staff practice their own decoupling—subscribing to reporting responsibilities and accountability upward, on the one hand, while acting in ways that extend beyond these structured requirements and reframing their actions for reporting as needed.[28]

This quite clearly sets out a backstage in front of which reform takes place. However, they immediately go on to state that

> [i]n contrast to these hidden behaviors, Srivastava and Larizza … present an example of how World Bank staff found ways to incorporate PDIA to support the Sierra Leone public sector reform team in pursuing a flexible and contextually adaptive approach to implementation while creatively working within the limitations of Bank lending procedures.[29]

Flexibility and continual adaptation were at the very forefront of the World Bank's approach in Sierra Leone. That which was hidden in the backstage of reformers' expertise was turned into material for their frontstage performance.

Another set of contours might be the form of the relationships between PDIA reformers. In referring to PDIA as a 'global social movement',[30] APW draw a clear contrast to other social forms, such as governments or bureaucratic donor institutions. Such a global social movement would have to network visionaries to share ideas (and hold each other accountable) without producing a hierarchy between reformers that might lead to overdetermined solutions to problems. The global social movement must thus be widespread and well-known enough to encompass and tie together 'visionaries'; disciplinary and inspiring enough to stop other unhelpful

[27] Rosalind Eyben, 'Hiding Relations: The Irony of "Effective Aid"', *The European Journal of Development Research*, 22:3 (2010), 382–97.

[28] Derick W. Brinkerhoff and Jennifer M. Brinkerhoff, 'Public Sector Management Reform in Developing Countries: Perspectives Beyond NPM Orthodoxy', *Public Administration and Development*, 35:5 (2015), 234.

[29] Brinkerhoff and Brinkerhoff, 'Public Sector Management Reform in Developing Countries', 234 (emphasis added). Citing Vivek Srivastava and Marco Larizza, 'Working with the Grain for Reforming the Public Service: A Live Example from Sierra Leone', *International Review of Administrative Sciences*, 79:3 (2013), 458–85.

[30] Andrews et al., 'Building Capability by Delivering Results', p. 131.

norms (such as restrictive professional norms) influencing 'visionaries'; and it must be flexible and mobile enough to support 'gale[s] of creative destruction' in institutional change.[31] In other words, PDIA requires a reflexive form of organisation; this form must be flexible enough to facilitate creativity while pushing against and withdrawing from other modes of organising expertise.

I am arguing that PDIA is in fact self-consciously organised as a moving combination of ignorance and implementation work in just the same way as it organises its object of reform. Indeed, PDIA remains ignorant about its own organisation, as the blank in the table above suggests. This ignorance is not obscurantist; just as law is embedded in and emerges from itself in PDIA-type reform, so Pritchett and others imagine that PDIA reformers are organised reflexively, emerging from the relationship between innovators and a social movement they seek to produce. Innovators' innovativeness and visionaries' visions are what tie them together in a social movement. The blank cell in the table above is not blank but redundant: the style or sensibility of PDIA is PDIA which is the global social movement.

I do not take a prescriptive position on the social edifice APW construct through PDIA. However, APW are certainly thoughtful, careful, and clear about the scope and limits of their political project. A reform sensibility-cum-reform-cum-global social network is fragile. Brinkerhoff and Brinkerhoff again:

> [D]ifferences [between participants] in [terms of] expertise and related vocabularies persist … [G]ood-fit, situation-specific solutions to public sector problems require distributed networks of actors, both inside and outside of government, with expertise, commitment, authority, and/or resources. Effective ownership emerges from the interactions within these networks. Good-fit reform strategies explicitly acknowledge the politics, competing interests, and incentives, between and among donors and government actors. They also recognize that these interactions can build trust, which enables the translation of expertise into meaningful acceptance before a reform is adopted and implemented.[32]

This is a fully fledged political image of a global social movement: it determines what decisions are amenable to ignorance (all decisions that relate to 'public sector problems'), what sort of ignorance work is desirable (phenomenological and political – given that they imply that we are

[31] Pritchett, 'Folk and the Formula', p. 53.
[32] Brinkerhoff and Brinkerhoff, 'Public Sector Management Reform in Developing Countries', p. 231 (emphasis added).

fundamentally ignorant of the full extent of the politics around those problems), and the relationship between ignorance and implementation work (ad hoc and interactional). The section I have italicised shows just how many moving parts must fall into place to build that global social movement.

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This social movement is more than just imagined. Steps have been taken to turn it into a reality. At the level of practice and project, consider the UK government-funded 'State Accountability and Voice Initiative' (SAVI). Begun in 2008, and expressly developed along PDIA lines, this is a '£34.7 million demand-side governance programme' managed by the British overseas development agency and operating in ten Nigerian states.

> Instead of providing grant funds to CSOs (the usual way of supporting demand-side governance), SAVI works through in-house state teams [i.e. individuals and small groups already within state bureaucracies, who are disposed in favour of reform] who facilitate locally led change in their own states. They support partners to think and work politically, work adaptively and learn by doing – through brokering working relationships, and providing behind-the-scenes mentoring, capacity building and seed funding support.[33]

Of note are the explicitly political aspects of SAVI's design and implementation:

> SAVI aimed to make thinking and acting politically central to decisions taken by front line staff and partners […] Staff and partners analysed the power relations that shaped change in their state, regularly updated this knowledge formally and informally, and used it to inform their decision-making. This included decisions made by SAVI state teams relating to the issues and processes they engaged with, and the alliances and partnerships they helped to facilitate.[34]

SAVI thus purportedly rejects specific ideas about what good governance looks like and rejects international development expertise as a specific site for their determination. Instead, it focuses instead on political agency and conditions on the ground – Brinkerhoff and Brinkerhoff's 'distributed networks of actors, both inside and outside of government, with expertise, commitment, authority, and/or resources' – in pursuit of some sort

[33] Helen Derbyshire and Elbereth Donovan, 'Adaptive Programming in Practice: Shared Lessons from the DFID-Funded LASER and SAVI Programmes' (DfID, 2016), Synthesis Paper 3, 2, 10.

[34] Derbyshire and Donovan, 'Adaptive Programming in Practice', p. 19.

of reform. Failure, in turn, is evidence of the maladaptation of the reform effort to a complex local political environment – to be rectified in any subsequent iteration.

This ongoing reiteration of institutional change is thus enabled by a particular ignorance claim, about the complexity of local politics. This, in turn, shapes the ongoing reconfiguration of the spatio-temporality of reform and the identity of its participants. Take the UK-funded and PDIA-influenced Pyoe Pin programme in Myanmar. It focuses on 'sub-national (local) governance and accountability'.[35] The programme works on these institutional matters across the 'economy (fisheries, garments), natural resources (extractive industries, land, sustainable forest management) and services (education, HIV, Maternal and Neonatal Child Health)'.[36] It is so wide-ranging because it 'brings together "coalitions" of groups and individuals' and shifts these coalitions over time in 'a cycle of continuous iteration'. This is acknowledged as an explicitly political endeavour in response to 'Myanmar['s] context[, which] is volatile, with unpredictable and uneven economic, political and social change events and opportunities presenting over time and space'.[37]

Note that ignorance is expressed through the language of political participation and thus unfolds through processes of identifying stakeholders and convening them. This then has political effects. The project cobbles together politically fragile and provisional collectives, who in turn imagine fragile and provisional institutions to govern them, which in turn require new collectives to be cobbled together. In other words, the project continually provisionalises who is governing (and on behalf of whom), what is being governed, and where and when governance takes place. It unsettles the boundaries between law and politics, or what is politically settled in this regard, and what is up for political contestation. At the same time, it produces that boundary as an effect of ignorance about political participation, reminding us that PDIA's global social movement tries to socialise political ignorance work in its participants.[38]

[35] Angela Christie and Duncan Green, 'Adaptive Programming in Fragile, Conflict and Violence-Affected Settings, What Works and Under What Conditions?: The Case of Pyoe Pin, Myanmar' (Institute for Development Studies, Sussex, 2018), p. 5, https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/13888, accessed 24 August 2022.

[36] Christie and Green, 'Adaptive Programming in Fragile, Conflict and Violence-Affected Settings', p. 6.

[37] Christie and Green, 'Adaptive Programming in Fragile, Conflict and Violence-Affected Settings', pp. 6, 13.

[38] Deval Desai, 'The Politics of Rule of Law Reform: From Delegation to Autonomy', *The Modern Law Review*, 83:6 (2020), 1168–87.

To clarify the stakes of this, consider a hypothetical and different engagement with Myanmar, one that is expressed epistemically, in the vein of demanding ever-more research into Myanmar's complex context. That might lead to a vision of rule of law reform as continually unfolding through a research process. This process has a spatio-temporality (e.g., 'field sites' and 'field trips') and produces participants in reform as research participants. The provisionality of the rule of law and its relationship to politics might then emerge as an effect of ongoing political contestations over the necessary constellation of research methods and practices to render that context comprehensible enough for an institutional reform.[39]

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I now turn to the programmatic level to think about the effects of the social organisation of reformers on their place in the broader development enterprise. I turn to terms of reference (ToRs) to hire rule of law reformers. They do not necessarily determine who is eventually hired; however, they are public statements by development institutions about a desired reform sensibility. Here, I conduct a brief examination of statements about 'expertise, commitment, authority, and/or resources'[40] in UK government ToRs. The various arms of the UK government have been early adopters of and big spenders on approaches to reform such as PDIA.[41] They have a standard set of ToRs that they use for every rule of law post, setting out the required competencies and characteristics that successful candidates must have. These are publicly available online, and my analysis is based on a close reading of them.

According to their 2016 'Technical Competency Framework: Governance Cadre',[42] DfID recruited 'Security, Justice, and Human Rights' (SJHR) specialists as part of its cadre of 'governance advisers'.

[39] Rachel M. Gisselquist, 'Legal Empowerment and Group-Based Inequality', *The Journal of Development Studies*, 55:3 (2019), 344.

[40] Brinkerhoff and Brinkerhoff, 'Public Sector Management Reform in Developing Countries', p. 231.

[41] In other work, I have conducted an analysis of ToRs from a range of institutions. See Deval Desai, 'In Search of "Hire" Knowledge: Hiring Practices and the Organization of Knowledge in a Rule of Law Field' in David Marshall (ed.), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard University Press, 2014).

[42] Foreign, Commonwealth, and Development Office, 'Technical Competency Framework: Governance Cadre' (2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928601/FCDO-Governance-TCF-Sept2020.pdf, accessed 24 August 2022.

In their standardised competency framework, the list of competencies for non-SJHR governance specialists begins with clear statements of the specialty's content: '[c]ore governance concepts (capacity, accountability, responsiveness, legitimacy, empowerment, rights)'; 'Elections, parliaments, political parties, civil society and media'; 'public sector budget cycle from formulation to execution … public procurement, internal control, reporting and accounting systems'; '[d]ifferent types of corruption (grand; petty; bribery; fraud; money laundering etc.)'; and so on.

The list of competencies for SJHR specialists, however, begins with no such assertion of the form or content of the rule of law. The competencies simply require that candidates have 'knowledge' of how rule of law 'contribute[s] to development, stability, and state-building'. It then proceeds to connect the rule of law to a series of sectors in which reformers might wish to establish administrative facts: the rule of law's links to 'promoting, realising and protecting human rights'; its relationship to 'community security, preventing gender-based violence, and security sector reform'; 'rule of law for growth and investment, including[…] protection of property rights'; and so on. The role of the reformer is to straddle these sectors as well as all the 'different security and justice institutions including the judiciary, prosecution, police, military, intelligence, prisons, oversight institutions, legal profession, civil society and non-state actors'; and the 'different legal systems, including non-state justice systems, in a range of contexts, including fragile states'. Reformers are required to encompass a range of differences.

The British government also hires rule of law reformers in its Stabilisation Unit (SU), a special cadre of aid professionals working in fragile states. The competencies for an SU specialist on 'justice' and 'community safety, security and access to justice' again stress difference.[43] They open with statements on the complexity of the rule of law. Moving to a technical level, the 'justice' competencies then require reformers to understand how to work with a 'range of different justice systems, often characterised by legal pluralism'[44] and have experience in 'holistic approaches to justice sector reform, including cross-sectoral linkages, interdependence and the role of non-state actors in justice delivery'.[45] The 'local security and justice' competencies require candidates to have a good working knowledge

[43] Stabilisation Unit, 'Category Profiles', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598995/CSG_Category_Profiles-O__8.pdf, accessed 24 August 2022.
[44] Stabilisation Unit, 'Category Profiles', p. 18.
[45] Stabilisation Unit, 'Category Profiles', p. 18.

of the universe of '[n]on-state, community based and traditional security and justice actors and mechanisms' as well as 'the relationships between the state and non-state security and justice actors and mechanisms'.[46]

Both documents also specify behavioural competencies. However, the SU document explicitly links behavioural and technical components: various reformers are required to bring to their job the ability to 'manag[e] and understand[] politically sensitive situations' and 'adapt[] to different social and cultural environments'.[47]

Stepping back, the ToRs articulate a style for reformers: ambivalence. The ToRs are ambivalent towards the type of ignorance work that matters. Ignorance work might emerge from reformers' professional experience with the complexities of the rule of law, or it might simply come from the complexity of the social and cultural environment. They are also ambivalent towards the relationship between ignorance and implementation work: 'manag[ing] and understand[ing]' politics is much less specific than 'responding' to context or 'resolving' real problems. Ignorance is broadly distributed.

This ambivalence is not cabined by a political or institutional context, in contrast to PDIA, which imagines its global social movement as helping reformers navigate those contexts. Indeed, it is also in contrast to ToRs in the same documents but for other governance domains. For example, the ToRs for public financial management require candidates to know how to work with 'International Financial Institutions (World Bank, IMF) and international PFM initiatives and frameworks, for example PEFA, the Open Budget Partnership, and INTOSA', and thus imagine them as part of a network of institutions, initiatives, and frameworks.[48]

Instead, rule of law reformers are relatively formless. In their ToRs, there is no reference to any global social movement or distributed networks of actors. Each reformer is left to work out what to do about the rule of law in whatever context they work. These ambivalent reformers instead sit within their departments, working on building their own 'cross-sectoral linkages' (as in the SU ToRs for rule of law reform) and reaching out to a range of different institutions (as in the SJHR ToRs).

The ToRs remind us that the politics of social organisation is not just an effort to regulate a reformer's style or sensibility. It is also an outwards-facing effort to manage the relationship between rule of law reformers and

[46] Stabilisation Unit, 'Category Profiles', p. 5.
[47] Stabilisation Unit, 'Category Profiles', pp. 7, 14, 40.
[48] Foreign, Commonwealth, and Development Office, 'Technical Competency Framework', p. 14.

development practice more broadly. Returning to the ADA project, my team resembled the rule of law reformers imagined in the ToRs: a group of holistic and complexity-sensitive individuals sitting in a department and working with colleagues. Recall that the agricultural economist who sparked our ADA work had a project whose fiscal and economic principles he proclaimed were sound, but whose major 'problem' he proclaimed was 'politics'. Our role was to deal with the complex dimensions of his project. We functioned as a receptacle for 'politics', which we then deposited in the highly elastic and eternally contestable form of the ADA. In effect, our professional role was to purify his truth claim by bracketing and containing its conditions of failure. This role was structured by our position in the DA. Without an alternative form of social organisation for our ignorance, we accepted the DA's categorisation of particular questions as more, or less, suffused with ignorance. Had we been within PDIA's global social movement, however, we may have had the vocabulary to articulate an alternative to the agricultural economist – for example, to politicise other dimensions of his project.

I am arguing here that the social form given to expert ignorance shapes its relationship to other expert regimes in development. The form frames and channels political energy that might contest the institutions that rule of law reform generates. For example, it raises the possibility that people might have a meaningful impact on institutions – indeed, it raises key first-order questions about the values and politics of institutions and invites people to contest them. Yet it does not necessarily offer a means of resolving these questions, and while people are stuck debating them, important second-order issues might get resolved by more authoritative adjacent expert domains. In other words, so organised, rule of law reforms might have a depoliticising effect precisely by appearing to be deeply political endeavours.

7.3 Conclusion

In this chapter, I have argued that if reform is the structure of theatrical action, then people and institutions might try to organise it socially and thus regulate that action – from disciplining it within an institution like the World Bank to organising it through a global social movement such as PDIA. The politics of these efforts are found as they categorise decisions as more or less amenable to ignorance and implementation work, and in doing so, they express preferred types of, and relationships between, ignorance and implementation work.

I have also drawn attention to two sets of effects that result from this politics. First, it shapes the forms of the rule of law that reforms produce. Second, it shapes the place of reformers within the broader development enterprise. At one end, a reformer may operate alone in her silo, unable to develop links to other practitioners in the absence of any meaningful core to her expertise. At the other, she may offer the promise of wide-ranging impact as well as an opportunity for other forms of development rationality – development microeconomics, Weberian institutionalism, formal legalism, and so on – to purify themselves by jettisoning their political and socially contextual challenges.

8

Conclusion

> Haste still pays haste, and leisure answers leisure;
> Like doth quit like, and Measure still for
> Measure –
>
> —*Measure for Measure*, V. i. 466–68

Conclusions demand recapitulation, interwoven with speculation: a bold patchwork rendering of the previous chapters, using their brightest threads, along with several unstitched filaments, tapering off into the distance. In what follows, I briefly summarise my argument. The rest of the chapter then asks whether my measure of rule of law reform gets the measure of other fields. I speculate about the extent to which my arguments about expert ignorance could travel beyond rule of law reform, for instance, to studies of governance more broadly, as well as the politics of the methods I have proposed to study expert ignorance. It is particularly speculative in moving from international development, to Brexit, to other domains concerned with governance and government. At the same time, the chapter pre-empts and limits expansive claims made thereon.

As a matter of form, you might then read the conclusion as a patent enactment of the movement between the receding horizon of open-ended possibility (here, through space and across fields), and its abrupt foreshortening through unstable efforts at closure or limitation. In the form of this chapter, then, you find an effort to underdetermine expert ignorance through patterned engagements with its boundlessness (and thus perhaps meaninglessness) and simultaneously with its situatedness: a performance of expert ignorance about expert ignorance, if you will.

8.1 Summary of the Argument

In this book, my immediate puzzle has been to understand rule of law reformers, their expertise, and its effects. This puzzle has three parts. Theoretically and methodologically, how can we observe and talk about rule of law reformers and their expertise? Analytically, how do rule of law

reformers not only make meaning of the rule of law but refuse it, too? And with what effects on the people, projects, and practices of rule of law reform? Politically, what are the consequences of these effects on the rule of law and for development practice writ large?

Theoretically and methodologically, I have argued that existing social theories of expert-driven global governance, and their attendant research methods, assume that rule of law reformers seek to make something meaningful out of the rule of law in a context. These theories and methods do not fully capture the operations and effects of reformers' persistent and constitutive refusal to make meaning out of the rule of law. As a result, these methods do not commit to understanding how ignorance might produce significant fluidity with respect to the space and time of reforms (including the boundaries between their inside and outside) and the identities of all involved (including their subjecthood and objecthood).

To grapple with and map this fluidity, I have instead fashioned a theoretical and methodological apparatus from aesthetic theory and performance analysis. This apparatus foregrounds the open-ended dimensions of reformers' ignorance work and focuses on the fuzzy shadows of the rule of law that reformers produce. The apparatus takes seriously the material and structural constraints on producing these fuzzy shadows, pointing to how the reform aesthetic or style is struggled over and disciplined. I have also argued in favour of focusing on and fictionalising personal experiences. This approach provides a stable yet non-determined vantage point from which to discuss reforms. This allows me to investigate expert ignorance while recognising its challenge to the possibility of an external perspective on it.

Analytically, I have argued that we should analyse rule of law experts as a people irreducibly embodying different styles of reform through which they reimagine their own subjecthood and objecthood, and those of others, as reform goes on. They express their styles through the combination of ignorance and implementation work they deploy, through which they try to divert future action in one way or another. As a result, we might imagine rule of law reformers collectively as actors in a performance, in a very real sense. They deconstruct and reimagine each other and their claims (as in *The Archbishop's Ceiling*,), and in doing so, they shape each other's identity and the spatio-temporality of the action on stage (as in the entanglement of Listener and Reader in *Ohio Impromptu*). Space, time, and identity are made fluid; reformers use implementation and ignorance work to shape how they might be made concrete in the future. The performance style that reformers develop

should be understood as an aesthetic form that they give to the institutional sublime that is the rule of law.

Politically, I have argued that the enduring fluidity of reform produces provisional instantiations of the rule of law – and I have placed particular emphasis on how reforms continue to renegotiate first-order matters around law's autonomy. In this light, we can understand efforts to shape and discipline a reformer's performance style – whether through a social movement, a profession proper, a network, and so on – as political interventions in how the rule of law is provisionally instantiated and law's autonomy is negotiated. We can also understand them as interventions in how rule of law reform relates to other domains of development – with political (or perhaps depoliticising) effects, as rule of law reform comes to be a process through which other domains articulate their political problematics.

In the next section, after a Brexit detour, I set out some possibilities for the broader applicability of expert ignorance, as well as some important limitations. In the final section, I reflect on the potential broader relevance of my theoretical and methodological moves. I draw out some affinities with recent work on novel forms of governance that are concerned with critiquing their own governance practices. My efforts to turn expert ignorance into an object of sociological critique may then provide a basis for productive future conversations with those concerned that 'the critical repertoire that legal scholars and other reformists bring to bear on contemporary governance practices might have become blunted and misdirected'.[1]

8.2 Taking the Measure of Expert Ignorance: From Rule of Law Reform to Governance?

> I had rather my
> brother die by the law than my son should be
> unlawfully born. But, O, how much is the good duke
> deceived in Angelo! If ever he return and I can
> speak to him, I will open my lips in vain, or
> discover his government.
>
> —*Measure for Measure*, III. i. 212–17.

[1] Fleur Johns, 'State Changes: Prototypical Governance Figured and Prefigured', *Law and Critique* (2022), 18; Fleur Johns, 'From Planning to Prototypes: New Ways of Seeing Like a State', *The Modern Law Review*, 82:5 (2019), 833–63.

Are we to 'die by the law' or be 'unlawfully born'? Isabella's choice remains relevant today. Do we submit to the closure and determination of legal arrangements or seek to transcend them? And what to make of a world structured such that this choice is our lot? Some do not submit: the law (over)determines the world, reduces it to orderly patterns, and forecloses alternative imaginaries of the world to the one it asserts. The law is false consciousness; it is the supposedly neutral garb that clothes power and enables it to travel around the world. The law is violent. Scholarly work should recover contingencies and alternatives.

I have argued otherwise. '[Dying] by the law' can operate at two poles. One is determination and the consequent ordering of the world into legal subjects and objects. The other is underdetermination and the consequent disordering of subjects and objects in the world, as well as of their context. This is death by inchoateness, stimulated by the self-erasure of the expert (or in Duke Vincentio's case, the sovereign), denying their authority to make the law.

I have further argued that expert ignorance could be understood as a process by which people strive to determine, in Isabella's terms, the 'lawfulness' of their birth between these two poles. It is the implementation work that they conduct to assert a relationship between knowledge and action, which is subsequently undermined by ignorance work, whose path dependencies are in turn undermined by further ignorance work. Implementation work becomes fragile, conducted in the shadow of ignorance to shape – and defer, bracket, redefine, and keep in its infancy – the ongoing process of producing a legal order.

The politics of expert ignorance is thus not found in the legal or institutional position one chooses to adopt – whether a legal formalist like Angelo, a pragmatist like Escalus, or a moralist like Isabella. It is instead found in how one moves between the extremes of 'open[ing one's] lips in vain' (a futile subjecthood) and 'discovering … government' (an ordered objecthood, or submission to order). The performance of rule of law reform exemplifies this movement in strong form: these extremes are pronounced. It also contributes to structuring how this movement operates in other domains – shaping where and how these domains locate those poles (for example, agricultural economics might transplant political disorder or complexity into rule of law reform while keeping control over order).

In the absence of a sovereign lawgiver, the futility of opening one's lips, of calling out for order, is potentially totalising. 'Government', in Isabella's terms, is at best interim and subject to revision on the sovereign's return; yet the possibility that he might not return makes it worthwhile to open one's lips and participate in the project of self-governance. 'Government'

is always in a state of emergence, inchoateness, or being 'discover[ed]' (as the quote above from *Measure for Measure* would have it).

So, to 'government': what other phenomena beyond rule of law reform might 'lawful birth' through '[dying] by the law' accurately describe? We are already in a limited, if fuzzy, space suggested by 'government' – activities concerned with the relationship between institutions and rule. We are further limited in approaching government through persistent claims by one or another expert in rule that they do not know what government even means or stands for.

To explore the broader relevance of expert ignorance, while at the same time circumscribing its applicability, I dally with 'Brexit', the process that unfolded after the British people – or more specifically a majority of voters who turned up that day in 2016 – voted in a referendum to leave the European Union. My vantage point is personal reflection on the day of the vote and beyond; I move us between abstract and concrete, floating and emplaced, immediate and mediated. We also move to the Global North, suggesting 'resonances'[2] between the operations of expert ignorance in the North and South without discarding the distinction between the two.[3]

The vote and its afterlife have entailed political fights over first-order questions of law and government – where, whether, and how rules and regulations might be made on any matter of economic, political, and social life; the extent and nature of parliamentary sovereignty; the cohesiveness of the EU as a rules-based club.[4] Brexit could be understood as a project, predominantly from the right, to reimagine institutions. Indeed, this is exactly how some of its proponents portray it – the simplification of trade rules, a newfound institutional dynamism on the part of Britain to negotiate its own trade deals, and so on.[5]

The complexity of institutionally disentangling Britain from the EU formed an explicit part of the politics on both the 'Remain' and 'Leave'

[2] Anna Gibbs, 'Writing as Method: Attunement, Resonance, and Rhythm' in Britta Timm Knudsen and Carsten Stage (eds.), *Affective Methodologies: Developing Cultural Research Strategies for the Study of Affect* (Palgrave Macmillan, 2015).

[3] Jean Comaroff and John L. Comaroff, 'Theory from the South: Or, How Euro-America Is Evolving toward Africa', *Anthropological Forum*, 22:2 (2012), 113–31.

[4] Reijer Hendrikse, 'Neo-Illiberalism', *Geoforum*, 95 (2018), 169–72; Maurizio Ferrera, 'The Stein Rokkan Lecture 2016 Mission Impossible? Reconciling Economic and Social Europe after the Euro Crisis and Brexit', *European Journal of Political Research*, 56:1 (2017), 3–22; Jamie Morgan, 'Brexit: Be Careful What You Wish For?', *Globalizations*, 14:1 (2017), 118–26.

[5] Morgan, 'Brexit'; Dominic Cummings, 'How the Brexit Referendum Was Won', *The Spectator* (9 January 2017), https://blogs.spectator.co.uk/2017/01/dominic-cummings-brexit-referendum-won/, accessed 16 August 2022.

sides of the Brexit debate, both before and after the vote.[6] I suggest that Brexit can be understood as a way of giving form to a sense of sublime institutional complexity – for example, through aesthetic (and recrudescent nationalist) invocations of Britain's 'sovereignty' as a counterpoint to technocratic expertise. We might sum this formless object up in Prime Minister Theresa May's slogan, 'Brexit means Brexit'.

Indeed, some of the struggles over Brexit might be understood as ignorance work – repeated denials that any expert might know what caused Brexit, nor what to do about it and how to achieve it – coupled with contests over the right and provisional sort of implementation work – organising Brexit through legal agreements, political coalition-building, bureaucratic gear-crunching, trade- and market-based faith, and so on. And Brexit's form appears to me to be peculiarly expert: the avowed rejection of expertise that accompanied Brexit is coupled with the persistence of authoritative expert and legal structures that frame its unfolding.

8.3 Interlude: Brexit, Ignorans, and Ignorandum

On 24 June at 6 a.m. in London (and 1 a.m. for me, as I watched the news from my Harvard Square apartment), Britain Brexited. The British Broadcasting Corporation's images streamed onto my computer. Its chorus of the phlegmatic (in every sense), powdered, and balding pundits began the evening by reminding viewers that the vote would be close but that the most recent polling suggested a narrow win for those wanting to remain in the European Union. As the reality of what was happening emerged, chuckles were replaced by a tide of drily raised eyebrows.

One by one, studio guests – politicians, journalists, the odd financier, but heavyweights all – told us with great confidence that this result represented a revolt against the authority of elites like themselves. They invoked 'the people' – by which they seemed to mean poor, poorly educated, middle-aged, or elderly, white, working-class people. Nick Robinson, former BBC political editor, sombrely informed us that he had spoken with a pensioner on the way to the polls; she wanted to 'give the establishment a good kicking'. Emily Thornberry MP, grave-faced,

[6] Adrian Pabst, 'Brexit, Post-Liberalism, and the Politics of Paradox', *Telos*, 176 (2016), 189–201; Hans Kundnani, 'Rather than Offer Clarity, Brexit Has Sown Confusion in Europe', *The Guardian* (21 August 2016), www.theguardian.com/commentisfree/2016/aug/21/europe-leaders-response-brexit-vote, accessed 16 August 2022.

agreed. She had spoken to a plasterer. He told her how hard he had to work to make ends meet, all the while feeling the pressure of cheaper immigrant labour breathing down his neck.

The pundits told viewers that pensioners and plasterers (or at least a pensioner and a plasterer) were disenchanted with the status quo. They were crying out for self-government, a contraction of a globalised political space to which they had little connection. Will Straw, a well-groomed second-generation professional politician, earnestly informed viewers that this was a 'wake up call for political and economic elites'. He was then asked why these elites were 'still waiting to wake up when … voters have been telling [them] how they feel' for several years. There was a pregnant on-screen silence.

As the night progressed, participants in the studio faulted a specific type, or arrangement, of self-insulating elitism. David Dimbleby ('DD'), the host and long-standing (and -sitting) British political commentator, asked every guest whether this vote reflected a popular 'contempt for experts'. A peculiar ambivalence about expertise emerged in the face of this self-flagellation. Take the following exchange between Dimbleby and Steve Hilton ('SH', a Brexiteer and the then-Prime Minister's one-time spin doctor):

SH (explaining why he remained pro-Brexit despite the economic volatility it would bring): Look, none of us [pro- or anti-Brexit] really know what will happen. The figures that were thrown around during the campaign weren't real. I know because I used to do that stuff [when I was chief spin doctor]. Politicians might genuinely believe that someone would be worse off under Brexit, but they'd have to make it tangible for the voters. So they would come up with some figure, like £4,300 worse off, for which you could probably find some backing. The point is that the world today changes very quickly… if we [rather than the European Union] control the levers of economic power, we can manage the bumps along the road.

DD: So you are saying that the litany of experts is blathering away? If the figures are invented, what on earth do they spend their day doing?

SH: They believe them [i.e. the figures].

DD: So let's get rid of all of them [i.e. the experts]!

SH: No, no, they do very important jobs … [trails off]. But people are expressing a sense of real anger that they're not being heard.

This exchange reflected a pervasive sense of anxiety that emerged over the evening. There was anxiety from the different camps over the outcome of the vote, of course. But there were at least two other types of anxiety as well. One was over the relationship between politics and knowledge – or as one anti-Brexit MP said to Dimbleby, 'this was a post-truth vote'. Another was anxiety over the political status of experts – what authority did they have to define the present and predict the future? Is all that one could say that 'they do very important jobs'? This was most immediately

apparent in the status of experts parsing the referendum itself. Professor John Curtice, the in-studio polling guru, had produced a visual model of prospective voting patterns throughout the country – a giant electrocardiogram projected against the wall, with staccato peaks and troughs. When asked by Dimbleby how his model was faring against the returns, he said, 'We never expected all our expectations to be met'.

This anxiety over the relationship between politics, knowledge, and experts contrasted two very different types of politics. They were stylised by Caroline Lucas MP when she called the referendum outcome the 'triumph of fear over facts'. Both pro- and anti-Brexit politicians spoke of the 'deep pain', 'fear', and 'anger' of 'the people', for whom 'gut and instinct trumped all the arguments about economic turmoil and warnings of economic collapse'. As such, viewers were presented with an incommensurable relationship between knowledge-based-cum-rational, and affective-cum-charismatic, governance. The nature of the entanglements between these two types of politics, and their attendant institutions, were supposedly laid bare by the seismic vote. These politics were no longer either mutually supportive or peacefully coexistent; instead, they were suddenly understood as always having been in conflict at best and in a relationship of domination at worst.

Towards the end of the broadcast, a pro-Brexit MP was asked what would happen first thing in the morning. Now freed from Brussels' shackles, the first step towards reasserting British sovereignty, she said, would be for lawyers to go through the tens of thousands of pages of EU regulations and decide which ones to keep and which ones to throw away. That legal task would be the first vindication of this popular revolt, their first piece of governance by 'gut and instinct'.

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In the moment, the importance of Brexit – from global to local, and in political, social, and economic spheres – could not, it seems, be overstated, no matter how hard those in the studio tried. The political editor of The Observer newspaper wove a Spinal Tap-estry,[7] calling it a 'nine, ten on the political Richter scale … does the scale go higher than a ten?' It was a 'generational' event, not to be mistaken for the ordinary oscillations of the political pendulum towards and away from mainstream consensus:

> For those of us in the business of reporting politics … most of the people, most of the time are barely paying the blindest bit of notice. And that is

[7] *This Is Spinal Tap*, film, directed by Rob Reiner. USA: MGM (Video & DVD), 2013.

> rational. The stable transfer of power from one relatively centrist, relatively benign government to another doesn't rivet many … Every five years or so this normal is briefly shaken. A big political decision comes along, and a window opens; the conversations I spend my life having at Westminster become mainstream, as a decision is taken—and then the window slams shut again. But this is a moment far bigger than even that. Today really is different, the sort the next generation will be taught about after that module on the Tudors and Stuarts … [the vote's result is] washing away a generation's worth of assumptions.[8]

Expert governance seemed to have met the limits of its knowledge – a surplus of the world composed of people who 'had enough of experts'[9] and were lashing out against these unaccountable governors.

In a legal sense, we might think of the limits of knowledge, or the location of the ungovernable surplus, as being on one side of the divide between law and politics. Consider commentary from the other side of the Atlantic from Brexit:

> An elaborate class of professional technicians has taken charge of … politics … These professionals, one could say, manage the passions or passivity of voters. They shape the content of what citizens know—and shape their ignorance too … Governing elites typically fault the people for their ignorance, and many discouraged citizens internalize the blame.[10]
>
> [Donald Trump] is whatever he pleases to be at the moment, the only principle being the triumph of his will … [H]e is astoundingly ignorant of everything that to govern a powerful, complex, influential, and exceptional nation such as ours he would have to know … He doesn't know the Constitution, history, law, political philosophy, nuclear strategy, diplomacy, defense, economics beyond real estate.[11]
>
> Teabonics: The most ridiculous—and misspelled—tea party protest signs.[12]

[8] Chris Mason, 'Millions of Smiles and a Grieving Establishment', *BBC News* (25 June 2016), www.bbc.com/news/uk-politics-eu-referendum-36627241, accessed 16 August 2022.

[9] As famously suggested by Michael Gove MP, a prominent Brexiteer. Henry Mance, 'Britain Has Had Enough of Experts, Says Gove', *Financial Times* (3 June 2016), www.ft.com/cms/s/0/3be49734-29cb-11e6-83e4-abc22d5d108c.html#axzz4HWjMu7A0, accessed 16 August 2022.

[10] William Greider, 'Bernie, Donald, and the Promise of Populism', *The Nation* (21 September 2015), www.thenation.com/article/bernie-donald-and-the-promise-of-populism/, accessed 16 August 2022.

[11] Mark Helprin in Symposium, 'Conservatives against Trump', *National Review Online* (21 January 2016), www.nationalreview.com/article/430126/donald-trump-conservatives-should-stand-against-him, accessed 16 August 2022.

[12] 'Teabonics: The Most Ridiculous – and Misspelled – Tea Party Protest Signs', *NY Daily News* (27 April 2022), www.nydailynews.com/news/national/teabonics-misspelled-language-protest-gallery-1.1918?pmSlide=1.15322, accessed 16 August 2022.

Institutions: for good and for ill, manager of passions of the people, bulwark against ignorance and the triumph of the will (as well as bad spelling).

The Brexit referendum meant that the 52 per cent of actual voters in favour of it could no longer be framed in law as different, aberrant, or stubbornly ungovernable. The outsiders had breached that bulwark. The destabilisation of expertise, the radical transformative potential of a moment, the possibility of new political and economic horizons beyond the globalised status quo that works for a cosmopolitan and mobile elite. This moment could be an opportunity to reveal the hidden workings of power, to open one's institutional imagination,[13] and to remake the world. Those erstwhile outsiders could seize the opportunity to redraw the lines between governance and chaos in their favour, determining where and how to draw them (along globalist or nativist lines, progressive or neoliberal, and so on) and selecting the legal arrangements to enact them.

And yet. In the moment of populist victory, the pro-Brexit MP would begin with a legal analysis of tens of thousands of pages of EU regulations and decide which ones to keep and which ones to throw away. With all due respect to Dick the Butcher, they concluded that the first post-vote thing to do was to call all the lawyers. Another pro-Brexit MP suggested that she would go to the Bank of England to talk with its policymakers about the levers it had at its disposal to stabilise the market. As Martin Wolf presciently mentioned in the *Financial Times*, to enact the anti-establishment programme of leaving the EU, the Brexiteers would need an army of experts.[14]

More generally, win or lose, nobody seemed to know what was going on. The politicians and experts who paraded through the BBC's studio continued to invoke the voice of the poor, uneducated, white voter in their expert analysis of the results. They struggled to show themselves as 'tribunes of the people'[15] and talked about their newfound need to listen to the 'common man' – a stock character whose actual characteristics were anything but stock, his qualities shifting to meet anxieties projected onto him. Any efforts to assert knowledge of his concerns were met with a swift reminder that the speaker lived in a 'bubble' (delivered unironically by

[13] Roberto Mangabeira Unger, *Democracy Realized: The Progressive Alternative* (Verso, 1998).
[14] Martin Wolf, 'Brexit Will Reconfigure the UK economy', *Financial Times* (24 June 2016), www.ft.com/cms/s/0/29a7964c-3953-11e6-9a05-82a9b15a8ee7.html, accessed 16 August 2022.
[15] Nick Clegg, 'Brexit: Cameron and Osborne Are to Blame for This Sorry Pass', *Financial Times* (24 June 2016), www.ft.com/cms/s/0/6044d4e8-3a03-11e6-a780-b48ed7b6126f.html, accessed 16 August 2022.

another denizen of the studio). The experts strove to reimagine their future relationship with that 'common man' – perhaps as humbled people who listened, or policymakers who would turn their gaze back to Britain and rededicate their energies to solving domestic problems. The experts laid claim to their ignorance and at the same time imagined the implementation of Brexit in legal terms, reasserting some divide between law and politics. The critical idea of institutional renovation – on the part of, and showing solidarity with, the ungovernable surplus (whoever they were) – was rapidly internalised and remobilised by the tribunes on the BBC to support some continuing project of governance, whatever it may look like.

And this project had stakes. By laying claim to their ignorance of Brexit in legal terms, the tribunes ensured their role in its implementation, in whatever manifestation, and whatever their prior commitments. As the *New York Times* noted in 2017, 'The Big "Brexit" Winners? Lobbyists and Lawyers'. It continued:

> [A] few hours after Britons voted last summer to leave the European Union, an official with a pro-'Brexit' group called an acquaintance on the Remain side to discuss what would come next. One thing led to another and, today, the two former opponents are partners in a consultancy, Hanbury Strategy…
>
> [L]awyers, trade experts, lobbyists and public relations firms are all lining up to coach businesses and the British government throughout what promises to be a complex, multiyear negotiation whose outcome remains uncertain.[16]

Indeed, in the years following the vote, Brexit remained stubbornly enigmatic. Even moments that seemingly represented an instance of resolution turned out to be anything but. The UK Supreme Court's 2019 ruling on an arcane procedural move by the executive – 'prorogation', or the suspension of parliament – was hailed by many as a triumph for the rule of law, or the judicialisation of politics.[17] But the underlying cause for the challenge was not executive fiat, but instead, a government trying to run out the clock to avert a legally enshrined Brexit deadline, to which the government would otherwise bind itself.[18] Similarly, a national election that

[16] Stephen Castle, 'The Big "Brexit" Winners? Lobbyists and Lawyers', *The New York Times* (22 February 2017). www.nytimes.com/2017/02/22/world/europe/brexit-advice-consultants.html, accessed 16 August 2022.

[17] Martin Loughlin, 'The Case of Prorogation: The UK Constitutional Council's Ruling on Appeal from the Judgment of the Supreme Court', *Policy Exchange* (15 October 2019), https://policyexchange.org.uk/publication/the-case-of-prorogation/, accessed 16 August 2022.

[18] *R (Miller) v. The Prime Minister* [2019] 4 All ER 299; [2019] 3 WLR 589.

followed, won by the incumbent Prime Minister under the slogan 'Get Brexit Done', was fought around securing a mandate to negotiate a legal agreement with the EU, during a transition period, with a stated default position of trading under 'WTO rules'.

More generally, the innumerable proposals for Brexit have invariably remained in the conditional tense,[19] such as transitional arrangements, temporary waivers, and other legal forms, of contested content and lengths, for the drafting of reams of legislation and regulation.[20] Even the subsequent agreement between the EU and the United Kingdom, with various transition periods and legal backstops, has continued to kick various first-order questions down the road. Can the UK stay together as a union of nations? How to manage the tensions between taking Northern Ireland out of the EU and keeping its (legally guaranteed!) special relationship with the Republic of Ireland intact?[21] What of Scottish claims to continue its own independence process on the grounds that its people desire to remain in the EU? The only consensus seems to be around the idea that the status quo is 'chaos', and that 'something must be done', always.[22]

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One view of Brexit is concerned with trying to categorise the various pre- and post-Brexit attacks on experts as assaults on public reason, or bad-faith attempts by various chancers to further their political careers, institutional effects be damned.[23] The masses or the elites are derided or patronised as some mix of ignorant and malicious.[24] In this view, Brexit denotes an interim process –from which existing patterns of expert and political governance have been deliberately displaced, and in which political battle then takes place over some vision of future order for Britain and

[19] David Allen Green, 'Five Steps for How Brexit Should Be Done', *Financial Times* (17 July 2017), http://blogs.ft.com/david-allen-green/2017/07/17/how-brexit-should-be-done/, accessed 16 August 2022.

[20] Kenneth A. Armstrong, 'Regulatory Alignment and Divergence after Brexit', *Journal of European Public Policy*, 25:8 (2018), 1099–117; Darren Harvey, 'Brexit and Covid-19', *King's Law Journal*, 32:1 (2021), 30–35.

[21] Jonathan Lis, 'Brexit Means Brexit: Theresa May's Slogan Was Truer than She Knew', *Prospect Magazine* (21 October 2021), www.prospectmagazine.co.uk/politics/brexit-means-brexit-theresa-mays-slogan-was-truer-than-she-knew, accessed 16 August 2022.

[22] Kundnani, 'Rather than Offer Clarity, Brexit Has Sown Confusion in Europe'.

[23] Comaroff and Comaroff, 'Theory from the South'.

[24] David Enoch, 'The Masses and the Elites: Political Philosophy for the Age of Brexit, Trump and Netanyahu', *Jurisprudence*, 8:1 (2017), 1–22; Mihaela Mihai, 'Foundational Moments, Representative Claims and the Ecology of Social Ignorance', *Political Studies* (2021), 1–21.

the EU (or what I have termed competing types of implementation work, such as legal, bureaucratic, or market-based).

I am arguing that we might also consider another view. This view is predicated on an argument that Brexit entails a range of ignorance work – establishing – an agreement that no-one (and certainly no expert) really knows the causes of Brexit, nor its consequences, nor what to do about it. In this view, Brexit itself is a political repository for a set of political anxieties over the sublime complexity of the consequences of the relationship between the European Union and Britain. All we know is the 'fundamental truth' that 'Brexit means Brexit', all these years on.[25]

In this view, Brexit takes on a particular form. The ignorance work of Brexit has been wide-ranging, from sociological claims that the masses know what Brexit might mean, to political self-critique by elites, adopting a humble mien in recognition that, whoever might know, it's not them.[26] Its implementation work has been much narrower – as suggested throughout this section, whatever was to be done, it would probably be legal and institutional. And so we see a range of legal patches, arranged not to give meaning to Brexit but to keep it unfolding over space and time – with legal experts at the centre of this process. Writing of the Brexit withdrawal agreement, one commentator notes that '[t]he UK government … negotiated and signed an agreement either without understanding it or not intending it to have effect'. So no one knows how to make it work … save through yet more legal effort, which raises yet another first-order issue, whether the constitutional status of Northern Ireland, or the government's obligations to follow international law.[27] If 'Brexit means Brexit' was 'a tautological phrase designed to buy … time to understand it',[28] Bell reminds us that law, and in particular public law, has occupied and stretched that time, turning Brexit into the perpetual 'postponement of non-agreement' by 'institutionalis[ing] strategic dissonance to square circles'.[29]

[25] Lis, 'Brexit Means Brexit'.

[26] Colin Copus, 'The Brexit Referendum: Testing the Support of Elites and Their Allies for Democracy; or, Racists, Bigots and Xenophobes, Oh My!', *British Politics*, 13:1 (2018), 90–104; Janan Ganesh, 'Liberal Self-Flagellation Always Assumes a Bleak Future', *Financial Times* (15 November 2016), www.ft.com/content/b26899a6-aa58-11e6-a0bb-97f42551dbf4, accessed 16 August 2022.

[27] David Allen Green, 'UK's New NI Protocol Legislation Is a Breach of Brexit Deal', *Al Jazeera* (14 June 2022), www.aljazeera.com/opinions/2022/6/14/uks-new-ni-protocol-legislation-is-a-clear-breach-of-brexit-deal, accessed 16 August 2022.

[28] Lis, 'Brexit Means Brexit'.

[29] Christine Bell, '"It's Law Jim, but Not as We Know It": The Public Law Techniques of Ungovernance', *Transnational Legal Theory*, 11:3 (2020), 323, 313.

8.4 Finding Expert Ignorance Elsewhere

Using 'expert ignorance' to explain everything from rule of law reform in the Global South to political dramas like Brexit in the Global North risks transforming it into a catch-all. One might be tempted to use the term to describe any moment of confusion, such as when a colleague talks at cross-purposes to you in a meeting, until you realise you held different underlying assumptions. Or when he abruptly shifts register 'from information to emotion'.[30] Or those patterns of wilful blindness by individual and collective experts that percolate over time into the structure of expertise, and society more broadly.[31] Or broader and more polemically still, it could be cabined into post-liberal politics, whether in or across the Global North and South over the last decade.[32]

Let me propose some horizons to expert ignorance through an example of the post-sovereign management of flows of people. Along with the highly complex ordering efforts to build a global architecture that regulates migration, recent studies have pointed to the importance of technologies that give form to and frame disorder or turn an ungovernable surplus of life into a manageable thing. These technologies do so without changing the prevailing system to incorporate that surplus. Stel, for example, studies informal Syrian and Palestinian settlements in South Lebanon. Against a backdrop where no one really knew whether someone was a refugee or not (the Lebanese government never registered them and in 2015 stopped the United Nations from doing so), a combination of international experts, state and local public authorities, and local camp committees continued to debate how best to classify and govern these settlements, while 'opt[ing] to keep things undecided and vague'.[33] Stel

[30] Catherine M. Will, 'The Problem and the Productivity of Ignorance: Public Health Campaigns on Antibiotic Stewardship', *The Sociological Review*, 68:1 (2020), 71.

[31] Linsey McGoey, *The Unknowers: How Strategic Ignorance Rules the World* (Zed Books, 2019).

[32] I borrow the term from both Pabst and Finkenbusch: Pabst, 'Brexit, Post-Liberalism, and the Politics of Paradox'; Adrian Pabst, 'Postliberalism: The New Centre Ground of British Politics', *The Political Quarterly*, 88:3 (2017), 500–9; Peter Finkenbusch, '"Post-Liberal" Peacebuilding and the Crisis of International Authority', *Peacebuilding*, 4:3 (2016), 247–61. Both understand it as a post-*neo*-liberal mode of politics. For the former, it marks a rejection of neo-liberal managerial expertise. For the latter, it represents its culmination. As the book suggests, I find expert ignorance's power to be precisely in sustaining some degree of undecidability, which includes its own temporality – capable of taking form as historically continuous, or as a moment of historical rupture, as the occasion demands.

[33] Nora Stel, *Hybrid Political Order and the Politics of Uncertainty: Refugee Governance in Lebanon* (Routledge, 2021), p. 205.

points out that the first-order debate persisted, never to be resolved, which resulted in a series of provisional bureaucratic responses to matters such as entitlement to work and land rights. This provisionality, she argues, became a form of governance, keeping the governed politically invested in the first-order debate while leaving their institutional status – and political autonomy as a discrete group – ambiguous.[34]

Sociologically, I have indicated that 'expert ignorance' does not refer to a specific group of actors who can be pinpointed at any point, but instead describes a form of embodied expertise (in the example above, some combination of actors and their practices). Conceptually, I have set out some conditions for expert ignorance. It does not reflect the momentary or intermittent experience of someone denying their expertise. Those denials reflect a legitimate position within the particular structure of expertise and are constitutive of a particular iteration of that expertise (even if certain experts might not see themselves as ignorant) – here, the continued non-decision at every level over the nature and construction of the category of 'refugee'. Practically, I have argued that expert ignorance is necessarily composed of ignorance and implementation work – here, the admixture of 'keep[ing] things undecided and vague', and enduring efforts to classify and govern. In light of my historical sketch of the emergence of expert ignorance, we might further limit its applicability to institution-building and institutional reform projects. We might say that expert ignorance is a means of invoking an institutional sublime (for example, the impossible complexities of managing Palestinian settlements) and giving it form while respecting its sublimity.

This resembles what Andrew Lang and I have elsewhere called 'ungovernance' – institution-building practices that embrace the impossibility of their success (akin to ignorance work) while committing to their implementation (akin to implementation work). Others have drawn ungovernance into their analyses of diverse domains, including peacebuilding, state-building, and environmental governance.[35] As noted above,

[34] Nora Stel, 'Lebanese–Palestinian Governance Interaction in the Palestinian Gathering of Shabriha, South Lebanon – A Tentative Extension of the "Mediated State" from Africa to the Mediterranean', *Mediterranean Politics*, 20:1 (2015), 76–96; Nora Stel, 'Mediated Stateness as a Continuum: Exploring the Changing Governance Relations between the PLO and the Lebanese State', *Civil Wars*, 19:3 (2017), 348–76; Stel, *Hybrid Political Order and the Politics of Uncertainty*, pp. 30–85.

[35] Jan Pospisil, 'The Ungovernance of Peace: Transitional Processes in Contemporary Conflictscapes', *Transnational Legal Theory*, 11:3 (2020), 329–52; Michelle Burgis-Kasthala, 'States of Failure? Ungovernance and the Project of State-Building in Palestine under the Oslo Regime*', *Transnational Legal Theory*, 11:3 (2020), 382–407; Stephen Humphreys, 'Ungoverning the Climate', *Transnational Legal Theory*, 11:3 (2020), 244–66.

Christine Bell has traced it through the public law practices around Brexit. Zina Miller has explored the effects on the transitional justice (TJ) field of what she calls the 'embedded ambivalence' of TJ experts towards transitional justice itself. This embedded ambivalence – a product of continual self-criticism, coupled with a will to action – 'can improve the enterprise, [but] it can also facilitate the evasion of foundational challenges'.[36] As she puts it, '[m]ajor critiques have been genuinely embraced as technologies of continuity rather than as instruments of destruction'.[37] And this '[r]epeated expansion raises questions about how and where to delimit the enterprise'.[38] This emphasis on the dynamics of expert self-denial, and its effects on the TJ field and its practices, shares an affinity with expert ignorance.

The analytical payoff of expert ignorance in other domains, then, might be to identify the forms of law or governance that emerge not out of an interstitial field, nor out of institutional fragmentation, but out of an ongoing movement between openness and closure, ignorance and implementation. This, in turn, points to the importance of analysing the relationship between the continual renegotiation of first-order questions (e.g., spatio-temporality, identity, the boundaries of the field or category in question) and the operations of that mode of governance – as well as efforts to shape that relationship, such as attempts to privilege legal implementation work in the Brexit context. In other words, "expert ignorance" allows us to reframe processes such as Brexit as a performance composed of ignorance and implementation work, and then to study sociologically any efforts to limit the relationship between those two types of work.

8.5 The Politics of Critical Method

It's all well and good to suggest more research on expert ignorance. Avenues for further inquiry are a hallmark of an academic book conclusion. But given the challenges of analysing and critiquing something as slippery as expert ignorance, what does it mean to take the measure of expert ignorance, and what are the politics of method for such an engagement?

[36] Zinaida Miller, 'Embedded Ambivalence: Ungoverning Global Justice', *Transnational Legal Theory*, 11:3 (2020), 353–81.
[37] Miller, 'Embedded Ambivalence', p. 378.
[38] Miller, 'Embedded Ambivalence', p. 353.

I have argued that ignorance and implementation work encompass critical methods to a remarkable degree.[39] In the context of rule of law reform, we have seen how big-picture debates about structures, norms, and goals are in the frontstage of the day-to-day work in projects and workshops. Studies of what things like 'rule of law' mean emically are part and parcel of sociological ignorance work. And turns to middle-level theory are as often lambasted as lauded for bracketing the big and small pictures in a quest to move forwards and do something.[40]

This perhaps reflects an instance of a broader challenge: how to anchor a critique of reflexive and complex governance phenomena that relentlessly internalise critiques. Johns, for example, remarks on 'the extent to which global governance practices among states and international organisations have metabolised critiques frequently levelled at them, without any associated disturbance of legacy power'.[41] Such phenomena resist critical reinterpretation since, as Dan-Cohen puts it, they 'claim for themselves both the future of knowledge and the end of modernity, both the apotheosis of knowledge/power and its demise'.[42]

Other recent scholarship has grappled with this challenge. Take work on the role of big data in governance. In this telling, big data facilitates modes of governance that do not seek to rule by representing the world but by flattening it into a stream of data. This stream of data, produced by a 'sensorium' rather than a set of knowledge practices, is constantly rearranged through various means – for example, algorithms or artificial

[39] As Riles points out in her study of networked governance, scholars are enamoured of network forms, as those networks run themselves through a 'parody of social scientific analysis': Annelise Riles, *The Network Inside Out* (University of Michigan Press, 2001), p. 174. Scholars are networked, and their tools provide the network with procedures. Riles too imagines global governance as an aesthetic practice; this is her way out of the problem of the absent 'outside' of networked governance. In her telling, everyone contests the *forms* of the network – what its meetings, documents, and other artefacts *look* like. Forms are semi-autonomous to the network – something that network participants can understand as enough of an object around which they can congregate and about which they can contest and debate. I see the aesthetics of expert ignorance as more radical. Expert ignorance produces a radical negation, collapsing a form–content relationship. As a result, its internalisation of academic critique is not just procedural; it forms part of reformers' work.

[40] See, on either side of the rule of law reform debate, Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond', *Annual Review of Law and Social Science*, 11 (2015), 155–74; Adrian di Giovanni, 'Parking the Debates: Law & Development in the Messy Middle of Public Law' (on file with author).

[41] Johns, 'State Changes', p. 2.

[42] Talia Dan-Cohen, 'Epistemic Artefacts: On the Uses of Complexity in Anthropology', *Journal of the Royal Anthropological Institute*, 23:2 (2017), 287.

intelligence – to produce and dissolve fleeting patterns and associations.[43] The governance effects of these associations then feed back into the system as part of the stream of data – meaning the system is already aware of and critically evaluating its own effects.

Van den Meerssche provides an example of the critical challenges this poses. He studies the use of artificial intelligence to identify risky migrants in the European Union's border control processes. As he explains,

> the use of algorithmic tools for patterning and prediction raises particular challenges for legal regulation and socio-political critique… [T]he key feature of the associative orders enacted at the 'virtual border' is the fact that people are not (solely and primarily) grouped on the basis of fixed criteria but, rather, through shifting lines of 'association, correlation and inference' (citation omitted). As a result, I have demonstrated, the standards of evaluation (the 'ordinal' norms) and the forms of affiliation (the 'nominal' orders) engendered by machine learning systems are fluid and mobile: they adapt and alter through their exposure to ever-unfolding passages and events.[44]

As a result, 'critique that focuses … on the "biased" representation of the subject and its classification according to pre-existing schemes' has limited purchase.[45]

Van den Meerssche's response is to trace the mundane workings of the algorithms in question, focusing on how they shape social relations through their continual adaptation: 'This elusiveness … should therefore not be seen as an impediment to critical engagement but, instead, as its object'.[46] Similarly, Johns identifies the following strategy:

> [I]t is down in the detail of particular practices, in the midst of mundane socio-technical work (including scholarly work), that developmental futures are being made, and remade. It is by observing and engaging assembly line personnel in the development project – … as diverse as they are – and understanding what they are doing and how, that we come to understand how we are seeing now, and what new blind spots we are cultivating and with what effects.[47]

[43] Fleur Johns, 'Data, Detection, and the Redistribution of the Sensible in International Law', *American Journal of International Law*, 111:1 (2017), 57–103; Fleur Johns, 'Global Governance through the Pairing of List and Algorithm', *Environment and Planning D: Society and Space*, 34:1 (2016), 126–49.

[44] Dimitri Van Den Meerssche, 'Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association', *European Journal of International Law*, 33:1 (2022), 190–91.

[45] Van Den Meerssche, 'Virtual Borders', p. 192.

[46] Van Den Meerssche, 'Virtual Borders', p. 192.

[47] Johns, 'From Planning to Prototypes', p. 863.

These strategies share a sense that the complex and reflexive governance phenomena in question are fundamentally meaning-making ones. In the quote above, for example, Johns is concerned with the 'developmental futures … being made'. Similarly, Van Den Meerssche's machine-learning tools produce new forms of social meaning ('clusters' of data, for example) – and he is concerned with how to critique their transformative effects on social meaning broadly understood. (e.g., 'These ephemeral bonds of association … cannot sustain durable political projects of recalcitrance or solidarity'.)[48] Their responses, in turn, seek to understand how this meaning is made, pragmatically and materially. And critically, they might identify structures and patterns (à la Van Den Meerssche), uncover systematic blind spots (à la Johns), and think about distributive and power effects.[49]

Both critique and its object, then, are meaning-making exercises, whose boundaries are porous. This means that critical engagements can be anchored in a sociological inquiry into something that undergirds the process of meaning-making – such as a materialist sociology, or a sociology of infrastructures.[50] So we might read Van Den Meerssche and Gordon, who seek 'new pathways for a critical practice that is not safe and sanctimonious but that opens and leaves open' further enquiries into contemporary meaning-making.[51]

Here, my account of expert ignorance is in conversation with – and perhaps deepens or extends – these approaches. I have insisted on paying attention to how rule of law reform internalises and deploys critique for the purposes not only of producing adaptation, adjustment, and further meaning-making but also of the outright refusal to make meaning: no one knows what the rule of law is nor how to do it. Said differently, refusing or unmaking meaning has, in my telling, become part of the technical

[48] Van Den Meerssche, 'Virtual Borders', p. 199.

[49] There are methodological and political affinities with Boltanski's efforts to provide an account of social critique, especially in a concern with complex and reflexive institutions and governance as particular and socially generative objects, and their commitment to finding critical openings amidst critical and pragmatic sociologies. Luc Boltanski, *On Critique: A Sociology of Emancipation*, 1st edition (Polity, 2011).

[50] Gavin Sullivan, 'Law, Technology, and Data-Driven Security: Infra-Legalities as Method Assemblage', *Journal of Law and Society* (2023, forthcoming), doi: abs/10.1111/jols.12352; Fleur Johns and Caroline Compton, 'Data Jurisdictions and Rival Regimes of Algorithmic Regulation', *Regulation & Governance*, 16:1 (2022), 63–84; Geoff Gordon, 'Engaging an Infrastructure of Time Production with International Law', *London Review of International Law*, 9:3 (2021), 319–49.

[51] Dimitri Van Den Meerssche and Geoff Gordon, 'Is This the Rhizome? Thinking Together with Fleur Johns', *Law and Critique* (2022, forthcoming), doi: 10.1007/s10978-022-09332-3.

apparatus of development, and perhaps in other governance projects. And this refusal of meaning is not cabined in a sociologically delimited field; it is a refusal to make meaning of the rule of law – perhaps governance – itself: to deny, with Duke Vincentio the possibility of governance is also to deny the possibility of meaning.

This, in turn, takes us to how expert ignorance underdetermines its own social conditions of possibility. Where for Latour, law's forms are somehow both superficial and yet remarkably durable over time,[52] and for Johns, rehistoricising a study of self-critical governance can offer critical purchase,[53] I have pointed to how rule of law reformers continually underdetermine both the temporality and history of rule of law reform.[54] I have made similar arguments about how expert ignorance underdetermines space and identity.

Instead, I have approached expert ignorance as a type of theatre or performance, in which the bodies of reformers have inscribed upon them fundamental tensions between meaning and its absence, embodiment, and disembodiment. I have done so with two goals: to capture the effects of the refusal of meaning (in a humanistic vein), while also keeping open space to sociologise aspects of that refusal owing to its location within a broader system of governance (in a social-scientific vein). To do this, I have mapped the action of reform from a participatory vantage point. Here, the scholar can be fully a subject or an object within the action – something which ethnomethodologists gesture towards but cannot consummate, remaining fixed instead on the precise nature of the researcher's entanglement with her object of research as both strive to make meaning out of the action they experience.[55] In other words, one possible alternative critical avenue, to which I have gestured in this manuscript, is to embrace the aesthetic quality of expert ignorance, and to study the efforts to discipline reformers' styles of performance – for example, studying PDIA in those terms.

[52] Bruno Latour, *An inquiry into Modes of Existence*, tr. Catherine Porter (Harvard University Press, 2013), pp. 360–62.

[53] Johns, 'State Changes', pp. 11–13.

[54] Similarly, Vos tracks the multiple, incommensurable 'beginnings' that EU experts and policymakers narrated about a militarised EU migration control initiative called Operation Sophia. Vos brackets the question of the strategic use of these multiple beginnings, and asks what they tell us about the Operation and its dramatis personae: Renske Nina Vos, 'Europe and the Sea of Stories: Operation Sophia in Four Absences' (PhD Thesis, Vrije Universiteit Amsterdam, 2021), 95–114.

[55] Harold Garfinkel, 'Ethnomethodology's Program', *Social Psychology Quarterly*, 59:1 (1996), 5–21; Anne Rawls, 'Harold Garfinkel' in George Ritzer (ed.), *The Blackwell Companion to Major Contemporary Social Theorists* (John Wiley & Sons, 2003), pp. 122–53.

Informed dramatic fiction here offers a stable-ish platform from which to enact such endeavours: after all, such fictions reveal 'life itself', as well as the struggles over 'certain pattern[s] of play' through which we seek to understand and shape life.[56] For example, in the manuscript, I have used the device of several unreliable narrators. This is in an effort to suspend the question of a rule of law reformer's intent, avoiding a set of empirical inquiries into that question without dismissing its importance.[57]

This sort of genre work should not be imagined as a curio at the end of a shelf containing empirically 'serious' social-scientific work.[58] Fictional accounts of reform that emerge from a deep engagement with expert ignorance are in fact already a mode of pedagogy and self-critique used by reformers themselves. For example, in 2015, the OECD produced a practitioner's notebook on governance reform – a set of insights from leading theorists and practitioners written in a manner accessible to reformers.[59] It is an account of the travails of 'Lucy', a governance reformer in her third year of service with a medium-sized donor government. She is being sent to a country at risk of violent conflict for two weeks to establish the broad parameters of a governance-reform programme. She receives a briefing packet from three senior governance colleagues. They attempt to transmit to her an inheritance of ignorance, or a sensibility of pervasive reflexive scepticism about her work. They urge her to remember that '[w]hatever analysis you did, you won't understand the context the way you want to'.[60] Furthermore, 'exactly how you get good institutions remains opaque, contested and often a question of ideological taste'.[61] Indeed, the 'real skill for the governance practitioner is to recognise what is going to happen on its own terms… Don't measure institutions by the artificial yardsticks of our own idealised models'.[62]

Lucy and her experiences are fictional. She is 'the central character' of the OECD-DAC's governance practitioner's notebook.[63] The editors of

[56] Mikhail Bakhtin, *Rabelais and His World* (Indiana University Press, 1984), p. 7.
[57] Linsey McGoey, 'The Logic of Strategic Ignorance', *The British Journal of Sociology*, 63:3 (2012), 533–76.
[58] Malcolm Ashmore, *The Reflexive Thesis: Wrighting Sociology of Scientific Knowledge* (University of Chicago Press, 1989), pp. 51, 66, 74–76.
[59] Alan Whaites et al. (eds.), *A Governance Practitioner's Notebook: Alternative Ideas and Approaches* (OECD, 2015).
[60] Alan Whaites, 'Memo to Lucy' in Whaites et al. (eds.), *A Governance Practitioner's Notebook*, p. 24.
[61] Whaites, 'Memo to Lucy', p. 19.
[62] Whaites, 'Memo to Lucy', p. 24.
[63] Whaites et al. (eds.), *A Governance Practitioner's* Notebook, p. 333.

the notebook do not attempt to hide their artifice ('[t]his publication is unusual', they tell us at the very beginning).[64] They have quite deliberately eschewed an analytic register. The OECD

> traditionally produced evaluations, guidance documents and summaries of 'good practice'. We are, however, at an interesting time in the evolution of thinking on governance practice – for reasons that we hope become clear in the document itself. This publication takes a rather different approach by articulating the thoughts, aspirations and concerns of a newly inducted governance adviser employed by a fictitious development agency. Rather than offer any definitive answers, it tries to stimulate ideas and thinking.[65]

As the italicised section suggests, the text is self-exemplifying. Lucy is not just a means of emplacing the reader; she is the most effective way for the notebook's editors to produce the style they seek to explain: the notebook is 'informal, and intentionally non-definitive – there is no simple right or wrong answer. But while being intentionally informal, perhaps even self-critical, this book does not underestimate the importance of governance work, nor the difficulties facing governance practitioners within aid agencies'.[66] The editors thus stage ignorance work, implementation work, and ways of disciplining the two (invoking the strictures of 'aid agencies' and the open-ended support of fragile 'networks' of like-minded reformers).[67] Lucy is a stage on which her sensibility can play out.

This suggests a different mode of critical engagement – one in which scholars grapple with the aesthetics of reform through informed, fictionalised accounts that they imagine in action and not just on the page. As with any fiction, these fictions require time and character development; they might be more or less informed by real experience, and more or less fictionalised as the circumstances demand (this diversity is reflected in my chapters on the project and the workshop). In other words, the work stands on the quality and genre of its fiction.

As I have noted, fictionalised accounts are already being used by ignorant experts to intervene in their own social organisation. I am arguing that scholars might want to use fictionalised accounts for the same purpose. The aesthetics of scholars' fictions might operate as a political intervention into expert ignorance. In the final analysis, critical engagement with expert ignorance does not entail pointing out its illegitimacy or

[64] Graham Teskey and David Yang, 'Foreword' in Whaites et al. (eds.), *A Governance Practitioner's Notebook*, p. 3.
[65] Teskey and Yang, 'Foreword', p. 3 (emphasis added).
[66] Whaites et al. (eds.), *A Governance Practitioner's Notebook*, p. 15.
[67] Teskey and Yang, 'Foreword', pp. 3–4.

stimulating a crisis within it – for that is what ignorant experts themselves do. Rather, it entails the aesthetic and social work of engaging with and reshaping the social organisation of ignorant experts.

We might do well to heed the counsel of Duke Vincentio that disruptive aesthete of power, and remember that, in a world of expert ignorance,

> the time may have all shadow and
> silence in it; and the place answer to
> convenience.
>
> —*Measure for Measure*, III. i. 273–75.

Scholars might be those, then, who inhabit the same shadows and silences and lurk in these same dark corners as these new, ignorant Dukes, to 'stage [them] to [our] eyes' (I. i. 74).

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