
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.

Vincenzio'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 gaze²⁰ – withers on the vine as Vincenzio surpasses it, leaving spectators unsure of the truth of what they witness as well as their role in it. Vincenzio 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	<i>Demos</i>	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 '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.

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 spill-over 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 governance³⁰ 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).