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“We’re Very Apolitical”: Examining the Role of the International Legal Assistance Expert

BLAKE K. PUCKETT*

ABSTRACT

International rule of law practitioners are important sources of knowledge transmission in the promotion of global governance. Yet they face significant barriers in their role as bearers of a globalizing legal culture. This article analyzes three of these barriers in the context of rule of law promotion in Central Asia. First, practitioners tend to dismiss the political nature of their work, which local actors then appropriate for their own purposes. Second, this misconception is amplified by the lack of adequate training, experience and continuity among rule of law practitioners. Third, the language barrier and the challenge of translation remain underappreciated. Translation must go far beyond a mere exchange of words and become a transmittal of the historical and cultural experiences embedded in language that make the concept of global governance plausible. Only a persistent presence and a commitment to mutual cooperation can surmount these barriers.

INTRODUCTION

A key concern in taking global governance scholarship from the realm of ideas to the realm of practice is the attitudes of legal practitioners, particularly those working on legal reforms outside of their own cultures. In operationalizing global governance, the temptation will be to limit the discussion to systems and institutions, laws and less formal rules, and local cultures and their resistance to

*I would like to thank the conference organizers and the *Indiana Journal of Global Legal Studies* for allowing me the opportunity to participate in its Symposium on Operationalizing Global Governance. Second, I want to acknowledge the Kennan Institute and its 2007 Workshop on Development in the Post-Soviet Space in which I was privileged to participate; many of the ideas being developed here owe their germination to the articles and discussions at the workshop.

globalizing themes. Yet as key conduits for the ideals and principles around which global governance can form, legal practitioners should be of particular interest to academics. The motivations, ideologies, strengths, and constraints of these agents must be understood. To the extent that academics also place themselves in the role of reform promoters, they should more readily assume the role of anthropologists¹ who routinely consider their own impact and their own situations within the group they are studying.² This is a challenge for lawyers, who have fairly strong professional norms of minimizing their own presence and impact and focusing instead on the law at hand and the case before them, as well as for legal academics, where the norm is to produce a scholarly third-person account of legal norms, processes, and institutions. This article seeks to overcome this tendency by focusing on international rule of law practitioners as important sources of knowledge transmission in the promotion of global governance.

My own research has grown out of my experiences working on legal reform issues in Central Asia earlier this decade and from my interest in broader questions of democratic reform in the region. Central Asia harbors significant geopolitical instability and is geographically isolated from countries central to the development of the western legal tradition. It is plagued by systemic corruption embedded in the Soviet past and largely condoned by current ruling elites. In such an inhospitable environment, what role do legal reform experts (both local and international) play, and how do they see themselves in these roles? This article suggests that at least in this region, there are some fairly significant gaps between how those working on the rule of law conceptualize their activities and how these same activities play out on the ground. Furthermore, there are some significant problem areas in how legal experts are fielded. Researchers and activists would do well to keep before them these issues even as they pursue solutions to the larger challenges that arise as societies respond to both globalization and the continued push for democracy and the rule of law. Specifically, this article focuses on three areas—the view of power and politics among rule of law practitioners, the role of career progression for legal reformers, and the role of translation in international legal reform.

1. See Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving For Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465, 495 (2008).

2. Johannes Fabian & Vincent de Rooij, *Ethnography*, in THE SAGE HANDBOOK OF CULTURAL ANALYSIS 613, 620 (Tony Bennett & John Frow eds., 2008) (“The researcher’s *presence* is the distinctive mark of ethnographic inquiry.”).

I. APOLITICAL GOVERNANCE?

Like our propensity to background our own role in legal reform practices, we also have a strong tendency to downplay the role of power and politics in the practice of legal reform, and for good reason. The rule of law, whether one is talking about the professional persona of a lawyer in an adversarial system, the dispassionate ruling of a judge in court, or the broadest imaginings of a society built on the rule of law and not of man, depends on the idea that power, and the politics that use it, are going to be constrained by a set of rules that apply to all.³ The lawyer will defend his guilty client, the judge will put aside her own notions of justice, and the citizen will refrain from taking up arms to solve problems because in some sense, the rule of law requires them to do so. Much can be said of the myth-like character of the rule of law,⁴ and much scholarship has been written to dissect this myth into its politically-motivated subcomponents;⁵ and yet, in the end, it plays an important role in creating rule of law societies. So, in some ways, the legal reform practitioner, eager to see the development of the rule of law, must promote this myth of neutrality if there is ever to develop an ideological hold on people sufficient to overcome their own propensity to turn to levers of power and politics.

The word myth is used here to suggest more than just a false story, but rather a story of real power that, even if not fully true, is capable of impacting the real world by affecting the motivations and aspirations of real people.⁶ The problem comes when we confuse the development of this myth with its present operationalization. The rule of law myth has power when judges, lawyers, and litigants begin to believe that judges are truly neutral finders of fact and law able to rise above their own prejudices and preferences. As a result, courts are trusted to decide cases and defend rights. It operates when people obey the law, both out of an inner sense that obeying is normatively right, and because disobeying will lead to punishment, even if objectively the chances of discovery, arrest, and punishment are quite small. But the de-

3. Richard H. Fallon, Jr., "*The Rule of Law*" as a Concept in International Discourse, 97 COLUM. L. REV. 1, 8 (1997) ("The fourth element of the Rule of Law is the supremacy of legal authority. The law should rule officials, including judges, as well as ordinary citizens.") (footnotes omitted).

4. See generally PAUL W. KAHN, *THE REIGN OF LAW* (1997) (arguing that the rule of law is our deepest political myth).

5. See, e.g., Carroll Seron & Susan S. Silbey, *Profession, Science, and Culture: An Emergent Canon of Law and Society Research*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 30, 30 (Austin Sarat ed., 2004); Frank Upham, *Mythmaking in the Rule of Law Orthodoxy* (Carnegie Endowment for Int'l Peace, Working Paper No. 30, 2002), available at <http://www.carnegieendowment.org/files/wp30.pdf>.

6. See ROGERS M. SMITH, *STORIES OF PEOPLEHOOD* 129–34 (2003).

velopment of this mindset requires a cultural transformation measured in years, if not generations. While the development of the rule of law requires an ongoing proclamation of its possibility, this future goal must not obscure present conditions.

The bottom line is that the rule of law as presented above does not exist in Central Asia, and to operate as if it does, or even as if it is on the horizon, is to let the myth befuddle the promoters rather than constrain local power. Whether one pays the traffic police \$1.50 to avoid an arbitrary detention, the investigator \$500 to avoid the arrest and conviction of the clearly innocent, or the prosecutor \$5,000 to procure the release of the clearly guilty, the Central Asian legal system acts as a set of structures enabling the raw use of power rather than constraining power.⁷ Nor is the prognosis much better at higher levels—constitutions are changed to accommodate political consolidation⁸ and treaties are passed to assuage outsiders with no thought to their domestic impact.⁹

In this atmosphere, how is the legal reform community reacting? Research up to this point suggests that the legal reform community faces grave difficulty both in recognizing and in responding to these challenges. Three vignettes from my recent trip to Central Asia provide a window into the current thinking of the community.

A. Vignette One: Apolitical Work

Efforts to depoliticize rule of law promotion have succeeded, at least according to their promoters. I interviewed an Embassy official from a western country involved in legal training. After a fairly extensive discussion of the types of legal training that the Embassy has been able to provide local law enforcement, prosecutorial officials, and judicial officials in the past year, I asked him if he screens the judges or other officials who attend the training based on their reputations for effectiveness or corruption. I asked this question in the context of four earlier in-

7. These were all incidents I heard or observed first hand during my visit to Central Asia in March 2008.

8. See Natalia Antelava, *Kazakhstan Pave Way for President for Life*, BBC NEWS, May 21, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/6672853.stm>; Hamid Toursunof, *Kyrgyzstan: Akaev's Iron Constitution*, TRANSITIONS ONLINE, Feb. 10, 2003, available at http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=43&NrSection=6&NrArticle=8666&ST1=body&ST_T1=wir&ST_PS1=1&ST_AS1=0&ST_max=1.

9. For example, the International Covenant on Civil and Political Rights was signed by Kyrgyzstan in the mid-1990s. The constitution includes Article 12, incorporating treaties directly into domestic law, but I am aware of a lawyer who just recently received a call from the presiding judge in one of his cases, castigating him for referring to an international instrument in his domestic court. See Constitution of the Kyrgyz Republic art. 12.

interviews each with long-time consultants on legal reform in the region, and each of whom had said in one way or another that the judicial system was fundamentally corrupt. One interviewee said that every single judge in the system was corrupt, from top to bottom, and that the system was one big pyramid funneling money to the top.¹⁰ In response to my question, the Embassy official said they did not screen because “we’re very apolitical,” “we focus on rule of law; we try to stay away from politics.”¹¹ This in a country that not three months before had held an election in which the major opposition party had been denied even a single seat in a single-district, party-list election for parliament, despite winning more than 10 percent of the vote for a ninety-member parliament.¹² At first glance, this is shocking. To suggest that one can work on the rule of law—work to constrain officials’ power through the adherence to rules—without it being an eminently political act is astonishingly naive.¹³ And yet this is nothing new. Naiveté plays a very important role; it allows interference in domestic concerns by agencies constrained in one form or another from interfering openly.¹⁴

The World Bank and its constituent agencies are a prime example of an organization explicitly restricted in its ability to engage in political activity. The International Bank of Reconstruction and Development’s Articles of Agreement, essentially its charter, provides the following:

Article IV, SECTION 10. Political Activity Prohibited

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these

10. Interview with Embassy Official (Mar. 7, 2008) (on file with author) (confidentiality of all interviewees was promised prior to the interviews).

11. Interview with Embassy Official (Mar. 10, 2008) (on file with author).

12. International Foundation for Electoral Systems, IFES Election Guide: Kyrgyzstan, <http://www.electionguide.org/results.php?ID=1375> (last visited Sept. 26, 2008). The opposition party is called Ata-Meken (Fatherland).

13. A similar move to define a reform effort as tackling “a distinctively legal program that stood above political conflict” was seen in the expansion of property rights to various entitlements by Charles Reich in *The New Property*, 73 YALE L.J. 733 (1964). See William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1488 (1986).

14. The idea that a broad sphere of public activity can be truly politically neutral is also frequently found in post-communist concepts of religion. The Kyrgyz Constitution specifically prohibits the pursuit of “political goals” by religious organizations. Constitution of the Kyrgyz Republic art. 8(4).

considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹⁵

And yet good governance and rule of law have been ongoing goals of the World Bank for more than a decade, as evidenced by the Bank's related expenditures: \$3.4 billion in support of public sector governance and \$424 million for rule of law development for fiscal year 2007 alone.¹⁶

While the restrictions on foreign governments are not usually as plainly stated, the idea of non-interference in the domestic affairs of other countries still remains a powerful principle.¹⁷ Focusing on an "apolitical" rule of law also allows the U.S. government to work in the political arena while still paying lip service to concerns about national sovereignty. This is particularly important in Central Asia, where local power finds strong support for resisting interference by neighbors China and Russia as members of the Shanghai Cooperation Organization.¹⁸ As useful as these terms may be in allowing the West to promote certain values abroad, there comes a point at which the repetition of the propaganda serves no one.

15. Int'l Bank of Reconstruction and Dev. [IBRD] Articles of Agreement art. IV §10, *available at* <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf>; *see also* Multilateral Inv. Guar. Agency, Int'l Dev. Ass'n, and Int'l Fin. Corp. Articles of Agreement, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040600~menuPK:34625~pagePK:34542~piPK:36600~theSitePK:29708,00.html> (containing similar provisions).

16. THE WORLD BANK, THE WORLD BANK ANNUAL REPORT 2007 (2007), at 23, *available at* <http://siteresources.worldbank.org/EXTANNREP2K7/Resources/English.pdf>.

17. While the duty to engage in humanitarian intervention is a clear exception to this principle, this duty is typically applied only to the most egregious examples—reinforcing the general principle that in typical cases a country's internal politics are to remain sacrosanct. *See* Hans Corell, *Sovereignty and Humanity: Reality and Possibility*, 36 DENV. J. INT'L. L. & POL'Y 1, 4 (2007).

18. *See* Shanghai Cooperation Organization, Declaration on Fifth Anniversary of Shanghai Cooperation Organization, June 15, 2006, *available at* www.sectsc.org/html/01470.html ("Diversity of cultures and model of development must be respected and upheld. Differences in cultural traditions, political and social systems, values and model of development formed in the course of history should not be taken as pretexts to interfere in other countries' internal affairs. Model of social development should not be 'exported'. Differences in civilisations should be respected, and exchanges among civilisations should be conducted on an equal basis.").

B. Vignette Two: Reception Blues

Rule of law through judicial reform must account for the current nature of the judiciary. This vignette begins with a speech¹⁹ I heard presented by the ambassador of another western country at a reception in honor of Judge's Day. The speech was striking on a number of different levels. First, the themes that the speech touched on were the same themes that a Western ambassador would have discussed in 1993. Those themes—privatization, the sanctity of contracts, and the rule of law—have been the mainstay of Western concerns about the former Soviet Union since 1993.²⁰ It was as if the intervening fifteen years had not occurred, and nothing had been learned in the West about the advancement of democracy and the rule of law, or in Kyrgyzstan about how exactly those values might develop in the Kyrgyz milieu. The experiences of Kumtor, the largest Western investor in Kyrgyzstan,²¹ or of the various other gold companies that have attempted to invest there,²² or the input of the International Business Council, which has been commenting on the regulatory needs and challenges in Kyrgyzstan since at least 2001,²³ were not mentioned.

Not only did the speech fail to engage the history of post-Soviet Kyrgyzstan, it also failed to engage its present audience. The ambassador, despite the presence of the most senior Kyrgyz court officials, did not address them by name or direct his speech toward them. Nor did he speak in Russian, let alone in Kyrgyz.²⁴ While the ambassador's inability to engage the audience was a single event, a striking comment by another Western diplomat that evening suggested an even deeper problem. He noted that the top judge in attendance was not only the head of the judicial pyramid, but was also the head of a corruption pyramid in which lower

19. See Official Welcome at the Judicial Education in Central Asia International Conference: Current Situation and Perspectives (Mar. 6, 2008) (on file with author).

20. See Thomas R. Pickering, U.S. Ambassador to Russia, Address at the Los Angeles Town Hall: US.-Russia Relations, Building Trade and Investment (Oct. 20, 1994), in VITAL SPEECHES OF THE DAY, Dec. 1, 1994, at 100; Kyril Tidmarsh, *Russia's Work Ethic*, FOREIGN AFF., Spring 1993, at 67.

21. Dorothy Kosich, *Kyrgyz Republic's Political Waters Muddy Kumtor Gold Mine Negotiations*, MINEWEB, June 3, 2008, <http://www.mineweb.com/mineweb/view/mineweb/en/page34?oid=54022&sn=Detail>.

22. Dorothy Kosich, *Things Not Looking Good For Western Mining Companies in Kyrgyzstan*, MINEWEB, Mar. 28, 2007, <http://www.mineweb.net/mineweb/view/mineweb/en/page33?oid=18726&sn=Detail>.

23. See generally Int'l Bus. Council, Building the Kyrgyz Economy, <http://www.eng.ibc.kg> (last visited Oct. 17, 2008).

24. Russian remains the primary language for legal discourse in Kyrgyzstan, as in most of Central Asia, and would have been entirely appropriate for the speech. Instead, the ambassador's speech was translated into Russian by an interpreter.

court officials funneled their takings up the ranks. The diplomat's concern was not only that these officials were on the invite list, but that in the process they were learning the reformist words and ideas to mimic while fundamentally remaining unchanged in their approach to law.²⁵

I again wondered whether I was witnessing mimicry or mastery when in a later interview a U.S. official told me that the head of the top court "understands that there is a need for jury trials." He then detailed how recently prosecutors were "stripped" of their powers (such as search warrants) and these powers were given to judges.²⁶ If judges are an island of professionalism, then this is good news.²⁷ If, instead, reforms merely institutionalize a corrupt judiciary freed from external constraints, then they are not merely unsuccessful; in the future, these "reforms" may serve to constrain a truly reformist government as entrenched judges mobilize rhetoric of independence and neutrality to defend their enlarged fiefdoms.

Jury trials, judicial warrants, judicial training, and courts' use of computers are all products of western reform efforts in Kyrgyzstan.²⁸ Combined with the institution of a new judicial council to oversee judicial appointments and discipline,²⁹ the operative assumption seems to be that if we just empower the courts and get them free of the executive, then all will be well. However, as my colleague Scott Newton of the London School of Oriental and African Studies and a long-time legal reform practitioner in the region has suggested, perhaps we should first do an ethnography of the judges in order to understand what clans they represent, how they are connected to other political players, and how they are already entrenched in the current

25. For a similar phenomenon in another post-Soviet country, see Karen Bravo, *Smoke, Mirrors, and the Joker in the Pack: On Transitioning to Democracy and the Rule of Law in Post-Soviet Armenia*, 29 Hous. J. INT'L L. 489, 552 (2007) ("Theatrical non-reform reforms operate as the smoke and mirrors that hide the true nature of the regime, and act as carrots to stimulate continued Western aid and engagement, while giving the regime cover to continue its consolidation of power.").

26. Interview with U.S. Official (March 10, 2008) (on file with author).

27. CHRISTOPH H. STEFES, UNDERSTANDING POST-SOVIET TRANSITIONS: CORRUPTION, COLLUSION AND CLIENTELISM 153–175 (2006) (focusing on need for "islands of honesty" to promote successful reform).

28. See Millennium Challenge Corp., Millennium Challenge Corporation Working with the Kyrgyz Republic to Fight Corruption and Promote Good Governance, Mar. 14, 2008, <http://www.mcc.gov/documents/factsheet-031408-kyrgyzrepublic.pdf>; *Kyrgyzstan's Judicial Council Receives Computers Under USAID Judicial Reform Facilitation Project*, AKIPRESS NEWS AGENCY, July 13, 2008, available at WL 7/13/08 AKIpress News Agency 07:00:23.

29. INT'L CRISIS GROUP, KYRGYZSTAN: THE CHALLENGE OF JUDICIAL REFORM 14–15 (2008), available at <http://www.crisisgroup.org/home/index.cfm?id=5387&l=1> (noting the creation of the National Council for Judicial Affairs in 2004 and the creation of a Congress of Judges and a Council of Judges under the 2007 Constitution).

power arrangements.³⁰ When the Chairwoman of the Constitutional Court (who, not so coincidentally, struck down the constitutional changes of 2006)³¹ finds herself a new parliamentary member of the ruling party³² following elections precipitated by her own decision, one must question what promoting judicial independence might mean, and more broadly, what institutional change can accomplish.

C. Vignette Three: Repulsed by Corruption

If international reformers underestimate systemic corruption in institutional reforms of the judiciary, local reformers may be better off ignoring it altogether. I interviewed the local director of legal projects at a well-funded, internationally-backed non-governmental organization (NGO). They had extensive programs in legal reform—including several projects working on draft laws in various stages of development, including laws related prosecutorial reform and issues of torture. The interview was going remarkably well, and the director, after agreeing to be taped, was happily outlining the various projects her NGO was working on.

Then, when asked what role her organization played in dealing with corruption in the legal system, she responded in two distinct ways—verbally and physically. Her stated response was that her organization does not work on anti-corruption issues, but that I might want to talk to the Anti-Corruption NGO, or perhaps the local branch of Transparency International. The failure to make addressing systemic corruption a central focus in the NGO's programming was surprising. But her physical response suggested this was no mere oversight. Even as she suggested I look elsewhere, she physically retreated from the table, verbally deflated, and lost much of the energy that had propelled our interview forward during the first hour. If her stated response suggested that the incoherence of a legal reform project without an anti-corruption agenda was being replicated on the local level, her physical response suggested that much more than naiveté might be at work—confronting

30. Scott Newton, *Judicial Reform as Ideology: MCC and Déjà Vu in Kyrgyzstan* 14 (Mar. 31, 2008) (unpublished manuscript, on file with author).

31. *Kyrgyz Constitutional Court Invalidates 'Illegitimate' Constitution*, RIA NOVOSTI, Sept. 14, 2007, available at <http://en.rian.ru/world/20070914/78793159.html> (discussing changes that favored the opposition).

32. Daniel Sershen, *Kyrgyzstan: Parliamentary Election Campaign Kicks Off*, EURASIA INSIGHT, Nov. 26, 2007, available at <http://www.eurasianet.org/departments/insight/articles/eavl12607a.shtml>.

corruption might involve far greater risks than promoting the adoption of a law on state-provided legal aid.³³

In each of the three vignettes, one sees a disconnect between the work being done to promote legal reform and the realities of the current political system. What was missing was an explanation of how legal reform might take into account systemic corruption in Kyrgyzstan. Instead, legal reform practitioners, particularly those on their first tour in the region, seemed to see corruption and systemic political intransigence to reform as problems that their programs were meant to correct, but consistently failed to reckon with the ways that these same characteristics might affect their own efforts.

II. GOVERNANCE WITHOUT EXPERIENCE: CAREER PROGRESSION

While the disconnect between the legal work being done and the true challenges of the political system that it seeks to influence may in part be due to a powerful ideology, this ideology would not be nearly as effective were it not for the limited career options for many of the international legal practitioners working in Central Asia.

To begin with, many legal consultants are present in the region for very short periods of time. A two or three-month assignment to deal with a specific issue or area of expertise is quite common, and it is not surprising that projects of such short duration provide little opportunity to understand or affect systemic issues.³⁴

However, even among those individuals or agencies that have a long-term presence, there is a surprising lack of investment in area familiarization or the benefits of personnel longevity. The American Bar Association (ABA) Rule of Law Initiative has been active in Central Asia since 1993.³⁵ Yet, while their country and regional directors generally have prior experience working for the ABA Central European and Eurasian Law Initiative (CEELI), the typical length of tour for their international staff remains quite short. In one country in Central Asia, during the past ten years the main local ABA office has seen more than twenty experts pass through, most for a year or less.³⁶ Preparatory training on the

33. One of the current projects of the NGO was to assist the government in drafting a law that would reform the provision of legal aid by the government. Interview with NGO Director (Mar. 10, 2008) (on file with author).

34. Wade Channell, *Lessons Not Learned About Legal Reform*, in *PROMOTING THE RULE OF LAW ABROAD* 137, 150 (Thomas Carothers ed., 2006).

35. See Am. Bar Ass'n, ABA Rule of Law Initiative—Kyrgyzstan, http://www.abanet.org/rol/europe_and_eurasia/kyrgyzstan.html (last visited Oct. 17, 2008).

36. Interview with ABA Staff Member (Feb. 28, 2008) (on file with author).

region or country might last a week or two.³⁷ In the opinion of one local advisor, the result was that most international staff developed an effective understanding of the local environment only toward the very end of their tours.

A similar lack of rule of law specialists is also a problem among lawyers deployed overseas by the U.S. government directly. Department of Justice (DOJ) lawyers deployed in the region are neither rule of law nor regional specialists. They are volunteers from the general pool of Assistant U.S. Attorneys and DOJ Trial Lawyers in offices across the United States who are assigned to the Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT).³⁸ They receive some minimal training at OPDAT headquarters and then work in an embassy for twelve to eighteen months, with the potential to extend for another year if desired and if funding is available.³⁹ Their lack of training and experience is an even greater impediment to the rule of law project because, unlike the ABA,

37. Conversation with ABA/CEELI Rule of Law (ROLI) Liaison, Bloomington, Indiana (Apr. 4, 2006). For a recent ABA/ROLI representative's description of fairly minimal preparation, see Jeffrey Spalding, *The ABA Rule of Law Initiative, An American in Moscow*, http://spaldii.typepad.com/an_american_in_moscow/2007/08/the-aba-rule-of.html (Aug. 3, 2007, 19:25 EST).

38. An example of the job requirements for one of these positions as posted on the DOJ website:

Qualifications: Required qualifications: Applicants must possess a J.D. degree, be duly licensed and authorized to practice as an attorney under the laws of a State, territory, or the District of Columbia. **Applicants must be a current Department Trial Attorney or Assistant United States Attorney** and must have at least four or five years of post J.D. experience to be qualified at the GS-14 or 15 level. The successful applicant will have excellent interpersonal and management skills, be mature and self-sufficient, communicate effectively orally and in writing, and possess extensive prosecutorial experience in a variety of substantive criminal areas. Applicants should also be able to work with diverse types of individuals and groups and achieve consensus on difficult and multidimensional issues. **Preferred qualifications:** In addition, international experience, particularly in working with foreign law enforcement and justice systems, is an important asset. Experience in working with the legal systems of former Soviet states, and Russian or Romanian language skills are helpful but not required.

U.S. Dep't of Justice, U.S. Department of Justice Criminal Division Resident Legal Advisor for Moldova, <http://www.usdoj.gov/oarm/jobs/moldovarla5oarm.htm> (last visited Oct. 17, 2008).

39. According to one DOJ lawyer, preparation included desk-side briefings from regional analysts in various U.S. government agencies in Washington, D.C., typically not for more than a few weeks, and perhaps two to three months of language training, but only if time permitted. The DOJ vacancy announcements suggest that for many of these positions, the limited time span between the posting of the opening and the projected on-the-ground date will mean little or no extra time for additional training before arrival overseas. Interview with DOJ Lawyer (Mar. 10, 2008) (on file with author).

the DOJ funds legal reform projects. As a result, DOJ lawyers are not only project implementers, but project designers as well.⁴⁰

The lack of long-term career focus for rule of law specialists is also seen in national lawyers. My experience suggests that while young law students and young attorneys may be quite eager to engage in rule of law reform projects sponsored by international organizations, this initial eagerness is tempered as the attorney progresses and life obligations increase. While this is certainly true in the West, the initial opportunities available for lawyers in Central Asia are far fewer. A move into

40. The job description of OPDAT's Regional Director for Eurasia:

About the Office: The mission of the Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) is to develop and administer technical and developmental assistance designed to enhance the capabilities of foreign justice sector institutions and their law enforcement personnel, so those institutions and their personnel can more effectively combat terrorism, organized crime, corruption, financial crimes, trafficking in persons and other types of crime, in a manner consistent with the rule of law, and can more effectively cooperate regionally and with the United States in combating such crime.

Responsibilities and Opportunity Offered: Based in Washington, DC, the Regional Director directs the delivery of the foreign criminal justice sector development and technical assistance programs which take place in the countries comprising the Eurasia region. Duties also include the responsibility to develop and manage resources within detailed program budgets and cost estimates; to employ systems of internal control in order to monitor the results, impacts and financial soundness of programs; and to provide professional leadership and guidance to the region's headquarters staff, and Resident Legal Advisors and other in-country program personnel, regarding carrying out programmatic objectives in support of OPDAT's global mission to provide administration of justice assistance and resources to prosecutors and other justice sector personnel in developing and transitioning countries. The successful candidate will manage the development of and obtain financing for all programs and will review, evaluate, and implement follow-up assistance based upon the results and impacts of each preceding assistance activity. While working within the OPDAT headquarters staff, the Regional Director coordinates with management officials within the Criminal Division and the Department of Justice, and with program policy and funding officials in the Department of State, the U.S. Agency for International Development, the Millennium Challenge Corporation and operational law enforcement agencies, as well as with host country justice sector authorities, to assure the programs address host country needs, and support Departmental and U.S. policy objectives. Performs other duties as assigned.

U.S. Dep't of Justice, U.S. Department of Justice Criminal Division, Office of Overseas Prosecutorial Development: Assistance and Training, Trial Attorney/GS-14 to GS-15, <http://www.usdoj.gov/oarm/jobs/opdat-regional-director-eurasia-08-oarm-028.htm> (last visited Sept. 20, 2008).

the corporate world is difficult, as there are few law firms and other corporate jobs are gained primarily through connections.⁴¹ The same remains true of government jobs. Additionally, these jobs do not provide an adequate living apart from bribery or other corrupt practices.⁴² Academia suffers the same pay problems, as it is largely state-controlled. A common result is that promising local lawyers take advantage of educational or other opportunities abroad and then choose not to return.⁴³ Understandably, with no support network and few long-term prospects, many of those with both the greatest understanding of the local legal milieu and international legal training and experience to address the local challenges move on.

Occasionally one does find a rule of law practitioner who has persevered. In Central Asia, there are a handful of legal consultants and other international development specialists who have significant long-term experience in the region.⁴⁴ However, while the longer-term consultants overcome many of the disadvantages already discussed, achieving regional expertise, familiarity with both the practice of rule of law promotion and its related scholarship, and often competency with one or more local languages, the consultant nonetheless faces her own constraints. As one consultant told me, with no firm career path, the consultant must adjust to whatever the current project requires.⁴⁵ Such consultants may have extensive experience, but they must still pay the bills, and to do so may mean supporting poorly-designed projects because those are the only projects available. So, while on the margins, the legal consultant can do much to hone a project to better fit the circumstances on the ground, his intervention will typically come too late to restructure the fundamentals of a project. Consultants remain outsiders to both the national legal community and the Western-based donor organizations. Thus, the integration of their experience into rule of law projects remains limited.

Any effort to change the career prospects of national lawyers is wrapped up in the larger effort to transform legal institutions and is a long-term process. How-

41. Daniel G. Hoskins, *A Study of the Trade Route Between Northwest China and the Ferghana Valley* 43 (Apr. 4, 2006) (unpublished manuscript, on file with author).

42. AM. BAR ASS'N RULE OF LAW INITIATIVE, PROSECUTORIAL REFORM INDEX FOR KYRGYZSTAN 52–53 (2007), http://www.abanet.org/rol/publications/kyrgyzstan_pri_10_2007.pdf (“Nearly all respondents agreed that low salaries have significantly contributed to corruption of all kinds . . .”).

43. In Russia, according to one study, the majority of Russian students with foreign legal training work in western law firms, but outside of Kazakhstan, Central Asia does not have any western law firm offices. See Jane M. Picker & Sidney Picker, Jr., *Educating Russia's Future Lawyers—Any Role for the United States?*, 33 VAND. J. TRANSNAT'L L. 17, 74 n.267 (2000).

44. Interview with Legal Consultant (Feb. 27, 2008) (on file with author); Interview with Legal Consultant (Mar. 6, 2008) (on file with author).

45. Interview with Legal Consultant (Mar. 6, 2008) (on file with author).

ever, Western agencies—particularly DOJ, but also professional organizations, courts, and foundations—can address the need for specialized rule of law practitioners. A far greater commitment to initial training would be a good start. A longer-term career track that allowed the development of a pool of experienced practitioners who both served overseas and engaged in research and strategic planning within their own institutions would be a key component of making global governance realistic in the legal realm.⁴⁶

III. GOVERNANCE MAY BE GLOBAL—LANGUAGES ARE NOT

In addition to apolitical myths and dead-end careers, a third challenge to operationalizing global governance is language. While much of the work of international law has been done in English or another world language,⁴⁷ to begin to operationalize this law at the concrete level of lived experience for the vast majority of people, these ideas and concepts will need to be translated.

The need for translation is a truism with which few would argue. But there is a vast difference between acknowledging the difficulty philosophically and recognizing the truly monumental tangible difficulties that translation involves. This is not a new phenomenon, nor is it limited to lawyers. Much of the historical travel literature on Central Asia makes short shrift of the language difficulties, either assuring the reader that the author understood the native language perfectly well (despite no obvious chance ever to have acquired it),⁴⁸ or glossing over the possibility of failed

46. The military has long recognized the need for area experts. Foreign Area Officers (FAOs) are first and foremost military professionals, having spent five to seven years leading troops before being designated as FAOs. We should expect the same type of initial professional development for lawyers before they engage in overseas practice. And both the DOJ and ABA, for example, do expect their overseas representatives to have significant domestic experience first. However, FAOs combine their military professional experience with two to three years of additional training in cultural studies (typically a regionally-focused Master of Arts degree), language training (a year at the Defense Language Institute), and in-country experience (often as open-ended as a vehicle, travel money, and a general requirement to report on their travels). Only after this training are FAOs used to promote U.S. foreign policy, either in U.S. Embassies overseas or as analysts or advisors to high-ranking commanders in the United States. DEP'T OF THE ARMY, COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT AND CAREER MANAGEMENT, Pamphlet 600-3, 255-61 (2007).

47. Consider the U.N.'s website for treaties, <http://untreaty.un.org/>, whose interface is in English and French, and which contains copies of treaties and other notifications in English and French, and in some cases, in Arabic, Chinese, Russian, and Spanish as well.

48. *See, e.g.*, ARMIN VAMBERY, *TRAVELS IN CENTRAL ASIA: BEING THE ACCOUNT OF A JOURNEY FROM TEHERAN ACROSS THE TURKOMAN DESERT ON THE EASTERN SHORE OF THE CASPIAN TO KHIVA, BUKHARA, AND SAMARCAND IN THE YEAR 1863* (Praeger Publishers 1970) (1864).

translations even as the conversation becomes ever more elaborate.⁴⁹ Contemporary writers sometimes demonstrate the same practices, focusing on the rhythm of the story and obscuring the back and forth of translation, unless it adds to the spice of the story.⁵⁰ The same type of obfuscation (that suggests governance reforms can happen without being political) can make a hero of a travelling vagabond.

The editorial redaction of translators in classic travel literature quickly gives way to the realities of programs tied to translators. One meeting I attended between U.S. government representatives and a Central Asian ministry to discuss planned assistance for the coming fiscal year included the very best in technical equipment. Headsets were available for every participant, many of the Power-Point presentations had been translated, and two well-qualified translators were on hand to do simultaneous translation. However, as I listened to the presentations from the U.S. representatives with one ear and the translations with the other, it became readily apparent that much was being lost. Some sentences or paragraphs might be conveyed nearly effortlessly, but as presentations wandered into idioms, technical terms, or new concepts, quite often only the barest outline of what was being said would come through the translation.⁵¹ Unfortunately, the lost subtleties were quite often key concepts: diplomatically-framed gentle promotion of the principles that the aid was meant to promote, rather than just the bromides of cooperation and goodwill in which they were framed. If this is the level of frustrated communication that occurs in the very best of circumstances, clearly the task at hand is far more difficult than generally acknowledged.

The problem is even more challenging when it comes to legal concepts. Even within the Western legal tradition, a single legal concept like *laïcité* can all but es-

49. See WILLIAM OF RUBRUCK, *THE JOURNEY OF WILLIAM OF RUBRUCK TO THE EASTERN PARTS*, 1253–55, at 148 (William W. Rockhill trans., 1900) (describing where Rubruck held a theological inquiry that probably passed from Latin to Syriac to Turkic to Old Uyghur).

50. CRAIG MURRAY, *MURDER IN SAMARKAND: A BRITISH AMBASSADOR'S CONTROVERSIAL DEFIANCE OF TYRANNY IN THE WAR ON TERROR* 12, 13 (2006) ("The direct speech may be regarded as a stylistic device. . . . Several conversations that originally took place in Russian are given in English.").

51. Another interesting example appeared in a recent press release from the U.S. Embassy in Dushanbe, Tajikistan. In a question and answer session, Acting Deputy Assistant Secretary of State for South and Central Asian Affairs Pamela Spratlen mentioned the use of the "air bridge" in Termez, Uzbekistan by U.S. troops. The term refers to a metaphorical bridge, which in reality is weekly flights by German transport planes between Germany and Uzbekistan that U.S. troops would now be able to use. For the translator and reporters though, there was great confusion. Was it a bridge, a base, or a major change in the U.S. position in the region? The transcript suggests all three. Press Release, Embassy of the United States, Press Briefing by Acting Deputy Assistant Secretary for Central Asia, Pamela Spratlen (Apr. 2, 2008), available at http://dushanbe.usembassy.gov/pr_04022008.html.

cape translation between the French and American legal traditions.⁵² I confronted the problem of translation in my own research with the simple word “lawyer.” In describing the subjects I am interested in, I usually focus on lawyers as the primary rule of law promoters. However, when I use the word “lawyer,” or its Russian translation *advocat*, I end up missing many of the personnel I am most interested in. In Soviet-legacy legal systems, the *advocati* are only a subset of legal professionals, roughly corresponding to civil litigators and defense attorneys.⁵³ Prosecutors and judges, easily subsumed under the lawyer category in the United States, are distinct categories in Central Asia.⁵⁴ And, of course, other functionaries of the legal system—marshals, court recorders, police investigators, and legislative drafters—are all excluded as well.⁵⁵ Even knowing this, the translation difficulty remains, for it is the underlying concept of a single professional ethos that ultimately must be translated. Translating concepts is a far more difficult task than translating words.

In regions like Central Asia there are entire fields of law that are outside the lived experience of even the urban elite, let alone the average farm worker. Efforts at civic education can begin to change this for high-priority fields such as basic human rights.⁵⁶ However, it requires a far richer conceptualization of rights to discern how to integrate concepts such as freedom of speech, association, and religion with concerns over corruption, security, and national identity in a fragile state.

The task of translation, then, is far from mechanical. It requires the gradual assimilation of new concepts and the re-understanding of old concepts to fit contexts far removed from their original habitats. Global governance is itself a concept that has grown out of international law amidst the vastly changed dynamics of a far more integrated world system.⁵⁷ Translating the tasks of global governance for lawyers and policy makers familiar with the more traditional international

52. Carol J. Greenhouse, *Separation of Church and State in the United States: Lost in Translation?* 13 IND. J. GLOBAL LEGAL STUD. 493, 493 (2006).

53. SAMUEL KUCHEROV, *THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION* 447 n.1 (1970).

54. Am. Bar Ass’n, *The Legal Profession Reform Index for Kyrgyzstan 2* (2004), <http://www.abanet.org/rol/publications/kyrgyzstan-lpri-2004.pdf>; Donald D. Barry & Harold J. Berman, *The Soviet Legal Profession*, 82 HARV. L. REV. 1, 5 (1968) (“‘Lawyer’ is a peculiarly American term for the description of all members of the legal profession, including not only advocates in court and legal advisers but also judges, prosecutors and other officials concerned with the administration of justice, law professors, and even persons who, having been admitted to the bar, are engaged in other pursuits.”).

55. Am. Bar Ass’n, *supra* note 54, at i.

56. See Am. Bar Ass’n, *Public Legal Education Pioneers in Southern Kyrgyzstan*, Aug. 2008, http://www.abanet.org/rol/news/news_kyrgyzstan_street_law_success.shtml.

57. See Alfred C. Aman, *Indiana Journal of Global Legal Studies: An Introduction*, 1 IND. J. GLOBAL LEGAL STUD. 1, 1–2 (1993).

system has been a task of the *Indiana Journal of Global Legal Studies* for more than a decade now. As we speak of the further operationalization of global governance we must realize that the translation task has become far greater: to be effective, global governance must be given a meaningful context in places that have only the weakest familiarity with the international standards on which it was first built.

IV. A MODEST COMMITMENT

Making sense of global governance at the periphery requires a firm grasp of the challenges that await our attempts to extend the rule of law. If law is to respond successfully to globalization, we must recognize that the global reach of law is far more tenuous than that of other global conditions, whether economic or climatic. Local power structures can adapt to global trends without changing their underlying nature and will react to attempts at reform regardless of whether those reforms are labeled apolitical. Effectively engaging these structures requires knowledge and time, virtues that remain to be institutionalized among rule of law professionals. The commitment to sustained engagement is also a prerequisite to effective translation, for only time will allow the development of shared vocabulary and shared experiences that will advance the rule of law and the shared relationships that can overcome the mistakes that inevitably occur in cross-cultural settings. Commitment must come at the individual level, with long-term investment in both the technical skills and regional relationships that will allow sustained, informed cooperation as reforms progress. And commitment must come at the institutional level, with a paradigm shift from quick transitions to long-term investments that may ultimately bear fruit only with generational changes.

I closed the talk on which this article is based with a quote on the challenges of being a legal comparativist. The quote is a little dated, and arguably a part of the tradition of the Global Journal and its conferences is to move beyond comparative law to a more global perspective. But I would argue that even as we move closer together through globalization, in many corners of the world, a detailed knowledge of the local remains crucial. In this setting, it is important to remember that in simpler times it was said:

Comparatists have—pure and simple—an incomplete knowledge of many hard facts. They must know something about the historical, social, economic, political, cultural and psychological context which has made a rule or proposition what it is. Because thorough

knowledge needs hard and extensive study, excellent language skills, good libraries, long experience, probably knowledge of life and practice within the foreign system, it is rarely acquired. In practice, the comparatist almost inevitably knows the legal order better in which she was trained. This asymmetry of knowledge alone may cause systematic mistakes.⁵⁸

Or perhaps more succinctly, when I asked one of my interviewees what was the biggest problem he saw in international legal experts coming to work in Kyrgyzstan, he answered simply, “arrogance.”⁵⁹

58. Anne Peters & Heiner Schwenke, *Comparative Law Beyond Post-Modernism*, 49 INT'L & COMP. L. Q. 800, 832 (2000).

59. Interview with Legal Consultant (Feb. 27, 2008) (on file with author).