

Editorial

Introduction – A New Journal !

The rule of law has become a global ideal. It is supported by people, governments and organizations around the world. It is widely believed to be the cornerstone of national political and legal systems. It is also increasingly thought of as a fundamental principle of international relations and international law. In the 2005 World Summit Outcome document, the heads of states and government of the world agreed to recognize ‘the need for universal adherence to and implementation of the rule of law at both the national and international levels.’ A year later, the United Nations General Assembly adopted a resolution on ‘the rule of law at the national and international levels.’ Few, if any, ideals have achieved such widespread acceptance and broad application.

Nor has this enthusiasm been limited to meetings and discussions among leaders and representatives of states. Since the late 1980s, many governments, local and international non-governmental organizations, international organizations, (multinational) corporations, law firms and private funds have actively been engaged in promoting and strengthening the rule of law, primarily at the national level. They have tried to achieve legal change and reform by training judges, building court houses, introducing or amending constitutions and laws, and influencing the values of the general public. Estimates vary, but it is clear that annual turnover in the rule of law industry exceeds a billion US dollars a year.

The remarkable consensus on the importance of the rule of law conceals, however, important conceptual, political and strategic differences. Firstly, there are conflicting views on the meaning of the rule of law. The rule of law is, indeed, a paradigmatic example of what scholars often describe as a profoundly contested concept. Secondly, promoters of the rule of law have a variety of objectives that are not always easy to reconcile, including poverty alleviation, private sector development, human rights protection, democratization and geopolitical stability. And thirdly, there are important strategic differences in the way promoters of the rule of law seek to achieve their objectives, ranging from discrete changes to parts of the legal system to a comprehensive overhaul of legal institutions and procedures.

Diversity and disagreement would not be a cause for concern if people and organizations knew what they were doing. Yet many practitioners, policy-makers

and observers believe that current efforts to promote and strengthen the rule of law suffer from ‘an apparent lack of knowledge at many levels of conception, operation and evaluation’, as Thomas Carothers put it in a widely read and influential paper. This is not to say that we know nothing at all. Long-standing academic traditions have produced deep and extensive analyses of efforts to achieve legal change. Some organizations, notably the World Bank, have produced serious intellectual explanations and justifications of their activities. But there is still much that we do not know. This problem of knowledge is aggravated by a lack of exchange among academics from various disciplines who study the rule of law and by a lack of interaction between academics and practitioners. Carothers therefore once suggested that it might be a good idea to devote a specialized journal to the study of the rule of law. The Hague Network on the Rule of Law, which was founded by the Hague Institute for the Internationalisation of Law and consists of academics and practitioners, agreed that a single forum is much-needed.

The mission of the Hague Journal of the Rule of Law is to deepen and broaden our knowledge and understanding about the rule of law. Its two main areas are 1) theoretical issues related to the conceptualization and implementation of the rule of law in domestic and international contexts and 2) the relation between the rule of law and such outcomes as economic development, democratization and human rights protection. The journal welcomes contributions from academics and practitioners with expertise in any relevant field, including law, anthropology, economics, philosophy, political science and sociology. The journal will occasionally publish special sections. Future special sections are planned on the rule of law in Eastern Europe; 20 years after the fall of the Berlin Wall (edited by Martin Krygier), the rule of law and Islam, the international rule of law, and an investigation and assessment of the proliferating indexes for measuring the rule of law. The journal will publish papers (approximately 6000-10.000 words) and notes (approximately 500-3000 words). Papers are accepted on the basis of double blind peer-review. Notes are accepted after review by two or more board members. In addition, the journal will publish book reviews (1000 words maximum) and occasionally review essays.

This first issue of the Hague Journal consists of two parts: a series of ‘think pieces’ and a special section, edited by Stephen Golub, on the recent report *Making the Law Work for Everyone* by the Commission on Legal Empowerment of the Poor (CLEP).

The think pieces – a format suggested by Philip van Tongeren and Ella Colvin, publishers of the journal – are short reflections by members of the editorial board and special invitees. They have responded to one or more of the following questions: What will the rule of law field be like in five to ten years or what should it be like by then? What are the main challenges and issues? What knowledge are we lacking and most in need of?

The aim of these think pieces is twofold. First, we believe that the start of a new specialized journal is an excellent opportunity to take stock of the field and its challenges. Secondly, we hope to give readers and possible contributors a clear sense of the purpose of the journal and the range of topics, issues and approaches we are interested in and see as falling within the scope of the journal. Needless to say, the series of think pieces are not meant as an exhaustive research agenda.

In his think piece, Randy Peerenboom discusses three challenges for the academics and practitioners in the next five or ten years: the study of the methodology of rule of law reform, the testing of claims about the relation between rules and institutions and the aims of the rule of law, and the development of conceptions of the rule of law which do justice to alternative, non-Western ideals. Jan Michiel Otto endorses the latter point by defending an inclusive universalism in the academic study and practice of rule of law promotion. He proves his case by showing how the rule of law is arguably compatible with Sharia, despite persistent misperceptions and stereotypes in the West. Martin Krygier's think piece emphasizes the need for both academics and practitioners to move away from a focus on rules and institutions to the conceptualization of non-legal factors upon which the rule of law depends. Sumaiya Khair discusses an example of such an approach which takes non-legal factors into account, the legal empowerment of the poor, and suggests that the establishment of National Commissions on Legal Empowerment is desirable. David Trubek presents a theory of the political economy of current rule of law efforts in which the core notion is the developmental state.

A number of think pieces discuss flaws in the rule of law industry and present bold and innovative or just much-needed commonsensical ideas on how to solve them. Jim Goldston points out that the rule of law industry suffers from a lack of legitimacy, quality, effectiveness, and reverse knowledge transfers, and that it fails to take into account the considerable deficiencies of legal systems in developed countries. He argues that these defects could be remedied by stimulating indigenous philanthropy, the establishment of a global justice endowment and the creation of an international civil society consortium of leading rule of law actors. Veronica Taylor likewise explains that the industry 'tends to over-promise and under-perform'. She explains that rule of law assistance is hampered in many respects by a knowledge-vacuum and pleads for rigorous empirical research. Pim Albers addresses one of the core-activities of many efforts to strengthen the rule of law, improving the quality of the court system, and discusses systems which have been developed over the past 20 years to achieve this aim. He pleads for the establishment of an international institute for Court Excellence. Stephen Golub claims that the notion of the rule of law is far too narrow and ineffective to address the needs of the poor. In his view, the concept of justice is a better organizing principle for efforts to alleviate poverty. He presents two pessimistic and two

optimistic scenarios for how international efforts to alleviate poverty will look ten years down the line.

Although the idea of an international rule of law is an old one, it is fair to say that the application of the rule of law to the international level has only recently begun to attract widespread attention and that it poses some of the most exciting challenges for both scholarship and reform. In his think piece, Simon Chesterman points out that the rule of law can fruitfully be applied to at least three different phenomena at the international level: the relations between states and other subjects of international law, the relation between international and domestic law and global administrative law, i.e., governance regimes that touches individuals without mediation through national institutions. Chesterman focuses on the rule of law-deficit in the UN Security Council and maps out the challenges that need to be overcome if the international rule of law is to be more than a slogan. André Nollkaemper emphasizes the importance of the interaction and interface between the international and domestic rule of law. An international rule of law depends on national institutions, notably courts. Nollkaemper argues that many actors in rule of law promotion are insufficiently aware of this and argues that both scholarship and reform efforts should be spent, not so much on either the domestic or the international rule of law, but on the intermediate level of an 'internationalized rule of law'. Mark Ellis concurs in his think piece on the International Criminal Court. According to Ellis, the success of the ICC and international criminal law over the next ten years depends on whether courts at the national level can be built and strengthened. Ellis discusses the challenges that the international community faces in this daunting enterprise and offers clear solutions. Jane Stromseth also discusses the ICC and various hybrid tribunals, but focuses on how these courts can contribute to strengthening the rule of law at the domestic level more generally in post-conflict societies. She argues that institutional efforts are currently not or insufficiently supplemented with meaningful outreach to the affected populations and that this negatively affects public confidence in the rule of law.

We think this first issue of the HJRL shows the impressive wealth and variety of views and perspectives about the nature and scope of the rule of law enterprise. It also shows the challenges that lie ahead. We encourage both academics and practitioners to submit their work for publication in the journal.

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