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Rule of Law Symposium

Strengthening Demand for the Rule of Law in Post-Conflict Societies

Jane Stromseth*

Building the rule of law in the wake of military conflict has proven to be a complex and formidable challenge in countries as diverse as Iraq, Afghanistan, Timor-Leste, and Sierra Leone. It has become clear in these and other situations that strengthening the rule of law is not simply a matter of building institutions—courts, legislatures, and so forth—or enacting better laws. The rule of law also depends crucially on building public trust and confidence in those institutions. Or, to put it another way, strengthening the rule of law is not only a question of the supply side of institutions, but also depends crucially on the *demand* side: addressing the needs and aspirations of ordinary people, reaching out to them, giving them a stake in the law, and helping to create institutions that are responsive to their concerns and worthy of their trust and confidence.

The specific challenges of building public trust and confidence in—and demand for—the rule of law in difficult post-conflict situations is one of many challenges that my colleagues Dean David Wippman, Professor Rosa Brooks, and I address in our book, *Can Might Make Rights?: Building the Rule of Law After Military Interventions*.¹ I will say a few words here about why we picked that particular topic for the book. Then I will

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1. JANE STROMSETH, DAVID WIPPMAN, ROSA BROOKS, *CAN MIGHT MAKE RIGHTS?: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* (2006).

share some of the results of our research—both the good news and the bad news about the challenges of post-conflict rule of law building. I'll highlight, in particular, some of the special issues on the demand side of rule of law reform.

Each of my co-authors and I were serving in government in the late 1990s. David Wippman and I were at the White House at the National Security Council; Rosa Brooks was at the State Department. We were involved in some aspects of the interventions in Timor-Leste and in Kosovo, and the reconstruction efforts in Sierra Leone, Bosnia, and Haiti. As we went back to our respective positions as law professors, we were thinking about writing a book looking at the legality and legitimacy of these interventions (after all, we are lawyers); but we also wanted to look at their effectiveness. Had these interventions actually made the people in those societies better off in the aftermath of the international interventions? As we thought about this question it became clear to us that building the rule of law was really the centerpiece in any sustainable effort to help make people in a society that was the target of an intervention ultimately better off.

Then the attacks of September 11 shook the world and led to interventions triggered and motivated primarily by national security concerns. We started to wonder about the continued relevance of our book project focused largely on humanitarian intervention. Yet as we looked at the intervention in Iraq, whatever one might think about it, and the intervention in Afghanistan, we saw that many of the same problems and challenges arose in their wake: the challenge of building inclusive and credible governance structures, of building fair and effective judicial systems, of enacting laws that are responsive to the needs of the population, and so forth. It struck us that many common issues arise regardless of the motivation that may lead an intervener to act. So we began looking at the multiple challenges of building the rule of law in the aftermath of intervention.

In our research, we uncovered both some bad news and some good, more hopeful, news as we traveled to the Balkans, Timor-Leste, Sierra Leone, Iraq, and a number of other countries.

THE BAD NEWS: RECURRING PROBLEMS IN POST- CONFLICT RULE OF LAW BUILDING

Let's start with the bad news. Why have past efforts to build the rule of law not been nearly as effective in most post-conflict settings as any of us would like? There are many reasons that are, of course, highly specific to particular countries that have to do with the particular history, culture, and, above all, the leadership in those countries. Not every post-conflict society has a Nelson Mandela or a Jose Ramos-Horta that they can turn to for inspiration, to bring out the best in people.

We found, however, that there are three overarching reasons why efforts to strengthen the rule of law after intervention often falls short—reasons that tend to recur in different societies. First is the inherent difficulty of strengthening the rule of law in societies that have been devastated by conflict—in circumstances where legal and political institutions are deeply distrusted, where the infrastructure is devastated, and where people are often deeply pessimistic about the possibilities of the law being fair or helpful in their lives. It is enormously hard to build not only the institutions but also the cultural acceptance and confidence and commitment to the rule of law that is so important.

In addition, interveners themselves complicate the story if their intervention is regarded as suspect, as not legitimate, by large segments of the local population, or if their own conduct undermines the message that law matters. For example, see Abu Ghraib. It is hard to convince people to take rule of law norms seriously if the intervener's conduct is undermining the very message that it is trying to send. Interveners also often do not have a good understanding of local culture, traditions, or language. Often interveners will need to deploy anthropologists as well as lawyers and other country experts if they are genuinely trying to tackle the deeper problems of building the rule of law.

To complicate matters further, difficult challenges and tradeoffs accompany any effort to build the rule of law after conflict. Short term interests may genuinely conflict with long-term interests. For example, accommodations with local war lords in Afghanistan may give you some initial stability in rural areas, but this can also entrench and empower spoilers who will end up undermining and compromising efforts to move in a more democratic direction. Fostering local ownership and

respecting local cultural norms may involve working with local tribal justice systems, which may enjoy considerable local legitimacy, but they may conflict fundamentally with international human rights norms, particularly the human rights of women. These are all illustrations of how enormously complicated the task of trying to strengthen the rule of law in the aftermath of conflict is, especially for external interveners.

A second reason why these efforts have so often fallen short is that they tend to focus on formal institutions—on the structures, on the means, enacting legal codes, training judges, building courthouses. All of this is important and necessary, but there is often too little attention given to the underlying challenge of nurturing a culture that believes in and values the rule of law or in making institutional reforms that are really responsive to meeting the needs of the people.

We tell a story in our book that illustrates this. We call it the camel story. It's probably apocryphal, but let me just briefly tell it here. During the 19th and early 20th centuries, some Middle Eastern governments were eager to improve the lot of nomadic tribes people, who roamed from place to place, living in tents, without reliable access to clean water or health care or schools. The governments thought: "Let's build houses for the nomads. We'll give them to the nomads for free, they'll settle down, become townspeople, and they'll have all these things we regard as part of modern life." So, the officials built the houses and the nomads came, scratched their heads and decided to keep living in their tents (which they preferred to the new houses). The nomads pitched their tents outside the houses, and they put their camels in the new houses, which soon deteriorated because they really were not built with the needs of camels in mind. After a while, the nomads decided to carry on, they uprooted their tents and they went off, leaving government officials scratching their heads at this unsuccessful effort at transformation.

Well-intentioned efforts by external interveners to build the rule of law in post-conflict societies by creating new formal structures and laws can run into similar problems. Intervenors may think that the mantra "if we build it, they will come" applies to courts as well as baseball fields. But courts do not occupy the same place in every culture. In many societies there may be tribal justice systems, there may be other ways of resolving disputes, and these new institutions that are built may not be the most responsive to the particular needs of the

people in that society. There is a challenge in many rule of law programs to address more effectively needs that are directly felt as coming from the people themselves.

A third and related reason why post-conflict rule of law building efforts have often fallen short is their segmentation. Different agencies focus on different aspects of the rule of law. You have people who train judges, people who design criminal law codes, people who focus on building better prisons. But, often there is not enough of an attempt to look at the interrelationships between these different reform efforts. If there isn't an effort to look at the interconnections, reform programs often will have only piecemeal results. They may actually empower local actors in ways that make them unaccountable and undermine the long-term goal of building the rule of law.

Let me give an example from Haiti. In Haiti there was an enormous effort during the mid-1990s to reform and strengthen the police system, which had been very corrupt and very problematic. There was quite a bit of progress made initially in training and recruiting and building a better police force. But not quite as much effort went into judicial reform. What ended up happening was that these newly trained police arrested a lot of people, many of whom were detained for months, some for years, without a judicial system able to adequately process their cases and give them due process. Judges in the meantime could be bribed to release suspects. The broader concerns of the public that the law was not really there to protect them, but was rather an instrument of repression and control, were not adequately addressed. So although there was enormous progress on one dimension of the rule of law, it was not balanced by related reforms.

These problems of the inherent challenges, of the lack of attention to underlying cultural dimensions, and of the segmentation of rule of law reforms have been recurring problems in many different post-conflict societies.

THE HOPEFUL NEWS

But what about the good news? (We're Minnesotans, we like good news!) We now have a clearer sense of some of the things that need to be done better. Many of the earlier speakers in this symposium mentioned those things. We have a much better sense now—those of us working on rule of law issues, people

working at the U.N., people working at government agencies, NGOs, local reformers—that there is no “one size fits all” template. There is no such thing as “rule of law in a box” that you can simply drop down on a society. Building the rule of law is something that has to grow from the culture, the history, and that draws on local aspirations and goals. To enjoy legitimacy it must be built with the support and leadership of the local population.

We also understand the important need to establish basic security early on, right away in the aftermath of intervention, because if there is looting and rioting and spiraling down of security you don't have the foundation to build the rule of law. Once you lose that momentum, it is very hard to get it back.

We also have a sense of the need to coordinate rule of law efforts with economic reforms and other kinds of initiatives as part of a holistic approach to post-conflict rule of law building.

Increasingly, we are also beginning to see greater appreciation of the importance of building on the *demand* side—strengthening public understanding of and support for the rule of law—and being adaptive and creative and sensitive to the culture in doing this. We have a whole chapter in our book called “creating rule of law cultures.” It is a bit of a presumptuous title because in fact interveners usually do not understand local cultures very well. And none of us know as much as we might want about how to nurture cultural change over time. It is particularly difficult in a post-conflict society where people are deeply distrustful of governmental and legal institutions, for good reason, based on bitter past experience. Successfully fostering a rule of law culture, and giving people legitimate reasons to have confidence in the rule of law, can take years and is very challenging and complicated.

Let me give a few examples of some important things that can be done better by interveners working with local reformers in this regard. One is to examine carefully the role that formal legal institutions such as courts actually play in a particular society in the first place. To what extent does the society rely on other dispute resolution mechanisms? Are those mechanisms regarded as legitimate? Do they discriminate against some segments of the society? A careful look at the terrain, understanding the range of dispute resolution mechanisms in effect, and how they might be nurtured in a progressive direction is an important initial step.

Reformers also need to get to the grassroots to find ways to

reach beyond cities and elites and reach out to people in remote areas. Let me give one example of this in Sierra Leone. A number of Western NGOs have helped train local paralegals in Sierra Leone who work in the countryside and go out and educate people about their rights and about the alternative modes of dispute resolution that are available to them. So they might say to a young woman that there is a tribal elder system you can go to, but there also are courts in the city some miles away. The paralegals give people a sense of their options and alternatives. By empowering people to know about their alternatives, not only does this give them more choices, but also it puts a certain amount of creative pressure on the traditional dispute settlement system because all of sudden the tribal chiefs know that they are in competition for market share in dispute resolution. Maybe they need to offer a higher quality of justice if they want a continued flow of business. So that is an example of an innovative program that has gotten out to the grassroots and has helped nurture important aspects of the rule of law.

Another crucial dimension on the demand side is to strengthen civil society organizations, including local NGOs that can monitor domestic justice systems and make sure they are actually providing some degree of fair justice to the local population. An example of this is the Judicial System Monitoring Program in Timor-Leste.² This is a valuable organization supported by a number of governments and NGOs. The Judicial System Monitoring Program not only monitors trials and proceedings in the judicial system in Timor-Leste; it also has a women's justice unit, which looks at the impact on women of the proceedings before various courts. In addition, it has a victims' rights unit that focuses particularly on domestic violence, a big problem, and tries to assist women looking for some degree of protection when they face domestic violence. That's an example of a critical initiative that is trying to strengthen the rule of law by focusing not only on the institutional supply side but also on the public demand side of the equation.

We also emphasize the importance of including marginalized groups, of trying to give people a greater stake in the law and greater knowledge about their rights. Reaching out

2. Judicial System Monitoring Programme, <http://www.jsmp.minihub.org> (last visited Mar. 8, 2009).

to the public creatively, using music, drama, and the arts, can be especially effective in connecting to young people. One innovative organization that is using such creative methods to educate people about the rule of law is Interactive Radio for Justice.³ This organization is currently working in the eastern Congo, where things are very bleak. In fact, it is only able to work through radio because the security situation is so difficult. The organization is helping to educate people about their rights in a number of ways. For example, as the organization's leader Wanda Hall recently explained at a talk in Washington, DC, in part of eastern Congo, the police had a tendency to stop people and essentially demand a payment from them, accusing them of violating a law that said people had to stop and salute the flag whenever the flag was visible. Well, it turned out that police were stopping people and fining them even when the flag was nowhere to be seen. People were very traumatized by this and were the victims of extortion. This Radio Justice show interviewed local officials who acknowledged publicly on the radio that the law requires that the flag be in clear view for this penalty to be in effect and also that people must be given a ticket that provides for a clear fine of a designated amount. Well, all of sudden people understood that there was a law that had some limitations, so if they were confronted with this situation, they could say to the police, "no, the law doesn't say that, you can't just stop me and take money away from me." It turns out that this public awareness of the law has actually gone some way to address the problem. That is an example of work on the demand side that is a crucial component of trying to build the rule of law.

The outreach program of Sierra Leone's Special Court provides another example of an innovative effort to strengthen domestic awareness of, and capacity for, the rule of law. The Special Court's primary function is to bring to justice those who bear the greatest responsibility for the brutal atrocities that marked Sierra Leone's violent civil war. As a hybrid war crimes tribunal, the Special Court includes both international and Sierra Leonean judges, prosecutors, investigators, defense attorneys, administrators, and other staff. Though not without its challenges, the Special Court is contributing in some tangible ways to Sierra Leone's domestic legal system. For example,

3. Interactive Radio for Justice, <http://www.irfj.org> (last visited Mar. 8, 2009).

Sierra Leonean police investigators working with the Special Court have gained some valuable training in witness protection and management. Beyond these supply-side contributions to the domestic justice system, the Special Court's outreach office is engaged in important demand-side capacity-building: educating the public about the Court's work and about the importance of legal accountability and fair justice through town hall meetings and lively discussions throughout the country.⁴ The outreach office also helped create "Accountability Now Clubs" at local universities—clubs of university students that consider issues of justice, accountability, human rights and good governance in Sierra Leone. In addition, the Court has engaged and empowered civil society organizations through the Special Court Interactive Forum, a gathering of local and international NGOs that focus primarily on the Court's work and how it can be improved, but that also network on related issues of accountability and human rights. This sort of domestic capacity-building can nurture a greater ability within civil society to insist upon justice and accountability from developing domestic legal and political institutions.

All this is not to neglect the importance of strengthening the ability of post-conflict states to actually *supply* fair and credible justice. On the contrary, building public demand for justice must be combined with sustained efforts to build state legal capacity to provide fair justice through strengthened institutions—courts, police, legislatures, and so forth—that are credible and enjoy public legitimacy. Otherwise, public expectations and hopes for the rule of law will be raised only to be dashed.

CONCLUSION

In the wake of armed conflict, building the rule of law is critically important yet enormously hard. Mutually reinforcing reforms usually will be needed in multiple areas—from security, to governance, to justice system reform, to accountability for atrocities, among other reforms. Strengthening cultural, political, and institutional foundations for the rule of law, and building public confidence in the very idea of the rule of law, all

4. For a fuller discussion of the Special Court's outreach efforts, see Jane Stromseth, *Pursuing Accountability for Atrocities After Conflict: What Impact on Building the Rule of Law?*, 38 GEO. J. INT'L L. 251, 304–308 (2007).

are a crucial part of the mix.

In the face of such daunting challenges, interveners need to be both more humble and more ambitious as they work on rule of law programs in post-conflict settings. They need to be more humble in recognizing that their own role as interveners is limited and partial and that they are not the experts on the local culture; the local people are. They also need to be more ambitious in working holistically and creatively on a wide array of rule of law initiatives such as the ones described above, giving closer attention to issues of public education and confidence, and not taking an overly narrow supply-side view of the rule of law.