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Review of "*Advancing Rule of Law Abroad*"

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Michael Ardovino, Ph.D.

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ABSTRACT: This is a review of the book *Advancing Rule of Law Abroad* by Rachel Kleinfeld using USAID guidelines.

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REVIEW OF ADVANCING RULE OF LAW ABROAD- NEXT GENERATION REFORM

By Rachel Kleinfeld

In *Advancing Rule of Law Abroad* (2012, Carnegie Endowment Press), Rachel Kleinfeld defines rule of law and describes development practitioners attempts over several decades to implement it. The author defines ROL as U.S. government assistance efforts to support legal, judicial and law enforcement reform in developing countries. This includes improving legal systems (criminal, civil, administrative, and commercial law and regulations), along with judicial/law enforcement bodies (ministries of justice, courts and police and any procedures and personnel). She clarifies that first-generation ROL reform focuses on laws, police, courts, lawyers, prisons, anti-corruption, and access to justice. American government organizations that work on Rule of Law include USAID, the Departments of Justice, State, and 28 other smaller agencies as well as the United Nations, World Bank, regional multilateral agencies and other country bilateral agencies. Often, this disparate group of organizations all must work together in weak states using better tools for enhancing Rule of Law.

- ROL programs are created to enhance security (ex: during the Cold War in Latin America), to improve human rights and democracy (as under the Carter Administration during the 1970s), and to catalyze market development (using institutions as in East Asia). The European Union used ROL programs to prepare Eastern European countries for EU membership in the 1990s.

- ROL programs in developing countries bring up the issue of legitimacy as in Indonesia during the 1990s: Does the US government have a right to interfere in a sovereign society? The idea of Cultural imperialism argues that no country has the right to impose its values, beliefs or systems even if cultures can be affected by other cultures. Europe and the U.S.'s neocolonial past in developing countries suggests political control and power over countries in Latin America and Africa are what is really sought with ROL programs. The author also asks if the U.S. has credibility to improve ROL programs when corruption and democratic shortcomings have existed and still exist here.

- The four objects of ROL reform (or tools to implement) include: good laws (having a sound constitution and strong state), using proper training, equipment and funding when creating institutions, having the proper power structure so formal and informal checks and balance on state power can emerge, and taking consideration of social norms so citizens will learn to support rule of law along with institutions, laws and the power structure.

- Cultural habits can be an obstacle to ROL reform in that citizens may just ignore laws (as with marijuana laws in the U.S.); the press, other citizens and state actors may not expect other citizens to follow laws ruining any kind of pressure to conform (as in India); or the culture of politicians or ROL professionals may impede rule of law norms, preventing any horizontal accountability (as in Indonesia). Using honor or shame as a tool, however, may alter behavior social norms over time.

- Top-down ROL programs directly focus on institutions, laws, and physical resources and improve conditions when general corruption-reduction is the goal, as in Eastern Europe in the 1990s, or to spotlight a specific area. However, they don't work well when they merely

mimic Western laws or when only top State leaders seek them, avoiding citizen or civil society buy-in.

- Bottom-up ROL programs focus on civil society actors to build local support of citizens who might see legitimacy in the effort as with Indonesia's Partnership for Governance Reform. This approach succeeds because local actors know their country best, can react to change better, have the greatest stake in reform and are more likely than state organs to have support from people who want change. Weaknesses include implementers having less control over funds, upsetting usually strong state actors who may see civil society assistance as more covert and harmful to political control (as in Russia in 2012), barriers between aid recipients and the rest of society, and funding self-interested actor rather than genuine reforms.

- The diplomatic approach has the US government directly influencing a recipient state using rewards (such as economic aid) or punishment (like a trade embargo). To be successful, a clear goal must exist (not often the case) and mixed interests among donor/recipient actors may muddle effectiveness as in Romania with anti-terrorism aid in the 1990s.

- Enmeshment is the indirect socialization of recipient elites like military officers or parliamentarians who see how ROL functions in the West via NATO or the WTO. Enmeshment works better if the trained can actually implement change at home. Conditionality of membership also works if applied consistently or strongly as with the European Union on admitting Romania to membership.

- The top-down approach can aim at laws/institutions (money for legal training or prisons), power structures (money for courts that can counter the power of the government), and culture (money to affect beliefs and attitudes among police cadets or law students). The Bottom up approach can aim at laws/institutions (money for civil society or NGOs), power structures (money for advocacy groups to counter the power of the government), and culture (money for popular education on rule of law or children's civic education).

- Diplomacy can focus on laws/institutions (influencing passage of a law or an ombudsman), power structures (rhetoric for change for more judicial independence), and culture (push for more free press and civil society freedoms). Enmeshment can aim at laws/institutions (forcing a country to pass property laws), power structures (advocate civilian control of the military or elite socialization), and culture (exchange programs or military training).

- Second-generation ROL reform improves on first-generation in that it looks at the existing problems in a recipient society and does so with each part utilizing a sociological or political science methodology and the best way to measure and gauge success in that society. Where first-generation only used a top-down approach on laws and institutions, now the second-generation approach is more comprehensive in applying specific tools when determining the institutional, political and cultural components of the ROL problem. Locating the opposition and support to ROL reform is next by mapping society actors in a

stakeholder matrix combining tools and actors (religious/civic organizations, media, political parties, business, labor).

- After studying the actors, determining evaluation targets and measurement goals allows more precision in determining program effectiveness. Output metrics look at how and where the money is spent. Outcome metrics looks at what the money results in when spent. Impact metrics look at how well the money affects the broader ROL problem.

- When designing a ROL program, one must ask: what is the problem to address and the end goal to do it? Will local support be present? What are the agency's resource constraints or expertise? What are any countervailing U.S. interests that can undermine the program?

- A best fit approach works for a unique, cultural situation and is not the ideal institution approach used in the past that transplants everything from a Western society. Sequencing means taking into consideration political cycles and cultural moments when implementing programming. When using funds/strategies, flexibility is vital with an example being USAID's Office of Transition Initiatives (OTI), an office that can react quickly with appropriate implementing partners to changing situations.

The author concludes by recommending the use of bottom-up efforts via civil society, using better enmeshment techniques with diplomats, the National Security Council and local politicians, and being careful to be flexible with funds during local political moments. She also advocates streamlining ROL reform projects and agencies within a country and remembering to do no harm while focusing most on what recipient citizens want and need. When designing ROL programs, utilize the research of political scientists and sociologists who can better analyze local social norms and power structures and who can critique and investigate the failures of first generation, institution-based reform.

U.S. Agency for
International Development
1300 Pennsylvania Avenue NW
Washington, DC 20523
Tel: 202-712-0000
Fax: 202-216-3524
www.usaid.gov