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Successful Policy Transfers in Post-Socialist Justice Systems?: Practices of Plea Bargaining in the Republic of Georgia
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In what is often painted as a landscape of backward nations with struggling sovereignty, weak states and fragile market economies that are slowly drifting back towards authoritarianism and the geopolitical sphere of Russia, the Republic of Georgia under Mikheil Saakashvili was heralded as one of few nations in post-Soviet space that stood out in the foreground as having emerged from its nearly-failed state status as a surprising success story of transformation, climaxing to a war with Russia in 2008 and ending with the defeat of Saakashvili's party and regime change in 2012.[1] Following on the heels of the Rose Revolution in 2003, Georgia was seen to have made a dramatic break with its Soviet legacy by Saakashvili's efforts to reprogram a nation with entrenched corruption through the promotion of a certain geopolitical trajectory for Georgia towards Europe. This marked more than an apparent shift away from

[1]Lithuanian Foreign Minister Audronius Ažubalis, in a mission representing the EU, stated in a visit to Georgia before the 2012 elections, "Georgia's success story surprises and at the same time inspires many people. We strongly support the three important choices made by Georgia: the decision to continue the European and Euro-Atlantic integration process, willingness to further implement necessary reforms, and determination to organise free and fair elections" (*Five EU FMs Visit Georgia Ahead of Elections*, 17 Sept. 2012).

authoritarianism and socialism towards European and NATO integration and a capitalist democracy, but was also accompanied by a total denial of the past forms of socialist governance from not only the Soviet period but also of the absence of government interventions in the tumultuous 1990s (Dunn, 2008). Despite its continued poverty, social injustices and marginalization (Frederisksen, 2013), what political scientists deemed as "hybrid" or "competitive" authoritarianism under Saakashvili,[2] the prevailing narrative in the media, among thinks tanks analysts, and politicians and officials from NATO, U.S. and E.U. (although to a lesser degree and certainly more vocal in its criticism) supported Saakashvili's reform agenda and encouraged, both financially, in official agreements and rhetoric, this nation of 4.4 million people to continue to make strides on the 'right' path towards democracy. The geopolitical response to the West's enthusiastic support of the burgeoning Georgian democracy implicates the competition between the U.S. and Russia (O' Loughlin, Ó Tuathail & Kolossov, 2005), its geostrategic position as a conduit for natural gas and petrol, land route access to Russia and as a target in Russia's foreign policy assertiveness after Putin's second term (Mohsin, 2010).

This final report for Title VIII Combined Research and Language Training Program summarizes my research activity (July 2014- April 2015) for my research entitled "Successful Policy Transfers in Post-Socialist Justice Systems?: Practices of Plea Bargaining in the Republic of Georgia". My research explores the reform agenda in the Republic of Georgia under Mikheil Saakashvili (2004-2012) and its continuance under the new Georgian Dream leadership (2012-), with particular attention to how Georgian

[2] For an overview of Levitsky and Way's conceptual paradigm of competitive authoritarianism (2002), see Wheately and Zürcher's (2008) application in the South Caucasus in: Elections without Democracy: The Rise of Competitive Authoritarianism. *Journal of Democracy*, 13(2), 51-65.

reforms have developed in the framework of Euro-Atlantic integration objectives. Rather than focusing on testing a hypothesis, my research is qualitative in nature and, hence, I approached my field work by exploring a puzzle: [3] How has the international donor community, other non-state actors and Georgian policy-makers perceived this reform process similarly or differently and in concordance or not with their separate and collective goals? I used this puzzle as a jumping off point to continually fine-tune a more specific research question as I undertook my field work: how plea bargaining has been adopted and revised over time to fit the Georgian context, how the donor community assisted in the policy transfer (i.e., through exchanges, workshops, study visits, etc.), and what policy changes have occurred since the regime change in 2012. Exploring the reform agenda, I chose to examine those reforms under the rubric of 'anti-corruption,' which became an important domestic and regional issue and a public relations tool for the government to legitimize their political and economic claims of belonging to Europe. In boostering their narrative of success in the fight against anti-corruption, the Georgian government showed state capacities to implement policies, and the potential for future capacities to implement necessary for EU and NATO membership (Börzel and Pamuk, 2011).

Because these reform efforts encompassed a wide range of sectors, I focused on the case of the judicial reforms, more specifically the practice of plea bargaining, as a lens on policy-making practices and the politics of transformation; a policy process that brought about dramatic institutional changes, bringing the nation closer to its EU and NATO membership aspirations. This policy process involved the interaction of different

[3] For Interpretive methodologies in qualitative research, see Yanow, D., & Schwartz-Shea, P. (2006). *Interpretation and method: Empirical research methods and the interpretive turn*. Armonk, N.Y: M.E. Sharpe.

scales, networks and actors: state, non-state, external and internal actors and the mobile US policy transplant of plea bargaining. My research explores how the practices of this policy transfer of this legal procedure from the U.S. to Georgia unfolded 'on the ground.' Following the practice of plea bargaining opens up the micro scale from where we can trace the assemblage of the materials and practices of these so-called anti-corruption policies, explore the spatiality of these different scalar interactions and between the state and the public. Studying the legal transplant of a US policy in the post socialist context adds theoretical insight in that my research will contribute to literature examining how and why post-socialist transformations have been "uneven" across geographical lines (Smith and Timár 2010). As post-socialist countries look towards "best practices" of the West, there is no cookie-cutter solution as every justice system and notions of justice are unique. When rational choice, from a Western perspective, isn't always a given, I aim to explore what kind of rationalities are justified by research subjects, without a normative prejudice underlying my investigations.

Theoretically, I respond to the growing literature in Human Geography on policy mobilities, a critique of policy transfer literature. I argue for a more site-specific assemblage tracing methodology for a relational approach to policy transfer, that of policy mobilities. Policy mobilities paradigm is:

> The socio-spatially produced and power-laden inter-scalar process of circulating, mediating, (re)molding, and operationalizing policies, policy models, and policy knowledge" (McCann, 2012: 4).

Policy mobilities, then, is a paradigm that evokes the social production and circulation of knowledge about how to best design and govern places (McCann, 2012: 8).

Modern practices of policy-making, moreover, eschew traditional characterizations of space, governance and power (McCann, 2012). In geography, research inquiries into policy transfer are of particular interest to the question of the spatial conceptualizations of governance, because "contemporary policy-making processes have promiscuously spilled over jurisdictional boundaries, both 'horizontally' (between national and local political entities) and 'vertically' (between hierarchically scaled institutions and domains)" (Peck, 2011:773). While there has been much written about external influence on marketization and democratization processes in post-socialist transition,[4] I challenge the normativity underlying the diffusion model, which replaces 'policy' for values and norms (Stone, 2004). Policy mobility is an attempt to redress some of the failings in the literature on policy transfer that understand policy-makers as rational subjects making the 'right' decision with the 'right' policies about how to best design and govern places (Dolowitz & Marsh, 2000; Peck, 2011). Policy transfer literature black boxes how best practices come to be models, or what calculations were made. It is also dissatisfying because it tends to apoliticize policy making as a technocratic process (ibid). Moreover, the transfer paradigm presumes a hierarchical power relationship between policy borrower and policy lender—there is a leader and a follower (Lee & Hwang, 2012). Where neo-institutional policy transfer paradigms lack in a deep understanding of the socio-spatial processes of policy transfers (Stone, 2004), the policy mobilities paradigm succeeds in articulating the need for a relational methodology (McCann, 2011). The paradigm of policy mobility emphasizes the relational interpretation of policy-making sites and activities and pays more attention to the ideological and social context.

[4] For a review on the external influences on transition, see Jacoby, W. (2006). Inspiration, coalition, and substitution: External influences on postcommunist transformations. *World Politics, 58*(4), 623-651.

One policy area worth investigating is plea bargaining and how this legal procedure—common in the US, with limited usage in Europe—has been transferred to Georgia, given the legacies of its post-socialist court system. In its implementation phase, plea bargaining has been too widely applied and without formal rules to guide negotiation processes that typically happen when plea bargaining is employed. For this research project, I focused on the interpretations of the practice of plea bargaining as an imported American legal transplant, and its translation within the Georgian context. A legal transplant is a term borrowed from Máximo Langer (2004) to mean when a legal rule, procedure or system is moved from one country to another. [5]

One of President Saakashvili's first moves in office in 2004—even before the controversial zero tolerance principle was implemented-- was to introduce plea bargaining, a procedure familiar to him after his study of law in the US. In a normally functional court system, plea bargaining can be more efficient, less costly and give a defendant more options than a regular trial. However, its implementation in less free judicial systems and in a transitional contexts has led to plea bargaining being practiced very differently than it is in the US. (Alkon, 2010; Anderson, 2005; Langer, 2004; Reichelt, 2004; Van Cleave, 1997). In countries with less free judiciaries, plea bargaining tends to result in less-than-transparent negotiation processes and other forms of corruption (Alkon 2010; Reichelt 2004).

In Georgia, plea bargaining was introduced in corruption cases and was generally seen as a tool in the fight against corruption; that is, very high profile elites

[5] See Langer, M. (2004). From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure. Harvard International Law Journal, 45:1, 1-64.

were given the option to pay a fine or face prison on corruption or tax evasion charges.[6] But in 2006, as zero tolerance policy was introduced for petty crimes, plea bargaining rose to prominence and the prison population boomed (Transparency International 2010). In 2010, for instance, 80 per cent of judicial cases in Georgia were resolved through plea bargaining (ibid). What is unique in Georgia is the introduction of fines in negotiating a plea bargain, even when a fine is not considered a legal punishment of the violation in the criminal code. Fines amounting to about GEL 61.1 million (or USD 36.7 million) were imposed in plea-bargaining penalties in 2009 (Transparency International, 2010). This has led some observers to argue that plea bargaining had become a type of fundraising for the previous government under President Saakashvili (ibid). The Council of Europe's Commissioner for Human Rights wrote a particularly scathing report on judicial reforms in 2011, raising awareness of the abuse of the plea bargaining system in Georgia, where defendants cannot get a free and fair trial—those with money can afford to take plea bargains, while those who cannot afford plea bargain must face a trial that is not guaranteed to be fair (Hammarberg, 2011).

The October 2012 parliamentary election was a watershed political moment for the Republic of Georgia, ushering in a new political party for the first time since the Rose Revolution of 2003. The new Georgian government, a coalition headed by the Georgian Dream Party under Prime Minister Bidzina Ivanishvili, has made prison and judicial reform a top priority. The international community widely praised the previous administration (now the opposition, headed by President Mikheil Saakashvili) for its

[6] For instance, Eduard Shevardnadze's son-in-law, Gia Jokhtaberidze, paid a USD 15.5 million fine to the state budget as part of a plea bargain agreement after being arrested on charges of tax evasion. See (26 April 2004). Shevernadze's relative released after paying $ 15.5 million. Retrieved from http://www.civil.ge/eng/article.php?id=6771.

integration into Euro-Atlantic structures. However, arrests of high-profile elites (including opposition members), prisoner amnesties and prison torture scandals in the media have attracted international scrutiny and cast doubt on Georgia's ability to overcome the challenges it faces in reforming the justice system.[7]

Ultimately, the data I gathered due to the grant has helped me further my research on both the theoretical mechanisms of policy transfer and in my empirical work on the micro-practices of a US legal transplant in a post socialist context. While data analysis has not been fully reached, I can make several observations. When we contrast the Georgian and the US practices of plea bargaining, Georgia's implementation of plea bargaining contradicts legal scholar Vogel's (1999) argument that plea bargaining was originally introduced in the US as a state-building tool, or in order to build trust in the judicial system. Plea bargaining in the Georgian context does not build trust in the judicial system as it is seen largely as a type of state-capture (even after 2012 elections) , and perceived as a special favor for those defendants who have money and connections in Georgian society. Trust in the judicial system, according to CRRC barometer 2014, is one of the lowest ranking institutions in Georgia. In order to build trust, the financial incentives of plea agreements must be reversed. Furthermore, while Georgian policy-makers tend to rely on study trips abroad, they tend to send the same officials and are generally seen as a kind of nepotism within the administrative culture. Even though Georgian officials are more open to these types of lesson-drawing exchanges, more direct involvement is needed by citizens and NGOs to raise awareness of justice system reforms and rights.

[7] See Cornell, S. (19 September 2012) Georgia's Prison Abuse Scandal and its Implications. *Central Asian-Caucasus Institute Analytical Analyst.*

Policy Relevancy

Since 1991, and especially since the Rose Revolution in 2003, the US has provided considerable resources to Georgia's transition to a democratic rule of law, economic development and regional security. Strengthening the rule of law in Georgia remains a policy priority for the US. According to the US-Georgia Charter on Strategic Partnership signed in January 2009 (United States Department of State 2009) the US is committed to Georgia's successful integration into Euro-Atlantic structures, of which an independent judicial system is an important feature. Georgia has been a leader in reforms in the region and a key US ally among former Soviet Union states, and it is in US national security and foreign policy interests to continue to support this path, particularly in light of other geopolitical interests in the Eurasian region (i.e. Turkey, Iran and Russia).

Plea bargaining is a legal transplant from the US, and is, therefore, relevant to many aspects of the judicial reforms taking place in Georgia. Plea bargaining is a topical issue as reforms to the justice system have gained ascendency after the regime change in 2012, and the U.S. has thus far played an important role in Georgia's transition to a democratic rule of law. How can Georgia build an independent judicial system, and how can U.S. ensure those American best practices, such as plea bargaining, function properly? Plea bargaining in Georgia has come to the forefront in the challenges that the Georgian judicial system faces. The application of fines in the negotiation of a plea bargain has become another form of corruption and suggests that one cannot get a free and fair trial. This negotiation process, moreover, is less-than transparent and often we

don't know how a decision was reached, or how the powerful public prosecutor has played his hand. Moreover, combined with zero tolerance (another US import) plea bargaining has become a cost-efficient method to handle the influx of defendants, which has, nevertheless, resulted in an overburdened prison population. However, that does not mean there is no hope for plea bargaining in the future. It remains a very useful method in relieving the court system, but only if there is more participation from judges in overseeing the transparency and accountability of public prosecutors. My research sheds light on how and why decisions are made by Georgian policy makers about policy changes and revisions to best practice or models imported from the U.S. When recommendations are taken or not from the donor community, or when a "Georgian" solution is found to tailor-fit reforms for the implementation phase in the Georgian context.

One component of my reseaerch is that I gauge what Georgian elites have learned from their exchanges with the US or other Eastern European countries where they are typically sent to learn "best practices", how they revise and use those experiences to formulate policy change. Research on this "practice-based" approach in development fields will demonstrate how training exchanges are internalized, and how policy transfers work on the ground. The role of "practice-based" approaches in development fields help fine tune this methodology for learning and policy transfer or diffusion.

Furthermore, research on plea bargaining is very relevant to specific programs funded by USAID. The USAID's "Democratic checks and balances and accountable government enhanced" program was contracted to East-West Management Institute, which coordinated several NGOs and organizations in the ongoing four-year program, the

Judicial Independence and Legal Empowerment Project (JILEP), which was recently been concluded. The aim of the program underscores the importance of raising awareness in the public to overcome distrust of the justice system and to train professionals in technical matters and in the working culture of the court system. One component of my research findings deals with how plea bargaining is interpreted in different contexts as seen in its practices. This cultural and social context clarifies and supports the formulation of educational programs, from the perspective of the post socialist context, and not merely from the point of view of legislation and policy design. Moreover, training, in particular, judges to oversee the less-than-transparent negotiation process between a defendant and the state prosecutor is an important stepping stone to the successful functioning of plea bargaining. Better education and training of judges and defense attorneys will help to redress the imbalance of power of the state prosecutors that often arises in the court systems in Georgia, with an institutional Soviet legacy that still bears influence. Judges should be trained in how to decide if the punishment is fair, it fits the crime and if the defendant's financial situation can accommodate the penalty; or when to throw out a plea bargaining in which criminal offenses and the correct legal punitive measures for that offense are not proven. While progress has been made in regards to following protocol, the gray area of the law needs to be addressed— judges should not be afraid to make their own judgements when it is not clearly spelled out in legislation. In addition to targeting judges (rather than focusing on the defense attorneys, who should be advocating for their client, but in reality, it is the judge who can make a bigger impact when dealing with administrative cases), it was found there was no legal aid available for unrepresented parties in administrative cases in particular. The donor

community can develop a legal aid program that targets specifically these defendants who fall in the cracks due to the expedited nature of plea agreements. Lastly, georgian society does not fully grasp the negotiation process of a plea agreement. For instance, even before the agreement is reached, families will bring 'green checks' to show they have paid an amount of money already before the hearing. The amount of fine, furthermore, is often higher than what might be expected (the average fine is 9,000 GEL), and is in need of attention.

Language Training

I spent the nine months studying Georgian with Dr. Shavtvaldze's language school. She has developed a teaching methodology for the study of Georgian that has hitherto not been found in Caucasian studies. Her pedagogical methodology is well-suited for American students, who are used to more communicative approaches to language acquisition. I found her very responsive to my needs, as well as an understanding for my specific language needs and learning style. She was able to meet me as soon as I landed, and provided me with a teacher straight away, even during the summer vacation months.

Dr. Shavtvaldze's textbooks provide two levels: I finished the first level and half of the second. Her textbooks are based around acquiring the vocabulary that is needed to live in Georgia. I appreciated that grammar was not the focus, and through vocabulary and a communicative approach, I gained necessary skills to improve my spoken Georgian.

I had the opportunity to work with two teachers, both of whom I found highly qualified and well-trained. My long-term teacher, Nana Jirashvili, was one of the most

patient teachers I have ever had. Having studied other languages before with many different styles of teaching, I can say that patience and encourage are two of the most valuable qualities a language teacher can possess. Nana presented herself as very experienced, with a thorough knowledge of the textbooks. Dr. Shavtvladze spends time training her teachers with the successful outcome of streamlining her brand. My study of the Georgian language through the Title VIII CLRT scholarship helped me successfully conduct field research and further my academic goals. Cultural immersion played an important part of my research methodology and development of my research.

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