

“Exporting the Rule of Law to Central Asia: International Actors and Local Perspectives”

According to *Beyond Common Knowledge: Empirical Approaches to the Rule of Law* (2003) there is a significant shortage of empirical research on the outcomes and success of global rule of law programs. If this is true in Latin America where rule of law (or law and development) programs have been ongoing for several decades, it is even more the case in the post-Soviet space, where rule of law programs are just entering their second decade. In light of the growing interest in promotion of the rule of law, yet confronting the systemic nature and central importance of informal governance mechanisms in Central Asia (Harris 2004, Schatz 2004, Stefes 2006) it is important to evaluate whether rule of law practitioners have an adequate understanding of both the task before them and of the challenges inherent in promoting the rule of law in countries whose political systems are fundamentally at variance with the most basic requirements of the rule of law.¹

Research Objective

My current research seeks to describe how rule of law experts working in Central Asia view the rule of law project. For example, do they view it as an organic whole, grappling with the sum of the institutions as well as the cultural and historical experiences of the country they are working in, or do they focus their aspirations more narrowly on specific projects within their area of expertise? To what extent and in what ways do they link their specific projects back to the larger whole? In addition, to what extent does academic knowledge and practitioner experience inform the project. At the same time, this research seeks to understand and describe to what extent the rule of law project is informed by a broad understanding of the culture and indigenous population in the region in which they are working. As part of this research, my Title VIII funding allowed me to conduct a qualitative study of international rule of law experts and their local colleagues in three countries in Central Asia, Kyrgyzstan, Tajikistan, and

¹ A new ABA project suggests that the rule of law encompasses four “principals: a system of self-government subordinate to the citizenry; a system based on fair, public, understandable and resilient laws; a robust and accessible legal process providing the framework for transactions and dispute resolution; and diverse, competent and independent lawyers and judges.” James Podgeers, “A Big Tent Goes Up: ABA’s World Justice Project to Measure the Real Impact of the Rule of Law,” *ABA Journal* (August 2007).

Azerbaijan. Scholars of the post-Soviet milieu have produced significant research on the travails of western development and democracy experts in the ongoing ‘transition’ (Ishkanian 2007; Wedel 2001). One major theme of these scholars is that while international experts often come with sophisticated ideas on how to build the new future, they often lack the specific skills and knowledge needed for success in the concrete settings in which they are working (Mendelson, 2002). While this picture has held true across studies of a wide range of developmental programs, Central Asia has received less attention than other regions and a specific examination of rule of law specialists has not been conducted. My research seeks to determine if the rule of law project is exempt from the more general challenges of transnational experts, is uniquely handicapped due to the underlying connection between the rule of law and cultural expectations (Tamanaha 2004) or perhaps as a more recent focus of developmental agencies has incorporated some of the lessons of earlier developmental projects in the region.

Access to Central Asia as provided by the Title VIII funding was crucial for three reasons. First, there is no central depository of who the rule of law experts are – to find out who is working in each country one must be on the ground. Second, this research seeks to grasp the role of these experts in situ, before time and a change of culture alters memory. Finally, this research seeks to understand not only the perspectives of the foreign experts themselves, but to situate them in their context through additional interviews with the local employees through whom much of their work is done and other officials who could provide the broader context in which rule of law promotion is occurring.

This research follows my own extensive professional experience in Central Asia including work as a lawyer and educator from 1999 to 2003 in Ust-Kamenogorsk, Kazakhstan and in Bishkek, Kyrgyzstan and as an Reserve Army Attaché in the U.S. Embassies in Uzbekistan, Tajikistan and Turkmenistan.

After doing an initial round of interviews in Bishkek, Kyrgyzstan in February 2008, I had intended to use my Title VIII funding to do additional interviews in Kyrgyzstan, and a new round of interviews in Tajikistan and Turkmenistan. I had hoped to include Turkmenistan as one of three sites for my research because Turkmenistan, having recently experienced a change in leadership, is only now

opening to significant western technical assistance, including rule of law assistance. However visa difficulties led me to change my third country to Azerbaijan. Though I had not previously visited Azerbaijan, I hoped that it would provide a nice counterpoint to Kyrgyzstan and Tajikistan. As a country both very similar to other Central Asian countries in terms of Soviet legal and political traditions, yet positioned closer to Europe and with extensive mineral reserves and subsequent western investment I wanted to investigate how these differences might play out in rule of law programs.

Overall, I was able to successfully conduct my research in all three countries, interviewing a wide range of legal experts and officials, including representatives of the American Bar Association, OSCE, other international NGOs, various UN agencies, local lawyers, and officials from the US and other western Embassies. Challenges included identifying the appropriate officials to interview in a timely fashion. The most productive means proved to be through contacting those I already knew were involved with rule of law promotion and then building on their professional networks in-country. With my experience working in Kyrgyzstan and Tajikistan this proved relatively easy, but much more difficult in Azerbaijan with my more limited initial network of contacts.

While I am still analyzing my data four general themes have already emerged from my research. The first focuses on the individual rule of law experts and the challenges they faced – including language proficiency, short-term contracts, and family challenges that quite often limited their overall effectiveness and durability. Equally fascinating was the response by various interviewees to working in a region currently rather inhospitable to significant rule of law reform. Two significant approaches predominated, with many interviewees choosing to focus on their partnership with and impact on specific individuals, regardless of the success of their broader mandates, while others focused on broad institutional changes, even while acknowledging that these institutional changes would have to wait for a more favorable political climate before being fully realized.

A third interesting theme was the previous history of many of the interviewees, with a significant portion of them having served in various capacities in the new states of the former Yugoslavia. These experiences, often in the context of significant international leverage in rule of law development,

contrasted sharply with the much more limited influence currently available to rule of law promoters in Central Asia. Finally, one last area highlighted by my interviews that I hope to pursue further was the way that some interviewees compared their roles to those of missionaries of a new (secular) ideology, while others were clearly opposed to any sense of an ideological component to their work.

1. **American Councils for International Education:** How effectively did American Councils assist you in the following areas:
 - A. Pre-departure preparations: travel, stipend, university affiliation, visa, home stay, pre-departure information.
 - B. In-Country Support: finalizing arrangements at your university, assisting with archive access, arranging support services (medical care, etc.) as needed.
 - C. If you participated in the Combined Research and Language Training program, please also evaluate your classes and instructors.

American Councils was very effective in my pre-departure preparations – providing me with the travel arrangements and visas I needed in a very timely manner (including being quite flexible when my itinerary was pushed back several months and then again when one of my initial visa applications was denied). In-Country support was also quite good, particularly in the arrangement of my language instructors. Each of the three instructors was quite helpful – and American Councils was very accommodating in taking into account what type of language class I wanted, both in terms of time of meeting and content of the various classes. I particularly appreciated the availability of classroom space at the American Councils office in Dushanbe, both for language classes and for interviews and other research work. Given the limited infrastructure available in Dushanbe, including frequent power outages, the use of the office space was invaluable. The American Councils office in Baku was also particularly helpful in developing a list of possible contacts for my research among both international experts and local alumni of various American educational exchange programs.

2. **Your Future Plans:** What is the timeline for the remainder of your research? What are your plans for the immediate future? Do you have plans to publish articles, give lectures, briefs, presentations, and/or meet with Embassies, NGOs, or Government officials about your research in the near future?

This research is part of my PhD dissertation. I expect to finish my research with interviews in Washington, DC this summer and hope to have the dissertation complete by May 2010. I will also be working as director for a center on complex operations here at Indiana University prior to going back on the law teaching job market in 2010. I plan to publish one or more articles related to my dissertation

research, and also hope to give several presentations both here at Indiana University as well as at other universities here in the Midwest. At this point I do not have any plans to return to Central Asia in the coming year for meetings or briefings, but will likely be back in Central Asia in 2010 for work with one or more US Embassies. Ultimately, I hope that my research will better inform the development of policy surrounding the promotion of the rule of law abroad, with particular attention to the challenges faced in the former Soviet Union and the needs for the proper development of rule of law experts as well as rule of law programs.