

1 *Introduction: Between Global Norms and Local Translation*

After the end of the Cold War, there was a strong belief throughout the Western world that intervention in countries ravaged by civil war could bring about stable democracies with functioning rule-of-law systems.¹ As a result, a whole industry grew up dedicated to promoting global rule-of-law and democratic norms in post-conflict states. These norms encompassed, amongst other things, prison standards, rules governing elections and political party donations, media guidelines and mechanisms of oversight for the military. However, in the 2000s, given the infrequency with which stable democracies were emerging – despite years of peacebuilding and democracy promotion – the high expectations in regard to post-conflict countries began to wane.² In addition, the idea of putting external pressure on people to adopt a specific model of liberal democracy was increasingly perceived as normatively problematic.³

In line with the more limited expectations, policy recommendations referred more and more to ‘local ownership’ (Diamond 2008b: 316; Youngs 2012: 115) and ‘context sensitivity’ (Hill 2010; Leininger 2010) as key factors in promoting democracy and the rule of law. In Afghanistan, Western donors set up a ‘Tribal Liaison Office’, the declared purpose of which was ‘institutionalized engagement with customary structures, local communities and civil society groups’.⁴ The United Nations explored the benefits of customary law as a means of improving legal systems in developing countries⁵ and involved itself in attempts to find context-sensitive ways of promoting the rule of law in

¹ See e.g. United Nations Security Council (1992).

² See e.g. Bermeo (2009), Call/Cook (2003: 234), Ottaway (2003), Paris/Sisk (2009).

³ For discussion of this, see Duffield (2007), Hobson/Kurki (2012), Robinson (1996).

⁴ See TLO, ‘Goals and Objectives’, www.tloafghanistan.org/page30.html, accessed 1 March 2016.

⁵ Wojkowska (2006).

areas where Islamic law pertains.⁶ A well-known expert on US promotion of democracy denounced the marked ‘externality’ of such promotion and the low level of local ownership by recipient populations (Carothers 2009b). ‘Ownership’ also became the new catch-all term in the debate about development cooperation, whose purpose – according to the 2005 Paris Declaration – must be to ensure that foreign aid was distributed in line with strategies set by the recipients of that aid.⁷

The new policy paradigm dictates that norms should take on a local face but at the same time ‘reflect transcendent values that cannot be modified’ (Shaw/Waldorf 2010a: 5). A 2004 report on rule-of-law promotion by former UN Secretary-General Kofi Annan typifies this approach:

Success will depend on a number of critical factors, among them the need to ensure a common basis in international norms and standards and to mobilize the necessary resources for a sustainable investment in justice. We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations.⁸

In the current global political context, promoters of democracy and the rule of law assume they can simultaneously diffuse global norms and give them a local face and local legitimacy. But this shift to a new sensitivity of the ‘local’ brings with it a host of problems. To what extent are global norms localized? And who decides whether global standards or local particularities prevail? The ways in which external rule-of-law promoters such as UN agencies, development agencies and international non-governmental organizations (NGOs) deal with this dilemma remain unresearched. The core question posed by this book is therefore: how does external rule-of-law promotion affect norm translation⁹ in post-conflict states and how does interaction over global norms and their local faces take place?

Although conflict relating to norms and their domestic reception has become a vibrant area of research, current investigation neglects this

⁶ The UN’s Department of Peacekeeping Operations, for example, was one of the co-organizers of an Expert Conference on ‘Islamic Law, the Rule of Law, and International Peace Operations’ held in Cairo from 27 to 29 June 2011.

⁷ OECD (2005/2008). ⁸ United Nations Security Council (2004).

⁹ In what follows here, I use the term ‘norm translation’ to mean the interpretation of a norm in a new context. The term ‘localization’ is used to denote results of such translation where these do not equate either to rejection or full adoption.

1.1 Shortcomings of the State of the Art

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central question. Two particular approaches have been a major influence in the analysis of norm-diffusion processes and their dynamics: norm-socialization research and localization research; the former focuses on questions of compliance and asymmetric interaction, while the latter focuses on how local actors adapt global norms. Neither approach takes adequate account of interaction between norm promoters and domestic actors, however. In addition, they have opposing normative leanings, whereas norm-socialization research perceives anything less than full norm adoption as a ‘watering down’ of international standards, the localization approach often depicts localization as the desirable normative outcome on the basis that it ensures the legitimacy and stability of appropriated norms.

This book challenges some of the central assumptions of both the norm-socialization and norm-localization approaches in norm-diffusion research. It demonstrates that norm translation is the product of interactive ‘feedback loops’ between external norm promotion and domestic translation and that these loops are, in turn, affected by norm precision. Specifically, it analyses the interaction of rule-of-law promotion and domestic translation in the case of three rule-of-law norm sets¹⁰ in Guatemala – a paradigmatic post-conflict state. The norm sets in question are children’s rights, the right of access to public information and the scripts of international rule-of-law commissions, all of which were chosen for their different levels of precision. Based on this analysis, it also gives a more balanced account of the normative implications of global norms with a local face.

1.1 Shortcomings of the State of the Art

There are two major approaches to norm diffusion. Although the socialization approach has done much to help identify the effects of transnational norm promotion on domestic norm adoption, it has so far provided few insights into the interaction of norm promoters and their targets in relation to norm translation. The approach itself emerged in the context of the Cold War’s end and was intended as a means of analysing how and why certain international norms were

¹⁰ I will generally refer not to *one* norm but to ‘norm sets’, given that these – women’s rights, for example, or standards for a democratic police force – usually comprise a collection of norms, or what Finnemore and Sikkink (1998) would refer to as institution.

being adopted by an increasing number of states. A first generation of scholars developed influential models to describe the ways in which states socialized into international communities. These models – including the ‘norm life-cycle’ (Finnemore/Sikkink 1998), ‘boomerangs’ (Keck/Sikkink 1998) and the ‘norm-diffusion spiral’ (Risse et al. 1999) – continue to shape this field of research. A second generation of researchers enlarged the focus to include the socialization of states into democracy and the rule of law in the context of the European Union (EU) (Kelley 2004; Magen/Morlino 2009a; Schimmelfennig et al. 2006). They also offered a refined account of the norm-diffusion strategies available to external actors (Magen/McFaul 2009; Risse/Ropp 2013) and of the possible domestic constraints to diffusion (Checkel 1999; Cortell/Davis 2000). The perceived endpoint of norm diffusion was not just change at the collective institutional level but ‘internalization’ or ‘habitualization’ (Checkel 2001: 556; Finnemore/Sikkink 1998: 905) – in other words, a process in which the individuals in a state adapt their behaviour to a norm because they accept it as the right or normal thing to do. The focus of this approach on seemingly stable, uncontested norms with unambiguous delimitation and clear content was later criticized (for example, Acharya 2004; Wiener/Puetter 2009: 4). In addition, this line of thought remains vague on concepts such as partial compliance, decoupling and adaptation,¹¹ and diffusion outcomes other than full norm adoption are explained in terms of the domestic factors – such as normative context, veto players and deficient capacity – through which external norm promotion is filtered.¹²

The norm-socialization approach has an ‘outside-in’ perspective. External norm promotion is generally seen as an independent variable influencing a dependent norm-diffusion outcome, with domestic factors hindering this process. The direction of causality is ostensibly clear. Interaction between domestic context and external actors does occur, but only to the extent that promoters may adapt their strategies to the specific domestic situation in the target country. For example, strategies may be adjusted to accommodate the presence of strong veto players (Morlino/Magen 2009a); norms may be framed in a way that resonates more directly with local culture; and specific problems of

¹¹ See e.g. Jetschke/Rüland (2009), Noutcheva (2009).

¹² For example, Börzel/Risse (2013), Checkel (1999), Cortell/Davis (2000), Flockhart (2005a).

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capacity may be addressed (Börzel/Risse 2013; Keck/Sikkink 1998; Risse/Sikkink 1999). This asymmetric depiction of interaction severely limits the explanatory power of norm-socialization models.

An alternative approach focuses on norm localization and contestation. Instead of portraying norms and their interpretations as stable, it points to the dynamics surrounding them (Sandholtz/Stiles 2009; Wiener 2004, 2008) and explores the question of how norms are interpreted and modified in new contexts. Local actors are seen as engaging creatively in the combination and interpretation of norms in ‘glocalized’ normative orders (Acharya 2004, 2009; Zwingel 2012). Research into peacebuilding and the promotion of democracy has recently begun to focus on contestation and on hybrid outcomes of the everyday interaction involved in peacebuilding (Kurki 2010; Mac Ginty 2011; Richmond 2011). In IR research, however, localization is mostly seen as the product of domestic agency (see, for example, Acharya 2004; Liese 2009) and in this it too fails to take adequate account of the interactive nature of norm generation. In addition, the localization approach lacks a systematic model of translation and often replicates the linear perspective of norm socialization. A better analysis of translation and interaction is needed in order to establish why norms take on a particular ‘local face’ on the ground.

1.2 The Argument: Interactive Norm Translation

In response to the shortcomings just described, this book sets out to improve understanding of the political dynamics involved in the promotion and translation of rule-of-law norms. It offers a new, interactive perspective to norm translation – one that moves beyond the unidirectional perspective of norm socialization and the failure of norm localization to take account of interaction.

The book demonstrates that rule-of-law promotion affects domestic norm translation, but in unexpected ways. It traces the manner in which such promotion triggers domestic contestation, and thereby also ‘feedback loops’, which, in turn, bring about change in (1) the modes of interaction engaged in by external actors, and (2) the final form into which global norms are translated (see Figure 1.1). Although international promoters of the rule of law begin by trying to achieve full adoption of global standards using a conditionality-oriented mode of interaction, they subsequently respond to local interpretation and

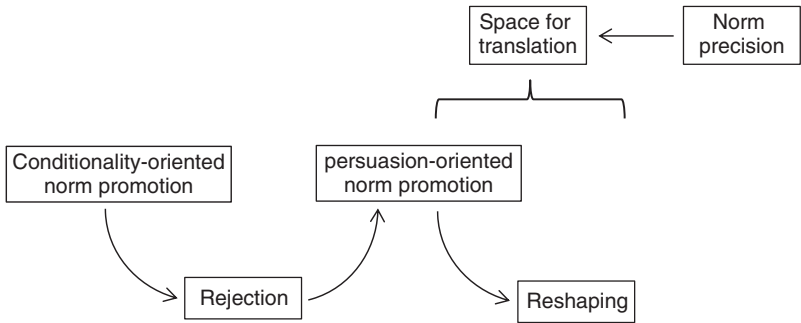


Figure 1.1 Feedback loops in norm-diffusion processes.

contestation, changing to a more persuasion-oriented (and less transparent) mode of interaction and accepting a degree of leeway in regard to local translation. This response is not a consciously thought-out policy on the part of the external actors but an ad hoc reaction to contestation. The actual amount of space afforded for translation, however, depends on the degree of precision of the global norm set in question: the more precise the norm, the less flexible the attitude of both external and domestic actors and the less substantial the ultimate localization.

In sum, domestic translation is a product of a process of interaction between external and internal actors. Feedback loops lead to changes that go beyond strategic bargaining with domestic elites over liberal reforms (on this kind of model, see Barnett et al. 2014; Barnett/Zürcher 2009). External actors become enmeshed in domestic discourse, domestic frames and domestic contestation, and, in reaction to this, shift to a more persuasion-oriented style of interaction and a joint re-discussion of norms.

The book's findings also underline the desirability of an interactional and deliberative approach to norms that stresses mutual processes of construction as a condition for the legitimacy of global norms in local contexts (Benhabib 2006; Brunnée/Toope 2010).

1.3 Design

In the absence of any systematic investigation of the patterns of interaction involved in external norm promotion and domestic translation,

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this study, based on a theory-generating case-study design, aims to produce a model of these processes (Lijphart 1971: 692; Munck 2004: 119–20). Its inductively generated theoretical argument should therefore be regarded as requiring further empirical testing in order to be fully generalizable.

Case selection was based on the following considerations. First, investigation of translation processes requires a detailed analysis of the politics and political discourse involved in them. Accordingly, this study concentrates on in-depth analysis of interaction and norm translation in a single country and across several cases.¹³ Second, the international donor community's approach of basing interaction in post-conflict states on peacebuilding and the promotion of democracy is a recent phenomenon, having evolved during the 1990s.¹⁴ To accommodate this, the country selected for study is one in which civil war was brought to an end at the close of the Cold War and with strong support from external actors. More specifically, the country in question – Guatemala – was one of the first contexts in which wide-ranging peacebuilding activities were engaged in by the international donor community¹⁵ (Paris 2004: ch. 7).

In addition, the particular norms on which the study focuses are rule-of-law norms. Norms are understood here as regulated modes of behaviour that are based on inter-subjective validity (Deitelhoff 2006: 39–44; Finnemore 1996: 22–23; Klotz 1995: 451). On this understanding, norms regulate interpersonal relationships by solving problems of collective action and also by constituting those relationships. They are 'prescribed patterns of behavior that give expectations as to what ought to be done' (Hurrell 2002: 143). As such, they serve internally as benchmarks for judging one's own behaviour and that of others.¹⁶

¹³ This ensures that the context – e.g. the role of external actors, past and present, and the domestic political system – remain constant.

¹⁴ See e.g. United Nations Security Council (1992).

¹⁵ As I use it here, the term 'international community' is not intended to denote a normative concept. I employ it mainly to refer to the group of donors – whether states, international organizations or international NGOs – active in a country.

¹⁶ From this constructivist perspective, norms endogenously influence the creation of identities and preferences by providing standards as to what is right or appropriate (for an overview, see also Deitelhoff 2006: 53–69; Kowert/Legro 1996). Norms here should be understood not as causes of action but simply as shaping the possibilities of action (Hurrell 2002: 144; Kratochwil 1989: 8). This point of view differs from that advanced in realist or liberal-institutionalist

Since the end of the Cold War, ‘rule of law’ has become a buzzword of development cooperation and an integral part of the ‘good governance’ agenda. Today, academics and practitioners describe rule-of-law promotion as an ‘elixir for many ills’ (Mani 2008: 29). It has gained such prominence amongst donors that ‘virtually every government in developing and transition countries is involved in one or more internationally sponsored projects designed to strengthen their legal systems and institutions’ (Faundez 2005: 567).

Although rule-of-law promotion has a long history in foreign policy, its meaning has changed over time. As early as the 1960s and 1970s, the US ‘law and development movement’ was viewing rule-of-law promotion as a strategy for fostering economic development in the Global South. In Latin America in particular, the United States was actively seeking to get law on investment and land ownership reformed. However, it was the 1980s that saw the greatest push for the rule of law, notably by the World Bank and the United States, who looked on it as part of the promotion of economic liberalism. In line with this ‘governance paradigm’, there was a belief that the only way in which underdeveloped states could achieve economic development was through an extensive reform of their institutions. Sections of the development-cooperation community, meanwhile, viewed rule-of-law promotion as the prime means of consolidating young democracies.

Not surprisingly, conflicts have arisen in academic and political circles as to the exact nature and purpose of the rule of law. Scholars often distinguish minimum and maximum concepts of it, the minimum version denoting a sound judiciary and stable institutions, the maximum version implying a more wide-ranging set of human rights and an understanding of law as having a content that is both substantive and moral.¹⁷ In the minimalist version, it would be considered sufficient to reform market institutions and formalize property rights and investment laws; in the maximalist version, promotion of the rule of law would have to encompass questions of social justice and wealth

theories, which only refer to power, material factors and constellations of interests to explain the creation of norms in the international system. In these approaches, once norms are in place, they are understood either as exogenous constraints on action that feature in actors’ cost–benefit calculations (Keohane 1984; Mearsheimer 1994/95) or as nothing more than patterns of standard behaviour (Axelrod 1985, 1986).

¹⁷ On definitions of the rule of law, see O’Connor (2006: 518–20) and Stromseth et al. (2006: chap. 3).

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distribution.¹⁸ In the first concept, there is no integral link with democracy; in the second, democracy and justice are seen as key. The first ‘runs the risk of turning toward revisionist authoritarianism’ (Mani 2008: 28); the second risks, as it were, wanting too much. This study eschews the choice between minimalist ‘procedural’ and maximalist ‘social justice’ definitions of the rule of law, preferring for analytic purposes a concept that combines a minimalist definition with civil and political rights.

The debate about non-minimal perspectives on rule-of-law promotion led to a number of previously distinct issues being woven together. Discourse about human rights had formerly been seen as independent of concerns about security and development, but in the 1990s, a rights-based outlook brought these three areas together into a single discourse on the rule of law (Rajagopal 2008: 50–51). In the UN, the 1990s saw rule-of-law promotion become a key part of activity in post-conflict states, with state-building, peacebuilding and human rights all rolled into a single approach.¹⁹ This triggered a new narrative about the ‘indissociable’ link between human rights and the rule of law.²⁰ All kinds of norms were combined here – from guidelines for judicial appointments, through standards for police reform and the demobilization of former combatants, to the promotion of women’s rights, to name but a few. In this scheme of things, the rule of law forms part – indeed the key part – of an overall promotion of liberal democracy (Carothers 1998: 96–7; Magen/Morlino 2009b). It was this perspective that shaped peacebuilding in the 1990s and 2000s – and along with it the approach of external actors to Guatemala.

Over the years, Guatemala has been a major target of rule-of-law promotion by UN agencies, the World Bank, the United States and Europe. In 1996, its government signed Peace Accords with the guerrilla forces of the Guatemalan National Revolutionary Unity (Unidad

¹⁸ Carothers (2003: 6), Rajagopal (2008: 55) and Upham (2002).

¹⁹ Carothers (2003: 5), Mani (2008: 29–32), Sriram (2008), Trenkov-Wermuth (2010: 2–3).

²⁰ Rajagopal (2008: 54). However, Rajagopal, for one, argues that the rule of law has come to be used as a substitute for human rights discourse, explaining that: ‘The human rights discourse is a discourse of social transformation and even emancipation, whereas the rule of law discourse does not have that ambition and may be seen as inherently conservative’ (2008: 53).

Revolucionaria Nacional Guatemalteca – URNG).²¹ These accords ended a thirty-six-year civil war that had begun shortly after the ousting, in 1954, of Guatemala's president, Jacobo Árbenz – the second civilian to hold the post during a democratic interlude in the country's history. The coup was led jointly by conservative forces and the military, with strong support, including military backing, from the United States (Handy 1994; Jonas 1991). The country continued to be governed by the military, or military-backed administrations, until the start of the 1980s, when it slowly began to open up to democratic reform.²² The Peace Accords were negotiated with the support of the international community. From 1994 to 2004, a UN verification mission, MINUGUA, was stationed in the country, initially to oversee compliance with human rights agreements and subsequently to monitor the implementation of the Peace Accords and support the state in the democratization process (Franco/Kotler 1998; Stanley 2013).

There are a number of ways in which Guatemala is paradigmatic of post-conflict spaces: its political system is more akin to a hybrid regime (Karl 1995; Zinecker 2009) than a liberal democracy; organized crime takes centre stage in the political discussion; domestic discourse remains polarized; and the promotion of democracy by the international donor community is often the subject of contestation. The ongoing frustration of external actors in regard to norm adoption and compliance (Morales López 2007) combined with the animated political discourse on internationally promoted reform projects make it an ideal source of systematic insight into post-conflict processes of translation and interaction in general.

Magen and Morlino (2009b: 10) describe the following dimensions of rule-of-law promotion:

- (1) protection of civil freedoms and political rights
- (2) independent judiciary and modern justice system

²¹ A process of democratization had begun in Guatemala as far back as 1983 and this had led, in 1986, to a (limited) opening up to democracy. It was not until 1996, with the signing of the Peace Accords, that military oversight of the fledgling democracy was cut back more thoroughly. Because of this gap between the limited democratization of the 1980s and the final peace agreement of 1996, external actors did not home in on the classic post-conflict field of electoral procedure (Azpuru et al. 2004: XVI; de Zeeuw 2005).

²² See e.g. Azpuru (1999: 103), Jonas (2000), Ropp and Sikink (1999).