

Indicators are a good first step, but by amalgamating ends and institutions and by making the rule of law unitary, these indicators hardly serve any clarifying purpose.

CONCLUSION

When Dicey described the rule of law a hundred years ago, he wrote that “whenever we talk of Englishmen as loving the government of law, or of the supremacy of law as being a characteristic of the English constitution, [we] are using words which, though they possess a real significance, are nevertheless to most persons who employ them full of vagueness and ambiguity.”⁹⁰ This pleasant fog had not improved significantly at the time that the field of rule-of-law reform was born.

The new field of rule-of-law reform did not emerge slowly after years of academic discourse. It grew from action—action needed right away—as states tried to keep regions from falling into poverty and anarchy, organizations jockeyed with one another for primacy in a new and growing field, reformers tried to create new polities out of crumbling states, and the United States and Europe fought for influence over the newly unallied states of Eastern Europe through legal systems, as well as through NATO and the EU. Few, except perhaps practitioners on the ground, noticed that they were working for different goals under the rubric of rule-of-law reform—and that they were too busy acting to comment.

After twenty years of such fevered activity toward ambiguous ends, however, it is time to take a step back and reflect.⁹¹ Rule-of-law reformers have been working to improve an ever-growing number of rule-of-law institutions. But the ends these institutions are intended to serve in society have become obscured. Rule-of-law reformers are trying to build a system that is better seen not as a set of institutions but as a set of distinct but interrelated end goals. When the system is properly balanced, these ends are mutually supportive. But when the system is in its infancy or when these goods are improperly aligned, they can undermine each other.

By treating the rule of law as a set of institutions, reformers handicap themselves in bringing about the end goals of the rule of law—all of which require reform across institutions, as well as cultural and political changes that lie outside the concrete institutional realm. By treating the rule of law as a single good rather than as a system of goods in tension, reformers can inadvertently work to bring about a malformed rule of law, such as one in which laws that overly empower the executive are applied and enforced more efficiently.⁹²

The difficulties of turning a definition of the rule of law based on ends into a practical method of tackling rule-of-law reforms are real. Acknowledging the need to do so and developing a measurement system that orients reformers toward this realization are first steps.