



# **Rule of law, markets and democratization**

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Horizons and Challenges for Rule of Law and Justice  
Reform in the Arab World

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# THREE KEY GOALS

- RULE OF LAW – RECENTLY ACKNOWLEDGED AS AN ESSENTIAL COMPONENT IN THE PROCESS OF DEVELOPMENT
- MARKETS – GLOBAL CONSENSUS PRESCRIBES MARKET-LED GROWTH
- DEMOCRATIZATION – SEVERAL WAVES, BUT WHAT KIND OF DEMOCRACY?

# **AN IMPRESSIVE TRIAD, yet poor outcomes**

- **RULE OF LAW** – purely formal, laws not enforced, public confidence in courts is low, one law for the rich...etc.
- **MARKETS** – development outcomes far from satisfactory (anarchy of success?)
- **DEMOCRATIZATION** – voters' apathy, culture of spin, corruption, political agenda hijacked by global concerns.

# WHY THESE DISAPPOINTING OUTCOMES?

- WHAT IS THE LINK BETWEEN RULE OF LAW, MARKETS AND DEMOCRATIZATION?
- ARE THESE THREE COMPONENTS IN CONFLICT?
- IS THERE A NATURAL SEQUENCE ?

# ISSUES TO BEAR IN MIND

- Law is a politically sensitive area of social relations
- Law is ubiquitous
- The link between law and society is complex.

# LAW IS A COMPLEX MECHANISM

- Everything has a legal dimension, but is law always decisive? When should we call in the lawyers?
- Law is a set of formal and informal rules, as well as a set of institutions
- Law is also a specialised form of reasoning that often entails a specific outlook on social relations (legal culture, ideology).

# RULE OF LAW OR LEGALITY?

- RULE OF LAW – an ideal, a contested political concept, difficult to measure. It refers to a delicate balance between legal, political and economic processes
- LEGALITY – Is legality the foundation of the rule of law ideal? Should legal reform focus first on securing order and then on protecting property and contract rights?

# THE EVER EXPANDING AGENDA – CONSEQUENCES

- How to set priorities? Should economic law take precedence of other (soft) areas of law, such as social rights or access to justice?
- Is a policy that seeks to strengthen in areas of exclusive interest to investors realistic?
- Does a wider focus on institutional reform ('governance matters') dilute the importance of law?

# INSTITUTIONAL REFORM- IMPLICATIONS

- Exclusive focus on legal institutions –has serious limitations, especially in weak states
- Wider institutional framework is crucial and as important as specialised legal institutions
- Which institutions? Absence of law - where law is not applied or purposely ignored – this is as much a governance as a legal issue.

# MARKETS AND DEMOCRACY

- Markets are necessary for the existence of (liberal) democracy
- But markets set limits to the process of democratization (markets as prisons)
- Democracy is often seen as capable of disrupting markets (redistribution, populism).

# LAW AND THE TENSION BETWEEN MARKETS AND DEMOCRACY

- Legal reform should promote markets – if so, should the scope of the reform process be restricted to the protection of property and contract?
- Legal reform should promote democracy – if so, should legal rules and institutions respond to the demands and needs of the majority (the poor)?

# CAN LAW RESOLVE THIS TENSION?

- TWO PERSPECTIVES
  - NO – LAW IS PART OF THE PROBLEM, AS IT IS DESIGNED TO CONTAIN THE EXCESSES OF THE MAJORITY
  - YES – LAW IS THE SOURCE OF INDIVIDUAL AND SOCIAL EMPOWERMENT.

# LAW AND DEMOCRATIC PROCESSES – A POSITIVE APPROACH

- Empowerment – individuals assert their rights as citizens and legal subjects
- Protection – legal system and political institutions afford protection against arbitrary action
- Access – equal opportunity to access state institutions and societal resources
- Accountability – horizontal and democratic systems of accountability to control the activities of public authorities.

# CONCLUSIONS

- Legal reform can smooth the inevitable tension between markets and democracy
- It can do so if its promoters are willing to support and develop legal institutions that enhance democracy for all
- Not an easy task, but one which requires taking into account how prevailing structures of authority shape social processes.