Promoting the Other Rule of Law

Promoting the rule of law is a key foreign policy goal for major Western donor states. The rule of law assumes the state legal system that can project law uniformly over its territory and monopolize legitimate violence. In most countries that receive foreign aid, however, non-state justice systems rooted in custom, tradition or religion handle the vast majority of legal disputes. Yet, scholars have paid relatively little attention to foreign policy towards non-state justice. This paper proposes a new theory that explains donors’ policies based on risk tolerance and strategic objectives. It posits five policy approaches (acceptance, transformation, acknowledgement, denial, rejection) and four common goals (judicial reform, symbolic recognition, state-building, counterinsurgency). It then explores how the largest rule-of-law-assistance donor nations approached non-state justice from 2008 to 2018. Donors strongly favored risk-averse approaches towards non-state justice, even when this was unlikely to produce the desired results or undermined policy coherence. Certain policy goals – such as counterinsurgency or state-building – sometimes prompted riskier choices, but only when there was a compelling justification and a reasonable prospect of success.

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