

Book Review: *Building the Rule of Law: Firsthand Accounts from a Thirty-Year Global Campaign*

Hon. John M. Walker, Jr.[†] and Isa C. Qasim^{††}

I. INTRODUCTION

In August 1991, a Colorado lawyer, Bill Meyer, accompanied by his wife Jane, traveled to Sofia, Bulgaria to begin an adventure. Their trip, initially planned to be three months, lasted an entire year. The only Western lawyer in a country recently liberated from communism, Meyer's work was far afield from his Boulder civil litigation practice. He was in Bulgaria to build the rule of law. There was much to do: master Bulgarian politics and law, advise members of parliament on necessary legislation, and press for judicial reforms. He would also write and distribute a book for the local bar on organizing a private law practice. Meyer was the first of what would become waves of American lawyers who volunteered their time (often months and even years) and expertise to the countries of Central and Eastern Europe, from the Baltic in the north to the former Yugoslavia in the south and across the reach of the former communist bloc and Soviet republics, including Russia itself.

Meyer, other volunteer "liaisons," and numerous volunteer-lawyers served as part of the Central and East European Law Initiative (CEELI) of the American Bar Association (ABA), founded in 1990 by the leadership of the ABA. They were part of a rule-of-law movement comprised of thousands of lawyers, judges, and academics that, after thirty years, has been the largest pro bono project ever undertaken by the ABA. CEELI's mission was to build the rule of law in each of the fledgling constitutional democracies that emerged after the fall of communism in Central and Eastern Europe. The CEELI project involved a variety of initiatives, including judicial training, partnerships between local and American law schools, working with in-country lawyers and lawyers' groups, and the "liaison" program that assisted countries and organizations that requested CEELI support in critical areas. Over time, the ABA built upon CEELI's success, eventually establishing the worldwide ABA Rule of Law Initiative (ROLI) of which the original CEELI became a part, and creating the CEELI Institute based in Prague (now independent of the ABA) which provides rule-of-law and anti-corruption training, workshops, and conferences to the legal communities in the region and beyond.

[†] The Honorable John M. Walker, Jr. is a Senior Circuit Judge at the United States Court of Appeals for the Second Circuit.

^{††} Isa C. Qasim is a Deputy Associate Counsel at the White House Counsel's Office and former law clerk to the Hon. John M. Walker, Jr. He contributed to this review prior to joining the Biden-Harris Administration and his contributions reflect his personal views only.

II. BUILDING THE RULE OF LAW

A recently published book, *Building the Rule of Law: Firsthand Accounts from a Thirty-Year Global Campaign*, documents this massive undertaking.¹ It gathers the recollections of many of the people who participated in the ABA's rule-of-law work, including Meyer; Homer E. Moyer, Jr., CEELI's co-founder; Mark Ellis, the current Chair of the CEELI Institute; and numerous "liaisons." The sixty-seven essays are first-hand accounts of CEELI, ROLI, and the CEELI Institute from its leadership and volunteers, providing essential insights into the organizations' origins, successes, challenges, and future prospects. Taken together, they provide a comprehensive history and, at the same time, an invaluable resource for scholars and others who want to understand the rule-of-law movement through the eyes of its earliest and most influential practitioners.

The book groups its essays into five sections: Part I focuses on the creation of CEELI, Part II on the CEELI Institute, Part III on ROLI, Part IV on reflections by CEELI and ROLI volunteers and staff, and Part V on the programs' futures and the rule-of-law movement more generally. The essays vary widely in tone and content and they provide a rich mosaic of personal narratives of the development and growth of the programs. They also detail how these programs have responded differently to changing circumstances. The CEELI Institute, for example, has developed innovative anti-corruption programs, a topic on which CEELI did not initially focus.

Together, the essays present a persuasive case for the central roles of CEELI, ROLI, and the CEELI Institute in the rule-of-law movement and their impact on the countries they served. Founded in 1990, CEELI was the vision of Homer Moyer, then Chair of the ABA's International Law Committee, who, together with Talbot "Sandy" D'Alemberte, the ABA's president, provided the leadership to bring CEELI into being. Beyond its concrete impact, CEELI blazed the trail for the "rule-of-law" paradigm for international development, popularizing an approach that today has been adopted by organizations worldwide and subjected to extensive academic analysis and critique.

Moyer's essays, in particular, do a superb job of explaining the vision behind the movement and the practical work that brought it to life. All of the essays celebrate the work that transpired. The book is also filled with color photographs, both formal and informal, of the leading figures of the three entities, supporting judges and Supreme Court Justices, the many volunteers, and the recipients of their assistance.

The heart of the book, however, is the forty-six reflections, in the nature of memoirs, by volunteers and staff upon their particular experiences abroad. Although varying in personal style, they are well-written and thoughtful. Some are funny. Many are brilliant. And all are informative and inspiring. Highlights include Meyer's memories of his year in Bulgaria;² Los Angeles Superior Court Judge Judith Chirlin's account of her drive across Iraq in 2003, before the

1. BUILDING THE RULE OF LAW: FIRSTHAND ACCOUNTS FROM A THIRTY-YEAR GLOBAL CAMPAIGN (James R. Silkenat & Gerold W. Libby eds., 2021) [hereinafter BUILDING THE RULE OF LAW].

2. *Id.* at 181-88.

insurgency, after a week of meetings with Iraqi judges and officials;³ and the numerous adventures of Mary Noel Pepys, a San Francisco attorney who found her professional and personal life transformed after spending five years working in Bulgaria, Latvia, Slovakia, Ukraine, and other countries as a pro bono CEELI volunteer.⁴

These and similar accounts provide concrete examples of the work done by CEELI, giving substance to the other essays' references to "training" and "assistance." For instance, Pepys describes working closely with a group of female Bulgarian judges to establish a sorely needed judicial training center. Among other things, Pepys was able to recruit Chief Justice William Rehnquist as a speaker at the center's opening ceremony in Bulgaria, smoothing the way to its full societal acceptance and securing Bulgarian governmental support. The reflections bring the project to life and remind the reader of the personal and professional risks the volunteers took, often under challenging conditions, and the impact of the projects.

III. QUESTIONS RAISED

The essays have a generative quality, naturally leading the reader to numerous questions concerning rule-of-law development. At its most basic, any book discussing this subject causes the reader to grapple with the central question: "What do we mean by the term 'rule of law'?" Different essays in the book provide varied answers to this persistent question. One by Moyer offers a positive definition of the rule of law, while readily acknowledging the slipperiness of the term.⁵ Many other essays, especially by the volunteers, essentially bypass the question or define it by its negative ("I know when it's not there."). These varying approaches allow us to see how the first rule-of-law practitioners at all levels understood their work and how it changed over time. Do they employ the formalistic "institution-based" definition warned against by Rachel Kleinfeld or her preferred value-laden definition?⁶ An essay by Judge Margaret McKeown offers valuable insights into the variations, including prominently the "kindred concepts" offered by the renowned British constitutional scholar Albert Dicey: "a government limited by law; equality under the law for all citizens; and the protection of human and civil rights."⁷ One might ask how the volunteers' views of the concept, or lack thereof, affected the programs they pursued. Was the average volunteer's understanding consistent with that of CEELI's leadership? Did experiences on the ground lead to new insights?

The book also highlights the growing professionalization of the rule-of-law

3. *Id.* at 212-13.

4. *Id.* at 231-44.

5. *Id.* at 471-72.

6. See Rachel Kleinfeld, *Competing Definitions of the Rule of Law*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 50-54 (Thomas Carothers ed., 2006).

7. *BUILDING THE RULE OF LAW*, *supra* note 1, at 141.

field. The individual reflections reveal a clear nostalgia for the volunteerism of the 1990s. What is clear in some of these fond personal reflections is that the field of rule-of-law development, fully energized by the early volunteers, has become more complex and may have lost some of its early spark. Pepys, in an incisive essay, decries the current tendency of donor organizations to focus “more on their own interests than on the recipient country’s needs.”⁸ At the same time, she notes that the proliferation of programs within a country tends to hamstring the work due to the “duplication of efforts by other entities” and “tripping over other consultants with competing or overlapping projects.”⁹ But these critiques follow logically from ROLI Director Alberto Mora’s pronouncement that “[l]ike it or not, ROLI operates in a competitive marketplace” of non-governmental organizations and for-profit rivals that compete for donor funding.¹⁰ Is the current and future professionalization described by Mora actually good for the recipient countries? Is it inevitable? What precisely has been lost in the process?

The volunteer reflections give rise to sociological questions as well. They offer a fascinating insight into the self-conception of the American lawyer. A recurring theme is the volunteer who embraced CEELI or ROLI work as a mid-career escape from the drudgery of American legal life. At the same time, the reflections express an earnest confidence in the superiority of the American legal system. One wonders how these experiences fit into broader American narratives of corporate disenchantment in the 1990s. Did these attitudes affect the kind of work initially supported by CEELI? Meyer notes that an initial goal of the CEELI initiative was to establish one or more law schools on the Western model but that “this vision had been sidetracked by the liaison program.”¹¹ It seems that the individual social visions of its volunteers informed the work of CEELI alongside the needs of the recipient countries. The reflections also demonstrate increasing ambivalence about the current state of the American legal system. Would a similar CEELI program started today have a different character as a result?

The book emphasizes the partnerships between American governmental and private actors in spreading American soft power. Moyer’s essays and the liaisons’ reflections provide numerous accounts of how the ABA used its members’ social capital to recruit American governmental officials, especially professedly apolitical justices and judges, to advance their rule-of-law objectives which focused on the countries’ needs without superimposing the American system. In this account, promoting the “rule of law” became an American governmental priority in response to the pressure of American lawyers, who then employed official prestige to advance their missions in host countries. What does this tell us about the role of legal professionals in America? How might this rule-of-law work, often characterized as “non-political,” be viewed in America’s changing legal landscape? How were these partnerships understood by target countries, and how might this understanding have changed over time? The book

8. *Id.* at 448.

9. *Id.*

10. *Id.* at 414.

11. *Id.* at 113.

does not give definitive answers, but it does provide the building blocks for future scholarly analysis into these and other questions. In doing so, it encourages academics to focus on the actual experiences of rule-of-law practitioners and not simply theoretical abstractions.

IV. FURTHER THOUGHTS

While the book raises many thought-provoking questions, some concerns may linger in the reader's mind. As the above reflections suggest, these compelling essays, except as part of the general mosaic, are not individually connected. Consequently, there is some repetition of basic facts and some essays do not provide a clear description of the program discussed.

A reader will also note that the essays, written many years after the events they describe, often omit a discussion of the long-term impact of the practitioners' work. Even as one is impressed by the diligence and scale of the volunteers' work and its immediate impacts, one cannot help but wonder about the work's effectiveness over time. A lay person might expect that this is something that could be ascertained and described. The essays' failure to come to grips with long-term impacts, however, is indicative of a major difficulty in assessing long-term progress within the entire rule-of-law development movement. While there are a few country-by-country studies and accounts of the current state of the rule of law and its progress in general—most notably the excellent annual “Rule of Law Index” published by the World Justice Project¹², any such measurable rule of law advances (and failures) cannot be readily traced to particular programs given the overall complexity of such causation within each country over time.

Another concern is the absence of contributions from program beneficiaries. Although we do get occasional glimpses in the form of quotes from beneficiaries, they appear through the recollections of the American authors. As a result, we do not hear directly from the people these programs served. Beneficiary essays would give the reader a fuller picture of the projects undertaken, much less assist in any comprehensive efficacy study of the ABA's work. But the book's objective is different from that and more limited: it intends to account for the work done historically from the ABA's perspective. A related concern is that the essays are sometimes less critical than they might have been. Perhaps this is because, in describing what they did, the volunteers' essays also convey a sense of pride in the work. As with all texts, the careful reader must account for these predilections.

Whatever the book's perceived limitations, they do not diminish its value as a historical account of what transpired from the unique perspective of those who made it happen. The collected essays contain definitive statements by the

¹² *Rule of Law Index*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/rule-of-law-index/> (last visited Nov. 25, 2022); see also *Freedom in the World 2022*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule> (last visited Nov. 25, 2022) (including rule-of-law analysis in its scores).

leaders and lawyer-volunteers of some of the world's leading rule-of-law programs on a wide variety of interesting questions. These include: how the awareness of country needs developed on the ground; how volunteers applied their expertise; the practical and conceptual difficulties that arose; and their visions for the future. These are topics that have interested scholars for years.¹³ While not engaging with the existing academic literature, the essays present a clear picture of what these talented practitioners believed and how they conceptualized their work. The book is thus a rich collection of primary source materials for future exploration by academics and rule of law practitioners.

V. CONCLUSION

Building the Rule of Law: Firsthand Accounts from a Thirty-Year Global Campaign, is a powerful testament to the optimism, generosity of spirit, energy, and vision of the ABA leaders, the many talented volunteers, and others working to build the rule of law during the tectonic social, political, and economic transformations that followed communism's collapse. It does not pretend to be a scholarly rendition but is rather a collective history and celebration of the most comprehensive and ambitious pro bono project ever undertaken by the ABA. The book also draws our attention to the fact that we have entered a new era of rule-of-law work. The professionalization of the field, the time passed since the fall of the Soviet Union and its communist hegemony in its Central and Eastern European satellite states, and the greater awareness of flaws in the American legal experience have all affected the rule-of-law movement. And we believe that future scholars will want to draw upon *Building the Rule of Law's* thoughtful observations and insights based on practical experience to deepen their understanding of the efficacy of rule-of-law development and of the nature and characteristics of the rule of law itself.

13. See, e.g., PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (Thomas Carothers ed., 2006) (gathering scholarly essays on the topic).