

Book Reviews

Deval Desai. ***Expert Ignorance: The Law and Politics of Rule of Law Reform***.
Cambridge: Cambridge University Press, 2023. Pp. 266. ISBN: 978-1-009-28472-1.

This book is about experts performing the rule of law – whatever the rule of law is. The point of curiosity that the book sets out from is that we cannot be so sure about the basic premises of the rule of law. Indeed, this is what any rule of law expert taking themselves seriously will tell you. What is more, experts' own-stated expert ignorance is the surest way they will be taken seriously, at least by their peers. Or so we are told by the author, who should know since, in a former life, he was himself a rule of law expert presumably denying his knowledge of the rule of law, only then to turn around and write a book not about the rule of law but, rather, about its denial.

True to form, this book does not define the rule of law or stipulate how it should be implemented. Instead, Deval Desai pursues a different track by asking: what does it do when rule of law experts say they do not know what the rule of law is? Strikingly, in running with this question, this former expert, now academic, turns to theatre, not theory, to explain his past experience. He does so, moreover, convincingly, first by showing in detail how the more beaten tracks of practice theory, discourse and organization sociology are inadequate for his analysis and, second, by showing how theatre and performance can elucidate expert ignorance. The book thus merges two both current but up to now largely disjointed debates: one on theories of expert rule and global governance and the other on art and the aesthetics of international law. Crucially, with this timely move to theatre, Desai indicates the direction for sharpening current critical theoretical tools by learning from the arts.

The approach of the book opens it up to a broader audience beyond rule of law scholars. Of particular interest are findings relating to expert rule and global governance. More specifically, for some time now, critical scholarship in this area has been entertaining the possibility that some of the existing analytical tools are losing their critical prowess. What if, Fleur Johns gave the opening salvo, practitioners of governance 'have learned some new steps, picked up some new rhythms and routines. And in so doing, governments and international institutions may quite possibly have blunted or outrun the standard tools of critical, progressive, and reform-minded international

lawyers’.¹ If such is the case, it warrants taking a new close look at how global governance has changed course. *Expert Ignorance* does exactly that.

Likewise, this shared impetus also lies at the foundation of broader work that Desai, together with Andrew Lang, has been developing under the nomenclature of ‘un-governance’. After detailed study of governance in various locales, un-governance was drawn up to signify a novel mode of governance where ‘big visions with claims to universality’ are pursued without adequate prescriptions for attaining them.² Moreover, the governance experts engaged in this pursuit are aware of this dual reality. Enter our rule of law reformers who both hold a commitment to the rule of law and at the same time question what it might be.

Desai in his book takes pains to attest to the singularity of rule of law expertise and to the slippery sublimity of its vision. For example, there are no recognized degrees on the rule of law, leaving the precise boundaries of the profession dangerously undemarcated and in constant danger of being encroached upon by other more recognized disciplines such as economics. The bigger point, however, may well be the overwhelming sense of recognition that the account sparks, including in light of the broader idea of un-governance. It is a curious and perhaps disenchanting (at 1) observation that international institutions are committed to some central goal that, despite ostentatious work, seems far from achieved and that the people working in these organizations are able to openly doubt that these goals are likely or even possible to deliver or can even be truly known. It is also a diagnostic that has found resonance across the board in application to, amongst others, the World Bank,³ the humanitarian field,⁴ the United Nations Security Council⁵ and the European Union.⁶

Save for in the conclusion of the book, Desai does not engage with the un-governance discussion head on. Still, the book can be read as eclipsing the concept. Where roughly the first half of the book lays the theoretical groundwork for thinking about current modes of global (un-)governance, the second half explores the ways beyond that critique. Let me explain. One of the reasons why the un-governance work has been so welcomed, at least by me, is that it offers a theoretical frame to say that there is no theoretical frame that fully captures and takes seriously the messiness of governance that can be observed upon close inspection in various transnational institutions. In order to substantiate such a bold claim, Desai does in-depth foundational work. In the first part of his book, particularly in Chapter 3, Desai sets out a detailed account of no fewer than three familiar avenues of dissecting expert governance: organizational sociology, discourse analysis and an ethnography of practices. He shows the insights

¹ Johns, ‘From Planning to Prototypes: New Ways of Seeing Like a State’, 82(5) *Modern Law Review* (2019) 833 at 834.

² Desai and Lang, ‘Introduction: Global Un-governance’, 11(3) *Transnational Legal Theory* (2020) 219.

³ van den Meerssche and Gordon, ‘“A New Normative Architecture”: Risk and Resilience as Routines of Un-governance’, 11(3) *Transnational Legal Theory* (2020) 267.

⁴ Johns, ‘State Changes: Prototypical Governance Figured and Prefigured’, 33 *Law and Critique* (2022) 251.

⁵ I. Roele, *Articulating Security: The United Nations and Its Infra-Law* (2022).

⁶ Vos, ‘The Many Beginnings of Operation Sophia: International Law and Literature in the Governance of the EU’, 11(1) *London Review of International Law* (2023) 31.

that these three different methods offer on the operations of ignorance, but he also draws out their limitations.

To achieve this, he works in turn through each method in application to a colourful account of expert ignorance in rule of law reform drawn from his own past experience. Desai presents a 'stylised amalgamation of projects' set in an equally stylized 'small country' on a coast of sub-Saharan Africa (at 50). Along with these, he brings in a cast of again stylized former colleagues who make use of comment bubbles to comment on the analysis in the main text. Desai uses this fictionalized account as 'a means of exemplifying provisionality, plurivocity, and partiality' (at 47) and as a case against which to set the three earlier mentioned methods and as a basis for moving beyond them. This approach shows the distinctive creative streak that is further mobilized in the second half of the book as well as, importantly, a willingness to both employ and destabilize an 'authorial voice' (at 47).

Centrally, in Chapter 3, this foundational exercise shows how the three methods of discourse, practice and organization sociology position the expert as a knowledge subject, 'as someone who tries to concretise her image of the rule of law in the world' (at 105). That knowledge may find its basis in various sources, but its existence is taken as a given, and, thus, it becomes impossible to take experts' own stated ignorance seriously. The positioning blocks a view of expert ignorance itself as it dismisses the self-denial of expertise by experts. By consequence, the expert ignorance, along with the political effects it may be producing, escapes the analysis.

Desai instead proposes a move that makes not experts or expertise but, rather, experts' doubts about expertise take centre stage.⁷ To get to these openly held doubts, methodologically, entails a direct engagement with the rule of law reformers – that is, to work with a method of co-creation to give substance to the very slippery idea of expert ignorance. It is the object of this method to bring in the (self-)critique of rule of law reformers, but, once 'in', this introduces the new difficulty of how to critique experts who are already very critical of their own work and institutions themselves as well as, by corollary, the question of how to critique the political effects that expert ignorance may be producing.

In this book, as indicated, the co-creative relationship between the rule of law expert and the academic researcher is especially intimate as they are bound up in the different identities of the author. This entanglement offers a rare insight into how to academically critique the self-critique of the expert. As it turns out, art is most helpful here. With this author, after placing expert ignorance centre stage, the move to analyse it as a performance follows suit. From there, approaching expert ignorance through theatre and theatre studies is only apt. Brilliantly, with this move to theatre away from the more usual approaches, Desai points us in the direction of resharpening our tools of critique by learning from the arts.

In Chapter 4, Desai continues by theorizing rule of law reform as an aesthetic artefact produced in the back and forth between the rule of law reformer and the rule of

⁷ See also Desai, 'Ignorance/power: Rule of Law Reform and the Administrative Law of Global Governance', in M. Hirsch and A. Lang (eds), *Research Handbook on the Sociology of International Law* (2018) 151.

law as a universal, or even sublime, reference (at 108). He approaches this encounter notably through performance studies. Desai thus continues to mobilize the colourful material of his past experience introduced in Chapter 3 by drawing on this resource to create the scenes for two plays of his own. In other words, he presents two concrete (if stylized) rule of law reform cases as two sets of performances. Subsequently, he analyses each performance through a specific play: Samuel Beckett's *Ohio Impromptu* and Arthur Miller's *The Archbishop's Ceiling*. Desai shows how performance studies help to capture the fluidity of rule of law reform in a way that the three analytical lenses discussed in Chapter 3 cannot. It allows a space to observe 'the movement reformers produce between the universal and particular, subject and object, and knowledge and action, as they critique themselves and each other' (at 109). This dynamic shows both fluidity and fussiness; the contingency of action as well as its concreteness. It shows through *Ohio Impromptu* how specific actions emerge through the contingent arrangement of expert ignorance and, through *The Archbishop's Ceiling*, how performance analysis can also capture the effects of these actions (at 153).

A third play, Shakespeare's *Measure for Measure*, is woven through the book as a central thread. In Chapter 5, Desai engages centrally with this play to push further on the politics of the rule of law performance. In *Measure for Measure*, the ruler of Vienna, Duke Vincentio, absents himself, leaving others in his place – competing and lesser qualified – to impose their versions of rule in his absence. The duke first self-negates, then fragments, the process of rule (at 160). Chaos ensues. Yet, in the end, the duke returns, and all matters are resolved.

Desai cautions us that the point of bringing in *Measure for Measure* is not about the closure of the end result nor about the indeterminacy or openness of the process. It is about how the two work in tension to create a performance of open-endedness. There is the commitment to the sublime rule of law and the concrete, if contingent, actions of the rule of law reformers pursuing that sublime in the knowledge that the sublime is unattainable. The reality of reform will always be flawed, sometimes deeply so. This performance of rule of law reform is marked and maintained by a dynamic of both and simultaneous over- and under-determination. This dynamic is moreover productive: as long as the ideal is not realized, there is a need for the reform to go on. For as long as the ideal goes unrealized, its meaning remains evasive, and, for as long as this meaning remains open-ended, it remains a space of possibility and change.

What is the critique of absence? The duke absents himself, and Vienna descends into chaos. The chaos may not be intentional, but is it however produced by the absence? Do things happen nonetheless or because? Questions of productivity and intent are consistently bracketed throughout the book and rightly so (at 235). Still, I wonder about the following: is the duke responsible for the chaos his absenting himself causes? Should rule of law experts take responsibility by taking themselves seriously? I can guess at the response of denial by the author, but he also points to the importance of expert ignorance as a product of a historic context. What if that context changes?

In Chapter 6, Desai offers the possibility of expert ignorance in rule of law reform as a product of a specific historical context, a possibility that he further sociologizes in Chapter 7. This historical context dates to the late 1990s and early 2000s, 'when

development ideas about the form and function of institutions shifted from a neoliberal understanding of institutions as a means of giving form to the sublime complexity of the world, to being a complex sublime themselves' (at 195). This turned the gaze inwards onto the institution and its 'fevered activity' towards ultimately 'ambiguous ends'⁸ and thus introduced the preconditions for self-critique and self-denying rule of law reformers. Desai contends that '[i]t is, however, plausible that their history begins and ends at the End of History' (at 195). Where does this legacy leave us now that we have left that time?

In the conclusion of the book, Desai opens up to the possibility of finding expert ignorance elsewhere (at 228). Here, he links up with the discussion on un-governance introduced earlier in this review – the observation of 'institution-building practices that embrace the impossibility of their success while committing to their implementation' (at 229). He also advances to the politics of method for such an engagement. Specifically, he asks how to respond to the broader challenge of building a critique of experts and institutions who relentlessly internalize critique (at 231), incorporating and co-opting critique into their own logics and frameworks.⁹ To keep up with the continually evolving movement, it is necessary to stay 'down in the detail' of particular governance practices,¹⁰ to keep taking experts seriously even when they do not take themselves seriously *per se*. Desai's book shows the importance of skidding back and forth between international legal research and expert governance and of bringing a sense of creativity to this engagement. Even if, and especially when times and governance change course, this type of critique keeps its finger on the pulse.

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Laurence Burgorgue-Larsen. ***The 3 Regional Human Rights Courts in Context: Justice That Cannot Be Taken for Granted***. Oxford: Oxford University Press, 2024. Pp. 576. £140.00. ISBN: 9780192871459.

There are some books that make your blood run cold when you are at the end of your doctoral degree. They change the state of the literature entirely, uncovering in one broad sweep what has taken you years to slowly decipher, and manage to do so in an accessible, compact and beautiful way that makes you wonder why no one else has written a book like this before. The combination of decades-long expertise and robust scholarly authority produces an exceptional piece of scholarship that you wish you had had at the beginning of your PhD journey.

⁸ Kleinfeld, 'Competing Definitions of the Rule of Law', in T. Carothers (ed.) *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 64, cited in Desai, *Expert Ignorance* (at 179).

⁹ I. Roele, *Articulating Security* (2022).

¹⁰ Johns, *supra* note 1, at 863, cited in Desai, *Expert Ignorance* (at 232).