



'External Assistance and Constitution-Building: Reflections'

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Understanding foreign culture and advising a foreign constitution-building process sounds like an oxymoron. Understanding is a fundamentally non-normative, non-transformational exercise, when advising is a normative endeavor.

Yet understanding foreign culture is a necessary prerequisite to anyone providing advice or engaging in comparative work as part of a process of constitution-building. In doing so, it is crucial to adopt a non-judgmental anthropological lens and engage in ethnographic work aimed at comprehending constitutional meanings in their political, social and historical contexts. A constitutional text does not exist in a vacuum, its meaning is being constructed and re-constructed in a dynamic process of interpretation, building on a historical sedimentation of meanings imbued with emotions, trauma, anticipations, etc. It is very difficult to get a grasp of the issues at stake without ethnographic work.

Ethnographic work entails an acquaintance with culture mediated by a physical experience in the country, a learning of its language and participant observation. In constitutional processes, this means a learning of its constitutional language and participant observation with local constitutional lawyers.

Based on my experience in Thailand, I would issue the following recommendations:

- Be serious and do your homework: travel in the country, spend time with local people, get to know the everyday, try, at least, to learn the language;
- Be non-judgmental: aim at understanding the logic of things, always presume the rationality, logic and complexity of the processes you observe; and
- Be empirically grounded and always work inductively: reason from fact to law, from field to norm, from the particular or specific toward the general.

Lawyers engaged in advising constitution-building processes should always be concerned with legal impact rather than abstract norms. How do particular laws and norms affect, even indirectly, even in a rather unexpected fashion, the conduct and attitudes of the people to which they apply?

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