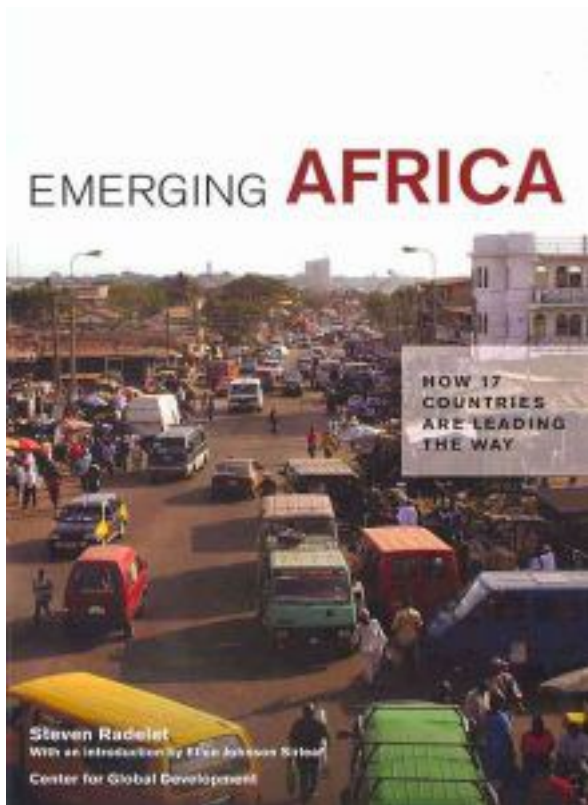


Emerging Africa



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The importance of the rule of law is something that lawyers typically ‘hold to be self-evident,’ not something that needs utilitarian justification. If any rationalisation is offered at all, it is normally couched in normative or methodological terms, espousing the quasi-aesthetic benefits of a coherent constitutional edifice.[1] The question why adherence to law as such might be desirable is usually not addressed, an understandable epistemological oversight given the nature of highly regulated advanced industrialised economies where much of the intellectual discourse on public

and administrative law takes place.

In the context of poorer countries with less sophisticated regulatory and organisational frameworks, however, the rule of law is sometimes treated as an unaffordable and technically unattainable ‘luxury.’ Looking at the issue from different disciplinary angles, many call into question the somewhat circuitous logic often deployed by lawyers and other proponents of ‘good governance.’ [2] Legal discourse often shirks away from squarely addressing one of the key questions underlying development studies, namely how to identify which institutional interventions are sound investments yielding competitive economic returns. To succeed in these debates, lawyers need to rely less on their standard currencies of equity and liberty, and instead learn the data-driven language of efficiency and returns on investment.

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