

Lessons on Global Legal Transfers from Afghan Taxi Drivers: A Social Network Approach

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Abstract

This paper takes up the challenge presented by Gillespie and Nicholson of studying legal transfers through an interpretive approach. The notion of social networks is introduced as a framework for analysing legal transfers in local contexts. Since legal transfers target to reconfigure behaviour, the notion of networks can help to reveal the manner in which new stimuli may change the relationships between actors. This study involves on an empirical study of Afghan taxi drivers to show the impact of legal transfers on a seemingly innocuous group in society. The study of taxi drivers reveals that legal transfers have had an impact on their behaviour but in an unexpected way. Taxi drivers strongly rely on guarantors within their social network for their contractual transactions. The expanded government bureaucracy has helped to create a new set of guarantors, namely 'government-guarantors', whose authority is traced to the state but whose role can be absorbed into the existing network of social relationships between individuals.

1. Introduction

The use of legal transfers in developing countries has come under renewed scrutiny in recent years.¹ Much of the attention on legal transfers to date has focused on the aims, objectives, and intentions of developmental technocrats working to institute reforms in developing societies.² Success is largely gauged by the ability of the receiving environments to replicate the intended outcome associated with the legal reform.³ Shortcomings associated with such reforms end up being attributed to lack of local know-how and thus not a problem with the transfers itself.⁴ Moreover, such inadequacies have often been the source of renewed and even bolder ambitions based on the belief that the problem has been 'figured out' thereby providing the requisite knowledge to successfully implement positive legal reforms the next time around.⁵

The prevailing discussion on legal transfers remains largely caught between the parameters laid out by Alan Watson and Pierre Legrand. Watson's position of laws being decoupled and autonomous from society facilitates the notation of legal ideas and concepts readily migrating from one context to another.⁶ Such a perspective treats laws as a transcendent, universal ideal free from local bias. Legrand's opposing view posits law as being deeply embedded within the culture,

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A recent work by John Gillespie and Pip Nicholas, both scholars with decades of experience studying legal development in Asia, calls for a renewed exploration into the migrate of legal concepts from one context to another. J Gillespie and P Nicholson, 'Taking the interpretation of legal transfers seriously: the challenge for law and development,' in J Gillespie and P Nicholson (eds), *Law and Development and the Global Discourses of Legal Transfers* (Cambridge University Press 2012), 1-26.

2. P Nicholson, *Borrowing Court Systems: The Socialist Experience of Vietnam* (Brill Academic Publishers 2007), 17.

3. J Gillespie and P Nicholson, 'Taking the interpretation of legal transfers seriously', at 5 ('The yardstick used to make this assessment, more often than not, is whether the transplant has been rejected or accepted').

4. B Garth, 'Rethinking the Processes and Criteria for Success' in RV Van Puymbroeck (ed.), *Comprehensive Legal and Judicial Development* (World Bank 2001), 11.

5. B Van Rooij and P Nicholson, 'Inflationary Trends in Law and Development' (2013) 24 Duke Journal of Comparative & International Law 297.

6. A Watson, 'Comparative Law and Legal Change', (1978) 37 Cambridge Law Journal, 313-15.

practices, and social structures of society, which provide law its local meaning.⁷ Law is meaningless outside of the specific context in which it is housed, and thus a legal transfer become an impossibility, since legal ideas that enter a new environment lose their original meaning and take on new ones. At most what is transferring is words, but not actual normative concepts.⁸

Development reforms have been influenced by both these conceptions of legal transfers, and most understandings fall somewhere between the two. During his term as senior UN official in Kosovo, Bernard Kouchner commented that the “most important lesson to be learned from Kosovo... is that peacekeeping missions need a judicial or a law-and-order ‘kit’ made up of trained police officers, judges and prosecutors, plus a set of potentially draconian security laws or regulations that are available upon their arrival.”⁹ Many legal reform projects proceed in a similar vein by trying to introduce “best practices” in the foreign legal system. At the same time, there has also been increased attention on how foreign interventions affect the recipient environment.¹⁰ Donors have increasingly been interested in assessing the “local legal landscape” to better gauge the viability of the intended transfers.¹¹ This increased sensitivity, however, does not necessarily represent a paradigm shift away from the foundational belief in the ability of the legal transfer to serve as a ‘conduit’ for change for the recipients.¹² Instead, the benefit of the transfer is taken for granted, and the attention to local sensitivity is geared at understanding how its reception may be most successful..

More recently, John Gillespie and Pip Nicholson, being aware that present approaches to legal transfers - including those that claim great cultural sensitivity - remain fixated on the conduit metaphor, have called for an approach that gives great attention to the “social demand” for legal change within recipient environments.¹³ They suggest adopting an interpretive approach, which considers

7. P Legrand ‘What “Legal Transplants”? in D Nelken and J Feest (eds.), *Adapting Legal Cultures* (Hart Publishing 2001). P. Legrand, ‘The Impossibility of Legal Transplants’ (1997) 4 *Maastricht Journal of European Comparative Law*, 111-24.

8. *Ibid.*

9. AU Bali ‘Justice Under Occupation: Rule of Law and the Ethics of Nation-Building in Iraq’ (2005) 30 *Yale J Int’l L* 431, 454.

10. RK Merton, ‘The Unanticipated Consequences of Purposive Social Action’ (1936) 1 *American Sociological Review* 894.

11. Gillespie, and Nicholson, ‘Taking the interpretation of legal transfers seriously’, 7.

12. J Gillespie, ‘Relocating global scripts in local networks,’ in Gillespie J and Nicholson P (eds), *Law and Development and the Global Discourses of Legal Transfers* (Cambridge University Press 2012), 29-55.

13. Gillespie and Nicholson, ‘Taking the interpretation of legal transfers seriously’, 5 (“We suggest refocusing analysis on the social demand for legal transfers in recipient countries.”).

how individuals in local environments construct local knowledge. Such an approach focuses on the existing frameworks through which recipients operate, recognizing that such settings are not devoid of regulatory forces. This approach goes beyond simply greater cultural awareness, as the goal is not to see how a transfer can be sensitive to the local setting, but rather to understand what impacts a transfer may have on the existing local dynamic. This exercise can hopefully create greater awareness of how recipient environments operate within their own systems of meanings and how different stimuli may lead to different responses.

This paper takes up the challenge presented by Gillespie and Nicholson of studying legal transfers through an interpretive approach.¹⁴ The notion of social networks is introduced as a framework for analysing legal transfers in local contexts. Social network analysis focuses on the relationships between actors within a particular environment and norms and patterns that govern their interactions. Since legal transfers target to reconfigure behaviour, the notion of networks can help to reveal the manner in which new stimuli may change the relationships between actors. Business and contract law transplants represent a fertile area of study since much of the legal development enterprise is focused on the central role of law reforms for promoting economic growth.¹⁵

This study focuses on an empirical study of Afghan taxi drivers to show the impact of legal transfers on a seemingly innocuous group in society. The social networks of taxi drivers consist of a variety of actors who interact with one another according to certain norms of behaviour. At the same time, legal transfers have entered Afghanistan, which seek to reconfigure the way parties transact with one another. The receipt of a formal contract law regime provides greater clarity in the law in the hopes that parties will be more inclined to settle their disputes through the formal legal system. Furthermore, international organizations such as the World Bank have advocated that a strong judiciary can help to promote business transactions within the country. In line with this narrative, the international community has focused on developing the rule of law in Afghanistan, which has led to an overall expansion of the government bureaucracy, though with questionable outcomes concerning the actual rule of law. The study of taxi drivers reveals that these transplants have had an impact on their behaviour but in an unexpected way. Taxi drivers strongly rely on guarantors within their social network for their

14. *Ibid.*, 7.

15. J Paquin, 'Cross-Cultural Business Law Transplants: The Neglected Issue of the "Fit"' (2008) 17 *Transnational Law & Contemporary Problems* 331.

contractual transactions. The expanded government bureaucracy has helped to create a new set of guarantors, namely 'government-guarantors', whose authority is traced to the state but whose role can be absorbed into the existing network of social relationships between individuals. Thus, reforms intended to strengthen the rule of law have instead created a new set of actors whose role helps to bolster existing social structures.

Part two of this paper provides an overview of social networks as well as the way in which a legal reform gains legitimacy within a network. Part three then applies social network analysis to a case study on the contractual transactions of Afghan taxi drivers. The research reveals that contract law plays a very insignificant role in regulating behaviour. However, the wider state apparatus, which supports justice institutions, has given rise to a new set of actors, 'government-guarantors', who taxi drivers may rely upon to guarantee their transactions.

2. Social Networks as a Framework for Analysis

A social network refers to a set of actors interconnected through various sorts of relations where the sum of all these actors and relationships creates a "web-like" structure. When approaching a social issue in society, social network analysis does not adopt the conventional position of starting with the individual. Society should not be viewed as a collection of atomized individuals and their particular characteristics. Instead, actions and choices should be understood as being constrained by an individual's relationships with others. Social network analysis treats networks of relationships rather than individuals as the building blocks of the social world. Social life only comes into existence when individuals interact with one another, thereby constraining and altering each other's behaviour. These discursive relations cannot be tracked by analyses that simply focus on the individual as a rational (or even non-rational), self-interested actor. Social networks help to reveal the nature and patterns of relations that arise amongst groups of actors.

A social network consists of "nodes" and "ties".¹⁶ The concept of nodes is a very open one and includes actors that may be individuals, but also organizations, websites, neighbourhoods, countries, or otherwise.¹⁷ Individuals are connected to one another through ties or relationships. Relationships include all forms of

16. J Clyde Mitchell, 'The Concept and Use of Social Networks' in JC Mitchell, *Social Networks in Urban Situations: Analyses of Personal Relationships in Central African Towns* (Manchester University Press 1969).

17. D Watts, *Small Worlds* (Princeton University Press 1999).

connections that individuals may have with one another, including kinship,¹⁸ economic relations,¹⁹ affective ties (such as friendship),²⁰ knowledge ties,²¹ cultural ties, religious ties, legal ties, and so forth. A researcher may delineate a particular set of relations that she seeks to study within a network. However, a network can and almost certainly will contain a number of types of relations that tie actors together. The strength of the relationship between individuals will depend on a number of considerations including “the amount of time, the emotional intensity, the intimacy (mutual confiding), and the reciprocal services which characterize the tie.”²² These embedded ties may vary for different dyads within the network, both in type (economic vs. cultural) and intensity (strong vs. weak).²³ Thus, the relationship between individuals will not be uniform across the network. However, certain network characteristics can still be adduced given the nature of the relationships between its actors.

An approach focusing on social networks raises the possibility of exploring the “multiplex relationships” that parties within a network may have towards one another.²⁴ Two parties may base their interactions on a number of social connections between one another. The greater the number of ties between parties, the stronger is the relationship. Thus, networks where actors share many such ties exhibit greater “cohesive.”²⁵

A number of societal factors may impact the way in which networks operate. Smaller as well as geographically isolated societies will generally have stronger networks than larger and more complex settings.²⁶ For example, consider how

18. DR White, ‘Kinship, Class, and Community’ in J Scott and PJ Carrington (eds), *The SAGE Handbook of Social Network Analysis* (Sage 2011).

19. SGoyal, *Connections: An Introduction to the Economics of Networks* (Princeton University Press 2009).

20. T Casciaro, KM Carley, and D Krackhardt, ‘Positive Affectivity and Accuracy in Social Network Perception’ (1999) 23 *Motivation and Emotion*, 285-306.

21. P Killworth, EC Johnsen, HR Bernard, GA Shelley, and C McCarty, ‘Estimating the Size of Personal Networks’ (1990) 12 *Social Networks* 289.

22. M Granovetter, ‘The Strength of Weak Ties’ (1973) 78 *American Journal of Sociology* 1360, 1361.

23. M Granovetter, ‘Economic Action and Social Structure: The Problem of Embeddedness’ (1985) 91 *American Journal of Sociology* 481.

24. M Gomez, ‘All in the Family: The Influence of Social Networks on Disputing Processing (A Case Study of a Developing Economy)’ (2007) 36 *Georgia Journal of International and Comparative Law* 291. The works of Manuel Gomez represent one of the few studies to date on the application of social networks to dispute resolution processes. Importantly, Gomez employs the concept to capture the multiply overlapping relationships between parties situated within a social network, focusing on two case studies based in Venezuela: the judiciary and ADR mechanisms. For another work, see, e.g. Strahilevitz, L ‘A Social Networks Theory of Privacy’ (2005) 72 *University of Chicago Law Review* 919.

25. Ibid., 309.

26. Ibid., 311.

neighbours in small towns usually all know one another, whereas a resident in an urban sky-rise may never see his neighbours. In small societies, individuals interact with those within their locale on a regular basis. These interactions will have the effect of creating embedded ties between members. Larger, more complex societies operate differently. Individuals will interact with much a larger number of individuals, sometimes occasionally or even just once. Thus, the immediate environment does not maintain the same types of embedded ties as those in smaller societies. Instead, the networks in larger societies tend to be more widely cast and more porous. In sum, the *social distance* between network actors is shorter in small societies than in large urban settings.²⁷

Certain networked communities have been observed to play judicial and enforcement functions apart from the legal system. Earlier studies of these networks include the manner in which traders on the Californian coast in the 1830s and 40s were able to create a trading network through coalitions based on reputations.²⁸ Similarly, Maghribi traders in the 11th century used coalitions to ensure transactional compliance, ostracizing individuals if they failed to provide the compensation owed.²⁹ In these instances, the social network provides an architecture that regulates behaviour. Informal normative arrangements may arise provided that the embedded ties are sufficiently strong such that actors would be materially disadvantaged by severing such ties. Furthermore, such informal arrangement must either be more efficient than the formal legal system (like diamond merchants who are members of the New York Diamond Dealers Club)³⁰ or provide regulation because of the absence of a formal legal order (like the Californian or Maghribi traders).

Social network analysis initially developed within the field of sociology in the 1960s and 1970s to provide a critical examination of prevailing 'structural' theories of society that emphasized the existence of grand narratives that structure individual behaviour.³¹ It began to gain particular momentum after

27. Granovetter, 'The Strength of Weak Ties', 1361.

28. K Clay, 'Trade Without Law: Private-Order Institutions in Mexican California' (1997) 13 *Journal of Law, Economics, and Organization* 202.

29. A Greif, 'Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition' (1993) 83 *American Economic Review* 525.

30. The New York Diamond Dealers Club provides its own dispute resolution mechanism, and members of the Club agree to submit any disputes with other merchants to this body. L Bernstein, 'Opting Out of the Legal System: Extralegal Contracting in the Diamond Industry' (1992) 21 *Journal of Legal Studies* 115.

31. PJ Carrington and J Scott, 'Social Network Analysis: An Introduction' in J Scott and PJ Carrington (eds), *The SAGE Handbook of Social Network Analysis* (Sage 2011), 1–8 at 2. The notion of embeddedness can also be

the sociologist Mark Granovetter wrote a 1973 paper that focused on the significance of “weak” ties between individuals for understanding the nexus between micro-level interactions and macro-social structures.³² Since then, it has gained prominence in a number of other fields including, politics, social movements, political economy, economics, geography, and even physics.³³ The domain of law remains conspicuously missing from this list, which is made all the more bizarre given the vibrant area of socio-legal studies within the wider legal scholarship. Socio-legal scholarship is specifically preoccupied with approaches that focus on law as a social phenomenon.³⁴ Social network analysis has been showcased in only a limited number of studies with a legal focus,³⁵ and has also been indirectly implied in such discourses as legal pluralism.³⁶ However, it has not gained any significant traction in the legal domain, and certainly not within the law and development discourse.

Having explained some of its salient characteristics, it is worth pointing out that social network analysis is generally considered to be an approach rather than a theoretical paradigm.³⁷ Social network provides a lens for viewing the social world, namely by focusing on the multiple overlapping relationships between individuals. However, beyond the assertion that the increased embedded ties strengthen the relationship between parties, social network analysis does not provide an understanding of how change and transformation occurs within networks. This is particularly important within the law and development enterprise, since one of the objectives of development efforts is to reconfigure the behaviour of individuals within a particular society. For this information about network dynamics, we need to look elsewhere.

To understand how new ideas impact constellations of meaning within a social network, one must turn to social theory. The social theorist Mark Suchman proposes three types of legitimacy to explain the manner in which a new stimulus,

traced back to the works of Karl Polanyi that explain the social embedding within the economy. K Polanyi, *The Great Transformation* (Beacon Press 1957).

32. Granovetter ‘The Strength of Weak Ties’.

33. Carrington and Scott, ‘Social Network Analysis: An Introduction’, 2.

34. See, e.g. R Banakar, and M Travers (eds.), *Law and Social Theory* (2nd edn, Hart Publishing 2013)

35. Gomez, ‘All in the Family’.

36. Sally Merry, one of the principle figures in the legal pluralism discourse, has written about the “unofficial forms of ordering located in social networks or institutions.” S Merry ‘Legal Pluralism’ (1988) 22 *Law and Society Review* 869, 873.

37. Carrington and Scott, ‘Social Network Analysis: An Introduction’.

such as a legal reform, affects a particular environment.³⁸ Changes that are viewed as legitimate are more likely to gain the approval of - and thus be adopted by - the actors within the particular network. The first type is pragmatic legitimacy, which means that the newly introduced idea or reform confers a level of material benefit for at least certain members. Individuals are motivated to ascribe to the reform because they stand to gain from its adoption. For example, a legal transfer that carries with it a large amount of funding (from some donor agency) will potentially confer a clear monetary benefit on certain individuals. Arguably, for a reform to gain pragmatic legitimacy, it should be *pareto superior*, meaning it should benefit certain actors without leaving others worse off, since otherwise, the reform would face staunch resistance.

The second type is normative legitimacy, which relate to the moral foundation of a group of people. If people feel morally attached to a particular idea, they are more likely to accept it as their own. For example, it has been documented that the Norwegian Refugee Council in Afghanistan occasionally attended *shuras* or community mediation circles in rural areas where they have been able to influence the conversation by explaining the Islamic legal ruling on a particular matter.³⁹ *Shura* members may be more receptive to such rules given the widespread reverence for Islamic normativity.

The third type is cognitive legitimacy, which occurs when people see a particular idea as an inevitable outcome. Regardless of whether or not individuals empathize with or benefit from a particular legal reform, they may have no choice but to acquiesce. For example, a powerful authoritarian government may introduce a draconian law that drastically increases the tax rate. Individuals may strongly oppose the law but lack the power to meaningfully contest its implementation.

The proposed approach of using social networks helps to situate the notion of legitimacy within a matrix of social relationships in which actors interact with one another according to certain norms. In societies with strong multiplex relations between individuals, informal norms will likely play a strong role in influencing behaviour. Conversely, in urban, modernized centres, such norms will likely play a less significant role, with the formal rules being more

38. J Gillespie 'Relocating global scripts in local networks' at 39; M Suchman 'Managing Legitimacy: Strategic and Institutional Approaches' (1995) 20 Academy of Management Review 577.

39. Norwegian Refugee Council, 'The Relationships Between the Formal and Informal Justice Systems in Afghanistan' (Norwegian Refugee Council 2007). Conversely, Scott Nelson argues that certain society use Islamic rhetoric but actively work to ensure that Islamic law is not implemented as it interferes with the interests of certain actors. M Nelson, In the Shadow of the Shari'ah: Islam, Islamic Law, and Democracy in Pakistan (Hurst & Co 2011).

significant. Understanding the full influence of a legal transfer within the social network requires due consideration of the nature of the relationships between actors within the network, their salient norms, and the way in which new stimuli affect actors' interests and behaviour.

A social network approach to legal transfers represents a significant break from the prevailing approaches to legal development. The law and development movement has been greatly influenced by the works of the new institutional economists who adopt the position that good institutions can promote economic growth. Douglas North's pioneering works considered institutions to be "any form of constraints that human beings devise to shape human interactions."⁴⁰ These may include formal laws but also the well-established and widespread informal norms that individuals adhere to within a given community. Institutions help to establish "a stable (but not necessarily efficient) structure to human interactions,"⁴¹ which constrains the ways in which individuals interact with one another.⁴² However, the process of establishing good institutions remains far from clear, particularly since developing societies are already replete with their own operating norms that constrain behaviour.

A social network approach puts attention back onto the local environment. It is not simply concerned with whether a legal transfer is culturally sensitive to local norms. Rather, it views the local environment as a matrix of relationships embedded with meanings. Studying networks requires unearthing the local knowledge that impacts the behaviour of individual actors. A legal transfer serves as an irritation in a setting where actors are incentivized to operate in particular ways. A social network approach helps to put attention on not only whether such stimuli gain legitimacy, but also the way in which prevailing norms may be transformed, which may not follow the intended script.

In the next section of this paper, social networks are employed to study how taxi drivers in Kabul conduct their contractual affairs.

40. DC North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990), 4.

41. *Ibid.*, 6.

42. Institutions change across societies as well as within the levels and corners of a given society. Hernando DeSoto's work on the Peruvian economy showed the importance of informal institutions for the economy, and his recommendation was to formalize the existing informal processes. H de Soto, *The Other Path: The Invisible Revolution in the Third World* (Harper & Row 1989), 245. However, the law and development movement has largely adopted a "best practices" approach, which supports legal transfers as a means of re-configuring existing legal institutions, despite North's cautionary note that "we know a good deal about the institutional foundations of successful development. [...] [w]hat is still missing is how to get there." World Bank, *Doing Business 2010: Reforming Through Difficult Times* (Palgrave Macmillan/World Bank 2009), v.

3. Contractual Relations of Taxi Drivers in Afghanistan

This section begins with a look at the development of the private law regime in the country. It then turns to the actual practices of taxi drivers and applies a social network approach to interpret their contractual affairs.

3.1. Development of Formal Contract Law

In Afghanistan, the reception of private law has been a long and continuous process. The *Civil Code of Afghanistan* (hereinafter as CCA) was enacted in 1977 and comprehensively covers various areas of private law.⁴³ The Code is largely based on the Egyptian Civil Code, authored by the preeminent Egyptian jurist Abdul Razzaq Al-Sanhuri. Al-Sanhuri was a scholar of both Islamic law and Roman-French civil law, and drafted the Egyptian Code in a manner that married the two.⁴⁴ The Egyptian Code thus follows the structure of the French Civil Code though many of its substantive rules follow Islamic law. Many of these Islamic legal rules are, in turn, derived from the Ottoman *Mejelle*, a commercial code prepared in 1877 that specifically focuses on areas of private law including contracts, torts, and property law.⁴⁵ Afghan legal elites have long had strong ties with Egypt, and many professors in *shari'a* faculties received training in Egypt from the 1970s onwards.⁴⁶ The Islamic quality of the Egyptian Code was well suited for Afghanistan where the general population holds strong reverence for Islamic law. Furthermore, prior to 1977, judges would rely on the *Mejelle* when dealing with a dispute, and thus the transition to a civil code largely influenced by the *Mejelle* can be viewed as a natural progression rather than a static break from the past.

The CCA is divided into four parts: personal laws, general obligations, designated contracts, and real rights.⁴⁷ Part two on general obligations contains the general provisions on contract law as well as provisions on torts.⁴⁸ Legal regimes provided

43. N Yassari and MH Saboory, 'Sharia and National Law in Afghanistan' in Michiel Otto (ed), *Sharia and National Law: Comparing the Legal Systems of Twelve Islamic Countries* (The American University in Cairo Press 2010), 284–286.

44. N Choudhury, 'Pluralism in Legal Education at the American University of Afghanistan' (2014) 37 *Suffolk Transnational Law Journal* 249, 253.

45. *Mejelle: A Complete Code of Islamic Civil Law* (Islamic Book Trust, 2000).

46. See, e.g. RF Williams, 'Legal Education in Afghanistan Prior to the Soviet Occupation' (1981) 6 *Suffolk Transnational Law Journal* 247; Choudhury, 'Pluralism in Legal Education'.

47. *Civil Code of Afghanistan*, Official Gazette 353, No. 4, 15 Jadi 1355 (5 January 1977).

48. Ibid. The table of contents includes four books. Book Two, which focuses on general Obligations (Art. 484–1034), includes contracts, quasi-contracts, delicts, and quasi-delicts.

by the code covers all of the stages of a contract including formation of contract,⁴⁹ defects in consent,⁵⁰ interpretation of contact,⁵¹ contractual options,⁵² third party to contracts,⁵³ and enforcement in the event of non-performance.⁵⁴ The sections on the various nominate contracts (e.g. sale, employment, etc.) specify the rules relating to each particular type of agreement. Thus, judges and lawyers have at their disposal a complete set of rules for any contractual dispute that may arise.

The actual application of the CCA is far from uniform. In many parts of the country, judges continue to use the *Mejelle* to deal with their cases rather than the CCA.⁵⁵ Many judges are trained in the *shari'a* and thus have a natural affinity towards the *Mejelle*, for which they may have received some formal (or informal) training. Furthermore, the government oversight of judges is very weak given the limited capacity of the government, particularly in rural areas. The defense lawyer added that when pleading before a court, lawyers sometimes cite the *Mejelle* before referencing the CCA (if the latter is even mentioned). This observation is particularly striking given the CCA clearly takes priority. Article 130 of the Constitution of Afghanistan states that enacted law shall serve as the first source of law and only in its absence will the *shari'a* - and Hanafi jurisprudence in particular - be permitted as a source of law.

In recent years, another law has been passed covering the area of contact law. The *Law on Commercial Contracts and Sale of Goods* came into effect in October 2014 and regulates contractual transactions similar to the CCA.⁵⁶ The new Law contains many of the same areas of contract law though in a compressed manner, as it does not go into as much detail on some topics. For example, while the area of "Subject of Contract" is contained over twelve articles in the CCA,⁵⁷ it is only mentioned in one article of the new Law.⁵⁸ The new Law introduces a number

49. Ibid., Art. 497–533.

50. Ibid., Art. 551–578.

51. Ibid., Art. 705–729.

52. Ibid., Art. 652–689.

53. Ibid., Art. 699–704.

54. Ibid., Art. 815–830.

55. N Choudhury, 'Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom' (2017) 4 Asian Journal of Law and Society 229.

56. A contract is defined in article 3 as "an agreement made for the purpose of creation, amendment, transfer or elimination of rights within the limits of this Law that shall be formed between natural or legal persons." Thus, the law applies generally to all types of contracts. *Law on Commercial Contracts and Sale of Goods*, Gazette Issue Number 1150, 20 October 2014.

57. *Civil Code of Afghanistan*, Art. 579–590.

58. *Law on Commercial Contracts and Sale of Goods*, Art. 13.

of changes, such as the statute of limitations being four years for all contracts,⁵⁹ whereas in the CCA a general period of 25 years is provided, but with variations in specific cases. Though it is not clear what purpose the new law serves, one would speculate it is an attempt to provide a simplified set of legal instructions to judges and concerned individuals. Furthermore, the new Law does not repeal the CCA, and thus the CCA should be viewed as a residual source of law, providing guidance when the new Law falls silent.

3.2. International Development Efforts to Improve the Legal System

One of the prerequisites for a functioning contract law regime is a functioning state, and in particular, a legal system that will protect the rights of individuals. As mentioned earlier, Douglas North stressed the importance of functioning institutions for a country's economic growth.⁶⁰ Law is one such institution that can help to strengthen a country's economy.⁶¹ The World Bank, IMF, and other international agencies have adopted what has come to be known as the Washington Consensus, which represent a set of standard 'best practice' policies for countries seeking to improve their economies and promote growth.⁶² In 2002, the World Bank launched its Doing Business project, which compares and ranks countries according to the ease of conducting businesses based on several indicators.⁶³ The project is geared at encouraging economies to adopt policies and regulations that may help to promote business activities and investor confidence in a country. One of these indicators specifically focuses on the enforcement of contracts, taking into consideration the quality of judicial processes.⁶⁴ In considering judicial processes, the index considers such factors as the availability of specialized commercial courts, case management system, simplified procedure for small claims, publication of judgements, and arbitration/mediation services.⁶⁵ Afghanistan is still reeling from decades of war, and thus it is unsurprising that the country's

59. Ibid., Art. 39.

60. See main text accompanying footnote 40.

61. See, e.g. de Soto, *The Other Path*.

62. Somewhat paradoxically, the World Bank concedes that "[d]espite widespread academic debates on whether legal transplants are possible at all, they are common practice." See World Bank, 'Legal Transplants and Legal Culture' <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20759640~menuPK:2035153~pagePK:210058~pPK:210062~theSitePK:1974062,00.html>> accessed: 1 Nov 2017

63. World Bank, *Doing Business 2010*.

64. World Bank, 'Enforce Contract Methodology' <<http://www.doingbusiness.org/Methodology/Enforcing-Contracts>> accessed 1 Nov 2017

65. Ibid.

performance on these indicators remains relatively weak. In the 2017 ranking, out of 190 countries, Afghanistan ranked 183 in terms of overall 'ease of doing business' and 181 in terms of 'enforcing contracts', indicating the long road ahead to strengthening the legal system and state institutions more broadly.

Developments to the legal system have been a slow process, involving various national and international actors.⁶⁶ As much as 90 percent of the funding for justice sector development came from international sources, such as the US, EU, and the UN.⁶⁷ While many international actors played a central role in reforming the legal system, such as Italy serving as the lead country from 2002–2006, the United States was the single greatest contributor to reform efforts. According to Special Investigator General for Afghanistan Reconstruction, by 2015 the United States government had spent over \$1 billion on rule of law programs in Afghanistan.⁶⁸ A variety of implementing partners helped to reconstruct the legal system. One such partner, Checchi Consulting, operated a \$44 million rule of law program from 2004–2009, which targeted training judges, professors, and university administrators, strengthening the Supreme Court, though the impact of such efforts on the rule of law remain highly suspect.⁶⁹ From 2010–2014, USAID contracted Tetra Tech DPK to implement reforms targeting the formal justice sector, which included attempts to strengthen the Supreme Court and the Ministry of Justice.⁷⁰ All such reform efforts had the effect of increasing the size of the government bureaucracy, while doing little for actual implementation for the rule of law. It is this expansion of the official bureaucracy as well as the individuals associated with the government through some form of official registration – rather than the actual effectiveness of the rule of law reforms – that is most significant for the present study of the transactions of taxi drivers.

3.3. Case Study of Taxi Drivers

The case study of taxi drivers in this section is based on interviews conducted in

66. For a comprehensive overview of the failing of US rule of law efforts in Afghanistan, see, e.g. G Swenson, 'Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed' (2017) 42 *International Security* 114.

67. A Suhrke, A and K Borchgrevink, 'Negotiating Justice Sector Reform in Afghanistan' (2009) 51 *Crime, Law, and Social Change* 211, 213.

68. SIGAR, 'SIGAR 15–68 Audit Report: Rule of Law in Afghanistan—U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than \$1 Billion' (SIGAR 2015).

69. For example, the Supreme Court was not truly independent and thus "judges had little incentive or ability to foster the rule of law, particularly if it involved challenging executive power." See Swenson, 124. Thus, funds spent on reform certain did not immediately equate to improvements in the justice system.

70. Ibid. at 125. During the same period, Checchi was contracted to work on projects targeting the informal justice sector. See Swenson, 127–129.

Kabul, Afghanistan, in April 2015. A total of twelve taxi drivers were interviewed on the nature of their contractual transactions. These drivers covered a variety of ethnicities, economic conditions (gauged superficially by the state of their car), and types of clientele.⁷¹ The interviews also included a former judge and a defense lawyer, both of whom provided background information on the operation of local courts.⁷² The goal of this research is not to make any sweeping characterizations about all Afghan taxi drivers, or less so about Afghan society generally. Rather, it focuses on a localized set of actors, namely a small set of taxi drivers in Kabul, to illustrate the impact of the transfers of global scripts on a local environment. Taxi drivers are situated within the low to lower-middle class income bracket in society and generally have limited interactions with legal and governmental institutions. For this reason, the impact of legal development reforms on these actors is not immediately apparent. Furthermore, taxi drivers are deeply embedded within traditional social structures in society whose norms directly influence their behaviour. The structure of their interpersonal relationships lends to the use of social network analysis for understanding their behaviour. This study of taxi drivers concentrates on two general types of transactions. The first concerns the way taxi drivers make agreements with their clients. The second relates to the purchase and sale property, both movable and immovable. Before going into these transactions, some background remarks on taxi driving in Kabul are provided for greater context.

Within Kabul, no metered taxis exist, and thus, all prices are negotiated. The city is divided into various areas, and customers who frequent two particular areas of the city are generally aware of the acceptable price ranges. Prices also increase during peak hours, when most people are seeking transportation to and from work.⁷³ Beyond individual taxis, buses and mini-buses also provide shared transport between two areas of the city at a fixed price. Taxis drivers may choose whether to drive individual clients or provide a car-pooling service. Taxis are also of two kinds. Official taxis registered with the government are a distinctive white and yellow. These taxis are required to pay a yearly fee to the government. Unofficial taxis take the form of private cars, and owing to the lack of official registration, they do not pay any yearly fee. Registration entails certain benefits. Certain busy

71. Interviews on file with author. Supplementing this research is my own experience with taxi drivers during my four years living in Afghanistan.

72. For an overview of the comments of both the judge and lawyer, see N Choudhury, 'Revisiting Critical Legal Pluralism'.

73. The morning congestion generally spans from 7–9 am, and in the evenings, it is from 4–6 pm.

streets have areas specifically allocated for official taxis. Furthermore, female customers are more likely to seek the services of official taxis for safety reasons. The income of an official taxi driver is thus generally greater than that of an unofficial taxi driver, though many variables also affect one's income including the number of hours worked daily, a driver's network of clients, the condition of one's car,⁷⁴ the driver's awareness of the city, and their overall driving skills.⁷⁵ Interviews covered both official and unofficial taxi drivers, as this distinction was negligible for the purposes of this research.

Turning first to the way taxi drivers contracted with their clients for transportation, the principle distinction was between regular clients and casual clients. For casual clients seeking one-off services, the two parties would negotiate and agree upon a price in advance, and the payment would be made at the end of the trip. Occasionally, a driver would agree to drive someone despite them being able to play only a fraction of the regular price. In other cases, a customer may wait until the end of the trip to inform the driver that he had no or limited funds to pay for the trip. In such instances, instead of getting into a prolonged argument, the driver may consider their service to be a religious act of charity (*sadaqa*).⁷⁶

Driving regular clients was a largely different affair. A client would normally be introduced to a driver through someone within his or her social circle. The driver may be a relative, or the relative or friend of someone already well acquainted with the client.⁷⁷ The relationship between the client and the customer would thus already consist of some level of social connectivity. When the service consisted of regular transport between two locations, such as daily travels to and from work, the two parties would agree to a price in advance. While there was some bargaining involved, neither party wanted to estrange the other party nor appear stingy, and thus a principle of flexibility governed such negotiations. Beyond regular services, a client may also ask for additional one-off rides from their driver. In such cases, the driver would leave it to the client to decide upon a

74. In Afghan society, honour plays a significant role for many individuals. Thus, the physical condition of the taxi one uses may be a significant consideration for many customers.

75. A skilled driver is able to find alternate routes in the event of road closures and is also more likely to avoid accidents in Kabul's chaotic streets.

76. Of course, in some cases, a driver may prefer a confrontation. In a comparable study, David Engel looked at Tort cases in Thailand. In cases where the claimant could not get compensation for their claim, they would attribute their misfortune to karma and religious belief. See D Engel and J Engel, *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* (Stanford University Press 2010).

77. On a limited number of occasions, a client may develop a regular service relationship with a driver who was a stranger. However, such cases are exceptional.

price. The client would normally pay an amount equal to or slightly higher than the rate normally associated with driving between the two given areas of the city. The driver viewed the relationship as economically valuable and thus sought to maintain positive relations. At the same time, the client would seek to maintain a positive image within the social circle in which she and the driver were both a part of. On certain occasions, the client may not have enough money to immediately pay the driver because of financial difficulty. In such cases, the taxi driver would simply record the trip. In one instance, a driver had continued driving a client for three months without collecting any money since the client was jobless, stating:

I understand that he is going through a difficult time right now. However, when he gets enough money, then he will pay me. Even if I force him to pay or stopped driving him, that would not be of great help since he has no money at the moment.

The day-to-day interactions between taxi drivers and their clients are helpful for understanding the norms that exist within the network of relationships between individuals in their social network.⁷⁸ For individuals within one's social circle, flexibility was expected of both parties. This would ensure that the relationship would not be strained. Furthermore, it would help to account for unanticipated contingencies, like when a client could not immediately pay because of a lack of funds. Flexibility also depended on trust between the parties. The client relied on trust with another individual within their network to find a reliable driver. The individual who introduces the two parties is trusted by both and thus helps to solidify trust between the two. This individual is able to vouch for both parties, especially the driver, since it is his services that are being sought. Once the arrangement has been agreed upon, a driver will trust the client to decide fairly on the price of one-off rides as well as to repay any outstanding amounts without running away. Clients would in turn depend on their drivers to generally provide immediate services whenever called upon.⁷⁹ Finally, the sustained relationship

78. The central unit of social organization in Afghanistan is the qawm. The qawm is a protean term that can loosely be defined as community and whose membership may consist of relatives, people of the same ethnicity or religion, or individuals living in the same geographic areas. The qawm or community itself defines the criteria of membership. See BR Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System* (Yale University Press 2002); T Barfield, *Afghanistan: A Cultural And Political History* (Princeton University Press 2010).

79. In this sense, there is a clear level of reciprocity in the relationship. A rich body of anthropological literature explores the questions of whether philanthropic acts - sometimes called "gifts" - are really that philanthropic. Marcel Mauss's work on the gifts and exchanges remains that most authoritative in the field. See M Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (Ian Cunnison tr, Cohen & West 1966).

between the parties over a period of time entails a level of cooperation. Each party viewed the relationship as consisting of a series of future interactions that would be of mutual benefit to the parties. Thus, each had vested interest in cooperating with one another.⁸⁰

Turning to transactions concerning property, the principle distinction is between immovable property and large movable property. First, concerning immovable property, transactions were either for property rental or property sale. A driver may own a house, which he rents out to a tenant. No written rental agreement was needed if the tenant was a family relation or within a driver's network of friends. In the case that the driver was not familiar with a potential tenant, a contract was drawn, which - importantly - required the guarantee of an individual with stature in society on the part of the tenant. This person could be a government employee working in some official capacity or a storeowner whose business was registered with the government.⁸¹ The approval by this latter individual served as an assurance that the tenant would use the house for lawful habitation purposes. The guarantor signs the contract alongside the contracting parties and additionally provides a copy of his government issued ID or business registration number so that he could be tracked in the event any issue was to arise. Such assurances are necessary in Kabul where a real possibility exists that a property may be used for illicit purposes or a tenant may suddenly disappear.

The process of buying and selling immovable property is comparable. If an individual within Kabul were to sell his house, he would provide the property deeds to the buyer and have an official individual - such as a government employee or registered storeowner - serve as a guarantor for the transaction. The documented transaction may or may not be filed with the government in a property registry. The volume of property sale transactions that are actually registered varies greatly between individuals and between areas of the city.⁸² In recent years, property transaction offices have sprouted up across Kabul, which help to connect potential buyers and sellers (working on a commission basis). One of the roles of these offices is to ensure that buyers and sellers do not face difficulties in their transactions. These offices face high social pressures to ensure

80. The work of Ian Macneil on relational contracts posits that contractual relations are part of ongoing relations between two parties. IR Macneil, *Contracts: Exchange Transactions and Relations* (Foundation Press 1978).

81. Government employees working in an official capacity have thorough character checks conducted on them and are provided special governmental IDs. Similarly, registered storeowners (as opposed to the plethora of unregistered street stalls) are provided unique IDs by the government confirming they are in good standing.

82. C Foley, *A Guide to Property Law in Afghanistan* (2nd edn, Norwegian Refugee Council 2011), 34.

that transactions are completed without any issue, since an office risks losing all legitimacy if a transaction associated with its office is later impugned. Reputation is a very significant factor in their business.

The sale of property in rural areas, i.e. outside of Kabul, also required the use of guarantors, but with certain differences. Land outside of Kabul is usually unregistered, and thus, the role of guarantors is particularly important in vouching for the sale. When an individual purchases an area of land, 4–5 individuals from the community – usually male elders as well as adjacent landowners – will confirm that the seller actually owns the land mentioned in the transaction. These guarantors all sign the document (if the contract is written) and the transaction is considered complete. This self-help approach ensures that communities can avoid legal dilemmas even without direct government involvement.⁸³

Second, in the case of large movable property such as cars, normally no property registry would exist for such items, and thus particular care was need to ensure that the car was not previously used for any unlawful purpose. Once again, the parties relied upon a guarantor on the part of the seller who was either a government official or a registered business owner and who could vouch for the transactions. While the transaction would not be noted in any registry, cars need to be registered with the government once every three years, as well as once the ownership changes.⁸⁴ If a car has been involved in any illegal activity, then the government will refuse to register the car and will also seek to find the perpetrator.

One driver related the story of a problem that his friend faced because of the absence of a guarantor during the sale of a car. Someone had sold his friend a car but without a guarantor and at a discounted price. Seeking to acquire an otherwise expensive car, his friend agreed to the purchase. His friend then resold the car, this time providing a guarantor. Shortly thereafter, the buyer – as well as the police – tracked his friend down through his guarantor, as the car had previously been involved in criminal activity. The buyer was unable to register the car because of the previous illegal activity, which until then had been undisclosed, and thus sought to annul the transaction and get a refund. The seller refunded the driver, as the car was not sold free from problems as originally promised. Several factors in the surrounding environment placed strong pressures on the seller to return

83. R Gang, 'Community-Based Dispute Resolution Processes in Balkh Province' (Afghanistan Research and Evaluation 2010). Gang mentions that there has been a recent shift in rural communities to have transactions registered by the government to ensure the rights of the parties. *Ibid.*, 35.

84. This rule is most strongly enforced in the cities and is certainly suffers from lapses in the rural areas.

the fund. Refusing to return the funds would tarnish his reputation - and that of his guarantor - as he would be labelled as untrustworthy and of poor character within his social circle and in the wider community. Furthermore, the police had contacted the seller to question him about the illegal activities associated with the car and to track down the original owner. Unfortunately, as the initial sale had no guarantor, the original owner could not be tracked down. The seller who was now in possession of the car was thus unable to seek a refund and was also unable to register the car. All he could do was sell the car for spare parts at a vastly discounted price, thus incurring a heavy financial loss.⁸⁵

This detailed narrative relating to taxi drivers can help to shed light on how legal transfers impact the social networks that permeate the local environment. The transactions that drivers have with their clients reveal how norms of flexibility, trust, and cooperation permeate their relationships. Moreover, the initial contact between drivers and their regular clients is established through a trusted acquaintance common to both parties. By guaranteeing both of their characters, this third party plays a central role in creating a new and direct relationship between the driver and the client, which is embedded within a wider set of social relationships.

These norms within the social networks of drivers can be further examined through the sale and rent of property. The property transactions of taxi drivers clearly reveal the central role of guarantors. The drivers highlighted the importance of trust and reliability when dealing with another party. The guarantor's assurance for the seller of property builds trust in the eyes of the buyer by providing a security in the event that an issue arises. Moreover, the guarantor must be a person of repute in society who can vouch for the seller's integrity. In Afghanistan, the significance of one's social connection to the greater community cannot be understated. An individual who loses standing amongst his network of peers, risks facing a form of "social death" i.e. being excommunicated from the community, which for many is considered worse than actual death itself.⁸⁶ Social distance between actors is thus a significant consideration when undertaking a transaction, as the role of the guarantor is to reinforce the relationship by providing an additional embedded tie beyond the simple recording of the transaction between the two parties. The use of the guarantor ensures that the contract is closely enmeshed in social norms.

85. An alternative to selling the car for spare parts would be to sell the car on the black market. Of course, this would entail its own set of risks and challenges.

86. T Barfield, 'Culture and Custom in Nation-Building: Law in Afghanistan' (2008) 60 Maine Law Review 347.

Certain transactional norms can only be understood within the context of the prevailing social practices. For example, at one point, a driver was asked several times whether the guarantor would be liable if there was a problem with the seller's property (e.g. the sellers deeds were fake) and he could not be located. The repeated response of the driver was simply that the guarantor would *obviously* be able to locate the seller and thus the question of the guarantor being liable was moot. Eventually, the driver did say that the guarantor would be liable in such a situation, though remaining unconvinced that such a situation would materialize. His response was not an attempt to elude the question but rather reflects the perspective of an individual operating as an insider to particular community norms. For drivers, to have a guarantor is to have certainty in being able to find the seller.

A thorough discussion of the existing norms that inhabit the social networks of taxi drivers can help to provide a renewed discussion on how the legal transfer of a formal contract law regime into Afghanistan has had an impact on the local environment. The reception of the CCA, as well as the subsequent enactment of the *Law on Commercial Contracts and Sale of Goods* were intended to strengthen the formal legal system by providing a clear set of rules for parties seeking to engage in contractual relationships. Furthermore, the various international efforts to strengthen the courts and the legal system follow the global script prescribed by the World Bank of promoting economic growth through justice sector improvements. The goal of these reforms has been to strengthen the regime for contractual transactions by providing the courts with clear guidelines. Nonetheless, it remains questionable the extent to which these laws have gained widespread legitimacy. For a new law to have an effect on the operation of a legal system, it must be adopted by its operators, including judges and lawyers. This may pose to be a particular challenge in Afghanistan where the rule of law remains weak and confined to the cities, and even then the application of law remains inconsistent. Many judges and lawyers in the country continue to view the *Mejelle* with greater cognitive legitimacy than enacted statutes.⁸⁷ Furthermore, the presence of enacted statute does not address the legal general mistrust that many people have towards the courts system.

For taxi drivers, non-legal (in the sense of non-state sanctioned) norms play a significant role in shaping individual behaviour. The presence of a formal

87. See Choudhury, 'Revisiting Critical Legal Pluralism'.

contractual legal regime capable of ensuring the parties rights in courts at no point figured into how they conduct their transactions. This included instances when problems arose between parties. Formal contract law lacked cognitive legitimacy since the system of using a guarantor is simply 'the way things worked'. In fact, none of the taxi drivers mentioned any process remotely associated with the court system or laws, even after being indirectly asked how the state *may* be able to deal with such issues. Contract laws lacked normative legitimacy as they trace their authority to the state, whereas the existing regulatory framework relies on social norms such as trust, which resonate far more strongly amongst drivers. The state legal system, on the other hand, did not rely on social relations, and in proposing a new normative framework, failed to convince these drivers of its normative superiority. It also remained unclear what pragmatic benefits taxi drivers would gain by vesting more authority – and money – in the state legal system.

Nonetheless, one intriguing finding does arise concerning the impact of legal transfers on taxi drivers. In all of the property transactions mentioned (expect those in rural areas), the contracting parties will seek a guarantor who has some level of official governmental status, whether they are an officer of the state or a business-owner with a government license. An individual's affiliation with the government means that he is registered in the government database and thus is more likely to be traceable. Furthermore, in the case of government employees, the government usually conducts security checks as a condition of employment, further adding a level of reliability on the part of the guarantor. The city centers in Afghanistan are often more cosmopolitan, as they host individuals who are originally from various provinces. Civil conflict has greatly contributed to the number of people relocating from rural areas into cities. As a result, people with a wide variety of backgrounds must interact with one another, and quite often, transacting individuals are outside of one another's immediate social networks. The social distance between individuals is greater in Kabul, thus requiring new mechanisms to ensure cohesion between individuals in the absence of a strong state. The presence of a 'government-guarantor' allows distant individuals to interact with others with sufficient confidence that co-contractors can be located in the event of a problem.

Legal transfers have thus affected the behaviour of the interviewed taxi drivers but in an unexpected way. The reforms advocated by the Washington Consensus as well as the Doing Business project at the World Bank include the strengthening of government institutions, and particularly courts. Legal reform projects,

alongside a variety of other international development initiatives in the country, have had the effect of greatly expanding the government bureaucracy. However, the significance of this expansion has not entailed the wider reach of the law, but rather a greater presence of government in daily life. Drivers remain influenced by the norms of the social networks, but operationalize new government structures to effectively 'widen' the potential reach of their networks. Thus, paradoxically, the officialdom associated with the government helps to bolster the regulatory force of informal norms rather than to reduce it. For these taxi drivers, the presence of the government is effectively absorbed into the existing social network. This is possible because these new government-guarantors are viewed with pragmatic legitimacy. They provide a quick and easy means of finding a party if necessary, with the assistance of the government - a government, it must be reminded, that is comprised of average citizens who also understand the value of social networks. Further, the role of these government-guarantors is viewed with normative legitimacy as they do not oppose existing social structures but rather build upon them. The government-guarantor is still within the social network of the person he is guaranteeing. If a recalcitrant contracting party were to disappear, then the government-guarantor would risk losing respect, not only within his social circle but also amongst his government colleagues and within society more generally. Thus, even with the addition of government-guarantors, network relationships remain essential for the contractual transactions of taxi drivers.

In sum, the focus on social networks can help to provide new insights on the operation of legal transfers in recipient environments, which would fail to be captured by concentrating simply on the transfer itself. A social network approach puts attention on the varying responses of network actors to new stimuli. Actors within a network are embedded within a particular context in which various local norms affect their behaviour. A legal transfer does not enter into a space devoid of normative meanings but rather one where meanings and behaviours have been long established. A social network approach to studying legal transfers can help to reveal the reasons why intended reforms sometimes fail and, in other cases, lead to unintended consequences.

4. Conclusion

The law and development movement has gone through a number of phases and despite its various shortcomings, it continues to play a central role in shaping

the trajectories of many developing countries.⁸⁸ Countries continue to rely upon legal transfers for structuring their legal systems in a way that may be conducive to economic development. Realistically, legal transfers will continue to play a significant role in development efforts for the foreseeable future.⁸⁹ Thus, the challenge is not to limit their application but rather to understand their impact in new settings.

This paper proposes the use of social networks to analyse the ways in which legal transfers operate in recipient environments. A social network approach aspires to uncover the existing actors, relationships, and norms that inhabit the space in which the legal transfer enters so that the reception of the latter can be studied alongside various other contingencies. Social networks have yet to become a mainstay in the law and development discourse, despite the revealing insights it may provide. Such a paradigm shift requires a revision in the way development agencies explore local contexts. It turns attention away from the immediate goals of the transfer and onto the rich diversity of meanings that inhabit diverse contexts.

A social network approach places emphasis on the relationships that individuals within an environment have with one another. By understanding how the introduction of new stimuli may affect a social network, one can better appreciate that existing norms and modes of behaviour are not easily replaced but rather possess a resilience and adaptability to change. Such an approach can provide valuable insights on unexpected consequences of particular reforms. In the case of taxi drivers in Afghanistan, efforts to reform the legal system paradoxically serve to reinforce the existing social networks that structure interactions and transactions between individuals. A social network approach raises the possibility of understanding meanings within a local setting according to the framework of those who constitute the living environment.

88. DM Trubek and A Santos, 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in DM Trubek and A Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006).

89. BZ Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 Cornell International Law Journal 209.