

Katherine Culver
Department of Anthropology
University of Pennsylvania
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Transnational Rule-of-Law Talk and Democratic Devolution in Contemporary Cambodia

Abstract: This paper raises the question of when, and how, rule-of-law ideologies associated with democratic governance and citizenship by donor countries might in fact support the legitimacy of authoritarian, or at least ‘illberally democratic’ regimes, through a consideration of recent political events in Cambodia. In the decades following the devastation of the Khmer Rouge period, Cambodia was the recipient of considerable development aid aimed at building rule of law. Although Cambodians have enjoyed considerable social and economic development during this time, this development feels precarious to many observers because rule of law and a democratic political system have not yet materialized. In fact, several events since the 2013 elections, perhaps the high water mark of democracy in Cambodia, seem indicative of a decisive reversal of democratic political development. Perhaps most notably, a little over two years ago, on November 16, 2017, the Cambodian Supreme Court issued a pivotal decision which disbanded the main political opposition party. While this event was the subject of dire pronouncements on the part of international observers and a smattering of local journalists (who declared it the “death of democracy” in Cambodia), it was met with little internal resistance; and in subsequent national elections, the ruling party significantly increased its share of the vote. Given the widespread acceptance of rule-of-law ideas in Cambodia, this outcome suggests that the Supreme Court’s decision may be thinkable as consistent with rule of law for at least some Cambodians. Using recent examples of rule-of-law talk among Cambodian politicians, the paper examines how the transnational rule-of-law talk that has taken root in Cambodia may facilitate these apparently paradoxical political outcomes.

I. Introduction

According to the forensic experts at Human Rights Watch, democracy died in Cambodia just after five pm on November 16, 2017 (*Phnom Penh Post* 11-17-17), when Cambodia’s Supreme Court issued a verdict disbanding the Cambodia National Rescue Party (CNRP) and barring over one hundred of its senior officials from political activity for five years. One of the officials targeted by this ruling, Mu Sochua, deputy president of the CNRP, had a slightly more sanguine (if still) forensic analysis, calling the decision “a blow to democracy but not a fatal one” (PPP 11-17-17).

From the perspective of just a few years prior, this was a surprising development. National elections in 2013, in which the CNRP had won over 40 percent of the vote, were taken by many observers as a forward step in the development of democratic political institutions in Cambodia, and a decisive turn away from the threats and occasional outbursts of violence that surrounded elections of the previous two decades. However, signs that these elections were a high water mark of democracy rather than part of a rising tide emerged in the months after the elections, when opposition party- and union-led protests were violently repressed. The opposition party leader, Sam Rainsy, retreated to exile in France under threat of multiple criminal prosecutions. Subsequently in the spring of 2016, his deputy, Kem Sokha, was charged

in a dubious sex-slash-corruption scandal and put under house arrest; he remained either imprisoned or under house arrest, until November of 2019, despite not having been convicted of any crime. A prominent and widely-respected political analyst, Dr. Kem Ley, who frequently commented on obstacles to democracy in Cambodia, was assassinated in July 2016; an alleged killer with a farcical story was arrested and then convicted of the murder, while activists calling for further investigation were charged with incitement of violence.

The Supreme Court's apparent death-blow to democracy was set up by the passage of amendments to the Law on Political Parties several months before its decision. These amendments allowed the Supreme Court to suspend any party who engaged in several prohibited activities, listed in the new Article 6:

- 1) creat[ing] a secession that would lead to the destruction of the territorial integrity of Cambodia;
- 2) conduct[ing] sabotage to counter liberal, multi-party democracy and constitutional monarchy regime;
- 3) carry[ing] out an activity that would affect the security of the state;
- 4) creat[ing] an armed force;
- 5) incit[ing] to break up the national unity.

The amendments were criticized by the UN, Human Rights Watch, and local civil society organizations as contrary to rule of law because of their vagueness, capacity for politically-motivated abuse, and contradictions with Cambodia's constitution. When the amendments were then used as the basis of a complaint against the CNRP filed to the Supreme Court by the Ministry of Interior, there was little internal resistance. The leadership of the CNRP itself chose not to present a legal defense, presumably considering the legal proceedings illegitimate. National elections held in July of 2018, in the absence of the CNRP, whose members had been barred by the Court's decision from political activity, resulted in substantial vote majorities in favor of the ruling party, the Cambodian People's Party (CPP).

As the description of this recent political history suggest, Cambodia's legal institutions have been central to its recent democratic regression. Indeed it is not especially surprising that the Supreme Court would rule as it did when presented with a complaint from the Ministry of Interior. Within Cambodia, the judiciary enjoys very little trust; and without, Cambodia is widely considered to lack core features of rule of law, such as an independent judiciary. Cambodia is ranked very low on comparative rule of law indices produced by transnational development organizations. In the 2015 World Justice Project's Rule of Law Index, Cambodia was ranked 99 out of 102 countries assessed (World Justice Project 2016). Cambodia was similarly ranked 150 out of 168 countries on Transparency International's 2015 Corruption Perceptions Index (Transparency International 2016), and an assessment of Cambodia's 'governance system' conducted by that organization found that Cambodian institutions were not sufficient to 'uphold the rule of law' (Johnson 2014: 5). Academics and editorialists have suggested Cambodia is characterized by 'rule by law' rather than 'rule of law' (see e.g. Un 2009; Tai 2016) and lacks a 'rule of law culture' (Sperfeldt 2016).

Still, the centrality of legal institutions to Cambodia's democratic regression poses some puzzles. In short: why use the courts to accomplish political objectives that previously would have been pursued extra-judicially? Or, put another way, how and why has this strategy been successful? The Prime Minister defended the Supreme Court's decision as grounded in "rule of law" (PPP 11-17-17), and, specifically addressing non-Cambodian observers, said he "would like to tell international friends that we are enforcing our own law" (PPP 11-17-17). He further

contended that the ruling did not harm the “multiparty democracy process” because there are other parties and the institution responsible for organizing elections is “independent.” While these assertions might be partly cynical, the continued electoral success of the Prime Minister’s party suggests that many Cambodians may accept his assessment.

In the remainder of this paper, I would like to sketch a partial explanation of why this may be so through an examination of rule-of-law discourse in Cambodia. Transnational rule-of-law discourse reached Cambodia through the large amounts of law and development aid it received in the 1990s and 2000s. I argue below that this discourse may have, paradoxically, enabled the events just described.

II. Transnational Rule-of-Law Discourse in Comparative Context

In spite of receiving a great deal of rule-of-law-focused development aid, Cambodia, according to most external observers, and many internal ones, lacks rule of law qua the state of affairs in which political leaders are subject to (legal) constraints on their exercise of power. However, while Cambodia is often said to lack rule of law, it certainly does not lack “rule of law,” i.e. the transnational ideology that links state legitimacy to the boundary policing between law and politics, nor rule-of-law discourse.

“Rule of law” is an ideal with transnational purchase, perhaps the central legitimating political ideal of today, according to some authors (Tamanaha 2004; cf. Waldron 2002). Rule of law at its most basic level is the idea that is that governments should be limited in their authority, and that these limits should come from something called “law,” whose reasoned, rule-bound character is seen as more legitimate than various other grounds of decision-making. What I call rule-of-law discourse is the set of tropes that are typically used to explain what rule of law is. Two common tropes, for example, are that judges are guardians of rule of law, and that their doing of law is separate from and even opposed to doing politics.

Much comparative scholarship—and development activity—treats rule of law as a measurable state of affairs, something that can be assessed through quantifiable, more-or-less objective indicators. This is not to say that rule of law, in this scholarship, has a single accepted definition. Indeed, as Waldron (2002) points out, rule of law may be an “essentially contested concept.” One of the key debates about what constitutes rule of law has centered on the “thickness” of its definition. Some argue that rule of law requires that a country’s laws have some specific content, typically certain civil and political rights associated with liberal democracy. Others—animated by studies of places like Singapore, whose development experience suggested that some of these features are not required for economic success—define rule of law more “thinly,” as a process- rather than substance-oriented norm.

There is however a basic notion shared across thick and thin conceptions of rule of law, the difference between which may be thought of as a difference in how to interpret this notion. One component of the “rule-of-law” ideal is that governments should be limited in their exercise of power. A second component is that the limits on government exercise of power should come from something called “law,” whose reasoned, rule-bound character is seen as more legitimate than various other grounds of decision-making (cf. Tamanaha 2012).

As this brief discussion already suggests, rule of law is not simply a descriptive state of affairs, but a normative political ideal. As a political ideal and ideology, rule of law purports to offer a solution to the foundational problem of state legitimacy that has animated Western political theory since at least Hobbes. Today, rule of law is a political ideal with transnational

purchase, perhaps even the central legitimating political ideal of today (Tamanaha 2004; cf. Waldron 2002).

Questions of legitimacy are entangled with the very question of whether rule of law as a state of affairs exists or can be established. For example, the idea of measuring whether judges—the government actors usually associated with the supervision of other government actors’ and private individuals’ adherence to law—decide cases according to law presupposes that claims are adjudicated by judges. One empirical precondition for (judicial) adjudication of claims according to law is that people appeal to courts to address their claims and resolve conflicts, which they are unlikely to do if they view judicial behavior as illegitimate.

This point becomes clearer when we consider that rule of law as ideology is a discursive construct, a product of human communicative, or semiotic, activity. When I say that rule of law is a discursive construct, I mean that the rule-of-law ideology I described just above is a fashion of speaking about state governmental activity, which I will call rule-of-law discourse or rule-of-law talk, which is socially produced and has a social-semiotic regularity. Law itself is a semiotic activity, which emerges through a complex set of communicative activities aimed at producing and doing things with—recognizing, commenting on, deploying, manipulating, and so on—instances of things identified by speakers and texts as “law.” The legitimacy which rule-of-law ideology pins on the restraint of government by law is similarly a product of communicative activity, wherein events and practices are made sense of through socially produced frameworks of understanding.

It is thus as a discursive construct that “rule of law” plays into the very institutions and state of affairs supposedly measured by the concept of rule of law. As a discursive framework for evaluating state—particularly judicial—activity, rule-of-law talk motivates all kinds of activities that comprise the operation of state legal systems and governments: among other things, what judges do, why they become judges, how they ‘interpret and apply’ law; and how lay citizens evaluate judges’ and other government officials’ behavior, which in turn feeds into how citizens vote and, thereby, into who superintends and comprises a country’s legal infrastructure.

Rule-of-law talk as I understand it is characterized by certain discursive tropes that elaborate rule-of-law ideology of the ways in which government power ought to be constrained. A common trope is that legitimate exercises of government power reflect “the rule of law, not man” (Tamanaha 2012: 236). This is often glossed via the notion that doing law—especially by actors like judges, though sometimes also by other government officials—is principally opposed to doing politics. In other words, rule-of-law talk valorizes specifically legal decision-making by certain actors, such as judges, where the evaluation of whether decision-making is legal or reflective of law depends on a notion of law defined contrastively with respect to the domain of politics.

By way of illustration, this trope was for example widely repeated in the aftermath of the 2000 election in the U.S., in which actors on both sides of the litigation over Florida’s botched vote count accused the other of attempting to use judicial process for political purposes, as though these purposes were antithetical to the proper operation of law:

When the Florida secretary of State, Katherine Harris, announced her certification of the result, she said, “[t]he true victor in the Florida election is the Rule of Law”; but her critics said that her patent political bias – she was also co-chair of the Bush campaign in Florida – was an affront to the Rule of Law. When the two sides began their various campaigns of litigation, we were told that their willingness to take contentious political

issues to court was a tribute to the Rule of Law in the United States; but we were also told that litigation undermined the Rule of Law, since it showed the parties' unwillingness to let any legal decision stand. (Waldron 2002: 137)

In addition to criticizing one another's legal actions as "political," actors on both sides also criticized judicial decisions in the litigation with which they disagreed as being, again improperly, motivated by politics, while praising judicial decisions with which they agreed as proper applications of the law. Even Supreme Court justices engaged in this talk:

It is confidence in the men and women who administer the judicial system that is the true backbone of the Rule of Law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the Rule of Law. (*Bush v. Gore*, 531 U.S. 98, at 128–129 (Stevens J., dissenting); quoted in Waldron 2002: 138)

The majority's decision, according to the dissent, was not simply mistaken as a matter of law; it reflected a lack of impartiality. Thus, in criticizing one another's actions as challenges to rule of law, speakers implied that there is a special or heightened threat to the judiciary's legitimacy that comes from using it to do politics rather than law, reflecting the ideology linking "rule of law" to state legitimacy.

Understanding rule-of-law as a discursive construct provides a distinct lens on transnational rule-of-law-building development efforts by Western countries. Development efforts aimed at building rule of law typically focus on building legal infrastructure—i.e. physical plant, laws, trained personnel—and on ideological instruction in rule of law—i.e. explanations of what kinds of considerations are appropriate to legal reasoning, in explicit or implicit contrast with considerations assigned to other domains of social activity (such as politics). In other words, a large portion of these efforts is discursive—unsurprisingly, in fact, since law is a communicative activity, as described above, that must be 'done' by actors tasked with law's implementation or enactment.

Yet while the trope of rule-of-law talk I just identified is part of transnational rule-of-law discourse, this does not mean that rule of law 'means' the same thing everywhere this fashion of speaking occurs. We can understand this through attending to something like different levels of at which the contrast between law and politics acquires (socially produced, intersubjectively regular) meaning. At a surface level, rule-of-law talk involves a social-semiotic regularity in the sign forms "law" and "politics" and their contrastive definition. But how are "law" and "politics" glossed in different places? Briefly speaking, these concepts may not have the same 'meanings' in all places in which they are related contrastively in rule-of-law talk. In the U.S., for example, the discursive contrast between "politics" and "law" has a particular history rooted in Enlightenment discourses which defined reason in contrastive opposition to emotion, passion, and self-interest. The design of the federal legislature as described in the Federalist Papers was justified on the basis of its ability to produce rational, public-interest-oriented policy in spite of the passions and self-interested behavior of individual voters and politicians. Relatedly, in U.S. legal settings, "emotion" is often identified as a source of "bias" that should be kept out of properly legal reasoning (see Culver 2017; Conley 2016, 2013; Mertz 2007). When taken up in

other places, that discursive tradition need not also be imported. This is not to say that there is no similarity in how “law” and “politics” are glossed in different localities, as fashions of speaking about law and politics may well circulate and be taken up transnationally along with the law-versus-politics trope. However, possible differences in local significance of these concepts—grounded in different moral and epistemological logics; figures of personhood associated with the social roles, such as judge, related to rule of law; and imagined consequences of doing law versus politics—should not be assumed away.

The at least partial open-endedness of the meaning of law and politics within rule-of-law talk is important from a comparative perspective because rule-of-law talk, while taking the same surface form transnationally, viz., the co-construction of law and politics via their presumed opposition—may have different implications for the evaluation of the behavior of state institutions and officials with respect to legitimacy in different places depending on how these two categories are fleshed out.

Of course, “rule of law” may not mean the same thing to different speakers in a single country or locality in the sense that all observers classify the same events as reflective or not reflective of rule of law, as the examples from the controversy surrounding *Bush v. Gore* suggest. Observers in fact disagreed intensely about whether particular actors’ behavior was reflective of rule of law. However, there was widespread ideological agreement about the importance of rule of law, and thus on the criteria for evaluating the legitimacy of judicial behavior, viz. was a judicial decision or decision to pursue litigation was motivated by partisan interest rather than a desire for consistency in the application of laws?

The presence of this intense sort of rule-of-law talk in places where most people assume that rule of law exists may be viewed as symptomatic of legitimacy-related anxieties about the maintenance of boundaries between law and politics—viz. the current crop of news articles on rule of law in the U.S. that have arisen since Trump became president. As Waldron points out, the crux of the *Bush v. Gore* controversy lay in the fact that:

[i]t is common in the United States for official positions to be held by political appointees; people appointed precisely because of their political partisanship. That such a partisan should be the one entrusted with discretion to certify an electoral result is problematic, to say the least, from the point of view of anyone interested in the outcome being determined by law rather than by the political clout of the parties. (Waldron 2002: 146)

The gap between the widespread agreement on rule-of-law ideology and the application of these ideological criteria to different sets of events in the *Bush v. Gore* controversy is probably attributable to the high stakes of this disagreement, as well as the strength of the threat these events posed to the rule-of-law ideology upon which governmental legitimacy is widely predicated in the U.S., i.e. the insulation of law from politics—blurring as they did the boundaries between ‘law’ and ‘politics’ as typically distinguished in the U.S., where courts are distinct from legislatures and the executive branch, and the social role of the ‘politicians’ who hold offices in the latter branches do not stereotypically involve making decisions according to ‘neutral’ legal principles in the manner that the social role of judge does. Indeed, many of the accusations of political influence with respect to judicial behavior criticized not the surface reasons given for judicial decisions, which were ‘legal’ in form, but rather rested on suspicions that these decisions had hidden motives. In contrast, when observers in the U.S. are tasked with

evaluating the existence of rule of law in contexts where the legitimacy of their own social order is not as acutely at stake—for example, in evaluating the absence of rule of law in developing countries, often in contrast to the supposed existence of rule of law in the U.S.—there is much less intense disagreement about the application of these criteria to particular events and actors.

Thus, although rule of law can mean different things to different observers, rule-of-law talk is significant because this talk is not all, as the saying goes, ‘just talk.’ As I illustrate with reference to the case of Cambodia below, rule-of-law talk is part of political discourse throughout the globe, even in places that supposedly lack rule of law. A discursive approach to rule of law in comparative context, I argue, poses a set of questions about rule of law building efforts that have high stakes and utility, especially for understanding rule of law in developing countries, and especially for places that supposedly lack rule of law. A key question of development efforts, suggested by studies that argue the establishment of rule of law is important for wealth, etc., is how exactly to establish rule of law. There are real, unanswered questions about how these development efforts—which, as stated above, involve the attempted dissemination of rule of law ideologies and thus rule of law talk—do or could work. These questions are posed especially sharply by countries which have been the recipients and/or targets, depending on one’s framing, of rule-of-law development aid but have failed to develop the economic and political institutions and outcomes these efforts promised. For example, is it possible that rule-of-law ideologies associated with democratic governance and citizenship by donor countries might in fact support the legitimacy of authoritarian regimes? In what ways can development interventions aimed at building rule of law be effective, or, alternately, counterproductive, depending on local contexts?

III. Transnational Rule-of-Law Discourse in Cambodia

While rule-of-law discourse is transnational, its uptake in any given place is mediated by local particularities. In Cambodia, the uptake of rule-of-law discourse (again, if not rule of law itself), occurred following the 1991 United Nations-brokered peace agreement which officially ended hostilities between the Cambodian state and lingering elements of the Khmer Rouge. The uptake of rule-of-law discourse, was, accordingly, discursively linked to a desire to distance the country from the horrors of the Khmer Rouge period.

This linkage is enshrined in Cambodia’s 1993 constitution, whose preamble anchors its attempt to establish rule of law to the destructive past of the Khmer Rouge, as well as to an imagined future return to ancient Angkor’s wealth and prestige.

The uptake of rule-of-law discourse in Cambodia was facilitated by the considerable amount of international development aid which focused on establishing rule of law that Cambodia received during the 1990s and into the 2000s. It is no wonder that legal infrastructure building was a priority, for donors and for the Cambodian government, since this infrastructure was decimated under the Khmer Rouge, not least through the loss of legally trained personnel, who, like other members of the educated elite, were targeted by the Khmer Rouge. Indeed, the Khmer Rouge was a movement that some have argued did away with law.

International rule-of-law and development aid focused on many aspects of legal infrastructure-building, such as the drafting of a new constitution, which was adopted in 1993, as well as sub-constitutional legal codes, such as the new comprehensive civil and criminal codes adopted in the mid-2000s; the building of court facilities; and the training of legal personnel,

such as lawyers and judges, in legal decision-making, in a manner (inevitably) informed by rule-of-law ideologies used by donor countries to legitimize their own legal institutions and practices.

Of course rule-of-law development aid also supported the establishment in the mid-2000s of the ongoing Khmer Rouge Tribunal (KRT), a court staffed by a mixture of international and Cambodian personnel that is attempting to subject to legal process the former leaders of the Khmer Rouge. A key rationale for the court's establishment was that it could be a 'rule-of-law' generating model for Cambodia's court system (Un 2013; Ghouse et al 2012; Menzel 2007). Whether or not this rationale has been fulfilled, the rule-of-law ideal has gained purchase in Cambodia.

As a study carried out before the KRT commenced showed, Cambodians appear to endorse a number of rule-of-law norms (Gibson 2010). Rule-of-law ideology has indeed informed a lot of infrastructure building that has been part of the Cambodian state's endeavors to legitimize itself. While these many of these efforts are donor-supported—and perhaps, as in the case of the KRT, donor-driven—Cambodia's long-ruling prime minister has made explicit commitments to establishing rule of law and framed policy reforms, for example to combat corruption, with reference to the goal of rule-of-law building. While much of the rule-of-law talk of the authoritarian prime minister could be perhaps dismissed as cynical and intentionally self-serving, many institutions and actors within Cambodia's legal system appear informed and motivated by rule-of-law talk in ways that are harder to dismiss, unless we assume the existence of a pervasive yet entirely cynical rule-of-law discourse in Cambodia. For example, during a discussion I had with the president of the RAJP about my research plans, he cautioned me that the school does “law” and, as a “scientific institution,” is not concerned with “politics,” reproducing the key trope of rule-of-law talk I described earlier. This was delivered partly as a warning—perhaps for both my protection and for his—to stay away from topics that could be viewed as threatening to the ruling party and, by implication, the government officials who oversee the school. Yet this warning was also a justification of the institution's legitimacy, subscribed to by at least some participants in it and reflected in the explicit institutional discourse about the school's mission to which students are exposed.

What of this rule-of-law discourse? In the following section, I discuss one of the sets of events leading up to the Cambodian Supreme Court's 2017 decision that was the occasion of a lot of rule-of-law talk, à la *Bush v. Gore* in the U.S. The appearance of rule-of-law talk around these events reflects, per the discussion just above, the transnational semiotic regularity of the appearance of rule-of-law talk around moments of anxiety about state legitimacy, and the use of a contrastive opposition of law and politics, to interpret and evaluate these events. Yet, as I describe, the use of rule-of-law talk as a ground of justification and critique by the actors involved in these events raises critical questions about the kinds of institutions and actions whose legitimacy rule-of-law talk may discursively facilitate, and is suggestive of the possibility that rule-of-law talk may produce very different discursive outcomes in places where rule of law is and is not assumed to exist.

IV. Cambodian Rule-of-Law Talk, Legitimacy, and Critique: L’Affaire Sokha

In May 2017, after the publication to Facebook of secretly recorded telephone conversations between Cambodia's acting opposition leader, Kem Sokha, and a woman who was likely his mistress, Sokha was accused of procuring a prostitute and investigated by the government's anti-corruption unit for misuse of government funds allegedly spent on her. Sokha

was called into court to give testimony about this, but he refused to appear, citing his immunity from prosecution as a member of Parliament. The Phnom Penh Municipal Court accordingly came up with an exception to this grant of immunity and ordered his arrest for contempt of court. Sokha managed to evade arrest by ensconcing himself in his party's headquarters, where he spent the next six months in not-so-secret hiding. Meanwhile he was tried and sentenced to prison in absentia. At the same time, the human rights lawyers who had initially represented his mistress were imprisoned on accusations of having bribed her to try and protect Sokha; and activists who subsequently started a campaign to protest their imprisonment—mainly involving wearing the color black every Monday and standing peacefully with signs outside of the prison where they were held—were themselves imprisoned on charges of incitement.

While the Cambodian government was criticized internationally, for example by the U.S., the E.U., and the U.N., for engaging in politically motivated 'judicial harassment' of Sokha and other government critics. The timing of these allegations was thought to be designed to keep Sokha from being able to campaign effectively for upcoming local elections—the government defended its behavior as upholding rule of law, arguing that political negotiations over the case proposed by the opposition would compromise the judiciary's independence. Indeed, a striking feature of these events was the attempt Cambodian actors on both sides of this conflict—government officials and opposition politicians—made to justify their own actions, and criticize the other side's, with reference to rule of law. Members of the executive branch and the essentially coterminous ruling party, for example, argued that Kem Sokha's arrest was necessary in order to preserve the rule of law, suggesting that not arresting him would undermine judicial independence and the separation of powers:

Tith Sothea, spokesman for the PQRU, said the video was created to highlight people's rights and rule of law in Cambodia, so the public can determine for themselves whether Sokha's case is legitimate or not.

“[Kem Sokha] is using his mistakes to exaggerate and claim the ill-intentioned politicisation [of his case],” he said. “We think [this exaggeration] should be ended, and [Sokha should] accept legal procedures in a democratic society.” (Sokchea 2016)

Members of the opposition argued that the prosecution of Sokha was legally unjustified and a misuse of the courts. The rule-of-law talk both sides engaged in—drawing on the trope of the contrast between “law” and “politics”—was thus similar to the talk occasioned by the Bush v. Gore litigation. This is unsurprising, per the discussion earlier in this paper, because these events involved an entanglement of the judiciary in the realm of electoral politics of a similarly high degree, and of similarly high stakes.

Yet the presence of rule-of-law talk surrounding these events raises critical questions about the production of state legitimacy via rule-of-law talk. As in Bush v. Gore, local observers with different political alliances had diametrically opposed assessments of whether particular court decisions and other government actions violated or upheld rule of law. Yet unlike in Bush v. Gore, these questions were not close to outside observers. Rule-of-law-based criticism of litigation and judicial opinions in Bush v. Gore depended on some interpretive leaps from both sides: inferences that, because a decision supported one side or the other, it was motivated by political bias. In the Sokha affair, in contrast, the interpretive leaps required to attribute less-than-honorable 'political' motivations to the ruling party were rather smaller. For example, this

was not even the first time Sokha had been ensnared in a sex-slash-corruption scandal through the publication of secret telephone recordings suspected of having been made by the government. Sokha was serving as acting leader of the opposition party because the former leader of the party was living in exile in France to avoid prosecution on a variety of charges of defamation of ruling party members; as he had done on and off over the past several years, returning only for brief periods—such as the few days before and after the last set of national elections, held in 2013—when pardons or withdrawals of prosecution were negotiated with the prime minister. Indeed, despite the repeated statements by the prime minister and other government officials that a political compromise to the Sokha affair would undermine the integrity of legal process, this was in fact how the standoff was eventually resolved, when Sokha was finally pardoned by the king at the prime minister’s request. While the politicians involved in litigation were arguably subject to and constrained by legal process in *Bush v. Gore*; and judges at the very least justified their decisions according to the types of reasoning typically accepted as legal in other circumstances; neither of these conditions were true in Cambodia during the Sokha affair.

These differences between the circumstances surrounding *Bush v. Gore* and the Sokha affair are important because despite years of behavior which has demonstrated the lack of constraints on the exercise of power experienced by Cambodia’s prime minister—i.e. the lack of rule of law in Cambodia—the Cambodian prime minister and ruling party nonetheless enjoy significant popular support, i.e. legitimacy, and have done so throughout this period.

Thus, the Sokha affair raises a key question for comparative studies of rule of law: namely, the potential compatibility of rule-of-law talk with lack of rule of law, or even, indeed, whether rule-of-law talk could in fact support the legitimacy of state institutions and officials that routinely violate rule-of-law principles. How it could be thinkable to many Cambodians (for at least several months) that a negotiated compromise that would absolve Sokha of guilt was an unacceptable threat to the integrity of law and thus illegitimate; and that the prosecution of Sokha was properly legal and thus legitimate?

I suggest that a semiotic analysis of rule-of-law discourse in Cambodia can help shed light on this, and suggest why these events might not be thinkable in the same way to observers in the U.S. Specifically, I argue that the meaning of ‘politics’ within the discursive co-construction of law and politics in rule-of-law talk is different in Cambodia than in the U.S. As described in the U.S., the stereotypical ‘political’ action is something like a national representative voting against a policy she knows would be good for the nation in order to benefit her constituents at everyone else’s expense; or a judge ignoring case precedent in order to reach a decision that aligns more favorably with her personal political views. In Cambodia, in contrast, as the discourse around the Sokha affair suggests, ‘politics’ and the ‘political’ index a different set of images.

In Cambodian rule-of-law talk, politics indexes the Khmer Rouge period, and the violence and chaos that accompanied it. Politicians who accused one another of undermining rule of law through playing politics invoked the specter of the Khmer Rouge, suggesting that their opponents’ actions were designed to return the country to civil conflict and chaos. For example, a government spokesperson describing the protests of the imprisonment of the human rights lawyers who had represented Sokha’s alleged mistress linked the violation of law to anarchy:

“Actions were taken to prevent violators of the law and anarchists from attempting to launch a colour revolution,” Sreng said. “It is an important point that the government has

to protect itself from these anarchists and their work overthrowing or having a revolution in Cambodia.” (Baliga et al. 2016)

These protests (the “colour revolution”) were explicitly linked by government officials to the Khmer Rouge:

References to a potential “colour revolution” – a term that usually refers to non-violent popular movements in the former Soviet bloc and elsewhere – have become a staple of ruling party rhetoric, and Prime Minister Hun Sen has invoked the term in asking security officials to stand firm with the government in the face of a theoretical opposition-led revolution. The term has been subsequently parroted by military and police officials in multiple speeches.

[...] Dismissing Rainsy’s [the opposition leader’s] comments [defending the protestors’ political rights], ruling Cambodian People’s Party spokesman Sok Eysan said the campaign was only an attempt to bring about a “colour revolution” in the country.

“It is representative of Pol Pot, that black colour,” Eysan said. “He [Rainsy] wants to bring the country back to war, which we have already moved on from.” (Baliga et al. 2016)

These discursive linkages in fact accord with the framing of rule of law in Cambodia’s constitution, whose preamble anchors its attempt to establish rule of law to the destructive period of the Khmer Rouge and an imagined future return to ancient Angkor’s wealth and prestige. Indeed, and importantly, not only the ruling party discursively linked the absence of rule of law to the Khmer Rouge period:

The CNRP quickly condemned the arrest as “illegal” and reminiscent of the Khmer Rouge era. “We ask the authorities to release him unconditionally,” they wrote. (Samean and Turton 2016)

The discursive linkage of “politics” with chaos and violence can be seen in the government’s framings of the dire consequences of allowing a political compromise to end the standoff:

However, Council of Ministers spokesman Phay Siphon and Cambodian People’s Party spokesman Sok Eysan yesterday both agreed that a failure to arrest Sokha soon would render both the National Assembly and court insignificant, adding that Sopheak’s comments were only his personal opinion.

“The National Assembly allowed the court to proceed, so if we do not enforce this according to the law, [we] must close down the National Assembly and close down the court,” Siphon said.

Siphon added that the threat of demonstrations should not be a deterrent to Sokha’s arrest, calling it a separate problem that the government would deal with using “the rule of law”.

Mirroring Siphon's comments, Eysan said that if Sokha was given any leeway, then the same should apply to other prisoners as well, saying the court as an institution should be shuttered in that eventuality. (Sokchea 2016)

In this discursive context, negotiated compromise becomes thinkable as political because it is not a court or 'legal' process. But such political compromise is deeply threatening—not just of the established social order in the sense of, say, judicial legitimacy; but in the sense of physical security. Similarly, the actions of peaceful protestors—which would likely be read primarily as political in the U.S. (if secondarily criminal, as in the case of certain forms of civil disobedience which violate laws)—become thinkable as primarily criminal (under laws on 'incitement') in Cambodia because of the threat they supposedly pose via their 'political' nature to safety and stability.

Recalling the Supreme Court's dissolution of the opposition party, I argue that the discursive alignment of the Khmer Rouge with "politics" in this trope of rule-of-law discourse has facilitated some outcomes that are ironic with respect to rule of law. The Prime Minister defended this decision as upholding rule of law, as quoted above. As suggested above, this defense could be entirely cynical. But we can also see how this might be thinkable in light of the discursive linkages described above. The decision drew heavily on a narrative of the CNRP as instigator of a "colour revolution," which the ruling party had previously linked to the Khmer Rouge's black uniforms. Through this narrative, and explained in detail by the court's opinion, the actions of ordinary politics—criticizing one's political opponents—become thinkable as illegitimate, illegal attempts to destabilize the elected government. Thus, through court decisions that to most outside observers undermine rule of law because of their failure to constrain the power of the ruling party, the Prime Minister and his party have discursively aligned themselves with the rule-of-law ideal while positioning their political opponents as not merely opponents of the CPP, but opponents of rule of law itself.

V. Conclusion

In Cambodia, the establishment of rule of law has extremely high stakes, as it has been framed as a safeguard against a return to the violence, chaos, and destruction of the Khmer Rouge period. Yet the discursive linkages of politics with this period may, in combination with the discursive opposition between law and politics that forms the basis of transnational rule-of-law talk that has been taken up in Cambodia, foreclose critique of government actions that violate the rule-of-law principle of restraint on government power and legitimize the criminalization of opposition politics.