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**Measuring the Measures: Creating the Conditions for Abusive Legalism**

On 14 January 2019, the Canadian government issued a travel advisory warning citizens against travelling to China “due to the risk of arbitrary enforcement of local laws.” The warning came after a Chinese court announced a death sentence for Canadian citizen Robert Lloyd Schellenberg – a judgment widely seen as Chinese retaliation for the detention of Meng Wangzhou, an executive at the Chinese telecommunications firm Huawei, in Vancouver.

It is difficult to dispute that “arbitrary enforcement of local laws” is inconsistent with the rule of law. However, none of the major indices that purport to measure the rule of law include criteria that comprehensively address the phenomenon. I argue in this paper that defects in how the rule of law has been measured by norm entrepreneurs1 (primarily inter-governmental organisations and NGOs) have created the spaces in which abusive legalism2 can flourish.

I begin with a review of previous studies of rule of law indices and a brief history of the major rule-of-law indices. I then consider how the rhetoric of “rule of law” has been used as a vehicle for supposedly “apolitical” developmental interventions, and the current importance of rule-of-law indices. I then critically consider the major rule-of-law indices, both in light of how they are compiled and in light of the hypothetical abusive legalist jurisdiction of Erewhon.

**Keywords:** Abusive legalism; rule of law; governance indicators

1 Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUMBIA LAW REVIEW 903, 909 (1996). 2 I define abusive legalism elsewhere as the use of sub-constitutional law in ways that appear consistent with formal and procedural guarantees associated with the rule of law, but which frustrate such guarantees, consolidate autocrats’ positions, and avoid attracting unfavourable scrutiny.