Experimental approaches to justice reform: lessons from the World Bank and beyond

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10 NOVEMBER 2016
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Overview

1. ‘Building the rule of law’: idea, ideal, practice
   ◦ Longstanding bipartisan endorsement...
   ◦ ...yet many decades “of largely failed efforts” (Hadfield & Weingast 2014)

2. The prevailing approach and its discontents
   ◦ Its durability despite decades-long critique
   ◦ We need “a completely different approach” (Carothers 2006)

3. One such approach: the World Bank’s ‘Justice for the Poor’ program

4. A (Hirschman-esque) self-critique

5. Concluding reflections on ‘expertise’

1. ‘Building the rule of law’: idea, ideal, practice

“No other single political ideal has ever achieved global endorsement”
- Brian Tamanaha (2008) in The Economist
- Adam Smith, Karl Marx… to Gordon Brown, David Cameron, Robert Zoellick, George Soros…
- Now enshrined as SDG #16: ‘provide access to justice for all’

Yet no coherent corresponding theory, instrument(s), practices
- “We don’t really know what we’re doing” (Carothers 2006)

Indeed, trenchant critique of prevailing orthodoxy for 40+ years
- It is “a grave error to think of law a technology” (Haggard et al 2008)
- None of which has dislodged it; funding only increasing!

What is this approach? Why/how is it so impervious to alternatives?
2. The prevailing approach and its discontents

Various names, but basically legal transplanting
- Take legal codes, practices from rich countries to poor ones
- They work ‘here’, so surely will also work ‘there’

Since the 1970s (and earlier), a steady drumbeat of critiques
- “…can be used at best as decoration, and not something to build with” (1935)
- a field in “crisis”, perpetuated by scholars “in self-estrangement” (1974)
- has yielded, at best, a “fragile path of progress” (2008)
- We need a “completely different approach” (2006)
‘Justice reform’ in the Solomon Islands

• RAMSI: $millions spent on state-of-the-art courthouse, jail, training of judges, police...
• ...vs ‘Justice Delivered Locally’, a decentralized system of island courts responding to everyday justice concerns of everyday people
Why, how is orthodoxy so durable?

**Because our administrative systems love it**
- Can be readily counted, measured, photographed
- Presume that ‘form’ drives ‘function’

**Because external ‘experts’ can readily contribute**
- Uncertainties assuaged by deeming recommendations ‘best practices’

**Because success is determined by inputs, not outcomes**
- Trainings held, laws passed, buildings constructed, procurement rules upheld
- Uganda’s anti-corruption law...

**Because our clients are mostly the providers, not users, of justice**
- What chief justice doesn’t want a nice new courthouse?

➢ Not just a legal phenomena; rampant elsewhere (education, health, etc)
3. An alternative: ‘Justice for the Poor’

Launched in 2002; has now operated in 20 countries

Focus on

- Users of justice systems
- Problem-solving, not solution-selling
- Forging, protecting deliberative space
- Enabling more equitable contests between contending actors
  - Building capability of weaker actors
  - ‘Good struggles’ as basis of content and legitimacy of reform
- Taking contextual idiosyncrasies, political economy seriously

Quick case: Cambodian Arbitration Council (ILO)
Part of a larger suite of ‘experimental’ approaches to building state capability

**Problem-Driven Iterative Adaptation (PDIA)**
- Nominate, prioritize local problems, by locals
- Try various responses; explore positive deviance
- Iterate, adapt. (Repeat!)
- Scale through diffusion, community of practice

Broadly similar approaches explored in transnational governance
4. A (Hirschman-esque) self-critique

“At some point of one’s life, self-subversion may in fact become the principal means to self-renewal.”

Building capability for implementation itself requires capability

A water pistol in a gun fight? (Forces arrayed against it too powerful?)

How robust, really, is the ‘authorizing environment’?

Can it resist, as necessary, large political pressures for ‘quick wins’?

Getting expectations right; non-linear trajectories normal
  ◦ “The hardest part about building the rule of law is the first 500 years”

- Yet more of the same clearly won’t do; the bar here is really low...
- Not all that new (versions of this since the 1950s); need to build on the shoulders of giants and forge global community of practice
5. Concluding reflections on ‘expertise’

What does it mean to be rule of law ‘expert’? A ‘governance expert’?
How does one best prepare for a career in this ‘field’?
  ◦ Core disciplinary training vital...
  ◦ ...yet so too is willingness to disavow expertise (as popularly understood)
  ◦ Likely to bring clear a priori normative commitments...
  ◦ ...yet need to respect legitimacy of local change processes

Broader crisis of expertise in public policy
  ◦ Insufficient deference to clear scientific expertise (climate change, vaccines)
  ◦ Perhaps excessive deference to experts of complexity (elections, finance...)
  ◦ Overly demanding expectations of political expertise (predicting conflicts)
  ◦ Insufficient respect for experience, local non-codifiable expertise (water)

➢ Need a much better theory of expertise and expectations
Further reading, sources


http://buildingstatecapability.com/
http://doingdevelopmentdifferently.com/
http://bsc.cid.harvard.edu/