LEGAL PLURALISM AND DEVELOPMENT

Previous efforts at legal development have focused almost exclusively on state legal systems, many of which have shown little improvement over time. Recently, organizations engaged in legal development activities have begun to pay greater attention to the implications of local, informal, indigenous, religious, and village courts or tribunals, which often are more efficacious than state legal institutions, especially in rural communities. Legal pluralism is the term applied to these situations because these institutions exist alongside official state legal systems, usually in a complex or uncertain relationship.

Although academics, especially legal anthropologists and sociologists, have discussed legal pluralism for decades, their work has not been consulted in the development context. Similarly, academics have failed to benefit from the insights of development practitioners.

This book brings together, in a single volume, contributions from academics and practitioners to explore the implications of legal pluralism for legal development. All of the practitioners have extensive experience in development projects; the academics come from a variety of backgrounds, and most have written extensively on legal pluralism and on development.

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Legal Pluralism and Development

SCHOLARS AND PRACTITIONERS IN DIALOGUE

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Preface

CAROLINE SAGE AND MICHAEL WOOLCOCK

This volume emerged from a desire to enhance the quality and frequency of dialogue between scholars and practitioners of legal pluralism. Too often, it seemed to our group within the World Bank legal department that scholars of legal pluralism were operating at a level several steps removed from the concrete challenges faced by practitioners in the field, whereas practitioners, for their part, too often encountered or reported on vexing instances of legal pluralism in particular contexts but failed to connect their work to, or engage substantively with, the broader literature on this issue. The reasons for this divide are in part a product of familiar differences pertaining to each group's respective training, professional identity, and career incentives and an abiding sense that the others' knowledge is only of tangential relevance to their immediate concerns. Even so, it's hard to argue that this separation generates optimal outcomes for either party or for newcomers to the field of legal pluralism seeking to discern how theory, research, and policy inform (or might inform) one another.

The first motive behind this volume, then, was a pragmatic one: namely, a conviction that both scholarship and practice are enhanced by regular, open, constructive interaction. The second and related motive was our conviction that scholars and practitioners could have a distinctively fruitful exchange, one transcending the diversity of views that one expects to encounter in more traditional professional gatherings. In our experience, "diversity" in such settings is still largely diversity of a particular kind (e.g., people coming at an issue from a range of well-known theoretical perspectives), with the corresponding debates largely centered on finer points of disagreement. These "family fights," so to speak, may be no less heated, but they are the debates one expects and to which one is trained to respond; they take place within a familiar intellectual space, with the rules and roles of participants, for the most part, well rehearsed and well understood. Although much can be gained from

such debates, of course, there is a danger that they will unfold along well-worn tracks and that a flurry of activity surrounding individual trees will deflect attention from more pressing issues facing the forest. Alternatively, precisely because the interests and incentives of senior academics and frontline practitioners so often diverge, the nature and extent of the similarities and differences between them may be less clear ex ante, creating the potential for some initial sense of unease about the appropriate tone and terms of debate. Conscious of these potential strengths and weaknesses, we sought the involvement of individuals whose work (whether scholarly or applied) and temperament (capacity for frank but collegial exchange) we knew, wagering that a well-managed gathering among a relatively small number of such people over two days would yield insights that a more orthodox professional gathering would not. We hope that the contributions gathered here affirm that the wager paid handsome dividends, though their capacity to stimulate further such exchanges elsewhere would be the highest form of vindication.

The third motive was somewhat more focused and strategic: for World Bank staff engaged in these issues, especially those contributing to a global field-based research and development program known internally as Justice for the Poor, it was to ensure that their work program was sufficiently grounded not only in the prevailing literature but also in the immediate frame of reference of its leading academic contributors. Most of the World Bank's analytical staff are economists, and they enjoy almost daily input from a veritable parade of Nobel laureates and other high-profile members of their profession, in the process ensuring that the World Bank's work programs in economics are imbued with a correspondingly refined content and legitimacy and supported by close professional coalitions borne of ongoing face-to-face interactions across the scholar-practitioner divide. It was our sense that this model was entirely desirable and feasible for fields other than economics and that, specifically, the resources and "convening power" of the World Bank could be harnessed to bring together various bank staff working on legal pluralism and some of the leading scholars of this field. As we discuss in the Introduction, engaging constructively with legal pluralism is an inherently problematic issue for development agencies of all kinds, so – for both ethical and pragmatic reasons – it is vital that the leading scholarly minds inform and refine this work.

BRIAN Z. TAMANAHA

As an academic who has been critical of World Bank development activities, I was wary when first approached by members of the Justice for the Poor program to help them organize a gathering between scholars and practitioners to explore the topic of legal pluralism. Within academic circles, the World Bank is viewed with suspicion for its perceived economic policies and formulaic approaches to legal development. This exchange was an ideal opportunity for academics to learn about views within the bank, as well as a chance to communicate our views to people in the bank.

It has indeed proved to be a fruitful interaction. Academics and practitioners, in their appreciation of the implications of legal pluralism, share a great deal more in common than might appear at first glance. The main difference is that scholars have the luxury of thinking about the situation from a distance, whereas practitioners have projects to carry out within constraints that limit what can be accomplished. These contrasting perspectives are evident in the essays: the academic pieces are more general, abstract, and conceptual, whereas the practitioner pieces are grounded in concrete situations and tasks. The pieces are not directly responsive to one another, because we thought that would be too artificially restricting for both sides. But our two-day gathering at the World Bank generated a genuine dialogue on a set of shared themes that influenced the final contributions. Readers of this collection, we hope, will benefit from reading essays from both perspectives within the covers of a single book.

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