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Regulatory Governance and the Improvement of Public Services

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This study examines the relationships between public services improvement and public management reforms, including regulatory governance, in the context of the dominant reform models promoted globally. Emphasis is placed upon the contested nature of the central concepts dominant in such analysis, inconsistencies in the assumptions that inform them, and the critique of them offered by research findings on empirical practice. It is argued that current reform initiatives in these areas in developing countries are closely interlinked, but are likely to be ineffective because they embody models that do not engage accurately with the real economic and political conditions of these countries. The implications for attempts to create new mechanisms of public services delivery are considered. The approach advocated is a cautious treatment of so-called "best practice" models, allowing for adaptive responses that are rooted in local conditions and assume variations in political and bureaucratic cultures, in the belief that this more versatile approach is less of a hostage to crude and contextless global blueprints. Ultimately, the provision of desired and effective public goods and services to all citizens will be determined by a resolution of the most appropriate relationships between state, market and civil society, rather than by technical and managerial fixes. The choices involved are political.

Introduction

The theme of the conference—innovation and change in regulation and competition—could easily be mistaken as essentially narrow and technocratic, a matter of applying rational economic solutions to problems of public policy in the most effective managerial ways. Most of the papers are essentially case studies of this kind, extremely valuable for the insights they will give into public policy processes and regulatory systems, and rightly drawing attention to the usual suspects in faltering policy implementation i.e., very limited money, technical and managerial resources and low levels of institutional capacity. But we could not fully understand even these cases unless attention is given too to the "big ideas" in which they are implicated and which condition their outcomes: poverty and inequality, the state and its relation to the market, civil society and accountable governance, efficient economic development. All of these big ideas are characterized by contested understandings.

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This study examines the relationships between regulation, governance, and public management reform, in the context of the ongoing debate about the most effective ways to improve the design, management, and delivery of public services. After a survey of the conceptual issues, it explores the question of policy transfer, with particular reference to recent findings of studies of public management reform in Asia. Emphasis is laid upon the problematic nature of reforms that mimic developed country models, and the initial findings of the Center for Regulation and Competition (CRC) Regulatory Governance Research Programs are deployed to advance this debate. The study concludes that further research should focus on the phenomenon of "regulation inside government," and the significance of variations in national administrative and political cultures.

Public Management Reform

Given the concerns of this conference (and indeed in the Philippines more generally) with soundly-based public policy and its effective management to produce better public services on a socially equitable basis, the author starts by examining very briefly the dominant ideas that supply the broad context in which privatization reforms, and their relationship to effective provision of desired public goods and services must be examined. One dominant approach is public management reform, and in particular that model of management reform labelled "new public management" (NPM). Public management must be broadly defined to include all public sector changes, including therefore privatization and post-privatization regulatory reforms. In parenthesis it might be noted that NPM in its originating countries, all advanced developed economies, is after two decades or more no longer "new;" but, as Dunleavy and Hood (1994) argued in a seminal article, it cannot either be called "old" public management. Moreover, the time lag involved in the transfer of the basic model of NPM to developing economies means that in many of those countries it is still new, and not much tested; again, the Philippines and most South East Asian countries would be included in this category.

Most of the literatures on the origins of NPM and its underlying principle see these principles as involving a novel conception of the state-society, public-private set of relationships (Hood 1998 is an important exception) and are generally in agreement that the roots of what must be regarded as a new philosophy of governance are to be found in neo-liberal thought. This reform model is driven by the assumptions that large state bureaucracies are inherently defective and wasteful, and that the market is better equipped than the state to provide most goods and services. A detailed presentation and critique of this model are to be found in Minogue (1998).

There is now an extensive literature on the design, introduction and implementation of reforms of this type in developed countries, most specifically relating to the United Kingdom (UK), New Zealand, Canada, and Australia. While, as Pollitt and Bouckaert (2000) make clear in their extensive review, there has been surprisingly little evaluation of the results and effects of NPM reforms, the literature establishes two opposing sets of judgments.

The arguments expressed in favor of the reform model are:

- the market has proved a more efficient alternative to the failed traditional state model;
- there have been clear efficiency gains through the application of the NPM model;
- public managers now have more autonomy and better incentives to manage well;
- consumers of public services have now been given more choice and can hold public managers directly accountable for their service delivery;
- overall efficiency gains have helped to control public spending and deliver low-tax regimes; and
- it has been demonstrated that public administration can be transformed from a "bureaucratic" culture into an "entrepreneurial" culture.

Against these positions a substantial range of critics argues that:

- the market has been revealed to be a flawed alternative to the state;
- the evidence on efficiency gains is ambiguous and indeterminate, particularly because any cost savings are often dissipated by relatively unmeasurable transactions costs ;
- increased managerial autonomy has blurred lines of accountability and increased the risk of policy errors and delivery failures;
- the introduction of competitive principles has turned public bodies into conflictual rather than collaborative organizations;
- there has been considerable demoralization of public workforces; and

- in several cases public services have gotten worse rather than better.

In relation to the UK, where the model has arguably received its fullest realization and development, the critical literature definitely comes down on the debit side of the balance sheet (Minogue 2001), not least in the emphasis given to the failure in many sectors to improve the quality of public policy or the standards of public services. It seems reasonable on this basis to suggest that if this model of public management reform is judged to be flawed in the most favorable conditions, it is unlikely to prosper when transferred to developing countries where the initial conditions are likely to be much less favorable. This theme is taken up later in the study.

The Post-Privatization Regulatory State

It is generally accepted that, at least in the developed economies, the linkage between public management and economic reform processes has now moved into what might be called a post-privatization phase, with considerable emphasis on institutions of regulatory governance. Regulation is seen, not as a narrow exercise in rule application and adjudication, but as a crucial part of the whole range of neoliberal market reforms, which include privatization and reshaped state-market mechanisms such as contracting and public-private partnerships. Since much regulation is carried out inside government (Hood et al. 1999), it is appropriate to consider the effects on regulatory policy and practice of public management reforms that introduce into the state sector the entrepreneurial disciplines of the marketplace. Moreover, since regulation can be categorized as a distinctive mode of policymaking (Majone 1999) it is appropriate to examine its relation to the general public policy process. Finally, the significant effects on regulatory systems and processes of political ideas, institutions and relationships of power require analysis of governance frameworks and an understanding of such concepts as "the regulatory state," "regulatory capture" and "regulatory space." What this means is that regulation must always be analyzed and evaluated in a political context. The political aspects of regulatory governance in developing countries are discussed later in this study.

Good Governance

Another significant component of an increasingly global reform agenda has been the concern of aid donors with governance, initially "good governance" (democratization, the rule of law, human rights protection, transparency, participation and accountability). "Good governance" and "new public management" are regarded as mutually supportive reforms, with greater political accountability contributing to more efficient and less corrupt government. Again, a detailed critique is offered in Minogue (2002a). Overall the donor position now might fairly be summarized (as in UNDP 1998, and DFID 2000) in terms of giving support to three key players (state, market and civil society) with the state providing a conducive political and legal environment for a private sector which will generate jobs and income, while civil society maintains political and social interaction with both. What is notable here is that the interplay between state, market and society makes "governance" at once an inclusive and a vague concept, leaving considerable room for flexible interpretation in individual cases.

As a reform strategy, good governance aims to achieve much more than mere efficient management of economic and financial resources, or particular public services; it is also a broad reform strategy to strengthen the institutions of civil society, and make government more open, responsive, effective, accountable and democratic. In this respect, "public management" is one component of the broader strategy of "good governance;" and it is in good governance that we see the efficiency concerns of public management combine with the accountability concerns of governance. A related assumption in governance thought is that there is a clear relationship between democratic political systems and effective economic development. We do not escape from the "contested" concept, with the orthodox, modernization approach claiming that there is, and should be a link, while a critical literature rejects such a view.

Policy Transfer: Getting the Wrong Institutions Right or the Right Institutions Wrong?

In this case, the question needs to be asked: why are these reforms being pressed so strongly on other countries when they are contested and controversial in developed states, and even there have not been properly evaluated? This leads on to the issue of policy transfer in this arena to developing countries.

It is clear at this point in time that the range of reforms addressed (public management, good governance, and post-privatization regulation) are all being strongly promoted in developing countries through a combination of global economic pressures, international aid donor activity, and national initiatives. It has been argued that these varied strands are interlinked in ways that produce a convergent, "global" model of economic-political-managerial relations (see, for example, Aucoin 1990). Hood (1998) characterizes all this as essentially an aspect of modernization, in which a traditional paradigm of public administration is threatened with replacement by a state of the art managerial paradigm that is unavoidable, irreversible, beneficent, and convergent across systems.

Yet the problems of direct policy transfer across cultural boundaries are beginning to be well documented. In this context a significant question is addressed both by Dolowitz and Marsh (1998) and Common (1999, 1998). How, and under what conditions, does the effective "transfer" of institutional reforms occur between different administrative and political systems? Dolowitz and Marsh attempt to establish a general framework within which issues of policy and institutional transfer may be examined. They consider both voluntary transfer, essentially a process of imitation, either through adoption of a "best practice" model, or through educational and training mechanisms; and coercive transfer, where some form of power is used by one organization to shape another (for example, through the enforcement of international agreements or aid donor program conditionality. They identify a range of key actors (notably a group labelled "policy entrepreneurs"), who combine to produce transfers, between different systems, of policies, institutions, ideologies and attitudes. They also elaborate a range of constraints that inhibit, affect, or prevent institutional and policy transfer, i.e., which help to explain transfers which "fail."

Common is concerned with a particular case of transfer: what are the agencies which can be identified as having promoted the transfer of new public management reform initiatives, which he takes to be characterized primarily by the adoption of market-type mechanisms to replace more traditional forms of public action? He suggests that multilateral aid donors have played a crucial role in this respect, and "need to be understood both as facilitators of policy transfer and as a key source of pressure on governments to modernize their public sectors" (Common 1998: 61). These pressures may be coercive, but often involve collaboration with national political elites anxious to secure the political benefits in a process labelled "the politics of reinvention." Common goes on to argue that NPM transfer exemplifies the integral relationship between the modernizing and democratizing tendencies associated with the globalization of an essentially Western model of political economy: international organizations appear to be instrumental in establishing such linkages. He uses privatization reforms as an example of a widespread strategy which can only be understood by taking into account the international environments that influence policy; and suggests that this internationalization of public management reforms may prevent national governments from innovating in ways suited to their own political and institutional contexts.

This directs our attention to what might be called "reception": that is, what are the characteristic responses of countries on the receiving end of the transfer process? To what extent do they genuinely embrace the NPM reform model, or even properly understand it? What degree of transformation of their institutions occurs? Does adaptation occur in ways that transmute the reform model itself, suggesting the need for revision or revaluation of the model (as suggested by China) (Duckett 2001; Straussman and Wong 2001)? Or is there evidence that the reforms may be damaging or inappropriate, or are subject to resistance, providing the basis for an argument that the reform model is itself deeply flawed, and at best either impractical or irrelevant? This is, after all, a model for the shaping of a new kind of state, and the problems of attempting such an ambitious transfer have been relatively neglected. The most obvious is that national administrative and political cultures vary widely, and that some process of cultural adaptation is essential. A second problem is that where NPM reforms are part of a good governance package, and the subject of aid conditionality, there may be a tendency for donors and recipient countries to collude in a set of facade reforms which make little real impact, but respond to the vested interest of each party in visible cooperation in pursuing a reform agenda (Harrison 2001). And if the NPM model, in particular, cannot be proved to be working in countries rich in managerial resources and skills, what makes it likely to work in countries often seriously deficient in such skills and resources?

The literature on policy transfer as it relates to more general market-oriented governance reforms in developing economies is still fairly sparse, but what there is tends to the conclusion that reforms are largely rhetorical; blueprints are borrowed, but honored in the breach more than the observance, with considerable local variation in reform trajectories, where such can be said to exist (Common 1999, 1998; Parker 1999; Sozen and Shaw 2002). The blueprint itself has been subjected to critiques for being too "top-down" (Wallis and Dollery 2001) and for being inappropriate to the bureaucratic/managerial cultures characteristic in developing countries (Minogue 2002b, Schick 1998).

But we should not make the mistake of thinking that this is the only blueprint on offer, or the only one being attempted. A recent set of studies of public management reform in a range of Asian countries (Cheung and Scott 2003a) gives rise to the significant conclusion that across the eleven countries studied, three paradigms or models can be seen operating. One of these is, indeed, new public management, but here the judgment is that "the substance of NPM has not so far been widely adopted in the Asian context" (Cheung and Scott 2003b: 11). The reasons given are that convergence ideas overlook unique traditions of administrative culture and a diversity of national adaptations of the NPM model; and that the three pillars approach (state-market-civil society) "is wholly novel in many Asian countries" (Cheung and Scott 2003b: 13) not least because there is little tradition of state devolution to the market.

Cheung and Scott also identify two other paradigms. The first is labelled "building state capacity" with its concern to strengthen administrative and public policy institutions and to create a strong and active state with autonomy from special interests. This seems little more than a variant on the traditional state and institution building model of the 1960s and 1970s. Certainly in Asia this paradigm has been dominant with both elites and citizens seeing the state as the natural provider of goods and services, while even international agencies here stress "public service fundamentals."

The second alternative paradigm is described as "civil society governance networks," a central feature being the need to build autonomous communities that also take over some public service functions from the state. However, Cheung and Scott note in their studies evidence of a reluctance to allow such autonomy, or the absence of effective social networks for this purpose, or even deeply embedded social and political resistance (see especially Beeson 2003). The "definitional looseness of governance values" leaves national regimes room for manuever, resistance or rhetorical acceptance while conducting "business as usual" (Cheung and Scott 2003b: 24). It is certainly arguable that most public management reform in developing countries in the last forty years has conformed to the traditional paradigm and rightly so, in the sense that the greatest need in most of these countries is to construct a strong autonomous state and efficient central institutions of administration and policy direction; yet the NPM model is rooted in the very opposite conception of the need to reduce and weaken the central state, and is in this context a potentially destructive formulation. Perhaps fortunately it is, as Polidano says, "only one among a number of contending strands of reform in the developing world" (Polidano 2001: 46).

Theory and Practice: The Reality Gap

A classic dilemma of administrative/managerial reforms in developing state governance has always been this: how can an underdeveloped, defective, resource-scarce state system reform itself, given that such reforms must be designed, implemented and given impetus by this unreformed and inadequate state itself? As in all public policy, an "implementation gap" is found, or what in this study is designated as a "reality gap:" that is, the bureaucratic, political, social and economic realities typical of developing countries bear little relationship to the conditions necessary for the reform models proposed. Yet these realities cannot be wished away; if reform is to be more than a rhetorical flourish it must in some sense be rooted in, and responsive to real processes and existing forms of behavior.

Some of these elements are highlighted in the initial findings of the Regulatory Governance Research Program of the Center on Regulation and Competition (CRC) at the University of Manchester, derived in part through its network of research partners in both developed and developing economies. This research focuses on issues of regulatory governance and post-privatization reforms and its findings are relevant to my general theme. These findings may be summarized briefly as follows:

- There are serious gaps in our knowledge and understanding of the governance process in developing economies; these governance structures appear to serve a range of objectives other than efficiency; correspondingly due attention to process, i.e., how things really work in practice, is essential to effective governance reform.

- Transferred "best practice" models demonstrate clear adaptive variations in different countries, and it is likely that the "blind" importing of these models from developed economies will be counterproductive where no account is taken of differences in legal infrastructure, bureaucratic culture, market realities, and political values.

- Regulation inside government remains widespread and this will bring resistance to stereotypical regulatory reform.

- A key task is to design governance reforms so that opportunities for corruption are minimized rather than enhanced.

- Political institutions and relationships constitute a primary operating context for economic reforms; but these political factors are frequently neglected or inadequately understood by external economic policy actors; in this respect the rhetorical nature of political commitment to such reforms is consistently underestimated. Well-organized and institutionally entrenched political interests will often succeed in controlling or subverting economic agencies; nonetheless, authoritative and stable political interests can be a driver for economic reforms.

- Market reforms of basic public services are likely to meet political and user resistance if they reduce access, affordability, and quality, and the impact of these reforms on poor communities is inadequately understood.

These findings demonstrate that significant constraints on efficient and effective policy and administration flow from the cultural characteristics of the government system; a good example here is the persistence and pervasiveness of corrupt behavior, which has attracted from international aid donors a seriousness of intention matched only by the extreme misconception of their analyses and strategies (Minogue 2002b). We need to understand better how these political, bureaucratic and cultural factors impede effective public management reform. We also need a better understanding of the role and operation of legal institutions and actors in regulatory systems that are politically and behaviorally constrained (Ogus 2003). There is therefore a link between general public management reform and regulatory reform, in the sense that the effectiveness of any area of public policy, including economic policy, will be determined by whatever are the bureaucratic and political constraints and weaknesses inherent in the general system of governance. Political factors may be taken in principle to represent an opportunity for commitment to effective reforms but are just as likely to be a potential source of inhibition. The tension between efficiency objectives and political imperatives is clearly marked, and is itself responsible for the relatively slow progress of institutional reforms.

Three examples may be cited here. First, Knight-John and Peruma (2003) demonstrate in a study of regulatory impact assessment in Sri Lanka (or rather, its absence there) that regulatory weaknesses in Sri Lanka are explained by a flawed institutional framework, the absence of an explicit regulatory policy, and "the unchecked poor governance that has saturated every stratum of the state." This latter characteristic leads to "easy capture by interested parties," even the possibility that regulatory capture has deliberately been built into the system. Where formal institutions of regulatory accountability exist, they largely constitute a facade concealing the de facto politicization of the regulatory process (Knight-John and Peruma 2003: 8-9).

A second example of the problematic politics of regulatory governance and public management reforms can be drawn from the Philippines, as indicated in separate studies by Hayllar (2003) and Montinola (1999). Montinola develops a complex argument based on principal-agent theory, and derives from a study of pre-Marcos legislative and electoral politics the view of competitive politics correlated with weak state capacity, high levels of public corruption, and poor support for bureaucratic reform. Hayllar's study shows that the democratizing reforms at successive stages in the post-Marcos period did not essentially change these fundamentals, or loosen the hold of traditional economic and political elites, and that despite rhetoric about reforming the system of governance and public administration, reform has served primarily to legitimize and strengthen the traditional elite's continued dominance over government. Real gains in the constitutional sphere and in a radical decentralization initiative, he argues, were less significant than "the institutionalization and considerable enlargement of pork-barrel funds necessary to maintain congressional and elite support for the government's reforms" (Hayllar 2003: 257). This system of patronage reinforced and funded systemic corruption. Economic reforms such as privatization and deregulation had some successes in improving services but also constituted new opportunities for established elites to take easy "rents." Ironically, the main drive to control corruption and increase bureaucratic efficiency came under President Estrada, soon to fall from power himself on corruption charges. Hayllar's conclusion is that bureaucratic reforms in the Philippines have been stalled by the strength of the existing patronage system; and that further economic, social and political reforms will be permitted only to the extent that they limit civil unrest and do not present a fundamental challenge to the privileges of the traditional elite. This may seem a depressing conclusion at first glance, but it is important to realize that political elites have significant constituencies to satisfy, including "middle class" groups who favor policies of economic modernization and national development, as well as a broader concern to alleviate or reduce poverty in order to reduce social and political instabilities. This is bound to create a certain amount of political energy behind economic reforms, even if the intention is to bolster existing political formations.

A third study, one that illustrates the crucial effect of politics on privatization strategies and outcomes is provided by Smith (2003). His comparison of the privatizations of electric power in Malaysia and Thailand argues:

- In both countries, restructuring and privatization of the electricity sector have "dramatically changed the nature of governance" of this sector (Smith 2003: 275).

- Strong government leadership in Malaysia meant rapid privatization, while weak coalitions in Thailand meant slow and contentious progress.

- In both cases, restructuring was used to reward political supporters.

- The strength of labor unions in Thailand meant resistance to reforms but also ensured a more open and responsive policy process; in Malaysia, on the other hand, there was a rapid implementation but a closed policy process, "the net result of which has in fact been a reduction in competition, increase in charges, and consumer complaints" (Smith 2003: 275).

These cases merely illustrate the impossibility of designing and introducing rational economic reforms without regard to the bureaucratic and political contexts which ultimately determine how and whether economic (and indeed managerial) measures work out in practice; they also imply that while politically contentious debates over privatization and regulatory reforms may slow down the pace of reform, the benefits derived from a more open and transparent process may ultimately produce more effective outcomes.

Conclusion

The contested understandings discussed earlier in this study should warn us of the dangers of attempting to impose or even to search for universalist models of political economy that take no account of cultural relativism. Citizens of every country want, need and aspire to responsive and accountable systems of governance which at the same time demonstrate a capacity to provide these citizens, not only with the economic foundation for sustainable employment and income, but with a minimum range of affordable goods and services such as education, health, water, energy, transportation, communications, and so on. But the main conclusion of this study must be that these desirable objectives are unlikely to flow from the unthinking application of notional models which are themselves embedded in other systems of economic, social and political thought and practice. Hood (1998) rejects the convergence argument for a global model of public management reform not only on the ground of adaptive cultural variation but because, he argues, national systems are "path-dependent" i.e., their existing possibilities for change are restricted and shaped by prior institutional formation, for example, through colonial systems, decolonization processes and types of political regime. Even where similar changes are introduced, the outcomes may be quite different in different places. A case in point is executive agencies. A recent comparative study (Pollitt et al. 2000) shows that while a common model can be identified, the operation of agencies in practice differed considerably even between developed countries, again in transitional economies and still further in developing country examples. What appears to be convergence on the surface turns out to be very different when its working out in practice is examined. Hood is right to warn against what he calls "fatal remedies" (1998: 208), because of the tendency for idealized modernization initiatives to produce perverse and unexpected results. Above all, proponents of liberalizing reforms need to be reminded that poverty, corruption and bureaucratic pathologies are the products, not the causes of underdevelopment.

In this respect a persuasive analysis is offered by Khan (2003) who argues that there are two alternative views of the role of the state in developing economies. The model preferred by donors (and largely the object of review and criticism in this study) is labelled by Khan a "service-delivery" state, and its failures flow essentially from governance failures: only correct these failures and all else will be delivered. Khan proposes that the more realistic model is that of the "social transformation" state, which focuses on the role of the state in the transition to capitalism, and subsumes the first model. Crucially, "the reform package which aims to push institutions in developing countries in the direction of a generalized advanced country model is not actually relevant for assisting developing countries" in carrying out a transformation which "has historically required stronger and more interventionist state capacities than are envisaged in the liberal market consensus" (Khan 2003: 3). Khan's conclusion is that "the distribution and disposition of political power in society are key determinants of enforcement success, and the emergence of high-growth states is therefore as much a task of political as it is of institutional engineering; and that the more persistent types of state failure occur when institutions fail because of an inappropriate match between internal political settlements and the ...interventions through which states attempt to accelerate transformation and growth" (Khan 2003: 5).

It is one of the received truths of political science that institutional reforms not only require institutional capacity, but must also be compatible with the interests of powerful social groups, usually expressed in some form through the political system (Hood 1976; and there is early recognition of this from a pathfinding development economist: Myrdal 1968). This relationship can only be played out on particular national stages, because internal political settlements will be different in each country. As Khan rightly says, the challenge for both donors and researchers is to identify "feasible institutional and political reform strategies" (Khan 2003: 36). A starting point would be to recognize that dominant reform models that amalgamate neoliberal economics, market-oriented principles of public management, and Westernized constructs of "good governance" will not, on existing evidence, produce such strategies. Donors especially must learn to accept the realities of local political cultures that shape and mediate externally-derived economic and managerial reforms, rather than being transformed by them.

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