Advancing Law and Governance through Inclusive Devolved Reflection

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The United Nations Sustainable Development Goals ("SDG"'s) include the target of building "inclusive institutions at all levels" through "citizen participation in decision making."[1] Yet the dynamics of how citizen participation may be enhanced through reflective processes in advancing systems of dispute resolution remains understudied. Collective participatory reflection forms part of a tapestry of action, consultation and study through which "questions can emerge and methods and approaches be adjusted"[2] and by which "collective identity" is created and "collective will" strengthened.[3] The capacity to "act in the light of reflection" cultivates "an instinctive posture of learning"[4] and allows for insights to "gradually accumulate about effective ways to work for the betterment of society."[5] This power to reflect as individuals and communities has increasingly been tapped to varying degrees within institutions of governance. This paper begins with an exploration of what may be described as an emerging approach to 'devolved reflection' as a mode of organizational practice, as an emerging legal principle and norm of customary international law, as an analytic and normative framework for new governance policy, as an applied reflective research methodology and as a component of a larger framework of learning through reflective action. The paper will draw on insights from research highlighting the role of engaged reflection and shared knowledge generation in facilitating conditions conducive to dynamic advancement within transnational dispute resolution systems -whether it be in the form of community engagement with consumer financial institutions, cross border-arbitration or post-disaster governance initiatives. The work traces the role of capacity building, cohesion and collective contribution to knowledge generation.

[1] See: Frank Anthony, Fariello [editor]; Boisson de Chazournes, Laurence [editor]; Davis, Kevin E. [editor]; Lucas, Samuel V.P. [editor]. 2016. *Financing and implementing the post-2015 development agenda : the role of law and justice systems (English)*. The World Bank Legal Review; Vol. 7. Washington, D.C. : World Bank Group.
http://documents.worldbank.org/curated/en/824011473329198139/Financing-and-implementing-the-post-2015-development-agenda-the-role-of-law-and-justice-systems

[2] Universal House of Justice, 26 November 2012

[3] Universal House of Justice, 27 December 2005

[4] Universal House of Justice, Ridvan 2016

[5] Universal House of Justice, October 2017

I. Introduction: Devolved Reflection and Organizational Progress

Echoing Goal 16 of the UN's Sustainable Development Goals of promoting "just, peaceful and inclusive societies" by building "effective, accountable and inclusive institutions at all levels" through "citizens' participation in decision making,"[6] recent scholarship has described an important shift in organizational structure aspiring toward equipping such entities to "draw out more human potential"[7] through reflective dialogue so as to enable them to address increasingly complex and critical social and environmental challenges.[8] Among the defining features of such organizations is a shift in orientation toward structures in which "purpose… [is] the guiding principle."[9] Such organizational systems operate on the basis of "peer relationships"[10] and are assisted to advance through joint reflection by asking "the …questions that help teams to find their own solutions"[11] while "trust[ing] in the collective intelligence of the system."[12] Such an approach resonates with emerging work in "Global Experimentalist Governance" which traces how participatory and multilevel problem solving may advance when particular problems are framed in an open way, and subject "to periodic revision by various forms of peer review in light of locally generated knowledge."[13]

Reflecting "a shift from [a] deficit to [a] strength-based paradigm"[14] through a process of devolved "collective… self-reflection…,"[15] recent research has found that "among the great number of innovative… [management] practices… joint reflection" is credited with contributing to significant advances in organizational culture and functioning.[16] In such settings, "collective insights emerge, as well as decisions and initiatives [to be] carried out …"[17] assisting "the whole organization [to] gro[w] its way through one topic after another."[18] At the

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[6] Forward by Mahmoud Mohieldin in Frank Anthony, Fariello [editor]; Boisson de Chazournes, Laurence [editor]; Davis, Kevin E. [editor]; Lucas, Samuel V.P. [editor]. 2016. *Financing and implementing the post-2015 development agenda : the role of law and justice systems (English).* The World Bank Legal Review; Vol. 7. Washington, D.C. : World Bank Group. http://documents.worldbank.org/curated/en/824011473329198139/Financing-and-implementing-the-post-2015-development-agenda-the-role-of-law-and-justice-systems

[7] Frederic Laloux, (2014) *Reinventing Organizations: A Guide to Creating Organizations Inspired by the Next Stage of Human Consciousness*, Nelson Parker, p. 4.

[8] Ibid. p. 5.

[9] Ibid. p. 50.

[10] Ibid.

[11] Ibid. p. 69.

[12] Ibid. p. 85.

[13] Gráinne De Búrca, Robert O. Keohane and Charles Sabel "Global Experimentalist Governance." *British Journal of Political Science*, Available on CJO 2014 doi:10.1017/S0007123414000076

[14] Ibid.

[15] Ibid. p. 154.

[16] Ibid.

[17] Ibid.

[18] Ibid. p. 156.

same time, reflective spaces permit organizations to regularly acknowledge and affirm practices that are working well in order that they may be strengthened.[19]

The significance of devolved reflective process in organizational advancement can be linked to a rich body of scholarship highlighting the role of social capital in supporting cooperative, cohesive and creative social behavior, enhancing productivity[20] and facilitating collective action for mutual benefit,'[21] including improved social welfare and reduced corruption.' [22] Social capital, understood as a set of norms, values, attitudes, beliefs and relationships,[23] is largely formed through the creation of spaces within a community that foster changes in thinking, attitudes and behavior and the formation of trust[24] – built through collective exchange, learning and action.[25] It is strengthened by consultative processes through which stakeholders continually elaborate a common understanding of collective objectives[26] articulate their interests [and] mediate their differences…[27] in order to promote development for the collective whole."[28] Inclusivity in is an important component of social capital and has been enriched by recent scholarship showing that cluster rather than individualized group membership selection can significantly enhance group diversity in multiple contexts.[29]

Drawing on insights from 'devolved reflection' processes, this paper will examine how such an approach is increasingly echoed in emerging legal principles and norms (Part II), in analytic and normative frameworks for new governance policy (Part III) in applied reflective research methodologies (Part IV) and as aspiring toward consultative principles (Part V).

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[19] Ibid. p. 160

[20] Putnam, R.D., "Bowling Alone: America's declining social capital" (1995) 6 *Journal of Democracy* 1.

[21] Woolcock, M., "Social capital and economic development: Toward a theoretical synthesis and policy framework" (1998) 2 *Theory and Society* 27.

[22] Putnam, R.D., "Bowling Alone: America's declining social capital" (1995) 6 *Journal of Democracy* 1.

[23] *See* Valentinov, V.L., "Toward a Social Capital Theory of Cooperative Organization" (2004) 3 *Journal of Cooperative Studies* 37.

[24] *See* Putnam, R.D., "Bowling Alone: America's declining social capital" (1995) 6 *Journal of Democracy* 1.

[25] UNDP Strategy Note on Governance for Human Development, 2004; See also World Bank Group: http://siteresources.worldbank.org/INTSOCIALCAPITAL/Resources/Social-Capital-Initiative-Working-Paper-Series/SCI-WPS-24.pdf

[26] See World Bank Group: http://siteresources.worldbank.org/INTSOCIALCAPITAL/Resources/Social-Capital-Initiative-Working-Paper-Series/SCI-WPS-24.pdf

[27] UNDP Strategy Note on Governance for Human Development, 2004

[28] *See* http://www.socialcapitalresearch.com/

[29] See: Richard R.W. Brooks, "Supermodular Architecture of Inclusion," 30 *Harv. J.L. & Gender* 379 (2007) (with Valerie Purdie-Vaughns).

II. Devolved Reflection as an Emerging Legal Principle and Norm of Customary International Law

In addition to the growing use of devolved reflection in organizational governance, such principles, particularly the principle of community based decision making has increasingly been referenced as a customary norm of international law[30] both in the realm of humanitarian assistance and local resource use planning.

In the sphere of humanitarian assistance, states are increasingly being required to facilitate the establishment of mechanisms enabling participation[31] and reflective planning.[32] The Good Humanitarian Donorship consortium of states emphasizes the need to involve communities in 'the design, implementation, monitoring and evaluation' of relief activities.[33] Article 2(c) (ii) of the 2012 Food Assistance Convention stipulates one of the governing principles in the provision of food assistance as being the involvement of communities 'in the assessment of their needs and in the design, implementation, monitoring and evaluation' of the relief activities.[34]

A range of qualitative guidelines and standards are emerging from treaties, resolutions of states and self-regulatory instruments including the Sphere Charter, requiring that local participants be involved, at minimum, 'in the design, implementation, monitoring and evaluation' of the humanitarian relief activities.[35] This includes access to appropriate and safe venues for meetings,[36] balanced representation,[37]understandable language[38] transparent and effective

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[30] For complete discussion see: Ali, S. and Kabau, T. (2015). *A Human Rights-Based Approach to the Global Regulation of Humanitarian Relief: The Emerging Obligation to Incorporate Local Participation*, BROOKLYN JOURNAL OF INTERNATIONAL LAW, Vol. 40, No. 3, 791-826.

[31] For complete discussion see, Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321.

[32] Brigitte I Hamm, 'A Human Rights Approach to Development' (2001) 23 *Human Rights Quarterly* 1005–1031, 1011.

[33] Good Humanitarian Donorship, 'Principles and Good Practice of Humanitarian Donorship' (endorsed in Stockholm, 17 June 2003) paragraph 7 <http://www.goodhumanitariandonorship.org/gns/principles-good-practice-ghd/overview.aspx> accessed 19 May 2014.

[34] Food Assistance Convention (adopted 25 April 2012, entry into force 1 January 2013) <http://www.foodassistanceconvention.org/convention/FoodAssistance.pdf> accessed 11 May 2013.

[35] Article 2(c) (ii) of the Food Assistance Convention (adopted 25 April 2012, entry into force 1 January 2013) <http://www.foodassistanceconvention.org/convention/FoodAssistance.pdf> accessed 11 May 2013. See also: Good Humanitarian Donorship, 'Principles and Good Practice of Humanitarian Donorship' (endorsed in Stockholm, 17 June 2003) paragraph 7 <http://www.goodhumanitariandonorship.org/gns/principles-good-practice-ghd/overview.aspx> accessed 19 May 2014; United Nations and the Inter-Agency Standing Committee, 'Civil-Military Guidelines and Reference for Complex Emergencies' (2008) 19 <https://docs.unocha.org/sites/dms /Documents/ENGLISH%20VERSION%20Guidelines%20for%20Complex%20Emergencies.pdf> accessed 5 May 2014; Emergency Capacity Building Project, 'Impact Measurement and Accountability in Emergencies: The Good Enough Guide' (2007) 34-35 <http://www.ecbproject.org/inside-the-guide/view-the-good-enough-guide> accessed 19 May 2014.

[36] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

[37] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

feedback mechanisms,[39] use of local resources and skills,[40] and engagement with progressive local religious, cultural and traditional norms[41] given that resource use questions are "inherently infused with value judgments"[42] and the reduction of such questions to a single metric, implies "significant loss to those values."[43] Such guidelines are emerging in order to ensure uniform and objective qualitative standards of participation in various stages of relief.

II. Devolved Reflection as an Emerging Framework for New Governance Policy and Evaluation

Elements of devolved reflection may be traced within the emerging field of new governance scholarship.[44] This area of inquiry has provided a framework for both policy making and evaluation of policy outcomes through recognition of the value of expanded participation and partnership on the part of governments and non-state actors in solving public problems[45]; a learning-focused orientation[46]; the use of public private partnership in regulatory reform[47]; the role of the state as a convener, catalyst and coordinator[48]; and development of problem-solving capabilities[49]. Recent scholarship has likewise examined the challenges facing new governance; including ensuring participants have the necessary skills for participation[50], the development of managerial and procedural safeguards[51], achieving stakeholder participation under conditions of social conflict[52] and representational and distributional inequalities[53].

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[38] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

[39] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

[40] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

[41] Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project, 2011) 55.

[42] Jim Rossi, Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking, 92 NW. U. L. REV. 173, 198 (1997).

[43] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

[44] For further discussion, see: Ali, S. (2015). *Towards Peer Presence in Post-Disaster Governance: An Empirical Study*, HASTINGS INTERNATIONAL AND COMPARATIVE LAW REVIEW, Vol. 38, No. 2, 243-274

[45] Lobel (a); Solomon, Jason M., 'Law and Governance in the 21st Century Regulatory State' [2008] *Texas Law Review* 86, 819-856

[46] Solomon, loc. cit.; Cohen, Amy J., 'Negotiation, Meet New Governance: Interests, Skills, and Selves.' (2008) 33 *Law & Soc. Inquiry* 33, 503.

[47] Alexander, Lisa T., 'Stakeholder Participation In New Governance: Lessons From Chicago's Public Housing Reform Experiment.' [2009] *Geo. J. Poverty Law & Pol'y* 16, 117

[48] Dorf, Michael C. & Sabel, Charles E.. 'A Constitution of Democratic Experimentalism.' [1998] *Colum. L. Rev.* 98 267; Solomon, loc. cit.; Cohen, loc. cit.

[49] Cohen, loc. cit.

[50] Ibid.

[51] Salamon, Lester M., 'The New Governance and the Tools of Public Action: An Introduction.' [2001] *Fordham Urb. L.J.* 28, 1611

[52] Alexander, loc. cit.

[53] Ibid.

New governance places opportunities for stakeholder participation and reflection as central to decision making processes[54]. Stakeholders, including organizations (institutions, public agencies, private firms and NGOs), interact, share responsibility and together generate policy[55]. States and localities are expected to be better situated to facilitate participatory processes and once solutions are found, they are best suited to monitor implementation[56].

Among the normative values identified with new governance[57] are ownership, responsibility and follow-through by stakeholders given that solutions are derived from community input[58]. Deliberation and reflection on the part of diverse participants, it is suggested, yields wiser results[59]; and collaboration may give rise to higher levels of transparency and accountability[60].

When effectively facilitated, devolved governance efforts respond to the aspiration for broad based contribution to decision making.[61] However, when implemented without regard to issues of universal representation and disparate access to resources, the process has the potential of replicating and possibly exacerbating existing representation problems,[62] and simply offering a means of providing "input" to existing plans rather than originating plans at the community level. Similar to the challenges facing responsive law[63], such as the existence of subjectivity in rule-making, and the danger of getting the moral question wrong through caving into power politics (as advanced through special interests, for example), likewise new governance approaches face the potential

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[54] Ibid 333

[55] Ibid

[56] Lobel, Orly. 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought' (2004) 89 *Minn. L. Rev.* 342, 381-382

[57] E.g. see Sabel, C., & Zeitlin, J. (n 70)

[58] Van der Heijden, Jerome. (2013) *supra* note 18, 9 [cannot find]

[59] Noveck, B. 'The Single Point of Failure' in S. Van der Hof & M. Groothuis (Eds.), *Innovating Government* 77-99 (The Hague: Asserr Press, 2011) 85

[60] See van der Heijden, Jerome (n 78) 10

[61] See: Philip Selznick, Law and Society in Transition: Toward Responsive Law. 1st ed. New Brunswick: Transaction Publishers, 1978. "Responsive Law" is described in relation to both "Repressive Law" (law as servant of repressive power) and "Autonomous Law" (law as differentiated institution capable of taming repression and protecting its own integrity). Repressive Law generally takes little note of affected interests. A "common source of repression is the poverty of resources available to governing elites" in circumstances where "urgent tasks must be met under conditions of adequate power but scarce resources." Autonomous Law can be characterized by the Rule of law" born when legal institutions acquire enough independent authority to impose standards of restraint on the exercise of governmental power. Specialized legal institutions claim qualified supremacy within defined spheres of competence. Autonomous law reflects a transition from blanket certification of the source of power to a sustained justification of its use. "Legal institutions purchase procedural autonomy at the price of substantive subordination." The downside is that the application of rules ceases to be informed by a regard for purposes, needs, and consequences. (64)

[62] Foster at 485.

[63] Among the challenges noted by Nonet and Selznick include the fact that "responsive law is a precarious ideal whose achievement and desirability are historically contingent and depend especially on the urgencies to be met and the resources that can be tapped." Specifically, there is the danger of subjectivity in rule making and "getting the moral question wrong." The achievement of responsive ideals depends a great deal on the development of "cognitive competence" [within the judiciary] to consider social conditions, gather relevant information from outside sources in order to search for a solution, rather than arbitrarily lay down a rule.

danger of rendering community resource problems "less visible or subject to scrutiny, because the farther the process is removed from a centralized decision-maker, the less accountability there will be..."[64] Research has suggested that in order to benefit from devolution and decentralization[65], the necessary conditions for its success should include (1) the broadest possible degree of stakeholder participation compatible with effective decision making, (2) effective and informed monitoring[66], (3) ensuring participants have the necessary skills for participation[67], (4) the development of managerial and procedural safeguards[68], and (5) ensuring stakeholder participation under conditions of social conflict[69] and distributional inequalities[70]. The challenge at present is to examine ways in which reflective devolved decision making processes might be strengthened to address potential disparities, the focus of the following sections of this paper.[71]

IV. Devolved Reflection as a Research Methodology and Approach to Policy Refinement

In an effort to advance participatory reflective approaches in comparative dispute resolution research design, a series of research projects will be examined to draw out lessons learned as to how local engagement responds to and shapes global norms in an effort to enhance access to justice. Insights from four projects highlighting the role of engaged participation and shared knowledge generation in consumer financial dispute resolution, cross border-arbitration and post-disaster governance initiatives will be examined. The work traces the role of capacity building, cohesion and collective contribution to knowledge generation.

In examining the dynamics by which selected dispute resolution organizations change and develop, rather than fundamental or top down shifts in structure, they appear to advance through 'iterative revolutions' in thinking and organization. The idea of iterative revolutions, building on the concept of scientific paradigmatic shifts as described by Kuhn[72], implies that over time, organizations develop through experiencing new challenges, asking new questions and addressing these questions through a collective body of shared knowledge and practice. Similar to Kuhn's notion that the evolution within scientific theory does not emerge from the mere accumulation of facts, but rather from a set of changing intellectual circumstances and possibilities.[73] A core

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[64] Id.

[65] Alexander, Lisa T. 'Reflections on Success and Failure in New Governance and the Role of the Lawyer' (2010) *Wisconsin Law Review Symposium Afterword* 737, 738

[66] Ibid 740-741; see also: Ali, S. 'Measuring Success in Devolved Collaboration.' (2010) 26 *Journal of Land Use and Environmental Law*

[67] Ibid

[68] Salamon, Lester M., 'The New Governance and the Tools of Public Action: An Introduction.' [2001] *Fordham Urb. L.J.*28, 1611

[69] Alexander, loc. cit.

[70] Ibid

[71] See: Ali. S. (2010). *Measuring Success in Devolved Collaboration*, JOURNAL OF LAND USE AND ENVIRONMENTAL LAW. 93-112.

[72] Thomas Kuhn, (1962), The Structure of Scientific Revolutions.

[73] Kuhn

element of this process requires exploring alternatives to 'long-held, obvious-seeming assumptions' through asking questions and reflecting on experience. In contrast to the traditional scientific model in which a lone scientists engages in paradigm challenging experiments, this process implies the collective work of groups, organizations and communities engaged in a joint exploration of knowledge.

Engaging in Reflective Process as Scholars, Users, and Practitioners: 4 Case Studies

At present, existing literature provides useful insights into efforts at establishing reflective spaces within existing ADR organizations. For example in Nancy Welsh's article on Magistrate Judges, Settlement and Procedural Justice, she examines emerging opportunities for feedback and self-reflection amongst mediation administrators in an effort to improve overall quality and procedural fairness in mediation.[74]

In addition to policy reflection within court settings, reflective research approaches have been used to advance understanding of how comparative systems of ADR function and advance in diverse contexts. The following will highlight four dispute resolution research projects that have employed a process of devolved reflective engagement with practitioners working in institutions involved in the arbitration of cross-border disputes, consumer financial grievance mechanisms, post-disaster humanitarian aid and court mediation reform and development.

What unites each of these projects is a concern with the development of comparative reflective spaces to address what has been working well, challenges and suggestions for improvement in the context of diverse cultural and social environments. The core impetus for this approach is the notion that "the realization of justice is dependent upon universal participation and action among all members and agencies of society..."[75] The aim is to create spaces where a growing number of individuals and practitioners can share insights that contribute to the ongoing improvement, refinement and progress of dispute resolution institutions.

Within this reflective approach, an interdisciplinary and values based inquiry is employed which appreciates the role of "values and ideals in the world [as being] central to social understanding"[76] and recognizes "the contributions that social inquiry can make to human well- being."[77] Such an approach envisions that "what we draw upon intellectually match the character and complexity of what we are trying to understand."[78] Such an approach begins with

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[74] See: Welsh, Nancy, *Magistrate Judges, Settlement, and Procedural Justice*, 16 Nev. L.J. 983 (2015-2016).

[75] Bahai International community, Prosperity of Humankind

[76] Martin Krygier , forward to Philip Selznick (2008), *A Humanist Science: Values and Ideals in Social Inquiry*, Stanford University Press.

[77] Philip Selznick (2008), *A Humanist Science: Values and Ideals in Social Inquiry*, Stanford University Press

[78] Martin Krygier , forward to Philip Selznick (2008), *A Humanist Science: Values and Ideals in Social Inquiry*, Stanford University Press

an "identification of the values at stake in particular social processes, practices and institutions; clarification of the nature of these values' understanding of what endangers them; and exploration of the conditions in which they might thrive."[79] By examining what has been working in advanced organizations, it is possible to synthesize "more than a collection of case studies" but examine "patterns and commonalities that point to a coherent new model."[80]

In general, this research approach builds upon a mixed methodology that involves a combination of survey work and comparative case studies. Each of the four studies will examine: 1) the key approaches to reflective engagement employed; 2) relevant insights and 3) limitations examined in more detail below.

I. Arbitration of Cross Border Disputes

Building on the observation that "for none is self-sufficiency any longer possible, inasmuch as political ties unite all peoples and nations, and the bonds of trade and industry, of agriculture and education, are being strengthened every day"[81] the first project, *Resolving Disputes in the Asia Pacific Region: International Arbitration and Mediation in East Asia and the West*, sought to examine how diverse cultures approach the resolution of conflict in the context of the integration of global markets.[82]

Approach to Reflective Engagement

This project sought to apply a framework of reflective engagment by: 1) widening the base of suvey participants to reflect the diversity of the international arbitration community and 2) engaging diverse practitioners in conversations regarding survey design and interpretation. Insights from reflection were synthesized into concrete observations regarding areas of advancement, challenge and suggestions for improving the system of cross border arbitration.

First, in extending much of the existing western-focused research on international arbitration as practiced in Europe and North America, this project sought to provide empirical understanding of the attitudes and perceptions of over 115 arbitrators, judges, lawyers and members of the rapidly expanding arbitration community in China, Hong Kong, Korea, Japan, Singapore, and Malaysia alongside counterparts in North America and Europe. The project covered both international commercial arbitration and mediation, providing an

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[79] Ibid.

[80] Frederic Laloux, (2014) *Reinventing Organizations: A Guide to Creating Organizations Inspired by the Next Stage of Human Consciousness*, Nelson Parker, p. 4.

[81] Abdu'l-Baha

[82] For full discussion, see: Ali, S. (2010; 2012 reprint). RESOLVING DISPUTES IN THE ASIA PACIFIC: INTERNATIONAL MEDIATION AND ARBITRATION IN EAST ASIA AND THE WEST (Routledge). v-xiv. 1-146.

empirical analysis of how both types of dispute resolution are conducted in the East Asian context. [83]

Second, a principal orientation of the research project focused on participation from those immediately and substantially affected by the potential outcome of the research. Participants were given a voice in framing and reframing the interview question under study, a voice in selecting the means of answering the question defined by the research, and a voice in determining the criteria to decide whether the question has been validly answered.[84]   Likewise, the research drew on the model of "social science as public philosophy" described by Robert Bellah which "accepts the cannons of critical disciplined research" but at the same time "does not imagine that such research exits in a vacuum or can be 'value free.'"[85] In this light, the research placed special attention on examining the underlying values that inform contemporary processes of dispute-resolution in diverse regions. [86] This approach drew on recent insights in the field of socio-legal studies regarding the growing need for legal study to be underpinned by theorizing that treats generalizations across legal families, traditions, cultures, and orders as problematic,[87] as well as the need to examine those underlying universal norms that guide dispute-resolution processes[88].

Insights from Reflection

The results of the 115 person survey and 64 follow up interviews highlight the importance of two major factors at work in the field of international arbitration: global convergence and informed diversity.[89] The major finding of the research was that due to the relatively flexible nature of the United Nations model law structure of international arbitration which allows countries to gradually and selectively adopt particular provisions of the model law, a relatively high degree of substantive legal uniformity in arbitration rules (convergence) can coexist and be enriched by procedural variation in settlement

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[83] For full discussion, see: Ali, S. (2010; 2012 reprint). RESOLVING DISPUTES IN THE ASIA PACIFIC: INTERNATIONAL MEDIATION AND ARBITRATION IN EAST ASIA AND THE WEST (Routledge). v-xiv. 1-146.

[84] Rhett Diessner, "Action Research" in *Converging Realities*, 1:1 (Switzerland: Landegg Academy, 2000).

[85] Robert N. Bellah, et al. 1985. *Habits of the Heart: Individualism and Collectivism in American Life*. New York: Harper and Row.

[86] For full discussion, see: Ali, S. (2010; 2012 reprint). RESOLVING DISPUTES IN THE ASIA PACIFIC: INTERNATIONAL MEDIATION AND ARBITRATION IN EAST ASIA AND THE WEST (Routledge). v-xiv. 1-146.

[87] See: William Twining, *Globalization and Legal Theory*, Law in Context, London: Butterworths, 2000; and Twining, William, "Have Concepts, Will Travel: Analytical Jurisprudence in a Global Context," International Journal of Law in Context. Vol. 1. No. 1, March 2005.

[88] See: Selznick, Philip. Law an*d Society in Transition: Toward Responsive Law. 1st* ed. New Brunswick: Transaction Publishers, 1978; and Selznick, Philip. *The Moral Commonwealth: Social Theory and the Promise of Community*, Berkeley, University of California Press, 1992.

[89] See also: Anne Marie Slaughter, *A New World Order* (Princeton, Princeton University Press, 2004).

processes and techniques (diversity) across regions. [90] At the same time, based on the norm of "global deliberative equality" and the basic moral precept that "our species is one, and each of the individuals who compose it is entitled to equal moral consideration,"[91] the enriching influence of regional diversity enhances the range of arbitral technique and enables the global examination of best practices from a wide range of experiences. Regional distinctions are reflected in varying arbitrator perceptions regarding the arbitrators' role in settlement, whether settlement is regarded as a goal in arbitration and the types of efforts made during the course of arbitration to settle disputes. For example, the survey found a greater openness to exploring settlement options and a greater degree of support for arbitrator-initiated settlement discussions among practitioners working in East Asia. Such diverse experiences are understood as not static but fluid, as a set of learned institutional and ideological expressions based on shared norms and beliefs about the world.[92]

Drawing on 64 open-ended interviews and follow up field work, practitioner insights focused on what international arbitration practitioners can do to assist in improving the practice of international arbitration in a cross cultural context. Such insights include the need for greater cross-cultural training of arbitrators, multi-disciplinary and multi-cultural panels, bilingual arbitrators, widening the pool of arbitrators from diverse countries, to greater transparency and strengthening of local arbitration tribunals, and finally greater training of counsel and arbitrators as to the uses and timing of mediation. In addition, nearly all arbitrators interviewed felt that extensive adversarial practices in arbitration were not advantageous or beneficial to the parties or practice in general.

Limitations

While the study sought to extend existing understanding of international arbitration practice in diverse regions by extending the survey pool to international arbitrators working in East Asia, a key limitation of the study was its bifurcated presentation of perspectives of practitioners working in two distinct regional groupings. While an effort was made to address this limitation by focusing on arbitrator's "region of practice" rather than "nationality" (including individuals from multiple jurisdictions working in a given region of practice) yet, cross-jurisdictional studies inherently involve categorization that may more fruitfully be presented as regional insights rather than a distillation of comparative statistics in an inherently interconnected global community.

II. Consumer Financial Dispute Resolution

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[90] For full discussion, see: Ali, S. (2010; 2012 reprint). RESOLVING DISPUTES IN THE ASIA PACIFIC: INTERNATIONAL MEDIATION AND ARBITRATION IN EAST ASIA AND THE WEST (Routledge). v-xiv. 1-146.

[91] Ibid, p. 245

[92] Michael Karlberg, Beyond the Culture of Contest: From Adversarialism to Mutualism in an Age of Interdependence, George Ronald Publishers Ltd., Oxford. 2004.

Situated in the immediate aftermath of the 2008 Financial Crisis, this project sought to examine how governments and self-regulatory organizations design and administer financial dispute resolution mechanisms in the context of increasingly turbulent financial markets.[93] *Consumer Financial Dispute Resolution in a Comparative Context* presented comparative research about the development and design of grievance mechanisms in East Asia, North America and Europe. Drawing on insights from a multi-jurisdictional survey, the project examined the emergence of global principles that influence the design of financial dispute resolution models, considered structural variations between the ombuds and arbitration systems and synthesized practitioner insights based on the objective of enhancing capacities that enable institutions to "respond creatively to challenges... [through] ...the ability to...uphold standards of fairness and equity."[94]

Approach to Reflective Engagement

This project sought to apply a framework of reflective engagment by: 1) identifying relevant globally accepted principles and standards pertinent to addressing consumer financial disputes; 2) drawing on selected principles to serve as a lens by which to analyze processes that give rise to the development of accessible, efficient and equitable financial ombuds and arbitration systems in seven jurisdictions; and 3) engage practitioners in conversations about achievements, challenges and lessons learned in the resolution of consumer financial disputes.

First, drawing on an exploration of the development of global principles that influence to varying degrees the design of consumer financial dispute resolution systems in diverse societies, emerging standards were synthesized from the Equator Principles, the Basel Accords, the UN Millenium Development Goals and general Rule of Law principles, including the need for accessible grievance mechanisms, financial dispute prevention through transparent risk disclosure and risk mitigation, impartiality, equity, accountability and fairness.[95]

Second, the project drew on these selected global principles to serve as a lens by which to analyze processes and structures that gave rise to the development of accessible, efficient and equitable financial ombuds and arbitration systems in seven jurisdictions. It examined comparative institutional dispute resolution structures and results in selected financial centres in East Asia, North America and Europe in order to glean best practices. Through comparison among corresponding financial dispute resolution centres in seven jurisdictions, the aim of the research was to understand how these jurisdictions

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[93] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

[94] (BIC, 2001 May, Integrity in Public Institutions)

[95] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

addressed consumer complaints through unique structures of financial dispute resolution including ombuds, arbitration and multi-tier processes. [96]

Third, drawing on relevant global principles to assess how arbitrators and ombuds viewed the benefits of particular methods of consumer financial dispute resolution alongside challenges and suggestions for improvement, a survey was conducted between the Fall of 2011 and the Summer of 2012. Nearly 100 survey questionnaires were distributed to practitioners throughout the world. A total of 48 arbitrators and ombuds people from East Asia, North America, Europe, the Middle East and Africa responded. The participants represented experienced practitioners, members of government regulatory ombuds services and private arbitration commissions. The majority of those surveyed (44 per cent) had worked for institutions involved in consumer financial dispute resolution for more than four years. [97]

Insights from Reflection

The question of how systems of consumer financial dispute resolution can be designed in diverse contexts to effectively and fairly administer the resolution of financial disputes, how such centres can draw on emerging global principles of accessibility, efficiency, impartiality and fairness and how such centres might consequently contribute to the health of the broader economic environment engages with scholarship in the law and development field, studies in dispute system design and work examining the impact of globalisation on international legal practice. In particular, insights from socio-legal dispute processing literature has long investigated how mechanisms can be developed to limit the effect of the power/knowledge gap of 'repeat players' in institutional dispute resolution settings through appropriate regulations and policies. Previous studies in respect of litigation process tend to suggest that 'haves' (i.e. large businesses, financially well endowed organizations) tend to fare better in courts than 'have nots'.[98] Therefore attention to procedural safeguards aimed at addressing structural inequities in the design and development of such systems is necessary if such disputes are to be effectively addressed. [99]

The results of the comparative cross-jurisdictional analysis of consumer financial dispute resolution centres in seven jurisdictions shed light on the underlying structural design, policy orientation, complaint procedures, financing and oversight of financial dispute resolution centres as established in diverse regions. The findings indicated that such centres in general offer a flexible and

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[96] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

[97] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

[98] See: M. Galanter, 'Why the Haves Come out Ahead: Speculations on The Limits of Legal Change', *Law and Society Review*, 9(1) (1974), pp. 95–160.

[99] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

relatively fast way to resolve financial disputes, but are not without their challenges. Such challenges include the potential for mismatch between regulatory consistency and individualised case handling.[100] Determining how best to overcome such challenges while addressing a growing number of finance-related disputes are pressing questions facing governments, legislatures and aggrieved citizens. [101]

The survey results found that practitioners of consumer financial dispute resolution viewed ombuds processes as particularly useful in providing an independent and accessible review service for financial customers. At the same time the service also helped to identify areas of systematic risk that could inform regulatory reform of banking institutions.[102] Perhaps as a result of such benefits, the use of ombuds processes has been increasing in recent years. At the same time, practitioners acknowledged areas for continued improvement including the need for greater public education[103] and oversight and quality assurance of ombuds processes.[104]

Arbitration practitioners likewise viewed the benefits of arbitration services in consumer financial disputes as providing disputants with technical expertise 'where the parties are not arguing over the law, but application of financial/accounting principles.' [105] Among the challenges include 'proof issues, imbalance of power and information, lack of full discovery options/rights.'[106] Concerns about such disparities were echoed by participants who noted the prevalence of perceptions that 'large institutions have "repeat-user" advantage.'[107] Practitioners noted suggestions for improvement included the need for '[g]ood program design [including] exit evaluations [and] grievance processes to allow parties to file complaints against neutrals who do not perform well' and provision of information regarding relevant standards and rules in order to ensure fairness and confidence in the process. In addition, 'a code of ethics for neutrals' was suggested along with support for 'procedural due process.'[108]

Limitations

The project's global, principle based perspective was helpful in identifying relevant achievements and gaps in existing practice. At the same time, the small sample size of the survey pool (n=48) limit the generalizability of the findings.

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[100] See Arner, Hsu and Da Roza, 'Financial Regulation in Hong Kong: Time for a Change', *As. J.C.L.*, 5 (2010), pp. 71–114.

[101] For full discussion, see: Ali, S. (2013). CONSUMER FINANCIAL DISPUTE RESOLUTION IN A COMPARATIVE CONTEXT: PRINCIPLES, SYSTEMS AND PRACTICE (Cambridge University Press) vii-xiv, 1-267.

[102] Survey No. 1 (July 2011–March 2012).

[103] Survey No. 1 (July 2011–March 2012).

[104] Survey No. 4 (July 2011–March 2012).

[105] Survey No. 8 (July 2011–March 2012).

[106] Survey No. 10 (July 2011–March 2012).

[107] Survey No. 14 (July 2011–March 2012).

[108] Survey No. 10 (July 2011–March 2012).

Post Disaster Governance

The project, *Governing Disasters: Engaging Local Populations in Humanitarian Relief*[109], examined lessons learned at the international, state and public/private levels in the realm of local engagement in post disaster response.

Approach to Reflective Engagement

This project sought to apply a framework of reflective engagment by: 1) applying existing insights regarding effective community engagement to analyze six case studies of post-disaster governance experiences in Haiti, Indonesia, Japan, Myanmar, Thailand, and New Orleans on international, state and public/private collaboration; and 2) engaging 69 humanitarian aid and disaster response practitioners from 18 countries and regions in order to understand the dynamics, challenges and lessons learned in a global decentralized yet coordinated process of post-disaster humanitarian assistance.[110]

Insights from Reflection

The project[111] affirmed that the key to the efficacy of post-disaster recovery is the primacy given to local actors in the management, direction and design of relief programs. Where local partnership and knowledge generation and application is ongoing, cohesive, meaningful and inclusive, disaster relief efforts are more targeted, cost-effective, efficient and timely.[112] Specifically, the survey found a statistically significant correlation between the level of community engagement and perceived effectiveness of response.[113] In particular, where engagement is robust, relief efforts are perceived to be more effective than in situations where engagement is weak.[114] Reflecting this growing consensus, legal instruments adopted by states, and self-regulatory mechanisms demonstrate a progressive codification of an obligation to ensure local participation in relief. Global and country level cluster organization based on the concept of "experimentalist governance" (ie. provision of greater discretion to local actors) consisting of a 'supervisory authority in a

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[109] Ibid.

[110] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321

[111] Ibid.

[112] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321

[113] For additional discussion, see: Ali, S. "Toward Peer Presence in Post-Disaster Governance: An Empirical Study" Hastings Journal of International and Comparative Law (2015)

[114] The limitations of the study must be acknowledged including the fact that given "the random nature of disasters and multiplicity of players" and the small sample size (N=69) of the survey, the findings may not be regarded as generalizable, but rather aim to offer insights into the development of institutional capacities for community participation.

decentralized system, helped to overcome tensions between coordination and autonomy. [115]

In particular, relief aid workers noted that when meaningful local partnerships are formed, a number of positive outcomes result including more "effective communication"; "better long term sustainability"; "ownership in work"; "flexibility"; "partnership"; "trust"; "good relationships with the community"; and a more "culturally accepted" approach. [116]

A critical need exists for genuine partnership in relief efforts. The study found that very few recovery programs achieve high levels of partnership: only 7% viewed their relief program as "highly effective". The majority of survey participants viewed relief program's as "generally or somewhat effective" (61%). Among the challenges cited by relief workers included: integrating diverse viewpoints "with various worldviews and needs"; achieving unity of action and movement "in the same direction"; lack of situational awareness; corruption/unfair distribution of resources; top down policies/donor priorities and prejudice/stereotypes. In addition, in some cases, the findings demonstrated a misunderstanding of concept of 'participation.' For example, some respondents saw participation as "convincing the local public and government to [get] involved in the programs" and "getting all partners on board with response." One respondent noted that often a response is designed in a way that is "not necessarily made to meet the real problems of beneficiaries but … rather meet the will and objectives of donor regarding bilateral cooperation". [117]

Among the suggestions for advancing systems of post disaster governance included: "systematic decentralized decision making for response"; the "use of locally sourced goods" based on "real needs of people on the ground using local human and material resources"; "increased meaningful participation"; "integrated but decentralized approach"; "exchanging lessons learned" and "engaging local partners with their traditional response skills and knowledge."

In particular, the most advanced examples of collaborative response demonstrated that "when an effort is participatory, in the sense that it seeks to involve the people themselves in the generation and application of knowledge, as all forge together a path of progress, dualities such as 'outsider-insider' and 'knowledgeable-ignorant' quickly disappear." [118] Building on an existing base of community cohesion "a consultative climate is encouraged that permits options to be examined dispassionately and appropriate courses of action selected." [119]

Limitations

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[115] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321
[116] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321
[117] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321
[118] BIC, Statement on Social Action
[119] BIC, Prosperity of Humankind

Given "the random nature of disasters and multiplicity of players…comprehensive analysis [of governance efforts is generally] difficult."[120] In addition, the small sample size (N=69) does not permit generalizable findings. Rather, the purpose of the survey and case studies is to offer insights into how institutional capacities for community participation and engagement might be built.

Court Mediation Reform

With the aspiration toward justice as a means for the expression of "dignity and equality"[121] , the project, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice*, was premised on the idea that as judicial systems advance, evolving conceptions of justice are reflected in varying emphasis on the role, place and practice of mediation in civil courts.[122] How such programs, whether voluntary or mandatory, provide opportunities for party directed reconciliation on the one hand, while ensuring access to formal legal channels remains an area for continued exploration. Program achievements were found to largely depend on the functioning of the civil litigation system, the qualities and skill of the mediators, safeguards against bias, participant education, and cultural and institutional support. [123]

Approach to Reflective Engagement

This project sought to apply a framework of reflective engagment by: 1) examining institutional developments, cultural contex and outcomes of mediation programs within10 jurisdictions using governance indicators to trace developments in judicial quality, efficiency and access to courts over a five year time period; and 2) engaging 83 court mediation practitioners in conversations about the dynamics, challenges and lessons learned in the context of mandatory and voluntary court mediation programs and the impact of program type, if any, on perceptions of confidence, fairness and efficiency..[124]

Insights from Reflection

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[120] Drabek, T.E. and McEntire, D.A., 2002. Emergent Phenomena and Mulitorganizational Coordination in Disasters: Lessons from the Research Literature. *International Journal of Emergencies and Disasters* [online], 20 (2), 197-224. Available from: Http://ijmed.org/articles/574/download/ [Accessed 29 October 2012].

[121] Abdu'l-Bahá: Paris Talks, pages 154

[122] For complete discussion, see: Ali, S. (2018). COURT MEDIATION REFORM: EFFICIENCY, CONFIDENCE AND PERCEPTIONS OF JUSTICE (Cheltenham, UK and Northampton, Massachusetts, USA: Edward Elgar) viii-x, 1-291.

[123] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321

[124] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321

Significant variation in the implementation of court mediation reforms currently exists. In some jurisdictions, mediation is mandated for particular civil case-types, whereas in others, parties are encouraged to engage in voluntary mediation with cost consequences being attached in some jurisdictions to unreasonable refusal to engage in mediation. Such programs reflect tensions between self-determination and party choice[125] alongside notions of collective responsibility for reducing the costs of litigation on society as a whole. Avenues toward voluntary or mandatory mediation reflect varying underlying normative conceptions of individual and collective justice. Given that "public means available for financing dispute resolution are not unlimited,"[126] a balancing of individual process choices and social efficiency requires careful investigation. [127]

The principal finding of the 10 country case studies, survey research and analysis of civil justice indicators indicate that overall, while both voluntary and mandatory mediation programs demonstrate unique programmatic strengths and are associated with positive gains in the advancement of civil justice quality over a five year period since implementation, sampled voluntary mediation program regions are associated with a slightly higher proportion of longitudinal advancement in levels of efficiency, and perceptions of justice with a nearly equal proportion of advancement in levels of confidence, and an identical proportion of voluntary and mandatory regions experiencing positive advancement in the sub-categories of impartial and effective ADR. [128]

With respect to advancing program quality, the survey findings provide insights into the dynamics, challenges and lessons learned from the perspective of those directly engaged in the work of administering, representing and mediating civil claims. In particular, the findings indicate that practitioners working in mandatory court mediation programs identify several key benefits including normalizing party-driven resolution, enhanced efficiency in some cases through effective case screening and contributing to relational repair, while practitioners working in voluntary programs identified the key strengths of such

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[125] Felix Steffek, and Hannes Unberath et al., Regulating Dispute Resolution – ADR and Access to Justice at the Crossroads (Hart, 2013).

[126] *Ibid.*

[127] For complete discussion, see: Ali, S. (2016). GOVERNING DISASTERS: ENGAGING LOCAL POPULATIONS IN HUMANITARIAN RELIEF (Cambridge University Press), vii-xix, 1-321

[128] For purposes of the study, efficiency is measured through an aggregation of the following indicators:

- *Efficiency of Legal Framework in Settling Disputes*: This indicator appears in the Global Competitiveness Report. It measures the efficiency of the legal framework in settling disputes. Data was collected from the Executive Opinion Survey where participants rate the efficiency of the legal framework in their countries on a 1 to 7 scale. Data from the World Economic Forum was also used in generating the results

- *Accessibility and Affordability*: This indicator appears in the World Justice Project Rule of Law Index. It indicates people's awareness of available remedies and the accessibility and affordability of courts, legal advice and representation. It also examines the extent to which court procedures and costs affect the accessibility and affordability of civil justice.

- *No Unreasonable Delay:* This indicator appears in the World Justice Project Rule of Law Index. It indicates the level of delay in adjudicating disputes and general perception of delay.

programs as the encouragement of self-determined engagement. Practitioner suggestions for improving the overall court mediation process ranged from enhanced training including training in cultural sensitivity and implicit bias, public education, and greater flexibility in settlement arrangements. Practitioners also highlighted that key to improving court mediation programs was the need to overcome a number of challenges including the need for greater party understanding of the mediation process, overcoming conflicts of interest, enhancing mediator quality, developing greater capacity to manage power imbalances and resource support through on-going monitoring and evaluation.

Limitations

The question of voluntary or mandatory program design is highly context dependent. As noted in an earlier study of mandatory and voluntary programs, "the differences in the structure and court environments of … programs mean that each program… is unique: they cannot simply be lumped together and viewed generically."[129] While the study reports on the program's correlation with the same measures including efficiency, confidence and perceptions of justice, the results must be seen as reflecting the unique conditions of each particular program and "any cross-program comparisons must therefore take into account the impact of programmatic and environmental differences on these results."[130]   Indicator analysis, while providing useful insights, as noted by Merry, Davis and Kingsbury, are influenced by governance structures and also exert a corresponding influence on such structures in their conceptualization of problems[131], also reflect inherent limitations including challenges associated with the existence of intervening and exogenous variables and therefore is supplemented by contextual case investigation of civil justice dynamics and survey data. In addition, given the small sample size of the country case studies (n=10) and survey research (n=83), lack of policy uniformity in some cases, and the fact that in some regions, elements of voluntary and mandatory systems may co-exist, the results can not be considered generalizable but rather aim at offering initial insights into the dynamics of diverse civil mediation policy approaches in the selected regions. The aim is that future studies will continue to refine and develop increasingly more accurate approaches to the analysis of such relationships.

Summary

The above projects sought to apply a framework of reflective engagment by first identifying globally accepted standards and principles as benchmarks to measure advancement; second by engaging practitioners in conversations about study design and reflection about the dynamics, challenges and lessons learned

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[129] Anderson, Heather and Pi, Ron, (2004) *Evaluation of the Early Mediation Pilot Programs*, Judicial Council of CA Administrative Office of the Courts.

[130] *Ibid.*

[131] Kevin E. Davis, *Indicators as a Technology of Global Governance*, 46 *Law & Soc'y Rev.* 71 (2012) (with Benedict Kingsbury and Sally Engle Merry).

in the development of dispute resolution programs; and third by examining institutional and cultural contex surrounding program advancement in order to reflect on broader patterns contributing to efficacy in program design.

Efforts to apply devolved reflective practice in dispute resolution research alongside emerging international customary law pertaining to community participation, and developments in new governance scholarship, echo a common concern with the importance of community engagement and deliberation. Such efforts represent an initial step in applying principles of reflection in research and practice settings. However, reflection isolated from a broader framework of collective study, consultation and action inhibits meaningful advancement. Experience has shown that significant advances in organizational and governance programs result from reflective practice woven into a wider tapestry of study, consultation and action, which will be discussed in the final section.

IV. Devolved Reflection and Systematic Learning

In advancing the reflective process within organization, governance institutions and research practices, it is useful to consider how reflection interacts within a broader framework of consultation, action and study in contributing to social progress.

As noted above, several challenges and limitations have been identified in the context of devolved governance including the potential of replicating and possibly exacerbating existing representation problems,[132] simply offering a means of providing "input" to existing plans rather than originating plans at the community level, the existence of subjectivity in rule-making, the danger of getting moral questions wrong through caving into power politics (as advanced through special interests, for example), rendering community resource problems "less visible or subject to scrutiny, because the farther the process is removed from a centralized decision-maker, the less accountability there will be..."[133] Research has suggested that in order to benefit from devolution and decentralization[134], the necessary conditions for its success should include (1) the broadest possible degree of stakeholder participation compatible with effective decision making,[135] (2) ensuring participants have the necessary skills for participation[136], (3) the development of managerial and procedural

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[132] Foster at 485.

[133] Id.

[134] Alexander, Lisa T. 'Reflections on Success and Failure in New Governance and the Role of the Lawyer' (2010) *Wisconsin Law Review Symposium Afterword* 737, 738

[135] Ibid 740-741; see also: Ali, S. 'Measuring Success in Devolved Collaboration.' (2010) 26 *Journal of Land Use and Environmental Law*

[136] Ibid

safeguards[137], and (4) ensuring stakeholder participation in conditions of adversity and wider social conflict. [138]

Reflection, alone is insufficient to contribute to social progress. Rather, reflection forms one component of a broader framework consisting of study/reading society and formulating a vision; 2) consultation; 3) action and reflection on action that together contribute to the achievement of social justice and organizational advancement.[139]

The first stage of "reading society and formulating a vision" involves "understanding… the nature and state of society, its challenges, the institutions operating in it, the forces influencing it, and the capacities of its peoples." [140] This does not necessarily "involve formal studies." Rather, "conditions need to be understood progressively, both from the perspective of a particular endeavour's purpose and in the context of a vision of humanity's collective existence." [141]

In contrast to the often concieved notion of 'participation' as offering a means for providing 'input' rather than originating plans within the community and bifurcating those considered to be 'insiders' or 'outsiders', the process of 'reading society and formulating a vision' "from within… seeks to involve the people themselves in the generation and application of knowledge… all forge together a path of progress, [and] dualities such as "outsider-insider" and "knowledgeable-ignorant" quickly disappear." [142] The concept of 'insiders' and 'outsiders' in many instances continues to be used in global resolutions concerning humanitarian sector participation in an effort to determine the identity of individuals qualified as locals.[143] Yet such concepts often create false barriers between individuals who seek to contribute to the betterment of a given community. Such individuals, regardless of location of origin, can 'be a source of strength, contributing innovative ideas and local knowledge which, when mobilised and used appropriately, can lead to solutions that can make a fundamental contribution' to community life.[144]

Contributing to overcoming the danger of getting moral questions wrong through caving into power politics (as advanced through special interests), in

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[137] Salamon, Lester M., 'The New Governance and the Tools of Public Action: An Introduction.' [2001] *Fordham Urb. L.J.*28, 1611

[138] Alexander, loc. cit.

[139] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[140] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[141] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[142] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[143] Béatrice Pouligny, 'Supporting Local Ownership in Humanitarian Action' *Humanitarian Policy Paper Series* 12 <http://www.gppi.net/fileadmin/gppi/GPPiPPR_local_ownership_2009.pdf> accessed 20 April 2014.

[144] Phong Tran, Rajib Shaw, Guillaume Chantry and John Norton, 'GIS and Local Knowledge in Disaster Management: A Case Study of Flood Risk Mapping in Viet Nam' (2009) 33(1) *Disasters* 152−169, 152.

reading society, community members jointly formulate a vision which "express[es] a general idea of how goals are to be achieved: the nature of the strategies to be devised, the approaches to be taken, the attitudes to be assumed, and … some of the methods to be employed." [145] Such a vision, over time, becomes "more and more precise, be able to accommodate constantly evolving and ever more complex action…"[146]

The second stage, involving consultation amongst members of a community, may be applied in "analysing a specific problem, attaining higher degrees of understanding on a given issue, or exploring possible courses of action." [147] In each case, "consultation may be seen as collective search for truth." [148] It is understood that "participants in a consultative process see reality from different points of view, and as these views are examined and understood, clarity is achieved." [149] From this perspective, "truth is not a compromise between opposing interest groups. Nor does the desire to exercise power over one another animate participants in the consultative process. What they seek, rather, is the power of unified thought and action." [150] This has direct implications for achieveing community participation and overcoming conditions of social conflict.

With regard to the nature of reflection and participation in the consultative process, it aims to be, "substantive and creative; it must allow the people themselves access to knowledge and encourage them to apply it."[151] At times, consultation might be exploratory, advisory or decisional in nature.[152] The process is not an "end in itself" but rather a means for "heightening collective consciousness, and fostering unified action."[153] The Institute for Studies in Global Prosperity has identified a number of capabilities needed for effective participation. Among these include:

- to think systematically in understanding problems and searching for solutions;

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[145] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[146] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[147] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[148] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[149] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[150] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

151 Institute for Studies in Global Prosperity, "Science, Religion and Development: Some Initial Considerations" (1997).

[152] Michael Karlberg, (2018)"Media and Public Discourse: Normative Foundations" in *Religion and Public Discourse in an Age of Transition: Reflections on Baha'i Practice and Thought* (Geoffrey Cameron and Benjamin Schewel, Editors), Wilfrid Laurier University Press.

[153] Shahriar Razavi, (2018) "Baha'i Participation in Public Discourse: Some Considerations Related to History, Concepts, and Approaches" in *Religion and Public Discourse in an Age of Transition: Reflections on Baha'i Practice and Thought* (Geoffrey Cameron and Benjamin Schewel, Editors), Wilfrid Laurier University Press.

- to use methods of decision-making that are non-adversarial and inclusive;
- to contribute to the effective design and management of community projects.[154]

As noted above, consultation is not a process of mobilizing support, pushing an idea or manipulating information for it to appear in the best light. Rather, the outcome of true consultation depends on the condition of those involved rather than adherence to a strict set of procedures. Members of a consultative group must "in every matter search out the truth and not insist upon their own opinion, for stubbornness and persistence in one's views will lead ultimately to discord and wrangling and the truth will remain hidden."[155]

Describing the interrelationship between consultation and reflection, this interrelationship ensures that decision making "benefit from a diversity of perspectives through a consultative process which, understood as the collective investigation of reality, promotes detachment from personal views, gives due importance to valid empirical information, does not raise mere opinion to the status of fact or define truth as the compromise between opposing interest groups. A key concern is learning "how to maintain such a mode of learning in action, how to ensure that growing numbers participate in the generation and application of relevant knowledge and how to devise structures for the systemization of an expanding worldwide experience and for the equitable distribution of the lessons learned"[156]. In particular, "as effort is made to welcome increasing numbers into thoughtful discussion on the direction of their collective development, decision-making processes become more consultative and participatory... leaders are enabled to better analyze specific problems, attain deeper understanding of complex issues, and evaluate courses of action with clarity and impartiality..."[157]

At the level of global reflection and discourse, new approaches to socio-economic development by stakeholders in the development process have increasingly come to draw on consultative principles to raise questions "about the salient assumptions... of the development process and to identify avenues of research and action in relation to those questions."[158] Such a process recognizes that ethical and social values lie at the heart of individual and collective

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154 Ibid.

155 Ibid.

156 Universal House of Justice, Letter to Baha'i Community in Iran, 2 March 2013

157 https://www.bic.org/statements/rising-together-building-capacity-recover-within#DfamHkoftFVFGomQ.97

158 Matthew Weinberg, (2018)"Contributions to International Development Discourse: Exploring the Roles of Science and Religion" in *Religion and Public Discourse in an Age of Transition: Reflections on Baha'i Practice and Thought* (Geoffrey Cameron and Benjamin Schewel, Editors), Wilfrid Laurier University Press.

ordering[159] and views stakeholders not as "beneficiaries" but rather as active "protagonists of development."[160]

Consultative processes have been increasingly attempted in the virtual online-offline space, including an initiative to promote meaningful deliberation among large numbers of participants on matters of social concern. One such process, "vTaiwan" has been used to facilitate conversations on the regulation of a range of social concerns including offensive online images, ride sharing services and FinTech. The "focused conversation" method consists in defining objectives, crowd-sourcing agenda's, reflection, interpretation followed by decision-making.[161] Stakeholders contribute to the interpretation of data and potential lines of inquiry through its website, meetings and hackathons. As of February 2018, 26 cases were discussed through the platform and 80% resulting in concrete policy action.[162]

Of direct importance in achieving impactful outcomes through collective reflection is the creation of shared meanings and attitudes about social reality that pave the way for constructive action. This requires a process of "transforming "habits of thought," as described by Weinberg, since "in many ways our minds are involved in constructing the world we find ourselves in. Our perceptions and the concepts we hold determine the social reality we see and create."[163] Shared understandings of concepts such as social equity, human security, power, "the common good," or community evolve through "a dynamic process of learning, dialogue, and praxis in which social challenges and solutions are constantly redefined and reassessed... By building a broader framework of analysis that encompasses not only material and technical variables but the normative and spiritual dimensions of various social issues, new insights can emerge that enrich dialogues previously locked into narrow conceptual boundaries."[164]

The final stage of the learning process consisting of "action and reflection on action" involves both systematic action accompanied by reflection to "ensure that [activites] continues to serve the aims of the endeavour." [165] Evaluation, while useful, is not sufficient to serve the requirements of a structured reflection process "through which questions can emerge and methods and approaches... adjusted." [166] Beyond evaluation, which often focuses on the measurement of

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[159] Ibid, see also: Wendy Heller (200), *The Religious Foundations of Civil Society* (Part 1 and 2), Journal of Baha'i Studies.

[160] Farzam Arbab, (2000), "Promoting a Discourse on Science, Religion and Development", in *The Lab, The Temple and the Market: Reflections at the Intersection of Science, Religion and Development* (Sharon M.P. Harper, Ed.), International Development Research Centre.

[161] See: info.vtaiwan.tw

[162] Ibid.

[163] Matthew Weinberg, *Identity, Discourse, and Policy: Reconstructing the Public Sphere*, The Journal of Bahá'í Studies 21. 1/4. 2011, p.74

[164] Ibid. 82-83.

[165] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[166] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

narrow technical results, a more critical point of analysis is attention to the advancement of social, technical and ethical capacity building.

The entire learning process, defying traditional new governance categorization of "either "top-down" or "bottom-up"" governance approaches, is characterized rather by "reciprocity and interconnectedness." [167] For example, as "a group of people working at the grassroots begins to gain experience in social action, the first lessons learned may consist of little more than occasional stories, anecdotes, and personal accounts." [168] However, "over time, patterns tend to emerge which can be documented and carefully analysed" by local administrative institutions that extend beyond "opinion or the mere collection of various experiences." [169] At the same time, such learning processes, to be effective, are connected "to a global process… with structures "at all levels, from the local to the international, to facilitate learning about development." [170] At the international level, "such learning calls for a degree of conceptualization that takes into account the broader processes of global transformation under way and which serves to adjust the overall direction of development activities accordingly." [171]

Conclusion

This paper has explored what may be described as 'devolved reflection' as a mode of reflective organizational practice, as an emerging legal principle and norm of international law, as an analytic and normative framework for new governance policy as an applied reflective research methodology and as a component of a wider tapestry of consultation, action and study. In examining the application of this framework, it examined lessons learned from research into how local engagement both responds to and shapes global norms in an effort to enhance access to justice. The reflections drew on insights from work highlighting the role of engaged participation and shared knowledge generation in facilitating conditions conducive to dynamic advancement within governance systems -whether in the form of community engagement with consumer financial institutions, cross border-arbitration or post-disaster governance initiatives. The work traces the relevance of reflective engagement as well as its potential to contribute to institutional advancement when carried out within a broader systematic context of study, consultation, action oriented toward the collective contribution to knowledge generation.

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[167] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[168] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[169] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[170] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.

[171] Office of Social and Economic Development at the Baha'i World Centre, *Statement on Social Action*, 26 November 2012.