
Rule of Law Indicators in Context: An Empirical Evaluation of GTZ Legal Advisory in Beijing

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Much has been written about the general ability (or lack thereof) of international development organizations to effectively monitor and evaluate the impact of their Rule of Law projects on the ground. However, less research has focused on particular development organizations' methods of project evaluation, the politics behind them and their strengths and weaknesses. This paper offers such an analysis of the evaluation methods of GTZ Legal Advisory in Beijing. After describing the work of GTZ in general and its Legal Advisory in particular, the paper offers a detailed evaluation of the tools that it uses to gauge the impact of its projects on the ground. What is gained from such a particularized analysis is a deeper understanding of both the donor politics and organizational tradeoffs inherent in monitoring and evaluation decisions, two factors often given insufficient attention in more theoretical discussions.

Keywords

Rule of Law, GTZ, monitoring and evaluation, China, international development.

I. Introduction

Although the rule-of law movement is over a half-century old, fundamental questions remain as to its effectiveness and even its goals.¹ During its inception after World War II, rule of law practitioners aimed to create legal systems that would “displace colonial

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and customary legal regimes.² Over time, the movement has had various focuses, such as to advocate for human rights and constitutional protections and establish market economies in post-Communist and transitional countries.³ Today's movement maintains these earlier characteristics in addition to appropriating a slew of new ones, such as "relieving poverty, sustaining development and conserving social capital."⁴

However, in spite of the rich, variegated history of rule of law work - and possibly because of it - there has been a "widening gap" between theory and practice, with disturbingly scant attention paid to measuring baselines of performance and the interconnectedness of social, economic, political and legal development.⁵ This gap has left many scholars and practitioners unable to know whether the massive resources being allocated to these projects are being put to their best use, or even any use at all. In the words of Thomas Heller,

What is absent in the rule of law-development theory nexus is a particularized account of either the preexisting roles and structures of legal institutions in the political economies that are the objects of reform, or the dynamics of transition that will affect the prospects of effective change.⁶

Independent of these abstract questions, we must first answer the baseline question of whether a set rule of law projects actually has their intended effects on the ground. In fact, an account of the preexisting roles of the legal institutions and the expected dynamics of effective change are both topics that arguably should be thoroughly addressed before a development organization invests in the promotion of the rule of law.

As Dani Rodrik has persuasively argued in the context of economic reforms, the greatest successes in institution building have relied upon "a mix of standard and nonstandard policies that are well attuned to the reality on the ground."⁷ In order to engage in the "pragmatic innovation"⁸ that Rodrik advocates, however, one needs to be fully cognizant of not only the current state of institutions, but, just as importantly, the

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² Thomas Heller, *An Immodest Postscript*, in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW* 382-3 (Thomas Heller & Erik Jensen eds., 2004).

³ *Id.*

⁴ *Id.*

⁵ Erik Jensen & Thomas Heller, *Introduction*, in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW* 12 (2004).

⁶ *Id.* at 13.

⁷ DANI RODRIK, *ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH* 35 (2007).

⁸ *Id.* at 41.

effects that one's programs and policies have had and are continue to have on them. Rodrik points out that the transition path to so-called "best institutions" is a rocky one that requires "incessant changes interacting with initial conditions."⁹ Thus, in order for as any rule of law organization to experiment with transitional legal institutions in attempts to modify and improve them, it must be acutely aware of the effects that its activities are having on the institutions themselves, in addition to all the institutions with which the legal system is connected.

Sadly, the current state of many rule of law organizations leaves much to be desired on this front. Although these organizations may not be vulnerable to Heller's critique that they have "a set of clear objectives but leave obscure both the theory underlying those objectives and the methods of reaching them,"¹⁰ they may be guilty of an even more fundamental flaw. These are the organizations that, while clear about their methods of reaching their objectives, lack adequate tools to gauge whether their methods are successful. It is this gap - the gap between rule of law projects and measurable progress - that is the topic of this paper.

Specifically, this paper will examine the extent to which Deutsche Gesellschaft für Technische Zusammenarbeit ("GTZ") Legal Advisory Service in Beijing is able to measure the impact of its projects on the ground, especially as related to its grander mission of promoting the rule of law in China. GTZ's programming in China is of particular importance not just because of the large amount of development funds that pour in from around the globe, but also because of the hopes that many pin to the development of China's judicial system. At the very least, companies hope that a greater adherence to the rule of law can help normalize contractual and business relations, reduce investment risks and boost profits. In addition, many hope that if legislation attains a greater importance, government officials will have to respect it more and thus will have less scope for the discretion that often leads to corruption. Lastly - probably the most idealistically - some imagine that stronger legal protections will grant citizens the scope to express and associate themselves freely, thus strengthening civil society and drastically limiting the state's power to interfere in the lives of the individual.

This paper will first give an overview of GTZ in general, and its legal advisory service in particular. To follow, it will discuss in detail the manner in which GTZ evaluates its own projects and progress toward its stated goals. Next, the paper will explore the strengths and weaknesses of GTZ's measurement tools in the context of China's legal system. The paper will close with conclusions.

⁹ DANI RODRIK, IN SEARCH OF PROSPERITY: ANALYTIC NARRATIVES ON ECONOMIC GROWTH 304 (2003).

¹⁰ *Supra* note 2 at 14.