The Unanticipated Consequences of Human Rights Audit

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The Sociology of Quantification

“Public measures recreate social worlds” – Espeland and Sauder

The unintended consequences of measurement, verification, and oversight
The UN Treaty Body System

State parties report to treaty body

Treaty body examines report

Treaty body issues ‘concluding observations’

State implements concluding observations
The Indicator Explosion in International Human Rights

• Widespread adoption of ‘fact-based’ performance indicators to monitor compliance:
  – “Fact-based or objective indicators...are verifiable and can be easier to interpret [than subjective judgements of performance] when comparing the human rights situation in a country over time and across populations.” (OHCHR, 2012)
Some examples

- Proportion of births attended by skilled health personnel (Right to Health, ICESCR Arts. 10 & 12)
- Proportion of the targeted population covered under public nutrition supplement programmes (Right to Food, ICESCR Art. 11)
- Percentage of crimes reported to the police (Right to a Fair Trial, ICCPR Arts. 14 and 15)
- Homicides (intentional and non-intentional) rate per 100,000 population (Right to life, ICCPR Article 6, etc.)
The shift to audit functions

• The process is becoming one of verification and checking of the collection and use of statistics and data:
  – Are accurate statistics being gathered?
  – Is the data properly disaggregated according to sex, race, etc.?
  – Is the data being used to inform policy?

• Most UN treaty bodies now consider the creation of a framework of indicators to itself be a legal obligation arising from the respective human rights treaties

• The role of the treaty bodies becomes auditing the efforts of States Parties to measure human rights performance rather than monitoring compliance directly
Audit and Unanticipated Consequences

• Power (*The Audit Society*, 1994) identifies several unintended consequences of audit:
  – The audited subject shows a tendency to “decouple” or “buffer away” the auditor through spurious “auditable performance”
  – The audited subject becomes “colonised” by the audit process (its desires become aligned with the audit process) and its behaviour shifts accordingly in ways that are unexpected and possibly undesirable

• “Human beings are infinitely more complex and varied than normalising efforts to control them.”
Example

• Research Excellence Framework
  – The work of the university becomes “colonised” by the audit process (producing auditable results – “REFfable outputs” – comes to supersede other arguably more valuable activities)
  – Universities act to “buffer away” the audit process (bringing in ringers, cherry picking staff for submission, focusing on certain metrics, etc.)
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• Decoupling
  – Creation of spurious “performance” to satisfy the auditor (below examples from UK’s 2008 state report to CESCR)
    • UK has a strategy to reduce health inequalities by 10%
    • 58.5% of 15 year old school pupils achieved 5 or more A*-C grade GCSEs or equivalent
    • The proportion of “dads” [sic] taking two weeks or more of paternity leave rose from 22% to 36% in three years
  – Creation of auditable performance becomes an end in itself (the fact that measurement takes place is enough) - what is important is that indicators are created and used
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• Colonisation
  • States concern themselves with evidencing whether measurement is accurate, whether statistics are disaggregated, whether the data is being used to inform government policy, etc... Rather than actual human rights protection

• A shift from *content* to *form*

• Retreat from Dworkinian view of rights – as the individual’s “trump” against the State – to a managerial exercise of quantification and verification
Managerialism

• “Law is finally drained out of international law, conceived as a professional technique for the management of values, purposes, ideals. For the managerial sensibility law was anyway always only a second best, a pointer to good purposes, but pointless if those purposes were known, and harmful if poised against them.” (Koskenniemi)

• Managerialism is about achieving known and stated goals

• Once the goals are known, arguments about justice and morality are irrelevant
Concluding Remarks

• If “human rights” are to have any real effect in a society they have to be internalised and normalised: they have to be part of its public discourse

• This means that they must be bound up in arguments about justice and morality, and their content continuously revisited and revised

• This means they are ill-served by the prioritisation of form over content: they are all about content