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International Laws and Charters: Global Prescriptions for Effective Reform?

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In *The Bottom Billion*, Paul Collier promotes laws and charters as a cheap and powerful tool to institutionalise development priorities and help the poorest countries, a task framed as a global public good. While the logic is appealing, it has flaws. Laws and charters are commonly either cheap or powerful, yet rarely both at the same time. They can improve governance, but their effectiveness is highly dependent on the politics of implementation. Short of creating purely symbolic 'parchment barriers', these requirements have to be better understood before global prescriptions can bear fruit.

The strengths of Collier's proposals

There are many good things about Collier's proposals. A focus on international norms and rules broadens the scope of development approaches. It recognises that global interconnections, specifically world markets, need to be embedded in institutions, and that these will – and should be – value based. Moreover, Collier underlines the importance of both state and non-state actors in achieving or hindering reform. Changes in domestic or international law go hand-in-hand with setting standards through multi-stakeholder initiatives, such as the UK-championed Extractive Industries Transparency Initiative (even though he omits to mention the corresponding human rights-focused initiatives such as the United Nations Global Compact).

Collier on laws and charters

Collier's laws and charters tool responds specifically to the traps caused by natural resources, poor governance and conflict. His proposals are situated at varying levels and include both a set of domestic laws in developed countries and international charters or global prescriptions.

Domestically, in Northern countries, stronger banking laws would require the reporting of suspicious deposits. Also, stronger anti-bribery legislation, notably the facilitation of whistle-blowing, would undercut the current business practices of many multinationals, particularly in corruption intensive sectors such as resource extraction and construction. At the global level, generalised charters are to address the management of natural resource revenue, democracy, budget

transparency, post-conflict reconstruction and investor insurance.

Promulgating such norms fulfils two broad functions: one prescriptive, the other political. They provide blueprints and an agenda for change for governments faced with complex problems. Their impersonal character enables them to transcend political rivalries, overcome distrust between national and international actors, and provide leverage for embattled reformers within governments and a rallying cry for civil society operating outside government circles.

Lastly, while made relevant through domestic pressure, to perform each charter needs a recognised 'institutional host' with the relevant technical and management expertise.

“ In the field of human rights and governance an ever-increasing codification of obligations seems to have had little effect on worst practice. ”

Collier's proposals are strongest where he emphasises that, because Northern laws affect opportunity structures in the South, Northern actors are implicated in enabling and sustaining bad practice abroad. Put more bluntly, 'rich countries have been a safe haven for the criminals of the bottom billion' (Collier 2007: 135). Therefore, laws can, and should be, changed. The Kimberley Process designed to tackle the trade in blood diamonds exemplifies a case in which legal and non-legal reforms combined to create real change at the international level.

The weaknesses of Collier's proposals

However, there is also much here that is less useful and clear. Though put together as a single set, there are profound differences in the tools and mechanisms – and thus corresponding expectations about feasibility and compliance – that these different laws and charters imply. Some presuppose non-binding cooperation of both private and public actors; some function through domestic criminal law; and others suggest inter-governmental agreement or bilateral treaties. This array lacks common characteristics and effects.

The investment charter relies mainly on peer pressure and the gains expected from investment to gather adherents. The more substantive aspects of democracy are to be promoted by the Western media and 'demonstration effects'. Further down the line, the 'post-conflict' charter combines content

from all the other charters in a 'contract' for state-building that would lock in donors and the broader international security regime. In turn, post-conflict countries are 'on probation for that first decade, placed under a set of rules that define the minimum acceptable progress before untrammelled sovereignty can be achieved' (Collier 2007: 152).

Change is not a public good

There is a flaw in Collier's pitch: it is not the cheap option. Laws and charters are not global public goods and they do not benefit everybody. The problem with enacting them is overcoming not just freeriding, but also, as he acknowledges, vested interests who have much to lose. Helping the Bottom Billion is not a public good either because the resulting benefits will hopefully disproportionately accrue to the populations living within them. This has consequences for compliance.

Collier incorrectly asserts that we hardly use laws and charters. In fact, the last few decades have seen a plethora of global prescriptions in the form of charters, guidelines and benchmarks at the international level, and the legalisation of inter-state relations, as well as the emergence of global administrative law (Krisch & Kingsbury 2006a). The results have been varied and often unclear. Much is known about how things should be done differently, and something about forging global charters and agreements; yet we know much less about their impact on practice. This applies particularly to

countries or settings where legal mechanisms are weak, such as the countries of the Bottom Billion. Domestic politics are often key.

Charters are not always effective

In the field of human rights and governance an ever-increasing codification of obligations seems to have had little effect on worst practice. States that commit abuses have just as commonly signed up to treaties than not, and their compliance or otherwise appears unaffected by the delegation of treaty oversight to external mechanisms (Hafner-Burton and Tsutsui 2007).

Existing anti-bribery legislation has also had a varied impact. The Foreign Corrupt Practice Act in the US has increasing influence, whereas the corresponding British legislation remains relatively dormant and, in the case of BAE Systems' arms deal with Saudi Arabia, was only recently subordinated to political interests (Schwartz and Bergman 2007). In a recent assessment, John Ruggie (2007), the UN Secretary General's Special Representative for Business and Human Rights, notes that where transnational companies are concerned, responsibility for outcomes has been difficult to trace, due to increasingly networked styles of operations and sub-contracting. Early reviews of the Kimberley process also emphasise the ongoing difficulty of changing actual practices where countervailing incentives are strong and institutional frameworks weak.

“ International conventions and charters risk being nothing more than good public relations. ”

There are good reasons to assume that the impact of laws on domestic politics is equally varied. Do external norms help set domestic agendas? *Pace* Collier, there seems little evidence that political divisions in the Bottom Billion are rooted in disagreement on political programmes. Instead, power politics, often with strong personal elements, frequently dominates.

Norm diffusion vs. bargains

For Collier, the European Union (EU) is key to any effort to make his charters relevant. This is a valid point: combined and direct EU aid amounts to more than half the global total. If the EU adopted a broader framework and forged a consensus that development of the Bottom Billion should be a priority, not just for aid programmes but also in the way Western companies conduct business abroad, much could be gained. Yet Collier focuses on the spread of norms: using the example of Eastern Europe, he states ‘this was the power of international norms at its most stunning’ – and that something similar could be done for the Bottom Billion (Collier 2007: 139). The argument is disingenuous. It was not the power of norms, but an elaborate system of conditionality, based on a clear bargain regarding future membership, that propelled the wave of reforms in Eastern Europe. No comparable bargain is on offer for the Bottom Billion. And even in Europe, once membership was achieved, both formal and informal backsliding occurred, revealing symbolic incorporation, paper tigers, and

ultimately the power of domestic politics and circumstance (*The Economist* 2006).

Western bias is counterproductive

The processes by which norms emerge and are promoted is a crucial part of their success. Understanding domestic structures and politics, related issues of author and ownership and the nature of linkages between domestic and international actors are all important for any attempt to make charters stick. Precisely because Collier’s proposed charters are not perceived as public goods, trust in, and inclusiveness of, those advocating norms is important.

Collier recognises that reputation and representation are important in establishing legitimacy or buy-in for any charter. He notes that the institutional host for a new revenue transparency mechanism needs to be an ‘honest broker’, but he shows little awareness of existing fault lines. He proposes the International Monetary Fund (IMF) or World Bank, themselves subjects of highly charged debates about institutional bias and reform.

At the international level, the EU may have more relational capital than the US, but there are significant cracks, visible in debates about migration, governance and the global trade regime.

Collier’s reformist universe is not state-centric, but it is distinctly Western. For better or for worse, his laws and charters, written by Western experts,

are designed to facilitate a specific model of market capitalism and political and judicial accountability that do not always translate easily into practice. They are also non-negotiable: China must either be brought on board using the lure of international prestige, or circumvented procedurally. The two strategies seem difficult to pursue simultaneously.

Implementation matters

For Collier, legal reform and formal standard setting are key to solving problems. His belief in general causal laws is evident in the use of cross-country regressions and also underpins his aim to identify generalisable rules for behaviour. Yet linear policy models have clear limits in what is a complex and political environment. Again, the crux is not in the establishment of general principles within a globalised world, but in identifying the room for manoeuvre and the legitimate procedures for arriving at these principles in policy and practice. Without this, they will become empty shells.

Broad international conventions can turn very political matters into implementation issues. This can be positive, but it can also produce perverse effects, shifting power towards legal know-how and specific sets of experts.

Conclusion

International conventions and charters risk being nothing more than good public relations. The danger is that by focusing on the processes of

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prescription, the political processes which create practice may be neglected. This will only increase the gap between the two and eventually undermine prescriptions themselves. By saying that charters and norms are easy, effective and cheap, Collier risks promising too much too quickly – something which he set out to avoid in the first place.

Nevertheless, policymakers should pay real attention to his emphasis on the linkages between governance in developing countries and the developed world. Tackling these issues would not only have direct impact, it would re-energise the wider debate about global public policy if Northern nations practice what they preach. This debate is likely to continue and the record suggests that it needs to be facilitated at multiple levels to produce practical meaning.

Credits

This In Focus was written by **Anna Schmidt**, a Research Fellow in the Governance Team at IDS.

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