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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



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.)

Unanticipated Consequences of Human Rights Audit

- 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*

Unanticipated Consequences of Human Rights Audit

- 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