Law Text Culture

Volume 6 *Legal Intersections* Article 5

January 2002

Reconsidering 'Globalisation': Judicial Reform in the Philippines

R. Hunter
Griffith University

Reconsidering 'Globalisation': Judicial Reform in the Philippines

Abstract
Various commentators have identified the development of 'globalised' law--Western and neo-liberal in origin--produced by global economic imperatives, and particularly under the demands of the International Monetary Fund (IMF) and the World Bank. For example, David Trubek et al note that 'Legal fields have become important assets in the global competition for investment', and that the particular legal configurations perceived as necessary for successful competition include '"modern" laws, "efficient" courts, and "business oriented" legal professions' (Trubek et al 1994: 477). Boaventura de Sousa Santos observes the hierarchy of legal systems being reproduced in 'the successful globalization of a given [i.e. Western] localism' (Santos 1995: 263). And Peter Fitzpatrick critiques the loan conditions imposed by the IMF and the World Bank, derived from the Western nations that donate funds rather than the 'developing' nations that receive them, which all ultimately promote a neo-liberal agenda involving the supremacy of the free market and a limited role for the nation state (Fitzpatrick 2001: 213). In addition to explicit economic prescriptions of liberalisation, deregulation and privatisation, these loan conditions include political prescriptions of democracy, human rights and the rule of law. In particular, Fitzpatrick remarks upon the 'immense material commitment ... to promoting the rule of law and the "transplanting" or "reception" of occidental laws, especially those of a commercial variety' (Fitzpatrick 2001:214).

Reconsidering 'Globalisation': Judicial Reform in the Philippines

Rosemary Hunter

Introduction

Various commentators have identified the development of 'globalised' law--Western and neo-liberal in origin--produced by global economic imperatives, and particularly under the demands of the International Monetary Fund (IMF) and the World Bank. For example, David Trubek et al note that 'Legal fields have become important assets in the global competition for investment', and that the particular legal configurations perceived as necessary for successful competition include '"modern" laws, "efficient" courts, and "business oriented" legal professions' (Trubek et al 1994: 477). Boaventura de Sousa Santos observes the hierarchy of legal systems being reproduced in 'the successful globalization of a given [i.e. Western] localism' (Santos 1995: 263). And Peter Fitzpatrick critiques the loan conditions imposed by the IMF and the World Bank, derived from the Western nations that donate funds rather than the 'developing' nations that receive them, which all ultimately promote a neo-liberal agenda involving the supremacy of the free market and a limited role for the nation state (Fitzpatrick 2001: 213). In addition to explicit economic prescriptions of liberalisation, deregulation and privatisation, these loan conditions include political prescriptions of democracy, human rights and the rule of law. In particular, Fitzpatrick remarks upon the 'immense material commitment ... to promoting the rule of law and the "transplanting" or "reception" of occidental laws, especially those of a commercial variety' (Fitzpatrick 2001:214).

In these accounts, therefore, developing countries are compelled to adopt, by one form of economic pressure or another, sets of commercial laws and court procedures that facilitate foreign investment and the free movement of global capital, regardless of the interests, and often to the detriment, of the national population, particularly its poorer and more economically vulnerable members. Richard Mohr's case study of the introduction of a new bankruptcy law and Commercial Court in Indonesia provides almost a textbook illustration of this argument (Mohr 2002).

The project of Rafael La Porta and colleagues at Harvard University, which seeks to apply the tools of economic analysis to identify 'optimal' commercial legal rules on a global basis, at least implicitly and sometimes explicitly participates in this form of legal imperialism. In a recent study funded by the World Bank's World Development Report 2002 and the World Bank's Financial Sector, for example, these researchers, to quote the Abstract of their report:

> measured and described the exact procedures used by litigants and courts [in 109 countries] to evict a tenant for non-payment of rent and to collect a bounced check. We used these data to construct an index of procedural formalism of dispute resolution for each country. We [found] that such formalism is systematically greater in civil than in common law countries. Moreover, procedural formalism is associated with higher expected duration of judicial proceedings, more corruption, less consistency, less honesty, less fairness in judicial decisions, and inferior access to justice. These results suggest that legal transplantation may have led to an inefficiently high level of procedural formalism, particularly in developing countries (Djankov et al 2002: 1).

Although this report focuses on relatively minor commercial disputes, and therefore is more directed to the conditions for contractual/entrepreneurial activity by local rather than transnational commercial actors, it does highlight the 'inefficiency' of the contractual enforcement regimes of many 'developing countries'. Elsewhere, too, La Porta et al have shown that English common law countries have laws that provide the greatest protection for shareholders and creditors, while French and German civil law countries have the least investor-friendly laws, with implications for the efficiency of financial markets (Berkowitz et al 2001: 1). These 'findings' suggest another kind of global competition occurring within the occident itself. Since commercial activities in most developing countries are already governed by some kind of Western law, transplanted during the earlier era of colonisation, what is identified here is the superiority of a *particular kind* of Western law, viz., the law emanating from the UK and US, as opposed to that emanating from Europe. Although the authors do not make any particular recommendations in this regard, what would seem to follow is the need for a new wave of

transplantation, this time of the efficient kind of Western law as determined by rational economic analysis, rather than the inefficient kind determined by arbitrary accidents of colonisation.

However, contrary to the claims of economic analysis to provide determinate answers, another research group has challenged the La Porta thesis concerning the relative efficiency of the common law. Taking an approach which also employs economic analysis, but which incorporates a broader range of factors into the analysis, Daniel Berkowitz et al have concluded that:

> the way in which the law was initially transplanted is a more important determinant of legality than the supply of a particular legal family. Furthermore, the legal transplantation process has a large, albeit indirect, effect on economic development via its impact on legality. The policy implication of these results are [sic] fundamental: a legal reform strategy should aim at improving legality by carefully choosing legal rules whose meaning can be understood and whose purpose is appreciated by domestic law makers, law enforcers, and economic agents ... In short, legal reform must ensure that there is a domestic demand for the new law, and that the supply can match demand (Berkowitz et al 2001: 16).

The disagreement between La Porta et al and Berkowitz et al reminds us that economics is not monolithic. Well publicised disagreements between the IMF and the World Bank also remind us that international financial institutions are not monolithic either. Indeed, my experience with the World Bank suggests that that organisation itself is not monolithic, but is internally divided with regard to approaches and priorities. My experience working on a World Bank-funded project in the Philippines also seems to bear only limited resemblance to the critical accounts of World Bank projects discussed above. These points suggest that, rather than contributing further to 'grand theorising' about legal globalisation, there is a need to shift attention to the level of the particular, and to ask in each case what it is that is being 'globalised', by what mechanism(s), and with what local effects. The aim of this article is to respond to these questions in relation to judicial reform (or one particular aspect of judicial reform) in the Philippines.

The Philippines Action Program for Judicial Reform

In 2001, Philippines Chief Justice Hilario G Davide Jr promulgated a five-year Action Program for Judicial Reform (2001-2006), under the banner of the so-called 'Davide Watch'. The Vision of the Davide Watch is:

> A judiciary that is independent, effective and efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer the call to public service (Supreme Court 2001: 11).
>
> The mission of the reform program is to achieve:
>
> . speedy and fair dispensation of justice to all;
>
> . judicial autonomy;
>
> . improved access to judicial and legal services;
>
> . improved quality of external inputs to the judicial process;
>
> . efficient, effective and continuously improving judicial institutions; and
>
> . a judiciary that conducts its business with dignity, integrity, account-ability and transparency (Supreme Court 2001: 12).

The goals of the program are 'regaining public trust and confidence in the country's system of justice, and improving the contribution of the judicial system to socio-economic development and global competitiveness' (Supreme Court 2001: 12).

The Action Program for Judicial Reform is funded by a combination of loans and grants from a range of sources, including (but not confined to) the World Bank. The Bank's involvement includes funding for infrastructure and computerisation of the courts, and a Case Decongestion and Delay Reduction Project, described in more detail below. The point to be made here is that the Action Program was a local initiative, emanating from the Chief Justice of the Supreme Court, rather than being required, imposed, or demanded as a condition of World Bank loans to the Philippines government. It might be argued that this is a distinction without a difference, since World Bank policy may simply entice local initiatives that conform to its desires. Local initiatives are inevitably constituted by the funding environment, and the Bank's economic agendas produce funding proposals that conform to those agendas. The reference in the program's goals to 'improving the contribution of the judicial system to socio-economic development and global competitiveness' might seem to confirm this. In fact, however, improving the contribution of the judicial system to socio-economic development and global competitiveness is an extremely muted theme in the day to day, and even overall, development and implementation of the Action Program. The first stated goal, that of 'regaining public trust and confidence in the country's system of justice' is the program's overwhelmingly dominant reference point. The potential benefits of the program for foreign investment have never been discussed with me, the international, World Bank-funded consultant. By contrast, the need for the people of the Philippines to have better access to reliable and impartial justice delivered in a timely manner is a constant refrain.

Richard Mohr has cautioned, however, that we also need to be aware of whose interests in a client state are promoted by particular reform programs (Mohr 2002: 6). There can be little argument that the Action Program for Judicial Reform was formulated at an elite level, and is directed towards the interests of possibly middle class court users -- small economic actors, if not large local or transnational corporations -- although the reform program is not confined to civil law, and victims of crime are also included. While 'the courts' as a whole will be beneficiaries of the program, the reforms may not be in the interests of some judges, or of lawyers. On the other hand, the United Nations Development Program is now funding its own research project on access to justice by the poor and cultural minorities in the Philippines, a study that was not included as such in the Action Program (although to the extent that these groups are victims of crime or are seeking some other form of justice, their interests are represented). Above all, and regardless of who might actually go to court, the aim of improving public *perceptions* of, and of reinstating public *confidence* in, the justice system has a broad domestic appeal. All of which suggests that the question of local interests is complex, and not entirely clear at this stage of the program's trajectory. Nevertheless, the fact that the program was a local initiative does appear to have a depth of meaning beyond providing convenient legitimation for World Bank agendas.

The Philippines Court System

In order to place the Action Program in its local and historical context, it is necessary to provide a brief account of the Philippines court system. In terms of colonial transplantation, the Philippines have been colonised twice, first by Spain (from the mid-16th century), and then by the USA (from the end of the 19th century), with brief periods of occupation by the British (1762-4) and the Japanese (1942-5). The Philippines has a US-style, post-WWII constitution, which was revised and re-enacted in 1987, after the fall of the Marcos regime. The legal system and the system of courts is unitary rather than federal. The organisation of the judiciary and legal procedures consists of a mixture of civil law and common law elements.

Municipal Trial Courts (MTCs), the lowest level courts (with slightly different names depending upon their location) deal with civil cases valued up to 200,000 pesos (300,000 pesos in Manila),1 ejectment cases, criminal cases carrying a penalty of up to six years' imprisonment, and violations of Municipal ordinances. In the provinces, MTC judges also conduct preliminary investigations of criminal cases within the jurisdiction of the Regional Trial Courts (RTCs).

RTCs are trial courts of general jurisdiction, dealing with all matters beyond the jurisdiction of the MTCs. Some RTCs are designated as specialist Family Courts or Dangerous Drug Courts. Since Philippines law does not allow for divorce, Family Courts deal with applications for judicial separation (which include a criminal investigation into possible collusion between the parties), adoption, other family relations matters, and all matters -- whether civil or criminal -- involving juveniles. Dangerous Drug Courts handle criminal charges for a range of drug offences, up to and including offences carrying the

death penalty. Further, some RTCs are designated as specialist Heinous Crimes Courts, Intellectual Property Rights Courts, Intercorporate Courts, or Agrarian and Forestry Courts, although these specialist jurisdictions are not exclusive, but rather co-exist with the court's general jurisdiction. In addition to the courts included in the diagram, there are a small number of Shari'a Circuit Courts (first level) and Shari'a District Courts (second level), which deal with matters of Muslim personal and family law.

The Court of Tax Appeals deals specifically with appeals from decisions of the Bureau of Internal Revenue and the Bureau of Customs. Appeals from the RTC (other than in death penalty cases) and from the Court of Tax Appeals go to the Court of Appeals, which is organised into 17 divisions of three justices each. The Court of Appeals also reviews decisions of a number of quasi-judicial agencies, including the National Labour Relations Commission. At the same level as the Court of Appeals sits the Sandiganbayan, a court of original jurisdiction which deals exclusively with criminal charges of graft and corruption against senior public officials. It is the Sandiganbayan which is currently hearing corruption charges against former President Joseph Estrada. The Supreme Court hears appeals from the Sandiganbayan and appeals on questions of law from the Court of Appeals, and also undertakes an automatic review of all death penalties handed down by the RTCs.

Although the quasi-judicial agencies use various forms of alternative dispute resolution (ADR) to resolve cases, there is no system of court-based or court-referred mediation in any of the Philippines courts, and private mediation is both limited in availability and rarely resorted to. The main form of ADR related to the legal system is the Barangay Justice System (BJS), a form of community-based dispute resolution instituted under the Marcos regime in 1978, although based on 'traditional' (pre-Spanish) Filipino methods of village dispute resolution. It is organised around local barangays -- the smallest unit of government. Everyone in the Philippines belongs to a barangay, and there are over 41,000 barangays in the country. All civil disputes and criminal matters involving a penalty of six months' imprisonment or less, where the parties come from the same barangay, must be referred to the BJS for attempted amicable settlement, and can only be filed in court with certification from the Barangay Chairman that dispute resolution has been attempted. According to a report on alternative dispute resolution programs published under the auspices of the judicial reform program, an average of 147,341 cases per year were referred to the BJS from 1980 to 1999, of which 87 per cent were settled by mediation or arbitration (Supreme Court nd: 13). The quality of dispute resolution under the BJS is thought to vary widely, however, depending upon the commitment and perceived impartiality of the particular Barangay Chairman.

In the trial courts, each judge has his or her own set of chambers (known as a sala), which consist of a clerks' office, judge's chamber, and courtroom. Each judge constitutes a single branch of a trial court, with branches grouped together into stations of varying sizes (smaller in the provinces, larger in metro Manila). Cases are filed at a single point in the station, and are then assigned to branches (judges) by lottery as an anti-corruption measure. Each judge is the sole trier of questions of fact and law. There are no juries in the Philippines, but at the same time, summary procedures are not routinely used in the first level courts. More commonly, proceedings at both the first and second levels are recorded stenographically and transcribed (on manual typewriters), and written judgments are issued. Moreover -- and this is one of the strongest legacies of the civil law system -- trials are conducted piecemeal, with evidence being heard in a series of short appointments over an extended period of time, rather than as continuous oral proceedings. A continuous trial system was piloted in 1989, and in January 1990 all trial courts were ordered to implement continuous trials, although 'continuous' was defined to mean a trial period not exceeding three months (Supreme Court Administrative Circular 3-1990). But few courts fully implemented this change, and the order on continuous trials is generally acknowledged to be honoured more in the breach than the observance. Lawyers' resistance is often blamed for the failure of the reform, but it is also clear that the necessary administrative support for the change was not provided to judges, and nor was the need for cultural change in the conduct of court proceedings addressed (Legada & Sabio 1989, Institute of Judicial Administration 1990).

The Supreme Court exercises supervision over trial court judges by means of administrative circulars and the monitoring of regular statistical reports. Judges are required to provide monthly statistical returns of the number of cases in broad categories that were filed, disposed, and pending in their salas during the month. These reports are used to generate annual caseflow statistics, currently compiled manually. Another focus of the monthly statistical returns are cases submitted for decision. Under article VIII, section 15 of the 1987 Constitution, cases are supposed to be decided by trial courts within three

months of submission for decision, thus the monthly returns require judges to report on cases that have been submitted for decision and when they were submitted. Previously, judges' pay was automatically docked if they failed to provide their monthly statistical reports, although this sanction has now been softened somewhat, so that the penalty is not automatic (Supreme Court Administrative Circular 2-2002). Judges with a substantial number of cases submitted for decision for more than three months are subject to auditing. Both of these types of sanctions have an impact on the reliability of the data provided. Judicial case management (such as it exists) is also hampered by lack of computerisation, inadequate storage space for pending and finalised files, frequent fires in which records are destroyed, and in some cases, simply unmanageable caseloads.

Delay and Congestion in the Philippines Court System

The Philippines courts suffer from longstanding problems of clogged court lists, slow processing of cases, and consequent lack of confidence in the court system to resolve disputes or deal with criminal offences in any kind of a timely or cost-effective fashion. Annual caseflow monitoring by the Supreme Court shows an increasing number of cases filed (despite the role of the BJS), combined with static or decreasing disposition rates, resulting in ever growing backlogs in almost all courts. For example, between 1989 and 1999, annual inflows of new cases increased by 14.4 per cent in the RTCs, and 106.3 per cent in the MTCs (Supreme Court 2001: 20). In part, the increase in the RTCs was dampened by shifts of jurisdiction from the RTCs to the MTCs, although the product was the huge increase in inflows to the MTCs. Between 1996 and 2000 annual inflows of new cases increased by only 4.0 per cent in the MTCs, but rose by 26.7 per cent in the RTCs (CPRM 2002: 2-4). The annual clearance rate for all courts fell between 1994 and 1998 from 50.7 per cent of pending cases to 45.7 per cent. The build-up of backlogged cases 2 over that period increased by a total of 453,791 cases (Supreme Court 2001: 21). Some courts performed much worse than the average. The Court of Tax Appeals' annual clearance rate averaged only 31.6 per cent of pending cases across the period, while the Sandiganbayan's averaged only 9.3 per cent (Supreme Court 2001: 23). Clearance rates in the trial courts remained static between 1998 and 2000 (CPRM 2002: 2-40), while the backlog continued to grow.

Increased backlogs have inevitably resulted in a blow-out in the average time taken to dispose of cases. One study showed that the litigation time3 in ordinary civil actions increased 79 per cent between 1977 and 1987, from one year and three months to two years and three months (Raval & Legada 1987: 10). There is every reason to believe that case processing times have increased further since then.

Potential causes of delay and low clearance rates are many. Those that appear in the Philippines literature, that I have observed, or that have been explained to me anecdotally include:

A high proportion of cases go to trial. Far fewer civil cases settle and far fewer criminal cases result in guilty pleas than is the case in Western common law systems. If those systems had similarly low rates of settlements and guilty pleas they would also collapse under the weight of pending cases.

. Most criminal cases include associated civil proceedings against the defendant brought by the victim(s) of the crime, known procedurally as private complainants. This has a disincentive effect on guilty pleas, because the defendant would also be admitting civil liability towards the private complainant(s). Conversely, if private complainants manage to gain restitution from the defendant (for example through the recovery of goods or money), they become unwilling to continue as witnesses in the criminal proceedings, thereby hampering the prosecution's ability to complete the case.

. Judicial appointment is not attractive to many lawyers. Judges are appointed from the ranks of practising attorneys (as in the common law system) rather than there being a career judiciary (as in civil law countries). Judicial appointment often involves a significant pay cut, very hard work, and not a great deal of respect or prestige. Moreover, anti-corruption measures in the judiciary, while by no means universally effective, are sufficiently strong as to render income supplementation by means of corrupt activities a somewhat risky and unreliable venture. As a consequence, there are insufficient practitioners of sufficient quality to fill judicial vacancies. More than one quarter of trial court branches (27 per cent) are vacant (Supreme Court 2001: 25), resulting in enormous caseloads for judges acting in those branches while maintaining responsibility for their regular branches.

. There are not enough prosecutors, public attorneys, police, or forensic experts to enable all the criminal cases in the system to be dealt with in a timely manner.

. There are problems with the service of summonses and subpoenas (which sometimes cannot be effected due to inadequate transport for servers) and with the delivering of notices of scheduled or postponed hearing dates through the mail, with the result that parties and witnesses often do not appear in court because they did not receive notification in time.

. Lawyers fail to appear in court, regularly seek adjournments, resist settlement and engage in dilatory tactics. Two earlier studies found lawyers to be responsible for around 70 per cent of the delay in civil cases and around 60 per cent of the delay in criminal cases (cited in Raval & Legada 1987: 11).

. Criminal cases are delayed because the accused cannot be apprehended. This issue relates less to case processing as conventionally understood and more to the way cases are counted. A criminal 'case' in the Philippines commences not when the accused is arraigned, but when the prosecutor files the information in the court, after which the judge issues an arrest warrant. Thus, much of the time at the beginning of a criminal case may be taken up in attempts to arrest the accused. If no action has occurred after a specified period of time, the case may be archived, which removes it from the court docket until such time as the accused is apprehended (which may never occur). Archiving accounts for a significant proportion of criminal case dispositions in the lower courts (Supreme Court 2001: 24, CPRM 2002: 2-35) -- in Manila, a higher proportion of cases are archived than resolved (CPRM 2002: 2-37) -- which may improve disposition figures, but is perceived as a failure of justice for private complainants.

. The distribution of work between the MTCs and RTCs, and among specialist and general RTCs, may not be optimal and may cause delays in some cases.

. Under *Batas Pambansa Bilang* 22 (BP22 or the Bouncing Checks Law), it is a criminal offence to write a bouncing cheque. All BP22 cases, of whatever value, are dealt with in the MTCs, and are thought to be clogging the dockets of those courts.

. Judges in circuit courts and judges in the provinces who are acting in other branches are obliged to spend a great deal of time travelling, which reduces the time available for hearing cases. Judicial efficiency is also reduced by degraded court facilities, unfilled vacancies in court staff, and other resource shortages.

Global Solutions to Delay and Congestion

Under the 'green beret' approach to law reform, to borrow Tim Lindsey's evocative image,4 there would be no need to find out the particular causes of congestion and delay in Philippine courts. These are, after all, universal problems, and hence are susceptible to a range of universal, boilerplate solutions. Basically, clearance rates can be increased, and delay and congestion reduced, by increasing judicial time, more efficient use of judicial time, and/or reducing the number of cases in the courts. Judicial time can be increased by the appointment of more judges, the creation of additional courts, and/or extra effort on the part of individual judges. Judicial time can be used more efficiently by the availability of more prosecutors and public attorneys, better facilities for service and notification, the institution of judicial case management (including case processing timetables and firm court dates), computerised records and forms, high quality staff and physical facilities, and judicial training. The number of cases in court can be reduced by means of optimal jurisdictional boundaries, more settlement of civil cases--either through lawyer negotiations or court-annexed or referred ADR, a higher proportion of guilty pleas in criminal cases, and the introduction of summary and small claims procedures to deal with minor criminal and civil matters (such as, for example, bouncing cheques) with less formality. Advocates of the greater efficiency of common law systems would also include in this list of solutions the introduction of continuous trials in the common law sense.

With two exceptions, none of these possible solutions to problems of court congestion and delay appear to be inherently objectionable, oppressive, or fail to address the concerns of ordinary citizens. The exceptions relate to guilty pleas and ADR. Clearly, an attempt to produce more guilty pleas in the name

of efficiency could lead to serious abuses of human rights, and could also fall disproportionately heavily upon the poor and cultural minorities. And Deborah Hensler has warned of the potential for ADR to undermine the rule of law in circumstances in which privatised, informal dispute resolution may be subject to threats, bribes or abuses of power, or in which clear judicial norms need to be developed or restated publicly (Hensler 2001).

Apart from these concerns, and assuming limited resources, the question then becomes *which* solution(s) should be adopted. At this point, divergence does emerge between local and World Bank preferences, with local advocates tending to focus on the need for increased court resources, facilities, and computerisation, while the Bank's representatives tend to emphasise the virtues of judicial case management. This emphasis in turn is based on previous experience in industrialised countries. Empirical studies in the US, for example, have shown that 'delays vary enormously across courts with almost identical structures, caseloads, and personnel levels', suggesting that 'delay [is] not an external phenomenon thrust on unwilling participants but a consequence of the behaviour of judges, lawyers, litigants, and other participants in the judicial system' (World Bank 1999: 2). Similarly, a survey of civil justice reforms in England, Australia, the USA, Brazil, Japan and eight European countries revealed that 'the economic interests of the legal profession explain many of the costs and delays in litigation' and that 'both civil and common law countries are resorting to greater judicial control of the litigation process to control lawyers and their clients' (World Bank 2000: 1).

Yet despite the Bank's predisposition towards the judicial case management systems adopted in Western countries, such systems are not being imposed upon or forcibly transplanted to the Philippines. Rather than simply assuming that the findings of empirical studies conducted in industrialised countries apply equally to particular developing countries, and making policy prescriptions on that basis, the major conclusion drawn by at least one section of the World Bank from the American and European studies has been a methodological one, that is, the need for research to identify the real problems that require solutions, instead of committing funds for reform projects based on perceptions, anecdotal evidence, and the perspectives and interests of those formulating the particular reform program. In the view of this section, the value of baseline empirical research as a prelude to the design and implementation of reform strategies has been illustrated repeatedly in both the West and the developing world. Such research can focus attention on ordinary rather than exceptional cases (Kritzer 1983: 32, World Bank 1999: 2, Hensler 2001), explode conventional wisdom about the courts (Hensler 2001, World Bank 2002: 1-2), and identify problem areas that had previously gone unnoticed (World Bank 2002: 2-3). Review and reform projects which have begun with empirical research and which are held up as models include those conducted by the Ontario and Australian Law Reform Commissions (Twohig et al 1996, ALRC 1999, 2000). It is this approach that constitutes the prime World Bank transplant or intervention into the Philippines Action Program for Judicial Reform.

The Case Decongestion and Delay Reduction Project

The Philippines Case Decongestion and Delay Reduction Project involves an in-depth study of court caseloads and case processing patterns. My role as international consultant is to advise on and assist in the conduct of empirical research on samples of recently decided cases at all court levels, and to undertake preliminary data analysis. The local consultants, the Centre for Public Resource Management (CPRM), are responsible for synthesising these case statistics with previous literature on delay and congestion in the Philippines courts, their own analysis of the Supreme Court's caseflow data over a five year period, a systems analysis of court budgets, staffing and resource levels, and an analysis of legal and procedural rules and administrative orders affecting case processing, in order to provide an integrated assessment of the major causes of delay and congestion. On the basis of this assessment they will provide recommendations on decongestion and delay reduction strategies. The recommended strategies will then be the subject of consultations with local stakeholders before being finalised. The project as a whole forms a part of the Action Program for Judicial Reform. Although the Action Program originally incorporated some form of research into court delays, it appears that the ultimate scale, scope and empirical methodology of the project were largely a result of urging by the World Bank and probably would not have occurred without it.

The empirical study of case files is examining, for each higher court and lower court level, the types of cases handled, the amount claimed in the cases or value of property involved, the types of parties and their legal representation, the procedural steps involved and which take the longest time, numbers of

motions filed, reasons for postponements of court dates, use of the Barangay Justice System or other ADR process, methods of resolution and outcomes. It is designed to yield information on case processing that is not currently captured in data reporting systems, such as the total time taken to finalise cases from filing to closure. It is also designed to test the validity and relative importance of hypotheses on the causes of delay found in the Philippines literature, put forward anecdotally by local court officials, and generated by World Bank 'experts'. Thus, for example, it will provide figures on actual trial rates, the amount of time taken for trial as opposed to pre- and post-trial phases, the proportion of criminal cases involving private complainants, whether postponements are due to the unavailability of prosecutors, public attorneys, forensic experts, non-receipt of notifications or lawyers' unavailability or failure to appear, arrest rates and times, the proportion of BP22 cases in the MTCs, and whether the time taken to finalise cases varies by reference to particular kinds of cases, geographical location, court caseload, or specialist or generalist jurisdiction. The results of the study will also feed into the process of computerising caseflow data, for instance by suggesting data fields and information that will need to be captured in new case management systems.

Of course, undertaking this kind of research leads inevitably to particular kinds of outcomes. Quantitative questions about case mix and case processing result in quantitative 'solutions' in terms of jurisdictional configurations, case management systems, and performance benchmarks. The research will yield little information, and hence little in the way of recommendations, concerning access to the courts for different sections of the population (although this is being investigated to the extent possible from an examination of court files), the quality of justice provided, the satisfaction levels of court users, or the adequacy of the legal and court systems to address matters of concern to non-elites. These are significant limitations. At the same time, however, the collection of quantitative data does not render conclusions entirely predictable. Within the scope of the World Bank sponsored research, there is still considerable room for surprises, interpretation and disagreements.

At this stage, only preliminary data from the higher courts is available, but it is already evident that some preconceptions held in Washington may prove unfounded, and some local fears may be confirmed. To give just two examples, the performance of the Court of Tax Appeals was of interest to World Bank officers, due to experience in other developing countries of governments having difficulty collecting tax revenues from citizens, thereby diminishing the public funds available for the provision of government services. In the Philippines case sample, however, virtually all tax appeals were brought by corporations claiming a tax refund or credit. In this context, slow resolution times may be very much in the government's interests, particularly since almost three quarters of appeals were upheld!

The second example concerns the Sandiganbayan. In a country in which graft and corruption are widely perceived to be endemic at all levels and in all organs of government, the Sandiganbayan represents the visible face of the fight against corruption, and the avenue by which those caught in the act can be brought to justice. The ability of the Sandiganbayan to actually achieve this goal is the subject of some doubt expressed in the press and by NGOs with interests in justice, public ethics and governance. Most criticism is directed at the process of preliminary investigation by the Ombudsman prior to cases being filed in the Sandiganbayan, and also at the lack of vigour shown and poor quality of evidence produced by the prosecution in some cases. As if to confirm these criticisms, the median duration of the Sandiganbayan cases in our sample was over six years, and in over three quarters of the cases the accused were acquitted.

But it is not immediately obvious what should be done to reduce 'delay' of these proportions, and neither is it clear whether improved prosecutorial resources and greater prosecutorial effort would in fact reduce or increase case disposition times. Clearly, too, the value of 'efficient' case processing needs to be weighed very carefully against both the value of a fair trial and the public interest in combating corruption. This example serves as a reminder that statistics do not always speak for themselves, that particular reform strategies cannot always be 'read off' from statistical findings, and that a technocratic approach to court reform is not an end in itself, but can only be a means to the achievement of social goals chosen by someone else -- hopefully chosen freely, and in the country in which they are to be implemented.

Further, although the precise contribution of empirical data analysis to the case decongestion and delay reduction strategies to be adopted in the Philippines cannot yet be determined, my sense is that the privileged status accorded to such analysis by the World Bank is not necessarily reflected in the local context. Whether particular statistical findings and my 'expert' interpretations of them are accepted or

ignored, highlighted or sidelined, may well depend upon the extent to which they accord with local concerns and preconceptions. Certainly, my experience to date is that the data produced is not treated as either compelling or unassailable. In other words, empirical data, like any other transplant, takes on a different meaning in a new location.

Conclusion

I have argued that the 'globalising' activities of the World Bank in relation to legal and court reform do not, in fact, operate towards a single end, nor according to a single methodology. Rather than producing more top-down, telescopic accounts of World Bank and IMF funded projects, in which objects viewed from a distance are difficult to distinguish from one another, it seems important to start building a more nuanced theory of the influence of international finance, from the bottom up.

This article has sought to contribute to such a process by describing and analysing one particular World Bank-funded project in the Philippines. This project does not involve the transplantation of Western commercial legal structures in the interests of foreign investment. It was initiated within the Philippines, and funding was sought and has been obtained from a variety of sources, including but not limited to the World Bank. Nor, in the context of case decongestion and delay reduction, has the World Bank required or induced the introduction of common law, or more broadly 'western', legal rules, procedures, or case management systems. What has been 'globalised' in this case is a specific judicial reform methodology. The World Bank has encouraged and supported the conduct of baseline empirical research as a grounding for tailored reform strategies. The product of this research promises to be an unpredictable hybrid of global and local knowledges.

Moreover, the proposed implementation process, perhaps without precisely intending to do so, responds to Berkowitz et al's argument that 'a legal reform strategy should aim at improving legality by carefully choosing legal rules whose meaning can be understood and whose purpose is appreciated by domestic law makers, law enforcers, and economic agents' (Berkowitz et al 2001: 16). It is too early to say what the results will be, but the process appears more promising than some critiques of the international financial organisations would suggest.

References

ALRC 1999 *Discussion Paper 62: Review of the Federal Civil Justice System* Australian Law Reform Commission Sydney

-- 2000 *Report No 89: Managing Justice -- A Review of the Federal Civil Justice System* Australian Law Reform Commission Sydney

Berkowitz D et al 2001 'Economic Development, Legality, and the Transplant Effect' MS on file with author

CPRM 2002 *Formulation of Case Decongestion and Delay Reduction Strategy (Phase 1) -- Analysis of the Caseload and Semestral Dockets of Lower Courts: Final Report* Centre for Public Resource Management Inc Manila

Djankov S et al 2002 *Courts: The Lex Mundi Project Harvard Institute of Economic Research Discussion Paper No 1951* Harvard Massachusetts

Fitzpatrick P 2001 *Modernism and the Grounds of Law* Cambridge University Press Cambridge

Gelfand A E ed 1983 *Proceedings of the Second Workshop on Law and Justice Statistics* US Department of Justice and American Statistical Association Washington DC

Hensler D 2001 'The Contribution of Judicial Reform to the Rule of Law' paper delivered at the Conference on New Approaches for Meeting the Demand for Justice Mexico City May 2001

Institute of Judicial Administration 1990 *Report on the Effects of the Continuous Trial System on*

Litigation Time and Output in the National Capital Region Institute of Judicial Administration UP Law Center Quezon City

Kritzer H M 1983 'The Civil Litigation Research Project: Lessons for Studying the Civil Justice System' in Gelfand 1983

Legada R T and R Sabio 1989 'Profile and Perceptions of Judges of Pilot Courts on the Continuous Trial System' *Judges Journal* III/4: 27

Mohr R 2002 'Performing Global Law: Court Reforms at the Intersection of the Local and the Universal' paper presented at the International Sociological Association XV World Congress Brisbane July 2002

Ontario Law Reform Commission 1996 *Rethinking Civil Justice: Research Studies for the Civil Justice Review* Ontario Law Reform Commission Toronto

Raval D J B and R T Legada 1987 'Delay and Docket Congestion in the Philippine Judiciary' *Judges Journal* 2nd issue: 9

Santos B de S 1995 *Toward a New Common Sense: Law, Science, and the Politics of the Paradigmatic Transition* Routledge London and New York

Supreme Court 2001 *Action Program for Judicial Reform 2001-2006 (with Supplement)* Supreme Court Republic of the Philippines Manila

-- nd *Assessment of the Alternative Dispute Resolution Programs in the Philippines and Recommendations for the Future (Draft)* Project Management Office Judicial Reform Project Supreme Court of the Philippines Manila

Trubek D et al 1994 'Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas' *Case Western Reserve Law Review* 44: 407

Twohig J et al 1996 'Empirical Analyses of Civil Cases Commenced and Cases Tried in Toronto 1973-1994' in Ontario Law Reform Commission 1996: vol 1

World Bank 1999 'Reducing Court Delays: Five Lessons from the United States' *PREMnote* no 34 December 1999

-- 2000 'Reforming Civil Justice Systems: Trends in Industrial Countries' *PREMnote* no 46 October 2000

-- 2002 'Reforming Courts: The Role of Empirical Research' *PREMnote* no 65 March 2002

Footnotes

1 At the time of writing, the Philippine peso was worth 0.035 Australian dollars and 0.019 US dollars. Hence 200,000 pesos = $ AU7,000 or $ US3,800.

2 Defined as the number of cases pending at the beginning of the year, plus the number of cases filed during the year, less the number of cases disposed of during the year.

3 That is, time from filing to submission for decision. The time taken to decide the case, and then to dispose of any motions for reconsideration, would be additional to this.

4 Writing about an IMF-sponsored reform in Indonesia, Lindsey refers to '"green beret" law reform team[s] ... airdropped into Jakarta armed with draft laws from their own jurisdictions and tight timetables for implementation' (cited in Mohr 2002: 11).