The Public Policy of Human Rights and the World Bank

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Introduction

The evolving concept of Rights Based Development (RBD) has the potential to offer a normatively coherent, ultimately practical response to world poverty and its deleterious impact on human lives. It is acknowledged, however, that RBD is still marked by disputes over definition, relevance and use. These debates come to the fore when considering the possible mainstreaming of RBD into the operations of the World Bank. A major concern for many analysts is that, thus far, the Bank’s engagement with human rights has been marked by supportive rhetoric, yet little in the way of change to Bank policy or operations. Further commitment by the Bank to Rights Based Development may simply mean that the language of rights is more fully employed, while the semi-radical meaning of those rights is leached away. Proponents of this argument regard the key question as being not whether the Bank should move toward an RBD approach in its work, but how it can be held truly accountable as a ‘duty-holder’ under international human rights law.

This paper starts out from the *a priori* position that while the Bank’s accountability is clearly a major issue, the potential for appropriate ‘mainstreaming’ should not be dismissed out of hand. There are significant and timely development benefits to be gained from an RBD-focused Bank – a prospect that should not be relinquished without serious investigation. Which begs the question, how best to approach such analysis?

The argument put forward here is that relocating the analytical framework from the disciplines of human rights law (where issues of RBD have thus far been most debated), economics (the traditional discipline of the Bank), or even international relations, to that of public policy will better articulate, and open the way to resolve, issues of World Bank governance and institutional reform as they relate to RBD. Contemporary public policy analysis is well-suited to making sense of complex public organisations and their decision-making environments. The World Bank operates within, and reflects, a combination of governance modes in a way that is not easily articulated under human rights law, economics or international relations. And with its appreciation of the relationship between agenda-setting and agency, public policy is a useful prism through which to consider how RBD might come to be appropriately embedded within the World Bank.

In building its argument, the paper first explores the competing, and sometimes problematic, definitions of Rights Based Development, and the degree to which RBD has been operationalised by development agencies and NGOs. It then examines the relationship
between RBD and the World Bank, noting how concerted, media-friendly criticism on the part of NGOs and some donor and borrower nations has in the past brought about at least limited Bank reform on human rights. Yet, in spite of the creation of the Inspection Panel and the introduction of environmental and social ‘safeguards’, the Bank can still be seen as essentially closed to RBD. Recent criticism of the projects of the Bank and its sister institution, the International Finance Corporation (IFC), highlight this by showing there continue to be human rights problems with a number of major Bank interventions.

The paper concludes with a brief examination of public policy ideas on agenda-setting and policy formation. It considers under this intellectual framework the potential for RBD-related reform at the Bank and concludes that, even in the face of current resistance on the part of Bank Management to a full embrace of RBD, there still exist avenues for outside advocates – viewed here as ‘policy entrepreneurs’ – to influence that organisation’s position on Rights Based Development. In other words, NGOs and sympathetic bilateral donors may well have some agency in pushing the Bank to mainstream key elements of RBD in a manner that doesn’t weaken the concept’s transformative elements. However, determining if and how this might come about requires questions and answers not usually proffered by lawyers, economists or international relations theorists. Understanding the issues of agency, agenda-setting and reform that are at the heart of such a project is, ultimately, the preserve of public policy.

**Rights Based Development**

It is important to note from the outset that Rights Based Development is not synonymous with the right to development, as articulated by the United Nation’s 1986 Declaration on the Right to Development, although there are, obviously, shared goals. The UN Declaration provides the legal expression of the right of every individual to attain the economic, social, cultural and political development necessary for them to fully realise all “human rights and fundamental freedoms”. Article 3(1) makes it clear where the onus of responsibility for this lies: “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.” Under the terms of the Declaration, states commit themselves to the progressive realisation of this right through the formulation and implementation of appropriate national development policies that also embody principles of participation and equitable distribution. The system of states that commits to this right is also obliged to support national policies through cooperation on issues of trade, debt, finance, technology transfer and untied assistance (Sengupta 2002). While states are the principal duty bearers under the declaration, other actors such as transnational corporations, NGOs, aid agencies and multilateral organisations are also
brought within the international human rights regime of which the Declaration is a part, and their obligations, in some cases, go beyond the ‘merely’ moral (Sengupta 2004).

The 1986 Declaration was one of the few outcomes – along with the UN Conference on Trade and Development (UNCTAD), the 1974 UN Charter of Economic Rights and Duties of States, and the 1975 endorsement by a special session of the General Assembly of Resolution 3362 – of Southern countries’ agitation in the UN for a New International Economic Order (NIEO). Resolution 3362, seen as the first step in further negotiations to arrive at concrete NIEO programs, acknowledged the historical role of Northern exploitation in creating international poverty. It also committed, with extensive reservations, the international community to principles such as: empowering UNCTAD to seek agreement on improving the terms of trade between North and South; indexing Southern commodity prices to Northern prices for manufactured goods; dedicating 0.7% of Northern states’ Gross National Products to official development assistance, and linking development assistance with the provision of Special Drawing Rights on the International Monetary Fund (IMF). (UN Doc A/RES/3362(S-VII); Bhagwati 1977)

Northern fears of Southern economic power, incited by the cartel behaviour of the Organisation of Petroleum Exporting Countries (OPEC), faded as world commodity prices progressively diminished and, as a result, successive UNCTAD sessions failed to produce a mutually acceptable reform program. By the mid-1980s it was as much as Southern states could do to ensure the passage of the General Assembly Declaration on the Right to Development – a far less radical project. Even then the bulk of industrial states refused to support General Assembly Resolution 41/133 that attempted to translate the principles of the Declaration into a practical action plan (Brownlie 1989 in Cornwall & Nyamu-Musembi 2004). So, the Declaration, for all its aspirations, should be seen as a mere echo of 1970s radical development theory and action.

Rights Based Development was the subject of debate even as the Declaration was being formed (see Shue 1980), but emerged in a more coherent way in the years following, with a significant contribution to its propagation coming via the 1993 UN World Conference on Human Rights in Vienna (see Boyle 1995). It differs from both the Declaration and the 1975 Resolution in that it sees the promotion of human rights and global poverty eradication as being intimately connected through an array of development and rights interventions rather than through a direct challenge to the established global economic order by a Southern coalition of states. Eyben (2003) puts forward a useful summary of RBD where she argues that ‘rights-based approaches’ include three, often inter-mingled, streams of analysis. The first focuses on ensuring state and multilateral agencies legitimately pursue economic, social and cultural rights and are held accountable under international human rights law for their
development activities. The second sees rights-based development as emerging out of a “myriad of social, cultural and political struggles and debates” that do not explicitly link themselves to human rights law, but are demanding the recognition of their rights nonetheless, especially those relating to participation in decision-making. The third understanding of RBD regards it as being part of an “historical evolution from clientelism to citizenship”, where development assistance is transformed from being the provision of resources and knowledge to passive recipients to a process of mutual exchange between groups of similarly empowered citizens. (Eyben 2003: 1)

The advantages in pursuing the RBD that emerges from these three intellectual streams are succinctly stated by Ljungman (2004) where, in noting the importance of rights to sustainable development, she states:

As both a strategy and a tool, a rights-based approach to development is in a much better position to ensure that development efforts address the broad concepts of poverty and poverty reduction - lack of material resources, power, influence, choice and freedom. Moreover, it provides the poor with an internationally recognised legal basis for their free, active and meaningful participation in the development process.

(Ljungman 2004: 18)

But there are also a number of analysts who would argue that at the heart of RBD there remains, or should remain, a commitment to the same notions of justice, and the concomitant understanding of rights as being associated with political struggle, that underpinned earlier, NIEO efforts of redistribution. (Pettit and Wheeler 2005: 5)

Both this more radical interpretation and Eyben’s reading of RBD demand of official development agencies, and the governments that back them, fundamental changes in development practice, especially on issues such as ‘Third World’ participation in development decision-making. However, the reluctance of official donors to become more genuinely participatory is one, significant aspect of the more general criticism that these agencies have resisted rights-based reforms by ‘colonising’ the rights-development discourse. Uvin (Uvin 2002) argues that the increasing adoption by multilateral and bilateral development organisations during the 1990s of rights-based language in describing their activities resulted in the appearance of a new lexicon with which to placate critics, meanwhile the rights concepts behind the words were stripped of real meaning. Bilateral and multilateral development agencies were happy to re-cast their policies, especially those relating to ‘good governance’, as human rights-based initiatives, yet did little to alter in any substantive way their development policy formulation and implementation. (See Cornwall and Nyamu-Musembi 2004, Pettit and Wheeler 2005 and Gundez 2004)
Turning to what key development agencies themselves are saying, there is evidence to back Uvin’s claim that they can talk the rights ‘talk’, but are less convincing, for reasons either of management failure or environmental complexity, when it comes to implementing viable RBD processes. For example, United Nations development agencies in their 2003 Common Understanding on Human Rights have explicitly committed themselves to upholding the principles expressed in the UN Declaration of Human Rights when defining development policies and programs (United Nations 2003). They also agree that a core purpose of effective development cooperation is to improve “the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights”, and are further guided by UN Committee on Economic, Social and Cultural Rights General Comment No. 3 (1990), which argues (at para 9) that the ICESCR-imposed obligation to progressively realize all economic, social and cultural rights means that there should not be any “deliberately retrogressive measures” taken without very careful justification by reference to the totality of ICESCR rights.

The United Nations Development Programme (UNDP) and the Office of the UN’s High Commissioner for Human Rights (OHCHR) have pursued these ideas in their joint Human Rights Strengthening Project (HURIST), which interprets RBD as resting on four, non-negotiable principles: the universality and indivisibility of human rights; equality and non-discrimination; participation and inclusion, and accountability and the rule of law (van Weerelt 2001). The project attempts to operationalise these principles – and translate the standards set under the international human rights regime to the legal, political, economic, social and cultural situations of particular countries – by working with local governments and communities on National Human Rights Plans. Evaluations undertaken thus far suggest, however, that deficiencies in local institutional capacity, as well as the preparedness of local governments to dedicate resources to them, has significantly hindered these human rights planning processes (Westman 2003).

The UNDP’s Guide to Participation and the OHCHR’s Draft Guidelines on a rights approach to poverty reduction have at least attempted to clarify the parties with whom a development agency should engage in a participatory manner and at what stages of the project cycle this should be done (United Nations Development Programme 1998; Office of the UN High Commission for Human Rights 2002). These guidelines are not as forthcoming, however, on the management realities of fitting high levels of participation within development agency time and resource constraints, or, at the monitoring and evaluation stage of the project cycle, on the data-gathering and evaluation that will confirm if rights are being met.

Key bilateral donor agencies, with the UK’s Department for International Development (DFID) and the Swedish International Development Agency at the forefront, have also
publicly declared their support for a human rights-oriented approach toward development assistance. In 2000, DFID released its “Realising human rights for poor people” policy paper which set out the nature of the agency’s commitment to rights-based approaches to development. Its core directive was that people be “empowered to claim their rights to the opportunities and services made available through pro-poor development”, and that DFID pursue this through the application of the “three key principles” of participation, inclusion and “fulfilling obligation”. (UK. Department for International Development 2000: 10)

A review of DFID’s attempt to evolve into a more rights-oriented institution was conducted by Piron (2003). She found that, contrary to the public statements made by the agency, there had been considerable delays in operationalising this policy position and that there had been considerably less positive change to the agency’s practice and the attitudes of its personnel than was initially hoped (Piron 2003: 4-6). Compared with official donor agencies such as Australia’s AusAID, however, DFID has at least attempted to tackle rights-based development in a meaningful way. Neither AusAID nor USAID have produced human rights policies, instead rolling rights in as a minor element in their good governance strategies, or utilising terms such as “participation” without regard for their rights implications. (See AusAID 2000; USAID 2004)

Many development NGOs reflect the multilateral and bilateral agencies’ rights-based rhetoric, but have attempted to go further in formulating effective RBD processes. The Human Rights Council of Australia, for example, has put forward an influential, and somewhat contested, “rights way to development” program that explicitly locates development as a sub-set of the international human rights regime, and then considers how government-to-government and citizen-to-government interactions change as a result (Human Rights Council of Australia 2001). It is not as clear, however, on the appropriate role of non-government players in rights-based approaches to development.

OXFAM International has gone as far as any large NGO in exploring Rights Based Development. The key human rights principles it espouses are not dissimilar from those of the UNDP or DFID:

The notion of accountability, the principles of universality, non-discrimination and equality, the principle of participatory decision-making processes, and recognition of the interdependence of rights are essential characteristics of a human rights approach to poverty reduction.

(Brouwer 2005: 2)
The difference is that OXFAM International has dedicated considerable effort to strategically operationalising RBD. Within the context of its general principles, it first identifies five “rights-based aims” to which it works – the right to a sustainable livelihood, basic social services, life and security, be heard, and an identity (gender and diversity) – and then links those aims with practical Strategic Change Objectives and Policy and Practice Changes. These then form the basis for an analytical model that owes a great deal to Logical Frameworks Analysis, and which can be applied to a range of policy fields. The dynamic that pushes this along is consultation with affected populations and an ongoing effort to ensure interaction between rights-holders and duty-bearers. This not only alters OXFAM’s own in-country projects and global awareness-raising campaigns, but also results in the provision of strategic funding for local NGOs to be actively involved in activities such as the reporting process of the UN Committee on Economic, Social Rights – which can act as a “stepping stone” toward greater awareness on the part of citizens of developing countries as to what their rights are and the legal avenues through which they can be pursued. (Brouwer 2005: 5-11.)

Other international NGOs that have attempted to transfer human rights frameworks across to the practical work of development are CARE and ActionAid. Both have focused on how their programs can empower beneficiaries to the extent that they should no longer be classified as ‘beneficiaries’ at all and should instead be considered ‘partners’ in development decision-making. Both have altered the way they evaluate their programs to reflect this. Cornwall and Nyamu-Musembi (2004), however, also note that both agencies have found that RBD can create its own problems. In the case of CARE-Kenya there were examples of communities utilising their empowerment and improved incomes to go to private providers and opt out of receiving public services, rather than collectively pushing for improvements in government services and hence general improvements in the protection and promotion of rights. In the case of ActionAid there were issues relating to their use of strong policy advocacy campaigns that sought to push the agenda on unequal power relations. Running such campaigns might have helped alter policy environments, but it also brought the agency into conflict with governments and funders when it came to negotiating productive relationships for local level development projects. (Cornwall and Nyamu-Musembi 2004: 1429-1430)

In general, Rights Based Development cannot be said to have coalesced into a clear operational blueprint – although, given the above analysis, any definition is likely to include at least the key issues of participation and empowerment, non-discrimination, accountability and inalienability of rights. This lack of clarity is in large part due to there being only limited practice-derived evidence; official donors, certainly, would appear to have little to offer by the way of practical advice on the question. Yet the above discussion indicates that there is
enough of value in the project that it warrants being taken up by major development agencies to a greater degree than has currently been the case. Leaving a project like this solely to a few international NGOs and concerned academic think-tanks such as the UK’s Overseas Development Institute and Institute of Development Studies (see their websites at www.odi.org.uk and www.ids.ac.uk/ids) threatens to stretch out unconscionably the period of RBD’s existence as a much theorised but little effected concept. The struggle for improvements in poor people’s livelihoods and expectations that RBD represents is not one that has its natural home in academia, it requires the oxygen of real-world application and adaptation. It is appropriate, therefore, for RBD advocates to target the World Bank, given its position in the world of development assistance practitioners, as being a potential driver of further RBD exploration and implementation in the international community. The question is whether there is anything in the Bank’s past or present to suggest that its open to engaging with RBD in any way that might reasonably be considered appropriate.

The World Bank

The World Bank Group is comprised of four main institutions, the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), with the shorthand term “the Bank” referring to the IBRD.

A Board of Governors, comprising the finance ministers of all member states and meeting once a year, is invested with all the powers of the Group and oversees its general direction on activities such as the admission of new members, the level of authorised capital stock, distribution of Bank income and review of financial statements. The bulk of the governing powers have been delegated to the Boards of Directors of the four agencies. The same twenty four Executive Directors (donor and borrower government representatives) sit on all four boards and so in effect oversee the whole Group on a daily basis (the Executive Directors meet, on average, twice a week).

The overall Group has one chief manager, the President, while lower level management is split between the agencies – although there is some functional sharing among the agencies, and considerable overlap between the IBRD and IDA. Voting on the Board of Directors is weighted according each country’s funding contribution. For this reason the United States is entitled to more than sixteen per cent of the IBRD Board’s total vote, while Japan is entitled to 7.9 per cent, Germany 4.5 per cent, and France and the UK 4.3 per cent each. Smaller contributors are organised in voting blocks with one Executive Director for each block (for example, Australia at the time of writing is located in the block headed by the New Zealand representative). (See the World Bank Group web site at www.worldbank.org.)
Under the 1944 Bretton Woods agreement that founded the IBRD, the Bank, and Group’s, President is nominated by the United States. Historically, the President has exerted considerable power over the direction of the Bank, aided in large part by asymmetrical information sharing with the Executive Directors, who are alternately overwhelmed or starved of knowledge on Bank affairs (Bretton Woods Commission 1994). However, there are, inevitably, limits to how far the President can stray from the vision donor countries have for, and the interests they have in, the Group (see Fidler 2001).

There may also be internal restrictions on the President’s capacity to instigate reform. Much has been written of the Bank’s ‘culture of approval’ when it comes to lending, based on the incentive structures under which project and program managers operate. Getting a project loan proposal safely through the Bank’s authorisation processes is, it is argued, regarded by managers as more important than determining whether or not the project is actually safe, or, in some cases, even developmentally effective. Caulfield (1996) supports this interpretation by pointing to facts such as: Bank manager performance is internally judged by the number and size of the loans they oversee; the Bank holds ‘preferred creditor’ status when it comes to loan repayments by borrowers, and that when a country gets to the point where it is seriously in debt to the Bank the overriding motive is to continue lending, hopefully to assist them become more productive and hence able to trade themselves out of debt, although the more common reality is that the Bank simply churns money through a cycle of lending and repayment. For critics such as Caulfield and Rich (1994), incentives such as these, combined with a misplaced belief that the Bank either internally or through consultants has access to the highest-level development expertise, has led to the Bank’s becoming deeply enmeshed in some extremely ill-advised projects. The fact the Bank is a multifarious institution with country programs, sectoral programs, evaluation branches, research branches and inter-agency policy units that results in cross-cutting interpretations of issues does not, according to the critics, displace the ‘culture of approval’ from its entrenched position.

The Bank’s actual stated mission is “to fight poverty … and to help people help themselves and their environment by providing resources, sharing knowledge, building capacity, and forging partnerships in the public and private sectors” (see the World Bank website at www.worldbank.org). This sets the scene for the Bank’s general argument on human rights, which is that its activities and development interventions – which aim to eradicate poverty, reduce corruption, increase ‘good governance’, and improve health, education and equity – in effect promote and protect basic human rights such as the right to self-determination, the right to life and an adequate standard of living, the right to participate in public affairs, the right to education and the freedom of expression, the right to work and to health and to a clean and safe environment (World Bank 1998).
In the context of discussing in its 2003 Annual Report the necessary link between empowerment of the poor and achieving the UN’s Millennium Development Goals, the Bank stated that human rights were critical in its efforts to “protect livelihoods and assets and enable poor people to invest in their futures and be included in the society in which they live”, and thereby, substantially aiding the Bank in its fundamental development goal of expanding “the opportunities for people to participate in decisions that affect their lives and the lives of their families” (World Bank 2003: 13). In the same Report, President Wolfensohn was adamant that the Bank “is already engaged in human rights” and that it is, in fact, “one of the major protectors and developers of programs which … give rights to people, starting with reducing poverty and the desire to give people the chance for a better life” (World Bank 2003: 10). The then Vice-President of the IFC, Peter Woicke, following the 2003 launch of the Equator Principles – international guidelines for banks in managing environmental and social issues in project financing – further claimed that the integration of human rights into such guidelines and operational safeguards was unavoidable and that the IFC would promote this and would be “the leader in helping banks and other financial institutions sort through these issues” (Sevastopulo 2003).

In spite of these comments, there is no clear policy emanating from the upper echelons of the Bank’s management, and endorsed by the directors, that unequivocally states the Bank support for RBD and then goes on to delineate how that support will be translated into programs. There is no equivalent of the UN’s Common Understanding statement, DFID’s “Realising human rights for poor people” policy or Sida’s “Programme for Peace, Democracy and Human rights” (Swedish International Development Cooperation Agency 1997; UK. Department for International Development 2000).

The wariness of the IBRD and the IFC in prioritising human rights is rooted in their interpretation of the political activity prohibition under Article 4 of its Articles of Agreement. Contrary to this, a growing number of international lawyers argue that the Articles do not set absolute limits on the Bank’s capacity to nominate the promotion and protection of human rights as a key objective (see Brodnig 2001). Analysts such as Darrow (2003) and Skogly (2001) have gone further, suggesting that the legality of the Bank’s engaging in Rights Based Development is now beyond dispute, and that the more pertinent issues are whether it is legally obliged to protect and promote human rights and what such obligation may mean in practice. Darrow concludes, somewhat ambiguously, that:

While there is no reason to expect or even necessarily wish for the transmogrification of either the Fund or Bank into a ‘human rights organisation’, their respective charters certainly should not be read as limiting the possibilities for constructive engagement with human rights principles, to the
In lieu of a clear RBD policy, the Bank has focused instead on implementing a number of operational policies and directives that attempt to lower the chance of environmentally and socially inappropriate development interventions being undertaken. The most important of these reforms were implemented in the early 1990s in the wake of highly criticised dam/hydro-electric projects such as Sardar Sarovar (Narmada) in India, Arun in Nepal and Yacretya in Paraguay/Argentina (see Caulfield 1996; Shihata 2000). A strategic campaign was run by environmental NGOs, following the Bank’s 1992 decision to continue supporting the Narmada Dam project, to convince the US Congress to withhold provision of replenishment funds for the IDA until the Bank accepted greater accountability for the damage – environmental, resettlement-related, cultural, economic – its projects caused (see Robert O'Brien et. al. 2000). The Bank’s response was to introduce a series of operational safeguards that a project had to pass to receive funding approval. Key operations directives include those relating to: Environmental assessment (Operational Policy (OP) 4.01), Natural habitats (OP 4.04), Cultural property (OP 4.11), Indigenous peoples (Operational Directive (OD) 4.20), Involuntary resettlement (OD 4.30), Forced labour and harmful child labour (IFC policy statement). Impact analyses that cover such concerns are now undertaken during the project design period, and further progress on a project should not occur until the safeguards have been met (World Bank 2002). The institution of these operational policies has gone hand-in-glove with the Bank’s move toward country programs based on Poverty Reduction Strategy agreements that focus on social policy projects in areas such as education, health and the environment. The Bank also claims that, under the Comprehensive Development Framework policy’s focus on “country ownership” and “partnerships”, it is more participatory now than previously, especially in the method by which Poverty Reduction Strategy Papers are formed (although the short time in which some PRSPs are written would suggest that the level of participation is not especially high) (Operations Evaluation Department 2003b).

An important step toward ensuring better accountability at the Bank, the Inspection Panel was established in 1993, but has not proved to be the panacea originally hoped. It is a quasi-independent body charged with investigating claims brought by local-level applicants who argue that Bank has failed to observe its own safeguard policies and thus has supported projects that are adversely affecting their communities. Part of the problem lies in its procedures. It may only take on a full investigation following approval by the Board of Directors, who have in front of them not only the Panel’s Eligibility Report but also a Management Response. Until clarification in 1999 of the instigation process, there was a tendency for Management to respond to the Panel’s initial report by devising a responsive
action plan with the relevant borrower and then presenting that to the Directors, thus obviating the need for a full scale inquiry. In its first ten years of operation the Panel received twenty seven requests, but produced only eight full Investigation Reports, although its rate of report production has increased markedly since the 1999 reforms. (See Shihata 2000; International Bank for Reconstruction and Development 2003)

Is the Bank correct, therefore, in its contention that, while it has not explicitly committed itself to Rights Based Development, the reforms of the 1990s have resulted in its operating in a manner that in effect promotes and protects rights? The available evidence suggests that there remain considerable deficits in the Bank’s support for human rights.

One, clear query of its position has come from the UN Committee on Economic, Social and Cultural Rights, which has a number of times declared that there is a direct duty on the Bank to respect and promote human rights, especially as it can be considered a specialised agency of the UN. The Committee has praised the Bank’s limitation of “the scale of and human suffering associated with forced evictions”, but has also admonished it in recent years for not taking sufficient account of the rights food, water, health, housing and education in its lending policies, credit agreements, structural adjustment programs and other development projects. (See UN Committee on Economic, Social and Cultural Rights General Comments Nos 4, 7, 12, 13, 14, 15).

A desk review by the Castan Centre for Human Rights Law (of which the author was a part) for the World Bank Special Adviser on Human Rights, examined the criticisms made since 2000 of key IBRD and IFC projects – with the major critics being NGOs (Northern and Southern), community groups bringing appeals to the Inspection Panel and the IFC’s Compliance Advisor Ombudsman, and academics. This review provided a number of findings that shed some light on the human rights reality of the agencies’ work. The clearest finding was that three types of activity attract the highest levels of criticism: oil and gas projects (such as the Baku-Tbilisi-Ceyhan Pipeline, Chad-Cameroon Petroleum Development and Pipeline, Gas Sector Development Project Bolivia-Brazil Gas Pipeline, and the Niger Delta Contractor Revolving Credit Facility); dam/hydro-electric projects (such as UG-Bujagali Private Hydropower Development Project (Uganda), Lesotho Highlands Water Project, and the Nam Theun Hydroelectric Project (Laos)), and water privatization programs (such as Ghana - Water Privatization Program, Manila Water Privatization Program, and the Argentinian Water Sector Reform Program). From a public policy perspective, these are all

1 Human Rights Criticism of the World Bank’s Private Sector Development and Privatization Projects, February 2004, A Discussion Paper Prepared for the Special Adviser (Human Rights), Managing Director’s Office (MDH), The World Bank by Professor David Kinley & Dr Tom Davis, The Castan Centre for Human Rights Law, Monash University, Australia. This is an unpublished report. The empirical findings section of the report is available on request to the author.
interventions that instigate a high degree of change within a relatively short period of time and have a physical, immediate impact on a people’s daily lives. Also, the benefits of the projects tend to be diffuse whereas the costs, in terms of the environment and resettlement, for example, are borne disproportionately by specific groups – a situation that indicates significant political feasibility issues. Also, in the case of water privatization projects, all were linked into longer-term structural adjustment processes, and that structural adjustment history was generally fraught, with extensive public criticism and, in some cases, demonstration and direct action. And in every water privatization project criticized there was a multi-national corporation involved as a buyer. (See also Harris, Hodges et al. 2003)

Regarding the objects of the criticism, there clearly remains considerable concern over the environmental impact of Bank projects, especially regarding the degradation of water, sanitation, food production and environment-related community structures. There is also continuing criticism that the Bank, its private partners and the recipient states fail to consult sufficiently with local populations during project design and implementation processes. This criticism has been applied to activities in all sectors and in relation to nearly all environmental and social safeguards the Bank has in place. There is little debate over the substance of the Bank’s impact assessments and safeguards – they are regarded as being, in principle, worthwhile – rather, the key accusation is that their effectiveness is diminished through poor application by the Bank and its partners. (See also Bridgeman 2001)

So too is the question of resettlement continuing to arise, mostly in relation to large construction projects, which require land to be appropriated. The criticism here also encompassed issues relating to impacts on indigenous cultures and livelihoods. An important point to note is that, in every project reviewed in this study, where resettlement had the potential to be an issue it was an issue. Furthermore, in all of those projects an impact analysis and a resettlement plan were produced but not, so the claims went, properly implemented. Frequently it was the Bank’s partners rather than the Bank itself whose behaviour was the cause of the complaint – the Bank was implicated by association. Partner governments have also been criticized for being corrupt, lacking capacity, silencing opposition to a project, passing repressive project-enabling legislation, failing to properly implement environmental and social protection programs, and failing to regulate appropriately the actions of private providers. In spite of this ongoing criticism, the Bank released in 2003 a “high risk-high reward” strategy for its support in developing water resources, and this was subsequently approved by the Board of Directors (World Bank 2004). It would appear that commitment to large-scale projects had not diminished, even with the application of the Comprehensive Development Framework (Bosshard, Bruil et al. 2003).

In addition to these findings, and relating especially to rights problems associated with water privatisation programs, Darrow (2003), argues that when it comes to the privatisation of essential services in developing countries, for example, it is possible the Bank and the IMF
may breach their ‘negative’ obligation to not assist in the transgression of human rights. He makes the point that the agencies’ “collective zeal” for privatisation might require review:

In particular, by respecting the presumption against unwarranted retrogression, ensuring that any deliberate diminution in enjoyment of economic and social rights is justified by reference to the totality of such rights, implementing a human rights impact assessment (within applicable methodological constraints), and guaranteeing the implementation of countervailing measures to the extent of foreseeable violations.

(Darrow 2003: 295-296)

While the above evidence is hardly comprehensive, and it doesn’t explore those projects that the Bank has walked away from (most notably China’s Western Poverty Reduction Project), there still appears to be a strong argument that the Bank has little serious commitment to RBD principles. Given the Bank’s ownership-management structure, the nature of the incentives that guide its decision-makers, and the difficulties inherent in reforming multilateral agencies, there must be serious questions raised over whether progress on this issue is possible at all.

Among the few authors who are beginning to consider the Bank’s organisation in the context of RBD-friendly reform, Bridgeman (2001) has been the most clear in arguing that not only is further reform not occurring, there is actually a progressive erosion of existing Bank safeguards through the removal of the “binding language” of directives and through the disparity in the resources which should be dedicated to impact analyses and safeguard implementation and those that are actually allocated (Bridgeman 2001: 1025-1027, 1035). She sees the key drivers behind this downgrading of the safeguard system being the incentive structures and the ‘culture of approval’ that dominate the Bank’s operation. Reforming the Bank so it entrenches the rights gains made and then takes on RBD in a more fulsome way will, according to Bridgeman, require something other than putting forward more rights-protective operational directives; it requires significant structural change in respect of representation and the weighted voting system, decentralisation, hiring practices, staff remuneration incentives, and an improved external accountability framework (Bridgeman 2001: 1012-1045). Reform proposals similar to these are made by several authors (see Gilbert, Powell et al. 1999; Horta 2002; Currah, Ear-Dupuy et al. 2003), but where they and Bridgeman fall short is in identifying the dynamics of organisational reform. For Bridgeman, pressure for change will come from groups and movements outside the Bank – she was writing in light of the major anti-Bank and anti-globalisation demonstrations of the early 2000s – focusing on the Bank’s “points of leverage”, especially those relating to funding, in a way similar to the strategy pursued environmental NGOs in the early 1990s. The argument in this paper is that, while such pressure has a role to play, it is not enough on its own, further
investigation is required into the public policy of rights-based development and the World Bank.

Public Policy

How are policy agendas set and how are they translated into policy practice? This is at the heart of the study of public policy. In regards agenda-setting, numerous theories abound. One of the most influential is Kingdon’s (1984) notion of ‘policy windows’ and ‘policy streams’. He argued that there exist opportunities for agenda-setting (‘windows’) that can be exploited by policy ‘entrepreneurs’ (politicians, government managers, NGOs, private firms) to move an issue from the informal agenda of public discussion to the formal agenda of government – or, in the current case, the World Bank. These windows open when there is a convergence of the problem, policy and political ‘streams’. The ‘problem stream’ equates with changing public perceptions over whether an issue actually amounts to a problem that requires government attention (perceptions may be altered through sudden crises or the operation of what Downs (1989) calls the ‘issue-attention cycle’). The ‘policy stream’ is the province of sectoral experts who devise solutions to what they believe, usually rationally, are the key problems in that area. The ‘political stream’ includes “such factors as swings of national mood, administrative or legislative turnover, and interest group pressure campaigns” (Kingdon 1984: 21). An effective policy entrepreneur is one who is able to bring problems and solutions together with a view to political timing, i.e. who understands the presence of these ‘streams’ and has the foresight and wherewithal to either manipulate problems and politics, or at least take advantage of opportunity when circumstance allows. Other authors such as Baumgartner and Jones (1993) and Howlett and Ramesh (2003) agree with Kingdon’s analysis, but put greater emphasis on the character of the ‘policy subsystems’ (which includes networks) that seek out problems, devise solutions and work to instigate public interest in an issue. This implies a multiplicity of players or stakeholders in the agenda-setting process who work as much together as they do competitively. It also implies agency. Unlike earlier agenda-setting models (sometimes called univariate models) that saw public policy problems as being related to deterministic factors such as the level of a state’s political and economic development (see Sharkansky 1971), more recent models that allow a role for policy subsystems/networks open the way challenges to formal agendas to come from outside governments or the multi-lateral organisations formed on behalf of governments.

On the question of policy practice there are, once again, multiple avenues to explore. Policy can be designed and implemented ‘rationally’. A policy hypothesis is defined, evaluated, compared against alternatives, and then monitored against clear criteria during its implementation. Alternatively, policy can be made in an ad hoc style by politicians/managers
responding to an immediate (or perceived) crisis. It can be the result of ‘top-down’, elite consensus that restricts the range of policy responses considered ‘appropriate’. It can arise out of meso-level, policy and implementation networks of government, private and civil society stakeholders that produce norms, expert discourse and policy ‘solutions’. It can result from ‘bottom-up’, on-the-ground activity, often involving incremental changes made by those charged with implementing a ‘top-down’ policy, that brings about change without significant input from higher-level officials. (See Stewart 1999; Howlett and Ramesh 2003; Weimer and Vining 2004; Considine 2005)

When thinking about how the Bank’s formal policy agenda can be altered so that policies that meaningfully engage with Rights Based Development are supported by both Management and Governors, it would appear, from a public policy perspective at any rate, that there are more options available to stakeholders outside the Bank than simple protest and direct action. The way is open for NGOs, and especially well-resourced Southern NGOs or South-North NGO hybrids, to become influential policy players through their expertise and knowledge of development (and the benefits of RBD) and possibly also through some form of mutually dependent relationship with the Bank (where they become essential partners in Bank-financed projects). In other words, RBD-oriented NGOs have to start thinking about policy entrepreneurship in terms of their setting themselves as key policy sub-system actors who can offer expert solutions to development problems, promote those solutions within the policy discourse, and then create connections between political and problem ‘streams’ in line with Kingdon’s analysis.

None of this is to say that advocacy has no role in this agenda-setting process. Clearly there is still a need for groups that bring development crises to global attention. The great benefit of Bank Watch-style groups or environmental lobbyists such as Friends of the Earth is that they work at impacting on the ‘problem stream’; they try and get the public’s attention and, especially after a World Bank-instigated environmental or resettlement disaster, they occasionally succeed. This work should, and does, target both the Bank’s Management and the nation states from which the Bank Governors are drawn. They are critical in helping to push open the policy window and thus have a policy entrepreneurship role to play. The argument this paper is putting forward, however, is that there are more forms of policy agency/entrepreneurship available to RBD-focused NGOs than just name-and-shame campaigns. Groups that are able to have input into the formation of coherent solutions to problems defined by policy subsystems are also critical. If they are able to do this via networks with the Bank, their chances of understanding and predicting opportunities in the ‘political stream’ will be greatly enhanced, as will their capacity as policy entrepreneurs. Finally, if they are able to build trust within the policy sub-system/network, through reciprocity, ongoing negotiation and diplomacy, then they open the way for the Bank
becoming a willing player in its own change. (See Considine and Lewis 1999; Klijn 2003; Considine 2005)

In short, public policy analysis enables the Bank to be seen as something more than a locus of realpolitick – it may also be a site of relationship-building between borrower and donor states and, more importantly for the purposes of this paper, be open to international development policy network interaction. These readings of the Bank regard the Governors and the Management as near-equal stakeholders, with similar bargaining power, whose relationship is essentially non-hierarchical and open to negotiation. Importantly, they also leave the way open for non-state and non-Bank players to have some agency in influencing policy agendas. These players exert influence, in the first instance, by applying pressure on the development policy agendas of Governors, and, in the second, by becoming key members, often by virtue of their development expertise, of the policy sub-systems/networks of which Bank Management and Governors are part. The key question this paper leaves for outside stakeholders such as RBD-oriented NGOs is whether they can do both at the same time.

Conclusion

Rights Based Development is an approach toward improving the lives of the poor that promises much but that remains in something of an implementation limbo. Part of its problems lies with the way its key advocates have, up to the present time, favoured long-term goals, such as opening up the international human rights law regime to access by local movements, over short to medium term objectives, such as offering clear definitions of who legitimate agents of change might be and how they are to exercise that agency. The World Bank has much to offer by way of global influence and implementation muscle, but both its history and current position on human rights indicate that it remains a long way from embracing RBD in any effective sense. Analysts of both RBD and the Bank have yet to resolve this disjunction. The argument presented in this paper is that they have too long ignored the public policy implications of these questions and thus have missed opportunities for engaging with the dynamics of policy and (implied) institutional change. To move forward on the relationship between RBD and the World Bank requires moving away from the disciplines of law, economics and, to an extent, international relations, and exploring the perspectives public policy has to offer.

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