
REACTION TO MARIANA VALVERDE

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We are grateful to Valverde for agreeing to read and comment on our book, despite it not being squarely within her area of research and interests. Her comments bring another perspective on institutions, and her piece exposes the readers to a type of analysis with different methodological assumptions from the ones we adopt in our book. Despite these differences, there are some issues raised by Valverde that resonate with pressing concerns in the field of law and development. Our reaction will revolve around these shared concerns.

Valverde points to the fact that our case studies are focused on illustrating and defining the concept of bypass, and in the process of engaging with this conceptual exercise, we may have sacrificed important details that could reveal significant differences between the practices described. The point raises the question of the value of generalizations. Some scholars in the field of law and development share this concern, being of the view that it may be more valuable to understand each case on its own terms than to find commonalities that ignore the intrinsic complexity informing social, political, economic and institutional dynamics. Taken to its extreme, this position can lead to the conclusion that no lessons can be transferred from one case to another, and therefore we are confined to studying case by case, starting afresh every time we move from the particularities of one society or from one practice to another.

The same position could be taken regarding institutional bypasses. By engaging in an analytical exercise that tries to define a concept, Valverde argues, we may not only be ignoring significant differences between the case studies, but we may also be ignoring differences within the same case study. For instance, there are different dynamics in the Poupatempo and private police forces, to use the two examples that Valverde refers to. Also, there may be significant differences in the way different units of Poupatempo operate that are not captured in our description; there may be also widely different types of contracts between residents of gated communities and private security firms that are not highlighted in our analysis. Accounting for these differences could show that each of our case studies may reflect a wide variety of experiences. In other words, each Poupatempo unit could be a potential case study on its own.

There is great value in such exercises. An analysis of the different practices adopted in different Poupatempo units (or even an analysis of the colour of the walls and its influence on employees and users, as Valverde suggests) could offer very useful information for policymakers. This kind of micro analysis, however, does not need to be antithetical to and exclusive of attempts to engage with more

macro analyses, such as the one that we engage with in the book. More than that, the value of such context-specific case studies does not need to be accompanied by a general skepticism of attempts to produce some form of cautious generalization.

We recognize that there are significant risks associated with generalizations. The field of law and development has fallen prey to these ambitions, and they almost led to its death. David Trubek and Marc Galanter discussed this problem in 1974, in what has now become the most cited piece in the field of law and development: “Scholars in self-estrangement: Some reflections on the crisis in law and development studies in the United States” (1974). In the piece, Trubek and Galanter articulate the dangers of unfounded generalizations, such as assuming that legal mechanisms that work well in developed countries would generate similar outcomes in developing nations. These “legal transplants” have failed miserably outside of their countries of origin because, as Trubek and Galanter argue, context matters. Within the next 40 years, the field has addressed these pitfalls and has largely overcome the ethnocentric outlook that prevailed in the 1960s and 1970s by focusing on context-specific analyses that highlight local variation and acknowledge the embeddedness of legal systems (Trubek 2016).

Our book and the concept of institutional bypass is certainly not an attempt to return to the type of ethnocentric and context-blind generalization that led to the crisis mapped by Trubek and Galanter. But we have, to a certain extent, some generalizing ambitions. The concept of institutional bypass is an attempt to observe regularities in the process of institutional change that allow for some generalizations. Because the generalization is at the procedural level – not at the level of specific rules and norms – we believe that it does not overlook the importance of context-specific details (Davis and Prado 2014, 216).

As much as context-specific case studies are valuable, they also involve risks. One of the major challenges that the law and development field faces today is academic fragmentation, where scholars are largely divided into a series of self-referential silos (Trubek 2016; Trebilcock 2016). This is why, in our book, we do not engage in the kind of micro-analysis that Valverde is interested in. We fully agree with her that it is very likely that practices that work in some communities may not work in others. The specificities of one particular gated community or one Poupatempo unit may be unique and worthy of analysis. While this kind of analysis may be deeply enriching, they provide very little in terms of guidance for policymakers. And here one needs to proceed with utmost caution. On the one hand, attempting to generalize from unique experiences and translate these generalizations into policy prescriptions would require ignoring the lessons law and development scholars have learned in the last 40 years. On the other hand, abandoning any generalizing ambition to focus on micro analyses may be a valuable project, but it is also one that would preserve the damaging fragmentation faced by the field of law and development today.



Are we losing something with the kind of generalization we engage in? Valverde rightly notes that we should not think of the state as a unitary or monolithic provider of services. Rather the state operates through complex networks of agencies at different levels of government and also through contractual and other relationships with the private for-profit and non-profit sectors. We do not dismiss these complexities, as long as they allow for experimentation and choice. These arrangements may be public or private and, in the latter case, they may be financed by the state or not. At the end of the day, these institutional details are dominated by the weight we put on citizens being able to determine how to best maximize their own welfare, complex and divergent as their individual utility functions may be. Thus, if citizens prefer a *Poupatempo* unit that looks like a traditional curbside kiosk or one that has striped paint on the walls, that is fine by us and will manifest itself in utilization patterns, assuming that users have some meaningful range of choice among providers.

In summary, we perceive our book to be an attempt to contribute to one of the most pressing methodological challenges that the field of law and development faces today: recognize the importance of context while preventing further fragmentation. The concept of institutional bypasses can be seen as an attempt to produce contained and mostly procedural – rather than substantive -- generalizations. We seek to fulfil our generalizing ambitions without eliminating the space for the kind of detailed case-study proposed by Valverde. In this sense, we believe that both the concept of an institution and the concept of institutional bypass can happily coexist with the kind of micro-analysis that Valverde values, and they can nicely complement each other in a number of important ways.

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