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## Book Review: Innovating Justice: Developing new ways to bring fairness between people, by Sam Muller et al

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## Book Review

**INNOVATING JUSTICE: DEVELOPING  
NEW WAYS TO BRING FAIRNESS  
BETWEEN PEOPLE, by Sam Muller  
et al<sup>1</sup>**

NICOLE AYLWIN\*

THE JUSTICE SYSTEM IS NOT PARTICULARLY WELL KNOWN for its ability to innovate. Aside from places of worship, the courtroom, and the justice system more generally, would likely be the only thing a nineteenth-century man or woman would recognize if dropped in the middle of the twenty-first century.<sup>2</sup> Faced with the present reality of an increasingly inaccessible justice system that is failing to meet the needs of the public, and with the pressures of delivering better services in a time of fiscal austerity, several major national policy reports have called on Canadian justice stakeholders to increase “innovation” in the justice

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1. (The Hague: HiiL, the Hague Institute for the Internationalisation of Law, 2013) 184 pages.
2. I am grateful to my colleague Trevor Farrow for this excellent explanatory device, which he regularly uses to illustrate the need for innovation in the justice sector to those unfamiliar with the field of justice innovation.

sector.<sup>3</sup> However, for stakeholders with limited experience with the process, design, and principles of innovation, how do you go about innovating?

*Innovating Justice: Developing new ways to bring fairness between people*,<sup>4</sup> by Sam Muller and the team at the Hague Institute for the Internationalisation of Law (HiiL),<sup>5</sup> is a book designed to help “justice innovators”—from activists and entrepreneurs to those working in the formal justice system, such as judges, lawyers, and frontline court staff<sup>6</sup>—to answer this question. Characterized by the authors as a handbook on justice innovation, the book draws on the experience and research of an impressive team of authors who, between them, have 162 years of cumulative experience in justice sector development.<sup>7</sup> The book provides readers with examples of successful justice innovations from around the world, tips and methods for improving the justice system, and a how-to guide that breaks down the innovation process into six manageable steps that can be used by would-be justice innovators to develop, test, pilot, and refine their own innovations.

While many readers will find the examples of justice innovation interesting, the true value of the book lies in its innovation guide. The guide, which makes up the core of the book, divides the innovation process into the following six steps.

1. “Focus on citizens’ needs.”<sup>8</sup> In this first step, future innovators are asked to identify the primary needs of their users and carefully consider who will benefit from their innovation.
2. “Release the mind.”<sup>9</sup> Step two asks innovators to consider how current ways of thinking limit potential solutions, reminding them that innovation often requires “organisational rule breaking.”<sup>10</sup>

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3. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: October 2013) at 5, online: <[www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)> [Action Committee, *A Roadmap for Change*]; Action Committee on Access to Justice in Civil & Family Matters, *Colloquium Report* (Ottawa: June 2014), online: <[www.cfcj-fcjc.org/sites/default/files/docs/2014/ac\\_colloquium\\_web\\_FINAL.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2014/ac_colloquium_web_FINAL.pdf)> at 3-4; Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa: November 2013), online: <[www.cba.org/CBA/equaljustice/secure\\_pdf/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf)> at 137-142.
  4. Muller et al, *supra* note 1.
  5. The HiiL is an advisory and research institution for the justice sector, with a mandate to “make law work for people and their organisations.” See *HiiL—The Hague Institute for the Internationalisation of Law*, online: <[www.hiil.org](http://www.hiil.org)>.
  6. Muller et al, *supra* note 1 at 13.
  7. *Ibid* at 7.
  8. *Ibid* at 22-34.
  9. *Ibid* at 34-47.
  10. *Ibid* at 36 [citation omitted].

3. “Shape solutions.”<sup>11</sup> Step three advises innovators to work “backwards from outcome goals”—a process that often challenges traditional justice sector training that encourages justice workers to focus first on procedure without speculating on the outcome.<sup>12</sup>
4. “Reframe the constitution.”<sup>13</sup> Perhaps one of the most challenging steps, step four provides readers with strategies for dealing with the “revolutionary moment” in innovation where existing rules are changed or bypassed, existing positions are redefined, and the relationships between rules and people are “reframed.”<sup>14</sup> This moment, note the authors, is likely to produce some “losers” whose position, income structure, or way of doing things may be challenged. Anticipating who these “losers” will be and thinking through how to get them to accept the new “rules of the game” is imperative to successful innovation.<sup>15</sup>
5. “Judge the business.”<sup>16</sup> How to make an innovation financially viable and sustainable is the focus of step five. Innovators are encouraged to find early funding, develop client relationships, and cultivate public-private partnerships.
6. “Get it done.”<sup>17</sup> Finally, step six emphasizes the need to monitor and measure the success of an innovation. Success can be defined broadly. It can include reducing costs, satisfying users, meeting needs, or creating fairer relationships. However, regardless of the definition of success, evaluating the impact of the innovation and learning from results is what allows good innovations to become great. Despite common portrayals of innovation that revere the flash-of-genius moment, in practice, innovating successfully takes hard work and requires innovators to constantly refine their ideas in response to feedback.<sup>18</sup>

Combined, these six steps provide the reader with an excellent sketch of what the process of justice innovation can look like while articulating clearly the goals the innovator should be trying to achieve at each stage of the process.

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11. *Ibid* at 48-65.

12. *Ibid* at 50.

13. *Ibid* at 66-81.

14. *Ibid* at 68.

15. *Ibid* at 71.

16. *Ibid* at 82-107.

17. *Ibid* at 108-27.

18. *Ibid* at 42, 156-57.

That said, the book offers little practical advice about how to achieve these goals. For instance in step two, “Release the mind,” the authors take great pains to argue that successful innovation requires time, space, and a devoted focus. They note that, “regular overload, constant delivery pressure and heavy administrative burdens ... are all obstacles to innovation.”<sup>19</sup> Using the dedicated research and development departments of private companies as an example of best practice, the authors suggest that justice organizations should carve out dedicated time for their staff to innovate.<sup>20</sup> Yet the book offers little insight into how public sector organizations, with far fewer financial and human resources than large R&D-focused companies, will find the resources to achieve this goal. In an era of shrinking budgets and increased workloads, the reader is left to wonder how cash-strapped and often understaffed justice organizations will ever be able to rise to the challenge to innovate.

The authors also regularly gloss over how difficult it can be to “forget the rules,”<sup>21</sup> reorganize relationships, and, generally challenge the status quo. For instance, while it is good advice to make innovation “losers” offers they “cannot refuse,”<sup>22</sup> the book’s lighthearted approach to this important step belies the difficult and time-consuming work it often takes to win over detractors. In many cases, the process of managing these highly political relationships—particularly in the justice system, which remains an extremely hierarchal institution—can be more difficult than the process of innovation itself.<sup>23</sup> In fairness to the authors, they do suggest that innovators find a spokesperson who can speak on behalf of an innovation.<sup>24</sup> But, again, for innovators who may be low in the hierarchy, finding that spokesperson is likely to be a challenging endeavor.

These small oversights reveal a larger (although tacit) assumption that the justice sector must adopt a more market-inspired approach to service delivery if it is to improve itself. This assumption can be traced through the entire book and is likely to cause consternation for many readers who are wary—for good reason—of the creep of market discourse into the public justice system. This notion is particularly evident in the sections on funding and partnerships, where a strong case is made for private funding and partnerships as the way forward.<sup>25</sup> It

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19. *Ibid* at 42.

20. *Ibid*.

21. *Ibid* at 37.

22. *Ibid* at 71.

23. See *e.g.* Louise Brown & Stephen P Osborne, “Risk and Innovation: Towards a Framework for Risk Governance in Public Services” (2013) 15:2 Pub Mgmt Rev 186 at 202-203.

24. Muller et al, *supra* note 1 at 154-55.

25. *Ibid* at 94, 100-01.

is most simply evidenced, however, by the authors' synonymous use of the terms "clients," "citizens," and "consumers" to describe the end-users (the beneficiaries) of a justice innovation. Some may argue that using these terms interchangeably is merely a matter of semantics. But in fact it represents the integration of a competing institutional logic, market logic, into a public justice system that has distinct responsibilities and relationships with its constituents, unique types of accountability, and a very different reform process than companies that are innovating in the private sector.<sup>26</sup> In other words, the justice system is not like a technology or pharmaceutical company, it is an institution central to democratic governance and the rule of law.

Despite neoliberal rhetoric suggesting otherwise, the principles that guide the market, and are often heralded as driving innovation, are not appropriate in all situations and in all contexts. Justice innovation will likely need to proceed differently from innovation in the private sector. I do not wish to suggest that there is nothing to be learned or gained from private sector approaches to innovation—in fact *Innovating Justice* demonstrates the opposite. However, in light of a growing body of literature that explores the consequences (both good and bad) of the increasing privatization of the civil justice system,<sup>27</sup> it would be wise to be cognizant of the underlying logics and premises transported into conversations on innovation when uncritically adopting the language used in private sector innovation models.

Arguably, the intent of the authors in *Innovating Justice* is not to provide a critical interrogation of the discourse of innovation. It would therefore be

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26. For discussions of how innovation must differ in the public services sector see, Stephen P Osborne & Louise Brown, "Innovation, Public Policy and Public Services Delivery in the UK: The Word that Would be King?" (2011) 89:4 Pub Admin 1335; Jean Hartley, "Innovation in Governance and Public Services: Past and Present" (2005) 25:1 Pub Money & Mgmt 27.
27. Although this literature is primarily concerned with the privatization of dispute resolution processes, its underlying concern with the broader consequences of privatization in the civil justice system provides some indication of why it might be desirable to proceed carefully. See Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014); Trevor CW Farrow, "Public Justice, Private Dispute Resolution and Democracy" in Ronald Murphy & Patrick A Molinari, eds, *Doing Justice: Dispute Resolution in the Courts and Beyond* (Montreal: Canadian Institute for the Administration of Justice, 2009); Dame Hazel Genn, "Why the Privatisation of Civil Justice is a Rule of Law Issue" (Paper delivered at the 36th FA Mann Lecture, Lincoln's Inn, 19 November 2012), online: University College London <[www.ucl.ac.uk/laws/academics/profiles/docs/Hazel/36th%20F%20A%20Mann%20Lecture%20Website.pdf](http://www.ucl.ac.uk/laws/academics/profiles/docs/Hazel/36th%20F%20A%20Mann%20Lecture%20Website.pdf)>; Eric K Yamamoto, "ADR: Where Have the Critics Gone?" (1996) 36:4 Santa Clara L Rev 1055; Tracy Walters McCormack, "Privatizing the Justice System" (2006) 25:4 Rev Litigation 735.

unfair to criticize them for this omission. Rather, the purpose of the book is to encourage justice innovators to challenge the existing paradigms and thought patterns that exist within the justice system, and to be self-reflective in their practice. By characterizing each step in the justice innovation process not simply as an item to be checked off a to-do list, but rather as a “mindset”<sup>28</sup> needed to innovate effectively, *Innovating Justice* is highly successful in forcing readers to think outside the box.

Ultimately, *Innovating Justice* is a welcome and well-timed book for those interested in thinking about and experimenting with justice innovation. It is an accessible and practical resource that is particularly timely for those of us working in Canada where justice innovation—as a formalized field of research and endeavor—is a relatively recent phenomenon. *Innovating Justice* offers important insights into how the justice system can develop a capacity for innovation and creative problem-solving, and provides an inspiring resource that can assist us in answering the growing need for new ways of “doing” justice.<sup>29</sup>

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28. Muller et al, *supra* note 1 at 15.

29. Action Committee, *A Roadmap for Change*, *supra* note 3 at 6.