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978-1-107-07520-7 - The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law

Edited by Sally Engle Merry, Kevin E. Davis and Benedict Kingsbury

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## Introduction

### *The Local-Global Life of Indicators: Law, Power, and Resistance*

*Kevin E. Davis, Benedict Kingsbury, and Sally Engle Merry*

This book is about the quiet exercise of power through indicators. With the turn to evidence-based governance, reliance on statistical data along with its synthesis into the kinds of scales, ranks, and composite indexes we refer to as indicators has become essential for policy formation and political decision making. The use of indicators in governance has expanded from economic and sector-specific quantitative data to measurement of almost every phenomenon. This book focuses on indicators of governance itself, specifically governance through law: indicators purporting to measure practices or perceptions of good governance, rule of law, corruption, regulatory quality, and related matters.

This volume presents nine original case studies that investigate how leading indicators of legal governance produced with global or transnational scope or aims are created, disseminated, and used, and with what effects. The indicators studied include Freedom House's Freedom in the World indicator, the Global Reporting Initiative's structure for measuring and reporting on corporate social responsibility, the World Justice Project's measurement of the rule of law, the Doing Business index of the International Finance Corporation of the World Bank, the World Bank-supported Worldwide Governance Indicators, the World Bank's Country Performance Institutional Assessment (CPIA), the Transparency International Corruption (Perceptions) index, and several indicators (including some of these) used by the U.S. Millennium Challenge Corporation in determining which countries are eligible to receive certain US aid funds.

The underlying theoretical framework of this volume is the linkage between knowledge and power. Indicators are both a form of knowledge and a technology for governance. Like other forms of knowledge, indicators influence governance when they form the basis for political decision making, public awareness, and the terms in which problems are conceptualized and solutions imagined. Conversely, the kinds of information embodied in indicators, the forms in which they are produced and disseminated, and how they function as knowledge are all influenced by governance

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practices. The production of indicators is itself a political process, shaped by the power to categorize, count, analyze, and promote a system of knowledge that has effects beyond the producers. In these respects indicators are comparable to law. Law as a technology of governance can have very substantial effects on knowledge – the legal processes and legal forms of trials, investigations, inquests, legislative hearings, statutes, and treaties, for instance, can all be important sources of information that shape wider understandings of the world. Like law, indicators order the buzzing array of actual behavior into categories that can be understood in more universalistic terms. Like law, indicators not only make sense of the messy social world but also help to manage and govern it.

Some of the case studies examine the conceptualization, production, use, and contestation of prominent global indicators. Others focus on the impact of global indicators in specific local contexts. They are designed to shed light on issues such as: Which actors produce indicators? What kinds of expertise and resources do they draw on? How are they affected by law? How do forms of knowledge and technologies of governance from “global” and “local” sources interact in particular contexts? The case studies are innovative in posing many questions about indicators that are parallel to those more routinely asked about law as a form of global governance (other work with a comparable orientation includes Frydman and van Waeyenberge (2014) and Bhuta (2015)).

This inquiry into indicators of national legal governance brings two separate areas of scholarship together into a productive collaboration. The first area is the sociology of knowledge. One strand of this focuses on the technologies of knowledge production and adoption by a variety of publics, in some cases informed by ideas of *governmentality* (e.g., Foucault 1991; Valverde 1998; Rose 1999). Another strand focuses on technologies and cultures of specific practices in public and private organizations, such as audit (Power 1997; Strathern 2000; Kipnis 2008). Technologies of quantification and commensuration have been studied in important work by scholars such as Desrosières (1998, 2008), Porter (1995), Bowker and Star (1999), and Espeland and Stevens (1998, 2008), work that has extended to the study of specific indicators, including many indicators of legal governance (Espeland and Stevens 1998, 2008; Davis and Kruse 2007; Davis, Fisher, Kingsbury, and Merry 2012; Davis 2014). Several scholars have examined the important roles played by social science techniques in creating this form of governance, and the use of quantification to provide more apparently objective and nonpolitical forms of knowledge (Hacking 1990; Porter 1995; Poovey 1998). Work on the sociology of knowledge, including work in science and technology studies (STS) discussed later, has established a theoretical framework shedding much light on the centrality of forms of knowledge to practices of governance as well as the socially constructed nature of knowledge (Foucault 1980a, 1980b; Asdal, Brenna, and Moser 2007; Frydman and van Waeyenberge 2014).

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The second area of scholarship is concerned with regulation and governance. Some of this work compares the uses and effects of different approaches to regulation, including choices among normative instruments that are more and less formal, and strategic or haphazard mixes among contracts, “soft law,” administrative practices, pragmatic problem solving, self-regulation, fiscal or market incentives, and command-and-control regulations. Much of this scholarship has been premised on rational-actor political economy models, but other scholars have constructivist or postmodern orientations. A significant strand for present purposes is addressing the place that law plays in systems of global regulation, including relations involving international and domestic law as well as actions of international administrative agencies (Dezalay and Garth 2002; Kingsbury, Stewart, and Krisch 2005). Roles of information in global regulatory governance have been studied from the perspective of information economics, but increasingly are receiving attention from political science scholars (Buthe 2012; Kelley and Simmons 2015; Cooley and Snyder 2015) as well as lawyers (Davis, Fisher, Kingsbury, and Merry 2012; Frydman and Van Waeyenberge 2014). Ethnographic work that traces the role of actors and organizations provides insights into the interpretive, cultural work of indicators and its temporality (Merry 2014; Merry and Coutin 2014).

We do not seek to contribute directly to debates among statisticians, mathematical economists, social science survey designers, and other experts about specific techniques for making certain indicators more robust. A substantial literature in this vein focuses on measurement error, comparability, weighting of factors, and gathering reliable data, with the general objective of helping to develop specific, effective, reliable, and valid measures. In contrast, this collection examines the institutional contexts and theoretical frameworks that underlie indicators, and investigates whether and how they are used and contested.

In the next section of this introduction we define the scope of this research project, explain the methodology and the principles of case selection used, and summarize each of the chapters. In the following section we set out some of the key lessons learned from our case studies about the conceptualization, production, use, and contestation of indicators. We conclude with remarks on future research directions.

## PROJECT OVERVIEW

### *Indicators Defined*

In earlier work, we have proposed that the category of “indicator” has distinct *knowledge* effects as a means of constructing understandings and the terrain of classification and contestation, and distinct *power* effects insofar as the conceptualization, production, and use of indicators change the nature of

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governance and of power interactions and can indeed in some cases constitute a form of governance. In that work as well as the present project we define “indicator” as follows:

An indicator is a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.

This definition includes composite or mash-up indicators that are themselves compiled by aggregating and weighting other indicators (Davis, Kingsbury, and Merry 2012, 73–74). Some indicators are numerical, some qualitative (producing information that may or may not be rendered numerically), and some mix quantitative and qualitative information. They all involve cultural work, however: practices of category construction, counting strategies, measurement decisions, forms of presentation, and the basic decision about what to measure and what to call it. Their operation in the world involves cognitive processes, usually among users and consumers as well as producers (Lampland 2010).

Increasingly indicators are built into sets of prescriptive standards of behavior. In some cases this is to enable local flexibility or to allow different regulated entities to pursue different pathways toward the same goals. In others it is more bluntly to measure performance or compliance (see Rosga and Satterthwaite 2009). In many of the cases studied in this volume, indicators are incorporated into a legally orchestrated evaluation or decision process. Although indicators may thus be closely connected with legal-type norms or processes, indicators are not (usually) framed as laws. Instead, they are typically presented simply as summaries of information that may be useful. Their conceptualization, production, and use are governed by few if any of the constitutional or procedural requirements typically prescribed for the making of laws or of authoritative policies. Yet indicators in the fields studied here are concerned with elements of national governance that are closely connected with law. Many of these indicators, or at least components of them, might be termed indicators of legal governance, although this simplification requires much qualification and elaboration in particular cases.

### *Methodology*

Given the relative novelty of the field of inquiry, and the emphasis we suspected was required on fine-grained context to elucidate dynamics of knowledge and power/governance, in designing this collaborative study we determined that a series of

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rich case studies of institutional processes and local effects would produce the most insight and illumination. This ruled out not only research designs using large-*n* quantitative studies, but also the use of a highly prescriptive template for case studies. Instead the authors met regularly as a group with us and a superb set of co-participants and interlocutors, in three annual meetings and several smaller meetings, facilitated by two grants to us from the U.S. National Science Foundation. This process enabled the building of a research network on indicators and the mentoring and development of promising younger scholars. Five of the contributors to this volume are based in developing countries (Kenya, South Africa, Colombia), and three others have very substantial research experience and accompanying linguistic expertise in Central Europe. Almost all the authors in the collection are qualified lawyers, and the others are social scientists who have close familiarity with legal institutions and practices as objects of study.

Case selection was an iterative process, premised on an initial view among the editors of what was needed to cover a reasonable proportion of leading indicators and institutions, and a reasonable selection of local contexts, within the framework proposed for the project. Authors were invited based in part on existing expertise on cases judged by the editors as likely to contribute significantly to understanding of particular institutions and their processes or particular local contexts and dynamics. The editors took account also of other parallel research, particularly the drafts now finalized and published in the Cooley and Snyder volume (2015). The availability of that volume and other work obviated the need to pursue exact symmetry between the institutional indicators studied in Part I, and the local contexts for such indicators studied in Part II. In particular, significant work is available on the institutions and production of leading anticorruption indicators (e.g., Bukovansky 2015), and on the institutional production, some local contextual effects, and dynamics between local contexts and indicator producers, with regard to several leading indicators of democracy and democratization (Tsygankov 2015; Cooley and Snyder 2015).

Through the collaborative process the authors participating in this project have come largely to share a science and technology studies (STS) sensibility (although without the insignia of membership). They identify in indicators and their alternatives the world-making processes of experts, in which networks of people, ideas, and technologies gradually build up a technology of measuring and knowing the world, some of which takes on a “black box” quality, as does a thermometer or barometer (e.g., Latour 1987). They trace roles of actors, institutions, and theories in the creation of instruments that provide new forms of knowledge (cf. Latour 2005), but extend this to integrate the study of governance and the interactions between knowledge and governance. The ways in which the various authors do this are partly influenced by discipline and training layered onto basic legal and political methods for the study of regulation and governance: thus Musaraj, Serban, and Sarfaty use

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ethnographic and anthropological methods, Bradley draws on his skills as an archival historian, Dutta uses analytical methods drawn from public policy training, Akech, Urueña and to some extent Prada use techniques combining interviews and legal analysis developed in doctoral work on law, Collier and Benjamin draw on media and political sources and policy debates in which they have been directly involved as participant-observers.

### *Overview of the Collection*

The five case studies in Part I examine the processes of conceptualization, promulgation, use, and contestation of influential governance-related indicators by six prominent organizations. Three of the organizations are nongovernmental – Freedom House, the World Justice Project, and the Global Reporting Initiative – although in some cases they have close connections to government or intergovernmental agencies, as with Freedom House’s links to the US government. The World Bank, the European Union, and the U.S. Millennium Challenge Corporation are major intergovernmental or governmental producers or users of indicators. Each case study makes a particular argument about the knowledge and power/governance effects of the institutional processes of indicator conceptualization, production, use, and contestation.

Christopher G. Bradley’s history of the creation and development of Freedom House and its Freedom in the World indicator, starting in the late 1930s, offers a fascinating study of an entity that has remade itself over time as the world has changed. Beginning from a campaign against Nazism, it changed to a series of other issues concerning civil and political liberties. Although its goals changed somewhat over time as the anti-Nazi movement gave way to the Cold War and its aftermath, it continued to promote the same overarching ideology. It has survived and been an unusually successful and long-lived indicator in a crowded field. Bradley argues that to understand this indicator, it is important to examine the institution that created it. It generates a great deal of media and attention for its premier indicator, Freedom in the World, yet its methodology for calculating country rankings is rough and it does not make a significant investment of resources in data collection.

Rene Urueña examines the rule of law indicator produced by the World Justice Project (WJP), an independent organization generously supported by foundation funding. Multiple rule of law indices are now in existence, as good governance has become an important goal in the third phase of law and development work. The index constructs a theory of the rule of law and promotes it through its measurements. Although the idea of the rule of law is deeply contested, Urueña argues that the indicator creates a space for that contestation. Moreover, given the multiplicity of indices and legal regimes for rule of law ideas, both domestic and international, the

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indicator provides a common language that helps groups communicate with each other. Urueña also shows that the WJP index establishes a normative system through quantification: it creates an understanding of the rule of law and promotes this legal consciousness. The indicator's technical role is essential to its credibility but at the same time its use is inevitably political, possibly in ways that differ from what the creators intended.

One of the areas of considerable interest in the use of governance indicators is corporate social responsibility. Galit A. Sarfaty examines one of the prominent global indicators of corporate sustainability reporting, the Global Reporting Initiative (GRI), a private organization that focuses on human rights and environmental performance. She traces the development of this indicator over time, the way its measurements are created, and the organizations that promote it. At first it sought to increase corporate accountability to consumers and NGOs, but has shifted to facilitating reporting from companies about their human rights and environmental records. Sarfaty raises questions about the effects of this indicator, pointing to the way that the measures are developed through consultations among business, labor, NGOs, and other organizations such as accounting and consulting firms and governments, a process dominated by business and international consulting firms. She describes the appeal of numerical measures for improving corporate social responsibility at the same time as she points to the drawbacks of this turn to numbers, such as a tendency for superficial compliance and ticking boxes rather than rethinking business strategies. Even though it has made significant efforts to publicize its work, consumers are relatively unaware of its rankings, and the audience for the GRI's work is increasingly businesses themselves and the accounting firms who certify the data.

Indicators are widely used in economic development work as well as in the good governance fields. María Angélica Prada Uribe examines the genealogy of development indicators, focusing in particular on those created by the World Bank. The chapter provides a valuable history of development indicators and their underlying theories, showing the differences among them and the way some indicators nevertheless achieve hegemonic status. As is the case for rule of law indicators, there is a struggle among indicators for acceptance and credibility. Those produced by powerful institutions such as the World Bank have an institutional advantage. She exposes the theories of development embedded in development indicators by comparing different indicators and the way they articulate standards for development. For example, the World Bank, a major promoter and user of indicators, uses a neoliberal, economics-based frame of reference and theory of growth. In contrast, the United Nations Development Programme (UNDP) promotes the Human Development Index, which is more focused on human rights and human well-being. Because of the power and influence of the World Bank,



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its indicators are globally dominant among some epistemic networks. The World Bank's development indicators reinforce its theory of development. As these indicators become widely accepted standards of development, governance becomes a matter of fostering compliance with established norms, what Prada Uribe, following Nicolas Rose, calls "government at a distance."

The four case studies in Part II focus on the impact of legal governance indicators and examine specific local contexts in which such indicators have been invoked. These case studies cover rule of law indicators in Romania, anticorruption indicators in Albania and in Kenya, and international labor indicators such as the World Bank's Employing Workers Indicator (part of the Doing Business indicators) in South Africa.

Nikhil Dutta's chapter compares two mechanisms for assessing country performance, one based on quantitative data, the Millennium Challenge Corporation (MCC), and one on qualitative data, the EU accession process. Both are conditionality arrangements, in which the transfer of benefits to recipients depends on their compliance with the terms specified by the grantors. However, the MCC, a mechanism for distributing US foreign aid, relies on quantitative measures while the EU accession process relies on qualitative narrative reports and discussions. A comparison between the effects of the two methods shows that they have quite different implications for accountability. The quantitative method is more legible than the qualitative one, but the quantitative method is not as transparent as it claims, because, despite the public availability of its standards and metrics, it sometimes fails to explain its discretionary decisions. This comparison shows that even though qualitative processes appear more participatory than quantitative ones, in this case, given the sharp imbalance of power between the EU and states that wish to join, the qualitative process lacks significant opportunities for flexibility and participation. Thus, the comparison between two specific methods shows how these technologies of knowledge shape decision making. The quantitative approach does not necessarily enhance accountability or provide a transparent, legible, and understandable process either to the public or to those who are being managed.

Mihaela Serban's analysis of rule of law indicators in contemporary Romania shifts the focus from the genealogy of indicators to their effects in particular contexts. The chapter describes the reception of indicators in a country that is measured and governed through indicators, yet has relatively little control over these measuring techniques. It examines reactions to rule of law indicators in Romania where they serve both as a mode of governance, as the EU seeks to pressure Romania to conform to a conception of the rule of law, and as a mode of reform by civil society and the state to diminish corruption and improve governance. Serban argues that there is skepticism and resistance vis-à-vis rule of law indicators when they appear to be mechanisms for outside actors to control a country, or when they are mobilized by



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inside actors to promote goals such as eliminating corruption when these actors are themselves seen as corrupt. Central to their power is their promise of objectivity and impartiality. Their credibility depends on being able to deliver on these promises. Some are seen as more vulnerable to politics and pressure, while others seem more based on “hard data” and more credible in the national sphere, where there is considerable competition among indicators promoted by very different actors and organizations.

Smoki Musaraj’s chapter examines the national reactions to globally created indicators, focusing again on the way they are mobilized within local political struggles. It examines the production and circulation of a corruption survey in Albania in 2008 and its political uses in a power struggle within the Albanian leadership. It highlights how this form of knowledge becomes a powerful actor within national politics. She also shows how the indicator itself is the product of global as well as national actors as it is developed, implemented, and then used politically. Sponsored by the United States Agency for International Development (USAID), the indicator was used by the American ambassador to Albania to criticize some members of the government. Musaraj argues that the use of indicators is a turn to a corporate form of producing and that using such forms of knowledge is a shift toward the use of this kind of expertise in decision making. Her analysis highlights the interconnections of private and public actors and global/local relationships for understanding the effects of indicators.

Migai Akech examines the mobilization of corruption indicators in Kenya, where similar tensions between public/private control and global/local power emerge. He describes the efforts of Transparency International to measure corruption in Kenya and notes the difficulty of measuring it at all. He points to the inadequacy of its measurements in Kenya that fail to tap into the widespread practices of corruption among political and economic elites. He locates the Kenyan Transparency International survey in the context of the global organization, offering a careful analysis of the national survey. He notes that corruption is a systemic problem yet measurement mechanisms do not count it that way. They focus on whether individuals have to pay bribes to get services but not on corruption within systems. He describes a promising approach being developed in Kenya: the use of performance indicators for situations such as public procurement and service delivery which, he thinks, can contribute to reducing corruption in public procurement and service delivery. His chapter emphasizes the role of the constitution and major institutions in controlling corruption and shows the value of more local approaches to indicator construction over more global ones.

Debbie Collier and Paul Benjamin consider the effects of labor market indicators, including those produced by the International Finance Corporation of the World Bank Group, for South Africa. They find that there are several labor market indicators

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in use globally, but South Africa's ranking on these indicators varies greatly. Its score depends on how each indicator values either a flexible labor market or the social welfare of workers. Some focus on flexible labor while others measure decent work. The former articulate a free market, neoliberal ideology favored by the World Bank Group's Doing Business indicator, while the latter express the concerns with quality of work of the International Labor Organization. South Africa's affirmative action and labor protection laws lead it to rank poorly in the Doing Business indicator but well when the indicator measures decent work. These indicators shape public opinion and policy formation in South Africa along with their underlying ideologies and theories of economic growth. Although indicators are commonly challenged by alternative indicators, it is relatively rare for an indicator to change because of external pressure. However, this chapter discusses the successful effort to change one of the World Bank's indicators that equates ease of doing business with a lack of protection for workers.

#### THE TRAJECTORY OF INDICATOR DEVELOPMENT

The case studies show the value of viewing the development and crystallization of indicators over time, a process Halliday and Shaffer refer to as "normative settling" in their analysis of transnational legal orders (2015). In this section we highlight observations from our case studies about the knowledge and governance effects of indicators by distinguishing four phases of the trajectory of development and use of indicators over time. These four phases can be presented in a stylized way as initially chronological, but once an indicator is established in pilot form or is finalized and put into use, there is likely to be reflexivity between the phases, particularly if there are proposals for revision. The first three phases are conceptualization, production, and use. The fourth phase is the impact or effect of the indicator, both in extranational institutions and – especially important in this book – in local contexts.

#### *Conceptualization*

The first phase is the conceptualization of the indicator. The indicator is named and its underlying theory of social change established. This requires a theoretical position, the development of categories for measurement, and modes of analyzing the data (see Bowker and Star 1999; Lampland and Star 2009). Every one of the global indicators examined in this book is predicated on an initial set of theoretical views. When an indicator is formulated and labeled as measuring, for example, rule of law or corruption, it builds on a theory of what constitutes a good society, or what constitutes a problem or pathology to overcome in the course of improving the