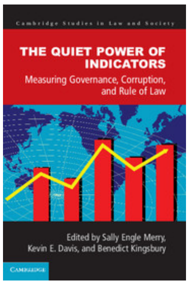
Oñati International Institute for the Sociology of Law
Instituto Internacional de Sociología Jurídica de Oñati
Oñati Socio-Legal Series
ISSN: 2079-5971
Oñati Socio-legal Series, v. 6, n. 5 (2016) – Investigations – Investigaciones – Ikerlanak
ISSN: 2079-5971



Book review

Sally Engle Merry, Kevin E. Davis and Benedict Kingsbury, eds. *The Quiet Power of Indicators, Measuring Governance, Corruption and Rule of Law*. New York, NY. Cambridge University Press, 2015, pp. 369, ISBN 978-1-107-07520-7 $34.99.

JOHN CIPPERLY*

1. Introduction

The **Quiet Power of Indicators – Measuring Governance, Corruption and the Rule of Law** explores the exercise of power through indicators as "technologies of governance" (Merry, Davis, Kingsbury, 2015). The authors examine the production, deployment, and contestation of indicators through case studies, some of which focus on the production and the promulgation of global indicators and others which focus on indicators applied in context. The collection of articles is framed in two parts, the first of which examines some of the most prominent governance indicators, their origins, and their deployment. The second part of the collection features country-specific case studies on use of indicators and the consequences. The introductory and concluding chapters situate this collection of articles within the late scholarship on governance indicators. The introduction and the conclusion frame the discussions and provide a shared point of reference from which the findings of each author can be understood. Nelken's concluding chapter draws together the salient findings shared among the authors, and points to space for contestation of indicators that may improve the production (or reproduction) of indicators and enhance their utility as technologies of governance and development.

The collection addresses indicators measuring governance, corruption and Rule of Law, including, among others: Freedom House's *Freedom in the World* Index, the World Bank's *Doing Business Index*, World Justice Project's *Rule of Law Index*, and Transparency International's *Global Corruption Index/Bribery Index*. While this review could not possibly do justice in reviewing each article in detail, in what follows, I provide observations under the themes of Governance, Corruption and Rule of Law.

2. Measuring governance

A number of the articles included in the collection address governance indicators directly (Bradley, Urueña) or indirectly (Uribe, Safarty). Bradley reviews Freedom House's *Freedom in the World Index*. Bradley offers unique insight into the history of the indicator and the purpose of its production, drawing attention to its ontological and methodological shortfalls that have existed since its earliest days. He brings into focus the political and ideological nature of translating technologies

* john.cipperly@gmail.com

Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo.28 20560 Oñati - Gipuzkoa – Spain
Tel. (+34) 943 783064 / Fax (+34) 943 783147
E: opo@iisj.es **W**: http://opo.iisj.net

of governance, arguing that certain ideological bearings and methodological limitations must be fully understood in order to sustain the use of the indicator as a decision-making tool in advocacy, public diplomacy and development aid. He draws attention to the indicator's Cold War origin, and traces its use through its application today. One gets the sense that Bradley's work could benefit from a review of the indicator in specific contexts. If the intention is to understand more fully how indicators are experienced locally, the study of the indicator's use in a specific context would be worthwhile.

Urueña reviews the World Bank's *Doing Business* as part of his discussion of other indicators, specifically the World Justice Project's Rule of Law Index, (discussed further below). *Doing Business* is otherwise not addressed in this collection except within the framework of Collier and Benjamin's study of labor market indicators. If there were a criticism as to what was left out of this far-reaching volume, it would be that more attention is not directed to *Doing Business* in and of itself, even as it is touched upon in various contributions. *Doing Business* is among the prominent among the indicators in use today, and is among the most contested. It may be that the editors sought to avoid *Doing Business* precisely for that reason, but that is not addressed here. *Doing Business* has far-reaching impact on how "business-enabling" governance is conceptualized and understood around the world, ranking as many as 189 countries. For example, Collier and Benjamin note the efforts of the Republic of Georgia to change their laws in order to improve indicator standings (Collier and Benjamin, 2015). Thus, the volume may have benefited from more direct attention to the governance effects of *Doing Business*, as many of the concepts addressed are invariably linked to it.

3. Measuring corruption

Two chapters focus specifically on corruption indicators and their use in context (in Albania and Kenya). Smoki Musaraj's chapter, "Indicators, Global Expertise, and Local Political Drama: Producing and Deploying Corruption Perception Data in Post-Socialist Albania" examines the production and deployment of anticorruption indicators, through survey design and the effort to measure public perception of corruption. She focuses on the results of a Bribery Index, which seeks to measure public perception of petty corruption (bribery) and how the results of the survey may be misconstrued. To this end, the survey serves both as a form of knowledge and technology of governance (Musaraj, 2015). Information is generated and deployed differently by different actors, including the donor agency, USAID in this case, as well as the local ruling party, its political opposition, the judiciary, and non-governmental organizations (NGO). As a form of knowledge, the USAID Corruption Survey is situated within the context of broader anticorruption efforts in Albania, much of which focused on anti-bribery interventions. Musaraj notes that while the indicator and project efforts focused on measuring and responding to the prevalence of bribery, the rhetoric displayed by USAID, political opposition groups, and NGOs focused on high-value "state capture" (Musaraj, 2015).

As a technology of governance, the USAID survey took different forms, one which seeks to raise awareness and educate local actors about corruption, even if the focus (anti-bribery) was mismatched to the prevailing rhetoric targeting state capture by elites, a distinctly different form or corruption which is not measured by the Corruption Survey. Such mismatching of interventions illustrates how interpretation of indicator data (and error) can result in conceptual leaps or conflation of several issues to one issue, or changing of meaning (Musaraj, 2015). To a certain extent, Musaraj's work is a model of the stated intention of the book. Her analysis of the global-local interplay of the framing of corruption problems and anticorruption approaches demonstrates with precision the Foucauldian knowledge/power framework. She falls short only in the detailing the curious origin of the anticorruption survey in Albania. She mentions that the survey was developed and used in Latin America (Musaraj, 2015). Although deployed in Latin

America, the survey was developed at Vanderbilt University in the U.S., through its Latin American Public Opinion Project (LAPOP). The survey itself did not originate in Latin America. If anything, the redeployment of the survey in Albania signals the extent to which global technologies are reshaped and resold to the same actors to meet similar ends, from one context to the next.

Migai Akech's chapter on anti-corruption interventions in Kenya explores the two-pronged efforts of Transparency International and the Government of Kenya to counter corruption, and takes an in-depth look at the deployment of public perception survey instruments, performance indicators, performance measurements and metrics that are produced and deployed by projects to counter corruption. Akech notes that TI equates the prevalence of bribery with poor governance, and seeks to inform policy makers of corruption levels in a way to influence and improve government performance. TI has executed an annual Bribery Index in Kenya for more than a decade (Akech, 2015). The Kenyan government's Ethics and Anticorruption Commission (EACC) also measures corruption in public procurements in a project that has been underway since the mid-2000s. Despite these efforts, Akech notes that there has been no noteworthy decrease in levels of bribery or corruption in public procurement, in part because TI's bribery survey outcomes do not rise to the level of influencing decision-making and do not change incentives for the behavior. TI is simply providing information that is then not acted upon. Akech evaluates the actions of the EACC as equally ineffective, because the outcomes of EACC surveys do not result in meaningful consequences. Akech argues that while both indices "name and shame" corrupt institutions, neither explains the cause nor gives the institutions incentives to do better. Akech also argues that more must be done locally to contextualize corruption measurement and transparency considering local institutional dynamics and local transparency efforts geared toward improving development outcomes. Here, it is important to point out that the extent to which any anticorruption effort is truly local is hard to determine, since so much of the discourse of bureaucratic transparency is influenced by international indicators, such as the TI indices and the *Doing Business* Index.

4. Measuring the rule of law

Rene Urueña and Mihaela Serban offer insightful chapters on Rule of Law indicators. Urueña addresses the World Justice Project's *Rule of Law Index* (ROLI) and the content and methodology that sets the ROLI apart from earlier Rule of Law interventions and other contemporary efforts (chiefly the United Nations Development Programme and Vera Institute of Justice). Urueña situates ROLI in a post-neoliberal law and development moment, where Rule of law is no longer just instrumental to development, but important in its own right. ROLI asserts that Rule of Law may be measured as a value, regardless of its direct impact on development. Accordingly, Rule of Law is not a proxy for other values, and no longer viewed as a platform for economic development (Urueña, 2015). This may prove attractive to donors and recipients alike, as it enables a definition of the Rule of Law which is not linked directly to or contingent upon development outcomes.

Serban's chapter on Rule of Law indicators in Romania focuses on the use of various indicators and their consequences. As with the chapters by Musaraj and Akech, this chapter goes to the heart of the stated premise of the book—examining the pull and push of indicators as technologies of governance, exercising power over development recipients. This is among the most compelling case studies offered in the book, setting forth the indicators brought to bear in development assistance in Romania, and describing in detail how the Rule of Law, anticorruption and judicial/legal reform came to be misconstrued through multiple and competing indicators (including those of Freedom House, World Bank, and Transparency International). Serban explains how local actors were often not equipped to respond to information resulting from the use of indicators within the context of post-communist transition in Romania. While data was made available in abundance, Serban notes that circumstances were such that there was little incentive for substantial reform following Romania's accession to the EU, even with the Cooperation and Verification Mechanism that the E.U. put in place to promote its standards for governance, transparency and accountability and Rule of Law.

5. Outliers

From the outset, the editors acknowledge that the book is a result of collaboration over several years and multiple workshops on the measurement of governance, corruption and Rule of Law. This could explain the degree of variation among the author's contributions. Within this volume, there are a few outliers that, while relevant and worthwhile, could be better as self-contained pieces in view of the book's intended focus on the measurement of governance, corruption and the Rule of Law. Uribe's chapter, *The Quest for Measuring Development*, addresses World Bank indicators as tools of development generally, and discusses indicators as technologies of governance (of development assistance). This piece provides a thorough analysis of the World Banks' use of indicators and the exercise of power through indicators, but does not address governance, corruption or Rule of Law, specifically. Safarty's chapter, *Measuring Corporate Accountability,* discusses indicators developed to facilitate corporate sustainability reporting (performance against environmental or social standards). With a focus on corporate governance, Safarty's contribution is a bit distant thematically from the rest of the collection. Nevertheless, she offers some of the sharpest writing on the production, deployment and contestation of indictors. While the article has less to do with the public sector focus of other contributors, it is a worthwhile study in how indicators are developed and deployed. A chapter by Nikhil Dutta examines the conditionality processes conducted by the EU and Millennium Challenge Corporation (MCC), and does not focus squarely on the subject of indicators. It is nevertheless a primer on EU and MCC processes, showcasing how indicators impact the formulation of MCC evaluations of governance. The chapter by Collier and Benjamin addresses some of the problems of indicators and the possible undesirable consequences of their use. This contribution looks at labor indices from the World Bank, International Labor Organization, and World Economic Forum, is thematically closer to Safarty's contribution than to other contributors.

The volume's focus on indicators is a welcome addition to the ongoing discussion among donors, recipients, intermediaries, and observers regarding the outcomes (or perceived lack of outcomes) that result from development assistance in these areas. While grounded in a theoretical discussion of the knowledge/power framework, the contents of the book are accessible to a wide audience. This accessibility should ensure that the book becomes suggested reading for Rule of Law policy-makers, experts, observers, and students alike. The book's intended audience is the constellation of donor agencies engrossed in development assistance, but the work could be equally useful for the government officials and stakeholders in aid recipient countries who are increasingly engaged in the observation and critique of indicators, performance measurement, and evaluation of aid effectiveness. Another audience that would be well-served by the book include the numerous NGO actors engaged in the production and promulgation of governance indicators, both directly and indirectly, since this volume could prove instructional for anyone interested in governance interventions. Readers may also be interested in a similar collection published in 2015, *The World of Indicators: The Making of Governmental Knowledge through Quantification* (Rottenberg, Merry and Park, 2015). *The World of Indicators* offers case studies on an even wider range of topics. For more on governance indicators and their use, and the subjective measurement of legal systems, readers would be well served to look into the World Bank's *Doing Business* index, in addition to other critiques of *Freedom in the World* and the *Corruption Perception/Bribery Index*. Beyond indicators, readers may want to take a look at works on governance assistance (by Galanter, Trebilcock, and Trubek, among others).

The terrain covered in the book is expansive, and further research projects could bring into focus one or more issues brought to the surface in this volume (i.e. defining and measuring Rule of Law, measurement methods, translating corruption and anticorruption approaches, etc.) The production, deployment and contestation of the indicators could be interrogated further when addressed specifically. More could be done to expand upon the work done by Serban, Musaraj, and Akech, among others. The work of Safarty, Collier and Benjamin, if addressed separately, could advance understanding of the World Bank's use of indicators and their influence on private actors, including multi-national and local firms. It may be particularly insightful to look to the impact of *Doing Business* and other indices in recipient countries to expand the conversation about how global indicators are experienced locally, in view of asymmetrical power structures and inequality among elites and traditionally marginalized groups.

Each of the sub-topics of this volume—indicators of governance, corruption, and Rule of Law—would be worthy of a volume in itself, especially if the focus of the research were to explore how these indicators exercise their power locally, and what may result from the confrontation of global indicators and local laws, norms and practices (legal and otherwise). To that end, the global-local life of indicators could be explored further by these authors to enable a more localized, if not more participatory engagement of indicator producers with their targets of study. This could give meaning to what appears to be shared objective of the authors and editors: to more closely connect *the measurers* with *the measured*.

The Quiet Power of Indicators – Measuring Governance, Corruption and Rule of Law, (editors: Sally Engle Merry, Kevin E. Davis, and Benedict Kingsbury) was published by Cambridge University Press in May 2015.