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Introduction: Global Governance by Indicators

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I. Introduction

The production and use of indicators in global governance is increasing rapidly. Users include public international development agencies such as the World Bank and the United Nations, national governmental aid agencies such as the US government's Millennium Challenge Corporation (MCC), global businesses and investors; bodies concerned with assessing or enforcing compliance with existing legal standards such as human rights treaty monitoring bodies, advocacy groups including many NGOs, and various scientific or expert communities, especially in the field of political science. Examples of prominent indicators and their producers or promulgators include: Doing Business Indicators produced by the International Finance Corporation (a member of the World Bank Group); Governance Indicators, including The Control of Corruption and Rule of Law, under the imprimatur of the World Bank; the Millennium Development Goals indicators under UN auspices; the Corruption Perceptions Index created by Transparency International; the Human Development Index (HDI) produced by the United Nations Development Program (UNDP); the Trafficking in Persons indicators produced by the US State Department; and various indicators produced by consultancies specializing in advising investors on political risks. The Office of the United Nations High Commissioner for Human Rights has explored possibilities of developing indicators for several core human rights.

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The burgeoning production and use of indicators in global governance has the potential to alter the forms, the exercise, and perhaps even the distributions of power in certain spheres of global governance. Yet the increasing use of indicators has not been accompanied by systematic study of and reflection on the implications, possibilities and pitfalls of this practice. As a result, little attention has been paid to questions such as: "What social processes surround the creation and use of indicators?," "How do the conditions of production influence the kinds of knowledge that indicators provide?," "How does the use of indicators in global governance change the nature of standard-setting and decision-making?," "How does it affect the distribution of power between and among those who govern and those who are governed?," "What is the nature of responses to the exercises of power through indicators, including forms of contestation and attempts to regulate the production or use of indicators?" The answers to these questions all have significant normative, theoretical and practical implications.

This book is part of a project on *Indicators as a Technology of Global Governance* of the Institute for International Law and Justice at New York University School of Law, which seeks to explain the phenomena of indicators, ranking and measurements in global governance and to understand their impact on countries and institutions being evaluated. The project is a multi-disciplinary enterprise drawing on perspectives from political science, sociology, anthropology, and law, and comprising both theoretical inquiries and case studies. In this book, prominent sociologists, anthropologists, political scientists and legal scholars use a power-knowledge framework to study the effects of quantification and indicators on decision-making, resource allocation, social categories, forms of contestation and power of experts within and across institutions. Each chapter examines indicators in a particular sector of practice while presenting arguments and insights of wider significance. In doing so, these investigations draw on several existing bodies of scholarship. Work in three areas may be highlighted.

First, several contributors use portions of the substantial body of work on connections of law and power in global governance.[1] This includes scholarship

[1] Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003); John Braithwaite, "Methods of Power for Development: Weapons of the Weak, Weapons of the Strong," *Michigan Journal of International Law* 26 (2004): 298–330; Anne-Marie Slaughter, A New World Order (Princeton, NJ: Princeton University Press, 2004); Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge, UK: Cambridge University Press, 2005); Benedict Kingsbury et al., "The Emergence of Global Administrative Law," *Law and Contemporary Problems*, 68 (Summer/Autumn 2005): 15–61; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006); Mark Goodale and Sally Engle Merry (eds), *The Practice of Human Rights: Tracking Law Between the Global and the Local* (Cambridge: Cambridge University Press 2007); Terence C. Halliday and Bruce G. Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford, CA: Stanford University Press, 2009); Benedict Kingsbury, "The Concept of 'Law' in Global Administrative Law," *European Journal of International Law* 20 (2009): 23–57; Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge, UK: Cambridge University Press, 2009).

dealing with "new governance" and experimentalist learning models,[2] with theories of governmentality,[3] and with networks.[4]

A second starting point is theoretical writings on quantification and indicators as social phenomena, both general works[5] and a small but growing body of studies relating to specific uses of indicators and quantification in global governance contexts.[6]

Third, important insights and perspectives on indicators come from science and technology studies (STS),[7] including actor network theory.[8]

[2] Gráinne De Búrca, "New Governance and Experimentalism: An Introduction," *Wisconsin Law Review* 2 (2010): 227–39; "Symposium: New Governance and the Transformation of Law," *Wisconsin Law Review* (2010): 227–748. Charles Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford: Oxford University Press, 2010).

[3] Peter Miller and Nikolas Rose, *Governing the Present* (Cambridge: Polity Press, 2008).

[4] Bruno Latour, "Préface: Le fantôme de l'esprit public—Des illusions de la démocratie aux réalités de ses apparitions," in Walter Lippmann, *Le public fantôme* (Paris: Editions Demopolis, 2008); Bruno Latour, "Networks, Societies, Spheres: Reflections of an Actor-Network Theorist," *International Journal of Communication* 5 (2011): 796–810.

[5] Ian Hacking, *The Taming of Chance* (Cambridge: Cambridge University Press, 1990); Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press 1995); Alain Desrosières, *The Politics of Large Numbers: A History of Statistical Reasoning* (Cambridge, MA: Harvard University Press, 1998); Wendy Nelson Espeland and Mitchell L. Stevens, "A Sociology of Quantification," *European Journal of Sociology* 49 (2008): 401–36; Wendy Nelson Espeland and Michael Sauder, "Rankings and Reactivity: How Public Measures Recreate Social Worlds," *American Journal of Sociology* 113 (2007): 1–40; Peter Andreas and Kelly Greenhill (eds), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict* (Ithaca: Cornell University Press, 2010); Ann Rudinow Saetnan et al. (eds), *The Mutual Construction of Statistics and Society* (New York: Routledge, 2011).

[6] Christiane Arndt and Charles Oman, *Uses and Abuses of Governance Indicators* (Paris: OECD Development Centre Study, 2006); Kevin E. Davis and Michael B. Kruse, "Taking the Measure of Law: The Case of the Doing Business Project," *Law & Social Inquiry* 32 (2007): 1095–119; Christopher Hood et al., "Rating the Rankings: Assessing International Rankings of Public Service Performance," *International Public Management Journal* 11 (2008): 298–358; Christiane Arndt, "The Politics of Governance Ratings," *International Public Management Journal* 11 (2008): 275–97; Armin von Bogdandy and Matthias Goldmann, "The Exercise of International Public Authority through National Policy Assessment: The OECD's PISA Policy as a Paradigm for a New International Standard Instrument," *International Organizations Law Review* 5 (2008): 241–98; Tore Fougner, "Neoliberal Governance of States: The Role of Competitiveness Indexing and Country Benchmarking," *Millennium Journal of International Studies* 37 (2008): 303–26; AnnJanette Rosga and Margaret L. Satterthwaite, "The Trust in Indicators: Measuring Human Rights," *Berkeley Journal of International Law* 29 (2009): 256–315; Martin Ravallion, "Troubling Tradeoffs in the Human Development Index," World Bank Policy Research Working Paper 5484 (Washington DC: World Bank, 2010); Margaret Satterthwaite, "Indicators in Crisis: Rights-based Humanitarian Indicators in Post-earthquake Haiti," *New York University Journal of International Law & Politics* 43 (2011): 865–964; Sally Engle Merry, "Measuring the World: Indicators, Human Rights, and Global Governance," *Current Anthropology* 52 (Supp. 3) (2011): S83–95.

[7] Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things Out: Classification and its Consequences* (Cambridge, MA: The MIT Press, 1999); Bruno Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (Cambridge, MA: Harvard University Press, 1987); Martha Lampland and Susan Leigh Star, *Standards and Their Stories: How Quantifying, Classifying, and Formalizing Practices Shape Everyday Life* (Ithaca: Cornell University Press, 2009); Ann Rudinow Saetnan et al. (eds), *The Mutual Construction of Statistics and Society* (New York: Routledge, 2011).

[8] Bruno Latour, *Reassembling the Social* (Oxford, UK: Oxford University Press, 2005); Bruno Latour, "Networks, Societies, Spheres: Reflections of an Actor-Network Theorist" (n. 4).

Part II of this chapter sets out our conceptual claims regarding the defining characteristics of indicators. Part III identifies defining features of governance and global governance and sets out several hypotheses concerning the reasons for, and the implications of, the turn to indicators in global governance. Part IV provides an overview of the volume and draws attention to ways in which some of the insights in particular chapters have general significance, including in relation to the hypotheses formulated in Part III. Part V concludes.

II. What is an indicator?

a. Indicators defined

There is no agreed meaning of "indicator," but for the purposes of our inquiry into indicators as an important emerging technology in the practice of global governance the concept can be delimited in the following way.

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 working definition subsumes indexes, rankings, and composites which aggregate different indicators. Many of the best-known indicators are aggregations or "mash-up" compilations,[9] with substantial discretion available to the compiler in choosing what specific indicators to include, with what weightings and what devices to limit double-counting or to smooth over data unavailability. Examples include the HDI and the World Governance Indicators. While the processes and uses of aggregation raise many special issues, for the purposes of this volume the term "indicators" also includes these aggregations. We focus on the subset of indicators that are used for evaluation or judgment, and have effects specifically on decision-making or other effects in global governance. The term is also used in other ways—for example, to refer to a diagnostic characteristic (such as an indicator of a person who has been trafficked, or an indicator species for an ecosystem)—but these usages are outside the concept as used by the contributors to this volume.

Indicators often take the form of, or can readily be transformed into, numerical data. A key challenge is whether and how indicators ought to be distinguished from other compilations of numerically rendered data. The differences lie in how indicators simplify "raw" data and then name the resulting product. That simplification can involve aggregation of data from multiple sources. It can also involve filtering that excludes certain data, including outliers or other data deemed to be

[9] Martin Ravallion, "Mashup Indices of Development," Policy Research Paper No. 5432 (Washington, DC: The World Bank, 2010).

unreliable or irrelevant. Sometimes data are filtered out and replaced with statistics, such as means or standard deviations, meant to convey similar information. In still other cases missing data are filled in with values estimated from existing data. The specific name given to data that have been organized and simplified in these ways typically denotes the social phenomenon the data ought to be taken to represent. So for example, a census report containing data on the numbers of people between the ages of 0–14, 15–64, and 65 + is not in itself an indicator. But suppose that data is aggregated in a particular way, for instance by dividing the sum of the first and third figures by the figure for the number of people in the 15–64 group. If that number is then labeled a "dependency ratio," and the same calculation is made for other units or other times, the collection of processed data is capable of being used for the purposes of inter-country or inter-temporal comparisons of "dependency" and qualifies as an indicator.

Indicators can also be contrasted with other representations of social phenomena. In principle, any given social phenomenon can be represented in multiple ways. For example, the level of respect for the rule of law in a given country in a given year may be represented by an indicator such as a rule of law index. Alternatively, however, it might be represented by a paragraph of text describing patterns of respect or disregard for the rule of law during the relevant period, or by a series of striking photographs or a video recording. All of these representations may purport to capture the same phenomenon. Each involves some form of simplification (although the forms vary), and each may be given a suggestive name by its producer. However, the indicator is distinctive in the ways in which it represents and conveys compiled numerical data, and it has particular attractions as a means of representation for use in comparing or evaluating particular units of analysis. Different representations are likely to convey different impressions and stimulate different responses, in ways that vary with the type of audience. Indicators cater to demand for (and receptivity to) numerical, rank-ordered and comparable data.

There is considerable room for variation within the scope of our broad definition of an indicator. Some indicators have names that are highly evocative of evaluative standards; some provide more complete orderings of the units being analyzed; some involve greater simplification of raw data. The indicators addressed in different chapters of this volume vary along each of these continua.

b. Salient characteristics of indicators

Our working definition highlights several features of indicators, including (1) the significance of the name of the indicator and the associated assertion of its power to define and represent a phenomenon such as "the rule of law"; (2) the ordinal structure enabling comparison and ranking and exerting pressure for "improvement" as measured by the indicator; (3) the simplification of complex social phenomena; and (4) the potential to be used for evaluative purposes. We elaborate on the significance of these features in the following paragraphs.

1. Naming the indicator

The assertion that an indicator has been brought into existence and given life is typically marked by naming it. The name itself is usually a simplification of what the index purports to measure or rank. The name's constancy may mask changes over time in the indicator itself. Calling an indicator a measure of "transparency" or "human development" asserts a claim that there is such a phenomenon and that the numerical representation measures it. An indicator may even create the phenomenon it claims to measure, as IQ tests came to define intelligence. Labeling this measure an Indicator, Index, Ranking, League Table, etc. implies a claim to knowing and measuring a phenomenon. As a result, the indicator represents an assertion of power to produce knowledge and to define or shape the way the world is understood.

2. Rank-ordered structure

All indicators are fundamentally comparative, and some element of ranking is a feature of the indicators we are studying. Indicators usually enable comparison of different units, but in a few cases only permit comparison of the same unit at different times. However, an indicator need not rank all data points or all units in a transitive way. Influential indicators are usually cardinal (attributing separately defined values to each unit), and most use one or other of a standard menu of scaling methods (e.g., a purely ordinal scale, an equal-interval scale, or a ratio scale), but it is possible to have an indicator which does not have these attributes. Some listings with most of the attributes of indicators may merely divide units into categories described nominally, identifying difference without ranking the categories. These do not fall within our definition of an indicator. Other nominal listings may have an element of hierarchy among broad categories (red, yellow, green). These do qualify as indicators for our purposes.

3. Simplification

Simplification (or reductionism) is central to the appeal (and probably the impact) of indicators. They are often numerical representations of complex phenomena intended to render these simpler and more comparable with other complex phenomena which have also been represented numerically. Indicators are typically aimed at policymakers and are intended to be convenient, easy to understand, and easy to use. Yet, the transformation of particularistic knowledge into numerical representations that are readily comparable strips meaning and context from the phenomenon. In this numerical form, such knowledge carries a distinctive authority that shifts configurations and uses of power and of counter-power. This transformation reflects, but also contributes to, changes in decision-making structures and processes.

Indicators also often present the world in black and white, with few ambiguous intermediate shades. They take flawed and incomplete data that may have been

collected for other purposes, and merge them together to produce an apparently coherent and complete picture. Wendy Espeland and Mitchell Stevens identify this as a potential consequence of what March and Simon refer to as uncertainty absorption, which "takes place when inferences are drawn from a body of evidence, and the inferences instead of the evidence itself, are then communicated."[10] As Espeland and Stevens describe this process, "Raw" information typically is collected and compiled by workers near the bottom of organizational hierarchies; but as it is manipulated, parsed, and moved upward, it is transformed so as to make it accessible and amenable for those near the top, who make the big decision. This "editing" removes assumptions, discretion and ambiguity, a process that results in "uncertainty absorption": information appears more robust than it actually is . . . the premises behind the numbers disappear, with the consequence that decisions seem more obvious than they might otherwise have been. An often unintended effect of this phenomenon is numbers that appear more authoritative as they move up a chain of command. The authority of the information parallels the authority of its handlers in the hierarchy.[11]

The degree of uncertainty beneath the surface of many of the most influential simplifying indicators in global governance is quite intensively scrutinized, but usually only in specialized scientific literature.[12]

4. *Indicators as tools for evaluation*

We single out indicators from other collections of data based on their potential use in evaluating performance. Indicators set standards. The standard against which performance is to be measured is often suggested by the name of the indicator—corruption, protection of human rights, respect for the rule of law, etc. To the extent that an indicator is used to evaluate performance against one standard rather than another, the use of that indicator embodies a theoretical claim about the appropriate standards for evaluating actors' conduct. Indicators often have embedded within them, or are placeholders for, a much more far-reaching theory—which some might call an "ideology"—of what a good society is, or how governance should ideally be conducted to achieve the best possible approximation of a good society or good policy. At a minimum they are produced as, or used as, markers for larger policy ideas. They may measure "success" directly along this axis, or they may measure what, from the standpoint of the theory or policy idea, are pathologies or

[10] James G. March and Herbert A. Simon, *Organizations* (New York: Wiley, 1958), 165.

[11] Espeland and Stevens, "A Sociology of Quantification" (n. 5), 421–2.

[12] Stephen Morse, *Indices and Indicators in Development: An Unhealthy Obsession with Numbers?* (London: Earthscan, 2004); Hood et al., "Rating the Rankings: Assessing International Rankings of Public Service Performance" (n. 6); Bjorn Hoyland et al., "The Tyranny of International Index Rankings," *Journal of Development Economics* 97 (2012): 1–14. Hoyland, Moene, and Willumsen reintroduce the uncertainty that is filtered out of the Human Development Index indicators and the Doing Business indicators when these are aggregated into rankings. They calculate, for example, that the ranking of the top four countries as shown in the 2008 HDI has less than 1 percent probability of being the true top rank. The estimated confidence intervals for Georgia in the 2007 Doing Business rankings are 11th place to 59th place, rather than the definitive 18th place Georgia was given in the report.

problems to be overcome. More frequently they address simply some measurable elements within a wider scenario envisaged by the theory or policy idea. Often the theory or policy idea is not spelled out at all in the indicator, but remains implicit.[13]

The theory or idea embedded in an indicator may be developed or reframed by its users or by other actors in ways that differ from anything intended by the producers. Indicators often express ideologies about the ideal society and the process of achieving it. But what they actually communicate, and to whom, may not be what their producers and promulgators sought to communicate. This communicative element makes it essential to consider the indicator's audience and how it is engaged by the indicator.

Use of the indicator in evaluative processes requires that its audience include active evaluators. Those evaluators may or may not exert significant governance power over the actor being evaluated. An indicator may be taken up by its audience (sometimes without any explicit intention on their part) in social processes that do not directly involve evaluation, including: establishing or cementing key concepts (such as "human development"); influencing actor identities; condensing and redefining status and hierarchies in quantified forms, framing standards or causal theories which may then be rendered in other ways (for example, in an organizational policy or a statement of best practices); influencing decisions as to what is measured or how statistics are compiled; crudely validating and calling into question other ideas or evaluative impressions. These other roles or uses of indicators do not alter the definitional requirement that an indicator must be *capable* of being used for evaluation, even while some of its roles and effects do not depend on the operation of specific evaluative processes.

III. Indicators as technologies of global governance

a. Global governance defined

Governance comprises the means used to influence behavior, the production of resources and the distribution of resources. Thus governance is a broader concept than regulation, which refers to means used to influence the behavior of regulated actors (the *Regulation and Governance* approach); however, the distinction is often a fine one because the process of allocating resources, and even the process of generating or not generating resources, can also serve as a means of regulation. Analyses of the means and impacts of governance vary in focus. Some address mainly material allocations and influences, as in the epigram that politics is who gets what, when, and how.[14] Others in Foucauldian or Marxian veins are concerned with the impact of power relations on identity and consciousness, the

[13] Poovey suggests that the use of numerical information to understand the world in ways that appear objective and free from interpretation but obscure underlying theoretical assumptions is a distinctive feature of modernity. Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago, IL: University of Chicago Press, 1998).

[14] Harold D. Lasswell, *Politics: Who Gets What, When, How* (Cleveland: Meridian Books, 1936).

constitution of the subject, and the analysis of structures of power or domination which the actors may not themselves be aware of. Others examine governance in the interactions of largely autonomous systems,[15] or in self-organizing systems that lack apparent intentionality,[16] or in certain actor-network forms that have not (or not yet) supported the delineation and articulation of forms of authority and governance.[17]

In many situations across this range (but not all), governance can be modeled using a standard triangular schematic which posits relations between the actors (the *governors*) who allocate resources among or exert influence over the behavior of other actors, the actors subject to governance (the *governed*), and other interested constituencies (the *public*).[18]

The process of governance is often itself subject to governance. In other words, governors are often simultaneously among the governed, in the sense that their actions are typically subject to various forms of contestation and control. Contestation can take many forms, including, depending on the context, violence, deliberate non-compliance, litigation, behind-the-scenes lobbying, or voting. Meanwhile control can range from resistance to specific decisions concerning specific actors, to much more systematic and generalized efforts at regulation. This last scenario can involve what Grabosky describes as "layers of regulation," citing situations in which private actors who serve as regulators are in turn subject to monitoring and control by public actors (see Figure 1.1).[19]

Governance can be effected through a wide variety of mechanisms, including military action, transfers of funds, promulgation of legal instruments, publication of scientific reports, advertising campaigns, or educational programs. Following Miller and Rose,[20] we call such mechanisms "technologies" of governance.[21] Different technologies of governance involve generation and allocation of different kinds of resources, including both material resources such as money or personnel, and intangible resources such as status and information. Different technologies also exert different kinds of influence over the governed. The governor may have *physical influence*, through being in a position to block or use force against the governed actor. The governor might wield *economic influence*, stemming from its ability to allocate material resources, or *social influence*, the ability to alter the governed actor's relations with other actors. The governor may be able to persuade

[15] Andreas Fischer-Lescano and Gunther Teubner, "Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law," *Michigan Journal of International Law* 25 (2004): 999–1046.

[16] Cf. Scott Camazine et al., *Self-Organization in Biological Systems* (Princeton: Princeton University Press, 2001).

[17] Bruno Latour, "Networks, Societies, Spheres: Reflections of an Actor-Network Theorist" (n. 4).

[18] *See*, e.g., Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992); John Braithwaite et al., "Can Regulation and Governance Make a Difference" (n. 4): 1–7; Kenneth W. Abbott and Duncan Snidal, "Strengthening Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit," *Virginia Journal of International Law* 54 (2009): 501–78.

[19] Peter N. Grabosky, "Using Non-Governmental Resources to Foster Regulatory Compliance," *Governance* 8 (1995): 527–50.

[20] Miller and Rose, *Governing the Present* (n. 3).

[21] *See also* Porter, *Trust in Numbers*; Espeland and Stevens, "A Sociology of Quantification" (n. 5).

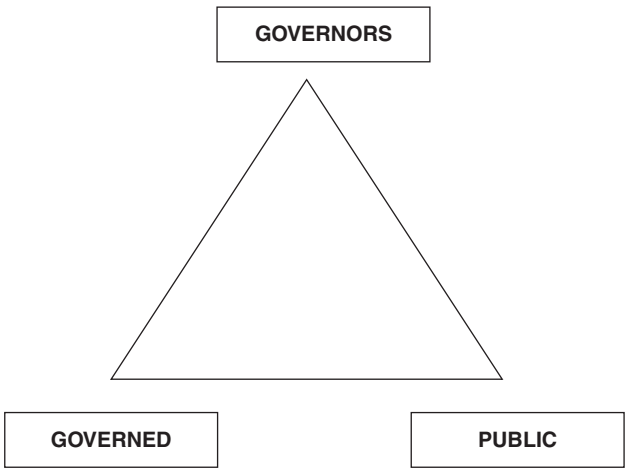

Fig. 1.1 A model of governance

the other actor of the merits of a certain course of action due to being perceived to have special insight which might be termed *scientific expertise* or *moral expertise*. Finally, different technologies of governance may be more or less amenable to particular forms of contestation or subject to different forms of regulation. So, for instance, financial auditing as a technology of corporate governance may be influenced especially strongly by a combination of legal regulation and detailed self-regulation, while environmental auditing is shaped by pressures from a more diffuse set of actors articulating less detailed norms.[22]

The term global governance is used in this book simply to denote governance beyond a single state. The governmental agencies of a state are often subject to governance conducted, at least in part, by entities outside the state. These entities may be inter-governmental organizations, hybrid public–private organizations, non-governmental commercial or non-commercial organizations, or other states. The ways in which such governance operates are often immensely intricate, creating substantial empirical and analytical challenges in efforts to understand the roles of indicators as a technology of such governance.

b. Possible effects of indicators on global governance

The use of indicators as a technology of global governance can be expected to affect: where, by whom, and in relation to whom governance takes place (the "topology of governance"); the processes through which standards are set; the processes through which decisions are made about the application of standards to particular cases; and the means and the dynamics of contesting and regulating exercises of power in

[22] Michael Power, *The Audit Society: Rituals of Verification* (Oxford: Oxford University Press, 1997).

global governance. In the sub-sections that follow we elaborate on each of these claims.

1. Topology of governance

The idea that indicators and other quantitative ways of representing social phenomena can serve as technologies of governance has distinctive implications for the topology of global governance. Indicators are one of the technologies of "government at a distance" (Miller and Rose), allowing certain actors to exercise influence over the conduct of large numbers of geographically dispersed actors, that are readily adapted to forms of governance outside or reaching across distances beyond the state. In particular settings of global governance, using indicators as a technology calls for expansion in ordinary political conceptions of who qualifies as a governor, while at the same time complicating models of governance premised on clear distinctions between governors, governed, and others.

Recognizing indicators as a technology of global governance implies that actors who promulgate indicators ought to be counted among the governors, even if they otherwise would not be recognized as wielders of power in global governance, or would be only to a lesser extent. Thus indicators help constitute or embed power relations. Moreover, simple producers of indicators used in global governance, or actors whose decisions have a significant impact on the form or content of such indicators, may exercise power even where they are not the formal promulgators or users of the indicator.

Including producers of indicators in the class of governors does not mean that tracing the strands of agency and power relations is necessarily straightforward. While in some cases (such as between credit rating agencies and their clients who pay to be rated) there is a symbiotic relationship between those who measure and those who are measured, particularly when the measured entity actively consents to the measuring, in other cases the measurer unilaterally exercises power over the measured. These complex and variegated power relations do not map neatly onto the distinction between governors and governed.

Another complicating factor is that the production of the indicators used in global governance is often a collective process. In many cases promulgators attach their names to indicators whose production involves contributions from a number of other actors. For example, reports and rankings for the Programme of International Student Assessment (PISA) are promulgated by the OECD, but are actually prepared and produced by an Australian consultancy under a contract with the OECD.[23] Moreover, the promulgators of indicators typically rely on data collected by a large network of independent actors stretching from international agencies to national statistical agencies, to local and national NGOs, to villages and local communities. They also rely upon analytical techniques generated by some segment of the scientific community. Consequently, the promulgator of an indicator

[23] Armin von Bogdandy and Matthias Goldman, "Taming and Framing Indicators: A Legal Reconstruction of the OECD's Programme for International Student Assessment (PISA)", this volume pp. 52–85.

may or may not be the actor most involved in determining its content. Instead, the promulgator is often more like the "manufacturer" of a consumer product, whose main contribution is to lend its brand name and perhaps its design and marketing expertise and quality control power to the collective product of a global supply chain.

The production of indicators also draws into the practice of global governance, through their own use of the indicators, people who would otherwise be regarded simply as members of the public. For example, when the United States State Department publishes its annual glossy report with indicators of countries' compliance with anti-trafficking standards, these can be read by activist groups who may influence economic agents such as prospective tourists in Toronto, just as easily as they can be read by government officials. Learning of Costa Rica's low score may lead a Toronto resident to alter her perceptions of Costa Rica, a country downgraded to the Tier 2 "watch list" in 2011.[24] In particular her travel decisions, in combination with the decisions of other members of the public, may (hypothetically) have a material effect on Costa Rica's tourism revenues.

Indicators may also play significant roles in global governance in helping to constitute actors and shape identities. Some organizations, such as Freedom House or Transparency International, depend for their prominence and influence primarily on indicators they produce. In many organizations, indicator production is important to the business model, helping generate website traffic or a demand for the organization's consultancy services; some indicators are sold commercially (see the discussion of the economics of indicators below). Disparate actors in different categories may become linked through an indicator which they help construct, or which measures behavior they are concerned with. Indicators may thus play roles in shaping highly decentralized or non-formal governance structures such as networks.[25] Indicators may be important in such governance modalities even where no clear delineation of governors and governed and interested public can be made, and where clear overarching human intentionality is lacking or where structural or non-animate elements (such as technological elements) greatly shape outcomes.[26]

The use of indicators in global governance enhances the role played in global governance by the subset of the public that comprises the scientific community. The scientific community determines the scientific authority of an indicator, which in turn may affect the extent of the indicator's influence. Producers of indicators are well aware of this fact. For example, Kaufmann and Kraay assert that their World Governance Indicators are more reliable because they are published in scientific journals and peer-reviewed.[27] Indicators typically rest on claims to objectivity and social science knowledge, but they differ significantly in the extent to which they reflect social science research and analysis. There are close relations between

[24] United States Department of State, Trafficking in Persons Report, June 2011. Washington, DC.

[25] Kevin E. Davis and Benedict Kingsbury, *Indicators as Interventions: Pitfalls and Prospects in Supporting Development Initiatives* (New York: Rockefeller Foundation, 2011).

[26] Latour, "Networks, Societies, Spheres: Reflections of an Actor-Network Theorist" (n. 4).

[27] Daniel Kaufmann et al., "Governance Matters", World Bank Policy Research Paper No. 2196 (1999) 32; *see also* Daniel Kaufmann et al., "Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996–2008," World Bank Policy Research Paper No. 4978 (2009).

indicators developed for social science theory testing and those which address policy questions, with the data and analysis of one informing the other.

2. Standard-setting

As we have explained, indicators are standard-setting instruments. But while the processes which generate indicators ultimately result in the production of specific goals and targets against which societies are measured, they may be different from other more politically explicit standard-setting processes.[28] Whereas political efforts to formulate norms and standards, for example in multilateral inter-governmental negotiations conducted by diplomats, tend to involve processes such as voting or interest-group bargaining or the exercise of material power, the processes in specialist agencies and expert meetings where the standards embedded in indicators are produced, accepted, and supported tend to involve derivation of power from scientific knowledge. As the awareness or the significance of indicators as standards rises, indicator design and production are likely to become increasingly subject to demands made of other standard-setting processes, including demands for transparency, participation, reason-giving, and review.[29]

Because indicators are by stipulation capable of being used in evaluation, they frequently blend standard-setting with evaluation, by conveying information such as a ranking of the state's performance relative to that of other states and a direction of change in the state's relative or absolute performance by comparison to previous iterations of the indicator. This has the potential to intensify demands for "due process," especially within inter-governmental bodies, as each specific ranked entity has a direct focused interest, going beyond the general interest in good standards, which it may regard as conferring "standing" to raise a challenge.

3. Decision-making

In the practice of global governance, many decisions by governing entities are in some way influenced by indicators, although few rely entirely and mechanically on indicators. In the most straightforward case, an indicator promulgated by an extra-national entity is then used by that entity in generating or allocating resources or in influencing behavior. This is, for example, what the World Bank does in promulgating "good governance" indicators that are used by the World Bank itself in deciding how to allocate aid. A modest extension of this occurs where one entity's indicators are used for governance purposes by other entities in the same sector, as when the MCC uses World Bank indicators. A more subtle case arises where the promulgation of the indicator by an extra-national entity spurs demands and

[28] The comparison between indicators and standard-setting is explored in Tim Büthe's chapter in this volume. *See also* Lampland and Star, *Standards and Their Stories: How Quantifying, Classifying, and Formalizing Practices Shape Everyday Life* (n. 7); Tim Büthe and Walter Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy* (Princeton: Princeton University Press, 2011).

[29] Benedict Kingsbury et al., "The Emergence of Global Administrative Law" (n. 1); *see also* the chapter by Bogdandy and Goldmann in this volume, pp. 52–85.

governance-related action by diffuse but nonetheless influential groups of other actors. For instance, the World Bank claims that it has prompted many countries to reform their legal systems simply by promulgating and promoting its country-level indicators on the ease of doing business.[30] The US State Department's Trafficking in Persons Report claims that it has fostered national anti-trafficking legislation. The regulatory influence of these indicators does not stem exclusively from the ways in which they are used by the World Bank or other development agencies, but also from the ways in which they are expected to be used in lobbying and decision-making by local political constituencies or prospective foreign investors. This shades into a further scenario, in which the indicators have regulatory effects primarily because they have been embraced as guides to appropriate conduct by actors within the state shaping national governmental decisions on national governance. The majority of prominent indicators appear to operate in global governance in even more diffuse ways than this, by influencing professional, public, and political opinion to craft new approaches or take different policy orientations.

Indicators are attractive to decision-makers and designers of decision-making processes because decision-making processes that rely on indicators can be presented as efficient, consistent, transparent, scientific, and impartial.[31] It is difficult to say which of these factors is most important in any given context. Efficiency and consistency may be factors of special importance in high-volume decision-making; transparency, scientific authority, and impartiality are considerations relevant to the use of indicators in both standard-setting and decision-making, although special issues arise in decision-making.

i. Efficiency

The use of easily-produced or already-available indicators (which simplify more complex and unruly information) is likely to reduce the burden of processing information in the course of decision-making. In principle therefore, reliance on indicators should reduce the time, money, expertise, and other resources required to make decisions. One of the appeals of an indicator technology for human rights treaty bodies is to help in coping with the growing burden of processing country reports as the number of reports increases. On the other hand, selecting or amalgamating among a high volume of different indicators requires expertise and can be costly. It may be viable and attractive for a sophisticated organization. But a multiplication of indicators, some poorly grounded and some extensively marketed,

[30] The *Doing Business* team claim that from its first publication in 2003 through to mid-2010, "Governments have reported more than 270 business regulation reforms inspired or informed by *Doing Business*" (*Doing Business Report 2010* (Washington DC: World Bank/IFC 2010), vi). The *Doing Business* team provides assistance to states in how to alter laws or practices to move up the rankings on relevant indicators, and the *Doing Business* team arranges a celebration each year for leaders of "the top 10 reforming governments" based on their improvements documented in that year's report (led in 2009 by Azerbaijan, Albania, Kyrgyz Republic, Belarus, and Senegal). Some 25 countries have inter-ministerial or other committees specifically aimed at "improving the business environment" using the *Doing Business* indicators as one guide (ibid., 15). The World Bank Group's newer *Investing Across Borders* team pursues similar approaches designed to increase the influence of its indicators.

[31] Porter refers to these virtues compendiously as "objectivity." Porter, *Trust in Numbers* (n. 5).

may lead to confusion and worse decision-making for other organizations and their constituencies.

The cost–benefit attractions of relying on indicators are particularly pronounced when sophisticated numerical data and information processing technology are readily available. It seems likely that the expansion in the use of global indicators since the 1990s is linked to the increasing accessibility and quality of social and economic statistics, the ever-declining cost of computing, as well as improvements in and dissemination of statistical techniques. National statistical systems are generally in a long-run pattern of improvement (although there are also cases of decline in governmental statistical systems). For example, developers of an indicator for the right to health were already able, by the early 2000s, to present data on 72 indicators for 194 countries using data available on the Internet.[32]

In some contexts, the quality of indicators may actually be a function of the total supply of indicators because some indicators are arguably most useful when aggregated with other similar indicators.[33] This raises the intriguing possibility that, at least for relatively sophisticated actors, the use of indicators may be a self-reinforcing phenomenon: as more indicators are produced, aggregations of indicators become more reliable, more indicators are used, more indicators are produced, et cetera. Greater supply of indicators also influences the ecology of indicators, with comparisons among them enabling selection of the most robust and reliable, and possibilities of continuous improvement.

It seems plausible that reducing the costs of decision-making becomes more attractive (sometimes even imperative) as the amount of decision-making and the need for rapid decisions increases. Thus, the striking increase over the decades since 1990 in the creation and use of indicators as forms of knowledge for global governance arguably reflects the greater demand for readily available and easily used comparative knowledge to inform decision-making as well as the increasing supply of information. The reliance on indicators in global governance seems to be associated with developments such as increases in population and in levels of economic activity, which in turn determine the scale and intensity of social and economic interactions susceptible to governance, and with specific institutional developments affecting the nature of governance decision-making.

ii. Consistency

To the extent that indicators provide unequivocal ordinal data, they can be translated into numerical form and used as inputs into decisions made in accordance with rules expressed in mathematical form (such as "approve the grant if $(A * B)/C > 3$"). A distinctive feature of rules that can be expressed as these kinds of mathematical operations is that they yield consistent results; given the same inputs, the output will be the same regardless of who is applying the rule or when it is being applied. Holding this process constant also enables consistency over time.

[32] Gunilla Backman et al., "Health Systems and the Right to Health: An Assessment of 194 countries," *The Lancet* 372 (2008): 2047–85.

[33] Kaufmann et al., "Governance Matters" (n. 27).

Consistency is likely to increase the legal or moral authority of decision-making in some contexts.

iii. Transparency

The simplicity of indicators makes it relatively easy to communicate them to third parties. This is significant whenever an effort is made to give third parties access to the informational basis for a decision; it should be relatively easy to communicate the basis for a decision based on indicators. This transparency can be superficial because the raw data used to construct indicators, and the methods used to simplify those data, are not necessarily easy to communicate and may in fact be treated as confidential. Even when such detailed information is provided, users may well not delve into the complexities and limitations of the underlying data and the analytic choices made in converting it into an indicator.

iv. Scientific authority

Reliance on indicators has the potential to displace unmediated subjective data and replace it with data whose relevance and reliability has been endorsed, to some extent, by a community of scientists. This in turn means that the credibility of decisions based on indicators can depend in part on the extent to which the indicator is seen to be endorsed by various scientific communities and the amount of authority commanded by those communities. An indicator may gain credibility from its association with particularly prominent individual scholars.

v. Impartiality

Basing governance decisions solely on publicly disseminated indicators excludes the possibility of basing them on subjective considerations of, or private data known only to, the particular decision-maker. As Porter has argued, the less a governor is trusted the more appealing this kind of demonstrated impartiality becomes.[34] This impartiality is limited, however. The reasons for simplifying raw data in one way instead of another, or choosing to rely upon one indicator rather than another, may be highly subjective. The decision-maker may be involved in this process, whether by constructing the indicator, determining itself which indicator to use, or signaling a demand for an indicator conforming to its preferences which a supplier then meets. It is in any case almost inevitable that indicators are shaped by the knowledge and experience of the experts who produce them. This knowledge and experience may in some cases be dominated by that of the first movers or early adopters of quantification in a particular area of social policy.

4. Contestation

A great deal remains to be learned about when, how and why the governed (or rival governors) contest the use of indicators, but we expect it to take both general and

[34] Porter, *Trust in Numbers* (n. 5).

long-established forms such as lobbying and litigation, as well as distinctive forms that are especially suited to changing or resisting governance through indicators, such as refusal to participate in data collection, challenges to scientific validity, or creation of alternative indicators. Contestation can take the form of debates about the data used and not used in indicators, the weightings criteria for the indicators, or about the embedded social and political theory of the indicator. Contestation strategies can include the creation of new indicators, and resistance to or discrediting of existing indicators and their producers or users. This may in turn prompt modifications to the indicator, or counter-strategies by producers and users.

Because they obscure the socio-political theoretical claims embedded in their construction, the use of indicators can make it relatively difficult to contest the use of those theories in global governance. Indicators may mask large areas of missing or incomplete data, inability to draw significant distinctions between entities that are nonetheless hierarchically ranked, much higher levels of underlying uncertainty than the indicator depicts, and choices about weighting of different components of composite indicators (which in some notable privately produced indicators are not disclosed at all). On the other hand, those with special expertise in the construction or analysis of indicators can overcome these impediments to technical contestation and exercise greater influence than they could in purely political settings. Limitations in the ability to contest the exercise of power by global decision-makers tend to shift the balance of power toward "technical" experts, that is to say, people with expertise in the construction or analysis of indicators.

The rapid growth in prominent indicators in global governance is a time-compressed phenomenon that was initially sufficiently circumscribed for case studies about early patterns of debate, acceptance and challenge to be used as a basis for some cautious generalizations. Several of the most prominent indicators in global governance began as efforts led and shaped by social-science communities. Eventual "scientific" acceptance of these indicators can be traced back to a time before "public" knowledge is settled about the issue through various controversies and challenges. The development of these indicators instantiates, to some extent, the process of developing scientific knowledge described by Latour.[35] Like other forms of scientific knowledge production, an indicator builds on existing concepts, techniques, and categories of understanding that are taken for granted as correct, and on networks of experts. Indicators are shaped both by technical factors, such as the statistical properties of an indicator when compared to other indicators, and social factors, such as social networks, perceived expertise, relational interactions, institutions, and allies.[36] These processes are collective and take place over time. Once the indicator has been established with wide scientific support (even while continuous scientific debate and refinement remains part of the further life of the indicator), a process of wider public acceptance occurs, as networks of actors and institutions adopt the indicator and consequently increase its credibility and

[35] Latour, *Science in Action: How to Follow Scientists and Engineers Through Society* (n. 7).
[36] Ibid., 29.

legitimacy, perhaps even converting it into a standard against which other indicators are evaluated.

The results of a survey we conducted of reporting about four major indicators—UNDP's HDI, Transparency International's Corruption Perception Index,[37] Freedom House's Freedom in the World indicator,[38] and the World Bank's Doing Business indicators—in three major US and UK opinion-shaping newspapers and magazines are consistent with this model.[39] In the first year or two after an indicator is released, there is discussion and debate about the indicator itself, but after a few years, the indicator is presented in these news media largely as a fact that describes a country's situation, with virtually no discussion about the source of the data or the nature of the indicator itself. In some cases, however, such as opposition from organized labour groups and the International Labour Organization to the 'Employing Workers' component of the Doing Business indicators, efforts at contestation can be intense. As such indicators have become more and more significant as technologies of global governance, the stakes of contestation have risen. Producers of indicators who may have viewed themselves as scientists or technicians working outside political and legal arenas, have been drawn into highly political conflicts.

5. *Regulation*

One outcome of contestation can be demands for regulation of indicator-related processes and activities. Some of these demands instantiate general patterns of demands for increased transparency, reason-giving, participation, review, and accountability in global governance institutions and processes, particularly where public authority is being exercised, but also in relation to some private governance actors.[40] Given the distinctive features of indicators as a technology of global governance, we expect growth in specifically adapted proposals or efforts to regulate indicators. These may take a variety of forms, several of which have been manifested in debates about regulation relating to sovereign debt ratings by credit rating agencies.[41] For instance, *producers of indicators* could be subject to scrutiny (although not necessarily legal obligations) with reference to human rights standards, domestic constitutional norms, and principles of global administrative law. Others may be regulated in the same ways as private actors such as multinational corpora-

[37] Transparency International, Corruption Perceptions Index 2010, available at <http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results> (accessed September 30, 2011).

[38] Freedom House, *Freedom in the World 2010* (Washington, DC: Freedom House, 2010).

[39] This survey examined news stories in the *New York Times,* the *Washington Post,* and the *Economist* and compared coverage in the first year after each indicator was created with coverage in 2004 and 2009. We thank Jessica Shimmin for work on this.

[40] Kingsbury et al., "The Emergence of Global Administrative Law" (n. 1); Benedict Kingsbury, "The Concept of 'Law' in Global Administrative Law" (n. 1); Armin von Bogdandy et al. (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Heidelberg: Springer, 2009).

[41] Amadou N.R. Sy, "The Systemic Regulation of Credit Rating Agencies and Rated Markets," IMF Working Paper WP/09/129 (Washington, DC: International Monetary Fund, 2009); Mathias Audit, "Aspects internationaux de la responsabilité des agences de notation," *Revue critique de droit international privé* 100 (2011): 581–602.

tions or networks of firms linked by transnational supply chains. These analogies suggest also the possible relevance of regulatory mechanisms such as competition law, transnational tort claims, and self-regulation. Procedural obligations on producers might require them to be transparent about the methods used to produce indicators and their limitations, to allow interested parties to participate in some way in the design process, and/or to accept some accountability in problematic cases for effects on external actors. Alternatively, producers might find their indicators held to externally administered standards of reliability and validity. Finally, structural interventions might be designed to foster healthy competition among producers. So, for example, public bodies might support or subsidize the production of competing indicators, or certain organizations already exercising other substantial powers as governors might be encouraged to refrain from promulgating indicators.

Other regulatory interventions might target the *users of indicators*. For example, use of indicators in global governance may spawn systematic efforts to educate users of indicators, and the members of the public who confer authority upon them, about both the costs and benefits associated with using indicators. Alternatively, regulation could focus on empowering *actors who are governed by indicators* by, for example, giving them access to the scientific expertise they need to contest decisions based upon indicators.

IV. Outline of this volume

Using case studies of indicators that are influential in global governance—university rankings, the OECD's PISA rankings of achievement among cohorts of school students, the UN Global Compact and other indicators of "corporate social responsibility," measures of state fragility and state failure used differently by aid agencies and the military, the World Bank's influential neo-liberal "Doing Business" and "Investing Across Borders" global rankings, ratings of companies for social impact investors, indicators used to measure police performance, indicators measuring health systems, trafficking in persons, internal displacement in Colombia, and the performance of humanitarian agencies in Haiti—the chapters illuminate some of the hypotheses proposed in the previous section about the ways in which indicators operate and affect global governance. In aggregate, they focus particular attention on the interplay of power and authority, dynamics of global and local indicators, and relations between indicators and law, including human rights law and global administrative law.

The chapters comprising the remainder of Part I of the book consider different theoretical approaches to the study of indicators.

Tim Büthe constructs a political-economy model of the supply and demand for indicators, recognizing, however, that most indicators are supplied and used in political contexts which do not closely follow market precepts, so that supply and demand may well be in long-term disequilibrium. He emphasizes the insufficiency of focusing simply on the producers (suppliers) and users (demanders) of indicators,

and accordingly formulates a model that identifies four relevant sets of stakeholders. In addition to those who would conventionally be called producers and users his model encompasses (a) actors who call for or provide material support for the production of indicators, regardless of whether they actually produce or use the indicators; and (b) the targets of the rules, "the subset of the users who either are themselves being measured or who act and speak on behalf of the objects or institutions being measured." Drawing on several other chapters in the book, Büthe applies his model particularly to private producers of indicators, such as the law school rankings produced by the for-profit entity US News and World Report, and the Freedom in the World index produced by the NGO Freedom House.

A public law approach to global governance indicators is taken by Armin von Bogdandy and Matthias Goldmann. Drawing on German public law thinking as well as theories of public law beyond the state, they propose that the promulgation of the PISA evaluations and rankings by the OECD be characterized in legal terms as a "standard instrument," in this case a "national policy assessment" (NPA). Because the OECD can be regarded as exercising international public authority, its NPAs would be subject to public law requirements, such as that the content and political direction of the NPA program be clearly defined under a mandate with a definite legal basis, adopted through a multi-stakeholder process, and implemented by a geographically balanced group of experts selected under an open process. The producers of NPAs would be required to give reasons for specific actions, to respond to criticism, and to maintain independence from national governments by which they might be captured.

The sociological approach taken by Wendy Espeland and Michael Sauder examines the processes by which a particular indicator comes to have meaning, effects, and uses in ways and places very different from those envisaged in its original production. This "dynamism" of an indicator depends on who notices or ignores the indicator, how different constituents use it, and how these users are connected to one another. "Successful" indicators become significant or authoritative as they accumulate networks of constituents, technologies, and things. The case studies in this chapter are of three sets of indicators of higher educational institutions: US law school rankings, transnational rankings of business schools, and world university rankings. Espeland and Sauder, like Büthe, highlight particular social and psychological factors that give special power to numbers and rankings as definite, transitive, simplifying heuristics.

Actor-network theory (material semiotics) inspires the exploration by Ronen Shamir and Dana Weiss of the emergence of measurable and comparable representations of "corporate human-rights responsibility." The authors consider symbolic representation of indicators in maps, diagrams, and social-branding labels, arguing that indicators tend to generate secondary and even third-tiered indicators ("indicators of indicators"). The second layer of analysis explores "corporate human rights responsibility" as a social performance which is simultaneously enacted through two interacting social modalities: regions and networks. The authors emphasize the extent to which indicators are actors whose work simultaneously

assembles the net of "corporate human rights responsibility" and the compilations that produce regions. Indicators are double agents: working to preserve the integrity of the network but also enabling the production of regions. In addition, the authors identify and criticize the practice of indicators moving "corporate human rights responsibility" further and further away from addressing or ameliorating the real risk-to-people.

A genealogical approach, producing a kind of "history of the present" is taken by Nehal Bhuta in his study of the USAID state fragility index as an example of the construction, uses, and purported measurement through indicators of the concepts of fragile, failing, or failed states. This terminology, he comments, operates as "a 'trading language' used to talk about complex social realities which are highly heterogeneous and about which there is little theoretical and empirical agreement. Once the concept is pragmatically and provisionally in use—and used in a variety of diagnostic, prescriptive and evaluative ways—its consistency with any 'outer reality' is less significant for its users than its correspondence with a (porous) set of acceptable uses and deployments."

Part II of the book uses social science methodologies to investigate how power and authority are exercised by and through indicators.

Katharina Pistor traces the history of the first generation of the indicators of governmental institutional quality—global indicators bearing labels such as "rule of law," "security of property rights," and "bureaucratic efficiency." Data collected and disseminated by private for-profit groups or by Freedom House was used in the mid-1990s and transposed by economists into measures correlated with development success under the Washington Consensus mantra that "institutions matter." Pistor argues that it is not the creation of the indicators that is problematic but rather the transposition of indicators that were designed for a narrow purpose into justifications for large-scale development policies by leading multilateral agencies, where neither the assumptions of policymakers that led them to these data nor the re-interpretation of the data is further scrutinized. She urges that raw data be made readily available, and alternative data sets used, to challenge existing assumptions rather than simply seeking to validate them and the policy choices with which they are associated.

Terence Halliday presents the results of detailed empirical studies into efforts by inter-governmental financial institutions (IFIs) to measure the quality of national laws on matters such as commercial law and corporate bankruptcy, and the use of these legal assessments in promoting change through inter-country comparison (especially countries in the same region) and appraising change through inter-temporal comparisons of a single country. He situates these initiatives within an overall ecology of partly competitive interactions between IFIs, but also within IFIs. The latter related particularly to the roles and aspirations of IFI legal departments as they moved from simply providing legal services to engaging in development policy under the new theory that "good" (reformed) national legal institutions were important to development and to financial system resilience. Halliday argues that the ecological, organizational, and professional challenges faced by IFIs and their legal staffs set significant limits to changing the uses of indicators and shifting

to non-indicator or less prescriptive methodologies, however desirable such changes or shifts might be.

Angelina Fisher studies the ways in which the WHO/UNICEF immunization coverage indicators have been used, at times extending far beyond their purported scope. The Global Alliance for Vaccines and Immunization (GAVI), for example, uses the WHO/UNESCO DTP3 vaccine coverage indicator to determine the type of funding it will make available to a country. Under GAVI's rules, countries with less than 70 percent DTP3 coverage of children at age one year are *not* eligible for funding to support introduction of new vaccines. In the Heavily Indebted Poor Countries debt relief initiative, this indicator is used as a requirement for the country to show progress on good governance. In other situations, these indicators are used in effect as proxy measures for the overall quality of national health care systems. As Fisher explains, this situation may be explained in part by the absence of any other single indicator of national health system performance suitable for making cross-country comparisons. In 2000, WHO published *The World Health Report 2000—Health Systems: Improving Performance*, measuring health systems in 191 member states on the basis of five indicators: overall level of population health; health inequalities (or disparities) within the population; overall level of health system responsiveness (a combination of patient satisfaction and how well the system acts); distribution of responsiveness within the population (how well people of varying economic status find that they are served by the health system); and the distribution of the health system's financial burden within the population (who pays the costs). The political uproar that followed (prompted not the least by the US ranking 37th) caused WHO to stop any subsequent explicit ranking of health systems. Immunization coverage indicators have filled the gap.

Part III of the book explores the different dynamics of global, regional, and local indicators, focusing on ways in which these acquire authority and significance, and influence policy process.[42]

Studying the roles of indicators of the numbers and circumstances of internally displaced persons in Colombia, an issue of tremendous importance in Colombia as a consequence of massive violence and attempts to remediate its effects, René Urueña traces the movement of numbers from local compilers with little direct influence, into reports of prestigious external bodies such as the United Nations, then back into the Colombian news media and political debates. He argues that there is a dialectic element to the process of creating and applying the indicators. Indicators may be creatively appropriated for local purposes that are not necessarily connected with their original "global" origin, and both governments and non–state actors adopt indicators as part of their rhetoric. Urueña shows that those who are measured will try to influence the measurement, making indicators an important aspect of their strategic political choices. The complex interaction between the producers and users of indicators cautions against considering governance through indicators as a one-way, top-to-bottom process.

[42] This is also a major theme in the international collaborative research project directed by Merry, Kingsbury, and Davis and funded by the National Science Foundation.

Christopher Stone makes a normative argument for bottom-up generation of locally usable near real-time "active indicators," as preferable to top-down production of global indicators or donor-demanded indicators which engross external constituencies but have little real local salience in direct management. Studying indicators of different performance patterns across police divisions in Jamaica, or different drivers of pre-trial detention in a Nigerian prison, he argues for iterative development of indicators from these local experiences into inter-country dialogues among the relevant professionals, and thence perhaps the eventual aggregation of these into global indicators.

Chapters in Part IV of the book consider the relations between law, human rights values, and indicators in human rights and humanitarian governance.

AnnJanette Rosga and Margaret Satterthwaite point out that efforts to use indicators within the *law* of international human rights are inevitably criticized for the kinds of pathologies identified in the literature on national audit practices: quantifying the not-adequately-quantifiable; missing data and concoction of data; disguising the processes of politics and judgment; the measures becoming endogenous as targets; the frequent need to revise what is measured, undercutting intertemporal comparability. Nonetheless, they see a growing potential for suitably tempered indicators to play valuable roles. A project of the UN Office of the High Commissioner for Human Rights (led by several outside advocate-experts working with the secretariat) from 2005 aimed to produce internationally prescribed indicators for the ICESCR and several major UN human rights treaties. Development of such indicators might help address concerns about the perceived legitimacy of the supervisory committees under these treaties, by shoring up their authority through relying on social science and statistics, and thus making it appear that their assessments of each state were based on quantified analysis applied to all states rather than being specific acts of (political) judgment. Some core difficulties in this turn to indicators have been manifest in this project: problems of authoritatively specifying adequate indicators where the rights themselves are under-specified; the improbability of "structural" and "process" indicators measuring major causal effects on "outcomes" in many cases; and the inability of indicator-based approaches to free the committees from acts of judgment in real cases. The initial aspirations of the OHCHR project to produce universally applicable indicators for assessing compliance and fulfillment of rights and enabling inter-country comparison were subsequently watered down, to a more modest and realistic aim of producing illustrative indicators. Rosga and Satterthwaite welcome this, and suggest that indicators might play a role in helping peoples and publics to exert the kinds of pressures and constraints on governments that human rights advocates have long sought through the rights themselves.

Wariness of governments about this possibility has been one factor slowing the development by inter-governmental bodies of compliance-focused indicators under international treaties against human trafficking. Anne Gallagher and Janie Chuang note this in their chapter, and focus on the major effort to produce such indicators, which has been undertaken by the US State Department pursuant to US legislation. This power is asserted unilaterally; almost no cases exist where an

international institution has delegated this power to a single government, or where other countries ranked have requested such rankings. Such unilateralism may nonetheless receive some support. It can overcome a collective action problem, where all or most governments agree that an indicator is desirable, but they cannot agree on effective criteria, and the decision rules or bargaining arrangements drive them down to the lowest common denominator of no indicator or an insipid one. Unilateralism can also function, albeit crudely, as a form of virtual representation, where the individuals and groups who are intended to benefit from performance of the treaty lack the influence themselves to incentivize governments to perform the treaty or to monitor performance. The US State Department's trafficking in persons indicators are, however, produced under criteria set by US legislation. These criteria are not identical to the relevant international treaty, although broadly similar. Politics within the US have influenced aspects of this monitoring: for example, a strong focus on prostitution under the G.W. Bush administration was attenuated under the Obama administration. Micro-political US concerns may also have influenced some reporting or non-reporting of particular trafficking incidents in the State Department's publications. Overall, however, Gallagher and Chuang suggest that the US unilateral approach to trafficking has probably provided an otherwise under-supplied public good.

Much more disquiet about one effect of global anti-trafficking law, policy, and indicators is expressed by Marina Zaloznaya and John Hagan in their study of the uses of the anti-trafficking agenda by the authoritarian government of Belarus. The authors point to the uses by the Belarus government of anti-trafficking as a basis for making travel abroad by students and young people much more difficult, and for other autarkic and nationalist agendas. They express concern that the State Department trafficking indicators and accompanying narrative take no account of other forms of human rights repression or excesses of policing systems in Belarus, and instead provide legitimating endorsement to the regime's efforts, an endorsement that single-issue international anti-trafficking organizations have also tended to concur in. This study illuminates the important but under-researched theme of the significance of global indicators in authoritarian contexts.

Indicators operate as core elements of systems of regulation in many contexts. Margaret Satterthwaite's chapter on the operation and effects of indicators used to guide and assess the work of (mainly non-governmental) humanitarian relief agencies in their on-the-ground operations in Haiti provides an illuminating example. Two major sets of standards were adopted as a form of self-regulation by groups of major international NGOs after the disastrous problems they faced in Great Lakes camps and in Yugoslav "safe areas" in 1994–95. These are the widely used Sphere indicators, and the Humanitarian Accountability Partnership's standard (although relatively few such NGOs have HAP certification thus far). The Sphere indicators, in particular, are used by major donors to guide decisions on which NGOs to fund, by peer NGOs as standards to hold each other to in order to maintain legitimacy of the whole "industry," and by staff within these NGOs to guide and critique their own performance internally. The processes for setting the standards included in Sphere often resemble regulatory processes. For example, the

standard of 15 liters of water per person per day was set taking into account what was plausibly attainable in many countries, but it was set well above bare survival level in order to provide leverage to relief agencies when seeking water supply funding and when working with host governments so that long-term reconstruction infrastructure water target levels would not be too low. The Sphere indicators have at times had some of the problems resulting from pathologies in incentives that characterize both indicators and regulation: after the January 2010 earthquake in Haiti formal relief camps were not established in areas of Port-au-Prince where it would be impossible to meet the Sphere standards of shelter, water, security, etc.; new Sphere-compliant camps were established in areas of Port-au-Prince where beneficiaries did not want to be; or (in a Sudan case) the number of people in food programs was limited to ensure each participant received the nutrition levels set in an earlier version of the Sphere indicators. The Sphere *Handbook* also has some regulatory silences: it said little (before its 2010 version) on protection of local people (action to prevent arbitrary forced displacement, or ensure their free movement rather than de facto detention), and continued after 2010 to lack indicators to measure performance on these issues, in contrast to the detailed indicators on more straightforward food and shelter functions of humanitarian agencies.

Sarah Dadush presents a study of the development and use of indicators and related reporting systems in social impact investing, through the Global Impact Investment Rating System (GIIRS) and the Impact Reporting and Investment Standards (IRIS). Social issues are coming to be weighed in commercial investments, while market values are increasingly inserted into philanthropy. In this dual process, quantification and the emulation of commercial ratings and accounting make specialized "investment impact" indicators increasingly significant as bridging and blurring devices. Dadush points to positive attributes of this system, but also to some of its costs, including a shift away from local self-expression of distinctive community initiatives in specific developing country settings, toward a standardized structure and language of global markets with which small-scale entities have little choice but to conform.

Part V of the book considers whether (and if so, when and in what form) indicators and indicator-related processes and activities should be subject to regulation.

Nikhil Dutta's chapter on market mechanisms of regulation focuses on the extent to which indicator producers provide transparency, reasons, participation opportunities, or review mechanisms in their activities. He postulates two means by which levels of these types of accountability in indicator generation are determined where some kind of market for the indicators exists. The first is the Demand Hypothesis, which posits that the response of generators to the demand from users and targets for accuracy determines observed levels of accountability. The second is the Supply Hypothesis, which predicts that indicator generators provide higher levels of accountability in order to attract users. The author tests how well each of these hypotheses explains observed levels of accountability in the generation of three indicators: the International Country Risk Guide ratings produced by the

PRS Group, a for-profit private company; the Freedom in the World ratings generated by Freedom House, a non-profit non-governmental organization; and the Minorities at Risk variables developed by the MAR Project, an academic project at the University of Maryland. The case studies confirm elements of the Supply Hypothesis, but with inflections.

In the final chapter, Sabino Cassese and Lorenzo Casini address arguments for and against the regulation of different global indicators, using the ratings produced by credit rating agencies as a particular illustration. They argue that, in normative terms, the determination as to whether a regulatory framework is needed depends on factors such as the type of indicator at issue, characteristics of the indicator-producing entity, and the kinds of users involved. The chapter sets out a taxonomy of different types, uses, and conditions of use of indicators, in order to distinguish cases in which indicators as accountability-enhancers require protection from regulation, from situations in which some public regulation may be required.

V. Conclusion

A premise of this book is that indicators are a technology of global governance, with distinct properties which we have sought to delineate and specify. Contributors to this volume have engaged in the systematic study of quantification and indicators as a technology of global governance, suggesting schematically the kinds of effects indicators could have on global governance, including on the topology of global governance (who are governors and governed, and in what ways), effects on processes of standard-setting and decision-making, and effects on ways in which contestation of governance occurs. Potential effects on the demand for and the supply of regulation in particular modalities, as well as effects on power and identities are also considered. The chapters in this book illuminate reasons for the growing use of indicators in global governance, the actual effects of particular indicators, and interactions between indicators and other technologies of governance, including law as well as different methods of governance by information.

12

Measuring Human Rights

*UN Indicators in Critical Perspective**

AnnJanette Rosga and Margaret L. Satterthwaite

Introduction[1]

Debates over the best way to identify human rights violations, assess compliance with treaty obligations, and measure human rights progress over time have preoccupied scholars and practitioners for many years. Quantitative data has been forwarded as a central tool in the drive for better methods of assessment, monitoring, and advocacy. Among quantitative tools, human rights indicators have been identified as especially powerful. Rights indicators, "piece[s] of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation,"[2] are understood to have a variety of advantages: they render complex data simple and easy to understand; they can be designed to demonstrate compliance with obligations, fulfillment of rights, and government efforts toward these goals; and they are capable of capturing progress over time and across countries. Since they are perceived to be an especially powerful intersection of law and social science, it is not surprising that NGOs, inter-governmental bodies, and governments have all begun to develop human rights indicators.

Human rights indicators are used to accomplish many, often contradictory, ends. They take their place among many manifestations of global governance projects. As such, they are situated at the nexus of international human rights

* This chapter is adapted, and draws significant portions of its text from: AnnJanette Rosga and Margaret L. Satterthwaite, "The Trust in Indicators: Measuring Human Rights," *Berkeley Journal of International Law* 27 (2009): 253. The authors thank Valerie Brender (NYU J.D. 2012) for assistance in preparing the manuscript for this chapter. Work on this chapter was supported by the Filomen D'Agostino Research Fund at NYU School of Law.

[1] Each of the authors has been, in various capacities, involved in projects to help develop and/or analyze such indicators. As a cultural anthropologist (Rosga) and human rights legal scholar (Satterthwaite) respectively, we drafted the article from which this chapter is adapted as a way of thinking through the interdisciplinary functions of human rights indicators, as they seemed to embody an especially powerful intersection of law and social science.

[2] Maria Green, "What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement," *Human Rights Quarterly* 23 (2001): 1062, 1065.

law, quantitative social science methodologies, administrative and regulatory apparatuses, advocacy projects, and the transnational spread of expert knowledges mobilized in the service of "standardization."[3]

As early as the 1980s, assessments of the role of statistics in measuring human rights contained variously embedded discussions of indicators, including critical assessments of their use. A convergence of social, political, and economic forces and their accompanying epistemological shifts has dramatically increased demands for indicators without equal attention to their limitations. These demands arise not only from the perceived need within international human rights circles for better tools to hold governments to account, but also from the replication of verification and monitoring techniques used in a wide variety of business, non-profit, and governmental management contexts. In 1994, economic analyst Michael Power identified what he called an "audit explosion," which he described as having "roots in a programmatic restructuring of organizational life and a new 'rationality of governance.'"[4] For Power, the audit, with its financial accounting origins, exemplifies both literally and metaphorically a number of monitoring and control practices characteristic of late modern social organization such as inspections, assessments, and other evaluative technologies.

> Audit has become a benchmark for securing the legitimacy of organizational action in which auditable standards of performance have been created not merely to provide for substantive internal improvements to the quality of service but to make these improvements externally verifiable via acts of certification.[5]

Increasing demands for "indicators" are thus inextricable from the privileging of abstract, quantifiable, and putatively transferable data bits. As such, indicators partake of both the strengths and weaknesses of auditing practices. Without arguing whether indicators are inherently good or bad, this chapter suggests attention should be paid to how this growth is inextricable from an "accounting culture" in which tests of measurability prevail over accurate and contextually sensitive assessments of substance or actions.

We place efforts by United Nations (UN) bodies to create human rights indicators into conversation with scholarship on audit and standardization from the social sciences. While we are in agreement with the editors of this volume that there are very real drawbacks involved in any indicators project, we nevertheless conclude that debates about indicators may provide advocates with new opportunities to use the language of science and objectivity as a powerful tool to hold governments to account. Because human rights compliance indicators *can* threaten

[3] *See*, e.g., Winton Higgins and Kristina Tamm Hallström, "Standardization, Globalization, and Rationalities of Government," *Organization* 14 (2007): 685; Suzan Ilcan and Lynne Phillips, "Making Food Count: Expert Knowledge and Global Technologies of Government," *Canada Review of Sociology and Anthropology* 40 (2003): 441.

[4] Michael Power, *The Audit Society: Rituals of Verification* (Oxford: Oxford University Press, 1997), 10 (quoting Nikolas Rose and Peter Miller, "Political Power Beyond the State: Problematics of Government," *British Journal of Sociology* 13 (1992): 173).

[5] Ibid., 10–11.

to narrow the available space for democratic accountability and purport to turn an exercise of judgment into one of technical measurement, advocates of human rights should remain vigilant to the elisions at work in the indicators project. However, we argue that the conundrum of democratic accountability and the failure to clearly locate responsibility for judgment in international human rights assessment exercises are not themselves products of an over-reliance on quantitative, and thus acontexual, tools chosen to carry out those exercises. Rather, these are structural problems, foundational to international human rights law as it exists today. They would still be present even if quantitative indicators were banished from human rights assessment. Nevertheless, we join other contributors of this volume in describing the ways in which quantitative indicators lend themselves more easily to disguising issues of accountability and judgment as technical problems of measurement and data availability.

Indicating lack of trust: The evolving approach to human rights indicators

In a full-length article examining human rights indicators,[6] we reviewed the history surrounding their use. Here, we offer only a brief summary of key points. On the whole, economic, cultural and social (ESC) rights as opposed to civil and political rights suffered a long-term marginalization, characterized by the late creation of a treaty-monitoring body for the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and a lack of infrastructure for their advancement. In the early 1990s, human rights practitioners began searching in earnest for appropriate tools to turn the rhetoric of ESC rights into concrete reality. Indicators were among those tools, since they seemed to promise a way to monitor whether a state's conduct resulted in the fulfillment of rights.

In particular, indicators were perceived to be useful in measuring a state's progress over time and in helping to develop the core content of ESC rights. Indicators were also seen as allowing for comparison across countries. The Special Rapporteur and Committee on ESCR (CESCR) identified indicators as a way to make the seemingly vague obligations imposed on states parties by the ICESCR more concrete.

One of the moves the CESCR made to counter concerns about the vagueness of the ICESCR was to call on states to set up adequate means of monitoring their own progress in ensuring ESC rights. Here, the Committee reminded states that they must continually make good faith efforts to guarantee ESC rights for all, and that these efforts should be measurable.[7]

[6] Rosga and Satterthwaite, "Trust in Indicators" (n.*), 253.

[7] ECOSOC, CESCR, General Comment No. 3, "The Nature of States Parties' Obligations," (1990), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, April 26, 2001, UN Doc. HRI/GEN/1/Rev.5, para. 10 at 11 (hereinafter "General Comment No. 3").

While states were not obliged by the treaty text to adopt any particular method for documenting and monitoring their progress in implementing Covenant rights, the Committee suggested that they should use benchmarks as "indication[s] of progress."[8] Importantly, these benchmarks were to be created and applied by the states, with the Committee in a supervisory, reviewing role. Finally—and perhaps most significantly—while resource constraints could legitimately have explained a state's inability to fully implement each right for all individuals, they would not be allowed to excuse a failure to *monitor* state efforts toward full realization of ESC rights.

A few years after the CESCR made these recommendations, a UN seminar on "appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights" was held in preparation for the World Conference on Human Rights in Vienna in 1993. During the workshop, some key issues surfaced that will be explored below:

(1) The problem of what was being "indicated" arose and appeared to be elided: what would be "indicated"—realization/enjoyment of rights, or compliance with the treaty?

(2) The lack of clarity concerning the substantive content of the various rights under discussion: this was seen as a severe constraint in developing indicators.

(3) Quantitative measures were seen to obscure "the qualitative and subjective nature of human rights."[9] However, the contours of the "subjective" nature of human rights were not discussed at length at the workshop.

The final relevant issue raised in the 1993 seminar was embodied in the conclusions of the conference: instead of producing a set of indicators to measure the core ESC rights, the conference concluded that it was impossible—at that early stage of the development of ESC rights—to identify and agree on indicators. Thus, the seminar ended with a non-conclusion: called together to agree on a set of indicators, the participants instead agreed that it was too early to identify appropriate indicators for rights whose contents remained indeterminate.

In the following years, the Committee continually requested that states parties develop and apply indicators to monitor their own progress in implementing various provisions of the treaty. The duty to monitor was also examined from the opposite side: in a General Comment, the CESCR asserted that a state's failure to demonstratively monitor could *itself* amount to a violation of the Covenant.[10]

[8] ECOSOC, CESCR, General Comment No. 1, "Reporting by States Parties" (1989), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies UN Doc. HRI/GEN/1/Rev.6 at 8 (2003), para. 6, at 14.

[9] World Conference on Human Rights Report on the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights, April 20, 1993, UN Doc. A/CONF.157/PC/73, para. 108.

[10] ECOSOC, CESCR, General Comment No. 14, "The Right to the Highest Attainable Standard of Health," August 11, 2000, UN Doc. E/C.12/2000/4, para. 52.

This step taken by the CESCR—from suggesting to states that benchmarks might be "useful" in 1990, to asserting that the creation and use of monitoring systems including indicators is a treaty obligation from 1999 onward—is striking. In effect, it shifts the onus of conceptualizing and applying indicators from the international community to the states themselves. In relation to indicators, then, the Committee's most vital role became the highly technical one of monitoring the state's monitoring.

It is important to note, however, that the CESCR continued to express hope that universally applicable, rights-specific indicators could be developed. As will be explored below, the UN Office of the High Commissioner for Human Rights (OHCHR) aimed to make this hope concrete. Leaders of the various human rights treaty bodies—including the chairperson of the CESCR—requested that the OHCHR construct indicators for key human rights enshrined in the international human rights treaties. Since then, professional staff of the OHCHR, together with experts gathered from a variety of disciplines, have been hard at work constructing indicators to measure the efforts of states and the enjoyment of human rights all over the world.

Audit, distance, and the problem with trusting indicators

Leaving unresolved the question of whether to construct transnational or national indicators allowed the CESCR to hold in abeyance the difficult choice between either fully inhabiting the role of rights compliance monitors or completely embracing states parties' control of the mechanics of measurement, thereby consigning itself primarily to the position of auditor. To understand how human rights indicators function as an *audit practice,* and further, to understand how audit practices bring human rights treaty bodies into the world of global governance, it will be useful to briefly detour away from legal scholarship into the social studies of science and technology.

Indicators as audit practice

Social scientists have noted that systems of auditing—in particular the language of quantification—are demanded when the following three conditions exist: one, there is "a relation of accountability" in which one party is mandated to provide an account of itself to another;[11] two, "the relation of accountability [is] complex such that [auditors] are distant from the actions of [auditees] and are unable personally to verify them";[12] three, there are conditions of mutual distrust between the auditor and the auditee.[13]

[11] Power, *Audit Society* (n. 4), 5 (internal citation omitted).

[12] Ibid., 5.

[13] Ibid. Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995) and Theodore M. Porter, "Objectivity as Standardization: The Rhetoric of Impersonality in Measurement, Statistics, and Cost–Benefit Analysis," in Allan Megill (ed.), *Rethinking Objectivity* (Durham and London: Duke University Press, 1994), 197, 207.

In the field of human rights, all three conditions are met. First, states that have ratified the principal human rights conventions are required to provide to the various treaty bodies periodic accounts of their efforts to ensure those rights. Secondly, particularly in the international realm, distance between parties is created and maintained along numerous axes, including geography, language, culture, economic capacities, etc. Thirdly, distrust is common on the part of human rights monitors concerning governmental self-representation in the context of rights fulfillment and reporting. At the same time, states frequently mistrust those responsible for monitoring their human rights performance.

The best that the ESCR Committee could do under these conditions was to maintain a balance between mutually mistrusting parties—the auditor (in this case, the treaty body) and the auditee (in this case, the states parties). In ways that foreshadowed later tightrope-walking solutions arrived at by the OHCHR, the Committee effectively maintained this balance by turning to an audit-like structure. On one hand, a comprehensive set of international indicators created by the Committee might have been perceived as an imposition, suggesting the Committee's mistrust of states parties. This may have resulted in an exacerbation of any existing mistrust that states parties had of the Committee. In their favor, however, a set of international indicators could, by their very appearance of cross-national comparability, have offered the imprimatur of objectivity. If identical indicators were to be applied transnationally, no single state could argue it had been subjected to unreasonable, or unfairly targeted, standards of accountability.

On the other hand, a series of *nationally* constructed indicators, while allowing for important cultural and economic specificity, could by this very specificity risk appearing to both states and international treaty bodies as arbitrary. This is in part because international indicators are often assumed to be valuable only insofar as they are cross-nationally comparable.[14] Nation-specific indicators might also risk exacerbating the Committee's mistrust of states parties, since work done to link rights with indicators might appear to provide opportunities for political manipulation.

The decision to abdicate the task of developing international indicators in favor of assigning itself the role of *monitor* of states' indicator efforts, handing over the task of indicator development to states themselves, was a rather neat solution, and a remarkable transformation for the Committee. For our purposes, it is most notable that the Committee undertook such an important shift in roles with so little discussion of its significance or ramifications.

The problems with trusting indicators

What are the ramifications of the Committee's removal from direct, substantive monitoring to what global governance scholars, to whom we shall turn below, have

[14] *See* Hans-Otto Sano, "Human Rights Indicators: Purpose and Validity," Paper for Turku/Åbo Expert Meeting on Human Rights Indicators, March 11–13, 2005.

called "rule at a distance"? What significance can be read from the Committee's effective abdication of one form of authority in favor of another in this instance? The significance lies in *audits* as a technology of control.

Audit practices entail "sampling, reliance on external expertise, and the assessment of internal control systems." As Power argues,

> [a]udits have value because they seek to draw general conclusions from a limited examination of the domain under investigation. But despite statistically credible foundations for sampling, audit practice is driven by economic pressures to derive more, or at least as much, assurance from fewer inputs . . . [R]eliance on others substitutes for directly checking the thing itself.[15]

Audits—and in our case, indicators—are further constrained by the limits of measurability and affordability. As former CESCR Chair Philip Alston explained, "For the most part, [indicators] are essentially statistical in nature. That in turn means that their subject matter must be potentially quantifiable, not only in a technical sense but in practical terms as well."[16] Chief among our concerns is the seemingly inevitable drift from this persistent demand for "potentially quantifiable" information to situations in which technical questions end up playing a more determinative role in the choice of human rights indicators than substantive considerations of the best way to assess rights. Questions such as, "Can it be counted? If so, when and how? How accurately? By whom?" are never merely technical. There are a number of important conceptual problems that beset measurement by indicator as well—problems that should be considered by human rights practitioners.

Numbers, statistics, and the language of quantification generally are seen as uniquely capable of reducing or eliminating subjectivity. In his seminal history of the association between objectivity and quantification, Theodore Porter observed that "quantification is a technology of distance":[17]

> The language of mathematics is highly structured and rule-bound. . . . In public and scientific uses . . . [it] has long been almost synonymous with rigor and universality. Since the rules for collecting and manipulating numbers are widely shared, they can easily be transported across oceans and continents and used to co-ordinate activities or settle disputes. Perhaps most crucially, reliance on numbers and quantitative manipulation minimizes the need for intimate knowledge and personal trust. Quantification is well suited for communication that goes beyond the boundaries of locality and community.[18]

Thus, the reliance on the language of quantification rests on an assumption that quantification will—at least partially—solve the problem of mistrust. The presentation

[15] Ibid., 12.

[16] Green, "What We Talk About When We Talk About Indicators" (n. 2), 1077 (quoting Philip Alston, "Concluding Observations," in Benchmarks for the Realization of Economic, Social and Cultural Rights: A Round-Table Discussion Organized by the High Commissioner for Human Rights, Geneva, March 25, 1998.

[17] Porter, *Trust in Numbers* (n. 13), ix.

[18] Ibid.

of neatly tabulated numbers erases the means and messiness of their own generation. It obscures evidence of the human judgment involved in statistical production.

No one in the human rights field pretends that indicators can ever really be *apolitical,* but the need for information that is as accurate, reliable, and meaningful as possible is pressing. Unfortunately, discussions of criteria for good indicators tend not to specify which form of objectivity is at work. Wendy Lesser identifies two different senses of objectivity: the first sense of objectivity is the "sense that an objective report is disinterested, honest, reliable, impartial."[19] The second sense of the term suggests that "only something which is not subjective—which does not partake of the individual human viewpoint—can be fully objective, neutrally conveying things and events that are out in the world without the distorting coloration of human consciousness."[20] Lesser points out that only a machine (her example is a television camera) can ever hope to approach the second sense:

> And even that possibility seems remote . . . for in order to become a functional picture of reality, even television's images need to be absorbed by our particular minds. The picture itself can have no meaning until viewers make something of it . . .[21]

But humans, with human judgment and interpretation, she reminds us, are necessary for the first sense.

> I depend on people to give objective—in the sense of disinterested and impartial—interpretations to videotape . . . . Objectivity, in the first of the two senses, is a quality that only the human mind can have.[22]

Discussions of "objective" indicators are vulnerable to two tendencies: first, to conflate these two senses of objectivity (with the result that ultimately those indicators requiring obvious human interpretation, such as qualitative assessments, are valued less highly), and secondly, to privilege those (generally numerical) indicators whose interpretive work is invisible.

The tendency for measures to become targets

As discussed with regard to the work of the CESCR, chief among the strengths of auditing practices is their rhetorically powerful capacity for transferability. Indicators are said ideally to allow comparisons between nations at similar levels of economic development, and over time within a given nation.[23]

[19] Wendy Lesser, *Pictures at an Execution: An Inquiry into the Subject of Murder* (Cambridge: Harvard University Press, 1993), 139.

[20] Ibid.

[21] Ibid.

[22] As Power puts it, "the general principles of quality control systems . . . can be made to look similar and enable them to be compared at an abstract level." Ibid. Exegeses and critiques of various conceptions of objectivity are numerous and reflect considerably more complexity and nuance than Lesser's more succinct summation here. For an especially useful collection of essays, *see Rethinking Objectivity* (n. 13), 197.

[23] Power, *Audit Society* (n. 4), 12.

Yet even to the degree indicators "can be made to look similar and . . . compared at an abstract level,"[24] across geographical space, they tend to lose their efficacy as accurate and adequate measures over time. Scholars suggest that this is a characteristic of all measurement mechanisms that are tied to the goal of *improvement*. As the social anthropologist Marilyn Strathern puts it, "[w]hen a measure becomes a target, it ceases to be a good measure."[25] Applied to the use of indicators in the human rights context, this principle explains the phenomenon of the "expectations gap"[26] in which a nation's reporting of successful fulfillment of treaty obligations has a more or less distant relationship to the actual enjoyment of rights by its citizens.

> [A]uditing works by virtue of actively *creating* the external organizational environment in which it operates. . . . Audit is never purely neutral in its operations. . . . New motivational structures emerge as auditees develop strategies to cope with being audited; it is important to be seen to comply with performance measurement systems while retaining as much autonomy as possible.[27]

Applied to human rights indicators, this principle underlies the risk that, to the extent that governments do actively try to meet benchmarks and standards set in relation to international human rights treaties, the incentive to demonstrate success—or, say, "progressive realization"—according to given indicators may become greater than any incentive to substantively ensure the fulfillment and/or enjoyment of human rights themselves. For example, efforts abound to measure states' compliance with the right to gender equality in education. A common indicator for this right is the ratio of girls to boys enrolled in primary education. Given that states will be rewarded for demonstrating narrow ratios, there is a built-in incentive to document female school enrollment. However, such figures do not allow substantive rights fulfillment to be assessed. Important contextual information that would do so includes the existence of curricula determined to be qualitatively equitable, the absence of sex segregation in schools, and actual school attendance of girls as compared to boys.

While the ratio of female to male enrollment may—when situated within sufficient contextual information—initially be a good indicator, the tendency for measures to become targets means that the link between the indicator and the right purportedly being measured attenuates over time. Thus, the demand for indicators to be "consistently measurable" carries with it an inherent weakness: applying the same indicators over time does not guarantee consistent measurement of rights fulfillment. Instead, indicators lose value as states adjust their practices to improve their standing according to those indicators.

[24] Ibid.
[25] Marilyn Strathern, "'Improving Ratings': Audit in the British University System," *European Review* 5 (1997): 305, 308.
[26] Power, *Audit Society* (n. 4), 9–10.
[27] Ibid., 13.

Enter the experts: Renewed efforts to create international human rights indicators

As foreshadowed above, the CESCR did not abandon its hopes for universal indicators when it assigned itself the role of auditor. Instead, it turned to OHCHR experts for help. In so doing, they effectively asked a body of professional staff mandated to support the work of the treaty bodies to achieve what they themselves could not: to transform a judgment-laden process into one that appeared technical, scientific, and therefore—in a context in which the treaty bodies' authority is often in doubt—more legitimate.

Within a year, the OHCHR produced a report outlining a conceptual framework for indicators that seemed to assume an "appropriate" set of indicators would at once garner the support of social scientists, states, and civil society. The report can be read to suggest that such indicators could then be used by treaty bodies in an application of technical expertise, moving the treaty bodies beyond mere auditing to actual assessment of state compliance with the human rights standards set out in the treaties. Although not stated as such, this would seem to have two advantages. First, it would be an assessment that appeared to be objective because it was based on quantitative, scientifically validated methods, embodied in measurement indicators, rather than in more visibly subjective (and therefore more easily politicized) exercises of human judgment. Secondly, this very focus on indicators would effectively foreground the end-product of (apparently neutral) measurement made possible by indicators. This end-product would take the form of conclusions concerning states' progress on rights, compliance with treaty obligations, and recommended next steps. Simultaneously, the focus on indicators would *background* the acts of interpretation necessary to transform abstractly worded international laws into human rights standards both capable of and appropriate for transnational measurement.

The troubled authority of human rights treaty bodies in international law

This ambitious goal—to create a set of indicators capable of attracting agreement among states, human rights advocates, and social scientists—is understandable given the long-standing and unresolved issue of the status of the treaty bodies—and thus of their assessments—in international law. Indeed, the turn toward mechanics of measurement and notions of scientific objectivity may seem to offer a kind of authority that treaty bodies have never been able to achieve through the "quasi-judicial exercise[s]" that make up their core functions.[28]

[28] OHCHR Report on Indicators for Monitoring Compliance with International Human Rights Instruments, May 11, 2006, UN Doc. HRI/MC/2006/7, para. 2 (hereinafter "2006 Report on Indicators").

While once the role of treaty bodies was understood to be almost entirely that of a supportive guide for states in implementing the treaties, their Committees now assess state performance through several procedures. All of the treaty bodies formally review state practice in hearings where state representatives are invited to present their periodic reports and to answer questions from treaty body members. These sessions are called "constructive dialogues," and the official approach is non-adversarial. In practice, however, the "constructive" dialogues range from extremely collegial to contentious.

In recent years, a number of treaty bodies have taken significant steps to follow up on the recommendations that result from these hearings in the form of written concluding comments or observations. Informally, NGOs often use these in their advocacy efforts; consequently, these can become the subject of intense domestic and international pressure. The treaty bodies also issue General Comments. While General Comments began largely as vehicles to explain procedural matters or to provide guidance for states in preparing their reports to the committees, they have, over time, come to emphasize interpretation, explicating in some detail the substantive provisions of the relevant treaty. Some famous General Comments have sought to resolve—in favor of broad human rights principles—basic issues in international law; when they have done so, some states have strongly objected. Despite this, some General Comments have become extremely influential through formal and informal channels: guiding state policies, influencing UN agency actions, and becoming the framework for NGO action.

Treaty bodies that decide individual petitions have an even more judicial, or court-like, role than those that do not. Thus, the treaty bodies walk a difficult tightrope: constrained by positive international law, their greatest power is often normative. They are at the height of their authority when they are most persuasive, when their legal analysis—their *judgment*—is valued. A power based on persuasion can be severely limiting, however. In the case of indicators, as explored below, the treaty bodies seem to be hoping that the power of social science will have greater "compliance pull" than well-reasoned General Comments or persuasive decisions in individual cases.

Expert indicators: The OHCHR indicators initiative

To carry out the task entrusted to it by treaty bodies, the OHCHR itself turned to professionals, convening several meetings of experts from universities, international agencies, and NGOs, as well as members of the treaty bodies themselves, to discuss indicators. The result was a framework that made a significant contribution in terms of conceptually clarifying human rights compliance indicators, while also significantly scaling down expectations for the use of those indicators.

Whereas the initial ambitious hope was for a set of indicators that could be used for monitoring compliance with human rights treaties, the final product was a framework and attendant list of *illustrative* indicators that

allows a balance between the use of a core set of human rights indicators that may be universally relevant and at the same time retain[s] the flexibility of a more detailed and focused assessment on [sic] certain attributes of the relevant human rights, depending on the requirements of a particular situation.[29]

In short, an effort that was initially aimed at giving the treaty bodies a new tool to help in the "quasi-judicial" exercise of assessing state compliance with treaties was transformed into an initiative aimed at giving all human rights practitioners a tool to conduct that assessment—implicitly now seen as a technical exercise.

From 2006 to 2008, the OHCHR piloted its framework and illustrative indicators through national and regional workshops.[30] Whereas earlier work seemed to assume that experts at the international level could develop universal indicators that would apply across countries, the 2008 report from the OHCHR calls for participation in the selection of indicators as an essential element of their use, though the means of such participation is not clearly specified. This participatory aspect is to be welcomed—indeed, as discussed below, it is essential. Still, the framework set out by the OHCHR reflects a continuing lack of clarity about a number of crucial issues. Perhaps most importantly, the OHCHR does not specify who, in addition to the treaty bodies, should *use* the indicators it has identified, instead suggesting they will be useful both for assessing compliance with human rights commitments, and for rights-based monitoring of development projects.[31]

Rights-based monitoring is an activity that is distinct from monitoring states' compliance with human rights treaties. While it necessarily involves a close examination of states' efforts in areas covered by relevant treaties, the goals of each type of monitoring are different. When assessing compliance with a treaty, the assessor is determining the extent to which a state has met its duties under a legal standard. When assessing a development project from a rights-based perspective, the assessor is determining the extent to which the project has advanced human development while also enhancing human rights. Indicators, therefore, are likely to differ significantly based on their use.

With respect to monitoring state compliance with human rights treaties, the OHCHR specifies that "[i]t is the objective of the work undertaken by OHCHR for the treaty bodies to identify relevant quantitative indicators that could be used in undertaking human rights assessments."[32] Toward this end, the OHCHR concludes that further work is needed to identify a "treaty-specific list of illustrative

[29] OHCHR Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, June 6, 2008, UN Doc. HRI/MC/2008/3, para. 43 (hereinafter "2008 Report on Indicators").

[30] *See* 2008 Report on Indicators (n. 29), paras 27–33.

[31] The OHCHR gives general guidance only, stating that the "stakeholders who would be contributing to the monitoring process either as information providers, or as independent interpreters of the available information, or as the ultimate users of that information . . . may involve, inter alia, the national human rights institution (NHRI), the administrative agencies including the relevant line ministries as data providers, relevant non-governmental organizations engaged in monitoring human rights, consumer groups, other social groups, including parliamentary committees and claim-holders at large" (2008 Report on Indicators (n. 29), para. 37. *See also* paras 35–6.)

[32] *See* ibid., para. 35.

indicators."[33] Given its determination that indicators also should be context-specific and participatory, the tension between state-specific and universal indicators appears to continue through the OHCHR's indicators project. The specific roles that different actors (the treaty bodies, states, OHCHR, civil society) will have in selecting and using the various indicators in the monitoring process remain unclear, although OHCHR offers some suggestions to countries adopting its indicators framework on how that framework might be operationalized.[34]

This is striking, not only since it represents a significant shift from the original task of identifying indicators for use by the treaty bodies, but also since there is enormous difference—legally and politically—among the various potential uses of the indicators forwarded by the OHCHR. For example, the treaty bodies have treaty-bestowed authority since they are charged with monitoring state compliance under the relevant treaty (though this authority is always contested); their use of the OHCHR indicators will carry with it a certain weight not present among other users. States have another type of authority—the type drawn on by the CESCR when it has called on states themselves to create indicators; states' adoption of the OHCHR indicators would go some distance toward legitimizing the framework, though it certainly would not have binding effect on other states under the international legal regime. The adoption and use of the OHCHR indicators by NGOs and other advocates would carry with it no special authority, though it would potentially lend an aura of legitimacy to the framework that may otherwise be lacking.

Finally, whether the indicators being designed actually do measure what they purport to measure is something that will need to be assessed over time. The OHCHR appears to hope that a core set of universal indicators can be agreed upon, but suggests that more contextual indicators will complement this core set. In its report, the OHCHR sets out "indicators for 12 human rights and the approach to the selection and contextualization of indicators with a view to encourage the application of the work at country level and in the treaty bodies."[35] However, the OHCHR provides only general suggestions as to *who* may adapt the indicators at the national level, or what relationship such choices—when made by "monitoring stakeholders" other than the treaty bodies—will have on how treaty bodies use indicators when assessing state compliance with human rights law.[36]

Instead of answering this question, the OHCHR presents the issue as a technical one, explaining that the framework presented "enables the potential users to make an informed choice on the type and level of indicator disaggregation that best reflects their contextual requirements for implementing human rights . . . ."[37] Thus

[33] *See* ibid., para. 7.

[34] Annex II to the 2008 Report on Indicators (n. 29), 34–50, calls for the compilation of "metadata" to facilitate the identification and interpretation of sample indicators: e.g., definition, rationale, method of computation, sources, disaggregation, periodicity, comments, and limitations.

[35] Ibid., para. 41.

[36] *See* 2008 Report on Indicators (n. 29), para. 37.

[37] Ibid., para. 43. Rosga's telephone interview with OHCHR indicators experts Nicolas Fasel and Grace Sanico Steffan in Geneva, Switzerland on November 15, 2010 provided information on how the

transformed, the issue of authority and judgment—always lurking behind the corner of the human rights regime—is again hidden from sight, buried in language concerning "informed choice" to be made by experts.[38]

In this way, human rights indicators share the attributes of other types of standards. As Bengt Jacobsson has said, "[s]tandardization may be regarded as a way of regulating in a situation where there is no legal centre of authority." Ominously characterizing the brave new "world of standards" that he and his colleagues set out to critically analyze, he continues:

> [w]e will have a kind of symbolic and secularized society based on the premise that people voluntarily conform to the decisions of authorized expert knowledge. But while order is being established, responsibility may be vanishing.[39]

Two responsibilities are at risk of vanishing in the context of human rights indicators: first, the responsibility for *transforming into measurable indicators* the more or less fully articulated normative standards that derive from international human rights treaties and the treaty bodies' interpretations of them; and secondly, the *choice of indicators* that will be used to measure human rights commitments. The work of experts who designed these standards at the request of the treaty bodies effectively disappears in the final product: a neat set of one-page matrices that present structural, process, and outcome indicators for the major human rights set out in international human rights treaty law. Jacobsson points to three significant problems "related to standardization, which stem from reliance on experts: depoliticization, technicalization, and the emergence of regulation without responsibility."[40]

Office's work has evolved since the 2008 Report. Following the multiple expert consultations, and sub-regional workshops with country-level stakeholders in Asia, Africa, and Latin America, the OHCHR organized, at the request of national stakeholders, workshops and consultations involving national human rights institutions (e.g., Human Rights Commissions accredited by the United Nations), government and statistical agencies, civil society organizations, and UN country teams. "This work is not done only in the context of reporting to Treaty Bodies, but also in relation to national human rights action plans and for mainstreaming human rights in development plans . . . The emphasis is on national relevance and not transnational comparability." OHCHR published an update on its indicators project in 2011, pointing out that the treaty bodies had endorsed the OHCHR indicators framework and the CESCR had referred to it in its 2008 reporting guidelines (paras 1, 41); noting that treaty bodies, the Human Rights Council, and UN Special Rapporteurs are increasingly using some form of indicators (paras 41–7); and calling for greater collaboration among government agencies, human rights organizations, and statistical bodies (para. 51). The 2011 Report places the OHCHR indicators project in the context of a broader turn toward quantitative analysis and "evidence-based" human rights monitoring (para. 53). OHCHR Report of the United Nations High Commissioner for Human Rights, April 26, 2011, UN Doc. E/2011/90 (hereinafter "2011 Report on Indicators").

[38] It is important to note that we are not attributing any intentionality to the OHCHR in the generation of these effects; that is, we do not argue that the OHCHR's *intent* has been to obscure the role of judgment through the use of indicators. Rather, we are calling attention to the ways in which this elision is an effect of the increasing reliance on social science experts, and an especially pronounced effect when quantitative tools predominate. In its 2011 Report on Indicators, the OHCHR includes a section emphasizing that "[t]he use of indicators does not replace the normative analysis of a human rights situation." 2011 Report on Indicators (n. 37), para. 18.

[39] Bengt Jacobsson, "Standardization and Expert Knowledge," in Nils Brunsson et al. (eds), *A World of Standards* (Oxford and New York: Oxford University Press, 2000), 40.

[40] Jacobsson, "Standardization and Expert Knowledge" (n. 39), 49.

Why is this a problem? Jacobsson argues that the danger lies in the potential for standards to depoliticize choices otherwise openly contested in the public sphere. Here, the marketing by OHCHR of its indicators seems intended to bring states *voluntarily* into closer line by persuading those with whom they work—"human rights stakeholders"—that indicators offer a technical answer to what would otherwise appear to be judgment-laden (and thus court-like) or highly contested (and thus political) issues. The auditing role of the CESCR is thereby maintained, but now with states being asked to use the rules set out by international experts rather than those of the state's choosing. In this way, what might otherwise appear as a bold assertion of authority and power by the treaty bodies is passed off as a technical exercise that should be voluntarily accepted by rational human rights practitioners—including those working for the state.

In the end, however, this effort cannot solve the problem that generated the CESCR's audit practice to begin with: the relationship of distrust between the treaty bodies and the states whose efforts they monitor. This is because, although it appears to do so, the framework forwarded by the OHCHR will never be able to do the real work of assessing where states have fallen short of their obligations under human rights treaties. To take one example: imagine an assessor seeks to determine the adequacy of a state's allocations to primary education and to the promotion of higher education for women. Imagine further that the state in question has an extensive primary school system, but that it has systematically undervalued women's roles in the professions. How will the user of the indicator "share of public expenditure on education devoted to primary education" know whether a state's choice to allocate proportionally less money to primary education than it allocates to scholarships and professional training for women is permissible when simultaneously confronted with the indicator "proportion of females with professional or university qualification"?[41]

Such can never be a technocratic assessment. It requires, instead, the exercise of *judgment*. By evading possibly the most thorny issue—who will be the final arbiter of which indicators will be used, and how exactly they will be used to assess state compliance with international human rights law—the OHCHR evades one of the most difficult issues in human rights law: that of authority. In the end, the discussion of human rights indicators requires us to attend to the issue of judgment, and the unique challenges posed by a system of law that fails to locate authority for judgment in any given body. In implicitly recognizing this problem but apparently seeking to elide it, the OHCHR deploys the language of expertise. While its framework for human rights indicators is conceptually clear and may allow for powerful advocacy, it does not resolve the underlying problem that its evident trust in numbers seeks to fix—the pesky, irreducible core of human judgment.

[41] Both of these indicators are included as illustrative of the right to education. *See* 2008 Report on Indicators (n. 29), para. 28.

Human rights indicators as technologies of global governance

In many ways, the turn to indicators in the human rights context mirrors trends across the landscape of transnational governance. These trends, manifested in part by audit practices, also come under critique from across the disciplines under the rubric of "global governance" and "governmentality" analyses. The gist of these critiques is well summarized by Jacobsson, who warns that:

> [g]reater reliance on standards may involve a danger that so-called technical expert knowledge will become a substitute for ethical and political discourse . . . There will be a growing focus on how things are done—a focus on form rather than content.[42]

The move to audit by the CESCR may embody this shift from content to form. Further, it risks displacing contestation over substantive rights issues onto seemingly bureaucratic or technical decisions about choice of indicators. This is—in part—the promise and peril of numbers. In her ethnographic project studying rights indicators, Sally Engle Merry lodges a similar critique:

> Numbers are the epitome of the modern fact because they seem to be simple descriptors of phenomena and to resist the biases of conjecture and theory since they are subject to the invariable rules of mathematics. Numbers have become the bedrock of systematic knowledge because they seem free of interpretation, as neutral and descriptive. They are presented as objective, with an interpretive narrative attached to them by which they are given meaning.[43]

As the treaty bodies turned to the OHCHR for assistance with the development of universal human rights indicators, thereby extending the turn to expert assistance, it would seem that this danger has, if anything, increased. Scholars who study globalization practices have noted the many ways in which the turn to technocratic numeracy can result in bureaucratic stalemates at best and a range of negative unintended consequences at worst.[44]

One of the unintended consequences may be the tendency of compliance indicators to close down spaces for democratic contestation. In carrying out its human rights obligations, states must continually make difficult prioritization choices, especially in the context of economic and social rights. Which rights should receive the state's most concentrated attention—the right to potable drinking water or the ability to access childhood vaccinations? Gender equality in higher education or ensuring non-discriminatory employment conditions? How should government authorities *make* such determinations? Who should decide and by

[42] Jacobsson, "Standardization and Expert Knowledge" (n. 39), 46.

[43] Sally Engle Merry, "Measuring the World: Indicators, Human Rights, and Global Governance," *Current Anthropology* 52 (2011): S83–95 (citing Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998)).

[44] *See*, e.g., Angela P. Cheater, "Globalisation and the New Technologies of Knowing: Anthropological Calculus or Chaos?" in Marilyn Strathern (ed.), *Shifting Contexts: Transformations in Anthropological Knowledge* (London and New York: Routledge, 1995), 117–30.

what means? And most relevant to our purposes, what does human rights law have to say about these challenging questions, and how might indicators measure state efforts to answer them?

In many respects, human rights law has very little to say of a concrete nature in answer to these questions. Prioritization challenges are often answered with the demand that all rights receive equal attention and priority—a claim often made by those invoking the principle of indivisibility.[45] In practice this is seldom, if ever, possible at the level of everyday policy—especially in resource-poor countries. Moreover, this principle does not mean very much in practice, since governments formulating policy are continually forced to stress some policies or actions over others. However, while there may not be clear *answers* to the question of prioritization, a good deal of work has been done to establish more concrete standards to *guide governments' choices* concerning competing rights demands.

The concept of minimum core obligations requires that states act to immediately fulfill certain basic rights standards, regardless of the economic status of the country, thus forcing prioritization of actions to achieve those goals. The principles of non-discrimination and equality have been interpreted to impose duties on states to ensure that they immediately prioritize the rights of the most vulnerable and marginalized communities. Moreover, the principle of non-retrogression means that governments must ensure that their policies and actions are designed to ensure that rights fulfillment is not diminished, but instead progresses forward toward full enjoyment.

These principles provide a good deal of guidance to states seeking to uphold their human rights obligations, and in some scenarios, states may rely upon them to prioritize activities. However, the principles will often fail to provide the answers to questions about prioritization and emphasis in implementation. Only rarely will they provide a rule of decision for policymakers choosing among options for actions that can improve human rights. This gap—between international norm and domestic implementation—is both normal and desirable. It opens space for states—and more importantly, for national populations within states—to determine how best to carry out their duties. Within this space, democratic contestation and participation by those most directly affected can take place. Without such a gap, human rights law would perversely short-cut democratic processes by imposing specific policy choices on states.

Indicators may threaten to close this fruitful gap between international law and domestic policy by, for example, targeting through measurement the outcomes of certain policies, or even turning specific policy choices themselves into indicators. For an example of the latter, the indicator "coverage of targeted population covered under public programs on nutrition education and awareness" has been identified by the OHCHR as an indicator of the right to food.[46] While such programs are one way to achieve an important element of the right to food, they might not be the one

[45] *See*, e.g., World Conference on Human Rights Vienna Declaration and Programme of Action, July 12, 1993, UN Doc. A/CONF.157/23, para. 5.

[46] 2008 Report on Indicator (n. 29), para. 24.

preferred by the inhabitants of a specific state, who may want funds to be spent on direct food aid or supplements to farmers who cultivate staple foods. The OHCHR's recent work within particular countries, however, seems to prioritize the "right to participation" by involving a variety of local actors, including national human rights institutions, government agencies, statistical offices, and civil society organizations. According to OHCHR's indicators experts,

> At the country level, [actors from civil society, government, and national level human rights institutions] start the development of indicators, either with one or two, or several sets of rights, or they try to use/incorporate the OHCHR conceptual and methodological framework, and [illustrative] list as well, into National Action Plans. . . . We try to develop a dialogue between the various agencies, many of whom are often sitting down together for the first time.[47]

Further, given the problems of measurability and availability of data, there may be a tendency to choose indicators that capture the outcomes of the most easily—or the most consistently—measurable policies or programs. For example, "proportion of targeted population covered under public nutrition supplement programs" has been used by OHCHR as an indicator of the right to food. This indicator asks the government to count something it is very likely already counting—the number of households benefitting from its own ("public") nutrition supplement programs. This indicator may reveal a great deal in countries that have chosen to respond to hunger and malnutrition with state-run supplement programs. It will be less revealing of the extent to which the right to food is being fulfilled in countries where the non-profit sector has taken on greater food supplementation duties than the state, however. Because of the bias in indicator construction toward choosing easily countable phenomena, one kind of indicator is more likely to be chosen than another. Finally, indicators that measure the outcome of only certain specific policies, and indicators that mandate specific policy choices, have an attenuated relationship to the legal norm at issue. They are therefore ill-suited for use in monitoring compliance with legal duties.

In sum, the development and use of compliance indicators may have the tendency to artificially close the gap between international law and domestic policy, thus shrinking the required spaces for participation. If indicators are designed and imposed uniformly across countries, and if they are not susceptible to being calibrated according to national priorities and deliberation, they could backfire as accountability mechanisms.

So it may seem that there is little to applaud in this recent manifestation of the "turn to indicators"—however tentative and "illustrative," however strewn with caveats they might be—by the OHCHR. And yet, as we have traced the human rights treaty bodies' ongoing efforts to grapple with the task of holding states accountable to their commitments to human rights treaties, we have come to

[47] Interview with Fasel and Sanico Steffan, November 15, 2010. One example of public consultations being carried out for the process of developing national (British) indicators can be found at: <http://personal.lse.ac.uk/prechr/>.

appreciate new aspects of this project that a "governmentality"-focused analysis risks occluding.

Such an analysis might focus solely on the dangers inherent in the turn to indicators—on the evasion of difficult questions of judgment represented by the human rights community's embrace of technocratic numeracy, and on the concomitant submersion of political debates "by technical questions of measurement, criteria, and data accessibility."[48] It would be easy enough to apply a similar analysis to the work of treaty bodies and the OHCHR in developing international human rights indicators. Certainly the turn to experts for putatively independent, bias-free, and scientifically valid techniques with which to assess the degree to which states are living up to the commitments they make represents the OHCHR's participation in wider transnational governance trends.

Through human rights indicators, the CESCR and OHCHR are certainly promoting engagement with various international standards in order to shape the conduct of governments—that is, they are intending to "transform the terrain of government policies."[49] However, there are significant differences that should be noted as well. Much of the governmentality literature, while helpfully diversifying our conceptions of those who *govern,*[50] nonetheless often implicitly assumes—through its choice of examples—that the targets of governance are largely if not solely citizens and populations. Human rights indicators, on the other hand, emerge out of projects aimed at changing the conduct of *governments* toward those same populations.

We believe that this difference matters—that the power of indicators, when harnessed by human rights advocates, may be fruitfully turned on the state by those the state has failed to serve, or even harmed.[51] Indeed, we believe that human rights indicators—if designed with these valences of power in mind—can be used to monitor whether governments have arrived at effective human rights policies and actions through democratic processes. In other words, instead of disappearing politics, indicators *should* be designed to allow for the monitoring of governmental processes to ensure they are participatory and open to deliberation and debate.

Discussions of indicators need not be technical conversations devoid of political contestation. Nor must they be conversations in which participants are seeking to submerge difficult questions of judgment in the abstract language of numbers.

[48] Merry, "Measuring the World" (n. 43).

[49] Suzan Ilcan and Lynne Phillips, "Making Food Count: Expert Knowledge and Global Technologies of Government," *Canadian Review of Sociology and Anthropology* 40 (2003): 441, 444.

[50] *See* Andrew Barry, "Ethical Capitalism," in Wendy Larner and William Walters (eds), *Global Governmentality: Governing International Spaces* (London and New York: Routledge, 2004), 195, 202 ("Writers on governmentality, following Foucault, have long emphasized that the activity of government cannot be reduced to the actions of the state. In an era where direct state control and ownership has declined . . . international institutions, NGOs, auditors, consultants and multinational corporations are together expected to perform the job of government at a distance").

[51] For an example of recent scholarship making this argument, *see* Sital Kalantry, Jocelyn E. Getgen, and Steven Arigg Koh, "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR," *Human Rights Quarterly* 32 (2010): 254.

They should be conversations in which engaged social actors are grappling with the very phenomena we have been describing—actors who are fully aware of both the power and the limits that statistics possess.

Conclusion

The value of indicators as a social technology can neither be determined in advance, nor assessed on the basis that they draw on the power of quantitative language. While it may be true that quantitative methods, in their very abstraction and stripping away of contextualizing information, pose particular—and especially high—risks of misuse by those with the power to mobilize them, they are tools like any other. All tools can be misused; all social actors with power can misuse that power. The key lies in knowing where—and how—human judgment and political contestation should enter. Rather than trusting in numbers too quickly, those using human rights compliance indicators should embrace the opportunities presented by this new project, finding ways to utilize human rights indicators as a tool of global governance that allow the *governed* to form strategic political alliances with global bodies in the task of holding their governors to account.