Law & Social Inquiry
Volume 49, Issue 1, 1–6, February 2024

Law& Social Inquiry

Measures of Justice: A Symposium in Honor of Sally Engle Merry (1944–2020)

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> *Quantification is a technology of control, but whether it is reformist or authoritarian depends on who has harnessed its power and for what purposes.*
>
> —Sally Engle Merry, *The Seductions of Quantification* (2016, 218)

Professor Sally Engle Merry's thought-provoking scholarship has reached far beyond her disciplinary boundaries in anthropology and influenced our own work as human rights and peace and conflict studies scholars. On a daily basis, through our research with Everyday Peace Indicators, we engage and struggle with many of the questions Sally raised in her research and publications on the quest for commensuration through measurement in international organizations and aid. In particular, her book *The Seductions of Quantification* (2016) provided us with the inspiration to continue to engage more deeply with our goals to democratize indicator production. Dilemmas of positionality, perspective, and power in measurement are the reasons we have developed systems to include everyday people in the decision making necessary to develop indicators for public policy and research (Firchow and Mac Ginty 2020; Dixon and Firchow 2022).

We also share a Brandeis connection with Sally. In 1978, Sally received a PhD in anthropology from Brandeis under the supervision of Brandeis Professor Emeritus David Jacobson. For her dissertation research she used ethnographic methods in a public housing project in Boston, the results of which she eventually published in her first book called *Urban Danger: Life in a Neighborhood of Strangers* (Merry 1981). Merry argued that crime statistics in the United States had exaggerated the danger actually experienced by residents of public housing projects and were based on racist stereotypes (Goodale 2021), thus beginning her lifelong study of the (mis)use of statistics and numbers by policy makers. For these reasons, it was only fitting for us to coedit a dedicated symposium in *Law & Social Inquiry* on measures of justice in Sally's memory.

The demand for and use of measurement, quantitative data, and indicators have only grown since Sally Engle Merry tragically passed away after a long battle with cancer in September 2020. She may have been aware of United Nations Secretary General António Guterres's announcement of a UN-wide Data Strategy in May 2020, which encourages what he refers to as *data action*, or making better use of data, *nurturing*

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https://doi.org/10.1017/lsi.2023.33 Published online by Cambridge University Press

capabilities, or analytics and data management, and *fostering enablers*, or building skills in data production and collection (United Nations 2020). This data strategy now pervades the United Nations' work in most sectors, from human rights and rule of law to peace and security to climate action. Although Merry was not against the use of indicators and the quantification of data production, she would have infused this movement toward evidence-based global policy with a necessary critical and watchful eye, cautioning against seeing data as a panacea and reminding policy makers that political decisions have to be made around what data to collect and analyze and who should be included in the production of data through the use of indicators.

This symposium reflects the disciplinary and thematic breadth that spanned Sally Engle Merry's work, from political science to anthropology and from human rights to peace and conflict studies. The symposium contributions fall generally into two broad areas: questions related to commensurability in measurement and questions related to commensurability in the law more broadly. All of the contributions in the symposium attend to Merry's concerns related to commensuration and the tendency for policy makers to want to universalize and generalize social life as they try to professionalize human rights, humanitarianism and peacebuilding, or conflict response broadly defined (Sending 2017; Barnett 2018; Leander and Waever 2018). Another common thread throughout the contributions is a clear recognition that the experience and reception of "justice" by victims or everyday people does not focus on outcomes alone (e.g., a guilty verdict or a reparation payment), but is very much about the processes and relationships that are built between justice institutions and the communities they serve. In other words, justice, as experienced by everyday people, is just as much about the process and relational transformation between state and society as it is about the legal decisions and laws that uphold it. This relationship is complex, and we need measurement tools that can attend to this complexity.

We start with Mark Goodale's exploration of the consequences of commensuration and universalization on the meanings of "justice" in "Justice in the Vernacular: An Anthropological Critique of Commensuration." In particular, Goodale lays out the tensions between the need to understand justice in a context-specific way and the need for the international community to measure at a global, and therefore commensurate, level. Goodale contextualizes Merry's research in the growing importance in the post–Cold War era of statistical evaluation within global policy and academia when "the promotion of international human rights and international justice was coupled with monitoring, classification, and ranking" (Goodale 2024). Echoing calls for an ethics of numbers in governance and policy (Espeland and Stevens 2008; Krause 2017; Willis 2017; Firchow 2018; Saltelli and Di Fiore 2020; Littoz-Monnet and Uribe 2023), he stresses the importance of her research and criticism of commensurability in relation to neoliberalization and the rise of "audit culture" and its demand for the efficiency provided by quantitative data in what he describes as an "ideology of commensurability," ultimately arguing for a more contextualized approach.

Goodale's exploration of a "small data" alternative to our current "big data" and hyper-quantified reality offers an insightful opening to our next contribution by Peter Dixon, Pamina Firchow, and Fiorella Vera-Adrianzén, entitled "The Paradox of Justice: From Transitional to Everyday Justice." This contribution from members of the Everyday Peace Indicators project transports Merry's "Paradox of Measurement" to the

https://doi.org/10.1017/lsi.2023.33 Published online by Cambridge University Press

everyday lived reality of human rights experiences through what they call the "Paradox of Justice." The authors argue that victims' lived experiences are filtered and reproduced through the technology of consultation, which does not include the everyday, experiential engagements between victims and human rights institutions that are necessary to establish justice. Dixon, Firchow, and Vera-Adrianzén develop an "Everyday Justice" framework based on five experiential domains, developed through an inductive analysis of indicators of justice collected across eight communities in rural Colombia: mental & physical states, relationships & actors, time & space, practices & objects, and language & communication (Dixon, Firchow, and Vera-Adrianzén 2024, 26–41). They argue that moving beyond a simple call for increasing victims' consultation allows for a thicker and more meaningful engagement rooted in everyday justice experiences that reflect the complex and multifaceted experiences of justice that communities experience in their daily lives and should drive postconflict interventions. The authors reinforce Goodale's (and Merry's) concerns with the commensuration of measurement and indicators and call for more of a recognition of the diversity and variety of subnational justice experiences, even at the community level—a level of detail rarely seen in state-based or international justice efforts.

Such concern with the diversity of the justice experience is shared by Hadar Dancig-Rosenberg and Tali Gal in their contribution, "Many Shades of Success: Bottom-up Indicators of Individual Success in Community Courts." Dancig-Rosenberg and Gal focus on the emergence of problem-solving courts, which draw on collaborative and future-oriented rehabilitative processes as an alternative to more traditional adversarial models of punitive justice. While the practice of collaborative justice in these community courts has developed, particularly in Israel, the metrics used to judge their success has not kept pace (Dancig-Rosenberg and Gal 2024, 42-67). Rather, the traditional metric of recidivism, which measures the extent to which defendants reoffend, still dominates discussions of "justice success." As the pillar of desistance theory, this indicator is important, but it is also quite limited in its ability to reflect success as a process toward desistance. Could, for example, a defendant who passes through a community court and commits another crime be deemed a success if they also reestablish ties with their family and seek drug counseling? Where do outcomes like well-being and trust fit in? Drawing on in-depth interviews with court personnel, part of a larger evaluation of community courts in Israel, the authors argue that success is a continuum. It is relative, subjective, multidimensional, and sometimes hard to see. Ultimately, to judge the real success of justice, success requires indicators that are born from and can speak to this complexity.

While Dancig-Rosenberg and Gal are focused on individual success, Naomi Levy, Amy E. Lerman, and Peter Dixon ask similar questions at the community level in "Reimagining Public Safety: Defining 'Community' in Participatory Research." They draw on their research using the Everyday Peace Indicators methodology to study police reform in the City of Oakland to argue that "community-centered" measurement, combined with researcher-practitioner partnerships, can help move both researchers and policy makers toward a more meaningful approach to policy design and evaluation. At the same time, they raise concerns about the application of community-centered measurement in the context of American policing, cautioning that the concept of community is slippery and complex. In Oakland, for example, the authors draw on a multidimensional definition of community to represent the varied ways it has meaning

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in people's daily lives in the context of community safety: geographic, identity-based, linguistic, and experiential, the latter drawing on shared experiences of the criminal justice system. It is fundamental, they conclude, for researchers to be transparent about how they define community, as well as how they ultimately choose representatives with whom to engage. This is especially important when it comes to community indicators as a part of a broader strategy for evaluating policy change, since different conceptions of community are likely to produce different indicators. In turn, these indicators will point toward different visions of what constitutes success (Levy, Lerman, and Dixon 2024). Therefore, and again returning to the question of commensurability raised by Goodale and Merry, if the aim is to generate a set of indicators that holds a new system accountable to providing safety for all, the authors argue that it is critically important to take seriously the complexity of incongruous experiences and power dynamics.

A common thread across these articles is that metrics run the risk of reducing and misrepresenting the complexity of the phenomena they are deployed to measure. In her article, "Reparations, But for What? Presenting a New Approach to Coding Reparations," Claire Greenstein argues for a new approach to measuring individual reparations payments. She demonstrates that measuring reparations payments as paid versus not paid is not sufficient if not all human rights violations are considered when paying reparations. Using original data on reparations promises for nine types of state-sanctioned human rights abuses committed during internal conflicts or dictatorships that occurred in twenty-seven countries in Europe between 1939 and 2006, Greenstein shows that reparations promise rates vary by type of abuse (Greenstein 2024). She also shows that they vary over time since human rights norms are not static. Therefore, Greenstein argues, it is important to establish a more specific, fine-grained approach to measuring reparations in order to understand better what kinds of human rights abuses states respond to and whether they respond equally to all kinds of abuses.

Lisa Laplante and Ana María Reyes build on Greenstein's and Dixon, Firchow, and Vera-Adrianzén's contributions in this issue in "Measuring Up: A Dialogical Model for Assuring a Reparative Process." They draw on the right to participation to argue that governments are obliged to assure the quality of participation at all stages of reparation programming, including design implementation and evaluation. Like Greenstein, Laplante and Reyes argue that not enough information is available on the nature of reparations; however, they take this a step further to argue, like Dixon, Firchow, and Vera-Adrianzén, that it is not just the outcome that should be taken into consideration, but also the process and the relationships that the state builds with victims through its engagement with reparations. Reparations, according to Laplante and Reyes, should not only be judged by their outcomes, but also on the quality of the inclusive process during their design and implementation. Therefore, the authors develop a new reparative protocol or, at minimum, a set of essential best practices to establish legitimate reparative processes (Laplante and Reyes 2024).

Moving away from concerns with measurement specifically, Kevin E. Davis and Alfredo Guerra Guevara engage the question of commensurability from a legal perspective in "Legal Disagreement," questioning whether the law is applied uniformly among all individuals. They develop the concept of legal disagreement, which they broadly define as "disagreement about the legal consequences that a legal official will assign to a particular set of facts" (Davis and Guevara 2024). They argue that legal disagreement is caused by

https://doi.org/10.1017/lsi.2023.33 Published online by Cambridge University Press

differences in individuals' social positions and is directly influenced by their perspectives, treatment, or biases. This is likely to be due to differences in individuals' sources of information about the legal system, how the system treats cases of a given type, or how individuals process legal information, all of which may be related to differences in social position. The authors use data from World Justice Project population surveys to create quantitative measures of legal disagreement for 128 countries or jurisdictions and identify correlations between legal disagreement and measures of its potential causes and consequences, such as perceptions of discrimination and ethnic fractionalization.

Finally, Diana Kapiszewski, Deborah Groen, and Katja Newman explore heterogeneity in constitutionalism in the principles underlying these charters, and associated attitudes and behaviors, in their article, "Constitutionalism with Adjectives: Conceptual Innovation in the Comparative Study of Law." They demonstrate that scholars have adopted strategies to attend to this heterogeneity by attributing adjectives to constitutionalism (e.g., "globalizing constitutionalism"). The authors draw on an original dataset of all mentions of the word "constitutionalism" paired with a qualifying adjective found in the title/abstract of articles, or in the title/first substantive page of books/dissertations, written in English, published between 1945 and 2019, and referenced on the Internet. They discovered 1,621 instances of what they call an "adjective-constitutionalism combination" (ACC) in the scholarly literature, and 564 unique ACCs, "suggesting both extraordinary empirical variation, and little coordination among scholars with regard to conceptualization" (Kapiszewski, Groen, and Newman 2024). Unexpectedly, given the understanding that liberalism and democracy are foundational to higher law constitutions, scholars rarely considered justice and equality, and government responsibility for pursuing those ideals, to be core components of contemporary constitutionalism; moreover, some conceptualizations reflected illiberal or rights-limiting principles of governance. These findings, which suggest that pursuing these ideals is not paramount for national leaders, even when constitutionalism entails empowering states and governments, is troublesome and therefore merits further analysis.

Together, these eight contributions speak to the breadth and depth of Professor Sally Engle Merry's contributions and impact. Her ideas were both cautionary and generative, building a legacy of concepts and theories that will continue to shape many fields of study, including law and society, long into the future. She will be sorely missed as her legacy lives on in the work of scholars seeking to understand—and measure—the world in all of its complexity.

REFERENCES

Barnett, Michael. "Human Rights, Humanitarianism, and the Practices of Humanity." *International Theory* 10, no. 3 (2018): 314–49.

Davis, Kevin E., and Alfredo Guerra Guevara. "Legal Disagreement." *Law & Social Inquiry* 49, no. 1 (2024): 148–77.

Dancig-Rosenberg, Hadar, and Tali Gal. "Many Shades of Success: Bottom-up Indicators of Individual Success in Community Courts." *Law & Social Inquiry* 49, no. 1 (2024): 42–67.

Dixon, Peter, and Pamina Firchow. "Collective Justice: Ex-Combatants and Community Reparations in Colombia." *Journal of Human Rights Practice* 14, no. 2 (2022): 434–53.

https://doi.org/10.1017/lsi.2023.33 Published online by Cambridge University Press

Dixon, Peter, Pamina Firchow, and Fiorella Vera-Adrianzén. "The Paradox of Justice: From Transitional to Everyday Justice." *Law & Social Inquiry* 49, no. 1 (2024): 26–41.

Espeland, Wendy Nelson, and Mitchell L. Stevens. "A Sociology of Quantification." *European Journal of Sociology* 49, no. 3 (2008): 401–36.

Firchow, Pamina. *Reclaiming Everyday Peace: Local Voices in Measurement and Evaluation after War*. Cambridge, UK: Cambridge University Press, 2018.

Firchow, Pamina, and Roger Mac Ginty. "Including Hard-to-Access Populations Using Mobile Phone Surveys and Participatory Indicators." *Sociological Methods and Research* 49, no. 1 (2020): 133–60.

Goodale, Mark. "Sally Engle Merry (1944–2020)." *American Anthropologist* 123, no. 3 (2021): 1–4.

——. "Justice in the Vernacular: An Anthropological Critique of Commensuration." *Law & Social Inquiry* 49, no. 1 (2024): 7–25.

Greenstein, Claire. "Reparations, But for What? Presenting a New Approach to Coding Reparations." *Law & Social Inquiry* 49, no. 1 (2024): 90–117.

Kapiszewski, Diana, Deborah Groen, and Katja Newman. "Constitutionalism with Adjectives: Conceptual Innovation in the Comparative Study of Law." *Law & Social Inquiry* 49, no. 1 (2024): 178–208.

Krause, Keith. "Bodies Count: The Politics and Practices of War and Violent Death Data." *Human Remains and Violence: An Interdisciplinary Journal* 3, no. 1 (2017): 90–115.

Laplante, Lisa J., and Ana María Reyes. "Measuring Up: A Dialogical Model for Assuring a Reparative Process." Law & Social Inquiry 49, no. 1 (2024): 118–47.

Leander, Anna, and Ole Waever, eds. *Assembling Exclusive Expertise: Knowledge, Ignorance and Conflict Resolution in the Global South*. Abingdon and New York: Routledge, 2018.

Levy, Naomi, Amy E. Lerman, and Peter Dixon. "Reimagining Public Safety: Defining 'Community' in Participatory Research." *Law & Social Inquiry* 49, no. 1 (2024): 68–89.

Littoz-Monnet, Annabelle, and Juanita Uribe. "Methods Regimes in Global Governance: The Politics of Evidence-Making in Global Health." *International Political Sociology* 17, no. 2 (2023): 1–22.

Merry, Sally Engle. *Urban Danger: Life in a Neighborhood of Strangers*. Philadelphia: Temple University Press, 1981.

——. *Measuring Human Rights, Gender Violence, and Sex Trafficking*. Chicago: University of Chicago Press, 2016.

Saltelli, Andrea, and Monica Di Fiore. "From Sociology of Quantification to Ethics of Quantification." *Humanities and Social Sciences Communications* 7, no. 1 (2020): 1–9.

Sending, Ole Jacob. "Contested Professionalization in a Weak Transnational Field." In *Professional Networks in Transnational Governance*, edited by Leonard Seabrooke and Lasse Folke Henricksen, 67–81. Cambridge, UK: Cambridge University Press, 2017.

United Nations. *Data Strategy of the Secretary-General for Action by Everyone, Everywhere with Insight, Impact and Integrity*. 2020. https://www.un.org/en/content/datastrategy/images/pdf/UN_SG_Data-Strategy.pdf.

Willis, Graham Denyer. "Before the Body Count: Homicide Statistics and Everyday Security in Latin America." *Journal of Latin American Studies* 49, no. 1 (2017): 29–54.

https://doi.org/10.1017/lsi.2023.33 Published online by Cambridge University Press