

## Measuring the Rule of Law: Pushing Forward

Tom Ginsburg and Mila Versteeg<sup>1</sup>

VERSTEEG, MILA, and TOM GINSBURG. 2017. Measuring the Rule of Law: A Comparison of Indicators. *Law & Social Inquiry* 42 (forthcoming). Available at <http://onlinelibrary.wiley.com/doi/10.1111/lsi.12175/abstract>.

We are grateful that readers of the stature of Professors Alter and Merry have taken the time to read our article and to offer such thoughtful reflections on it. As we acknowledge, our paper is part of a broader literature on the phenomenon of rule of law indicators (Skanning 2010; Merkel 2012; Møller and Skaaning 2014; Rothstein 2014) and our findings are in many ways consistent with those of earlier scholars. Yet we also believe that a continuing conversation on indicators is critical in an era defined by what Merry (2016) calls the “Seductions of Quantification.”

Alter asks for greater interrogation of the gap between experts and mass perceptions, something familiar from both the current political moment of Brexit and Donald Trump, as well as the literature on political behavior. The general thrust of that literature is that one should not assume that perceptions are aligned, and that the gap between elites and masses is something worthy of careful investigation. In the present context, it is relevant because we have good reason to believe that the rule of law, under most conceptualizations, requires affirmative support from both elites and masses to sustain it. Yet the fact that there are different perceptions does not tell us much about whether experts or ordinary people are “correct” in their assessments. To make progress on this question, we need to disaggregate the expert and mass perception data and contrast it with some sort of objective indicator or proxy thereof.

We are very pleased that the World Justice Project data has allowed just this kind of disaggregation. Future research can contrast the disaggregated data with objective measures to evaluate whether the experts or citizens are more accurate. Further work can also explore whether the gap between experts and citizens varies systematically by country, region and issue area, and seek to examine its determinants. The fact that the data is being produced over time provides particular promise here. While we have not ourselves yet engaged in these inquiries, we share Alter’s view that it is worth doing.

Merry focuses on our suggestion (and this was merely a suggestion on our part) that correlated error may be determining the convergence among expert ratings. In our

---

<sup>1</sup> **Tom Ginsburg** is the Leo Spitz Professor of International Law at the University of Chicago. He may be contacted at [tginsburg@uchicago.edu](mailto:tginsburg@uchicago.edu). **Mila Versteeg** is an Associate Professor of Law at the University of Virginia. She may be contacted at [versteeg@virginia.edu](mailto:versteeg@virginia.edu).

original paper, we argued that experts *might* be relying on each others' perceptions, but of course to establish that fact would itself require a survey, or an addendum to the surveys the experts are already completing. We acknowledge that our article does not offer definitive answers on what explains the convergence between the indicators and, in some sense, raises more questions than it answers. Our own guess is that the most probable explanation for correlations among experts is not that they are systematically looking at common indicators, but are instead relying on general expert perceptions of a country's condition in making their assessments. These perceptions might correlate with a single underlying dimension like Rothstein's idea that government impartiality is the critical factor. Or the perceptions might be a more general kind of reputations that countries have. We all "know" that Afghanistan and Zimbabwe are "bad" performers on indicators of governance, and so might, if asked, assign those countries a low score on the rule of law. In short, we don't have a lot of data on how the assessments are formed. Some simple experiments might be able to uncover some patterns here.

This last point segues into another point consistent with Merry's argument, namely that important differences can be masked by apparent similarities in indicator scores. Afghanistan and Zimbabwe scored, respectively, -1.5 and -1.4 on rule of law in the 2014 Worldwide Governance Indicators. Both are highly imperfect political systems. Yet when it comes to legal capacity, there may be reasons to think that they are differently situated. As captured in an excellent recent film, *Democrats* (2014), Zimbabwe's courts are staffed by judges who do acquit political opponents of the regime. Afghanistan's "regime" is much less concentrated, and has featured genuine turnover in power at the highest levels; yet on average judges have much lower capacity. These kinds of distinctions may matter a good deal on the ground in comparing authoritarian systems.

As scholars who use quantitative methods, we are in agreement with Merry that the assumptions underlying indicators should be made clear, and this is one reason that we both demand and applaud transparency in structuring indicators. She pushes us further to articulate the deeper politics of the choice of indicator. While it is no doubt true that many measurement projects adopt an implicit model (often Euro-American) against which to test phenomena, this does not render indicators useless. Indeed, a careful social science approach can leverage the indicators to test the very assumptions underlying them. We ultimately view our effort as a modest contribution in this regard.

## REFERENCES

*Democrats*. 2014. Copenhagen: Upfront Films.

Merkel, Wolfgang. 2012. Measuring the Quality of the Rule of Law: Virtues, Perils, Results. In *Rule of Law Dynamics in an Era of International and Transnational Governance*, ed. Michael Zürn, André Nollkaemper & Randall Peerenboom, 21-47. New York: Cambridge University Press.

Merry, Sally Engle. 2016. *The Seductions of Quantification: Measuring Gender Violence, Human Rights, and Sex Trafficking*. Chicago: University of Chicago Press.

Møller, Jørgen, and Svend-Erik Skaaning. 2014. *The Rule of Law: Definitions, Measures, Patterns and Causes*. Houndmills: Palgrave.

Rothstein, Bo. 2014. What is the Opposite of Corruption? *Third World Quarterly* 35 (5): 737-52.

Skaaning, Svend-Erik. 2010. Measuring the Rule of Law. *Political Research Quarterly* 63: 449-60.