

The Rule of Law Measurement Revolution: Complementarity Between Official Statistics, Qualitative Assessments and Quantitative Indicators of the Rule of Law

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The measurement revolution

A measurement revolution has taken place in the fields of governance, justice, and the rule of law. Not only have the quality and amount of available data exponentially increased in the past two decades, but more importantly, the knowledge about precisely how to effectively use these data to advance reform in the field has greatly improved. This paper offers a brief account of progress made and lessons learned during the past two decades in the rapidly growing field of rule of law measurement, and offers some suggestions about remaining shortcomings and the path forward.

Systematic cross-country data about political systems, governance, and the rule of law was very scarce two decades ago. Analysis at the global, regional, and national levels was largely based on purely anecdotal evidence, or a few crude indicators. In contrast, there are over one hundred systems of measurement in this field today. These tools are based on rigorously collected data at the country level or across countries. While there is enormous variation in the intrinsic quality of these measurements, data are no longer scarce. Some of these measurements are built upon systematic analysis of qualitative information, others on highly sophisticated aggregation of existing indices, and yet others on massive quantitative data collection efforts in particular regions or around the world. Some of the most salient improvements of the past decade in cross-country indicators include the work of the World Bank, Transparency International, Freedom House, CEPEJ, Global Integrity, Hiil-TISCO, The Economist Intelligence Unit, the AfroBarometer, the World Economic Forum, ABA-ROLI, the OECD, IDLO, the Vera Institute of Justice, and The World Justice Project.¹ A variety of UN entities have also contributed to this process.² This measurement revolution resembles in some degree the phenomenal transformations that took place in the fields of economics and public health one hundred years ago.

This measurement revolution in the field of governance and the rule of law has a number of implications for everybody, from multilateral organisations, donor agencies, governments, the business community, and civil society. Better data leads to better planning and evaluation of government programmes and institutional reform; better targeting of donor resources; more accurate assessment of political risk by the business community; and increased ability of civil society organisations to hold governments accountable to their citizens.

Major remaining challenges

Despite the aforementioned improvements, the field of governance and rule of law measurement continues to lag seriously behind. We may be decades away from developing the required knowledge and practical expertise at the country level, that would enable the creation of a credible equivalent to the “infant mortality rate” for the justice sector. There appears to be a growing consensus among leaders in this field that the required knowledge to produce such indicators already exists, but this knowledge remains buried in the hands of a handful of experts scattered around the world. It has not been fully internalised by the rule of law community, and it remains largely ignored by government reformers in all corners of the world today.

The most fundamental barrier appears to be a deeply rooted culture among government officers and practitioners in this field that is hostile to measurement. In all corners of the planet judges and lawyers often act as if they were allergic to numbers, or when these numbers are collected, they are neither systematically analysed nor publicly disclosed. This peculiar culture is not the exclusive domain of least-developed nations; it is pervasive even among quantitatively oriented and technically sophisticated nations. For instance, in the United States major decisions about baseball are based on rigorously and systematically collected statistics, such as batting, pitching or fielding statistics; moreover, all relevant actors, from team managers to players to ordinary fans, have access to the same data and all of them make decisions based on it. In sharp contrast, statistics as simple as the total number of cases filed before trial or appellate courts in a particular jurisdiction; the disaggregation of cases by the litigants' socio-demographic characteristics; the ratio of cases decided in a particular period; or the average time to decide a case, are simply not collected in the majority of jurisdictions in the USA and Canada. Moreover, when these data are collected, they are not systematically analysed by the courts, nor they are made available to the public. The average North American college graduate has a far more sophisticated understanding of numbers and ratios as tools for decision-making in baseball, football, and basketball, than in the operation of government in all branches, particularly the judiciary.

Some argue that this pervasive disregard for data in the rule of law sector is by necessity; that justice is the domain of enlightened judges, an exquisite art beyond the reach of ordinary people. It is undeniable that justice is among the most elusive aspirations of the human race.³ However, we posit that the delivery of justice by formal courts, the performance of policing institutions, and the system of checks and balances of power among branches of government - to name but a few rule of law areas—are not so fundamentally different from economic or public health variables. The notions of economic development and health are equally complex and elusive aspirations of the human race, and yet we do not walk in absolute darkness in these fields. Indicators such as maternal and infant mortality rates, or the GDP, the GINI and the consumer price index, are far from perfect. However, they provide a picture that is reasonably coherent around the world, and one which is widely employed by decision-makers and ordinary system users alike.

Measuring is key to advance the rule of law. Quantitative and qualitative indicators are useful tools to evaluate performances, draw attention to issues, establish benchmarks, monitor progress, and evaluate the impact of interventions or reforms.⁴ Effective programmes should not be based on a priori assumptions. Interventions are more effective if they are matched to the extent possible to the true underlying situations, as revealed by data. A culture of measurement - and decision-making based on measurement - must be promoted in the rule of law field worldwide.

A second major challenge is the pervasive misuse of indicators among government officers and reformers everywhere. Government agencies collect large amounts of data but they rarely use these data effectively. Moreover, there appears to be a fundamental confusion between raw data and an effective system of indicators. Data may be easily manipulated and misused.⁵ Indicators are only tools. How appropriate and useful they are for policymaking in particular situations largely depends on the context. When indicators are used in isolation and taken out of context, they tend to lead to ineffective outcomes. Unfortunately, users of indicators - even very sophisticated ones - often forget or deliberately disregard their limitations. They often do so in order to hide the underlying agenda or policy decisions and assumptions that determined the development or use of the indicator in the first place.

There are several key requirements that must be met by indicators - all types of indicators, from those developed by local government agencies based on official statistics, to those produced by international organisations for cross country analysis - in order to be both technically acceptable and of practical utility. First, the quality of the conceptualisation of what is being measured is extremely important, and it's crucial for end-users to understand the underlying assumptions and value structure of what is being measured. Second, one must check the indicators' technical dimensions, such as the rigor of the data collection, aggregation, imputation, weighting, and normalisation methods which are used to produce them. In addition, uncertainty and sensitivity analyses, and other methods of explicit reporting of margins of error, are essential tools to understand the meaning of numbers. While these statistical analyses are generally beyond the reach of

ordinary citizens, they cannot be ignored by governments, donor agencies and other constituencies who attempt to base or track policy decisions on these indicators.⁶ Finally, specific indicators must be used in context.

An effective indicator system not only provides information on whether and to what extent progress is being made in one particular aspect, but also how progress in achieving one government objective may negatively affect another. This is true at the micro level, such as the case of a local police chief trying to solve more crimes with less intrusion on citizens' liberties - which is clearly described by Foglesong and Stone in another piece of this publication. It is also true at the macro level, such as the uneasy interaction between guaranteeing order and security at the country level, while providing effective protection of fundamental rights in low and middle income countries, as suggested by the WJP Rule of Law Index data. An effective system of indicators tracks different dimensions of the system together, and provides information about interaction among these dimensions over time. This is particularly important after intervention measures are implemented.

The third major challenge is lack of complementarity. While there has been an impressive development of regional and global indicators in the rule of law field during the past ten years, these indicators must be seen only as useful tools to complement the core body of rule of law data, *i.e.*, official statistics.

Government statistics and independent NGO research provide the raw material to track performance of specific dimensions of the system, while cross-country indicators serve to track performance of the system as a whole and to place such performance in relative perspective.

Government statistics are essential, but they are not flawless; they often have important technical shortcomings and are vulnerable to political manipulation and corruption. Different indicators complement each other. They should be used in conjunction to get the full picture and to avoid manipulation and misuse. Moreover, different orders of data (official and privately-produced; local and global; quantitative and qualitative), are not incompatible; effective reformers are cognizant of the relative advantages and shortcomings of each of them, and use them all in an integrative manner. Even countries with highly sophisticated official judicial statistics, such as the USA and Canada, may benefit from simple, cross-country comparable, privately-developed, independent and impartial, global indicators. For instance, in both countries high-ranking government officers or members of the judiciary have relied on the findings of the *WJP Rule of Law Index*⁸ to highlight areas in need of improvement in these countries, as compared to other high-income countries.

The fourth challenge is the uneven distribution of existing data. Rule of law indicators have improved in quality, but there is a lot of work to be done, particularly at the micro level. Take corruption for example; there are many cross-country indicators. But aside of bribery, there are very few micro indicators at the country level.

The path forward

The following three suggestions are made:

1. Improve rule of law data collection and analysis at the country level. Sustained investments in enhancing local government officer's capacity not only to collect statistics but also to develop comprehensive systems of indicators to inform policy based on these data, is a key component of long-term rule of law advancement.
2. Generate incentives (both positive and negative) for governments and judiciaries to systematically and periodically release data to the public.
3. Motivate governments and other users to integrate layers and orders of rule of law data (official and privately-produced; local and global; quantitative and qualitative) in their decision-making process.

Endnotes

¹ The authors have been responsible for the development of the *World Justice Project Rule of Law Index* for the past five years, and two of them were also previously involved in the development of the World Bank's *Doing Business* indicators.

² Parsons and Thornton, *Data as a United Nations Rule of Law Programming Tool: Progress and Ongoing Challenges*.

³ See, e.g., *What is Justice?* Hans Kelsen

⁴ Botero, Martinez and Ponce, *Justice by the Numbers*. forthcoming

⁵ Botero, Nelson and Pratt, "Indices and Indicators of Justice, Governance and the Rule of Law: An Overview". *Hague Journal on the Rule of Law* 2011, Volume 3, Issue 2.

⁶ Botero, Nelson and Pratt, "Indices and Indicators of Justice, Governance and the Rule of Law: An Overview". *Hague Journal on the Rule of Law* 2011, Volume 3, Issue 2.