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Justice in the Vernacular: An Anthropological Critique of Commensuration

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This article examines the far-reaching implications of Sally Engle Merry's seminal multi-sited research on human rights measurement and monitoring. As she argued, human rights indicators, which form the basis for measurement, depend upon a highly elaborate, and largely obscured, process of commensuration. Through commensuration, complex social, legal, and economic phenomena are treated as variables that can be measured using statistical procedures that flatten the underlying complexities. Commensuration, in this sense, takes place at all levels: local, subnational, national, and international. At each stage, the process of "measuring justice" through commensuration has the paradoxical effect of becoming more precise as variables become more detached from the nuances of everyday conflicts. In Merry's analysis, the global "seductions of quantification" reinforce the dominance of commensurability as an ideology of both scientific validity and social change. Drawing on both Merry's work and wider comparative research in the anthropology of human rights and justice, this contribution to the symposium argues that the anthropological critique of commensuration carries important lessons for the meanings of "justice" more generally. How can justice be measured at a global level if, as Merry's research shows, the underlying factors that supposedly reflect injustice are highly specific, contingent, and, most importantly, incommensurable? As a potential way out of this dilemma, the article explores the possibilities of conceptualizing "justice" in the vernacular, an approach grounded in local cultural and ethical realities.

In 2009, Sally Engle Merry began what would become the last chapter in her long and illustrious career as a researcher, scholar, and teacher. In that year, she received the first of three major grants from the US National Science Foundation in order to conduct empirical, collaborative, and interdisciplinary research on global "indicators"—the numerical categories that are used to measure and compare complex phenomena such as human rights compliance, gender violence, and sex trafficking. Merry's interest in the rise of quantitative indicators as a form of global governance can be explained both as a creative extension of longer-standing research foci and as the result of fortuitous personal circumstances within a period otherwise marked by institutional setback and tragedy.

For the first, she had recently completed a landmark multi-sited ethnographic study of human rights promotion around the world (see, for example, Merry and Stern 2005; Merry 2006a). From the perspective of grassroots activists, government bureaucrats, social and gender justice movements, and international human rights-monitoring

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agencies, among others, Merry's (2006a) research revealed the interstitial gaps and discursive dilemmas at the heart of the post-Cold War project to "translat[e] international law into local justice" (see also Goodale 2007; Goodale and Merry 2007). Among other contributions, Merry's anthropological research on different aspects of human rights monitoring and activism introduced the theoretical concept of "vernacularization" into a number of related literatures, a concept to which I return below.

But in the course of documenting the processes through which global human rights norms were appropriated and sometimes transformed within the practice of human rights, Merry also observed something else that was rather tangential to her main ethnographic fieldwork: the fact that much of the complicated work of human rights implementation was eventually filtered through techniques of social statistical measurement, the results of which were then taken up within global regimes of evaluation, classification, and ranking. With a hunch that the increasing importance of indicators deserved to be investigated at greater length, Merry turned toward the ethnographic and ideological dimensions of global quantification as her next—and final—major research initiative.[1]

Merry's interest in indicators during this period was also shaped by a fortunate convergence in her personal life. When she arrived at New York University after thirty years on the faculty of her alma mater Wellesley College, she joined her twin sister Patty and her older brother Robert in New York City. Patty was working as a child development officer on secondment to the United Nations Children's Fund (UNICEF) from her base as a professor of psychology in California. She had been recruited by UNICEF precisely in order to develop a new set of quantitative indicators that UNICEF could use to improve its early child education programs. Merry's brother, who had won the Nobel Prize in economics in 2003, had moved to New York University after retiring from his long-time institutional home, also at a university in California. Robert Engle's econometric research on financial risk was also, obviously, deeply quantitative. The three accomplished siblings spent many evenings debating the role of indicators in social scientific research, with Merry expressing deep skepticism about the increasing "reliance on simplified numerical representations of complex phenomena," representations that had important consequences for "relations of power between rich and poor nations and between governments and civil society" (Merry 2011, 83).[2]

This article, then, is an attempt to draw out the implications of this deep skepticism and the body of anthropological and interdisciplinary research that it engendered. In the next section, I situate Merry's study of quantitative indicators against a wider historical and critical intellectual background in which the proliferation of measurement in social and political life is analyzed as a pervasive form of contemporary

1. For a longer discussion of this intellectual history, see Goodale 2021a.

2. On the history of these interactions in New York City between the three siblings, see Goodale 2021b. As mentioned, this period also brought institutional difficulties for Merry and personal tragedy. Merry was recruited to New York University to oversee the development of the Institute for Law and Society, based in New York University's School of Law. Yet, after only five years, the School of Law decided to end support for the institute's doctoral program. This was a significant disappointment for Merry, who was serving as the institute's director. Her position was then moved to the Department of Anthropology, where she remained until her death in September 2020. At the same time, her sister Patty was diagnosed in 2011 with a late stage diagnosis of the same disease that would eventually claim Merry's life. Patty passed away in 2012.

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power, one in which technical expertise and an ideology of "evidence-based" knowledge coalesce into an "anti-politics machine" that forms the foundation for international intervention, donor assistance, and post-conflict reconstruction (Ferguson 1990). The article narrows the focus on what is the heart of Merry's (2016) anthropological critique of the use of indicators as a "technology of knowledge": the ways in which diffuse and highly complex phenomena are treated as necessarily commensurable in order to be measurable and then measured. As will be seen, the process of commensuration is itself complex and multilayered, a process that does "cultural work" throughout multiple scales of regulation and governance. To illustrate the problem of commensuration, I examine debates over the foundational concept of "justice." Although "justice" appears in many guises—within international and transnational policy making, within legal and social movements, and within academic literatures—it is often taken as a transversal value or policy objective or endpoint after a period of civil war or mass violence. Yet "justice" turns out to be as incommensurable as the other diverse and, according to Merry (2016, 112–13), "unmeasurable . . . array[s] of interactions and relationships" that are the subject of international concern and quantitative distortion.

The article then builds toward a critical response to the problem of commensuration within international legal ideology. Here, I show how another of Merry's key theoretical contributions—"vernacularization"—can be adapted as the basis for an alternative approach to justice seeking, one that is grounded in the potential of legal and moral pluralism and cultural diversity. Although a vernacular perspective on justice would have profound implications for international law and transnational activism, it nevertheless represents a decisive break with the "dark sides" of liberal legal global governance (Kennedy 2005). The article concludes by reflecting at more length on the vision of a counter-commensurable world suggested by Merry's late career research on global measurement regimes and the "seductive" power of statistical knowledge. In relation to justice seeking, what would it mean to overturn the hegemony of big data and replace it with an insistence on small data? Does recent work on "everyday" indicators provide yet another response to Merry's critique, one in which the mechanisms of measurement and accountability are determined by—and remain bound to—local actors, local conflicts, and local understandings? And, finally, what does the critique of quantitative indicators reveal about the relationship between power and knowledge more generally, a relationship through which the "texture of social life" disappears amidst the "individualization, homogenization, and universalization inherent in the process of finding equivalence" (Merry 2016, 221, 220)?

AUDITING THE WORLD

In order to understand Merry's critique of the increasing dominance of quantitative indicators and measurement within international law, it is important to situate the proliferation of evidence-based legal monitoring and implementation within a wider historical context. Although the broader shift toward the quantification of social life can be identified as part of a longer-term trend beginning in the 1960s toward technocratic governance within complex state and private institutions, it fell to a British

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accountant to first notice the transformative implications of a much more specific, and apparently mundane, development. As a new employee for one of the "Big Four" global accounting firms, Michael Power (1999, xi) was tasked with the "distinctly unglamorous" work of financial auditing, a "dull field" from "which the brightest and most ambitious are quick to move on," an entry-level branch of accounting that is "viewed with some suspicion, if not ridicule." Yet over a decade after his short stint as an accountant in the early 1980s, and after becoming an academic with time to reflect on the significance of his work as an auditor, Power realized that his "puzzling first-hand experiences of financial auditing" was a window into something important: the decline of the Euro-American welfare state and its replacement by what he describes as the "regulatory state" (xii, xvi).

The regulatory state is one in which social monitoring and measurement become institutionalized, in which the success or failure of governments and institutions at all levels depend on meeting quantitative benchmarks, rather than on the extent to which, for example, the underlying structural factors that perpetuate social and economic inequality are overcome through carefully tailored public policies and social investment. The rise of the regulatory state marked the institutional form of neoliberalization, a political economic trend that rapidly accelerated with the end of the Cold War and the precipitous decline of the social democratic left in the global North. As Power (1999, xvi) points out, although "audit society" in Britain might have begun during the brutal retreat from the welfare state under Margaret Thatcher's various governments, it actually deepened with the coming of the so-called Third Way—that is, the Phoenix-like rise of "new" left parties in the United Kingdom and the United States that sought to advance reformist social agendas, shaped by human rights and the politics of identity, while deepening their entanglements with global capitalism.

As neoliberalism went global throughout the first decade of the post-Cold War, so too did "audit culture" (Strathern 2000). This was a culture that had two fundamental pillars: first, the increasing reliance on "responsibilization," the duty of individuals to take over many of the provisioning and decision-making functions that—under the social democratic welfare model—had been performed by state agencies, and, second, the corresponding duty to be periodically evaluated on the extent to which self-governance was meeting pre-established quantitative markers, a neoliberal form of state or institutional regulation that has been called "coercive accountability" (Shore and Wright 2015).[3] Throughout the 2000s, audit culture became embedded at the heart of international and transnational organizations that were part of the globalization of liberal legality during the "Age of Human Rights" (Annan 2000), the golden age of post-Cold War "juristocracy" in which human rights, international criminal justice, and rule-of-law governance emerged as key juridical markers of the looming "neoliberal world order" (Hirschl 2004; Ferguson 2006). The remaking of international law through the imperatives of audit culture is perhaps no better

3. The pervasiveness of a global audit culture often finds expression well beyond the traditional boundaries of neoliberal governance. For example, in early 2021, the leadership of the Islamic State of Iraq (ISIS) sent a delegation to Nigeria on an "auditing mission" to decide whether or not the violent Islamic extremist movement Boko Haram could be trusted to represent ISIS's interests in West Africa. Having apparently failed the audit, the infamous Boko Haram leader, Abubakar Shekau, was killed on ISIS's orders by a more "moderate" group of Nigerian militant Islamists, the Islamic State West African Province (Burke 2021).

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illustrated than through the system that was developed to monitor compliance with international human rights treaties. Individual nation-states are "responsibilized" to ensure the protection of human rights through the ratification of treaties within domestic law and the implementation of their mandates within national borders. States are then audited by "treaty bodies" during deeply politicized and coercive "rituals of verification," in which often internally divided teams of country representatives are forced to withstand withering questioning on "problems" like culture, gender relations, and religion (Power 1999).[4]

Yet given the scope and sway of a globalized audit culture, the questions become: how is accountability measured; what techniques are used to demonstrate compliance with global legal norms; and how does coercive accountability function at a comparative level—that is, beyond particular national or other units of measurement? As Merry (2016, 9–10) explains, quantitative indicators became the instruments of a maturing audit culture, instruments that transformed the consequences of verification by "reassembling" social data for the purposes of global ranking, rating, and a kind of quantitative naming and shaming that resulted with the publication of each yearly "index" on everything from transparency, to peace, to happiness (Shore and Wright 2015).

It is this comparative dimension that most concerns Merry (2016, 10), the dimension of "indicator culture" that relies on a long succession of stages through which social complexity is simplified and decontextualized; that demands the methodological elision of "unmeasurable" data; and that is shaped by a belief—masquerading as epistemology—that "all things can be measured and … those measures provide an ideal guide to decision making." This is the problem of commensuration, a problem that crystallizes the long-term ramifications of audit culture. As Merry puts it, "indicators enable policy makers to compare freedom in Mauritius and Mauritania, poverty in Sweden and the Sudan, and human rights compliance in Russia and Rwanda despite the vast differences" (10).

It is perhaps not surprising that the commensurations of indicator culture would provoke such a strong anthropological critique, given that the discipline's adherence to the value of thick description and multi-scalar complexity runs completely counter to both the spirit and practice of global quantitative rendering. Yet what is even more problematic about commensuration is the way in which the statistical flattening of social or moral worlds is never content neutral; rather, indicators are the conduits for particular values, especially those associated with international normative regimes like human rights and international criminal justice. As will be seen in the next section, the dilemmas of commensuration run even to such fundamental concepts as "justice," whose apparent universal valence is at the very center of liberal legal doctrine and procedure.

THE IDEAL WITH NO NAME

In an ethnographic and critical study of the Khmer Rouge tribunal in Cambodia—known officially as the Extraordinary Chambers in the Courts of

4. In her study of the institutional system put into place to monitor compliance with the Convention on the Elimination of all Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (CEDAW), Merry (2006a) most notably analyzes the consequences of coercive accountability through the case study of Fiji and the 2002 hearings on its first-ever country report to the CEDAW Committee.

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Cambodia (ECCC)—Alexander Hinton (2018) introduces us to "Uncle San." Uncle San is a sixty-four-year-old villager who is from the country's Siem Reap province. During his early thirties, however, Uncle San, like millions of other Cambodians his age, lived through the fury of Democratic Kampuchea, the four-year reign of terror during which almost 25 percent of the population died as part of the Khmer Rouge's "Super Great Leap Forward," the brutal project to transform Cambodia into an agrarian communist utopia.

Along with others from his native village, Uncle San was forcibly internally displaced during these years to another part of Cambodia, where he labored under deadly conditions on a massive rural cooperative. Underfed, forced to confess counter-revolutionary thoughts during daily meetings with the Khmer Rouge camp cadres, and required to work in the rice paddies until late at night each day, Uncle San barely survived. Once, with his strength fading from malnutrition, he decided to eat whatever he could pick up in the rice fields, an act of "stealing" that brought immediate reprisal. As he recalled, "I took a crab from the field and was beaten for doing so. I remember the mistreatment of monks, hard work, poor food, tortures and killings" (Hinton 2018, 2). In early 1979, after the Vietnamese invasion of Cambodia and the rapid fall of Pol Pot's Khmer Rouge regime, Uncle San was released from the forced labor cooperative and returned to his village. However, like many other Cambodians who managed to survive, he found that he had nothing left: "[M]y home was destroyed … [and] all of my family members were killed" (2). For the next thirty years, Uncle San was tormented by nightmares of the Khmer Rouge period, his dreams filled with memories of his dead relatives. Although, following Buddhist tradition, he often lit candles for the spirits of the dead, he passed the decades—like so many others in Cambodia—in a never-ending state of mourning and post-traumatic stress.

Yet Uncle San's life was unexpectedly transformed when he learned of a momentous development in Phnom Penh, the capital city: "justice" had come to Cambodia in the form of the ECCC. After travelling to Phnom Penh with other villagers to visit the ECCC and learn about its plan to prosecute selected members of the surviving Khmer Rouge leadership, Uncle San began to experience psychological and spiritual relief for the first time in over thirty years. He was particularly assuaged by the fact that the ECCC was committed to "Cambodian and international standards of law" and to "moving forward through justice," which was also the ECCC's official slogan, visible on posters throughout the judicial chambers (Hinton 2018, 3–4). Back in his village, Uncle San experienced a sense of hope for the future. Now that Cambodia was "moving forward through justice," he was free to finally let the spirits of the dead rest forever. With his "mind fill[ed] with images of his village transformed with fancy houses, electricity, smooth new streets, and a large factory," Uncle San peacefully "slept the whole night with no bad dreams" (4).

Despite this apparently happy ending for Uncle San, a happy ending presumably experienced by many other Cambodians who likewise found comfort in the fact that their country was "moving forward through justice," there is a basic problem with his narrative: Uncle San does not exist. As Hinton explains, Uncle San was an invention of the ECCC and the transnational and national non-governmental organizations (NGOs) that were created to support and promote its work. "Uncle San," as it turns out, was a stock character in a series of stories distributed in brochures about the ECCC,

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in which invented survivor-victims of the Khmer Rouge related the details of their fictional lives and discussed the goals of the tribunal in terms drawn from what Hinton (2018, 5–6) calls the "transitional justice imaginary." This is a category of a broader liberal legal ideology in which the concept of "justice" embodies a series of specific values and meanings, including "teleological transformation," "progressivism," accountability, democratization, and the final resolution of conflicts (10–21). Moreover, this concrete account of justice is taken to be universal, a key part of a common global language spoken by all members of the "human family," the fictive kin group memorably invoked in the preamble to the 1948 Universal Declaration on Human Rights (UDHR).[5]

In other words, when Uncle San celebrated the fact that Cambodia was "moving forward through justice," he was speaking a universal language, understood by all, since "justice" was the ultimate commensurable normative ideal: interchangeable across time, space, and culture; reducible to policy making at multiple regional and institutional levels; and, most important for my purposes here, subject to statistical measurement, "cross-country" comparison, and global ranking. Yet as Hinton's thoroughgoing deconstruction of what he calls the "justice facade" demonstrates, "justice" is actually not commensurable in these ways; indeed, quite the contrary. In fact, the "justice" of liberal legal ideology, the justice spoken of by the invented Uncle San in his dreams of a better Cambodia, does not exist in Khmer culture or language.

The Khmer word and wider explanations used by the ECCC and NGOs to represent the universal "justice" ideal were far removed from the meanings of justice at the heart of liberal legality and its associated philosophical and political histories. Drawing from Buddhist moral precepts and rural animistic spiritual traditions that revolved around a clash between "light" and "dark" worlds, the concept of "justice" was not translated in any meaningful sense. Instead, it was effectively replaced with Buddhist moral and ontological categories and Khmer terminology, categories, and terminology that at least had the virtue of being understandable by Cambodians themselves, even if these were specifically not commensurable, not readily apparent beyond relatively circumscribed religious, cultural, and linguistic boundaries. Rather than a mechanism for "justice," a normative ideal with no name in Cambodia, the ECCC and its procedures were viewed quite differently: as a "*bangsokol* ceremony in which merit was transmitted to the dead to placate the spirits and enhance their prospects for rebirth" (Hinton 2018, 103).[6]

Similarly, Joel Robbins (2010) has explored the ways in which liberal legal notions of justice are completely inapplicable to many societies in Papua New Guinea (PNG) and throughout the richly diverse region of Melanesia more generally. As he explains, one of the major lines of normative difference between Melanesian and "Western models of justice" lies in the fact that culturally resonant conceptions of rightness and wrongness, entitlement and obligation, harm and reparation inhere not in people and not in individual legal subjects but, rather, in webs of social relationships. As he

5. Universal Declaration of Human Rights, GA Res. 217A (III), UNGAOR, 3rd Sess., Supp No. 13, UN Doc. A/810 (1948) (UDHR).

6. I have likewise explored the problem of normative incommensurability through a discussion of the category of "human" in human rights, based on long-term ethnographic research in Bolivia (Goodale 2022).

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puts it, invoking the well-known anthropological description of Marilyn Strathern (1988, 131), "in Melanesia, persons are microcosms of relationships" (Robbins 2010, 175).

Far from the self-image as liberal rights-bearing individuals, Melanesians view themselves in a radically different way; indeed, in a way that could be said to be diametrically opposed—in normative or conceptual terms—to the rights-bearing subject at the heart of human rights and international justice:

> People [in Melanesia] understand themselves to be made out of the relationships of kinship, marriage, and nurture that produced them. They are born with the obligations that these relationships carry, and they form new relationships (which carry their own obligations) in order to meet them. For example, a woman might marry in part to generate the bridewealth that will help her brother marry. Or in a matrilineal moiety system, a man may nurture his children (who belong to their mother's group) as a way of repaying the nurture his father (who would also have belonged to his mother's group) gave to him. (Robbins 2010, 175)

Robbins illustrates the normative alterity of the "relationalist" model and its incommensurability with international standards of rights and justice through several case studies. In one startling example, he shows how the rise of sex work among women from the Huli people of PNG's southern highlands province can be explained as a consequence of the breakdown of relational justice in the community, a destabilizing shift associated with the encroachment of urban cash economies and the moral values that they embody. Almost half of all Huli men between the ages of twenty and forty leave the Huli territory for varying periods of time to find wage labor throughout the country. While they are gone, the wives and sisters left behind are rendered much more vulnerable to sexual attack or seduction. Within the relational system, such acts of violence or extramarital relations would normally lead to claims for compensation, claims that are pressed with collective force if necessary, since the "relational productivity of women's sexuality and reproductive power" is the glue that binds together and maintains the vast web of Huli relationships (Robbins 2010, 182).

Yet, with many men gone, not only is the traditional system of marriage—which is based on bride wealth or payments from the groom's kin to the wife's kin—disrupted; even more, the status of women is dramatically weakened since their value within the wider relational system is not carefully guarded. As another anthropologist has observed, Huli women eventually "become enraged" by their new vulnerability and by the fact that their reproductive power has lost its traditional importance as a consequence of the massive out-migration of Huli men and the moral upheavals provoked by transient wage labor (Wardlow 2006). For some Huli women, therefore, turning to sex work is a response to the breakdown of the relational system. As Robbins (2010, 182) puts it, "men who turn their backs on the system are already pursuing their own individual pleasures at the expense of their relationships with their daughters, sisters, and wives." In becoming sex workers, Huli women "remove [their relational productivity] from [the] system altogether and put it to use in enriching themselves . . . . The institution of sex work, then, is some women's response to their inability to secure relational justice in a

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world more and more defined by the market and its individualist models of the good life" (182).

A second case study analyzed by Robbins (2010) brings the problem of commensurability into even sharper focus since it involves a direct confrontation between the relationalist systems of Melanesia and the liberal legal framework of international justice. This is the so-called Compo Girl case, in which Miriam, an eighteen-year-old girl from the Wahgi region of PNG, was included as part of a significant compensation payment demanded by her father's mother's clan for the death of her father. As Robbins explains the complicated relational background, the "claim was based on the charge that [Miriam's father's clan] had failed to nurture and protect him in such a way as to prevent his death" (183). As payment for this violation of relational justice, Miriam's father's mother's clan demanded twenty-four pigs, a cash payment of about sixteen thousand dollars, and an unmarried woman of marriageable age. Given that Miriam was the only eligible woman in her father's clan at the time, "it was decided that she should go in marriage to her father's mother's group as part of the settlement" (183).

Although Miriam was not opposed to the terms of the settlement, she did object to the timing since she was working on a correspondence course with the hope of eventually attending a secretarial school. Although Robbins (2010) does not describe the exact circumstances, Miriam discussed the compensation settlement with a journalist from one of PNG's national newspapers, and the resulting article came to the attention of human rights activists and members of PNG's National Court. One of the justices, Salamo Injia, who was also an Enga speaker from the central highlands, launched an inquiry into Miriam's situation, which then led to a formal case being filed on Miriam's behalf by a human rights NGO based in PNG's capital, Port Moresby. During the hearings, Justice Injia examined an affidavit prepared by a professor of anthropology at PNG's national university, which described in ethnographic and historical detail the relational system in which the compensation settlement was agreed upon by Miriam's clan and the clan of her father's mother. Nevertheless, the court sustained the petition of the human rights NGO on all counts and held that the compensation settlement was illegal since it violated Miriam's human rights as protected by national law. As he proclaimed, "no matter how painful it may be to the small ethnic society concerned, … such bad custom must give way to the dictates of our modern national laws" (185; quoting from Strathern 2005, 114).[7]

Examples such as these from the comparative ethnography of international law and justice could be multiplied almost endlessly. Indeed, much of the anthropological research on law conducted over the last several decades has focused precisely on the frictions created from diverse legal, political, and institutional efforts to realize in practice the liberal legal vision of a world united by its "faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women," to again quote from the foundational language of the UDHR. This is an

7. In a strange twist of historical fate, Justice Injia was himself involved in a compensation payment conflict involving rival Enga clans. Over twenty years after his involvement in the Compo Girl case, Justice Injia, who had risen to become chief justice of the Supreme Court of Papua New Guinea, was violently attacked in an ambush because his clan had not paid the compensation demanded by another clan for the death of one of its members from *sanguma* (sorcery) (Davidson 2018).

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essentially commensurable world, one in which this "faith"—and the values on which it is based—is ever-present, ahistorical, and, most importantly, universal, meaning deeply rooted (even if obscured) in all cultural, political, and religious traditions.

Without a belief in the ultimate commensurability of a concept like "justice" (leaving questions of language aside), how else could the entire edifice of international law be justified, from the United Nations (UN) system of human rights treaty monitoring and enforcement to the International Criminal Court? Without an unwavering and even righteous adherence to what I have called elsewhere the "myth of universality" (Goodale 2018a), what remains of human rights and international justice, their global normative legitimacy, the carefully curated narrative of their inevitable ascendance? Yet, as the illustrative sampling from the anthropological literature has shown us, "justice" is actually not commensurable in the ways on which the various systems of international law depend, an ethnographic and historical fact that is, among other things, devastating to the wider liberal legal project and the various teleologies—such as the "justice cascade" (Sikkink 2011)—through which it is, in part, expressed.

But if the actually existing incommensurabilities of socio-legal practice around the world reveal the commensurable worldview of international law and justice to be a "facade," in Hinton's (2018) framing, what functions does this facade serve? At an epistemological level, what might be thought of as the ideology of commensurability reinforces a tautology examined by Merry—that is, only that which is measured through quantitative indicators is measurable and, therefore, from this perspective, knowable. More generally, however, the ideology of commensurability—the assumption that a culturally, historically, and normatively particular concept like "justice" is, in fact, universal—must be understood as the justification for a powerful mode of global governance, one in which specific theories of social change are concealed by claims to objectivity and appeals to technical expertise (legal, statistical, humanitarian, or otherwise).

Yet if Merry is right, and the "seductions of quantification" obscure the ways in which liberal legal ideology and its various assumptions are reinforced through global regulation, monitoring, and classification, it is important to acknowledge that this a consequence that is widely embraced by international institutions and transnational activists. In other words, the desire for more liberal legal governance is at the very core of the postwar—and post-Cold War—human rights and international criminal justice movements. But, as archival research has revealed, there were never any doubts among a wide range of policy makers, intellectuals, theologians, and labor activists, among others, that the postwar system of international law (especially human rights) was closely associated with "Western" normative and political histories, despite the universalist rhetoric (Goodale 2018b). At the same time, there was also a kind of acquiescence from the beginning to the belief that it would be necessary to decontextualize these histories through an ideology of commensurability as a utilitarian trade-off in which the universalist means justified the ends: greater equality, the promotion of human rights, "peace with justice," and so on.

As Merry's research on human rights and quantitative indicators has demonstrated, however, this trade-off turned out to be more like a shell game than an actual exchange or compromise: liberal legal ideology eventually became a dominant mode of global governance under the sign of universality, but the ends were never realized. Indeed, something like an opposite dynamic was at work: the rise of liberal legal ideology as

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a mode of global governance was closely correlated with less equality, fewer possibilities for expanding human rights in practice, and a less "peaceful" world—that is, when structural, economic, racial, and other forms of endemic violence are taken into consideration (Moyn 2018; Whyte 2019; Goodale 2022).

But if this grand trade-off is not what it seems, what then are the alternatives? If the ideology of commensurability—so effectively unmasked through Merry's ethnographic and critical research—does not, in fact, lead to a global cascade of justice, how should a radically different approach to problems of conflict resolution, activism, and "translocal" solidarity be conceived (Goodale 2022)? In order to suggest initial answers to these questions, I return in the next section to the anthropology of law and justice, yet from the perspective of local practice, pluralism, and vernacularization.

JUSTICE BEYOND THE GAZE OF LIBERAL LEGAL IDEOLOGY

To abandon the ideology of commensurability, to abandon "global justice" as a teleological endpoint—the final stage toward which the "arc of history" is inexorably bending—is not, it should be emphasized, to surrender to a post-universalist nightmare in which the cosmopolitan Kantian dream of perpetual peace is finally extinguished by the reality of a dystopian future marked by endless inter-group violence, increasingly more widespread and brutal "expulsions," and a toxic global ecology in which only the privileged few are able to find health and security (Sassen 2014). Rather, the search for an alternative to the ideology of commensurability—and the legal, political, and epistemological forms through which it is expressed—is in fact a search for different conceptions of collective belonging and action, other vantage points from which conflict, cultural difference, and the need for trans-local mobilization might be viewed.

Put another way, the entire edifice of liberal legality is based on false premises; it presents itself as an answer to the wrong questions. Instead of looking for signs of "universal" human rights among all the world's legal, cultural, and religious traditions, instead of trying to develop a global toolkit with which the mechanisms of "transitional justice" can be put into place—as if "justice" were the same thing as a water purification system—and instead of devoting vast amounts of international development assistance to global monitoring and measurement regimes, we should rather be exploring the implications of different answers to different questions. One question would be: what is to be gained from embracing the potential of incommensurability, the idea that any valid trans-local sense of justice must be built from heterogeneous, and only vaguely related, cross-cultural practices of conflict resolution, collective healing, reckoning, and even reprisal? To begin with this question—or another, perhaps more succinct, version of it—would be to begin with the ethical assumption that legal, institutional, and cultural pluralism is a tremendous potential resource, one that has been treated with skepticism bordering on hostility at least since the end of the Second World War, during which the empirical realities of difference were made the basis for theories—and then deadly policies—of genocide and military imperialism.

But incommensurability is not the same thing as incomprehensibility; pluralism is not the same thing as immutable difference. Instead, incommensurability is a starting point that denies all the assumptions, enduring validity, and, most importantly,

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practical value of "global justice" as an organizing principle. If the ideology of commensurability is based on the proposition that "Justice [with a capital "J"] is universal, a uniform norm everyone shares," and that this norm merely takes different forms at different times in different places, a pluralist alternative, by contrast, would be based on the proposition that universal norms are a fallacy, a dangerous fallacy that, among other things, has been associated with colonial imposition, international conflict, and (ironically) ethnocentrism (Hinton 2018, 245).

Incommensurability replaces universality with the possibility of mutual recognition and appreciation; normative certainty with normative contingency; and the synthesis of liberal legality with the open-ended diversity, and even incompatibility, of legal pluralism. A pluralist approach to justice—one informed by the ethnographic research of Merry and other anthropologists—would be thoroughly non-teleological and fundamentally opposed—on empirical, historical, and ethical grounds—to the unifying and reductive pretensions of existing human rights and international criminal justice. A pluralist alternative would not begin by asking how apparently exotic and marginalized practices of justice (with a lowercase "j") could be shaped—through soft power, if necessary—to the "international norms and standards" of the "transitional justice imaginary" but would attempt to forge intercultural resonance across different justice traditions, even if this implies ultimate limits to the possibility for large-scale, international mobilization (Hinton 2018, 247).

For example, to revisit Hinton's (2018) nuanced ethnographic account of the Khmer Rouge trials in Cambodia, he describes how "justice" was practiced and understood by Neth Phally, whose eldest brother was murdered along with tens of thousands of others at S-21, the notorious interrogation, torture, and execution center in Phnom Penh. Although Neth did not understand most of the framing and explanations for the ECCC, he viewed his participation as a way to allow the spirit of his dead brother some measure of relief from decades of restlessness. Because his brother had been executed while blindfolded, Neth made sure to carry an old photograph of him at all times during the proceedings. As Neth explained to Hinton, this was so the spirit of his brother could enter the photograph and, for the first time, see those responsible for his death (242).

During a dramatic moment in the proceedings, Neth confronted Comrade Duch, the dreaded commandant of S-21 whose trial crystallized so many of the slippages and tensions in the effort to use the ideological and institutional framework of "global justice" to resolve finally—after more than thirty years—the trauma of the Khmer Rouge period in Cambodian history.[8] With the spirit of his dead brother staring through the photograph at Duch from his place on the witness stand, Neth listened as Duch

8. A math teacher before becoming a Khmer Rouge cadre, Comrade Duch was responsible for a facility at which one of the worst mass atrocities in human history was committed between 1976 and 1979. S-21 was opened at the site of a former high school. Classrooms were converted into spaces reserved for specific acts of torture: waterboarding, electric shock, strangulation, suffocation, removal of organs, and beatings, among others. Duch viewed the work of S-21 as essential to the success of the revolution and oversaw its horrors with bureaucratic detachment. Those who were taken to S-21 were not prisoners in the normal sense. As Duch explained during his testimony, "the detainees were 'treated as dead people' whose end had been briefly delayed" (Hinton 2016, 164). After receiving a list of new "detainees" from one of the guards, Duch casually added a short, handwritten note to the first page: "To the attention of Uncle Peng. Kill them all. 30 May 1978" (66). Convicted in 2010 of crimes against humanity, he died in prison in 2020 at the age of seventy-seven.

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apologized for the fact that Neth's brother had been killed at S-21. Interpreting this apology on behalf of his dead brother through his Buddhist beliefs, Neth acknowledged that Duch was trying to admit his bad deeds, something that is essential to Buddhist ethics. Nevertheless, reconciliation was not possible since Duch's actions prevented Neth from fulfilling his joint obligations with his honored elder brother (his *bâng)* to care for their parents in their later years (Hinton 2018, 244). Even more, Neth was unhappy that the unfamiliar courtroom procedures and expectations of global justice prevented him from fulfilling the Buddhist obligation to give a full rendering in public of the *tukkha* (suffering) that he and his brother endured (244).

Does the story of Neth provide evidence that the global "justice cascade" finally washed over Cambodia? Actually, it does when "global justice" is understood as a regime of liberal legal governance and intervention. But, from a pluralist perspective —a perspective that begins from within diverse justice traditions—the story of Neth is one in which his cultural grounding and ethical sensibility were overwhelmed by the infinitely more powerful apparatus of the ECCC, a formally "hybrid" court that nevertheless applies "international standards" under the close supervision of an entity called the United Nations Assistance to the Khmer Rouge Trials.[9] Despite the fact that Neth was able to bring a small token of his own justice tradition—the photograph, imbued with the spirit of his dead brother—into the courtroom, it seems clear that the ideology of commensurability that justified the creation of the ECCC left no room for the actually existing incommensurabilities between "global justice" and Khmer Buddhist practices.

A second example of the possibilities for a pluralist approach to justice comes from the longitudinal ethnographic research of Arzoo Osanloo (2009, 2020), an Iranian American anthropologist and socio-legal scholar who studies cultures of justice seeking in Iran. As Osanloo shows, at the national level, the official justice system in Iran is curiously shaped by both international law and institutions and the transnational activists who have relentlessly named and shamed Iran over the decades in ways that recall the Orientalizing rhetoric of the American government under George W. Bush, which infamously declared the country to be part of a parody-inducing "Axis of Evil."[10] In response, the Islamic Republic has emphasized the extent to which the national criminal justice system, in particular, which is based on Qur'anic principles, is actually superior to the "Western" system of human rights and justice, which the Iranian government and the country's religious leaders view as embodying the full suite of degraded and immoral values associated with liberalism and secularism.[11]

But well beyond the textual boundaries and strict application of Iranian law, which includes capital punishment for a wide range of offences and mechanisms of corporal

9. In its official presentation, the Extraordinary Chambers in the Courts of Cambodia (ECCC) goes to great lengths to emphasize the fact that, despite the fundamental importance of the United Nations Assistance to the Khmer Rouge Trials, it is a "Cambodian court," albeit one with "international participation." The symbol of the ECCC, created for this purpose, is a seated figure taken from the iconography of ancient Angkor, surrounded by "the United Nations wreath of olive branches symbolizing peace" (ECCC 2021).

10. For example, Amnesty International's (2020) report on Iran was entitled "Trampling Humanity."

11. Indeed, Iranian officials and religious scholars played a key role during the drafting of an international alternative to the UDHR itself, the Cairo Declaration of Human Rights in Islam, which was adopted in 1990 by the Organization of Islamic Cooperation (Mayer 1996).

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punishment—like public floggings and amputations—that have been the particular target of liberal legal international opprobrium, Osanloo discovered yet another system of justice at work, one that operates in the shadows of state law. Although the Islamic Republic justifies its legal system as the embodiment of wider Islamic values, especially retributive justice, ordinary Iranians have found ways to develop a justice tradition that is shaped by a quite different, but equally important, Islamic value—the value of mercy. As Osanloo's (2020) research shows, parties to legal cases are encouraged to forgive the people with whom they are in conflict, including perpetrators of crimes who would otherwise face the harsh punishments of Iran's form of Shariah law. As she explains, wide sectors of Iranian society—lawyers, artists, actors, social workers, even some religious officials—participate in different ways in the promotion of mercy as a central social value, one whose expression culminates in the emergence of a novel right that exists only within this particular religious, political, and historical context: the right to forgive.

When people exercise this right, they are able to shape collectively the course of justice in Iran from below. What results is a justice tradition that is largely unknown to the "international community" and, even more, organized in ways that run counter to the liberal legal ideological construction of justice in Iran as violative of international human rights *per se*.[12] Nevertheless, this everyday and socially constructed justice tradition clashes with the ideology of commensurability, which assumes a uniform standard of legal compliance and procedure, a standard against which Iran is found chronically wanting. But even the culture of forgiveness is not commensurable in the strict sense since a right to forgive does not exist within international law. Even more, its emergence must be understood as the result of a complex of factors that are not generalizable, not subject to promotion through global activism, and not capable of being measured through global indicators.

Yet, from a pluralist perspective, the culture of forgiveness in Iran offers obvious trans-local potential since the exercise of mercy is something that is interculturally resonant; it is a normative value that can be recognized and appreciated across even widely diverse justice traditions. But intercultural resonance is quite different than commensurability; it is grounded in different assumptions, it points to different forms of trans-local mobilization, and it likewise suggests clear limitations to the possibility of building a truly legitimate system of "global justice" based on "international norms and standards." And it goes without saying that intercultural resonance is much too ambiguous and interpretive to be rendered into statistical categories as part of the process of global classification and ranking.

But to argue for a pluralist alternative to the existing system of international human rights and justice—an alternative based in intercultural resonance, context, and, most importantly, the phenomenological richness and diversity of actual justice practices—does not depend, it should be added, upon a problematic conception of legal-cultural difference. Indeed, to imagine a world of tightly bounded justice traditions would be to commit the inverse of the same category of error that lies at the heart of the ideology of commensurability, yet, instead of "uniform norm[s] everyone shares," such an equally false approach would assume normative isolation and mutual

12. See note 9 above.

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incomprehensibility. Instead, a pluralist approach to justice would be informed by yet another concept drawn from Merry's (2006a, 2006b) body of research—"vernacularization."

As she has demonstrated, the international system of human rights and justice is vernacularized in different ways by different actors within a wider system of global governance and regulation. However, vernacularization does not mean the mere translation of international norms into "local" linguistic or cultural categories. This is what might be thought of as "vulgar vernacularization," and it is the meaning that has been widely, and mistakenly, given to Merry's theorization. What Merry actually observed ethnographically and then described was something very different: processes through which normative meanings were creatively and collectively negotiated against a background of international intervention and legal soft power. Even so, Merry's research challenged the simplistic claims by critics of international law that viewed it as a form of "moral imperialism," one in which elites from the global North seek to impose the culturally specific norms of liberal legality under the guise of global standards (Hernández-Truyol 2002).

Instead, as she argued, vernacularization offers a window into much more "fragmentary" processes and lines of influence (Merry 2006a, 227). This perspective views the relationship between different justice traditions and the system and practices of international law—which Merry would understand as yet another, albeit more powerful, justice system—in a way that allows for both distinctiveness and the possibility, even inevitability, of change within a wider world marked by interconnection at all scales. In other words, vernacularization offers a conceptual framework for mediating the tensions between different justice traditions—like those in Cambodia and Iran—and the vast global justice assemblage constituted by "international and national NGOs, governments, UN officials, and a wide array of economic and social pressures" (228).

By adopting a pluralist approach to justice—an approach built on vernacularization—what is lost is the liberal legal fantasy of the "Age of Human Rights," the vision in which a predefined set of international norms would become the "foundation of freedom, justice and peace in the world," as the UDHR put it. What would also be lost is the rationale for global measurement and classification through indicators since the "fragmentary" global landscape of justice traditions suggested by a pluralist alternative is one in which incommensurability is viewed as our greatest potential collective resource, one through which multiple kinds of "freedom, justice and peace" might be found. But what would be gained in leaving aside the distortions of "global justice" would be a renewed capacity to understand and learn from a wide spectrum of justice practices, the many ways in which people confront and make sense of conflict, relationality, and the ethical demands of everyday life.

CONCLUSION: SMALL DATA, ETHNO-QUANTIFICATION, AND THE TEXTURE OF SOCIAL LIFE

To conclude, let me first restate the main contributions and arguments of the article before extending the analysis to consider current innovations that might offer

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a middle-ground response to Merry's critique of indicators, a response that is arguably consistent with the pluralist approach to justice that I have proposed. I first situated Merry's research on global measurement within a wider history in which scholars observed the growing importance of statistical evaluation within government policy making, international intervention, academia, and private corporate governance. The rise of "audit culture" was closely connected to the increasing neoliberalization of social and economic life during the 1980s and 1990s, when many national governments began dismantling the remaining vestiges of the welfare state in favor of private and local provision of what had previously been public goods and services. Audit culture developed as a mechanism for measuring the efficiency of this transition, in which the withdrawal of the state from many of its former sectors was replaced with the expectation for self-governance, self-regulation, and the demand for ever-increasing levels of accountability.

Yet, as scholars recognized early on, the process of measuring various kinds of complex social, economic, and political phenomena tended to yield quantitative data that were detached from the underlying realities they purported to render into statistical categories. This problem became more acute when audit culture was taken up by international and transnational organizations later in the post-Cold War when the promotion of international human rights and international justice was coupled with monitoring, classification, and ranking. As Merry showed, the widespread imperative to measure and classify human rights violations produced a highly distorted statistical picture of global human rights compliance, a distortion that nevertheless became very useful for broader regimes of global governance and intervention.

As I have argued, Merry's critique was not principally concerned with the kinds of indicators that were being used to measure complex phenomena like the "right to play" in Tanzania, gender violence, or sex trafficking. Instead, the central problem was both procedural and ideological. As she has explained, the quantitative measurement of human rights and justice required the successive transformation of data from one level of extrapolation to the next so that, by the time a massive aggregated global index was produced, it had no real relation to actual human rights practices in particular places at particular times. And, ideologically, Merry's research on indictors questioned the broader theories of commensurability and universality in which international human rights and justice were grounded. In unpacking the "seductions of quantification" through ethnographic research, Merry's work also called into question many of the basic assumptions on which much of the postwar world order was constructed. Commensurability, it turns out, makes for good global governance, but it utterly fails as ethnographic social science.

I then extended this discussion of the heart of Merry's critique of indicators to the question of "justice." As anthropological research has likewise revealed, "global justice" is subject to the same forces of measurement and intervention, which are organized around a logic I have described as an "ideology of commensurability." After showing how "justice," in fact, does not exist in practice in the way assumed by this ideology, I then used illustrations from the ethnographic literature to develop an alternative to "global justice," one based on pluralism and the potential to be found in the acceptance of incommensurability between and even within different justice traditions. I argued

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that, far from "global justice," trans-local mobilization from a pluralist perspective would be oriented toward much less ambitious ideals such as mutual recognition and appreciation and intercultural resonance.

It goes without saying that the pluralist alternative to global justice that I have in mind is not one that would be easily accepted in the current conjuncture, in which the search for "big data" takes the ideology of commensurability to its logical conclusion: reality only emerges at the largest algorithmic scales, scales that are both defined and circumscribed by digitization, predictive analytics, and storage capacity. Yet this "new frontier of power" is one that is anathema to anthropologists of law and justice like Merry, whose research reveals the actual non-reductive and non-algorithmic nature of legal and ethical life in all of its cross-cultural and historical diversity (Zuboff 2019). This research, in other words, offers a "small data" alternative to the fallacies and dangers of what might be thought as "hyper-quantification," the effort to extend measurement and statistical surveillance into every aspect of our social, physical, and affective lives.

Yet if Merry's research undermines the ideology of commensurability and the global big data regimes that are its chilling realization, does this mean that measurement has no place in the alternative that I have proposed, one in which intercultural resonance and appreciation are both possible and potentially transformative across justice traditions? Here, an intriguing potential answer comes through the work of interdisciplinary development and conflict researchers like Roger Mac Ginty (2013) and Pamina Firchow (2018), who have developed what they call "everyday" indicators, precisely in an effort to preserve the possibility of measurement while recognizing most of the critiques of traditional global indicators.

What they propose is radically different from the kind of global measurement systems studied and critiqued by Merry. Instead, they advocate for an approach that, from an anthropological perspective, might be called "ethno-quantification"—that is, people and communities themselves both generate indicators, or measurement categories, and then take responsibility for using them as part of local, participatory processes of "peace building." In Firchow's (2018, 3–4) phrasing, "everyday" indicators are deeply contextual, and, from my perspective, at least partly incommensurable, yet also potentially interculturally resonant: "Everyday indicators are usually quite simple and deal with various aspects of our daily lives depending on the community we live in. Indicators can vary from hearing barking dogs at night, to the coroner removing dead bodies from the street in a timely fashion, to being attended promptly by a doctor when you are sick, or being able to attend a village festival."

Without knowing where the project to develop "everyday indicators" as a response to the wider critiques of quantification and the ideology of commensurability will eventually lead, at least one thing can be said for certain. Although Merry (2016, 221) was not able to respond to the proposal to develop an ethno-quantitative alternative to global human rights and justice indicators, I think she would have agreed that they represent a meaningful effort to make the "texture of social life" the basis for evaluation, in which intervention and need are derived from the "lives of nonelites around the world" rather than through the "lens of cosmopolitan experts."

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