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Gender Indicators as Global Governance: Not Your Father's World Bank

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CHAPTER 1

GENDER INDICATORS AS GLOBAL GOVERNANCE: NOT YOUR FATHER'S WORLD BANK

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As feminism has come of age, it has powerfully instantiated itself into global governance. What are the tools feminism has borrowed—even co-opted—to embed itself within governance? Do these tools enhance or diminish the liberatory potential of feminism? This chapter looks at one tool—the use of quantitative indicators to advance gender equality in global governance, with a focus on the World Bank's relatively new Women, Business and the Law (WBL) program,[1] as a microcosm of the recent explosion and popularity of gender indicators.[2]

The claim that feminists (at least some) now "walk the halls of power"[3] is captured in the construct, "Governance Feminism," that Janet

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1 *See Women, Business and the Law*, WORLD BANK, http://wbl.worldbank.org (last visited July 5, 2015).

2 For examples of the rise of gender indicators, *see, e.g.*, Hillary Rodham Clinton, Secretary of State, U.S. Department of State, Remarks at the Evidence and Impact: Closing the Gender Data Gap Conference, http://www.state.gov/secretary/20092013clinton/rm/2012/07/195244.htm (July 19, 2012); Jim Kim, President, World Bank, Remarks at the Evidence and Impact: Closing the Gender Data Gap Conference, http://www.worldbank.org/en/news/speech/2012/07/19/remarks-world-bank-group-president-jim-yong-kim-evidence-impact-closing-gender-gap (July 19, 2012) (personally launching a gender data portal in one of his first public appearances as Bank President; the Evidence and Impact conference was co-hosted by the World Bank, the U.S. State Department, and the polling firm, Gallup); U.N. Secretary-General, *Women and Peace and Security: Rep. of the Secretary-General*, U.N. DOC. S/2010/173 (Apr. 6, 2010) (gender indicators developed to evaluate and facilitate the integration of gender in peace and security).

3 JANET HALLEY, SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM 21 (2006) [hereinafter HALLEY, SPLIT DECISIONS].

Halley et al. promote.[4] However, Governance Feminism has its costs: "Women benefit differentially; some are harmed; and conflicts among feminists about what worlds to imagine are prematurely settled."[5] As Dianne Otto notes, efforts to theorize about Governance Feminism should engage with "familiar accounts of feminist attempts to engage with international law and its institutions, [which] tell a saga of [ongoing] 'marginalisation,' 'silencing,' and 'talking to ourselves.' "[6] Exploring the complexity—indeed the paradox—of Governance Feminism, Halley and her coauthors explore its limitations and risks, even as they celebrate its achievements.[7]

This chapter draws on the notion of Governance Feminism to examine how feminism has become embedded in the World Bank through the use of gender indicators that measure the legal rights of women on a country-by-country basis. I conclude that while feminism has shaped the way the Bank pursues law and development, the transformative potential of feminism within the Bank has been limited. Even as feminism has influenced the Bank's policies and funding, the Bank has in turn co-opted feminism to advance the Bank's economic growth agenda.

I ground these conclusions about feminism and its limits through exploration of two clusters of questions about gender indicators at the World Bank. First, what do gender indicators tell us about whether feminism is changing global governance or whether governance is changing feminism? Does governance by indicators have a deradicalizing effect on feminism? Put another way, can feminism use the master's tools (i.e., indicators) to dismantle the master's house (i.e., the current structure of global governance, which incorporates male privilege) or at least substantially renovate it?[8]

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[4] Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335 (2006) [hereinafter Halley et al., *Governance Feminism*]. Others view this phenomenon through the lens of "gender mainstreaming," but this chapter focuses on the intertwining of feminism and governance.

[5] Janet Halley, *Describing and Assessing Governance Feminism,* Chapter 1 *in* Janet Halley, Prabha Kotiswaran, Rachel Rebouche, and Hila Shamir, Governance Feminism: An Introduction at 4 (Minn. U.P. forthcoming). "Merging into the mainstream can …. consolidate a particularistic, identity-based project, sometimes at the expense of alternative affiliations that ignore the siren call of victimization and identity .... [and] [s]ome of the best things within and about feminism get left out." *Id.*

[6] Dianne Otto, *Power and Danger: Feminist Engagement with International Law Through the UN Security Council*, 32 AUSTL. FEMINIST L.J. 97 (2010) (internal citations omitted).

[7] HALLEY, SPLIT DECISIONS, *supra* note 3, at 29–32; Halley et al., *Governance Feminism*, *supra* note 4, at 341–42.

[8] *See* AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, *in* SISTER OUTSIDER 110, 112 (1984) ("For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change."); *see also* Otto, *supra* note 5, at 98 (invoking Lorde as a critique of Governance Feminism).

Second, when indicators are used to measure legal rights in the context of gender equality, what do these quantitative measurements make visible, and what do they obscure? What are the normative and practical implications of this for feminism? And what are the implications of economizing gender equality for feminism?[9]

Other scholarship on Governance Feminism (and critiques of it) centers on criminal punishment, specifically in the context of sexual violence in war and trafficking.[10] This scholarship identifies " 'the fierce turn in American feminism toward the state,' " particularly the tendency toward criminalizing " 'bad things that men did to women[.]' "[11] In shifting from international criminal law to law and development, this chapter analyzes the turn to the state as regards government and intergovernmental development efforts that promote monetizing and quantifying feminist values through indicators.

Numeric indicators are a classic governance device for identification, allocation, and evaluation. Tracing the "genealogy of indicators," anthropologist Sally Engle Merry describes the rise of indicators as a "project of modernity," noting:

> Numbers as an instrument of knowledge production were developed first for business transactions . . . and subsequently as instruments of state governance . . . for administration and tax . . . , but it is only with the development of the modern state that statistics have been used to describe the characteristics of populations themselves.[12]

Within legal scholarship, the continued growth of empirical studies, such as law and economics, has proliferated. Within the development field, indicators drive decision-making in policy and program design,

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9 *Cf.* GALIT A. SARFATY, VALUES IN TRANSLATION: HUMAN RIGHTS AND THE CULTURE OF THE WORLD BANK 107, 126 (2012) [hereinafter SARFATY, VALUES IN TRANSLATION] (discussing the trend toward economizing human rights within the World Bank):

> [T]hings really happen in the Bank when an economic case could be made for them. You put [them] in economic language. . . . It [ ] became acceptable internally to talk about corruption when people could show with cross-country regressions that it's related to lower growth. . . . People needed [economic-based evidence] to say that "OK, it's all right for us to work on this." So one obstacle would be to try and articulate rights issues in the way that economists could understand.

Id. at 127 (quoting a March 14, 2006, interview with an official with the World Bank Development Research Group); *see also id.* at 131 (discussing quantifying the social capital concept and translating it econometrically).

10 *See, e.g.*, Halley et al., *Governance Feminism*, *supra* note 4; Otto, *supra* note 5; Kelly Askin, *A Decade of the Development of Gender Crimes in International Courts and Tribunals: 1993 to 2003*, 11 HUM. RTS. BRIEF 10TH Anniversary Issue at 16 (2004).

11 John Sutherland, *The Ideas Interview: Janet Halley*, GUARDIAN (Aug. 7, 2006), http://www.guardian.co.uk/world/2006/aug/08/gender.academicexperts (interview quoting Halley).

12 Sally Engle Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 52 CURRENT ANTHROPOLOGY S83, S89 (2011) [hereinafter Merry, *Measuring the World*].

implementation, and monitoring and evaluation.[13] This chapter synthesizes feminist criticism, empirical studies, and law and development[14] to analyze the emergence of *gender* indicators as a tool of global governance in vital decisions concerning the allocation of law and development assistance.[15]

The World Bank promotes a dual narrative about why gender equality as a legal norm matters for development. First, "gender equality matters in its own right, because the ability to live the life of one's own choosing and be spared from absolute deprivation is a basic human right, to be enjoyed by everyone, whether one is male or female."[16] Second, gender equality "matters instrumentally, because greater gender equality contributes to economic efficiency and the achievement of other key development outcomes."[17]

While focused on the World Bank's WBL program, this chapter considers the broader ecology within which gender indicators have flourished, to identify lessons about law reform, global governance, and transnational feminism. In so doing, I examine the implications of utilizing a technology of corporate governance—numerical measurement

[13] *See, e.g.*, WORLD BANK, WORLD DEVELOPMENT REPORT: GENDER EQUALITY AND DEVELOPMENT 37 (2012) [hereinafter 2012 WDR ON GENDER]; USAID, GENDER EQUALITY AND FEMALE EMPOWERMENT POLICY 1 (2012), http://pdf.usaid.gov/pdf_docs/PDACT200.pdf [hereinafter USAID, POLICY]; Memorandum from the Development Economics Vice Presidency and Poverty Reduction and Economic Management Network for World Bank's staff, Engendering Justice: A Gender Assessment's Impact on Project Design (May 2005), *available at* http://www1.worldbank.org/prem/PREMNotes/premnote98.pdf; Preface, *in* Andrew D. Mason & Elizabeth M. King, ENGENDERING DEVELOPMENT—THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE xii (2001), *available at* http://documents.worldbank.org/curated/en/2001/01/891686/engendering-development-through-gender-equality-rights-resources-voice.

[14] Note that the law and development field itself sits at the intersection of economic, legal, and institutional theory. *See* David M. Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice*, *in* THE NEW LAW AND DEVELOPMENT: A CRITICAL APPRAISAL 1 (David M. Trubek & Alvaro Santos eds., 2006) [hereinafter Trubek & Santos, *New Critical Practice*].

[15] This builds on my broader interest in new governance approaches (beyond gender) to diagnosing, managing, and solving transnational problems. *See, e.g.*, Catherine Powell, *Libya: A Multilateral Constitutional Moment?*, 106 AM. J. INT'L L. 298 (2012).

[16] 2012 WDR ON GENDER, *supra* note 14, at 47.

[17] *Id.*; *see also* SARFATY, VALUES IN TRANSLATION, *supra* note 10, at 115–20 (discussing the Bank's use of intrinsic and instrumentalist claims in the context of human rights). As discussed below in Part I, this dual frame has been echoed by the Obama Administration in the President's first National Security Strategy. WHITE HOUSE, NATIONAL SECURITY STRATEGY 38 (2010), http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf [hereinafter NATIONAL SECURITY STRATEGY]. Then-Secretary of State Hillary Clinton and U.S. Agency for International Development (USAID) Administrator Raj Shah each issued gender policy guidance, further raising the profile of this dual narrative within the Administration. *See* Clinton statement, U.S. DEPARTMENT OF STATE POLICY GUIDANCE: PROMOTING GENDER EQUALITY TO ACHIEVE OUR NATIONAL SECURITY AND FOREIGN POLICY OBJECTIVES (2012), *available at* http://www.state.gov/documents/organization/189379.pdf [hereinafter STATE POLICY GUIDANCE] (fact sheet) (summarizing internal policy guidance cable); Shah statement, USAID, POLICY, *supra* note 14, at iv.

and analysis—as an instrument of the modern state and now, by extension, multi-governmental institutions.[18]

The Bank is both an enormous producer of gender indicators and a consumer of them, in measuring patterns of and trends in gender inequality. These indicators inform the Bank's own work and influence its partners (including aid recipients and donors) and other stakeholders.

Increasingly, governments and international organizations have relied on quantitative indicators to make the case that investing in women and girls yields not only beneficial development outcomes for the sake of women and girls themselves, but also positive outcomes for whole *communities*, for whole *nations*, and even for the pursuit of *international* peace and prosperity.[19] Further, the claim is that investing in women and girls leads to more *sustainable* outcomes and is thus a more *efficient* use of resources than prior development strategies that failed to use gender as a pathway for scarce, targeted resources.[20]

The goal of this chapter is to interrogate what is gained and what is lost through the use of gender indicators in the service of these ambitious claims. Do such quantitative metrics make gender inequality more visible and therefore more susceptible to remediation? Does the use of data create (at least the illusion of) greater objectivity and accountability (to taxpayers at the national level and shareholders within international financial institutions)?

Conversely, in what ways do numbers obscure certain forms of gender dominance and subordination that are not easily reducible to quantification (such as gender-based violence and women's empowerment and autonomy)? Empiricism often relies on proxies to measure these phenomena. But is the solution to come up with more and better data?

Because international law has been traditionally based on relations between states, feminist theorists have criticized its structure for masking gender inequality in the private sphere (for example, in the market) and by private actors (for example, by obscuring accountability for gender- and sexual-based violence by an abusive spouse or a private

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[18] For a broader consideration of the use of indicators in transnational law and regulation, see, for example, Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Introduction: Global Governance by Indicators*, *in* KEVIN E. DAVIS, ANGELINA FISHER, BENEDICT KINGSBURY & SALLY ENGLE MERRY, GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION CLASSIFICATION AND RANKINGS, at 3 (2012)[hereinafter Davis, Kingsbury & Merry, *Global Governance by Indicators*] (collection of case studies across various fields of transnational law).

[19] *See, e.g.*, Melanne Verveer, *Why Women Are a Foreign Policy Issue*, FOREIGN POL'Y (Apr. 12, 2012), http://www.foreignpolicy.com/articles/2012/04/23/why_women_are_a_foreign_policy_issue (the author here was then-Secretary of State Hillary Clinton's Ambassador-at-Large for Global Women's Issues from 2009 to early 2013); 2012 WDR ON GENDER, *supra* note 14.

[20] *See, e.g.*, USAID, POLICY, *supra* note 14, at 1; 2012 WDR ON GENDER, *supra* note 14.

militia leader).[21] This chapter investigates whether and how the use of gender indicators fits into these and other prevailing accounts and/or critiques of international law and global regulation.

The chapter is organized around five parts. Part I analyzes the World Bank's dual narrative on why gender equality matters for development. The fact that the instrumental value of gender equality (as told through gender indicators) has been emphasized over its intrinsic value represents a strategic choice to get institutional buy-in. But it also represents a normative choice that has practical implications. Part II discusses the rise of indicators as a mode of governance, including in the development assistance field and, by extension, the law and development field. Part III gives an overview of the burgeoning construction and use of *gender* indicators as a mode of Governance Feminism within the United Nations (U.N.) family (including within the World Bank's WBL program) in response to earlier indicators that were insufficiently attentive to gender. Part IV summarizes criticism of gender indicators for falling short themselves in the way they have been conceived, interpreted, and deployed. Much of the criticism of gender indicators involves methodological arguments, rather than arguments questioning the normative implications of relying on indicators as a way of evaluating gender justice. Building on these critiques, Part V circles back to the normative—and by extension practical—implications of the turn to gender indicators (and the motives underlying them), concluding with thoughts about how gender indicators might fit more meaningfully into the feminist project.

I. THE WORLD BANK'S DUAL NARRATIVE: THE INTRINSIC AND INSTRUMENTAL VALUE OF GENDER EQUALITY

While highlighting both the intrinsic value and the instrumental value of gender equality, the World Bank's work inherently privileges the latter. Because of its role as a development institution that privileges economic growth and efficiency, the Bank views gender primarily from a cost-benefit perspective. Even though the Bank's core mission is to "[e]nd extreme poverty within a generation and boost shared prosperity"[22] – and its agenda has expanded to include a comprehensive set of programs to advance this mission – its comparative advantage is economics and promoting market-friendly policies.[23]

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[21] See Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991), and its progeny for an example of groundbreaking feminist critique.

[22] *About*, WORLD BANK, http://www.worldbank.org/en/about (last visited Aug. 12, 2013).

[23] Jessica Einhorn, *Interview with the Author*, FOREIGN AFFS. (Sept. 1, 2001), http://www.foreignaffairs.com/articles/64199/jessica-einhorn/interview-with-the-author (response to letters

The Bank's 2012 World Development Report—which took gender equality and development as the primary theme—is an example of this dual narrative.[24] The Report initially states that gender equality is a core objective with its own intrinsic value. It describes gender equality as "a process of expanding freedoms equally for all people."[25]

However, the Report then largely focuses on the instrumental justification for gender equality as being "smart economics."[26] From the Bank's perspective, gender equality is "an instrument for development" because "it can enhance economic efficiency and improve other development outcomes in three ways."[27] First, eliminating gender barriers in education, economic opportunities, and productive inputs "can generate broad productivity gains[.]"[28] Second, "improving women's absolute and relative status feeds many other development outcomes, including those for their children."[29] Third, gender equality is an instrument for development through "leveling the playing field—where women and men have equal chances to become socially and politically active, make decisions, and shape policies," which is more "likely to lead over time to more representative, and more inclusive, institutions and policy choices and thus to a better development path" overall.[30]

This emphasis on the instrumental value of gender equality over its intrinsic value is an institutionally strategic decision. The World Bank, the United Nations system generally, and national governments have sought to mainstream gender throughout their organizational structures. Pitching gender equality as facilitating broader goals of these institutions is more likely to secure buy-in by the leadership of these organizations, who are frequently men or, regardless of their gender, may not necessarily view gender equality as an institutional priority.

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in reaction to the author's earlier piece, *The World Bank's Mission Creep*, FOREIGN AFFS. (Sept./Oct. 2001), *available at* http://www.foreignaffairs.com/articles/57235/jessica-einhorn/the-world-banks-mission-creep#).

[24] 2012 WDR ON GENDER, *supra* note 14.

[25] *Id.* at 3 (citing and paraphrasing AMARTYA K. SEN, DEVELOPMENT AS FREEDOM (1999) [hereinafter SEN, DEVELOPMENT AS FREEDOM]). The Bank's Report also cites to MDG3 and the main international treaty on women's equality, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). *See also* GEND. & DEV. GRP. IN THE POVERTY REDUCTION & ECON. NETWORK, WORLD BANK, GENDER EQUALITY AS SMART ECONOMICS: A WORK IN PROGRESS (2011), *also available at* http://bit.ly/1ospFzE [hereinafter GENDER EQUALITY AS SMART ECONOMICS].

[26] 2012 WDR ON GENDER, *supra* note 14. To be fair, a section of the Report focuses on "promoting women's agency[,]" which, along with other references sprinkled throughout the Report, includes references to the ways in which women's agency "has intrinsic relevance for women's individual well-being and quality of life." *Id.* at 151. Nevertheless, the bulk of the Report—even the section on women's agency—is focused on the "instrumental relevance" of women's equality and empowerment.

[27] *Id.* at 3.

[28] *Id.*

[29] *Id.*

[30] *Id.*

Thus, increasingly, international organizations, national foreign ministries, and development agencies are touting the key links between gender equality on the one hand and economic prosperity and even world peace on the other. As the World Bank's 2012 World Development Report says in its opening paragraph, "[g]reater gender equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative."[31] This is echoed in the U.S. National Security Strategy, which states, "[e]xperience shows that countries are more peaceful and prosperous when women are accorded full and equal rights and opportunity."[32] The World Bank views the monetary benefits of investing in women and girls as "smart economics."[33] Similarly, former Secretary of State Hillary Clinton refers to promoting the status of women as an exercise of "smart power."[34]

At the same time, economizing gender involves a process of translation that can be viewed as a form of adaptation to an organizational culture—or, as Sally Engle Merry puts it, a form of "vernacularization."[35] Economics and qualitative analysis are the

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[31] 2012 WDR ON GENDER, *supra* note 14, at xx.

[32] NATIONAL SECURITY STRATEGY, *supra* note 18, at 38; *see also* Lucy Madison, *In Farewell Speech, Clinton Calls for "Smart Power" on Global Stage*, CBS NEWS (Feb. 1, 2013), http://www.cbsnews.com/8301–250_162–57566994/in-farewell-speech-clinton-calls-for-smart-power-on-global-stage/ [hereinafter Madison, *Farewell Speech*] (quoting former Secretary of State Hillary Clinton as saying: "The jury is in. The evidence is absolutely indisputable: If women and girls everywhere were treated as equal to men in rights, dignity, and opportunity, we would see political and economic progress everywhere"); Mary-Katherine Ream, *USAID Launches New Gender Policy*, IIP DIGITAL (Mar. 1, 2012), http://iipdigital.usembassy.gov/st/english/article/2012/03/201203011512.html#axzz2b6DzOGzH ("This is the first time in 30 years the U.S. government has updated and issued a formal approach to gender and development, officials said. It reveals a fundamental shift in the aid community's conversation on women."); Raj Shah (Administrator, USAID), White House USAID Gender Policy Launch Event (notes on file with the author) ("It's been 30 years since the U.S. Government has issued a gender policy. This is shocking, given that we say woman are central to solving development problems.").

The first Gender Policy Guidance issued by the State Department notes:

> Evidence shows that investments in women's employment, health, and education are correlated with greater economic growth and more successful development outcomes. Engaging women as political and social actors can change policy choices and makes institutions more representative and better performing. And a growing body of evidence shows that women bring a range of unique experiences and contributions in decision-making on matters of peace and security that lead to improved outcomes in conflict prevention and resolution.

STATE POLICY GUIDANCE, *supra* note 18; *see also* USAID, POLICY, *supra* note 14.

[33] *See, e.g.*, GENDER EQUALITY AS SMART ECONOMICS, *supra* note 26; 2012 WDR ON GENDER, *supra* note 14, at xx ("Gender equality is . . . smart economics"); *id.* at 3 ("Gender equality matters for development—It is smart economics").

[34] Madison, *Farewell Speech*, *supra* note 33 (quoting Clinton as pointing to gender equality as an example of smart power—a compromise between hard, military power and the soft power of moral suasion—because gender "is not only a moral issue. Which of course it is. It's an economic issue and a security issue. . . . It therefore must be central to U.S. foreign policy"); *see also* Verveer, *supra* note 20 ("[P]romoting the status of women is not just a moral imperative but a strategic one; it's essential to economic prosperity and to global peace and security. It is, in other words, a strategy for a smarter foreign policy.").

[35] SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006).

vernacular of the World Bank. However, vernacularization has its limits, both as a normative matter and as a practical one. Normatively, vernacularization tends to involve adopting or co-opting the local culture. Therefore, liberatory projects such as feminism may be sapped of their emancipatory potential when confronting an organization's dominant ideology.[36] As Galit Sarfaty notes, "a paradox of vernacularization" is that a project that otherwise seeks to challenge practices, policies, and structures of an institution may end up losing its own normative valence in the face of a potentially more powerful one.[37]

As a practical matter, the emphasis on quantitative measurement "neglects what cannot be counted"[38] and obscures women's empowerment, voice, and agency in favor of formal equality and efficiency. The emphasis on the instrumental value of gender equality fits into a broader trend toward "evidence-based investments"[39] and "results-based management."[40]

This trend toward quantification often means that indicators are deployed as proxies to measure activities that are otherwise hard to quantify. For example, measures of "women's empowerment" must rely on proxies of autonomy, such as whether a woman needs her husband's permission to travel, sign a contract, buy land, etc., as a formal matter. In fact, whatever the law is in an area as a formal matter may be beside the point, if a woman can be barred from any of these activities as a matter of practice or custom. Similarly, activities (such as training programs, enrollment, or graduation rates) are presumed to correspond to particular outcomes (i.e., educational attainment),[41] when in practice, women and girls may have difficulty participating fully in a program for any number of reasons, including violence, harassment, lack of child care, lack of safe and affordable transportation, etc.

At the same time, gender indicators have helped advance a feminist agenda within the development landscape by threading the needle of instrumentalist economic growth and efficiency goals within narratives

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[36] SARFATY, VALUES IN TRANSLATION, *supra* note 10, at 151.

[37] *Id.* at 141.

[38] Sally Engle Merry, *Firming Up Soft Law: The Impact of Indicators on Transnational Human Rights Legal Orders* 38 (draft on file with author) [hereinafter Merry, *Firming Up Soft Law*].

[39] USAID, POLICY, *supra* note 14, at 1; *see also* Danny Leipziger & Eckhard Deutscher, *Foreword*, *in* EQUALITY FOR WOMEN: WHERE DO WE STAND ON MILLENNIUM DEVELOPMENT GOAL 3?, at xv (Mayra BuviniĆ et al. eds., 2008), *available at* http://siteresources.worldbank.org/INTGENDER/Resources/EqualityforWomenfinal.pdf (the coauthors worked for World Bank and OECD, respectively) ("There is compelling *evidence* of the importance of gender equality for poverty reduction and sustainable growth. So it should come as no surprise that most development actors—international agencies, bilateral donors, and most developing countries—have an official policy for promoting gender equality.") (emphasis added).

[40] UNDP, RESULTS BASED MANAGEMENT: CONCEPTS AND METHODOLOGY (2000), *available at* http://web.undp.org/evaluation/documents/RBMConceptsMethodgyjuly2002.pdf.

[41] Merry, *Firming Up Soft Law*, *supra* note 39, at 12.

concerning the intrinsic value of gender equality. This is apparent in the assessments gender indicators have helped shape—on a range of gendered phenomena—from "missing women" and "missing girls"[42] to the "Girl Effect"[43] to evaluating persistent gaps and discrimination in numerous areas. These narratives are powerful and penetrating, in large part because of the story the numbers tell. Girls and women are more likely to die; girls' school enrollment continues to be low; women everywhere tend to earn less; women are more likely to do unpaid family work or to work in informal sectors; women are underrepresented in the upper echelons of formal politics and have less say in decisions and control over household resources.[44]

The World Bank itself attributes the persistence of such gender inequalities to a variety of factors that numbers alone may not be able to fully diagnose, such as the fact that there may be: a single institution or policy "fix" that is blocked; multiple constraints that are mutually reinforcing (in ways that are not easily measurable); and entrenched

[42] Amartya Sen, *More Than 100 Million Women Are Missing*, 37 N.Y. REV. BOOKS (1990), *also available at* http://ucatlas.ucsc.edu/gender/Sen100M.html (while the numbers have since been updated, Sen introduced the phenomenon and estimated that 100 million women were "missing"—their potential existence extinguished through sex-selective abortion, infanticide, or inadequate nutrition during infancy); *see also* 2012 WDR ON GENDER, *supra* note 14, at 15 (discussing how the phenomenon of "missing girls" and "missing women" is based not only on preference for sons, discrimination, and social norms, but also on poor institutions that "force households to choose among many bad options" and "multiple service delivery options").

[43] Prominently branded by the Nike Foundation, the "Girl Effect" relies on the empirical claim that "investing in a girl stops poverty before it starts." NIKE FOUNDATION, http://nikeinc.com/pages/the-nike-foundation/ (last visited Aug. 18, 2014); *see also* Stuart Elliot, *Nike Harnesses Girl Effect Again*, N.Y. TIMES (Nov. 10, 2010), http://www.nytimes.com/2010/11/11/giving/11VIDEO.html (tracing the roots of the "Girl Effect" campaign back to Nike's "if you let me play" campaign regarding the participation of women and girls in sports, and noting that while the "Girl Effect" campaign rebrands poverty, it is purposefully not branded as Nike). Data on the "Girl Effect" website reflects that "when we all invest in girls, everyone wins[,]" since such investments lead to improvements in income (as each additional year of secondary school increases a girl's eventual wages by 15 to 25 percent) and in health (as mothers get more schooling, their infants and children will be healthier). *Id.* An independent website on the "Girl Effect" campaign is available at http://youthinkyouknowme.girleffect.org/ (last visited Aug. 18, 2014). *Accord* Rajiv Shah, *Message from the Administrator*, *in* USAID, POLICY, *supra* note 14 at iv ("[I]in other cases—boys are falling behind. With [the new USAID gender equality] policy, we can ensure our values and commitments are reflected in durable, meaningful results for all"); *see also* Judith Warner, *Is There Really a 'Boy Crisis'?*, TIME IDEA (Mar. 21, 2013), http://ideas.time.com/2013/03/21/the-boy-crisis-is-it-fictional/ (concluding, based on current research, that American boys face challenges due to gendered social experience and expectations as well as because of "class" (income and education level). The study recommends against "pit[ting] boys' needs against those of girls or view[ing] one gender's success as a zero-sum game that requires the relative failure of the other. . . . The solution is rather to realize that a rising tide of educational expectation will raise all boats").

[44] 2012 WDR ON GENDER, *supra* note 14, at xxi. Even in a rich country, such as the United States, women are at a disadvantage. "Women may control 65% of global spending, but in the United States, where that number is higher, we represent only 3% of Fortune 500 directors." Dorothy Thomas, *The W Factor: How Women Could Save the World (if only we would let them)* at 2 (on file with author).

social norms and gender roles, including notions surrounding caregiving and housework.[45]

Such persistent governance dilemmas are as much about governance as about government. While the latter relies on "the assumption that all legal power inheres in the state and comes down from a pinnacle of legitimate coercive power[,]" a thicker understanding of Governance Feminism follows Michel Foucault's distinction between managerial and sovereigntist forms of power.[46] "Governance" implies "multiplicity, mobility, fragmentation, a regulatory or bureaucratic legal style, as well as ready facility with non-state and para-state institutional forms (NGOs, law school clinics, ad hoc expert groups doing letter writing campaigns)."[47]

Steps to address persistent gender inequality are more sustainable when assessed and addressed through *both* bottom-up and top-down forms of governance.[48] While top-down methods involve experts and other policymakers taking leadership in developing and/or imposing decisions, bottom-up solutions involve affected individuals and communities taking the lead in crafting and/or implementing decisions to improve their own destiny. As discussed further below, governance by indicators tends to be top-down (from international development agency or donor to national government to affected individuals or communities).

Bottom-up decision-making may be better informed, more targeted, and more effective, as affected individuals and communities will likely feel greater ownership over the solutions and therefore have more of an interest in sustaining them. As a social justice method, bottom-up decision-making—which has deep roots in feminists' consciousness-raising methodologies—is also more likely to reflect the intrinsic value of gender equality or "the ability to live the life of one's own choosing and be spared from absolute deprivation [as] a basic human right [equally available] for everyone, independent of whether one is male or female."[49]

While indicators appear objective, neutral, and scientific, their selection and reproduction often involve discretion, judgment, and preference, and they actually mask political struggle over questions of power, gender, development, corporate responsibility, rule of law, and human rights as "technical questions of measurement, criteria, and data

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[45] 2012 WDR ON GENDER, *supra* note 14, at 13–14 (pointing, in particular, to the "sticky domains" of health and mortality, the economy, and agency in society and in household decision-making).

[46] Halley et al., *Governance Feminism*, *supra* note 4, at 341 (relying on Michel Foucault, *Governmentality*, *in* THE ESSENTIAL WORKS OF FOUCAULT (1954–84) VOLUME 3: POWER 211 (James D. Faubio ed., Robert Hurley trans., The New Press 2000)).

[47] *Id.*

[48] *Cf.* Janet Koven Levit, *A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments*, 30 YALE J. INT'L L. 125 (2005).

[49] 2012 WDR ON GENDER, *supra* note 14, at 3.

accessibility."[50] Since such debates often rely on technical expertise, the creation and interpretation of an indicator frequently involves a "slippage [ ] in the way [ ] problems are defined, in the identity and role of experts, [and] in the relative power of the people engaged in producing and using the indicator[.]"[51]

By exercising the "power of naming" in naming the category to be measured, determining what is included in or excluded from the category, and setting forth parameters for measurement, the use of an indicator is an exercise of hegemony.[52] Indeed, indicators are typically created in the global North, even while the data collection (particularly in the context of development assistance) occurs in the global South, seemingly enlisting the subject being measured in self-regulation.[53]

This form of control and regulation has been called "government at a distance."[54] We are all familiar with forms of control and regulation through standards created to inspire performance and improvement. These standards simultaneously promote "self-governance among the governed"[55] in ways that have become so naturalized and ingrained that we rarely question these forms of social control and self-control. Common examples of self-governance through numbers that are rarely questioned include grades and GPAs, SAT and LSAT scores, *U.S. News and World Report* higher education rankings, reports to donors evaluating project outcomes, and even indicators for faculty productivity pegged to allocation of academic research grants.[56]

The World Bank's turn to gender indicators[57] has tended to be both top-down and bottom-up, with its WBL program relying on input from in-country practitioners to document national laws as well as World Bank databases to collect information on women's rights issues selected by the

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[50] Merry, *Measuring the World*, *supra* note 13, at S88. Merry points out:

> Political debates about compliance shift to arguments about how to form an indicator, what should be measured, and what each measurement should represent. . . . The outcomes appear as forms of knowledge rather than as particular representations of a methodology and particularly political decisions about what to measure and what to call it.

Id.

[51] *Id.* at S88.

[52] John M. Conley, *Comment*, 52 CURRENT ANTHROPOLOGY S93 (Apr. 2011) (response to Merry, *Measuring the World*, *supra* note 13).

[53] Merry, *Measuring the World*, *supra* note 13, at S89–S90, S93.

[54] NIKOLAS ROSE, GOVERNING THE SOUL: THE SHAPING OF THE PRIVATE SELF (1989).

[55] Merry, *Measuring the World*, *supra* note 13, at S89.

[56] *Id.* at S89–S90. *But see* Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007) (criticizing the LSAT).

[57] For other examples of the World Bank's turn to gender indicators, see, e.g., 2012 WDR ON GENDER, *supra* note 14. The Bank also launched the Gender Data Portal in 2012. Kim, *supra* note 2.

WBL program.[58] Perhaps because the Bank functions as both a bank that can resource gender equality through its financial assistance *and* a social justice agency, it provides both top-down and bottom-up support when working with national and subnational governments. An example of the Bank's experience with supporting bottom-up development is its support for the establishment of the National Solidarity Program in Afghanistan, built on the idea that "[l]ocal villages can and should take responsibility for their own development."[59]

The role of gender indicators in the WBL program can be understood as advancing (yet falling short in realizing) three transformative projects: feminist transformation, legal transformation, and economic transformation.

***Feminist transformation*:** First, on the feminist theory front, the history of the WBL program is one reflecting a classic example of what we might think of as Governance Feminism, with feminists within the World Bank developing and gaining acceptance for gender indicators within the context of an institution whose approach to development is deeply informed by quantitative indicators. Feminist economists and lawyers infiltrated the Bank, using the language of banking, to develop gender indicators that help advance a legal and economic justice reform agenda for women and girls. The WBL is a cross-disciplinary enterprise of lawyers, economists, and other experts, who bring a variety of understandings about feminism to the table, often in consultation with outside stakeholders in poor countries in which the Bank works as well as with elite development professionals and advocates who can access the Bank's elaborate organizational structure. In developing and advancing gender indicators, feminists within the World Bank have used the "master's tools" (quantitative metrics) to reform, not transform, the "master's house" (the World Bank).

***Legal transformation*:** Second, on the legal reform front, the WBL program uses gender indicators to measure progress in women's rights. However, the use of gender indicators reveals several limitations about law, development, and the use of quantitative empiricism to draw conclusions about law and development. An initial limitation is that, despite their appearance of scientific objectivity, indicators are far from neutral and rest on normative assumptions about which legal rights are counted, how they are counted, and what the goals of legal reform should

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[58] WORLD BANK & IFC, WOMEN, BUSINESS, AND LAW 2014: REMOVING BARRIERS TO ENHANCE GENDER EQUALITY 6 (2014), http://wbl.worldbank.org/Reports [hereinafter 2014 WBL Report] (this was the most recent report available at the time of this writing, with the first biennial report having been issued in 2010).

[59] ISOBEL COLEMAN, PARADISE BENEATH HER FEET: HOW WOMEN ARE TRANSFORMING THE MIDDLE EAST 188 (2013) (discussing how the visionary behind the National Solidarity Program was a former World Bank official, Ashraf Ghani, who went on to become Afghanistan's finance minister (after the fall of the Taliban) and was elected to the Afghan presidency in 2014.

be.[60] Another limitation is that legal variables are challenging to measure "in the face of legal complexity and uncertainty."[61] A final limitation worth raising here is that since the notion of development is in itself contested, measuring how legal rights and law reform advance "development" turns on a contested idea that itself may be problematic, if the path to development is one that replicates existing structures of dominance and subordination in "developed" countries.[62]

***Economic transformation*:** Third, on the economic front, while the WBL program does not provide funding itself, its gender indicators are used by other agencies that make funding decisions. As an international financial institution, the World Bank generally sits at a pivot point between public and private international governance to move money and resources. Substantially more money and resources began to flow to so-called "gender-informed" projects from FY 2010 to FY 2012,[63] with the total share of "gender informed" lending rising from 54 to 83 percent during this time period.[64] According to the Bank, "[t]his translates into a dollar figure in FY12 of almost US$29 billion in gender-informed loans, out of a total lending envelope of US$34 billion."[65] The work of the WBL program has arisen within this context. However, it is not clear how much of this represents new investment, as opposed to merely recasting

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[60] For example, there is substantial debate about how to measure the right to be free of gender-based violence. As Sally Engle Merry notes, there has been disagreement about whether and how to measure the severity and extent of violence; whether to include mental or psychological violence; how to account for the potential underreporting of violence against women to law enforcement; and whether to take into account subjective factors such as fear of violence. Merry, *Firming Up Soft Law*, *supra* note 39, at 25, 26, 36 ("[T]he content of indicators is fundamentally shaped by a focus on what is countable and what forms of data already exist or can be acquired in a way that seems 'objective.' The [violence against women] surveys simplify the category of severe physical violence and drop fear and stalking in order to have an apparently objective measure." *Id.* at 36.).

[61] *See, e.g.*, Kevin E. Davis & Michael B. Kruse, *Taking the Measure of Law: The Case of the Doing Business Project*, 32 LAW & SOC. INQUIRY 1095 (2007) [hereinafter Davis & Kruse, *Taking the Measure of Law*].

[62] *Id.*; *see also* Trubek & Santos, *New Critical Practice*, *supra* note 15. Despite the complexities of quantifying legal rights (or perhaps because of these complexities), my interest in selecting the World Bank's WBL program as a focus of this chapter was to focus on an initiative in which law is doing some work.

[63] " 'Gender informed' means that gender has been taken into account in at least one of three dimensions—analysis, actions, and monitoring and evaluation." WORLD BANK, UPDATE ON THE IMPLEMENTATION OF THE GENDER EQUALITY AGENDA AT THE WORLD BANK GROUP 15 (Sept. 21, 2012), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/DEVCOMMEXT/0,,pagePK:64000837~piPK:64001152~theSitePK:277473~contentMDK:23276764,00.html. According to the Bank, the benefit of approaching "gender-informed" projects with regard to these three dimensions "is its simplicity and that it is amendable to self-assessment, thereby increasing accountability [and ease of application, since] the ratings on each dimension are binary, not subjective judgments about quality." *Id.* at 16, box 5.

[64] *Id.* at 15 (and 16, for chart). The Bank reports that "[f]our out of five projects approved by the Board in FY12 were gender informed."

[65] *Id.* at 15. However, the Bank makes the caveat that "[i]t is important to recognize that the corporate commitments to assess gender mainstreaming are applied at the ex ante stage—relating to the design and objectives of the operations. As such, these are important instruments for enhancing accountability, but do not function to capture results on the ground." *Id.* at 16.

investments that would have been made in any event. The value of increasing investment in "gender-informed" projects will depend on the extent to which these investments actually make a difference in improving the lives of the women who are the beneficiaries of these projects.[66]

One large donor partner, the U.S. Millennium Challenge Corporation (MCC) is a development agency that relies heavily on the set of gender indicators compiled by the World Bank's WBL program. The MCC was established by Congress in 2004 as an independent bilateral U.S. foreign aid agency based on President George W. Bush's call for a "new compact for development, defined by new accountability for both rich and poor countries alike."[67]

While the WBL program provides a broad array of data about gender inequality, the MCC has translated these data into a composite "Gender in the Economy Indicator," which was added in 2012 to the MCC's list of "selection criteria" for making determinations over allocation of development aid to eligible countries.[68] As a single composite score, the "Gender in the Economy Indicator" has the benefit of simplicity and marketability (internally and externally), but it has the downside of potentially diluting explanatory power by synthesizing the complexity of gender equality into one number.

Thus, the WBL's gender indicators have traveled from an international institution (the World Bank) to a U.S. agency (the MCC), and then overseas, through the MCC's international assistance program. Prospective grantees are encouraged to improve gender equality laws and policies that affect their MCC Gender in the Economy Indicator score.

II. THE RISE OF INDICATORS AS GOVERNANCE

The rise of gender indicators is part of a wider trend regarding indicators as governance. Indicators are "technologies of knowledge developed in the economic domain [that have] move[d] uneasily into . . . newer fields."[69] Indicators "promis[e] greater specificity . . . and

[66] *Cf.* Special Inspector General for Afghanistan Reconstruction (SIGAR) 15–24 Audit Report, *Afghan Women: Comprehensive Assessments Needed to Determine and Measure DOD, State, and USAID Progress* (Dec. 2014) (noting that U.S. agencies have failed to provide a comprehensive assessment confirming that the gains Afghan women have made—which these agencies tout and take credit for—are actually traceable to development assistance), *available at* http://www.sigar.mil/pdf/audits/SIGAR–15–24–AR.pdf.

[67] Press release from the White House on President George W. Bush's announcement of the Millennium Challenge Account (Mar. 14, 2002), http://georgewbush-whitehouse.archives.gov/infocus/developingnations/millennium.html.

[68] MCC, GUIDE TO THE INDICATORS AND THE SELECTION PROCESS FOR FISCAL YEAR 2015, *available at* https://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015 [hereinafter MCC, GUIDE].

[69] Merry, *Measuring the World*, *supra* note 13, at S88.

definitions of compliance yet import[ ] new ambiguities[.]"[70] Established initially in the context of business transactions and financial management, indicators involve "[p]ractices of measuring phenomena that are relatively easily counted, such as money or inventories of goods, [but that have been] transplanted into domains far less amenable to quantification, such as frequency of torture or prevalence of ill health."[71] While "[i]ndicators are a basic technology of corporate management and control . . . [t]he spread of its techniques of auditing and counting to the state and civil society is an instance of [ ] seepage of the corporate form."[72] Because the development assistance field is dominated by economists, it has quite readily adopted indicators as a technology for producing and disseminating knowledge.

This chapter borrows the working definition of "indicator" used by Davis, Kingsbury, and Merry, who "subsume[ ] indexes, rankings, and composites which aggregate different indicators" to refer to:

> a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.[73]

From measures of the ease of doing business to the enjoyment of basic human rights, the practice of auditing has exploded within global governance institutions, ranging from the World Bank's Doing Business project to treaty bodies, spearheaded by the Office of the High Commissioner for Human Rights.[74] "[W]ith their apparently simple and straightforward meanings," the reliance on numbers "produces an

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[70] Merry, *Firming Up Soft Law*, *supra* note 39, at 22.

[71] Merry, *Measuring the World*, *supra* note 13, at S88; *see also id.* at S89 (noting also that "[q]uantification . . . become[s] increasingly important to a variety of government and business functions . . . from developing cost-benefit measures for locating railroad lines to the need to measure life spans by life insurance companies").

[72] *Id.* at S90–S92 (pointing to various ways the boundaries between corporate and other domains of society have become blurred and intertwined, including indicator-based funding, outsourcing of data collection and evaluation to private-sector consultants, and the use of indicators in corporate responsibility programs, such as the U.N. Global Compact). Indeed, "[t]he expansion of indicator technology into new domains and spaces of governance is another way the corporate form is reshaping contemporary social life." *Id.* at S93.

[73] Davis, Kingsbury & Merry, *Global Governance by Indicators*, *supra* note 19, at 6.

[74] *See, e.g.*, Davis & Kruse, *Taking the Measure of Law*, *supra* note 62, at 1095; AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT'L L. 253 (2009); *see also* Davis, Kingsbury & Merry, *Global Governance by Indicators*, *supra* note 19, for a broader collection of examples.

unambiguous and easily replicated field for judgment."[75] Indicators are alluring because they appear objective, neutral, and "evidence-based."[76] "Numbers have become the epitome of the modern fact," which is "basic to the ways Westerners have come to know the world."[77] However, the use of indicators often masks a large degree of subjectivity and ideology.

While indicators are typically developed by experts with experience in statistics and other technical fields, "successful" indicators can gain acceptance by broader publics, sometimes to such a great extent that they can come to stand in for the underlying phenomenon they were intended to measure.[78] "[S]uch categorization gradually becomes an accepted 'black box' which no longer needs to be explained and justified," thereby producing a kind of "truth" or "illusion of knowledge"—"a way to know a world that is unknowable and to govern a world that is ungovernable."[79]

In the development assistance field, the Human Development Index (HDI) is an example of a prominent indicator that enjoys broad acceptance.[80] Instead of focusing primarily on economic growth through Gross National Product (GNP), the HDI follows Amartya Sen's capacities approach to development by measuring other indicators of well-being,

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[75] Merry, *Measuring the World*, *supra* note 13, at S88.

[76] Rajiv Shah, *Message from the Administrator*, *in* USAID, POLICY, *supra* note 14, at iv (explaining that the gender policy "provides guidance on pursuing more effective, evidence-based investments in gender equality" and supports "requirements to ensure that every strategy and project is shaped by a gender analysis and establishes common indictors for judging our success").

[77] Merry, *Measuring the World*, *supra* note 13, at S89 (citing MARY POOVEY, A HISTORY OF THE MODERN FACT: PROBLEMS OF KNOWLEDGE IN THE SCIENCES OF WEALTH AND SOCIETY (1998)).

[78] Merry, *Firming Up Soft Law*, *supra* note 39, at 29–34.

[79] *Id.* at 29, 34, 37, and 37, respectively. For a thoughtful discussion of this, consider Sally Engle Merry's cautionary note:

> One of the puzzles of indicators is the extent to which they are used and even considered reliable despite widespread recognition of their superficiality, simplification, and neglect of context and history. . . . This is a seductive form of knowledge. It promises certainty and clarity and provides readily comparable information that facilitates decision-making. [T]his apparent clarity accounts for their growing popularity. Indicators and other numerical forms of knowledge subdue the thorny difficulties of making decisions about incommensurable social practices, issues, and problems.

Id. at 37. See also the work of scholars in science and technology studies, who have provided insight regarding the consequences of classification on knowledge production. *See, e.g.*, GEOFFREY C. BOWKER & SUSAN LEIGH STAR, SORTING THINGS OUT: CLASSIFICATION AND ITS CONSEQUENCES (1999); BRUNO LATOUR, SCIENCE IN ACTION: HOW TO FOLLOW SCIENTISTS AND ENGINEERS THROUGH SOCIETY (1987); THE MUTUAL CONSTRUCTION OF STATISTICS AND SOCIETY (Ann Rudinow et al. eds., 2011).

[80] Davis, Kingsbury & Merry, *Global Governance by Indicators*, *supra* note 19, at 20 (citing as other prominent examples Transparency International's Corruption Perception Index, Freedom House's Freedom in the World indicator, and the World Bank's Doing Business indicators); *see also* Wendy Nelson Espeland & Michael Sauder, *The Dynamism of Indicators*, *in* GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH CLASSIFICATION AND RANKINGS 86 (Kevin E. Davis et al. eds., 2012) (focusing on U.S. NEWS & WORLD REPORT law school and other educational rankings as another example of a prominent indicator).

such as access to health and education.[81] The HDI reports assert that "non[-]income measures [of well-being] should be an integral component of any assessment of well-being as they measure important aspects of well-being *directly*, while income is only one among several inputs generating such well-being."[82] When the United Nations Development Program (UNDP) first introduced the HDI as part of its first annual Human Development Report, the HDI initially spurred debate because it expressed development through an index that ranked countries based on their *human* development and on combined economic and social factors. This debate spawned discussion about what the index meant and how it would be used.[83] But within a year or two, it became "settled" as the new normal and is now virtually "presented as a fact about a country, without further debate or deliberation."[84]

The fact that such indicators—and the norms they embody—are typically developed by technical experts, rather than by governance structures that are more open and transparent, raises accountability questions and can make such indicators hard to contest. At the same time, because indicators themselves are seen as being scientific, objective, and neutral, they possess an authority, impartiality, consistency, and efficiency that is attractive.[85]

III. THE EMERGENCE OF GENDER INDICATORS

The WBL indicators can usefully be considered within the broader ecology of gender indicators. Before turning to analyze the World Bank's WBL program, this section summarizes three prominent sets of gender indicators in the law and development field in the context of: (1) the UNDP Human Development Index and Report, (2) U.N. Millennium Development Goals, and (3) the World Economic Forum.[86] While these three sets of indicators are composites of data, as discussed further below, the WBL program's biennial reports provide responses to questions that reveal simple statistics to "yes/no" questions on legal differentiations (i.e., "Can women work the same night hours as men?").[87]

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[81] Amartya K. Sen, *Foreword*, *in* READINGS IN HUMAN DEVELOPMENT: CONCEPTS, MEASURES AND POLICIES FOR A DEVELOPMENT PARADIGM vii–xiii (Sakiko Fukuda-Parr & A.K. Shiva Kumar eds., 2005); *see also* SEN, DEVELOPMENT AS FREEDOM, *supra* note 26.

[82] Kalpana Bardhan & Stephan Klasen, *UNDP's Gender-Related Indices: A Critical Review*, 27 WORLD DEV. 985 (1999) [hereinafter Bardhan & Klasen, *UNDP's Gender-Related Indices*] (emphasis in original).

[83] Merry, *Firming Up Soft Law*, *supra* note 39, at 8, 29.

[84] *Id.* at 8, 30 (noting that this "norm settling process"—the "process of creating and then accepting an indicator as a relatively reliable form of knowledge"—typically takes years).

[85] Davis, Kingsbury & Merry, *Global Governance by Indicators*, *supra* note 19, at 13–15.

[86] While this chapter focuses on gender indicators in the context of law and development, the U.N. Secretary-General has also recommended gender indicators as part of its implementation of U.N. Security resolutions on women, peace, and security.

[87] 2014 WBL Report, *supra* note 59.

UNDP Gender Indicators:

The construction of gender indicators in the development field emerged in response to earlier indicators that were viewed as insufficiently attentive to gender, such as the HDI.[88]

In its 1995 Human Development Report—which focused on gender—UNDP introduced two new gender-related indexes: the Gender-related Development Index (GDI) and the Gender Empowerment Measure (GEM). The GEM gauged women's empowerment by measuring women's agency in political and economic life. By contrast, the GDI factored gender inequality into the overall HDI assessment, modifying the HDI by imposing a welfare penalty for gender inequality in the HDI's components—life expectancy, educational attainment, and per capita gross domestic product (GDP).[89] To obtain the GDI, the HDI was adjusted downward to the extent there were gender gaps in these three areas, in effect, "penalizing" the HDI if gender inequality existed.[90]

In response to criticism—both conceptual and methodological—of the GEM and GDI,[91] UNDP launched the Gender Inequality Index (GII) in the 2010 Human Development Report. The GII seeks to deliver a comprehensive picture of gender inequality by measuring women's status in three dimensions: empowerment, economic activity, and reproductive health. It is unique from other indices in that it focuses on critical issues of educational attainment, economic and political participation, and female-specific health issues. The GII marks an improvement over the GEM and GDI, in that the GII permits analysis of women's issues not only in relation to men, but also in light of issues that do not affect men in a comparable way (like reproductive health). A further improvement is that the GII uses a more holistic approach by capturing components that were previously gauged with separate empowerment and development indices.[92]

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[88] Caren Grown, *Indicators and Indexes of Gender Inequality: What Do They Measure and What Do They Miss?*, *in* EQUALITY FOR WOMEN: WHERE DO WE STAND ON MILLENNIUM DEVELOPMENT GOAL 3?, at 93 (Mayra Buvinić et al. eds., 2008) [hereinafter Grown, *Indicators and Indexes of Gender Inequality*].

[89] *Id.* at 93, 114.

[90] *Id.* (explaining that the greater the gap between men and women in the HDI components, the more the GDI varied from the HDI); *see also* Bardhan & Klasen, *UNDP's Gender-Related Indices*, *supra* note 83, at 985–86 (noting that more so than the GEM, "the GDI suggest[ed] that gender inequality is not only a problem for those it disfavors, but that it detracts from overall development in a country").

[91] Amie Gaye et al., *Measuring Key Disparities in Human Development: The Gender Inequality Index,* UNDP Human Development Research Paper Series 2010/46 (2010) [hereinafter Gaye et al., *Measuring Key Disparities*].

[92] *Id.*

U.N. Millennium Development Goals Gender Indicators:

A separate set of gender indicators emerged in the context of the U.N. Millennium Development Goals (MDGs).[93] The U.N. Millennium Declaration identifies eight development goals with time-bound targets and quantifiable indicators.[94] The goal for gender is embodied in the third goal, MDG3, whose objective is to "promote gender equality and empower women."[95] The target for MDG3 is to "eliminate gender disparity in primary and secondary education, preferably by 2005, and at all levels of education no later than 2015."[96] Measuring progress toward this target was operationalized as the ratio of girls' to boys' enrollment in primary, secondary, and tertiary education. Three additional official indicators were added for MDG3, including: ratio of literate females to literate males among 15- to 24-year-olds; the percentage of nonagricultural wage employment that are women; and the proportion of parliamentary seats held by women.[97]

While seen as useful by international development professionals, the official MDG3 indicators came under strong criticism.[98] The Millennium Project Task Force on Gender Equity suggested 12 indicators to replace the official MDG3; however, many of the recommended indicators required data that were not widely available.[99] The World Bank's 2007 Global Monitoring Report (GMR) suggested a more modest, feasible list of supplemental indicators to complement, rather than replace, the official MDG3 indicators,[100] which feminist economists within the World Bank who helped pioneer these additional indicators referred to as the "MDG3 plus" approach.[101]

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[93] *Goal 3: Promote Gender Equality and Empower Women*, UN.ORG, http://www.un.org/millenniumgoals/gender.shtml (last visited Aug. 16, 2013) [hereinafter *Goal 3*].

[94] U.N. General Assembly, *United Nations Millennium Declaration*, Doc. A/RES/55/2 (Sept. 18, 2000).

[95] *Goal 3*, *supra* note 94.

[96] *Id.*

[97] Mayra Buvinić & Andrew R. Morrison, *Introduction, Overview, and Future Policy Agenda*, *in* EQUALITY FOR WOMEN: WHERE DO WE STAND ON MILLENNIUM DEVELOPMENT GOAL 3?, at 1 (Mayra Buvinić et al. eds., 2008) [hereinafter Buvinić, *Introduction*].

[98] Andrew R. Morrison et al., *The State of World Progress, 1990–2007*, *in* EQUALITY FOR WOMEN: WHERE DO WE STAND ON MILLENNIUM DEVELOPMENT GOAL 3?, at 33, 34 (Mayra Buvinić et al. eds., 2008).

[99] *Id.* at 35.

[100] *Id.*

[101] Buvinić, *Introduction*, *supra* note 98, at 10 ("The additional indicators recommended in our MDG3 plus approach are: i) primary completion rates disaggregated by gender; ii) under-five mortality rates disaggregated by gender; iii) percentage of reproductive-age women and their partners using modern contraception; iv) percentage of 15- to 19-year-old girls who are mothers or pregnant with their first child; v) labor force participation rates for 20- to 24- and 25- to 49-year-olds, disaggregated by gender; and vi) average hourly wages, also disaggregated by gender").

The World Economic Forum's Global Gender Gap Index:

Another prominent gender indicator, the Global Gender Gap Index, was introduced in 2006 by the World Economic Forum.[102] The Index "convert[s] data into male/female ratios, which are then truncated according to an 'equality benchmark' and a somewhat elaborate weighting procedure."[103] This index includes five components of gender inequality: economic participation, economic opportunity, political empowerment, educational attainment, and health and well-being. While it originally included female-specific measures (as does the Gender Inequality Index) as well as gender gaps, it now includes only achievement disparities between men and women.[104]

The World Bank's Women, Business, and Law Gender Indicators:

In contrast to the three composite indicators discussed above, the World Bank's WBL biennial reports focus on a narrower set of concerns involving gender equality in work and business. Further, it provides "yes/no" responses to questions, which reveal individual data on legal differentiations and are illustrated through various charts and diagrams. The WBL program measures how laws, regulations and institutions "differentiate between women and men in ways that may affect women's incentives or capacity to work or to set up and run a business."[105] In 2014, the WBL program issued its third biennial report on legal differences based on gender. The 2014 report included 143 economies, covering six subject areas (accessing institutions, using property, getting a job, providing incentives to work, building credit, and going to court).[106] Methodologically, the data collected by in the WBL report are based on a wide array of information, including survey questions answered in-country as well as verification against the text of laws in each country.[107]

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[102] *Global Gender Gap*, WORLD ECONOMIC FORUM, http://www.weforum.org/issues/global-gender-gap (last visited Aug. 20, 2014).

[103] Gaye et al., *Measuring Key Disparities*, *supra* note 92, at 6–7.

[104] *Id.* at 7.

[105] Press Release from World Bank and IFC, Many Societies Gradually Moving to Dismantle Gender Discrimination, Yet More Can Be Done, Says World Bank Group President Jim Yong Kim (Sept. 26, 2013), available at http://wbl.worldbank.org/reports [hereinafter Press Release from World Bank and IFC]; *see also About Women, Business and the Law*, WORLD BANK, http://wbl.worldbank.org/aboutus (last visited July 6, 2015).

[106] Press Release from World Bank and IFC, *supra* note 106. Significantly, the 2014 report also pilots a new "protecting women from violence" indicator, which is new since the 2012 report. This pilot covers 100 countries. 2014 WBL Report, *supra* note 59, at 4.

[107] The 2014 WBL report includes indicators constructed through answers by in-country practitioners with expertise in family and labor law, representatives of civil society organizations who work on gender issues. These responses were verified by cross-checking:

> codified sources of national law, such as constitutions, marriage and family codes, labor codes, passport procedures, citizenship rules, inheritance statutes, land laws, gender equality law, civil procedure codes, electoral laws, and social security codes.

2014 WBL Report, *supra* note 59, at 6.

However, as mentioned earlier, once the MCC obtains the WBL data, it collapses it into a composite "Gender in the Economy Indicator." In fact, the MCC bases its composite indicator on a more limited set of activities than are covered in the WBL report.[108]

President George W. Bush paved the way for the MCC, which was established to "deliver smart U.S. assistance by focusing on good policies, country ownership, and results. . . . [The MCC was designed to] benefit[ ] both developing countries and U.S. taxpayers through: competitive selection[,] country-led selection[, and] country-led implementation[.]"[109] It has provided over $8.4 billion, based on "Scorecards" it calculates to "evaluate policy performance [based on] objective and quantifiable policy indicators in three broad policy categories: Ruling Justly, Investing in People, and Encouraging Economic Freedom."[110]

The "Gender in the Economy Indicator" was added in 2012—to much fanfare—as a "selection indicator" (for selecting aid recipients) under the "Encouraging Economic Freedom" rubric (though it relates to the other two policy categories—"Ruling Justly" and "Investing in People"—as well). Girls' education—both primary school *completion* and secondary school *enrollment*—were already included as independent MCC indicators,[111] but there had been no indicator on adult women. The "Gender in the Economy Indicator" utilizes the WBL data, although simplified to one number, through which MCC "measures the [aid-recipient] government's commitment to promoting gender equality by providing women and men with the same legal ability to interact with the private and public sector."[112]

In its guidelines explaining its indicators and aid selection process, the MCC states two rationales linking greater economic equality for women to growth and poverty reduction.[113] The first rationale is that

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[108] While the WBL's 2014 report posed 103 questions across the six main topics covered, the MCC bases its Gender in the Economy Indicator solely on ten activities: (1) getting a job, (2) registering a business, (3) signing a contract, (4) opening a bank account, (5) choosing where to live, (6) getting passports, (7) traveling domestically, (8) traveling abroad, (9) passing on citizenship to their children, and (10) becoming heads of households. Compare *Id.* at 45 and MCC, Gender in the Economy Indicator, https://www.mcc.gov/pages/selection/indicator/gender-in-the-economy-indicator (under "Methodology").

[109] *About MCC,* MCC, http://www.mcc.gov/pages/about (last visited Mar. 25, 2013). The MCC was established largely in reaction to the view that the U.S. Agency for International Development (USAID) had many different, conflicting goals, frequently growing out of political pressure and not resulting in long-term economic progress. Patrick Cronin, *The Rebirth of USAID,* DAILY CALLER (May 4, 2010), http://dailycaller.com/2010/05/04/the-rebirth-of-usaid/ ("The problem is not so much USAID as the proliferation of goals and authorities and earmarks that have often satisfied Washington's powerbrokers at the expense of promoting development around the world").

[110] MCC, GUIDE, *supra* note 69.

[111] *Id.*

[112] *Id.* (under "Gender in the Economy Indicator").

[113] The MCC favors indicators that, inter alia, have a clear theoretical or empirical link to economic growth and poverty reduction. *Id.* (under "Guide to the MCC Indicators").

studies show that gender inequality significantly harms the economic growth of a country aid recipient, as inequality "prevents a large portion [of] the population from fully participating in the economy[.]"[114] Women are underrepresented in the formal labor market and as entrepreneurs and are overrepresented in the "female" informal sector, which depresses wages in the "female" sectors.[115] The second rationale is that "[r]esearch shows that when women have access to employment, investment in children's health, nutrition, and education often increases, promoting higher levels of human capital."[116] Both of these rationales are instrumentalist, viewing women's equality as important not necessarily for the sake of women, but rather to grow national economies or improve the well-being of children.

IV. CRITICISM OF GENDER INDICATORS

While the criticisms of most of the gender indicators are methodological, the concerns raised about the World Bank's WBL program are more broadly conceptual and have been raised openly by the program itself.

The World Bank's Women, Business, and Law Gender Indicators:

Due to the newness of both the World Bank's WBL program and the MCC's "Gender in the Economy Indicator," there is little independent analysis of these initiatives. However, the WBL has undertaken a self-assessment and acknowledges the shortcomings of its 2014 report, indicating that these omissions are grounded in methodological limitations:[117]

*D*e jure*, not* de facto *inequality*: In focusing exclusively on *de jure* inequality, the WBL 2014 report "recognizes the often large gaps between law on the books and actual practice[,] [and that] women do not always have access to the equality that may be theirs under formal law."[118] This focus on *de jure* inequality is based on the fact that it is easier to identify the text of the *de jure* law than it is to measure *de facto* inequality. While conceding the lack of coverage of *de facto* inequality as a limitation, the WBL 2014 report notes that identifying *de jure* inequality "is one step towards better understanding where and how women's economic rights may be restricted in practice."[119]

[114] *Id.* (under "Gender in the Economy Indicator") ("Studies show that legally sanctioned gender inequality has a significant negative impact on a country's economic growth because it prevents a large portion [of] the population from fully participating in the economy, thus lowering the average ability of the workforce.").

[115] *Id.*

[116] *Id.*

[117] 2014 WBL Report, *supra* note 59, at 5.

[118] *Id.*

[119] *Id.*

Formal, not informal economy and other factors: While the 2014 report recognizes that "most women in developing economies start businesses or work in the informal economy," the report focuses on the formal economy, as a main goal is to identify barriers women face in transitioning from the informal to the formal economy.[120] The report also acknowledges, but does not measure factors referred to as "infrastructure," such as safe transportation and good street lighting, which "might also affect women's ability and desire to work in certain locations or at night."[121]

Customary law partially included: The 2014 report does not cover the actual application of customary law in any detail, even while recognizing that "customary law can determine a woman's rights to marriage or in property an inheritance[.]"[122] However, the report does cover the constitutional treatment of customary law, including "whether customary law is exempt from constitutional provisions on nondiscrimination."[123] Because customary law exists in parallel with formal legal regimes, the former can determine a woman's rights in marriage, property, and inheritance, often providing different rights to women than the formal legal system does.

Parental leave and child care responsibilities: The 2014 report recognizes that "[e]qualizing rights to work may not necessarily result in more women entering the workforce, if they are still expected to be the primary care-givers for their children, and if access to child care is limited."[124] The 2012 report had downplayed data on child care – because such issues are not always related to facially explicit gender differentials – which was a limitation in the earlier report.[125] Where there were gender differentials in the law, the 2012 report still down-played, for example, parental leave benefits, because "legal differentiation in this area is the norm, not the exception."[126] The 2014 covers parental leave and related issues more significantly, which is an improvement.[127]

The problem of composite indicators: As discussed earlier, the MCC has conflated the WBL's data into the composite "Gender in the Economy Indicator." While its simplicity may have helped make it saleable internally and helped its marketability, synthesizing gender equality into a single score risks failing to capture the complexity of gender inequality in the economy.

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[120] *Id.*

[121] *Id.*

[122] *Id.* at 5. The report goes on to say that customary law is only partially included "due to the difficulties in defining its rules." *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.* at 13.

[126] *Id.*

[127] 2014 WBL Report, at 10.

Importantly, WBL and MCC staff recognize that the numbers cannot tell the full story. "When you put a number on something, people think that's the only thing that matters [when, in fact,] it's just a starting point."[128] Acknowledging the need for a broad framework, the 2014 report recognizes that "[e]qual opportunities for women in business and the workplace depend on the interplay of various economic, social and cultural factors."[129]

Critiques of Other Global Gender Indicators:

Much of the criticism of the other gender indicators has tended to be based on the way these indicators have been conceived, interpreted, and deployed—rather than questioning the normative implications of relying on indicators as a way of evaluating gender justice.

Feminist economist Caren Grown does an impressive job of summarizing the criticisms of the GDI and GEM,[130] which led to their being replaced by the GII. The GDI had "conceptual and empirical problems associated with both the life-expectancy and earned-income components."[131] Furthermore, the GDI was "difficult to interpret in a situation in which gender gaps in the three components [life expectancy, educational attainment, and income] favor one sex in one component and another in the other components[, a] problem [that] applies as well to the GEM[.]"[132]

There were also challenges associated with the *use* of the GDI, without reference to the HDI.[133] The GDI results were meaningful only when read in combination with the results of the HDI.

The GEM also suffered from conceptual and empirical issues. Because it used unadjusted income per capita, "women in rich countries appear relatively more empowered than women in poor countries with otherwise equal relative shares of economic and political power."[134] Moreover, by "combining absolute levels of human development with relative female well-being, [it was] difficult to sort out which is changing over time—women's relative status or levels of development[.]"[135] Further, GEM's heavy emphasis on representation at the national

[128] WBL staffer phone interview (03.28.13).

[129] 2014 WBL Report, *supra* note 59, at 5.

[130] Grown, *Indicators and Indexes of Gender Inequality*, *supra* note 89, at 114.

[131] *Id.* at 115.

[132] *Id.*

[133] *Id.* at 114 ("The GDI is not interpretable in itself. . . . Yet countries, and even the UN Human Development Reports, have interpreted the GDI a measure of gender inequality[,]" reflecting the "great demand and a need for a direct gender inequality measure.").

[134] *Id.* at 115.

[135] *Id.*

political level and in the formal economy obscured the important role women play in local institutions and grassroots organizations.[136]

The GII was established to address these concerns. However, some of those who have been involved in administering it have noted substantial challenges, including: (1) lack of gender disaggregated data, (2) time series data and data availability across time and across space, and (3) more consistent measurement (for example, to make international comparisons more meaningful).[137]

Critics have also discussed a number of data problems with the MDG3 indicators, including availability and quality of data; the difficulty of quantifying women's empowerment; and the fact that a narrowing of any particular gender gap, such as a wage gap, might indicate declines for men rather than improvements for women.[138] There are also reporting problems and other challenges associated with collecting data on violence against women.[139]

V. NORMATIVE AND PRACTICAL IMPLICATIONS OF GENDER INDICATORS FOR THE FEMINIST PROJECT

This chapter concludes with the following thoughts on the normative implications of relying on indicators as a way of evaluating gender justice. Building on the critiques summarized above, this part analyzes these normative—and by extension related practical—implications of prevailing gender indicators and the motives underlying them.

Many of the existing gender indicators reflect a thin, formal approach to gender equality. Considered within the framework of feminist accounts of international law, many of these indicators largely fit within first-wave, formal feminist approaches. First-wave liberal assimilationist feminism argue that women should seek to be more like men by becoming

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[136] Bardhan & Klasen, *UNDP's Gender-Related Indices*, *supra* note 83, at 1002.

[137] Gaye et al., *Measuring Key Disparities*, *supra* note 92, at 28.

[138] Grown, *Indicators and Indexes of Gender Inequality*, *supra* note 89, at 114; *see id.* at 95, 96, and 98 (discussing each data problem, respectively). On empowerment, Grown notes proxies for measuring women's empowerment, including:

> (i) decision[-]making over expenditures and resource allocation, social and domestic matters (for example, cooking), and child-related issues (for example, well-being, schooling, health); (ii) control over resources (income, assets, unearned income, welfare receipts, household budget, participation in paid employment); and (iii) mobility or freedom of movement. Measures of the process of female empowerment are more difficult; most available indicators tend to measure the enabling factors or conditions for empowerment, such as labor force participation, female literacy or school enrollment, and political representation by women. [However,] [o]nly one of these—the share of seats in national parliaments held by females—is included among the official indicators for monitoring progress toward MDG3."

Id. at 96.

[139] *Id.* at 113.

better educated, obtaining higher paying jobs, and spending less time in the private sphere of the family and more time in the public sphere of politics and the market. Gender indicators largely reflect a concern with this type of formal equality.

In response to this formal equality approach, second-wave cultural feminists asserted that the first-wave liberal assimilationists neglected to challenge the fundamentally problematic value system that associates femininity with inferiority. On this view—represented for example in Carol Gilligan's "different voice" theory[140]—feminism should validate qualities historically associated with femininity and activities historically assigned to women, such as mothering and caregiving more generally.[141] The strand of development literature that mirrors second-wave cultural feminism most closely is the focus on women's agency, but as Caren Grown notes, "Measures of the process of female empowerment are more difficult; most available indicators tend to measure the enabling factors or conditions for empowerment, [which in turn rest on indicators of formal equality,] such as labor force participation, female literacy or school enrollment, and political representation by women."[142]

Third-wave structural feminism claims the earlier feminist approaches share a common flaw by leaving the essentialist conceptual dichotomy between men and women intact. Hence, liberal feminism fails to value femininity, while cultural feminism, "even as it challenges the prevailing devaluation of femininity, runs the risk of tacitly legitimating women's marginalization by underscoring how different they are from men."[143] Third-wave feminism—represented by Catharine MacKinnon, for example[144]—insists on deconstructing the structures of dominance and subordination that trap women. On this view, meaningful equality requires moving beyond formal equality to substantive equality.

The gender indicators discussed in this chapter have limited capacity either to deconstruct structures of dominance and subordination or to pave the way toward new structures that move societies toward substantive equality. Instead, these gender indicators are geared toward measuring and coaxing inclusion of women in existing structures, which are largely defined by traditional "male-oriented" models of success (i.e., that fail to value traditionally female-dominated forms of unpaid or underpaid work, such as caregiving). Moreover, given their interest in promoting consistency that enables comparison across countries and

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[140] *See, e.g.*, CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).

[141] Amy Allen, *'Mommy Wars' Redux: A False Conflict*, N.Y. TIMES (May 27, 2012), http://opinionator.blogs.nytimes.com/2012/05/27/the-mommy-wars-redux-a-false-conflict/?emc=eta1 [hereinafter Allen, *'Mommy Wars' Redux: A False Conflict*].

[142] Grown, *Indicators and Indexes of Gender Inequality*, *supra* note 89, at 96.

[143] Allen, *'Mommy Wars' Redux: A False Conflict*, *supra* note 141.

[144] *See, e.g.*, CATHARINE MACKINNON, FEMINISM UNMODIFIED (1988).

across time, the gender indicators surveyed here tend to simplify complex social relations and strip them of context and history.[145] Perhaps better-designed indicators could address these shortcomings, or perhaps we need to look beyond indicators to supplement them with other forms of knowledge, including surveys, case studies, and more broadly qualitative information.

To address the various concerns raised throughout this chapter, gender indicators would need to advance approaches that are more genuinely feminists in their operation—as well as their aspiration. For example, gender indicators could utilize the feminist methodology of participatory decision-making (including in the creation of the indicators themselves). Participatory decision-making could more effectively disrupt existing structures of dominance and subordination. Such bottom-up strategies could also pave the way to solutions that are more responsive to affected individuals and communities, who will have a greater stake and deeper investment in sustaining solutions they are involved in developing. Thus, these approaches can be more effective as a practical matter as well as more respectful of the integrity of individuals whose lives are being measured by indicators.

In sum, rather than co-opt global governance, gender indicators have been co-opted by global institutions. Because of their current methodological, conceptual, and normative limitations, gender indicators are not capable of securing more fundamental transformation of global governance. Indicators are a classic governance device. As with other indicators, *gender* indicators replicate and promote the characteristics of governance that have emerged in the eras of enlightenment, science, and modern government, including individualism, rationalism, objectivity, and accountability. Yet, quantitative measurements only create the *perception* of objectivity, neutrality, and transparency. Indicators, in fact, embed normative assumptions.

Given the technical nature of indicators, technocrats end up wielding power in debates over data, shifting the conversation from norms to numbers. The fact that many leading technocrats are educated in the global North reifies existing inequalities in global governance, by empowering those who govern from afar over those immediately affected. In this sense, the World Bank WBL case study reflects Audre Lorde's famous point that the master's tools cannot dismantle the master's house.[146]

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[145] *Cf.* Sakiko Fukuda-Parr et al., *The Power of Numbers: A Critical Review of MDG Targets for Human Development and Human Rights* 2 (Harv. Sch. Pub. Health Working Paper Series, May 2013), http://www.worldbank.org/content/dam/Worldbank/document/Gender/Synthesis%20paper%20PoN_Final.pdf (noting the reductionism in the way the MDGs' targets were set and "the potential for distorting priorities and marginalizing, or even displacing, important human development and human rights concerns inherent in such global goal-setting exercises").

[146] LORDE, *supra* note 9.

Governance almost certainly has a deradicalizing effect on feminism, even as feminists have come to power in international institutions, in foreign ministries, in parliaments, and as heads of state. As a mechanism of governance, gender indicators seek to institutionalize gender equality and thereby reshape policies, priorities, and laws in both international and national law and development efforts. But the reach of gender indicators will continue to be limited so long as they are used primarily to mainstream women into existing structures of power, rather than to transform those structures.