Data Silences: The Practice of Managing what we Measure and how we Act

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1. Introduction

Data is widely used as an instrument to facilitate understandings of legal, societal, political, and economic, phenomena. With the use of data, actors such as government agencies, international organizations and private entitles, have used arguments of objectivity and a neutrality in data, as means, to concretize how different phenomenon can be represented.[2] For instance in matters ranging from understanding crime, determining the incidences of poverty, determining human development, measuring corruption, amongst many others, narrating numbers provides commensurability and understandability.[3] However, underlying this data is the subjective choices that are made that underpin how it is collected, cleaned , sorted, circulated and then used.[4] Problematizing the ways in which data is framed , is critical because it is then used to describe situations, determine policy, build institutions, and shape futures.[5]

Data has a reactivity by which it frames and determines the narratives around it. It has a knowledge making aspect as it explains concepts but also a governance aspect to it, as it provides direction, and pathways for action.[6] For example, the measurement of corruption provides not only an understanding of what constitutes

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[2] See generally for critiques on the ways in which numbers are used to obscure complexities in social phenomenon. Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1996).Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (University of Chicago Press, 2016).

[3] Wendy Nelson Espeland and Mitchell L. Stevens, "Commensuration as a Social Process," *Annual Review of Sociology* 24 (1998): 313–43, https://doi.org/10.1146/annurev.soc.24.1.313.

[4] Siddharth Peter de Souza, "Epistemic Diversity and Voices from the Global South: Countering the Managerial Implications Of Measuring Justice," in *Designing Indicators for a Plural Legal World*, Global Law Series (Cambridge: Cambridge University Press, 2022), 112–63, https://doi.org/10.1017/9781009091275.004.

[5] Kevin E Davis and others, 'Indicators as a Technology of Global Governance' (2012) 46 Law & Society Review 71.

[6] Sally Engle Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52 Current Anthropology S83

corruption but also provides insights into what needs to be accounted for to tackle corruption.[7]

Given the power that data has, it becomes important to think about what data is, who defines it, who has the power to circulate it, and who ensures that it is adhered to and is therefore relevant.[8] In this essay, I introduce the idea of *Data Silences* as the practice of managing what we measure and act on. I will argue that data silences are choices that are made through acts of commissions, omissions and practices of delegitimization and dehumanization that are designed to tell a partial picture of the world we live in. These are active choices that are used by those in power to extract a knowledge and governance dominance over others. I will make the argument that data silences, is a consequence of epistemic injustices that are engineered to facilitate or privilege one understanding of the world over another.[9] This is through creating conditions which determine who has the capacity to speak, what kinds of testimonies are heard and what kinds of contributions are recognized as valid.[10]

To illustrate my argument of the concept of data silences, I will introduce three cases. The first case discusses ways in which rule of law indicators are framed, and the epistemic choices that determine the contours of the concept,[11] The second case examines the ways in which the government of India addressed Covid-19 data in 2020, and how through its acts of omissions it sought to diminish incidents of

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[7] Alexander Cooley, "The Emerging Politics of International Rankings and Ratings," Ranking the World: Grading States as a Tool of Global Governance, April 2015, https://doi.org/10.1017/CBO9781316161555.002.

[8] Lina Dencik and Javier Sanchez-Monedero, "Data Justice," *Internet Policy Review* 11, no. 1 (January 14, 2022), https://policyreview.info/articles/analysis/data-justice.William Twining, 'Have Concepts, Will Travel: Analytical Jurisprudence in a Global Context' (2005) 1 International Journal of Law in Context 5. Benoît Frydman and William Twining, 'A Symposium on Global Law, Legal Pluralism and Legal Indicators' (2015) 47 The Journal of Legal Pluralism and Unofficial Law 1.

[9] Kristie Dotson, "Conceptualizing Epistemic Oppression," *Social Epistemology* 28, no. 2 (April 3, 2014): 115–38, https://doi.org/10.1080/02691728.2013.782585.Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Routledge 2015). Boaventura de Sousa Santos, João Arriscado Nunes and Maria Paula Meneses, 'Introduction: Opening Up the Canon of Knowledge and Recognition of Difference' in Boaventura de Sousa Santos (ed), *Another Knowledge is Possible: Beyond Northern Epistemologies* (Verso 2008).

[10] Miranda Fricker, "Introduction," in *Epistemic Injustice: Power and the Ethics of Knowing*, ed. Miranda Fricker (Oxford University Press, 2007), 0,.Veli Mitova, "Explanatory Injustice and Epistemic Agency," *Ethical Theory and Moral Practice* 23, no. 5 (November 1, 2020): 707–22, https://doi.org/10.1007/s10677-020-10094-z.

[11] Brian Z Tamanaha, 'The Rule of Law and Legal Pluralism in Development' (2011) 3 Hague Journal on the Rule of Law 1. Julio Faundez, 'The Rule of Law Enterprise: Promoting a Dialogue between Practitioners and Academics' (2005) 12 Democratization 567.Noora Johanna Arajjrvi, 'The Rule of Law in the 2030 Agenda' [2017] KFG Working Paper Series, No. 9, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?". <https://www.ssrn.com/abstract=2992016>

migrant distress.[12] And the third case is from the ongoing genocide in Palestine in 2023/2024 where attempts are being made to delegitimize data to minimize narratives of suffering. These three cases will ask whether when we think of data, are we thinking of how to imagine data that considers plural worlds, their cultures, histories, and values.[13]

Through this essay I till therefore put forward three strategies through which data silences are enacted. The first is a strategy of the use of data to commission the construction of worlds and world views, the second is a strategy of omitting the experiences of worlds and world views, and the third is a strategy of delegitimizing and dehumanizing experiences of worlds and world views.

2. **Data Silence Case #1: Constructing understandings of rule of law**

A very common and persuasive understanding of the rule of law emerges when one thinks of the rule of law in terms of numbers. There are several organizations that measure the rule of law such as, The World Justice Project, the UN Rule of Law Indicators, the World Bank Governance Indicators, to name just a few.[14] Each of these projects prescribe certain criteria and categories for what the rule of law is by variously describing and foregrounding aspects that enable them to make the rule of law commensurable.[15] These include aspects such as the independence of the judiciary, the freedom of the press, the time and speediness it takes to resolve a dispute, among several others. Rankings, make the rule of law, a concept, that is easily measurable and transferable in different parts of the world.

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[12] Michael Doherty, 'Comprehensibility as a Rule of Law Requirement: The Role of Legal Design in Delivering Access to Law' (2020) 8 Journal of Open Access to Law <https://ojs.law.cornell.edu/index.php/joal/article/view/100> Deval Desai, 'The Politics of Rule of Law Reform: From Delegation to Autonomy' (2020) 83 The Modern Law Review 1168.

[13] James A Goldston, 'New Rules for the Rule of Law' in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard Law School 2014). Mareike Schomerus, 'Policy of Government and Policy of Culture, Understanding the Rule of Law in the "Context" Of South Sudan's Western Equatoria State' in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitmacy* (Harvard University Press 2014).

[14] Nehal Bhuta, Debora Valentina Malito and Gaby Umbach, 'Introduction: Of Numbers and Narratives- Indicators in Global Governance and the Rise of a Reflexive Indicator Culture' in Debora Valentina Malito, Gaby Umbach and Nehal Bhuta (eds), *The Palgrave Handbook of Indicators in Global Governance* (Springer 2017).

[15] Wendy Nelson Espeland and Mitchell L Stevens, 'Commensuration as a Social Process' (1998) 24 Annual Review of Sociology 313.Wendy Espeland, 'Narrating Numbers' in Rottenburg, Richard, Merry, Sally Engle, Park, Sung-Joon and Mugle, Johanna and others (eds), *The World of Indicators: The Making of Governmental Knowledge through Quantification* (Cambridge University Press 2015).

These rankings also give us a vocabulary to understand which countries and which regions of the world have a well-functioning system supported by the rule of law.[16] We are told, based on these rankings, that the rule of law may be fragile in some parts of the world as opposed to other parts of the world. These rankings tell us if institutions are working. They describe where the civil society can effectively challenge, and monitor state institutions and they tell us what can be done to make the system function better.

Rankings not only give us a vocabulary but through their instrumentalization they also evoke a reactivity around them making it possible for different institutions of the state to act and respond based on how a particular aspect of the rule of law is described and evaluated in the rankings.[17] For instance Serban describes that in Romania, rule of law indicators are used by the European Union to exert control, by determining how rule of law is defined, and in this case, placing a focus on anti-corruption and judicial reform.[18]

As rule of law rankings have gained currency, so too has the notion that the rule of law as a concept has a global character. The organizations that are responsible for the proposals around what the rule of law is and how it is being implemented include international organizations such as the World Bank or the United Nations, conglomerations like the World Economic Forum that adopt the rule of law in their programming. The rule of law as a concept is adopted by nation states that see the rule of law as essential for policy making and adopted by companies for instance in articulating their commitments to the Sustainable Development Goals. As a result, there is a thinning of the concept of the rule of law for it to be easily understood and comparable.[19] There is a reduction in the substance of the concept itself by design so that it has applicability across different domains.

This implies that the rule of law can be read as a checklist from which we can build a toolbox which can then be applied to different parts of the world.[20] This is not a new problem. The orthodoxy of the rule of law, which is, the notion that the rule of law can be promised and sustained if we get institutions right, is a challenge that

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[16] Alexander Cooley, 'The Emerging Politics of International Rankings and Ratings' in Alexander Cooley and Jack Snyder (eds), *Ranking the World: Grading States as a Tool of Global Governance* (Cambridge University Press 2015).

[17] Wendy Nelson Espeland and Michael Sauder, 'Rankings and Reactivity: How Public Measures Recreate Social Worlds' (2007) 113 American Journal of Sociology 1.

[18] Mihaela Serban, "Rule of Law Indicators as a Technology of Power in Romania," in *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*, ed. Sally Engle Merry, Kevin E. Davis, and Benedict Kingsbury (Cambridge University Press, 2015).

[19] Wolfgang Merkel, 'Measuring the Quality of Rule of Law' in Michael Zurn, Andre Nollkaemper and Randy Peerenboom (eds), *Rule of Law Dynamics: In an Era of International and Transnational Governance* (Cambridge University Press 2012).

[20] Golub (n 3). Mark Brown, '"An Unqualified Human Good"? On Rule of Law, Globalization, and Imperialism' (2018) 43 Law & Social Inquiry 1391.

development practitioners have spoken about before.[21] The sheer amount of money that has gone into promoting the rule of law globally, and its consequent failure, is a testament to the fact that without thinking about the epistemic consequences of the rule of law that is being promoted, we run the risk of offering models that are unfamiliar and lack local resonance in the countries in which they are being introduced.[22]

Why is it that we have presumed that the rule of law as a concept, rests in a state and in an institutional imagination? Why do we see it as a concept that has universal applicability? Why is it that we have assumed that the rule of law has a statist value, as it is described, and has purchase in societies across the world where in addition to the state, there is the fact of legal pluralism? And why is it that we have assumed that the rule of law emerges in different societies based on considerations of institutions as they are often described in the West and in the Global North? The reason why these questions become important, is that the measurement of the rule of law takes on a very managerial approach to how law is understood and how it is practiced.

With the rule of law taking on a very instrumental approach, a data silence emerges. What is missing, is an account, of the messiness that follows when trying to build societies that have just outcomes.[23] This is typified in the work of the World Justice Project Rule of Law Index. In their approach, informal justice, which is meant to account for judicial systems outside those of the state is included as one of nine factors to measure the rule of law along with constraints on government power, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. Yet at the time of developing the index, the factor of informal justice is not included. The argument of the developers is that it is difficult to make comparison across contexts.[24] This entails

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[21] Golub (n 7).Frank Upham, 'Mythmaking in the Rule of Law Orthodoxy - Carnegie Endowment for International Peace' (Carnegie Endowment for International Peace 2002) <https://carnegieendowment.org/2002/09/10/mythmaking-in-rule-of-law-orthodoxy-pub-1063> Rachel Kleinfeld, 'Competing Definitions of the Rule of Law: Implications for Practitioners' (*Carnegie Endowment for International Peace*) <https://carnegieendowment.org/2005/01/21/competing-definitions-of-rule-of-law-implications-for-practitioners-pub-16405>

[22] Katherine Erbeznik, 'Money Can't Buy You Law: The Effects of Foreign Aid on the Rule of Law in Developing Countries' (2011) 18 Indiana Journal of Global Legal Studies 873.

[23] Louis-Alexandre Berg, Deborah Isser, and Doug Porter, 'Beyond Deficit and Dysfunction: Three Questions toward Just Development in Fragile and Conflict-Affected Settings' in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard Law School 2014).

[24] " Informal Justice is not included in the *WJP Rule of Law Index*®. While WJP has devoted significant effort to collecting data on informal justice in a dozen countries, the complexities of these systems and the difficulties of measuring their fairness and effectiveness in a manner that is both systematic and comparable across

that to ensure commensurability, an attempt is made not to integrate the messiness with which justice is sought out by different people, in different contexts, with different capacities, in different parts of the world. Such a decision creates a data silence because it does not account for a critical avenue and forum for the resolution of disputes, that not only has legitimacy but also authority in large parts of the world. In making this choice, the framing of the rule of law prioritizes some factors over others, while at the same time, not reframing how it positions itself, i.e. a rule of law ranking based on a statist imagination, and not a rule of law for a global, and multicultural world.

3. Data Silence Case #2: No Data no problem[25]

The second case on data silence comes from the Covid-19 pandemic in 2020.When the Government of India announced a lockdown in March 2020 to manage the COVID-19 outbreak, it precipitated a large-scale exodus of workers from cities to villages. [26]With the closure of factories, construction sites, restaurants, hotels and other workplaces, millions of migrant workers who had moved to cities in search of work had to make their way to their villages because of the loss of work, income, food, and shelter. With no transportation to get back home due to the cancellation of buses and trains, one of the most distressing images of the lockdown was of millions of workers walking home for thousands of kilometers.[27] Many vowed not to return to the cities after being abandoned by their employers and offered no security.[28]

In September 2020, the Government of India said that over 10 million migrant workers had been displaced and had travelled to their villages between March and

countries, make assessments extraordinarily challenging." "WJP Rule of Law Index," accessed November 1, 2024, https://worldjusticeproject.org/rule-of-law-index.

[25] This case study was earlier published by the author. Permissions have been received and it has been only slightly modified. The original blogpost is available here - de Souza, S. P. (2020, December 18). Data Silences— Invisibilising Migrant Distress in Times of COVID-19. Data and Pandemic Politics, 6. https://doi.org/10.26116/datajustice-covid-19.006

[26] Hannah Ellis-Petersen and Manoj Chaurasia, "India Racked by Greatest Exodus since Partition Due to Coronavirus," *The Guardian*, March 30, 2020, sec. World news, https://www.theguardian.com/world/2020/mar/30/india-wracked-by-greatest-exodus-since-partition-due-to-coronavirus.

[27] Ipsita Chakravarty, "A Story of Swollen Feet: The Physical Toll of Walking Home during Lockdown," Text, Scroll.in (https://scroll.in, June 14, 2020), https://scroll.in/article/963641/a-story-of-swollen-feet-the-physical-toll-of-walking-home-during-lockdown.

[28] Thomson Reuters Foundation & Anuradha Nagaraj Roli Srivastava, "'I Will Never Come Back': Many Indian Migrant Workers Refuse to Return to Cities Post Lockdown," Text, Scroll.in (https://scroll.in, May 30, 2020), https://scroll.in/article/963251/i-will-never-come-back-many-indian-migrant-workers-refuse-to-return-to-cities-post-lockdown.

June 2020 during the lockdown.[29] However, in response to a question raised in the Parliament about whether compensation or economic assistance was provided to workers who had died during the lockdown, the government stated that the question of compensation did not arise, because no data had been maintained of migrant deaths, and further that there was no data on job losses either.[30] The casualness of this response not only points to the incompetency and unwillingness to understand the impacts of the lockdown on citizens, but also an abdication of responsibility in responding to the impact on life and livelihood that such a lockdown had.

The apathy towards collecting and making available data by the government seemed to have almost been anticipated by non-government actors who in contrast undertook several data collection exercises. A group of researchers and students put together a list of deaths that had taken place during the lockdown based on newspaper and online reports in English, Hindi, and other regional languages and came up with a list of at least 971 deaths of migrant workers that took place until July 2020.[31] The database not only provided information about the deaths caused due to the pandemic, but also offered insights into the kinds of hardships that people faced. It categorized deaths based on starvation and financial distress, lack of medical care, exhaustion, suicides, police brutality, accidents during migration, and retained some deaths as unclassified in cases where the reports were not clear. Over 216 people died due to starvation and financial distress, 47 from exhaustion from walking or standing in line, 133 from suicides — a grim reading of the devastation that was caused to migrant workers across the country.

A voluntary group called the Stranded Workers Action Network (SWAN) also documented the experiences of workers who had been displaced during the pandemic and organized relief for them.[32] They came up with an extensive response to the questions raised in the Parliament comparing the government's response of a lack of data with a consolidated response of publicly available studies including on matters related to compensation announced for workers who had died, information regarding how migrant workers had returned home, information on food insecurity, and the extent of job losses across the country. Another report by Azim

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[29] "Govt Says 10 Million Migrants Returned Home From March to June, Including Those Who Walked," The Wire, accessed February 11, 2024, https://thewire.in/labour/govt-says-10-million-migrants-returned-home-from-march-to-june-including-those-who-walked.

[30] "No Data Available on Migrant Deaths during Lockdown, so No Compensation: Centre Tells Parliament," Business Today, September 15, 2020, https://www.businesstoday.in/latest/economy-politics/story/migrant-deaths-no-data-available-so-no-compensation-centre-informs-parliament-273047-2020-09-15.

[31] "Non Virus Deaths | Thejesh GN," April 1, 2020, https://thejeshgn.com/projects/covid19-india/non-virus-deaths/.Aman et al., "Of Denial and Data | Economic and Political Weekly," *Economic and Political Weekly* 56, no. 23 (June 5, 2021), https://www.epw.in/journal/2021/23/insight/denial-and-data.html.

[32] "Stranded Workers Action Network(SWAN) (@StrandedWorkers) / X," X (formerly Twitter), June 17, 2021, https://twitter.com/StrandedWorkers.

Premji University with data collected through a phone survey of 5000 respondents between 13 April and 20 May 2020, found that over 80% of migrant workers lost their jobs during lockdown, 74% of households of migrant workers had to reduce their food intake, 5 in 10 households did not have money for a week's worth of essentials, and 6 in 10 did not receive cash transfers.[33]

These databases are among several other initiatives that arose as a part of the need to document and monitor the impacts that COVID-19 had on the livelihood of migrant workers.[34] While these studies point to the robust and critical role that civil society groups, volunteers, and academic institutions played to provide empirical information about migrant distress, they also highlight that in their absence, the Government had the capacity to determine the narrative on how the migrant crisis unfolded, deny any responsibility on the basis of the data available to them, and limit the capacity of the citizenry to hold them accountable for their policies and actions.

A serious concern from the lack of data on migrant deaths is that it appears that only whatever is measured has value and is responded to.[35] It raises questions about the priorities of what data is valuable enough to be collected, what data is considered okay to share, and what data can be ignored or made invisible. For instance, in the response to the question of compensation for migrant deaths, the government stated that since it did not have data, the question of compensation did not arise. Besides the coldness of the response, it shows that there are ways in which narratives can be determined, distorted or ignored through methods of counting, collecting, and sharing information.

This bring out a second strategy through which a data silence is enacted. What is clear from this case is that only that data, which is documented, is managed, and if it is not documented, a response is not warranted. The process of documentation therefore becomes a precondition to be able to prove the gravity of the crisis and the necessity of a response. It also shows that through the refusal to collect or give information other narratives can be provided through distortions, distractions

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[33] Azim Premji University, "COVID-19 Livelihoods Survey- Migrant Workers," 2020, https://cse.azimpremjiuniversity.edu.in/wp-content/uploads/2020/07/Migrant-workers-Pamphlet-English-final.pdf.

[34] Azim Premji University, "Database of COVID Impact Surveys," 2020, https://cse.azimpremjiuniversity.edu.in/covid19-analysis-of-impact-and-relief-measures/#other_surveys.

[35] Alison Powell, "To Be Seen We Must Be Measured: Data Visualisation and Inequality," *Media@LSE* (blog), June 26, 2020, https://blogs.lse.ac.uk/medialse/2020/06/26/to-be-seen-we-must-be-measured-data-visualisation-and-inequality/.

or media management where in this case outlets discussed the migrant crisis as a tragedy but not as a result of state policies.[36]

By not collecting data, not only is information not provided about the number of deaths, but also about the types of deaths, which in turn prevents a nuanced understanding about the kinds of situations people were in, from battling exhaustion at having to walk great distances, to starvation and suicide from the impacts that the lockdown had. The documentation of such information provides a way to know in more granular detail about the layers of the crisis, what kind of assistance was needed on an urgent basis, and who was most affected. The studies mentioned above offer a glimpse of the kind of inequalities that emerged but also demonstrated the kind of failures of policy and relief responses that resulted in many people lacking access to very basic facilities like food and shelter. Documentation thus not only denied one an understanding of the gravity of the situation, but it also denied one the ability to assess the different aspects of the crisis.

Further by not collecting data, the capacity to act by non-governmental actors and the victims' families was also severely hampered, whether in the case of applying for compensation in case of deaths, in ensuring access to government welfare schemes but also in the capacity to demand transparency and fix accountability from government for the failure of policy and relief measures.

What this case has shown is another way in which a data silence can be enacted. In this instance, injustice can be perpetuated through strategies of omitting documentation, denying knowledge, and avoiding responsibility through facilitating a 'data silence'. Such deliberate silences can then be used as a powerful tool by the government to change narratives around the crisis and use its infrastructure to make information that is uncomfortable for it unavailable to the public discourse thereby limiting scrutiny of its actions.

In contrast to the first case of rule of law indicators, where choices are made to construct worlds that lend themselves to commensurability, in this case, acts of omission of experiences are used to create conditions from which actions and outcomes can be managed.

4. Data Silence Case #3: Delegitimizing experiences, centering erasure

The third case of data silences comes from the Occupied Palestinian Lands. In October 2023, in response to widespread devastation and high casualties in Gaza over 7000 at the time, Joe Biden, The President of the United States of America threw doubt on the numbers emerging from Gaza, stating they were from the Hamas

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[36] Aman Abhishek, "How the Modi Government Manufactured Public Opinion During the Migrant Crisis," accessed February 11, 2024, https://thewire.in/media/covid-19-migrant-crisis-public-opinion-modi.

controlled ministry. He stated, "I have no notion if Palestinians are telling the truth about how many people are killed".[37]

He made this statement even though the numbers from the ministry have shown a historic reliability, and accuracy in their reporting according to nonprofit organizations like Human Rights Watch.[38] He made this statement despite large scale media attention, as well as reporting both by Palestinian as well as International Press about violence in Gaza, and most importantly, he made the statement knowing fully well that his words would carry weight, and result in them being used to delegitimize suffering in Gaza.[39]

This form of action constitutes a third strategy of a data silence, that of engineering erasure, devaluing and delegitimizing experiences. In this case, it is not that data is not present, but rather this form of erasure aims to plant doubts in the data by trying to minimize suffering and remove experiences of destruction.

Palestinians for instance have for years had to deal with their suffering being reduced in Western media. Consider for example a recent New Yorker article which was titled 'Gaza is Starving'.[40] This title makes no mention of why Gaza is starving, what is causing it and who is causing it. This title was subsequently corrected by the media activist group Slow Factory to state 'Gaza is being starved by Israel' to demonstrate the importance of removing passivity when it comes to reporting Palestinian suffering.[41] This follows reporting in major newspapers and media outlets where Palestinians are often reported to have 'died', rather than being 'killed', with no attribution to the circumstances or context to their deaths.

This systemic erasure is what is happening to document atrocities, but as 'We are not Numbers', a Gazan based youth group argues it is also used as a strategy to

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[37] "Joe Biden Dismissing Gaza Death Toll Sparks Fury," accessed February 13, 2024, https://www.newsweek.com/joe-biden-dismissing-gaza-death-toll-sparks-fury-1838089.
[38] Ali Harb, "'Appalling': Why Has Biden Cast Doubt on the Palestinian Death Count?," Al Jazeera, accessed February 12, 2024, https://www.aljazeera.com/news/2023/10/26/appalling-why-has-biden-cast-doubt-on-the-palestinian-death-count.
[39] "Hala Alyan on Instagram: 'On Witnessing   Second Slide Is from @dianabuttu,'" Instagram, October 26, 2023, https://www.instagram.com/p/Cy4KUAOvkjy/.
[40] "Gaza Is Starving | The New Yorker," accessed February 13, 2024, https://www.newyorker.com/news/q-and-a/gaza-is-starving.
[41] "Slow Factory   on Instagram: 'Filing This in Our Media Justice Folder for Later…   In Order to Build Solutions, One Must Be Able to Pinpoint the True Root Cause of the Harm. The Lack of Integrity Surrounding Palestine in the Media Is Absolutely Appalling and Plays a Major Role Garnering Support for the Ongoing Genocide and Occupation on Palestinian Folks. This Right Here Is the Reason We Need Media Justice More than Ever. Learn More about Our Work in Media Justice. Link in Bio ID via @SF_Access Pinned in Comments,'" Instagram, January 5, 2024, https://www.instagram.com/p/C1tyJPvuZNH/.

diminish life. They state how reporting about Palestinians is often in terms of deaths, of homelessness and of those dependent on aid. What it fails to document is the life that people live. They argue how 'numbers are impersonal and often numbing. What they don't convey are the daily personal struggles and triumphs, the tears and the laughter, and the aspirations that are so universal that if it weren't for the context, they would immediately resonate with virtually everyone.'[42]

In this reflection by the group, we are witness to another form of erasure, of how numbers seek to reduce the lives of Palestinians to statistics. Numbers are placed in doubt to delegitimize suffering, they are reported in a manner which places them in an ambiguous context (starvation), and they are also used to strip any nuance from people lives. In all these narratives, numbers are used to deny Palestinians the same human dignity that others in similar situations would have. [43]

This form of data silence is different from the first two, which speak to the constructions and omissions of data which result in how worlds are formed, and how they socialize. In this case, there is an active attempt to create a data invisibility, and the erasures thus formed, are a result of processes that are made to actively dehumanize people, their data and their worlds to make them seem invalid. This case is where there is an attempt that is made to produce the non-existence of data, even while it is present.[44]

5. **Challenging data silences**

Through these different case studies, we are witness to different ways in which data silences are managed. In this final section of the paper, we will examine different ways in which data silences can be challenged.

5.1 Knowledge making powers and the political economy of data

The first strategy is to challenge the knowledge making power and the political economy of data. This entails interrogating how narratives around data emerge, gains currency, and how they have the capacity to shape and create new social worlds.[45] Take for example in the case of Palestine, this would include describing

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[42] Editor, "About," *We Are Not Numbers* (blog), accessed November 15, 2023, https://wearenotnumbers.org/about/.

[43] "Palestinians Are Not Numbers: On the Future of the Palestinian Discourse," Middle East Monitor, September 21, 2020, https://www.middleeastmonitor.com/20200921-palestinians-are-not-numbers-on-the-future-of-the-palestinian-discourse/.

[44] Boaventura de Sousa Santos, "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges," *Review (Fernand Braudel Center)* 30, no. 1 (2007): 45–89.

[45] Wendy Espeland, "Narrating Numbers," in *The World of Indicators: The Making of Governmental Knowledge through Quantification*, ed. Rottenburg, Richard , Merry, Sally Engle, Park, Sung-Joon and Mugle, Johanna et al. (Cambridge University Press, 2015),

and examining the knowledge making capacity of the promoters of data narratives. These include international media houses located in the global North and global North governments. There is a strong hegemony of actors that determine the ways in which the narratives on numbers are shared.[46] To counter this it is imperative we must design for a world where many worlds fit it and, in addition to just acknowledging that there are a variety of perspectives, these perspectives must become part of knowledge and governance.[47] To be able to incorporate these different imaginations we need to be able to examine how data captures and represents people and their experiences.[48] As the author Hala Alyan states, to counter erasure, we need to witness -to be able to challenge dominant discourses around what constitutes legitimate data.[49] This practice of witnessing is critical particular as the contexts within which reporting takes places is skewed towards powerful actors in the global North.

5.2 Pluralize sources of data and locating people centricity

Connected with the first argument, we need to pluralize sources of data.[50] This involves expanding what is understood as valid data, and who has the power to generate it. For instance, the case on migrant distress in India, is an example where citizen collectives themselves drove narratives around data. This, process resulted in a decentering of the state and indicated a shift from seeing data as it resides in the state, and in state-based institutions, to data as it is reflected in people and communities.

Focusing on people's struggles, entails thinking about data as a demand-based idea.[51] In the migrant case, the citizen collectives, placed an emphasis on the ways in which people are marginalized and represented in data.[52] Through focusing on

https://doi.org/10.1017/CBO9781316091265.003. Daniel Bonilla Maldonado, "The Political Economy of Legal Knowledge," in *Constitutionalism in the Americas*, ed. Daniel Bonilla Maldonado and Colin Crawford (Edward Elgar, 2018).

[46] Boaventura de Sousa Santos, 'Introduction: Why the Epistemologies of the South? Artisanal Paths for Artisanal Futures', *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press 2018).

[47] Arturo Escobar, 'Introduction', *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press 2018).

[48] Linnet Taylor, "What Is Data Justice? The Case for Connecting Digital Rights and Freedoms Globally," *Big Data & Society* 4, no. 2 (December 1, 2017): 1–14, https://doi.org/10.1177/2053951717736335.

[49] "Hala Alyan on Instagram."

[50] Amartya Sen, 'Human Rights and Capabilities' (2005) 6 Journal of Human Development 151.

[51] Yash Ghai and Jill Cottrell, 'The Rule of Law and Access to Justice' in Yash Ghai and Jill Cottrell (eds), *Marginalized Communities and Access to Justice* (Routledge 2009).

[52] OECD, 'Equal Access to Justice for Inclusive Growth - Putting People at the Centre' (2019) <https://www.oecd.org/governance/equal-access-to-justice-for-inclusive-growth-597f5b7f-

different aspects of marginalization, depending on people's social and economic backgrounds such narratives are from the ground up.[53]

A people centered data approach therefore will focus on ensuring that not only is there a plurality of experiences of people but that there is a plurality of knowledges, institutions, ideas that underpin data. This is to ensure that data is designed to produce agency in people's social and material lives.

5.3 Complexity over commensurability

The final strategy to challenge data silences is to think about the instrumentalizing of ideas to produce commensurability.[54] Take the first case of rule of law indicators. The idea of commensurability has a lot of attraction because it allows us to ask questions for instance if the rule of law improved or declined. The consequence of this commensurability for instance is that we reduce the rule of law into something be compared and that give us a common vocabulary.[55] The commonness, however, results in a circulation of a particular vision of what the rule of law should be and as it circulates, and as it is utilized, it acquires a dominance over other ideas of what the rule of law can be. This results in the establishment of a hegemonic notion that for the rule of law to survive it must follow a certain prescribed set of criteria.[56]

This approach argues for problematizing commensurability, and scalability when thinking about data, by examining what kinds of perspectives are left behind because of choices that are made in measurement frameworks. In doing so, it argues that despite the allure of numbers, often, reducing complexity, means that there is construction of a world that would be limited, and only a partial representation of what was intended to be studied.[57]

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en.htm> accessed 31 July 2019.Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33.Tania Burchardt and Polly Vizard, '"Operationalizing" the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain' (2011) 12 Journal of Human Development and Capabilities 91.

[53] Frantz Fanon, *The Wretched of the Earth* (Grove/Atlantic, Inc 2007). Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2009). Kalindi Kokal, *State Law, Dispute Processing And Legal Pluralism: Unspoken Dialogues From Rural India* (Routledge 2019).

[54] Espeland (n 12).

[55] Morag Goodwin, 'The Poverty of Numbers: Reflections on the Legitimacy of Global Development Indicators' (2017) 13 International Journal of Law in Context 485.

[56] Siddharth Peter de Souza, 'Epistemic Diversity and Voices from the Global South: Countering the Managerial Implications Of Measuring Justice', *Designing Indicators for a Plural Legal World* (Cambridge University Press 2022).

[57] Mathias Siems and David Nelken, "Global Social Indicators and the Concept of Legitimacy," *International Journal of Law in Context* 13, no. 4 (December 2017): 436–49, https://doi.org/10.1017/S1744552317000374.

Therefore, in this case by placing complexity over commensurability when we are thinking about a concept such as a rule of law, we need to begin by assuming that it will necessarily be heterogeneous in nature, that, for this concept to have purchase and have value, it needs to take into account people, their needs and acknowledge the role that different knowledge centers play in ensuring the legitimacy, legibility and the authority of the rule of law .[58] It would require moving beyond a rule of law orthodoxy to be able to look at new locations, new imaginations, and new struggles from where the rule of law can be conceived of.[59]

6. Conclusion

This essay has sought to introduce the concept a data silence and showcase three attributes to it through cases related to rule of indicators, migrant distress in India, and the genocide in Palestine.

The paper argues that data silences can be enacting through constructing social worlds, omitting social worlds, or delegitimizing them. In doing so, they create silences, by reducing the agency of people to tell their stories, and drive narratives which are in their interest.

To counter data silences, the paper proposes three strategies, firstly to explore the knowledge making power of data, to pluralize data sources and to produce people centered data, and finally to place prominence on complexity over commensurability.

In doing so, this essay seeks to argue for building an epistemic plurality to how we conceive of data, challenging the way it is collected, sorted, circulated, and used and being cognizant of the fact that the managerial potential of data is central to the ways in which it is used to construct social worlds.

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[58] Boaventura de Sousa Santos, 'The Heterogeneous State and Legal Pluralism in Mozambique' (2006) 40 Law & Society Review 39.Daniel Adler and Sokbunthoeun So, 'Towards Equity in Development When the Law Is Not the Law: Reflections on Legal Pluralism in Practice' in Brian Z Tamanaha, Caroline Sage and Michael Woolcock (eds), *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge University Press 2012).Franz von Benda-Beckmann, 'The Multiple Edges of Law: Dealing with Legal Pluralism in Development Practice' in Caroline Mary Sage and Michael Woolcock (eds), *The World Bank Legal Review: Law, Equity and Development*, vol 2 (The World Bank 2006).Ugo Mattei and Marco de Morpurgo, 'Global Law and Plunder: The Dark Side of the Rule of Law' (International University College of Turin 2010) 1–10
[59] See generally for instance the conception of justice in the Constitution of Bolivia, 'Bolivia (Plurinational State of)'s Constitution of 2009' (*Constitute*) <https://www.constituteproject.org/constitution/Bolivia_2009?lang=en> accessed 10 December 2020.