
Tribute to Sally Merry's Scholarship from an International Law Perspective

Caroline de Lima e Silva

Sally Merry was a remarkable scholar and her loss will make a profound impact on the scholarship that shapes the intersection between international human rights law and the local sphere. Hence, the aim of this essay is to make a small tribute to a selected part of her scholarship that connects law and anthropology. Merry shifted the understanding of international law from a global and utopian perspective to something tangible and feasible, which has a direct influence on people's lives and communities.

One of the most important books that I read by Merry was *Human Rights and Gender Violence* (Merry 2006a). This book is a masterpiece in its understanding of how global human rights law has become an important resource for local communities. What scholarship in the fields of International Law and Political Law names as international human rights law, Merry calls "global." The shift from international to global is crucial because Merry was a pioneer in comparison to others in how she integrated the international and domestic realms, exemplifying with case studies what human rights mean in practice. While scholarship in Political Science and Law treat international human rights through a macro perspective, Merry sparked hope within this field because she connected universal laws to the practical values of local communities.

In this book, particularly, she explains that women's rights should be taken seriously although this is not the situation in many places in the world, such as India. By traveling beyond national borders, either through the spread of networks, social movements and other mechanisms, rights can help in changing the situation in local places around the world. In contrast with other causal theories, such as the Justice Cascade (Sikkink 2011), Merry is concerned with demonstrating that whatever happens in

Please direct all correspondence to Dr Caroline de Lima e Silva, Geismar Landstrasse, 11C, 37083 Goettingen, Germany. e-mail: carolinedelimaesilva2017@u.northwestern.edu.

Law & Society Review, Volume 54, Number 4 (2020): 868–873
© 2020 Law and Society Association. All rights reserved.

the international community in terms of rights claims can influence the local communities either positively or negatively. Although Merry's scholarship broadly demonstrates that international human rights law fulfilled its objectives (at least to a certain extent), her book also points out some negative examples in which the fight for women's rights was only partially successful.

Merry describes four mechanisms used to apply global human rights in local communities (Merry 2006a: 5). The first is to transform the universal standards of HR to local contexts. The second is that activists need to present their human rights' claims according to the cultural context that they are dealing with but, at the same time, they will need to challenge existing powers relations in order to be effective. The third is that, in order to have local impact, human rights need to be adapted and advocates have to speak a broader language to guarantee funding. The fourth is that to promote individual rights-consciousness, institutions need to implement rights effectively and consciously. As Merry says, "to promote individual rights consciousness, institutions have to implement rights effectively. However, if there is little rights consciousness, there will be less pressure on institutions to take rights seriously." (Merry 2006a: 57; Munger 2007: 829).

The author emphasizes a crucial struggle between the role of culture and rights inserted in the context of power dynamics, "Culture was juxtaposed to civilization during civilization mission of imperialism" (Merry 2006a: 11). Before deconstructing culture, she provides a definition of it: "culture consists of a repertoire of ideas and practices that are not homogeneous but continuously changing because of contradictions between them or because new ideas or institutions are adopted by members" (Merry 2006a: 12). Therefore, she sees culture not as an isolated concept but rather as entangled with macro systems that include the institutions at several levels of interaction—local, domestic, international, and global. One of the remarkable points that allowed Merry to unfold power dynamics from the international to the national (and local) was the use of the methodology "deterritorialized ethnography" to study the interconnectivity of different networks of academics, activists and authorities implementing international human rights.

Beyond the view of culture as entangled with power, the author also analyzes culture as tradition. For example, culture associated with the Global South or culture as national essence - which includes language, law and religion or culture as contentious - which represents the struggles of women trying to assert their rights in different regions of the globe such as Uruguay and Denmark (Merry 2006a: 15).

While Chapters 2 and 3 of the book provide a very detailed view of the anthropological approach that she applies to the case

studies, one of the most interesting perspectives presented in this book is Merry's approach to the Indian society described in Chapter 4. Indian society is constituted by a plural and complex civil code, which integrates culture in a very holistic manner including different religions and systems (Menski 2006). The right to alimony, for instance, is not reconcilable at first when comparing the international and local laws. According to Menski, a virtual unification of the Civil Code in India happened in 2001, but this unification did not guarantee rights postdivorce on a regular basis (Menski 2006).

For instance, in the Indian Civil Code, women do not have the right to alimony (Merry 2006a: 106). One of Merry's most important questions in the chapter is, then, how to reconcile the lack of alimony rights in India with Article 16 (h) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW): "The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration." Merry emphasizes that, although international law and norms view human rights as universal, most international instruments will need to be reconciled with local culture in order to be feasible in particular parts of the world such as India.

Looking then at a different situation in Fiji, the CEDAW Committee intervened in applications of the *bulubulu* (village reconciliation) tradition, explaining that the tradition violated women's rights. However, the CEDAW Committee did not make clear that the tradition should change only with regard to the crime of rape specifically rather than being changed in general (Merry 2006a: 118), especially considering that this specific crime should be punished with life imprisonment. Merry argues that *bulubulu* is a complicated and changing practice and the CEDAW Committee should have conducted a deeper analysis on the matter (Merry 2006a: 118). She redefines *bulubulu* as a practice of renegotiating relationships of inequality. According to interviews with the prosecutors, which explained that even with the *bulubulu*, when charges refer to rape the investigation is not dropped. The existence of *bulubulu* may lead magistrates to reduce the sentence similar to the "plea bargain" in common law systems (smaller sentences for confession) (Merry 2006a: 127). Merry concludes that local pluralism should be taken into account by international human rights' practice.

She concludes this study by explaining that feminist theories and education centers lead women to rethink the violence that they experienced. She emphasizes that intermediaries play a role in translating international concepts to local communities

(Merry 2006a: 229). My only criticism of Merry's approach is the fact that country reports on the UN Committees (CEDAW) are considered to be mostly ineffective because of their dependency on states' cooperation. Therefore, analyzing states' report in countries such as India and Fiji can be challenging from the perspective of political scientists. Alternative approaches to considering states' report are beginning to appear within the literature on compliance with international institutions (Krommendijk 2014).

Although quantitative research was not her main area of interest, her work did include quantitative findings from her earliest work on working-class legal consciousness. Later on in her career, Merry worked on critiquing and translating general findings from the language of indicators. Taking one report as an example, she explains that "The report focuses on what is measurable, such as laws passed, convictions, number of trainings, number of shelters, number of special police units, and so on, rather than the unmeasurable quality of life of victims or of poor communities from which people are trafficked" (Merry 2015a: 391). On the matter of human trafficking, she continues by explaining, "this partial information is translated into apparently objective tier rankings, producing a 'truth' of the status of trafficking in each country" (Merry 2015a: 391). Although this example is uncommon in Merry's scholarship, my understanding is that she was both critical and positive while analyzing international human rights indicators in practice, doing so by contrasting rational indicators with the knowledge that she acquired in the field. Merry's scholarship is in conversation with more realistic views on human rights indicators, as in (Hafner-Burton 2013).

Most importantly, she acknowledges the general human rights claims that "the emphasis on objectivity and counting gives credibility to these indicators. Indeed, many argue that this data, despite its limitations, provides a far superior way of assessing human rights compliance" (Merry 2015: 394) and that they thus open the way toward a new research agenda. Beyond compliance, she understood that "these indicators not only specify and clarify; they translate human rights concerns into other disciplinary languages. They make them accessible to other fields and facilitate dissemination and the mainstreaming of human rights" (Merry 2015: 394). Merry later published more research on indicators (Merry 2016; Merry et al. 2015). It is crucial to take a broad view of Merry's scholarship, because she crosses the lines between so many fields—such as anthropology, law, sociology, and political science—and because she raises concerns about the interconnectivity of the human rights discourse and meaning through this integrated view.

In January 2021, I was to have met Professor Sally Merry personally during the conference “Multiple Legalities: Conflict and Entanglement in the Global Legal Order” and potentially talked to her about how her scholarship profoundly shaped mine and other colleagues at Northwestern University. Within the Departments of Political Science, Sociology, Anthropology, among others, many classes included some of her articles and books. Although she will no longer be able to participate in person in the discussions, I am certain that her teachings on international human rights and on how the international order influences the domestic order will resonate not only during this conference but also in the decades yet to come. Professor Sally Merry was one of the few scholars in the broader field of international human rights law who managed to demonstrate human rights as both feasible and tangible within local communities throughout the world.

References

- Hafner-Burton, Emilie. 2013. *Making Human Rights a Reality*. Princeton, NJ: Princeton University Press.
- Krommendijk, Jasper. 2014. *The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in The Netherlands, New Zealand and Finland: Paper-Pushing or Policy Prompting?*. Antwerp: Intersentia.
- Menski, Werner F. 2006. “Asking for the Moon: Legal Uniformity in India from a Kerala Perspective.” *Kerala Law Times, Journal Section* 2006: 52-78.
- Merry, Sally Engle. 2006a. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago, IL: University of Chicago Press.
- . 2015. “Firming Up Soft Law.” *Transnational Legal Orders* 374-99.
- . 2016. *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking*. Chicago, IL: University of Chicago Press.
- Merry, Sally Engle, Kevin E. Davis, and Benedict Kingsbury, eds. 2015. *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*. Cambridge, UK: Cambridge University Press.
- Munger, Frank W. 2007. “Culture, Power, and Law: Thinking About the Anthropology of Rights in Thailand in and Era of Globalization.” *New York Law School Law Rev.* 51: 818-38.
- Sikkink, Kathryn. 2011. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics (The Norton Series in World Politics)*. New York, NY: WW Norton & Company.

Caroline de Lima e Silva is a Postdoctoral fellow at the Lichtenberg-Kolleg - The Göttingen Institute for Advanced Study (Georg-August-Universität), since October 2019. She has a PhD in Law, University of Copenhagen (iCourts) and a PhD in Political Science, Northwestern University. During her doctoral studies, she was awarded several different scholarships such as CAPES (Ministry of Education in Brazil), The Danish National Research Foundation Grant, several scholarships for

fieldwork from Northwestern University (EDGS, LACS and Buffett Institute for Global Studies) and The Sasakawa Fellowship. She is currently working on a book project entitled "Gatekeepers of the Realm" based on her PhD dissertation ("The Relationship between domestic high courts in Latin America and the Inter-American Court of Human Rights"). The project is both an empirical and theoretical contribution to the literature, including both citation and content analysis within the database of the Constitutional Courts and qualitative interviews with the main actors working at these institutions, such as judges and clerks. She also holds an LL.M from Kings College University of London and an LL.B from Pontificia Universidade Católica de São Paulo. She is a lawyer registered at the Bar Association in São Paulo, Brazil.