Transparency, Accountability, and Global Governance

Thomas N. Hale

Observers often cite transparency as a response to the accountability concerns of global actors, but how disclosure and openness actually affect the behavior of international organizations, transnational corporations, and nation-states remains theoretically and empirically underspecified. This article identifies three forces—market pressure, external discourse, and internal norms—that can have a regulatory effect on global actors who make their actions transparent. It also highlights the limitations of such accountability tools and stresses the need for an accounting actor, typically civil society, to bring them to bear. The article then considers the implications of transparency-based accountability for larger questions of global governance, especially its potential to create the kind of nonterritorial, problem-based polities that scholars have called for to address problems that transcend national boundaries.

Keywords: Transparency, global governance, reflexive law, private regulation, accountability.

Few concepts have come to enjoy more popularity in international policy-making circles than transparency. It has become the international community’s standard response to accountability concerns at international institutions, appearing in the pronouncements of government and international officials, corporate executives, and activists alike. If “democracy deficit” is the catchphrase for global governance’s problem, “transparency” is its buzzword solution.

Much of this rhetoric is simply a faithful recitation of the good governance canon. Most policymakers who advocate transparency do so from a general sense that “sunshine is the best disinfectant.” Few can specify how—or even if—openness and disclosure actually alter the behavior of global actors to promote accountability.

Such knowledge would not be needed if transparency were nothing more than jargon, but the reality is that transparency mechanisms are used as substantive policy tools in a surprising range of areas. They have a long history in the domestic realm; as Mary Graham has noted, governments have used transparency to regulate corporations at least since the creation of the US Securities and Exchange Commission in 1933. Today, national and local governments in the United States and elsewhere—even in relatively closed political systems like China—require entities like companies, schools, and hosp-
Transparency, Accountability, and Global Governance

tals to publish a host of figures, covering such diverse topics as student test scores, medical accidents, and the release of pollutants.3

Transparency is also used by inter- and nongovernmental organizations (IGOs and NGOs). The International Monetary Fund and World Bank have sometimes made clear and accurate fiscal reporting a condition of their aid packages. The European Union requires candidate countries to adopt transparent policymaking procedures as part of its efforts to ensure that member countries meet certain democratic standards. NGOs, for their part, have pressured corporations into monitoring and disclosure arrangements in an attempt to improve companies’ environmental and social conduct, a phenomenon some observers have dubbed the “NGO-industrial complex.”4 They have also demanded similar information from IGOs and nation-states. For example, in response to environmental and social concerns, the World Bank created an independent watchdog that investigates allegations of Bank wrongdoing and publishes its findings as factual records. The North American countries have, through the environmental side agreement to their free trade zone, created an international organization that investigates and publicizes countries’ failures to enforce their own environmental laws.

Critics contend that transparency mechanisms like these are too “soft” to create real accountability, arguing that bad publicity is insufficient to make global actors change behavior. While such critiques often highlight important deficiencies in current governance arrangements, they assume that formal regulation generates higher compliance than informal arrangements. At the global level, however, this line of argument is often a dead end; the world is unlikely to see “hard” command and control regulation or administrative law applied transnationally in the near future.5

Given that policymakers and activists consistently advocate transparency, use it for important governance tasks, and are unlikely to replace it with more formal arrangements in the foreseeable future, it is surprising that we understand so little about how it works to promote accountability. The first goal of this article is to contribute to filling that gap by analyzing whether—and how—transparency is able to change the behavior of global actors, especially in situations where information users have no formal control over disclosers, and indeed may be significantly less powerful.

The first section borrows from Andreas Schedler to conceptualize accountability as the linkage of two components: the ability to know what an actor is doing and the ability to make that actor do something else. Transparency clearly speaks to the first, but can it, despite its “softness,” provide for the latter?

The following section answers that question with a qualified “yes” by identifying three forces—market power, external discourse, and internal norms—that provide the enforcement component of Schedler’s equation. The first fits with rationalist explanations of social behavior, while the latter two
are best explained by ideational or constructivist approaches. Using one such model, Gunther Teubner’s theory of reflexive law, I am able to develop a theoretic framework to explain how transparency enhances the regulatory effects of norms and discourse. I find preliminary evidence that all three forces can alter the behavior of global actors, but I also find that they are not available in all situations. Furthermore, the forces must be invoked by dedicated political actors, typically NGOs or socially responsible market actors, in order to be effective.

I then turn to the second goal of the article: to consider the implications of these findings for larger questions of global governance. Critical theorists and constructivist scholars of international relations have argued for a layer of issue-based, nonterritorial governance that transcends national boundaries. Territorial states, they claim, are ill adapted to confront transnational problems. Important stakeholders may be oppressed simply because they do not happen to live in the polity where decisions affecting them are made. Furthermore, transnational nonstate actors over which stakeholders have no formal authority may weigh heavily on their lives. To resolve such mismatches, some scholars have suggested transparency and participation as vehicles for building problem-based decisionmaking communities to supplement traditional governance arrangements. I specify how transparency creates such communities by allowing stakeholders to self-select into ad hoc public spheres in which market forces, discourse, and norms can govern behavior. I conclude by summarizing the possibilities and limitations of transparency mechanisms in global governance.

Before proceeding it may be helpful to define a few key terms. An institution is transparent if it makes its behavior and motives readily knowable to interested parties. This definition covers both access to information—answering inquiries—and general disclosure—making unsolicited information available. A “transparency mechanism” is a policy that makes an institution more transparent. Finally, an “accounting actor” is an organization or individual that holds another organization or individual accountable.

**Conceptualizing Accountability**

Accountability, like art, is more easily recognized than defined. Though it is clearly a central aspect of normative democratic theory, several scholars have noted that the idea is “an under-explored concept whose meaning remains evasive.” Schedler, however, has outlined a way to think about accountability that helps explain the role transparency mechanisms can play. He sees accountability as the synthesis of two concepts: answerability—“the right to receive information and the corresponding obligations to release details”—and enforcement—“the idea that accounting actors do not just ‘call into question’ but also ‘eventually punish’ improper behavior.” In other words, A is account-
able to B if B can (1) know A’s behavior, and (2) exert pressure on A to influence that behavior.

The first component, answerability, is directly addressed by transparency. By demanding information as well as justification, transparency sheds light into the black box of politics. This process empowers accounting actors then to apply enforcement. Voters who review representatives’ records are able to use the information to either support them in the next election or vote them from office. A boss who installs a hidden camera by the water cooler is able to reprimand employees who linger there.

But is enforcement possible at the global level? Schedler notes that academic writers are quite emphatic in stating that the capacity to punish forms an integral part of political accountability. Voters are able to influence their representatives’ behavior because they have constitutionally granted electoral power over them. Similarly, employers have contractual power over employees. In contrast, NGOs have no such formal authority over corporations. Likewise, the lines connecting global institutions to the people affected by their projects and decisions are often so long and thin as to be considered negligible. Absent formal enforcement, can transparency alone promote accountability?

Existing analyses of transparency mechanisms leave this question largely unanswered, even when studying informal enforcement, perhaps because they come primarily from the domestic literature where the question of enforcement is less problematic. Archon Fung et al. describe a transparency action cycle in which disclosure generates new information that changes the perception of information users, who alter their behavior accordingly. This shift is then perceived by the discloser, who responds appropriately. For example, a report highlighting pollution at a factory (new information) causes neighbors (information users) to complain to the media and local officials, which in turn causes the company (the discloser) to alter its behavior. This model provides a useful sketch of how transparency mechanisms operate, but it glosses over the crucial question of how mere information allows information users to alter disclosers’ behavior. What changes in information-users’ behavior cause changes in the discloser’s behavior? In order to design effective transparency mechanisms, particularly at a transnational level where enforcement can be difficult, we must know what makes this cycle spin.

Three Tools of Enforcement

In this section, I identify three informal enforcement “tools” that accounting actors can mobilize to hold targeted institutions accountable. These tools include market pressure, the internal norms of the targeted actor, and discourse between the targeted actors and relevant stakeholders. These last two are dis-
discussed together, for reasons I expect will become clear to the reader. My
analysis is demonstrated through case studies, which are included simply to
provide an example of how transparency mechanisms can function. Because
each case study is tied to a specific political situation, generalizations are nec-
essarily limited.

Market Pressure
Markets channel resources toward actors whose products enjoy a high ratio of
perceived value to price. Value is conventionally understood in narrow, func-
tional terms—how well the product fulfills some need. However, consumers
are increasingly broadening this definition to include a range of other metrics,
including a product’s social or environmental impacts. In response, corpora-
tions have adopted a host of informational mechanisms to demonstrate their
social concern. Industries have set up certification schemes—often at the
behest of NGOs—for everything from sustainable lumber, to dolphin-free
tuna, to nonsweatshop clothing.14 Furthermore, just as companies must dis-
close financial information to investors and regulators, an increasing number
are choosing to release social and environmental data as well in order to purs-
ue a “triple bottom line.” The Global Reporting Initiative is the most
advanced of these efforts.15 Such measures are transparency mechanisms; they
release information to the public about corporate behavior.

While the trend toward socially responsible merchandise is perhaps the
most visible manifestation of market pressure, it is important to remember that
the effect also occurs in labor and capital markets. Workers often withhold
their labor—that is, go on strike—to compel employers to change their prac-
tices. Similarly, investors increasingly withhold capital from companies that
do environmental or social harm. Indeed, in 2003 in the United States alone,
socially responsible investment funds managed $2.17 trillion worth of assets,
accounting for one in every nine invested dollars.16

While understandably dominant in the private sector, market pressure is
also wielded in the public and charitable sectors. Just like companies, states
can be boycotted through embargoes or civil society campaigns. States are
also indirectly vulnerable to market power wielded against companies that are
important to their economies. Even IGOs are susceptible to market pressures.
If we think of an organization like the World Bank as a “producer” of develop-
ment and its donor governments as “consumers” of that product, the anal-
ogy is clear. If donors do not like the Bank’s policies, they can withhold fund-
ng or direct money to a different organization. The same is true of NGOs or
any other organization that must raise money from public or private donors.

Market pressure is a real and coercive force at the transnational level and is
increasingly used by activists and stakeholders to force organizations, prin-
cipally corporations, to alter their behavior. It can provide the punishment
component of Schedler’s two-part definition of accountability by hitting actors
where it hurts—their bank accounts. How, then, does transparency help bring this force to bear? The experience of US corporations in apartheid-era South Africa provides an unusually rich illustration, and serves as an important reference point for contemporary efforts.

The Sullivan Principles: A Case Study
Beginning in the late 1970s, US corporations operating in South Africa faced abundant criticism from civil rights activists, students, church groups, and others who believed US investment in South Africa bolstered the white minority regime. Activists were divided into two camps: one calling for complete withdrawal and divestment from South Africa, the other arguing that US corporations could serve as a progressive force for change by implementing nondiscriminatory practices and investing in local communities. Both sides used economic pressures, particularly investment boycotts, to compel corporations to either reform or withdraw.

The reformist line was championed by the Reverend Leon H. Sullivan, a civil rights activist from Philadelphia who also served on the board of General Motors. Working with corporations invested in South Africa, Sullivan developed a set of principles for firms to follow, such as desegregating workspaces, promoting nonwhites to positions of authority, and donating to local educational and health charities. The Sullivan Principles, as the program came to be known, were designed to transform US firms from cogs turning the wheels of apartheid into wrenches jamming them.

Because the principles were voluntary and because many in the activist community were doubtful that anything short of full corporate withdrawal would have any effect on the apartheid regime, Sullivan and his partners needed some way to make their commitments credible. In 1978, they contracted Arthur D. Little, a respected consulting firm, to collect data on corporate compliance and publish that information in an annual report. Corporations were evaluated according to each of the Sullivan Principles and given an overall ranking: “making good progress,” “making acceptable progress,” or “needs to be more active.” Through this system, the behavior of US firms operating in South Africa was made somewhat transparent to concerned investors.

However, the information about corporate behavior actually generated and publicized by these reports was sketchy at best. Arthur D. Little evaluated corporations against largely imprecise and subjective criteria, forcing the reports’ authors to at times wax Orwellian. For example, for the principle concerning the promotion of nonwhites, a high score was defined as “quite considerable” progress, a middle score as “somewhat considerable,” and a low score as “slight or no advancement.” In the third report, nearly 70 percent of companies were placed in the middle category, leaving observers wondering what exactly “somewhat considerable” progress meant. As one activist wrote, “To trust the efficacy of the Sullivan Principles requires a great deal of faith.”

17
Despite these limitations, many institutions looking to promote change among US corporations in South Africa used the Sullivan Principles as a way to target the economic pressures they applied. For example, in 1993, the Investor Responsibility and Research Center (IRRC) counted 255 state and municipal laws that limited government procurement from or public investment in companies that did business in South Africa. Many of these laws invoked the Sullivan Principles, allowing business with firms that participated or received high rankings, and prohibiting economic interaction with firms that were not signatories or that performed poorly. An interesting shift occurred in 1986, when Sullivan disassociated himself from the principles and the program became discredited. Before then, 25 percent of local and state laws concerning US corporations in South Africa used the Sullivan Principles to distinguish between “responsible” and “irresponsible” corporations. After the program lost credibility, only 9 percent did. This change suggests that credible transparency mechanisms can direct significant economic pressures against noncompliant corporations, and that less credible mechanisms are substantially less able to do so.

Other types of investors also relied on the Sullivan reports to direct their economic pressure. A sizable block of private universities interviewed by the IRRC stated they would not hold stock in companies that had not signed the Sullivan Principles and routinely supported shareholder resolutions demanding compliance with the principles. Many church groups, private foundations, and even private banks followed suit.

That so many socially conscious investors were willing to use the Sullivan Principles in spite of their many defects suggests that even a small amount of transparency can be a powerful motivator and director of economic pressures. It also suggests that a stronger, more revealing transparency mechanism might have had even more coercive effects on US corporations in South Africa. Indeed, the fact that corporations stridently fought efforts to “ratchet up” the reporting system and make their actions more visible reinforces this conclusion.

But even if transparency was an effective way to channel economic pressures against noncompliant corporations, the question remains as to whether such pressures actually improved the lot of nonwhite South Africans. A 1985 IRRC study compared the performance of Sullivan signatories to that of nonsignatories with the purpose of determining, as the report’s title bluntly asks, “Does Signing the Sullivan Principles Matter?” The IRRC indeed found that signatories outperformed nonsignatories in several areas, such as pay rates, promotion of nonwhites to managerial positions, and donations to local communities. This conclusion is unsurprising, given that signatories were likely to have been self-selected for social responsibility. More interestingly, the report found that the areas in which signatories were more responsible than nonsignatories were precisely those areas measured in the annual
In other words, US corporations improved their social performance only in the areas where firm behavior was exposed.

Observers generally view the Sullivan Principles as a minimally successful experiment in corporate responsibility that contributed only negligibly to the downfall of the apartheid regime. However, for this discussion, the more important lesson is that despite their many flaws, the Sullivan Principles helped activists exert market pressure against socially irresponsible corporations, causing them to improve their behavior.

The Limits of Market Power

The experience of the Sullivan Principles suggests we be cautiously optimistic about the ability of transparency to alter corporate behavior. But while such transparency mechanisms are currently an underexplored and underutilized tool in the global regulatory kit, it is important to stress their limitations.

First and most obviously, economic pressure can be exerted for social ends only when significant numbers of consumers and investors are willing to invoke it. If buyers do not care sufficiently about an issue to (1) differentiate “good” products from “bad” ones, and (2) potentially pay a premium for the “good” product, markets will not direct suppliers toward socially conscious behavior. Public opinion surveys find consistent consumer support for socially conscious products; about three-quarters of Americans say they have a moral obligation to consider how the products they buy are made. Of course, these good intentions do not always translate into purchasing behavior. In order for transparency mechanisms to utilize market power, the information they provide must become, as Fung et al. describe, “embedded” in the behavior of information users.

Second, different types of actors are vulnerable to markets to varying degrees. For example, companies that make products for mass consumption rely heavily on brand image to sell their goods. Many of the most prominent transnational corporations fall into this category and indeed contribute little more to the production process than design, coordination of supply chains, and, critically, branding and marketing. Conversely, so-called brandless companies—which make generic goods or sell primarily to other businesses—do not depend for sales on public goodwill and so will be less susceptible to pressures from consumers. However, brandless corporations may still be vulnerable to pressures from capital markets, as was seen in the South African example.

Market pressure suffers normative limitations as well. By definition, it is the wealthiest who are most able to use market power. Under Schedler’s model, the Sullivan Principles and their contemporary counterparts provide accountability only to the extent that the interests of wealthy consumers and investors approximate the interests of the people affected by the targeted corporations’ actions. A system that relies on noblesse oblige may be seen as
legitimate if it produces beneficial results—a paternalistic improvement is better than none—but ultimately must be considered normatively inferior to systems that give affected stakeholders direct control.

**Public Discourse and Internal Norms**

Market pressures, even when not formally codified in law, are uncontroversially recognized as “real” punishments that can fill the enforcement component of the accountability equation. The pain they can cause is measurable and concrete. In contrast, public discourse and internal norms are intangible and their effectiveness as regulatory tools is contested. While mainstream scholars of international relations have noted that global actors desire to maintain a good reputation and may alter behavior that brings uncomfortable criticism upon them, the effect has rarely been subject to serious analysis and is often dismissed as marginal.25

This section seeks to fit the regulatory effects of norms and discourse into a theoretic framework—Teubner’s concept of “reflexive law.” A synthesis of Niklas Luhmann’s systems theory—which argues social units reflect on their own values to decide how to behave—and Jürgen Habermas’s theories of communicative rationality—in which actors must justify their behavior in discourse with society at large—reflexive law can provide a detailed theoretic explanation for how transparency allows public discourse and internal norms to promote accountability at the global level. Since his seminal 1983 article, Teubner has refined this theory significantly, gradually placing greater emphasis on Luhmann’s ideas.26 Here I draw from the earlier version, joining other observers who, coming primarily from the domestic environmental law literature, believe the theory is most compelling when it involves a significant Habermasian component.27

Teubner, like Luhmann and Habermas, is concerned that traditional legal and governance structures are unsuited to manage the increasing complexities of contemporary society. He sees traditional governance, typified by the regulatory welfare state, as centralized, bureaucratic, and focused on “substantive” outcomes like environmental protection or wealth redistribution. In a highly complex and diverse society, such governance arrangements have neither the technical capacity nor the moral legitimacy to achieve public goals. For example, consider the proposal by some environmental activists to regulate all transnational corporations through a body of international law enforced by the United Nations.28 Not only would the UN or any international organization struggle to manage the massive technical complexities of such a project, but it is even less probable that various countries representing a range of economies and levels of development could agree on common standards.

Luhmann’s solution is to delegate governance responsibility to subunits of society, which he believes are distinguished along functional lines (e.g., science, religion, education)—“a displacement of integrative mechanisms from
the level of society [where traditional arrangements locate them] to the level of the subsystems. In effect, each of society’s functional subgroups must regulate itself, a process Teubner later calls “autopoiesis.” Regulation, Luhmann argues, becomes a task of self-reflection. Reflection imposes “internal restrictions on given subsystems so that they are suitable components of the environment of other subsystems.”

Though Luhmann does not stress the point, it is important for our purposes to emphasize that self-reflection is guided by each functional group’s internalized norms. Socialization inculcates epistemic communities with certain group norms—“best practices” in contemporary parlance. When actors reflect on their own behavior, they are guided by these internal principles.

Habermas, in contrast, is unwilling to delegate governance to subsocietal units. He believes that law must change from pursuing substantive goals, like reducing pollutants by a certain level, to procedural goals like guaranteeing that fair procedures are followed to determine how many pollutants should be allowed. As Teubner translates him, Habermas explains:

Since ultimate grounds [i.e., the legitimizing ideologies that allow for substantive regulation] can no longer be made plausible, the formal conditions of justification themselves contain legitimizing force. The procedures and presuppositions of rational agreement themselves become principles.

The legitimizing procedures Habermas is most concerned with are the linked concepts of participation and dialogue, which he believes lead to the “democratization of social subsystems.” For Habermas, a just society is defined by the presence of an “ideal speech situation” in which communication is abundant and not coerced or otherwise distorted. As Thomas Risse explains, in such a setting,

actors try to challenge the validity claims inherent in any casual or normative statement and to seek a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action. . . . The participants in a discourse are open to be persuaded by the better argument and . . . relationships of power and social hierarchies recede into the background. . . . The goal is not to attain one’s fixed preferences, but to seek a reasoned consensus. Actors’ interests, preferences, and the perceptions of the situation are no longer fixed, but subject to discursive challenges.

Teubner fuses the discursive, procedural ideas of Habermas with the reflexive ideas of Luhmann into two integrative theses:

1. Reflection within social subsystems is possible only insofar as processes of democratization create discursive structures within these subsystems.
2. The primary function of the democratization of subsystems lies neither in increasing individual participation nor in neutralizing power structures but in the internal reflection of social identity.36

In sum, Habermas sees communicative procedures as the glue uniting complex societies, while Luhmann gives that role to internal reflection. With his idea of reflexive law, Teubner recognizes that these two processes are not mutually exclusive but, in fact, complementary. If actors are to be legitimate members of society—meaning, if they aim to successfully interact with different groups—they must allow for exchange between the external discursive process and the internal reflective one. That is, they must consider the desires of other actors in society when they reflect on their own behavior.37 Actions must be justified both discursively vis-à-vis other actors and reflectively vis-à-vis internal values.

Two Case Studies: The World Bank Inspection Panel and the Commission on Environmental Cooperation Citizen Submission Process

Theories require empirical validation to become compelling. The experiences of two sophisticated transparency mechanisms—the World Bank Inspection Panel and the citizen submission process of the Commission on Environmental Cooperation—offer preliminary evidence that norms and discourse do indeed promote accountability among global actors. They also highlight the role of transparency and suggest a number of limitations for norm- and discourse-based regulation, particularly its dependence on civil society as an accounting actor.

The World Bank Inspection Panel was created in 1993 in response to criticisms from civil society groups and some member states that the Bank’s loan projects were violating its own social and environmental regulations, perversely harming the very people and places the Bank was chartered to assist. Any person or group of people negatively affected by a Bank project—or, in some cases, an organization acting on their behalf—can file a complaint with the panel. If that complaint is deemed to fall within the panel’s mandate, a full investigation is authorized. To gather evidence, the panel then holds interviews, conducts field visits, and takes submissions from outside experts, Bank staff, affected stakeholders, and NGOs. Its goal is to determine if the Bank has violated any of its environmental or social policies. The end result is a factual record of the Bank’s compliance with its own policies, which is presented to the Bank board and then released to the public.

The citizen submission process of the Commission on Environmental Cooperation (CEC) is similar. The CEC is an intergovernmental organization created by the environmental side agreement to the North American Free Trade Agreement (NAFTA). One of its main tasks is to review complaints,
which any person resident in North America may submit, that the NAFTA parties are failing to enforce their domestic environmental laws. Such complaints are investigated by the CEC, whose findings are released as public records. One point of difference from the World Bank Inspection Panel is that CEC records may also become the basis of a formal treaty action against the NAFTA party in violation, but this provision has never been invoked.

Both the Inspection Panel and the CEC submission process function as "information courts." They have plaintiffs, defendants, and a panel of judges. Evidence is collected and weighed to determine whether the defendant has violated a certain set of established rules. But unlike most courts, the judgments of these info-courts have no formal legal standing. They simply paint what is supposed to be an accurate and objective picture of the World Bank and the NAFTA parties' behavior; they make it transparent.

How effectively have these info-courts provided remedies to affected stakeholders? The World Bank Inspection Panel's experience has proven relatively promising. In one case involving a poverty alleviation project in western China, the panel review ultimately led to the end of Bank involvement in the project. Of the twenty-five cases for which data were available at the time of writing, six others also led to substantial changes in Bank policy, such as allocating more funding for displaced people or revising environmental assessments. Seven other cases resulted in smaller-scale changes or further study of the issues in question. The remaining eleven resulted in no changes.38

Those asking the question "does the Inspection Panel work?" will be unsatisfied by those numbers, because it is unclear how many of the twenty-five cases should have resulted in large changes, how many in small changes, and how many were in fact spurious. There is no baseline against which to measure the panel's record.

For the purposes of this article, however, the results are quite interesting. They show that in over half of the cases brought before the panel, the mere release of information has actually changed Bank behavior, and in a quarter of cases, this change has been substantial. Given that the panel's findings had no "hard" consequences, why should the Bank have changed its policies in any of the cases?

It seems likely that discourse and norms played a significant role. Regarding the former, the cases that resulted in the largest policy changes were also the ones on which NGOs like the Center for International Environmental Law lobbied hardest. Cases with high levels of activism achieved significant change in 60 percent of cases, compared to 15 percent for less attention-grabbing cases.39

Turning to norms, change at the Bank seems partly driven by the extent to which a case is connected to the Bank's institutional values—its underlying sense of "who we are." The panel process contains a preliminary fact-finding stage that allows the Bank to review stakeholder grievances and potentially
reform policy before a public factual record is published. At this stage, Bank officials are not yet exposed to public shame, so their motivations for changing policy likely stem from their own values. Of the six cases resolved in the fact-finding stage, two achieved large policy changes and the remainder achieved mid-level results. These results are substantially better than the success rate for cases that went to the full investigation stage, suggesting that transparency can alter an institution’s behavior simply by showing where its actions conflict with its own values.

On balance, it seems that the CEC has been less effective than the World Bank panel. For example, in the high-profile Cozumel case, the CEC’s findings led to improvements in Mexican environmental law but failed to stop the specific violation at issue—the building of a cruise ship pier in environmentally sensitive waters in the Gulf of Mexico. Of twenty-six completed CEC cases, four resulted in “high” levels of policy change, seven in “medium” changes, and the remainder in negligible changes. Again, these results are less interesting here than the question of what made some cases more successful than others.

As in the World Bank example, activist pressure was an important part of successful cases. While only 15 percent of all cases yielded high results, cases with high levels of advocacy achieved substantial policy changes 30 percent of the time. Only 20 percent of cases with substantial activism yielded no result.

The Role of Transparency
The above examples allow us to say with some precision how transparency mechanisms allow public discourse and internalized norms to regulate global actors.

First, transparency mechanisms institutionalize public discourse. The act of disclosure begins a dialogue between the discloser and interested parties. In the case of the Sullivan Principles, the annual ratings system was a running commentary on companies’ compliance with social values. A low rating would elicit criticism from NGOs and socially conscious investors to whom the company would then respond.

The procedure of dialogue is substantially more developed in both the CEC submission process and the World Bank Inspection Panel, reaching a quasi-judicial level of formality. Information and opinions are exchanged between complainants and defendants through the form of briefs and submissions, which are later refined into official findings. Moreover, citizens can begin the dialogue by submitting a complaint whenever they feel the need to do so. These procedures provide a specialized forum in which discourse can occur.

Second, beyond simply providing a forum for discourse, transparency mechanisms make discourse a credible reflection of the real-world situation.
In the cases studied, they align discourse with an actor’s actual compliance record. A forum is not particularly meaningful if it is filled with liars. As Robert Keohane and Joseph Nye note, “Credibility is a crucial resource, and asymmetrical credibility is a key source of power.” In a fully transparent environment, actors become subject to what Habermas calls the “forceless force of the better argument.” Transparency mechanisms compel actors to tell the truth, making it difficult for discourse to be manipulated by one “loud,” deceitful actor. In this manner, credibility is asymmetrically allocated along lines that reflect the world situation, enhancing the standing of those with valid claims against targeted institutions, which in turn find their credibility significantly diminished. Transparency mechanisms thus approximate Habermas’s “ideal speech situation.”

Third, by separating credible information from specious claims, transparency mechanisms serve an important “editing” function. Keohane and Nye argue that in informational politics there exists a “paradox of plenty”: “A plethora of information leads to a poverty of attention.” Or, as a New Yorker cartoon puts it, “If this is the information age, how come nobody knows anything?” Transparency mechanisms cut through the flood of information and countervailing claims to focus attention on facts.

Fourth, turning to self-reflection, we see that transparency empowers actors to comply with their own internalized norms. According to Luhmann, actors regulate themselves through self-reflection. Transparency can facilitate self-reflection by exposing an actor’s own behavior to itself. Where that behavior is in conflict with internalized norms, the actor has the ability—because it is relatively autonomous within its functionally differentiated sphere—to change to comply with its own norms. This was seen in the cases brought before the World Bank Inspection Panel in which Bank management, having become aware of the problem, agreed to address the complainants’ concerns before a formal review process could even take place.

However, as with market power, discourse and norms suffer important limitations. First, though the transparency mechanisms studied do much to level the informational playing field, they cannot erase all power asymmetries. Generating reports, participating in investigations, and publicizing cases require significant expertise and finances. Poor and remote stakeholders are unlikely to have access to the scientific expertise and publicity tools that the most successful cases before the Inspection Panel and the CEC employed. Indeed, many may not know that such info-courts even exist.

As was seen in the examples, some of this gap can be filled by third parties, particularly sophisticated international NGOs. However this raises a second limitation of transparency mechanisms, seen previously with market power: can the interests of Northern NGOs be used as proxies for the interests of affected stakeholders? Certainly in most cases, the help of sophisticated NGOs is seen as generous and useful rather than paternalistic, but at a mini-
Thomas N. Hale 87

mum, NGOs purporting to speak for others must set policies that protect the views of their disadvantaged partners.

Transparency and Democratic Global Governance
The preceding section argued that transparency empowers stakeholders to use markets, internal norms, and discourse to enforce accountability upon global actors. This section explores how this process helps to democratize global governance.46

Efforts to fill globalization’s democracy deficit generally come from either liberal institutionalists or critical theorists and constructivists.47 The difference in these two approaches roughly tracks the differing emphases each school of thought places on the centrality—both positive and normative—of the nation-state. Liberal scholars highlight the ways in which global actors are beholden to nation-states and, ultimately, the polities those states represent.48 They essentially treat accountability concerns at intergovernmental organizations as they would similar concerns at domestic governmental agencies; some have even suggested IGOs effectively represent “the fourth branch of government.”49 The reforms that liberals proscribe mirror what is known domestically as public administrative law, a range of procedures—many involving transparency—that seek to solicit from interested parties comment on a government agency’s work and design policy in a way that is open, fair, and subject to democratic oversight.50 Liberals also tend to emphasize that some international organizations, like their domestic counterparts, gain legitimacy from nondemocratic metrics like technical expertise or impartiality. Indeed, some institutions—for example, courts and central banks, both of which have international analogues—are effective and credible (and thus legitimate) precisely because they are isolated from popular sentiment.51

In contrast, constructivists and critical theorists tend to be more skeptical about the degree of state control over global actors. More fundamentally, they question whether making global actors fully accountable to nation-states would be sufficient to resolve global governance’s accountability problems. In this view, territorially based states are unlikely to address problems that do not fit into the borders of any one state. Because affected stakeholders may live in polities that do not have control over the actors that are harming them, they are effectively oppressed.

The detrimental effects of this mismatch are compounded by the abundance of power inequalities in global politics. For example, powerful international organizations like the World Bank or the International Monetary Fund are structured to weigh the views—and the votes—of rich countries over those of poor countries, despite the fact that both organizations work primarily in the developing world. The growing number and size of transnational corporations,
which many critical theorists consider to be effectively outside the control of any state, represent another potential source of oppression.

This diagnosis has led critical theorists to advocate much greater changes than simply increasing the accountability of global institutions. Many argue for the creation of new forms of direct democracy at the global level to supplement—or even supplant—the nation-state. Anthony McGrew describes a form of governance that “combines a commitment to direct forms of democracy and self-governance together with new structures of functional governance.”52 Echoing Luhmann, this line of thinking maintains that “governance should be organized along functional (e.g., trade, environment, health), as opposed to territorial, lines and that such functional authorities should be directly accountable to the communities and citizens whose interests are directly affected by their actions.”53 As John Dryzek puts it, “The point is that the reach of public spheres [authorities] is entirely variable [by the scope of the particular issue] and not limited by formal boundaries or jurisdictions, or obsolete notions of national sovereignty.”54

Moreover, these functional groups apply equally to the private sector and the public. All decisionmakers—private corporations included—are accountable to the stakeholders in their functional groups.

The idea of direct, functionally disaggregated democracy has enormous appeal at the theoretical level. After all, if all people were allowed to influence all decisions that affected them regardless of territorial boundaries or the nature of the decisionmaker, would not the highest form of “rule by the people” be reached?

The difficulty, of course, lies in implementation. As McGrew explains, Burnheim proposes that functional groups

be managed by a committee, chosen on the basis of a statistically representative sample of those citizens and communities whose interests are implicated in its decision making. This would ensure that those with a stake in the decisions of each [functional] authority would have a voice in the governance of that functional domain of social life “to the degree that they are materially and directly affected by decisions in that domain.”55

It is difficult to see how this vision could operate in practice. First, how would functional groups be defined? Using the environment as an example, would there be a committee for each watershed, each ecosystem, each biome, or the entire planet? All of the above? The multiple scales at which various problems exist could lead to a staggering proliferation of bureaucracies, each charged with a different layer of governance. Second, how would we decide who counted as a stakeholder in each functional group, and, even more problematically, how would we weigh their relative stakes? Third, how could stakeholders make intelligent decisions about each functional group in which they
Thomas N. Hale 89

are implicated? A major advantage of representative democracy is that it allows citizens to aggregate their interests into various representatives, making political participation feasible. Voters seem hard pressed to follow national, regional, and municipal elections; it is likely they would be more paralyzed than empowered by a glut of function-based committees.

However, as Rodger Payne and Nayef Samhat have suggested, transparency may be a way to implement some of the democratic benefits envisioned by advocates of direct democracy.56 As explored above, transparency enhances the various forms of power that stakeholders can wield to influence decisionmakers. Because this process is not formally organized—it depends on the political will and capacity of stakeholders—it elides many of the structural problems raised by the “institutionalized” vision of transnational participatory democracy discussed above. Informality allows functional groups and stakeholders to self-select. Their “weight” in the decisionmaking process is measured in part by how vigorously they campaign against the targeted actor or how many resources they are able to invest in a boycott, decisions that reflect in part how much they care about the issue in question. In this way, governance is structured similarly to a market, the “currency” of which is political will and one’s ability to make one’s voice heard. Thus, an informal structure resolves some of the dilemmas that make a formal structure unworkable, creating a kind of transparency-based “informational democracy.”57

There are strong parallels here to the ideal speech communities envisioned by Habermas and applied to the international regime level by international relations scholars like Payne and Samhat. These theorists have postulated that international regimes—that is, the collections of rules, institutions, and other actors surrounding certain issues, like trade or arms control, roughly akin to what other writers identify as “functional groups”—can serve as the basis for nongeographic political communities to be built through discourse. However, the preceding exploration of the mechanics of this process allows me to offer two refinements to this vision.

First, Habermasian discourse is not the only tool with which transnational communities can be built. While discourse plays a central role, and is perhaps vital to making actors think of themselves as members of a “community” as opposed to merely participants in a “regime,” other forces can be important components of the community’s operation. Market forces can be harnessed as implements of political pressure, as can norms and self-reflection. Indeed, as Teubner’s reflexive law suggests, norms and self-reflection complement Habermasian speech by giving societal discourse traction on actors’ decision-making.

Second, and more fundamentally, this article suggests that new transnational communities are best conceptualized not at the level of regimes, as Payne and Samhat envision, but below them, at the level of individual political problems. New political communities are indeed being created by the
transparency mechanisms studied in this article, but they are largely ad hoc, transitory, and specific to the transnational problems that give rise to them. Furthermore, they tend to grow up around existing institutions, supplementing—not replacing—them.

For example, each case that comes before the World Bank Inspection Panel creates a community of actors who all have some stake in the project. This group includes both decisionmakers (e.g., the Bank officials managing the loan and the borrowing government) and decisiontakers (e.g., the stakeholders who stand to lose from the project, the NGOs who represent them, or other, independent interests). The accountability mechanisms explored above—market pressure, discourse, and norms—give the decisiontakers some influence over the decisionmakers. Thus, within the ad hoc community generated by a particular policy problem and supported via the Inspection Panel structure, stakeholders are empowered to influence the decisions that affect them. In this way, the specific instance of transnational governance identified in the Inspection Panel case occurs with some degree of democratic legitimacy.

Taking the full range of Inspection Panel cases as a whole, the aggregation of individual cases creates a larger effect of democratic oversight over the Bank’s actions. If similar transparency mechanisms were adopted by other multilateral development banks and other public and private providers of development-oriented loans, democratic governance could be expanded to the regime level. To the extent that the same actors find themselves implicated in political questions repeatedly, the communities—or at least a significant part of them—may become semipermanent. However, it is important to remember that these larger effects are abstractions based on aggregations of highly specific, problem-based, ad hoc “micropolities.” This point is critical for the implementation of accountability mechanisms because it implies that the democratization of global governance is most productively built from the ground up.

Interestingly, this view comports with liberals’ emphasis on reforming the existing interstate architecture, but in a way that relies on critical theory’s efforts to redraw the bounds of political communities. While the World Bank ultimately remains governed by its member states, the Inspection Panel offers an additional check on Bank behavior by engaging people not because they live in a particular state, but because they have a direct interest in what the Bank does.

**Conclusion**

Transparency can play a useful role in promoting accountability at the transnational level by allowing accountability actors to employ markets, discourse, and norms against a variety of global institutions, including nations, interna-
tional organizations, and transnational corporations. Such methods are not always effective, but strengthening the role of accountability actors, primarily NGOs, and ensuring that transparency mechanisms achieve maximum disclosure can do much to make global governance more democratic. Indeed, transparency mechanisms are a critical part of the infrastructure on which transnational political communities can be built.

For all the rhetoric surrounding transparency, policymakers have yet to employ it to the fullest extent. Mechanisms like the World Bank Inspection Panel and the CEC citizen submission process continue to encounter resistance from the institutions they are designed to monitor. Furthermore, accountability actors, especially those in the developing world, require assistance—such as technical and legal training—to overcome the obstacles they face to utilize transparency safeguards most advantageously.

As transparency mechanisms become more prevalent, further study will be required to design effective policies and to distinguish valuable accountability tools from mere public relations stunts. Additional study will also expose those areas in which transparency mechanisms cannot adequately serve transnational governance needs, indicating where other measures, such as traditional “command and control” regulation, will be required. As globalization drives the need for increased—and increasingly democratic—global governance, transparency mechanisms will likely form a key pillar in global politics.

Notes

Thomas N. Hale is a PhD candidate in the Department of Politics and special assistant to the dean at the Woodrow Wilson School of Public and International Affairs, Princeton University.

1. See, for example, Ann Florini, “The End of Secrecy,” Foreign Policy (Summer 1998): 50–64.
3. See ibid.
5. One area of exception might be crimes against humanity, which are universally criminal and subject to enforcement by a global body, the International Criminal Court.
10. Ibid.
11. Ibid., p. 16.
12. The authors of these evaluations note that their lessons may not be transferable to the international level: “Whether our framework also proves helpful in analyzing the effectiveness of international transparency is a subject of current work.” Archon Fung, David Weil, Mary Graham, and Elena Fagotto, “The Political Economy of Transparency: What Makes Disclosure Policies Effective?” Occasional Paper, Ash Institute for Democratic Governance and Innovation, Kennedy School of Government, 2001, p. 3.
13. Ibid., p. 9.
15. See the initiative’s website at http://globalreporting.org.
20. Ibid., pp. 72, 79.
25. See, for example, Keohane and Nye’s discussion of “reputational power.” Keohane and Nye, “Democracy, Accountability, and Global Governance,” p. 5.
32. Ibid.
33. Ibid.
36. Ibid.
39. Ibid.
40. Ibid.
41. For a detailed analysis of the CEC’s record, see ibid., pp. 24–41.
42. Ibid.
45. Keohane and Nye, “Power and Interdependence in the Information Age,” p. 89.
46. It is important to note that this section presents a fairly narrow conception of democracy, one that focuses on making decisionmakers accountable to the people whom their decisions affect. Most theorists consider such accountability necessary but insufficient for a robust conception of democracy, which typically includes rights, duties, and other aspects. See, for example, David Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance (Cambridge: Polity Press, 1995). However, this broader account is beyond the purview of this article.


51. See, for example, Moravcsik, “Is There a ‘Democratic Deficit’ in World Politics?” p. 222.


53. Ibid., p. 411.

54. Quoted in ibid., p. 410. The first set of brackets is McGrew’s; the second is mine. It should be noted that John Dryzek advocates coupling the shift to nonterritorial political communities with “deliberative” forms of democracy. See note 57 below.


57. A significant strand of critical theory argues that a reordering of political authority along thematic, as opposed to geographic, lines be coupled with a shift toward “deliberative” methods of governance. Such methods emphasize experimentation and learning over “command and control” regulation. The idea is to arrive at effective and desirable policies by developing and promulgating “best practices,” as opposed to mandating certain standards. Advocates argue that deliberative methods of governance are particularly attractive at the global level because regulatory governance often faces political and technical challenges. There is much to this view, and further exploration of transnational deliberative governance and specific policy programs like the UN Global Compact is needed to better understand what such structures could offer. It is likely that transparency is central to deliberative governance arrangements, which require information sharing to allow learning to occur. However, such an investigation is beyond the scope of this article. See generally John S. Dryzek, Discursive Democracy: Politics, Policy, and Political Science (New York: Cambridge University Press, 1990); John S. Dryzek, Deliberative Democracy and Beyond (Oxford: Oxford University Press, 2000); and John S. Dryzek, “Political and Ecological Communication,” Environmental Politics 4, no. 4 (1995).