Transparency: Possibilities and Limitations

THOMAS N. HALE AND ANNE-MARIE SLAUGHTER

Riding a train between Princeton and New York, the ethicist Peter Singer found himself seated next to a talkative man. After answering many questions about his profession, Singer finally managed to inquire as to his fellow traveler's occupation. "I'm a transparency maintenance worker," the man replied. Thinking he had discovered an advocate of truth and responsibility, Singer excitedly asked his seatmate what institution or organization he monitored. Confused, the man replied, "I wash windows."

Singer's mistake was an honest one. The concept of transparency has spread imperialistically out of the good governance canon and into popular parlance. The window-washer's usage notwithstanding, in this paper transparency will be used to denote any kind of measure that publicizes information about an institution's behavior, such as monitoring, reporting, or simply responding to inquiries.

Commonly recognized as a desirable institutional value for everything from corporations to governments, transparency in recent years has developed from a buzzword into a substantive policy tool, particularly in efforts to make transnational actors more socially and environmentally responsible. Openness and disclosure have been demanded of such diverse organizations as international financial institutions, transnational corporations, and nation-states. In each of these cases, transparency is touted as a tool of accountability—a way to make global institutions more responsive and thus begin to fill globalization's "democracy deficit."

But can merely exposing the behavior of an actor—be it a corporation,

Thomas N. Hale *is a graduate of the Woodrow Wilson School of Public and International Affairs at Princeton University, where he continues as Special Assistant to the Dean.* ***Anne-Marie Slaughter*** *is Dean of the Wilson School and the author, most recently, of* A New World Order.

an intergovernmental organization, or even a country—actually affect how it behaves? Transparency is often used as a synonym for accountability, but real accountability requires more than monitoring. In order to hold a person or organization accountable, it is necessary not only to know what they are doing, but also to have some way to make him do something else.

Knowledge is the first step toward enforcement, which domestically is generally carried out by government regulators and courts. If a corporation pollutes the environment or exploits its employees, it can be fined and its managers can be held criminally liable.

Transparency in recent years has developed from a buzzword into a substantive policy tool, particularly in efforts to make transnational actors more socially and environmentally responsible.

At the international level, these formal legal solutions are rarely available. Does this mean that international transparency mechanisms are toothless, as some critics claim? Not necessarily. In this article we identify several levers that activists and international lawyers can use to bring real, coercive pressures to bear at the international level. When these tools—which include market pressure, personal and institutional values, and even dialogue with society—are available, transparency mechanisms can go beyond mere monitoring to provide actual enforcement.

Some critics dismiss such pressures as too soft or overly informal to regulate behavior, but experience suggests they can be surprisingly coercive. The key issue, however, is not the larger debate between hard and soft regulation, but rather how and under what conditions transparency can promote accountability. As transparency-based policies expand in both rhetoric and practice, careful study of the exact ways they can and cannot make global actors more accountable is needed in order to distinguish effective governance policies from public relations stunts.

Furthermore, well-constructed transparency mechanisms may be a useful tool for policymakers who increasingly find traditional regulation unsuitable to complicated transnational problems. Consider the proposal by some activists for regulate all transnational corporations through a body of international law enforced by the United Nations: the technical challenges of such a regulatory effort would overwhelm any intergovernmental agency, and it is highly unlikely that a single body of global law and a single global regulator would be seen as legitimate by businesses. Transparency mechanisms—if properly understood and well implemented—may be sufficiently flexible to help overcome these challenges.

To understand how these issues work in practice, consider the following three transparency mechanisms: one that seeks to regulate corporations, another that targets an international organization, and a third aimed at nation-states.

REMEMBER THE SULLIVAN PRINCIPLES?

Beginning in the late 1970s, U.S. corporations operating in South Africa faced a slew of criticism from civil rights activists, students, church groups, and others who believed that U.S. investment in South Africa bolstered the white minority regime. While some activists called for complete withdrawal and divestment, others argued that U.S. corporations could serve as a progressive force for change.

This 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 non-whites to positions of authority, and donating to local educational and health charities.

Transparency is touted as a tool of accountability—a way to make global institutions more responsive and thus begin to fill globalization's "democracy deficit."

Because the principles were voluntary and many in the activist community doubted that anything short of full 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."[1] Through this system, the behavior of U.S. firms operating in South Africa was made somewhat transparent.

However, the information about corporate behavior that was 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 wax Orwellian at times. For example, for the principle concerning the promotion of non-whites, 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 to wonder what exactly "somewhat considerable" progress meant. As one activist wrote, "to trust the efficacy of the Sullivan Principles requires a great deal of faith."[2]

Despite these limitations, many institutions looking to promote change among U.S. corporations in South Africa used the Sullivan Principles as a way to target the economic pressure they applied. In 1993, the Investor Responsibility and Research Center (IRRC) counted 255 state and municipal laws limiting government procurement from, or public investment in, companies doing business in South Africa.[3] Many of these laws invoked the Sullivan Principles, allowing the governments to do business with firms that participated or received high rankings, while prohibiting economic interaction with firms that were not signatories or performed poorly in the rankings.

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 create economic pressure.

Other types of investors also relied on the Sullivan reports to direct their economic pressure. A sizeable number of private universities interviewed by the IRRC stated that they routinely supported shareholder resolutions demanding compliance with the Sullivan Principles and would not hold stock in companies that had not signed them. Many church groups, private foundations, and even private banks followed suit.[4]

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 create economic pressure. It also suggests that a stronger, more revealing transparency mechanism might have had even more coercive effects on U.S. corporations in South Africa. Indeed, the fact that corporations fought efforts to strengthen the reporting system and make their actions more visible reinforces this conclusion.

But even if transparency were an effective way to channel economic pressure against noncompliant corporations, the question remains whether or not such pressure actually improved the lot of non-white South Africans. A 1985 IRRC study compared the performance of Sullivan signatories to that of non-signatories in order to determine, as the report's title bluntly asks, "Does Signing the Sullivan Principles Matter?"[5] The IRRC indeed found that signatories outperformed nonsignatories in several areas, such as equitable pay rates, promotion of nonwhite managers, and donations to local communities. In itself, this finding might be unsurprising, given that the corporations most likely to sign the Sullivan Principles were also likely to be the most socially responsible. Interestingly, however, the report also found that the areas in which signatories were more responsible than nonsignatories were precisely those areas measured in the annual report. The report found no statistical difference between signatories and nonsignatories in areas in which corporate behavior was not publicized. In other words, U.S. corporations only improved their social performance when firm behavior was exposed.

A WATCHDOG AT THE WORLD BANK

Throughout the 1980s and early 1990s, the World Bank came under heavy criticism from environmentalists, human rights activists, and indigenous peoples' associations. These groups contended that many of the bank's lending projects were violating environmental and social safeguard policies and harming the very people and places they were supposed to help.

In 1993, following the controversial Narmada Dam project that was heavily criticized for displacing indigenous people, the bank created an independent Inspection Panel to serve as an internal watchdog. Any person negatively affected by a bank project—or, in some cases, an organization acting on that person's behalf—can file a complaint with the panel. If the panel deems the complaint within its mandate, a full investigation commences. To gather evidence, the panel holds interviews, conducts field visits, and takes submissions from outside experts, bank staff, affected stakeholders, and NGOs. Its goal is to determine whether the bank has violated any of its environmental or social policies. The end result is a factual assessment of the bank's compliance with its own policies, which is presented to the bank board and then released to the public.[6]

The Inspection Panel is effectively an "information court." It has a plaintiff, a defendant, 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 Inspection Panel's judgments have no formal legal consequences. They simply paint an ostensibly accurate and objective picture of bank behavior; they make it transparent.

How effectively has this information court provided remedies to people hurt by bank lending projects? 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 25 cases for which data was available, six others prompted large changes in bank projects, such as allocation of further funding for displaced people or the revision of environmental assessments. Seven other cases resulted in smaller changes or further study of the issues in question. The remaining eleven resulted in no changes.[7]

Those asking the question "does the Inspection Panel work?" will be unsatisfied by those numbers because it is unclear how many of the 25 cases should have resulted in large changes, how many in small changes, and how many were in fact spurious. We have no baseline against which to measure the panel's record.

Change at the World Bank seems driven by the extent to which a case is connected to the bank's institutional values—its underlying sense of identity.

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

Two factors may help answer that question. First, the cases that resulted in the most extensive project changes were the ones on which NGOs like the Center for International Environmental Law lobbied hardest. Cases with high levels of public activism achieved significant change in 60 percent of cases, compared with only 15 percent of less attention-grabbing cases.

Second, change at the bank seems driven by the extent to which a case is connected to the bank's institutional values—its underlying sense of identity. The panel process contains a preliminary fact-finding stage that allows the bank to review stakeholder grievances and potentially reform a project before a factual record is published. At this stage of the game, bank officials are not yet exposed to public shame, so their motivations for changing policy likely stem from their own values—internal transparency. Of the six cases resolved in the preliminary 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.

TRADE AND TRANSPARENCY IN NORTH AMERICA

In 1992, the United States, Mexico, and Canada signed the North American Free Trade Agreement (NAFTA), an unprecedented and controversial step toward continental economic integration. Before the measure passed in the U.S. Congress, environmentalists insisted that a separate treaty be linked to NAFTA to ensure that economic integration would not come at the cost of the North American environment. The North American Agreement on Environmental Cooperation (NAAEC), as the treaty was named, created an intergovernmental body called the Commission on Environmental Cooperation (CEC), with headquarters in Montreal.

One of the CEC's principal tasks is to investigate citizens' complaints that the NAFTA parties have failed to enforce their environmental laws, as the NAAEC requires. The citizen submission process functions as another information court, investigating the parties' compliance with environmental laws and publishing its findings as factual records. While the CEC process goes one step beyond the World Bank panel by allowing the United States, Canada, and Mexico to use a CEC report as the basis for formal legal sanctions against each other under the NAAEC, they have never invoked that provision. Instead, citizens have depended on the informal sanction of activist pressure to compel compliance with the NAAEC.

How have they fared? 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 26 completed CEC cases, four resulted in high levels of policy change, seven in medium changes, and the remainder in negligible changes.[8] Again, these results are less interesting to us than the question of what made some cases more successful than others.

As in the World Bank example, we find that activist pressure was an important predictor 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 the cases with substantial activism yielded no result.

HOW AND WHEN TRANSPARENCY POLICIES WORK: THREE UNDERAPPRECIATED FORCES

The above examples suggest three forces that, when empowered by transparency, can sometimes alter the behavior of global actors—markets, dialogue with civil society, and institutional values. These forces can change how institutions act even in the absence of formal legal structures, but their scope and power depend on a number of conditions.

Market Pressure

Economic pressure can bring about social change only when significant numbers of consumers and investors are willing to apply it. If buyers do not care enough about an issue to differentiate "good" products from "bad" ones and potentially pay a premium for the "good" product, markets will not direct suppliers toward socially conscious behavior.

Economic pressure can bring about social change only when significant numbers of consumers and investors are willing to apply it.

Additionally, some actors are more vulnerable to market pressure than others. 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—Nike, McDonalds, Toyota—fall into this category. Conversely, companies that make generic goods or sell primarily to other businesses do not depend on public goodwill for sales and are therefore less susceptible to consumer pressure. Mining companies like Anglo-American or Rio Tinto are a good example. However, these corporations may still be vulnerable to pressures from capital markets, as was seen in the South African example.

Dialogue with Civil Society

The above examples suggest that transparency mechanisms work better when activists incorporate the information into their dialogue with the institutions they are trying to hold accountable. Why might this occur?

First, information courts like the World Bank Inspection Panel and the CEC provide a concrete forum for grievances. Brushing off stakeholders' criticisms is not an option because the Inspection Panel and the NAFTA commission create a process in which the Bank and the NAFTA parties are compelled to engage with their critics.

Second, beyond simply providing a forum in which dialogue can occur, these transparency mechanisms moderate the exchange by highlighting where each side's claims diverge from reality. Information courts are not just talking shops; they are places where actors have to face the facts if they wish to remain credible. Transparency mechanisms compel actors to tell the truth, enhancing the standing of those with valid claims against targeted institutions, which—unless they cooperate—find their credibility significantly diminished.

Third, by dividing credible information from specious claims, transparency mechanisms serve an important "editing" function. Robert Keohane and Joseph Nye argue that in informational politics there exists a "paradox of plenty: a plentitude of information leads to a poverty of attention."[9] Transparency mechanisms cut through the flood of information and countervailing claims to focus stakeholders' attention on the facts.

Institutional Values

The experience of the World Bank suggests that transparency mechanisms can make use of institutional values to change behavior by demonstrating to organizations how their actions are contrary to their core principles. It should come as no surprise that the World Bank, an organization whose mission is infused with a powerful ethos of poverty alleviation, is susceptible to such pressures. The fact that we found little evidence for values-driven behavioral change among the Sullivan Principles companies or the NAFTA countries likely reflects the different values held by many corporations and the difficulty states have in hewing to a defined institutional ethos.

THE FUTURE OF TRANSPARENCY

Understanding transparency mechanisms is important not only because they and their accompanying rhetoric have become so pervasive but because transparency represents a promising direction in which to develop innovative governance tools.

We argued before that transnational regulation is often seen—at times correctly—as both technically impracticable and politically illegitimate. However, transparency-based systems may be able to avoid the technical limitations of traditional regulation by distributing functions across the full spectrum of relevant players. No single regulatory entity would be required to collect compliance information and punish violations. Instead, actors would monitor and enforce standards against themselves, their peers, and their opponents using the three levers discussed above. In the World Bank and CEC cases, it was mostly NGOs that served this function. NGOs were also instrumental to the use of the Sullivan Principles, but universities, state and local governments, and private banks—with their substantial financial assets—were the main regulators.

Regarding legitimacy, it is politically easier to get an organization to agree to discuss something than to do something. Many corporations, international organizations, and states are unwilling to agree to be bound by a common standard or law. However, they are likely willing—or can be made willing—at least to discuss problems with relevant stakeholders. What that organization may not realize, however, is that mere discussion may greatly increase the likelihood of action.

CONCLUSION

So who could be opposed to transparency? Who could be in favor of opacity or, worse still, obscuration? Small wonder that transparency has become the rallying cry of good global governance. However, in order for transparency to handle the tasks that policymakers and activists envision for it, it must be seen as a conduit to regulation, not as regulation itself. Consider the cases presented in this paper: if it were not for socially conscious investors, the Sullivan Principles would have done little to improve the lives of black South Africans working for U.S. corporations under apartheid. But for activists and the personal values of World Bank staff, the Inspection Panel's findings would fall on deaf ears. And but for environmentalist pressure and media attention, the CEC would have little effect on environmental enforcement in North America.

Seeing transparency in this way alerts us to its limits. Policymakers seeking to use transparency mechanisms as a means of regulation must understand that they are unlikely to succeed in environments where market pressures do not exist, activist groups are poorly organized, and the targeted institutions' internal values run contrary to the program's goals.

Still, this conception of transparency also highlights some important possibilities. The fact that mere information can create accountability at the global level by marshalling concrete pressures against international actors suggests an intriguing path to global regulations that are at once effective, technically feasible, and politically viable. This finding should give hope to anyone committed to making global institutions more responsive to the people whose lives they affect. Transparency may be an egregiously overused and poorly understood buzzword, but beneath the rhetoric lies a valuable—if circumscribed—tool for transnational accountability. ■

ENDNOTES

1 *Third Report on the Signatory Companies to the Sullivan Principles* (Boston: Arthur D. Little, Inc., 1979).

2 Elizabeth Schmidt, *The Sullivan Principles: Decoding Corporate Camouflage* (Washington, DC: Institute for Policy Studies, 1979), 6.

3 William F. Moses, *A Guide to American State and Local Laws on South Africa* (Washington, DC: Investor Responsibility and Research Center, 1993).

4 David Hauck, Meg Voorhes, and Glenn Goldberg, *Two Decades of Debate: The Controversy over U.S. Companies in South Africa* (Washington, DC: Investor Responsibility Research Center, 1983).

5 *Does Signing the Sullivan Principles Matter? A Comparison of the Labor Practices and Public Affairs Activities of Signers and Non-Signers* (Washington, DC: Investor Responsibility and Research Center, 1985).

6 Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice* (New York: Oxford University Press, 2000).

7 The Inspection Panel's "case histories" are available on its website: <http://wbln0018.worldbank.org/ipn/ipnweb.nsf>. The authors' analysis is available at <www.princeton.edu/~thale/thesis.pdf> (accessed December 1, 2005).

8 Details of cases before the CEC can be found at its website <www.cec.org/citizen/index.cfm?varlan=english>. The authors' analysis is available at <www.princeton.edu/~thale/thesis.pdf> (accessed December 1, 2005).

9 Robert O. Keohane and Joseph S. Nye, "Power and Interdependence in the Information Age," *Foreign Affairs* 77(5) (September/October 1998): 89.