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FROM FRAGMENTATION  
TO UNITY?

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INFO-COURTS' AND THE  
ACCOUNTABILITY OF INTERNATIONAL  
ORGANIZATIONS: EVIDENCE FROM  
THE WORLD BANK INSPECTION PANEL

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“Info-courts” are often cited by advocates of global administrative law (GAL) as a promising tool stakeholders can use to hold international organizations and other actors to account. These mechanisms allow affected individuals to challenge an international organization’s or state’s compliance with certain guidelines or laws. While quasi-judicial in nature, info-courts do not issue legal decisions, but rather create non-binding reports that aim to clarify the facts of compliance or non-compliance in a particular case. The idea is to use transparency to create accountability.

“Info-courts” are increasingly common in a range of areas, but here I focus on the field where they are perhaps most prevalent—multilateral development lending institutions.<sup>2</sup> The World Bank Inspection Panel, created in 1993, is the first and most prominent info-court, but similar mechanisms now exist at the Inter-American Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the African Development Bank. An info-court also exists at the affiliates of the World Bank not covered by the Inspection Panel (i.e. the International Finance Corporation and the Multilateral Investment Guarantee Agency), and at three bilateral development-oriented investment agencies: the Japan Bank for Investment Cooperation, Export Development Canada, and the U.S. Overseas Private Investment Corporation.<sup>3</sup>

The rapid diffusion of info-courts throughout the field suggests a unifying trend in the administrative law of multilateral development lending (though other multilateral lenders and donors, such as the United Nations Development Programme, have not adopted such mechanisms). A wide range of stakeholders now has recourse through info-courts to hold international lenders to account for the projects they sponsor. If we measure unity by the diffusion of an institutional form, this issue area seems increasingly unified.<sup>4</sup>

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<sup>2</sup> On info-courts generally see Thomas N. Hale and Anne-Marie Slaughter, 'Transparency: Possibilities and Limitations', *Fletcher Forum on World Affairs* 30 (2006). Thomas N. Hale, 'Transparency, Accountability, and Global Governance', *Global Governance* 14, no. 1 (2008).

<sup>3</sup> For a detailed comparison of most of these institutions, see David Bradlow, 'Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions', *Georgetown Journal of International Law* 36 (2005).

<sup>4</sup> This is the sense one gets from Bradlow’s comprehensive and detailed survey of the field, which compares the institutional features of the various mechanisms. *Ibid.* It is not uncontroversial, however. A previous study argued that the variation in the precise institutional features of different mechanisms actually led different accountability outcomes Paul J. Nelson, 'Transparency Mechanisms at the Multilateral Development Banks', *World Development* 29, no. 11 (2001). See also Sabine Schlemmer-Schulte, 'The

However, such a measure of unity may be inappropriate. Scholars and policy-makers often argue that transparency creates accountability, but the literature rarely explains exactly *how*. Previous work on info-courts has found that transparency leads to accountability only under certain conditions.<sup>5</sup> Specifically, civil society activism was found to be an important determinant of an info-court's influence. To the extent activism and other relevant conditions vary across institutions and info-courts, the formal similarity of the mechanisms is belied by variation in the actual accountability they provide. What looks like unity may in fact be fragmentation.

We therefore would like to know how info-courts work before drawing conclusions about the consistency of accountability that they provide. In this paper I seek to identify the conditions under which info-courts provide accountability in order to think about how those conditions may vary across institutions. My conclusions thus carry important implications for the unity or fragmentation of this area of GAL, but do not measure it directly.

The analysis presented here builds directly from previous work but expands it in important ways.<sup>6</sup> Most significantly, it is, to my knowledge, the first study to test the workings of the Inspection Panel with quantitative methods. To do so, it relies on data from a new survey of expert observers of the Panel conducted in the spring of 2008.

To preview the findings, I conclude that the Inspection Panel functions primarily through appeal to the legalistic norms of Bank bureaucrats. That is, despite the Panel's inability to issue authoritative rulings, its findings nonetheless affect the Bank's behavior much as "real" courts affect their addressees. As I explain below, this conclusion suggests the GAL of development banks may be more unified than previous work—which attributed info-courts effectiveness to highly variable factors like civil society activism—has suggested. The paper thus finds evidence for unity in this area of GAL.

The analysis proceeds as follows. Section two provides a brief overview of the Inspection Panel to ground the following theoretical discussion. Section three develops three causal pathways through which the kind of information info-courts generate might create accountability. Section four tests these theories against evidence from the World Bank Inspection Panel. Section five concludes by discussing implications for the study of info-courts and of GAL more generally.

## 1. THE WORLD BANK INSPECTION PANEL<sup>7</sup>

The rules governing the Panel are laid out in its 1993 founding resolution and two subsequent "clarifications" in 1996 and 1999.<sup>8</sup> The Panel is composed of three

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World Bank Inspection Panel: A Model for Other International Organizations?' in *Proliferation of International Organizations: Legal Issues*, ed. Niels M. Blokker and Henry G. Schermers (The Hague: Kluwer Law International, 2001).

<sup>5</sup> Hale, 'Transparency, Accountability, and Global Governance', Hale and Slaughter, 'Transparency: Possibilities and Limitations'.

<sup>6</sup> Hale, 'Transparency, Accountability, and Global Governance'.

<sup>7</sup> This section is drawn from Thomas N. Hale, 'TRANSPARENCY AS GOVERNANCE: USING INFORMATION TO REGULATE GLOBAL ACTORS', (Princeton University, 2004), 49-51.

<sup>8</sup> World Bank Board of Governors, Resolution No. IBRD 93-10 / IDA 93-6, Washington D.C., September 22, 1993; 1996 Clarifications (October 17, 1996); 1999 Clarifications (April 20, 1999); Available:

independent development experts, one of whom is designated as the Chairperson. These individuals are nominated by the Bank President and appointed by the Board. A small secretariat, also independent of Bank management, provides logistical support.

The Panel entertains requests for investigation from project-affected people or their appointed representative, who may, in exceptional circumstances, be foreign. An Executive Director of the Bank may also request an inspection. Complaints must allege that an "actual or threatened material adverse effect on the affected party's rights or interests" has resulted "directly out of an action or omission of the Bank to follow its own operation policies and procedures during the design, appraisal, and/or implementation" of the project in question.<sup>9</sup> Complaints may not pertain to alleged violations by the borrowing country, Bank procurement practices, or projects which have been more than 95 percent completed.<sup>10</sup> Complainants must also demonstrate that they have previously raised the issue with Bank staff and received unsatisfactory results.

When the Chairperson receives a request, she considers whether it meets the basic eligibility requirements and then either requests more information or officially registers it. Once the request is registered, Bank management must submit a response within 21 days, at which point the Panel performs an initial eligibility review. The purpose of this review is to decide whether or not the case merits a full investigation. Typically this review is completed within 21 days, but the Panel may extend the deadline if it needs to gather further information. The Panel's decision at this stage—to investigate or not—is only a recommendation. The Bank's Board then decides whether to adopt or reject the Panel's suggestion. Should the Panel recommend an investigation and the Board approve, the request is made public and the Panel is empowered to investigate the substance of the claim. Among other methods, it may hold public hearings and make site visits. Furthermore, "any member of the public" may provide the Panel with relevant supplemental information.

After the Panel finishes its investigation it submits its report to the Executive Directors and the Bank staff, which has six weeks to prepare a reply. The Board then considers the Panel report and Management's response, and must decide within two weeks whether or not to take any action on the matter, that is, whether to address the requesters' concerns or not. The Panel report, Management response, and Board decision are then made public.

## 2. THEORIES OF TRANSPARENCY AND ACCOUNTABILITY

Scholars have recognized the Panel as an innovative mechanism for addressing the complex normative issues that surround international IGOs and the people they affect.<sup>11</sup> In this paper I avoid the important normative questions that surround this issue. I do not ask if the Panel should make the Bank accountable to stakeholders, nor do I consider how effective it is at doing so (which would require normative judgments about

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<http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WResolution?openview&count=500000>.

<sup>9</sup> "Inspection Panel Operating Procedures," (Washington, D.C.: World Bank, 2004). Para 1.

<sup>10</sup> The original resolution makes ineligible projects for which money has been 95 percent disbursed, but the Panel has interpreted this clause to make completion, not disbursement, the relevant criterion.

<sup>11</sup> For a detailed overview of the accountability issues facing the World Bank, see Alnoor Ebrahim and Steve Herz, 'Accountability in Complex Organizations: World Bank Responses to Civil Society', in *working paper* (Harvard Business School, 2007).

good and bad outcomes). Rather, I seek to answer the positive question of *how* the Panel affects Bank behavior, if at all. Does it make the Bank more responsive to the needs of stakeholders? If so, how?

The central theoretical challenge is to understand the relationship between transparency and accountability. The Panel, as an info-court, provides information about Bank behavior to a broad audience that includes member states, affected stakeholders, other interested audiences like NGOs, and to Bank officials themselves. But how does the mere provision of information solve the Bank's alleged "democratic deficit"? There must be some causal process linking information to behavioral changes.

Several scholars have noted that accountability is "an under-explored concept whose meaning remains evasive."<sup>12</sup> Andreas Schedler, however, has outlined a way to think about accountability that helps explain the role transparency mechanisms can play. Schedler 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."<sup>13</sup> In other words, A is accountable 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.<sup>14</sup> "By demanding information as well as justification," transparency sheds "light into the black box of politics."<sup>15</sup> This process empowers accounting actors then to apply "enforcement." For example, voters who review a representative's record are able to use the information to either support her in the next election or vote her from office.

But is enforcement possible in the context of international organizations? Schedler notes that "academic writers are quite emphatic in stating that the capacity to punish forms an integral part of political accountability."<sup>16</sup> Voters are able to influence their representatives' behavior because they have constitutionally-granted electoral power over them. In contrast, stakeholders of World Bank projects have no such formal authority over the Bank.

Absent formal enforcement, can transparency alone promote accountability? I suggest three alternative—but not necessarily mutually exclusive—logics through which transparency could lead to accountability in the way Schedler articulates: principal-agent theory, soft law, and reflexive law. Each is discussed in turn below.

## 2.1 Principal-agent theory

Principal-agent theory originates in micro-economic understandings of organizational behavior, but has more recently been imported to the study of international

<sup>12</sup> Andreas Schedler, 'Conceptualizing Accountability', in *The Self-Restraining State: Power and Accountability in New Democracies*, ed. Andreas Schedler, Larry Diamond and Marc Plattner (London: Lynne Rienner, 1999), 13. See also Robert O. Keohane and Joseph S. Nye, "'Democracy, Accountability, and Global Governance'", *Politics Research Group Working Papers on International Relations, Kennedy School of Government, Harvard University* (2001).; David Held and Mathias Koenig-Archibugi, *Global Governance and Public Accountability* (Oxford: Blackwell, 2005) 3.

<sup>13</sup> Schedler, 'Conceptualizing Accountability', 15.

<sup>14</sup> Schedler writes, "Accountability as answerability aims at creating transparency." *Ibid.*, 20.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, 16.

institutions by international relations scholars.<sup>17</sup> The central insight is that some actors ("principals," typically states) may choose to delegate certain tasks to other actors ("agents," typically IOs) in order to reduce transaction costs, to enhance credibility, or perform other functions. One of the central dilemmas of principal-agent theory is how the principal can control the agent. Where agents' interests diverge from those of principals, principals will need a way to keep agents in line. Under the definition of accountability outlined above, they will need to know the agents' behavior and then have some way to control that behavior.

Here the member states of the World Bank—and especially the most powerful members of the Board—are the principals while the Bank management is their agent. The Inspection Panel is also an agent of the member states, one tasked with helping the member states keep track of Bank management. By providing the Board with information on the Bank's activities, the Inspection Panel allows member states to use their formal authority to redirect Bank activities. The enforcement element of accountability is unproblematic because member states formally dictate Bank policy.

However, there is an obvious concern with this version of accountability—it is accountability to member-states, not affected stakeholders. If info-courts work in this way, then they provide accountability only to the extent that the interests of powerful board members overlap with those of people in the field.

There is a second problem with info-courts under principal-agent theory. Member states have kept the Institution Panel on a fairly short lead. The Panel can only *recommend* that the Board authorize an investigation; it has no power to bring facts to light should the Board not wish it to do so. Therefore when the interests of affected stakeholders run against those of powerful member states we can expect the Panel to provide very little recourse under principle-agent theory. If principal-agent theory is the dominant explanation of the workings of info-courts we should be doubtful about the unity of GAL in this area, because the correspondence of member state and stakeholder interests is likely to vary significantly from institution to institution.

## 2.2 *Soft law*

The term "soft law" is used in different ways by different authors, but generally refers to something that looks or functions like law but lacks a formal juridical foundation.<sup>18</sup> In the context of the Inspection Panel I intend it as an explanation of info-court effects that emphasizes the "court" half. Under this theory the Panel's findings of compliance and non-compliance function analogously to "real" courts' rulings. The defendant (Bank management) complies with rulings as, for example, a domestic government agency subject to a domestic court's jurisdiction would.

There are obvious reasons to question this explanation. If the Bank management is not forced to comply with the Panel's findings, why should it? Furthermore, if member states had wanted the Panel to operate more like a traditional court, they could have given it the authority to deliver rulings instead of just findings.

<sup>17</sup> For the most comprehensive example, see Darren G. Hawkins et al., eds., *Delegation and Agency in International Organizations* (Cambridge: Cambridge University Press, 2006).

<sup>18</sup> See generally Kenneth w. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organization* 54 (2000).

At the same time, the Panel does have many of the trappings of a court: plaintiffs, defendants, judges, formal rules to apply, and even a burgeoning jurisprudence. These aspects may command normative authority from a rational, legalistic bureaucracy like the World Bank. To the extent norms of appropriateness and legal culture pervade the institutions info-courts are designed to monitor, they may function akin to “normal” courts in the way that soft law theory envisions.

Under this theory info-courts succeed when the legalistic processes through which they work command normative authority from the international bureaucracies they monitor. If soft law is the dominant explanation for the workings of info-courts, we may expect more unity than under the other hypotheses, because the various institutions are likely relatively consistent in the normative weight they place on quasi-legal processes.

### 2.3 *Reflexive law*

Last, I turn to Gunther Teubner’s theory of reflexive law.<sup>19</sup> Earlier, qualitative work on the Panel has found significant support for this theory.<sup>20</sup> A full explication of Teubner’s ideas is beyond the scope of the paper, but the central insight I exploit here is Teubner’s synthesis of Habermasian discourse theory and Luhmann’s notion of autonomous, self-regulating social spheres. The former argues that in an “ideal speech situation”—where communication is abundant and not coerced or restricted—actors seek a reasoned consensus to some disagreement. Instead of blindly arguing for their fixed preferences, actors’ perceptions become subject to “the forceless force of the better argument.”<sup>21</sup> In other words, under certain conditions rational persuasion becomes possible.

Luhmann, in contrast, focuses on processes of internal reflection. His central contention is that society is divided into autonomous spheres that are governed by their own rules and norms. For Luhmann, regulation is a process of self-reflection. Actors consider their behavior in light of their own values and react accordingly.

Teubner’s contribution, in my reading, is to link these internal and external exchanges into a theory of regulation. In this account actor’s behavior is governed both by dialogue with others and by internal reflection vis-à-vis their own values. Teubner terms this complex process “reflexive law.”

Transparency, I argue, greatly facilitates regulation based on reflexive law; indeed, it is hard to imagine how the process Teubner describes would work without it. Consider the specific contributions of the Inspection Panel. First, the Panel institutionalizes discourse into a quasi-legal process. Competing informational claims are explicitly formulated by all the concerned parties in the form of briefs, counter-statements, and, ultimately, the investigation reports. By initiating a complaint the affected parties force the Bank into an information-rich environment.

<sup>19</sup> Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law', *Law and Society Review* 17, no. 2 (1983).. Teubner’s thinking on reflexive law as evolved substantially since this original statement. However, for the purposes of the present paper this early—and simplified—presentation of the concept suffices.

<sup>20</sup> Hale, 'Transparency, Accountability, and Global Governance', Hale and Slaughter, 'Transparency: Possibilities and Limitations'.

<sup>21</sup> Thomas Risse, 'Global Governance and Communicative Action', in *Global Governance and Public Accountability*, ed. David Held and Mathias Koenig-Archibugi (Oxford: Blackwell, 2003), 170.

Second, and perhaps most crucially, the Panel adjudicates between competing truth claims. The Panel's published findings replace inaccurate or deceitful discourse with an official record of "what really happened"—which rules were broken, which not. The arguments of Bank management and the complainants that are validated by the investigative process gain significant credibility. This is important because, as Keohane and Nye note, "Credibility is a crucial resource, and asymmetrical credibility is a key source of power."<sup>22</sup> By soliciting, certifying, and discrediting claims, the Panel approximates Habermas's ideal speech situation.

Third, and related, the Panel serves an important editing function. Irrelevant information can distract or mislead actors as surely as disingenuous information can. This is especially true in the complicated cases the Panel considers, and in an age where information technology permits a large array of actors to participate in discourse. Modern informational politics suffers from a "paradox of plenty" in which the vast quantities of information available actually make it more difficult to use.<sup>23</sup> By focusing actors' attention on a particular set of facts, the Panel increases the value and force of information.

Fourth, the Panel provides information about the Bank's compliance with its own principles, connecting the discursive, external information processes to the normative internal ones. By giving the Bank information about its compliance with its own norms, the Panel empowers Bank management to regulate itself via self-reflection. But by connecting that reflection to dialogue with outside actors—the complainants—the Panel links internal and external critique in the reflexive law process Teubner imagines.

### 3. TESTING THE THEORIES

#### 3.1 Hypotheses

Each of the three theories described above has distinct observable implications that allow us to test rival hypotheses. Because the theories are not mutually exclusive, I expect the data to provide evidence for all three mechanisms, and so do not seek to "prove" or "disprove" any of them. Rather, the more important question is which causal mechanism is most salient.

Principal-agent theory predicts that changes in Bank behavior will be driven by the concerns of member-states, especially those states with a powerful position on the Bank Board. Transparency informs the state principles about the behavior of their agent, Bank management, allowing them to redirect the agent accordingly.

Because Board meetings are closed and the minutes, when made public, are quite telegraphic, we cannot measure state interests directly. However, my survey of experts provides information on whether or not the Board of Directors was influential in forcing changes in Bank behavior in response to a particular case. Do cases where the Board gets involved lead to larger changes in Bank behavior, on average, than other kinds of cases? I make the (fairly strong) assumption that if Board members (other than the borrower in

<sup>22</sup> Robert O. Keohane and Joseph S. Nye, 'Power and Interdependence in the Information Age', *Foreign Affairs*, no. September-October (1998): 89.

<sup>23</sup> *Ibid.*



question) get involved it is to change Bank policy in the way the complainants desire, while the borrowing state seeks to block changes.<sup>24</sup>

If these arguments are true, we should see the combination of Board interest and transparency driving changes in Bank behavior. I therefore estimate the following model using standard OLS regression to test the principle-agent theory, including the overall levels of transparency and activism as controls (note that the data used to estimate these models is discussed below):

$$(1) [\text{Change in Bank behavior}] = \_0 + \_1[\text{Board interest}] + \_2[\text{transparency}] + \_3[\text{activism}] + \_4[\text{Board interest} * \text{transparency}] + u$$

Principle agent theory predicts that  $\_1 + \_4$  (i.e., the causal influence of the Board) will be positive and greater than the coefficients for transparency and activism. We also expect  $\_4$  (the conditional impact of the Board at higher levels of transparency) to be positive.

The soft law explanation predicts that the Panel's rulings will be the most significant driver of changes in Bank policy. The findings of non-compliance alone should drive change in Bank policy. If this is true, then external activism and the involvement of member states should matter less than the level of transparency achieved. Cases with higher levels of Panel review (more transparency) should lead to greater changes. To test this I estimate (again with OLS) the model:

$$(2) [\text{Change in Bank behavior}] = \_0 + \_1[\text{Board interest}] + \_2[\text{transparency}] + \_3[\text{activism}] + u$$

Here we would expect  $\_2$  to be positive and greater than the coefficients for Board interest and activism.

To make sense of this model we need to understand the relationship between activism and transparency. We could imagine that transparency drives activism—NGOs get involved as more facts come to light—or that the relationship is in fact reversed—more NGO lobbying makes a case likely to proceed further through the review process. If this is the case—that activism drives transparency—then the soft law model is supported but with the important caveat that activism drives the “legal” process. The findings may be doing the causal work, but activism might explain how we get higher levels of disclosure in the first place. I therefore attempt to estimate the probability of a Panel recommending an investigation as a function of activism *before* that recommendation is offered (using both linear and probit models).

$$(3) [\text{Probability Panel recommends an investigation}] = \_0 + \_1[\text{activism beforehand}] + u$$

If the reverse is true, and transparency drives activism, we should see activism increase as a case moves further through the Panel process. To test whether or not that is the case, I would like to estimate:

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<sup>24</sup> Like any assumption, this one does not perfectly describe every case. For example, one of the expert survey respondents reports that in the 1998 Ecodevelopment Project case in India the “enlightened” Indian representative on the Board was quite instrumental to the positive resolution of the stakeholders’ concerns.

$$(4) [\text{Change in level of activism}] = \beta_0 + \beta_1[\text{transparency}] + u$$

However, as explained below, data limitations prevent me from estimating model (4).

Last I test the reflexive law model. Here we expect the combined effect of transparency and activism to do most of the causal work. I estimate (OLS):

$$(5) [\text{Change in Bank behavior}] = \beta_0 + \beta_1[\text{Board interest}] + \beta_2[\text{transparency}] + \beta_3[\text{activism}] + \beta_4[\text{transparency} \times \text{activism}] + u$$

Under reflexive law we expect  $\beta_4$  to be positive and relatively large, and  $\beta_2 + \beta_3 + \beta_4$  to be greater than  $\beta_1$ .

Before proceeding to the empirics, it is important to note an important facet of the analysis: endogeneity. We have no way to measure which cases out of the total universe of *potential* cases are brought before the Panel. We are thus selecting on our dependent variable. If our goal were to determine what caused a case to appear before the Inspection Panel this would be problematic because the cases we observe are likely to differ systematically from the “null” cases—specifically, they are likely to be about more severe problems. This would also hurt our ability to determine how effective the Panel is. But because the goal here is not to explain why cases occur but rather how they affect Bank behavior, the endogeneity problem does not overly hamper the analysis. I note it simply to emphasize that the cases we are analyzing likely share many important characteristics, and so we can expect colinearity between the explanatory variables. This will harm the precision of our parameter estimates, but not bias them.

### 3.2 Data

The unit of analysis is a case submitted to the Panel. I have data on 40 of the 52 cases submitted to the Panel by April 2008.<sup>25</sup> The data are drawn from several sources: textual analysis of World Bank documents; civil society reports on particular cases, and, most importantly, a new, anonymous survey of Bank officials, former Panel members, and civil society experts. The survey was conducted over email in April-May 2008. Respondents were asked to rank the relevant attributes of various cases on simple ordinal scales relative to other cases.

The key dependent variable is the degree to which the Bank changed its behavior following a case. Changes are scored as either: none (0), low (1), medium (2), or high (3). For reference, a case that scored consistently in the highest category was the China Western Poverty Case, in which the Bank eventually terminated its involvement in the project.

Activism is rated on a three-point scale: low (1), medium (2), or high (3), and measured at four different time periods: before the request was submitted, while the investigation was going on, and after the final report was released (if it was). The level of transparency was also measured on a three-point scale: none (0) if the Panel did not conduct an eligibility review, low (1) if it only conducted an eligibility review, and high (2) if it released a full report. The interest of the Board was measured as a binary

<sup>25</sup> The data are available for download at the author's website: <http://www.princeton.edu/~thale>

variable, taking the value 0 if the Board was not recognized by the expert observers to be interested in the case and 1 if it was.

### 3.3 Results

I first regressed (OLS) Bank behavior on each explanatory variable independently to check that the variables correlated in the expected directions. The results are given in table 1.

**Table 1: Change in Bank behavior regressed on single explanatory variables**

Variable	Coef. and S.E.	p-value	Adj. R <sup>2</sup>
Board interest	.75** (.16)	.00	.35
Transparency	.99** (.16)	.00	.48
Activism	.47** (.16)	.01	.17

N = 40

These naïve bivariate regressions show that each of the explanatory variables has a positive, highly statistically significant effect on changes in Board behavior, as expected. Note that it is inappropriate to read too much into the relative magnitudes of the coefficients in the simple bivariate case.

Estimating model (1) to test principal-agent theory gives the following results (table 2):

**Table 2: Principal-agent theory**

Variable	Coef. and SE	p-value
Board interest	3.37 (2.00)*	.10
Transparency	1.37 (.30)**	.00
Activism	.05 (.15)	.72
Interaction of Board interest and transparency	-1.81 (1.00)*	.08
Intercept	-.25 (.32)	.44

N = 40, Adj. R<sup>2</sup> = .57, SER = .68

As predicted by principal-agent theory, the interest of the Board has a large positive effect on changes in Bank behavior. Transparency is also significant both substantively and statistically, while the effect of activism is washed-out completely. What is most surprising however, is that the interaction term between board interest and transparency is *negative*, large, and statistically significant. This implies that transparency and Board interest both drive changes up, but that when the two are combined they in fact hamper changes. These puzzling results are not predicted by principal-agent theory or any of the rival hypotheses. One tentative explanation could be that the cases where the Board is most interested in making changes are also embarrassing. These cases thus attract attention from the Board but, when the facts are brought to light through the Panel process, the Bank is reluctant to admit failure by implementing significant changes. However, to my knowledge such a process has never been cited by observers of the Panel.

The data provide limited support for principal-agent theory. While the interest of the Board is clearly an important factor in explaining the success of a case, this effect is not enhanced by the information provided by the Panel. Indeed, it is *diminished*. The Panel is thus not performing as principal-agent theory would predict.

I now turn to the soft law hypothesis. The results of model (2) are given in table three:

**Table 3: Soft law**

Variable	Coef. and SE	p-value
Board interest	.18 (.23)	.44
Transparency	.77 (.29)**	.01
Activism	.08 (.15)	.59
Intercept	.03 (.31)	.92

N = 40, Adj. R<sup>2</sup> = .46, SER = .72

The results provide significant support for the soft law hypothesis. While all the effects are in the predicted direction, the level of transparency achieved is the only one that is statistically and substantively significant. The amount of information provided by the Panel seems to drive changes in Behavior much more than either state interest or activism.

To interpret these results it is helpful to understand the relationship between transparency and activism. Estimating model (3) yields the following results (table 4):

**Table 4: Effect of pre-submission activism on Panel's probability of recommending a review**

Model	Coef. and SE	p-value	Adj. R <sup>2</sup>
Linear	.27 (.14)*	.07	.14
Probit	.75(.41)*	.07	.15 (pseudo)

N=18

Both linear and probit models provide consistent results; in the linear model a one-degree increase in pre-submission activism is correlated with about a 30 percent increase in the likelihood the Panel will recommend a case be investigated.<sup>26</sup> This result importantly qualifies the previous finding. Activism exercises an indirect effect on Bank behavior by pushing cases further through the review process, and thus generating more of the transparency that does the causal work of changing Bank behavior.

Does transparency in turn lead to more activism? At the time of writing I only have the data necessary to answer this question for 10 cases, making regression analysis highly imprecise. However, merely looking at the data is instructive (see table 5).

<sup>26</sup> Here the endogeneity problem discussed above does become problematic, because we would expect "bad" cases both to attract more activism and to have a higher probability of being recommended for investigation. However, running the models with the final changes in Bank policy included as a control variable—which we can interpret as a proxy for the severity of the case in question—does not alter the results.

**Table 5: Transparency and activism**

Case	Change in activism	Level of transparency
Brazil: Itaparica Resettlement and Irrigation Project (1997)	-2.5	Eligibility review
Bangladesh: Jamuna Multipurpose Bridge Project (1996)	-1.5	Eligibility review
Bangladesh: Jute Sector Adjustment Credit Project (1996)	-1	Eligibility review
Tanzania: Power IV Project (1995)	0	Eligibility review
Chile: Financing of Hydroelectric Dams in the Bío Bío River (1995)	0	Eligibility review
India: NTPC Power Generation Project (1997)	-0.5	Investigation
Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit (1994)	-0.5	Investigation
Argentina/Paraguay: Yacyretá Hydroelectric Project (1996)	0	Investigation
<b>Brazil: Rondônia Natural Resources Management Project (1995)</b>	<b>1</b>	<b>Investigation</b>
Ethiopia: Compensation for Expropriation and Extension of IDA Credits to Ethiopia (1995)	0	None

In only one case did activism actually increase over the course of the investigation (Brazil: Rondônia Natural Resources Management Project), providing no evidence that the transparency generated by the Panel leads to more activism. This finding (limited to the few cases for which there are data) reinforces the idea that it is transparency itself, not activism, that actually changes Bank policy, further supporting the soft law theory.

Last I consider the reflexive law hypothesis. The results of model (5) are given in table six:

**Table 6: Reflexive law**

Variable	Coef. and SE	p-value
Board interest	.22 (.25)	.38
Transparency	.95 (.44)**	.03
Activism	.27 (.37)	.47
Interaction of activism and transparency	.13 (.24)	.58
Intercept	-.22 (.55)	.69

N = 40, Adj. R<sup>2</sup> = .45, SER = .73

The data suggest weak support for the reflexive law hypothesis but are mostly inconclusive. While the effect of transparency and activism are both enhanced when the other is high, the effect is not particularly large (.13) and, in any case, is only about half its corresponding standard error! Tuebner's theory, which earlier qualitative work has identified as the key driver of the Panel's workings, thus finds little support in the data.

#### 4. CONCLUSION

In sum, soft law emerges as the most salient theory to explain the Panel's effect on Bank behavior. This conclusion is at odds with earlier work that highlighted the importance of activism to the Panel's effectiveness.<sup>27</sup> In fact, activism was the least important predictor of behavioral change in all the models estimated in this paper. Nor was it seen to be a particularly strong cause of the level of transparency achieved, denying it even an indirect role in the Panel process.

While the Board—that is, the powerful states that control the World Bank—was seen to have a strong influence on outcomes, this influence does not seem to derive from the Panel process *per se*. Thus, while the role of powerful states is clearly important, I find no evidence that the Panel should be understood through a principal-agent lens.

These findings have important implications for how we should understand the spread of info-courts like the Panel throughout the field of multilateral development lending. Where institutions exhibit, like the World Bank, legalistic cultures that dispose the bureaucrats within them to follow even non-binding “rulings,” info-courts are likely to serve as effective accountability tools. In the theoretical section above I assumed that this factor varies *less* across various info-courts than activism or state interest in protecting the rights of stakeholders. I do not test that assumption here, but it seems intuitive that other multilateral development banks would share the World Bank's institutional culture. To the extent they do, there is reason to be relatively optimistic that the spread of info-courts does in fact imply increasingly unification of GAL in this area.

In order to test this idea directly, the cases of other info-courts could be subject to analysis similar to that performed here. However, few other mechanisms have developed enough of a case history to be studied in the same way (see table seven). It will thus be unlikely that sufficient data will exist to test the effect of info-courts on a broad range of institutions for some time.

**Table 7: Cases at info-courts of multi- and bilateral development lenders**

<b>Info-court</b>	<b>Year Created</b>	<b>Cases submitted as of March 2008</b>
World Bank Inspection Panel	1993	52
Inter-American Development Bank Independent Investigation Mechanism	1994	5
Asian Development Bank's Accountability Mechanism (in 2004 replaces Inspection Mechanism)	1995/2004	18
IFC/MIGA Compliance Adviser/Ombudsman	1999	34
Export Development Canada (bilateral)	2002	12
Japan Bank for Investment Cooperation (bilateral)	2003	0
European Bank for Reconstruction and Development Independent Recourse Mechanism	2004	5
African Development Bank's Independent Review	2004	1

<sup>27</sup> Hale, 'Transparency, Accountability, and Global Governance', Hale and Slaughter, 'Transparency: Possibilities and Limitations'.

Mechanism		
US Overseas Private Investment Corporation (bilateral)	2004	2

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