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### Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank

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WHY CULTURE MATTERS IN INTERNATIONAL INSTITUTIONS:  
THE MARGINALITY OF HUMAN RIGHTS AT THE WORLD BANK

By Galit A. Sarfaty\*

Why do international institutions behave as they do? International organizations (IOs) have emerged as significant actors in global governance, whether they are overseeing monetary policy, setting trade or labor standards, or resolving a humanitarian crisis. They often execute international agreements between states and significantly influence domestic law. It is thus important to analyze how international institutions behave and make policy. In order to understand institutional behavior and change, it is useful to conduct an ethnographic analysis of the internal dynamics of IOs, including their formal and informal norms, incentive systems, and decision-making processes. This Article analyzes the organizational culture of one particularly

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powerful international institution—the World Bank—and addresses the question of why the Bank has not adopted a human rights policy or agenda.<sup>1</sup>

Established on July 1, 1944, the World Bank has become the largest lender to developing countries, lending over \$20 billion per year.<sup>2</sup> With over 10,000 employees (including economists, sociologists, lawyers, and engineers, among others), its mission is poverty reduction, which it primarily carries out through its development lending.<sup>3</sup> While the institution has adopted a number of social and environmental policies and works on issues as diverse as judicial reform, health, and infrastructure, it has not adopted any overarching operational policy on human rights. Human rights concerns are not systematically incorporated into the everyday decision-making of staff or consistently taken into consideration in lending; existing incorporation of human rights is ad hoc and up to the discretion of employees.<sup>4</sup> In addition, many employees consider it taboo to discuss human rights in everyday conversation and to include references to it in their project documents. The marginality of human rights stands in contrast to the Bank’s rhetoric, including official reports and public speeches by its leadership in support of human rights.<sup>5</sup>

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<sup>1</sup> While the Bank has no operational policies on human rights per se, its Indigenous Peoples Policy addresses the rights of indigenous peoples. 1 WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, OD 4.20, ¶ 6 (Indigenous Peoples) (which aims to ensure that “the development process fosters full respect for the[] dignity, human rights, and cultural uniqueness” of indigenous peoples).

<sup>2</sup> The World Bank Group, one of the United Nations’ specialized agencies, consists of five closely associated institutions, which are owned by member countries that carry ultimate decision-making power in all matters, including policy, financial, and membership issues. The term “World Bank Group” encompasses all five institutions, including the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes. The term “World Bank,” as I use it in this Article, refers specifically to two of the five, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).

<sup>3</sup> Out of the 10,000 Bank employees, about 7,000 are based in the Washington, D.C. headquarters and 3,000 work in the field offices.

<sup>4</sup> There are some minor exceptions. For instance, some Bank documents have referred to human rights, and certain employees indirectly work on human rights, particularly economic, social, and cultural rights.

<sup>5</sup> See, e.g., THE WORLD BANK, DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK (1998); HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT (Philip Alston & Mary Robinson eds., 2005) (including contributions by senior World Bank officials, including former President James Wolfensohn); THE WORLD BANK INSTITUTE DEVELOPMENT OUTREACH, HUMAN RIGHTS AND DEVELOPMENT (Oct. 2006).

What do I mean when I say that human rights is a marginal issue within the Bank? In other words, there is no comprehensive or consistent approach on the policy and operational levels. In more specific terms, there are at least three provisions/safeguards missing at the Bank: (1) There is no staff policy to mitigate the impact of Bank projects on human rights. (2) When Bank employees engage in country dialogues or draft Country Assistance Strategies, they are not required to consider countries' obligations under international human rights law.<sup>6</sup> (3) The Bank has no guidelines on when it would suspend operations due to human rights violations.

Why should we be surprised that human rights is such a marginal issue at the World Bank? I contend that there are a number of compelling reasons for why the Bank's approach to human rights (or lack thereof) appears counterintuitive. First, other institutions involved in poverty reduction, including the United Nations Development Program, the United Nations Children's Fund, and the UK's Department for International Development, have begun to adopt human rights policies or a rights-based approach to development.<sup>7</sup> Second, the Bank has been subject to pressure from civil society organizations and internal advocates to integrate human rights considerations in its projects and programs. Third, private financial institutions have begun to address human rights more openly out of a concern for their public image and the reputational

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<sup>6</sup> The World Bank normally develops a Country Assistance Strategy (CAS) every one to three years in consultation with the borrower country's government and civil society organizations. This strategy addresses the country's top development priorities, creditworthiness, past portfolio performance, and the level of financial and technical assistance that the Bank seeks to provide the country.

<sup>7</sup> UNITED NATIONS DEVELOPMENT PROGRAM (UNDP), HUMAN RIGHTS IN UNDP PRACTICE NOTE (2005); UNITED NATIONS (UNICEF) EXECUTIVE DIRECTIVE: GUIDELINES FOR HUMAN RIGHTS-BASED PROGRAMMING APPROACH (1998). A rights-based approach typically requires institutional change and the creation of accountability mechanisms so that human rights are treated as constitutive of the goal of development. Yet scholars have challenged its effectiveness in achieving practical, on the ground changes to development work. See CELESTINE NYAMU-MUSEMI & ANDREA CORNWALL, WHAT IS THE "RIGHTS-BASED" APPROACH ALL ABOUT? PERSPECTIVES FROM INTERNATIONAL DEVELOPMENT AGENCIES (Institute for Dev. Stud. Working Paper No. 234, 2004); PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004); Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755 (2005); Mac Darrow & Amparo Tomas, *Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 HUM. RTS. Q. 471, 537 (2005).

risk of committing human rights abuses.<sup>8</sup> Even the International Finance Corporation (IFC), the Bank's private sector arm, has openly adopted human rights as part of a risk management approach, although its engagement in selective human rights has been subject to criticism by NGOs.<sup>9</sup> Despite these three factors, one would have expected the Bank to have already adopted a strategy on human rights. Yet it has not. Why?

I argue that legal and political obstacles do not fully explain this phenomenon; what has been missing from existing explanations is an anthropological analysis of the Bank's organizational culture that would shed light on internal obstacles to the adoption of human rights norms. Whether and how the Bank should adopt human rights is a topic that has been discussed at length by academics and civil society advocates.<sup>10</sup> However, I contend that this literature primarily focuses on legal arguments for binding the Bank and its member countries to international human rights obligations. It does not investigate the internal workings of the bureaucracy in order to understand *why* the Bank has yet to adopt and internalize human rights norms. This Article offers an empirical analysis of the Bank's organizational culture based on ethnographic field research at the institution over four years, including personal interviews, participant observation, and analysis of Bank documents.<sup>11</sup> My ethnographic research on the World Bank sheds light on why organizational change has not occurred and suggests the

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<sup>8</sup> See, e.g., The Equator Principles for private banks that are modeled after the International Finance Corporation's social and environmental policies, *available at* <http://www.equator-principles.com/>.

<sup>9</sup> See, e.g., Steve Herz et al., *The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remediating Violations?* (2008) (representing views from a number of NGOs including the Center for International Environmental Law, Bank Information Center, Oxfam Australia, and World Resources Institute), at [http://www.ciel.org/Ifi/IFC\\_Framework\\_7Aug08.html](http://www.ciel.org/Ifi/IFC_Framework_7Aug08.html).

<sup>10</sup> Recent books devoted to this topic include: MAC DARROW, *BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND, AND INTERNATIONAL HUMAN RIGHTS LAW* 126 (2003); BAHRAM GHAZI, *THE IMF, THE WORLD BANK GROUP, AND THE QUESTION OF HUMAN RIGHTS* (2005); SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* (2003).

<sup>11</sup> See *infra* Part II.C for a more detailed description of my research methods.

conditions under which it can happen. The reason why I selected this case is because despite external pressure over the past two decades and repeated attempts by insiders to push the human rights agenda forward, there has been neither norm adoption nor internalization.<sup>12</sup>

I have found that the ways in which norms become adopted and ultimately internalized in an institution in large part depends on their fit with the organizational culture. When a new norm is introduced, employees may interpret it in different ways. In the case of the Bank, employees from different professional groups often have distinct interpretive frames that they use to define issues, analyze their relevance to the Bank's mission, and apply them in practice. Proponents of a norm must account for internal conflict over competing frames when trying to persuade staff to accept it. They must also consider the operational procedures, incentive system, and management structure of the organization when determining the most effective strategy of implementation. Thus in order to bring about internalization, actors must adapt norms to local meanings and existing cultural values and practices—in other words, they must “vernacularize” norms.<sup>13</sup>

This Article will proceed as follows. In Part I, I argue that theories of international institutions should account for the internal dynamics within organizational cultures, which shape how institutions change and influence state behavior. Ethnographic research can help us analyze the conditions under which norms are internalized, including the degree to which they should be legalized. Applying a principal-agent model to IOs, I then argue that one has to look beyond

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<sup>12</sup> Adoption refers to an institution's acceptance of a norm and its manifestation as a formal or informal rule. Internalization refers to the acceptance of a norm by actors within the organization who are persuaded of its merits and validity through such processes as social learning, framing, and deliberation. Ryan Goodman and Derek Jinks refer to these mechanisms as persuasion. They distinguish persuasion from coercion and acculturation, which entails the adoption of norms without belief in their content, driven by social and cognitive pressures. Ryan Goodman & Derek Jinks, *How To Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004).

<sup>13</sup> Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 38, 39 (2006). See also SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2005).

states to understand and predict how international institutions behave. In Part II, I address the question of why human rights has remained such a marginal issue at the Bank, despite internal and external pressure that would suggest otherwise. After reviewing legal constraints in the Bank's Articles of Agreement and failed efforts from the early 1990s through 2004 at introducing a human rights agenda at the Bank, I argue that bureaucratic obstacles have played a large role in impeding human rights adoption. I focus on the 2006 Legal Opinion on Human Rights by the departing General Counsel and its failure to generate organizational change due to its uncertain legal status and internal conflict within the department.<sup>14</sup> Part III analyzes the Bank's organizational culture, including formal and informal processes of norm socialization; the incentives and operational policies that influence what employees value and how they reconcile competing goals; the production and circulation of knowledge within the organization; and power dynamics between professional subcultures. I focus on the prestige of economists and the lower status of lawyers in the Legal Department, and ultimately argue that the clash of expertise in the Bank is a critical obstacle in achieving human rights norm internalization. Part IV argues for the importance of framing norms to adapt to organizational culture. After examining interpretive battles among Bank lawyers and economists over how to define human rights norms and interpret them with respect to the Bank's mission, I discuss the most recent attempt to introduce human rights into the Bank. I describe how members of the Bank's Legal Department are following an incremental strategy of framing human rights for economists, which demonstrates how they are learning from the failures of prior attempts and adapting their

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<sup>14</sup> Roberto Dañino, Legal Opinion on Human Rights and the Work of the World Bank (Jan. 27, 2006), at <http://www.if-watchnet.org/?q=en/node/335>.

approach to the Bank's organizational culture. The conclusion analyzes the potential risks of achieving norm internalization at the Bank by economizing rather than legalizing human rights.

## I. INTERNATIONAL INSTITUTIONS AND ORGANIZATIONAL CULTURE

International organizations (IOs) have become an emerging topic of study among scholars in international law and international relations. My case study of the World Bank demonstrates the importance of ethnographic research towards explaining IO behavior. An analysis of an IO's bureaucratic culture, including the politics of expertise within it, can help explain organizational change. It can identify conditions for the internalization of norms, including the degree to which they should be legalized. Applying a principal-agent model to IOs, I argue that one has to look beyond states to understand and predict how international institutions behave, particularly when their behavior departs from the interests of member states.

### *Analyzing Norm Diffusion and the Limits of Legalization Through Ethnographic Research*

Studies of international institutions should account for their internal dynamics, including possible internal divisions between departments and individuals. Instead of only focusing on state interests, we need to examine the bureaucratic practices of the background experts that run institutions. As my study of the World Bank affirms, the actions and decisions of bureaucrats are critical factors in shaping how the institution operates and influences state behavior. These experts “do not speak in the language of interests or ideologies—they speak professional vocabularies of best practices, empirical necessity, good sense, or consensus values.”<sup>15</sup> In order

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<sup>15</sup> David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 SYDNEY L. REV. 1, 11 (2005).



to understand the politics of expertise within IOs, we must analyze their underlying organizational cultures.

Previous scholarship in international relations (IR) and international law has understudied the norm dynamics that operate within IOs and overemphasized the role of states in shaping IO behavior. The rational actor theories that have historically dominated international relations—realism and functionalism—are largely state-centric in their analyses of how IOs behave.<sup>16</sup> IOs play a larger role in the models developed by neoliberals and institutionalists, who disaggregate the state and focus on the actions and interests of individuals, interest groups, and political institutions that shape state preferences. Constructivist accounts have further departed from traditional IR theory by providing more autonomy to IOs, which serve as vehicles by which states are socialized into complying with norms.<sup>17</sup> Yet while constructivists have moved international relations away from state-centric theories, they are only beginning to provide empirical accounts of IO behavior.<sup>18</sup>

While legal scholars have increasingly treated IOs as their object of study, they have underemphasized their organizational cultures and internal politics. Interest-based models provide a rationalist account to explain state interests and behavior.<sup>19</sup> Norm-based models, including managerial theory and the transnational legal process school, have focused on the

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<sup>16</sup> See, e.g., ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984); NEOLIBERALISM AND ITS CRITICS (Robert O. Keohane ed., 1986); KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979).

<sup>17</sup> See, e.g., John Gerard Ruggie, *What Makes the World Hang Together: Neo-Utilitarianism and the Social Constructivist Challenge*, 52 INT'L ORG. (1998); Alexander Wendt, *Anarchy is What States Make of It: The Social Construction of Power Politics*, 46 INT'L ORG. 391-425 (1992).

<sup>18</sup> MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* 6 (2004); Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699 (1999).

<sup>19</sup> See, e.g., JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005).

question of why states comply with international norms.<sup>20</sup> Scholars have also measured the extent of countries' implementation and compliance with treaties over time.<sup>21</sup> In addition, there is a growing literature on mechanisms of norm socialization to explain how law influences state behavior.<sup>22</sup> Yet, this scholarship has not investigated the process of norm development within IOs. What is needed is evidence of what David Kennedy calls "the vocabularies, expertise, and sensibility of the professionals who manage . . . background norms and institutions, [which] are central elements in global governance."<sup>23</sup>

Ethnographic research can provide a comprehensive analysis of the organizational cultures of IOs and how they change. It involves an in-depth, case-oriented study, including long-term fieldwork within an institution and in-depth interviews. Fieldwork means that one is usually "living with and living like those who are studied. In its broadest, most conventional sense, fieldwork demands the full-time involvement of a researcher over a lengthy period of time . . . and consists of ongoing interaction with the human targets of study on their home ground."<sup>24</sup> Conducting fieldwork in an institution means that one engages in direct, first-hand observation of employees' daily behavior and participates in their activities, such as training workshops, seminars, and project meetings. In addition, one often conducts archival work and interpretive analysis of documents.

Anthropological research aims to answer a question rather than test a hypothesis. It is not based on prior assumptions or models, as are other methods. Rather, hypotheses and theories

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<sup>20</sup> See ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *YALE L.J.* 2599 (1997).

<sup>21</sup> See *ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS* (Edith Brown Weiss & Harold K. Jacobson eds., 1998).

<sup>22</sup> See, e.g., Goodman & Jinks, *supra* note 12.

<sup>23</sup> Kennedy, *supra* note 15, at 3.

<sup>24</sup> JOHN VAN MAANEN, *TALES OF THE FIELD: ON WRITING ETHNOGRAPHY* 2 (1988).

emerge from the data, and are constantly evaluated and adjusted as the research progresses.<sup>25</sup> The following is a concise summary of the cycle of ethnographic research:

In ethnography . . . you learn something (“collect some data”), then you try and make sense of it (“analysis”), then you go back and see if the interpretation makes sense in light of new experience (“collect more data”), then you refine your interpretation (“more analysis”), and so on. The process is dialectic, not linear.<sup>26</sup>

Therefore when ethnographers interview subjects, they “do not automatically assume that they know the right questions to ask in a setting.”<sup>27</sup> Interviews are usually unstructured or semi-structured with open-ended questions that are developed in response to observations and ongoing analysis. The questions are designed to seek respondents’ interpretations of what is happening and allow them to describe problems, policy solutions, their rationales, etc. in their own words. My ethnographic study of the World Bank followed this research protocol. As part of my Ph.D. dissertation research in anthropology, I worked and conducted fieldwork at the Bank headquarters in Washington, D.C. for approximately two years over a period of four years, from 2002-2006. During the summers of 2002 and 2004, I served as a consultant and intern in the Legal Department and the Social Development and Environment Departments of the Latin America and Caribbean region. My position as an intern for two summers afforded me the trust to gain access for a full year of fieldwork, from September 2005 until July 2006. While this

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<sup>25</sup> John Comaroff argues that “anthropology always rests on a dialectic between the deductive and the inductive, between the concept and the concrete, between its objectives and its subjects, whose intentions and inventions frequently set its agendas” (Michèle Lamont & Patricia White, Workshop on Interdisciplinary Standards for Systematic Qualitative Research 37, report available at [http://www.nsf.gov/sbe/ses/soc/ISSQR\\_workshop\\_rpt.pdf](http://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf)).

<sup>26</sup> MICHAEL H. AGAR, *THE PROFESSIONAL STRANGER: AN INFORMAL INTRODUCTION TO ETHNOGRAPHY* 62 (1996).

<sup>27</sup> HELEN B. SCHWARTZMAN, *ETHNOGRAPHY IN ORGANIZATIONS* 54 (1992).

Article is focused on my research during this time, I have revised the material accordingly based on recent developments.

My methods included interviews with more than 70 staff (from project managers to a former President), Executive Directors, U.S. Treasury officials, and NGO representatives; participation at Bank training sessions and seminars; and analyses of Bank projects and documents. When I observed meetings or interviewed employees, I described the purpose of my research and obtained their informed consent. Almost all interviews were recorded and transcribed, and were conducted under the condition that I not use the employees' names. Thus I only provide the current (or former) position and department of the people that I interviewed, unless I was given verbal consent to provide their full identity.<sup>28</sup>

By conducting ethnographic research on the Bank, I was able to uncover the formal and informal norms and the decision-making processes within the institution that shape state behavior. I aimed to examine the institution from the top down as well as the bottom up, focusing not only on its leadership and administrative structure, but also on the tasks and incentives of staff. I analyzed the informal practices and unspoken assumptions held by employees that may be misinterpreted by or hidden from external observers as well as the employees themselves. By doing so, this study reveals the competing subcultures and other internal contestations that may impede norm internalization.

Why do certain norms and policies become adopted in an institution while others do not? An ethnographic analysis of organizational culture can explain how and why certain norms are framed, interpreted, and implemented by IO officials. IR scholars describe a case of unsuccessful

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<sup>28</sup> For those interviewees who gave their consent, I have attached their full names or exact titles to their quotations. Otherwise, I have provided general descriptions of each interviewee's position and department.

norm diffusion as “the dog that didn’t bark.”<sup>29</sup> The case of the diffusion of human rights at the World Bank is more precisely a case of the “dog that didn’t—at least initially—bark.” My empirical research investigates why human rights norms have been historically rejected by the Bank and have only recently moved closer toward being adopted and internalized. It is important to study these cases in order to identify the conditions of possibility for the internalization of norms within IOs.

I contend that the conditions under which norms are internalized by IO officials are shaped by how the norms are framed. In particular, the degree of “legalization” of human rights norms influences whether staff adopt and internalize them. The extent to which legalizing human rights impedes or facilitates internalization will depend on the organizational culture.

My study departs from conventional writing on legalization, including its definition and its strategic value for implementing human rights. When legal scholars discuss “legalization,” they often refer to the definition used in recent IR literature: as “a particular form of institutionalization characterized by three components: obligation, precision, and delegation.”<sup>30</sup> According to this definition, legalization describes “a particular set of characteristics that institutions may (or may not) possess.”<sup>31</sup> This conception is more applicable to an institutional regime or arrangement (e.g., European Community law or WTO agreements), rather than the structure or status of a specific norm within an institution.

I would like to focus on a different aspect of legalization—the extent to which norms are perceived as having a “legal” status, often in relation to an existing legal system (e.g., the

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<sup>29</sup> Jeffrey T. Checkel, *Norms, Institutions, and National Identity in Contemporary Europe*, 43 INT’L STUD. Q. 83, 86 (1999).

<sup>30</sup> Kenneth W. Abbott et al., *The Concept of Legalization*, 54 INT’L ORG. 401, 401 (2000). See also JUDITH GOLDSTEIN ET AL., LEGALIZATION AND WORLD POLITICS (2001).

<sup>31</sup> *Id.*

international human rights regime). In other words, to what degree are norms conceived as “legal” norms (rather than moral, cultural, or professional norms, for instance)? This understanding of legalization addresses the relationship between a norm and its legal expression, and whether “legal norms, as a type, operate differently from any other kind of norms.”<sup>32</sup> With respect to human rights (the focus of my study), these norms could be framed as moral or political concepts, as well as legal concepts. Amartya Sen critiques “the entirely law-dependent views of human rights” and argues that they be defined as ethical rather than legal claims.<sup>33</sup> He believes that “human rights can have influence without necessarily depending on coercive legal rules.”<sup>34</sup> Going one step further, there are instances when a law-dependent view of human rights can hinder its influence.

This leads us to an assessment of the strategic value of human rights legalization.<sup>35</sup> In the past few decades, there has been a trend towards the legalization of human rights and international institutions in general.<sup>36</sup> Legal scholars have emphasized the benefits of legalization, which “tends to bolster the credibility of normative commitments, increase compliance with international norms, and provide a highly rationalized mode of clarifying and resolving interpretive disagreements.”<sup>37</sup> Yet there are costs associated with human rights legalization, particularly when it occurs in institutional environments that value non-legal principles or seek non-legal goals (such as respect for moral values like dignity). For example,

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<sup>32</sup> Martha Finnemore, *Are Legal Norms Distinctive?*, 32 INT’L L. & POL. 699, 701 (2000).

<sup>33</sup> Amartya Sen, *Human Rights and the Limits of Law*, 27 CARDOZO L. REV. 2913, 2916-17 (2006).

<sup>34</sup> *Id.* at 2921. Sen further elaborates on this argument in Amartya Sen, *Elements of a Theory of Human Rights*, PHIL. & PUB. AFFAIRS (2005).

<sup>35</sup> See Jack Donnelly, *The Virtues of Legalization*, in THE LEGALIZATION OF HUMAN RIGHTS: MULTIDISCIPLINARY PERSPECTIVES ON HUMAN RIGHTS AND HUMAN RIGHTS LAW 67 (Saladin Meckled-García & Basak Çali eds., 2006).

<sup>36</sup> Derek P. Jinks, *The Legalization of World Politics and the Future of U.S. Human Rights Policy*, 46 ST. LOUIS U. L.J. 357, 360 (2002).

<sup>37</sup> *Id.* at 361.

during the creation of human rights commissions in post-authoritarian regimes in the 1990s, there were attempts “to detach human rights from their legal moorings and redefine them as a generalized language of public morality.”<sup>38</sup> Citing the harmful consequences of overlegalization, Laurence Helfer advocates for a cost-benefit view of legalization in his case study of the Caribbean backlash against human rights regimes.<sup>39</sup> Although Helfer adopts the IR definition of legalization defined above and applies it to human rights treaties rather than norms within institutions, he raises important questions about the usefulness of legalization in particular contexts.<sup>40</sup>

In examining why legal norms could have distinctive effects in certain institutional contexts but not others, Martha Finnemore notes that “[a]n organization staffed mostly by lawyers is likely to find legal norms more persuasive than other kinds of norms and to give them special weight. . . . If economists (or members of some other profession) dominated policy making, we would expect norms of that profession, and not legal norms, to be particularly powerful.”<sup>41</sup> Finnemore’s example applies aptly to the case of the World Bank.

My research demonstrates that legalizing human rights would not be an effective strategy for their adoption at the Bank. Framing human rights norms in legal terms may limit their persuasiveness and impede their internalization. This is because of the dominance of economics and the marginality of lawyers and legal frames within the Bank’s organizational culture, as I further describe in Part III. Thus a key condition for the internalization of human rights norms is

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<sup>38</sup> See Richard Ashby Wilson, *Is the Legalization of Human Rights Really the Problem? Genocide in the Guatemalan Historical Clarification Commission*, in *THE LEGALIZATION OF HUMAN RIGHTS*, *supra* note 35, at 81, 84.

<sup>39</sup> Laurence Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 *COLUM. L. REV.* 1832 (2002).

<sup>40</sup> *Id.*

<sup>41</sup> Finnemore, *supra* note 32, at 704.

finding an institutional fit with the organizational culture. Finding an institutional fit requires that norms become vernacularized so that they resonate with pre-existing understandings. This involves “a dynamic process of matchmaking.”<sup>42</sup> Proponents of a norm should act strategically—e.g., through norm framing, cuing, or persuasion—in order to ensure congruence with the organizational culture.

### ***Looking Beyond Member States***

My empirical study demonstrates that institutions can have relative autonomy when member states hold competing preferences and do not reach consensus. In these circumstances, IO officials have discretion and can significantly influence how the institution behaves. While the Bank’s member states cast a shadow over the Bank, what has been underemphasized is how much decision-making autonomy the agency has in pushing issues forward under their radar.

One can analyze the relationship between the Bank and member states by applying a principal-agent model that includes multiple principals. The multiple-principals problem is an extension of the traditional model, which assumes that principals and agents are unitary actors.<sup>43</sup> Multiple principals may hold competing preferences and may be unable to effectively exert oversight over the agent. Because oversight is costly, they are often forced to delegate authority. This leaves the agent with considerable independence.<sup>44</sup> Bureaucratic drift occurs when an agency makes decisions or implements policies that diverge from the goals preferred by the

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<sup>42</sup> Amitav Acharya, *How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism*, 58 INT’L ORG. 239, 243 (2004).

<sup>43</sup> Richard W. Waterman & Kenneth J. Meier, *Principal-Agent Models: An Expansion?*, J. PUB. ADMIN. RES. & THEORY 173, 181 (1998).

<sup>44</sup> *See id.*; Gary J. Miller, *The Political Evolution of Principal-Agent Models*, 8 ANN. REV. POL. SCI. 203, 211-12 (2005).



principals.<sup>45</sup> Bureaucratic drift is particularly common in a multiple principals situation since a conflict of interests among warring principals may prevent them from agreeing on common goals and exerting oversight over the agency.<sup>46</sup> This is often the case in an international institution, where there is a “long chain of delegation” from the principals (or member states) to the IO agent.<sup>47</sup>

The World Bank represents a multiple-principals problem, where member governments serve as principals that collectively form the Board of Executive Directors. The Board is composed of 24 Executive Directors who represent countries or country groups.<sup>48</sup> Under the Bank’s Articles of Agreement, the Board serves as the institution’s policy-making organ while the President and senior management are responsible for operational, administrative, and organizational issues.<sup>49</sup> The Executive Directors thus serve as principals that delegate certain tasks and responsibilities to agency officials. When member countries hold competing preferences and cannot achieve consensus on a policy, there may be bureaucratic drift. Since it is difficult for them to effectively exert oversight, the member countries are forced to delegate authority to the agency officials. These dynamics have been confirmed by my ethnographic research on the Bank. When studying its internal decision-making process, I discovered that

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<sup>45</sup> See, e.g., Murray J. Horn & Kenneth A. Shepsle, *Administrative Process and Organizational Form as Legislative Responses to Agency Costs*, 75 VA. L. REV. 499 (1989); Mathew D. McCubbins et al., *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243 (1987); Mathew D. McCubbins et al., *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431 (1989).

<sup>46</sup> Horn & Shepsle, *supra* note 45, at 502.

<sup>47</sup> Daniel L. Nielson & Michael J. Tierney, *Delegation to International Organizations: Agency Theory and World Bank Environmental Reform*, 57 INT’L ORG. 241, 242 (2003).

<sup>48</sup> Five Executive Directors are appointed from the five donor countries that contribute the largest number of shares—currently, the United States, Japan, Germany, France, and the United Kingdom. The other nineteen Directors are elected by regional groups of the other member countries. The Bank links voting power to members’ capital subscriptions, which are based on a country’s relative economic strength.

<sup>49</sup> The Board meets once or twice a week to vote on loan and credit proposals and to make decisions on strategic and policy items, including the administrative budget.

employees operate quite independently from the Board. Certain sensitive management issues are carried out without Board approval or involvement. The Board's limited influence is in part due to the short tenure of its members and its protocol of reaching almost all decisions by consensus.

An institutional constraint that favors agency autonomy is the short time horizon of Board members as compared to that of the Bank President. Most Executive Directors serve for just one or two two-year terms, whereas the President's tenure can be at least 5 years or more if he or she is reelected. Roughly a third of the Board members change each year. As a result, the Directors' knowledge of the history and practice of the institution is quite narrow.<sup>50</sup> According to an interview by Catherine Caufield with former Director Moisés Naím, "It is impossible, even for the few of them that have a good prior understanding of the institution, to master the overwhelming array of complex issues on which they are supposed to develop an independent opinion."<sup>51</sup> Naím further explains that the Directors end up relying on the guidance of management because they are "no match for a usually brilliant group of professionals with decades of experience at the Bank."<sup>52</sup>

Given the different time horizons of the President and the Executive Directors, the President can incrementally introduce changes that will not be perceived as too radical by Board members. This is because they have a limited institutional memory and, as multiple principals, cannot effectively exert oversight over the President. Former President James Wolfensohn adopted an incremental strategy for introducing changes during his second five-year term. By this time, he had served the Bank longer than any Board member and was able to get a lot more

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<sup>50</sup> Interview with James Wolfensohn, former President, World Bank, in New York, N.Y. (June 14, 2007).

<sup>51</sup> CATHERINE CAUFIELD, *MASTERS OF ILLUSION: THE WORLD BANK AND THE POVERTY OF NATIONS* 238 (1996). Moisés Naím, a former Venezuelan trade and industry minister, was an Executive Director at the Bank representing a bloc of countries including Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Spain, and Venezuela.

<sup>52</sup> *Id.* at 239.

done as compared to his first few years in office. Wolfensohn treated the Board in the following manner:

[I]f you make the assumption to the Board that this is the way you operate, you very rarely get challenged. . . . So if you can proceed in the institution with a set of assumptions that you are doing things in the way they should be done, . . . you can incrementally do a tremendous amount. Because it's unlikely that anyone will challenge you. Because they think that maybe this is the way the Bank should operate. So I got a lot of things done incrementally without coming to the Board for big policy decisions. I knew that if I went to the Board on many of the policy decisions, [I'd] run into a hell of a lot of problems.<sup>53</sup>

Wolfensohn adopted this incremental strategy when pushing forward his corruption agenda. He noted that by the time he had left, he was spending about six or seven million dollars a year on corruption, although he had never presented a policy to the Board.<sup>54</sup>

Another important reason for why the Board lacks significant power over Bank management and staff is that it historically only operates by consensus (with few exceptions). The Board has historically been deeply divided over the issue of human rights. Some member states like China and Saudi Arabia are highly opposed to an explicit human rights agenda that would include the protection of civil and political rights (which they view as a reflection of “Western” values). Others like India and Brazil (middle-income countries that are responsible for a substantial portion of the Bank’s revenue) are afraid that human rights would increase transaction costs for loans.<sup>55</sup> Among countries that moderately support a human rights agenda,

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<sup>53</sup> Interview with James Wolfensohn, former President, World Bank, in New York, N.Y. (June 14, 2007).

<sup>54</sup> *Id.*

<sup>55</sup> There are a number of other reasons for their opposition, including their view that a human rights agenda would encroach on their sovereignty and turn the institution into a human rights enforcer. Some countries fear that human rights would become a conditionality on lending, which may adversely affect borrower countries with poor human rights records while not punishing donor countries with similar records. Finally, certain countries view human rights as a political consideration that is restricted under the Bank’s Articles of Agreement.

there is disagreement over what it would look like. Should the Bank adopt a rights-based approach to development, a human rights operational policy, or a human rights impact assessment that would limit possible human rights violations caused by projects? Among such a diverse Board constituency, it is difficult to agree on a single approach. Because the Board operates by consensus, disagreements on such issues as human rights have simply resulted in inaction.

Since Bank officials have recognized the unlikelihood of getting Board support for a human rights agenda, they have avoided proposing it for fear of a backlash against the issue if they tried and failed to gain approval. Instead, internal advocates are introducing sensitive topics like human rights not through Board approval but by making incremental changes in operations.<sup>56</sup> In other words, they are supporting a strategy that is under the radar screen of member states.

## **II. THE ROLE OF HUMAN RIGHTS AT THE WORLD BANK**

Over the past two decades, NGOs and internal advocates have pressured the Bank to introduce a human rights agenda in the institution. One would expect the Bank to have been swayed by this pressure along with the growing trend among corporations and development agencies to address human rights more openly. Yet it has not. Many scholars have cited legal reasons for why the Bank has not adopted human rights norms. In the first section below, I clarify and describe the uncertainty over the Bank's human rights obligations under international law. I then analyze legal restrictions in the Bank's Articles of Agreement that have historically served as the major obstacle to the Bank's direct engagement in human rights. However, I argue

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<sup>56</sup> See *infra* Pt. V.

that legal constraints are insufficient reasons and that internal factors have played a major role. Failed efforts at reform by internal advocates suggest the critical role of bureaucratic obstacles in impeding human rights adoption. After describing these internal campaigns and their inability to produce institutional change, I discuss the most recent attempt at reform—the 2006 Legal Opinion on Human Rights by a former General Counsel. Its failure to generate momentum among staff or create substantive changes in policy was in part due to questions over its legal status. As I further explain below, there was uncertainty over whether the opinion constitutes an official World Bank legal opinion because it had not been requested by the Board nor submitted to the Board for approval. Yet despite the opinion’s uncertain legal status, members of the Legal Department did not or even refused to circulate the opinion due to internal conflict within the department over value-laden issues like human rights.

### ***The Bank’s Obligations Under International Law***

What does international law say about the Bank’s responsibilities with respect to human rights? Does the Bank have an obligation to ensure that its projects, programs, and internal policies are consistent with international human rights standards, and that its activities do not facilitate human rights abuses? Does it have a responsibility to promote human rights in its member states?

In order to address these questions, the first, most important issue to explore is the extent to which the Bank as an international organization is bound by rules of customary international law beyond its charter, including customary international law norms on human rights. There is a

debate over this question, as there is over what constitutes customary international law on human rights.

The Bank functions as an international body with legal personality due to “the nature of the specific powers granted under [its] Articles (notably the power to conclude agreements governed by international law, and the provisions establishing their relationship with other international organizations), their entitlement to specified privileges and immunities, and the fact that they operate extensively within the international sphere. . . .”<sup>57</sup> According to legal scholars, the Bank’s status as an international legal person implies its role as both a subject and object of international responsibilities and obligations, *possibly* including obligations incumbent upon the organization under international agreements and customary international law.<sup>58</sup>

Because international organizations cannot become parties to human rights treaties as states can, they are not directly bound by treaties. Yet, according to the International Court of Justice, international organizations can be bound by obligations under general principles of international law<sup>59</sup> and capable of possessing international rights and duties.<sup>60</sup> IOs are also bound by *jus cogens*, or peremptory norms of international law such as the prohibition against genocide.<sup>61</sup> In addition, the Bank has obligations as a specialized agency of the United Nations.<sup>62</sup> The Bank must respect the purposes and principles in the U.N. charter, including “the human

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<sup>57</sup> DARROW, *supra* note 10, at 126.

<sup>58</sup> See, e.g., DARROW, *supra* note 10; SKOGLY, *supra* note 10; Daniel Bradlow, *The World Bank, the IMF, and Human Rights*, 6 TRANSNAT’L & CONTEMP. PROBS. 47, 63 (1996); Fergus MacKay, *Universal Rights or a Universe unto Itself? Indigenous Peoples’ Human Rights and the World Bank’s Draft Operational Policy 4.10 on Indigenous Peoples*, 17 AM. U. INT’L L. REV. 527 (2002); Ibrahim Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 DENV. J. INT’L L. & POL’Y 39, 47 (1988).

<sup>59</sup> See Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, 1980 I.C.J. 73, 89-90 (Dec. 20).

<sup>60</sup> See Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J.

<sup>61</sup> Henry G. Schermers, “The Legal Bases of International Organization Action,” in A HANDBOOK ON INTERNATIONAL ORGANIZATIONS 401, 402 (Rene-Jean Dupuy ed., 1998).

<sup>62</sup> See Agreement Between the United Nations and the International Bank for Reconstruction and Development, art. IV(2), 16 U.N.T.S. 346, 348 (1948).

rights purposes as stated in Article 55, as elaborated in the [Universal Declaration on Human Rights] and the body of international human rights law built upon it.”<sup>63</sup> It must also give “due regard” for decisions of the U.N. Security Council, although it is not required to follow the recommendations of the U.N.’s specialized human rights agencies.<sup>64</sup>

The second issue with regard to the Bank’s obligations under international law is whether the institution has any obligations vis-à-vis its members. Because only some of its member states are parties to particular human rights agreements, the Bank’s responsibilities would vary with respect to different members. There is a debate regarding whether the Bank should go as far as enforcing states’ treaty obligations through loan conditionalities or should just implement them through technical assistance.<sup>65</sup>

Finally, there is the issue of what role, if any, international financial institutions (IFIs) like the Bank should play in the progressive development of international law—e.g., by promoting human rights in development. While international conferences, such as the 1993 Vienna World Conference on Human Rights and the 2000 Millennium Summit, have recognized the interdependence between human rights and development,<sup>66</sup> the rules of customary international law in this area are still subject to dispute.

In summary, the international legal obligations of the Bank with respect to human rights are a matter of dispute among legal scholars. The institution has skirted most of these arguments

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<sup>63</sup> DARROW, *supra* note 10, at 128.

<sup>64</sup> See SKOGLY, *supra* note 10, at 99-102; Bradlow, *supra* note 58, at 63.

<sup>65</sup> Daniel D. Bradlow, *Should the International Financial Institutions Play a Role in the Implementation and Enforcement of International Humanitarian Law?*, 50 U. KAN. L. REV. 695 (2002).

<sup>66</sup> At the 1993 Vienna World Conference, a consensus affirmed, “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. . . . The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world” (para. 8).

and instead focused on its limited mandate under its Articles of Agreement, whose interpretation has become the locus of contention among Bank staff, advocates, and policymakers.<sup>67</sup>

### ***The Bank's Articles of Agreement***

In addressing the question of why the Bank has not adopted a human rights agenda, many scholars, policymakers, and advocates have focused on restrictions in the institution's Articles of Agreement, or founding constitution. The legal restrictions arise from two provisions: (i) Article IV, Section 10; and (ii) Article III, Section 5(b), which place limits on the factors that staff can consider in their decisions.<sup>68</sup> Article IV, Section 10 prohibits political activity and permits only economic considerations in decision-making:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighted impartially in order to achieve the purposes stated in Article I.

Article III, Section 5(b) limits the factors that the Bank can consider in the granting of loans and restricts political considerations:

The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

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<sup>67</sup> See sources *supra* note 10.

<sup>68</sup> Articles of Agreement of the International Bank for Reconstruction and Development, Art. IV, sec. 10, and Art. III, sec. 5(b), July 22, 1944, 60 Stat. 1440 (1945), 2 U.N.T.S. 134 (1947) [hereinafter Articles of Agreement].



These provisions have historically stymied the Bank’s explicit engagement with human rights, particularly civil and political rights, which have been interpreted as “political considerations.” As a result, Bank employees have claimed that their work can only indirectly promote human rights.

The General Counsel’s office has provided the authoritative interpretation of the Articles of Agreement from time to time with respect to human rights, including what is considered an allowable “economic consideration” and a prohibited “political” one. The official interpretation has evolved over time to reflect an incremental expansion of the Bank’s mandate and a multi-faceted view of development, including not only its economic dimensions but also its political, social, and cultural ones.<sup>69</sup> Former General Counsel Ibrahim Shihata authored the most influential opinions, which expanded the Bank’s mandate and acknowledged the centrality of human rights within development work:

While the Bank is prohibited from being influenced by political considerations, its staff increasingly realize that human needs are not limited to the material “basic needs” often emphasized in the 1970s. . . . [N]o balanced development can be achieved without the realisation of a minimum degree of all human rights . . . .<sup>70</sup>

In the past two decades, Shihata’s opinions and memos have provided legal room for the Bank’s involvement in areas that were once deemed as too political, such as legal and judicial reform and anti-corruption efforts. Yet human rights, especially certain civil and political rights, have still been considered too political for the Bank to directly address in its work. While restrictions in the Articles of Agreement have continued to serve as a legal obstacle to human rights

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<sup>69</sup> DARROW, *supra* note 10, at 152.

<sup>70</sup> IBRAHIM SHIHATA, *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 133 (1991).

adoption, bureaucratic obstacles have been more critical in impeding internal efforts at reform.

### ***Efforts at Reform and Reasons for Failure***

Institutional memory points to the early 1990s as one of the first internal campaigns to integrate human rights into operational work. Leading this initiative was an interdisciplinary working group of operational staff from the African region. The initiative was framed as part of a new institutional focus on good governance as a key ingredient for development.<sup>71</sup> While the working group organized a number of brown bag lunches, workshops, and symposia, it became inoperative in the mid-late 1990s. One reason was that many of the group members became very busy with their work on governance and corruption, which had become a priority at the institution. In addition, some of the senior officials who had previously supported the working group had retired or moved to other departments. Without support from senior staff, it was difficult for the working group members to invest resources in human rights research and education. This changed by the late 1990s.

In 1995, James Wolfensohn became President of the Bank and ushered in an era of more open dialogue on human rights. According to Wolfensohn, it took about three to four years to educate staff that human rights was an important issue within the context of the Bank's work.<sup>72</sup> Under his leadership, the Bank published its first official report on human rights, which recognized the institution's role in promoting and protecting human rights but stopped short of

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<sup>71</sup> See THE WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH. A LONG-TERM PERSPECTIVE STUDY 60-61 (1989) ("Underlying the litany of Africa's development problems is a crisis of governance. . . . [What is required is] a systematic effort to build a pluralistic institutional structure, a determination to respect the rule of law, and vigorous protection of the freedom of the press and human rights.").

<sup>72</sup> Interview with James Wolfensohn, former President, World Bank, in New York, N.Y. (June 14, 2007).

stating that it had an international legal obligation to do so.<sup>73</sup> Since the report's publication in 1998, Bank documents and speeches have periodically mentioned human rights, although the Bank's Board of Executive Directors has continued to oppose its official incorporation into institutional policy.<sup>74</sup> President Wolfensohn recognized the unlikelihood of getting the Board to spearhead a human rights agenda since it was and remains deeply divided over the issue. Instead of consulting with the Board, Wolfensohn and senior management appealed to employees to try to build support within the institution.

The momentum for a potential human rights strategy began in 2002. On May 2nd of that year, the Bank organized an all-day internal workshop entitled "Human Rights and Sustainable Development: What Role for the Bank?," which was attended by about 100 employees from across the institution. The purpose of the workshop was to increase staff awareness of human rights and to discuss possible implications for Bank operations. In a plenary address to the workshop, President Wolfensohn announced that the mood was changing and it was time to take the words "human rights" out of the closet.<sup>75</sup> He then invited a number of senior staff to lead an institution-wide task force on human rights and draft a strategy paper that he could present at the Bank's next Annual Meetings.<sup>76</sup>

Coordinated by the Social Development Department, the task force included staff from several departments including Legal, Human Development, External Affairs, Sustainable Development, and Poverty Reduction. Including representatives from a variety of departments

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<sup>73</sup> THE WORLD BANK, *supra* note 5.

<sup>74</sup> See DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, REALISING HUMAN RIGHTS FOR POOR PEOPLE: STRATEGIES FOR ACHIEVING THE INTERNATIONAL DEVELOPMENT TARGETS 16 (2000) (concluding that "the reluctance of some of [the Bank's] shareholders . . . to incorporate human rights into its development work could constrain its poverty reduction strategies").

<sup>75</sup> Human Rights & Sustainable Development: What Role for the Bank?, Summary of Proceedings 12 (May 2, 2002).

<sup>76</sup> *Id.* at 11.

was critical since it allowed for cross-disciplinary dialogue and prevented one department from co-opting the agenda. On June 2003, the task force presented a background report on human rights to the Board’s Committee on Development Effectiveness (CODE). The report reviewed the Bank’s existing work in support of human rights and identified the difficulties of adopting a human rights policy.<sup>77</sup> Although it recommended that the Bank merely adopt human rights principles (instead of a policy or a rights-based approach), the committee ultimately did not approve the report.<sup>78</sup> The committee and senior management felt that they were not ready to approve a report on such a controversial issue. According to one task force member, although senior officials had reviewed multiple drafts, they just “got cold feet” about passing a paper on human rights and began to “backpedal.”<sup>79</sup> They called for more background studies and analysis before progressing any further on a strategy.

Following the committee’s meeting, Wolfensohn assigned the human rights portfolio to a managing director in charge of human development issues—Mamphela Ramphela.<sup>80</sup> During the fall of 2003 and early 2004, Ramphela and her senior advisor Alfredo Sfeir-Younis pursued a decentralized approach with regional human rights focal points, who were given the latitude to determine how they would address the issue. Some regions did not follow up on this request, while others simply wrote stocktaking reports of their human rights-related activities. There was little coordination among the regions, with Ramphela only chairing a couple of meetings with the new focal points and senior management.

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<sup>77</sup> Interview with former official, Social Development Department, World Bank, in Washington, D.C. (Feb. 16, 2006).

<sup>78</sup> The task force did not bring the issue to the full Board of Executive Directors but only its Committee on Development Effectiveness, since it did not want to sharpen existing divisions on the Board. Members of the task force now regret that they did not at least prepare a public statement based on their work.

<sup>79</sup> Interview with former official, Social Development Department, World Bank, in Washington, D.C. (Feb. 16, 2006).

<sup>80</sup> The Bank’s managing directors rank directly below the President.

The “crescendo” of this phase of internal human rights advocacy occurred in March 2004.<sup>81</sup> On the first of the month, former UN High Commissioner for Human Rights Mary Robinson and New York University law professor Philip Alston convened a conference on the law school’s campus on “Human Rights and Development: Towards Mutual Reinforcement.”<sup>82</sup> The conference featured a keynote address by Wolfensohn and presentations by a number of senior officials, including the recently appointed General Counsel Roberto Dañino who outlined what would later become his legal opinion on human rights. But the momentum seemed to stop soon thereafter. Aside from the publication of a book based on the conference, there was no substantive follow-up and no major resources devoted to continuing this initiative. In addition, Mamphela Ramphele resigned from the Bank in April 2004.

Why did the flurry of activity over human rights between 2002 and 2004 not result in the adoption of a human rights strategy? It would seem that many key ingredients were in place for human rights norm adoption and eventual internalization: (i) support from the President to develop a strategy that would be presented to the Board; (ii) the appointment of a managing director to oversee the human rights portfolio; and (iii) an interdisciplinary task force with representatives from different departments. So why didn’t the task force and the Ramphele-led initiative succeed in gathering internal support and pushing through a Bank strategy on human rights?

Those familiar with the events, including several task force members, cite a number of reasons for why the task force and region-based initiative failed to capitalize on the growing momentum towards human rights norm adoption. These reasons include excessive caution and

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<sup>81</sup> Interview with official, Bank Information Center, in Washington, D.C. (Jan. 31, 2006).

<sup>82</sup> See HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT, *supra* note 5.

backpedaling on the part of senior management and the Board’s Committee on Development Effectiveness; internal resistance to collaborating with civil society organizations; and a lack of resources to carry out the requisite activities for increasing staff awareness on human rights. Wolfensohn himself admits that he should have placed more emphasis on the issue of human rights during his tenure:

The thing that I thought I had done was to establish the issue of human rights as being an important issue for people at the Bank. If I didn’t go far enough, then I made a mistake. . . . Maybe in retrospect, I should’ve made a bigger deal of it and tried to put it within the context of some legal framework or some administrative framework.<sup>83</sup>

Moreover, there were criticisms that the task force leaders were too theoretical and underemphasized the concrete practical steps that were needed to push the agenda forward.<sup>84</sup> Some thought Ramphela lacked the political capital and Bank experience to influence senior management. Even though she was a managing director, many employees viewed her as an outsider since she had only joined the Bank in 2000, and as lower in status than the two other managing directors since she was responsible for the “soft” issues like human development.<sup>85</sup>

Yet based on my interviews, the most significant factor behind the failure of internal attempts between 2002 and 2004 was a clash of expertise. Task force members complained of the difficulty of reaching consensus among people from different sectors and disciplinary

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<sup>83</sup> Interview with James Wolfensohn, former President, World Bank, in New York, N.Y. (June 14, 2007).

<sup>84</sup> Interview with official, Human Rights Watch, in Washington, D.C. (July 20, 2006).

<sup>85</sup> One employee described her as being “pitchforked” into her position from outside the Bank, rather than rising from within the ranks. As a result, she didn’t understand the Bank’s language well and had trouble effectively carrying out her mandate. Interview with official, Development Research Group, World Bank, in Washington, D.C. (Feb. 14, 2006). In comparison, another managing director, Shengman Zhang, commanded more respect at the Bank because he had worked at the institution for a long time, and all of the operational vice-presidents reported to him. Interview with official, External Affairs Department, World Bank, in Washington, D.C. (Mar. 15, 2006).

backgrounds, who held divergent views on how to define human rights and interpret them with respect to Bank operations.<sup>86</sup> The theoretically oriented people (who emphasized the indivisibility of human rights) clashed with the more pragmatically minded, who were mainly concerned with operational issues and the need to make trade-offs between different rights in projects with limited budgets. One employee intimately familiar with the events explained that the failure to bring about a human rights strategy was not due to resistance from the Board or senior management but rather “turf battles, and just the difficulty of doing something like this in such a multi-sectoral organization.”<sup>87</sup> Amid internal disputes, the task force failed to build a constituency among staff in support of its mission.

The final piece that was missing was support from the Legal Department, which is surprising given the centrality of the Articles of Agreement in determining the Bank’s role with respect to human rights. Although the task force included a lawyer from the department, he did not consult with the General Counsel and did not consider himself the department’s official representative on the issue of human rights. Other members of the Legal Department felt shut out from the process by task force members.<sup>88</sup> In the fall of 2003, when Ramphel led a decentralized approach with region-based human rights focal points, the Legal Department was only belatedly included in discussions. Finally, there were turf wars between the Legal Department and the regional departments, which wanted to remain in control of the human rights agenda and not cede it to the lawyers.

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<sup>86</sup> See discussion *infra* Part IV.A.

<sup>87</sup> Interview with official, Social Protection Team, Human Development Network, World Bank, in Washington, D.C. (Jan. 24, 2006).

<sup>88</sup> Interview with official, Legal Department, World Bank, in Washington, D.C. (Jan. 4, 2006).

While the turf wars continued, the Legal Department's role in discussions over human rights expanded following the appointment of a new General Counsel, Roberto Dañino, in late 2003. Dañino championed the human rights agenda over the next two years and paved the way for recent efforts by members of the Legal Department (discussed in Part IV).

### ***The 2006 Legal Opinion on Human Rights***

On January 31, 2006, on his last day as the Bank's General Counsel, Roberto Dañino dropped a bomb on the desks of his staff (or more accurately in their computers).<sup>89</sup> Members of the Legal Department woke up that morning to an email from Dañino with an attachment entitled, "Legal Opinion on Human Rights and the Work of the World Bank."<sup>90</sup> Its topic was not a surprise to many given that Dañino had been a champion of this issue during his tenure at the Bank and was credited with opening up space inside and outside the institution for a dialogue on human rights. He set up a small working group on human rights only one month after he had arrived at the Bank. Over the next two years, he strengthened the Bank's relationship to the Office of the UN High Commissioner for Human Rights, and gave a number of speeches on the important role of human rights in the Bank's work.

The closing statement from Dañino's legal opinion reads:

The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities since it is now evident that human rights are an intrinsic part of the Bank's

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<sup>89</sup> Dañino had resigned from the Bank on January 13, 2006, due to disagreements with then President Paul Wolfowitz.

<sup>90</sup> The document was officially dated January 27, 2006. Dañino concurrently released a second legal note and related discussion note on "Bank Activities in the Criminal Justice Sector."



mission.<sup>91</sup>

This view represents a significant departure from the previous official interpretation by former General Counsel Ibrahim Shihata.<sup>92</sup> Both Shihata and Dañino interpreted provisions in the Articles that have a bearing on human rights, particularly those that prohibit political activity and permit only economic considerations in decision-making.<sup>93</sup> While Shihata was the first to acknowledge the relevance of human rights for the Bank, he never went so far as saying (as Dañino did) that there are instances where a country's human rights violations *should* be taken into account. He also did not recognize the indivisibility of rights, as he noted that "there are limits on the possible extent to which the World Bank can become involved with human rights of civil and political nature. . . ."<sup>94</sup> Moreover, Shihata applied a strict definition of economic factors as those that have a "direct and obvious' economic effect relevant to the Bank's work."<sup>95</sup>

Dañino called for a "purposive" interpretation of the Articles, "examined against the backdrop of the current international legal regime and the evolving understanding of development."<sup>96</sup> He explained that "there are instances in which the Bank may take human rights into account, and others in which it should. Indeed, there are some activities which the Bank cannot properly undertake without considering human rights."<sup>97</sup> Dañino then outlined three increasing levels of Bank involvement in human rights. First, he explained that the Bank *may*

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<sup>91</sup> Dañino, *supra* note 14, at 9.

<sup>92</sup> A number of Shihata's legal opinions and memoranda during his tenure from 1983 to 1998 were published in a book: IBRAHIM SHIHATA, THE WORLD BANK LEGAL PAPERS (2000).

<sup>93</sup> See Articles of Agreement, *supra* note 68, Art. IV, sec. 10, and Art. III, sec. 5(b).

<sup>94</sup> SHIHATA, *supra* note 70, at 109.

<sup>95</sup> According to some legal scholars, Shihata's economic test is ambiguous and does not contain clear criteria. It "does not stipulate the time period over which the directness and the obviousness of the economic impact of the particular factor should be determined. If the time period for analysis is short, then relatively few nonobvious economic issues will have a direct and obvious effect." Bradlow, *supra* note 58, at 61.

<sup>96</sup> Dañino, *supra* note 14, at 3.

<sup>97</sup> *Id.* at 5, 7.

take a supportive role in assisting a country in fulfilling its own human rights legal obligations (when it expresses its wish to do so), provided that these commitments “have an economic impact or relevance.”<sup>98</sup> Second, when a country has violated or not fulfilled its obligations, the Bank *should* take them “into consideration,” again provided that they have an economic impact. So far, Dañino’s opinion does not stray very far from those of Shihata.

When describing the third level of Bank involvement, Dañino differed from Shihata in not requiring any economic impact and stating that the Bank *should* do something in extreme cases. He stated, “[I]n egregious situations, where extensive violations of human rights reach pervasive proportions, the Bank should disengage if it can no longer achieve its purposes.”<sup>99</sup> This is a major departure from Shihata’s view. Yet the opinion did not clarify what are considered to be “extensive violations” or “pervasive proportions.” Without this further clarification, there is a danger of ad hoc disengagement based on political factors.

Dañino highlighted a number of other significant issues in his opinion: (i) the indivisibility of rights (“the Bank should not make a distinction between different types of human rights” (e.g., economic, social, and cultural rights over civil and political rights),<sup>100</sup> (ii) the existence of economic evidence that establishes a correlation between human rights and economic growth;<sup>101</sup> (iii) a recognition of norms that traverse national boundaries (e.g., “corruption, corporate or financial crimes, money laundering, corruption, environmental hazards, war crimes and crimes against humanity”);<sup>102</sup> and (iv) a transformation of the concept of

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<sup>98</sup> *Id.* at 7.

<sup>99</sup> *Id.* at 8.

<sup>100</sup> Dañino, *supra* note 14, at 5-6.

<sup>101</sup> *Id.* at 5.

<sup>102</sup> *Id.* at 6.

sovereignty with relation to human rights.<sup>103</sup> On the last point, the opinion cited customary international law on human rights and argued that “[t]he balance [between state sovereignty and human rights] has . . . shifted in favor of protecting human rights, with the concept of sovereignty having itself been transformed by the evolution of human rights standards and the pursuit of human rights enforcement at all levels of international law in global, regional and domestic fora.”<sup>104</sup> Despite this statement, Dañino did not go as far as saying that international organizations like the Bank are bound by international human rights law. The only subjects of international human rights legal obligations, according to Dañino, are states.

Finally, the opinion reflected the role of the private sector in influencing developments towards social responsibility at the Bank. Dañino argued that it is “standard practice” among private banks to rely on an analysis of not only economic factors, but *all* factors that affect investments, including social, environmental, and political ones.<sup>105</sup> In his March 2004 speech at NYU that formed the basis of this opinion, he further used the private sector as a model for the Bank. He argued that the Bank, “although a development institution, is primarily a financial institution. . . . [L]ike its private sector counterparts, [the Bank must consider] . . . the ‘investment climate’ in the recipient country.”<sup>106</sup> Moreover, in an October 2005 speech at the Bank, Dañino compared his experience there with his work on Wall Street where, he explained, commercial and investment banks are similarly supposed to make decisions based on economic considerations alone. Yet he noted that these banks all have political risk units that analyze the political impacts of investments on countries and the political realities of their borrowers. Thus,

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<sup>103</sup> *Id.* at 6-7.

<sup>104</sup> *Id.* at 7.

<sup>105</sup> Dañino, *supra* note 14, at 4-5.

<sup>106</sup> Roberto Dañino, *The Legal Aspects of the World Bank’s Work on Human Rights, in* HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 515, *supra* note 5.

they recognize that political dimensions are relevant factors for decision-making. Dañino concluded that since private banks consider political factors, “[w]hy should the Bank refuse to do so?”<sup>107</sup>

### ***The Opinion’s Uncertain Legal Status and Limited Impact***

The 2006 legal opinion seemed to clear the way for the Bank’s adoption of human rights norms. It removed a major obstacle—legal restrictions in the Articles of Agreement—that Board members and employees had long cited as the reason why the Bank could not directly engage in human rights. It also raised the status of Legal Department lawyers who had played a minimal role in earlier initiatives within the Bank but were now in the position to lead internal discussions over a possible human rights strategy.

Yet the opinion had a limited impact due to ambiguity over its legal status and a resulting uncertainty over whether the Legal Department should circulate it as the Bank’s “official” interpretation of its Articles. General Counsels customarily write legal opinions in response to a request from the Board, which would then endorse them as official Bank opinions. In the case of Dañino’s opinion, senior Bank management, rather than the Board, had asked Dañino for guidance on the issue of human rights.

The opinion was not submitted to the Board because senior officials knew that the Board was sharply divided over human rights and would very likely not endorse it.<sup>108</sup> Dañino felt that it

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<sup>107</sup> Roberto Dañino, Welcoming remarks at a seminar on “Gender-Based Violence and Equitable Development: The Role of the International Community,” World Bank, Washington, D.C. (Oct. 24, 2005). Yet Dañino also notes that “[i]t is easier for a private company to walk away from a particular investment than for the Bank to do the same with respect to an investment program affecting a whole country.” *Id.*

<sup>108</sup> The Board conventionally operates by consensus so any disagreements between countries over human rights would be enough for the Bank not to approve the opinion.

was not the right time to confront the Board on this issue. He stated that it was “impossible,” at least at this point in time, to get a policy or opinion approved by the Board:

That’s the reason that I didn’t want to go to the Board. . . . Because if you go there, [some of the Board members might try to] stop us. . . . And I knew for a fact that we didn’t have a consensus [in the Board], so what’s the point in hitting a brick wall? So I didn’t go there.<sup>109</sup>

The Board’s lack of endorsement of an opinion would be a public condemnation of internal efforts to push a human rights agenda forward in the Bank. It may even result in a backlash by Executive Directors, who may then become more vigilant in prohibiting any human rights-related initiative that they deem as contrary to the Bank’s mandate. Dañino and other senior officials felt that it was best to operate “under the radar” with regard to controversial issues like human rights.<sup>110</sup>

With little chance of the opinion being approved by the Board in the near future, it currently has an uncertain legal status. Under the Bank’s Articles of Agreement, the Executive Directors have the authority to decide questions of interpretation of the Articles’ provisions.<sup>111</sup> Legal opinions from the General Counsel are only intended to offer guidance to the Board in deciding these questions. Yet, there is no precedent for how to treat opinions unapproved by the Board and written by a General Counsel who has since departed.

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<sup>109</sup> Interview with Roberto Dañino, former General Counsel, World Bank, in Washington, D.C. (May 26, 2006).

<sup>110</sup> See *infra* Part IV.B.2. I should briefly note that the Legal Department’s decision not to formally present the opinion to the Board did not mean that Board members did not know of its existence. A member country representative that was supportive of a human rights agenda at the Bank had told me that he was familiar with the opinion and supported the under the radar strategy, since he was well aware of the unlikelihood of gaining Board approval of the opinion. Interview with Senior Advisor to an Executive Director, World Bank, in Washington, D.C. (May 11, 2006).

<sup>111</sup> Articles of Agreement, *supra* note 68, Art. IX.

Among employees who had read the opinion, there was wide disagreement about its status. A senior member of the Legal Department said it should be treated as “an internal matter, part of an iterative process. . . . It’s considered as a source of advice for management, but not the Board.”<sup>112</sup> Some staff questioned the process by which it was drafted and its legitimacy as an official Bank opinion. They claimed that it only represents Dañino’s personal opinion and does not carry legal weight on an institutional level since the Board never requested the advice of the General Counsel on this issue.<sup>113</sup> According to a senior Bank lawyer, the unclear status of the opinion put the Legal Department in a period of limbo.<sup>114</sup>

Despite the opinion’s uncertain legal status, there was still an opportunity for it to provoke a discussion among staff about the role of human rights at the Bank—an issue that had been taboo for many years. The opinion’s flexible interpretation of the Articles of Agreement could have created an enabling environment for more explicit work on human rights. However, the great majority of staff did not receive the opinion on January 31st when it was released, or on any day thereafter. The opinion appeared in the inboxes of only the members of the Legal Department and a selected number of vice-presidents and senior officials. While some of the lawyers then forwarded the opinion to their colleagues in other departments, there remained (and still remain) many staff that had not read the opinion, let alone knew that it existed even months after its release. The Legal Department made no effort to circulate the document to the rest of the staff and, even more remarkably, some lawyers obstinately refused to disclose its contents when asked. Inquiring employees were told that it was the exclusive domain of the Legal Department

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<sup>112</sup> Interview with Senior Counsel, Legal Department, World Bank, in Washington, D.C. (May 25, 2006).

<sup>113</sup> Interview with official, Social Development Department, Environmentally and Socially Sustainable Development Network, World Bank, in Washington, D.C. (Feb. 1, 2006).

<sup>114</sup> Interview with official, Legal Department, World Bank, in Washington, D.C. (Feb. 21, 2006).

and could not yet be shared to “outsiders,” referring to not only the press and NGOs but also anyone in the Bank outside of the department.<sup>115</sup> Nevertheless, NGOs were leaked a copy of the opinion, which they subsequently posted on their websites.<sup>116</sup>

There is precedent for not disclosing opinions outside of the Bank. They are supposed to remain internal only, although they are often leaked externally. Under the Bank’s disclosure policy, the General Counsel cannot publicly release legal opinions without the Board’s approval.<sup>117</sup> The only prior occasion when opinions were externally released was the publication of former General Counsel Ibrahim Shihata’s legal opinions and memoranda in a book.<sup>118</sup> In this case, Shihata “sought a special authorization from the Bank’s Executive Directors.”<sup>119</sup> However, the Bank’s disclosure policy does not prohibit opinions from being disclosed to staff outside the Legal Department.<sup>120</sup>

So why wasn’t the 2006 opinion circulated more widely across the Bank? In addition to the opinion’s questionable legal status, my research points to another underlying reason for why members of the Legal Department did not or even refused to circulate the opinion—internal conflict within the department over value-laden issues like human rights. In order to understand this conflict, one must analyze the practices and status of lawyers and economists within the bureaucracy as well as the clash of expertise within the Bank’s organizational culture.

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<sup>115</sup> Personal communication (Feb. 1, 2006).

<sup>116</sup> See, e.g., <http://www.ifwatchnet.org/?q=en/node/335>.

<sup>117</sup> WORLD BANK, THE WORLD BANK POLICY ON DISCLOSURE OF INFORMATION, ¶ 75 (2002).

<sup>118</sup> SHIHATA, *supra* note 92.

<sup>119</sup> *Id.* at XLI.

<sup>120</sup> WORLD BANK, *supra* note 117.

### III. THE BANK'S ORGANIZATIONAL CULTURE

If legal constraints insufficiently account for the marginality of human rights at the Bank, we must look inside the organization. One must examine the Bank's organizational culture to determine how bureaucratic obstacles have shaped the adoption and diffusion of human rights norms. An organizational culture is "a persistent, patterned way of thinking about the central tasks of and human relationships within an organization."<sup>121</sup> It encompasses a range of factors, including the formal goals of an organization, its mission, the prior experiences and personal beliefs of employees, "the expectations of their peers, the array of interests in which their agency is embedded, and the impetus given to the organization by its founders."<sup>122</sup> Organizations do not have homogenous cultures, but multiple subcultures that may operate in conflict. This is the case for the World Bank, where subcultures are based on such factors as employees' disciplinary backgrounds or the geographic regional unit in which they operate.

My study of the Bank analyzes its culture as a political process of constructing and negotiating meanings, which are continuously contested. I uncover the formal characteristics of an organization, including its management structure and operational policies.<sup>123</sup> I also analyze the informal characteristics such as power dynamics among staff and the Bank's incentive system, which emphasizes lending targets rather than results on the ground. Below I will briefly describe the explicit and implicit goals and incentives that are relevant to human rights adoption.

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<sup>121</sup> JAMES Q. WILSON, *BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT* 91 (1989).

<sup>122</sup> *Id.*

<sup>123</sup> Susan Wright, "Culture" in *Anthropology and Organization Studies*, in *ANTHROPOLOGY OF ORGANIZATIONS* 1, 17 (Susan Wright ed., 1994).



### *Processes of Norm Socialization*

An organization has a sense of mission when it has a clearly defined direction and principal goals behind its operations. The mission “confers a feeling of special worth on the members, provides a basis for recruiting and socializing new members, and enables the administrators to economize on the use of other incentives.”<sup>124</sup> A strong sense of mission can foster loyalty to the organization and camaraderie among staff, but can also favor the dominant subculture and lead to resistance to new tasks that seem incompatible to it.<sup>125</sup> Such new tasks and programs may be given less resources or prominence within the organization as compared to those supported by the dominant subculture.

The explicit mission of the Bank is poverty reduction, according to its Articles of Agreement. Yet given the vagueness of this goal and its vulnerability to multiple interpretations, the Bank has been accused of “mission creep” by those inside and outside the organization. Mission creep refers to the shifting of activities away from an organization’s original mandate.<sup>126</sup> One could distinguish between the Bank’s explicit mandate and multiple implicit mandates, which can cover a range of poverty reduction-related issues. For example, when Bank management has resisted issues like human rights (particularly certain civil and political rights), it has defined them as outside the Bank’s mandate and thus not worthy of being part of the organization’s work program. Within the institution and within employees themselves, there is significant debate as to the core mission of the Bank and what activities can be considered consistent with it.

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<sup>124</sup> WILSON, *supra* note 121, at 95.

<sup>125</sup> *Id.* at 101.

<sup>126</sup> Jessica Einhorn, *The World Bank’s Mission Creep*, 80 FOREIGN AFFAIRS 22 (2001).

Processes of socialization condition employees as to what are the unstated assumptions behind their work and what issues are taboo to discuss and/or work on. Socialization refers to “a systematic means by which [organizations] bring new members into their culture.”<sup>127</sup> It can occur through recruitment procedures, training, informal conversations with peers, and rituals that validate the organizational culture. Norm socialization processes inculcate employees with the generally accepted values and expected behavior in an organization.

One mechanism by which socialization occurs is through incentives (both pecuniary and nonpecuniary), which “tell people specifically what is valued and comparatively more important in the particular setting and how, therefore, to allocate attention and effort among competing objectives.”<sup>128</sup> The Bank’s incentive system could be summed up in this statement: “The culture of the Bank is getting a project to the Board. . . . You get your intellectual brownie points from your peers in the Bank by saying that I have taken a 200 million dollar project to the Board in so many months, and so many years. That’s what gives you standing.”<sup>129</sup> While this incentive is not explicitly stated in staff manuals, it becomes part of the common knowledge of employees soon after they join the Bank.

There are a number of problems with this incentive system, some of which are articulated by an employee:

It’s very easy to measure money out the door but hard to assess your contribution to results. How do you know that it was your project that achieved [a particular result]? Also, managers move [to different departments] and there are big lags in

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<sup>127</sup> Richard Tanner Pascale, *The Paradox of “Corporate Culture”: Reconciling Ourselves to Socialization*, CAL. MGMT REV. 26, 27 (1985).

<sup>128</sup> JEFFREY PFEFFER, NEW DIRECTIONS FOR ORGANIZATION THEORY: PROBLEMS AND PROSPECTS 111 (1995).

<sup>129</sup> Interview with official, Global Development Learning Network, World Bank Institute, in Washington, D.C. (Nov. 10, 2005).

things—people think you can change a country in two years, but you can't. You need to have a very sophisticated system for assessing your contribution to development in your specific area. And that's hard to do, and it's hard to do it in the time period where they can hold you accountable for that.<sup>130</sup>

Since projects often take many years to yield results, promotion is not tied to favorable long-term outcomes. Rather, it is based on the approval of projects and the size of those projects in terms of money loaned. In addition, it is often difficult to find a causal relationship between a manager's actions and a project's long-term effects, given that there are many external factors (e.g., the political conditions on the ground) that are also at play. James Q. Wilson refers to bureaucracies like the Bank as "procedural organizations," where the ways in which staff "go about their job is more important than whether doing those jobs produces the desired outcomes."<sup>131</sup> In other words, only outputs rather than outcomes can be observed in such organizations.

What are the indirect results of the Bank's incentive system on policy compliance by employees? Given my interest in human rights, I have focused on the Bank's safeguard policies, which are designed to avoid or mitigate detrimental impacts of Bank activities and ensure that operations are financially, socially, and environmentally sound. While there is no safeguard policy on human rights, many of the existing policies address human rights-related issues. They include cultural property, environmental assessment, forests, indigenous peoples, involuntary

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<sup>130</sup> Interview with official, Public Sector Team, East Asia and the Pacific Region, World Bank, in Washington, D.C. (Nov. 9, 2005).

<sup>131</sup> WILSON, *supra* note 121, at 164.

resettlement, natural habitats, and safety of dams.<sup>132</sup> Although employees are required to apply the policies in borrower countries, they do not consistently do so in practice.<sup>133</sup>

While the Bank promotes its safeguard policies as indicative of its concern for environmental and social goals, its implicit incentive system suggests that these goals are not primary. In fact, most employees perceive the policies as impediments to lending because they add constraints to tasks and thereby reduce efficiency and opportunities for promotion. Policies may also create a perverse incentive: For instance, staff may avoid projects that would benefit indigenous peoples (by redesigning projects in areas unpopulated by them) so that they would not be required to complete additional time-consuming and costly tasks under the Bank's Indigenous Peoples Policy.<sup>134</sup> These tasks include the preparation of an indigenous peoples development plan and the scheduling of public consultations.<sup>135</sup> Because task teams (the operational groups that prepare and supervise projects) have limited budgets and a restricted timetable, they have an incentive to minimize the number of policies that they have to comply with.<sup>136</sup> Policies may serve more as maximum ceilings rather than as minimum standards.

There is discretion among project managers as to how to apply safeguard policies and how to balance compliance with other goals. Some managers who are sympathetic to human rights and view them as part of the Bank's mandate are more careful in applying the policies in their projects. Yet, they still face pragmatic dilemmas when trying to balance competing

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<sup>132</sup> See OPERATIONAL MANUAL, *supra* note 1, (Project Requirements) (2004), available at <http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf>.

<sup>133</sup> For an analysis of inconsistent application of the Bank's safeguard policy on indigenous peoples, see Galit A. Sarfaty, Note, *The World Bank and the Internalization of Indigenous Rights Norms*, 114 YALE L.J. 1791 (2005).

<sup>134</sup> Interview with official, Environment Department, Latin America and Caribbean Region, World Bank, in Washington, D.C. (Nov. 15, 2005).

<sup>135</sup> See OPERATIONAL MANUAL, *supra* note 1, OD 4.20 (Indigenous Peoples).

<sup>136</sup> Interview with official, Environment Department, Latin America and Caribbean Region, World Bank, in Washington, D.C. (Dec. 27, 2005).

principles. One employee noted that “[i]n the day-to-day operations, very often principles may contradict each other. For example, we want [projects] to be participatory and for people to have a say and be involved, but at the same time we want projects to go very fast.”<sup>137</sup> Employees also face ethical dilemmas in their work. They may be internally divided over how to balance their support for human rights-related concerns with their allegiance to the implicit Bank goal of quickly approving and carrying out projects with the least interference and complications. One lawyer that I spoke to described a dilemma he is facing in an African country that has one of the largest AIDS problems in the world but also one of the most repressive regimes.<sup>138</sup> Should the Bank stop lending to the country because it has unfairly locked up dissidents, even if it means closing down its AIDS project that is significantly helping its poor population? Employees are not given guidance as to how to balance competing priorities like these and are not encouraged to discuss ethical issues.<sup>139</sup>

### ***The “Knowledge Bank”***

Within the institution, knowledge is considered to be the currency of value, and having a Ph.D. is more the norm than the exception. The Bank’s collection of knowledge, which it has gathered over many years of experience advising developing countries, is its comparative advantage over commercial banks and private investors and gives it authority over other development agencies.<sup>140</sup> Its research departments are unparalleled in the field of development—

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<sup>137</sup> Interview with official, Global Development Learning Network, World Bank Institute, in Washington, D.C. (Nov. 10, 2005).

<sup>138</sup> Interview with official, Legal Department, World Bank, in Washington, D.C. (Mar. 9, 2006).

<sup>139</sup> Interview with official, Operations Evaluation Department, World Bank, in Washington, D.C. (Nov. 16, 2005).

<sup>140</sup> There are many critics of the Bank’s research, including those who feel that the Bank is too tied to its own paradigms. An independent evaluation of the Bank’s research by top academic economists criticized it for

few, if any, universities have the depth and breadth of practical experience that is housed in the Bank. In the mid-1990s, former President Wolfensohn began to define it as a “knowledge bank,” focused on not only lending money but also the production and transmission of development-oriented ideas, analysis, and advice to client countries.<sup>141</sup> By doing so, “existing products and services [were] redefined as knowledge assets, or augmented with knowledge of how they are used.”<sup>142</sup> The accumulation and dissemination of knowledge on development is now considered a complementary goal to the promotion of economic growth.<sup>143</sup> In-house research can, at least in theory, be integrated into the Bank’s everyday operations and made available to policymakers in client countries; in other words, ideas can be put into practice.<sup>144</sup>

How does knowledge circulate within the Bank and what are the conditions under which it is produced? In order to answer this question, it is important to analyze the Bank’s management structure, which significantly shapes the processes of knowledge production and circulation. The Bank is divided into two major groups: the operations units and the network units. The operations units are responsible for carrying out development projects on the ground and maintaining relations with member countries. They are divided into six geographic regional units, whose cultures are quite distinct. The operations units are further sub-divided into five thematic areas, including Sustainable Development, Human Development, and Infrastructure.<sup>145</sup>

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being “used to proselytize on behalf of Bank policy, often without taking a balanced view of the evidence, and without expressing appropriate skepticism.” ABHIJI BANERJEE ET AL., AN EVALUATION OF WORLD BANK RESEARCH, 1998-2005, 4 (2006).

<sup>141</sup> See James Wolfensohn, Former President, World Bank, Address at the World Bank/International Monetary Fund Annual Meetings (1996).

<sup>142</sup> THOMAS H. DAVENPORT, WORKING KNOWLEDGE: HOW ORGANIZATIONS MANAGE WHAT THEY KNOW x (1998).

<sup>143</sup> See Joseph E. Stiglitz, *The World Bank at the Millennium*, 109 ECON. J. F577, F590.

<sup>144</sup> See Christopher Gilbert et al., *Positioning the World Bank*, 109 ECON. J. F598, F610 (1999).

<sup>145</sup> As of July 1, 2006, the Bank merged a number of thematic areas, resulting in a reduction of network units from seven to five. The current network units are: Financial and Private Sector Development, Human

The network units form the research arm of the Bank and offer advisory services to the operations staff in the form of reports and referrals to experts. These units cover the same thematic topics as the operations units but are not sub-divided geographically.

Since 1997, the Bank has operated under a matrix organizational structure, with overlapping geographic and functional units and parallel reporting relationships that are intended to promote knowledge management. Matrix structures, which became fashionable in the late 1970s and early 1980s, feature a diffusion of responsibility along multiple lines of command.<sup>146</sup> For instance, an employee in operations may be concurrently responsible to bosses in three units: a country management unit (based in the field), at least one network or thematic research unit in the headquarters (e.g., poverty, the public sector, the environment, or infrastructure), and a sector management unit. The sector management unit is the department where the employee sits in the headquarters, and corresponds to a particular geographic region and thematic area (e.g., Latin American Sustainable Development or African Health and Education). It is also the unit responsible for an operations employee's performance appraisal and promotion (although it also receives comments from the other units).

When the Bank holds a staff orientation training session, it devotes a considerable amount of time to the goals, functions, and benefits of "the matrix environment."<sup>147</sup> One of the primary objectives of the matrix is to facilitate knowledge seeking and sharing through collaboration and teamwork among units. Knowledge sharing can enhance the quality of Bank assistance. For example, operations employees are expected to maintain strong affiliations with

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Development, Operations Policy and Country Services, Poverty Reduction and Economic Management, and Sustainable Development.

<sup>146</sup> Christopher A. Bartlett & Sumantra Ghoshal, *Matrix Management: Not a Structure, A Frame of Mind*, HARV. BUS. REV. 138, 139 (1990).

<sup>147</sup> My account is based on a 2004 New Staff Orientation power point presentation on "The Matrix Environment and the World Bank."

multiple thematic groups, which provide cross-country comparisons and best practice examples on a particular issue like developing a transport sector strategy. One advantage of a matrix structure is that “[i]ts multiple information channels allow[] the organization to capture and analyze external complexity.”<sup>148</sup> Such complexity includes interdependent activities and the need to respond quickly and flexibly to changing environments. In addition, an integration of geographical and functional groups can, in theory, promote innovative ideas and cooperation among staff.

However, the matrix system has grown unpopular among many employees who question whether it achieves its stated objectives. The material from the staff orientation training session boasts that the matrix structure enables staff to “balance potentially conflicting objectives.” This seems to be a grave problem in practice as employees find it difficult and confusing to report to multiple bosses, particularly when the bosses assign them conflicting tasks. Management scholars have reiterated this criticism. They have observed that “the proliferation of channels [in a matrix] create[] informational logjams, . . . and overlapping responsibilities produce[] turf battles and a loss of accountability.”<sup>149</sup> The training session material itself admits to some of the challenges of the matrix—e.g., ambiguous roles and reporting relationships, power struggles, high levels of staff stress, and decision-making problems.

Moreover, in the case of the Bank, the matrix structure does not necessarily facilitate cooperation among staff towards promoting innovation. A senior official who had recently joined the institution observed that while the matrix is supposed to create a marketplace of ideas that compete for influence, he is “not really sure that it functions as a perfect market, that the best

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<sup>148</sup> Bartlett & Ghoshal, *supra* note 146, at 139.

<sup>149</sup> *Id.*



ideas are winning.” He lamented that there is “a loss of resources being spent on running that system.”<sup>150</sup> Most of the new ideas come from people in the network, since those in operations are too busy designing and running projects. Despite the matrix’s objective of collaboration between network and operations units, there is an underlying tension between them. Operations employees often complain that those in the network do not understand the day-to-day responsibilities of managing projects and dealing with country governments, and, as a result, their research is not always relevant to operational work.<sup>151</sup>

The network, which serves as a community of professionals united by a thematic work program, is the source of new knowledge, although country knowledge gathered by operations staff is also highly valued. The network’s centrality in the Bank’s management structure indicates the importance of experts in this knowledge-based organization. With expert knowledge given such a high priority in the Bank’s work program and management structure, it is not surprising that it serves as an important factor in determining status among employees.

### *A Clash of Expertise*

Staff behavior is shaped by a number of factors, including employees’ prior experience, political ideology, personality characteristics, and professional or disciplinary background.<sup>152</sup> It is this last factor that I focus on because, based on my interviews and observations, it is one of the strongest sources of identification among staff, as well as a basis for sharp internal division. Having undergone specialized formal education in a discipline, employees derive much of their

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<sup>150</sup> Interview with official, Legal Department, World Bank, in Washington, D.C. (Dec. 8, 2005).

<sup>151</sup> Interview with official, Environment Department, Latin America and Caribbean Region, World Bank, in Washington, D.C. (Nov. 15, 2005).

<sup>152</sup> WILSON, *supra* note 121, at 55.

knowledge and skills from their professional background and are strongly influenced by professional norms. This is especially true in an organization like the Bank where employees are given a lot of discretion under operational rules to pursue often vaguely defined goals. In addition, many employees perceive their disciplinary background as a key contributing factor in determining their status and opportunities for career advancement within the organization.

Composed of multiple, often competing groups of professionals, the Bank's organizational culture is an "epistemic community," a "network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area."<sup>153</sup> Employees come from about 160 different countries and include economists, political scientists, lawyers, sociologists, anthropologists, environmentalists, financial analysts, and engineers, among others. The number of non-economist social scientists has grown steadily over the past three decades, from about a dozen in the 1970s and early 1980s to over 200 in 1998 (based on the number of people in the newly established Social Development Network).<sup>154</sup> At the same time, the number of engineers, once an influential expert group at the Bank, has decreased. Thus, the dominance of a particular expertise among staff has shifted over time.

Professional groups may exhibit competing preferences over goals for the organization, including visions for what development means and how it can be achieved. They speak distinct languages arising from their disciplinary training, which may impede conversation and collaboration. In an analysis of policy debates at the Bank, a few employees observed:

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<sup>153</sup> Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1, 3 (1992). See also KARIN KNORR-CETINA, *EPISTEMIC CULTURES: HOW THE SCIENCES MAKE KNOWLEDGE* (1999).

<sup>154</sup> GLORIA DAVIS, *A HISTORY OF THE SOCIAL DEVELOPMENT NETWORK IN THE WORLD BANK 1973-2002*, 18 (2004). These numbers do not include the numerous short-term consultants who are employed by the Bank each year.

In DEC [the development economics research group], and among country economists and country managers, talk revolves around quantification, statistical significance, and formal models. Among operational staff, the grammar is different—it revolves around usability, and among many of the social scientists, around social and political change.<sup>155</sup>

Power relations between professional communities are apparent in turf wars, where departments try to assert their authority and influence within the larger organization. Experts struggle over who has authority and jurisdictional control over particular issues, such as human rights. One of the sharpest divisions is between economists and non-economists, particularly lawyers. Within the Bank, forms of expert knowledge are valued differently, with economic knowledge ranking the highest.

### ***The Prestige of Economists and the Dominance of Economics***

The dominant subculture within the organization consists of economists because their expertise is considered the most valuable to the Bank's core work of promoting poverty reduction and economic growth. They have an influence way beyond their numbers. Economists comprise the majority of senior management positions (although they do not make up the majority of staff), and their way of thinking prevails within the institution, including their definition of development success. Moreover, the prestigious country director positions, which are responsible for dialogue with country ministers and budget allocation to the sectoral units at the headquarters, are most commonly held by economists. It is important to note, however, that

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<sup>155</sup> Anthony Bebbington et al., *Exploring Social Capital Debates at the World Bank*, 40 J. DEV. STUD. 33, 44 (2004).

there are different types of economists in the Bank, including neoclassical and institutionalist, which also compete for authority.

Economists have their own prestigious research group (the development economics group, or DEC), which hires top economists and recent doctorates, mostly from U.S. and British universities. There is no comparable effort to recruit top members of other professions as there is to recruit economists into DEC, and there is no serious career track for non-economists as there is for economists.<sup>156</sup> DEC economists produce high-quality academic papers that influence Bank staff, public policymakers in member countries, and the academic community. Since employees in operations rarely have enough time to write academic papers, and those in the network often do not have an opportunity to research topics of their own choosing, DEC serves as an important platform for the transmission of new ideas across the institution.<sup>157</sup>

The dominance of a single profession may be harmful for the Bank, as one senior economist acknowledged:

In my view, the limitation of the Bank up to this point is that we've been wedded to one discipline: economics. So fashions and trends and fads in that discipline have affected the fashions and trends and fads of economic development at the Bank. So why shouldn't the fads and fashions of anthropology or political science affect it?<sup>158</sup>

Non-economists often feel that they have to translate their writing and speech into economists' language and quantify their observations in an effort to gain legitimacy for their ideas. Although

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<sup>156</sup> One exception is the Young Professionals Program, which annually recruits 20–40 talented young people from a variety of professional backgrounds, including economics.

<sup>157</sup> On the rare occasions that operations staff do have time to write, their audience is usually development practitioners rather than academia.

<sup>158</sup> Interview with official, Development Research Group, World Bank, in Washington, D.C. (Feb. 14, 2006).

they lack the theoretical training, they learn “a craft version” of the economics knowledge system.<sup>159</sup> What distinguishes the economics professional from the legal one, for example, is that one can claim to be an economist without advanced training or licensing while one cannot claim to be a lawyer without passing the bar exam.<sup>160</sup> Staff with backgrounds other than economics may even call themselves economists in order to gain status: I met a public sector specialist with a public policy background who chose the title of political economist for this reason. This form of “workplace assimilation” has discouraged informed debate among different disciplinary perspectives and has created a sense of inferiority among some non-economists.<sup>161</sup>

### ***The Status of Lawyers and the Legal Department***

Lawyers do not typically serve as the intellectual leaders among staff or as key players in policymaking and agenda-setting. The great majority of lawyers in the Bank are part of the Legal Department, which is dominated by transactional lawyers who work on loan agreements and advise staff on operational policies and law-related issues.<sup>162</sup> Aside from a small number of lawyers in operations who work on legal and judicial reform and other public sector projects, lawyers typically do not serve as project team leaders and their participation in projects is usually limited to technical legal tasks. Unlike economists, lawyers are not encouraged to spend their time writing academic papers. Although the Legal Department has organized seminars in order

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<sup>159</sup> ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* 65 (1988).

<sup>160</sup> Marion Fourcade, *The Construction of a Global Profession: The Transnationalization of Economics*, 112 AM. J. SOC. 145, 151 (2006).

<sup>161</sup> Interview with official, Global Development Learning Network, World Bank Institute, in Washington, D.C. (Nov. 10, 2005).

<sup>162</sup> See Joseph J. Norton, *International Financial Institutions and the Movement toward Greater Accountability and Transparency: The Case of Legal Reform Programmes and the Problem of Evaluation*, 35 INT’L LAWYER 1443, 1457 (2001).

to foster intellectual dialogue on legal topics (for example, a two-day Legal Forum in December 2005 and a seminar series with external academics), lawyers are mainly expected to be skilled in a practitioner-based knowledge.<sup>163</sup>

The reputation of the Bank's Legal Department has historically been at a higher level than its current state and has shifted over time, often in line with the strength of leadership by the General Counsel.<sup>164</sup> The appointment and dismissal of the General Counsel is the responsibility of the Bank's President.<sup>165</sup> The role of the General Counsel "may vary according to the organization, the time period, and even the personalities involved."<sup>166</sup> When the Bank's General Counsel has played an influential role in the institution, there has been an opportunity for lawyers within the Legal Department to go beyond such traditional duties as drafting loan agreements, advising on the legal aspects of Bank operations, and contributing to the formulation of and compliance with the Bank policies and procedures. They have at times served as

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<sup>163</sup> In 2004, former General Counsel Roberto Dañino tried to raise the prestige of the Legal Department and inspire a new generation of lawyers to join the Bank. To that end, he established the Legal Associates program, which recruits talented young lawyers from around the world for a two-year stint in the department and possibly permanent employment thereafter.

<sup>164</sup> The shifting status of the Bank's Legal Department is not unusual among international organizations. For instance, the International Monetary Fund's (IMF) Legal Department played an influential role in the institution under General Counsel Joseph Gold from 1960 to 1979. However following Gold's retirement, the position of "General Counsel and Director of the Legal Department" was downgraded to just "Director of the Legal Department," which reflected "a denigration of law within the IMF." Legal considerations played a less significant role in IMF decision-making following Gold's tenure, although they returned to prominence in the late 1980s when the title of "General Counsel" was again added to the Director of the Legal Department position. In this case, the changing title of the head of the Legal Department indicates the shifting status of lawyers within the organization. Richard W. Edwards, Jr., *The Role of the General Counsel of the International Financial Institution*, 17 KAN. J.L. & PUB. POL'Y 254, 270-71 (2007-2008).

<sup>165</sup> The Bank's Articles of Agreement states: "Subject to the general control of the Executive Directors, [the President] shall be responsible for the organization, appointment and dismissal of the officers and staff." Articles of Agreement, *supra* note 68, Art. V, sec. 5.

<sup>166</sup> William E. Holder, *The International Monetary Fund: A Legal Perspective*, 91 AM. SOC'Y INT'L L. PROC. 199, 207 (1997). Former Bank General Counsel Shihata further notes that "[t]he role of the [General Counsel], and that of Bank lawyers generally, has evolved with the evolution of the role of the Bank itself." Ibrahim F.I. Shihata, *Role of the World Bank's General Counsel*, 91 AM. SOC'Y INT'L L. PROC. 199, 221 (1997).

policymakers, innovators, and institution-builders.<sup>167</sup> For example, during the tenure of former General Counsel Ibrahim Shihata, the Legal Department played a key role in designing the Inspection Panel<sup>168</sup> and launching the Multilateral Investment Guarantee Agency (MIGA) and the Global Environmental Facility (GEF).<sup>169</sup> In addition, Shihata's legal opinions on governance and the rule of law paved the way for the introduction of legal and judicial reform projects into the Bank's agenda.<sup>170</sup> The General Counsels since Shihata, as well as the Legal Departments that they supervised, have played a much weaker role in Bank policymaking and institution-building. Moreover, since Shihata there has been a high turnover of General Counsels, all of whom have served less than five years as compared to Shihata's fifteen year tenure.

The Legal Department's increasingly weak leadership in Bank decision-making, as compared to its status under Shihata, made it difficult for lawyers to play an influential role on the issue of human rights. Moreover, because only lawyers from the Legal Department have full access to legal opinions and internal memos, as well as the Bank's law library, there has been limited open dialogue between lawyers and the rest of the staff over legal opinions like the 2006 opinion on human rights.<sup>171</sup> This has not always been the case. Legal opinions used to be accessible to all Bank staff, but the practice ended when lawyers were feeling challenged by non-lawyers in operations, who had criticized some of their legal interpretations.<sup>172</sup>

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<sup>167</sup> Edwards, *supra* note 164, at 257.

<sup>168</sup> *Id.* at 261.

<sup>169</sup> Shihata, *supra* note 166, at 221.

<sup>170</sup> *Roundtable of International Financial Institutions General Counsels*, 91 AM. SOC'Y INT'L L. PROC. 199, 200 (1997) (remarks by Andres Rigo).

<sup>171</sup> Even lawyers who work in units outside of the Legal Department have limited access. If a Bank employee who is not in the Legal Department entered its intranet website, she would have access to all documents except the section on legal opinions. She would be immediately prompted to provide a password, which is only given to members of the department.

<sup>172</sup> Interview with official, Legal Department, World Bank, in Washington, D.C. (July 26, 2006).

Finally, as is the case for any department or organization, there is internal conflict within the Legal Department. There are lawyers who favor a conservative, formalistic interpretation of legal issues, while others adhere to a progressive one. For example, the 2006 Legal Opinion on Human Rights did not represent a unity of views within the department over the Articles of Agreement. It was drafted by a small group of lawyers led by Dañino and was circulated within the department for comment. While there was no vocal opposition, a number of lawyers preferred a more cautious approach and later questioned its status as an official legal opinion.

Even after the opinion was released, there was resistance from within the department to openly discussing and publicizing it. An informal group of lawyers approached the Deputy General Counsel about ways to foster open dialogue within the department on the opinion's practical implications. The lawyers thought that this would be a good time to spark an internal conversation about the role of human rights, which they considered long overdue. Yet they knew that proposing a Bank-wide discussion would have been too radical at this time, since it may have appeared to challenge the authority of the Legal Department. That is why they instead suggested a safer alternative: a brown-bag lunch that would be restricted to members of the department. (Brown-bag lunches are low-key events, as opposed to daylong seminars or conferences.) Nonetheless, the Deputy General Counsel rejected this event as still being "too controversial."<sup>173</sup> His resistance demonstrates a cautious attitude among members of the department and an unwillingness by some lawyers to promote discussion of new ideas. Internal conflict inhibited the Legal Department from presenting a united position on human rights and leading staff in an open discussion in light of the recent opinion.

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<sup>173</sup> Personal communication (Feb. 2, 2006).



#### IV. FRAMING HUMAN RIGHTS NORMS TO ADAPT TO THE BANK'S CULTURE

How does the clash of expertise within the Bank's organizational culture play out over particular issues like human rights? More generally, how does it shape efforts at organizational change? In Part II, I demonstrated that the failure of internal attempts to push forward a human rights agenda at the Bank was in large part due to institutional obstacles, including internal conflict over how to interpret and implement human rights norms. In this Part, I analyze how different professional subcultures within the organization correspond to distinct interpretive frames on human rights.<sup>174</sup> Interpretive gaps between frames are critical obstacles in achieving norm internalization in bureaucracies. In the context of the Bank, interpretive gaps refer to differences between employees' interpretations of human rights, including how they justify their relevance with respect to the Bank's mission and conceptualize their practical role in Bank operations.

Of course, interpretive gaps are only one obstacle towards achieving norm internalization. Other important factors include an appropriate staff incentive system to motivate behavior, leadership by senior and middle management, and the investment of sufficient resources to effectively institute policy changes. But I argue that particularly for the Bank, the clash between interpretive frames is an underemphasized factor that has hindered the development of a human rights consciousness among staff. After elaborating on the interpretive gaps, I describe how members of the Legal Department are taking them into account in their recent efforts to bring human rights into the Bank. Instead of legalizing human rights, they are framing them in a way that appeals to economists. They are also pursuing an incremental

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<sup>174</sup> See Barnett & Finnemore, *supra* note 18, at 719.

approach to generate staff support for human rights while remaining under the radar of the Board of Executive Directors.

### ***Competing Interpretive Frames***

Professional subcultures within the Bank hold distinct interpretive frames that shape their understanding of issues and their preferred strategies for implementation.<sup>175</sup> Members of subcultures “routinely take actions on the basis of collective understandings to the group.”<sup>176</sup> Their “distinctive worldview[s] and normative commitments” often derive from their professional background, such as law or economics.

The two main interpretive rationales for understanding the value of human rights for the Bank and development in general are the intrinsic and instrumental frames. Proponents of the intrinsic frame view human rights as universal and indivisible, and they value their protection as an end in itself. In contrast, proponents of the instrumental frame provide a functionalist rationale for promoting human rights, as a means to an end. They measure the value of human rights based on whether they enhance development effectiveness and make good business sense. As I describe below, the two interpretive frames roughly correspond to distinct disciplinary ways of thinking.<sup>177</sup>

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<sup>175</sup> See Jennifer Howard-Grenville, *Inside the 'Black Box': How Organizational Culture and Subcultures Inform Interpretations and Actions on Environmental Issues*, 19 *ORG. & ENV'T* 46, 51 (2006).

<sup>176</sup> John Van Mannen & Stephen R. Barley, *Cultural Organization: Fragments of a Theory*, in *ORGANIZATION CULTURE* 31, 38 (Peter J. Frost et al., 1985).

<sup>177</sup> Adherents of each interpretive frame are not restricted to professionals of that discipline. For instance, while most lawyers adhere to the intrinsic frame and most economists adhere to the instrumental frame, there are certainly exceptions. But for the sake of simplicity, I present a general typology. Moreover, in my comparison of staff interpretations, I exclude employees that completely oppose the integration of human rights into the Bank's work.

There are two subgroups within the intrinsic frame—the first emphasizes the legal dimension of human rights while the second emphasizes their moral dimension. The first subgroup defines human rights as legal obligations that derive their legitimacy from the international human rights regime and, in particular, the Universal Declaration of Human Rights.<sup>178</sup> Members of this subgroup include, not surprisingly, many Bank lawyers, as well as civil society advocates. They view rights as implying corresponding legal duties for state governments. The Bank lawyers who are committed to this interpretation have expressed grave concerns about any attempt to dilute the basic legal tenets of human rights and to “water down” corresponding obligations.<sup>179</sup> They insist that it “is essential . . . that efforts to integrate human rights in development practice not compromise those key characteristics [of legal obligations and duties] in the process, and risk the impoverishment of rights discourse and the undermining of core values and objectives that human rights were conceived to realize.”<sup>180</sup>

The second subgroup of the intrinsic frame emphasizes the moral dimension of human rights. Its members define rights as primarily ethical principles or moral imperatives, founded on a conception of fundamental human dignity and a framework of common values. They often advocate for a principles-based approach that focuses on ethics and social policy goals that are not necessarily attached to legal standards. Members of this subgroup include many non-economist social scientists, such as anthropologists and sociologists. One manifestation of this

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<sup>178</sup> Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

<sup>179</sup> Interviews with officials, Legal Department, World Bank, in Washington, D.C. (Jan. 4, 2006, Jan. 17, 2006).

<sup>180</sup> Klaus Decker et al., Human Rights and Equitable Development: “Ideals,” Issues, and Implications 49 (2005), background paper for THE WORLD BANK, WORLD DEVELOPMENT REPORT 2006.

interpretive frame is the Bank's 1999 report on *Principles and Good Practice in Social Policy*, primarily drafted by employees in the Social Development Department.<sup>181</sup>

Adherents of the instrumental frame value human rights as a means of achieving developmental objectives like economic growth. Given their pragmatic orientation, adherents of this approach often mention possible trade-offs that must be made when implementing human rights, especially in countries with limited resources. They prioritize the fulfillment of those rights that achieve poverty reduction and economic growth. Because many economists typically adhere to this interpretive frame, it holds a lot of weight in the institution.

### ***Evaluating the Bank's Recent Efforts***

Following former General Counsel Roberto Dañino's resignation in January 2006, internal human rights advocates were left with a potentially influential legal opinion but no one to champion it. The opinion remained in a sort of legal limbo as members of the Legal Department disagreed on its status and hesitated to circulate it throughout the rest of the Bank. Many members of the Legal Department were also reluctant to discuss it openly even within the department. Nevertheless, a small number of lawyers continued their efforts to push the human rights agenda forward. This section describes the institutional obstacles that the lawyers encountered, and how they have redesigned their strategy to adapt to the Bank's organizational culture.

In late 2005 and 2006, an informal group of lawyers (many of whom would help draft the 2006 legal opinion) began to organize activities towards furthering the human rights agenda and

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<sup>181</sup> THE WORLD BANK, *PRINCIPLES AND GOOD PRACTICE IN SOCIAL POLICY: ISSUES AND AREAS FOR PUBLIC ACTION* (1999).

taking an explicit approach to human rights. A prominent member of the group was a senior lawyer from the Danish Ministry of Foreign Affairs who was hired in October 2005 by the Legal Department. His appointment was funded by the Nordic countries, which have demonstrated strong support for a human rights agenda.<sup>182</sup> On October 20, 2005, the Nordic countries presented a working paper to former President Paul Wolfowitz entitled, “The World Bank and Human Rights.”<sup>183</sup> The paper discussed “why and how the human rights perspective should be enhanced in the World Bank’s policies and operations with a view to reinforcing its development and poverty eradication mission.”<sup>184</sup> It opened a dialogue on human rights with former President Wolfowitz and became part of a new Nordic and Baltic-sponsored initiative.

The initiative’s first order of business was the creation of the Justice and Human Rights Trust Fund, whose purpose was “to provide effective support . . . to include human rights considerations in the analytical and operational activities of the World Bank Group.”<sup>185</sup> Its proposed activities included empirical research, country case studies, and outreach across the Bank through human rights education and training of operations staff. The trust fund would be managed by the Legal Vice-Presidency, in cooperation with representatives from other Bank units, and would have a minimum life span of five years.

Due to internal politics and a collapse in leadership following the resignation of Wolfowitz, the Justice and Human Rights Trust Fund never launched as of publication of this Article. Yet the deliberations that I witnessed in 2006 over the objectives and activities of the

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<sup>182</sup> Former President Wolfensohn had approached the Nordic countries in 2004 and asked for their assistance in advancing a human rights agenda at the Bank. It took about two years for the arrangements to be made in order to bring in the senior lawyer from the Danish Ministry of Foreign Affairs. It is not uncommon for countries to fund the appointment of a Bank staff member to pursue a particular policy agenda.

<sup>183</sup> The World Bank and Human Rights: Nordic-Baltic Working Paper (Oct. 20, 2005).

<sup>184</sup> *Id.*

<sup>185</sup> Justice and Human Rights Trust Fund Concept Note, p. 1, July 12, 2006.

trust fund suggest possible ways to operationalize human rights norms in the Bank. While designing the trust fund's plan of action, the Bank lawyers faced resistance and had to revise their approach to adapt to the Bank's organizational culture. Their recent efforts address (or, at times, sidestep) a number of the institutional obstacles that had plagued prior efforts to introduce human rights. These include: the lack of a pragmatic orientation; the failure to conduct outreach to staff in headquarters and the country offices; a lack of resources; and a fear by the Board and senior management that human rights is too controversial and beyond the Bank's mandate.

### ***Framing Human Rights for Economists***

The lawyers who helped draft the 2006 legal opinion realized that there was an interpretive gap between their vision of human rights and that of the economists who dominate the Bank. They spoke with employees in the headquarters and field offices who questioned the added value of a human rights approach when compared to existing best practices, which already incorporate a number of human rights principles. Throughout these discussions, they encountered a need for more empirical work to demonstrate the causal links between human rights and economic development. Some employees complained of a lack of clarity over what is meant by a rights-based approach to development. Would it simply be a rhetorical repackaging of existing practice? There was also a perception among many staff that human rights norms are overly rigid, particularly when defined with respect to international legal instruments. They leave little room for the tradeoffs that are often necessary in development practice.

As the lawyers debated over how to design the new trust fund, they were torn over whether an instrumental approach would dilute the intrinsic meaning of human rights. They

recognized that they needed a dual approach that adhered to not only a legal interpretation but also the instrumental frame. Yet they were worried over possible risks in taking an overly technical approach to rights. Despite their misgivings, the lawyers decided to emphasize how human rights enhance development effectiveness and make good business sense. I call this strategy: “economizing human rights.”<sup>186</sup> It is an effort to demystify the concept of human rights and build a constituency among staff while emphasizing an empirical approach that measures human rights performance using indicators.

According to a senior Bank economist, “[w]e will not make inroads in the Bank if [human rights] language is not made into economic language.”<sup>187</sup> This statement suggests the importance of translating human rights into the dominant discourse of economics. The decision to economize human rights represents a recognition by the lawyers that past attempts to introduce the agenda failed in part because of a failure to build a constituency at the Bank. The following statement by another Bank economist emphasizes the value of empirical evidence in pushing agendas like corruption forward within the institution:

I think that things really happen in the Bank when an economic case could be made for them. You put it in economic language. This is how corruption came in. It sort of became acceptable internally to talk about corruption when people could show with cross-country regressions that it’s related to lower growth. . . . People needed this to say that “Okay. It’s alright for us to work on this.” So one obstacle would be to try and articulate rights issues in the way that economists could understand.<sup>188</sup>

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<sup>186</sup> See Bronwen Morgan, *The Economisation of Politics: Metaregulation as a Form of Nonjudicial Legality*, 12 SOC. & LEG. STUD. 489 (2003).

<sup>187</sup> Statement by Daniel Kaufmann, Proceedings of the Conference on the Establishment of a Justice and Human Rights Trust Fund (JHRTF) in the World Bank, p. 11, Copenhagen, June 26-27, 2006.

<sup>188</sup> Interview with official, Development Research Group, World Bank, in Washington, D.C. (March 14, 2006).

As part of an attempt to speak to economists, the lawyers adopted a largely instrumental approach to rights in the proposed Justice and Human Rights Trust Fund.

One of the trust fund's main objectives was to "serve as a hub for bolstering an emerging community of practice around human rights in the Bank."<sup>189</sup> In preparation for the trust fund, the Norwegian government financed a workshop on May 15-16, 2006. The topic of the workshop was developing indicators for "measuring justice," in order to evaluate the performance of a country's justice sector.<sup>190</sup> Also discussed at the workshop was the Legal Department's project on human rights indicators, developed in collaboration with the Danish Institute for Human Rights, which began in 2005. As part of this empirical focus, the lawyers also proposed pilot projects in borrower countries. Pilot projects would allow for an empirical study of the effects of using a human rights approach in Bank projects, as compared to existing practices.

### ***Operating "Under the Radar": Pursuing Pilot Projects Rather than a Policy***

The trouble with the Bank is that getting anything adopted as an institutional position or strategy is really tough because . . . there's been a shift towards decentralizing things. So getting to a policy is almost the last step after things have already percolated [within the institution]. It's almost like practice precedes policy in this place. . . . Back in the 1990s, it was the opposite way—that if you wanted to get something done, you would push the policy first, and then practice would follow. For example, the safeguard policies. Those were key to getting people to change behavior. It's kind of the opposite now. [Changes in] behavior tend to happen through pilot projects.<sup>191</sup>

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<sup>189</sup> World Bank Legal Department, *The Proposed Nordic Trust Fund & Emerging Human Rights Practice in the Bank* (Mar. 2006) (emphases removed).

<sup>190</sup> Participants at the workshop included about thirty representatives from the World Bank, the Nordic-Baltic Foreign Ministries, and academic experts in human rights from four continents.

<sup>191</sup> Interview with official, External Affairs Department, World Bank, in Washington, D.C. (Mar. 15, 2006).



After years of internal and external advocacy for an institutional policy on human rights, internal advocates began moving towards a country-level approach. The lawyers who designed the trust fund decided that Bank country staff should take the lead on any human rights initiative, with support from the donor community. They felt that regional and national ownership of a human rights agenda is critical. One reason for this tactic is the important decision-making role played by country directors at the Bank, “much more so than vice presidents, . . . and certainly much more so than sector directors or sector managers. [They are the ones] who are really making the decisions in terms of resource allocation, and are leading the dialogue with the country.”<sup>192</sup>

One of the trust fund’s preparatory workshops focused on country-level initiatives, including pilot projects, the integration of human rights principles into national development strategies, and the promotion of human rights dialogues with national authorities.<sup>193</sup> Another proposed project was the incorporation of human rights into the poverty reduction strategy papers of selected governments—those that request assistance in incorporating human rights concerns in their development strategies. The Bank would assist the governments in “translating internationally agreed human rights standards into operational policy actions, thereby prioritizing support for those services that both contribute to economic and social development and constitute human rights obligations on the state.”<sup>194</sup> The team of lawyers behind the recent approach made an important decision to focus on pilot projects rather than to advocate for a stand-alone operational policy. One reason for this decision is the previously discussed staff

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<sup>192</sup> Interview with official, Operations Evaluation Department, World Bank, in Washington, D.C. (April 5, 2006).

<sup>193</sup> Proceedings of the Stockholm Seminar on Human Rights Dialogues and Rights Principles in Development Cooperation at the Country-Level, Stockholm, June 19-20, 2006.

<sup>194</sup> Statement by Joseph K. Ingram, Former World Bank Special Representative to the United Nations and the World Trade Organization, at the First Session of the Human Rights Council in Geneva Switzerland (June 21, 2006).

incentive system, in which internal promotions are based on lending targets rather than compliance with safeguard policies. In my interviews, I found a general resentment among staff to the existing policies:

People [have been] feeling that the compliance police are after them, and that the procedures are rigid and bureaucratic. . . . And there [is] a lot of weariness from the experience of the safeguards about trying to make things mandatory because it'll be seen as a burden. So the idea is trying to do this through good practice examples. . . .<sup>195</sup>

Another reason is the lawyers' recognition that they could not get a policy approved by the Board, which is sharply divided over the issue of human rights. As a result, they decided to pursue an incremental strategy of working under the radar screen of the Board.

An incremental, under the radar strategy stands in contrast to one of mainstreaming, which entails explicit management support for the incorporation of an issue into existing programs. An example of prior mainstreaming is the incorporation of environmental concerns into Bank programming through adoption of an operational policy on environmental assessment.<sup>196</sup> Yet to introduce a more sensitive and controversial issue like human rights, internal advocates are supporting a strategy of implicit management support and avoidance of the Board. A senior advisor to an Executive Director acknowledged the value of an incremental strategy for human rights. He commented that Bank officials "shouldn't try and get a formal process going because it would backfire, and that [they] should basically do a human rights

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<sup>195</sup> Interview with official, Social Development Department, Latin America and Caribbean Region, World Bank, in Washington, D.C. (Mar. 15, 2006).

<sup>196</sup> 2 OPERATIONAL MANUAL, *supra* note 1, OP 4.01 (Environmental Assessment).

agenda through stealth.”<sup>197</sup> The Executive Director of the Bank’s Nordic Baltic office agreed. He explained that trust funds are a way to introduce controversial changes into the Bank: “The strategy is to hurry slowly, below the radar.”<sup>198</sup>

## V. CONCLUSION

Analyzing organizational culture is useful to understanding organizational change and predicting how IOs behave. The conditions under which norms are adopted and internalized in an organization are shaped by its culture, including its mission, management structure, incentive system, and decision-making process. Internalization occurs when actors vernacularize norms, or adapt them to local meanings and existing cultural values and practices.<sup>199</sup> There is not a universal recipe for how to bring about internalization in IOs. Rather it is necessary to find an institutional fit for norms. They must be framed to adapt to the structural, functional, and cultural distinctiveness of each institution.

The recent initiative to push human rights forward at the Bank offers insights on how to bring about organizational change. Until recently, bureaucratic obstacles have impeded the Bank’s adoption of human rights norms. In particular, there has been a clash of expertise between lawyers and economists over how to define human rights and justify their relevance with respect to the Bank’s mission. In an effort to appeal to the dominant subculture of economists, internal advocates are framing human rights as quantifiable and instrumentally valuable towards the economic development goals of the Bank. They are pursuing an

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<sup>197</sup> Interview with official, Board of Executive Directors, World Bank, in Washington, D.C. (July 24, 2006)

<sup>198</sup> Proceedings of the Conference on the Establishment of a Justice and Human Rights Trust Fund (JHRTF) in the World Bank, p. 8, Copenhagen, June 26-27, 2006.

<sup>199</sup> Merry, *supra* note 13, at 39.

incremental strategy from the bottom-up through country-level pilot projects, rather than a top-down official policy. By late 2006, the strategy became public and no longer under-the radar,<sup>200</sup> but it is too early to gauge its success. This approach represents one potentially effective way of bringing human rights norms into the Bank. Another may be to alter the existing distribution of power within the institution (and thus the organizational culture) so that lawyers have more decision-making power and status as compared to economists and other professional groups. However this is a radical change that would likely take many years and would require support from the leadership.

Human rights are a particularly difficult set of norms to incorporate into an economic institution because they force employees into a struggle between principles and pragmatism—i.e., a tension between pursuing normative, intangible values and goals, and finding a practical way to solve problems (which may involve reconciling competing principles). In an environment like the Bank where most issues are subject to cost-benefit analysis, employees may be ambivalent about principles that appear to be non-negotiable or subject to trade-offs. They may perceive potential costs to trying to commensurate seemingly incommensurable values.

What are the consequences of economizing rather than legalizing human rights? Some critics fear that although legalizing human rights norms may limit their persuasiveness within the Bank, an economic framework would dilute their meaning and serve as a ceiling for future human rights standards of other development agencies. There are thus potential risks of translating human rights too far into the existing power structure. As an anthropologist has observed, if human rights “are translated so fully that they blend into existing power

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<sup>200</sup> See FAQ on “Human Rights” on the World Bank’s website, <http://www.worldbank.org>; THE WORLD BANK INSTITUTE DEVELOPMENT OUTREACH, *supra* note 5.

relationships completely, they lose their potential for social change.”<sup>201</sup> This is part of the dilemma of human rights framing and vernacularization strategies: they will not induce radical, long-term change if they do not challenge existing power structures and are too compatible with dominant ways of thinking.<sup>202</sup> Yet they also need to resonate with local cultural understandings in order to appear legitimate and appealing, and to thus become part of local rights consciousness.<sup>203</sup>

This raises a number of important questions: Can human rights be so extensively vernacularized that they lose their essential core, or even contradict their fundamental meanings? Do human rights need to remain connected to a legal regime (and be linked to state obligations deriving from international law) in order to still be considered “human rights” and not another concept like “empowerment”?

Ethnographic studies can illuminate the process by which norms become internalized within international institutions. They uncover the multiple normative frameworks that often compete within institutions. Interpretive gaps between these frameworks may lead to under-implementation or inconsistent compliance to norms, whether human rights or otherwise. Analyzing the organizational culture of an institution can help one determine how to overcome bureaucratic obstacles and devise an appropriate strategy for organizational change.

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<sup>201</sup> MERRY, *supra* note 13, at 135-36.

<sup>202</sup> *Id.* at 136, 222.

<sup>203</sup> *Id.* at 137, 222.