

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

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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 markedly influence domestic law, which makes it important to analyze how international institutions behave and make policy. Conducting an ethnographic analysis of the internal dynamics of IOs, including their formal and informal norms, incentive systems, and decision-making processes, can usefully aid in understanding institutional behavior and change. This article analyzes the organizational culture of one particularly powerful international institution—the World Bank (the Bank)—and explores 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, making loans worth over \$20 billion per year.<sup>2</sup> Its more than ten thousand employees (including economists, sociologists, lawyers, and engineers, among others) are engaged in the Bank's mission of poverty reduction, which it primarily carries out through its development lending.<sup>3</sup> While the institution has adopted various social and environmental policies

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<sup>1</sup> While the Bank has no operational policies on human rights per se, its policy on indigenous peoples addresses the rights of those peoples. WORLD BANK, *THE WORLD BANK OPERATIONAL MANUAL*, OP 4.10, para. 1 (July 2005) (Indigenous Peoples), available at <http://go.worldbank.org/DZDZ9038D0/> (aiming at "ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples").

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

<sup>3</sup> Out of the ten thousand Bank employees, about seven thousand are based at headquarters in Washington, D.C., and three thousand work in the field offices.

and works on issues as diverse as judicial reform, health, and infrastructure, it has not instituted any overarching operational policy on human rights. Human rights concerns are not systematically incorporated into the everyday decision making of the staff or consistently taken into consideration in lending; incorporation of human rights is ad hoc and at 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 them in their project documents. The marginality of human rights stands in contrast to the Bank's rhetoric in official reports and public speeches by its leadership, which have supported human rights.<sup>5</sup>

What do I mean by saying that human rights is a marginal issue within the Bank? In general, it means that the Bank maintains no comprehensive or consistent approach on the policy and operational levels. In more specific terms, it means that the Bank lacks at least the three following provisions/safeguards: (1) a staff policy to mitigate the impact of its projects on human rights; (2) a requirement to consider countries' obligations under international human rights law when its employees engage in country dialogues or draft Country Assistance Strategies;<sup>6</sup> and (3) guidelines on when it would suspend operations because of human rights violations.

Why should we be surprised that human rights are such a marginal issue at the World Bank? I find a few compelling reasons 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 Programme, the United Nations Children's Fund, and the United Kingdom's Department for International Development, have adopted human rights policies or a rights-based approach to development.<sup>7</sup> Second, the Bank has been pressed by civil society organizations and internal advocates to integrate human rights considerations into its projects and programs. Third, private financial institutions have begun to address human rights more openly out of concern for their public image and the reputational risk of committing human

<sup>4</sup> There are some minor exceptions. For instance, some Bank documents have referred to human rights, and certain employees work indirectly on human rights, particularly economic, social, and cultural rights. See Mac Darrow & Louise Arbour, *The Pillar of Glass: Human Rights in the Development Operations of the United Nations*, 103 AJIL 446, 487 & n.188 (2009).

<sup>5</sup> See, e.g., HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT (Philip Alston & Mary Robinson eds., 2005) (with contributions by senior World Bank officials, including former president James Wolfensohn); World Bank, *Development and Human Rights: The Role of the World Bank*, Report No. 23,188 (Sept. 30, 1998) [hereinafter World Bank, Report No. 23,188]; *Human Rights and Development*, DEV. OUTREACH (World Bank Inst.), Oct. 2006 [hereinafter DEV. OUTREACH].

<sup>6</sup> The World Bank normally develops a Country Assistance Strategy 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, and past portfolio performance, as well as the level of financial and technical assistance that the Bank seeks to give the country.

<sup>7</sup> United Nations Development Programme [UNDP], *Human Rights in UNDP: Practice Note* (Apr. 2005); Laure-Hélène Piron & Francis Watkins, *DFID Human Rights Review: A Review of How DFID Has Integrated Human Rights into Its Work* (July 2004), available at <http://www.odi.org.uk/rights/Publications/DFIDRightsReview07.04.pdf>; UNICEF, *Guidelines for Human Rights-Based Programming Approach*, CF/EXD/1998-04 (Apr. 21, 1998), available at <http://www.unhcr.org/refworld/pdfid/3f82adbb1.pdf>. 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 in development work. See 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); Celestine Nyamu-Musemi & Andrea Cornwall, *What Is the "Rights-Based" Approach All About? Perspectives from International Development Agencies* (Inst. for Dev. Stud. Working Paper No. 234, 2004).

rights abuses.<sup>8</sup> Even the International Finance Corporation, 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 nongovernmental organizations (NGOs).<sup>9</sup> Despite these three factors, the Bank has not adopted a strategy on human rights.

Whether and how the Bank should adopt human rights has been discussed at length by academics and civil society advocates.<sup>10</sup> 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 so as 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 extensive ethnographic field research at the institution itself, including personal interviews, participant observation, and analysis of Bank documents. This research sheds light on why organizational change has not occurred and suggests conditions under which it could happen. I selected this case because the Bank has neither adopted nor internalized human rights norms despite external pressure over the past two decades and repeated attempts by insiders to push the human rights agenda forward.<sup>11</sup>

I have found that the ways norms become adopted and ultimately internalized in an institution largely depend on their fit with the organizational culture. When a new norm is introduced, employees from different professional groups within the Bank often have distinct interpretive frames that they use to define the norm, analyze its relevance to the Bank's mission, and apply it in practice. Proponents of a norm must take internal conflict over competing frames into account when trying to persuade staff members 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, to bring about internalization, actors must adapt norms to local meanings and existing cultural values and practices—that is, they must “vernacularize” norms.<sup>12</sup>

This article proceeds as follows. In part I, I argue that theories of international institutions should account for the internal dynamics within organizational cultures, which shape how

<sup>8</sup> See, for example, the Equator Principles for private banks, which are modeled after the International Finance Corporation's social and environmental policies. The Equator Principles (July 2006), 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?* (Aug. 2008) (representing views from several 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* (2001).

<sup>11</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 entail the adoption of norms without belief in their content, and as a result of 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>12</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* 219–22 (2006).

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. In part II, I consider why human rights have remained such a marginal issue at the Bank. I review legal constraints in the Bank's Articles of Agreement (or Articles) and failed efforts from the early 1990s through 2004 to introduce a human rights agenda at the Bank, as well as the uncertain legal status and limited impact of a 2006 legal opinion on human rights. Part III analyzes the Bank's organizational culture, including formal and informal processes of norm socialization and power dynamics between professional subcultures, and focuses on the prestige of economists and the lower status of lawyers in the Legal Department. In part IV, I emphasize the importance of framing norms to adapt to organizational culture, examine battles between Bank lawyers and economists over defining human rights norms and relating them to the Bank's mission, and discuss the most recent attempt to introduce human rights into the Bank's work. The conclusion analyzes the risks of achieving norm internalization at the Bank by "economizing" rather than legalizing human rights.<sup>13</sup>

## I. INTERNATIONAL INSTITUTIONS AND ORGANIZATIONAL CULTURE

### *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 focusing only on state interests, we need to examine the bureaucratic practices of the background experts that run the institutions. My study of the World Bank affirms that 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>14</sup> 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 devoted little attention to the norm dynamics that operate within IOs and has emphasized 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>15</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 ascribing more autonomy to IOs, which serve as vehicles for socializing states into complying with norms.<sup>16</sup> Yet while constructivists have moved

<sup>13</sup> See note 187 *infra* and corresponding text.

<sup>14</sup> David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 SYDNEY L. REV. 5, 15 (2005).

<sup>15</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>16</sup> See, e.g., John Gerard Ruggie, *What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge*, 52 INT'L ORG. 855 (1998); Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 INT'L ORG. 391 (1992).

international relations away from state-centric theories, they are only beginning to offer empirical accounts of IO behavior.<sup>17</sup>

Even though legal scholars have increasingly treated IOs as an object of study, they have concentrated on factors other than the institutions' organizational cultures and internal politics. Interest-based models are rooted in a rationalist account of state interests and behavior.<sup>18</sup> Norm-based models, including managerial theory and the transnational legal process school, have focused on why states comply with international norms.<sup>19</sup> Scholars have also measured the extent of countries' implementation of and compliance with treaties over time.<sup>20</sup> In addition, a growing literature on mechanisms of norm socialization seeks to explain how law influences state behavior.<sup>21</sup> None of this scholarship, however, has investigated the process of norm development within IOs. We lack 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>22</sup>

Ethnographic research can provide a comprehensive analysis of the organizational cultures of IOs and how they change. It involves in-depth, case-oriented study, including long-term fieldwork within an institution and in-depth interviews. Conducting 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 mostly of ongoing interaction with the human targets of study on their home ground."<sup>23</sup> An ethnographer engages in direct, firsthand observation of employees' daily behavior and participates in their activities, such as training workshops, seminars, and project meetings. In addition, he or she often carries out archival work and interpretive analysis of documents.

Anthropological research aims at answering a question rather than testing a hypothesis. It is not based on prior assumptions or models, like other methods. Rather, hypotheses and theories emerge from the data, and are constantly evaluated and adjusted as the research progresses.<sup>24</sup> The following concisely summarizes the cycle of ethnographic research:

In ethnography . . . you learn something ("collect some data"), then you try to make sense out of it ("analysis"), then you go back to see if the interpretation makes sense in light of

<sup>17</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) [hereinafter Barnett & Finnemore, *Politics, Power*].

<sup>18</sup> See, e.g., JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005).

<sup>19</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>20</sup> See ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS (Edith Brown Weiss & Harold K. Jacobson eds., 1998).

<sup>21</sup> See, e.g., Goodman & Jinks, *supra* note 11.

<sup>22</sup> Kennedy, *supra* note 14, at 7.

<sup>23</sup> JOHN VAN MAANEN, TALES OF THE FIELD: ON WRITING ETHNOGRAPHY 2 (1988).

<sup>24</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 intensions and inventions frequently set its agendas." John Comaroff, *Notes on Anthropological Method—Mainly in the Key of E*, in MICHÈLE LAMONT & PATRICIA WHITE, WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH 36, 37 (Report on National Science Foundation Supported Workshop, May 19–20, 2005), available at [http://www.nsf.gov/sbe/ses/soc/ISSQR\\_workshop\\_rpt.pdf](http://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf).

new experience (“collect more data”), then you refine your interpretation (“more analysis”), and so on. The process is dialectic, not linear.<sup>25</sup>

Therefore, when ethnographers interview subjects, they “do not automatically assume that they know the right questions to ask in a setting.”<sup>26</sup> Interviews are usually unstructured or semi-structured with open-ended questions 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, and so forth in their own words. My ethnographic study of the World Bank followed this research protocol. As part of the research for my doctoral dissertation in anthropology, I worked and conducted fieldwork at the Bank’s headquarters in Washington, D.C., for approximately two years over a period of four years, from 2002 to 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 the Caribbean Region. My two summers as an intern afforded me the trust to gain access for a full year of fieldwork, from September 2005 until July 2006. While this article centers on my research during this time, I have revised the material on the basis of recent developments.

My methods included interviews with more than seventy staff members (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 list only their current (or former) position and department unless I was given verbal consent to disclose their identity.<sup>27</sup>

Conducting ethnographic research on the Bank enabled me to uncover the formal and informal norms and the decision-making processes within the institution that shape state behavior. I examined the institution from both the top down and the bottom up, focusing not only on its leadership and administrative structure, but also on the tasks and incentives of the 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. The application of these techniques 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 norm diffusion as “the dog that didn’t bark.”<sup>28</sup> 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 historically been rejected by the Bank and

<sup>25</sup> MICHAEL H. AGAR, *THE PROFESSIONAL STRANGER: AN INFORMAL INTRODUCTION TO ETHNOGRAPHY* 62 (2d ed. 1996).

<sup>26</sup> HELEN B. SCHWARTZMAN, *ETHNOGRAPHY IN ORGANIZATIONS* 54 (1993).

<sup>27</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.

<sup>28</sup> Jeffrey T. Checkel, *Norms, Institutions, and National Identity in Contemporary Europe*, 43 *INT’L STUD. Q.* 83, 86 (1999).

have just recently moved closer to being adopted and internalized. Such cases hold the key to identifying the conditions of possibility for the internalization of norms within IOs more broadly.

I argue that the extent to which IO officials internalize norms is shaped by how the norms are framed. In particular, the degree of “legalization” of human rights norms influences whether staff members adopt and internalize them. How much the legalization of human rights impedes or facilitates internalization will depend on the organizational culture.

This 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, “a particular form of institutionalization characterized by three components: obligation, precision, and delegation.”<sup>29</sup> According to this definition, legalization describes “a particular set of characteristics that institutions may (or may not) possess.”<sup>30</sup> This conception is more applicable to an institutional regime or arrangement (e.g., European Community law or WTO agreements) than to the structure or status of a specific norm within an institution.

I focus here 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 international human rights regime). Thus, I ask to what degree norms are conceived of as legal norms (rather than, say, moral, cultural, or professional norms). This understanding of legalization addresses how a norm and its legal expression relate to one another and whether “legal norms, as a type, operate differently from any other kinds of norms.”<sup>31</sup> With respect to human rights, 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 for defining them as ethical rather than legal claims.<sup>32</sup> He believes that “human rights can have influence without necessarily depending on coercive legal rules.”<sup>33</sup> To take the thought one step further, sometimes a law-dependent view of human rights can hinder their influence.

How, then, should one assess the strategic value of human rights legalization?<sup>34</sup> In the past few decades, there has been a trend toward legalizing human rights and international institutions in general.<sup>35</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>36</sup> Yet the legalization of human rights also incurs costs, particularly in institutional environments that value nonlegal principles or seek nonlegal goals (such as respect for moral

<sup>29</sup> Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, & Duncan Snidal, *The Concept of Legalization*, 54 INT’L ORG. 401, 401 (2000); see also JUDITH GOLDSTEIN ET AL., LEGALIZATION AND WORLD POLITICS (2001).

<sup>30</sup> Abbott, Keohane, Moravcsik, Slaughter, & Snidal, *supra* note 29.

<sup>31</sup> Martha Finnemore, *Are Legal Norms Distinctive?* 32 N.Y.U. J. INT’L L. & POL. 699, 701 (2000).

<sup>32</sup> Amartya Sen, *Human Rights and the Limits of Law*, 27 CARDOZO L. REV. 2913, 2916 (2006).

<sup>33</sup> *Id.* at 2921. Sen further elaborates on this argument in Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315 (2004).

<sup>34</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>35</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>36</sup> *Id.* at 361–62 (footnotes omitted).

values like dignity), as happened during the creation of human rights commissions in postauthoritarian regimes in the 1990s, when attempts were made “to detach human rights from their legal moorings and redefine them as a generalized language of public morality.”<sup>37</sup> Citing the harmful consequences of too much legalization, Laurence Helfer advocates a cost-benefit view of the process in his case study of the Caribbean backlash against human rights regimes.<sup>38</sup> Although Helfer adopts the IR definition of legalization described 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>39</sup>

In examining why legal norms could have distinctive effects in certain institutional contexts but not others, Martha Finnemore notes:

An 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>40</sup>

Finnemore’s example aptly applies to the World Bank.

My research leads me to conclude that legalizing human rights would not be an effective strategy for their adoption at the Bank, as I further describe in part III. A key condition for the internalization of human rights norms is finding an institutional fit with the organizational culture. Finding an institutional fit requires that norms become vernacularized so that they resonate with preexisting understandings in “a dynamic process of *matchmaking*.”<sup>41</sup> Proponents of a norm should act strategically—for example, through norm framing, cuing, or persuasion—to ensure congruence with the organizational culture.

### *Looking Beyond Member States*

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>42</sup> Multiple principals may hold competing preferences and may be unable to exert effective oversight of the agent. Because oversight is costly, they are often forced to delegate authority, leaving the agent with considerable independence.<sup>43</sup> Bureaucratic drift occurs when an agency makes decisions or implements policies that diverge from the goals preferred by the principals.<sup>44</sup> Bureaucratic drift is a common characteristic of the multiple-principals situation since a conflict of

<sup>37</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 34, at 81, 84.

<sup>38</sup> Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 COLUM. L. REV. 1832 (2002).

<sup>39</sup> *Id.*

<sup>40</sup> Finnemore, *supra* note 31, at 704.

<sup>41</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>42</sup> Richard W. Waterman & Kenneth J. Meier, *Principal-Agent Models: An Expansion?* 8 J. PUB. ADMIN. RES. & THEORY 173, 181 (1998).

<sup>43</sup> See *id.*; Gary J. Miller, *The Political Evolution of Principal-Agent Models*, 8 ANN. REV. POL. SCI. 203, 211–12 (2005).

<sup>44</sup> See, e.g., Murray J. Horn & Kenneth A. Shepsle, *Commentary on “Administrative Arrangements and the Political Control of Agencies”: Administrative Process and Organizational Form as Legislative Responses to Agency Costs*, 75 VA.



interests among principals may prevent them from agreeing on common goals and exerting oversight of the agency.<sup>45</sup> Such paralysis often affects international institutions, where there is a “long ‘chain of delegation’” from the principals (or member states) to the IO agent.<sup>46</sup>

The World Bank typifies the multiple-principals problem, where member governments serve as principals that collectively form the Board of Executive Directors. The board is composed of twenty-four executive directors who represent countries or country groups.<sup>47</sup> Under the Bank’s Articles of Agreement, the board serves as the institution’s policymaking organ, while the president and senior management are responsible for operational, administrative, and organizational issues.<sup>48</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, bureaucratic drift may ensue. In view of their difficulty in exerting oversight, the member countries are forced to delegate authority to the agency officials. My study of the Bank’s internal decision-making process confirmed these dynamics, showing that employees operate quite independently of the board. They carry out certain sensitive management issues without board approval or involvement.

An institutional constraint that favors agency autonomy is the short time horizon of board members as compared with that of the Bank president. Most executive directors serve for just one or two two-year terms, whereas the president’s tenure can amount to five 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>49</sup> According to former director Moisés Naím, in an interview by Catherine Caufield, “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>50</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>51</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, who are constrained by their limited institutional memory and inability, as multiple principals, to exert effective oversight of the president. Former president James Wolfensohn

L. REV. 499 (1989); Mathew D. McCubbins, Roger G. Noll, & Barry R. Weingast, *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431 (1989); Mathew D. McCubbins, Roger G. Noll, & Barry R. Weingast, *Administrative Procedures as Instruments of Political Control*, 3 J. L. ECON. & ORG. 243 (1987).

<sup>45</sup> Horn & Shepsle, *supra* note 44, at 502.

<sup>46</sup> Daniel L. Nielson & Michael J. Tierney, *Delegation to International Organizations: Agency Theory and World Bank Environmental Reforms*, 57 INT’L ORG. 241, 242 (2003).

<sup>47</sup> Five executive directors are appointed from the five donor countries that contribute the largest number of shares—currently, France, Germany, Japan, the United Kingdom, and the United States. 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>48</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.

<sup>49</sup> Interview with James Wolfensohn, former president, World Bank, New York, N.Y. (June 14, 2007).

<sup>50</sup> CATHERINE CAUFIELD, *MASTERS OF ILLUSION: THE WORLD BANK AND THE POVERTY OF NATIONS* 238 (Macmillan 1997) (1996). 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>51</sup> *Id.* at 239.

adopted an incremental strategy for introducing change during his second five-year term. By then, he had served at the Bank longer than any board member and could get a lot more done in comparison to the achievements of 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>52</sup>

Wolfensohn adopted this incremental strategy to advance his anticorruption agenda. He noted that by the time he 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>53</sup>

Another important reason for the board's lack of significant power over the Bank's management and staff is that by tradition it operates only by consensus (with few exceptions). Historically, the board has been deeply divided over the issue of human rights. Some member states, like China and Saudi Arabia, strongly oppose 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), fear that human rights would increase transaction costs for loans.<sup>54</sup> Countries that moderately support a human rights agenda do not agree on what it should 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 the possibility that projects would cause human rights violations? The diversity of the board makes it 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.

Bank officials have recognized the unlikelihood of getting board support for a human rights agenda and have avoided proposing it, fearing 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 (discussed in part IV below). In other words, they are supporting a strategy that falls 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 at the institution. One would expect the Bank to have been swayed

<sup>52</sup> Interview with Wolfensohn, *supra* note 49.

<sup>53</sup> *Id.*

<sup>54</sup> There are 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 might 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.

by this pressure, as well as by the growing trend of corporations and development agencies to address human rights more openly. That it has not been so swayed is explained by many scholars on the basis of legal reasons. In the first two sections, I clarify the uncertainty over the Bank's human rights obligations under international law and 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. I then describe failed efforts at reform by internal advocates, as well as the limited impact of the 2006 legal opinion on human rights by a former general counsel.<sup>55</sup>

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

What does international law say about the World Bank's responsibilities with respect to human rights? Does the Bank have an obligation to ensure that its projects, programs, and internal policies conform to 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?

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. Commentators continue to debate both this question and even 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 [its] relationship with other international organisations), [its] entitlement to specified privileges and immunities, and the fact that [it] operate[s] extensively within the international sphere."<sup>56</sup> According to legal scholars, the Bank's status as an international legal person implies its role as both a subject and an object of international responsibilities and obligations, *possibly* including obligations incumbent upon the organization under international agreements and customary international law.<sup>57</sup>

Because international organizations, unlike states, cannot become parties to treaties, they are not directly bound by human rights treaties. Yet, according to the International Court of Justice, international organizations can be bound by obligations under general principles of international law<sup>58</sup> and capable of possessing international rights and duties.<sup>59</sup> IOs are also bound

<sup>55</sup> Roberto Dañino, Legal Opinion on Human Rights and the Work of the World Bank (Jan. 27, 2006), at <http://www.ifwatchnet.org/?q=en/node/335> [hereinafter Dañino Opinion].

<sup>56</sup> DARROW, *supra* note 10, at 126.

<sup>57</sup> See, e.g., Daniel D. Bradlow, *The World Bank, the IMF, and Human Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 47, 63 (1996); Ibrahim F. I. 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). See generally DARROW, *supra* note 10; SKOGLY, *supra* note 10; 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).

<sup>58</sup> See Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 ICJ REP. 73, 89–90 (Dec. 20).

<sup>59</sup> See Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 ICJ REP. 174 (Apr. 11).

by *jus cogens*, or peremptory norms of international law such as the prohibition against genocide.<sup>60</sup> In addition, the Bank has obligations as a specialized agency of the United Nations.<sup>61</sup> The Bank must respect the purposes and principles in the UN Charter, including “the human rights purposes as stated in Article 55, as elaborated in the [Universal Declaration of Human Rights] and the body of international human rights law built upon it.”<sup>62</sup> Furthermore, it must have “due regard” for decisions of the UN Security Council, although it is not required to follow the recommendations of the UN specialized human rights agencies.<sup>63</sup>

The second question to ask about the Bank’s obligations under international law is whether the institution has any obligations vis-à-vis its members. Because only some of the member states are parties to particular human rights agreements, the Bank’s responsibilities would vary with respect to different members. Whether the Bank should go as far as enforcing states’ treaty obligations through loan conditionalities or helping states to implement their treaty obligations through technical assistance remains a matter of debate.<sup>64</sup>

The final issue concerns what role, if any, international financial institutions (IFIs) like the Bank should play in the progressive development of international law—for example, 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 of human rights and development,<sup>65</sup> the rules of customary international law in this area are still subject to dispute.

In summary, legal scholars have yet to agree on the international legal obligations of the Bank with respect to human rights. The institution has skirted most of these arguments and instead focused on its limited mandate under the Articles of Agreement, whose interpretation has become a locus of contention among Bank staff, advocates, and policymakers.<sup>66</sup>

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

In addressing why the Bank has not adopted a human rights agenda, many scholars, policymakers, and advocates have focused on restrictions in the Articles of Agreement, or founding constitution. The legal restrictions arise from two provisions, Article IV, section 10 and Article III, section 5(b), which place limits on the factors that staff members may consider in their decisions.<sup>67</sup> Article IV, section 10 prohibits political activity and permits only economic considerations in decision making:

<sup>60</sup> H. G. Schermers, *The Legal Bases of International Organization Action*, in A HANDBOOK ON INTERNATIONAL ORGANIZATIONS 401, 402 (René-Jean Dupuy ed., 2d ed. 1998).

<sup>61</sup> See Agreement Between the United Nations and the International Bank for Reconstruction and Development, Art. IV(2), Sept. 16 & Nov. 15, 1947, 16 UNTS 346, 348.

<sup>62</sup> DARROW, *supra* note 10, at 128.

<sup>63</sup> See SKOGLY, *supra* note 10, at 99–102; Bradlow, *supra* note 57, at 63.

<sup>64</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>65</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.” United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, para. 8 (June 25, 1993), UN Doc. A/CONF.157/24, at 20 (Part I) (Oct. 13, 1993), *reprinted in* 32 ILM 1661 (1993).

<sup>66</sup> See sources cited *supra* note 10.

<sup>67</sup> International Bank for Reconstruction and Development, Articles of Agreement, Art. IV, §10, & Art. III, §5(b), July 22, 1944, 60 Stat. 1440, 2 UNTS 134 [hereinafter Articles of Agreement].

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 weighed impartially in order to achieve the purposes stated in Article I.

Article III, section 5(b) limits the factors that the Bank may consider in granting 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." 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 promote human rights only in an indirect way.

From time to time, the general counsel's office has rendered an authoritative interpretation of the Articles 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 multifaceted view of development, including not only its economic dimensions but also its political, social, and cultural ones.<sup>68</sup> Former general counsel Ibrahim Shihata authored the most influential opinions, which broadened the Bank's scope of work and acknowledged the centrality of human rights within development: "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 realization of a minimum degree of all human rights . . . ."<sup>69</sup>

In the past two decades, Shihata's opinions and memos opened legal room for the Bank's involvement in areas that were once deemed too political, such as legal and judicial reform and anticorruption efforts. Yet human rights, especially certain civil and political rights, have still been considered too political for the Bank to address directly. While restrictions in the Articles of Agreement have continued to serve as a legal obstacle to the adoption of a human rights approach to its work, 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 the setting of one of the first internal campaigns to integrate human rights into the Bank's operational work. This initiative was led by an interdisciplinary working group of operational staff from the African region, who framed it in the context of a new institutional focus on good governance as a key ingredient for

<sup>68</sup> DARROW, *supra* note 10, at 152.

<sup>69</sup> IBRAHIM F. I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 133 (Franziska Tschofen & Antonio R. Parra eds., 1991).

development.<sup>70</sup> While the working group organized quite a few brown-bag lunches, workshops, and symposiums, it became inoperative in the mid- to late 1990s, partly because many of its members were diverted by 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, the members of the working group could not easily invest resources in human rights research and education.

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 impress upon the staff that human rights was an important issue within the context of the Bank's work.<sup>71</sup> Under his leadership, the Bank published its first official report on the subject, which recognized the institution's role in promoting and protecting human rights but stopped short of stating that it had an international legal obligation to do so.<sup>72</sup> Since the publication of the report in 1998, documents issued by the Bank and speeches by its officials have periodically mentioned human rights, although the Board of Executive Directors has continued to oppose their official incorporation into institutional policy.<sup>73</sup> Wolfensohn recognized the unlikelihood of getting the board to spearhead a human rights agenda since it was and remains deeply divided over the issue. Wolfensohn and senior management appealed to employees in an effort to build support within the institution.

The momentum for a human rights strategy began in 2002. On May 2 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 a hundred employees from across the institution. The purpose was to increase the staff's awareness of human rights and to discuss possible implications for the Bank's operations. In a plenary address to the workshop, Wolfensohn announced that the mood was changing and that it was time to take the words "human rights" out of the closet.<sup>74</sup> He then invited some senior staff members 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>75</sup>

Coordinated by the Social Development Department, the task force included staff from the Legal, Human Development, External Affairs, Sustainable Development, and Poverty Reduction Departments. Involving representatives from a variety of departments was critical since it allowed for cross-disciplinary dialogue and prevented one department from co-opting the agenda. In June 2003, the task force presented a background report on human rights to the

<sup>70</sup> See WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH 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>71</sup> Interview with Wolfensohn, *supra* note 49.

<sup>72</sup> World Bank, Report No. 23,188, *supra* note 5.

<sup>73</sup> See UNITED KINGDOM DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, HUMAN RIGHTS: CORE TEXT, para. 3.39 (DFID/SDD Human Rights Policy Paper), available at [http://www.siyanda.org/docs\\_gem/index\\_policy/hr\\_coretext.htm](http://www.siyanda.org/docs_gem/index_policy/hr_coretext.htm) (concluding that "[t]he reluctance of some of [the Bank's] shareholders . . . to incorporate human rights into its development work could constrain its poverty reduction strategies").

<sup>74</sup> Human Rights & Sustainable Development: What Role for the Bank? Summary of Proceedings 12 (May 2, 2002) (Ko-Yung Tung, citing James Wolfensohn).

<sup>75</sup> *Id.* at 11.

board's Committee on Development Effectiveness. The report reviewed the Bank's existing work in support of human rights and identified the difficulties of adopting a human rights policy.<sup>76</sup> Although it recommended that the Bank adopt human rights principles (instead of a policy or a rights-based approach), the committee ultimately did not approve the report.<sup>77</sup> The committee and senior management did not feel ready to approve a report on such a controversial issue. According to one member of the task force, after reviewing multiple drafts, senior officials just "got cold feet" and began to "backpedal" on passing a paper on human rights.<sup>78</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 Ramphele.<sup>79</sup> During the fall of 2003 and early 2004, Ramphele and her senior adviser, Alfredo Sfeir-Younis, pursued a decentralized approach, selecting officials as regional human rights focal points who were given the latitude to determine how they would address the issue. Some of the officials did not follow up on this request, while others simply wrote stocktaking reports on their region's human-rights-related activities. These officials engaged in little coordination with one another, and only a few meetings were held between them and senior management.

This phase of internal human rights advocacy reached a crescendo in March 2004.<sup>80</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 at the law school entitled "Human Rights and Development: Towards Mutual Reinforcement."<sup>81</sup> The conference featured a keynote address by Wolfensohn and presentations by several senior officials, including the recently appointed general counsel, Roberto Dañino, who outlined what would later become a legal opinion on human rights. But the momentum seemed to stop soon thereafter. Aside from the publication of a book based on the conference, no substantive follow-up took place and no major resources were devoted to continuing the initiative. In addition, Ramphele resigned from the Bank in April 2004.

In view of the flurry of activity over human rights between 2002 and 2004, many key ingredients for the adoption of human rights norms and their eventual internalization seem to have been in place: support from the president for the development of a strategy that would be presented to the board; the appointment of a managing director to oversee the human rights portfolio; and the formation of an interdisciplinary task force composed of representatives from different departments. Why, then, did the task force and the Ramphele-led initiative not succeed in gathering internal support and pushing through a strategy on human rights for the Bank?

<sup>76</sup> Interview with former official, Social Development Department, World Bank, Washington, D.C. (Feb. 16, 2006).

<sup>77</sup> The task force did not bring the issue to the full Board of Executive Directors but only to its Committee on Development Effectiveness, since it did not want to sharpen the 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>78</sup> Interview with former official, Social Development Department, *supra* note 76.

<sup>79</sup> The Bank's managing directors rank directly below the president.

<sup>80</sup> Interview with official, Bank Information Center, Washington, D.C. (Jan. 31, 2006).

<sup>81</sup> See HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT, *supra* note 5.

Those familiar with the events, including several members of the task force, cite many reasons for the failure of the task force and the region-based initiative to capitalize on the growing momentum toward adopting human rights norms. These reasons include excessive caution and 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 the staff's awareness of human rights. Wolfensohn himself admits that he should have placed more emphasis on 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>82</sup>

Moreover, the leaders of the task force were criticized for being too theoretical and for having underemphasized the concrete practical steps that were needed to push the agenda forward.<sup>83</sup> Some thought Ramphele lacked the political capital and Bank experience to influence senior management. Even though she was a managing director, many employees considered her an outsider since she had joined the Bank only in 2000, and they viewed her as lower in status than the two other managing directors since she was responsible for the "soft" issues like human development.<sup>84</sup>

Yet my interviews indicate that the most significant factor behind the failure of the internal attempts between 2002 and 2004 was a clash of expertise. Members of the task force complained of the difficulty of reaching a consensus of people from different sectors and disciplinary backgrounds, who held divergent views on how to define human rights and interpret them with respect to the Bank's operations.<sup>85</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 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 multisectoral organization."<sup>86</sup> Amid internal disputes, the task force failed to build a constituency of staff members in support of its mission.

The final missing ingredient was support by the Legal Department, which is surprising given the centrality of the Articles of Agreement to determining the Bank's role with respect to

<sup>82</sup> Interview with Wolfensohn, *supra* note 49.

<sup>83</sup> Interview with official, Human Rights Watch, Washington, D.C. (July 20, 2006).

<sup>84</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 did not understand the Bank's language well and had trouble effectively carrying out her mandate. Interview with official, Development Research Group, World Bank, 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, Washington, D.C. (Mar. 15, 2006).

<sup>85</sup> See *infra* pp. 677–78.

<sup>86</sup> Interview with official, Human Development Network, World Bank, Washington, D.C. (Jan. 24, 2006).



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 human rights. Other members of the Legal Department felt shut out from the process by the task force.<sup>87</sup> In the fall of 2003, when Ramphela was leading the decentralized approach with region-based human rights focal points, the Legal Department was only belatedly included in the discussions. Finally, turf wars erupted between the Legal Department and the regional departments, which wanted to retain control of the human rights agenda and not cede it to the lawyers.

Even though the dissension continued, the Legal Department's role in the discussions on human rights expanded after the appointment of General Counsel Dañino in late 2003. Dañino championed the human rights agenda over the next two years and paved the way for recent efforts in that regard by members of the Legal Department (discussed in part IV below).

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

On January 31, 2006, on his last day as general counsel, Dañino dropped a bomb on the desks of his staff (or, more accurately, in their computers).<sup>88</sup> Members of the Legal Department woke up that morning to an e-mail from Dañino with an attachment entitled "Legal Opinion on Human Rights and the Work of the World Bank."<sup>89</sup> Its topic did not surprise many, since Dañino had championed 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 arriving 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 speeches on the importance of human rights to the Bank's work.

The closing statement of Dañino's legal opinion reads: "[T]he 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 mission."<sup>90</sup> This view represents a significant departure from the previous official interpretation by General Counsel Shihata.<sup>91</sup> Both Shihata and Dañino interpreted provisions in the Articles that bear on human rights, particularly those that prohibit political activity and permit only economic considerations in decision making.<sup>92</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 sometimes 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

<sup>87</sup> Interview with official, Legal Department, World Bank, Washington, D.C. (Jan. 4, 2006).

<sup>88</sup> Dañino had submitted his resignation from the Bank on January 13, 2006, because of disagreements with then-president Paul Wolfowitz.

<sup>89</sup> Dañino Opinion, *supra* note 55. The document was officially dated January 27, 2006. Dañino concurrently released a second legal note and related discussion note, "Bank Activities in the Criminal Justice Sector."

<sup>90</sup> Dañino Opinion, *supra* note 55, at 9.

<sup>91</sup> A selection of Shihata's legal opinions and memorandums during his tenure from 1983 to 1998 was published in the book IBRAHIM F. I. SHIHATA, *THE WORLD BANK LEGAL PAPERS* (2000).

<sup>92</sup> See note 67 *supra* and corresponding text. The provisions in question are quoted in the text following note 67.

political nature.”<sup>93</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>94</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>95</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>96</sup> Dañino then outlined three increasing levels of Bank involvement in human rights. First, he explained that the Bank *may* take a supportive role by 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>97</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.<sup>98</sup> So far, Dañino’s opinion did not stray very far from the interpretations of Shihata.

When describing the third level, however, involving extreme cases, Dañino differed from Shihata in not requiring any economic impact and stating that the Bank *should* do something. “[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 Dañino considered to be “extensive violations” or “pervasive proportions.” The lack of this further clarification leaves a danger of ad hoc disengagement based on political factors.

Dañino highlighted several other significant issues in his opinion: (1) the indivisibility of rights (“the Bank should not make a distinction between different types of human rights” (e.g., economic, social, and cultural rights as against civil and political rights));<sup>100</sup> (2) the existence of economic evidence that establishes a correlation between human rights and economic growth;<sup>101</sup> (3) the recognition of norms that traverse national boundaries (e.g., “corporate or financial crimes, money laundering, corruption, environmental hazards, war crimes and crimes against humanity”);<sup>102</sup> and (4) the transformation of the concept of sovereignty in 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

<sup>93</sup> SHIHATA, *supra* note 69, at 109.

<sup>94</sup> Bradlow, *supra* note 57, at 60 (quoting then-unpublished Legal Opinion on Governance, *in* SHIHATA, *supra* note 91, at 271). 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.” *Id.*

<sup>95</sup> Dañino Opinion, *supra* note 55, at 3.

<sup>96</sup> *Id.* at 7.

<sup>97</sup> *Id.*

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

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

<sup>100</sup> *Id.* at 5–6.

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

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

<sup>103</sup> *Id.* at 6–7.

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 toward social responsibility at the Bank. Dañino argued that it is “standard practice” among private banks to rely on an analysis not only of economic factors, but of *all* factors that affect investments, including social, environmental, and political ones.<sup>105</sup> In his speech at NYU of March 2004 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 a speech at the Bank in October 2005, 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 maintain political risk units that analyze the political impacts of investments on countries and the political realities of their borrowers. Thus, they recognize that political dimensions are relevant factors in decision making.<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 a position to lead internal discussions on a possible human rights strategy.

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

The opinion was not submitted to the board because senior officials knew that its members were sharply divided over human rights and would very likely not endorse it.<sup>108</sup> Dañino felt that it was not the right time to confront the board on this issue. He stated that it was “impossible,” at least at this point, to get the board to approve a policy or opinion: “That’s the reason

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

<sup>105</sup> *Id.* at 4–5.

<sup>106</sup> Roberto Dañino, *The Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT, *supra* note 5, at 509, 515.

<sup>107</sup> Roberto Dañino, Welcoming Remarks, Gender-Based Violence and Equitable Development: The Role of the International Community, seminar at World Bank, Washington, D.C. (Oct. 24, 2005). Yet Dañino also notes that given the Bank’s mandate and role as a public institution, it would be more difficult for it to forgo a particular investment because of political factors than it would be for a private company. *Id.* (based on author’s notes).

<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.

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 amount to a public condemnation of internal efforts to push a human rights agenda forward in the Bank. It could even result in a backlash by executive directors, who might then become more vigilant in prohibiting any human-rights-related initiative that they deemed contrary to the Bank's mandate. 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 that the opinion would be approved by the board in the near future, its legal status remained uncertain. Under the Articles of Agreement, the executive directors have the authority to decide questions relating to the Articles' interpretation.<sup>111</sup> Legal opinions by the general counsel are intended only to offer guidance to the board in deciding these questions. Yet there is no precedent on how to treat opinions unapproved by the board and written by a general counsel who has since departed.

Employees who had read the opinion held widely differing views 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 members questioned the process by which it was drafted and its legitimacy as an official Bank opinion. They claimed that it merely represented Dañino's personal opinion and did not carry legal weight on the institutional level since the board had never requested the general counsel's advice on the issue.<sup>113</sup> According to a senior Bank lawyer, the unclear status of the opinion put the Legal Department itself in a period of limbo.<sup>114</sup>

Still, the opinion could have provoked discussion by the 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. The great majority of the staff, however, did not receive the opinion on January 31, 2006, when it was released, or on any day thereafter. It was sent only to the members of the Legal Department and a selected number of vice presidents and senior officials. Some of the lawyers then forwarded the opinion to their colleagues in other departments, but many among the staff had not read it, 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, 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 and could

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

<sup>110</sup> See *infra* text at notes 192–99. I should briefly note that the Legal Department's decision not to present the opinion formally to the board did not mean that board members did not know of its existence. A member country representative supportive of a human rights agenda at the Bank 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 the board's approval of the opinion. Interview with a senior adviser to an executive director, World Bank, Washington, D.C. (May 11, 2006).

<sup>111</sup> Articles of Agreement, *supra* note 67, Art. IX.

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

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

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

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

Nondisclosure of legal opinions outside the Bank is a matter of precedent. They are supposed to remain internal, although they have periodically been leaked externally. Under the Bank’s disclosure policy, the general counsel may not release legal opinions publicly without the board’s approval.<sup>117</sup> The only prior example of such external release was when former general counsel Shihata’s legal opinions and memorandums were published in a book.<sup>118</sup> In this case, Shihata had “sought a special authorization from the Bank’s Executive Directors.”<sup>119</sup> Yet the Bank’s disclosure policy does not prohibit the dissemination of opinions to staff members outside the Legal Department.<sup>120</sup>

My research points to another underlying reason, in addition to the opinion’s questionable legal status, for why the 2006 opinion was not circulated more widely across the Bank. Members of the Legal Department did not, or even refused to, circulate the opinion because of internal conflict within the department over value-laden issues like human rights. 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.

### III. THE BANK’S ORGANIZATIONAL CULTURE

If legal constraints insufficiently account for the marginality of human rights at the Bank, one must look inside the organization to 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 the 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 homogeneous cultures, but multiple subcultures that may operate in conflict. In the World Bank, the subcultures are based on such factors as employees’ disciplinary backgrounds and the regional unit in which they operate.

By analyzing the Bank’s culture as a political process of constructing and negotiating meanings that are continuously contested, this study not only uncovers the formal characteristics of the organization, including its management structure and operational policies.<sup>123</sup> It also analyzes the informal characteristics, such as power dynamics among the staff and the Bank’s

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

<sup>116</sup> *E.g.*, Oxfam International, at <http://www.ifwatchnet.org/?q=en/node/335>.

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

<sup>118</sup> SHIHATA, *supra* note 91.

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

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

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

<sup>122</sup> *Id.* at 27.

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

incentive system, which emphasizes lending targets rather than results on the ground. A brief description of the explicit and implicit goals and incentives relevant to the adoption of human rights follows.

### *Processes of Norm Socialization*

An organization has a sense of mission when a clearly defined direction and principal goals lie 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 its staff, but also favor the dominant subculture and lead it to resist new tasks that seem incompatible to it.<sup>125</sup> Such new tasks and programs may be given fewer resources or less prominence within the organization in comparison 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” both 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 the Bank’s 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 suitable for inclusion in the organization’s work program. Within the institution and in the minds of employees themselves, the core mission of the Bank and the activities that can be considered consistent with it have continually been debated.

Socialization conditions employees as to the unstated assumptions behind their work and the issues that are taboo, to be neither discussed nor worked on. Socialization refers to “the 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 the 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

<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*, FOREIGN AFF., Sept./Oct. 2001, at 22.

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

<sup>128</sup> JEFFREY PFEFFER, NEW DIRECTIONS FOR ORGANIZATION THEORY: PROBLEMS AND PROSPECTS 111 (1997).

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.

Some of the problems with this incentive system were 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 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 lent. In addition, finding a causal relationship between a manager's actions and a project's long-term effects is often difficult, since many external factors (e.g., the political conditions on the ground) also come into play. James Q. Wilson refers to bureaucracies like the Bank as "procedural organizations," where the way staff members "go about their jobs is more important than whether doing those jobs produces the desired outcomes."<sup>131</sup> That is, 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? To find an answer in terms of human rights, I focused on the Bank's safeguard policies, which are designed to avoid or mitigate any detrimental impacts of Bank activities and ensure that operations are financially, socially, and environmentally sound. While the Bank has not introduced a 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 resettlement, natural habitats, and the 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>

The Bank promotes its safeguard policies as indicative of its concern for environmental and social goals, but 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. Such policies may also create a perverse incentive: for instance, staff members may avoid projects that would benefit indigenous peoples (by redesigning projects to be undertaken in areas lacking an indigenous population) so that they would not be required to complete additional time-consuming and

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

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

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

<sup>132</sup> See OPERATIONAL MANUAL, *supra* note 1, Table A1, OP 4.0 (July 2005) (Environmental and Social Policies—Policy Objectives and Operational Principles).

<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).

costly tasks under the Bank's Indigenous Peoples Policy.<sup>134</sup> These tasks include the preparation of an indigenous peoples plan and the scheduling of public consultations.<sup>135</sup> Because task teams (the operational groups that prepare and supervise projects) function on limited budgets and a restricted timetable, they have an incentive to minimize the number of policies that they must comply with.<sup>136</sup> Policies may serve more as maximum ceilings than as minimum standards.

Project managers have discretion regarding how to apply safeguard policies and 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 to their projects. Yet they still face pragmatic dilemmas when trying to balance competing 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 with described a dilemma he faced in an African country with 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 unfairly locked up dissidents, even if it meant closing down its AIDS project, which was significantly helping its poor population? Employees have not been given guidance on balancing competing priorities like these and are not encouraged to discuss ethical issues.<sup>139</sup>

### *The "Knowledge Bank"*

Within the institution, knowledge is considered the currency of value, and having a doctorate 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—few, if any, universities have the depth and breadth of practical experience that is housed in the Bank. In the mid-1990s, then-president Wolfensohn began to define it as a "knowledge bank,"

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

<sup>135</sup> See OPERATIONAL MANUAL, *supra* note 1, OP 4.10, paras. 6, 10.

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

<sup>137</sup> Interview with official, *supra* note 129.

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

<sup>139</sup> Interview with official, Operations Evaluation Department, World Bank, 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 being "used to proselytize on behalf of Bank policy, often without taking a balanced view of the evidence, and without expressing appropriate skepticism." Abhijit Banerjee et al., *An Evaluation of World Bank Research, 1998–2005*, at 6 (Sept. 24, 2006), available at the Bank's Web site, <http://www.worldbank.org/>.



focused not only on lending money but also on the production and transmission of development-oriented ideas, analysis, and advice to client countries.<sup>141</sup> By doing so, “[e]xisting 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 became a complementary goal to the promotion of economic growth.<sup>143</sup> In-house research, at least in theory, could be integrated into the Bank’s everyday operations and made available to policy-makers in client countries; ideas could be put into practice.<sup>144</sup>

How does knowledge circulate within the Bank and under what conditions is it produced? The Bank’s management structure 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 subdivided into five thematic areas, including sustainable development, human development, and infrastructure.<sup>145</sup> The network units constitute the research arm of the Bank and supply 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 subdivided 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 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 responsible for the operations employee’s performance appraisal and promotion (although it does receive 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 greater involvement of the units in collaboration and teamwork. Knowledge sharing can enhance

<sup>141</sup> See James Wolfensohn, Annual Meetings Address (Oct. 1, 1996), available at the Bank’s Web site, *supra* note 140.

<sup>142</sup> THOMAS H. DAVENPORT & LAURENCE PRUSAK, *WORKING KNOWLEDGE: HOW ORGANIZATIONS MANAGE WHAT THEY KNOW* at x (paperback 2000) (1998).

<sup>143</sup> See Joseph E. Stiglitz, *The World Bank at the Millennium*, 109 *ECON. J.* F577, F590 (1999).

<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 some of the thematic areas, resulting in a reduction of network units from seven to five. The current network units are Financial and Private Sector Development, Human 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.*, July–Aug. 1990, at 138, 139.

<sup>147</sup> My account is based on a 2004 new staff orientation slide presentation, “The Matrix Environment and the World Bank.”

the quality of the Bank's assistance. For example, operations employees are expected to maintain strong affiliations with multiple thematic groups, which provide cross-country comparisons and best-practice examples on a particular issue like developing a transport sector strategy. An advantage of the 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, in theory, integrating geographical and functional groups can promote innovative ideas and cooperation among the staff.

In practice, however, the matrix system has grown unpopular among many employees, who question whether it achieves its stated objectives. Material from a staff orientation training session boasts that the matrix structure enables the staff to "balance potentially conflicting objectives." This seems to be a grave problem, as employees find it difficult and confusing to report to multiple bosses, particularly when the bosses assign conflicting tasks to them. Management scholars have reiterated this criticism. They have observed that "the proliferation of channels [in a matrix] create[s] 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—for example, 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 by the staff in the interest of promoting innovation. A senior official observed that while the matrix is supposed to create a marketplace of ideas competing for influence, he was "not really sure that it functions as a perfect market, that the best ideas are winning." He lamented the "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 by 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, so that their research is not always relevant to operational work.<sup>151</sup>

The network, which represents a community of professionals united by a thematic work program, serves as 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. Not surprisingly, the high priority of expert knowledge in the Bank's work program and management structure makes it an important factor in determining status among employees.

### *A Clash of Expertise*

Staff behavior is shaped by various factors, including employees' prior experience, political ideology, personality characteristics, and professional or disciplinary background.<sup>152</sup> I focus on this last factor because my interviews and observations point to it as one of the strongest sources

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

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

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

<sup>151</sup> Interview with official, *supra* note 134.

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

of identification among the staff, as well as a basis for sharp internal division. Having undergone specialized formal education, employees derive much of their working knowledge and skills from this professional background and are strongly influenced by professional norms. This pattern especially applies to an organization like the Bank, where employees are given considerable discretion under operational rules to pursue often vaguely defined goals. Furthermore, many employees perceive their disciplinary background as a key contributing factor to 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 social scientists who are not economists grew steadily from about a dozen in the 1970s and early 1980s, to over 200 in 1998, and to as many as 446 in 2002.<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 staff members with particular expertise 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 understanding and collaboration. In an analysis of policy debates at the Bank, a few employees observed: "In DEC [the development economics 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 specific issues, such as human rights. One of the sharpest divisions is between economists and those who are not economists, particularly lawyers. Within the Bank, forms of expert knowledge are valued differently, and economic knowledge ranks 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 influence way beyond their numbers. Economists fill the majority of senior management positions (although they do not make up the majority of the staff), and their way of thinking prevails within the institution, including how they define development success. Moreover, they

<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*, at 18 (World Bank Paper No. 56, Mar. 2004); WORLD BANK, *AN OED REVIEW OF SOCIAL DEVELOPMENT IN BANK ACTIVITIES* 8 (Feb. 2004). The 2002 estimate takes into account both staff and short-term consultants. It includes 175 social development specialists, 22 gender specialists, and 249 additional Bank staff members who hold graduate degrees in the noneconomic social sciences.

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

generally hold the prestigious country director positions, which bear responsibility for dialogue with country ministers and budget allocation to the sectoral units at the headquarters. Importantly, however, the Bank employs economists of different persuasions, including neoclassical and institutionalist, who also contend for authority.

Economists have their own prestigious research group, the development economics group, which hires top economists and recent doctorate holders, mostly from U.S. and British universities. No effort is made to recruit top members of other professions comparable to the recruitment of economists into DEC, and no serious career track like the one for economists exists for other professionals.<sup>156</sup> DEC economists produce high-quality academic papers that influence the Bank's 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 are often not afforded an opportunity to research topics of their own choosing, the DEC serves as an important platform for transmitting 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>

Experts in other disciplines often feel obliged to translate their writing and speech into economists' language and to quantify their observations to gain legitimacy for their ideas. Although 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 members with other backgrounds may even call themselves economists 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 between different disciplinary perspectives and has created a sense of inferiority among some who are not economists.<sup>161</sup>

*The status of lawyers and the Legal Department.* Lawyers do not typically become intellectual leaders among the staff or key players in policymaking and agenda setting, with the occasional exception of general counsels. The great majority of lawyers at the Bank serve in the Legal Department, which is dominated by transactional specialists who work on loan agreements

<sup>156</sup> One exception is the Young Professionals Program, which annually recruits twenty to forty 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 academics.

<sup>158</sup> Interview with official, *supra* note 84.

<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, *supra* note 137.

and advise the staff on operational policies and law-related issues.<sup>162</sup> Aside from a small number 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 designed to foster intellectual dialogue on legal topics (for example, a two-day legal forum in December 2005 and a seminar series with academic guests), lawyers are mainly expected to be skilled in practitioner-based knowledge.<sup>163</sup>

The reputation of the Bank's Legal Department has historically stood at a higher level 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, lawyers in the Legal Department have been given an opportunity to go beyond the traditional duties listed above and at times have served as policy-makers, innovators, and institution builders.<sup>167</sup> For example, during Shihata's tenure the Legal Department played a key role in designing the Inspection Panel<sup>168</sup> and launching both the Multilateral Investment Guarantee Agency and the Global Environment Facility.<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 onto the Bank's agenda.<sup>170</sup> Yet the general counsels after Shihata, as well as the Legal Departments that they supervised, have been relegated to a

<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 LAW. 1443, 1457 (2001).

<sup>163</sup> In 2004 then-general counsel 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 possible permanent employment thereafter.

<sup>164</sup> The shifting status of the Bank's Legal Department is not unusual among international organizations. For instance, the Legal Department of the International Monetary Fund (IMF) played an influential role in the institution under General Counsel Joseph Gold from 1960 to 1979. Following Gold's retirement, however, 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 after 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. 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 an International Financial Institution*, 17 KAN. J.L. & PUB. POL'Y 254, 270–71 (2008).

<sup>165</sup> The Bank's Articles of Agreement state: "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 67, Art. V, §5.

<sup>166</sup> William E. Holder, *The International Monetary Fund: A Legal Perspective*, 91 ASIL PROC. 201, 207 (1997). Former 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*, *id.* at 214, 221.

<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 ASIL PROC. 199, 200 (1997) (remarks by Andrés Rigo).

weaker position in Bank policymaking and institution building. Moreover, since Shihata's departure, there has been a high turnover of general counsels, all of whom have served less than five years as compared with Shihata's fifteen.

The Legal Department's increasingly weak leadership in Bank decision making following the Shihata period made it difficult for lawyers to assert substantial influence 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, they have engaged in limited open dialogue with 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 of the Bank's staff, but the practice ended when lawyers were feeling challenged by nonlegal officials in operations, who had criticized some of their legal interpretations.<sup>172</sup>

Finally, as with any department or organization, internal conflict can be found in the Legal Department. Some lawyers 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 unified view within the department on the Articles of Agreement. It was drafted by a small group of lawyers led by Dafino and was circulated within the department for comment. While no strong opposition was voiced, some lawyers preferred a more cautious approach and later questioned its status as an official legal opinion.

Even after the opinion was released, resistance surfaced from within the department to openly discussing and publicizing it. An informal group of lawyers approached one of their superiors about ways to foster open dialogue inside the department on the opinion's practical implications. The lawyers considered this an opportune 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 at that moment would have been too radical, since it might have appeared to challenge the authority of the Legal Department. Instead, they 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 senior official in question rejected such an event because he viewed the subject as "too controversial."<sup>173</sup> This resistance demonstrates a cautious attitude among members of the department and an unwillingness by some lawyers to promote discussion of new ideas. Thus, internal conflict inhibited the Legal Department from presenting a united position on human rights and from leading the staff in an open discussion in light of the recent opinion.

#### 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 advance a human

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

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

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

rights agenda at the Bank stemmed largely from institutional obstacles, including internal conflict over how to interpret and implement human rights norms. In this part, I show 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 to achieving norm internalization in bureaucracies. In the context of the Bank, interpretive gaps refer to differences between employees' interpretations of human rights, including how the employees justify the relevance of human rights to the Bank's mission and conceptualize their practical role in the Bank's operations.

Of course, interpretive gaps are only one obstacle to achieving norm internalization. Other important factors include an appropriate staff incentive system to motivate desired behavior, leadership by senior and middle management, and the investment of sufficient resources to institute policy changes effectively. Particularly for the Bank, however, the clash between interpretive frames is an underemphasized factor that in my view has hindered the development of a human rights consciousness among the staff.

### *Competing Interpretive Frames*

The distinct interpretive frames held by professional subcultures within the Bank shape their understanding of issues and their preferred strategies for implementation.<sup>175</sup> Members of subcultures "routinely take action on the basis of collective understandings unique to the group."<sup>176</sup> Their normative commitments and worldviews 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 follow a functionalist rationale for promoting human rights, as a means to an end. They measure the value of human rights according to whether they enhance development effectiveness and make good business sense. The two interpretive frames roughly correspond to distinct disciplinary ways of thinking.<sup>177</sup>

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

<sup>174</sup> See Barnett & Finnemore, *Politics, Power*, *supra* note 17, at 719.

<sup>175</sup> See Jennifer A. 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 Maanen & Stephen R. Barley, *Cultural Organization: Fragments of a Theory*, in *ORGANIZATIONAL CULTURE* 31, 38 (Peter J. Frost et al. eds., 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.

<sup>178</sup> Universal Declaration of Human Rights, GA Res. 217A, UN GAOR, 3d Sess., Resolutions, at 71, UN Doc. A/810 (1948).

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” the 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 defines 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 noneconomist social scientists, such as anthropologists and sociologists. One manifestation of this interpretive frame is the Bank’s 1999 report *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, proponents of this approach often mention trade-offs that may have to be made when implementing human rights, especially in countries with limited resources. They set highest priority on the fulfillment of rights that achieve poverty reduction and economic growth. Because many economists typically adhere to this interpretive frame, it carries a lot of weight in the institution.

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

Following General Counsel Dañino’s resignation in January 2006, internal human rights advocates were left with a potentially influential legal opinion but no one to champion it. Although members of the Legal Department disagreed on its status, hesitated to circulate it throughout the rest of the Bank, and were reluctant in many cases to discuss it openly even within the department, a few of their number continued their efforts to push the human rights agenda forward.

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

<sup>179</sup> Interviews with officials, Legal Department, World Bank, 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 WORLD BANK, WORLD DEVELOPMENT REPORT 2006).

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

<sup>182</sup> Then-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 to make the arrangements 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.



the Nordic countries presented a working paper to then-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 Wolfowitz and became part of a new Nordic-and-Baltic-sponsored initiative.

As its first order of business, the initiative proposed creating the Justice and Human Rights Trust Fund, whose purpose was “[t]o provide effective support . . . to include human rights considerations in the analytical and operational activities of the World Bank Group.”<sup>185</sup> Its activities were to include empirical research, country case studies, and outreach across the Bank through human rights education and the 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.

Internal politics and a collapse in leadership after the resignation of Wolfowitz prevented the launching of the Justice and Human Rights Trust Fund until 2009, when it was renamed the Nordic Trust Fund under the management of the Bank’s Operations Policy and Country Services network.<sup>186</sup> The deliberations that I witnessed in 2006 on the objectives and activities of the trust fund suggest possible ways to operationalize human rights norms at the Bank. While designing the trust fund’s plan of action, the lawyers faced resistance and had to revise their approach to adapt it to the Bank’s organizational culture. Their recent efforts address (or, at times, sidestep) several institutional obstacles that had plagued prior efforts to introduce human rights. These include lack of a pragmatic orientation, failure to conduct outreach to the staff in headquarters and the country offices, lack of resources, and fear by the Board of Executive Directors and senior management that adopting human rights was too controversial and beyond the Bank’s mandate.

*Framing human rights for economists.* The lawyers who helped draft the 2006 legal opinion recognized the interpretive gap between their vision of human rights and that of the economists who dominated 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 incorporated some 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? Many staff members also perceived human rights norms as overly rigid, particularly when defined with respect to international legal instruments, leaving little room for the trade-offs that are often necessary in development practice.

As the lawyers considered how to design the new trust fund, they were torn over whether an instrumental approach would dilute the intrinsic meaning of human rights. They realized that they needed a dual approach that would adhere to both a legal interpretation and the instrumental frame. Yet they worried about the risk of taking an overly technical approach to rights.

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

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

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

<sup>186</sup> See World Bank, The Nordic Trust Fund, at <http://go.worldbank.org/PKPTI6FU40>.

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>187</sup> It is an effort to demystify the concept of human rights and build a constituency among the staff while promoting an empirical approach that uses indicators to measure human rights performance.

According to a senior Bank economist, “We will not make inroads in the Bank if [human rights] language is not made into economic language . . . .”<sup>188</sup> This statement suggests the importance of translating human rights into the dominant discourse of economics. The decision to economize human rights shows that the lawyers recognized that past attempts to introduce the agenda failed in part because they neglected to build a constituency at the Bank. The following statement by another Bank economist emphasizes the value of empirical evidence in furthering agendas within the institution like dealing with corruption in borrower countries:

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 all right for us to work on this.” So one obstacle would be to . . . articulate rights issues in the way that economists could understand.<sup>189</sup>

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>190</sup> In preparation for the trust fund, the Norwegian government financed a workshop on May 15–16, 2006. The topic was developing indicators for “measuring justice” so as to evaluate the performance of a country’s justice sector.<sup>191</sup> But the workshop also discussed the Legal Department’s project on human rights indicators, which had begun in 2005 and was developed in collaboration with the Danish Institute for Human Rights. As part of this empirical focus, the lawyers 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 with existing practices.

*Operating “under the radar”: pursuing pilot projects rather than a policy.* As a Bank official explained:

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 [through the institution]. It’s almost like practice precedes policy in this place. . . . Back in the 1990s,

<sup>187</sup> See Bronwen Morgan, *The Economisation of Politics: Metaregulation as a Form of Nonjudicial Legality*, 12 SOC. & LEGAL STUD. 489 (2003).

<sup>188</sup> Daniel Kaufmann, Statement, *in* Conference on the Establishment of a Justice and Human Rights Trust Fund (JHRTF) in the World Bank, Proceedings 11 (Copenhagen, June 26–27, 2006) [hereinafter JHRTF Conference] (on file with author).

<sup>189</sup> Interview with official, Development Research Group, World Bank, Washington, D.C. (Mar. 14, 2006).

<sup>190</sup> World Bank Legal Department, *The Proposed Nordic Trust Fund & Emerging Human Rights Practice in the Bank* (Mar. 2006) (emphasis omitted).

<sup>191</sup> There were about thirty participants in the workshop, including representatives from the World Bank, officials in the Nordic and Baltic Foreign Ministries, and academic experts in human rights from four continents.

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>192</sup>

After years of internal and external advocacy for an institutional policy on human rights, internal advocates began moving toward a country-level approach. The lawyers who designed the trust fund decided that the Bank’s country staff should take the lead on any human rights initiative, with support from the donor community. They considered regional and national ownership critical to a successful human rights agenda. They advanced as one reason for this tactic the significant decision-making role that country directors played 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>193</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>194</sup> Another project proposed that human rights be incorporated into the poverty-reduction strategy papers of selected governments—those that requested assistance in integrating human rights concerns into 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>195</sup> The team of lawyers behind the recent approach made a strategic decision to focus on pilot projects rather than to advocate for a stand-alone operational policy. One reason for this decision was the previously discussed staff incentive system, in which internal promotions are based on lending targets rather than compliance with safeguard policies. Staff members that I interviewed expressed a general resentment of 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>196</sup>

Another reason was the lawyers’ recognition that the sharp division of the board over human rights would prevent them from getting it to approve a new policy. As a result, they chose to pursue an incremental strategy of working under the board’s radar screen.

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.

<sup>192</sup> Interview with official, *supra* note 84.

<sup>193</sup> Interview with official, Operations Evaluation Department, World Bank, Washington, D.C. (Apr. 5, 2006).

<sup>194</sup> Stockholm Seminar on Human Rights Dialogues and Rights Principles in Development Cooperation at the Country-Level, Summary of Discussions (June 19–20, 2006) (on file with author).

<sup>195</sup> Joseph K. Ingram [then–World Bank special representative to the United Nations and the World Trade Organization], Statement, First Session of the Human Rights Council in Geneva, Switzerland (June 21, 2006) (on file with author).

<sup>196</sup> Interview with official, Social Development Department, Latin America and the Caribbean Region, World Bank, Washington, D.C. (Mar. 15, 2006).

Prior mainstreaming occurred at the Bank when environmental concerns were incorporated into its programming through adoption of an operational policy on environmental assessment.<sup>197</sup> Yet to introduce a more sensitive and controversial issue like human rights, internal advocates espoused a strategy of implicit management support and avoidance of the board. A senior adviser to an executive director acknowledged the value of an incremental strategy for human rights, observing 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 agenda through stealth.”<sup>198</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>199</sup>

## V. CONCLUSION

Analyzing organizational culture contributes usefully to understanding organizational change and predicting how IOs will 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>200</sup> There is no universal recipe for bringing about internalization in IOs. Rather, an institutional fit for norms must be found. They must be framed to be adaptable 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. Internal advocates attempted to appeal to the dominant subculture of economists by framing human rights as quantifiable and instrumentally valuable to achieving the economic development goals of the Bank. They called for pursuing an 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>201</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’s work. 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 in relation to economists and other professional groups. A radical change of this nature, however, would probably 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 doing so forces employees into a struggle between principles and pragmatism—that is, it creates a tension between normative, intangible values and goals, and practical ways to solve problems (which may make it necessary to reconcile 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

<sup>197</sup> OPERATIONAL MANUAL, *supra* note 1, OP 4.01 (Jan. 1999) (Environmental Assessment).

<sup>198</sup> Interview with official, Board of Executive Directors, World Bank, Washington, D.C. (July 24, 2006).

<sup>199</sup> Sveinn Aass, Introductory Remarks, *in* JHRTF Conference, *supra* note 188, at 8.

<sup>200</sup> MERRY, *supra* note 12, at 39.

<sup>201</sup> See DEV. OUTREACH, *supra* note 5; FAQ, “Human Rights,” at the Bank’s Web site, *supra* note 140.

may perceive potential costs in trying to render seemingly incommensurable values commensurate.

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. Therefore, injecting human rights too far into the existing power structure involves risks. As an anthropologist has observed, if human rights “are translated so fully that they blend into existing power relationships completely, they lose their potential for social change.”<sup>202</sup> This co-option 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>203</sup> At the same time, they need to resonate with local cultural understandings if they are to appear legitimate and appealing, and thus become part of local rights consciousness.<sup>204</sup>

This conundrum raises important questions: Can human rights be so extensively vernacularized that they lose their essential core, or even contradict their fundamental meanings? Must human rights remain connected to a legal regime (and be linked to state obligations deriving from international law) to continue to be considered “human rights” and not another concept like “empowerment”? Ethnographic studies can illuminate the process of internalizing norms within international institutions and thus help determine how to resolve such issues and devise an appropriate strategy for organizational change.

<sup>202</sup> MERRY, *supra* note 12, at 135–36.

<sup>203</sup> *Id.* at 136, 222.

<sup>204</sup> *Id.* at 137, 222.