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Rethinking the International Anti-Corruption Agenda: Civil Society, Human Rights and Democracy

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ARTICLES

RETHINKING THE INTERNATIONAL ANTI-CORRUPTION AGENDA: CIVIL SOCIETY, HUMAN RIGHTS AND DEMOCRACY*

JOHN M. ACKERMAN**

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I. INTRODUCTION

Scholars and reformers should resist the temptation to encapsulate the problem of corruption in the “developing” world as strictly one of bureaucratic breakdown or of decay in the rule of law. Such approaches limit policy options to a series of superficial choices

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which normally do not have lasting effects. The first step towards building a long-term solution to corruption is to understand acts of corruption as symptoms of a deeper problem in the relationship between state and society in general and in the functioning of democracy in particular.

The objective of this article is to insert the discussion of anti-corruption policies within broader debates on accountability, democracy, and human rights. In Part II, this article begins by offering a new, expansive definition of accountability, which breaks with minimalist, bureaucratic versions of the concept. It also address the failings of elections as pro-accountability mechanisms and derives from this discussion the need for the development of policy strategies designed to directly attack corruption as such.

In Part III, this article then explores the diversity of pro-accountability strategies available. Specifically, it examines the costs and benefits of what I call “Weberian” and “marketization” strategies, linked respectively to the “old” and “new” public management approaches. It also explores innovative recent strategies based on the creation of specialized independent agencies and the development of “social accountability” initiatives.

In Part IV, this article defends the importance of society-based approaches as a means to reinvigorate anti-corruption policy. It examines the various dimensions along which such approaches can vary and points out that not all civil society approaches are equally effective. Many society-based initiatives can easily get trapped in the same bureaucratic and legalistic traps as more traditional approaches. This article argues that the best way to avoid this slippage is to ground society-based strategies in a “human rights approach” to development. Finally, it concludes with some general thoughts on the broader challenges of anti-corruption strategies and their relationship to the advancement of democracy and human rights.

II. CONSTRUCTING ACCOUNTABILITY

It is generally accepted that the best way to combat corruption and thereby guarantee the public interest nature of the state is by strengthening government accountability.¹ But what exactly does this

1. ROBERT D. BEHN, *RETHINKING DEMOCRATIC ACCOUNTABILITY* 2 (2001)

concept mean? In its most literal sense, the term “account-ability” means little more than the “ability” or the “possibility” that someone or something can be “accounted for” or “counted up.”² Under this minimalist understanding, all that the accountability of government would require is the most basic form of bookkeeping (for example, this many miles of highway were built last year, this much money was spent, this number of students attended public schools, etc.). It might also require the existence of someone who could possibly view the accounts if he or she so wished, a principle of “minimal exposure” if you will, but not much else. Transparency, punishment, performance, corruption, external surveillance, the public interest, power, and principal-agent relationships are all left out of this basic understanding of the concept of accountability.

Such a definition is clearly insufficient. Basic bookkeeping plus minimal exposure are not powerful enough levers to generate positive feedback cycles of expanding accountability. If my colleague at the Public Works Ministry knows that I built 300 miles of highway last year, would this in itself promote good governance? What if my 300 miles were made out of below standard concrete? What if the budget had called for me to build 1000 miles? What if my colleague is actually my subordinate whose job depends on his maintaining favor with me? Clearly we need a much more robust definition of accountability for this term to do the work we expect of it.

The conceptual task, therefore, is to build a workable definition of accountability that has sufficient leverage and clarity so as to

(quoting Mark Moore of Harvard University and Margaret Gates, a consultant for nonprofit agencies, who state that “corruption, arbitrariness, and inefficiency . . . can be exorcized through mechanisms of accountability”); Mark Bovens, *Public Accountability*, in *THE OXFORD HANDBOOK OF PUBLIC MANAGEMENT* 182 (Ewan Ferlie et al. eds., 2007) (conveying that public accountability enhances the integrity of public governance providing safeguards against corruption and other forms of inappropriate behavior); Sanjeev Khagram et al., *Overview and Synthesis: The Political Economy of Fiscal Transparency, Participation, and Accountability Around the World*, in *OPEN BUDGETS: THE POLITICAL ECONOMY OF FISCAL TRANSPARENCY, PARTICIPATION, AND ACCOUNTABILITY* 1, 3 (Sanjeev Khagram et al. eds., 2013) (maintaining that increased fiscal transparency and participation lead to improved accountability resulting in reduced corruption).

2. See BEHN, *supra* note 1, at 4; *Accountability Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/accountability?show=0&t=1382219724> (last visited Oct. 19, 2013).

irrefutably push towards good government and the rule of law.³ But where should our conceptual construction project begin and where should it end? The first element that most authors include is punishment or sanction. As Robert Behn has argued, “Those whom we want to hold accountable have a clear understanding of what accountability means: Accountability means punishment.”⁴ Andreas Schedler also incorporates this element into his definition of accountability, including both *answerability*, or “the obligation of public officials to inform about and to explain what they are doing”⁵ and *enforcement*, or “the capacity of accounting agencies to impose sanctions on powerholders who have violated their public duties.”⁶

As we can see from this second definition, once we start building in new elements to the concept, it is very difficult to resist the temptation to push further. For instance, Schedler’s definition adds in the key concepts of “information,” “explanation,” and “accounting agencies.”⁷ Here the author encourages us to go beyond the relatively passive requirement of minimal exposure to include a more proactive

3. See Steven Aftergood, *An Inquiry into the Dynamics of Government Secrecy*, 48 HARV. C.R.-C.L.L. REV. 511, 511 (2013) (referring to President Obama’s 2009 memorandum committing his administration to “creating an unprecedented level of openness in Government” as an essential quality of good government); Mark Fenster, *The Transparency Fix: Advocating Legal Rights and Their Alternatives in the Pursuit of a Visible State*, 73 U. PITT. L. REV. 443, n.4 (2012) (commenting that the view that transparency is a subset of good government dates back to the Progressive Era, when a social and political movement led the charge for reforms to eradicate bureaucratic corruption, especially at the municipal level); see also Dr. Amichai Magen, *The Rule of Law and Its Promotion Abroad: Three Problems of Scope*, 45 STAN. J. INT’L L. 51, 58–59 (2009) (explaining that “the rule of law plays different roles in different types, or phases, of domestic democratic development—from post-conflict state-building to the opening of private spheres in autocratic regimes, and from ensuring free and fair electoral transitions to the evolution of the institutional, regulatory, and normative elements necessary for minimalist, illiberal democracies to mature into effective, liberal ones”).

4. BEHN, *supra* note 1, at 3.

5. Andreas Schedler, *Conceptualizing Accountability*, in THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 14 (Andreas Schedler et al. eds., 1999).

6. See *id.*

7. See *id.* at 15 (asserting that accountability involves the right to receive information and obligation to release all necessary details, and establishes a vocal relationship between accountable and accounting actors).

opening up on the part of public officials.⁸ It is not enough for bureaucrats to leave their ledgers open on their desks so that passersby can catch a glimpse of their reports. They must actively inform and explain what they are doing and perhaps even justify why in comprehensible language. In addition, Schedler's reference to accounting agencies introduces the element of the participation of an external actor.⁹ For the author, it is not sufficient for the members of a government agency to be in full communication with each other; for accountability to exist there must also be a vigilant eye that gazes in from the outside.¹⁰

Richard Mulgan's definition of accountability emphasizes precisely this external nature of the accountability relationship. He argues that accountability includes three central elements: 1) "It is *external*, in that the account is given to some other person or body outside the person or body being held accountable";¹¹ 2) "It involves *social interaction and exchange*, in that one side, that calling for the account, seeks answers and rectification while the other side, that being held accountable, responds and accepts sanctions";¹² 3) "It implies *rights of authority*, in that those calling for an account are asserting rights of superior authority over those who are accountable."¹³ This third element of Mulgan's definition introduces a crucial new element to our discussion: "superior authority."¹⁴ According to Mulgan, accountability necessarily implies power.¹⁵ Only when the observer stands above the observed can we speak of accountability. Indeed, following this line of thinking, other authors

8. *See id.* (positing that key to the accountability of government and public officials is informing the public and explaining what they are doing).

9. *Id.* at 14, 18, 21.

10. *Id.* at 16 (referring to Taiwan and Nigeria's need for independent authorities to prosecute and impose sanctions on offending officials that would otherwise escape investigation and prosecution because of their close relationship with the ruling party).

11. Richard Mulgan, "Accountability": *An Ever-Expanding Concept?*, 78 PUB. ADMIN., no. 3, 2000, at 555.

12. *Id.*

13. *Id.*

14. "Superior authority" includes the right "to demand answers and to impose sanctions" from "those who are accountable." *Id.*

15. *See id.* at 563 (maintaining that institutions of accountability, such as legislatures, statutory authorities, and the courts, exist to control or constrain government power).

argue that accountability can only exist as an element of a “principal-agent relationship.”¹⁶ Might it be that we can only speak of accountability when the actor being held accountable is directly at the service of the actor calling for the account?

Although externality and superior authority are indeed often important elements of accountability relationships, they are by no means necessary for accountability to exist. “Internal” accountability relationships are widespread, for instance within a sports team, a government agency, or even a single individual.¹⁷ The coach of a team evaluates players’ performance and rewards or punishes them depending on the results, but so does each one of the players. External audit agencies often hold government agencies accountable for their actions, but so do fellow colleagues within a single ministry. In the extreme case, can’t an individual hold herself accountable for her own actions by, for instance, punishing herself if she fails to live up to her own standards of work performance?

In addition, “horizontal” accountability relationships, between two actors of equal authority, are common in all areas of life and politics.¹⁸ Can’t one legislator hold another legislator accountable for whether or not she upholds the party platform during her floor votes? How about the relationship between an Ombudsman and an executive agency or between two twin brothers? We should not confuse sanctioning power with superior authority. The fact that I can punish you does not necessarily mean that I am above you. My punishment might be more effective if I am indeed in a superior

16. See Erika Moreno et al., *The Accountability Deficit in Latin America*, in *DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA* 79, 83 (Scott Mainwaring & Christopher Welna eds., 2003) (contrasting the agency relationship, where the principal has discretionary authority over the agent, with accountability, where the authority runs from agent to principal).

17. See BEHN, *supra* note 1, at 1 (indicating that within the government exist auditors, inspectors general, and independent counsel whose sole tasks are holding other government officials accountable); Mulgan, *supra* note 11, at 556 (referring to accountability as including an internal sense of responsibility and concern for the public interest by public servants); Bovens, *Public Accountability*, *supra* note 1, at 184 (“[T]he actor, or accountor, can be either an individual or an agency.”).

18. See Mark Bovens, *Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism*, 33 *W. EUR. POL.* 946, 956 (2010) (describing focus groups, citizen panels, and independent external assessment of the activities of public agencies as social forms of accountability that operate in a horizontal fashion).

position, but I can still observe, evaluate, and punish if we are equals.¹⁹

Independently of *how* public servants are held accountable, what can they be held accountable *for*? Here there are two broad schools of thought. One wave equates accountability with honesty and rule following.²⁰ Public servants should be evaluated, rewarded, and punished based on the extent to which they desist from corrupt and illegal practices.²¹ This is an essentially “negative” and process-based view of accountability insofar as it requires public servants only to refrain from certain activities. A second wave defends the idea that accountability also implies the affirmative task of effective performance and pro-active decision-making.²² This perspective points out that it is not very helpful for a public servant to follow the rules and not accept bribes if her actions and decisions do not lead to effective policy outcomes.²³

19. This last argument should not, of course, be interpreted as an attempt to weaken the strength or the relevance of those accountability relationships which are indeed grounded in power relationships. For instance, according to classic democratic theory, governments are accountable to the people because the citizens are the original power holders who delegate authority temporarily, and over certain specific issues, to the government. *See* Mulgan, *supra* note 11, at 555–56 (looking to how accountability mechanisms function in a democratic state). This understanding of the structure of democracy should ground all discussions of accountability. Nevertheless, when we limit our understanding exclusively to this framework we risk missing a great variety of other relationships that can be equally important for strengthening government accountability.

20. *See* Melanie Manion, *Excerpts from Corruption by Design: Building Clean Government in Mainland China and Hong Kong*, in 4 PUBLIC SECTOR CORRUPTION 29, 30–31 (Michael Johnston ed., 2010) (discussing mechanisms of clean government as including clean officials who adhere to and enforce the rules associated with anti-corruption).

21. Peter N. Grabosky, *Citizen Co-Production and Corruption Control*, in 4 PUBLIC SECTOR CORRUPTION 49, 53 (Michael Johnston ed., 2010) (explaining how some nations’ independent inspection organizations warn officials about violations, may impose reprimands, order an officer’s dismissal, and recover damages arising from official misfeasance).

22. *See* Samuel Paul, *Accountability in Public Services: Exit, Voice and Control*, 20 WORLD DEV. 1047, 1055–56 (1992) (describing consulting participants in public hearings or advisory panels as one possible method for improved decision-making); *see also* BEHN, *supra* note 1, at 9–10 (stating that the goal of government is to “accomplish public purposes” and therefore, what it actually accomplishes is important in the accountability context).

23. *See* BEHN, *supra* note 1, at 10 (conveying that what are important are the consequences of government action, such as change in policies, programs, and

The *temporal* dimension is another important aspect of accountability.²⁴ Specifically, are there such things as “*ex-ante*” or “simultaneous” accountability, or is all accountability necessarily *ex-post*? In the strictest sense, accountability can only be exercised after the fact. Since accountability involves the evaluation of the behavior of public servants, it is senseless to speak of evaluating something that does not already exist. Nevertheless, this truth should not lead us to conclude that public servants can only be held accountable for *completed* projects or “results.” For instance, an agent of accountability does not need to wait until the highway is already built to ask for information and explanations and evaluate the answers given. How was the strategic plan developed? How are the workers organized at the construction site? How do the engineers respond to unexpected circumstances? For the purpose of conceptual clarity, we can use the term “*ex-post*” accountability to refer to the evaluation of *completed* projects, the term “*ex-ante*” accountability to refer to the evaluation of plans of action and the term “simultaneous” accountability to refer to the evaluation of ongoing government initiatives.

For those who might have doubts about the existence of *ex-ante* accountability mechanisms, the Administrative Procedure Act and National Environmental Policy Act in the United States are excellent examples.²⁵ Before agencies can put new regulations into effect they are required to give complete information as to their content, justify them, and even defend them in court if questioned by civil society groups or individuals with legal standing.²⁶ Such accountability mechanisms can be criticized for unnecessarily slowing down

public services).

24. Ernesto Isunza Vera, *Para Analizar Los Procesos De Democratización: Interfaces Socioestatales, Proyectos Políticos y Rendición de Cuentas*, in DEMOCRATIZACIÓN, RENDICIÓN DE CUENTAS Y SOCIEDAD CIVIL: PARTICIPACIÓN CIUDADANA Y CONTROL SOCIAL 265, 283–87 (Ernesto Isunza Vera & Alberto J. Olvera coords., 2006).

25. See Administrative Procedure Act, 5 U.S.C. § 702 (1966) (“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof.”); National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370 (2000) (requiring federal agencies to consider the environmental impacts of their activities before implementing proposals).

26. See Administrative Procedure Act, 5 U.S.C. § 702 (1966); National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370 (2000).

government action, as agencies spend significant time and resources justifying their plans and responding to criticisms, but this is a very different point from affirming that such forms are not accountability relationships at all.²⁷

An additional central element of the accountability equation is to understand that it is a *process* and not a *state*. To “be accountable” is to be in motion, not simply sitting in an office “open to criticism.” To “be accountable” is to work with society and accounting agencies to improve government honesty and performance instead of doing one’s best to hide from scrutiny.²⁸ The pro-active behavior that accountability demands requires dialogue, explanation, and justification.²⁹

One other important distinction present in the literature is that between accountability and *responsiveness*.³⁰ Some scholars argue that there is a radical split between these two concepts, that responding to the demands of citizens is very different from being accountable to them.³¹ For instance, Bernard Manin, Adam Przeworski, and Susan Stokes have claimed that “a government is ‘responsive’ if it adopts policies that are signaled as preferred by citizens,”³² while “governments are ‘accountable’ if citizens can

27. See SUSAN ROSE-ACKERMAN, *CONTROLLING ENVIRONMENTAL POLICY: THE LIMITS OF PUBLIC LAW IN GERMANY AND THE UNITED STATES* 127 (1995) (“Although judicial review is criticized in the United States as time-consuming and ineffective . . . it has the advantage of explicitly requiring that political and policy decisions of agencies should be accountable to citizens.”).

28. *Id.* at 126–27 (recommending other nations look to the United States’ method of requiring public notice, a rulemaking process that includes participation by public participants, and a judicial-review clause of the American Administrative Procedure Act in adopting regulations as a way to maintain legitimacy).

29. This, of course, does not mean that different sorts of pro-activity are equal from a moral or a political point of view. For instance, it is quite different for a public servant to pro-actively inform and dialogue with her superior, an international agency, a large corporation, or a civil society group. Although each would consolidate her accountability to the respective actor, our evaluation of each type of accountability will depend on the importance that we place on the respective “agent of accountability.”

30. Bernard Manin et al., *Introduction* to *DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION* 1, 8–10 (Adam Przeworski et al. eds., 1999).

31. *Id.* (stating that “responsiveness” deals with the relationship between signals and policies while “accountability” deals with the relationship between outcomes and sanctions).

32. *Id.* at 9.

discern representative from unrepresentative governments and can sanction them appropriately, retaining in office those incumbents who perform well and ousting from office those who do not.”³³ The problem with such a radical distinction is that it conceptualizes government as an entity that citizens “alienate” or throw up into the air at each election and then try to discipline or control at the next.³⁴ From this perspective, accountability can only be exercised externally and *ex-post*. Citizens are only empowered to sanction the government after it has “performed” by changing their vote during periodic elections.³⁵

In contrast, I propose envisioning government as a part of the polity itself, not an external actor that the citizens lift up above them and then try to control after the fact. This alternative conceptualization of government envisions a constant give and take between state and society and the exercise of accountability both before and during the exercise of public authority.³⁶ Here “responsiveness” and “accountability” are still two different concepts, the former referring to the motivation for an action or decision and the latter referring to the quality of the action or decision itself. Nevertheless, they are inextricably linked since a government that opens itself up fully to scrutiny and sanction before, during, and after it acts will usually also take very seriously the interests and demands of citizens.³⁷

The above discussion brings us to settle on a definition of accountability that includes pro-active behaviors like information and justification, the evaluation of performance in addition to rule-following, the calling to account before, during, and after decisions

33. *Id.* at 10.

34. See Schedler, *supra* note 5, at 18 (observing that the idea of electoral accountability is characterized by punishing past behavior as voters do when holding politicians accountable at periodic elections).

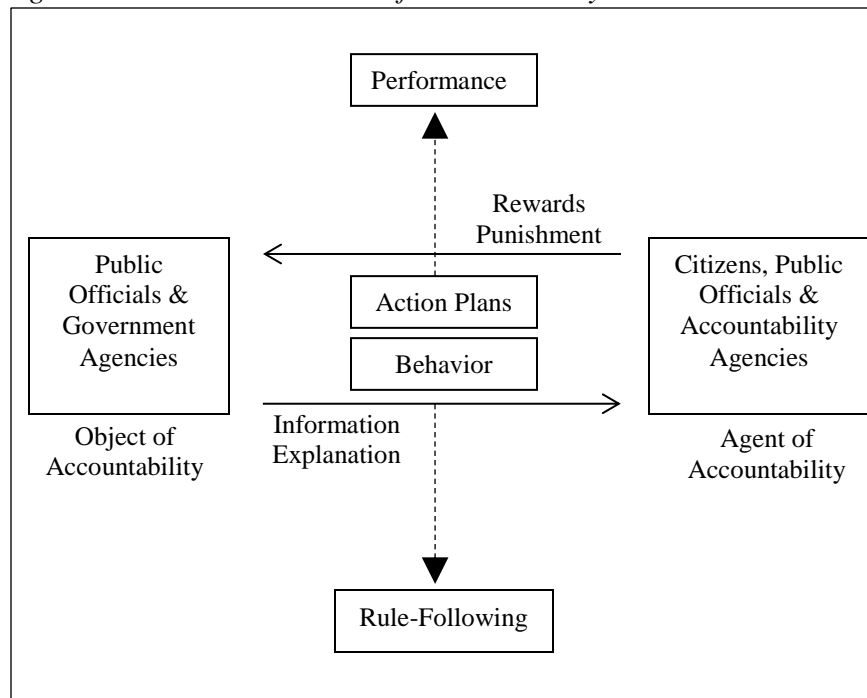
35. See Manin et al., *supra* note 30, at 10.

36. John Ackerman, *Co-Governance for Accountability: Beyond “Exit” and “Voice”*, 32 *WORLD DEV.* 447, 455 (2004) [hereinafter Ackerman, *Co-Governance for Accountability*] (referring to the success of past reforms as depending on the ability of the government to involve social actors from the beginning of the regulatory design phase).

37. See *id.* at 451 (describing the success of Porto Alegre, Brazil’s accountability arrangement as encouraging active participation by any adult to attend, speak, advise, and vote in the assemblies).

are made, and, of course, the application of sanctions (both positive and negative).³⁸ We can therefore define accountability as a *pro-active process by which public officials inform about and justify their plans of action, their behavior, and results, and are sanctioned accordingly*.³⁹ Figure 1 below summarizes the discussion of accountability up to this point:

Figure 1: The Core Elements of Accountability



But why worry about accountability as a specific target of intervention? Aren't free and fair elections enough? Citizens elect representatives and then supposedly hold them accountable for their behavior at the following election. The representatives in turn appoint and hold bureaucrats and the members of the judicial branch accountable for their behavior. Such an "accountability chain" is supposed to assure good government and the rule of law since the

38. See Paul, *supra* note 22, at 1054.
 39. See generally Schedler, *supra* note 5; Manin et al., *supra* note 30.

jobs of all public officials ultimately depend on the popular vote.⁴⁰

Unfortunately, research has shown that the accountability that public officials are exposed to through the celebration of periodic elections is just not enough to guarantee good government and the rule of law.⁴¹ There are three central problems with elections as accountability mechanisms. First, there is a profound problem of *information asymmetry* both between elected officials and the electorate and between bureaucrats and elected officials.⁴² It is simply impossible for citizens to be aware of each and every decision that an elected representative makes, or for an elected representative to be aware of every act performed by unelected public servants.⁴³ Add to this the media's consistent manipulation of information and the ability for both elected and unelected officials to intentionally hide important facts, and the interference present in the accountability chain becomes formidable.⁴⁴ Instead of a crystal clear fiber-optic line of communication between public officials and citizens, we have something more like a garbled telegram that can be deciphered in multiple ways. Under such circumstances the "moral hazard problem" raises its ugly head.⁴⁵ Why would a bureaucrat

40. Manin et al., *supra* note 30, at 10 ("Elections are a 'contingent renewal' accountability mechanism, where the sanctions are to extend or not to extend the government's tenure.").

41. *See id.* at 12; Larry Diamond et al., *Introduction to SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES*, 1, 12 (Andreas Schedler, et al. eds., 1999) ("[E]lections . . . are by themselves too weak to guarantee 'decent' government."); *see also* STEVEN LEVITSKY & LUCAN A. WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* 7–8 (2010) (pointing out the potential for fraud in the election process).

42. Manin et al., *supra* note 30, at 12 (asserting that governments may act based on opinion polls, rather than on direct voter communication, to be more "responsive" than "representative").

43. *See id.* at 10–11 (stating that information may be too costly or impossible to obtain, making it difficult for the government to be both fully responsive and fully representative).

44. *See* EDWARD S. HERMAN & NOAM CHOMSKY, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA* xii (1988) (discussing censorship and how it is used to shape the media).

45. *See* Manin et al., *supra* note 30, at 12 ("[W]hen governments know what voters will be satisfied with and voters do not know what governments can do for them, room is opened for moral hazard."); *see also* Shaila Dewan, *Moral Hazard: A Tempest-Tossed Idea*, N.Y. TIMES, Feb. 26, 2012, at BU1, *available at* http://www.nytimes.com/2012/02/26/business/moral-hazard-as-the-flip-side-of-self-reliance.html?pagewanted=all&_r=0 (defining "moral hazard" as "the undue

follow the dictates of an elected official or an elected official the dictates of the citizens if it is much easier and more lucrative to take advantage of the communication breakdown and follow one's own interests and agenda?

The second problem with elections as accountability mechanisms is that they only operate *ex-post*. As discussed above, such monitoring and enforcement after the fact is indeed an important type of accountability.⁴⁶ Nevertheless, it is only one part of the larger accountability landscape. Insofar as we conceptualize government as something that should be in constant contact with the public, we need to imagine and to construct *ex-ante* and simultaneous accountability mechanisms as well. If the public relies exclusively on *ex-post* accountability, it effectively "alienates" its voice by delegating its authority entirely during the periods between elections.⁴⁷ This arrangement would not be a problem if the government were occupied by perfectly honest politicians and civil servants with whom we agree on all issues, but in the real world it is important to maintain a significant connection between citizens and government to prevent public officials from behaving as short-term dictators between elections.⁴⁸

Third, elections only allow citizens to exercise accountability *externally*, from "outside" of government. Elections are grounded in a clear split between state and society. Citizens send representatives to the capital through their vote, but do not participate themselves in the tasks of government. Representatives may consult the public before making decisions, and the public may change its vote in the next election, but it is excluded from playing a direct role in

risks that people are apt to take if they don't have to bear the consequences").

46. See Guillermo A. O'Donnell, *Delegative Democracy*, 5 J. DEMOCRACY 55, 60–61 (1994) (conveying that under a representative democracy, voters hold elected officials accountable vertically, and outside institutions hold them accountable horizontally, by "call[ing] into question, and eventually punish[ing], improper ways of discharging [their] responsibilities").

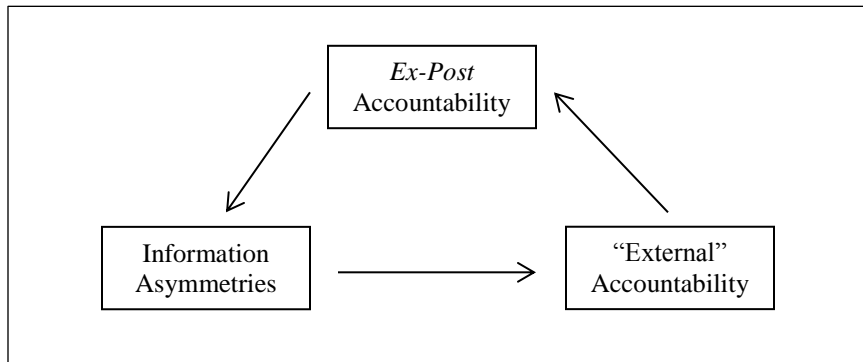
47. See *id.* at 65–66 (explaining that if elected officials are not answerable for their actions in between elections, it opens the door for elected officials to "[say] one thing during the campaign and [do] the contrary when in office"); see also Schedler, *supra* note 5, at 18 (noting that periodic elections allow voters to hold elected officials accountable, but in between elections, "incumbents may continually disclose their actions and justify them" without immediate recourse).

48. See Schedler, *supra* note 5, at 19 (discussing the role that "agencies of accountability" play in reigning in power).

decision-making.⁴⁹ Under formalistic representative democracy, excluding a more “participate version,” citizens normally do not have any concrete authority over government.⁵⁰

The above three problems are intimately connected in an interlocking negative feedback loop (see Figure 2 below). First, since citizens are external to government, it is much more difficult for them to have access to adequate information and to exercise accountability in anything other than an *ex-post* fashion.⁵¹ Second, citizens’ lack of information prevents them from effectively exercising *ex-ante* or simultaneous accountability or participating directly in the tasks of government.⁵² Third, the limitation to *ex-post* accountability makes citizens feel that they are unimportant for the functioning of government, thus minimizing the number and force of citizen demands for information and inclusion.⁵³

Figure 2: The Triple Failure of Electoral Democracy



49. See O’Donnell, *supra* note 46, at 55, 60–61 (stating that voters become a passive audience of their representative following an election).

50. See Manin et al., *supra* note 30, at 3 (“While citizens are free to discuss, criticize, and demand at all times, they are not able to give legally binding instructions to the government.”).

51. See *id.* at 24 (describing the British government barring independent researchers from accessing tissue extracted from cows suffering from mad cow disease during the mad cow disease outbreak).

52. See *id.* at 10–11 (“If people are not certain about . . . the effect of policies on outcomes, then they cannot be sure which policies are in their best interest or how much they can expect from the government.”).

53. See *id.* at 6.

III. CATEGORIES OF PRO-ACCOUNTABILITY REFORM

The celebration of free and fair elections is a necessary but not sufficient condition for the establishment of good governance and the rule of law.⁵⁴ Democracy needs to be complemented with reforms explicitly designed to improve government accountability.⁵⁵ There are four general categories of pro-accountability reform: “Weberian reform,” “marketization,” “independent agencies,” and “social accountability.” This section outlines the nature of each one of these strategies in turn. Although each category summarizes a distinct way of approaching pro-accountability reform, the categories are by no means mutually exclusive. Indeed, in practice the best strategy is usually to combine various approaches to have the maximum impact.⁵⁶ For instance, there is no contradiction in simultaneously strengthening bureaucracy along Weberian lines and opening up the doors of government to practices of social accountability. Indeed, when initiatives are well designed these two types of strategies can create synergies, which make the whole much more than a sum of the parts.⁵⁷

Max Weber understood bureaucracy to be the institutionalization of rationality in which each public servant had a specific task to carry out and was fully accountable for her actions to her superior.⁵⁸ This understanding created a vertically integrated triangle with power

54. See Diamond et al., *supra* note 41, at 2 (explaining that despite how competitive free and fair elections may be, they do not guarantee a decent government).

55. See *id.* at 1 (suggesting that governments should exercise self-restraint and also be subject to external restraint and oversight to ameliorate government accountability).

56. See Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 448 (describing the importance of combining answerability and enforcement processes to establish the accountability of public officials).

57. See *generally id.* at 458 (arguing that “active involvement of civil society and the strengthening of the state apparatus are not mutually exclusive,” but that co-governance requires active participation by both the government and society).

58. See James Pfiffner, *Traditional Public Administration Versus the New Public Management: Accountability Versus Efficiency*, in INSTITUTIONENBILDUNG IN REGIERUNG UND VERWALTUNG: FESTSCHRIFT FÜR KLAUS KONIG 443, 443 (A. Benz et al. eds., 2004) (discussing Weber’s emphasis on “monocratic hierarchy,” where “policy is set at the top” and the “role of the bureaucrat is strictly subordinate to the political supervisor”).

concentrated at the top in which “good governance” is guaranteed through careful supervision and the rational organization of the tasks of government.⁵⁹

This ideal type⁶⁰ of bureaucracy dominated the field of public administration and public management for most of the twentieth century.⁶¹ Indeed, up to the present day, it is viewed as particularly important for scholars and practitioners in the developing world where the government apparatus is weak and the state is still not consolidated.⁶² A solid, rationally organized government is seen as the first line of attack against corruption, clientelism, and capture.

Unfortunately, in the contemporary world of “flexible government” the strengthening of the command-and-control functions of government has fallen out of favor with many.⁶³ Nevertheless, such “old” public management strategies—like civil service reform and the improvement of internal auditing, evaluation, and surveillance—are absolutely central elements of any pro-accountability reform package.⁶⁴ If the central administrative apparatus does not have sufficient strength and legitimacy to control its own employees other pro-accountability reforms will surely fail.⁶⁵

59. See PAUL DU GAY, IN PRAISE OF BUREAUCRACY: WEBER, ORGANIZATION, ETHICS 44 (2000) (depicting bureaucracy as a “procedural, technical and hierarchical organization” where personal convictions must be set aside “to the diktats of procedural decision-making”).

60. Weber’s “ideal typical” bureaucrat is an expression of the essential characteristics of social forms and does not necessarily reflect the reality of particular existing cases.

61. See DONALD F. KETTL, THE GLOBAL PUBLIC MANAGEMENT REVOLUTION: A REPORT ON THE TRANSFORMATION OF GOVERNANCE 6, 67–68 (2000).

62. *Id.* (“For political and administrative transformations to succeed, [developing nations] must frequently build new social structures, legal systems, and market arrangements.”).

63. See LAWRENCE LYNN, JR., PUBLIC MANAGEMENT: OLD AND NEW 173 (2006) (noting how Guy Peters’ state development models show that certain causes for bureaucratic dissatisfaction lead to different types of reform: centralized power reforms into a market system; hierarchy changes into a participatory government; inertia creates a flexible government; and over-regulation leads to regulation).

64. See *id.* at 110–11 (describing the Clinton administration’s movement towards creating a smaller, cheaper, and more effective government by focusing on cutting red tape, putting the public first, and decentralizing decision-making power empowering employees to get results).

65. See *id.* at 176–77 (explaining that even with a lack of resources, public administration should be capable of planning, management, organization, and basic functions).

One of the most popular recent waves of public administration reforms emphasizes both the privatization of public services and the imitation of private sector management techniques by government.⁶⁶ These two strategies are analytically and empirically distinct.⁶⁷ It is one thing for the government to sell off government monopolies and it is quite another for the government to run itself like a business. Nevertheless, both strategies look to improve the accountability of service provision by introducing the discipline of the market and can go together under the name of “Marketization.”⁶⁸ Privatization introduces the market in a single act while strategies such as managed competition, subcontracting, deregulation of government procedures, and flexibilization of government labor markets, introduce market behavior in a more piecemeal and indirect fashion.⁶⁹ Such reforms involve society as an aggregation of consumers who can punish or reward service providers depending on their effectiveness.

The functioning of the market here can sometimes serve as a powerful pro-accountability mechanism. However, it can also make accountability problems much worse by excluding public services from citizen oversight and transparency requirements.⁷⁰ Furthermore, marketization should not be confused with social accountability, to be discussed below. Although both strategies look to tap into the energy of society to improve accountability, each reform strategy has

66. See MICHAEL BARZELAY, *THE NEW PUBLIC MANAGEMENT: IMPROVING RESEARCH AND POLICY DIALOGUE* 75 (2001) (providing England under Prime Minister Thatcher as an example of a nation that aimed to limit private sector management by divisionalizing government departments; for example agency chiefs acted like general managers who were accountable for their divisions’ performance, and ministers were like corporate CEOs who mainly did output control).

67. See KETTL, *supra* note 61, at 1–2 (2000) (admitting, however, that both seek to change how managers run their programs by using influential market strategies).

68. See *id.*

69. See generally LYNN, *supra* note 63, at 178 (observing that managerialism often leads to long delegation chains that are counterproductive to accountability goals).

70. See John M. Ackerman & Irma E. Sandoval-Ballesteros, *Information Regulation: Controlling the Flow of Information to and from Administrative Agencies: the Global Explosion of Freedom of Information Laws*, 58 ADMIN. L. REV. 85, 88 (2006) (describing the obligation citizens have to monitor the conduct of governmental organizations and to make sure public programs run properly).

a very different logic. While marketization seeks to send sections of the state off to society, social accountability seeks to invite society into the state. While marketization is grounded in the discourse of consumer protection and consumer choice, social accountability is based in the language of citizens' rights and empowerment.⁷¹

Social accountability also has a few important advantages over marketization since it retains central government control over service provision. First, social accountability retains the comparative advantage that the state has over the market in the provision of public goods, natural monopolies, basic necessities, and goods that require long-term planning and development. Second, since the state is still in control it keeps transaction costs to the minimum by permitting the focused coordination of multiple programs with parallel goals. When public services are broken down and sold off or sub-contracted out, this tends to significantly increase transaction costs. Using social accountability instead of marketization allows for the advantages of centralized coordination without the disadvantages of over-bureaucratization. Third, it avoids the inequality-producing effects of market-based service delivery and caters to inclusion and social justice more directly.

State reformers should remember that the New Public Management ("NPM") can be applied in a wide variety of ways. As B. Guy Peters has pointed out, NPM is a catchall term that actually holds within it four different models of government: "market government," "participative government," "flexible government," and "deregulated government."⁷² Pro-accountability entrepreneurs should think twice before assuming that marketization is the best and only way to apply the NPM. Careful attention needs to be given to the type of good or service being provided, the increase in transaction costs marketization might provoke, the possible loss of strength in the accountability signal when "citizens" are replaced with "consumers," and the potential for increases in inequality that can arise from marketization. In the end, the "participative" model of the NPM frequently can be even more effective than the "market,"

71. *See id.* at 108 (explaining that accountability demands more than just giving citizens access to reports—accountability requires governmental organizations to justify their conduct in plain language).

72. *See* B. GUY PETERS, *THE FUTURE OF GOVERNING* 21 (2001).

“flexible,” or “deregulation” models.⁷³

One of the most popular pro-accountability reforms in recent years has been the creation of Independent Pro-Accountability Agencies (“IPAs”).⁷⁴ IPAs are autonomous public institutions that are responsible for holding government accountable in a specific issue area. Examples include autonomous corruption control bodies, independent electoral institutes, auditing agencies, human rights *ombudsmen*, and “public prosecutors.”⁷⁵ In recent years, there has been a veritable explosion in the creation of such institutions in the developing world.⁷⁶ In Latin America, Belize, Brazil, Columbia, Costa Rica, Chile, Peru, and Mexico have all created or revived one or more such independent institutions in the last decade.⁷⁷ This trend is also present in Asia, Africa, Australia, and Eastern Europe.⁷⁸

Some countries have distinguished themselves as especially innovative cases in the creation of new pro-accountability institutions. Thailand’s 1997 constitution created seven different such institutions: the National Counter Corruption Commission, an independent electoral commission, an ombudsman, a constitutional court, an administrative court, an environmental review board responsible for evaluating the environmental impact of public projects, and a consumer review board which involves consumer

73. *See id.* at 50 (noting that pursuant to the participative model of reform, the government should be responsible for finding out what the public wants and how to deliver results).

74. *See* Carmen Alpín-Lardiés & Mario Classen, *Conclusion to SOCIAL ACCOUNTABILITY IN AFRICA: PRACTITIONERS’ EXPERIENCES AND LESSONS* 212 (Carmen Alpín-Lardiés & Mario Classen eds., 2010) (acknowledging that two other popular accountability reforms are social accountability and public sector reform).

75. *See* JONATHAN FOX, *ACCOUNTABILITY POLITICS: POWER AND VOICE IN RURAL MEXICO* 35 (2007) (explaining that these new institutions of horizontal accountability complement the legislatures, judiciaries, and sub-national governments already in existence).

76. John Ackerman, *Understanding Independent Accountability Agencies*, in *COMPARATIVE ADMINISTRATIVE LAW* 265 (Susan Rose-Ackerman & Peter L. Lindseth eds., 2010).

77. *See id.* at 265 n.3 (noting that there has been an increase in constitution courts and regulatory agencies, and providing Mexico as an example to demonstrate how the development of IPAs has been an effective in improving bureaucratic performance).

78. *See id.*

representatives in the design of consumer protection laws.⁷⁹ Hungary is another fascinating case insofar as it has recently established four different ombudsmen, one for human rights protection, a second for national and ethnic minorities, a third for data protection and freedom of information, and a fourth for education.⁸⁰ In Latin America, the new constitutions of Venezuela, Ecuador, and Bolivia radically redefine the division of powers.⁸¹ Other examples include the Chilean *Contralor*,⁸² the Peruvian Ombudsman,⁸³ the Brazilian *Ministerio Público*,⁸⁴ and the flurry of new agencies recently created by the Mexican government.⁸⁵

The performance of IPAs varies widely between countries. In many countries there is a long tradition of creating new “independent” bureaucracies in response to problems to make the government appear as if it were committed to resolving the issue at hand, whether it be corruption, human rights violations, free and fair

79. See Danny Unger, *Principals of the Thai State*, in REINVENTING LEVIATHAN: THE POLITICS OF ADMINISTRATIVE REFORM IN DEVELOPING COUNTRIES 181, 196–97 (Ben Ross Schneider & Blanca Heredia eds., 2003) (describing the path-breaking changes in the Thai Constitution that now require government agencies to provide information, explanations, and rationales for policies affecting citizens’ individual rights).

80. SUSAN ROSE-ACKERMAN, FROM ELECTIONS TO DEMOCRACY: BUILDING ACCOUNTABLE GOVERNMENT IN HUNGARY AND POLAND 80 (2005).

81. See John Ackerman, *Estado Democrático, Rendición de Cuentas y Organismos Autónomos en América Latina*, in AMÉRICA LATINA: DEMOCRACIA, ECONOMÍA Y DESARROLLO SOCIAL 91, 97–99 (Gregorio Vidal & Omar de León eds., 2010).

82. See Peter M. Siavelis, *Disconnected Fire Alarms and Ineffective Police Patrols: Legislative Oversight in Postauthoritarian Chile*, 42 J. INTERAM. STUD. & WLD. AFF. 71, 72 (2000) (noting that before the military regime took over in 1973, Chilean IPAs were considered above party politics).

83. Charles D. Kenney, *Reflections on Horizontal Accountability: Democratic Legitimacy, Majority Parties and Democratic Stability in Latin America*, at n.13, Draft prepared for the Kellogg Institute for International Studies, University of Notre Dame Conference on Institutions, Accountability, and Democratic Governance in Latin America (May 8–9, 2000), available at <http://kellogg.nd.edu/faculty/research/pdfs/Kenney.pdf> (commenting that the Peruvian Ombudsman’s Office has come to enjoy a degree of legitimacy due, in part, to the leadership of Jorge Santistevan de Noriega).

84. See generally ROGÉRIO BASTOS ARANTES, MINISTERIO PÚBLICO E POLÍTICA NO BRASIL (2002).

85. See Ackerman, *Understanding Independent Accountability Agencies*, *supra* note 76, at 267 n.3.

elections, etc.⁸⁶ Such institutional innovations often successfully deflect criticism from the central bureaucracy, thereby permitting the government to avoid a full reform of the state.⁸⁷ The transparency and openness to participation also varies widely between IPAs. For instance, while ombudsmen tend to be open and to provide much needed information to the public, auditing agencies tend to be much more closed-lipped.⁸⁸

My own research shows that there is a direct relationship between the effectiveness of IPAs and the level and intensity of their interaction with society.⁸⁹ Those IPAs that take their role as bridges seriously are the ones that fulfill their mandates more effectively, while those that separate themselves from either the government or society tend to end in isolation and ineffectiveness.⁹⁰ Here, we see that so called “horizontal” and “vertical” accountability cannot be so easily separated. The strength of government accounting agencies depends on their connection with society at large, which leads us to the question of social accountability.

Governments can do a great deal on their own to improve accountability through actions such as strengthening top-down oversight, professionalizing staff through civil service reform, empowering internal comptrollers, establishing performance contracts, and creating new independent public oversight agencies.⁹¹ Nevertheless, pro-accountability reform is much more effective when

86. See Michael Dodson & Donald W. Jackson, *Horizontal Accountability and the Rule of Law in Central America*, in *DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA* 228, 229 (Scott Mainwaring & Christopher Welna eds., 2003) (explaining that a “political democracy” upholds the citizens’ guaranteed rights, and makes sure no one is above the law, including the elected officials).

87. See *id.*

88. See Frederick Uggla, *The Ombudsman in Latin America*, 36 J. LAT. AM. STUD. 423, 424–25 (2004) (distinguishing ombudsmen from prosecutors and accounting offices because ombudsmen can create resolutions from citizens’ complaints relatively cheaply).

89. See John Ackerman, *Organismos Autónomos y la Nueva División de Poderes en México y América Latina*, INSTITUTO DE INVESTIGACIONES JURÍDICAS DE LA UNAM 12, 16–21, available at <http://www.bibliojuridica.org/libros/6/2834/5.pdf> (last visited Nov. 10, 2013) [hereinafter Ackerman, *Organismos Autónomos*].

90. *Id.*

91. *But see* Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 447 (noting that both old public management strategies, such as civil service reform, and new public management strategies, such as managed competition and performance contracts, isolate the public from state activities).

societal actors play a central role as well.⁹² There are a great variety of initiatives that fall under this category. Initiatives as different as participatory budgeting, administrative procedures acts, and social audits, all involve citizens in the oversight and control of government and therefore can be considered social accountability initiatives.⁹³ Here we give a brief overview of this category of pro-accountability reform.

The universe of government action is so broad that it is virtually impossible to oversee the entirety of the operation.⁹⁴ Comptrollers can only perform a limited number of audits. Human rights ombudsmen can only respond to a certain number of complaints. Legislatures can only follow up on a specific number of government programs. Budgets can be expanded and powers can be extended, but the infinite detail of government behavior will always escape the view of the overseer. There is no single all-seeing “god’s eye” point of view from which to control the government apparatus.

It is therefore necessary to complement such top-down “police patrol” oversight strategies with bottom-up “fire alarm” mechanisms.⁹⁵ For Mathew McCubbins and Thomas Schwartz, “police patrol” oversight is the traditional modality in which supervisory agencies operate, trying to keep a constant eye on those they are supposed to monitor.⁹⁶ To the contrary, “fire alarm”

92. See CHARLES R. EPP, MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS AND THE CREATION OF THE LEGALISTIC STATE 216–17 (2009) (noting activist movements of the 1960s which put pressure on bureaucracies to make certain administrative processes open to public accountability, such as police disciplinary procedures).

93. See Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 450–51, 457 (commenting that administrative procedure acts and referendum laws help make the government and its elected officials accountable to the public that voted for them, and that participatory budgeting is also an important accountability concept because it allows citizens to help plan where the government should spend public funds; in doing so it reduces the incentives for corruption and the political use of public funds).

94. See *id.* at 449 (specifying that the major difficulty is in monitoring the exorbitant amount of governmental communications, actions, and inactions).

95. See generally Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 165 (1984).

96. See *id.* at 165–66 (explaining that police patrol oversight is more centralized than fire alarm oversight, and it involves Congress studying a sample of agency activities to detect violations and provide remedies).

oversight occurs when an agency relies on external actors to detect when there are problems (to sound the alarm) and then focuses its attention particularly carefully on those areas that require extra attention.⁹⁷ While a roving police car might happen to come upon a burglar or a burning building, society is everywhere. Indeed, according to Catalina Smulovitz, this gives society an extra plus.⁹⁸ Since society is everywhere, it does not even have to act in all cases to make its presence felt. The mere threat that society might sound the alarm or respond in other more disruptive ways is often enough to control public servants.⁹⁹

Unfortunately, although society is omnipresent it is often quite dormant. Indeed, the capacity of onlookers to *not* intervene to resolve problems is well known, particularly in highly modernized, urban areas.¹⁰⁰ Numerous examples exist of circles of curious passersby who do little or nothing to help victims of accidents, heart attacks, or theft. In addition, civil society is not always as “pure” as it is often made out to be.¹⁰¹ Any power that is given to society risks being co-opted by criminal organizations and powerful interest groups, who only look for personal and group benefits.¹⁰²

Society is a powerful potential force for strengthening government accountability. Nevertheless, this force does not come alive automatically or always in the most productive forms.¹⁰³ Pro-

97. *See id.*

98. *See* Catalina Smulovitz, *How Can the Rule of Law Rule? Cost Imposition Through Decentralized Mechanisms*, in *DEMOCRACY AND THE RULE OF LAW* 168, 171 (José María Maravall & Adam Przeworski eds., 2003) (arguing that having many “decentralized external eyes” increases the amount of people interested in enforcing the rule of law).

99. *See id.* at 172 (explaining that “decentralization allows for a ‘fire alarm’ type of control,” providing a piecemeal approach to control transgressions to the rule of law).

100. *See* McCubbins & Schwartz, *supra* note 95, at 168 (implying that lack of violation reporting in a fire alarm system may lead to less oversight because congressmen would not be motivated by their constituents).

101. *See generally* Smulovitz, *supra* note 98, at 168–69 (indicating that citizens will only follow the laws if the penalties for breaking them are costly).

102. *See id.* at 169 (explaining that when the government does not follow the rule of law, it can gain support from the criminal organizations or interest groups that benefit from the its illegal conduct).

103. *See id.* at 169–70 (suggesting that when some citizens find it beneficial to not hold their government accountable, the rule of law cannot become self-enforcing; the key to sustaining a self-enforcing rule of law is a “consensus of

accountability reformers need to design mechanisms that both help translate this potentiality into action and privilege social actors that work for the public interest. Context is absolutely crucial. There is no single “silver bullet” or special recipe for creating successful social accountability initiatives. As this article will show below, the best strategy will always depend on the social and political context.

IV. HUMAN RIGHTS AND SOCIAL ACCOUNTABILITY

What has come to be called the “human rights based approach” to development offers a good starting point for undergirding a solid commitment to social accountability in anti-corruption policy.¹⁰⁴ The Office of the High Commissioner for Human Rights (“OHCHR”) understands this as an approach that “links poverty reduction to questions of obligation, rather than welfare or charity.”¹⁰⁵ The British Department for International Development (“DFID”) defines this approach as “empowering people to take their own decisions, rather than being the passive objects of choices made on their behalf.”¹⁰⁶ The World Bank has also claimed that “social accountability is a right” and that such initiatives are grounded in “a new manifestation of citizenship based on the right to hold governments accountable by expanding people’s responsibility.”¹⁰⁷

values” that allow citizens to act together).

104. See *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RIGHTS 9–10 (2006), <http://www.ohchr.org/Documents/Publications/FAQen.pdf> [hereinafter OHCHR, *Frequently Asked Questions*] (explaining that human rights can provide standards against which the public can hold the government accountable and arguing that human rights promotes the rule of law and encourages public participation in governance).

105. See *Human Rights and Poverty Reduction: A Conceptual Framework*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RIGHTS iii (2003), <http://www.ohchr.org/Documents/Publications/PovertyReductionen.pdf> (discussing that the foundation for a human rights based approach to poverty reduction is in international law and government accountability is critical to supporting human rights).

106. See *Realising Human Rights for Poor People*, DEP’T FOR INT’L DEV. 7 (2000), http://www2.ohchr.org/english/issues/development/docs/human_rights_tsp.pdf (explaining that the organization’s goal is to have poor people’s ideas and perspectives directly influence the laws and policy created for their betterment).

107. See *From Shouting to Counting: A New Frontier in Social Development*, THE WORLD BANK SOC. DEV. DEP’T. 2 (last visited Nov. 1, 2013),

The core objective of the human rights approach to development is to invert the power relationships between service providers and the poor.¹⁰⁸ Instead of envisioning development as a process by which governments, foundations, or international agencies channel resources to help excluded groups overcome poverty and suffering, the human rights approach starts by acknowledging the *entitlements* of the poor.¹⁰⁹ As a result, according to this perspective, “service providers” are better conceptualized as “duty-bearers.”¹¹⁰ It is their obligation, not their choice, to guarantee the human rights of the poor, the “rights-holders.”¹¹¹

This approach gives a very different taste to development. As Andrea Cornwall has argued, instead of talking about “beneficiaries with needs” or “consumers with choices” the human rights approach speaks of “citizens with rights.”¹¹² Citizens are active subjects in the political sphere, not objects of intervention by government programs or passive choosers in the marketplace.

Citizenship necessarily implies empowerment and the active *participation* of the poor in the design, control, oversight, and evaluation of the development projects that affect them. Indeed,

<http://siteresources.worldbank.org/INTPCENG/214574-1116506074750/20511078/Social+Accountability+Booklet+Feb+26+04.pdf>.

108. See Philip C. Aka, *Analyzing U.S. Commitment to Socioeconomic Human Rights*, 39 AKRON L. REV. 417, 442 (2006) (describing various NGOs, such as Amnesty International and Human Rights Watch, commitment to promoting social and economic justice on a global scale).

109. See William R. O’Neill, S.J., *Commonweal or Woe? The Ethics of Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL’Y 487, 489 (1997) (listing basic entitlements including welfare rights to nutritional well-being, health care, or employment opportunities).

110. See Tara J. Melish, *Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty*, 13 YALE HUM. RTS. & DEV. L.J. 1, 92 (2010) (arguing that there is an international duty of states to ensure that their regulatory systems are designed to recognize human rights across social sectors).

111. See *id.*; O’Neill, *supra* note 109, at 489.

112. See ANDREA CORNWALL, BENEFICIARY, CONSUMER, CITIZEN: PERSPECTIVES ON PARTICIPATION FOR POVERTY REDUCTION 66 (Anne Sisak ed., 2002) [hereinafter CORNWALL, BENEFICIARY, CONSUMER, CITIZEN] (arguing that citizenship should include participation in government with rights granted by the State, instead of just as a national identity); Andrea Cornwall, *Preface for THE PARTICIPATION READER* xii, xii–xiii (Andrea Cornwall ed., 2000) (explaining that the human rights approach seeks to expand participation beyond invited participation to mobilization, insurgency, and struggles for rights and citizenship).

according to authors such as Clare Ferguson and Julia Häusermann the right to participation should be seen as the foundational base of the rights approach since it is the prerequisite to claiming all of the rest of the human rights.¹¹³ The very act of demanding the fulfillment of one's rights requires an active subject, who is in control of his or her life, a participant in his or her own process of development.¹¹⁴

Nevertheless, not just any sort of participation will do the trick. It is not sufficient for a government only to open up controlled spaces for opinion-giving or popular consultation for it to claim that it is applying a human rights approach.¹¹⁵ The value-added of the human rights approach is that "it offers the possibility of shifting the frame of participatory interventions away from inviting participation in pre-determined spaces to enabling people to define for themselves their own entry points and strategies for change."¹¹⁶ A human rights approach to participation begins with empowerment and then searches for strategic inroads into the government or other duty holders.¹¹⁷ It does not try to circumscribe who can participate when and how depending on the spaces already open within the government. It is therefore a truly "bottom-up" approach to development.

In addition to inverting power relationships and requiring participation, the human rights approach also teaches impatience and intolerance to poverty and injustice.¹¹⁸ The violation of so-called

113. See CLARE FERGUSON, *GLOBAL SOCIAL POLICY PRINCIPLES: HUMAN RIGHTS & SOCIAL JUSTICE* 3, 15 (1999) (stating that democratic participation in government allows individuals to enforce their own rights and bring claims if they are violated); JULIA HÄUSERMANN, *A HUMAN RIGHTS APPROACH TO DEVELOPMENT* 180–81 (1998) (noting that this type of participation is necessary for sustainable development).

114. See HÄUSERMANN, *supra* note 113, at 180 (specifying that poor people need to be involved in the prioritizing of issues, the implementing of solutions, and the evaluation of the solutions' effectiveness).

115. See Andrea Cornwall, *Locating Citizen Participation*, 33 *INST. OF DEV. STUDIES* 49, 49 (asserting that people marginalized by the government and society are also associated with "popular participation").

116. CORNWALL, *BENEFICIARY, CONSUMER, CITIZEN*, *supra* note 112, at 68.

117. See *id.* at 68, 75 (explaining that predetermined inroads are not nearly as valuable as enabling citizens to create their own ways to participate in development).

118. See SUZANNE STAGGENBORG, *SOCIAL MOVEMENTS* 20 (Sherith Pankratz ed., 2010) (explaining that under the synthetic approach, the "framing perspective" calls for social movement leaders and organizations to identify injustices to inspire

“civil” and “political” rights usually causes immediate indignation and protest.¹¹⁹ Incidents like the torture of opposition political leaders, the censorship of the media, and the violent repression of street protests often lead to immediate and powerful reactions by the affected actors and other interested parties. Unfortunately, the existence of poverty, unemployment, and sickness do not always create the same kind of urgent response.

Here, the human rights approach to development looks to remind us of the fundamental *indivisibility* of human rights. As the U.N. states, “[H]uman rights are indivisible . . . [w]hether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person Consequently, they all have equal status as rights, and cannot be ranked, a priori, in hierarchical order.”¹²⁰ So called “economic” and “social” rights like the right to work, social security, education, and health are just as fundamental as “civil” and “political” rights like the right to protection against torture, freedom of assembly, and freedom of speech.¹²¹ From a human rights perspective, the absence of medicine or doctors at a local health clinic is equivalent to the torture of opposition political leaders.¹²²

collective action).

119. See CHARLES TILLY & SIDNEY TARROW, *CONTENTIOUS POLITICS* 2, 12–13 (2007) (referring to various historical accounts of protests in reaction to violations of civil and political rights, such as those following the alleged 2004 “stolen election” in Ukraine, and more historically, the reaction of the Boston colonists in the late 1700s which culminated to the dumping of tea into the Boston Harbor); see also, STAGGENBORG, *supra* note 118, at 20 (discussing how the synthetic resource mobilization model views individual discontent as the impetus behind collective action, as well as an instigator of social change).

120. *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, U.N. HUMAN RIGHTS BASED APPROACHES PORTAL, available at <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> (last visited Oct. 9, 2013).

121. See generally *id.*; Katherine E. Cox, *Should Amnesty International Expand Its Mandate to Cover Economic, Social, and Cultural Rights?*, 16 ARIZ. J. INT’L & COMP. L. 261, 262 (1999) (asserting that particularly in developing countries, abuses of civil and political rights cannot be effectively tackled without simultaneously addressing longstanding economic and social problems).

122. See CAROL BELLAMY, *THE STATE OF THE WORLD’S CHILDREN 2004: GIRLS, EDUCATION AND DEVELOPMENT* 92 (2003) (stating that the right to health is governed by human rights principles). Compare *The Right to Health*, OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RTS. 27 (2008),

What this means is that the violation of economic and social rights requires immediate and forceful responses.¹²³ If a government neglects to provide teachers to a local school, the community is within its right to protest and organize. If an international agency fails to attend to the negative social consequences of the economic policies it recommends, the population is entirely justified to call for the immediate resolution of its grievances.

Finally, the human rights approach is grounded in the idea that the source of poverty lies in the structure of the power relations that exist in society.¹²⁴ In addition to “empowering” the poor, this approach looks to transform the framework of power in society as a whole.¹²⁵ In other words, human rights requires “scaling up.” This is most obvious in the area of political rights. In addition to freedom of speech and freedom of association, the Universal Declaration of Human Rights also claims that citizens have the right to participate in government itself through the celebration of democratic elections.¹²⁶ It is not enough to “be empowered.” The structure of political decision-making itself must put citizens in a *position of power*.

The same applies for economic and social rights. It is not enough for citizens to participate in planning local development projects or speak out against poor service delivery to fulfill the human rights

<http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (emphasizing that states are obligated to adopt national health policies and provide adequate healthcare), *with* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984), *available at* <http://www.un.org/documents/ga/res/39/a39r046.htm> (declaring that States Parties to the Convention Against Torture must take appropriate measures to prevent torture).

123. *See, e.g.*, International Covenant on Economic, Social and Cultural Rights art. 14, Dec. 16, 1966, 993 U.N.T.S. 3, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (asserting that States Parties that do not comply to certain obligations under the ICESCR are expected to create a plan of implementation within two years of ratifying).

124. *See* OHCHR, *Frequently Asked Questions*, *supra* note 104, at 9.

125. *See* CORNWALL, BENEFICIARY, CONSUMER, CITIZEN, *supra* note 112, at 78 (arguing that simply encouraging impoverished individuals to participate in public engagement is not enough, but rather, they should be enabled “to exercise agency through the institutions, spaces and strategies they make and shape for themselves”).

126. *See* Universal Declaration of Human Rights art. 21, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1984).

approach. Citizens should be made direct participants in the wealth of the national economy as well as in national economic policy-making.¹²⁷ As this U.N. document on a “Common Understanding” of the human rights based approach states, programs that comply with this approach must include “assessment and analysis to identify . . . the immediate, underlying, and structural causes of the non-realization of rights.”¹²⁸ As Cornwall has pointed out, this element of the human rights approach is so important, because,

[I]n emphasizing obligation and responsibility, the rights-based approach opens up the possibilities of a renewed focus on the root causes of poverty and exclusion, and on the relations of power that sustain equity Bringing governance squarely into the frame, exclusion becomes in itself a denial of rights and the basis for active citizens to make demands, backed by legal instruments.¹²⁹

The following table summarizes the above-mentioned five central elements of the human rights approach to development:

Table 1: The Human Rights Approach to Development

Core Concept	Traditional Approach	Human Rights Approach
Service Provision	Charity/Help	Obligation
The Poor	Beneficiaries/ Consumers	Citizens
Participation	Top-down	Bottom-up
Economic & Social Rights	Less Urgent than Civil & Political Rights	Indivisibility of Human Rights
Power Structure	Unimportant or Ignored	Central to Overcoming Poverty

Social accountability initiatives may or may not fall within the category of human rights approaches to development.¹³⁰ The fact that

127. See, e.g., BELLAMY, *supra* note 122, at 93 (advocating that people are important actors and are “key” in their own development).

128. *Id.* at 93.

129. See CORNWALL, BENEFICIARY, CONSUMER, CITIZEN, *supra* note 112, at 67.

130. See Melish, *supra* note 110, at 71–72 (2010) (explaining that there has

they have to do with accountability and improving governance does not guarantee that they also have to do with human rights. A more accountable government is not necessarily one that approaches the task of development from a human rights perspective. It is easy to imagine a government that informed its citizens about and justified every one of its actions in a pro-active manner and exposed its public servants to clear sanctions depending on their performance, but still approached the poor in a paternalistic, charity-based manner.

The involvement of civil society in pro-accountability initiatives does not necessarily guarantee their human rights component either. As discussed above, “participation” can take many different forms. “Beneficiaries” can participate by replacing government officials in the delivery of goods and services.¹³¹ “Consumers” can participate in service delivery by sending market signals about their preferences.¹³² The people at large can “participate” by making their opinions known or responding to specific invitations made by the government.¹³³ None of these modalities truly fulfills the promise of the human rights perspective. This perspective requires a bottom-up approach to participation in which empowerment comes before opportunity and rights come before efficiency.

Only when social accountability initiatives are grounded in a vision of service providers as duty-bearers, that sees the poor as citizens, stimulates participation from the bottom-up, emphasizes the indivisibility of human rights, and is oriented towards changing the overall power structure can we speak of a human rights approach in action.¹³⁴ But how can we judge whether this is the case or not? What

been a shift in the human rights approach, and that whereas the “old” human rights approach was focused on the protection the political rights of individuals from state apparatuses—and thus far more state-centric—the new approach gives more power to local administrative units and private actors).

131. See CORNWALL, BENEFICIARY, CONSUMER, CITIZEN, *supra* note 112, at 11, 17 (commenting that beginning in the 1970s with the passage of legislation, “beneficiaries” played more active roles in development).

132. See *id.* at 32 (relaying that market participation will affect economic activity).

133. See *id.* at 13 (arguing that poverty and disempowerment cannot be combated by simply inviting participation in “projects, programmes or processes” and instead, people must be enabled to create their own spaces for engagement).

134. See *generally id.* at 60–61 (providing a historical overview of the shift in development discourse regarding participation towards more of a merging of participation and good governance, in which government service delivery is more

are the specific indicators of the presence of a human rights approach in social accountability initiatives?

For each element of the human rights approach we can design specific indicators, which will reveal whether the element exists. First, with regard to the charity (or obligation) criteria, an excellent indicator is whether formal legal instruments are encouraged as a means by which citizens can claim their rights.¹³⁵ The encouragement of legal recourse demonstrates that service providers are being conceptualized as duty-bearers, since it is the law that ultimately grounds the duty to uphold human rights.¹³⁶ If legal recourse is not encouraged, this puts in doubt the idea that the service provider is obligated to perform effectively.

Second, with regard to the beneficiaries/consumer/citizen criteria, we can examine to what extent the participants in the social accountability initiatives are encouraged to engage in a broad debate about the underlying sources of the problems which they encounter daily in their interaction with the government.¹³⁷ Are citizens only expected to give their opinions and participate in the solutions concerning the delivery of specific services, or are they taken seriously as political actors who can participate in constructing and implementing broader national or international solutions?

Third, with regard to the “direction” of participation, are the participatory mechanisms designed externally and then “imposed” on the population, or are previously existing community forms of participation taken as the starting point for the design of the mechanisms? Is participation carefully controlled and limited to previously existing spaces or is it encouraged to multiply and expand beyond these spaces?

responsive to the needs of the poor and attempts to enable the poor to have a say in the policies that concern their lives).

135. See WALTER EBERLEI, INSTITUTIONALISED PARTICIPATION IN PROCESSES BEYOND THE PRSP 26 (2001), available at [http://inef.uni-due.de/page/documents/Eberlei_\(2001\)_-_GTZ_-_Institutionalisation_\(engl\).pdf](http://inef.uni-due.de/page/documents/Eberlei_(2001)_-_GTZ_-_Institutionalisation_(engl).pdf) (citing to other authorities to argue that political participation should be “protected by the rule of law” and that the poor should feel safe to take steps towards improving their situation through legal means) (internal citations omitted).

136. See, e.g., *id.* (contending that a functioning judiciary is required to diminish poverty).

137. E.g., *id.* at 41 (relating that countries with well-developed participation include “open and continuous” public debates to address poverty reduction).

Fourth, are violations of economic, social, and cultural rights placed at the same level as the violations of political and civil rights? Specifically, are patience and tolerance to violations of so-called second generation rights preached, or is the initiative inspired by a push for immediate action?

Fifth, with regard to the issue of the overarching power structure, a crucial indicator is whether the actors and forces, which oppose improving government accountability, are explicitly named and engaged with or simply not mentioned.¹³⁸ Insofar as these opposing forces are not explicitly taken into account, this is an indicator of a tendency to sweep larger structural problems under the rug.¹³⁹

The following table (Table 2) summarizes the indicators for each one of the elements of the human rights approach:

Table 2: Indicators of the Human Rights Approach in Social Accountability Initiatives

Core Element	Indicator
Service Providers as Duty-Holders	Is formal legal recourse encouraged?
Participants as Citizens	Are citizens encouraged to think beyond immediate and localistic concerns?
Bottom-up Participation	Is participation expansive and does it build on previously existing practices?
Indivisibility of Human Rights	Is the initiative inspired by a push for immediate and urgent action?
Power Structure	Are opposing forces explicitly named and engaged with?

In general, an important challenge with regard to implementing a human rights approach is the institutionalization of social

138. Cf. DENA RINGOLD ET AL., *CITIZENS AND SERVICE DELIVERY* 33 (2011) (emphasizing generally the importance of the citizens' right to information regarding service delivery, including information whether policy makers and providers are doing their jobs properly).

139. *But see id.* at 33–34 (suggesting that it is still uncertain whether having access to an information framework actually improves the quality of public services).

accountability initiatives. As Walter Eberlei has written, a certain “event culture” tends to prevail when the concepts of societal participation and civic engagement are brought to the table.¹⁴⁰ Many public officials seem to believe that all that these concepts imply is the holding of a series of hearings, workshops, and consultations, not the establishment of a long-term participatory dialogue with civil society.¹⁴¹

There are three different levels at which participatory mechanisms can be institutionalized in the state. First, participatory mechanisms can be built into the strategic plans of government agencies, with rules and procedures mandated that require “street-level bureaucrats” to consult or otherwise engage with societal actors.¹⁴² Second, specific government agencies can be created that have the goal of assuring societal participation in government activities or act as a *liaison* in charge of building links with societal actors.¹⁴³ Third, participatory mechanisms can be inscribed in law, requiring individual agencies or the government as a whole to involve societal actors at specific moments of the public policy process.¹⁴⁴

Although the first level of institutionalization is more or less widespread and the second level is relatively common, the third level is extremely rare. There are of course some important exceptions, including the Administrative Procedures Act in the United States, Bolivia’s Popular Participation Law, Porto Alegre’s Participatory Budgeting framework, Mexico City’s Citizen Participation Law, and

140. EBERLEI, *supra* note 135, at 9.

141. *See id.* at 14–15 (claiming that although in theory poverty reduction strategies should build on existing political processes to ensure long-term implementation, in practice, oftentimes these poverty reduction activities are not structurally integrated and are thus limited and weak).

142. *See id.* at 15, 16 (advocating for representative participation in which civil society and private sector actors are involved in processes according to the broad section of the population they are capable of representing).

143. *See* Cary Coglianese, Heather Kilmartin, & Evan Mendelson, *Transparency in Public Participation in the Rulemaking Process*, U. OF PA. L. SCH. 18–19 (2009), available at <http://www.hks.harvard.edu/hepg/Papers/transparencyReport.pdf> (expressing that agencies can relay informal communications with external actors to administrators to actuate effective rulemaking).

144. *See* Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 459 (emphasizing that participatory mechanisms are most effective when fully institutionalized, meaning that public involvement is within a clear legal structure).

the wave of freedom of information laws that has swept the world over the past two decades.¹⁴⁵ Nevertheless, these exceptions only prove the rule that participatory mechanisms are usually vastly under-institutionalized, depending too much on the ingenuity and good will of individual bureaucrats.

Why this is the case is more or less evident. Law making under democratic conditions involves the messy process of legislative bargaining and a full role for political parties.¹⁴⁶ State reformers and multilateral agencies tend to shy away from such arenas, especially when they are dominated by opposing parties or factions.¹⁴⁷ Therefore, reformers usually settle for executive procedures, special agencies, or innovative individual bureaucrats to carry out their participative strategies.

This is a mistake. If dealt with in a creative fashion, partisanship can be just as effective as isolation in the search for effective accountability mechanisms.¹⁴⁸ It is absolutely crucial to involve political parties and the legislature to fully institutionalize participative mechanisms through the law.

In addition to the institutionalization of social accountability mechanisms in the state, we can also speak of their institutionalization in society. Good laws, open institutions, and proactive public servants will do very little if civil society itself is not able to take advantage of these openings. On the one hand, civil society organizations and groups need to build their capacity to dialogue with government and hold it to account.¹⁴⁹ This endeavor involves including the education and training of civil society as a central element of any social accountability initiative.¹⁵⁰ On the other hand, civil society groups ought to band together to assure the long-

145. See generally *id.* at 451 (explaining how these governments are addressing participatory mechanisms).

146. Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 459.

147. *Id.*

148. *Id.*

149. See EBERLEI, *supra* note 135, at 3 (stating that the participation in political processes of civil society actors “remains an absolutely essential element” for the development of poverty-reduction policies).

150. See RINGOLD ET AL., *supra* note 138, at 41 (affirming that governments and civil society organizations are using information campaigns to provide citizens with information regarding their rights and the standards of services they should expect, in an effort to increase the access and use of these services).

term continuity and “institutionalization” of social accountability initiatives.¹⁵¹ With many groups participating in coordinated fashion, the permanence of the effort is much more likely guaranteed.

Nevertheless, there is such a thing as “over-institutionalization.”¹⁵² Once participation is legally recognized and socially organized, it is also controlled by those forces. Institutionalization can work as a double-edged sword. In general, the risk is the creation of an elite class of individuals or civil society organizations who supposedly speak for the people but do not have social base or legitimacy to back up this voice.¹⁵³

The debate with regard to the nature of institutionalized participation is an old one, going back to discussions of the corporatist form of interest mediation during the 1970s. At that time the important distinction was made between “state corporatism” and “societal corporatism.” The former category includes those states who created new labor and business “corporations” out of whole cloth and controlled them from above.¹⁵⁴ The latter category refers to those states in which previously existing labor and business groups negotiated their entrance into the state from a position of power.¹⁵⁵

A similar distinction can be made with respect to the institutionalization of civic engagement for accountability. When this institutionalization leaves the state with the power to divide, co-opt, and control civil society we have reached the problematic situation of “over-institutionalization,” or “statist institutionalization.”¹⁵⁶ When it empowers previously existing societal actors to make their voices heard and to apply sanctions on misbehaving or ineffective governments, we have the much more productive case of what can be

151. Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 459.

152. *Cf. id.* (arguing that decentralization of government does not “automatically” improve government accountability).

153. *See id.* (asserting that decentralization and the increase of local units, while bringing the government closer to its citizens, actually may reinforce inequalities).

154. *See* Philippe C. Schmitter, *Still the Century of Corporatism?*, 36 *REV. POLITICS* 85, 104–05 (1974) (defining state corporatism as connected to political systems in which local units are “tightly subordinated” to a central power).

155. *See id.* (describing societal corporatism as “imbedded” in political systems with autonomous units).

156. *See* Melish, *supra* note 110, at 71 (demonstrating former human rights approaches as responding to state infringements on individual liberties, resulting in a confrontational discourse).

called “societal institutionalization.”¹⁵⁷

In addition to being under-institutionalized, another risk is for pro-accountability initiatives grounded in civic engagement to be “under-involved” or too “externalist.” Consultations and workshops are common and protests and elections are frequent; but it is very difficult to find cases in which societal actors are “invited into the kitchen.”¹⁵⁸ For instance, transparency laws often only give access to documents that report on concluded processes, not permitting citizens to have access to information about the process that led up to the decision or action.¹⁵⁹ Governments usually claim the need to protect personal privacy and national security as their major reasons for resisting a policy of total transparency.¹⁶⁰ Although this may often be the case, governments also frequently use such claims only as excuses to hide uncomfortable information from the public eye.¹⁶¹

Nevertheless, there is a limit to the extent to which citizens as agents of accountability can be invited into the core of the state. Nuria Cunill Grau has stated that “[c]o-management is irreconcilable with control [and t]he efficacy of [social control] is directly dependent on the independence and the autonomy that societal actors

maintain with respect to state actors.”¹⁶² According to this point of

157. See Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 458–59 (asserting that reformers should focus on involving civil society earlier in the design of participatory mechanisms rather than waiting for the government to design the mechanisms in a top-down manner).

158. See EBERLEI, *supra* note 135, at 3 (explaining that a majority of cases involve consultations and that collaborations, on the other hand, have been rare). See generally Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 459.

159. See John M. Ackerman & Irma E. Sandoval-Ballesteros, *The Global Explosion of Freedom of Information Laws*, 58 ADMIN. L. REV. 85, 99 (2006) (stating that most transparency and freedom of information laws are more restrictive).

160. See *id.* at 101 (listing typical exemptions to freedom of information laws as including protection of national security, personal privacy, public security, commercial secrets, and internal deliberations).

161. See *id.* at 105 (citing to other authorities to indicate that some governments act disingenuously when they allude to issues such as privacy and national security) (internal citations omitted).

162. Nuria Cunill Grau, *Responsabilización por el Control Social*, CENTRO

view, pro-accountability initiatives based on civic engagement need to defend the *autonomy* of society.

There is indeed a point at which individual citizens or civil society groups go so far into the state that they end up being consumed by the monster that they were supposed to control.¹⁶³ Funding is a crucial issue here. Insofar as the government funds *in a discretionary manner* individuals and groups who are holding it accountable, their ability to exercise their pro-accountability function is compromised.¹⁶⁴

Nevertheless, we should not take this argument too far. An organization that receives resources from the government is not necessarily “bought off.” If resources are disbursed transparently and with the use of objective criteria the fear of cooptation is significantly reduced.¹⁶⁵ The numerous existing public universities, public investigation commissions, and government-funded citizen councils demonstrate that public money and public criticism can go hand-in-hand. In addition, there are numerous ways in which societal actors can be invited inside the state without any money exchanging hands, including legal figures such as “social audits” and “citizen comptrollers.”¹⁶⁶ The General, State, and District councils of Mexico’s Federal Election Institute are excellent examples of how societal actors can enforce accountability from within the state itself.¹⁶⁷

LATINOAMERICANO DE ADMINISTRACIÓN PARA EL DESARROLLO 6 (2000), available at http://www.defensoria.org.co/red/anexos/pdf/08/responsabilizacion_cs.pdf.

163. See Henry Lucas et al., *Research on the Current State of PRS Monitoring Systems* 17 (Inst. of Dev. Studies, Discussion Paper No. 382, 2004), available at <http://internationalbudget.org/wp-content/uploads/Research-on-the-Current-State-of-PRS-Monitoring-Systems.pdf> (emphasizing that it is important for civil society organizations to maintain their autonomy and engage with government without conceding their values to prevent a loss of credibility in their roles as watchdogs over state actions).

164. See *id.* at 20 (warning against joint-monitoring activities involving civil society organizations that are dependent on government funding, and suggesting, in the alternative, that external actors such as international NGOs may be more effective).

165. See Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 451 (demonstrating, for example, that in the city of Porto Alegre, robust negotiations and a weighted voting system have ensured a fair distribution of resources).

166. *Id.* at 451.

167. Ackerman, *Organismos Autónomos*, *supra* note 89, at 12; see also

“Depth of involvement” is frequently related to “level of Institutionalization” insofar as the closer societal actors get to the core of the state, the more their behavior is usually regulated.¹⁶⁸ But this is by no means a guarantee. Relatively external forms of participation, like public consultations of large infrastructure projects, can be required by law, while many civil society organizations or movements are able to reach into the very core of the state even without legal permission, as when informal but powerful bargaining tables are set up between guerrilla leaders and government officials.¹⁶⁹ These are therefore two distinct dimensions and each needs to be given its due attention in the design of social accountability mechanisms.

There is also a tendency for participatory pro-accountability mechanisms to only involve a small group of “well behaved” NGOs, middle class professionals, and centrist politicians.¹⁷⁰ The unspoken fear is that the participation of broad-based grassroots movements, uneducated citizens, and leftist politicians will only make things more difficult. The fundamental problem here is one of communication and value sharing.¹⁷¹ On the one hand, communication with the “well behaved” group is much easier because they usually speak the same language, both literally and figuratively, and have often even studied at the same universities as the public officials. On the other hand, language, class, and cultural barriers make it much more difficult to truly listen to and understand

Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 452 (stating that the General Council, for example, acts as both the horizontal accountability agency and the principal directive body for the IFE).

168. *But see* Marie Gildemyn, *Towards an Understanding of Civil Society Organisations' Involvement in Monitoring and Evaluation* 1, 18–19 (Inst. of Dev. Policy and Mgmt., Discussion Paper No. 2011-03, 2011) (stating that the extent to which civil society organizations are involved in the “core” of government is different from the level of institutionalization as a result of the organizations’ goal of maintaining their autonomy).

169. *See* Teresa La Porte, *The Legitimacy and Effectiveness of Non-State Actors and the Public Diplomacy Concept* 1 (ISA Ann. Convention, 2012) (demonstrating the effectiveness of movements without legitimacy through examples such as the Arab Spring and the global “#occupywallstreet”).

170. *See* Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 458–59 (contending that this tendency calls for “the full inclusion” of all citizens in the central activities of the government rather than this exclusion).

171. *See id.* at 459 (asserting that state reformers and multilateral agencies avoid the “messy process” of the intense negotiations of lawmaking).

the “raucous” group.¹⁷² Clear proposals are often misinterpreted as destructive criticism and the need to be taken into account is frequently confused with a desire to disrupt. The simplest option is therefore to only open up participation to those one already understands.

This is clearly a mistake. As Eberlei argues, “The circle of participating actors established must be gradually and systematically expanded, in order to broaden the scope of dialogue and make it largely inclusive,”¹⁷³ Such broad-based participation is crucial for three reasons. First, civic engagement for accountability is usually more effective precisely when government officials *do not* know what to expect from civil society.¹⁷⁴ When public officials and society actors form part of the same “epistemic community,” officials can anticipate exactly when, where, and how they will be observed, judged, and held accountable. Some level of predictability is positive insofar as it allows for coherent long-term planning.¹⁷⁵ But too much predictability is dangerous insofar as it tends towards complicity.¹⁷⁶ Social accountability can be most effective when it keeps government officials on their toes.

Second, “well behaved” civil society groups are usually considered so because they “trust” government to do a good job.¹⁷⁷ Although some level of social trust in government is necessary for national cohesion, too much trust can be counterproductive. As Catalina Smulovitz has pointed out, it is often the case that “the social trust that results from value-sharing weakens citizens’ oversight and control capacities of what rulers do, and increases, in turn, the chances of opportunistic actions by one of them.”¹⁷⁸

172. *But see* Smulovitz, *supra* note 98, at 181 (stating that people’s diversity does not automatically impede “control or attempts to impose costs”).

173. EBERLEI, *supra* note 135, at 15.

174. *See* Smulovitz, *supra* note 98, at 181 (arguing that the social trust created by value sharing actually increases the control of the government officials and creates opportunities for officials to act opportunistically, thereby negating accountability).

175. *But see id.* (suggesting that consensus on values does not necessarily ensure long-term survival of the law).

176. *See id.* (emphasizing that social trust can weaken the citizens’ oversight over government officials).

177. *See id.* at 180 (stating that some find that societal trust is necessary for political cooperation).

178. *Id.* at 181.

“Distrust” is one of the most powerful motivating forces for the vigilant observation of government and it is often the “raucous” groups that score high on this criteria.¹⁷⁹ In the end, “autonomous civil society is [not so] important because citizens share values that sustain the benefits of self-restraint . . . [it] is important because it implies the existence of multiple external eyes with interests in the enforcement of law and denunciation of non-obedience.”¹⁸⁰

Third, pro-accountability initiatives that involve a wide range of interests and ideological positions are much more legitimate than those operated by a small, handpicked group of professionals.¹⁸¹ Expanding the circle of participation is clearly a challenge, but it is the only way to achieve broad-based acceptance and ownership in such pro-accountability initiatives. We should be careful not to fall prey to depoliticized or neutral ideas of civil society that see “cooperative” or “moderate” forms of social organization as the only ones that can positively influence the construction of accountability arrangements.¹⁸²

In the end, we should question the commonly accepted idea that the absence of partisanship and political conflict is the only fertile ground for neutrality and accountability. Professionalism and independence are necessary but by no means sufficient to assure the long-term survival of accountability. To survive, pro-accountability structures need to be legitimated by society both at their founding moment and during their everyday operations.¹⁸³ This requires the multiplication, not the reduction, of “external eyes” and the diversification, not unification, of political and ideological perspectives.¹⁸⁴ Indeed, sometimes the most effective strategy for state reformers might be to stimulate dynamic social movements and social protest and let them take the lead in pressuring and undermining the power of recalcitrant elements of the state.

179. *See id.*

180. *But see id.* at 171.

181. *See* EBERLEI, *supra* note 135, at 15 (stating that the expansion of the group of actors is necessary to broaden dialogue and increase inclusivity).

182. *See* Ackerman, *Co-Governance for Accountability*, *supra* note 36, at 453–54 (suggesting that more effective reform comes from more diversity of political positions rather than political neutrality, as exemplified by electoral reform in Mexico).

183. EBERLEI, *supra* note 135, at 5.

184. Smulovitz, *supra* note 98, 171.

V. CONCLUSIONS

In this article, I have argued in favor of a transformation of both the theory and practice of international anti-corruption and pro-accountability reform. To implement successful strategies, we should break with the conventional wisdom based in a minimalist understanding of corruption and a bureaucratic approach to policy. In its place, we should develop new expansive visions of accountability and give particular emphasis to the role of civil society. Additionally, when considering society-based initiatives, the most fruitful strategy is to take up a human rights based approach. Otherwise, we risk running into the same problems that affect more traditional strategies.

I began my discussion by proposing a new definition of accountability as a *“pro-active process by which public officials inform about and justify their plans of action, their behavior and results and are sanctioned accordingly.”* This definition breaks with the biases of understandings grounded in more elemental bureaucratic transparency and sets the stage for understanding corruption as a symptom of a breakdown of state-society relations instead of just due to administrative failure. In the first section, I also outlined the central failures of electoral democracy as an accountability mechanism. This is important to carve out theoretical space for developing innovative ways for citizens to participate in improving governance, beyond electoral participation.

The following section then identified society-based accountability strategies within the broader schema of different administrative reforms. This was then immediately followed by an extensive discussion of the principal strengths and weakness of social accountability initiatives. To confront the weaknesses and build on the strengths, I propose focusing specifically on a series of key issues, including identifying government service providers as duty-holders, understanding beneficiaries of government programs as citizens, valuing bottom-up participation, understanding the indivisibility of human rights, and engaging with the broader power structures. The challenge is to avoid using civil society to help government avoid its responsibilities and instead enable social mobilization to pressure government to operate more efficiently and effectively.