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# Theories of Civil Society and Global Administrative Law: The Case of the World Bank and International Development

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## 15. Theories of civil society and Global Administrative Law: the case of the World Bank and international development

*Francesca Bignami\**

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### 1 INTRODUCTION

For over two decades, the concept of civil society has informed institutional design in the international realm. Empowering civil society has served as a key rhetorical and policy response to the criticism that the social and economic processes of globalization and the international organizations that have emerged to govern the global realm are illegitimate, elite driven, and anti-democratic.<sup>1</sup> It is only a slight exaggeration to say that the majority of the Global Administrative Law (GAL) that exists today can be understood as the historical product of institutional reform designed to empower civil society. Civil society, however, is a notoriously ambiguous concept. In most contemporary legal and political theory it is believed to be an important component of a fair and stable political community and therefore essential to the good life. It is also generally, although certainly not universally, used to refer to a sphere that is relatively free of the state and the market, populated by voluntary associations through which individuals join together to pursue their common interests and express their common identities. Beyond that, however, there is little consensus. How civil society contributes to democracy and what particular forms of civil society – sometimes in league with other societal actors – are important for democracy and good governance vary considerably among the different theories of how to organize the collective life of a political community.

This chapter canvasses the most prominent contemporary theories of civil society, with the ambition of clarifying and assessing the legal and political reforms that have been undertaken in favour of civil society in the international sphere in recent decades. Although the scholarship on the subject is profuse, it is possible to discern five separate lines of argument and justification: liberal, social capital, multicultural, cosmopolitan, and effective governance. For each normative account of civil society, the chapter identifies how civil society is believed to contribute to democracy and what types of voluntary associations and, in some cases, other non-state actors, are cast as important to achieving democracy and the right and good organization of politics.

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\* I thank James Beatty and Jeffrey Klossner for their excellent research assistance.

<sup>1</sup> See Laura Pedraza-Fariña, 'Conceptions of Civil Society in International Lawmaking and Implementation: A Theoretical Framework' (2013) 34 Michigan Journal of International Law 605.

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The chapter then proceeds to consider the experience with civil society reforms in the domain of international development law. It carefully examines the reforms that have been enacted by the World Bank (WB), which has been recognized as a leader among international development organizations, and considers to what extent the WB experience is representative of the field in more general terms. The civil society theories presented in the first part of the chapter are used to analyse the WB's emerging body of law and to clarify how the WB's legal reforms are – and are not – intended to improve the legitimacy of this global administrative body and this field of global governance. The theoretical-empirical exercise serves as an important tool for evaluating the development of the WB's law, as well as that of other international organizations involved in the international development sector.

Broadly speaking, the law governing how the WB interacts with civil society has become more inclusive over time, motivated by an expanding set of legitimacy claims and incorporating a growing number of civil society (and other non-state) actors. Initially, in line with the WB's policy focus on international development, the actors and rationales for WB administrative law were limited largely to the social capital and multicultural theories of civil society. Thus, the administrative law of WB loans and WB societal funding are focused largely on local and indigenous groups in borrower countries. Other multilateral development banks, such as the Inter-American Development Bank and the Asian Development Bank, have adopted very similar policies related to project financing, which are also inspired by the social capital and multicultural theories of civil society. More recently, the WB has adopted a number of legal procedures related to transparency and consultation. These procedures are informed by liberal and expertise theories which require the inclusion of all 'stakeholders' in the policymaking process and therefore invite oversight by and participation from all types of civil society organizations, as well as the private sector and various public actors. While other multilateral development banks have also adopted policies on transparency and consultation, they tend to be less comprehensive than those of the WB. What is generally missing from the law, although certainly not the politics, of the WB are versions of cosmopolitan theory that privilege transnational associations because of their ability to represent and mobilize, and hence constitute, a nascent global society.

## 2 THEORIES OF CIVIL SOCIETY

Before turning to the particularities of the different contemporary political theories of civil society, it is important to highlight the important premise shared by all of them: liberal democracy. Civil society, in all the theories, is assumed to operate in the larger context of liberal democracy, and the importance attributed to civil society relies to a large extent on how civil society contributes to the institutions and practices of liberal democracy. Although there are obviously many different definitions of liberal democracy, in both political theory and the politics of states, the term is generally used to signify, at a minimum, both a private sphere outside of the state and collective decision making to guide the state. The activities of the state, depending on the political theory, can be extensive or minimalist, but when the state does intervene in the life of the

political community it must be guided by procedures that generally entail public deliberation, voting, and majority or super-majority decision rules. In collectivities of any size, this generally involves elections for political representatives and a legislative body.

The liberal democracy premise calls attention to one of the fundamental anomalies of international politics and law from the perspective of the theory of democracy, of which civil society theory is a subset, and that is the absence in the international realm of majority decision making involving the individual members of global society. Indeed, GAL is partly directed at chronicling and, to the extent possible, taming the lack of direct democracy. For the purposes of this discussion, the point to keep in mind is that legal and political reforms in the international realm designed to empower civil society carry the benefits promised by the normative theories only if they are also accompanied by the institutions and practices of democracy. These institutions and practices can exist at different levels of governance – local, national, regional or international – and they can be established or incipient – as is certainly the case in certain countries and international legal regimes – but they are the indispensable companion to civil society.

## 2.1 Liberalism

Attention to civil society in liberal theories of politics has been spurred by the experience of the ‘Third Wave’<sup>2</sup> of democratization, especially in the countries of Eastern Europe and the former Soviet Union, and the important contribution to defeating authoritarianism made by churches, trade unions, social movements and other forms of civil society.<sup>3</sup> Liberal theories focus on the liberty-enhancing properties of civil society.<sup>4</sup> The basic premise that citizens should be able to freely choose and pursue their individual life projects is connected to the existence of a vibrant set of groups and organizations independent of the state. These associations constitute arenas in which individuals can express and pursue different interests, identities and aspirations. They also serve to preserve a robust sphere of liberty free of the state: associations operate as centres of power that compete with the state and that enable their members to critically debate and engage with the initiatives of the state.

The importance that liberal thinkers attach to pluralism in the private sphere leads them to adopt a highly inclusive definition of civil society. As long as an association is not part of the coercive apparatus of the state, and does not act exclusively to accomplish market ends, it counts as civil society. All ends and modes of organizing are included: small associations such as neighbourhood watches, large ones such as

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<sup>2</sup> Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1991).

<sup>3</sup> See, e.g., Gregor Ekiert and Jan Kubic, *Rebellious Civil Society: Popular Protest and Democratic Consolidation in Poland, 1989–93* (University of Michigan Press 1999), 44.

<sup>4</sup> Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (Penguin 1996); Terry Nardin, ‘Private and Public Roles in Civil Society’ in Michael Walzer (ed.), *Toward a Global Civil Society* (Berghahn 1995), 30–33; Michael Walzer, ‘The Idea of Civil Society: A Path to Social Reconstruction’ in Eugene Joseph Dionne (ed.), *Community Works* (Brookings Institution Press 1998), 132; Michael Walzer, ‘The Concept of Civil Society’ in Michael Walzer (ed.), *Toward a Global Civil Society* (Berghahn 1995), 18–25.

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environmental federations and veterans' rights groups, and market-based organizations such as corporations, labour unions, employer associations and industry lobbies.<sup>5</sup> The related public policy prescriptions are fairly minimalist. The state must guarantee the fundamental rights of free speech and free association, which are a prerequisite for social mobilization.<sup>6</sup> Some degree of transparency in the policymaking activities of the state is also necessary to enable civil society to use the democratic process to check the state.

## 2.2 Social Capital

In the view of Robert Putnam and others, joining and participating in voluntary organizations is essential for constructing social capital and training individuals in the skills and values of citizenship. Social capital theory has been driven largely by the historical and political circumstances of decline in associational life in old, Western democracies, in particular in the US, and the possible adverse consequences for democracy.<sup>7</sup> Displaying certain affinities with the republican tradition of political theory, this analysis of civil society posits a conflict between the pursuit of self-chosen aims and the peaceful and prosperous ordering of public affairs. Self-interest and particularistic identities can precipitate the breakdown of community – through civil war or, less dramatically, through ineffective government, unable to provide basic public goods such as clean water and healthcare. This in turn compromises liberty. Thus, for society to be possible and for government to work, individuals must learn certain skills and virtues of citizenship. And, according to Putnam and others, the voluntary associations of civil society are where this learning occurs.<sup>8</sup> Putnam articulates his understanding of the relationship between private associations and good government as social capital: in the small-scale setting of the bowling league or the local union organization, individuals learn the habits of cooperation, reciprocity and trust that are necessary for all collective endeavours, including the public deliberation and responsible management at the root of good government and democracy.<sup>9</sup>

Social capital theory is more selective than liberal theory in defining the ambit of civil society. The theory turns on popular associations with an active membership base that engage in social and civic activities, and generally excludes two categories of associations whose aims and internal structure are such that they cannot serve as incubators of citizenship. The first are actors viewed as being strictly market based: corporations, partnerships, other profit-seeking entities, and the lobbying groups that

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<sup>5</sup> Walzer, 'The Concept of Civil Society' (n 4), 19.

<sup>6</sup> See, e.g., Mark Tushnet, 'The Constitution of Civil Society' (2000) 75 *Chicago Kent Law Review* 379, 398–99 (analysing the importance of First Amendment rights of speech and association for civil society).

<sup>7</sup> Robert D Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000).

<sup>8</sup> See, e.g., Nan Lin and Bonnie Erickson (eds), *Social Capital: An International Research Program* (Oxford University Press 2009).

<sup>9</sup> See *ibid* 18–24; Robert D Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press 1993).

represent their interests in politics.<sup>10</sup> Maximizing profits in capitalist markets and influencing politics to the material advantage of particular economic actors do not require reciprocity and cooperation and hence do not lead to the creation of social capital. The second type of association that is excluded is the specialized organization that focuses on political advocacy and which has neither a rank-and-file membership nor the capacity to mobilize large numbers of individuals when necessary.<sup>11</sup> Like profit-seeking entities, the internal dynamics of small pressure groups – whether they pursue private or public interests – are not conducive to building social capital. That is because the professionals who staff the national offices of organizations such as the Center for Science in the Public Interest (a foundation-funded, pro-consumer group) or Citizens for a Sound Economy (a corporate-funded, anti-big government group) have very little daily connection to the individuals and the interests they represent. Although citizens may donate money to their causes, such associations are unlikely to motivate citizens to actively pursue different forms of civic engagement.

The social capital justification for civil society gives rise to a number of policy recommendations. Many of them are directed at encouraging and enabling individual citizens to join voluntary associations.<sup>12</sup> Others are designed to transfer governance powers to civil society actors and therefore to incentivize the formation of associations and to create opportunities for organizing. This, according to Putnam, can be accomplished by giving citizen associations legal powers and tax dollars that ordinarily would be used and spent by public officials. Among the examples cited are a decision of the City of Boston to delegate the power of eminent domain to allow a local neighbourhood association to purchase and develop land in central Boston, and state and federal funding for a tutoring programme in Philadelphia sponsored and run by a local volunteer group. As these illustrations suggest, the focus is often on local associations that concentrate their efforts on problems such as the delivery of social services, education and land use planning, which are considered of direct concern to individual citizens and are most properly addressed at the local level.

### 2.3 Multiculturalism

The central problem in multiculturalism theories is cultural, ethnic and religious diversity in contemporary societies; the response is to recognize and accommodate such groups and their associations within a broader framework of pluralism and democracy.<sup>13</sup> The justification for treating ascriptive categories differently is generally

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<sup>10</sup> See Putnam, *Bowling Alone* (n 7), 91–92.

<sup>11</sup> *Ibid* 52.

<sup>12</sup> See Robert D Putnam and Lewis M Feldstein, *Better Together: Restoring the American Community* (Simon & Schuster 2003), 271–79.

<sup>13</sup> See, e.g., Ayelet Shachar, ‘On Citizenship and Multicultural Vulnerability’ (2000) 28 *Political Theory* 64; Charles Taylor, ‘The Politics of Recognition’ in Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1992); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge University Press 1995); and Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford University Press 2001).



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premised on the communitarian insight that individual ends and identity are inextricably tied to community, and that cultural and religious communities can serve as an important forum within the broader political system for shaping and expressing personhood. Multiculturalism theories are aimed at a wide range of ascriptive groups and political contexts: ethnic and religious minorities such as Islam in Western societies, territorially based groups such as the Québécois in Canada, and indigenous peoples such as the Maori in New Zealand. In their treatment of civil society, they privilege organizations through which groups engage in self-governance and social activities – churches for instance – as well as organizations that are designed to mobilize and represent cultural and religious groups in the broader political community.

Thinkers in the multiculturalism tradition typically advocate allocating legal responsibilities and public funds to civil society organizations (CSOs) to engage in governance activities, such as the distribution of social services and the regulation of family life. Sometimes, they also argue for special representation for ascriptive categories, through their associations, in administrative and democratic bodies. Moreover, legal regimes in multicultural societies often contain exceptions or affirmative accommodations for members of cultural and religious groups based on their particular characteristics.

#### 2.4 Cosmopolitanism

Among the theories canvassed in this chapter, the cosmopolitan line of argument is the only one that is directed specifically at the international realm. The historical and political context that informs the literature is the rise of associations and social movements that span the globe.<sup>14</sup> These are associations and informal networks that mobilize individuals across national borders, focus on global issues, and target multiple countries and multilateral regimes in order to achieve their goals. Both long-standing organizations such as Amnesty International and the World Wildlife Fund as well as more spontaneous social movements such as the anti-globalization networks responsible for the protests at meetings of international economic organizations are representative of this phenomenon.

In cosmopolitan scholarship, transnational social mobilization is generally cast as the kernel of an emerging global civil society that is a necessary counterweight to both the forces of global capitalism and the unaccountable inter-state bargaining and international bureaucracies of the international realm.<sup>15</sup> In these accounts, the accelerating globalization of markets has led to profound social injustice, which the political elites

<sup>14</sup> See Richard Falk, *On Humane Governance: Towards a New Global Politics: The World Order Models Project Report of the Global Civilization Initiative* (Pennsylvania State University Press 1995), 106, 199, 253; John Keane, *Global Civil Society* (Cambridge University Press 2003), 8–20; Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998), 10–11.

<sup>15</sup> See Daniele Archibugi, 'Principles of Cosmopolitan Democracy' in Daniele Archibugi, David Held and Martin Köhler (eds), *Re-Imagining Political Community: Studies in Cosmopolitan Democracy* (Stanford University Press 1998), 222; Commission on Global Governance, *Our Global Neighbourhood: The Report of the Commission on Global Governance* (Oxford University Press 1995), 56; Richard Falk, 'Global Civil Society: Perspectives, Initiatives, Movements' (1998) 26 *Oxford Development Studies* 99, 100; Falk, *On Humane Governance*

and international technocrats that dominate international politics and organizations have been either unwilling or unable to address. A global society, in which citizens come to identify with one another based on their shared circumstances of poverty, environmental depredations, and other forms of injustice, is necessary to tame globalization and ensure that the forces of globalization are harnessed to the advantage of ordinary people.

In contrast with the theories already discussed, the term ‘civil society’ is used here to refer broadly to social relations separate from the state. Associations are important but generally because of whom they represent in international politics and their ability to mobilize people transnationally, and not because of any intrinsic benefits derived from the act of organizing. Global civil society is synonymous with a global people, and associations are the vehicle for organizing that people, in many ways a temporary surrogate for political parties in traditional democracies. To some extent, cosmopolitan thinkers will into being what does not yet exist: an integrated, cosmopolitan public sphere in which people are no longer artificially divided by the particular histories, languages and cultures of the nation state. By shining light on the importance of a (future) global civil society, they call for social movement entrepreneurs and non-governmental organizations (NGOs) to mobilize transnationally on issues common to human society, and in so doing, build a global civil society. Cosmopolitan theories also generally contain a very strong substantive vision of politics and the types of interests that have been neglected in the global realm. They therefore focus on interests and constituencies such as the environment and the poor, and exclude market-based actors such as multinational corporations, financial institutions and industry lobbying groups.

Cosmopolitan thinkers have generally sought to encourage mobilization from below, similar to some of the social capital literature discussed earlier. There is also an ambitious proposal to establish a directly elected world parliament (‘Global Peoples Assembly’). The Global Peoples Assembly would represent global civil society in international lawmaking, thereby transposing the key political institutions of democracy – elections, representatives and a collective body with a majority or super-majority decision-making rule – to the global realm.<sup>16</sup> Another possible policy implication, given the role of associations in mobilizing and representing global civil society, is the inclusion of transnational associations with significant memberships and geographic presence in policy deliberations.

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(n 14), 106; Keane, *Global Civil Society* (n 14), 173; David Held, ‘Democracy and Globalization’ in Archibugi et al (n 15), 22–23; Mary Kaldor, ‘Global Civil Society’ in David Held and Anthony McGrew (eds), *The Global Transformations Reader* (Polity 2000), 560; Paul Wapner, ‘The Normative Promise of Nonstate Actors: A Theoretical Account of Global Civil Society’ in Paul Wapner and Lester Edwin J Ruiz (eds), *Principled World Politics: The Challenge of Normative International Relations* (Rowman and Littlefield 2000), 267.

<sup>16</sup> See Richard Falk and Andrew Strauss, ‘On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty’ (2000) 36 *Stanford Journal of International Law* 191, 193.



## 2.5 Effective Governance

The theories of civil society discussed so far have largely concerned the role of civil society in advancing citizenship in different theories of democracy. Civil society, in these theories, is linked to a broader set of principles, both procedural and substantive, for how to navigate the relationship between the individual and society, cope with the conflicts that permeate societies, and achieve a stable and fair political community. In the public policy and governance literature, however, the emphasis is not on citizenship but on the effectiveness of the organizations and policies of the state, and the contribution that can be made by civil society. To simplify somewhat, the focus is not on the conflicts of politics but on the problem solving of administration.

In the public policy literature, the dominant problem is the deficiencies of traditional ‘command-and-control’ administration. Civil society is believed to offer the prospect of more effective governance for three main reasons.<sup>17</sup> First, the problems addressed by government are often highly technical and require specialized forms of knowledge, which are often possessed by civil society actors. Second, government policies require implementation, and to the extent that civil society and other non-state actors support the policy in question, cooperation and compliance is more likely. Third, in some cases, the expertise and resources commanded by the private sphere can be so significant that government is advised to transfer policymaking functions wholesale to non-state actors, with only minimum supervision from the state.

In public policy literature, civil society organizations are defined as voluntary associations involved in a variety of advocacy and social activities and are considered but one set of non-state actors that can contribute to effective governance. The principal other category, which is emphatically excluded from the other theories of civil society, consists of business actors engaged in their profit-making, market-based functions. In many cases, especially with regard to the market-regulating functions of the state, the individual firms that operate in an economic sector are the non-state actors with the greatest knowledge and resources and therefore their participation is essential for effective problem solving. Indeed, in governance scholarship, the more capacious terms of ‘parties’, ‘non-governmental actors’, and ‘stakeholders’ are generally preferred to ‘civil society’. The prescriptive component largely focuses on the institutional design of the public actors responsible for policymaking, and calls on them to be transparent in their activities and open to input from civil society and other stakeholders. It also seeks to delineate areas such as service provision, technical standard setting, and the distribution of development aid in which policy tasks are more effectively handled by non-state actors.

Table 15.1 summarizes the principal elements of each of the theories of civil society.

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<sup>17</sup> See, e.g., Richard B Stewart, ‘Administrative Law in the Twenty-First Century’ (2003) 78 *New York University Law Review* 437; Gráinne de Búrca, Robert O Keohane, and Charles Sabel, ‘New Modes of Pluralist Global Governance’ (2013) 45 *New York University Journal of International Law & Politics* 723, 739–785; Jody Freeman, ‘Collaborative Governance in the Administrative State’ (1997) 45 *UCLA Law Review* 1.

*Table 15.1 Theories of civil society*

	Liberalism	Social capital	Multiculturalism	Cosmopolitanism	Effective governance
Who	All non-state and non-market associations	Popular associations with active membership	Ascriptive groups	Global people and transnational associations	Stakeholders, including business
Why	Liberty	Develop citizenship skills	Identity politics	Social justice	Effective administration
Policy prescriptions	Basic rights and government transparency	Transfer local government powers	Transfer government powers and special public representation	Global Peoples Assembly	Administration open to input and delegation of powers

### 3 CIVIL SOCIETY, THE WORLD BANK, AND INTERNATIONAL DEVELOPMENT LAW

Among global administrative bodies, the WB is widely credited with having made some of the most far-reaching reforms in favour of civil society. The following section reviews, in a roughly chronological order, the many institutional changes that have been made. At the same time, it illustrates how the WB reforms both are and are not representative of other international organizations in the field of international development. Legal reform has followed a local to global trajectory, with the earlier period characterized by an emphasis on project planning and local participation in borrower countries and the more recent developments focused on the WB's broadly applicable policymaking activities. Over time, the WB's administrative law has also come to reflect an increasingly diverse set of theories of civil society, accompanied by an expanding set of non-state actors entitled to participate in WB policymaking.

The first major set of reforms has revolved around the procedures and criteria that must be followed when countries propose and the WB approves financing for development projects, known as the Safeguard Policies.<sup>18</sup> In the mid-1980s, the WB came under pressure to more aggressively incorporate environmental considerations in the lending process. By the early 1990s, this had culminated in a set of procedural requirements familiar to many domestic administrative law systems: preparation of a formal environmental assessment, disclosure of the preparatory project document to the affected groups and local NGOs, consultation of those groups before and after the preparation of a draft environmental assessment, and independent compliance oversight

<sup>18</sup> See generally David Gartner, 'Beyond the Monopoly of States' (2010) 2 *University of Pennsylvania Journal of International Law* 595, 612.

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by the World Bank Inspection Panel.<sup>19</sup> Under the current policy, the environmental assessment must ‘take into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects.’<sup>20</sup> Increasingly, borrower countries, as opposed to WB administration, have been given primary responsibility for ensuring compliance with the analytical and procedural requirements.<sup>21</sup>

The history of these reforms closely follows the political dynamics of the cosmopolitan theories of civil society canvassed above. Most of the WB’s Safeguard Policies were adopted in reaction to the highly visible injustices of earlier WB projects, and came on the heels of extensive NGO mobilization. The initial requirements were developed in the early 1980s in response to a number of projects involving dams and other types of infrastructure in the Amazon region that had led to the displacement of indigenous populations and the destruction of the rainforest and natural habitats.<sup>22</sup> The establishment of the Inspection Panel roughly a decade later was driven by the intense controversy surrounding the Sardar Sarovar dam and canal complex in the Narmada Valley of central India.<sup>23</sup> The dam, which had received WB support, would have flooded and rendered uninhabitable a fertile agricultural region and would have led to the eviction of hundreds of thousands of people. In going forward with the project, government officials had blatantly violated a number of national legal requirements, including environmental impact studies and the approval of the Ministry of Environment and Forests, and had failed to comply with the WB’s Safeguard Policies on environment assessments, indigenous peoples’ rights, and planning for involuntary resettlement. The planned construction sparked intense local protests, led to the mobilization of NGOs in Europe, Japan and North America, and provoked scrutiny from a number of Western governments, including the US Congress. In response, the WB created an independent commission to review the project, which concluded that the WB had violated its own Safeguard Policies. Although the WB initially attempted to minimize the implications of the findings, it was soon compelled to establish an independent review process and the Inspection Panel.

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<sup>19</sup> World Bank, Operational Directive 4.00, Annex A: Environmental Assessment (1989); World Bank, Operational Directive 4.01 on Environmental Assessment (1991).

<sup>20</sup> World Bank, Operational Directive 4.01 on Environmental Assessment para 3.

<sup>21</sup> See Daniel Bradlow, ‘The Reform of the Governance of IFIs: A Critical Assessment’ in Hassane Cissé, Daniel D Bradlow, and Benedict Kingsbury (eds), *World Bank Legal Review: International Financial Institutions And Global Legal Governance*, vol 3 (World Bank 2011), 95.

<sup>22</sup> Benedict Kingsbury, ‘Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples’ in Guy S Goodwin-Gill and Stefan Talmon (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford University Press 1999), 324; David Gartner, ‘Uncovering Bretton Woods: Conditional Transparency, The World Bank, And The International Monetary Fund’ (2013) 45 *George Washington International Law Review* 121, 128–29.

<sup>23</sup> Dana Clark, ‘Understanding the World Bank Inspection Panel’ in Dana Clark, Jonathan A Fox and Kay Treakle (eds), *Demanding Accountability: Civil-society Claims and the World Bank Inspection Panel* (Rowman & Littlefield 2003).

The actual law of the Safeguard Policies, however, is less clearly motivated by cosmopolitan theories of civil society. The most noticeable connection is with the substantive vision of justice that underpins many cosmopolitan arguments for civil society. The analytical and procedural requirements entailed by the Safeguard Policies and their enforcement by the Inspection Panel are designed to remedy what Richard Stewart has called the ‘problem of disregard’ in global governance.<sup>24</sup> This is reflected not only in the history, but in the official language and purposes of the policies:

As social groups with identities that are often distinct from dominant groups in their national societies, indigenous peoples are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development.<sup>25</sup>

The Safeguard Policies are an example of procedures that lock in certain results, namely environmental conservation and the fair treatment of residents and indigenous populations. This obviously advances the cosmopolitan agenda of social justice and environmental conservation and highlights the extent to which CSOs and transnational mobilization in many cosmopolitan theories are instrumental to achieving good results and are not merely ends in themselves, as in other types of civil society scholarship.

For the civil society theories that inform the legal criteria applicable to WB project planning, it is necessary to look elsewhere – to social capital and multiculturalism. As in the social capital literature, there is a strong emphasis on individual citizens and their local associations and a bias against international NGOs, which are often highly professionalized and elite driven. This is apparent from the types of consultations required by the WB’s Safeguard Policies and from the conditions for submitting a request to the Inspection Panel. Under the environmental assessment consultation requirements, ‘the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project’s environmental aspects and takes their views in account’.<sup>26</sup> All of the related information disclosure requirements refer to the same two categories of ‘project-affected groups and local NGOs’. Under the Inspection Panel rules, there are two principal types of requesters: individuals who are affected by the project who band together for the purpose of seeking oversight; and local NGOs acting on the behalf of the affected individuals. Only if neither of these two comes forward do the rules allow for international NGOs to apply to the Inspection Panel: ‘[non-local representatives may come forward] in the exceptional cases ... where the party submitting the request contends that appropriate representation is not locally available and the Executive Directors [of the World Bank] so agree at the time they considers the request’.<sup>27</sup>

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<sup>24</sup> Richard B Stewart, ‘Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness’ (2014) 108 *American Journal of International Law* 211.

<sup>25</sup> World Bank, Operational Policy 4.10 on Indigenous Peoples (2005) (OP 4.10) para 2.

<sup>26</sup> World Bank, Operational Policy 4.01 on Environmental Assessment (1999) para 15.

<sup>27</sup> IBRD Res 93-10/IDA Res 93-6 (22 September 1993) ‘The World Bank Inspection Panel’, para 12.

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This focus on local civil society draws on the insights of social capital theory on the importance of local associations for democracy. It is no secret that many of the WB's borrower countries are not considered fully fledged democracies and have weak bureaucracies and unstable or ineffective democratic institutions. Corruption and clientelism are a major problem in many recipient nations. These systemic governance problems at the national level have contributed to poor international development outcomes, since the selection and management of projects is largely within the control of national governments. By seeking to create opportunities for citizens and their associations to engage with policies at the local level, therefore, the analytical and procedural requirements of project preparation appear to be targeted not only at improvements in specific project outcomes, but at fostering the social capital that can lead to more robust and effective democracy and state institutions.

The multiculturalism element of the WB's Safeguard Policies is evident from the special criteria and procedural rights related to indigenous peoples. In addition to the general transparency and consultation requirements, there are a number of other procedures that apply only when a project will affect indigenous peoples. They were first identified as a special category in the early 1980s and the current set of guarantees were established in July 2005 (Operational Policy 4.10).<sup>28</sup> Once an initial screening determines that an indigenous group is implicated by a project, the borrower is required to prepare a social assessment 'to evaluate the project's potential positive and adverse effects on the indigenous peoples and to examine project alternatives where adverse effects may be significant'.<sup>29</sup> In the course of preparing the project, the borrower is under a duty to 'engage in free, prior, and informed consultation' with the indigenous community, which includes disclosure of all relevant information about the project, including the social assessment.<sup>30</sup> The borrower must also prepare an Indigenous Peoples Plan, which sets out the steps that will be taken to ensure that the indigenous group benefits from the project and to ensure that any harms are mitigated or compensated, and which again must be disclosed (in draft form) to the indigenous community.<sup>31</sup> Only if this consultation reveals that there is 'broad support' for the project in the indigenous community can the project proceed.<sup>32</sup> As with the other Safeguard Policies, members of the affected community or a local representative NGO can file a request with the Inspection Panel if the borrower fails to comply with these requirements. From this legal overview, it is apparent that the particular segment of civil society singled out by multicultural theories – ascriptive identities that are expressed through non-state associations – also receives special consideration in the WB rules.

By giving rights to indigenous communities, the WB rules seek to foster within borrower countries the pluralist democracy advocated in multiculturalism theories of

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<sup>28</sup> OP 4.10; Fergus MacKay, 'The Draft World Bank Operational Policy 4.10 on Indigenous Peoples: Progress or More of the Same?' (2005) 22 *Arizona Journal of International & Comparative Law* 65.

<sup>29</sup> OP 4.10 para 9.

<sup>30</sup> OP 4.10 para 10.

<sup>31</sup> OP 4.10 paras 12–14.

<sup>32</sup> OP 4.10 para 11.

how to structure the relationship between ascriptive groups and the broader political community. The provisions on consultation and, in theory, consent are premised on the recognition that land is of particular concern to indigenous groups and therefore, with respect to the policy area of land-use planning, they should have special powers:

The Bank recognizes that the identities and cultures of indigenous peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose indigenous peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease.<sup>33</sup>

This institutional response to ethnic and cultural diversity mimics political arrangements within certain multicultural societies where territorially based groups are given special prerogatives over policy areas that are considered of particular concern to them, such as language and education. To name but two examples, Quebec and Trentino-Alto Adige have been granted considerable autonomy within their respective countries of Canada and Italy and today are responsible for self-governance in a number of policy areas.

It is generally believed that the WB's Safeguard Policies have set the tone and the pace for the creation of similar policies at other multilateral development banks, principally the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development (EBRD), and the African Development Bank.<sup>34</sup> Multilateral development banks have, for the most part, adopted identical procedural and analytical requirements for their own project planning. The private sector elements of the World Bank Group, in particular the International Finance Corporation and the Multilateral Investment Guarantee Agency, have also done so, albeit somewhat later than on the public side.<sup>35</sup> With specific reference to indigenous peoples, the WB's Operational Policy 4.10 of 2005 triggered a wave of policy reform at other multilateral development banks: the International Finance Corporation and Inter-American Development Bank in 2006, the EBRD in 2008, and the Asian Development Bank in 2010.<sup>36</sup> The African Development Bank is the notable exception on this score, since it has not yet adopted a stand-alone safeguard policy for indigenous peoples, although it does require an environmental and social assessment for each project, which includes an assessment of any potential impact on indigenous peoples.<sup>37</sup>

A second set of WB policies, most of which are somewhat more recent than the efforts at better project planning, involves the direct funding of civil society groups.

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<sup>33</sup> OP 4.10.

<sup>34</sup> David Hunter, 'Civil Society Networks and the Development of Environmental Standards at International Financial Institutions' (2008) 8 *Chicago Journal of International Law* 437, 442.

<sup>35</sup> *Ibid* 444–45.

<sup>36</sup> Asian Development Bank, 'Safeguard Policy Statement' (*Asian Development Bank*) <<http://www.adb.org/site/safeguards/policy-statement>> accessed 15 March 2015; Fergus McKay, 'Indigenous Peoples and International Financial Institutions' in Daniel D Bradlow and David Hunter (eds), *International Financial Institutions and International Law* (Kluwer Law 2010).

<sup>37</sup> African Development Bank, *Integrated Safeguards System* (1 Safeguards and Sustainability Series 2013) 7.



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The Bank has developed an official definition of civil society, which applies across the gamut of WB policies, but is especially relevant for funding and the question of which organizations are eligible:

[T]he term civil society [refers] to the wide of array of non-government and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.<sup>38</sup>

A recent report on World Bank–Civil Society Engagement (2010–2012) found that there were 26 separate programmes across the WB that provided grants directly to CSOs.<sup>39</sup> In contrast with the WB’s Safeguard Policies, the WB’s funding of CSOs is somewhat anomalous in the universe of multilateral development banks. The one exception is the Asian Development Bank, which first issued a policy stressing cooperation with CSOs in 1987; it provides funding for some organizations and has encouraged partnerships between CSOs and private sector companies.<sup>40</sup>

WB grants appear to fund roughly three types of CSO activities: the provision of social services and other public goods such as disaster relief management; small-scale entrepreneurship; and the direct improvement of citizen engagement and government accountability and transparency through the dissemination of information, training in citizenship skills, and monitoring of public and private actors. Some of these activities are functional to international development objectives, namely the provision of aid and various types of public goods, and therefore civil society involvement is based on the contribution it can make to effective governance. However, the bulk of the WB’s funding, at least in its official presentation, appears to be directed at those associations and activities that contribute to building social capital. Many of the programmes, for instance the Governance Partnership Facility, which supports governance work by civil society actors and is the implementation arm of the WB’s Governance and Anti-corruption Strategy, are explicitly driven by the relationship between civil society and stable democracy.<sup>41</sup> Other programmes cast citizenship and democracy as an important, if not primary, effect of civil society funding. To take one passage from the WB’s recent report:

Community-driven development (CDD) programs financed by the Bank put poor people at the core of decision making and amplify their voice while delivering key economic resources and services. They support collective action, build local empowerment, and strengthen social capital, as community groups and local governments take responsibility for managing

<sup>38</sup> World Bank, ‘Defining Civil Society’ (*World Bank*, 22 June 2013) <<http://go.worldbank.org/4CE7W046K0>> accessed 16 February 2015.

<sup>39</sup> World Bank, *World Bank–Civil Society Engagement: Review of Fiscal Years 2010–2012* (World Bank 2013) 43.

<sup>40</sup> Enrique R Carrasco, Wesley Carrington and HeeJin Lee, ‘Governance and Accountability: The Regional Development Banks’ (2009) 27 *Boston University International Law Journal* 1, 31.

<sup>41</sup> *Ibid* 25–26.

investment resources. By promoting transparency and accountability, CDD helps empower citizens and encourages responsive government. CDD can also strengthen local government, improve the delivery of public goods and services, and promote sustainable community assets.<sup>42</sup>

The third and last bundle of institutional reforms, which has gained considerable steam in recent years, is broad-based transparency and consultation on the policymaking activities of the WB. While the Safeguard Policies are tied to specific project loans, the disclosure and consultation afforded in this set of procedures affects virtually all WB policies, including those with implications for development at the country, regional and global levels. On the transparency front, the WB has enacted a comprehensive Access to Information Policy. Since 2010, the vast majority of WB documents have been made public through a combination of a public database and the right to file requests for specific documents with the Bank. The database is directly accessible through a website and contains over 100,000 documents related to projects, statistics, country reports and more. For the information that is not included in the database, individuals have a right to file requests, and if denied, they can file an internal administrative appeal, and from there, an appeal to an independent appeals board.<sup>43</sup> With respect to consultation, there appears to be an emerging procedural norm in favour of publishing draft policies, soliciting feedback from the public, and explaining in the final version of the policy how the comments were taken into account.<sup>44</sup> The policies that are covered include cross-cutting global policies, such as revisions to the Safeguard Policies and sector strategies in areas such as energy and the environment, as well as country-level policies designed to inform loan and grant programmes, most importantly Country Assistance Strategies and Poverty Reduction Strategies.<sup>45</sup>

This law, while still of course profoundly shaped by the WB's development mission and the particular constituencies affected by that mission, is more broadly targeted and motivated than the law on project planning and grant making. Rather than drawing exclusively on the social capital and multiculturalism traditions, the most recent set of transparency and consultation standards reflects the liberal and effective governance theories of civil society. Transparency, in the Policy on Access to Information, is portrayed as essential to achieving the larger aims of governance that is effective and that is subject to a variety of liberal checks and balances, so as to protect against needless and wasteful WB initiatives:

Transparency is essential to building and maintaining public dialogue and increasing public awareness about the Bank's development role and mission. It is also critical for enhancing good governance, accountability, and development effectiveness. Openness promotes engagement with stakeholders, which in turn improves the design and implementation of project and policies, and strengthens development outcomes. It facilitates public oversight of Bank-supported operations during their preparation and implementation, which not only assists in

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<sup>42</sup> Ibid 23–24.

<sup>43</sup> World Bank, *The World Bank Policy on Access to Information* (Report 54873, 2010).

<sup>44</sup> Bradlow, 'The Reform of the Governance of the IFIs' (n 21), 44.

<sup>45</sup> World Bank, *World Bank–Civil Society Engagement: Review of Fiscal Years 2010–2012* (n 39) 13; see generally Gráinne de Búrca, 'Developing Democracy Beyond The State' (2008) 46 *Columbia Journal of Transnational Law* 221.

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exposing potential wrongdoing and corruption, but also enhances the possibility that problems will be identified and addressed early on.<sup>46</sup>

Similarly, consultation is portrayed not only as a means of encouraging citizen action and mobilization in developing countries, with all of the associated social capital benefits, but also as a mode of enlisting expertise and improving governance outcomes. The sourcebook used as a point of reference for the many consultations lists, among the primary objectives of consultations, those of '[improving] the quality of decision-making process by capturing the experience of specialized civil society organizations and other similar groups' and '[tapping] the knowledge of CSOs that work at the community level'.<sup>47</sup>

Consistent with the broader purposes of access to information and consultation and the more inclusive set of concerned parties, the preferred term in this area of law is not civil society but 'stakeholder'. The latter term covers not only CSOs, but also market actors, in their lobbying efforts directed at government and in their profit-seeking activities, as well as public sector actors involved in the specific issue area. As suggested in one WB publication, the official policy appears to be gaining traction in the actual practice of consultations. In an overview of consultations held in 2010–2012, the WB reported a broad range of stakeholder participation. Among the participants in 572 consultation meetings held worldwide, 38 per cent were CSOs, 23 per cent were governments, 12 per cent were consultants and individuals, 8 per cent were bilateral agencies, 8 per cent were multilateral donor agencies, 5 per cent were private sector, 4 per cent were academia, and 1 per cent was the media.<sup>48</sup>

Transparency and consultation have been taken on board by the other four major multilateral development banks, although they are generally not as extensive as in the WB. The WB's move to disclose more information, particularly in the form of draft policies, prompted other multilateral development banks to follow suit. The current African Development Bank information disclosure policy, adopted in 2012, obliges it to disclose all information unless it falls under one of eight exceptions, which include 'deliberative information and incomplete reports'.<sup>49</sup> Certain finalized draft documents, such as country strategies, are released for public consultation, but without information that recipient countries deem confidential.<sup>50</sup> The Asian Development Bank, under its 2011 policy, lists seven categories of information which it does not release to the public, subject to a public interest override, and it releases policy and strategy proposals at the same time that they are sent to the Board for review.<sup>51</sup> The Asian Development Bank has been recognized as one of the most transparent multilateral

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<sup>46</sup> World Bank, *The World Bank Policy on Access to Information* (n 43), 1.

<sup>47</sup> World Bank, *Consultations with Civil Society: A Sourcebook* (World Bank 2007) 2.

<sup>48</sup> World Bank, *World Bank–Civil Society Engagement: Review of Fiscal Years 2010–2012* (n 39) 14.

<sup>49</sup> African Development Bank, *Disclosure and Access to Information Policy* (African Development Bank 2012) §3.3.

<sup>50</sup> *Ibid* §4.11.

<sup>51</sup> Asian Development Bank, *Public Communications Policy 2011* (Asian Development Bank 2011) ¶28.

development banks.<sup>52</sup> Like the Asian Development Bank, the Inter-American Development Bank's information policy, issued in 2010, mandates disclosure of policy and strategy proposals simultaneously with their release to the Board, but also maintains a more extensive list of 10 categories of non-disclosed information.<sup>53</sup> The EBRD's information disclosure policy was approved in 2014, and includes a presumption of disclosure. The EBRD publishes draft reports as part of its public consultation process, and also publishes a summary of public comments received during that process.<sup>54</sup> Unlike the Asian or Inter-American Development Banks, it does not release updated drafts circulated to the Board after the public consultation. The EBRD also publishes 'Project Summary Documents' containing overviews of proposed investment projects at least 30 days prior to review by the Board of Directors.<sup>55</sup>

Turning to consultation, the practice is most common in the EBRD: annual meetings include CSOs and civil society consultations are held at both the working level and the political level.<sup>56</sup> The Asian Development Bank also engages in robust dialogue with civil society partners, although it has been criticized for centralizing those consultations through its NGO and Civil Society Center rather than allowing CSOs to contact project or country groups directly.<sup>57</sup> The Inter-American Development Bank encourages consultation with civil society in the development of project or country strategies, but leaves final responsibility for such participation in the hands of the borrowers.<sup>58</sup> Historically, the African Development Bank has engaged in much less consultation than its peers, but it has recently issued a policy meant to encourage more CSO participation.<sup>59</sup>

A last set of institutional rules directed at civil society bears mention. In the WB, over the years, there have been efforts to involve specific CSOs in general policymaking activities. These institutional arrangements, however, have been unstable over time and are currently far less prominent than stakeholder consultations. Beginning in 1982, the WB established a committee composed principally of international development NGOs that met annually to advise senior Bank management.<sup>60</sup> This was replaced in 2002 by the Joint Facilitation Committee, which sought to include a more representative group of CSOs as well as one with demonstrated and substantial constituencies in

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<sup>52</sup> Carrasco et al., 'Governance and Accountability' (n 40), 23.

<sup>53</sup> Inter-American Development Bank, *Access to Information Policy* (Inter-American Bank 2010) §5.1.

<sup>54</sup> European Bank for Reconstruction and Development, *Public Information Policy* (European Bank for Reconstruction and Development 2014) §2.1.

<sup>55</sup> *Ibid* §3.1.

<sup>56</sup> European Bank for Reconstruction and Development, *EBRD Sustainability Report 2013* (2014), 12.

<sup>57</sup> Carrasco et al, 'Governance and Accountability' (n 40), 31.

<sup>58</sup> Inter-American Development Bank, *Strategy for Promoting Citizen Participation* (2004), 15.

<sup>59</sup> African Development Bank, *Framework for Enhanced Engagement with Civil Society Organizations* (African Development Bank 2012).

<sup>60</sup> Jane G Covey, 'Critical Cooperation? Influencing the World Bank through Policy Dialogue and Operational Cooperation' in Jonathan A Fox and L Dave Brown (eds), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements* (MIT Press 1998), 81.

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developing countries.<sup>61</sup> Like the earlier committee, however, it was the subject of a good deal of controversy, both because of the role of WB staff in directing the committee's work and because of the lack of consensus on how to select the committee members. The Joint Facilitation Committee, therefore, was terminated in 2005, and in its place, the WB has organized civil society events at its Annual and Spring Meetings, which do not present the same problems of selection and perceived control as the policymaking committees.

Along these same lines, two WB-administered programmes have been established which include civil society representation on their governing committees.<sup>62</sup> The first is the Global Agriculture and Food Security Program, created in 2009, which is designed to improve agricultural production and sustain small farmers in developing countries, and which includes three non-voting CSOs on its governing committee. These seats are distributed regionally: two agricultural producer associations from the South and one international development NGO based in the North. The other is the Global Partnership for Social Accountability, which was created in 2012 and which funds various good governance initiatives in developing countries. The structure of the steering committee is similar, with the important difference that the three CSOs (out of 10 seats total) have voting rights on a par with the governments and donor agencies represented on the committee. Civil society representation on governing committees might reflect a more general trend in the international development field. For instance, the Programme Coordinating Board of UNAIDS, a UN institution which coordinates the UN's response to AIDS, includes five CSOs. These civil society seats are distributed geographically, with three from developing countries, but do not come with voting rights.<sup>63</sup> Another example is the GAVI Alliance, a global childhood vaccination partnership between governments, the World Bank, UNICEF, and the World Health Organization, which includes CSOs as full voting members of its Board.<sup>64</sup>

The inclusion of CSOs on WB policymaking committees reflects cosmopolitan theories in which associations and networks represent a global civil society and mobilize people transnationally. In line with cosmopolitan theories, these public-private committees have all sought to include global representation. That is, they have allocated seats to NGOs based on their geographic areas of activity and have attempted to achieve comprehensive geographic representation. Depending on the issue area, a number of the committees have sought to achieve balance in the types of interests and identities represented. More recently, the selection of NGOs has also turned on the extent of their membership base in borrower countries. Yet, precisely because it is necessary to employ selection criteria, the policymaking committee has proven to be a form of public law that is contested and unstable in the increasingly plural social and political context in which the Bank operates. It remains to be seen whether this will

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<sup>61</sup> World Bank, *World Bank–Civil Society Engagement: Review of Fiscal Years 2010–2012* (n 40), 3.

<sup>62</sup> See generally David Gartner and Kenneth W Abbott, 'Reimagining Participation in International Institutions' (2012) 8 *Journal of International Law and International Relations* 1.

<sup>63</sup> *Ibid* 10.

<sup>64</sup> *Ibid* 13.

also be the case for the governing committees that have recently been established for particular policy sectors.

Table 15.2 summarizes the WB institutional reforms that have been made to empower civil society and the particular theory of civil society embodied in each.

*Table 15.2 World Bank civil society reforms*

	1990s	2000s	2009/2012
Institutional reforms	Project planning analytical and participation requirements Civil society funding	Transparency Consultation	Governing committees with civil society representation
Theory of civil society	Social capital and multiculturalism	Liberalism and effective governance	Cosmopolitanism

#### 4 CONCLUSION

In contemporary debates, civil society almost universally signifies a moral good. However, the political theory differs significantly on how and why civil society is central to the right and good ordering of democratic societies. By analysing the mechanisms and specific forms of civil society that are believed to contribute to good government in a number of important strands of scholarship, this chapter has sought to bring conceptual clarity to the legal reforms that have been introduced in the global realm to empower civil society and thus render global governance legitimate. This chapter has applied the theory to one particularly important area of global governance and global administrative body – international development and the WB. It has shown that over the past decades, the WB has enacted three different clusters of civil society reforms: analytical and procedural requirements for project planning; civil society grants; and transparency and consultation on WB policies. While the first two clusters have sought to enhance social capital and multiculturalism in borrower countries, the third set has been aimed at introducing greater liberal checks and effectiveness into the WB's own policymaking. Somewhat surprisingly, cosmopolitan theories on the role of transnational associations in representing a global people have been more evident in the politics of reform than in the actual content of the resulting legal rules. Two recently established governing committees, which include geographically balanced civil society representation, do reflect cosmopolitan theory, but it is unclear how stable or representative this trend is in the larger context of WB governance.

Looking beyond the WB, its trajectory of civil society reform is fairly representative of other multilateral development banks. The four major regional development banks have all introduced similar analytical and procedural requirements for their own project planning. Direct funding of CSOs is less common, although the Asian Development Bank does operate such programmes. At the policy level, all four regional development



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banks have introduced access to information policies and have begun to engage, somewhat unevenly, in civil society consultations.

This theoretical-empirical exercise is important for both evaluating and constructing the emerging body of GAL. By identifying the normative ambitions of the WB's civil society reforms, which have also shaped other multilateral development banks, the question of whether or not these reforms have been successful becomes more tractable. It is now possible to take the second step and evaluate the empirical experience of the law. Have these institutional reforms contributed to the formation of social capital and the creation of multicultural policy spaces in borrower countries? Is the policymaking of multilateral development banks, today, subject to greater liberal debate and is it better at drawing on the expertise of stakeholders?

By exposing the theoretical foundations of WB law, it also becomes possible to learn lessons across different sites of global governance. One of the challenges of global governance is the disaggregated nature of international bodies and policy fields and the related difficulty of creating a coherent body of law that ensures that particular policy missions and institutional histories will not compromise the greater public good. Much of the civil society law that has been enacted by the WB has been driven by the international development focus of WB governance and is designed to promote social capital and multiculturalism in borrower countries. To the extent that the WB's reforms have proven to be successful, there is good reason to think that other global administrative bodies in the international development field can learn from the WB's experience. This constructive ambition also includes regulatory organizations, such as the World Trade Organization, which are primarily focused on trade but which also have profound implications for developing countries. To give but one example, the analytical, disclosure, and consultation requirements contained in the WB's law of project planning could logically be extended to the regulation of areas such as intellectual property, in which there are similar international development effects. In sum, uncovering the normative foundations of civil society law can contribute to the constructive ambitions of the emerging field of GAL.

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