

Special Issue

Introduction

The Governance of Transnational Environmental Harm: Addressing New Modes of Accountability/Responsibility

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Introduction

The globalization of environmental degradation, witnessed by transboundary pollution and ecological damage to the global commons, has exposed the negative effects produced when actors displace environmental costs beyond national borders and onto future generations. These new pathways of actual and potential harm have provoked regulatory responses at various jurisdictional scales, raising public expectations in many countries that responsibility for the condition of the biosphere is a legitimate object for global governance. However, environmental governance regimes, featuring various articulations of state and private authority, have struggled to keep up with the complex, diffuse impacts of modern technologies. There is an emerging literature examining the idea of “accountability deficits” in which global governance priorities fail to correspond with the interests of those directly affected by social and ecological harm.¹ These deficits are typically identified on the basis of accountability/responsibility norms associated with nation states, but important analytical objections have been made about treating global accountability issues as analogous to those facing domestic political systems.²

This issue of *Global Environmental Politics* explores various conceptual perspectives on accountability and responsibility for transnational harm, and examines their application to different actor groups and environmental governance regimes. As more than one contributor to this issue points out, there has been a relative dearth of critical thinking about accountability and responsibil-

1. See, for example, Mason 2005; and Newell and Wheeler 2006.

2. Grant and Keohane 2005, 33–34; and Keohane 2006, 77–78.

ity for transnational environmental harm. In part this can be attributed to the underdevelopment of these concepts outside national political communities. These are concepts, after all, which are often contested even when used *within* states in conditions where there is a territorial congruence between producers of harm, affected parties and regulatory authorities. Transnational relations upset this territorial, state-centered understanding of responsibility/accountability. In using the term “transnational harm,” I am referring to the ways in which environmental harm (defined in relation to publicly justifiable needs or interests) is experienced as a result of material transactions across borders entailing inputs (e.g. extraction of resources and ecological services) and/or outputs (e.g. wastes and other pollutants) associated with production and consumption processes.³ The term “transnational” denotes both the cross-border (and potentially global) scope of these interactions, as well as the fact that nonstate actors are involved, at least to some degree, as producers or recipients of harm.

Informed by the research articles in the issue, I address in this Introduction the analytical challenge of applying accountability and responsibility notions to the realm of transnational and global environmental politics. The main theoretical objection to such a move is that the domestic categories of accountability/responsibility normally invoked are not relevant at the global level or, at the very least, in need of significant revision in order to have any explanatory value. My argument is that, while there are good reasons to be cautious about understanding transnational accountability and responsibility in terms of concepts normally applied to national political communities, it is also necessary to avoid treating these organizational scales as mutually exclusive. Indeed, attempts to seek direct (individual) accountability for transnational environmental harm include the political rescaling of responsibility norms in a way that binary couplings such as “national/ international” and “state/private” are purposely dissolved.

Rescaling Accountability/Responsibility for Environmental Harm

While there are multiple definitions of accountability, with responsibility an even more indeterminate notion, this special issue narrows the application of these concepts to the governance of cross-border environmental harm. Specifically, it brings together social science researchers engaged in work on the politics of accountability and responsibility in global environmental governance. Governments, international organizations, corporations and NGOs actively construct and contest accountability and responsibility norms. How and on what basis are these claims made across territorial borders? What are the political conditions favoring the emergence and uptake of such norms in environmental governance? The scholarship featured in this issue addresses, first, new inflections of environmental responsibility from considerations of international equity (Okereke) and precaution (Pellizzoni and Ylönen). It then examines,

3. This definition largely follows Elliott 2006, 346–347.

within the organizational arena, new governance models of accountability, specifically transnational environmental partnerships (Bäckstrand) and transnational standards schemes (Chan and Pattberg); and the issue ends, in the informal realm of civil regulation, with the accountability politics of civil society groups as they challenge various actors on the issue of climate change (Newell).

The contributors to this special issue were invited to use the lens of accountability/ responsibility to examine the relevance of these concepts to the governance of transnational environmental harm. No precise definitions were prescribed, but there are clear family resemblances in the notions adopted by contributors. In this issue, environmental responsibility has a wider compass of meaning than accountability. Conventionally, the regulation of transboundary and global environmental damage has centered on legal norms of *state responsibility*, which are anchored by the general obligation on states to ensure that activities under their jurisdiction or control do not cause damage to other states or to areas beyond state jurisdiction. This is both a principle of customary international law and informs a wide range of multilateral environmental agreements. Of course, international environmental norms are also shaped by other standards of responsibility; for example, the key principle of common but differentiated responsibility is expressly framed by equity concerns.⁴ Furthermore, there are significant areas of global environmental governance where states have favored the use of private responsibility rules, such as international civil liability regimes covering the transportation of hazardous goods. In their contribution to this issue on the precautionary principle, Pellizzoni and Ylönen identify a broadening scope of responsibility norms in environmental governance, noting new “hybrid” forms of moral agency and complex chains for assessing and assigning responsibility.

Within global environmental governance, we can also observe new discursive and institutional framings of accountability. These framings entail attributions of responsibility against particular actors featuring *answerability* and *redress* as core elements—that these agents are “held to account” for their (in)actions according to set standards, and that they may justifiably be subject to sanctions for breaching these standards.⁵ As traditionally understood within national political communities, *public accountability* denotes the capacity of citizens and their representatives to exercise effective oversight and constraint on the exercise of state power.⁶ The meanings of *answerability* and *redress* are both widened and complicated when directed at transnational environmental harm. The diverse and diffuse ecological effects of a bewildering range of modern technologies present significant information demands on individuals and communities seeking answerability from harm producers. For transnational environmental effects, where the distances between responsible actions and (threatened or re-

4. Okereke, this issue.

5. Bäckstrand, this issue; and Chan and Pattberg, this issue.

6. Mulgan 2000, 555–57; and Flinders 2001, 9–15.

ceived) harm are far-reaching and even planetary-wide, these informational obstacles can be particularly onerous. Moreover, even assuming that foreign sources of significant harm can be pinpointed, those affected typically lack the means to directly sanction the producers of harmful activities in their source country.

The nature of transnational ecological harm undermines the credibility of state-centered accountability regimes. Governments seem unable to prevent externally generated threats to the well-being of their populations, while their diplomatic efforts to hold responsible actors to account through international treaty negotiations clash with the geopolitical interests of other states. The principle of state sovereignty limits inter-governmental collective action. The exclusive political authority of states over their populations is a foundation for public international law. But this same principle, with its associated rules of voluntary consent to international regulation and non-interference by other states in domestic affairs, blunts the effectiveness of many efforts to reduce transnational harm. Moreover, multilateral rule-making processes give rise to inter-governmental institutions where chains of public accountability are more remote and indirect than within domestic political systems. The preference at this scale is for *delegated models of accountability*, where international organizations are entrusted with selected governance functions by participating states. This, however, has sparked criticism from those who view *accountability as intrinsically participatory*, where those directly affected by holders of power are privileged as accountability claimants.

For Grant and Keohane,⁷ the failure to distinguish between the *delegate/participatory* framings has sown confusion in the analysis of accountability in world politics. It has given rise to conflicting political judgments on inter-governmental bodies like the World Bank, the International Monetary Fund and the World Trade Organization. Under the participatory model of accountability, these organizations have been charged with having a pronounced democratic deficit because they do not allow the direct participation of nonstate parties affected by, or concerned with, their policies.⁸ From the perspective of the delegation model, however, there is accountability to national publics through executive mechanisms of supervisory and fiscal control exercised by member states.⁹ Indeed, Grant and Keohane add, the institution at the global level of the participatory model of public accountability founders on the absence of a coherent and well-defined global public:

Having the right to participate in politics as an affected party is ambiguous at the global level. . . In the absence of a public whose boundaries are defined by participation in a polity, it is very difficult to specify either who should be entitled to participate or how they would do so.¹⁰

7. Grant and Keohane 2005, 30–33.

8. Dahl 1999; and Nye 2001.

9. Nielson and Tierney 2003; and Lamy 2006.

10. Grant and Keohane 2005, 33.

While they concede that fragmentary global publics are emerging in issue-areas such as human rights and environmental protection, they are neither representative nor large enough to constitute coherent political subjects comparable to national publics.¹¹

This interpretation presumes a necessary correspondence between publics and representative political authorities. It is possible to conceptualize publics in non-territorial terms as collective spaces of deliberation addressing shared rights and responsibilities. By this understanding, in the arena of environmental governance, publics are political subjects directing accountability claims at those responsible for causing them significant environmental harm or risk. Rather than territorial (state-centered) terms of reference, the geographical scope of this environmental responsibility is set in principle by open and inclusive discourse on the perceived harm or risk. *Transnational or global publics* are composed of individuals who may not necessarily be co-nationals, but who may forge a common political identity on the basis of their joint exposure to cross-border environmental harm. Public accountability is advanced insofar as producers of harm can be called upon to justify their actions to affected publics and can be sanctioned in some way for causing significant involuntary harm.¹²

It is important to stress, though, that the governance of transnational environmental harm involves more than simply the temporal and spatial extension of domestic responsibility and accountability norms. In the first place, state-centered and private sector modes of accountability for harm typically focus on agents reporting, explaining and justifying their actions *ex-post*, in situations in which there are claims that these actions have caused particular damage. Accountability mechanisms are thus an exercise in the attribution of responsibility after involuntary damage has taken place. Pellizzoni and Ylönen highlight in their paper this dominant “liability model” of responsibility, and argue that it struggles to cope with systemic social and ecological injury when cause-lines are scrambled by uncertainty and spatial-temporal distance. Indeed, many transnational or global environmental problems involve the imputation of responsibility to actors *before* harm has been received (e.g. climate change accountability of new investments in coal-burning power stations) or, for so-called high-consequence risks (e.g. nuclear accidents), where the probability of future harm may be remote but its potential magnitude is severe. Environmental activists are frequently at the forefront of such responsibility claims, as they routinely charge political and market-based accountability regimes with ignoring or downplaying transnational ecological risks. As Newell acknowledges in his paper, these are *ex-ante* accountability claims insofar as they attempt to create expectations and commitments that would prevent future harm.¹³

It is the impact of nonstate actors in global environmental politics—

11. A diagnosis shared by Brunkhorst 2002 and Ruggie 2004.

12. Mason 2005; and Bohman 2007.

13. Newell, this issue; see also Boström and Garsten 2008.

notably non-governmental organizations (NGOs) and transnational corporations—that adds further complexity to the rescaling of responsibility for transnational harm. The contributors in this issue focusing on the institutionalization of accountability practices within forestry and climate change governance find it academically productive to differentiate accountability “logics” or “ideal-typical regimes” according to public, market-based and social spheres of action.¹⁴ Methodologically, this approach favors the study of particular issue areas or transnational governance forms in order to pinpoint the specific blend of accountability standards and mechanisms in play. Not surprising, this invites the identification of “hybrid” accountabilities when different logics of responsibility are pulled together. These hybrid forms may be consensual, as with the transnational public-private partnerships discussed by Bäckstrand, or confrontational, to take the examples cited by Newell of the creative use of legal strategies to hold private actors to account for environmental damage.

Theoretical Perspectives on Accountability/Responsibility

In a recent review of global accountability politics, Weisband and Ebrahim identify as a common analytical problem “the rift between how accountability is imagined and how it actually operates . . . [for] definitions and framings of accountability tend to be driven by normative agendas rather than by empirical realities.”¹⁵ This analytical challenge is seen to hold whether accountability is being considered at the level of single organizations or for more complex governance networks. For Weisband and Ebrahim, the unexamined normative agenda is most often that of a practitioner-led, technocratic approach, which adopts a formal framing of accountability as the means by which the lead actors (“principals”) hold power-wielders (“agents”) accountable, in accordance with a set of standards and with the possibility of imposing sanctions for perceived wrongdoing.¹⁶ They claim that this *principal-agent view of accountability* is generally served by positivist logic, whereby the “truth” about behavior can be revealed with sufficient information about actors’ incentives and constraints. Relevant research topics informed by this approach, therefore, include the formulation of transferable accountability standards, the design of effective monitoring mechanisms, and identification of the penalties needed to deter non-compliant behavior.¹⁷

The methodological individualism of the principal-agent perspective betrays its theoretical debt to rational choice analysis. Accountability is cast as a question of strategic interactions between principals and agents, oriented to successful control or influence of the situation in which they find themselves.¹⁸ A familiar objection to this approach is that it operates with a truncated notion of

14. Bäckstrand, this issue; and Chan and Pattberg, this issue.

15. Weisband and Ebrahim 2007, 12.

16. *Ibid.*, 4–5. For example Keohane 2003; and Mulgan 2003.

17. Weisband and Ebrahim 2007, 14.

18. Keohane 2006, 76–77.

political action; specifically, that it neglects the reasons actors employ when justifying their actions before others, as well as the wider material and symbolic contexts of accountability relations.¹⁹ Attention to this broader political culture is of course doubly important when examining public accountability for cross-border harm because, in their political efforts to be accepted as principals, regional and transnational publics are likely to seek assistance or inspiration from a diverse range of civil society actors located in different countries.

In focusing on accountability/responsibility norms and practices outside formal relationships of authority, the contributors to this issue have a wider purview than the principal-agent view of accountability. Broadly, their papers are informed by, and engage with, three theoretical perspectives in global environmental politics—the global governance approach, constructivism and critical political economy. These approaches, at least as employed by the authors here, are all postpositivist in the sense that they acknowledge the normative and power-laden character of research on accountability and responsibility for environmental harm.

The *global governance perspective* is typically concerned with new alignments of authority in transnational and global politics.²⁰ Bäckstrand captures this transition with the term “complex multilateralism,” referring to new transnational governance collaborations between private and public actors. Likewise, Chan and Pattberg highlight the incursion of private standard-setting (the environmental certification of the Forest Stewardship Council) in global forest governance. Work on accountability from the global governance approach has centered on the challenges to legitimate rule-making posed by governing bodies that are self-organized as “horizontal” networks of nonstate actors, and which escape traditional hierarchical or “vertical” chains of responsibility to (inter)governmental political authorities. In such circumstances, new norms of “good governance” are seen to arise from institutional experimentation and competing political interests.²¹

Important theoretical insights on accountability are offered to the global governance approach by the articles in this issue on climate change partnerships and private environmental rule-making. Bäckstrand’s finely nuanced survey of the forms of accountability adopted in different climate governance networks corrects the tendency in much global governance literature to bid farewell to the state. Many of these partnerships operate, she notes, “in the shadow of the state” insofar as states and international organizations delegate rule setting and implementation, while they are also prone to “old” forms of political bargaining. Chan and Pattberg propose a specific model of institutional change in accountability regimes. This framework is employed to explain the evolution of the accountability structure of the Forest Stewardship Council—both its internal (or-

19. Green and Shapiro 1994; and Okereke, this issue.

20. Biermann 2006 provides an incisive survey of global governance research.

21. Risse 2006; and Gulbrandsen 2008.

ganizational) accountability and its governance aspirations to promote the external accountability of forestry governance to affected publics. Significantly, Chan and Pattberg explicitly consider the political drivers of accountability regime change, giving more explanatory weight to crises of legitimacy and ideological shifts than is usual in the global governance perspective.

Constructivist perspectives afford even greater emphasis to understanding how discourses and practices of accountability/responsibility are socially constituted and contested. This entails examining how accountability/responsibility norms are bound up with the validation of particular forms of knowledge, how specific practices and interests are legitimated, and what effects these discursive moves have on existing relations of power.²² Affinities have been established here with the genealogical method of the French poststructuralist Michel Foucault, especially his work on “governmentality,” defined as the technologies and knowledges of modern government. Within scholarship on environmental politics and responsibility, Foucauldian analysis has been employed critically to interrogate “environmentality” (that is, environmental governmentality), notably how rationalities and practices of ecological regulation reinforce configurations of power. For example, Luke views the resource managerialism and conservationist ethics of sustainable development governance as legitimating a political economy of neoliberal globalization.²³ Meanwhile, Agrawal delineates the same process for colonial and postcolonial environmentalism in India, showing how regulation prescribed new subjectivities of ecological responsibility.²⁴ Insofar as technologies of government foster particular norms of accountability and responsibility for cross-border harm, this type of research alerts us to the analytical need to observe carefully the political subjectivities in play: these are far more than principal-agent identities.

Constructivist arguments thus broaden the empirical domain of studies of accountability and responsibility to map relevant political discourses and techniques of control. However, the same analytical contextualism that allows openness to “actual” accountability effects can obscure the relationships of power transcending these immediate practices.²⁵ Informed by sociological institutionalism, the contribution of Pellizzoni and Ylönen to this issue affirms the relevance of cultural framing in the allocation of responsibility under conditions of uncertainty, but endorses a “social connection model” of responsibility to capture the structural genesis of much transnational environmental harm and risk. Similarly, Okereke draws on constructivist literature to examine the uptake of North-South equity norms in international environmental regimes, yet finds this perspective limiting for addressing the power-oriented question of why certain norms of responsibility are privileged over others in transnational and global political arenas.

22. Weisbrand and Ebrahim 2007 endorse such an approach.

23. Luke 1999.

24. Agrawal 2005.

25. Bleiker 2008.

Commentators informed by *critical political economy* invest particular civil society groupings with political legitimacy in their role in seeking greater environmental accountability and responsibility from wielders of power—particularly economic power. Democratic accountability claims made on behalf of transnational affected publics are seen as implicated in the conflictual social relations which underpin global capitalism. Thus, it is argued, there is a normative need to differentiate between those NGOs and activist networks that, through their campaigning, seek a technical-managerial response to transnational ecological harm and those, like the “global justice” movement, that expressly oppose the neoliberal power regime and its international sponsors (e.g. World Bank, World Trade Organization). The former, it is claimed, pursue liberal accountability strategies that aim for modest realignments of business or (inter)governmental practice. In contrast, the latter are seen to employ “critical” accountability strategies, challenging actors fundamentally over systemic abuses of economic and political power.²⁶

Indeed, on this basis critical political economists have questioned the legitimacy of “liberal” environmental NGOs to be considered as representatives of affected publics, whilst transnational activists networks engaged in contentious interaction with major powerholders are deemed to be more attuned to the interests of environmental victims.²⁷ In this issue, however, Newell counsels against blanket appraisals of accountability gains in terms of liberal or radical positioning. Groups like the Pew Center and the Climate Group, who constructively engage with businesses on climate change accountability, are credited in his paper with having significant influence on the environmental performance of the firms that they liaise with. Okereke also addresses the legitimacy of competing responsibility norms, though his focus is on the stand-off between the market-based morality of neoliberal states and the radical distributional aspirations of many developing countries: he invokes neo-Gramscian concepts to argue that the “responsibility deficit” of global environmental cooperation has much to do with the co-optation of environmental equity norms for neoliberal ends. In short, the prevailing global economic structure, with its enduring ideological hegemony, severely limits the possibility of alternative ways of constructing environmental responsibility.

The theoretical perspectives outlined above have competing explanatory and methodological priorities for addressing accountability and responsibility for environmental harm. Their units of analysis encompass strategizing behavior between principals and agents (rational choice theory), governance networks and regimes (global governance approach), accountability/responsibility discourses and practices (constructivism), and processes of capital accumulation and legitimation (critical political economy). In part these reflect the influence of divergent (inter)disciplinary domains (glossed over here) with their

26. Newell 2001; and this issue.

27. See, for example, Ford 2003.

own analytical traditions and optics. There remains for intellectual discussion the question of how much their particular insights can be integrated; for example, Keohane claims that his version of principal-agent theory is compatible with constructivism,²⁸ though Foucauldian scholars would likely dispute this. Similarly, governance theorists and critical political economy scholars share a preoccupation with accountability deficits, but offer divergent political analyses of their genesis and scope. While there are valid scientific reasons to follow each of their emerging research programs on transnational accountability and responsibility, there remains a significant philosophical disjuncture between the (neo)positivism of principal agent theory and the postpositivism of the three other perspectives.

The Emergence and Uptake of Environmental Accountability/Responsibility Norms

All accountability relations presuppose obligations to act in ways that are consistent with standards of appropriate behavior (norms). That is the source of their legitimacy. Accountability obligations may be disputed within countries, but this usually occurs against a background of well-established responsibility norms rooted in national political cultures. With transnational accountability claims, the researcher often has to make sense of novel claim-making and protracted political struggles to legitimize new standards of behavior operable across territorial borders.²⁹ As Okereke notes in this issue, norms perform multiple functions—constituting collective identities, regulating actions and expressing rights and responsibilities. The institutional frameworks that stabilize these functions in domestic political contexts (e.g. citizenship rules and practices, national identities) are of course not oriented to the transnational integration of norms.

Empirical evidence of accountability and responsibility norms is always indirect. The methodology for gaining access to these norms entails analyzing relevant discourses of justification and application of the norm. In the case of accountability for cross-border environmental harm, the empirical task is to identify political agency and communication featuring relevant responsibility norms. There are testable hypotheses put forward by scholars to explain the “life cycle” of norms, including whether, and how, these norms become institutionalized in specific sets of rules and organizations.³⁰ As noted above, the contributions to this special issue by no means subscribe to a uniform conceptual approach: however, they all address, more or less explicitly, two explanatory claims evident in recent research on the development and diffusion of environmental norms—that, other things being equal, (i) a necessary condition for the effec-

28. Keohane 2006, 76–77.

29. Grant and Keohane 2005, 29–30; and Weisbrand and Ebrahim 2007, 7.

30. Finnemore and Sikkink 1998; and Bernstein 2001.

tive emergence of new responsibility norms is a recognition of a legitimation deficit in environmental governance, and (ii) a necessary condition for the effective uptake of new norms is that they “fit” with existing norms in their area of application.

The Emergence of Environmental Accountability/Responsibility Norms

Pellizzoni posits, “each shift in the dominant approach to responsibility corresponds to the recognition of a decline in the social perception of institutional and corporate authoritativeness and trustworthiness, and an attempt to recover them.”³¹ According to his co-authored article in this special issue, advocates of the precautionary principle fuel this “crisis of legitimacy” of environmental governance. Citing regulatory failures over, for example, asbestos and BSE, advocates question the capacity of existing institutions to manage risks (of substantial harm) under conditions of uncertainty. Precautionary norms thus meet social demands to reduce the risk of false negatives (Type II errors) in environmental regulation, partly by democratizing risk assessment and management processes in order to include relevant information from affected publics as well as experts.³² That regulatory authorities at different scales have adopted the precautionary principle attests to its growing political currency, but Pellizzoni and Ylönen caution that the social effects are wider still, for precautionary norms create expectations for enlarging obligations of responsibility towards global publics and future generations.

Other contributors to this issue share the legitimation deficit diagnosis. For Newell, a core motivation of climate change activists promoting new accountability norms is their shared perception that there are “governance gaps” and “accountability deficits” in international climate change regulation, especially with regard to market actors. Chan and Pattberg similarly claim that new responsibility norms can be triggered by an “accountability crisis” in existing governance institutions, with the loss of legitimacy attributed to states and/or corporations. Their model of institutional change in accountability regimes proposes four factors that induce accountability crises. These are changes in the number and type of actors, problem-solving failures, issue framing and ideological change. This model synthesizes explanatory claims from a variety of sources and invites further research to test its general validity on the emergence of new accountability/responsibility norms and rules.

It should be noted, however, that the remaining contributors are more circumspect regarding the significance of legitimation deficits for norm emergence. Okereke treats the “responsibility deficit” of global environmental governance as more of an outcome of, than a condition for, the development of international equity norms. This finding reflects in part his focus on state-centered

31. Pellizzoni 2004, 260.

32. Pellizzoni and Ylönen, this issue; see also Whiteside 2006, 117–143.

norm development, where the relevant norm promoters are diplomatic representatives or international organizations; but it is also shaped by the greater explanatory weight he accords to neoliberal ideology and rule-making. In her examination of transnational climate partnerships, Bäckstrand finds the diagnosis of a global “regulatory deficit” too broad to account for the emergence of a diverse range of accountability rules and mechanisms. The researcher, she suggests, needs instead to trace the complex dispersal of accountability norms among different actors and institutional networks.

The Uptake of Environmental Accountability/Responsibility Norms

Constructivists have proposed that a necessary condition for the effective uptake of transnational environmental norms—whether their diffusion is through global civil society or legal institutionalization—is their “fit” with existing norms in their area of application. For civil society activists and networks, it is argued, environmental accountability claims in transnational campaigns achieve more salience when they correspond with widely shared values about harm prevention and fair treatment.³³ Legal institutionalization most obviously refers to the embodiment of new norms in multilateral agreements. Here the stable comity and slow evolution of international legal orders militates against novel or radical normative proposals, unless they achieve a critical mass of support.³⁴ However, as shown convincingly by Bernstein, these immediate path dependencies are themselves skewed by underlying political or economic opportunity structures. New environmental norms are more likely to achieve institutional uptake, he claims, when they resonate with the dominant norm-complex of “liberal environmentalism,” which favors individualistic notions of harm prevention alongside public participation entitlements framed by state authority structures.³⁵ There is an overlap here with the notion of a dominant cooperative scheme employed by Pellizzoni and Ylönen in this issue, notably their argument that the “troublesome career” of precautionary norms arises in large part because of their mismatch with the traditional “liability model” of responsibility.

In explaining norm uptake, the global governance approach places less emphasis than constructivist perspectives on the relationship of new norms to existing norms. To be sure, in their article, Chan and Pattberg accord significance to the “appropriateness of relations” in explaining the currency of particular accountability rules, but they stress the close interrelationship of norm emergence and norm institutionalization (within broader changes in governance systems) rather than a discrete life cycle of norm development. Bäckstrand’s paper also reflects this analytical preference for looking first at institu-

33. Keck and Sikkink 1998, 201–217.

34. Finnemore and Sikkink 1998: 901.

35. Bernstein 2001.

tional structures of accountability in which norms are already embedded. Insofar as she highlights a particular norm set (procedural fairness norms), their differential articulation and uptake in climate change partnerships is given a functional explanation—adaptation to arena-specific logics of action which cover more than existing norms (e.g. strategic modes of action). This is a suggestive line of inquiry which deserves further discussion.

Okereke's article examines most fully the "fitness" thesis of norm uptake, including Bernstein's socio-evolutionary take on this claim. He surveys the spread of two equity norms—common heritage of mankind and common but differentiated responsibility—in international environmental regimes. He finds support for a strong variant of the thesis that "fitness" with neoliberal material and ideational structures is of greater explanatory significance for norm institutionalization than other factors proposed by constructivists (the source and force of norm articulation, the nature of the issue area, and the "moral temper" of the international community). The explanatory emphasis that Okereke gives to the neoliberal character of the current global economic order leads him to make use of neo-Gramscian concepts. He concludes that the "fitness" account of norm institutionalization needs to be anchored more systematically in a critical political economy perspective.

Newell registers a similar theoretical concern in his paper, which is thrown into relief by his preoccupation with external pressures on corporations to adopt particular environmental norms. By not effectively addressing climate change, private corporations are seen by many civil society actors to be exercising power without environmental responsibility. This perception drives the latter to promote new norms of corporate accountability: Newell observes wide support for these accountability norms within global civil society, evident in calls for an International Corporate Accountability Convention,³⁶ but not yet borne out by institutionalization. The mismatch between norm emergence and institutional uptake is partly rooted, he claims, in the constitutional authority ascribed in international law to the rights of capital, such that corporations are protected from public accountability for the harmful consequences of their production, trade and investment activities overseas. Yet, as Newell details in his discussion of "civil regulation," existing private accountability norms (e.g. tort liability, shareholder answerability) can nevertheless be utilized to further democratic accountability for transnational environmental harm. In other words, there is more space for maneuver in the politics of norm development than the "fitness" thesis might otherwise predict.

Conclusion

Whether for analytical or political purposes, the framing of accountability practices as "national," "transnational" or "global" has normative implications. This

36. On this campaign see Clapp 2005.

does not mean that researchers should reject these spatial constructs, for the relevant analytic narrative is how different actors use these constructs to promote and institutionalize responsibility norms. It would include, for example, how actors deploy a “rhetoric of scale” to advance particular material interests and cultural identities.³⁷ Accountability claims for transnational and global environmental harm express scalar tensions over standards of appropriate behavior. Arguably the clearest such tension on cross-border accountability is between its territorial expressions as favored by states (e.g. multilateral environmental agreements) and its nonterritorial framing by civil society actors (e.g. the shared subjectivities of environmental victims). The researcher needs to treat these spatial moves as constitutive of the power relations of environmental accountability and responsibility.

While, as indicated above, the research articles in this issue do not share a common theoretical framework, they all acknowledge the admixture of territorial and nonterritorial categories present in new attributions of responsibility for transnational environmental harm. International environmental policy scholarship has long recognized the influence of domestic institutions and actors on cooperation between states, while research on civil society networks has highlighted how national political and economic actors can face accountability claims from, or on behalf of, non-nationals.³⁸ Such interactions are discussed in the contributions here, fleshed out both conceptually and empirically. The actors and issues examined are of course not comprehensive, but it is clear that accountability/responsibility norms for transnational environmental harm have widespread discursive and organizational currency. They are a significant part of the normative underpinning of global environmental governance and, in their ongoing, uneasy encounter with the material and ideational structures of liberalism, they may yet assist in achieving a more durable, ecologically rational compromise with the latter.³⁹

This outcome depends on changes in wider regimes of responsibility beyond the realm of global environmental governance. In particular, it depends on whether a cosmopolitan “constitutionalization” of international law is emerging that supports responsibility norms in a way consistent with the moral principle that all actors causing significant environmental harm should be accountable to injured or threatened parties whatever the nationality or residence of the latter. There is certainly evidence for this in, for example, the transnational diffusion of a “rule-of-law”—principles, norms and rules of legitimate governance—that extends beyond compliance with international law to encompass universal discourses of transparency, legal equality, human rights and public participation. Rule-of-law entails transnational legal obligations which fall on holders of authority alongside, or in place of, state-centered obligations; for

37. Herod and Wright 2002, Part II.

38. Schreurs and Economy 1997; and Keck and Sikkink 1998.

39. Bernstein and Ivanova 2007.

example, the emergence of an “individualization of responsibility” for human rights violations, whereby individuals face direct accountability for their actions regardless of immunities that might otherwise be claimed under state responsibility rules.⁴⁰ The universality of harm prevention obligations in environmental governance is arguably less secure, and the global rule-making and enforcement institutions are weak, but the normative linkages with the human rights sphere certainly warrant further investigation.

Against this progressive development of responsibility norms, we must reckon with two countervailing tendencies—a restrictive neoliberal application of the rule-of-law doctrine and an instrumentalist use of international law. The first trend is recognized by several of the contributors to this issue, employing Stephen Gill’s notion of “new constitutionalism” to identify a global accountability regime in which market contract and private property interests are given priority in international law (e.g. investment treaties, trade law), thus marginalizing environmental responsibility norms.⁴¹ The second tendency is associated most obviously with the controversial interpretation of key rules of international law by the Bush administration in its “fight against terrorism.” US unilateralist moves are portrayed as undermining both established international rules of state responsibility and emerging global norms of individual accountability. Furthermore, they are seen as fostering a broader instrumentalization of international law, encouraging states to exploit legal multilateralism to promote their own interests.⁴² The global prospects for environmental accountability/responsibility norms will be enhanced inasmuch as the constitutionalization of international law takes a cosmopolitan rather than a neoliberal or instrumentalist direction.

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40. Brüttsch and Lehmkuhl 2007; the term “individualization of responsibility” is from Nollkaemper 2003, 631.

41. Gill 1998.

42. Bartholomew 2006; and Habermas 2006, 179–193.

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