Legitimating Transnational Standard-Setting: The case of the International Accounting Standards Board.

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ABSTRACT

The increasing use of transnational standard-setting bodies to address quality uncertainties and coordination issues across the global economy raises questions about how these bodies establish and maintain their legitimacy and accountability outside the sovereignty of democratic states. Based on a discussion of the legitimacy challenge posed by global governance, we provide an overview of mechanisms by which such bodies can defend their legitimacy claims and examine the actual mechanisms used by the International Accounting Standards Board (IASB). While the IASB staked its initial credibility on technical competence and independence, it has increasingly emphasized due process norms in its claim for support. Our analysis evaluates the IASB due process against the cultural benchmarks established by domestic standard-setters in the USA and UK and against a normative model of procedural legitimacy. These comparisons help us to understand the modifications that were made in the hope of due process adding legitimacy to accounting standard setting beyond the state. They also reveal the broader political context of competing legitimacy criteria that confronts transnational standard-setters.
INTRODUCTION

The growing acceptance by countries across the globe of International Financial Reporting Standards (IFRS), issued by the International Accounting Standards Board (IASB), is being used by some to suggest that the IASB is a model for transnational standard-setting (e.g., Lloyd et al, 2007; Büthe and Mattli, 2008). But it has long been recognized that the continuing acceptance of accounting standard-setting is a matter of managing the legitimacy of the process of standard-setting in addition to, or perhaps even independently of, the technical characteristics of those standards.

“…the fundamental question of accounting inquiry is not ‘what is income and wealth?’ or even ‘how shall we compute income and wealth?’ Instead, the fundamental question is ‘How shall we go about deciding rules for computing income and wealth?’ …an accounting rule-making body will not succeed on its technical competence but rather on its political competence.” (Gerboth, 1973, p. 479)

Perhaps not surprisingly then, the perceived success of the IASB in creating technically competent standards that appear to meet the needs of advanced capital markets and the regulation of international capital flows1 is now being met with concerns about the political legitimacy of the process by which these standards are created (Kerwer, 2007, 2008; Véron, 2007, pp. 34-40). For example, the European Parliament (EP) of the European Union, which accepted the IFRS as the basis for financial reporting by companies beginning in 2005, noted in a 2008 motion, adopted by its Committee on Economic and Monetary Affairs, that the IASB:

“… is a private self-regulatory body which has been given the role of lawmaker for the EU … [the EP] underlines that the IASC/IASB … lack transparency, legitimacy, accountability and are not under control of any democratically elected parliament or government, without the EU institutions having established the accompanying procedures and practices of consultation and democratic decision-making that are usual in its own legislative procedures…” (European Parliament, 2008, p. 4).

Importantly, the experiences from the long operation of domestic standard-setting processes in accounting in how to secure political support may no longer be valid when applied to a standard-setter operating outside of national borders and the legal and constitutional context that the nation-state provides. The situation which the IASB faces is becoming more common. In several policy/issue areas, private, non-state bodies have emerged as transnational rule-makers and providers of common goods for the global

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1 The technical adequacy of IFRS is not beyond question (Ball, 2006; Barth et al, 2008; Durocher and Gendron, 2009; Laux and Leuz, 2009; Whittington, 2008) but it is beyond the scope of this paper. We note only that IFRS have been supported by IOSCO and are increasingly accepted by national regulators, in part, on technical grounds and enquire into the process by which legitimacy is sought beyond the technical characteristics of the standards.
economy (e.g., Cutler et al., 1999; Cashore et al., 2004; Pattberg, 2007). Examples include
the International Organization for Standardization (ISO), the Internet Corporation for
Assigned Names and Numbers (ICANN), the Forest Stewardship Council (FSC), and the
Global Reporting Initiative (GRI). These bodies establish rules and make decisions that
are recognized as authoritative, even if they are technically voluntary and not legally
binding. To the extent that private rules exert de-facto collectively binding effects and
impacts (costs and constraints), their democratic legitimacy is at stake and the means by
which their actions should be legitimated to their stakeholders is uncertain and contested.

Both the accounting literature and the political science literature, in particular,
have been concerned with the assessment of the legitimacy of transnational regulatory
bodies, the mechanisms by which their legitimacy is asserted, and the consequences
should the legitimacy of these bodies be rejected by stakeholders (e.g., Suddaby et al,
2007; Richardson, 2009; Buchanan and Keohane, 2006; Bernstein and Cashore, 2007;
Beisheim and Dingwerth, 2008). There is both a normative and a positive dimension to
this literature. At issue is whether globalization and the inherent “hollowing out” of the
state (Rhodes, 1994, 2007), normatively requires, or has empirically encouraged, new
mechanisms of democratic accountability for those bodies exercising state functions
beyond the boundaries of traditional political sovereignty (Held and Koenig-Archibugi,
2005). Does the IASB provide a model for other transnational standard-setters or is its
approach to claiming legitimacy a unique result of its history and context? If the former
is true, our IASB study may offer important insights for the broader transnational
governance literature.

Our purpose in this article is two-fold. First, we develop a conceptual inventory of
the mechanisms, or institutional vocabularies (Suddaby and Greenwood, 2005), available
to transnational organizations to claim legitimacy for their operations and outcomes. We
focus, in particular, on those mechanisms suggested by an analysis of the democratic
legitimacy deficit of international governance arrangements beyond national systems of
law. Second, we conduct a case study and critique of the mechanisms used by the IASB
to legitimate their actions. We will demonstrate that the IASB, in addition to claiming
credibility as technical competent, independent standard-setter, has increasingly relied on
due process mechanisms drawn from domestic contexts to reassure stakeholders. We also
identify the areas in which the IASB has made adjustments to deal with context-specific
ruptures in the use of due process rhetoric.

It is important to place appropriate boundaries around the issue of concern in this
paper. Legitimacy is typically defined as acceptance by a specific audience of an actor’s
claim to act in accordance with social values. This claim may rely on pragmatic,
normative or cognitive grounds (Suchman, 1995) but ultimately is maintained
discursively (Suddaby and Greenwood, 2005; Halliday et al, 2010). Our concern is not
with the legitimacy of the IASB per se but only with the process of legitimation and the
legitimation rhetoric and actions adopted by the IASB from among a range of
possibilities. We seek to understand the conditions that may have led to the choice of a
particular legitimation strategy by the IASB and how that strategy has been implemented.
Whether due process is a “cynical ploy” (Eaton and Porter, 2008, p.141) by the IASB or
an institutional norm to be “decoupled” (Meyer and Rowan, 1977) from internal standard-setting processes is beyond the scope of this paper. Similarly whether these legitimation strategies will ultimately prove ‘successful’, i.e. whether the IASB will become the global accounting standard-setter and whether IFRS will be accepted and implemented by all companies, is yet to be determined.

We provide a historical analysis to better understand why the IASB has emphasized a due process approach, and evaluate the IASB due process against the cultural benchmarks established by domestic standard-setters in the US and UK, and against a normative model of ‘procedural legitimacy’. The IASB has the potential to exercise power over financial reporting within domestic borders analogous to the way that the World Trade Organization has “disciplined” the organization of accounting practice (Arnold, 2005). This power, however, is constrained by the way in which the IASB is embedded within a network of organizations (Richardson, 2009) and dependent for resources on those organizations, in the context of the emerging architecture of global financial governance. Due process in this context is a (potential) means for disciplining the exercise of power by the IASB and, perhaps more importantly, for forcing influence attempts by networked entities (both state and non-state) on the IASB into a public forum (cf. Zeff, 2002).

Given the IASB decision to adopt the rhetoric of due process, cultural and normative baselines provide grounds for immanent and transcendental critiques. Suchman (1995, p. 582) notes that one approach to establishing legitimacy is to draw on “cultural models that furnish plausible explanations” for action; similarly Suddaby and Greenwood (2005) emphasize the use of “institutional vocabularies” to explain action. We argue that the UK and USA due process norms provide a minimum standard, or cultural model, that the IASB committed to following when they introduced due process thus allowing an “immanent critique” (Antonio, 1981), i.e. a critique based on the IASB’s own commitments to due process. The normative model, drawing on Habermas’ communicative action model and the USA Administrative Procedures Act, allows a “transcendental critique” (Buchwalter, 1987, or rational reconstruction to use Habermas’, 1994, terminology) by comparing the IASB due process to a standard based on potentially unattainable standards of rational engagement, dialogue and decision-making. These comparisons allow us to identify where the IASB due process has varied from empirical and theoretical expectations.

Our empirical results show that while the IASB has implemented some significant due process innovations compared to the US and UK models, concerns, from the perspective of our normative model, about bias and unequal access, partly rooted in the self-mandated character of the organization, remain. Furthermore, the recent creation of a Monitoring Board, composed of public authorities, that will appoint and oversee the Trustees of the IASC Foundation, seems to reflect strong political pressure by key public constituencies (EU, IOSCO, SEC) to complement due process mechanisms with more direct accountability to public authorities that have traditionally overseen accounting standard-setting in domestic contexts. More generally, the contestation surrounding the
governance of transnational standard-setters such as the IASB serves as a reminder of the importance of the macro-political context of standard-setting.

**THE DEMOCRATIC LEGITIMACY DEFICIT OF GLOBAL GOVERNANCE**

The core concern about the legitimacy of international or global governance resides in the lack of democratic institutions and mechanisms beyond the nation-state (Dahl 1999). In the absence of a global political community or *demos* and of a global polity in which international rule-making could be embedded, “many of the chief sources of legitimacy at the domestic level, such as constitutional mandates, electoral processes, legality, and tradition are not available to transnational organizations” (Grant and Keohane, 2005, p. 35). This concern applies to *intergovernmental* arrangements where states cooperate through national governments in international agreements and/or international organizations (e.g. WTO), to *transgovernmental* networks where sub-state actors (mostly senior non-elected officials) collaborate across borders (e.g. Basle Committee on Bank Supervision), and to *transnational* governance by non-state actors and entities, such as the IASB.

In the case of *intergovernmental* and *transgovernmental* governance, rule-making beyond the nation-state derives democratic legitimacy through chains of *delegation*: nation-state governments formally delegate authority to national representatives, or directly to international organizations, so that there is a link between international rule-making and democratically legitimated bodies at the domestic level.\(^2\) However, several features of international governance tend to erode democratic accountability of delegated international governance arrangements: chains of delegation from the ‘will of the people’, as expressed in electoral or other processes of citizen participation, to international bodies are too long to offer meaningful control, and decision-making on the international level is often not transparent. Furthermore, many international arrangements are informal (for example Memoranda of Understanding governing transgovernmental collaboration) and rules may be non-binding. The diffusion of decision-making in a multi-level system of delegated authority (governed by negotiation and compromise) blurs the clear attribution of responsibility for decisions to distinct government entities. Taken together, these obstacles militate against an extension of domestic accountability arrangements to the level of ‘global administration’ via delegation (Kingsbury et al, 2005, p. 53-55).

Transnational governance by *non-state, private* organizations looks even more problematic as private bodies seem to escape any accountability to democratically legitimated legislative or administrative bodies: bodies that could hold them to account do not exist on the international level, and there is no formal delegation link to domestic ‘principals’. In short: “Their activities are not based on or mandated by national, supranational or international law” (Black, 2008, p. 138).

To be sure, the delegation of rule-making authority to private bodies and self-regulatory arrangements have a long *domestic* tradition in many countries particularly

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\(^2\) Note that this argument ignores the fact that, globally, many national governments are not democratically organized, or are elected via simulacra of democracy.
with regard to technical standards (e.g. Mattli and Büthe 2005b). Governments find it convenient to delegate rule formulation and implementation to private actors, as well as to independent public agencies, primarily because these are perceived to have superior technical expertise and capacity in specialized domains of policy-making (Epstein and O’Hallaran, 1999). However, in the national context of developed democracies, these delegation relationships are embedded in broader constitutional arrangements that ensure accountability of private or self-regulatory decision-making in two ways. First, delegated decision-making has to respect certain procedural norms (transparency, notice-and-comment, reason-giving) and is subject to judicial review that includes concerns for substantive norms (e.g. individual liberties). Second, self-regulatory bodies or ‘agents’ have to answer to public bodies or ‘principals’ that, in turn, enjoy democratic legitimacy through electoral or other mechanisms of citizen participation. These mechanisms may be more or less effective in practice, yet, in principle, private authority is democratically mandated and can be held to account, and, ultimately, may be withdrawn by the public principal. In democratic nation-states, private rule-making, then, operates in the ‘shadow of hierarchy’ (Scharpf 1997) of constitutional arrangements.

By contrast, private authority and rule-making on the international level is self-mandated. It is not subject to any constitutional mechanism that could review and correct governance procedures and decisions. To be sure, in the case of IASB for example, there are a number of inter- or transgovernmental organizations that have some authority in financial reporting, a stake in the IASB mission, and that have supported IASB’s emergence as global standard-setter. The International Organization of Securities Commissions (IOSCO) in particular but also the Basle Committee and the World Bank could be considered “public principals [that] have come to endorse IASB” (Mattli and Büthe, 2005a, p. 252). Yet, none of these organizations possess formal, let alone exclusive international jurisdiction in accounting that would allow formal delegation of standard-setting powers to IASB. “Accountability has therefore been rightly noted as “the most difficult issue” when governance is provided by private actors” (Mattli and Büthe, 2005a, p. 227, citing Virginia Haufler).

In the case of voluntary standards such as IFRS, one avenue to tie the exercise of de-facto private authority on the international level back to domestic accountability mechanisms could be the authorization of standards by national authorities. IFRS do not enjoy independent force of law. The domestic adoption of IFRS is conditional on legislative or administrative approval by public bodies: one could argue, then, that standards become authoritative by state consent only.3 However, this is problematic in so far as domestic authorities have very limited discretion to set rules themselves, i.e. the standards are perceived to be “take-or-leave”. In the case of IFRS, therefore, a domestic authority must endorse ‘wholesale’ a process of rule-making at the IASB. This leaves national authorities with limited options of amending or re-writing rules (carve-outs, exemptions or exceptions) if the commitment to IFRS within domestic borders is to be

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3 This argument was actually put forward by former Chairman of the Trustees of IASCF, Tommaso Padoa-Schioppa in a March 2006 speech (cited by Véron, 2007. p. 39): “true, there is a sense in which the IASB is accountable, but the equivalence to other public bodies has a limit in the fact that the IASB does not have the power to make the standards obligatory.”
credible. In addition, IFRS are adopted as “living documents” and are subject to revision by the IASB in real-time while state oversight of such changes may be delayed.

State consent to IFRS is therefore a blunt instrument for legitimating these standards. It also ignores the independent, direct effect of global standards. Once standards have reached a certain level of ‘global authority’, having being adopted by major jurisdictions, it becomes difficult for other jurisdictions not to opt in, for reasons of competitiveness, access to capital markets, or simply because other international organizations (IMF, World Bank) may require endorsement of IFRS as a condition for participation in their programs.

In sum, global governance arrangements generally, and transnational, private governance in particular, suffer from a severe democratic legitimacy deficit. For Dahl (1999), it follows that international governance, characterized as a bureaucratic bargaining system, can not be democratized; it should hence be restricted to limited functional cooperation where the efficacy of international problem-solving is traded against the loss of some democratic legitimacy, in line with the more general trade-off between citizen participation and system effectiveness (Dahl 1994). An alternative position, put forward by Held (2006), agrees that current patterns of international governance are undemocratic but advocates an expansion of democratic (representative) institutions at regional and global level, to build a ‘cosmopolitan democracy’ (Keohane and Nye, 2003, p. 387).

A third position adopted here shifts attention away from models of democracy and looks instead at potential sources of legitimacy, beyond the traditional representative-electoral model of democracy that seems ill suited for contemporary global governance. The idea is that different types of legitimacy, individually or in combination, may enhance (as a matter of degree on a continuum) the democratic or ‘good governance’ quality of governance arrangements, without necessarily collapsing into categorical, alternative models of democracy.4

FROM DEMOCRATIC LEGITIMACY TO LEGITIMATION

At this point, it is important to distinguish between normative and sociological dimensions of legitimacy, a term that, following Suchman (1995, p. 574) we define as “generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (see also Richardson and Dowling, 1986) In a normative understanding that we have adopted so far, the question is one of acceptability with reference to certain norms, both substantive and procedural. We have seen how transnational standard-setting by private bodies fails to meet the requirements of traditional representative democracy. Yet, standard-setters such as IASB find broad acceptance for the standards that they develop. This latter phenomenon is captured by the sociological perspective on legitimacy. Here the empirical acceptance of rule-making is key; the purpose is to

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4 It is true that certain mechanisms of legitimation have been developed into integrated alternative models of democracy, deliberation and deliberative democracy (Dryzek, 2000) for example.
understand why actors accept certain rule systems and norms as legitimate (Buchanan and Keohane, 2006). These two dimensions of legitimacy may point in the same direction, i.e. actors that “do good” (in normative terms) may command a higher level of acceptance in their environment, and hence, governance success, but this is ultimately an empirical question (Beisheim and Dingwerth 2008).

Another important aspect emerging from the sociological perspective is that legitimacy is an important resource that organizations need to actively gain and maintain in interaction with their environment in order to be successful. A strategic approach to legitimacy emphasizes the ways that organizations purposefully seek to garner societal support (Dowling and Pfeffer, 1975; Suchman, 1995, p. 572). This strategic perspective seems particularly relevant to our case of transnational setting of voluntary standards. The IASB can not rely on the force of law, it depends entirely on the acceptance of its standards by users and by national or supranational public authorities that have the power to adopt and authorize IASB standards for their jurisdiction.

Furthermore, the different constituencies of IASB standards may base acceptance or non-acceptance on diverging legitimacy concepts that underpin competing accountability claims. We can, therefore, expect that the construction of legitimacy, including the response to multiple legitimacy and accountability claims, is a key concern for a transnational standard-setter (Black, 2008). It is also a difficult task. Organizations confronted with conflicting accountability expectations may develop what Koppell (2005b) has termed “Multiple Accountabilities Disorder”. This occurs if, as in the case of ICANN (Internet Corporation for Assigned Names and Numbers), uncertain and conflicting expectations are met with poor organizational performance. However, the relatively unstructured territory of transnational standard-setting may also offer a space for organizations such as IASB to innovate and develop creative strategies of legitimation.

SOURCES OF TRANSNATIONAL LEGITIMACY: A CRITICAL INVENTORY

One approach to organizing these (normative) principles and (sociological) mechanisms is to consider the legitimacy of standard-setting as a three-stage process by which inputs (including technical advice, preferences, impact statements, etc.) are collected from affected parties, these inputs are considered and aggregated or transformed through a formalized decision process, and finally, standards are produced and issued. Each of these three stages of the process – input, through-put, and output – are subject to evaluation and become a site of legitimation.

Results- and Expertise-based, ‘Output’ Legitimacy

Given the strong focus on policy efficacy in traditional legitimacy accounts of international governance, the most logical point of departure of this exploration remains

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5 Sunder (1988) provides a typology of standard-setting mechanisms in accounting that may also be seen as mechanisms for legitimating standards. He identifies six mechanisms: common law, market, referendum, legislature, judiciary, and bureaucracy.
the Weberian concept of rational order based on professional competence. Weber (1978 [1922]) famously pioneered research into why actors accept certain rule systems by distinguishing between three types of ‘legitimate domination’, or legitimate authority: charisma, tradition, and rational-bureaucratic order. As Keohane and Nye (2003, p. 386) succinctly note, “international institutions have little prospect of benefiting from symbolic, affective or traditional legitimacy”.6 Instead, an extension of the rational-bureaucratic strand of legitimacy – policy efficacy – has traditionally been used as the primary argument to legitimate international (as well as delegated domestic) exercise of rule-making authority.

International institutions can claim legitimacy to the extent that they successfully discharge the function of policy coordination and the provision of public goods for a global economy that they have taken as their mandate. This line of reasoning is reflected in a results-based concept of legitimacy. The output of decision-making, i.e. the quality of the decision and of its results in terms of furthering the common good, is considered as a source of democratic legitimacy (Scharpf 1999). Especially in specialized policy domains and novel, technically complex areas that are characterized by strategic uncertainty, professional expertise and technical competence/capacity are accepted as the key basis for decision-making (Eisner et al, 2006; Majone, 1996).7 In technical standard-setting, the assumption is that experts in a field can recognize a “good” standard based on its ability to resolve technical problems or to facilitate future developments in the field.

A narrow view of ‘objective’, technical outcomes, of course, runs the risk of ignoring the broader social implications of technical standards, which are difficult to assess. There is not one, ‘objectively’ superior set of standards, nor are standards intrinsically Pareto-efficient, i.e. they can have redistributive, hence political effects. Standards may carry bias and advantage certain cultural approaches. The focus on outputs begs the fundamentally political question of who benefits (from the decision or good provided): the initiators of, say, a new set of global accounting standards, a broader community of stakeholders (e.g. all users of financial statements), or society at large (e.g. through financial stability)(e.g. Wolf, 2006)? Furthermore, it is not clear on which basis output success is measured: is it success benchmarked against the stated objectives of the standard-setter, or is it success in terms of compliant behavior by constituencies who use or adopt standards?

6 The adjectives “symbolic” and “affective” relate to charisma and ‘traditional’ refers to tradition as basis of legitimate domination, all in the specific Weberian sense. This is not to deny the importance of symbolic and norm-based foundations of social action as developed in social-constructivist approaches. In some accounts, legitimacy as the “belief by an actor that a rule or institution should be obeyed” is distinguished from two other motives for actors to obey or comply: coercion and self-interest (Hurd, 1999). Coercion is not an option for standard-setters, and self-interest is a general driver that is not specific to one form of legitimacy. A dichotomous perspective typically would distinguish between (rationalist) self-interest and (constructivist) internal sense of obligation as the two drivers for recognizing legitimate authority. Furthermore, we recognize but do not engage with the view that legitimacy may be based on a false consciousness of the relationship between social values and actions (c.f. Richardson, 1987).

7 While expertise may also be viewed as input into decision-making, its main role is to ensure the quality (output) of decision-making in technically complex policy areas. Input, by contrast, is more concerned with appropriate representation of the interests of parties affected by decisions.
Nevertheless, the initial credibility of a standard-setting body with users and public authorities will crucially depend on the perceived expertise and capacity to deliver results. For specialized rule-making bodies, the demonstration of technical competence is indeed a necessary condition to establish legitimacy with constituencies. However, this may not be sufficient to sustain legitimacy. The degree of political salience plays a crucial role.

It is important to know to which extent ‘technical’ standards are political, and hence contested. Koppell (2005b) argues that the salience of legitimacy, i.e. the degree to which the public will be concerned about an organization’s legitimacy, will vary with both the “publicness” of the issue (i.e. the degree to which it addresses a common or public good and affects individual choices) and with the “power” of the organization, i.e. its scope and concentration of authority. The higher “publicness” and “power”, the higher the salience and demand on legitimacy of the organization.8 The macro-political context will also shape the demands on legitimacy: the post-Enron context of financial reporting in the US, for example, had the effect of de-legitimating private-sector mechanisms and increased the demand for improving administrative law procedures (Mattli and Büthe, 2005a, p. 249).

In sum, technocratic, results-based legitimacy will not be sufficient if standard-setting has redistributive effects and significant reach in terms of collectively binding rules, nor is it immune to demands arising from changes in the macro-political context.

**Participatory, ‘Input’ Legitimacy**

Input legitimacy refers to the participation of affected parties in rule-making or standard-setting so as to establish congruence between affectedness and voice in decision-making. It is not tied to a specific form of participation, such as electoral participation as under the representative democracy model that we have found ill suited for transnational governance. On a general level, input legitimacy is attained when a standard-setting process reflects the “will of the people” (Scharpf, 1999, p. 6.) Participation may involve direct involvement of interested parties in the standard-setting process or, more likely at a transnational level, through the involvement of representatives of interest groups or stakeholders.

In the absence of formal authorization by ‘the people’, or by bodies that can legitimately speak on behalf on the affected ‘people’, rules on who should participate and to which extent remain fundamentally arbitrary. As transnational, non-state standard-setters are self-mandated, so are the rules on participation. Who are the constituencies, and which participation rights should they have? For example, should only direct users of financial information participate, or broader constituencies such as employees of companies? How are constituencies identified and selected? This raises issues familiar in a regulatory context: what about undue influence by powerful special interest groups that have superior lobbying resources? Does the opening up of participation result in unequal access and bias? These issues relate to the scope of participation, but the quality of

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8 Koppell (2005a, Table 2) classifies IASC’s publicness as medium, and its power as high.
participation is also at stake (Dingwerth, 2007, p. 28). Participation can be limited to passive modes such as receiving information or extend to the formulation, or even voting on standards. Both with regard to scope and quality of participation, it is not clear ‘how much’ participation (and how much balance between constituencies) could be considered sufficient to establish legitimacy.

The second fundamental problem is that there is a conflict or trade-off between inclusive, broad participation and the expertise-based logic of decision-making in technical standard-setting. Regulatory bodies stake their reputation on professional credibility and the independent, ‘quality’ driven logic of decision-making. Some constituencies may lack skills and capacities to contribute to such decision-making. Moreover, participation may not only (legitimately) complicate and slow down decision-making and reduce efficiency, depending on the nature of participation (e.g. if there are veto rights) of different constituencies, it may also result in compromising the professional logic, and may invite different forms of (illegitimate) ‘politicization’, including regulatory capture by special interests.

**Through-Put, Procedural and Deliberative Legitimacy**

Through-put or procedural legitimacy denotes the fairness of the process by which inputs are transformed into outputs or results of political decision-making (e.g. Dingwerth 2007, p. 15, building on Michael Zürn’s work). An emerging body of scholarship in international relations and international law has identified a set of principles and mechanisms that may be used to claim and maintain perceptions of legitimacy of international governance arrangements. One strand of this literature, under the rubric of ‘global administrative law’ emphasizes in particular procedural mechanisms of legitimation, which seems relevant to technical standard-setting and its due process dimension (see Kingsbury et al, 2005, as paradigmatic statement). We draw on this literature to explore mechanisms available to transnational standard-setter to defend their legitimacy (Esty 2006). Essential, procedural legitimacy, also discussed in more formal terms as “due process” in constitutional and administrative law, is about the rigor (as

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9 Procedural legitimacy may also be thought of as including legitimacy by institutional design of decision-making. Esty (2006, p. 1519) draws attention to one aspect of design as a source of “Madisonian or systemic legitimacy [that] relies on the dispersion of policymaking responsibilities among contending institutions as a way to protect individual liberty, limit the potential abuses of power, promote fairness and balance, and ensure effective decision-making.” This logic of check and balances has both an intra- and an inter-organizational dimension. A transnational regulator can establish internal procedures and bodies that serve as ‘second opinions’ and checks on decision-making, such as Advisory Groups or Supervisory Councils. Externally, this concept is more problematic as it would undermine the monopoly of a transnational standard-setter. At the same time, competition is a recognized option for standard-setting (Sunder 1988).

10 “Much of global governance can be understood as regulatory administration. Such regulatory administration is often organized and shaped by principles of an administrative law character. Building on these twin ideas, we argue that a body of global administrative law is emerging. This is the law of transparency, participation, review, and above all accountability in global governance.” (Global Administrative Law Project, Institute for International Law and Justice, New York University School of Law (http://www.iilj.org/GAL/GALworkingdefinition.asp).
opposed to arbitrariness) of decision-making. As such, it promises to counter-balance the arbitrariness of participation rules that results from the self-mandated character of private standard-setting.

Through-put legitimacy builds on the adoption of processes of deliberation or problem-solving that meet the needs/expectations of affected parties. Philosophically this approach relies on the principles of discursive democracy or Habermas’ “ideal speech situation” as a normative ideal (Cohen, 1989). Each party must respect the right of others to participate, engage only on the basis of rational argumentation, feel free to propose changes and evaluate alternatives, and be willing to accept any outcome achieved through appropriate processes. Under these conditions, deliberation may not only improve the quality of information and policy options (epistemic function). It may also mitigate potential conflicts between parties by transforming participants’ positions and interests (transformative function), and it provides a procedure to justify regulatory choices (reason-giving function) (Bohman 2000; McGrew and Robotti 2006).

Deliberation is particularly attractive in our context as it promises to overcome the noted tension between participatory input and expertise-based output logic. Whereas other approaches assume a trade-off relationship between output effectiveness and input inclusiveness (requiring the restriction of participants to experts), deliberative models posit that the inclusive character of reasoned debate actually increases the rationality of the decisions (Dryzek, 2000). Importantly, deliberation is different from the type of participation discussed under input legitimacy: it is not about increasing the number of constituencies that can vote on, veto or capture the regulatory process. It is about increasing the rationality of decision-making by allowing different constituencies to submit their positions to debate. As such, proceduralism and deliberation protect the technical competence core of legitimacy that transnational standard-setter need to establish. Moreover, proceduralization does not require any substantive modifications of the organization’s goals and mandates - it is about the how, not about the what. Procedures considered as ‘proper’ and rigorous are the procedural match of substantive professional quality or credibility. Finally, deliberation is particularly attractive on the international level as it does not presuppose a sense of community or tradition among actors: the demos, as it were, emerges as a result of the deliberative process, based on evidence and the ‘better argument’, not on tradition or majority voting.11

At the same time, deliberation presupposes demanding conditions of discourse, most notably: equal access (and comparable capacities) for different actors and the primacy of logic, reason and evidence over power relationships and special interests. Hence, while useful as a normative standard, deliberative legitimacy may be difficult to

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11 “Procedural rigor is especially important in the international policy domain where the lack of democratic underpinnings and political accountability requires special focus. Rulemaking structures that require decision-makers to engage in an open policymaking process that draws on a range of views and mandates an explanation for the choices made can go some distance toward addressing issues of representation and accountability” (Esty, 2006, p. 1522).
achieve in practice. Problems of undue influence and bias as discussed with reference to input-legitimacy may thus also afflict this mechanism of legitimation.

THE PROMINENCE OF “DUE PROCESS” IN TRANSNATIONAL STANDARD-SETTING

Our overview of potential legitimating mechanisms suggests that with the increasing relevance (‘publicness’) and influence (‘power’) of IASB as an emerging global standard-setter, the results-based, output type of legitimacy on which the organization was initially built, is no longer sufficient. The desire by key stakeholders to protect IASB’s credibility as a professional and independent standard-setter, however, acts as a constraint on the choice of alternative strategies of legitimation. More traditional, input-based avenues of enhancing constituency participation do not appear as viable solutions to the legitimacy challenge of a transnational, technical standard-setter – first, they would conflict with the existing base of ‘output’ legitimacy, and second, the institutionally ‘thin’ transnational environment and the self-mandated character of regulation make traditional forms of democratic participation and legitimacy, both direct and delegated ones, largely unavailable. Against this background, it is perhaps not surprising that procedural or “due process” norms and practices have become very prominent in IASB’s strategies to maintain its legitimacy as global standard-setter.12

The IASB has been cited by some as one of the most effective and accountable of the transnational regulatory bodies that have emerged as part of the new global financial architecture (Lloyd et al, 2007; Büthe and Mattli, 2008). The IASB due process mechanisms, in particular, are singled out as “good practice” among transnational NGOs:

“The due process benefits the IASB in two ways. Externally, by demonstrating that standards are developed in an open public consultative process, it enhances the legitimacy of the standards. Internally, it imposes discipline on the organisation by improving the consistency of and opportunities for stakeholders’ participation. The IASB’s hope is that wider recognition and understanding of its due process will sustain participation in the long term” (Lloyd et al, 2007, p. 39).

To understand these claims, we need a more fine-grained approach that tells us what due process or procedural and deliberative legitimacy entails in organizational practice. Esty (2006, p. 1524), for example, presents a “global administrative law toolbox arrayed in four functional clusters: (1) controls on self-dealing, corruption, and special interest influence; (2) systematic and sound rule-making; (3) transparency and public participation; and (4) power-sharing.” Beisheim and Dingwerth (2008) make a more

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12 Due process norms have the additional attraction for decision-makers that they relate to well-established domestic patterns of governance – they enjoy normative appeal as trusted elements of legitimate, national orders of law – even if their application on the transnational level may require substantial adaptation or may turn out to be dysfunctional.
parsimonious distinction between three “key elements of normative procedural legitimacy”, a triad that provides a useful benchmark to assess the legitimacy of transnational standard-setter:

a) inclusiveness (with equal and fair rights of participation for all stakeholders who must be legitimate representatives of their constituencies)
b) deliberation, as discussed earlier, and
c) democratic control (accountability, transparency and responsiveness)

Transparency, i.e. disclosure of and access to information pertaining to decision-making, is the fundamental prerequisite of accountability, which is defined as the obligation of an agent (to a principal or forum) to report on activities (explain and justify conduct) and face consequences (costs) than can be imposed by the principal or forum (e.g. Bovens, 2007). Agents are both internally accountable to clients within an institution, and externally accountable to those affected by the institution’s decisions (Keohane, 2003).

Obviously, further specifications are needed to make these elements operational in the specific case of the IASB and we do this in a later section when we assess IASB due process against the normative standard of procedural legitimacy. Suffice to note at this point that there are potential tensions between different elements, for example between transparency and accountability on the one hand, and deliberativeness on the other, as “representatives are often unable to engage in a sincere exchange of arguments unless meetings occur behind closed doors; moreover, the more control constituencies exert on their representatives, the less they may be persuaded by the arguments of other” (Beisheim and Dingwerth, 2008, p. 16).

While we can see the attraction of due process to an organization such as the IASB, there remains a fundamental ambiguity about what due process would mean in this self-regulatory context. The word “due” implies that the extent of procedural guarantees provided is specified in law (Hyman, 2005). On the transnational level, there is no central authority to provide the legal basis for due process. Many authors have noted the immaturity of transnational administrative law (Shapiro, 1993, 2001). This provides a space in which the IASB could innovate to meet the demands of its constituencies but also means that it is difficult for the IASB to make credible commitments to due process in the absence of the usually remedies of judicial review or tort law to deal with failures of due process. In addition, due process is premised on the existence of a well defined polity to whom notice must be given and access provided. Hence, the due process adopted by the IASB must simultaneously construct and engage the community to which it wishes to be accountable. These ambiguities require that we examine the actual mechanisms put in place to manage legitimacy claims by the IASB.

HOW HAS THE IASB MANAGED LEGITIMACY DEMANDS?

In order to better understand the way that the IASB has managed public concerns about its legitimacy we provide a brief historical review of the emergence of due process norms in the IASB and conduct a comparative analysis of the IASB due process and the
due process models followed in the two cultures that most influenced the emergence of the IASB and to whom the IASB has been primarily accountable, i.e. the USA and the UK. The first analysis provides some evidence on why the IASB focused on due process norms rather than other approaches to legitimacy. The second analysis focuses on how the IASB has modified due process procedures compared with domestic contexts in order to use due process to support a claim to legitimacy outside of a democratic constitution and national set of laws.

Due process and the History of the IASB

The IASB emerged in 2001 based on the foundation built by the International Accounting Standards Committee (IASC) since its formation in 1974. The IASB represents a dramatic change in membership and operating procedure compared with the IASC. The IASC was composed of 143 representatives of the accounting profession throughout the world whereas the IASB is a small cadre of 14 standard-setters chosen for their technical competence with regard to the financial reporting needs of, primarily, multinational corporations. The standards produced by the IASC, known as International Accounting Standards (IAS) were intended to form the basis for harmonization of practice around the world. In particular, these standards were seen as a substitute for developing countries who did not have the technical capability to develop their own accounting standards. IAS were to establish a minimum level of financial reporting quality which would be consistent with more developed approaches to standard-setting in those countries with well developed capital markets and standard-setting processes.

In the late 1980s this approach to standard-setting changed as the IASC engaged with the International Organization of Securities Commissions (IOSCO) regarding the development of a set of standards that would allow for cross-border listing of securities without reconciliation of financial reports to account for differences in accounting standards. This new mandate sowed the seeds for the transition of the IASC into the IASB. IFRS are produced to simplify cross-border capital flows among the developed market economies.

It is noteworthy that there is no mention of due process in the original constitution of the IASC but this provision was added to the Constitution of the International Accounting Standards Committee Foundation when this body was formed in 2001 to oversee the work of the IASB. The IASC was a representative organization with each country being given a vote on standards (regardless of the number of professional organizations in that country or the size and economic importance of the country). And most of the comments on standards proposed by the IASC came from member bodies.

Importantly, then, the IASC, while a private, professions-based organization, followed an intergovernmental logic of representation and delegation more akin to an international organization where each country has one vote, and standard-setting is driven by negotiations between the different needs of individual jurisdictions, and not by strict reliance on technical competence that is independent from geographically defined constituencies. In short, IASC operated more like a representative body, and not like an
independent regulator. Accordingly, in this setting, only limited due process was needed as the polity was defined by membership in the IASC and members had a voting representative on the Council, i.e. some level of input legitimacy, and accountability to clearly identified constituencies, was available.

When the IASC began its negotiations with IOSCO to broaden the use of IAS in developed market economies, due process issues were raised (Camfferman and Zeff, 2007, pp. 338-340). The concern was that (a) the broader constituency of users of financial statements was not represented in the processes used, (b) the process was not transparent, and (c) the use of input provided by due process in the setting of standards was not apparent. In particular, the IASC did not appear to have the staff to adequately handle the comments provided on exposure drafts within the short-time horizon allotted to most approvals processes (Beresford, 1993).

The introduction of due process norms followed vocal criticism of the IASC by FASB (Beresford, 1993). In a widely cited policy paper FASB (1998) laid out what it considered to be the essential characteristics of an international standard-setter: “The characteristics the FASB has identified are (1) an independent decision-making body, (2) adequate due process, (3) adequate staff, (4) independent fundraising, and (5) independent oversight.” FASB was not willing to consider IAS for use in the US until an international standard-setter with these characteristics was put in place. The same document also outlined a set of essential characteristics for the standards themselves. This model of standard-setting was reinforced by the SEC and IOSCO during negotiations leading to the restructuring of the IASC. The result was a conscious attempt to mirror the due process of FASB at the IASCF and this has extended into the IASB.¹³

In essence, then, the technical cadre or expert model of an independent, private standard-setter monitored by an oversight body was directly imported from US practice to inform transnational design. It is indeed striking that:

“FASB and the IASB do not only sound similar (both acronyms are often pronounced so that they rhyme with “Frisbee”), they also look similar, because their organizational structure is virtually the same. Indeed, the

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¹³ While now generally supportive of the convergence of U.S. GAAP and IFRS, the SEC continues to be critical of IASB governance and funding. In a recently published ‘Work Plan’ (following up on the November 2008 ‘Roadmap’ towards convergence), the “Independence of Standard-Setting for the Benefit of Investors” was again identified as one key area of concern: “Another important element for a set of high-quality global accounting standards is whether the accounting standard setter’s funding and governance structure support the development of accounting standards for the ultimate benefit of investors. This is an area of significant concern to the investors and investor groups that commented on the Proposed Roadmap. The Work Plan includes an ongoing review of the functioning of the IASB’s governance structure and developments to secure a stable, broad-based source of funding. This review will help the staff assess whether these factors promote standard setting that is accountable, independent, and free from undue influence” (Securities and Exchange Commission, Commission Statement in Support of Convergence and Global Accounting Standards/Notice, Federal Register, Vol. 75, No. 40, Tuesday, March 2, 2010, p. 9498, accessed at: http://www.sec.gov/rules/other/2010/33-9109fr.pdf).
main bodies differ only in their names and in the number of their members” (Fleckner, 2008, p. 279.)

This is an example of the “legal imperialism” of the US that has been noted in other settings (Mattei and Lena, 2001). However, a key element of the US model is missing on the transnational level: the public principal and the administrative law framework. Private standard-setting by FASB operates in the ‘shadow of hierarchy’ of supervision by the capital market regulator, the Securities Exchange Commission (SEC), a regulatory agency that in turn is accountable to Congress under the framework of the Administrative Procedures Act. As discussed earlier, the IASB, by contrast, is not subject to oversight by a single public authority. It thus enjoys broad discretion as to the choice and interpretation of procedures. The way that due process was implemented drew from the models familiar to the architects of the IASB (primarily US and UK based accountants) modified to fit the circumstances in which the IASB was embedded and created.

**Due Process and Cultural Models**

The reformation of the IASC into the IASB involved a noted conflict between European and US participants (Camfferman and Zeff, 2007: Chap. 13). This resulted in several distinct governance structures being proposed prior to the final agreement on the technical expert model adopted. In particular, a bicameral structure was initially considered that would retain the representative council of accounting associations as an oversight body to the work of a group of technical experts. This model was abandoned and the accounting associations disenfranchised when it became clear that this model would not be accepted by the US and the organizations of the global financial architecture that it dominates (e.g., IOSCO, International Monetary Fund and the World Bank).

The change in structure of the IASB resulted in some unanticipated reactions. For example, the EU had committed to use IAS as a basis for cross-border listings but had made this commitment at a time when the IASC operated according to representative voting processes. The restructuring of the IASC into the IASB reduced the input of member states to the formal due-process mechanisms and the role of initial members of IASB as liaisons to the largest national standard-setters. The EU responded by creating the European Financial Reporting Advisory Group (EFRAG) in 2001 that vets IFRS prior to their adoption within the EU. This intermediary stage undermines the intent of the IASB to create global accounting standards that would harmonize practice. This type of response clearly indicated to the IASB concerns about the legitimacy of its standard-setting process and, in particular, a bias towards US-style standards that were anathema in Europe.

The IASB due process was designed after consideration of the due process used by national standard-setters: “In establishing its consultative arrangements, the IASB originally drew upon and expanded the practices of national standard-setters and other regulatory bodies” (IASCF, 2006, p. 3/section 8). These models, however, needed to be modified to fit the transnational context of the IASB. In order to better understand the due
process model implemented by the IASB we conduct a comparative analysis of the IASB compared with the due process used by FASB and the UK Accounting Standards Board (ASB) as cultural models, and with the normative model of procedural, deliberative legitimacy, building on the “normative model of due process” developed by Richardson (2008). The results are summarized in Table 1.

[Table 1]

The data used to populate this table were collected up to June 2009 and reflect the procedures in place at that time. It should be noted that both the IASB and FASB have explicit due process documents while the UK ASB does not. In the case of the ASB, we also contacted the ASB project director to verify the information used. The difference in the level and type of documentation of due process in the USA and UK reflect cultural differences specifically the greater legalism common in the USA versus the reliance on implicit, principles-based approaches in the UK.

The core elements common across all of the boards/committees examined are the extensive public disclosure of agendas, project progress reports, exposure drafts, standards and annual reports. There is also a hierarchical structure within each setting whereby an oversight committee is responsible for making appointments to the board/committee, raising the funds necessary to support the committee’s activities (thereby creating nominal financial independence between the standard-setter and those using the standards), and approving the annual budget.

The oversight process described above does vary slightly between settings in terms of the criteria used to evaluate the standard-setting process/body. In particular, the IFRIC, which issues interpretations rather than standards, is held to different criteria than standard-setting boards. One concern expressed about IFRIC, however, is that it may on occasion act as a standard-setting board even though its mandate is only to provide interpretations of existing standards. EFRAG (2006), for example, notes that IFRIC may express an opinion that certain approaches to implementing a standard should not be used. A negative opinion, as opposed to a recommended interpretation, is seen by EFRAG to be equivalent to creating a standard but IFRIC’s due process for such recommendations is not equivalent to the IASB due process.

More generally, there is a problematic and implicit boundary issue concerning transnational standard-setters. In a domestic context, the domain for which a body may set standards is defined by the legal uses to be made of those standards. For example, in the US, the SEC may require listed firms to adopt a certain set of accounting standards and the AICPA may require its members to implement certain accounting standards in order to be considered to have met professional norms of practice. Since the IASB does not operate within a specific legal context, there is no formal constraint on the types of standards that are issued or to whom they are intended to apply (i.e., the polity to whom the IASB is accountable). This issue arises, for example, in questions of whether the IASB should take the concerns of SME (small and medium enterprises) or non-profits

14 This is why we present IFRIC’s procedures separately in Table 1.
into account because in some jurisdictions adoption of IFRS as domestic GAAP will require these types of organizations to implement IFRS even though these standards are focused on large, multinational, publicly listed companies. The intended applicability of IFRS is an explicit due process issue for the IASB: which are the affected parties whose interests need to be heard? Yet, this is often impossible for the IASB to decide a priori, before domestic standard-setters decide which type of organizations will be required to implement IFRS.

The lack of a process of judicial review for transnational due process means that it is more difficult for a transnational body to make credible commitments to follow due process. The IASB deals with this issue in two ways. First, due process commitments (in basic form) are written into the IASB constitution. The constitution is reviewed every five years and changes must be subject to a public review process (IASCF, 2009, Section 17c). These basic due process requirements provide a stable anchor for public expectations of what the IASB must do in setting standards. Second, the due process requirements include a “comply or explain” clause (IASCF, 2009, p. 15, Section 110) that requires the IASB to carry out all stages of its publicized due process or provide reasons why it cannot carry out these requirements. The “comply or explain” approach is taken from European corporate governance codes (beginning with the London Stock Exchange and brought into corporate governance more generally by Cadbury, 1992). On the other hand, the due process handbook makes extensive use of the adjective “normally” in describing its procedures. This term signals that exceptions may arise and would allow variation in procedures without triggering the “comply or explain” requirement.

The adoption of an explicit due process document in the IASB follows the US tradition but there are several areas in which the IASB procedures are more in line with UK precedents. The ASB and IASB both accommodate special interests while the FASB maintains the formal independence of their standard-setters. For example, representatives of the major domestic standard-setters have a guaranteed position on the IASB for liaison purposes. The role of liaison members on IASB also reflects concern that those affected by IFRS may not be able to participate directly in the standard-setting process because of lack of knowledge of and proximity to the standard-setting process. Domestic standard-setters are used by the IASB to funnel local comments into their decision-making process. The IASB’s (2006) “best practices” guide captures this concern:

“Forms of communicating views other than comment letters are increasingly important in gathering views, including forums on specific issues. Other accounting standard-setters should use these forums as a mechanism for encouraging their constituents to participate in the IASB’s standard-setting process. When resources permit, the IASB may be able to assist other accounting standard-setters by making personnel available to enhance the effectiveness of these local or regional forums. Other accounting standard-setters can assist the IASB in identifying constituents who can be involved in round-table discussions and other forums and the issues of particular relevance to constituents. Without limiting the direct
communication of ideas to the IASB, other accounting standard-setters
have a role in communicating the views and ideas of their constituents to
the IASB through the consultation process—providing a focus for views.
Other organisations, such as representative bodies with an interest in
financial reporting, may also contribute to this process” (IASB, 2006, p. 5)

The IASB and ASB also use a supermajority\(^1\) voting procedure for the decision
to release an exposure draft while the FASB uses a simple majority vote (see Table 1,
“Exposure drafts”). FASB implemented a supermajority procedure in 1990 at the
suggestion of their oversight body (the Financial Accounting Foundation, FAF). The
intent was to make it more difficult for standards to be issued to combat the perceived
“standards overload” that was affecting small businesses at the time (e.g., Kelley, 1982;
AICPA, 1996). This requirement was removed in 2002 in favour of a simple majority.
The supermajority vote at the IASB is aimed, according to former Chairman Sir David
Tweedie, at “reducing the likelihood that any single perspective can dominate” (Tweedie,
2007). This is a direct response to concerns by the EU that standards would tend to reflect
the concerns of countries with UK/US financial reporting concerns (e.g. focused on
equity rather than other stakeholders). On the other hand, concern has been raised in the
US that the supermajority rule will prevent the IASB from moving quickly to deal with
emerging financial reporting issues (Cunningham, 2008).

Interestingly, the IASB uses different voting procedures for agenda setting than
for standards approvals (IASCF, 2006, section 74). The decision to add a topic to the
IASB agenda and to commission a discussion paper (either by staff or by a national
standard-setter) is based on a simple majority vote. The decision to release an exposure
draft (or to re-expose a draft after comment) or to issue an IFRS require a supermajority
vote. In principle this variation in voting procedures should allow issues to enter the
standard-setting process easily but make it more difficult to have a standard created to
deal with an issue.

The length of time that an exposure draft is open for comment at IASB is also
more consistent with the UK tradition. FASB in recent years has emphasized
administrative efficiency in creating standards that react to current issues. Although an
exposure draft may be held open for no less than 30 days by FASB this contrasts with the
90-day exposure draft period used by the ASB and the 120 day exposure draft period
used by the IASB (see Table 1, “Exposure draft”). The extended exposure time for
international standards may reflect the need for domestic standard-setters to conduct their
own due process on responses to the international standard. This series of embedded
processes requires additional time. This is an explicit concern in IASB’s (2006) “best
practices” guide:

> “Although other accounting standard-setters acknowledge the IASB’s
discretion to set the appropriate comment period for consultative

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\(^1\) A supermajority requires a specified level of support that exceeds a simple majority. A typical example is
a two-thirds majority. In the case of the IASB, 9 of 14 votes (board members) constitute a supermajority
(see Table 1).
documents, the IASB should bear in mind the need for other accounting standard-setters to have enough time to prepare material that places the IASB documents in the national or regional context, to expose the IASB documents in their jurisdictions, to receive comment from their constituents and to formulate their own views with the benefit of constituents’ comments” (IASB, 2006: 6)

There are also common failures in due process across the IASB and its cultural models. In particular, none of the bodies provides assistance for participation in the standard-setting process. While this is an issue for participation in domestic standard-setting processes (Richardson, 2008), the problem is exacerbated in a transnational context where the costs of participation are higher and the political environment is dominated by well-funded interests. For example, travel costs to attend open meetings are higher, on average, for transnational bodies given the extended physical domain covered by the standard-setter and language issues are likely to constrain the participation of some groups (particularly those outside the bloc of countries that dominate the IASB16). The IASB standard-setting process will also attract the attention of multi-national organizations, industry associations and accounting firms who will lobby to bring about preferred outcomes (Caramanis, 2002; Zeff, 2002). These actors will have significant advantages over users of financial reports or those groups, primarily NGOs, seeking to expand financial reporting into new areas.

The IASB has attempted to deal with these issues by encouraging domestic standard-setters to explain IASB proposals to their constituency and to collect and aggregate opinion within its local domain. In addition, the IASB has used regional roundtables to encourage participation. For example, a set of joint FASB/IASB roundtables to discuss the IASB response to the financial system problems were held in the UK, USA and Japan during 2009. These are open events where groups wishing to participate or just observe are encouraged (subject to space limitations but the rationing process by which seats are allocated, if necessary, is not made public). These approaches however may have the effect of widening the gap in accessibility/influence between those nations represented on the IASB and those that are not so represented. The close working relationship between FASB and the IASB, in particular, has raised concerns about variation in the influence of various participants in the standard-setting process (Howieson and De Lange, 2006).

**Due Process and Normative Models**

The preceding discussion of IASB practices provides rich material for an assessment of the quality of its due process as benchmarked against normative models. We have noted earlier that procedural/deliberative legitimacy offers itself, strategically,

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16 The operating language of the IASB is English. IFRS have been translated into 41 languages (with varying degrees of detail and timeliness) but very few exposure drafts, discussion papers or process documents, such as agenda and minutes, are translated even though they recognize that “translation is a necessary and vital part of achieving the IASC Foundation’s mission to develop a single set of global accounting standards” (http://www.iasb.org/Translations/Available+translations.htm).
as a supporting legitimating mechanism to a transnational standard-setter that relies on technical competence and independence to establish credibility. But are IASB rules and practices consistent with normative standards of “procedural legitimacy” (Beisheim and Dingwerth, 2008)?

Procedural legitimacy models typically build on the principles of “communicative rationality” and the “ideal speech situation” as developed by Habermas (1990, 1996). The Habermasian principle of “force-free deliberation” is a useful benchmark to assess IASB practices. The key idea applicable to standard-setting is that due process is intended to ensure that a decision is based on rational and unconstrained consideration of all alternatives (van Peursem, 2005).

It is important to specify in more operational detail the expectations associated with a normative model based on communicative rationality or force-free deliberation. Richardson (2008, p. 683) distills a number of useful procedural principles from Habermasian discourse ethics:

(a) non-exclusion of those who can make a contribution
(b) equal opportunities for participation
(c) a requirement that participants must mean what they say
(d) elimination of any motivation/force except a desire for better decisions/reasons

These are conditions of an “ideal speech situation” that enables social learning and persuasion by the ‘better argument’. We do not expect to find all these elements fully met in a given empirical situation, so the question is more one of degree of approximation of an ideal standard, subject to a given context. Furthermore, we need to enrich these actor- and discourse-focused principles by complementary, ‘good governance’ requirements that relate to the institutional environment of decision-making.

As noted earlier, Beisheim and Dingwerth (2008) connect the discourse requirement of deliberation to two other key elements: inclusiveness and fairness of participation, and democratic control, which includes both transparency and accountability. Esty (2006) provides us with more specific criteria in form of a “global administrative law toolbox”, which has been tentatively applied to the IASCF/IASB by Luthardt and Zimmermann (2008).

To construct our normative benchmark, we essentially build on Beisheim and Dingwerth’s trichotomy (inclusiveness, deliberation, and democratic control). This parsimonious, yet comprehensive framework allows us to focus on the procedural dimension of rule-making which is so prominent on the transnational level. However, we introduce the following modifications, partly drawing on Esty (2006) and on Luthardt and Zimmermann’s (2008) application of Esty. First, we place the principle of transparency first (and separate from accountability) because transparency is a fundamental

To fully answer this question would require an empirical investigation of actual organizational practices and their impact on decision-making. Our assessment is largely based on the interpretation of formal rules as laid down in official documents, and on some secondary sources on decision-making in standard-setting.
prerequisite for the proper operation of all three principles. Second, we use the quality of input or participation (degree of inclusiveness) as one important indicator of the quality of deliberation, which is difficult to observe and assess in itself. Third, we add power-sharing as fourth dimension, to reflect the opportunity of ‘checks and balances’ that comes with the multiple-actor constellation on the transnational level.

Our analysis shows that on a number of points the due process followed by IASB is consistent with our normative benchmark.

1. **Transparency** is a good starting point for an assessment because “transparency is a core good governance attribute: open procedures contribute to virtually all of the foundations of legitimacy” (Esty, 2006, p. 1530). As Table 1 shows, there is extensive public disclosure of IASB’s plans, deliberations, and decisions, aided by “IABS’s extensive use of information technology” (Luthard and Zimmerman, 2008, p. 13) that certainly exceeds the degree of ‘digital accessibility’ offered by many national standard-setters (e.g. webcasts of Board Meetings). Not only the Board meetings but also those of the Standard Advisory Council (SAC), the Interpretations Committee (IFRIC) and IASB’s working groups are open to the public. IASB’s website provides access to comprehensive documentation, again probably exceeding what most domestic standard-setters offer.

2. “Opportunities to both observe and contribute to policy-making” (Esty, 2006, p. 1531) are available to stakeholders and the interested public insofar as the IASB systematically seeks broad input (participation), formally through inviting comments on discussion papers and exposure drafts, but also through other consultation mechanisms such as public hearings, including roundtable meetings, and field visits. The SAC and IFRIC can also be seen as additional channels for feeding input into the IASB standard-setting process. There is no restriction to the right to comment (non-exclusion principle), although there is no right to appear at open hearings. Comment letters, a widely used avenue for stakeholders to submit their positions, are posted on the IASB’s Website, and the IASB project team summarizes the comment letters for the IASB’s consideration (IASFC, 2006, p. 6, section 36).

As noted earlier, IASB is sensitive to the context of multi-level regulation by giving major national standard-setters a special consultative role under formal liaison relationships (IASCF, 2006, p. 12, section 82-85). The IASB grants a rather long 120 day comment period to allow for domestic consultations to take place and feed into the transnational process. Overall, this multi-layered approach to seeking input facilitates the inclusion of affected constituencies. Generally then, the input procedures are structured, in principle, to allow open and evidence-based decision-making.

3. **Accountability** can be considered a hallmark of “systematic and sound rule-making”, one of the four criteria used by Esty (2006). The requirement to explain and justify conduct reinforces adherence to evidence-based decision-making. In institutional terms, IASB reports internally to the Trustees of the IASC Foundation who provide oversight with regard to appointments, funding, and general performance. Externally, the
creation of a new Monitoring Group (discussed further in the next section) adds a new layer of hierarchy and reporting above the Trustee level. IASB does not only meet standard public reporting expectations (providing project, plan, decision summaries), as discussed earlier, the IASB has self-committed to a strong “comply or explain” approach, which is presented as the cornerstone of what it considers its accountability (IASCF, 2006, p. 4, section 16). Essentially, self-commitment is to compensate for the lack of formal accountability to an external public principal or judicial authority in the transnational context. In a similar but more far-reaching way, IASB has also self-committed to a regular constitutional review of its entire governance process. The latter element is especially interesting and innovative from a reason-giving perspective as it institutes a meta-review of rule-making, an iterative rule-review process of setting standards.

4. Power-sharing (Esty, 2006, p. 1534) is a governance principle that can help to discipline the exercise of authority and promote the inclusion of minority interests and positions. There is some internal division of authority between the IASC Foundation entrusted with oversight and the Board that is solely responsible for standard-setting. Divided authority is also achieved in the Constitution of IASCF by prescribing different geographical and professional backgrounds for the Trustees (IASCF, 2009, p. 6, Section 6). This is to ensure that different perspectives are considered in the deliberation process. (This is different for Board members who are selected on the basis of professional competence but by 2012 a new geographical balance will be required as well, IASCF 2009, p. 12, Section 26). The requirement of supermajorities in IASB voting procedures (both for final decisions and decisions to release an exposure draft) can also be interpreted as protecting minority positions, or denying sub-groups in IASB (auditors and preparers versus users) a structural qualifying majority (Luthardt and Zimmermann, 2008, p. 15).

At the same time, we also have presented evidence of deviations from the normative model. The major area of concern is equal access and opportunity for participation and special interest influence.\(^{18}\) Lobbying by well-funded interests such as industry associations and accounting firms, or by powerful public constituencies such as SEC or the EU Commission, for that matter, may in practice trump evidence-based decision-making. The IASB due process does not offer any financial or other assistance to less well resourced groups such as NGOs to use the comment process. Collective action problems may leave users (investors), whose needs are purportedly the primary focus of IASB activities, less well represented.

The scholarly literature is divided as to the evidence of systematic bias or even regulatory capture. Luthardt and Zimmermann (2008, p.11-12) conclude that “apart from singular events (IAS 39) multi issue/multi-period empirical studies did not demonstrate that the IASB is substantially influenced by any particular interest group at the

\(^{18}\) The expectation that all stakeholders need to have the opportunity and capacity to participate may be unrealistic. Still: “A slighter weaker version of communicative rationality is to require that all viewpoints are represented in the discussion, assuming a limited number of perspectives of an issue will capture the concerns of the majority of stakeholders” (Richardson, 2008, p. 683).
disadvantage of others”. However, bias may be more subtle and difficult to detect. A large-scale survey of companies listed on the US and three European stock exchanges found interesting differences between European and American perceptions about the quality of IASB standard-setting procedures:

“Americans assess key aspects of IASB standard-setting much more favorably than Europeans, including IASB due process, transparency, accessibility, inclusiveness, and accountability (…) 93 percent of American financial executives consider submitting comment letters effective; only 51 per cent of Europeans consider them effective” (Büthe and Mattli, 2008, p. iii).

Critics have characterized the IASB milieu as a “cozy arrangement for a narrow band of stakeholders, but it does little to include other member groups of the global community that it purports to serve” (Brown, 2004, cited in Luthard and Zimmermann, 2008, p. 12). “In support of this view, Hansen (2008) finds that the odds of successfully lobbying the IASB increase with the financial contribution to the IASB” (ibid).

The initial funding regime, i.e. the dependency on major financial contributors (big accounting firms), has indeed been recognized as a potential source of bias, and IASCF has more recently begun to put funding on a broader basis.19

One might also have concerns about how the IASB processes the input and evidence it receives through consultation. The due process handbook notes under Section 14 (ISACF, 2006, p.4) that “the IASB listens to, evaluates, and, where the IASB considers it to be appropriate, adopts suggestions received during consultations.” While an independent standard-setter needs to exercise professional discretion, it is not clear on which (evidential) basis the IASB comes to the conclusion that a given comment is ‘appropriate’ or not. The due process handbook is much more explicit in the agenda-setting section (Sections 52-61) which criteria guide the (more specific) decision to add a potential item to the agenda, namely “on the basis of the needs of users of financial statements”. However, given the crucial importance of agenda-setting in any decision-making process, it is surprising that decisions to add a topic are taken by simple majority vote, whereas later stages (exposure draft and final decision) require supermajorities.

In sum, while we find evidence of significant deviations from the normative benchmark, it is fair to say that the IASB has put into place an ambitious and, in some aspects, innovative set of due process practices that emulate but, crucially, also adapt domestic cultural models to the more complex environment of transnational standard-setting. In particular, the IASB has used due process as a mechanism of ‘self-commitment’ in trying to justify its self-mandated, self-regulatory character.

**DUE PROCESS AND COMPETING ACCOUNTABILITY CLAIMS**

19 For details of the ongoing transition to a “broad-based” funding regime see: http://www.iasb.org/About+Us/About+the+IASC+Foundation/Funding.htm
In spite of the IASBs innovation in and commitment to due process, it appears that due process has not proved sufficient to assuage concerns by major public constituencies such as the EU that the IASB lacks proper public oversight and accountability. In return for their endorsement or recognition of IFRS, the major securities and financial markets regulators demanded to reinforce the public interest oversight over the transnational accounting standard-setter (Black, 2008, p. 148). In a joint statement, the European Commission, the Financial Services Agency of Japan, the IOSCO, and the US SEC noted:

“International Financial Reporting Standards (IFRS) are becoming more widely used throughout the world. We have a common interest of ensuring continuing user confidence in the institutions responsible for the development of global accounting standards. A natural step in the institutional development of the IASB and the IASC Foundation would be to establish a means of accountability to those governmental authorities charged with protecting investors and regulating capital markets. We will work together to achieve these objectives” (IOSCO, 2007).

In response to political pressure by this coalition, the IASCF Trustees decided to give priority to the issue of public accountability in the constitutional review process (IASCF, 2008a) and quickly proposed to create a monitoring group composed of key regulators that would enhance the public accountability of the IASC Foundation “while not impairing the independence of the standard-setting process” (IASCF, 2008b).

Less than one year after the constitutional review process had been initiated, the Trustees rushed to approve, in January 2009, a new constitution that significantly alters the governance structure of IASCF/IASB by establishing a new level of authority above the Trustees:

“A Monitoring Board will provide a formal link between the Trustees and public authorities. This relationship seeks to replicate, on an international basis, the link between accounting standard-setters and those public authorities that have generally overseen accounting standard-setters” (IASCF Constitution, 2009, p. 10, Section 10).

The main responsibilities of the Monitoring Board are to approve the appointment of the Trustees and to review and provide advice on the Trustees’ activities. The Monitoring Board initially has five full members: a member of the European Commission, the Chair of the IOSCO Emerging Markets Committee, the Chair of the IOSCO Technical Committee, the commissioner of the Japan Financial Services Agency, the chairman of the US SEC; the chairman of the Basel Committee on Banking Supervision has observer status.

A Memorandum of Understanding between the capital market authorities of the Board and the IASC Foundation further specifies the purpose and the duties of the
Next to Trustee selection, the Board also has duties to “confer with the Trustees regarding their oversight responsibilities” in the areas of “IASB oversight, due process and funding”. This could open the door to more direct influence on the IASB process of standard-setting, effectively reaching beyond the Trustee level.

It is too early to say in how far public oversight by the Monitoring Board will complement or rather threaten to erode IASB’s results-based and due process legitimacy, by reducing its independence and ‘politicizing’ decision-making. However, the potential power of the Board should not be overestimated. The capital market regulators on the Board do collectively represent the key public constituencies of IASB and should hence enjoy tremendous leverage. Yet, the Board may be hampered by collective action problems, i.e. the different parties may well not be able to agree on a consistent course of action and control towards IASB. The EU Commission and the US SEC in particular have a history of turf conflicts in this domain. Put differently, the creation of the Monitoring Board may not eliminate:

“the multitude of public sector principals of the IASB. Lack of a single or primary public principal who could threaten IASB with re-negotiating the grant of authority (as the SEC can do domestically in the United States), leaves the agent with greater freedom of action for at least two reasons: First, a setting with many public principals allows the agent to play off one principal against another. Second, such a setting gives rise to the kinds of collective action problems that are familiar from the literature on multiple principals” (Mattli and Büthe, 2005a, p. 259).

The wording of the constitutional amendment and the design of the Monitoring Board suggests that the idea is to replicate, on the transnational level, the oversight relationship that exists between private standard-setters and governmental agencies on the domestic level. The Monitoring Board is supposed to act as public principal and to cast a ‘shadow of hierarchy’ (Scharpf, 1997) over the private standard-setter IASC/IASB.

However, the Monitoring Board does not have formal authority to grant or take away from the IASB. From a democratic legitimacy perspective, the attempt to copy the accountability relationship from the domestic context to the transnational level appears fundamentally flawed: a) most authorities on the Monitoring Board only have a domestic regulatory oversight mandate, not a transnational one, and IOSCO’s transnational mandate is one of weak delegation at best; b) the link between the Monitoring Board and

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21 Comment letters on the IASB constitutional review had raised concern that a Monitoring Group may have too much influence on the IASB agenda (e.g. Ernst and Young, 2009).

22 In a similar vein, Fleckner (2008, p. 309) who compares the political independence of FASB and IASB notes: “The IASB has to please considerably more people than the FASB. (…) However, unlike FASB, the IASB might be able to address lobbying by pointing at the conflicting wishes of other constituencies. (…) For that reason, finding the right balance between pleasing multiple constituencies might offer more independence than attempting to counteract the wishes of one powerful agency”.

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IASCF is not embedded in broader constitutional arrangements with specific rules on who is authorized to take certain decisions, i.e. there is no Congress or judicial authority that governs the relationship between the Trustee and the Monitoring Board as is the case in the relationship between FASB and SEC.

That being said, the fact that these arrangements look similar to well-established patterns of governance on the domestic level has strong political attraction as a symbol of democratic accountability. Moreover, the current political macro-context provides strong momentum to calls for stronger public oversight of financial reporting generally, and accounting standards have come much more under the microscope of political attention as well.\(^\text{23}\) It is plausible to speculate that the urgency (and direction) of recent governance reforms at IASCF/IASB has much to do with the political pressures in the aftermath of the financial crisis and recession of 2008/2009.

More broadly, it is important to recognize that strategies of legitimation need to accommodate conflicting accountability claims and that strategies operate in a larger macro-political environment that may be more or less supportive of specific avenues to defend the legitimacy of rule-making. Normatively, due process, properly adapted, is a highly attractive option for transnational standard-setters, but its political viability is not guaranteed. As to IASB’s ongoing quest for legitimacy much will thus depend on how successfully this body will be able to manage conflicting legitimacy accountability claims – without falling victim to “multiple accountabilities disorder” (Koppell, 2005b).

DUE PROCESS, AUDIENCES, AND DEMOCRATIC CONTROL OF GLOBAL GOVERNANCE

The refocusing of the audience for transnational legitimacy of the IASB on states and transnational IGOs, noted above, fundamentally transforms due process compared with domestic benchmarks. On the one hand, there is evidence that individual users of IFRS are remarkably complacent (“docile”) about the failure of IFRS to achieve the level of comparability across financial statements that was the motivation for ceding authority from national standard setters to a transnational body (Durocher and Gendron, 2009). It is also widely observed that users typically do not participate in due process forums (Larson, 2007). This leads Durocher and Gendron (2009, p 22) to ask the question: “how legitimate is ‘due process’ if users are only involved in reproducing myths rather than engaging in criticism?” The involvement of states and transnational IGOs in IASB due process may overcome these limitations by refocusing accountability on actors with the knowledge, resources and interests at stake to make participation feasible and worthwhile. These groups may in fact be the real “users” of the financial statements of

\(^{23}\) “The financial crisis is thus the first real test for this arguably unique experiment in global economic policy-making. And what a test it is. Accounting standards are now on the agenda on the highest level. They are cited by some as being the cause of the crisis” (Nicholas Véron, The IFRS’ Stress Test, La Tribune, 25 May 2009 (in French), English version available at: http://veron.typepad.com/files/tribune_090525_en-4.pdf
multinational corporations rather than the individual investors that have been “made up” by domestic standard-setters (Young, 2006).

In addition, the competing accountability claims held by transnational actors, coupled with their access to IASB/IASFC members and the dependence of the IASB on these actors for funding, have the potential to make the IASB susceptible to lobbying pressure (Zeff, 2002). One potential consequence of due process mechanisms is to redirect lobbying from private meetings and indirect channels into a public forum. At a minimum, due process holds the IASB accountable for views provided in open forum, rendering more visible decisions that appear to fly in the face of the dominant views. Although due process was introduced into transnational accounting standard-setting as a “cultural norm” championed by the US SEC, it may actually provide a degree of independence from powerful international actors, by exposing and possibly disciplining their influence and power over the standard-setting process.

On the other hand, as Morefield (2005) reminds us, based on Laski’s (1917) critique of sovereignty, “states are not people” and aggregate representation disguises variation of opinions within states, not to mention that states often act in opposition to the majority will of their population (e.g. the UK and USA entering into the Iraq war). The approach to legitimation taken by the IASB thus can be challenged for emphasizing accountability to organizations rather than individuals while drawing on a legitimation discourse that is anchored in principles of individual rights and safeguards against authority. We recognize the paradox of reliance on due process to legitimate international accounting standard setting in the face of well known limitations to the exercise of due process in national standard-setting processes. And yet, the alternative to due process in this setting is not obvious.

It would be irrational, for example, to suggest that it would be better not to have due process mechanisms in place if the goal is to provide some form of democratic accountability. “If democratic global governance is to be achieved, global information (including for accountability) systems will be required and help shape governance” (Gallhofer and Haslam, 2007, p. 642). The fact that the US would not endorse the IASC standards, in part, because of the lack of due process (this was one of five preconditions for the SEC to support an international accounting standard-setter) suggests, at a minimum that due process is seen as necessary to allow networked governance within the global financial architecture to operate (Gallhofer and Haslam, 2007). The existence of due process provides a possibility of discipline being exercised even if the empirical reality is that this mechanism is not routinely used by grassroots constituencies.

CONCLUSION

The emergence of transnational standard-setting bodies raises concerns over the legitimacy of processes that have political consequences without the oversight and accountability expected within advanced democracies. The IASB initially built its credibility on technical competence (output legitimacy) but has increasingly relied on due
process (throughput legitimacy) to support its claim to act as legitimate global standard-setter. The use of due process by the IASB reflects domestic traditions of accounting standard-setting (particularly in the US) but this was not an obvious choice for the legitimation of transnational accounting standards. The IASB’s predecessor organization, the IASC, for example, did not have formal due process procedures. The emergence of due process in the IASB reflects (1) the change in governance of the IASB compared with the IASC, i.e. moving from a representative model to a technical expert model, (2) the desire of the IASB to have countries adopt IFRS without modification, e.g. through a domestic review process, and (3) the limitations of alternative legitimation mechanisms/rhetorics for an expertise-based body in a transnational setting.

A comparison of the IASB due process with domestic cultural and normative models highlights specific due process innovations that capture some of the complexity of transnational standard-setting. For example, the IASB has adopted supermajority voting requirements to reduce the perception of narrow interests affecting standards; the IASB uses an extended consultation period to allow domestic feedback to be aggregated through national standard-setting bodies before being introduced into IASB discussions; the IASB has taken steps to make credible commitments to due process in the absence of judicial review procedures by embedding due process in its constitution, by adopting strong “comply or explain” procedures, and by instituting a regular constitutional review process of its entire governance structure (meta-review). In short: the IASB strives to legitimate its self-mandated character by credible ‘self-commitment’.

As a result, the IASB is considered by some to be one of the most accountable of transnational organizations. However, the IASB is also confronted with competing accountability claims, in particular with calls for stronger regulatory oversight, calls that seem to gain momentum in a macro-political context that favors stronger public regulation of financial markets. Public capital market regulators, one of the key constituencies of IASB, have pressed successfully for stronger public oversight by a Monitoring Board, seeking to replicate the public oversight mechanisms practiced in domestic settings. Hence, the legitimation of transnational standard-setting remains contested, and the future success of the IASB will depend on how skillfully it can manage competing legitimacy claims.

More broadly, the use of due process by the IASB, and the innovations in due process with which they are experimenting, provide insights into the problems and potential of legitimation outside of the national institutions of democratic society. These experiments will need to be monitored to determine the extent to which they contribute to the public perceptions of the legitimacy of IFRS, and the extent to which they possess symbolic as well as substantive importance (Richardson, 1985). In future research, fieldwork and interview-based studies will be an important tool to further enhance our understanding of these legitimation processes.

24 “Symbolic legitimation involves the symbolic transformation of the identity or meaning of acts to conform to social values” (p.143). “Substantive legitimation involves the structural transformation of action to conform to social values” (p.145).
REFERENCES


Table 1: Due Process across IASB, FASB and IFRIC, and UK Accounting Standard Setting Bodies

<table>
<thead>
<tr>
<th>Procedure</th>
<th>FASB</th>
<th>IASB</th>
<th>IFRIC</th>
<th>UK ASB</th>
</tr>
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<tbody>
<tr>
<td><strong>Oversight</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Against what criteria?</td>
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<td>Effectiveness, Cost, Efficiency, Feasibility</td>
<td>Timeliness, Authoritative Guidance</td>
<td>Quality, Consistency, Cost, Effectiveness</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Representatives of interest groups on the board?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Are there independence/conflict of interest guidelines?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Public Reporting</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decision Summaries Reported?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Project Summaries reported?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Plans Reported?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Annual report released?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td><strong>Advisory Council</strong></td>
<td></td>
<td></td>
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<td></td>
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<td>Is there an advisory council of users</td>
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<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<td>Are special interest advisory groups used?</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td><strong>Agenda Setting</strong></td>
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<td></td>
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<td>Who identifies issues?</td>
<td>Staff</td>
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<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Stakeholder surveys</td>
<td>No</td>
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<td>Not surveys but any individual or organization</td>
</tr>
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<td></td>
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<td></td>
<td>Oversight body</td>
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<td>Yes</td>
<td>Yes</td>
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<td>Simple</td>
<td>Simple</td>
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<td>FASB</td>
<td>IASB</td>
<td>IASC Foundation</td>
<td>ASB</td>
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<tr>
<td>-----------------------------------------------------------</td>
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<td>-----------------</td>
<td>-----</td>
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<td>Approval of plans</td>
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<td>IASB</td>
<td>IASC Foundation</td>
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<td>Approval of funds</td>
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<td>IASC Foundation</td>
<td>IASC Foundation</td>
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<td>Yes</td>
<td>Yes</td>
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<table>
<thead>
<tr>
<th><strong>First Drafts/Discussion Papers</strong></th>
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</tr>
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<tr>
<td>Is a Statement of Principles (SOP) used?</td>
<td></td>
<td></td>
<td></td>
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<td>Release prior to exposure draft</td>
<td>Yes – conceptual framework</td>
<td>Yes – conceptual framework</td>
<td>NA</td>
<td>Yes – Statement of Principles</td>
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<td>Board vote on principles</td>
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<td>Simple majority</td>
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<td>7 of 10 (6 if less than 10 members are present)</td>
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<td>Who comments on SOP?</td>
<td>&quot;Associates&quot;</td>
<td>Yes</td>
<td>Yes</td>
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<td>Who writes the first draft (discussion paper)?</td>
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<td></td>
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<td>Staff</td>
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<td>Taskforce</td>
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<td></td>
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<td></td>
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<tr>
<td>Procedures for appointment to taskforces</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Use of &quot;associates&quot;</td>
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<td>Exposure drafts (Draft Interpretation for IFRIC)</td>
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<td></td>
<td>9 of IASB’s &lt; 3 members</td>
<td>- 7 of 10 (6 if</td>
<td></td>
</tr>
</tbody>
</table>

25 "Associates" are members of the public who have a special relationship with the standard-setter, e.g. serving on advisory boards, being appointed to taskforces etc.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer 1</th>
<th>Answer 2</th>
<th>Answer 3</th>
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<td>How are Exposure Drafts released?</td>
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<tr>
<td>Print Media</td>
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<td>Digital Media</td>
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<td>Can the Board omit exposure draft</td>
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<td>No less than 60 days</td>
<td>3 months</td>
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<td>Right to Comment</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Is the right to comment restricted?</td>
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</tr>
<tr>
<td>Who</td>
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<td>No</td>
<td>No</td>
<td>Constituents and professional, industry and lobby groups</td>
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<td>How</td>
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<td>Generally 120 day period, no less than 30 days</td>
<td>No less than 60 days</td>
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<td>No</td>
</tr>
<tr>
<td>Meeting at discretion of board</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Are resources available to assist parties use the</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Comment process?</td>
<td>Use of Comments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------</td>
<td>---------------</td>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Is the board required to use comments?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Does the board explain its use of evidence?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Optional</td>
<td></td>
<td>Not Specified</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the board discussion of comments open to Public?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Re-exposure Draft</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>What Board vote is required for re-exposure?</td>
<td>Not Specified</td>
<td>9 of IASB’s 14 Members</td>
<td>Not Specified</td>
<td>- 7 of 10 (6 if less than 10 members are present)</td>
</tr>
<tr>
<td>Final Decision</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>What Board vote is required?</td>
<td>Simple majority of 4 votes</td>
<td>9 of IASB’s 14 Members</td>
<td>&lt; 3 members can vote against the proposal; 9 of IASB’s 14 Members</td>
<td>- 7 of 10 (6 if less than 10 members are present)</td>
</tr>
<tr>
<td>How is the decision released?</td>
<td>Print media</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Digital (web site)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>