Are NGOs Illegitimate Regulators?

The Case of the Fair Finance Guide and the Role of Deliberation

Master's Thesis in Applied Ethics

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Abstract

In this thesis I will argue that the Fair Finance Guide deals with a legitimacy problem because the procedures that generate the standards they set lack the necessary deliberation. I will show that although their activities are crucial in raising the environmental and social standards of financial institutions, these institutions justly accuse the FFG of lacking legitimacy and that their criticism should be taken more seriously in order to prevent the FFG from developing a one-sided, dogmatic and limited framework of regulation. I will suggest that the concept of deliberative democracy offers insights on how to deal with their legitimacy deficit and will offer proposals on how they might improve their practices.

Introduction

During the last couple of decades and as a result of global governance gaps, non-governmental organizations (also referred to as NGOs) increasingly have been involved in activities such as monitoring and regulating business. Because often these activities were formerly only performed by governments, the organizations are seen at times as fulfilling 'political roles' and participating in forms of 'governance'. Since they obviously are not governments, questions have sprung up concerning their legitimacy. How and when, corporations have asked, are they legitimate? What gives them the right to 'govern', to act as watchdogs? And what reasons are there to comply with their standards and demands? These are concerns raised about all kinds of alternative regulatory regimes and initiatives and present us with a contemporary problem of legitimacy.

In this thesis I will address this issue and particularly examine the legitimacy of NGOs that are active in 'governance' activities like developing standards and rules, acting as watchdogs and providing penalties for non-compliance. There are many of these organizations but I have chosen to focus on one in particular called the *Fair Finance Guide*, an organisation initiated by several large non-governmental organizations that is aimed at improving the conduct and raising the corporate social responsibility standards of financial institutions.

That there is a need to somehow create more sustainable practices by financial institutions and large corporations is something increasingly being recognized by many in the business world as well, resulting in a broad field of corporate social responsibility policies and practices.[1] The lack of a shared standard, experience and expertise as well as the absence of sanctions where practices might be lawful yet morally objectionable, however, has caused debates in the field to be quite diverse though not always as effective. Left to the industry itself, corporate social responsibility policies and practices might not be radical enough for real change. The *Fair Finance Guide* thus might be able to provide a framework and some guidance by offering a way to empower citizens through knowledge and providing the opportunity to both the institutions they aim to regulate as well as individuals to take more responsibility for where money flows, and through that for the world we live in.

There are some reservations, however, concerning the role of NGOs. Some parent organizations of the *Fair Finance Guide (*henceforth*:* FFG), especially the larger ones active on an international level, are organizations with great political influence who have been

[1] Scherer & Palazzo (2008), pp. 4

crucial in representing civil society but whose own integrity and intentions have sometimes been called into question.[2] They have been accused of lacking self-reflection and overstating the organizations' alleged moral superiority.

While the FFG challenges financial institutions legitimacy, their own legitimacy has also been called into question. Many financial institutions have publicly accused the FFG of being flawed, incompetent and unfair and with that have called into question the organizations 'right' to issue demands. Of course, some resistance can be expected of institutions that risk becoming targets of negative media campaigns, although some criticism may very well be justified. It is a possibility considered by more as the organization has also been criticized by individual experts and by institutions that present themselves as ethical innovators.[3]

What could become problematic then is that the FFG might be regarded as 'too idealistic', 'unrealistic' and lacking in adequate expertise and that this will thwart their effectiveness and their ability to bring about any real change. This might also mean that alternative organizations aimed at monitoring and 'rating' financial institutions corporate social responsibility (henceforth: CSR) policies will become more dominant. Many of these are often met with less resistance because they are either voluntary or less radical and do not form a substantial threat to the institution's reputation.[4] Also, maybe to a lesser extent but still present there is the risk that other actors like consumers and politicians will increasingly doubt the FFG's legitimacy while now being their greatest assets. As the Edelman Trust Barometer 2016 has already pointed out, the trust people have in NGOs is slowly but steadily decreasing[5].

The aim of my thesis is not only to frame the accusations and understand them in the light of the issue of legitimacy and to develop a standard of evaluation, but also to take seriously the aforementioned criticisms. More specifically my aim is to specify ways to increase the organization's legitimacy and with that enhance its prospects of success.

[2] See Reimann (2005), pp. 37
[3] Like the Triodos bank, see Triodos (2016) https://www.triodos.nl/nl/over-triodos-bank/wie-wij-zijn/missie/waarom-we-anders-zijn/
[4] Examples of such other organizations are Forum Ethibel and Sustainalytics
[5] See the online Edelman Trust Barometer (2016) http://www.edelman.com/insights/intellectual-property/2016-edelman-trust-barometer/executive-summary/

Structure of the study

My thesis has five sections. In the first section of this thesis, I will briefly elaborate on the circumstances and context from which the FFG emerged and will explain how the initiative can best be seen as part of a bigger movement of NGOs trying to fill governance gaps. I will explain what the FFG is, how it operates and why it is aimed at raising CSR standards. After pointing out some of the advantages that these novel forms of governance and regulation provide, I will explain that these initiatives have caused quite a debate among practitioners as well as academics and that the issue of legitimacy is seen by many as a central problem.

The concept of legitimacy is used differently in different contexts. I will therefore explore it in greater detail in the second section and explain why, for the purpose of my argument, I have decided to focus on one particular interpretation of the concept of normative legitimacy. Since there is no gold standard for the requirements of legitimacy for NGOs and it still is a topic of debate I have chosen to look at a number of sources and standards proposed by authors from different academic disciplines to get a broad overview of what elements are regarded as constitutional of NGO legitimacy. As there exists a plethora of conditions or ways to justify the exercise of power and give reasons for compliance, I will argue that legitimacy might best be seen as a matter of degree, which means that an organization will justly be perceived to be more legitimate if it meets more of these conditions and less if it meets fewer. In order to be able to evaluate the legitimacy of the FFG systematically, I identify four categories of conditions that are relevant when judging the legitimacy of NGOs performing governance activities.

Because my aim is to assess the legitimacy of the FFG and see if its critics point towards possible deficiencies, I will in section three turn to examples of complaints and critiques expressed by the financial institutions that the FFG has aimed to regulate. The statements I have chosen illustrate some issues and frustrations that can also be found in the broader critical debate on NGOs as standard setters and watchdogs and as I will argue that there are three recurring topics underlying objections to the legitimacy of the FFG. These concern inherent limits of choosing and picking what the 'most important' topics and issues are, the role of NGO's own organizational strategies and business interests and levels of accountability and finally also their levels of expertise, quality of methods and willingness to debate and revise.

In section four I will take up the task of evaluating the legitimacy of the FFG with regards to each of the four aspects identified in section two and will look at how the three key concerns from the criticism relate to these aspects and see what they can tell us about possible problems or shortcomings regarding certain areas or conditions. Because some elements from the criticism concern issues falling within aspects of legitimacy I will argue that they reveal weaknesses in terms of the organizations legitimacy and point to certain deficiencies with respect to value based and procedural aspects of legitimacy.

In section five I will argue that these deficiencies seem to be the result of a lack of deliberation in a number of areas and that in light of the results from section four, some practices may have to be changed in order for the FFG to become more legitimate as well as more effective. I will propose several possible solutions for their legitimacy deficit and will argue that it might also be worthwhile to look at insights from deliberative democracy theory and practical tools that can be developed to implement these into practice.

1. Governance Gaps and NGOs

To understand why the *Fair Finance Guide* and similar initiatives came into being and understand under which circumstances the debate on the legitimacy of NGOs active in certain 'governance' activities emerged, it will be useful to explain a few things about the global economic and political context. I will start this section by doing so and then proceed to zoom in on the specific case of the Fair Finance Guide.

1.1 Global governance gaps and the rise of NGOs as regulators

In the past few decades, national and international political structures have changed dramatically. The global economy has grown more interconnected and relations across national borders have expanded due to developments in transportation, communication and coordination. This caused an extension in the scope of action of business and multinational corporations and has made their supply chains increasingly complex, their business activities fragmented, some production processes shifting to states with weak regulatory frameworks and their overall activities transcending national borders.[6] Competition in a global economy has also amplified the risks and costs resulting from business activities. The complexity, existence of conflicts of interests and the subordination of morality to financial incentives, in combination with the lack of a global legal framework and authority, have had disastrous effects on the environment and global justice.[7] The integration of national economies into a world economy and the globalization of business has changed and often diminished the authority of states and their regulatory capacities.[8] This has resulted in environmental concerns and issues like war, inequality and human rights violations that have long since ceased to be manageable by national standard setting alone[9]. In short then, globalization and the absence of a global regulator providing the moral boundaries of the market, have led to ethical problems and unsustainable business models that are harming the environment and people not protected by their governments (either because they are not willing or not able to do so).

As a reaction to this regulatory vacuum left by the global economy, and in in order to deal with and prevent some of the negative effects with which it has left us, new forms of governance and attempts at regulations have been designed. Either initiated by industries

[6] Among others, Wolf offers an overview of these broad structural changes in Wolf (2008), pp. 225-248
[7] Scherer & Palazzo (2008), pp.2
[8] Wolf (2008), pp. 229
[9] Schneider & Scherer (2015), pp. 309

themselves, in order to manage risks and protect their reputation, by cooperating governments in the form of international norms and treaties or by organizations representing certain causes or defending certain objectives.[10] While international treaties and norms have been developed that many countries have agreed upon, there are limits to these frameworks because they are often not obligatory and do not make offenders of its rules subject to any form of punishment.

Because of this, many have argued that while the development of international standards and norms as well as state and international legislation are important, non-state and non-law activity is needed to truly narrow the governance gaps and effectively respond to the impact of the forces of the global economy and the negative effects of globalization.[11] And more and more of these non-law and non-state activities are being initiated and undertaken by civil society actors. Examples of civil society actors are non-governmental organizations (also referred to as NGOs) who are often vital in defending rights, social and political causes and are increasingly seen as influential actors on the political economic landscape. Not only are they increasingly seen as disrupting traditional relationships between investors, boards of directors and corporate officers, they are also increasingly acting as watchdogs, developing standards and rules, providing education and information to citizens and consumers and taking on advisory roles for governments.[12]

The Fair Finance Guide is an example of such a civil society actor. And while the FFG has not yet been the subject of a lot of academic research, the pursuits of other NGO initiatives and the roles that NGOs in general take in these novel processes of global governance have been explored by authors coming from a variety of academic disciplines.[13] The growing interest in the topic can be explained by the increase in numbers and activities of these organizations and their growing impact on policies but also because it is argued that by developing standards and rules, acting as watchdogs and providing penalties for non-compliance, these organizations are fulfilling 'political roles' formerly assigned to other actors. And because their activities are at times regarded as 'governance' activities that generally were performed by governments, some have asked how exactly they are justified in

[10] For example initiatives like the Sustainable Apparel Coalition and similar industry initiated agreements on codes of ethics, the many United Nations organizations aimed at protecting human rights or promoting sustainable development, the ISO, aimed at international standardization within different industries, or organizations like Greenpeace or Friends of the Earth International that are specifically focused on the environment.
[11] Ruggie (2014), pp. 5
[12] Guay, Doh & Sinclair (2004), pp. 125
[13] See i.a. Guay, Doh & Sinclair (2004), Ruggie (2014), Schneider & Scherer (2015) and the World Economic Forum Report on 'The Future Role of Civil Society' (2013)

doing so and what gives them the right to ‘govern’, to act as watchdogs and what reasons there are to comply with their standards and demands.

One concern is that while NGOs, when partaking in these ‘governance’ activities contend to act in accordance with the common good, they are not bound to act in the public interest the same way that governments are. Their activities are not justified by formal democratic procedures, for example.[14] This is one reason why NGOs involved in regulating activities have been scrutinized and questions about their accountability and legitimacy have been raised[15].

1.2 The case of the Fair Finance Guide

The Fair Finance Guide is an example of an NGO initiative that is trying to fill governance gaps and close the regulatory vacuum. In the following section I will discuss the case of this initiative, explain what its aims and methods are and why their project has come under scrutiny.

As stated on the website of the Fair Finance Guide (2016), it is a collaborative project initiated by a number of non-governmental and civil society organizations. It initially started in the Netherlands in 2009 with the Fair Bank Guide and the Fair Insurance Guide and is led there by among others Oxfam Novib, Amnesty International, the Dutch labour union FNV, Friends of the Earth Netherlands, the Dutch Society for the protection of animals and PAX.

Since these initiatives proved to be successful, the international non-governmental organizations behind it have started to expand their reach and scope and guides modelled on the Dutch Fair Bank and Insurance Guides, which form parts of the FFG, have now launched in seven other countries (Japan, Sweden, Brazil, Indonesia, Belgium, France and Germany) with the aim to extend the project to even more countries in the future. In all these countries the project is supported by a composition of international and local NGOs, altogether now adding up to 34 civil society organizations in total.

The project is aimed at improving financial institutions policies and practices because it is held that the impact that financial institutions have on society is considerable and it is through their practices that they are able to either aid or hinder sustainable developments. According to the organizations behind the FFG, financial institutions are crucially important to focus on

[14] Logister (2007), pp. 165
[15] Schneider & Scherer (2015)

because they are essential providers of funds and capital and are investing in (multinational) corporations throughout the world. The way they use their resources and manage their trading activities have in this way far reaching consequences on global economic structures and their trading activities can have a massive impact on the transformation of sustainable development, poverty reduction, human rights and the environment.[16]

Although there are widely accepted international norms and conventions, there is no binding global standard for the responsible behaviour of financial institutions nor does the (inter)national legislative framework adequately cover the regulation of their activities. The goal of the FFG is to fill this currently existing regulatory gap and have financial institutions do more than merely complying with laws and regulations in the countries where they operate but to get them to comply also with all widely supported standards, declarations and treaties.[17] The FFG distinguishes a number of issues that financial institutions policies and practices especially have an impact on, like climate change, human rights, labour rights, the arms trade, the oil and gas sectors as well as fisheries, agriculture and forestry.

The FFG tries to fill regulatory gaps by measuring financial institutions CSR policies and practices. CSR can be seen as a way of managing the responsibility of enterprises for their impact on society. It is thus a form of corporate self-regulation.[18] The FFG measures CSR against international standards on sustainability and human rights and discloses the results of their research and analysis in an online database that is freely accessible to the public, media and policymakers. They assess CSR policies and do empirical case studies to see if financial institutions follow their own policies and by annually updating the database and rating the institutions progress, they aim to create pressure and incentivize financial institutions to compete for the best CSR practices and to encourage them to progressively keep raising their transparency and accountability this way. According to the organization they also try to engage in dialogue with the institutions themselves as by giving feedback and advice on the development of more coherent CSR.

Through their online database they also aim to raise public awareness and provide customers with the information they need in order for them to make informed choices and act as responsible citizens, as well as raise political awareness. Through pressure of citizens and

[16] Oxfam Novib (2015)a http://www.oxfamnovib.nl/english/about-oxfam/projects-and-programs/fair-finance-guide-international
[17] See the 5 year report of the Dutch Fair Bank Guide, Eerlijke Bankwijzer (2014)
[18] As defined by the European Commission (2016) https://ec.europa.eu/growth/industry/corporate-social-responsibility_nl

because of the media coverage of their case studies, they have been able to set the political agenda on several occasions and give their recommendations to members of national parliaments and government agencies to create more effective regulation by the government also.

The FFG seems to get more attention from political actors and consumers with each year and their case studies get more attention from traditional and social media outlets.[19] To give an example, their database has caused an increasing number of people to reach out to their banks asking them to improve practices and a growing number of people has switched institutions, like their choice of bank through the 'I want to leave my bank' button on the website of the Fair Bank Guide. [20] In the Netherlands, their Fair Bank Guide has been called an important leading force in sustainability and got official political recognition from several Dutch ministers. [21] Outside of the Netherlands their guides have similar success stories and the voice of the FFG is gaining strength internationally.

Their success, however, also comes with growing criticism. The institutions that have become the 'targets' of the FFG have, perhaps unsurprisingly, not always been appreciative of the involvement and interference by the organization. They've been subjected to 'naming and shaming' media campaigns and have been pressured to meet the standards set by the FFG. When failing to meet the exact demands of the organization they have been portrayed as unethical, irresponsible and unsustainable. This while most institutions have CSR policies in place that aim to represent international norms and highly value compliance with laws. An important source of frustration has been that although the FFG has been able to exert pressure and develop a framework of standards used as a tool of measurement, it is not clear what gives them the 'right' to do so and fill the gaps left by 'official' standards-setters like governments.

It is a problem also recognized by others and practitioners as well as scholars have been concerned with the ability of NGOs to meddle with businesses in these ways. Some have even argued that these NGOs might not be 'authorized' to do so and have accused them of possibly exercising illegitimate power. The fact that some have referred to it as a 'legitimacy crisis'[22]

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[19] Oxfam Novib (2015)a
[20] Oxfam Novib (2015)a
[21] for example it reached the 'Sustainable 100' list, developed by a renown Dutch newspaper Trouw (2015) http://www.trouw.nl/tr/nl/14148/De-Duurzame-100-2015/integration/nmc/frameset/duurzame-100-2015/ranglijst.dhtml
[22] Walton, Davies, Thrandardottir & Keating (2016), pp. 2768

has, as anticipated, been welcomed by businesses exposed to what they feel like is unjustified criticism and pressure.

To understand why there is talk of a legitimacy crisis it is best to look at the topic of 'classical' political legitimacy. Theories of the legitimacy of the kinds of power and authority as described above mainly concern governments. Governments, it is claimed, can exert certain kinds of power, make rules and demand compliance because their power is 'legitimate'. Classical justifications for political authority have been based on actual or hypothetical social contract theories, democratic theories, consequentialist theories or theories appealing to fairness. Although contested, it is still a widespread assumption that through one of these theories, exclusively governments are justified in exercising the kind of authority needed for people as well as economic actors to accept and expect rules and sanctions and to comply with certain demands.[23]

With the rise of globalization this classical account of legitimacy has been contested by the idea that national communities have ceased to be the exclusive source of political legitimacy in the global realm, and that even though governments might remain the main political agents, international conventions and global institutions have been developed that can be seen as legitimate entities as well.[24]

Before continuing to explore this topic and proceed with making any judgments concerning the legitimacy of the FFG however, it is necessary to figure out what is meant by legitimacy in the first place and settle on a workable definition of the concept. This will be the main task of the following section.

[23] This assumption is questioned by for example Huemer (2013), who argues that none of these theories sufficiently stand up to scrutiny and that they fail to rightfully justify governments political authority. According to Huemer this proves that political authority is a moral illusion altogether. I will not go as far as this in my thesis because I want to leave room for the possibility of legitimate political authority but his theory is nonetheless interesting to consider because it highlights the peculiar special status we assign to governments as entities in moral reasoning.

[24] See Peter (2016) on political cosmopolism in the Stanford Encyclopedia of Philosophy

2. The concept of legitimacy

To be able to work with the concept of legitimacy I will use a normative concept that sees legitimacy as the justification of power through the fulfilment of certain conditions. This concept makes it possible to normatively judge if power is legitimate and thus does not concern a mere description of the social acceptance of it. However, the social acceptance of power often depends on its justification. It is not a necessary precondition, however, as power can obviously be exercised without being or being perceived as legitimate. This is a different issue though and one on which I will not focus on here. What I am concerned with for the purpose of my thesis is to look for a possible framework of conditions on the basis of which to evaluate the normative legitimacy of the FFG.

2.1 A normative understanding of legitimacy

Legitimacy is a multifaceted concept allowing for various interpretations. I have chosen to concentrate on an interpretation of the concept used when dealing with political legitimacy and the justification of authority because NGOs such as the FFG have been accused of assuming certain political roles formerly performed by government when issuing rules and attach consequences to the failures to comply with them. When pointing out that watchdog and standard setting NGOs are dealing with a legitimacy problem, it is often meant that while they may be able to exert pressure and set standards, it is not clear what gives them the right to do so and how the authority they claim to have can be justified. Practitioners as well as academics have been sceptic about the issue and "…most, if not all seem to agree that there is an expanding gap between, on the one hand, the number, the scope and the power of (these) international institutions, and, on the other, the justification of their right to govern."[25]

A commonly used definition of legitimacy is that of Suchman who states that: "legitimacy is a 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". [26] Comparable definitions are mentioned by other authors, Logister (2007) for example refers to legitimacy as "A right to be and do something in society, a sense that an organization is lawful, admissible and justified in its chosen course of action or…an acknowledged right to exert influence".[27]

[25] Karlsson Schaffer (2010), pp. 5
[26] Suchman (1995), pp. 574, also mentioned by Baur & Palazzo (2011) Karlsonn Schaffer (2010)
[27] Logister (2007), pp. 169

Legitimacy is different from mere legality because being lawful is something one either is or is not and it seems that it can be seen as on the one side being a descriptive concept that refers to peoples beliefs about authority while on the other side can consist in a normative evaluation of authority. Authority here stands for a right to rule, to issue commands and to enforce these commands using coercive power.[28] It remains a complex concept though and different definitions have focussed on different aspects of it. What is clear is that there are different dimensions of legitimacy that offer sources on which legitimacy claims can made. Although communities might differ in their perceptions of the relevance and validity of these claims, they can provide guidance on what to look for when trying to decide whether and to what degree the FFG and similar initiatives can be said to be legitimate.

When discussing NGO legitimacy, several scholars have made a distinction between normative and sociological understandings of legitimacy.[29] The sociological understanding sees legitimacy as relationship based and concerns the social acceptance of authority and the exercise of power, mostly refers to whether an entity is considered and perceived as legitimate without concentrating on the reasons why. In the case of the FFG, we would then look at how widespread their authority on matters of sustainable finance is accepted and in what degree it is successful in coercing or convincing actors to do what they require. Because the sociological legitimacy of NGOs relies on multiple audiences with differing normative standpoints, looking at its social acceptance gives us descriptive information about only one dimension of legitimacy. And while social acceptance might be an important source of legitimacy, it is often dependent on the normative sources of legitimacy. Or as one author described it, a power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs and people thus have reasons to accept it. [30] In light of the current issue, it will be more interesting to look at the reasons behind sociological acceptance and lack of it and therefore focus on this normative dimension of legitimacy. This understanding of legitimacy views legitimacy as derived from norms, values and standards that provide the basis of claims to legitimacy and of the moral justification of power. It thus deals with the possible conditions that are necessary for entities in order to qualify as legitimate.

[28] Definition by Peter (2016) in the Stanford Encyclopaedia of Philosophy
[29] Walton, Davies, Thrandardottir & Keating (2016) pp. 2781, Peter (2016)
[30] Beetham (1991), pp. 11

When looking at the normative dimension of its legitimacy, we thus look at the reasons behind the acceptance of authority. Classical theories of legitimacy were mainly concerned with the justification of the authority of the government. For John Locke, for example, legitimate authority depends on whether the transfer of authority happened in the right way. Rawls argues that authority needs ongoing evaluation for it to be legitimate. According to Rousseau, legitimacy called for democratically justified laws.[31] In the case of the government then, many possible accounts of and conditions for legitimacy have been developed. When judging the legitimacy of governments today, conditions mainly looked at are constitutional embeddedness, compliance with international standards like human rights and democratic accountability and representativeness. These conditions, it is argued, decide if power is justified, gives the status of an authority and justify peoples acceptance of rules and sanctions. Although many other elements might be relevant in order for governments power to be justified and normatively legitimate, I will not go further into these because at present I am concerned with the legitimacy of NGOs that are accused of 'acting like governments' while they are obviously not and it would not make sense to judge them the same way.

As scholars concerned with the legitimacy of non-governmental regulators and standard-setters, have argued, their conditions for legitimacy will be different from the conditions that that government legitimacy is based on.[32] In fact different standards and conditions have already been developed by authors from various disciplines. I will explore a number of these proposals and standards of measurement that have been developed to see if I can identify key or constituent sources on which legitimacy claims are made as well as judged when it comes to justifying NGOs as standard setters and regulators. These sources will provide a framework for a structured analysis of the legitimacy of the FFG.

2.2 The legitimacy of NGOs

In the following section I will take a look at existing literature on the nature of NGO legitimacy and standards of measurement that have been developed. I will use insights from different academic disciplines and authors that have paid attention to the issue of NGO legitimacy. I will identify different sources on the basis of which legitimacy claims are being made as well as judged when it comes to the legitimacy of NGOs as standard setters and will

[31] Peter (2016)
[32] Buchanan & Keohane (2006)

lay out a collection of sources and qualifying conditions that can be used to evaluate the legitimacy of the FFG.

The field of research on the ethics of global governance and NGO activities is an interdisciplinary field applying insights and methods from sociology, political science and philosophy. Whilst looking for conditions on which to normatively judge the legitimacy of the FFG on, it becomes clear that authors from different disciplines have contributed to the debate but there is no golden standard of legitimacy that is generally agreed upon.[33] I have therefore chosen to concentrate on a mix of authors in order to develop possible evaluative frameworks for NGO legitimacy.

Allen Buchanan offers one of the most comprehensive contemporary philosophical treatments of political legitimacy in the global realm. He develops a framework to judge the legitimacy of non-governmental organizations involved in governance and concerns himself with the normative 'right to rule' of organizations and institutions involved in standard setting and governance activities. [34] His theory is concerned with the legitimacy of organizations other than governments that issue rules and attempt to secure compliance with them by attaching costs to noncompliance and/or benefits to compliance.[35] According to him an organization 'deserves that their subjects treat the rules they issue as worthy of compliance', only if they fulfil certain standards. Together with Keohane, Buchanan argues that among other things, three substantive criteria should be met, the first of which they call *minimal moral acceptability*, which holds that the organizations refrain from violations of the least controversial human rights. The second is *comparative benefit*, which implies that their legitimacy is called into question if there is a better alternative available. And the third, *institutional integrity*, means that an organization's behaviour and its prescribed procedures and goals should be in line.

With the aim of developing a way to evaluate NGO legitimacy that is not only grounded in theory but also in practice, Louis Logister has argued that one has to start with practice. Logister therefore conducted an empirical study and has tried to extract sources of legitimacy from interviewing NGOs and core stakeholders, including donor governments, funding institutions, multinational corporations and international organizations. [36]

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[33] Steffek & Hahn (2010), pp. 9
[34] See 'Political Legitimacy' entry in the Stanford Encyclopedia of Philosophy by Peter (2016)
[35] Buchanan & Keohane (2006), pp. 1
[36] Logister (2007), pp. 170

The questions he asked different stakeholders concerned their views on the current controversies around NGOs and their practices, their main problems and their perceptions on the relevant origins of NGO legitimacy. After hearing perceptions of how NGOs are justified and legitimized according to NGOs themselves and according to other stakeholders, Logister discovered that interviewees referred to a range of legitimacy sources and decided that these could be divided into seven different types.[37] The first source of legitimacy often mentioned is legitimacy derived from procedures and concerned the transparency of what NGOs do, whose interests they represent and what control systems are in place. Different stakeholders mentioned the importance of good administration for this. Legitimacy deriving from public support was seen as another source, as was legitimacy from effectiveness and expertise demonstrated by the ability to achieve results and the quality of their work. A fourth source of legitimacy that he recognized derived from upholding and protecting international legal norms like the Universal Declaration of Human Rights and international labour rights. And legitimacy deriving from aiming to realise certain moral values was also mentioned although all interviewees agreed that moral values alone were insufficient to justify NGO actions.[38] Another source that was mentioned was legitimacy derived from recognition by powerful actors like international organizations, governments and corporations and participation in processes of cooperation and sharing expertise. And finally, representativeness was mentioned as a source, seeing legitimacy as derived from having effective and comprehensive representative structures.

Logister concluded his research by arguing that while stakeholders with different sorts of relationships with NGOs often value and recognize different sources of legitimacy, the types extracted from his interviews do reveal the most dominant concepts encountered in the literature on NGOs and legitimacy.[39]

Steffek and Hahn (2010) focus more on existing theoretical research and have tried to provide an overview of scholarly works evaluating legitimacy, accountability and representation. In their research they find that for some authors, legitimacy of NGOs is primarily derived from the noble goals they pursue. Authors holding this opinion often see NGOs mainly as a necessary counterweight to state power.[40] But there are also authors who see NGOs as contributing to the construction of the internationalised state or as substituting state roles in

[37] Logister (2007), pp. 171
[38] Logister (2007), pp. 174
[39] Logister (2007), pp. 175
[40] See Van Rooy and Wapner in Steffek & Hahn (2010), pp. 10

processes of global governance activities. Seen from such a perspective, goals and principles are not sufficient conditions for legitimation. For these authors, a second source of legitimacy is often brought up, namely the number and distribution of persons that the NGO claims to represent and the degree in which they are involved in decision making processes of the organisation.[41] For these authors, NGO legitimacy is derived from the representation of the interest of their constituencies and from accountability towards them. Still others do not think that legitimacy derives from this alone and argue that it is necessary also to focus on the effects that NGO actions have for those they claim to represent.[42] Steffek and Hahn acknowledge the difficulty of developing a comprehensive theory or yardstick to evaluate the legitimacy of NGOs but their overview offers three potential sources of legitimacy that can be distinguished. Goals and principles, NGOs societal constituency and their involvement in decision-making and lastly the effects of their policies. [43]

2.3 Sources of legitimacy

In the previous section I have distinguished several sources of legitimacy that are referred to by authors from different disciplines that we will be able to use when judging the legitimacy of NGOs as standard setters. I have looked at those extracted from empirical research, from an overview of extensive literature studies on NGOs new roles in society and to the prevalent theory concerning the legitimacy of global governance institutions developed by Buchanan and Keohane. They have each offered and proposed different sources and conditions for legitimacy. While it might seem too demanding to satisfy all these proposed conditions at the same time, I want to argue that the more of these conditions can be satisfied, the better. This means that I will look at legitimacy as a matter of degree rather than looking at it as a quality that an institution either has or has not.

To be able to look at the different elements in an orderly manner when evaluating how and to what extent the FFG can be judged to be legitimate, I have decided to divide them into four overarching topics summarized in the table below which shows the conditions as belonging to institutional, moral, functional or procedural aspects of legitimacy.

[41] Steffek & Hahn (2010), pp. 11
[42] Steffek & Hahn (2010), pp. 14
[43] Steffek & Hahn (2010), pp. 10

	Logister	**Steffek & Hahn**	**Buchanan & Keohane**
Institutional	-Upholding international legal norms -Recognition by powerful (international) actors		-Refraining from violations of basic rights
Value based	-Aiming to realize important moral values	-Pursuing noble goals and principles	-Supporting accepted and recognized moral values such as those acknowledged by international law
Functional	-Being effective in achieving intended goals		-Comparative benefit, no better alternative exists
Procedural	-Transparency of control systems up & down -Structures in place to secure representativeness	-Accountability to constituencies	-Institutional integrity: procedures, goals and behaviour don't clash

Before looking at the FFG with regards to these aspects of legitimacy I will in the following section first turn to some of the criticism of the FFG to see what concerns are being raised and what issues are seen as most problematic. After identifying a number of key concerns, I will then try to figure out if there are any issues of which can be said that they fall under the scope of one of the above aspects of legitimacy and concern particular conditions and whether these issue are actual threats to their legitimacy.

3. Criticisms of the Fair Finance Guide

In the following section I will give various examples of common complaints and critiques that the FFG received and will try to identify some main concerns. I decided to focus particularly on the Dutch version of the FFG and critiques from banks they have been monitoring and rating because it has been the FFG's longest running model. This means that the critiques do not concern flaws in the guide's early stages but are examples of more pervasive and substantial disagreements of which can be said that they reflect the criticisms that the FFG receives from financial institutions in general.

The press statements I have chosen illustrate some issues and frustrations that can also be found in the broader critical debate on NGOs as standard setters and watchdogs and as I will argue there seem to be three recurring topics that are seen as problematic.

3.1 Examples of critiques

I will start with a critique from Triodos, who claims to be a 'green and ethical bank' that *only* invests in sustainable businesses.[44] They have their own account of what ethical banking is and on how to have the greatest impact. Next to international social and environmental standards, they have their own ethics charter and their own idea on how to be a sustainable financial institution. Although they share a lot of values with the FFG, they sometimes disagree on their methods as well as specific topics.

Triodos is sometimes frustrated by something else, namely that they have some standards that the FFG doesn't even look at and therefore they don't get 'graded' on the 'extra' positive influence they have. According to Triodos this causes the FFG to provide an incomplete and unfair image of reality. On their website they state: "We think it is unfair that the guide just gives certain standards and seems to completely ignore intrinsic motivations and concrete choices that banks make altogether… we believe that they also create the wrong incentives this way".[45]

ABN AMRO stated on their website that although they are certainly not opposed to the fact that banks are subject to review, they disapprove of the approach taken by the FFG that according to them serves "solely to generate publicity for the NGOs involved and to underline

[44] Triodos (2016) https://www.triodos.nl/nl/over-triodos-bank/wie-wij-zijn/missie/waarom-we-anders-zijn/
[45] Triodos (2015) https://www.triodos.nl/nl/over-triodos-bank/nieuws/actueel/presentatievorm-eerlijke-bankwijzer/

their objectives, while needlessly damaging … reputations".[46] As a reaction to a report on tax avoidance by the FFG that refers to the bank as 'possibly being involved in tax avoidance', they requested two separate professors in tax law to review the results of the investigation. Their findings both pointed out fundamental flaws in terms and parameters used by the FFG, but to the frustration of ABN AMRO, the FFG did not modify their approach after they had been made aware of the flaws noticed by the professors.[47]

AEGON, ING and the Dutch Banking Association protested the ratings on sustainable energy and fossil fuels because according to them, a number of significant investments in sustainable energy had been neglected. As a reaction to their criticism, the FFG released a statement that said "we simply focus on the most important businesses and investments"[48].

This response, however, clearly illustrates an issue that many financial institutions believe is problematic. An excerpt from a conversation with a corporate responsibility manager at another Dutch bank illustrates this problem as well. I will quote his statement as length:

> "Look, we're a bank, we're not a charity foundation. Our business is making money but of course we do our best to comply with international social and environmental standards, it's a complex web though and our supply chains are not always as traceable as we would like, which makes it difficult to control and maintain oversight sometimes. Either way, we do find some topics more important than others and have private investors that care about certain topics and we do our best to meet their standards on those topics.
>
> I will give you an example of what is frustrating to us; imagine a bank that invests in sustainable livestock businesses because they believe that by investing in these initiatives, sector standards will slowly be raised, benefiting a lot of animals since it's a huge sector. The bank nonetheless risks getting a 'bad grade' for animal welfare and with that negative publicity from the Fair Bank Guide because one of the companies they invest in has a subsidiary that's involved in a small fur factory in Russia. Even when it's relatively a very small part of their business and the bank is not directly involved in it, the Fair Bank Guide will state that the bank 'fails' on the topic of animal welfare and will name and shame the bank in public for investing in fur. This, while investments with much larger impact concerning animals are ignored.
>
> As banks we don't think this is fair. Fur is just one topic that's important. Animal testing and the livestock industry are other topics that might be no less important. But fur gets

[46] ABN AMRO (2014) https://www.abnamro.com/en/newsroom/press-releases/2014/abn-amro-response-to-tax-avoidance-report.html
[47] See ABN AMRO (2014). Although I could not find an official response published by the FFG.
[48] Eerlijke Bankwijzer (2015) http://eerlijkebankwijzer.blogspot.nl/2015/11/reactie-eerlijke-bankwijzer-op-kritiek.html

> a lot of people's attention more easily because the images of dead seals are in the public consciousness and they get a lot of people upset very easily.“ [49]

3.2 Key concerns

The issues and frustrations raised in these critiques seem not to be specific to the case of the FFG and can be recognized in the broader critical debate over NGOs as standard setters, watchdogs and regulators. There are some key concerns recurrent in the literature that correspond with the above complaints.

First of all, there is the worry about picking certain standards and ignoring others. The FFG is criticized on the scope and selection of the issues they measure and accused of defending only a narrow set of purposes and constituencies whereby they overlook or neglect others. As Triodos mentioned, initiatives or issues not measured by the FFG do not get any credit while there might be issues outside of the FFG standards that are also important for sustainable finance. This is a worry raised by others as well, and as a report on the role of NGOs in regulating business from the London School of Economics and Political Science states, there is a chance that when NGOs attempt to regulate business they may not necessarily focus on the most important issues and "may even divert attention away from more serious, but less visible, problems"[50]. This can cause them to undermine particular actions that might also be crucial for sustainability. Other critics have also mentioned that the ability of NGOs to pick and choose certain causes and framing them in simplistic universal terms is problematic because it lets them decide which of the many causes are most deserving of attention and threatens to limit the scope of what sustainability means.[51]

A second key concern which is seen as possibly threatening NGOs legitimacy is the fact that the NGOs themselves are large organizations that have their own interests. It is a worry that has been raised by opponents as well as insiders and has received more attention in the past decade. [52] Especially organizations that have been subjected to NGO scrutiny have, either deservedly or undeservedly, used this to turn the tables on their critics. It could be seen as a result of the growing number and size of NGOs which has caused them to become more professionalized and strategic in raising funds. According to critics though, this has also

[49] This is an excerpt from a conversation I had with a corporate responsibility manager at Van Lanschot and Kempen&Co during a study assignment for the course Ethics, Ethicist & Ethical Expertise in December 2015
[50] Hutter & O'Mahony (2004), pp. 11
[51] Reimann (2005), pp. 46
[52] See i.e. Polman (2010) and McGann & Johnstone (2005)

caused them to become more bureaucratic, competitive and income driven. As one scholar described, NGOs now have to compete in the 'Do-Gooder Market', a "competitive charity market transforming NGOs into large, highly professional organizations". [53] The problem with this is that while trying to regulate businesses, NGOs sometimes are actually just seeking publicity for themselves and that they may tend to pick the most controversial topics to support their own organizations interests and not necessarily the noble goals that the organization claims to defend.

Perhaps an even more important aspect of the critiques of their market-related opportunism and commercialization is that while they are, as any large organization, pursuing their own business interests, they are not being held accountable as much as corporations, causing even greater mistrust among the businesses they aim to regulate.[54] The fact that NGOs are less open to public scrutiny and that there is a lack of regulations of NGO performance and governance, is seen by many as posing a threat to NGOs regulatory prospects.[55] Apparently, worries about their organizational integrity convince some that there is a need to watch the watchdogs.[56]

A third important frustration that can be recognized in the criticism of the FFG and has also been identified by scholars and other critics is that there often exists a lack of adequate discussion about the terms and parameters used when judging companies. When judging businesses, NGOs sometimes lack the proper knowledge about how businesses work, what they have power over and which strings they can and cannot pull. As some scholars have mentioned this can cause NGOs to create unrealistic expectations of what corporations are responsible for.[57] At the same time this also causes businesses to adopt an even more sceptical attitude towards the NGOs. In case of the FFG this issue can be illustrated by the example of the ABN AMRO bank who called in independent experts to evaluate the quality of a case study conducted by the FFG because they felt that the used metrics were inadequate and could not lead to the claims that were made. While the professors they consulted confirmed that these claims indeed could not justly be made based on the FFG's investigation, it didn't cause them to reconsider or change any of their research, causing the bank to publicly doubt the

[53] Reimann (2005), pp. 44
[54] Arenas, Lozano & Albareda (2009), pp. 184
[55] Hutter & O'Mahony (2004), Reimann (2005), pp. 42
[56] That this may lead to an infinite regress of watching the watchers of watchdogs is mostly ignored by these critics.
[57] Reimann (2005), pp. 48

organizations expertise. This exemplifies the existing perception among businesses and other stakeholders that NGOs who judge businesses and campaign against them sometimes do this based on the wrong information of are based upon premises not adequately researched. Some have argued that this undermines their legitimacy to play a role in regulating business. [58]

To conclude then, three broad concerns can be extracted from the criticism to the FFG which have also come to the fore in additional literature on NGOs as regulators. The first issue deals with the inherent limits of choosing and picking the 'most important' topics and issues, the second concerns NGOs own organizational strategies and business interests and their levels of accountability. And the third concerns their level of expertise, quality of methods and willingness to debate and revise. In the following section I will proceed with the evaluation of the legitimacy of the FFG to see if these three key concerns point to actual legitimacy deficiencies.

[58] Arenas, Lozano & Albareda (2009), pp. 185

4. Evaluating Legitimacy

Before I turned to the criticism in section three, I examined various aspects of legitimacy and possible conditions that may lead to a larger or lesser degree of legitimacy. I will in the next section try to evaluate how the FFG is doing with regard to each of the four aspects identified in section two and will look at how the above three key concerns from the criticism relate to these aspects and if they can tell us something about possible problems or shortcomings regarding certain areas or conditions.

With regard to the constitutional aspect of legitimacy the FFG as an organization can be said to uphold and comply with international legal norms. This is what they see as the bare minimum also to be expected of financial institutions. Mere compliance with legal norms and refraining from violations of basic rights however is not enough, they argue, as they expect financial institutions to do more than that and expect that widely supported (inter)national declarations, treaties and guidelines on sustainability are supported.[59] That the FFG itself upholds international legal laws and refrains from violations of basic rights is regarded an obvious matter. Moreover, FFG parent organizations like Oxfam and Amnesty can even be said to have played an important role in the development and reformation of international law themselves by influencing international decision-making processes and encouraging the codification of international norms that in turn have initiated or affected international laws.[60] Some of the organizations behind the FFG consult a number of national governments while other have a special consultative status at the United Nations, meaning that their advice and the interests and values they represent are taken into account in international decision making processes.[61] [62]

International organizations like the World Bank and the International Monetary Fund have also included input from NGOs behind the FFG. These are institutions and standards already referred to and claimed to be respected by financial institutions in their CSR policies. As for the recognition by powerful (international) actors then, the FFG and the general values it represents can be said to be largely recognized by the more established NGOs that have initiated the FFG. Locally though, the FFG itself has been referred to by members of parliament when discussing more sustainable practices in the financial sector and the

[59] Eerlijke Bankwijzer (2014)
[60] Alihusain (2010) https://www.peacepalacelibrary.nl/2010/11/the-influence-of-ngos-on-international-law/
[61] Amnesty (2016) https://www.amnesty.org/en/what-we-do/united-nations/
[62] Amnesty (2016)

organization has been recommended as a civil society partner to be consulted when developing industry covenants.[63] With regards to the institutional aspect of legitimacy, the FFG and its parent organizations do not seem to have large shortcomings. Although the FFG in particular has not received that much recognition of powerful international actors, their parent organizations have and have even played a crucial role in developing the norms and standards most CSR policies are based on now. Concerning institutional embeddedness as a source of legitimacy most of their institutional legitimacy then comes from the international political recognitions of its parent organizations.

With regards to the value based aspect of legitimacy, the FFG supports accepted and recognized moral values such as those acknowledged by international law, but sees this as the bare minimum. Their aim is to go further than that and promote a more sustainable financial sector through advancements in a broad spectrum of social, economic and environmental issues.[64] Although there have been some incidents causing critique about their performance, in general NGOs still receive the public 'trust-premium' as regards to representing noble goals and values.[65] The moral worth of their goals and values in general is not so much contested but the criticism shows that their views on how to reach them are and that their lack of self-reflection and critical self-evaluation is found to be problematic.

The fact that the FFG wants financial institutions to go further than the 'do no harm' principle[66] and comply with laws and standards but wants them to be proactively involved in raising these standards and even aim to make them compete for the best sustainability policies is not always appreciated. Financial institutions might agree on the importance of a moral value but they often disagree in how they see the role and responsibilities of businesses in reaching them, as was mentioned by one CSR manager who saw nothing wrong with the goals of the organization but said 'look, we are not a charity foundation'[67]. There exists dissatisfaction on the FFG's expectations of what financial institutions should do and are capable of doing. Even if financial institutions agree that they have a role to play in the advancement of working conditions or the protection of human rights, there still is

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[63] Eerlijke Geldwijzer (2015) http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2015/debat-duurzaam-bankieren/
[64] Eerlijke Bankwijzer (2014) pp. 7
[65] Edelmann Trust Barometer (2016)
[66] Oxfam Novib (2015)a http://www.oxfamnovib.nl/english/about-oxfam/projects-and-programs/fair-finance-guide-international
[67] See criticism section 3.1

disagreement on how to go about this. The methods proposed by the FFG are not always regarded as realistic, which is sometimes seen as resulting from a lack of knowledge.

Another worry is that that some goals are oversimplified or picked out for the sake of the NGOs own publicity and used as a marketing strategy to raise more funds for the NGOS, rather than being aimed at actually improving CSR. It is worried that NGOs claim to be the only ones knowing what goals are worth pursuing and in the case of the FFG decide what sustainable finance means in general, ignoring or devaluing initiatives by the institutions themselves. By rating a certain range of financial institutions policies and not others it is also argued that they are undermining and neglecting other topics and limit the incentives for institutions to develop their own take on sustainability. Regarding the value based aspect of legitimacy then, it seems that the overall values of the FFG are not so much contested but that they are accused of not possessing the right knowledge on what is necessary for the realization of them and not being frank about the limits of their own method.

In terms of the functional aspect of legitimacy, the FFG is successful in various respects. They succeed in putting media pressure on financial institutions, in raising awareness among consumers and in managing to persuade most of the institutions to at least react publicly to the ratings and case studies. The fact that they have been referred to by several politicians and their website has been visited by more people each year, can be said to show that they have had at least some effect. When looking at the longest running model, the Dutch Fair Finance Guide, most banks respond annually to the ratings, and have improved he transparency of their CSR policies. It is hard to tell if this caused financial institutions' actual practices to be more sustainable. This is acknowledged by the organization itself, as a spokesperson of the Fair Finance guide mentions that that although all the financial institutions and banks that have been rated have polished up their policies, it often does not create the real fundamental change towards sustainability desired by the FFG. [68]

Concerning their comparative benefit. The FFG does offer a way to deal with the "wild west" of CSR in the financial sector, something which governments have not been able to do. As explained in section one, no clear guidelines concerning CSR policies exist, so if they offer one 'benefit', it is that they create a comprehensive set of guidelines on what CSR policies should consist in. There have been other parties offering an overview and monitoring CSR

[68] Oxfam Novib (2015)b http://www.oxfamnovib.nl/persberichten/beleid-banken-duurzamer-echte-omslag-ontbreekt

policies of financial institutions, but what the FFG uniquely allows is an overview for the public as well as making it easy for consumers to look at the specific topics they find most important. Although some alternative monitoring agencies exist these do not use media campaigns as means of punishment if standards are not met and often give either a positive rating or none. In that respect the FFG provides a respectively better alternative because it enforces compliance to more than law.

As for the procedural aspect of legitimacy, in terms of organisational integrity the FFG offers consumers as well as financial institutions the full methodology of their own rating system and research method online wherein they explain all the aspects that they evaluate and clarify how they do the grading.[69] In their reports and case studies they seem to indeed do exactly as described in their methodology regarding the evaluation and rating of the institutions and in that respect they seem to be consistent and do not receive any complaints. But while they make it easy for consumers to contact banks concerning their CSR policies, there exists no such feedback mechanism for the activities of the FFG itself. With regards to the institutions they aim to regulate, the FFG states that it actively participates in corporate stakeholder meetings and organizes expert learning meetings, sometimes in collaboration with banks.[70] But from the criticism it seems that financial institutions are not satisfied with their current practices and do not feel that their voice is really being taken into account and that their input is largely being ignored. Although the FFG states that they engage in dialogue and offer feedback on draft policies of financial institutions, it is not clear if and how they indeed actively incorporate any feedback or concerns from the institutions themselves. It seems then that the communications exist more in mutual commentaries and there is not so much actual dialogical engagement.

Concerning their accountability to constituencies, they do not have democratic procedures to ensure their representativeness. However, one can argue that civil society representativeness can also be derived from expertise and organizational credibility. Although it is worried that the lack of public scrutiny and the lack of democratic procedures will result in a lack of accountability and control, larger parent organizations of the FFG are developing procedures to improve their transparency and responsiveness to stakeholders in addition to their being

[69] Profundo Research & Advise (2014)
[70] Eerlijke Bankwijzer (2014)

watched by several organizations holding them accountable and providing mechanisms for their constituencies to do so.[71]

Let me sum op the argument so far. The FFG's policies are in line with internationally recognized norms and standards, uphold international laws, they are recognized by powerful institutions and refrain from violating basic rights. The general nobility of their goals is not contested but their particular principles and ideas on how to reach them are. Although they are not the only ones now structurally monitoring CSR policies of financial institutions, as an NGO initiative, they do receive a public trust premium, provide information to the public and through their naming and shaming method have been successful in penalizing behaviour. It could be said then that the FFG seems to satisfy many of the aforementioned legitimacy conditions and it can be claimed that they are legitimate to some degree with regards to all four aspects.

The key concerns from the criticism mainly pointed towards deficiencies with respect to the value based and procedural aspects of legitimacy. If we want to look at possible ways of enhancing the legitimacy of the FFG, we will have to start with those. The criticism seems to be mostly about a lack of expertise of the FFG, lack of accountability and a lack of self-scrutiny. In order to build trust and gain legitimacy, the FFG could make some adjustments in those areas. In the following section, I will suggest that looking at the role of communication and the concept of deliberative democracy provides a useful framework for this.

[71] Like the 'INGO Accountability Charter' by Accountability Now, a joint initiative of several accountability organizations aimed at increasing NGO accountability standards and building trust and leverage

5. Deliberation

After looking at the framework developed in section three, I have suggested that the more of the proposed conditions of legitimacy an NGO satisfies and the better, the stronger its claim to legitimacy can be. Although the FFG seems to sufficiently draw legitimacy from several sources, the criticism points towards certain deficiencies and shortcomings especially regarding the conditions falling under what we have distinguished as the value based and procedural aspects of legitimacy. In this final section, I will take a closer look at these deficiencies and argue that they are the result of a lack of deliberation in a number of areas. In the following section I will first elaborate on what exactly seems to be 'missing', before then suggesting that the concept of deliberative democracy might offer useful insights on how to deal with the deficiencies and increase the legitimacy of the FFG.

5.1 What is missing

When looking at the value based aspect of legitimacy we see that legitimacy partly depends on NGOs pursuing morally desirable goals and values. This forms a problem because there is considerable disagreement on what norms are noble and important and how that is decided and by whom. Financial institutions feel that their views, input and feedback are not being taken seriously and that their knowledge and expertise is often excluded. They have argued that this has caused the FFG standards to cover only a limited view on and limited scope of topics, have caused them to undermine certain other issues and has sometimes simply lead to unrealistic expectations. It seems that they mostly disagree about the justifiability of the values and methods chosen by the FFG and that they want the FFG to be more susceptible for their knowledge and expertise about how financial institutions work. Also because this might then open up a space to explore more possibilities in collaboration.

Moreover, the lack of public scrutiny of NGOs in general has financial institutions worry about the FFGs degree of accountability and representativeness and has caused them to mistrust the organization and reduced their willingness and enthusiasm to team up and collaboratively work towards positive change. Regarding the mechanisms securing representativeness, the financial institutions are sceptical. If the FFG is not representative by being democratically elected, it is argued that they should be more accountable in other ways that ensure that they stand for the common good, are inclusive of a broad spectrum of interests as well as responsive to input from different stakeholders.

Because the criticism is aimed mainly at a lack of expertise of the FFG, lack of accountability and a lack of self-scrutiny, I want to argue that the FFG could make some adjustments in order to build trust and gain legitimacy. From the aforementioned critiques, a few suggestions can be retrieved. In order to improve the value based aspect of legitimacy, it would be useful to create a more inclusive and transparent environment, an environment wherein knowledge and expertise from within the financial institutions is taken seriously and where there is room for debate on possible improvements regarding methods, solutions and the evolvement of sustainable policies. Better consultative procedures for example might offer a way of enhancing knowledge about the issues at stake, open up new ways of looking at them and might at the same time support more constructive mutual criticism.

In order to prevent dogmatism and blinding ideology by both the FFG and the financial institutions they aim to regulate it might be useful to include multiple stakeholders in more meaningful ways and decide what values are 'important' and which methods should be used more collaboratively. Structurally ensuring representativeness and keeping a space open for reflection and deliberation might offer a way to increase legitimacy as suggested in this thesis. Considering these issues, I want to argue that it might be worthwhile to look at the concept of deliberative democracy and at possible practical tools that aim to implement the insights of this theory in practice. Doing so might offer a way to enhance legitimacy and might be especially relevant for the case of the FFG and other similar NGO initiatives.

5.2 Deliberative democracy and moral consensus

When looking for ways to increase the legitimacy of NGOs as well as corporations and to improve the development of CSR policies, the concept of deliberative democracy has received an increasing amount of attention in the academic debate.[72] Although authors have used slightly different definitions and interpretations, what is most central to the concept is the importance of communicative processes of opinion and will formation. Deliberative democracy as developed by Habermas[73], for instance, can be seen as a normative framework that assumes that legitimacy is based, not only on formal processes like voting, but that legitimacy depends on the embeddedness of decisions in processes of deliberation, because it is there that an intersubjectively accepted moral consensus can be formed.[74]

[72] Baur & Arenas (2014), pp. 161
[73] Throughout his work since the 1960s, among others in *Moral Consciousness and Communicative Action* (1990) and *Between Facts and Norms* (1996)
[74] Bohman & Rehg (2014)

When thinking about who gets to decide the importance of issues, what the best way of reaching goals is and how financial institutions should develop their policies more ethically then, it might be useful to consider 'importance', and especially moral importance not as something that is self-evident, that 'just is' but as something that is socially constructed and can be subject to change. What is morally important or the 'best' way to go about something then can be seen as being decided in the social realm, through deliberation.

Instead of a philosophical search for moralistic rules from which to derive normative ethics for business, authors have argued that it might be better to use this concept of deliberative democracy to account for the relation between corporate decision making and public deliberation. And that the key to a more legitimate exercise of authority by international organisations and other non-state actors may lie in more transparent decision-making processes that provide opportunities for debate and dialogue with participation of those representing a broad range of views[75]. As Scherer and Palazzo (2008) argued, especially in a globalized world, legitimacy needs to be created and constantly recreated through proactive discursive and political engagement.[76] This can only be done though when alternative views can be openly debated and there exists an implicit respect for the integrity of the other and his capacity to understand in the processes of communication.

According to Nelson (2007), a lot of potential exists exactly here, in improving the processes of communication, consultation and cooperation between NGOs and corporations. She argues that good intentions do not make NGOs immune from the need to understand and learn from their stakeholders, especially considering persisting disagreements about business responsibilities and what the most appropriate approaches and solutions to adopt are.[77] A key issue from the perspective of companies that are subject to NGO campaigns is the veracity and accuracy of statements made about the company and many companies find it frustrating that some statements made about them are factually incorrect or highly selective in terms of all the available evidence and do not provide information on the broader corporate or societal context. This is something recognizable in the criticism of the FFG as well. The possibilities and suggestions explored by Nelson can be seen as one way of employing the deliberative democracy concept and mainly focus on improving communication processes, making it possible to assess the performance of NGOs and increase their answerability. According to

[75] I.e. Wheatley in Peters (2009), pp. 20
[76] Scherer, Palazzo (2008)
[77] Nelson (2007), pp. 6

the Global Accountability Index, highly regarded NGOs such as Oxfam still have some room for improvement in these areas, especially since they rank lower on certain aspects of accountability than heavily criticized corporations such as Shell.[78] One way to deal with this is to design stakeholder engagement mechanisms for assessing the accuracy, fairness and representative nature of statements and campaigns that at the same time stimulate the willingness of the organizations responsiveness to complaints. The mechanisms should be aimed at the clarification of claims and interests and at reducing misunderstandings in order to be able to set realistic standards.[79]

Nelson suggests that NGOs and corporations can work together in several ways, such as through joint participation in multi-stakeholder advisory and consultation structures. They could also jointly participate in the evaluation of projects and tools development and take part in joint research projects. For this to be successful, she argues that multi-stakeholder accountability and governance structures can be developed and if NGOs themselves do not succeed in this, that help of external parties can be employed. As an example she refers to the Keystone Capability Profiler, an organization whose aim is to help organizations to understand and improve their performance by harnessing external feedback more competently.

It might be better to see the development of CSR more as a collaborative challenge which could benefit from methods, tools and services that improve feedback practices and enhance the ability to make decisions and develop agreement about the best ways to address difficult problems. By involving diverse stakeholders, particularly from the corporate world, in meaningful ways, one might argue that new possibilities open up to come to more ethical and sustainable decisions. One way to incorporate the criticism and increase legitimacy then would be to design structures of communication that ensure trust and stimulate coordinated action and aim to use conflict in a more constructive way. By institutionalizing certain processes of communication between the FFG and financial institutions and creating a space wherein all stakeholders aim to come to a greater understanding of the interests and views that play a part in corporate as well as NGO decision making processes, mutual trust and respect as well as practices might be advanced. This could be done under the guidance of external

[78] Nelson (2007), pp. 24
[79] Nelson (2007), pp. 19

parties but can be initiated by the FFG and it is conceivable that this will also be encouraged by CSR managers.

We have just looked at the concept of deliberative democracy above all in order to see how deliberative processes, opening up to external expertise and improving feedback mechanisms and cooperative structures, might increase the legitimacy of the organizations as well as possibly the actual CSR policy output. By redesigning the conditions of stakeholder dialogue and promoting an environment of mutual trust, it might become possible to move closer to an intersubjectively accepted moral consensus and transform CSR cooperatively.[80] I am convinced that there certainly is room for improvement in this regard and some steps can be taken in order to advance communication between the FFG and financial institutions. As I've argued structures can be designed to do so and incorporating feedback more competently as well as creating an open space for deliberation might offer a way to cope with some of the criticism and benefit the degree of legitimacy.

5.3 The merits of conflict

While we have just focused on the merits of communication and possible consensus as a way of dealing with the criticism of the FFG and the legitimacy deficiencies it is accused of, some have argued that employing the concept of deliberative democracy in this sense can also become excessively pragmatic and conservative.[81] Different authors have pointed out that there are inherent limitations of the theory as it is commonly referred to in the field of business ethics and worry that problematic underpinnings of the theory get silenced behind a commonsense that assumes that 'open deliberation' will generate a role for business better grounded in morality, while using the concept in an instrumental way might reduce it only to particular demand. [82] Especially it is claimed that participation of all in all decisions and insisting on deliberation might lead to a re-legitimation of existing systems and prevents sufficient disruption of established views. As Edward and Willmott (2008) contend, overemphasizing the institutionalization of representation might result in the glossing over of the forced nature of agreement.[83] According to them, institutionalized dialogues devoted to the solution of a particular issue often start from a predefined perspective on a problem and

[80] Arenas et al. (2009), pp. 191 compare this environment of mutual trust to what Habermas called the 'ideal speech situation', where communication is governed by basic rules and participants are able to evaluate assertions based on reason and evidence alone and have a desire to reach a rational consensus together.
[81] Edwards, Willmott (2008), pp. 425
[82] Edwards & Willmott (2008), pp. 422
[83] Edwards & Willmott (2008), pp.425

shut out those who have a radically different perspective, which means that such a strategy fails to give sufficient voice to underdogs.

Other authors have problematized the focus on consensus and have pointed out that the deliberative democracy concept, as it is generally used in the academic literature on business and society, often ignores or suppresses the importance of conflict. Some have even argued that it would be more useful to look at a theory that emphasizes difference, contestation and undecidability as the core constitutive forces of the public sphere and of legitimacy, like the theory of social hegemony by Mouffe. [84]

Especially when one institutionalizes communication it will probably more often take place in the context of boardrooms and only a selected number of stakeholders will generally be involved. Discourse will then inevitably be to a certain degree predefined and will probably focus more on specific problems and be aimed at decision making. In such a context the interpretation of deliberative democracy as described above might be fine but minimizing radical conflict does have its inherent limitations. As Baur and Arenas (2014) have stressed, there exists another interpretation of the concept of deliberative democracy that centers the importance of undefined discourse and deliberation in order to be able to explore opinions and discover issues rather than building consensus. They elaborate on this interpretation and argue that it is neither feasible nor desirable to institutionalize every kind of interaction between NGOs and corporations and that sometimes unregulated interaction between business and civil society is preferable because it offers a more varied discourse, can be inclusive of more stakeholders and be more innovative.

It seems then that the deliberative democracy concept can be employed in two ways. On the one hand it can be used as a basis for building structures and to a certain degree institutionalize NGO and business interaction where there is a need for a shared understanding and where decisions about methods and interpretations have to be made. For these issues it will be beneficial if communication is subject to rules and aimed at mutual understanding, learning and more legitimate decision-making.

At the same time though, NGOs are expected to represent civil society and the ‘common good’, something which is also continually contested outside of boardrooms, occurring in a to some extent unregulated public sphere where more stakeholders are represented and more conflict exists. This conflict is a crucial force in enabling the exploration of opinions and

[84] As suggested by Laasonen, Fougere & Kourula (2012) as well as by Edwards & Willmott (2008)

issues and can be seen as the source of moral values that will ultimately also be represented in the boardrooms. That is, if NGOs find a way to competently integrate and continuously reflect on the input they get from the public sphere they claim and aim to represent.

This is important because decisions made in a manner too disconnected to the public or by individuals who are not accountable to their constituencies can cause a different loss of legitimacy, and will probably provoke criticism from the general public. To ensure that NGOs stay connected to deliberation taking place 'outside' of their structures, some have argued that it is worth exploring in what ways deliberative democracy theory can be adapted to the context of internet technology. As Ellis (2010) for example has suggested, the internet might help satisfy conditions of deliberative democracy processes and online communities might offer interesting and potential contexts for reorganizing conversation. This might be fruitful to look at in light of the two interpretations of deliberative democracy described above as well and offer a way for NGOs to also stay connected to a more conflictual and unregulated public sphere.

It is important for NGOs to streamline their organizational structures and communication to increase influence and leverage in corporate decision making and thereby become more legitimate, especially in the eyes of the corporations they aim to regulate. For the FFG this might mean that practices will need to be developed to improve the understanding and incorporation of financial institutions' feedback. A third party, an independent mediator for example, may help organize and improve the communication process in order to build trust between the organizations and help make mutual criticism become more constructive. At the same time though, conflict plays an important role in keeping moral space open and NGOs need to stay connected to deliberation taking place in the unregulated public sphere that is less focused on problem solving in order not to undermine their 'local legitimacy'. Regarding this, it may be interesting for the FFG to explore possibilities of how using (online) social networks or platforms can help improve harnessing input from their constituencies in order to stay aware of the more innovative trends or radical ideas emerging from civil society and the public sphere at large.

There seems to be space for progress in both directions and the two interpretations of deliberative democracy might shed light on how to increase the degree of legitimacy and deal with some of the criticism of the FFG. Ultimately though, what is laid open by this exploration yet again is the tension that exists for NGOs between a need to develop cooperation, communication and build leverage in corporate decision making and increase their legitimacy towards them, while at the same time staying rooted in the public sphere and successfully representing civil society. As has already been mentioned by others, an important task of NGOs therefor is to be able to explain their double role and manage it wisely.[85] I would argue that this is also their most important challenge and it is here where there is room for growth, lie possibilities to increase their legitimacy as well as to realize any substantial change and, in the case of the FFG, change financial institutions' policies in order to build a more sustainable economic order.

[85] Arenas et al. (2009), pp. 192

Conclusion

In this thesis I have explored the issue of legitimacy of NGOs aiming to regulate corporations and have focused specifically on the case of the Fair Finance Guide. Organizations like the FFG have emerged as a result of global governance gaps and have offered certain pragmatic advantages over governments by being able to provide negative consequences to immoral business behavior. They have played an important role in raising corporate social responsibility standard and have successfully developed tools, inspiring several countries to pursue similar initiatives. Although the organization offers promising solutions to deal with the existing regulatory vacuum, I have explained in section one that the FFG and organizations like it have come under fire and have been accused of not being legitimate.

Since legitimacy as I have explained in section two is quite a diffuse concept, I have focused on the notion of normative legitimacy and have distinguished several relevant conditions for evaluating NGOs legitimacy which I divided up into four aspects. Doing this made clear that concerning the value based and procedural aspects of legitimacy, the FFG seems to have some weaknesses. These weaknesses also surfaced in section three where I looked at a number of specific critiques of the FFG as well as general NGO criticism to see what key concerns generally are raised when their legitimacy is called into question. Concerns coming to the fore regarded a lack of accountability and representativeness, shortcomings in expertise and an unwillingness to debate and revise particular issues or methods.

I have argued that it is due to these issues that there is exists a risk that the FFG and the standards they set become one-sided, dogmatic and an environment of distrust is constructed which causes financial institutions to look for alternative monitoring agencies and portray the FFG as an inadequate and unfair organization that pursues its own business interests over the common good.

In order to address the weaknesses and increase legitimacy I have suggested that a more inclusive and deliberative environment needs to be constructed where financial institutions and the FFG partake in feedback mechanisms designed to be representative, promote trust and are aimed at mutual understanding, consensus building and decision making. I have argued that looking at the concept of deliberative democracy offers insights on how to go about this.

As I have pointed out, the concept has by some also been used to underline the importance of an open, unregulated and conflictual public debate that is aimed at exploring issues rather than making decisions and designing policies. The existence of such debate I argued is elemental for civil society to thrive and serves as the ultimate source of values for the FFG. It is then also crucial for the FFG to stay connected to what takes place outside of their organization and be able to use input from deliberation taking place in the public sphere.

To conclude I have argued that legitimacy can be increased by improving practices in both directions, and that at the one hand this will take an institutionalization of communication processes, aimed at minimalizing conflict and building trust between NGOS and corporations, if needed with the help of an external actor. While at the other hand creating innovative ways to ensure that NGOs stay representative for the common good deliberated in the unregulated, conflictual public sphere. There is a need then to design suitable organizational structures and feedback mechanisms because there is a lot to learn from the other. NGOs can benefit from the experience and expertise of financial institutions while these institutions can benefit from the NGOs' development of consistent CSR policy frameworks.

Finally, I want to emphasize that the role of individual managers should not be underestimated in shaping the conditions of dialogue. Further research could be done that explores how managers from both parties can become more aware of their double roles, the stories they are part of and mutual prejudices that exist and try to understand where critiques come from. This I think will increase the chances of collaboration an co-learning which will be useful especially in the light of the likeliness that NGOs and businesses increasingly have to deal with each other. I do not want to oversimplify it by saying everything will be fine if 'we just all sit and talk', but I hope to have shown that improving communication and developing mechanisms to do so might benefit both NGOs and corporations as well as increase their legitimacy.

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