

TESTING TRANSPARENCY[†]

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ABSTRACT—In modern democracies, governmental transparency is thought to have great value. When it comes to addressing administrative corruption and mismanagement, many would agree with Justice Brandeis’s observation that sunlight is the best disinfectant. Beyond this, many credit transparency with enabling meaningful citizen participation.

But even though transparency appears highly correlated with successful governance in developed democracies, assumptions about administrative transparency have remained empirically untested. Testing effects of transparency would prove particularly helpful in developing democracies where transparency norms have not taken hold or only have done so slowly. In these contexts, does administrative transparency really create the sorts of benefits attributed to it? Transparency might grease the gears of developed democracies, but what good is grease when many of the gears seem to be broken or missing entirely?

This Article presents empirical results from a first-of-its-kind field study that tested two major promises of administrative transparency in a developing democracy: that transparency increases public participation in government affairs and that it increases government accountability. To test these hypotheses, we used two randomized controlled trials.

Surprisingly, we found transparency had no significant effect in almost any of our quantitative measurements, although our qualitative results suggested that when transparency interventions exposed corruption, some limited oversight could result. Our findings are particularly significant for developing democracies and show, at least in this context, that Justice Brandeis may have oversold the cleansing effects of transparency. A few rays of transparency shining light on government action do not disinfect the system and cure government corruption and mismanagement. Once corruption and mismanagement are identified, it takes effective government institutions and action from civil society to successfully act as a disinfectant.

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INTRODUCTION	1265
I. BACKGROUND.....	1275
A. <i>Transparency Versus Information Disclosure</i>	1275
B. <i>Emergence of Transparency in the Arc of Democracies</i>	1277
C. <i>The Skeptic's Response to Transparency Promotion</i>	1282
II. THE TRANSPARENCY HYPOTHESES.....	1285
A. <i>The Public Participation Hypothesis</i>	1285
B. <i>The Accountability Hypothesis</i>	1288
III. DESIGNING A TRANSPARENCY TEST	1290
A. <i>Project Setting and Opportunity</i>	1291
B. <i>Experimental Design</i>	1295
IV. RESULTS OF THE TRANSPARENCY TESTS	1305
A. <i>Results of Testing the Participation Hypothesis</i>	1305
B. <i>Results of Testing the Accountability Hypothesis</i>	1313
V. IMPLICATIONS AND EXPLORATIONS: NOW WHAT?.....	1325
A. <i>Should We Just Give Up on Transparency?</i>	1326
B. <i>It Is Grease, Not a Disinfectant</i>	1327
C. <i>Looking Forward</i>	1331
CONCLUSION	1332

INTRODUCTION

Justice Brandeis famously wrote that “[s]unlight is said to be the best of disinfectants.”¹ That quip is immediately recognizable to many and often used to justify transparency initiatives.² But is it correct? What empirical evidence do we have that it is? Other important assumptions about transparency’s effects also remain untested. Even in the face of a growing chorus of transparency skeptics who question the promise of transparency and highlight its costs,³ many legal processes are still based on the presumption that increased transparency leads to greater citizen participation in government decision-making. Can that presumption be supported? We find transparency in many successful democratic governments, but correlation does not indicate causation.

¹ LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* 92 (1914).

² In this piece, we define “transparency” as the act of making information available by the agency or organization responsible for that information. This should be distinguished from information disclosure—a related but distinct phenomenon wherein third-party actors publicize information about government. Third-party propagation lacks the imprimatur of government support for disclosure and therefore may be expected to affect citizens’ views of the disclosure in different ways. *See infra* Section II.A.

³ *See infra* Section I.C.

In the past half-century, transparency has become a core value among modern democracies. The European Parliament incorporated transparency among other values in its Declaration of Fundamental Rights and Freedoms.⁴ The Council of Europe included transparency as one of five items on its list of “core democratic principles.”⁵ The United Nations Human Rights Council listed “[t]ransparency and accountability in public administration” as one of ten “essential elements of democracy.”⁶ On signing the Freedom of Information Act, President Lyndon B. Johnson remarked that “one of our most essential principles” is that “democracy works best when the people have all the information that the security of the Nation permits.”⁷ Transparency has been described as one of the “hallmarks of American administrative law,”⁸ “an emerging international norm,”⁹ one of the “values

⁴ Declaration of Fundamental Rights and Freedoms, art. 18, 1989 OJ No. C. 120/55

⁵ LAWRENCE PRATCHETT & VIVIEN LOWNDES, DEVELOPING DEMOCRACY IN EUROPE: AN ANALYTICAL SUMMARY OF THE COUNCIL OF EUROPE’S *ACQUIS* 87–89 (2004).

⁶ *Democracy*, UNITED NATIONS, <http://www.un.org/en/sections/issues-depth/democracy> [<https://perma.cc/SX3U-KURN>]; see also *UNDP Global Anti-Corruption Initiative (GAIN) 2014–2017*, UNITED NATIONS DEV. PROGRAMME 9 (2014), http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/globalanticorruption_final_web2.pdf [<https://perma.cc/MR6Y-ARPE>] (discussing the UNDP’s inclusion of transparency and accountability as part of its anti-corruption work).

⁷ Lyndon B. Johnson, Statement by the President Upon Signing the Freedom of Information Act, 316 PUB. PAPERS 699 (July 4, 1966); see also David C. Vladeck, *Information Access—Surveying the Current Legal Landscape of Federal Right-to-Know Laws*, 86 TEX. L. REV. 1787, 1787 (2008) (noting that FOIA “embodies the ideal that information is the lifeblood of democracy”).

⁸ William Funk, *Public Participation and Transparency in Administrative Law—Three Examples as an Object Lesson*, 61 ADMIN. L. REV. 171, 171 (2009); see also B.S. Chimni, *Co-optation and Resistance: Two Faces of Global Administrative Law*, 37 N.Y.U. J. INT’L L. & POL. 799, 808–09 (2005) (listing transparency as one of the “core administrative law principles”); Laura A. Dickinson, *Regulating the Privatized Security Industry: The Promise of Public/Private Governance*, 63 EMORY L.J. 417, 419 (2013) (including transparency among the “procedural values of global administrative law”); Miriam Seifter, *States as Interest Groups in the Administrative Process*, 100 VA. L. REV. 953, 992 (2014) (referring to transparency as one of the “pillars of the administrative state”); Richard B. Stewart, *U.S. Administrative Law: A Model for Global Administrative Law?*, 68 L. & CONTEMP. PROBS. 63, 73 (2005) (listing “decisional transparency” as a fundamental structural element of U.S. administrative law).

⁹ Catherine A. Rogers, *Transparency in International Commercial Arbitration*, 54 KAN. L. REV. 1301, 1307 & n.21 (2006) (citing various proponents of this position); see also Steve Charnovitz, *Transparency and Participation in the World Trade Organization*, 56 RUTGERS L. REV. 927, 928 (2004) (discussing the “emergence of international norms on transparency and citizen participation”).

of human dignity embedded in human rights and humanitarian law,”¹⁰ and “essential for democracy to function.”¹¹

When developing democracies are unwilling to operate with transparency, they come under pressure from their own citizenry and from developed countries.¹² Transparency is quickly becoming an export of developed democracies. Some of the most important aid, development, and trade organizations promote—and sometimes use their international investment power to secure—transparency.¹³ Perhaps the most effective tool

¹⁰ Dickinson, *supra* note 8, at 419; *see also* Gregory H. Fox & Brad R. Roth, *Introduction: The Spread of Liberal Democracy and Its Implications for International Law*, in *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW* 1, 7 (Gregory H. Fox & Brad R. Roth eds., 2000) (calling the commitment to the principles of pluralism, choice, and transparency “essential to securing an institutionalized protection of other human rights”); Carol Harlow, *Global Administrative Law: The Quest for Principles and Values*, 17 *EUR. J. INT’L L.* 187, 209 (2006) (listing transparency among the “background values of the global governance or human rights movement”); Sharmila L. Murthy, *The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization*, 31 *BERKELEY J. INT’L L.* 89, 127 (2013) (listing transparency among “human rights values”).

¹¹ Tal Z. Zarsky, *Transparent Predictions*, 2013 *U. ILL. L. REV.* 1503, 1530. Indeed, “essential” is a bit of a shibboleth for descriptions of democracy in the literature. *See, e.g.*, Molly Beutz, *Functional Democracy: Responding to Failures of Accountability*, 44 *HARV. INT’L L.J.* 387, 431 (2003) (describing transparency as “essential to the proper functioning of democracy”); Mark Fenster, *The Opacity of Transparency*, 91 *IOWA L. REV.* 885, 895–96 (2006) (tracing the modern democratic theory argument that transparency is an “essential element of a functional liberal democracy”); *see also* James R. Hollyer et al., *Democracy and Transparency*, 73 *J. POL.* 1191, 1192–93 (2011) (noting a consensus among scholars that transparency is critical to democratic governance); Frederick Schauer, *Transparency in Three Dimensions*, 2011 *U. ILL. L. REV.* 1339, 1349 (calling transparency a useful facilitator of public decision-making, which is “an important component of democratic governance”).

¹² Sometimes the sources of this domestic and international pressure arise from concerted action by sophisticated advocates for transparency. Mark Fenster, *The Transparency Fix: Advocating Legal Rights and Their Alternatives in the Pursuit of a Visible State*, 73 *U. PITT. L. REV.* 443, 470 (2014) (discussing how transparency advocates “mobilize resources against state structures and officials by working simultaneously at two distinct levels: rooting their efforts in specific national contexts . . . while acting within transnational networks and furthering seemingly neutral, international norms of transparency”).

¹³ Such organizations include the United Nations, the United States Agency for International Development, the World Trade Organization, the World Bank, and other international institutions, NGOs, and businesses. *See Democracy*, *supra* note 6 (listing transparency among a handful of values and institutions that are “essential elements of democracy”); *Promoting Accountability & Transparency*, U.S. AGENCY FOR INT’L DEV. (May 7, 2019), <https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/promoting-accountability-transparency> [<https://perma.cc/5ANS-9QHK>] (“The process of governing is most legitimate when it incorporates democratic principles such as transparency, pluralism, citizen involvement in decision-making, representation, and accountability.”); *see also* Lisa Philipps & Miranda Stewart, *Fiscal Transparency: Global Norms, Domestic Laws, and the Politics of Budgets*, 34 *BROOK. J. INT’L L.* 797, 809–21 (2009) (discussing the role of various international regimes and organizations in pushing fiscal transparency); Susan Rose-Ackerman & Sinead Hunt, *Transparency and Business Advantage: The Impact of International Anti-Corruption Policies on the United States National Interest*, 67 *N.Y.U. ANN. SURV. AM. L.* 433, 436–44 (2012) (discussing the evolution of anti-corruption practices and transparency in U.S. business dealings); Richard B. Stewart & Michelle Ratton Sanchez Badin, *The World Trade Organization: Multiple Dimensions of Global Administrative Law*,

these organizations use to encourage—or even coerce—transparency is conditioning foreign investment and development assistance on increased transparency.¹⁴

While transparency initiatives have their detractors, most of these critics concede the importance of some governmental transparency,¹⁵ even as they express concern that the costs of transparency may sometimes outweigh its benefits.¹⁶ Purported costs of transparency include

9 INT'L J. CONST. L. 556, 559–74 (2011) (describing the need for transparency and the measures at work within the World Trade Organization); *Open Budgets Portal: Tools and Resources*, WORLD BANK (2017), <http://wbi.worldbank.org/boost/tools-resources/intl-initiative> [<https://perma.cc/Z7D7-2XQC>] (displaying consolidated worldwide budget information to facilitate data visibility and access); *Our Commitment to Transparency*, U.S. AGENCY FOR INT'L DEV. (Dec. 11, 2019), <https://www.usaid.gov/results-and-data/progress-data/transparency> [<https://perma.cc/QR3Y-YJ4D>] (describing multiple transparency initiatives supported by USAID and noting its commitment “to upholding the values of transparency, open government, participation, and collaboration in tangible ways that benefit the American people”); *Together Against Corruption: Transparency International Strategy 2020*, TRANSPARENCY INT'L (2015), https://www.transparency.org/whatwedo/publication/together_against_corruption [<https://perma.cc/FF9G-H47L>] (describing the mission, values, and strategy of the global movement to stop corruption and promote transparency). See generally *UNDP Global Anti-Corruption Initiative (GAIN) 2014–2017*, *supra* note 6 (describing initiatives to secure greater transparency as a strategy of reducing corruption in the delivery of foreign aid).

¹⁴ See SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM 177–97 (1999) (addressing the role the international community has played in limiting corruption when financing development throughout the world); Lisa Philipps & Miranda Stewart, *supra* note 13, at 809–14 (discussing the IMF and other organizations' role in pushing countries toward fiscal transparency through conditional lending); Diane Ring, *Developing Countries in an Age of Transparency and Disclosure*, 2016 B.Y.U. L. REV. 1767, 1811–25 (discussing the ways in which international tax transparency initiatives may result in higher enforcement rates in developing countries); Richard B. Stewart, *Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 AM. J. INT'L L. 211, 233–34 (2014) (discussing accountability mechanisms and transparency as methods for “generating, constraining, directing, and influencing the exercise of power”); Angel Gurría, *Openness and Transparency - Pillars for Democracy, Trust and Progress*, ORG. FOR ECON. CO-OPERATION & DEV., <http://www.oecd.org/fr/etatsunis/opennessandtransparencypillarsfordemocracytrustandprogress.htm> [<https://perma.cc/T29S-3HX8>] (stating that “[o]penness and transparency are key ingredients to build accountability and trust, which are necessary for the functioning of democracies and market economies”); *Transparency International*, UNITED NATIONS EDUC., SCI. & CULTURAL ORG., <https://en.unesco.org/partnerships/non-governmental-organizations/transparency-international> [<https://perma.cc/KRX2-Q8A9>] (describing the methods and objectives behind a transparency initiative serving to combat corruption).

¹⁵ See *infra* note 23.

¹⁶ Note that some of transparency's skeptics are indeed quite skeptical about the value of transparency. Of these, perhaps the strongest critique comes from Professors Ben-Shahar and Schneider who argue: “‘Mandated disclosure’ may be the most common and least successful regulatory technique in American law.” OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 3 (2014). While Ben-Shahar and Schneider take aim at many sorts of transparencies, it is interesting that many of the critics of transparency focus on legislative transparency, which is different from the administrative transparency at the heart of this paper. See JASON GRUMET, CITY OF RIVALS: RESTORING THE GLORIOUS MESS OF AMERICAN DEMOCRACY 85–110 (2014) (describing a number of ways that legislative transparency can undermine legislative deal making,

ossification,¹⁷ inefficiency,¹⁸ stifled governmental decision making,¹⁹ and empowering special interests at the expense of broader public interests.²⁰ For

dampen civility and trust among legislators, and drive legislators to avoid doing business in forums where transparency is provided). *But see* GARY D. BASS ET AL., CTR. FOR EFFECTIVE PUB. MGMT., BROOKINGS INST., WHY CRITICS OF TRANSPARENCY ARE WRONG (2014), <https://www.brookings.edu/wp-content/uploads/2016/06/critics.pdf> [<https://perma.cc/5BBC-5L99>]. That said, critiques of legislative transparency have similar implications in the administrative context. Although administrative agencies do not have the same quantity of critics highlighting the costs of transparency, those costs noted by critics of legislative transparency also apply to the administrative context. This is not to say that there are not important differences between legislative and administrative transparency, but only that these differences relate to practical implementation considerations of potential public reaction to different sorts of transparency (e.g., voting against a politician versus attending a public meeting). The distinctions between the two types of transparency are less relevant to evaluating the value and costs of transparency generally.

¹⁷ See Funk, *supra* note 8, at 182–83 (suggesting too much transparency can leave observations of government to narrow interests that can work to defeat broader interests); Jerry L. Mashaw & David L. Harfst, *Inside the National Highway Traffic Safety Administration: Legal Determinants of Bureaucratic Organization and Performance*, 57 U. CHI. L. REV. 443, 459–62 (1990) (describing an instance of how public transparency created ossification).

¹⁸ See Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law Redux*, 125 YALE L.J. 104, 197–204 (2015) (“Critics . . . worry that the very predictability of enforcement—or, more precisely, the predictability of who will be protected from enforcement—will undercut compliance with the INA and reduce the deterrent effect of the law, thereby threatening the rule of law.”); Robin Kundis Craig & J.B. Ruhl, *Designing Administrative Law for Adaptive Management*, 67 VAND. L. REV. 1, 30 (2014) (noting that “administrative law theory has increasingly criticized extensive public participation requirements because they create burdensome inefficiency in agency decisionmaking”); Nina A. Mendelson, *Rulemaking, Democracy, and Torrents of E-Mail*, 79 GEO. WASH. L. REV. 1343, 1356–71 (2011) (expanding public input into government decision-making processes through the use of technology can result in a deluge of public input, which sometimes can overwhelm or disrupt the process); Schauer, *supra* note 11, at 1352 (“Transparency may well prevent bad officials from engaging in corrupt or otherwise bad acts, but . . . transparency can also make it more difficult for good officials to engage in good acts.”).

¹⁹ See, e.g., *United States v. Nixon*, 418 U.S. 683, 705 (1974) (“Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.”); SISSELA BOK, *SECRETS: ON THE ETHICS OF CONCEALMENT AND REVELATION* 171–90 (1982) (arguing among other things that “[t]he processes of reasoning, planning, accommodation, and choice are hampered if fully exposed from the outset, no matter how great the corresponding dangers of secrecy”); Mariano-Florentino Cuéllar, *Earmarking Earmarking*, 49 HARV. J. LEGIS. 249, 294 (2012) (stating that “transparency can famously undermine political arrangements”); Funk, *supra* note 8, at 182 (suggesting too much transparency can leave observations of government to narrow interests that can work to defeat broader interests).

²⁰ BEN-SHAHAR & SCHNEIDER, *supra* note 16, at 5–7; Elizabeth Garrett & Adrian Vermeule, *Transparency in the U.S. Budget Process*, in *FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO BUDGET POLICY* 68, 80 (Elizabeth Garrett et al. eds., 2008) (“[T]he groups that benefit most from fishbowl transparency . . . are tightly organized groups seeking transfers to particular economic interests, narrowly defined.”); David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. PA. L. REV. 1097, 1156 (2017) (“FOIA . . . systematically skews the production of information toward commercial interests and facilitates powerful antiregulatory agendas.”) [hereinafter Pozen, *Freedom*]; David E. Pozen, *Transparency’s Ideological Drift*, 128 YALE L.J. 100, 130 (2018) (arguing the transparency in the current federal system often tends to empower special interests instead of providing oversight for the public interest) [hereinafter Pozen, *Transparency*]; Antonin Scalia, *The*

example, in a particularly biting criticism of an administrative transparency initiative, Justice Scalia went so far as to call the Freedom of Information Act (FOIA) “the Taj Mahal of the Doctrine of Unanticipated Consequences” and “the Sistine Chapel of Cost Benefit Analysis Ignored.”²¹ But Justice Scalia was unwilling to fully dismiss transparency completely, adding “[t]his is not to say that public access to government information has no useful role.”²² Following Justice Scalia’s logic, a number of critics—perhaps more appropriately labelled as transparency skeptics—argue that what is needed is a more thoughtful approach to transparency: where does it make sense and what sorts do the most good.²³ Similarly, even most of transparency’s defenders would concede that although transparency is important, it is not preeminent among legal values.²⁴ Most agree that transparency must give way in certain situations, and many transparency initiatives explicitly accommodate these situations via enumerated exceptions to disclosure requirements.²⁵

Despite these criticisms, institutional commitment to transparency is perhaps not surprising. The appeal of transparency is intuitive, particularly in contexts where the institutions of government and civil society are strong. In these settings, transparency seems to almost effortlessly grease the

Freedom of Information Act Has No Clothes, REG., Mar./Apr. 1982, at 16 (arguing FOIA was passed to protect “the little guy” but is mainly useful to “corporate lawyers”).

²¹ Scalia, *supra* note 20, at 15.

²² *Id.* at 19.

²³ See e.g., Fenster, *supra* note 11, at 910–11 (“[P]roponents and skeptics disagree about the normative and practical effects of disclosure requirements—effects that they feel certain would occur—but they agree both that transparency is better than its opposite in the abstract, and that they can derive and impose the measure of transparency that democracy requires.”); Scalia, *supra* note 20, at 19; Lawrence Lessig, *Against Transparency*, NEW REPUBLIC (Oct. 9, 2009), <http://www.newrepublic.com/article/books-and-arts/against-transparency> [https://perma.cc/H528-48ZR] (“How could anyone be against transparency? Its virtues and its utilities seem so crushingly obvious. But I have increasingly come to worry that there is an error at the core of this unquestioned goodness. We are not thinking critically enough about where and when transparency works, and where and when it may lead to confusion, or to worse.”).

²⁴ Almost all of those involved in the debate about the merits of transparency converge on the point that at least some degree of transparency is necessary. Perhaps because of this, Professor Mark Fenster aptly labels skeptics of transparency “weak-form” transparency advocates. Fenster, *supra* note 11, at 910–11.

²⁵ See 5 U.S.C. § 552 (b)(1)–(7) (2012) (including exemptions for, among other things, military matters, national security, and law enforcement); *EPA v. Mink*, 410 U.S. 73, 80 n.6 (1973) (“Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.” (quoting S. REP. NO. 89-813, at 3 (1965))); see also Fenster, *supra* note 11, at 912–14 (discussing the balance of interests that FOIA’s statutory exemptions attempts to create); Teresa Dale Pupillo, *The Changing Weather Forecast: Government in the Sunshine in the 1990’s—An Analysis of State Sunshine Laws*, 71 WASH. U. L.Q. 1165, 1172–73 (1993) (summarizing statutory exceptions to state open meetings requirements).

machinery of democracy. For example, new information might galvanize interest groups and spur new investigative media series. Both will, in turn, sift through what might be mountains of information and publicize only its most salient aspects, which may be accompanied by specific calls to action. When mismanagement is uncovered, calls for political oversight follow, and politicians may provide such oversight without much prompting as they seek to enhance their reputations and grow their electoral support. When corruption is found, the public demands increased political oversight, and in response, government leaders push for investigations and public hearings, and police and prosecutors may even begin criminal investigations.

In developing democracies where transparency has not fully taken hold, some suggest that lack of transparency is both the cause and effect of corruption.²⁶ A lack of transparency conceals malignant actors and minimizes political accountability. However, there may be less nefarious explanations: for instance, skepticism of transparency's lofty promises may carry more weight in developing nations. Developing nations may question whether transparency initiatives are worth the costs, given all the other economic and social stresses present in most developing democracies. If transparency reduces efficiency and increases the cost of government in a country grappling with widespread hunger, disease, and little access to education or reliable infrastructure, then investing in transparency might not seem worth it. There is no certainty that if transparency exposed problems in the government, the government would work to address such problems. Leaders, politicians, prosecutors, police agencies, and courts would need to address the problems transparency uncovered—none of which would be guaranteed in a state with fragile and sometimes corrupt institutions.

²⁶ One way to see the tricky causal and correlative links between transparency and corruption play out is through examining the various *Country Reports on Human Rights Practices* compiled by the State Department. Compare U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2017: MONGOLIA ("Factors contributing to corruption included conflicts of interest, lack of transparency, lack of access to information, an inadequate civil service system, and weak government control of key institutions."), with U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2015: LIBYA ("There were many reports and accusations of government corruption due to lack of transparency in the government's management of security forces, oil revenues, and the national economy."), U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2016: BURUNDI ("There were also allegations of corruption related to lack of transparency of budget revenue related to gasoline importation."), and U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2013: GUINEA-BISSAU ("No progress was made during the year toward reducing corruption and increasing transparency. Corruption was endemic, and the government efforts were limited to combat the problem.").

All this leads to a crucial question: if the standard assumptions about how transparency motivates nongovernmental actors do not hold true in developing democracies, can investments in transparency be justified? Without robust institutions and civil society, the risks of corruption and mismanagement that could be exposed by greater transparency are higher—but so are the potential welfare trade-offs involved in allocating resources between transparency initiatives and other development programs. In evaluating the costs and benefits of transparency in developing democracies, intuition can only take us so far. Empirical evidence is vital to help us understand the reach and effect of transparency initiatives. But until now, at least in the administrative context, no causal empirical evidence existed relating to transparency initiatives.²⁷

In this Article, we report our efforts to empirically test two hypotheses about administrative transparency in the context of a developing democracy. This study emerges from an incredibly rare opportunity to conduct randomized controlled trials on transparency's effects in the administrative setting.²⁸

Our research not only required finding a government agency willing to introduce a new degree of transparency but also the willingness of that government to make the new transparency available on a randomized basis.²⁹ It is important to note the difference between information disclosure as opposed to transparency. A test of transparency entails not only the effect of

²⁷ See *infra* Section I.A.2 (discussing causal evidence derived from randomized control trials in the administrative context, all of which focus on information disclosure by third parties rather than government-introduced administrative transparency.)

²⁸ See *infra* Section II.B.1.

²⁹ In order to tease out causal relationships of transparency—not just correlation—we needed an opportunity to measure the difference between the base case (i.e., a control) and the test case where transparency is offered (i.e., a treatment). Given the difficulty of teasing out the potential differences between cases in one place from another or one time from another, the easiest way to find a base case and test case was through randomizing the application of transparency. In the context of our study, that meant finding a case where people and communities could be randomly assigned to different degrees of administrative transparency.

The opportunity to test transparency in this context is incredibly rare. In many developed democracies, transparency is already ubiquitous, so running a test would require dialing transparency back. An effective test case would require that some groups continue to receive transparency (i.e., the control) while others are deprived of it (i.e., the treatment). In a practical sense, such a proposal is almost laughable. On the other hand, in developing democracies that have not provided transparency, most governments are not willing to simply begin providing transparency. Tinkering with transparency levels does not happen without careful consideration, as government leaders may perceive transparency's effects as more of a threat than a boon. Furthermore, even if a government were willing to provide more transparency, it would also need to be willing to cooperate with researchers to provide transparency to some citizens but not others on a randomized basis. In order to fully test a hypothesis on transparency's effects, all these stars (among others) must align.

disclosing information *about* the government but also the impact of such disclosures *by* the government.

Fortunately, we found a willing government partner in a collaborative research project we performed with the management of a development program in Uganda's Bwindi Impenetrable Forest National Park ("the Park").³⁰ The Park worked with us to disclose information essential to providing increased oversight over community development projects in some villages surrounding the Park while not doing the same in other villages. We rolled out two randomized control studies, one that focused on the effect of increased transparency on community participation and a second that focused on public accountability.

These efforts resulted in a substantial trove of data.³¹ Our first randomized controlled trial focused on testing whether sharing information about public meetings—such as when and where the meetings took place, as well as their purpose and stakes—would affect resident participation.³² Our results show this transparency treatment not only failed to produce increased participation but also, surprisingly, resulted in residents reporting that they felt *less able* to participate in those meetings.³³ As we dug into the data and followed up with qualitative interviews, we found that transparency backfired particularly strongly among women and other disadvantaged groups. It seemed that the messages reinforced their perception that they could not overcome local elites and would not benefit from participating.³⁴

The second randomized controlled trial—focusing on whether transparency resulted in increased accountability in the delivery of local development projects—again indicated that transparency initiatives fell short of their promise.³⁵ In this trial, residents in some villages received regular

³⁰ The Bwindi Impenetrable Forest National Park is renowned because it is one of the two areas on the planet where mountain gorillas are found.

³¹ In this Article, we present certain findings for the first time and recontextualize findings from two of our previous peer-reviewed social science papers in a legal context. Mark T. Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development? A Field Experiment near Bwindi National Park, Uganda*, 106 WORLD DEV. 407, 408 (2018); Mark T. Buntaine & Brigham Daniels, *Diffuse Responsibility Undermines Public Oversight: A Field Experiment at Bwindi National Park, Uganda* (Mar. 22, 2019) (working paper), <https://papers.ssrn.com/a=3371189> [<https://perma.cc/XB5C-T6S8>]. While we feel somewhat sheepish about continually footnoting our past work in the Parts that follow, we do this so the reader can understand what we have reported elsewhere and what we have not.

³² Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 408.

³³ *Id.*

³⁴ *See id.*

³⁵ Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31, at 26.

reminders about the allocation of funds for a village-level project, information that was not easily available from any other source. However, follow-up qualitative work illustrated how transparency gave residents a foothold to seek other forms of accountability beyond project delivery. For example, one corrupt official was fired, another was suspended and then reassigned, and a corrupt contractor fled the area in an attempt to escape the consequences of a government investigation.³⁶ These results indicate that, even though we were not able to find statistically significant impacts of transparency treatments on the delivery of local development projects, transparency did work in some communities to highlight problems, inspire action, and promote at least some accountability in specific cases.³⁷

In reflecting on our results, we conclude that promoters of transparency should not oversell its promises, particularly in areas where the institutions of civil society and the administrative state are weak. Based on these results, we advocate for careful implementation of transparency initiatives to ensure they do not further deflate and alienate those with little influence in society. At the same time, we argue that transparency should not be abandoned as a means to promote broader participation and involvement in government. Transparency can impact society in a number of positive ways, even though its effects may be difficult to capture quantitatively. We also suspect that the benefits of transparency may take time to materialize. It is entirely possible that, although transparency does not immediately result in better government, highlighting problems may still improve governance in the long run.

This Article proceeds in five Parts. In Part I, we define *transparency* and provide further background on the emergence of administrative transparency initiatives in developed and developing democracies. Part II develops the two major assumptions about transparency that we put forward as testable hypotheses: that increased governmental transparency leads to increased public participation and that increased governmental transparency increases public accountability. Part III discusses our research design for testing the impact of transparency. Part IV discusses the results of the two randomized controlled trials that we employed to test these hypotheses. Finally, Part V describes how our research changed the way we think about transparency and highlights a few of the questions our results raise for transparency initiatives, especially in developing democracies.

³⁶ *Id.* at 27–30.

³⁷ *Id.* at 4.

I. BACKGROUND

This Part provides the relevant background on transparency and the history of our experiment. First, we provide a definition of *transparency* and contrast it with *information disclosure*. We discuss why so little empirical evidence relates to transparency and focuses instead on information disclosure. Second, this Part considers how transparency came late in the historical arc of most developed democracies and contrasts this to today's developing countries, which often attempt to introduce transparency much earlier in the development of political institutions. We provide a potential explanation of why a democracy's stage of development might significantly impact—for better or for worse—the success of transparency initiatives. Finally, we review some of the major contentions of transparency skeptics. This growing body of work critiques the widely held assumptions in favor of administrative transparency, providing additional motivation to put transparency to the test.

A. Transparency Versus Information Disclosure

1. Defining Administrative Transparency

Transparency has been described as “availability and accessibility of knowledge and information,”³⁸ “openness to the gaze of others,”³⁹ being able to see how “business is conducted,”⁴⁰ “the degree to which information . . . is made publicly available,”⁴¹ “knowledge about government actors and decisions and access to government information,”⁴² and “the process of making the invisible or hidden visible or seen.”⁴³ Though their prominence varies, two key elements to all these definitions are that transparency encompasses both *information* and *the act of making information available*. In most usages, the making available aspect requires that the entity that possesses potentially hidden information be the one to reveal it.

³⁸ ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 135–53 (1995).

³⁹ Fenster, *supra* note 11, at 888.

⁴⁰ Salvador J. Esparza & Michael L. Wall, *Transparency: Everyone Is Watching!*, in *NEW LEADERSHIP FOR TODAY'S HEALTH CARE PROFESSIONALS* 292 (Louis G. Rubino et al. eds., 2d ed. 2020).

⁴¹ INT'L ORG. OF SEC. COMM'NS, TECH. COMM., *TRANSPARENCY ON SECONDARY MARKETS: A SYNTHESIS OF THE IOSCO DEBATE* 23 (1992).

⁴² J.M. Balkin, *How Mass Media Simulate Political Transparency*, 3 *CULTURAL VALUES* 393, 393 (1999).

⁴³ Andrea C. Armstrong, *No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions*, 25 *STAN. L. & POL'Y REV.* 435, 458 (2014).

This Article focuses on administrative transparency, meaning transparency relating to the workings of government agencies. Most field studies on government disclosure do not focus on the workings of agencies, but rather on the behavior of citizens and how their voting behavior changes in elections as a result of information disclosure. But a hacker's revelation of information found in a government agency's files would not render the agency itself transparent, even if the hacker was motivated by a belief in the importance of governmental transparency.⁴⁴ Positive action by an agency to make information available implies an intent to conduct the business of government in ways that are visible to citizens. This distinction—between intentional and unintentional disclosure—may affect the way the disclosed information, and the agency itself, are perceived by citizens.

2. *Empirical Testing of Transparency and Information Disclosure*

Most of what we know about the impact of government information on society comes from empirical research on the impact of informational disclosure, not transparency. But third-party disclosure does not imply an intent to conduct the business of government in an open and accessible manner. Nongovernment actors (generally researchers, NGOs, or the media) have tested the impact of disclosing to the public government information on numerous occasions. These actors publicize information they generate themselves or information that a government has released but that is mostly or entirely unknown to the general public. While these information disclosures seem superficially similar to transparency, the two are not interchangeable. Administrative transparency connotes more than just the presence of government information; it also implies a willingness of the government to release that information and to make private information public. This distinction is not mere semantics. In measuring the impact of information disclosure on government corruption and governance, participation in governmental processes, or the public's perception of and trust in the government, it matters whether the government disclosed the information itself. The imposition of information disclosure on the government by third parties does not suggest to citizens that the government is inviting scrutiny, participation, and trust. Transparency arguably does, at least on the margins.

If government disclosure is substantively different from disclosure by third parties, it is clear why testing the transparency hypotheses is so difficult: government cooperation is necessary. Governments rarely have the

⁴⁴ The act of *making available* by the entity that could keep information secret is what led Fenster to rightly label information published by Wikileaks as informational disclosure instead of transparency. Mark Fenster, *Disclosure's Effects: WikiLeaks and Transparency*, 97 IOWA L. REV. 753, 781–807 (2012).

opportunity to roll out new transparency initiatives, and even when they do, they rarely have the flexibility—or even the willingness—to do so using a randomized process that would permit a study of the effects of administrative transparency. The willingness of a government to randomize transparency allows researchers to test not only the effect of disclosing information *about* the government but to test the impact of transparency *by* the government.

B. Emergence of Transparency in the Arc of Democracies

In this Section, we provide context on transparency initiatives in developing countries—why we are seeing more of them and how we might think about them normatively. To do this, we provide a brief overview of the role transparency has played in developed democracies and when transparency established itself as an important value in the arc of their development.⁴⁵ We then contrast that history to the transparency initiatives that have become increasingly common in developing democracies. This discussion allows us to speculate about the usefulness of transparency initiatives at an early stage of political and economic development.

1. The Emergence of Transparency in Developed Democracies

Robust transparency generally comes quite late in democracies' developmental process. In the United States, for example, the common law was intact before the thirteen colonies declared their independence from England.⁴⁶ Principles of separation of powers and popular representation were enshrined by the 1787 Constitution.⁴⁷ Adoption of the Bill of Rights explicitly guaranteed key civic freedoms like freedom of speech and the right to trial by jury.⁴⁸

Early in its history, the United States experienced a tremendous growth in its institutions of civil society. The French sociologist Alexis de Tocqueville, who studied the development of the United States at the turn of the nineteenth century, remarked on what we would likely see today as an explosive growth in civil society:

⁴⁵ For a much more robust and rich discussion of history of transparency, see Pozen, *Transparency*, *supra* note 20, at 107–44, for a discussion of the shift from a progressive to a more libertarian type of transparency in the United States.

⁴⁶ See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 90–93 (2d ed., 1985) (discussing the common law—and codification of it—in the U.S. colonial period).

⁴⁷ For separation of powers principles, see, for example, U.S. CONST. art. I, § 1 and *id.* art. II, § 2. For popular sovereignty principles, see, for example, U.S. CONST. pmbl.; *id.* art. I, § 2; and *id.* amends. XV, XVII, XIX, XIV, XVI.

⁴⁸ See AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 1–136 (1998) (providing a history of the Bill of Rights and explaining the freedoms it guarantees).

The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; they found in this manner hospitals, prisons, and schools. If it be proposed to inculcate some truth, or to foster some feeling, by the encouragement of a great example, they form a society. Wherever, at the head of some new undertaking, you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.⁴⁹

The institutions of civil society that de Tocqueville found so remarkable and firmly rooted in the early 1800s provided a foundation for these institutions to build on.

Over time, the government institutions and civil society grew in sophistication and reach. State and local governments—some of which had roots preceding independence—led the way in the early days of the Republic. The federal government’s growth came in energetic spurts. In the 1880s, Congress created the Interstate Commerce Commission, which in many ways grew into the first modern administrative agency—one staffed by experts who would exert influence through the creation of regulation.⁵⁰

The twentieth century began with wide-ranging progressive reforms that frequently expanded the reach of government.⁵¹ Interestingly, information disclosure became one of the tools to promote the changes urged by progressives. For example, the legislation to rein in the food and drug industries required not only government inspections but mandatory public disclosure of the findings, heightening the impact of oversight.⁵² Likewise, Congress’s passage of the nation’s first federal whistleblower protections helped promote the public disclosure of information on the operations of

⁴⁹ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 129–30 (Francis Bowen ed., Henry Reeve trans., 1863).

⁵⁰ Henry P. Monaghan, *Marbury and the Administrative State*, 83 COLUM. L. REV. 1, 17 n.100 (1983); Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189, 1208–15 (1986) (discussing the formation and development of the Interstate Commerce Commission).

⁵¹ Rabin, *supra* note 50, at 1218 n.74 (“Historians have had great difficulty identifying a Progressive ‘movement,’ and with good reason. The diffuse character of ‘Progressive’ reforms is striking: Local reforms aimed at eliminating ‘machine’ politics and democratizing the electoral process; state-level reforms intended to regulate factory wages, hours and accident compensation; federal reforms in the food and drug area have all been lumped together as goals of the ‘Progressive movement,’ despite overwhelming evidence that key participants in the respective policymaking processes shared virtually no sense of common purpose.”).

⁵² Meat Inspection Act, Pub. L. No. 59-242, 34 Stat. 1256 (1907) (codified as amended in 21 U.S.C. § 601 et seq.); Pure Food and Drug Act, Pub. L. No. 59-384, 34 Stat. 768 (1906) (repealed 1938); *see also* LEWIS L. GOULD, *AMERICA IN THE PROGRESSIVE ERA, 1890–1914*, at 27 (2001) (discussing Roosevelt’s efforts to use “publicity about the operations” as a way “to insure their socially beneficial behavior”); Kevin Stoker & Brad L. Rawlins, *The “Light” of Publicity in the Progressive Era: From Searchlight to Flashlight*, 30 JOURNALISM HIST. 177 (2005).

government.⁵³ It is perhaps not surprising that it was during this period that Justice Brandeis compared transparency to sunlight.⁵⁴

In the wake of the Great Depression, the New Deal further expanded the reach of government.⁵⁵ In the post-World War II period, efforts were made to rationalize and check the workings of government. The clearest reflection of this is in the passage of the Administrative Procedure Act (APA).⁵⁶ Nonetheless, the federal government continued to expand during the 1950s and 1960s.⁵⁷ This period also saw the enactment of the first Freedom of Information Act,⁵⁸ though in a much weaker form than the enactment that we have today.⁵⁹

Following Watergate, a period that featured a President actively fighting disclosure of information that had the potential to implicate him and his own administration in wrongdoing,⁶⁰ we saw additional transparency legislation enacted. This included a significant strengthening and expansion of the federal Freedom of Information Act,⁶¹ which assumed something close to its current form. This enactment resulted in a “strong presumption” of

⁵³ Lloyd–La Follette Act of 1912, Pub. L. No. 62-336, § 6, 37 Stat. 539, 555 (1912) (codified as amended at 5 U.S.C. § 7211).

⁵⁴ See *supra* note 1 and accompanying text.

⁵⁵ Rabin, *supra* note 50, at 1243–53 (discussing evolution of the regulatory state during the New Deal); George B. Shepherd, *Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics*, 90 NW. U. L. REV. 1557, 1561–65 (1996) (summarizing the administrative history of the New Deal); Jennifer Shkabatur, *Transparency With(out) Accountability: Open Government in the United States*, 31 YALE L. & POL’Y REV. 79, 84–85 (2012) (discussing transparency reforms during the New Deal).

⁵⁶ Pub. L. No. 79-404, 60 Stat. 237 (1946); see also CHARLES H. KOCH, JR. & RICHARD MURRAY, ADMINISTRATIVE LAW AND PRACTICE § 14:21 (3d ed. 2010), Westlaw ADMLP § 14:21 (“Efforts to improve transparency in the federal government took on a new urgency in the middle of the 20th century. In the 1960s, trust in the government reached new lows. The Freedom of Information Act was one of the responses to this public attitude.”); Shepherd, *supra* note 55, at 1558–61 (summarizing the history that resulted in the APA); Shkabatur, *supra* note 55, at 84–87 (summarizing how notice and comment rulemaking along with other provisions of the APA resulted in dramatic increases in government transparency).

⁵⁷ JOANNA L. GRISINGER, THE UNWIELDY AMERICAN STATE: ADMINISTRATIVE POLITICS SINCE THE NEW DEAL 195–202 (2012).

⁵⁸ 5 U.S.C. § 552 (1966).

⁵⁹ Scalia, *supra* note 20, at 14, 15 (“The 1966 version was a relatively toothless beast, sometimes kicked about shamelessly by the agencies.”).

⁶⁰ See *United States v. Nixon*, 418 U.S. 683, 700–02 (1974) (holding that Nixon would need to hand over the tapes he surreptitiously recorded of his conversations with his advisors and visitors to the White House to the Watergate special prosecutor).

⁶¹ Pub. L. No. 93-502, 88 Stat. 1561 (1974); STAFF OF S. COMM. ON THE JUDICIARY, 93D CONG., AMENDING THE FREEDOM OF INFORMATION ACT, S. REP. NO. 93-854 (1974).

disclosure of documents held by the government.⁶² This period also saw the passage of open meetings requirements as part of the Government in the Sunshine Act.⁶³ In this context, Chief Justice Earl Warren reflected the mood of the times: “If anything is to be learned from our present difficulties, compendiously known as Watergate, it is that we must open our public affairs to public scrutiny on every level of government.”⁶⁴

Most European Union member states, which include many developed democracies, took even longer to embrace transparency. While Sweden’s transparency laws predate the founding of the United States,⁶⁵ it was only in the 1990s that most European countries began to move toward robust transparency regimes. Even then, the movement began primarily with countries in Scandinavia.⁶⁶ However, this patchwork approach became much less significant in 2009, when the Treaty of Lisbon came into force within EU countries.⁶⁷ Among other reforms, the Treaty calls for government decision-making to occur in the public eye within the EU. This often takes the form of providing public access to government documents. EU regulations attempt to practically implement the Treaty’s lofty ideal of government openness.⁶⁸ The regulation starts from the premise that “[a]ll documents held by the European Parliament, Council and Commission are public.”⁶⁹ While there are some exemptions to the requirement that administrative documents should be open to the public, these exceptions are interpreted narrowly.⁷⁰ The right of EU residents to access documents has been extended across all public entities in the EU.⁷¹ While some EU member

⁶² U.S. Dep’t of State v. Ray, 502 U.S. 164, 173 (1991); Shkabatur, *supra* note 55, at 88; *see also* Vladeck, *supra* note 7, at 1796.

⁶³ Michael Halberstam, *Beyond Transparency: Rethinking Election Reform from an Open Government Perspective*, 38 SEATTLE U. L. REV. 1007, 1017, 1018 n.63 (2015).

⁶⁴ Earl Warren, *Governmental Secrecy: Corruption’s Ally*, 60 AM. B. ASS’N J. 550, 550 (1974).

⁶⁵ Francesca Bignami, *Creating European Rights: National Values and Supranational Interests*, 11 COLUM. J. EUR. L. 241, 293–94 (2005); Jacques Ziller, *European Models of Government: Towards a Patchwork with Missing Pieces*, 54 PARLIAMENTARY AFF. 102, 105, 108 (2001) (contrasting the Swedish system of open government with the closed systems of other countries).

⁶⁶ Bignami, *supra* note 65, at 293–94.

⁶⁷ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1.

⁶⁸ Council Regulation No. 1049/2001, 2001 O.J. (L 145) 43 (EC).

⁶⁹ European Union Directorate-General for Internal Policies, Policy Dep’t for Citizens’ Rights & Constitutional Affairs, *Openness, Transparency, and the Right of Access to Documents in the EU*, at 4 (2016), [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556973/IPOL_IDA\(2016\)556973_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556973/IPOL_IDA(2016)556973_EN.pdf) [<https://perma.cc/R2AL-PSZ9>].

⁷⁰ *Id.*

⁷¹ Consolidated Version of the Treaty on the Functioning of the European Union, art. 15(3), May 9, 2008 O.J. (C 115) 54.

states struggle to live up to these commitments, among the most developed countries in the European Union, we see significant transparency.

Similar stories of commitments to transparency could be told about other developed countries that embraced transparency late in their evolutionary processes, such as Japan,⁷² Australia,⁷³ Canada,⁷⁴ New Zealand,⁷⁵ and South Korea.⁷⁶ Different transparency initiatives, of course, can require various degrees of transparency and apply to a variety of settings. Developed democracies continue to adopt different degrees of transparency on fundamental aspects of governance, seeking to facilitate meaningful citizen oversight and participation.

2. *Transparency Initiatives in Developing Democracies*

Despite the late adoption of transparency in most developed democracies, advocates both internal and external encourage today's developing democracies to implement transparency initiatives early—even when other aspects of democratic infrastructure are still relatively weak. For example, during the last decade, even as Mexico's government, then under Enrique Peña Nieto, was “accused of authoritarianism and corruption”—both barometers of a struggling democracy—elements of “[c]ivil society, social movements, investigative journalists, and normal citizens aided by social media” pushed for the expansion of transparency within Mexico, while the Mexican government sought to co-opt and water down any transparency gains.⁷⁷ Similar stories could be told about transparency

⁷² Michael J. Marcus, *Regulatory Transparency in Japan: Half Full or Half Empty?*, 3 ASIA PERSP. 20 (2001); T.J. Pempel, *Japanese Bureaucratic Transparency*, POLICY BRIEF 2012-4 (2012), https://www.researchgate.net/publication/265241657_Japanese_Bureaucratic_Transparency [<https://perma.cc/ZDZ5-RY6R>].

⁷³ Mary Anne Neilsen, *Public Sector Accountability and Transparency*, in AUSTL. PARLIAMENTARY LIBRARY BRIEFING BOOK (Sept. 2010), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook43p/publicsectoraccountability [<https://perma.cc/VX3S-73S8>].

⁷⁴ *Transparency*, GOV'T OF CAN. (last updated Jan. 30, 2020), <https://www.canada.ca/en/employment-social-development/corporate/transparency.html> [<https://perma.cc/X69H-4FWA>].

⁷⁵ E. Allan Lind, *Transparency, Trust and Public Value*, in OPENING GOVERNMENT: TRANSPARENCY AND ENGAGEMENT IN THE INFORMATION AGE 87, 87 (John Wanna & Sam Vincent eds. 2018); *Declaration on Open and Transparent Government*, N.Z. GOV'T (last updated Jan. 31, 2019), <https://www.data.govt.nz/manage-data/policies/declaration-on-open-and-transparent-government> [<https://perma.cc/DN5A-ELRC>].

⁷⁶ Hyehyun Hong, *The Internet, Transparency, and Government–Public Relationships in Seoul, South Korea*, 40 PUB. REL. REV. 500 (2014); Mark Funkhouser, *South Korea's Street-Level Transparency*, GOVERNING (May 2014), <http://www.governing.com/gov-institute/on-leadership/gov-street-level-transparency.html> [<https://perma.cc/W2CJ-D9J6>].

⁷⁷ Irma E. Sandoval-Ballesteros, *Rethinking Accountability and Transparency: Breaking the Public Sector Bias in Mexico*, 29 AM. U. INT'L L. REV. 399, 427–37 (2014).

advocates supporting initiatives in countries like India,⁷⁸ South Africa,⁷⁹ and Ghana,⁸⁰ among others.

At the same time, international institutions and organizations such as the United Nations, United States Agency for International Development, the World Trade Organization, and the World Bank have strongly supported the adoption of transparency measures in developing countries.⁸¹ These outside organizations pressure developing democracies to embrace transparency—in some cases by making foreign aid and investment contingent on the adoption of specific transparency measures.⁸²

But why, among the various tools available to promote better governance, is transparency so often a priority? Perhaps the answer is that, unlike other key features of thriving democracies, transparency mandates are almost uniquely exportable. Decades of work may be necessary to develop an educated population, a robust press, a judiciary that respects individual rights and the rule of law, a meaningful system of checks and balances, or an active civil society movement. Yet, when things change, they can change quickly: transparency initiatives can be implemented within the term of a single political administration, if the political will exists to do so.

While there is hope that transparency will pay dividends in developing democracies and that it will push these countries along their pathway toward political and economic development, at this point, the hope is just that—a hope. And, though much rides on this hope, it is uncertain whether transparency initiatives will do much good in developing democracies. Given this uncertainty, empirical testing of transparency—as described in Parts II and III—becomes all the more important.

C. *The Skeptic's Response to Transparency Promotion*

In recent years, a new body of work has challenged transparency proponents to rethink what sorts of transparency are worth the costs, when transparency is appropriate, and what level of voluntary disclosure is beneficial. Below, we provide a brief introduction to the literature

⁷⁸ See C. Raj Kumar, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia*, 16 MICH. ST. J. INT'L L. 475, 524 (2008) (noting that India recognized the right to information to promote corruption-free governmental service).

⁷⁹ See Phillips & Stewart, *supra* note 13, at 815–18 (noting that the International Budget Project surveyed South Africa regarding budget transparency).

⁸⁰ Eyram A. Adadevoh, *New Wine in New Wine Skins: The Anti-Corruption Framework of Ghana*, 7 J. WORLD ENERGY L. & BUS. 202, 205–12 (2014) (noting that Ghana passed a Right to Information Bill to promote transparency in 2013).

⁸¹ See *supra* note 13 and accompanying text.

⁸² See *id.*

questioning the implementation and value of modern transparency initiatives.

One line of criticism focuses on the ways that transparency favors societal elites, at the cost of society in general or of the disadvantaged in particular.⁸³ The case for administrative transparency assumes that information released by the government becomes open to the public. However, those with niche but strongly held interests (e.g., a profit motive) are more likely to go through the effort to access and act on disclosed information.

Another critique is that while some level of transparency might prove helpful to the public in an absolute sense, the costs of transparency may ultimately outstrip its benefits.⁸⁴ While the financial cost of compliance with transparency initiatives can be significant, other nonfiscal costs may be incurred as well. For example, transparency could chill internal deliberations, reduce candor, increase posturing, reduce flexibility, and limit the ability of government agencies (and leaders) to evolve in their thinking.⁸⁵

⁸³ See R. DOUGLAS ARNOLD, *THE LOGIC OF CONGRESSIONAL ACTION* 275 (1990) (claiming open meetings laws provide access to lobbyists and “serve to increase the powers of special interests, not to diminish them”); Pozen, *Transparency*, *supra* note 20, at 124–25 (explaining that while public groups were the first to rely on FOIA, “[p]rofit-motivated enterprises, however, soon came to dominate the requester pool”); see also Pozen, *Freedom*, *supra* note 20, at 1112 (arguing that “businesses are [FOIA’s] principal patrons”); Amy E. Rees, *Recent Developments Regarding the Freedom of Information Act: A “Prologue to a Farce or a Tragedy; or, Perhaps Both,”* 44 DUKE L.J. 1183, 1184 (1995) (“In fact, FOIA has rarely if ever been used as a powerful external check on governmental affairs. Rather, the typical FOIA request is made by a wily civil litigant circumventing traditional discovery rules, a corporate counsel in search of competitors’ financial information . . .”).

⁸⁴ David Stasavage, *Does Transparency Make a Difference? The Example of the European Council of Ministers*, in *TRANSPARENCY: THE KEY TO BETTER GOVERNANCE?* 165, 165–66 (Christopher Hood & David Heald eds., 2006) (discussing costs of transparency in international relations); Jacob E. Gersen & Matthew C. Stephenson, *Over-Accountability*, 6 J. LEGAL ANALYSIS 185 (2014) (describing the potential for accountability measures to backfire in representative government, by creating incentives for representatives to make suboptimal choices that they anticipate will be viewed favorably); Andrew Keane Woods, *The Transparency Tax*, 71 VAND. L. REV. 1, 25–38 (2018) (detailing various costs associated with transparency); David E. Pozen, *Deep Secrecy*, 62 STAN. L. REV. 275 (2010) (discussing arguments in favor of governmental secrecy in a variety of contexts and theoretical frameworks); Pozen, *Transparency*, *supra* note 20, at 158–59.

⁸⁵ Fenster, *supra* note 11, at 908 (“Transparency also harms government decisionmaking by adversely affecting the ability of government officials to deliberate over policy matters outside of the public eye, and by curbing or skewing the production of informational goods. Disclosure of documents prepared by government officials may inhibit a president and agency decisionmakers from receiving candid, objective, and knowledgeable advice from subordinates.”); see also *United States v. Nixon*, 418 U.S. 683, 705 (1974) (“Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.”); *In re Sealed Case*, 121 F.3d 729, 750 (D.C. Cir. 1997) (“If presidential advisers must assume they will be held to account publicly for all approaches that were advanced, considered but ultimately rejected, they will almost inevitably be inclined to avoid serious

While transparency proponents might hope to increase trust in government, some critics suggest that the opposite may occur. Providing the public full information about how the government works may, counterintuitively, undermine public trust in government. At some level, the public is frequently disappointed to find out how exactly the metaphorical sausage of government is actually made.⁸⁶

Another critique is less prominent in the literature but may be especially helpful in explaining the results of our experiment. There is a branch of literature focused on the specific context of developing democracies that, without questioning whether increased transparency is desirable to some degree, questions whether transparency alone is sufficient to help improve governance. These critics suggest that transparency in isolation cannot make substantial headway given the interconnected and endemic governance failures with which many developing democracies struggle.⁸⁷

consideration of novel or controversial approaches to presidential problems.”); Simone Chambers, *Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation*, 12 J. POL. PHIL. 389, 389 (2004) (“[T]he ‘glare’ of publicity makes it difficult to argue reasonably.”); Andrea Prat, *The Wrong Kind of Transparency*, 95 AM. ECON. REV. 862 (2005) (detailing a general theory of the ways that transparency might work to demotivate agents in a principal-agent game).

⁸⁶ R. Michael Alvarez et al., *Are Americans Confident Their Ballots Are Counted?*, 70 J. POL. 754, 764 (2008) (highlighting a negative relationship between voter familiarity with voting technology and confidence in elections).

⁸⁷ Arie Halachmi & Dorothea Greiling, *Transparency, E-Government, and Accountability*, 36 PUB. PERFORMANCE & MGMT. REV. 562, 566 (2013) (“Yet it should be noted that transparency is a necessary, but not sufficient, condition for ensuring greater public accountability.”); Ivar Kolstad & Arne Wiig, *Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?*, 37 WORLD DEV. 521, 521 (2009) (“The main conclusions of the paper are that though transparency may affect corruption in several ways, it is insufficient in itself, and needs to be complemented by other types of reforms.”); *id.* at 524 (“Several studies argue, however, that the effect of transparency on corruption is not unconditional. In other words, transparency is a necessary, but not sufficient condition to reduce corruption. In addition to access to information, you need an ability to process the information, and the ability and incentives to act on the processed information.”); Catharina Lindstedt & Daniel Naurin, *Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption*, 31 INTL. POL. SCI. REV. 301, 303 (2010) (“Transparency is no quick fix. In order to do its job with respect to corruption it is dependent on other factors, which may take a long time to improve.”); George M. von Furstenberg, *Hopes and Delusions of Transparency*, 12 N. AM. J. ECON. & FIN. 105, 114 (2001) (“This belief, either based on naïveté or cynical pretense, in the revolutionary power of transparency is entirely misplaced in countries with corrupt, dictatorial, or simply vicious rulers whose subjects cannot act on information about their oppressors no matter how clear and transparent their crimes. Calling for greater transparency of a government sufficiently tyrannical to prevent the people from using information about it would not change anything; it could not empower an effective opposition. Greater transparency thus may or may not be necessary, but it certainly is not sufficient for reform.”).

II. THE TRANSPARENCY HYPOTHESES

In this Part, we lay out two hypotheses tested by our experiment: that administrative transparency increases public participation and that it increases government accountability.⁸⁸ We provide both theoretical and empirical background information about both hypotheses to explain why transparency might be expected to affect each outcome. We should note that both hypotheses have been subjected to only limited or indirect empirical testing, motivating our experiment further. Below, we also review prior empirical testing of information disclosure by third parties and relate it to what is asserted about administrative transparency.

A. *The Public Participation Hypothesis*

Increased administrative transparency is expected to mobilize the public. Many scholars and jurists have argued that transparency allows for observation, and observation informs the need for action and increases its efficacy.⁸⁹ This public participation hypothesis is not a new concept—James Madison argued that “a people who mean to be their own Governors, must

⁸⁸ While many scholars see interrelationships among transparency, participation, and accountability, a number of scholars have explicitly asserted a causal relationship between transparency on one hand and accountability and participation on the other. See, e.g., Carl E. Bruch & Roman Czebiniak, *Globalizing Environmental Governance: Making the Leap from Regional Initiatives on Transparency, Participation, and Accountability in Environmental Matters*, 32 ENVTL. L. REP. 10428 (2002); Elizabeth Figueroa, *Transparency in Administrative Courts: From the Outside Looking In*, 35 J. NAT’L ASS’N L. JUDICIARY 1, 7 (2015) (“[T]ransparency is consistent with the general principle that public officials and civil servants have a duty to act visibly, predictably and understandably to promote participation and accountability.”).

⁸⁹ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”); ALFRED C. AMAN, JR. & WILLIAM T. MAYTON, *ADMINISTRATIVE LAW* 581 (3d ed. 2014) (“Open government is in accord with our basic principles of democracy and the need for citizens to know how their government, in fact, functions. This enables the citizenry to make proper evaluations of the wisdom of governmental uses of power.”); ERNEST GELLHORN & RONALD M. LEVIN, *ADMINISTRATIVE LAW AND PROCESS: IN A NUTSHELL* 153 (5th ed. 2006) (“Effective public and political oversight requires detailed knowledge of agency activities; and without disclosure of records in the government’s possession, citizens may be unable to determine whether the agency is ignoring violations of law.”); Thomas O. Sargentich, *Debates About Openness in Government: Freedom of Information*, in *ADMINISTRATIVE LAW ANTHOLOGY* 209 (Thomas O. Sargentich ed., 1994) (“On the other hand, the public often demands more openness on the part of the government, especially agencies. After all, learning what is happening in agencies is an important first step in developing strategies of response. Also, democratic theory requires a high degree of public knowledge about the workings of government so that the desired processes of dialogue and interaction can occur.”); Steven Aftergood, *Reducing Government Secrecy: Finding What Works*, 27 YALE L. & POL’Y REV. 399, 399 (2009) (“Our political institutions cannot function properly without [sunlight].”); Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2331–32 (2001) (stating that “presidential leadership enhances transparency, enabling the public to comprehend more accurately the sources and nature of bureaucratic power”).

arm themselves with the power which knowledge gives.”⁹⁰ Administrative transparency provides information that helps answer the who, what, when, where, why, and how of participation in government policies, programs, and decision-making. At a societal level, information can create shared knowledge and thereby reduce collective-action costs to mobilize the public.⁹¹ Without transparency, knowledge is diminished, and ignorance works to prevent individual and collective action, facilitating corruption.⁹²

However, a number of scholars have questioned whether transparency actually mobilizes the public. For example, some argue that transparency does not translate into public knowledge and action, just knowledge and action by narrow interests willing to expend the energy to sift through information.⁹³ Probably the most forceful arguments along these lines have been provided by Professors Omri Ben-Shahar and Carl Schneider, who argue that transparency works to overload citizens with information and thereby stunts action while providing certain groups access to information that helps them protect their own narrow interests.⁹⁴

⁹⁰ Letter from James Madison to W.T. Barry (Aug. 4, 1822), in *THE COMPLETE MADISON: HIS BASIC WRITINGS* 337 (Saul K. Padover ed., 1953).

⁹¹ Fenster, *supra* note 11, at 899 (stating “modern political theory and open government legislation” assume that transparency enables “informed individual choice and collective, democratic decisionmaking”); James R. Hollyer et al., *Transparency, Protest, and Autocratic Instability*, 109 AM. POL. SCI. REV. 764, 764–67 (2015); Pozen, *Transparency*, *supra* note 20, at 161 (“Certain forms of transparency concerning the basic contours of government action may well be prerequisites to individual and collective self-determination and can be justified without consequentialist assumptions.”).

⁹² Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29, 41 (2005).

⁹³ ADRIAN VERMEULE, *MECHANISMS OF DEMOCRACY* 181–82 (2007) (discussing how transparency results in lower-quality deliberations and empower “narrow interest groups”); Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L.J. 1490, 1531 (2006) (“But participation has a potential downside that must be addressed squarely: the risk that special interests will take advantage of open decisionmaking processes to distort policy outcomes.”); Fenster, *supra* note 11, at 907–08 (“Frequent FOIA requesters include businesses that seek the records of competitors for commercial motivations, individuals seeking personal and family records from the Social Security Administration for genealogical research, or litigants attempting to circumvent discovery rules in suits against the government.”); Pozen, *Transparency*, *supra* note 20, at 156–58 (arguing that transparency frequently empowers corporate interests at the expense of more public interests); Adam M. Samaha, *Government Secrets, Constitutional Law, and Platforms for Judicial Intervention*, 53 UCLA L. REV. 909, 921 (2006) (arguing that transparency “can facilitate rent-seeking at the expense of the common good”); Martin Shapiro, *Administrative Law Unbounded: Reflections on Government and Governance*, 8 IND. L.J. GLOBAL L. STUD. 367, 372–73 (2001).

⁹⁴ BEN-SHAHAR & SCHNEIDER, *supra* note 16. Ben-Shahar and Schneider’s argument, though framed quite broadly, assumes governments are making enough information available that citizens feel overloaded and probably ought to read as a critique of transparency that causes information overload, rather than transparency itself. *Id.*; see also ARCHON FUNG ET AL., *FULL DISCLOSURE: THE PERILS AND PROMISE OF TRANSPARENCY* 73–74 (2007) (arguing that goals of transparency thwarted by public often misinterpreting information disclosed while other parties use information for private goals like profit);

There has been little empirical study of whether administrative transparency increases public participation. Most experimental studies on the impact of third-party information disclosure focuses on voter behavior, not citizen interactions with bureaucracies.⁹⁵ To the extent that researchers have studied participation in bureaucratic processes, they have focused on citizen attitudes about and perceptions of local officials, not on actions that citizens might take in response to information about the performance of local officials.⁹⁶

Only a small number of studies have focused on aspects of governance other than voting, and some of these were conducted in developed democracies, leaving much empirical work to be done on administrative transparency. Some examples of the sorts of studies that have been completed, however, provide a window into the importance of research into contexts other than voting. Professor Daniel Gingerich, for example, found that public knowledge of higher levels of corruption within government increased participation in anti-government protests.⁹⁷ Professors James Hollyer, Peter Rosendorff, and James Vreeland presented a theoretical model predicting that transparency can increase group protest in autocratic regimes by changing the beliefs of individuals about the probability that others will also participate.⁹⁸ Professor Ben Worthy reviewed the U.K.'s Open Data transparency program, which releases data about public spending, and found

Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 651, 689, 720 (2011) (arguing that the costs of time, effort, and money associated with transparency undermine its potential benefit to citizens); Caroline Bradley, *Transparency Is the New Opacity: Constructing Financial Regulation After the Crisis*, 1 AM. U. BUS. L. REV. 7, 7 (2011) (demonstrating how transparency fails because it provides a limited, but also overwhelming amount of information to citizens); Amitai Etzioni, *Is Transparency the Best Disinfectant?*, 18 J. POL. PHIL. 389, 400 (2010) (arguing that transparency only helps sophisticated parties, who fail to, in turn, adequately advise uneducated consumers based on the information).

⁹⁵ See e.g., Alberto Chong et al., *Does Corruption Information Inspire the Fight or Quash the Hope? A Field Experiment in Mexico on Voter Turnout, Choice, and Party Identification*, 77 J. POL. 55 (2015); Claudio Ferraz & Frederico Finan, *Exposing Corrupt Politicians: The Effects of Brazil's Publicly Released Audits on Electoral Outcomes*, 123 Q.J. ECON. 703 (2008); Rohini Pande, *Can Informed Voters Enforce Better Governance? Experiments in Low-Income Democracies*, 3 ANN. REV. ECON. 215 (2011).

⁹⁶ Jenny de Fine Licht, *Policy Area as a Potential Moderator of Transparency Effects: An Experiment*, 74 PUB. ADMIN. REV. 361 (2014); Stephan Grimmelikhuijsen et al., *The Effect of Transparency on Trust in Government: A Cross-National Comparative Experiment*, 73 PUB. ADMIN. REV. 575 (2013); Stephan G. Grimmelikhuijsen & Albert J. Meijer, *Effects of Transparency on the Perceived Trustworthiness of a Government Organization: Evidence from an Online Experiment*, 24 J. PUB. ADMIN. RES. & THEORY 137 (2012).

⁹⁷ Daniel W. Gingerich, *Corruption and Political Decay: Evidence from Bolivia*, 4 Q.J. POL. SCI. 1 (2009).

⁹⁸ Hollyer et al., *supra* note 91, at 764–67.

little mobilization results from administrative transparency.⁹⁹ Even when it comes to the effect of third-party information disclosure (rather than administrative transparency), much work remains to be done, and better empirical results are needed.

B. *The Accountability Hypothesis*

Another key motivation of advocates of transparency is to give the public a tool to hold the government accountable. Transparency is viewed as a catalyst to action by the public that will lead to greater official accountability.¹⁰⁰ We refer to this notion as the accountability hypothesis.

Generally speaking, administrative transparency comes with knowledge of the functioning of government. This knowledge may allow the public to seek accountability from elected officials and bureaucrats via elections, oversight of agencies, participation in policy and program design, protest, and litigation.¹⁰¹ By encouraging the public to pursue some or all of these channels, administrative transparency might work to reduce corruption,¹⁰² disincentivize self-interested behavior by officials,¹⁰³ expose the role of interest groups in policymaking,¹⁰⁴ and reward more reasoned and socially-optimal policies.¹⁰⁵ Although scholars, judges, and commentators

⁹⁹ Ben Worthy, *The Impact of Open Data in the UK: Complex, Unpredictable, and Political*, 93 PUB. ADMIN. 788 (2015).

¹⁰⁰ CHAYES & HANDLER CHAYES, *supra* note 38, at 22–23; VERMEULE, *supra* note 93, at 182; David Gartner, *Uncovering Bretton Woods: Conditional Transparency, the World Bank, and the International Monetary Fund*, 45 GEO. WASH. INT'L L. REV. 121, 122 (2013); Schauer, *supra* note 11, at 1347–50; Shkabatur, *supra* note 55, at 82–83; Stewart, *supra* note 14, at 258–61.

¹⁰¹ AMAN, JR. & MAYTON, *supra* note 89, at 581 (“[Open government] also, however, is in accord with a healthy sense of distrust of governmental power as well and the need to control agency discretion to ensure that the law is administered properly. In this sense, open government and the publicity that goes along with it provides not only valuable information but a means of effectively constraining government and thus protecting citizens from any potential abuses of governmental power that may exist.”).

¹⁰² See 2 JEREMY BENTHAM & JOHN BOWRING, *Essay on Political Tactics*, in THE WORKS OF JEREMY BENTHAM 301, 310 (William Tait ed., 1843) (1838) (arguing that greater publicity pressures government officials to adhere to their duties); BRANDEIS, *supra* note 1, at 92 (describing transparency as “a remedy for social and industrial diseases”).

¹⁰³ VERMEULE, *supra* note 93, at 179–82 (“Transparency . . . helps to promote impartiality by suppressing self-interested official behavior.”); Elizabeth Garrett & Adrian Vermeule, *Institutional Design of a Thayerian Congress*, 50 DUKE L.J. 1277, 1288–89 (2001).

¹⁰⁴ VERMEULE, *supra* note 93, at 185–86 (“[S]elf-interested agents also have incentives to keep secret some aspects of budgeting that their principals would be eager to monitor—namely, the use of budgets to provide benefits to well-funded and well-organized special interests that will reward lawmakers with campaign funds.”).

¹⁰⁵ ROSE-ACKERMANN, *supra* note 14, at 127–32 (discussing the use of incentives to reduce corruption among elected officials); Joseph E. Stiglitz, *On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life*, in GLOBALIZING RIGHTS: THE OXFORD AMNESTY LECTURES 1999, at 115–16 (Matthew J. Gibney ed., 2003); Kagan, *supra* note 89, at 2331–32.

widely agree that transparency achieves some or all these noble ends, this widespread agreement does not and cannot establish the validity of these assumptions.

While transparency has been exported from more developed democracies to developing democracies through a number of avenues, little is known about how administrative transparency functions in developing democracies, nor whether it provides any measurable benefit. It is often said that correlation is not causation. And indeed, we would expect well-functioning governments in developed democracies to have less to hide and therefore to be more transparent than governments rife with corruption and waste. In the context of developing countries, both transparency and government accountability are elusive. Neither side of this relationship means that transparency causes more accountable governments.

Researchers have conducted studies, even randomized controlled trials, trying to measure the impact of informational disclosure by third parties. As mentioned in Part II, despite some shared attributes with administrative transparency, third-party disclosure is fundamentally different from transparency. Still, the lessons of these information disclosure studies are relevant to our study—not only as background for the reader on our research context, but also because these prior studies helped shape the design of our experiments.

A number of studies in developing democracies have provided evidence that disclosure makes public officials more likely to increase government effectiveness, particularly when the information disclosed is tied to electoral sanctioning. In a seminal study, Professors Ferraz and Finan show that in Brazil, releasing official audits of municipal budgets that exposed corruption before elections decreased the reelection of corrupt local officials.¹⁰⁶ Professors Reinikka and Svensson's research shows that a government-led newspaper campaign in Uganda disclosing education spending to primary schools resulted in reduced corruption and increased funds reaching the schools.¹⁰⁷ Professors Grossman and Michelitch find that an information dissemination campaign resulted in higher legislative performance scores from constituents,¹⁰⁸ suggesting that accountability through information dissemination resulted in more responsive governing by those being held

¹⁰⁶ Ferraz & Finan, *supra* note 95, at 704–05.

¹⁰⁷ See Ritva Reinikka & Jakob Svensson, *Fighting Corruption to Improve Schooling: Evidence from a Newspaper Campaign in Uganda*, 3 J. EUR. ECON. ASS'N 259, 260–67 (2005).

¹⁰⁸ Guy Grossman & Kristin Michelitch, *Information Dissemination, Competitive Pressure, and Politician Performance Between Elections: A Field Experiment in Uganda*, 112 AM. POL. SCI. REV. 280, 280–81 (2018).

accountable. Professors Bjorkman and Svensson find that the disclosure of report cards about health facilities facilitated community monitoring in Uganda, decreased child mortality by 33%, and increased the utilization of health services by local residents.¹⁰⁹ All this suggests that disclosure interventions that help citizens *act* on information about the shortfalls of governments are often effective, though the types of public action in response to information were often not the focus of research.

However, other studies have reported less encouraging results. Professors Humphreys and Weinstein found that disseminating scorecards about the legislative performance of members of parliament seemed to have short-term influence on voter perceptions of incumbents but did not ultimately change voter or politician behavior,¹¹⁰ perhaps because of spin by politicians. Additionally, there is strong evidence that politicians can and have hampered or delayed transparency initiatives when they threaten rents from corruption.¹¹¹

Because so many have put so much stock in the participation and accountability transparency hypotheses, empirical testing of transparency would provide critical insight into important questions in law, governance studies, international development, and public administration. While the logic of these hypotheses resonates with democratic intuition, they remain untested in developing democracies. A better understanding of the impacts of transparency seems relevant not only to many scholars—champions and skeptics alike—but also to the many policymakers, foundations, and institutions of international governance who have rallied around the cause of spreading transparency abroad. The question seems especially relevant for nations and institutions in developed democracies that attempt to export transparency.¹¹² After all, the prospect of limiting aid, trade, and development comes at a significant cost to those who live in developing democracies.

III. DESIGNING A TRANSPARENCY TEST

Much rides on the two transparency hypotheses, particularly in developing democracies where civil society and institutions are weak. Does

¹⁰⁹ Martina Björkman & Jakob Svensson, *Power to the People: Evidence from a Randomized Field Experiment on Community-Based Monitoring in Uganda*, 124 Q.J. ECON. 735, 736 (2009).

¹¹⁰ Macartan Humphreys & Jeremy M. Weinstein, *Policing Politicians: Citizen Empowerment and Political Accountability in Uganda—Preliminary Analysis 3* (Int'l Growth Ctr., Working Paper No. S-5021-UGA-1, 2012), <https://www.theigc.org/wp-content/uploads/2012/03/Humphreys-Weinstein-2012-Working-Paper.pdf> [<https://perma.cc/MM9W-HZEH>].

¹¹¹ Jennifer L. Bussell, *Why Get Technical? Corruption and the Politics of Public Service Reform in the Indian States*, 43 COMP. POL. STUD. 1230, 1237–38 (2010).

¹¹² See *supra* notes 12–14 and accompanying text.

administrative transparency help in those contexts? If so, administrative transparency might help jump-start democracy. If not, it might be better to focus attention and resources for development elsewhere. In this Part, we begin by discussing our research setting and opportunity. We then move on to explain the design of our two experiments and discuss features of the design relevant to each of the transparency hypotheses.

A. Project Setting and Opportunity

In order to test transparency, a research opportunity required identifying a government willing to increase transparency of its actions along with a willingness of that government to somehow randomize the transparency it provides and a commitment to cooperate with researchers to study transparency's effects. Fortunately, those stars did align in a collaborative research project we performed with the management of a development program in Uganda's Bwindi Impenetrable Forest National Park.¹¹³ While the Park itself draws tourists from all over the world, the nearly one hundred villages bordering the Park are severely impoverished, with an average household of seven people earning less than a dollar a day.¹¹⁴ The Park shares a percentage of the fees collected from tourists with these poor communities to fund local development projects, such as purchasing livestock (such as chickens or goats) for village residents, building or improving roads, constructing schools, installing water tanks, and planting tea plants and thorn bushes up to the forest edge to prevent animal incursions.

While the potential impact of these development projects is appreciated by local people, difficulties plague the government's program for delivering projects. Planning is not always equitable, and beneficiaries are not always designated fairly.¹¹⁵ During implementation, the misdirection of funds and

¹¹³ We developed a relationship with the Park over the course of years. The relationship began with an offer to help with policy issues on a volunteer basis by one of the coauthors. Over time, it has grown into an ongoing research endeavor that is guided by the researchers and Park leaders finding areas of common interest and cooperating to both pursue worthwhile research and further the reach of Park management to address practical challenges.

¹¹⁴ Andrew Masinde, *Bwindi Hospital Puts Food on the Table of Undernourished Batwa*, NEW VISION (Aug. 29, 2013), https://www.newvision.co.ug/new_vision/news/1330344/bwindi-hospital-food-table-undernourished-batwa [https://perma.cc/XME4-SXFD].

¹¹⁵ Karen Archabald & Lisa Naughton-Treves, *Tourism Revenue-Sharing Around National Parks in Western Uganda: Early Efforts to Identify and Reward Local Communities*, 28 ENVTL. CONSERVATION 135, 143–44 (2001); Ann Laudati, *Ecotourism: The Modern Predator? Implications of Gorilla Tourism on Local Livelihoods in Bwindi Impenetrable National Park, Uganda*, 28 ENVTL. & PLANNING D: SOC. & SPACE 726, 729–30 (2010); David Mwesigye Tumusiime & Paul Vedeld, *False Promise or False Premise? Using Tourism Revenue Sharing to Promote Conservation and Poverty Reduction in Uganda*, 10 CONSERVATION & SOC. 15, 21–25 (2012).

corruption creates additional challenges.¹¹⁶ The money passes through several layers of government from the time it leaves the national government's coffers until it reaches local people.¹¹⁷ Specifically, under Ugandan national guidelines, to fund local development projects, the Park passes money to the district levels of government (akin to states in the United States), districts pass it on to subcounties (akin to counties in the United States), and subcounties work with village-level committees to select contractors, then disperse the money to complete projects.¹¹⁸

Traditionally, the Park has attempted to provide a degree of transparency by releasing funds to other levels of government publicly, in the presence of leaders from all affected levels of government.¹¹⁹ However, the specific amount of funds transferred to each village was not disclosed to ordinary residents of the local communities. Thus, as money disappeared and mismanagement occurred, there was no way for residents to recognize funds were missing, though, as we would later learn from residents we encountered, they frequently suspected foul play.

When funds for local development projects do not make it to the local level, it poses problems not only for the villages, but for the Park as well. Funding local development projects helps the Park foster goodwill.¹²⁰ That goodwill is critical because the Park relies on local cooperation to fulfill its conservation mission. The Park's rangers cannot regularly monitor even major threats to forest resources, like poaching and logging. In fact, the dense forest vegetation makes it hard for them to detect illegal activities even when they are in the vicinity. Without goodwill, preventing practices such as trapping and timber harvesting by local people is even more difficult. Additionally, besides these development projects, the most visible presence of the Park is a contingent of armed forest guards stationed around the Park

¹¹⁶ PHIL FRANKS & MEDARD TWINAMATSIKO, LESSONS LEARNT FROM 20 YEARS OF REVENUE SHARING AT BWINDI IMPENETRABLE NATIONAL PARK, UGANDA 32–33 (2017), https://www.researchgate.net/profile/Medard_Twinamatsiko/publication/322244006_Lessons_learnt_from_20_years_of_revenue_sharing_at_Bwindi_Impenetrable_National_Park_Uganda/links/5a4dcfb0f7e9b8284c54df1/Lessons-learnt-from-20-years-of-revenue-sharing-at-Bwindi-Impenetrable-National-Park-Uganda.pdf [<https://perma.cc/UEA5-5HY5>]; Wilber Manyisa Ahebwa et al., *Tourism Revenue Sharing Policy at Bwindi Impenetrable National Park, Uganda: A Policy Arrangements Approach*, 20 J. SUSTAINABLE TOURISM 377, 386–89 (2012); Archabald & Naughton-Treves, *supra* note 115, at 143–44; Tumusiime & Vedeld, *supra* note 115, at 21–25.

¹¹⁷ Ahebwa, *supra* note 116, at 386–89.

¹¹⁸ UGANDA WILDLIFE AUTH., GUIDELINES FOR REVENUE SHARING BETWEEN WILDLIFE PROTECTED AREAS AND ADJACENT LOCAL GOVERNMENTS AND COMMUNITIES 14 (2013).

¹¹⁹ We gleaned this information from conversations with both Park officials and local people—the intended beneficiaries of the development projects. The Park continued this practice during the period of our experiments as well.

¹²⁰ Ahebwa, *supra* note 116, at 386.

in significant part to monitor the use of the Park by local people, which predictably evokes negative feelings from the nearby residents.

When we first met the Park's leadership in 2012, they expressed a desire to increase the percentage of funds expended that actually benefited local people. We asked Park managers what they thought would help. They told us they desired more interaction with local villages. This included providing increased transparency about the Park's revenue-sharing program. Transparency caught our interest: why had the Park not already provided transparency about the administration of the revenue-sharing program?

The first difficulty the Park's leaders mentioned was that the poor quality of the roads in and around the Park made it difficult for local people to access Park headquarters and for the Park's staff to access the villages in the area. All the roads were unpaved, and many were built on steep mountain terrain. Sometimes roads made their way through dense forests, and sometimes they went long distances to avoid doing so. Additionally, the torrential storms of the rainforest regularly washed out the roads, making them impassible for long periods of time.

Second, we learned that not all the villages eligible for revenue sharing are even on a road. Reaching some of them requires hiking several hours up and down steep slopes. This means that Park rangers have only infrequent contact with residents in many villages, stifling the flow of information that might help residents participate and hold officials accountable.

Third, until recently, very few people in the villages had access to long distance communication beyond a community radio, which made it challenging to transmit village-specific information about project planning or implementation. Even as cell phone technology has become more common, most phone users do not have phones capable of accessing the internet—and even if they do, the users generally cannot afford to go online frequently.

Fourth, the Park faced tight timelines from the time that officials in Kampala put money for local development projects on the books of the Park to the time those funds ought to be dispersed. With the limited resources the Park had, it could not visit each village and explain to the residents what to expect (and therefore what to monitor for in terms of corruption).

We agreed with the Park that we would build a communication network that would allow dissemination of targeted, village-specific information to residents around the Park who are eligible to benefit from revenue sharing. While we believe that this partnership between researchers and managers of a national park was the first of its kind, researchers have suggested, in other contexts, that ubiquitous mobile phones even in the poorest countries might

decrease barriers of cost, distance, time, and processing that limit information access by the public.¹²¹

In the Park, we also found a government partner who was anxious to work with us to test strategies for improving the planning and delivery of revenue-sharing projects. In order to test transparency, we needed to compare a treatment group (i.e., those receiving additional transparency) with a control group (i.e., those not receiving additional transparency). Our partner would need to make new information available to the public in randomly-assigned villages through the platform we developed. Ultimately, the Park's leaders wanted to know if the transparency intervention worked, as such evidence could help with decisions about how to invest in technologies that could facilitate transparency across the national parks system. Some staff strongly favored more transparency and were skeptical about randomizing it to only some places, but these Park officials agreed that transparency for some was better than transparency for none, particularly when we emphasized the value of learning for future investments and efforts.

We ended up with a subscriber base of about 3,000 residents living in villages surrounding the Park for our first experiment on planning and recruited another 3,000 (for a total of approximately 6,000 residents) for our second experiment on accountability. The subject pool was drawn from ninety-one villages surrounding the Park that are eligible for revenue sharing, each averaging about 200 households. We estimate that transparency messages were reaching about 7.5% of households in our first phase of research and about 15% in the second phase.

¹²¹ John C. Bertot et al., *Using ICTs to Create a Culture of Transparency: E-Government and Social Media as Openness and Anti-Corruption Tools for Societies*, 27 GOV'T INFO. Q. 264, 268 (2010) (discussing how information and communication technologies are seen as cost-effective and convenient methods to promote openness and transparency for the public); Robert I. Rotberg & Jenny C. Aker, *Mobile Phones: Uplifting Weak and Failed States*, 36 WASH. Q. 111, 114–16 (2013).

B. Experimental Design

1. General Research Design

Even though randomized controlled trials are often touted as “the gold standard” in testing causal evidence by scholars¹²² and jurists,¹²³ they are extremely rare in legal scholarship.¹²⁴ This is because, despite their value,

¹²² See David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 211, 218–220 (3d ed. 2000) (explaining that “[c]ontrolled experiments are ideally suited for demonstrating causation” and “inferences based on well-executed randomized experiments are more secure than inferences based on well-executed observational studies”); Michael Abramowicz et al., *Randomizing Law*, 159 U. PA. L. REV. 929, 933–34 (2011) (proposing that administrative law analyses make greater use of randomized control trials to evaluate impacts of agency actions); D. James Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1140 (2017) (discussing how randomized controlled trials are the “gold standard” for investigating interventions); Daniel Martin Katz, *Quantitative Legal Prediction—Or—How I Learned to Stop Worrying and Start Preparing for the Data-Driven Future of the Legal Services Industry*, 62 EMORY L.J. 909, 950 (2013) (calling randomized controlled trials the gold standard for testing new phenomena in a particular environment).

¹²³ See *In re Mirena IUS Levonorgestrel-Related Prods. Liab. Litig.* (No. II), 341 F. Supp. 3d 213, 227 (S.D.N.Y. 2018) (“A randomized control study is widely considered the gold standard of human studies.”); *Mullins v. Premier Nutrition Corp.*, 178 F. Supp. 3d 867, 882 (N.D. Cal. 2016) (“Randomized clinical trials are ‘the gold standard for determining the relationship of an agent to a health outcome.’” (quoting Michael D. Green et al., *Reference Guide on Epidemiology*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 549, 555 (3d ed. 2011))); *United States v. Harkonen*, No. C 08-00164 MHP, 2010 WL 2985257, at *3 (N.D. Cal. July 27, 2010) (“Randomized, double-blind, placebo-controlled studies represent the ‘gold standard’” (quoting *In re Neurontin Mktg., Sales Practices, & Prods. Liab. Litig.*, 612 F. Supp. 2d 116, 125 (D. Mass. 2009))); *In re Neurontin Mktg. & Sales Practices Litig.*, No. 04-cv-10981-PBS, 2010 U.S. Dist. LEXIS 12737, *49 (Feb. 12, 2010) (“Experts must accord appropriate weights to different levels of evidence, i.e. a randomized, controlled trial, as the ‘gold standard’ of evidence, must be accorded greater weight than observational, non-controlled studies or case reports.”); *In re Neurontin Litig.*, 612 F. Supp. at 125 (calling “double-blind, placebo-controlled [studies]” “the ‘gold standard’” (quoting Green et al., *supra*, at 338)); *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1173 (N.D. Cal. 2007) (calling randomized control trials the gold standard “for determining whether a drug is related to the risk of developing an adverse health outcome”); *Casey v. Ohio Med. Prods.*, 877 F. Supp. 1380, 1385 (N.D. Cal. 1995) (stating case studies are not a substitute for controlled studies or trials).

¹²⁴ We completed a search on LexisNexis and found the vast majority of references to randomized control trials referred to those articles. The law review articles we found which conducted a randomized controlled trial (not all of these focused their paper on the trial) were fewer than three dozen. Some of the most interesting studies included the following: Anthony A. Braga et al., *The Effects of Body-Worn Cameras on Police Activity and Police-Citizen Encounters: A Randomized Controlled Trial*, 108 J. CRIM. L. & CRIMINOLOGY 511 (2018); Nélío Brazão et al., *Promoting Emotion and Behavior Regulation in Male Prison Inmates: A Secondary Data Analysis from a Randomized Controlled Trial Testing the Efficacy of the Growing Pro-Social Program*, 42 LAW & HUM. BEHAV. 57 (2018); D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012); D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013); D. James Greiner, *What We Know and Need to Know About Outreach and Intake by Legal Services Providers*, 67 S.C. L. REV. 287 (2016); Daniel E. Ho, *Does Peer Review Work? An Experiment of Experimentalism*, 69 STAN. L. REV. 1 (2017); Dalié Jiménez et al., *Improving the Lives of Individuals in Financial Distress Using a Randomized Control*

they are very difficult to deploy, particularly in policy settings. They not only take careful research design and demanding statistical analysis but can also take immense effort and resources.¹²⁵

The opportunity to randomly assign transparency is the most critical design feature in our tests, both in terms of fortune in finding a willing government partner and in its importance for drawing robust causal inferences. Since the two randomly-assigned groups are similar in expectation on measurable and unmeasurable factors, a randomized trial allows us to attribute any differences between treatment and control groups to the treatment variable (in our case transparency).¹²⁶

Since the Park-funded projects are proposed, approved, and implemented at the village level, we used villages as the unit of randomization. Approximately half of the villages were randomly assigned to receive the treatment messages (i.e., additional transparency), while the other half received messages from a local hospital promoting health as a placebo. Placebo messages with information on public health were used instead of no messages to ensure that we were not just measuring the effects of more contact from an external institution.

We filed a plan for analysis of our data prior to assigning the treatment or collecting outcome data.¹²⁷ We followed our pre-specified analytical

Trial: A Research and Clinical Approach, 20 GEO. J. POVERTY L. & POL'Y 449 (2013); Fernanda S. Rossi, et al., *Detection of Intimate Partner Violence and Recommendation for Joint Family Mediation: A Randomized Controlled Trial of Two Screening Measures*, 21 PSYCHOL. PUB. POL. & L. 239 (2015). Even though law review articles frequently cite to randomized controlled trials, we contend that legal scholars have not paid enough attention to legally relevant randomized control trials found in social science literature.

¹²⁵ This study, for example, required finding, training, and stationing a project manager in the field for almost two years, ten international trips by the authors, the help of dozens of students both on the ground in Uganda and in the United States, meeting with and securing cooperation of a number of officials with foreign government agency, obtaining approvals from institutional review boards (which are designed to protect the interests of human subjects) both in the United States and abroad, securing government licenses and permits, seeking grants to pay for our numerous expenses, and much more.

¹²⁶ The explanation provided here is extremely simplified. For the leading commentaries on randomized controlled trials most applicable to the law and social sciences, particularly focused in developing countries, see ALAN S. GERBER & DONALD P. GREEN, *FIELD EXPERIMENTS: DESIGN, ANALYSIS, AND INTERPRETATION* (2012); RACHEL GLENNERSTER & KUDZAI TAKAVARASHA, *RUNNING RANDOMIZED EVALUATIONS: A PRACTICAL GUIDE* (2013); James N. Druckman et al., *The Growth and Development of Experimental Research in Political Science*, 100 AM. POL. SCI. REV. 627 (2006); Macartan Humphreys & Jeremy M. Weinstein, *Field Experiments and the Political Economy of Development*, 12 ANN. REV. POL. SCI. 367 (2009); Steven D. Levitt & John A. List, *Field Experiments in Economics: The Past, the Present, and the Future*, 53 EUR. ECON. REV. 1 (2009).

¹²⁷ Registering pre-analysis plans is meant to provide honesty among researchers about the hypotheses they set out to test and the methods they intend to use. It is an important tool to reduce post hoc culling of data to fish for results. For more information about registering pre-analysis plans and the

choices in estimating main effects, which helps guard against the possibility of searching for results using different analytical procedures. In particular, we relied on two types of analytical techniques. In this Article, we focus on a simple difference between treatment group and control group means without further adjustment for covariates.¹²⁸ This provides for unbiased estimation of effects in a randomized trial (note that this is not the case for observational studies where treatment and control groups are likely to be different in expectation). Indeed, one of the benefits of randomly assigning treatment is that analytical techniques need not be complicated to uncover unbiased effects with a causal interpretation.

For some extensions and robustness checks, we also performed ordinary least-squares (OLS) regressions for each of the outcomes we measured, using the following estimating equation:

$$y_{ij} = \alpha + \tau_1 t_j + \beta X_i + v_h + \epsilon_h$$

where y_{ij} is the outcome for individual i in village j , α is a regression intercept, τ_1 is an estimate of the treatment effect, t_j is a binary treatment indicator that is positive when village j is treated, β is a vector (series) of coefficients on the covariates (personal characteristics) for individual i , X_i is a matrix (X-by-n dataset) of covariates (characteristics measured at baseline) for individual i (including, most importantly, the baseline measurement of the variable being tested), v_h is a measure of fixed effects for the individual's subcounty h , and ϵ_h is a clustered error term for subcounty h .¹²⁹ We estimated a separate regression for each outcome of interest using this equation.¹³⁰ Note that the OLS regression should provide the same answer for treatment effects as a difference-in-means analysis in expectation, but with more precision in errors, since this approach models the variation in outcomes associated with other covariates and fixed effects.

In addition to randomizing on the village level, to account for factors that could impact outcomes at the subcounty level (which is a higher level of governance than the village level), we blocked the randomization on the

purposes for registering them, see *Registration*, EVIDENCE GOVERNANCE & POL., <http://egap.org/content/registration> [<https://perma.cc/2F2F-TUSA>]; see also Mark Buntaine et al., *Does Transparency Educate and Mobilize Citizens? A Field Experiment with Revenue-Sharing Funds in Bwindi National Park, Uganda: A Pre-Analysis Plan for Phase I*, EVIDENCE GOVERNANCE & POL., 20160517AD (2016) [hereinafter Buntaine et al., *Pre-Analysis Plan*], <https://egap.org/file/1327/download?token=p8c7OzaE> [<https://perma.cc/T8RL-K8YM>].

¹²⁸ Buntaine et al., *Pre-Analysis Plan*, *supra* note 127, at 9.

¹²⁹ Note that the clustering of standard errors is irrelevant in our empirical analysis, since we report sharp null standard errors from randomization inference, as described in our pre-analysis plan. *Id.*

¹³⁰ Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 413 (explaining that the main specification for estimating individual-level treatment effects is an OLS regression).

subcounty level, which ensures a balance of treatment and control units within blocks and maximizes the statistical power to detect effects. Multiple villages receive funds for development projects from the same subcounty. Since a common problem might present similar problems to all the villages receiving funds within a subcounty (e.g., mismanagement or corruption), village level outcomes may be impacted by this clustering. Similarly, villages in each subcounty have similar geographic location and constraints, which may predict levels of participation in revenue sharing. In cases where subcounties had an odd number of villages, the final village had an equal chance of being assigned treatment or control.

Through our research design, we also estimated spillover effects between treatment and control villages: would providing one village transparency result in a nearby village also receiving the information and thereby having different outcomes? Certainly, there is a lot of interaction between people from different villages, so we had to worry that these interactions might contaminate the control group. To account for this possibility, we performed a robustness check of our analysis by including a variable for the treatment status of geographically contiguous villages and interacted it with the indicator for the direct treatment status. We also performed other robustness checks by increasing the bounds of continuity, but the tests did not provide any consistent evidence of spillover in our data, and modeling to control for potential spillover did not alter our conclusions.¹³¹

2. *Research Design for the Participation Hypothesis*

Our test of the participation hypothesis was intended to provide evidence on the effect of administrative transparency on citizen participation. In creating and interpreting our test, we tried to understand the causal chain between administrative transparency and citizen participation. To do this, we drew on and modified the model of participation described by Professors Lieberman, Posner, and Tsai, which examines the impact of different kinds of information on people's perceptions about the value of participation in public affairs.¹³²

As Figure 1 illustrates, transparency messages might include two different kinds of information relevant to participation. First, it could inform people how to become involved—including where and when meetings were

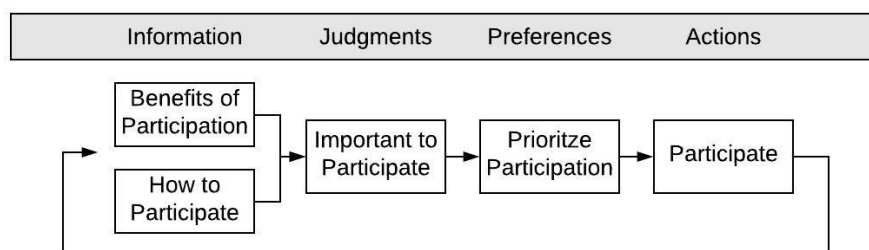
¹³¹ We provide a more complete explanation of our methods in our two other papers about this work. See *id.* at 412–13; Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31, at 18. Note that both papers have extensive associated appendices.

¹³² Evan S. Lieberman et al., *Does Information Lead to More Active Citizenship? Evidence from an Education Intervention in Rural Kenya*, 60 *WORLD DEV.* 69, 74–76, 81 (2014) (finding no substantial impact on any of a range of outcomes associated with public or private citizen activism).

held, the rules governing the meetings, and how to participate at the meetings. Second, transparency could provide information to help individuals understand the value of participation.

The first type of transparency information might increase participation by reminding the person about opportunities to participate and removing logistical obstacles to participation. The second type of transparency information might increase participation by altering the judgments people make about the value of participation. Information provided through transparency can communicate to recipients that their participation is important—that they can contribute to a process that matters. This understanding might, in turn, affect a person’s preferences and cause her to prioritize participation over other competing uses of her time. Acting on those preferences would then lead to increased participation. That participation would then provide opportunities to learn about other participation opportunities, which in turn might shape future judgments, preferences, and actions.

FIGURE 1: ASSUMPTIONS UNDERLYING THE PARTICIPATION HYPOTHESIS



Over an eight-month period, we worked with the Park to craft and then send to all individuals in treatment villages SMS text messages with pertinent and timely information detailing various aspects of the Park’s local development program. The messages focused both on the logistical aspects of participating in project planning and the value of citizen participation. Messages about logistics included suggestions about whom to contact for information about planning meetings, how to find out where and when a meeting would be held, and the role of locally-selected committees in putting together proposals for the Park. Messages that highlighted the benefits of participating in local planning meetings focused on the purpose of those meetings—the selection of local development projects. Because projects would be proposed by local people and were meant to benefit them, the

planning process would provide obvious and concrete ways that a potential participant might benefit.¹³³

Much of this information was only made available to residents through the treatment messages, though some of it might have been available through village leaders or otherwise present in local knowledge from past years' planning processes.¹³⁴ The messaging platform provided the first consistent, regular source of information about the planning process available in this area.

We examine the impacts of these transparency messages on participation in two ways. First, we reviewed attendance rolls for each of the villages and also asked respondents to self-report their participation in community meetings. Second, we surveyed all individuals in our subject pool (both treatment and control) before sending treatment messages (i.e., baseline surveys) and then again after the treatment period when the planning process had ended (i.e., endline surveys). These survey measures included questions related to subjects' perceptions: whether individuals felt there were opportunities to contact the Park about revenue sharing and whether they agreed that people like them had opportunities to participate effectively in planning. Using these measures, we were able to estimate the impact of transparency on individual-level outcomes related to participation and, because of the randomization, infer that any observed differences between treatment and control groups were due to the transparency messages.

3. *Research Design for the Accountability Hypothesis*

The literature on administrative transparency and accountability suggests that unless information disclosure is both *targeted* and *actionable* (i.e., it allows citizens to more clearly see how government actions implicate their interests and also how citizens can use the information to promote their own interests), interventions often struggle to drive impact.¹³⁵ Most information disclosure experiments in the developing world focus on elected

¹³³ We recognize the argument that our messages were dissimilar to most transparency initiatives in nontrivial respects: the information was culled for and then delivered to the public by our messaging system, not directly by government. Still, those receiving the messages were informed that our messaging system—though independent from the government—was still acting as conduit to disperse information for the government.

¹³⁴ Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 411 (explaining that the messages sent by the Bwindi Information Network went out during the planning phase of the revenue-sharing program).

¹³⁵ See generally Stephen Kosack & Archon Fung, *Does Transparency Improve Governance?*, 17 ANN. REV. POL. SCI. 65, 83–84 (2014) (analyzing sixteen studies and arguing the studies suggest transparency interventions will have greater success when they provide information and a course of action to address problems).

officials.¹³⁶ We recognized that tools for holding bureaucrats accountable would necessarily differ from those for holding elected politicians accountable. In particular, bureaucrats do not face reelection, and so the tools for holding them accountable must address other incentives, like career progression, job security, and professional prestige.

The model of administrative accountability that reflects our understanding of how administrative transparency creates government accountability grows out of the insight that “[t]he diffusion of power carries with it a diffusion of accountability.”¹³⁷ When many people have responsibility for administering public programs, it is more difficult to hold any one person accountable for problems. Without transparency, citizens do not know *whom* to hold to account, let alone the outcomes they are responsible for, which unsurprisingly results in disengagement and inaction. Officials blame each other for problems, and the concerns of citizens are passed off with nobody ultimately claiming responsibility. As Hamilton put it in *The Federalist Papers*, when a number of officials share overlapping and diffuse duties in an area of administration, we struggle to “determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall.”¹³⁸

Providing transparency that sets expectations for citizens about what government ought to be doing can help surface information about specific problems. In turn, information about specific problems might heighten the duty to act by officials. We might posit that officials are more likely to pass blame about general problems but will need to act on specific problems identified by citizens to be in their area of authority. Thus, transparency about both the government performance and the expectations citizens should have for government could in turn produce demands for accountability. It could also produce information about specific problems that could clarify and highlight the responsibility of government officials to respond.

This idea that more information changes the standard for judging accountability is what gave punch to Senator Howard Baker’s famous question about Watergate: “What did the [P]resident know, and when did he know it?”¹³⁹ The principle that possession of information triggers specific

¹³⁶ See *supra* notes 106–109 and accompanying text.

¹³⁷ *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 497 (2010).

¹³⁸ THE FEDERALIST NO. 72, at 476 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

¹³⁹ Connie Cass, *Remembering Howard Baker, Whose Famous Question Embodied the Watergate Hearings*, PBS NEWS HOUR (June 26, 2014, 5:59 PM), <https://www.pbs.org/newshour/politics/remembering-howard-baker-whose-famous-question-embodied-watergate-hearings> [https://perma.cc/EZ4S-BNYC].

duties is prevalent in the law—information can create duties to disclose,¹⁴⁰ duties to warn,¹⁴¹ and duties of care.¹⁴² Consistent with this theory, Professors Leslie Schwindt-Bayer and Margit Tavits argue that the key to stemming corruption in developing democracies is clarifying the responsibilities of officials.¹⁴³ We expect that citizens will be more likely to provide information about specific problems and seek accountability when they know what they should expect from government. In turn, it will be easier to clarify responsibility and instigate action when officials have knowledge of specific problems.

In developing our research design, we considered how transparency messages that told residents about their approved projects could trigger accountability. In particular, this meant making sure that the official charged with overseeing the local development projects understood that a failure to act on specific problems brought to light by people who knew what to expect would reflect poorly on him or her by at least the community and perhaps by

¹⁴⁰ See, e.g., *Chiarella v. United States*, 445 U.S. 222, 227 (1980) (holding that a duty to disclose “arose from (i) the existence of a relationship affording access to inside information intended to be available only for a corporate purpose, and (ii) the unfairness of allowing a corporate insider to take advantage of that information by trading without disclosure”); *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank, Nat’l Ass’n*, 731 F.2d 112, 123 (2d Cir. 1984) (“During the course of negotiations surrounding a business transaction, a duty to disclose may arise . . . where one party possesses superior knowledge, not readily available to the other, and knows that the other is acting on the basis of mistaken knowledge.”); *Goodman v. Kennedy*, 556 P.2d 737, 745 (Cal. 1976) (A duty to disclose “may exist when one party to a transaction has sole knowledge or access to material facts and knows that such facts are not known to or reasonably discoverable by the other party.”).

¹⁴¹ See, e.g., STUART M. SPEISER ET AL., 6A AMERICAN LAW OF TORTS § 18:349 (2019), Westlaw AMLot (explaining that for the duty to warn in allergy tort cases, “[s]ome older decisions state that the defendant must have actual knowledge However, other cases hold the defendant to a duty to warn of a danger the defendant should know about as an expert, regardless of his or her actual knowledge” (footnotes omitted)); *Little v. Liquid Air Corp.*, 952 F.2d 841, 850 (5th Cir. 1992) (stating the law that there existed a “duty to warn of *all* dangers of which [people] had actual or constructive knowledge”); *Zipkin v. Rubin Constr. Co.*, 418 So. 2d 1040, 1044 (Fla. Dist. Ct. App. 1982) (“[S]uperior knowledge of the danger is essential before there is a duty to warn.”).

¹⁴² See, e.g., *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 223 (Tex. 2002) (“[F]or almost a century, the law in Texas has been that absent actual knowledge, utilities are not liable for dangerous conditions on customers’ property—the duty of care generally ends at the meter box.”) (footnote omitted). For other states with the same duty of care law, see *id.* at 224 n.9.

¹⁴³ LESLIE A. SCHWINDT-BAYER & MARGIT TAVITS, CLARITY OF RESPONSIBILITY, ACCOUNTABILITY AND CORRUPTION (2016); see also Margit Tavits, *Clarity of Responsibility and Corruption*, 51 AM. J. POL. SCI. 218, 218, 227 (2007). The authors theorize that different types of political institutions in democracies lead to different levels of corruption, based on the extent to which responsibility for public policy outcomes is clear. *Id.* at 218. Because curbing corruption requires voters to punish the misuse of public office in democracies, when voters are unable to pinpoint the source of failures in governance, the main mechanism that might ensure accountability breaks down. *Id.* at 220. In particular, the authors find that clear majority control of policy, low cabinet turnover, long cabinet duration, and low opposition influence over policy are associated with less corruption. *Id.* at 227.

those charged with supervising the official. Key to doing this would not only involve bringing information to those with duties to address problems, but also ensuring they knew their shirking was visible. This meant making it clear that other officials were aware that the responsible official knew about specific problems, and that the official should be acting on problems. By clarifying to all parties—the public, responsible officials, and related officials—expectations for what public programs should deliver, we predicted that delivery of local development projects would improve.¹⁴⁴

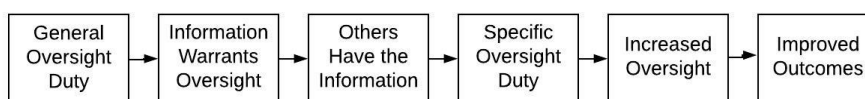
As illustrated in Figure 2, in transforming the theory of bureaucratic accountability into a testable accountability hypothesis, we focused on creating a transparency message that communicated to the public what public officials should deliver if they were doing their jobs effectively. The public official role we focused on was the district chief administrative officer, who has the duty to oversee funds allotted for local development projects, which are mostly managed by the subcounty below the level of district. In order to transform a chief administrative officer's diffuse duty to provide oversight into a more particular duty to address problems in implementation, we presented official information that both (1) would trigger a duty of the official to act; (2) let him know that other high-ranking national officials (i.e., the chief warden of Bwindi National Park) were aware of the fact that he was in possession of the information that triggered the duty; and (3) the public knew about what they should expect if their local development project was implemented well.

To do this, we sent information to subjects once the Park transferred money to the district for their local development project. In particular, we sent messages to residents in treatment villages about the sort of development projects the Park had funded for their communities and the amount of money that their community would have to implement the project. We also followed up with the treated subjects. We told them about the procedures for resolving problems that they had identified with the implementation of their local development project, who and how to contact about problems, and how to file an official complaint with the chief administrative officer about corruption or mismanagement by the contractor charged with delivering the project or with subcounty government officials.

¹⁴⁴ One complication of our test of the accountability hypothesis is that while the Park desired transparency, its disclosure of information in many ways allowed the public to infer bad actions from individuals in different levels of government, even though those other levels of government were themselves providing transparency. While we recognize this complication in our experimental design, it is important to recognize that, in many cases where transparency exposes bad actors, the bad actors themselves have not put the transparency initiative in place and may even work to undermine the transparency that ultimately exposes them.

Because we worried that local people might be hesitant to file complaints, we also surveyed subjects every two weeks and asked them if they had seen evidence of any progress on local development projects. We then compiled the results of these polls and created reports updating the district chief administrative officers about problems reported by the public. To make these reports salient to the chief administrative officer, we worked with the head official of the Park, the chief warden, who certified the reports, attached a cover letter, and had the reports hand-delivered by Park staff to the office of each district's chief administrative officer. The chief warden also called each district chief administrative officer and confirmed the delivery of the first report and offered to answer any questions they might have about the report. Figure 2 shows the hypothesized causal chain for the chief administrative officer, who provides oversight.

FIGURE 2: THEORETICAL FRAMEWORK UNDERLYING THE ACCOUNTABILITY HYPOTHESIS



We wanted each district chief administrative officer to understand three things: (1) that problems existed in projects that the chief administrative officer oversaw; (2) that members of the community had reported these problems and knew that there were deviations from the outcome that they should expect; and (3) that the chief warden understood these problems existed and was asking the chief administrative officer to act. We expected that the common knowledge of expectations and problems through transparency would set this logic into motion for the chief administrative officers.

We designed our treatment—across multiple vectors—to make the case to district chief administrative officers that they had a specific duty to provide oversight and remedy discrete problems. While we could not measure what was going on in the minds of the chief administrative officers, we performed audits to see which projects were delivered. We conducted these audits several months after projects had been approved and funds allocated. Each village was audited for progress on their project, and interviews with at least ten individuals in each village were collected. These audits and surveys were used to measure the causal impact of the transparency efforts and community monitoring on the successful implementation of the projects, as well as to measure differences in levels of overall satisfaction between treatment and control villages about local

development projects. The questions asked to measure satisfaction about the revenue-sharing program are the same as those asked in the participation experiment.

IV. RESULTS OF THE TRANSPARENCY TESTS

In this Part, we present the most important results of our tests of transparency. In contrast to the prior articles we have written on this experiment,¹⁴⁵ we focus here on the results with the most relevance to the two main hypotheses about transparency. Additionally, to provide context for our findings, we also provide a number of qualitative results for the first time. We begin by discussing results relating to the participation hypothesis and then move on to discuss results for the accountability hypothesis.

A. Results of Testing the Participation Hypothesis

Our results can be divided into two parts. The first, which are given more credence, are those based on analyses that we intended to conduct at the outset of the experiment. In order to help eliminate questionable practices like data mining, the best practice in social science research is to file a pre-analysis plan. The plan details the overall research design, what measurements will be taken, and what analyses will be conducted.¹⁴⁶ The second type of results are those that were beyond the scope of our pre-analysis plan. These include additional statistical analyses as well as qualitative research designed to help us understand our results. Such results, while still important, should be considered more exploratory.

After all our efforts, when we gathered the data and conducted the empirical analysis of the measurements called for in our pre-analysis plan, we found no evidence to support the idea that transparency increased participation. In fact, on one measure—a self-assessed measurement about whether a subject felt he or she had an opportunity to participate—we observed what seemed to be a mild backfire effect, meaning those who received treatment were less likely to feel that they had an opportunity to participate effectively. Along all other measurements, the transparency intervention we employed failed to increase individuals' participation in the planning and implementation of revenue-sharing programs.

¹⁴⁵ See Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31; Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31.

¹⁴⁶ Our pre-analysis plan for testing the participation hypothesis was registered before we began our field research. See Buntaine et al., *Pre-Analysis Plan*, *supra* note 127.

Some of the core results for three main self-reported survey outcomes related to participation are displayed in Table 1. The top set of rows shows the average value by experimental condition and the difference between the treatment and control groups, along with bootstrapped standard errors for all values.¹⁴⁷ We see that in no case did the treatment have a positive effect in the sample, as we had hypothesized. It even seems that there was a significant negative effect relative to perceived opportunities to participate ($p = 0.03$). When we dig further into the causes of this negative effect, we find that more disadvantaged groups—women, illiterate people, and impoverished people—experienced a negative effect in receiving transparency messages, while more advantaged groups did not.

¹⁴⁷ To compute bootstrapped standard errors, we repeatedly drew with replacement observations from the dataset equal to the size of the actual group. The bootstrapped standard error records the standard deviation of the means of repeatedly drawn sets of observations. For more information, see generally B. Efron & R. Tibshirani, *Bootstrap Methods for Standard Errors, Confidence Intervals, and Other Measures of Statistical Accuracy*, 1 STATISTICAL SCI. 54 (1986).

TABLE 1: TREATMENT EFFECTS ON PARTICIPATION OUTCOMES BY SUBGROUPINGS

Grouping	Treatment	Opportunities to Communicate	Opportunities to Participate	Participated in Planning
pooled	1	3.94 (se=0.051, n=797)	3.42 (se=0.043, n=797)	0.72 (se=0.021, n=797)
pooled	0	3.97 (se=0.044, n=875)	3.55 (se=0.038, n=875)	0.75 (se=0.020, n=875)
pooled	diff	-0.03 (se=0.069, n=1672)	-0.13 (se=0.060, n=1672)	-0.04 (se=0.027, n=1672)
male	1	3.97 (se=0.060, n=360)	3.51 (se=0.049, n=360)	0.72 (se=0.024, n=360)
male	0	4.04 (se=0.055, n=406)	3.56 (se=0.042, n=406)	0.78 (se=0.020, n=406)
male	diff	-0.08 (se=0.076, n=766)	-0.05 (se=0.066, n=766)	-0.06 (se=0.031, n=766)
female	1	3.82 (se=0.112, n=105)	3.10 (se=0.111, n=105)	0.70 (se=0.044, n=105)
female	0	3.73 (se=0.094, n=128)	3.52 (se=0.077, n=128)	0.67 (se=0.039, n=128)
female	diff	0.09 (se=0.143, n=233)	-0.42 (se=0.133, n=233)	0.03 (se=0.064, n=233)
impoveryished	1	3.84 (se=0.065, n=282)	3.35 (se=0.060, n=282)	0.73 (se=0.026, n=282)
impoveryished	0	3.82 (se=0.069, n=275)	3.55 (se=0.049, n=275)	0.77 (se=0.026, n=275)
impoveryished	diff	0.02 (se=0.099, n=557)	-0.20 (se=0.075, n=557)	-0.05 (se=0.037, n=557)
not impoveryished	1	4.10 (se=0.079, n=181)	3.52 (se=0.065, n=181)	0.71 (se=0.032, n=181)
not impoveryished	0	4.15 (se=0.060, n=256)	3.55 (se=0.051, n=256)	0.73 (se=0.027, n=256)
not impoveryished	diff	-0.04 (se=0.104, n=437)	-0.02 (se=0.083, n=437)	-0.02 (se=0.043, n=437)
not fully literate	1	3.93 (se=0.059, n=288)	3.35 (se=0.062, n=288)	0.75 (se=0.025, n=288)
not fully literate	0	3.93 (se=0.064, n=305)	3.62 (se=0.039, n=305)	0.78 (se=0.023, n=305)
not fully literate	diff	0.00 (se=0.086, n=593)	-0.27 (se=0.075, n=593)	-0.03 (se=0.036, n=593)
literate	1	3.94 (se=0.086, n=177)	3.53 (se=0.070, n=177)	0.66 (se=0.037, n=177)
literate	0	4.02 (se=0.075, n=229)	3.45 (se=0.064, n=229)	0.72 (se=0.029, n=229)
literate	diff	-0.08 (se=0.113, n=406)	0.08 (se=0.096, n=406)	-0.06 (se=0.046, n=406)
Outcome Variables: <i>Opportunities to Communicate</i> is a survey response on a Likert scale of 1 (Very Dissatisfied) to 5 (Very Satisfied) on perceived opportunities to communicate with UWA about revenue sharing. <i>Opportunities to Participate</i> is a survey response on a Likert scale of 1 (Disagree) to 4 (Agree) on agreement that people like the respondent have opportunities to participate in revenue sharing. <i>Participated in Planning</i> is a binary survey response on whether the individual participated in planning meetings. Grouping Variables: <i>Pooled</i> are all respondents by experimental condition. <i>Gender</i> is the self-reported gender of respondents. <i>Impoveryished</i> indicates all individuals in households with an average monthly income of less than 100,000 shillings. <i>Literacy</i> is defined by self-reported full literacy. Standard Errors: All standard errors are bootstrapped within experimental and grouping conditions. The standard errors on the treatment effect (diff) are the average differences between the bootstrapped values within each experimental condition over many draws.				

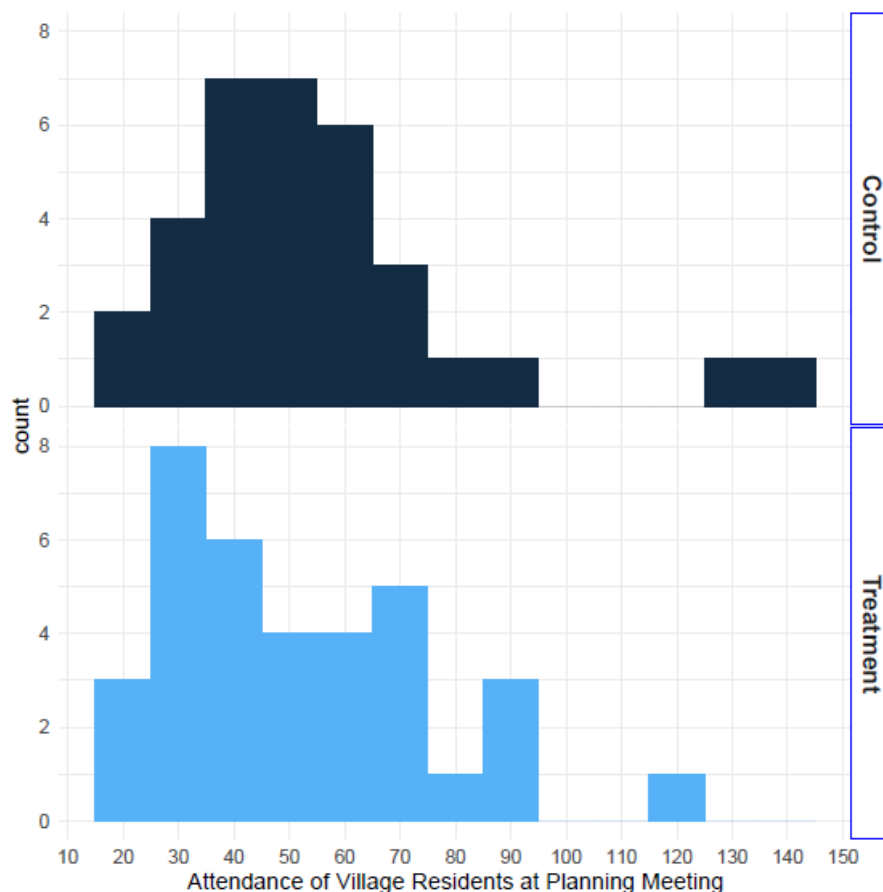
We also considered the total number of people who attended planning meetings. Unlike the survey-based outcomes described in Table 1, the

number of people in attendance at planning meetings was based on official attendance rolls collected by Park rangers¹⁴⁸ and thus is not subject to the same concerns about self-reporting. As displayed in Figure 3, we also fail to observe differences in the number of people who attended planning meetings when comparing treatment and control villages.¹⁴⁹

¹⁴⁸ These underlying rolls are on file with the authors and not publicly available due to confidentiality protections.

¹⁴⁹ Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 416 fig.6.

FIGURE 3: COMPARISON OF ATTENDANCE AT PLANNING MEETINGS
BETWEEN TREATMENT AND CONTROL VILLAGES.



Note: This figure shows a count of villages that have attendance at different level in bins of 10 attendees by treatment condition. This figure is adapted from Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 416 fig.6.

Why did our efforts not lead to greater participation? To interpret the results, we began digging deeper into the data we had collected, particularly looking for an explanation for the backfire effect we observed among more disadvantaged groups.¹⁵⁰ We had a number of theories about these results, but decided to collect more data to help guide our thinking. To extend our work beyond that called for in the pre-analysis plan, we first generated a randomized list of individuals who received the transparency treatment but

¹⁵⁰ *Id.* at 416.

who had indicated they did not perceive opportunities for them to participate in the planning process. We called twenty people from this list at random, asking if they could provide us further detail.¹⁵¹

Our participants' comments touched on several consistent themes. Respondents cited feelings of frustration with elite capture of local planning efforts, exclusion from the process, and even hopelessness about benefiting from or even affecting the outcomes of the planning meetings.¹⁵² To illustrate, consider a few particularly poignant comments we received, each from different individuals we contacted.

It's only because we don't share on the funds so we are like tired of attending the meetings. In[]fact, [r]evenue sharing has no importance to me.

I don't perceive any opportunity of participating in the planning for my village's revenue sharing because "meetings are hidden and you can't know when and where the meetings happen." "I have never been called for any revenue sharing meeting, we only meet people pulling goats and they tell us that they have got them from revenue sharing."

The major barrier here is local leaders deciding for the locals in their favor.

I have never benefited from [revenue sharing] and I have lived in this village for more than 30 years. I don't see any purpose of participating in the planning of something that doesn't benefit me.

I am no longer interested in the program because I have never received anything from the Park but every time you call me to ask me questions concerning the [P]ark, I feel annoyed to hear about that program.

The only barrier I see is that even if I go to the meetings, my opinions are not going to be considered and addressed.

"If it was you and you went to a meeting where your opinions are rejected[,] would you go back?" "I have always advocated for random selection of beneficiaries in my village for the revenue sharing projects but I have been failed by leaders." "I may opt not to attend again."

"I would perceive opportunities to participate in the planning of my village's revenue sharing program but I have one concern." "Our leaders . . . select a

¹⁵¹ *Id.* at 418. The full transcripts of the responses to questions are available in the Supporting Information file permanently archived with the online file for Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31. Buntaine et al., *Supplementary Data, Can Information Outreach Increase Participation in Community-Driven Development? A Field Experiment Near Bwindi National Park, Uganda*, SCIENCE DIRECT, <https://www.sciencedirect.com/science/article/pii/S0305750X17303510#s0115> [<https://perma.cc/W3LF-W45K>].

¹⁵² *Id.*

project of their choice and they submit its proposal to the sub county without our knowledge.”¹⁵³

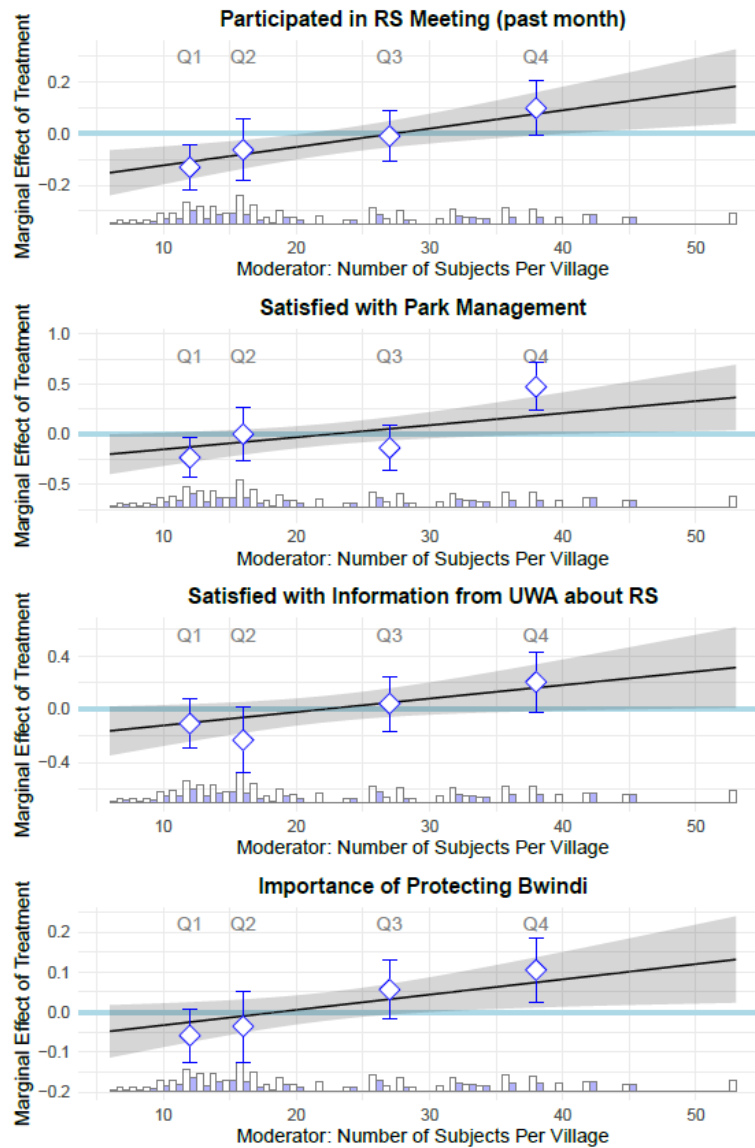
For some subjects, the transparency treatment made clear the many ways in which they were systematically excluded from the revenue-sharing program. Because of this, the messages *lessened* their perception of their own ability to participate, perhaps by making their exclusion more salient to them. A number of studies have found similar backfire effects among those disadvantaged in societies where elite capture is prevalent.¹⁵⁴

Our exploratory work also uncovered another finding, this one more hopeful. In disaggregating the data in different ways, we found that participation and satisfaction levels *increased* when a relatively larger number of individuals in a village received the transparency messages and *decreased* when a smaller number of people in a community were provided transparency messages. This result suggests that transparency is most effective when it supports collective action to overcome elite capture, perhaps through a common understanding of what needs to be done. As illustrated in Figure 4, this saturation effect was observed in four of the outcomes we measured: participation in revenue-sharing meetings, satisfaction with information from the Park, satisfaction with Park management, and importance of protecting Bwindi National Park. While not present in the other outcomes, the magnitude of this effect was consistent in each of these four categories, leading us to tentatively conclude that transparency efforts are more likely to succeed the more people they can reach and prompt to action.

¹⁵³ Telephone Interviews by Jeremiah Nahamya with twenty randomized subjects (Mar. 20, 2017). Buntaine et al., *supra* note 151, at 30–35 (quotation marks in original).

¹⁵⁴ See, e.g., Aniruddha Dasgupta & Victoria A. Beard, *Community Driven Development, Collective Action and Elite Capture in Indonesia*, 38 DEV. & CHANGE 229, 238, 243–44 (2007); Scott A. Fritzen, *Can the Design of Community-Driven Development Reduce the Risk of Elite Capture? Evidence from Indonesia*, 35 WORLD DEV. 1359, 1370 (2007); Jens Friis Lund & Moeko Saito-Jensen, *Revisiting the Issue of Elite Capture of Participatory Initiatives*, 46 WORLD DEV. 104, 109 (2013); Lauren Persha & Krister Andersson, *Elite Capture Risk and Mitigation in Decentralized Forest Governance Regimes*, 24 GLOBAL ENVTL. CHANGE 265, 274 (2014); Jean-Philippe Platteau, *Monitoring Elite Capture in Community-Driven Development*, 35 DEV. & CHANGE 223, 227–28 (2004).

FIGURE 4: SHOWING THE SATURATION EFFECT IN TRANSPARENCY EFFORTS



Note: As the number of subjects receiving messages increased, measures of participation and satisfaction also increased. Number of subjects vs. marginal effect of treatment are plotted on the axes, while the distribution of villages with each number of subjects is shown along the x axis. This figure adapted from Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 418 fig.9.¹⁵⁵

¹⁵⁵ Buntaine et al., *Can Information Outreach Increase Participation in Community-Driven Development?*, *supra* note 31, at 418 fig.9.

B. Results of Testing the Accountability Hypothesis

This finding of a potential saturation effect during the participation experiment led us to expend considerable effort to double the size of our study for the accountability stage, where we investigated whether transparency and resident monitoring could improve the delivery of projects.¹⁵⁶

In the accountability phase of the project, we randomly reassigned villages to receive information about approved projects along with access to a reporting platform that collected information about the implementation of projects. We again found no evidence that providing individuals with increased transparency and a means to act on it increased accountability. And remember, here we even coupled transparency with reports we created to put district chief administrative officers on notice that specific local development projects warranted their oversight and that the public and other government officials knew of the problems. Despite all this, both treatment and control villages had comparable levels of successfully implemented projects in both the village-level audits and our resident audits.¹⁵⁷ In fact, treated villages seemed to fare a little worse on average.¹⁵⁸

We visited all the villages slated to receive development projects from the Park and performed an audit on the ground of these projects after they were supposed to be finished. We used a number of different metrics to check if a project had been successfully implemented: whether the implementation was finished, whether the implemented project was the same as the approved project, whether the project could be verified as complete, whether dispersed goods could be located, and whether the project was verified as having come from revenue sharing. We found no evidence that treatment villages performed better than control villages under any of these metrics.¹⁵⁹ Figure 5 displays these main outcomes.

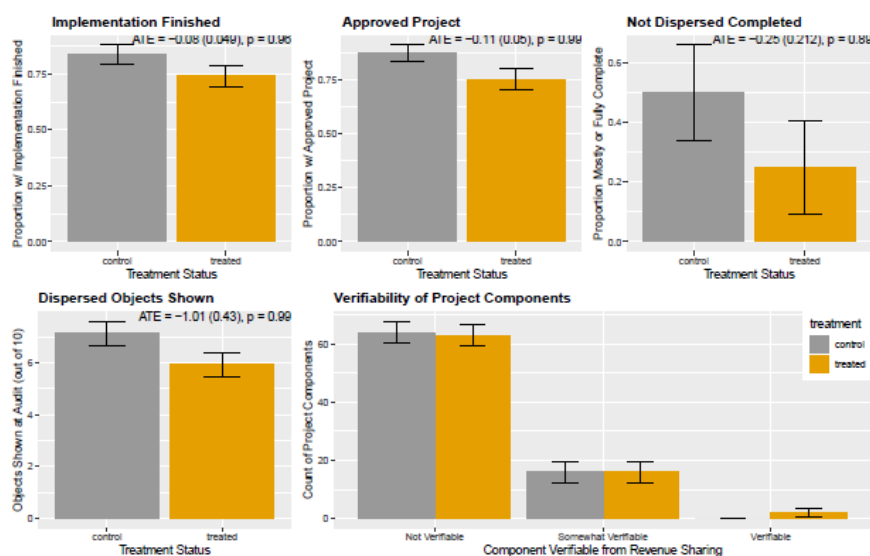
¹⁵⁶ *Id.* at 417–18. Given concerns about literacy rates and whether or not written messages were as impactful as voice messages, we moved to a new platform called Viamo between the two experiments so that we could rely on voice messages.

¹⁵⁷ Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31, at 18–21.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 18–19.

FIGURE 5: AUDIT OUTCOMES FOR ACCOUNTABILITY PHASE OF PROJECT



We also performed resident audits during our village visits and found similar results using these measures. In resident audits, we completed in-person interviews with at least twenty individuals in each village. These individuals were asked if the revenue-sharing projects had been implemented in their village, and whether they could show us physical evidence of the project.¹⁶⁰ We found that there was no difference in any of these outcomes between treatment and control villages; both treatment and control villages had similar levels of successfully implemented projects and a similar ability to provide evidence for the projects, confirming what we found in the village-level audits described above.¹⁶¹

During resident audits, we also asked questions about perceptions. These surveys measured residents' perceptions of the revenue-sharing program that funded the local development projects, including their satisfaction with the program and Bwindi National Park, among other topics.¹⁶² Our results in this phase of the project were consistent with what we observed in the village and resident audits, as well as the results from the first phase of our study: residents in treatment villages did not report higher

¹⁶⁰ *Id.* at 20.

¹⁶¹ *Id.* at 20–21.

¹⁶² *Id.* at 22.

levels of satisfaction in any of the metrics we measured relative to the residents in control villages who received health messages.¹⁶³

Table 2 displays some of the main results for these measures. The top set of rows shows the pooled analysis for the entire experimental sample of residents surveyed. The Table shows results for five key outcomes: whether the resident had seen a revenue-sharing project being implemented, whether the resident was satisfied with the implementation of revenue-sharing, whether the resident would choose the same project again given the planning and implementation, whether the resident had ever seen corruption in revenue-sharing projects in their village, and whether the resident could show or direct us to physical evidence that a project was completed. On each of these measures, we did not observe any positive difference outside of what would be expected because of sampling error between the treatment and control group. There was no statistically significant evidence that transparency created the predicted outcomes of increased accountability.

¹⁶³ *Id.*

TABLE 2: TREATMENT EFFECTS ON ACCOUNTABILITY OUTCOMES BY SUBGROUPINGS

Grouping	Treatment	Implemented	Satisfied Implementation	Chose Again	Corruption	Evidence Shown
pooled	1	0.87 (se=0.011, n=938)	1.99 (se=0.023, n=938)	0.55 (se=0.016, n=938)	0.43 (se=0.016, n=938)	0.54 (se=0.017, n=938)
pooled	0	0.92 (se=0.009, n=916)	2.02 (se=0.027, n=916)	0.52 (se=0.016, n=916)	0.41 (se=0.017, n=916)	0.59 (se=0.016, n=916)
pooled	diff	-0.05 (se=0.014, n=1854)	-0.04 (se=0.034, n=1854)	0.04 (se=0.023, n=1854)	0.02 (se=0.024, n=1854)	-0.05 (se=0.023, n=1854)
female	1	0.89 (se=0.014, n=453)	1.99 (se=0.035, n=453)	0.53 (se=0.023, n=453)	0.44 (se=0.022, n=453)	0.55 (se=0.022, n=453)
female	0	0.95 (se=0.010, n=427)	2.04 (se=0.036, n=427)	0.54 (se=0.024, n=427)	0.40 (se=0.025, n=427)	0.60 (se=0.024, n=427)
female	diff	-0.06 (se=0.018, n=880)	-0.04 (se=0.048, n=880)	-0.01 (se=0.033, n=880)	0.04 (se=0.033, n=880)	-0.05 (se=0.031, n=880)
male	1	0.85 (se=0.016, n=485)	1.98 (se=0.035, n=485)	0.58 (se=0.022, n=485)	0.42 (se=0.022, n=485)	0.52 (se=0.022, n=485)
male	0	0.90 (se=0.013, n=489)	2.01 (se=0.040, n=489)	0.49 (se=0.023, n=489)	0.42 (se=0.023, n=489)	0.57 (se=0.022, n=489)
male	diff	-0.05 (se=0.022, n=974)	-0.03 (se=0.048, n=974)	0.08 (se=0.031, n=974)	-0.00 (se=0.031, n=974)	-0.05 (se=0.032, n=974)
impooverished	1	0.87 (se=0.011, n=797)	1.97 (se=0.026, n=797)	0.56 (se=0.018, n=797)	0.43 (se=0.017, n=797)	0.54 (se=0.018, n=797)
impooverished	0	0.94 (se=0.009, n=809)	2.03 (se=0.029, n=809)	0.53 (se=0.017, n=809)	0.40 (se=0.017, n=809)	0.59 (se=0.017, n=809)
impooverished	diff	-0.07 (se=0.015, n=1606)	-0.06 (se=0.040, n=1606)	0.03 (se=0.024, n=1606)	0.03 (se=0.025, n=1606)	-0.05 (se=0.025, n=1606)
not impooverished	1	0.89 (se=0.026, n=141)	2.05 (se=0.058, n=141)	0.52 (se=0.044, n=141)	0.41 (se=0.045, n=141)	0.52 (se=0.043, n=141)
not impooverished	0	0.84 (se=0.036, n=107)	1.98 (se=0.074, n=107)	0.43 (se=0.048, n=107)	0.46 (se=0.047, n=107)	0.52 (se=0.048, n=107)
not impooverished	diff	0.05 (se=0.043, n=248)	0.07 (se=0.093, n=248)	0.09 (se=0.063, n=248)	-0.05 (se=0.065, n=248)	-0.01 (se=0.061, n=248)
not fully literate	1	0.85 (se=0.013, n=728)	1.98 (se=0.027, n=728)	0.55 (se=0.018, n=728)	0.44 (se=0.020, n=728)	0.55 (se=0.019, n=728)
not fully literate	0	0.93 (se=0.009, n=681)	1.99 (se=0.029, n=681)	0.53 (se=0.019, n=681)	0.41 (se=0.018, n=681)	0.60 (se=0.018, n=681)
not fully literate	diff	-0.08 (se=0.016, n=1409)	-0.02 (se=0.039, n=1409)	0.02 (se=0.027, n=1409)	0.03 (se=0.026, n=1409)	-0.05 (se=0.026, n=1409)
literate	1	0.93 (se=0.018, n=210)	2.01 (se=0.050, n=210)	0.57 (se=0.034, n=210)	0.40 (se=0.036, n=210)	0.50 (se=0.035, n=210)
literate	0	0.90 (se=0.020, n=235)	2.11 (se=0.054, n=235)	0.49 (se=0.034, n=235)	0.42 (se=0.033, n=235)	0.54 (se=0.033, n=235)
literate	diff	0.04 (se=0.027, n=445)	-0.10 (se=0.076, n=445)	0.08 (se=0.047, n=445)	-0.03 (se=0.048, n=445)	-0.04 (se=0.048, n=445)

Outcome Variables: *Implemented* is a survey response that indicates whether the respondent observed any evidence of the approve project being implemented, regardless of its quality or completeness. *Satisfied Implementation* is a survey response on a Likert scale of 0 (Very Dissatisfied) to 3 (Very Satisfied) on the level of satisfaction with the implementation of revenue sharing. *Chose Again* is a binary survey response on whether the individual would choose the same project again given the experiences with planning and implementation. *Corruption* is a binary survey response on whether the individual has seen evidence of corruption in their village's previous revenue sharing projects. *Evidence Shown* is a binary indicator of whether the respondent was willing and able to locate physical evidence of project implementation to be photographed by our research team. **Grouping Variables:** *Pooled* are all respondents by experimental condition. *Gender* is the self-reported gender of respondents. *Impooverished* indicates all individuals in households with an average monthly income of less than 100,000 shillings. *Literacy* is defined by self-reported full literacy. **Standard Errors:** All standard errors are bootstrapped within experimental and grouping conditions. The standard errors on the treatment effect (diff) are the average differences between the bootstrapped values within each experimental condition over many draws.

This outcome surprised us even more than the results of our participation experiment. As we understood it, every prerequisite for a successful transparency initiative was in place, so why did the transparency treatment fail to have an impact in any of the many measures we examined? Why was community oversight unsuccessful in driving positive change? We expected that transparency about the allocation of projects, combined with community monitoring and a clear line to local leaders, would drive accountability and promote greater success in the revenue-sharing program. While some scholars have questioned the value of transparency,¹⁶⁴ it seemed to us at the outset that many of the critiques did not directly apply to the setting of our study. In particular, the transparency was directed directly at ordinary people rather than elites, it was not costly for the implementing agency, and the information provided through transparency directly linked to institutions that might solve problems, namely by fostering direct complaints to the head administrative officer of local governments. Yet still, we observed failed projects and evidence of mismanagement in as many of the treatment villages as control villages. This result might mean that the limits of transparency go beyond even what the critics of transparency have identified.

We returned to the field determined to find information to explain these surprising results. As part of this field work, we conducted a series of interviews with officials involved in implementing the local development projects. We interviewed twenty-one individuals, all from different regions surrounding the Park—three people in each of six positions, including officials at the district, subcounty, and village levels.¹⁶⁵ Interviewees included each of the district chief administrative officers who had received the treatment reports.¹⁶⁶

We found some evidence that our treatment made an impact in ways that we were unable to measure. We found that the transparency provided—particularly information about what to expect and how to seek recourse in the event of mismanagement or corruption—was credited on several occasions with enabling citizens to push back against corruption and seek redress from officials in ways that we did not anticipate. While these claims for accountability did not result in better or more completed projects, we uncovered three instances that helped us better see the impact of the

¹⁶⁴ See *supra* Section I.C.

¹⁶⁵ Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31, at 4.

¹⁶⁶ While interview transcripts are on file with the authors, due to concerns relating to protecting the identities of the interviewees—a core tenet of research ethics—they remain unavailable to those outside the study.

transparency messages. Here are the examples we found,¹⁶⁷ each of them corroborated by more than one of our interviewees:

In one treatment village, people received our messages about how much money would be spent procuring the goats for an animal rearing project. A subcounty chief came to the village and offered villagers cash instead of goats, telling the residents that the goats were sick. Funds had been provided to spend a certain amount on each goat, but the subcounty chief told the village that they would receive a fifth of what was allocated. Some villagers accepted the money, and others did not, receiving no compensation.¹⁶⁸

Based on the discrepancy between the information the villagers received from the transparency treatment and what they were told by the subcounty chief, some of the villagers decided to issue a complaint to the Park. The Park, in turn, directed them to the district chief administrative officer. The district investigated the incident, and upon finding the subcounty chief had misused funds, the district attempted to fire him. The subcounty chief successfully challenged the decision to fire him in an administrative review, and he was reinstated after having been suspended for a number of months. The district ended up transferring this subcounty chief to a location where he would not oversee projects funded by the Park.¹⁶⁹

In a second treatment village, villagers were told that they would receive a certain amount of money for their local development project as part of transparency messages. The subcounty chief told the village they would only receive two-thirds of what they were told they would receive. Because of the transparency messages, the villagers knew to expect more money and asked about the remaining funds. While never substantiated, it was suspected that the subcounty chief had arranged a scheme to pocket some of the additional funds. The villagers reached out to the Park to ask if their project had been changed. After being informed that it had not, the villagers brought this to the local government's attention and the district fired the subcounty chief. The local development project was eventually completed, though not within the timeline measured in our experiment.¹⁷⁰

In a third treatment village, villagers were told that the Park had approved a particular development project as part of the transparency treatment. The subcounty chief released funds for a contractor to pursue a different project. When work on a different project began, villagers

¹⁶⁷ Buntaine & Daniels, *Diffuse Responsibility Undermines Public Oversight*, *supra* note 31, at 27–31.

¹⁶⁸ *Id.* at 27.

¹⁶⁹ *Id.* at 28.

¹⁷⁰ *Id.* at 29.

complained to the subcounty. The subcounty chief told the villagers that there was not a problem.¹⁷¹ The villagers complained to the Park, which directed them to complain to the district chief administrative officer. The district auditor initiated a review, which found that the subcounty had released substantial sums to the contractor for work he had finished on the alternative project along with additional payments for phases of work that had not been started, which is not permitted by procurement rules. The district ordered the subcounty chief to fix the problem, and the contractor ultimately fled the subcounty, leaving the alternative project unfinished.¹⁷²

While we were not able to measure these kinds of effects of transparency in our randomized controlled trials, each of these narratives is in accord with our theory. We had hoped that pressure from the community on the district chief administrative officer would help prompt that official to see that he or she had a specific duty to investigate problems within his or her area of oversight. As we hypothesized, when a more specific duty was triggered, the chief administrative officer acted. In two of the three cases we identified, it did not improve outcomes of specific development projects. In one village, the community only received a portion of its funding to purchase livestock, though its efforts to draw attention to problems resulted in a subcounty chief losing his job. A second village ended up with a partially completed project that was different than the one the Park had funded, though due to its efforts the corrupt contractor who caused them problems fled the subcounty in an apparent attempt to avoid punishment. In a third village, misallocated funds were eventually returned to a village—though not in time for us to capture this in our endline surveys (though regardless, one case would not have changed our results much). This case also resulted in the termination of a subcounty chief.

A second development that surprised us was that during our structured interviews with district chief administrative officers,¹⁷³ each of those interviewed claimed to have never read or even seen the reports we had created and that the Park's chief warden had delivered. These reports summarized the progress of projects in each of the villages on a biweekly basis and were meant to aid the district's oversight of local development projects by identifying specific problems.¹⁷⁴ These reports were consistently delivered by Park rangers with a cover letter from the chief warden of the Park. The chief warden had also reached out to the district chief

¹⁷¹ *Id.*

¹⁷² *Id.* at 30.

¹⁷³ *Id.* at 22.

¹⁷⁴ *Id.* at 22, 24.

administrative officers, stressing his concern with the report's findings and asking whether he could answer any questions about the report.¹⁷⁵

Our counterparts at the Park had a hard time believing that the reports were not reviewed. Another potential explanation is that the district chief administrative officer's purported disinterest was a form of obfuscation. We discuss this possibility at greater length in Part VI, but claiming not to have seen the reports is also consistent with how one would expect a public official with a diffuse oversight duty to react if he or she wanted to refute evidence of specific knowledge of a problem—knowledge which might prompt a duty to act. Obfuscation of knowledge and responsibility goes hand in hand with blame shifting, which became a recurring theme; officials consistently assigned responsibility for failure on other individuals and offices.

Blame shifting was, in fact, a central element in the interviews we conducted. In addition to the previously-mentioned interviews with the district chief administrative officers, we also conducted interviews with eight village leaders and committee members and eight subcounty officials. In these interviews, we asked each individual where corruption had arisen or was likely to occur in the process of implementing local development projects, as money flowed from Uganda Wildlife Authority to the districts, then to the subcounties, and was finally paid to the contractors. Each participant pointed at other players. Elected officials at the subcounty blamed corrupt appointed subcounty chiefs; subcounty chiefs pointed to corrupt contractors and local villagers sitting on village committees; village chairpersons blamed both subcounty and district governments for opacity; and members of village committees pointed to the subcounty.¹⁷⁶ In Figure 6, we illustrate the range of answers we received in our interviews.

To analyze the interviews, we created a coding scheme for systematically categorizing the blame each actor placed on different layers of government. Four people not involved in conducting or transcribing the interviews were provided our coding instructions and independently coded each interview. Coders were asked to identify instances of blame which interviewees placed on the problems found in the implementation of the Park's local development project to others involved in implementation (officials at the village, subcounty, or district levels of government, a contractor, or the Park itself). The coders were asked to assign a score of 1 (meaning "a low level of blame," such as speculation of corruption or general statements of likely sources of corruption, without directly implicating

¹⁷⁵ *Id.* at 11.

¹⁷⁶ *See id.* at 34.

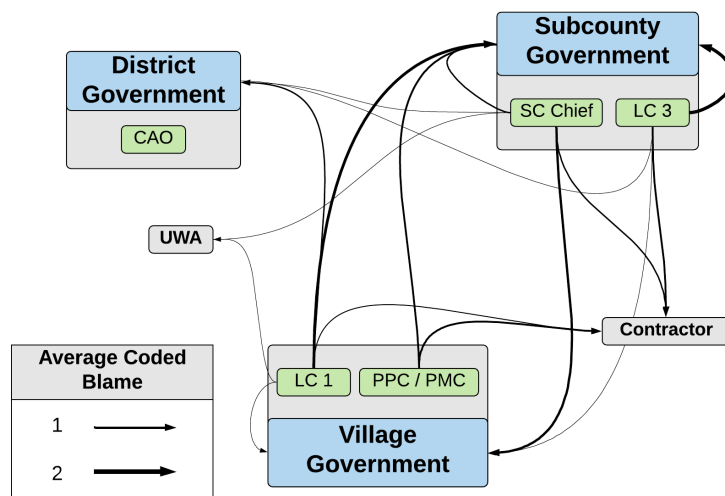
anyone) or 2 (meaning “a high level of blame,” such as a direct accusation of corruption or suspected corruption), with an implicit score of 0 (meaning “no blame”). In instances where an individual placed blame on multiple officials at the same level of government, the highest blame score was selected for that level of government.

We found our coders very frequently came to agreement. Not only did the coders almost uniformly agree as to when interviewees blamed others, but also in more than 85% of the scores, at least three out of the four coders assigned the same blame score to the interview. We took the coding scores and then averaged between the four different encodings and interviewees’ roles to find the average blame individuals in each role placed on the different levels of government. We present these results graphically in Figure 6.

These interviews with officials at the subcounty and village levels reveal a more general trend among actors to blame corruption and mismanagement on others and shift the accountability for poor outcomes away from themselves. In some cases, blame was placed on another level of government; in others, interviewees pointed to specific officials’ actions (or, in some cases, inaction).

This blame shifting is a particularly serious problem when paired with the difficulties villagers faced in demanding accountability from local officials. In each of the three cases we outlined above, where villagers were able to seek accountability, they were passed from one authority to the next multiple times before they were able to successfully air their concerns. This failure of any level of government to take responsibility for the revenue-sharing program’s successful implementation was a serious barrier to achieving better results. The difficulty local governments face in auditing the delivery of projects would make achieving accountability difficult under the best of circumstances. When coupled with a web of officials who can each pass off responsibility, accountability through transparency becomes hopelessly difficult to attain.

FIGURE 6



Note: Showing who blamed whom for revenue-sharing problems in interviews with subcounty and village officials. Interviews with district officials were not included in this analysis. Thicker arrows indicate a higher average degree of blame placed on the recipient. Blame was scored from 0–2, with 0 corresponding to no blame and 2 being a direct accusation of corruption or suspected corruption. Blame scores were then averaged over individuals in each office. District, village, and subcounty governments refer to blame that was placed on the level of government as a whole or on individual officials at that level. Individuals interviewed include village LC 1 Chairpersons (LC 1), members of the village-level project management and project procurement committees (PMC / PPC), subcounty chiefs (SC Chief), and subcounty LC 3 chairpersons (LC 3).

As mentioned in Part III, we also sought to rule out the possibility that we did not find an effect of the transparency treatments in either phase of this research project because the information spilled over between villages, contaminating the control group. To do so, we examined the interaction between the treatment and the number of contiguous villages. If the treatment effects were modified by contiguous villages, we would see confidence intervals on the interaction terms that did not include zero and main effects on the treatment that differed from what was reported above. We did not find consistent evidence that the effect of treatment is conditional on whether nearby villages are also treated.¹⁷⁷

¹⁷⁷ See *infra* Tables 3 and 4.

TABLE 3: TREATMENT EFFECTS FOR PARTICIPATION OUTCOMES CONSIDERING SPILLOVER

	<i>Dependent variable:</i>					
	Opportunities to Communicate	Opportunities to Participate	Participated in Planning			
	(1)	(2)	(3)	(4)	(5)	(6)
Treated	-0.021 (-0.157, 0.115)	0.025 (-0.242, 0.292)	-0.122 (-0.257, 0.012)	-0.387 (-0.653, -0.122)	-0.047 (-0.116, 0.022)	0.046 (-0.090, 0.182)
One Contiguous		0.039 (-0.153, 0.231)		-0.214 (-0.451, 0.022)		0.121 (0.018, 0.224)
Two Contiguous		-0.125 (-0.405, 0.155)		-0.130 (-0.405, 0.145)		0.180 (0.032, 0.328)
Treated X One Contiguous		-0.177 (-0.508, 0.155)		0.323 (-0.033, 0.679)		-0.083 (-0.245, 0.080)
Treated X Two Contiguous		0.207 (-0.183, 0.597)		0.352 (-0.015, 0.718)		-0.137 (-0.345, 0.070)
Village fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Covariates	Yes	Yes	Yes	Yes	Yes	Yes
Observations	992	992	994	994	999	999
Adjusted R ²	0.041	0.042	0.028	0.030	0.036	0.040

Notes: Confidence intervals are based on standard errors clustered at the village level.

TABLE 4: TREATMENT EFFECTS FOR VILLAGE-LEVEL ACCOUNTABILITY OUTCOMES
CONSIDERING SPILLOVER

	<i>Dependent variable:</i>					
	Implementation Finished (1)	Approved Project (2)	Not Dispersed Completed (3)	Dispersed Objects Shown (4)	Verifiable (5)	Somewhat Verifiable (6)
Treated	-0.137 (-0.422, 0.147)	-0.176 (-0.402, 0.051)	-0.500 (-1.589, 0.589)	-1.657 (-4.769, 1.455)	-0.018 (-0.053, 0.018)	0.043 (-0.106, 0.191)
One Contiguous	-0.076 (-0.305, 0.154)	-0.065 (-0.232, 0.103)	-0.071 (-1.246, 1.104)	0.695 (-2.250, 3.640)	-0.017 (-0.043, 0.009)	0.214 (0.056, 0.371)
Two Contiguous	-0.012 (-0.279, 0.255)	-0.133 (-0.367, 0.101)	0.500 (-0.589, 1.589)	-0.574 (-3.747, 2.600)	-0.003 (-0.012, 0.007)	0.091 (-0.137, 0.320)
Treated X One Contiguous	0.064 (-0.253, 0.380)	0.042 (-0.228, 0.312)	0.271 (-0.982, 1.525)	0.828 (-2.512, 4.169)	0.060 (-0.005, 0.124)	-0.024 (-0.263, 0.215)
Treated X Two Contiguous	0.106 (-0.335, 0.547)	0.167 (-0.242, 0.576)	-0.000 (-1.541, 1.541)	0.922 (-3.610, 5.453)	0.018 (-0.024, 0.060)	-0.078 (-0.465, 0.309)
Block fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Covariates	No	No	No	No	No	No
Observations	161	161	18	143	161	161
Adjusted R ²	0.165	0.210	-0.164	0.366	0.362	0.018

Notes: Confidence intervals are based on standard errors clustered at the village level.

* * *

We set out to test transparency in a setting where other institutions of civil society were still developing and sometimes effectively absent. In this context, we wanted to address important assertions made about transparency. Does transparency reduce corruption and improve governance? Does it mobilize the public? While scholars, government officials, and aid organizations put great stock in transparency, there is seldom an opportunity to test that faith.

We found little positive evidence that transparency accomplishes any of the goals people assume, based on the measures we were able to analyze statistically. Transparency did not mobilize citizens to be more involved in governance and it may have even demobilized less empowered groups, such as women facing well-defined gender roles that expect women to defer to men.¹⁷⁸ Only when messages with information reached many people did we see indications of a positive effect on participation. Likewise, transparency did not lead to better implementation of development projects, though it seems that it did cost at least some corrupt officials their jobs.

Often in law review articles, the last section is designed to answer the question of “So what?” We believe the better question, given our results, is “Now what?”

V. IMPLICATIONS AND EXPLORATIONS: NOW WHAT?

We are quick to concede that our experiment is not the final word on the two examined transparency hypotheses. Our observations were made in one location, in one country, at one moment in time, and do not necessarily apply to transparency initiatives worldwide. At the same time, we also recognize that our experiment was first of its kind. We were given a rare opportunity to test transparency in this way, particularly in the setting of a developing country where corruption was expected to be a major hurdle.

Given our experience and findings, we now provide a description of how the last four years of working on this project has changed the way we think about transparency. The discussion below is not as much the social science implications of our findings, but rather a rendition of how our thinking has evolved on the broader questions relating to transparency, particularly transparency initiatives in developing democracies with struggling institutions.

¹⁷⁸ See *infra* notes 188–190 and accompanying text.

A. Should We Just Give Up on Transparency?

We had a chance to test transparency in a place where the stakes are high.¹⁷⁹ Transparency could in theory help to accelerate political development when other features of well-functioning democracy, such as a vibrant press and active civic associations, are less established. We tested transparency in such an environment, and it did not fare well. In fact, in some respects, it may have even backfired.¹⁸⁰ We did not expect this result; consistent with the great thrust of transparency theory, we hypothesized transparency would have a number of positive effects.¹⁸¹

Even as we have been left scratching our heads at times about the results of our transparency tests, we note that many of our partners in Uganda continue to see great value in the transparency interventions we tested. Our partners in the Park tell us that everywhere they go, people say good things about the messages and the opportunity to receive new types of information. They are very determined not only to continue working with us, but even to highlight our work when dealing with their peers, such as other Park managers.

Additionally, despite the results of our experiments, a number of our personal experiences suggest that we should not yet give up on transparency. As our work began, we were met with hope-filled faces of the residents who lined up to sign up to receive the transparency messages. Even as the platform we established sent a barrage of messages to thousands of people week after week, very few opted out of receiving messages, which they could have done by sending a single “STOP” reply. Those few who did opt out greatly outnumbered those who found out about the opportunities to receive transparency messages and later asked to join the platform and experience some transparency for themselves. While anecdotal, such observations and our interactions with residents when visiting villages consistently suggest that the platform has been well-received in the community.

Even during our interviews with the individuals whom we contacted to explore why the messages left them feeling shut out from the meetings to choose local projects, a number of them took the time to tell us that they appreciated the information. Perhaps the strongest evidence came in response to open-ended questions about what the Bwindi Information Network could do to help revenue sharing and whether there was anything our research team should know about participating in revenue sharing; these

¹⁷⁹ See *supra* Section I.B.2 (discussing the reasons why the assertions about effects of transparency are much less certain in developing democracies as opposed to developed democracies where institutions and civil society are in comparison much more robust).

¹⁸⁰ See *supra* note 34 and accompanying text.

¹⁸¹ See *supra* Part III.

questions contrast with other prompts that directly asked about the performance of the platform. We said in their recorded prompts, for example, “You can always send me updates on my phone especially what [the Park] is planning for people who live in frontline villages.” Another respondent told us, “You are doing very well, keep it up.” Yet another said, “We like your messages, especially those ones that talk about conservation of the Park.”

We may not have figured out how to harness this excitement for transparency (or perhaps even how to measure it), but we observed an intangible spark that seems to suggest transparency is having an impact. Our results suggest, however, that transparency is unlikely to be a quick fix to the problems of effective governance.

In our presentations and reviews about our work, we have received many questions about why transparency did not have a measurable effect in our experiment. Indeed, it is interesting to probe why so many people have asked that question. Many have an instinctual, almost implicit trust in transparency. For those with such confidence in transparency, our results are challenging.

Yet, our results are also hopeful. Even though we could not measure the impacts of our accountability measures, in qualitative results we found that those who received the transparency treatment used the information to demand accountability and, to some extent, succeeded in doing so.¹⁸² There is also a possibility that the administrators at the Park are right—the timeline for transparency to work may be beyond the timeline of our research projects.

B. It's Grease, Not a Disinfectant

Our experiments suggest important limits of the effectiveness of transparency in developing democracies. The alluring benefits promised by transparency advocates—that it can serve as a disinfectant, a key to participation, and a booster to the perceptions of citizens about government—cannot operate in a vacuum. Transparency's effectiveness relies on other functioning aspects of democratic institutions.

While Justice Brandeis associated transparency with the disinfecting power of sunlight, we have instead come to see transparency as grease on the gears of democracy. If that same grease is applied to a poorly designed machine—a machine whose parts do not fit as well together, which has missing pieces or parts installed improperly—the grease does little and may

¹⁸² See *supra* note 37 and accompanying text.

in fact just make a mess. It is not transparency itself that will constrain corrupt actors and bring about more effective government. Other institutions and aspects of civil society must be strong enough to support those goals.¹⁸³

To help the machine of developing democracies, more thought should be given to the role of transparency as democracies mature. As mentioned in Part II, for most of the world's developed democracies, robust transparency entered into the mix of good government initiatives quite late in the process of political and economic development. Does this mean that developing democracies should hold off? No, but our experiments suggest that care ought to be taken to prioritize other aspects of political development above transparency.

The failure of transparency to create measurable effects in our experiment might be explained, in large part, by the weaknesses of the machinery of democracy in our research setting, coupled with the external stresses that same machinery constantly faces. Take the accountability hypothesis: each of the steps embedded in the assumption that transparency will result in accountability are potential stumbling blocks. And, in a developing democracy, these stumbling blocks are larger than they would be in the context of developed democracy. We begin with the assumption that specific knowledge about mismanagement would trigger an oversight duty to prevent the mismanagement. Our conversations with district chief administrative officers suggest that they took seriously the duty to keep books that could withstand a potential audit but that they did not think about their oversight function more broadly. This might be a function of

¹⁸³ This is something other commentators of transparency regimes in other developing democracies have noted. Aude Delescluse, *Chad-Cameroon: A Model Pipeline?*, 5 GEO. J. INT'L AFF. 43 (2004) (arguing that transparency cannot fix poor governance or function well without strong civil society); Alex Kardon, *Response: Matthew Genasci & Sarah Pray, Extracting Accountability: Implications of the Resource Curse for CSR Theory and Practice*, 11 YALE HUM. RTS. & DEV. L.J. 59, 59 (2008) ("While there is persuasive evidence that low government accountability is at the heart of the resource curse, the link between this claim and identifying transparency as the best solution is tenuous. Achieving transparency may not cure the curse where civil society is not strong enough to convert information into accountability."); *id.* at 63 (asserting that transparency "will be fruitless if civil society is not prepared to do its part"); Catharina Lindstedt & Daniel Naurin, *Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption*, 31 INT'L POL. SCI. REV. 301, 316 (2010); Irma E. Sandoval-Ballesteros, *Rethinking Accountability and Transparency: Breaking the Public Sector Bias in Mexico*, 29 AM. U. INT'L L. REV. 399, 439 (2014) ("Today's political struggle for public access to information is as important as past struggles for political, civil, and social rights. Mexico is still unfortunately far from successfully constructing a conscious and organized social force. The groups that exist in civil society are scarce and the agenda of transparency has failed to permeate the thoughts and actions of citizens. Mexico's persistent struggle is to develop a system of institutional, organizational, social, and political checks and balances that shift the priority of government institutions to public good instead of personal gain. This is perhaps the greatest challenge to transparency in Mexico's near future.").

bookkeeping made salient because it is monitored closely by Uganda's Office of the Auditor General, but there might be more to it, as well. Perhaps when civil society so rarely manages to sound the alarm about specific problems, officials with oversight duties are not trained to listen for and recognize citizens' concerns.

And, even when the alarms sound and are heard due to transparency, these concerns might be drowned out by other stresses on the system. Our reports sat on desks with other reports and matters that presented what might seem to be insurmountable problems. Local residents around the Park suffer from chronic poverty.¹⁸⁴ Many families cannot afford to pay school fees.¹⁸⁵ AIDS is a major problem in these local communities,¹⁸⁶ and the Ebola outbreak ravaged communities that border this area of Uganda.¹⁸⁷ And while our report might highlight instances of mismanagement and corruption, there are reasons to worry that these problems are much more widespread than the cases we have identified. Spotlighting a problem does not create a solution, especially when there are more pressing matters at hand.

One of the messes created by the grease of transparency in our experiment was the demobilization of women, and by extension other disadvantaged groups, when transparency highlighted real or perceived local elite capture.¹⁸⁸ This is not an easy problem to unwind. In fact, the coalition that has created local elite capture almost certainly has a stranglehold on far more government decision-making than just the planning of local development projects. Men's voices tend to dominate so much of life in these villages, and messages that devalue the potential contributions of women

¹⁸⁴ See Robert Bitariho et al., *Tangible Benefits or Token Gestures: Does Bwindi Impenetrable National Park's Long Established Multiple Use Programme Benefit the Poor?*, 25 *FORESTS, TREES & LIVELIHOODS* 16, 16–18 (2016); Ann A. Laudati, *The Encroaching Forest: Struggles Over Land and Resources on the Boundary of Bwindi Impenetrable National Park, Uganda*, 23 *SOC'Y & NAT. RESOURCES* 776, 779 (2010); David Mwesigye Tumusiime & Espen Sjaastad, *Conservation and Development: Justice, Inequality, and Attitudes Around Bwindi Impenetrable National Park*, 50 *J. DEV. STUD.* 204, 208 (2014).

¹⁸⁵ See DORIEN KORBEE, *ENVIRONMENTAL SECURITY IN BWINDI: A FOCUS ON FARMERS* 17 (2007), http://www.envirosecurity.org/espa/PDF/Environmental_Security_in_Bwindi.pdf [<https://perma.cc/XHW4-CTSD>]; MICHELLE WIELAND & ROBERT BITARIHO, *A LOCAL ASSESSMENT OF THE IMPACTS OF FIFTEEN YEARS OF BMCT INTERVENTIONS* 29 (2013), http://itfc.must.ac.ug/sites/default/files/2018-07/BMCT%20Assessment%20Report_final.pdf [<https://perma.cc/PX57-JHAZ>].

¹⁸⁶ See Masinde, *supra* note 114.

¹⁸⁷ See Amanda Lichtenstein & Rosebell Kagumire, *DRC Ebola Outbreak Spreads to Neighboring Uganda, Activating Rapid Preparedness Response*, *GLOBAL VOICES* (June 13, 2019, 1:10 PM), <https://globalvoices.org/2019/06/13/drc-ebola-outbreak-spreads-to-neighboring-uganda-activating-rapid-preparedness-response/> [<https://perma.cc/Z7N2-M46D>].

¹⁸⁸ See *supra* note 34 and accompanying text.

have been a part of life for most since they were young.¹⁸⁹ And, even putting aside gender power imbalances, thwarting the local power brokers in a local planning meeting might come at serious personal cost. In communities as small as these villages (on average 200–400 households each), getting on the wrong side of those in power might cause interpersonal problems in many other facets of life.

The Park seems particularly motivated to address this issue because in the villages surrounding the Park women are much more likely than men to interact with the forest. Within family structures, women often take on the tasks of gathering wood, working farms at the edge of the forest, and fetching water. From the perspective of Park leadership, there is a great need for, and interest in, creating specific safeguards to better include women in the process of selecting and planning for local development projects funded by the Park. But how to fulfill that need? This is one of the most difficult challenges our experiment uncovered, and one that warrants careful and thorough examination, beyond what is feasible in the confines of this paper.¹⁹⁰

Just as we saw the effects of transparency dampened by blame shifting and obfuscation, we also saw the grease of transparency do its work in ways that our quantitative survey and audit protocols could not measure. When we went out into the field to determine why the accountability treatment did not result in the expected gains, we wanted to understand what went wrong. But we realized that one crucial question we had failed to ask was, “What went right?” True, we found out that the district chief administrative officers did not use our reports, but we also found that those same officials took meaningful actions to provide oversight when complaints from residents came to them. Furthermore, we learned that these complaints were a result of our transparency treatments. It became difficult for us to continue in our belief that our experiments did not have any effect (as our statistical analyses suggested) when we learned of a subcounty chief who was fired, another who was disciplined and transferred, and a contractor who had to flee in order to escape legal consequences. At the very least, these three people would take issue with the conclusion that the transparency treatment had no effect.

¹⁸⁹ See *supra* Section IV.A. See generally Peter R. Atekyereza, *The Education of Girls and Women in Uganda*, 16 J. SOC. DEV. AFR. 115 (2001) (examining the particular struggles women face in securing an education in Uganda).

¹⁹⁰ This problem is not unique to Uganda; it persists across many societies. See, e.g., Jessica Gottlieb, *Why Might Information Exacerbate the Gender Gap in Civic Participation? Evidence from Mali*, 86 WORLD DEV. 95, 95–98, 101–05 (2016); I.S.R. Pape, “*This Is Not a Meeting for Women*” *The Sociocultural Dynamics of Rural Women’s Political Participation in the Bolivian Andes*, 35 LATIN AM. PERSP. 41, 43–58 (2008).

Just as blame shifting and obfuscation were difficult to measure effectively, it was also difficult to observe when individuals had taken evidence from the transparency initiative and used it to make their case to decision-makers. The work of these individuals helped root out officials and contractors who had misused funds the Park provided for local development projects. The transparency treatments helped to create movement toward accountable government in unexpected ways that are difficult to detect through general and quantitative measures. And, it is possible that this kind of transparency, having driven government to fulfill some of its accountability functions, may remind those in the system to expect more. It may even inspire people to use other institutions and elements of civil society to seek accountability from government.

To the extent that our experiments have left those with any influence over the fate of transparency initiatives wondering about the value of transparency, we would caution against giving up too easily. Yes, we would advocate that transparency initiatives be developed with care, to maximize transparency's potential benefits and to minimize its risks. And we recognize that there may be complex dynamics in play, the effects of which cannot be foreseen at the outset, nor effectively measured at the backend. Understand that transparency has limits: it cannot solve problems of weak institutions and endemic failures of good governance. Ultimately, transparency is not by itself a disinfectant, as originally proposed, nor is it machinery—rather transparency is merely the grease for the gears of democracy. However, we recognize that transparency may still inspire people to care for the machinery. Investments in transparency must be carefully weighed against other opportunities to help build the other vital institutions and features of well-functioning democracies.

C. Looking Forward

Corruption in government is a very hard problem to solve.¹⁹¹ In retrospect, we question whether a single-shot intervention like a boost to transparency could ever be enough to generate a measurable impact. The expectations people have about government are not created overnight, and neither is trust. Particularly in developing democracies, where government dysfunction is common and where corruption may even be considered routine, motivating people to take action is difficult. Action against corruption exposes individuals to significant risks, which range from wasted time at best, to retribution from officials who resent meddling at worst. Indeed, one of the reasons we settled on crowd-sourcing reports of

¹⁹¹ See *supra* Part II.

implementation problems was to shield our subject pool from some of the risks of retribution.

The time scale of our research and the time scale for institutional change might not align. It may well be that people need a longer dose of transparency treatment before significant results can be observed. The feedback we received from our partners at the Park indicated they believe that they were seeing changes, including officials being put on notice or removed from office, even if we did not observe significant effects in our survey and audit data. But sufficiently subtle shifts may not be detectable using accepted statistical methods, given the limited number of villages surrounding the Park.

We will continue to help the Park provide transparency for certain sorts of information, such as information about what projects the Park has funded, when it transfers money, how much, and to what government entity. Given some of the potential limitations of transparency, however, it is no longer the current focus of our research.

Rather, we have moved on to test approaches to improve governance surrounding the planning and implementation of local development projects. Instead of highlighting *problems to local officials*, messages will instead *publicize successes of local officials*. Can recognizing excellence promote effective implementation better than exposing mismanagement and corruption? One feature that has struck us as particularly promising about this new approach is that recognizing good governance might catch on even in places reticent or unable to provide transparency. Can we move the needle by celebrating officials and communities that show excellence? Can the recognition carrot deliver results where the transparency stick failed? We hope our future research will address these questions.

CONCLUSION

If transparency is not the best first step, what is? Answering that question is beyond the scope of our research, but the apparent ease of exporting transparency to developing democracies should not make it the automatic first choice of would-be reformers. However, there is something to be said for ease of implementation, especially since anecdotal evidence suggested transparency had some effect within the time scale of our study, even if these impacts were not detected in our quantitative measurements. Transparency should not be abandoned as an element of packages to strengthen developing democracies, but expectations about its effects in isolation should be appropriately managed. Thinking about the context of transparency and the potential costs and benefits of transparency is warranted—at least some dose of transparency skepticism seems warranted.

But, there is something more here—something not fully captured in our data. Why have we seen people running from far-away houses to line up and sign up to join the information platform and to receive information from the Park? Why are Park officials so excited about transparency despite the discouraging results of our research? We see it as a great source of hope that our partners at the Park have tried to kick-start change. We find the same hope in the many people in the communities with whom we have worked who clearly long for change. This is the hope that has animated us from the beginning of our work in Bwindi.

While the transparency experiments did not turn out the way anyone involved hoped or expected, our tests were not the final say in successfully promoting effective government in developing democracies. Ultimately, we maintain hope that success will arise from many well-intentioned, dedicated citizens and officials, working together to fight corruption and invest energy in building up effective governments and institutions, even in the face of change coming at a much slower pace than any of the stakeholders would like. It is also impossible to rule out that transparency is a necessary condition to fix the sorts of problems the Park faces, even if in the short term it is not sufficient. Still, while our research suggests caution, our on-the-ground experience tells us to try again, but to work smarter, building on the lessons we have learned alongside our partners. We still believe that they are up to the challenge.

