11 *Discreet Transparency*

Dealing in Plural Veridictions in Swiss Gold Refineries

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In 2015, a coalition of 114 Swiss organizations including NGOs, trade unions, political parties, churches, and business associations launched a federal popular initiative to amend the Swiss constitution by adding a new article (Article 101a) on corporate accountability. The text, which was finally rejected in November 2020 by the majority of Swiss cantons despite being accepted by 50.7 percent of voters,[1] established that Swiss companies and those they control outside the country would be required to respect human rights and international environmental standards. The innovation of this text was that it introduces civil liability for the parent company in case of violation of these standards by the companies it controls elsewhere in the world. Between the launch of the initiative and the popular vote, the coalition embarked on a long campaign to raise awareness about the deleterious impacts abroad of several large companies based in Switzerland. The coalition's strategy was multifaceted, but one of its most visible aspects was an intensive and systematic examination of the procurement practices of certain companies active in the "riskiest sectors" – namely, the extraction, processing, and trading of raw materials. During the campaign, several organizations, mostly new to this type of "guerrilla auditing" (Hetherington 2011), published numerous reports pointing to acts of "misconduct" (human rights abuses, environmental damage, corruption, money laundering, tax evasion) and, by the same token, to the inability of the Swiss legal framework to prevent the harmful impacts abroad of companies established in its jurisdiction.

[1] In the tradition of "direct democracy," federal popular initiatives in Switzerland allow new articles to be added to the Swiss constitution. One of the conditions for the adoption of a popular initiative is that the proposed text is approved both by the majority of voters in the country and by the majority of the twenty-six cantons.

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Among the various sectors considered to be "at risk," the gold-refining industry quickly came under the spotlight of the coalition, and by extension the media. Although the refiners cultivate a certain discretion, it is estimated that 70 percent of the world's mined gold transits through this industry (WWF 2021: 20), which has a strong presence in Switzerland due to its historical links with the banking, watchmaking, and jewelry sectors. Because of its fungible nature, once the material has been aggregated, melted down, and refined according to international standards, the different origins of the gold disappear mechanically. Echoing the classic issue of commodity fetishism, the social life of gold and the traces of its potentially contentious past prior to refining are literally erased in favor of a standardized and commensurable licit product that can be bought and sold in licit international markets.

As a response to growing concerns among consumers about the possibly harmful origins of gold (e.g., Bloomfield 2018), the refining industry adopted responsible sourcing standards deemed to guarantee compliance with international norms of sustainability and human rights, yet without disclosing the provenance of the metal. In this chapter I examine the industry struggles and the legal processes through which the "responsible sourcing" claims of refining companies are established, made visible, and verified. I suggest that that Swiss refineries operate under a register of discreet transparency, through which this industry aligns with the contemporary trope of transparency while preserving discretion as a core business value. Refiners' practices, I suggest, are both discr*eet* in their efforts to preserve secrecy in their business operations, and discr*ete* in the legal processes through which they separate normative orders to establish different veridictions on the "true" provenance and ownership of gold. The chapter suggests that the various legal entanglements of gold and transparency establish specific "veridictions" (Latour 2004: 298), or different ways of defining what is true or false by textually linking and dissociating facts, persons, and objects in the construct of a situation. Based on the premise that corporate disclosure does not necessarily reveal undisclosed truths but rather produces new truths, I further argue that such work of legal entangling mediates the "responsible" status of gold as a veridiction project essentially aiming at establishing new truths.

I draw on ethnographic fieldwork in Switzerland and London with political activists, policymakers, and gold-refining industry actors

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within their respective epistemic communities and events, as well as on longstanding research among gold producers and traders in West Africa.[2] The chapter interrogates how growing expectations of transparency about the provenance of gold – largely at odds with the technical process of purification and the norms of business secrecy – are negotiated by gold-refining industry actors, coalition activists, and the Swiss government. I start with a brief genealogy of the "public secret" (Taussig 1999) about the provenance of gold refined in Switzerland – that is, the shared but hardly articulable knowledge (Taussig 1999: 5–6) that gold from ethically contentious sources transits through Switzerland. By sketching the controversies surrounding the elusive notion of provenance as applied to a fungible, and potentially indefinitely recycled, substance, I propose an examination of three competing approaches to corporate responsibility. For each, I pay attention to the different roles, conceptualizations, and legal entanglements of transparency and secrecy, broadly understood as the disclosure and access – or the lack of them – of singular elements mobilized to claim so-called responsible business relationships.

Responsible Gold: The Legal Entanglements of Transparency

Guarantees of ethical responsibility for gold refined into bullion and semifinished products are based on industry self-regulation through compliance with the standards of the London Bullion Market Association (LBMA), the umbrella organization of refiners that issues accreditations for over-the-counter trade. In addition to technical and financial criteria such as a minimum refining volume capacity or compliance with the standard to reach at least 99.5 percent purity of gold, LBMA-accredited refiners have been required since 2011 to comply with the Responsible Sourcing Programme (RSP). This standard embodies the principles set out in the *Due Diligence Guidance for Responsible Supply Chains of Minerals* from the Organisation for Economic Co-operation and Development (OECD 2016).[3] Refiners

[2] Research was funded by the Swiss National Science Foundation (projects 173354 and 201748).

[3] According to OECD guidance (2016: 17–19), companies claiming to source responsibly must conduct ongoing due diligence to (1) identify, (2) assess, and (3) mitigate human rights risks, and apply robust traceability mechanisms on that product to (4) enable third-party auditing and (5) produce due diligence reports.

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are expected to prove their capacity to have a transparent view of the "upstream" supply chain through a cascading system of due diligence self-reporting across the chain, allowing them to assess the social, environmental, and commercial practices of their suppliers. The notion of transparency is thus not only at the forefront of the LBMA's framework objectives – "ensuring integrity and transparency for the gold market." It is also in the implementation guide of its responsible standard, which is deemed to establish a "robust system of vigilance, control and transparency of the supply chains" (LBMA 2019: 7), yet without this calling into question the confidentiality of refiners' business relationships. The paradoxical promise of an assessment of the degree of "responsibility" of suppliers, yet invisible to the public, practically questions how unstable boundaries of secrecy and transparency are constituted and respectively valued in the trade and the import of natural commodities, including gold, in Switzerland.

In the context of the federal initiative campaign, the focus on gold refining by different members of the coalition was arguably strategic, since this market is regularly characterized as particularly "opaque" (Mariani 2012; Pieth 2019). It acted as a mirror to a certain national imaginary in which both watchmaking and banking – the main gold-consuming sectors – represent flagships of the Swiss economy, associated with values of precision and discretion respectively. As I was told by members of one advocacy group, by focusing on the main refineries, the coalition's limited resources could be judiciously allocated within a defined perimeter. The aim was to illustrate, synecdochically, the broader issue of accountability for wrongs in globalized supply chains, and the closely related issue of disclosure regimes that do or do not identify and attribute accountability. In particular, the judicial component of the initiative was considered the main shift toward a possible transformation of the accountability regime, adding the possibility of sanctions to the self-regulation model. Indeed, the violations that the coalition and its allies had made visible (see, e.g., EPER 2016; Global Witness 2020; STP 2018; TRIAL 2016; Ummel 2020) had had little effect so far other than to lead the targeted companies to either deny these allegations once they were made public, or to blame the suppliers under the pretext that reasonable due diligence had been carried out in accordance with industry standards. Following Pistor (2019: 6), the rhetoric at work thus oscillates between "but it's not our responsibility" and "it is our responsibility, *but it's legal*."

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In other words, mandatory due diligence, or "the production of narratives that make visible certain actors, relationships and processes of the past" (Hansen and Flyverbom 2015: 878), as already imposed by the codes of conduct of most companies, relies on a largely circular mode of verifiability as it is based on self-narration. Provocatively challenging the dominant paradigm of self-regulation and corporate social responsibility (CSR), the coalition's main question was quite simple: How can the misbehavior of certain companies be mitigated if it is assumed that only the same companies whose business practices might be objectionable are able to identify these failures? From this perspective, corporate claims of responsibility cannot be credible through the transparency apparatus of due diligence and CSR reporting alone, which are essentially "second-order descriptions" (Strathern 2000: 312) of the company by the company itself, then verified by audit firms paid by the same company. Against this circular system of verification of transparency claims, the members of the coalition insisted that only by disclosing the sources of the raw materials they trade, process, and transform would companies be able to make their claims potentially verifiable and credible.

According to the text of the proposed constitutional article, corporate accountability should therefore be dissociated from the scope of corporate codes of conduct only in order to be re-embedded into the broader framework of public transparency of the country that ultimately makes companies' operations not only possible but lawful. This proposition illustrates in its own way the shift in claims of industrial irresponsibility described by Julia Eckert (2021: 407), "from local officials to transnational facilitators." The attribution of responsibility for possible wrongs to different entities – operator, parent company, host state – and through different jurisdictions thus necessarily involves a plurality of legal orders, whose embeddings, by textually linking facts, persons, and things, give rise to what might be described after Latour as different types of "veridiction" (2004: 298).

This suggests paying attention to the "discursive entanglement, [or] the universe of statements that connect different bodies of norms to each other" (Krisch 2021: 6). I thus consider law – in various forms, including the "soft" (or non-binding) law of voluntary codes of conduct – as acting as a mediator in Latour's formulation. Indeed, Latour sees law as a "mode of enunciation" (2004: 298), whereby what is considered true or false in a situation is legally defined in a way that is

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neither strictly scientific, nor technical, nor political, but rather depends on the dominant criteria used to define a certain object in a certain situation. In the processing and trading of gold, shifting veridictions notably manifest in its material transformations, and in the displacement of the limits of transparency (and secrecy) regarding its provenance.

The Plural Modes of the Existence of Gold

The unstable materiality of resources extracted and circulated on a global scale informs their inscription in different ontologies (Richardson and Wetzkalnys 2014), or in different modes of existence carrying their own registers of veridiction (Latour 2004; 2012). By way of examples that I document elsewhere (Bolay 2021; 2022), artisanal gold mining in Guinea requires the approval of ancestors' spirits to be separated from the earth. Once smuggled to Mali, smelted and exported by officially registered *comptoirs* in Bamako, the gold acquires a status of good and a Malian geographic provenance. The same gold, when aggregated from other sources, most often in Dubai, and possibly smelted and made into jewelry, will no longer be "mined gold" but "recycled gold." Qualified by its presumed use rather than by its mode of circulation, it ends up legally free of any mining origin. Once remelted and refined into ingots to industry standards, it is considered by Swiss customs as a monetary item and not as a commodity. As a medium of exchange rather than an object of exchange, it is legally exempt from import taxes and declaration of origin. Thus, new social and normative inscriptions are conflated in the successive episodes of gold's transformation through the processes of smelting and purification of the substance from both its physicochemical and its social impurities.

With gold, the translations of a mined substance into an accredited product, tradeable on the main markets, are reminiscent of what Weeks (2020) calls "off-shore ontologies." Those are dematerialized, detached from anchorage, rely on simulation, and are, by the same token, flexible in their personification – gold being possibly considered as natural substance, as raw ore, as currency, as financial product, as jewel, or, more recently, as digital token. Such personifications act as ontological truths once their "mode of existence" is inscribed (by Guinean earth priests, for instance, by Malian-registered buying

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houses, by the LBMA's RSP, by Swiss customs, or by the Swiss Financial Market Supervisory Authority) in a register of veridiction, "far from epistemological definitions of true and false, but deserving of the qualifiers true and false" (Latour 2012: 66).

As the form of gold changes, so does its legal status, whether it is semi-purified gold from mines, also known as *doré*, jewelry, industry scrap, or refined bullion. In this respect, gold refineries have played a key role in maintaining the public secret about the potentially contentious origins of gold by "knowing precisely what not to know," to use Taussig's formulation (1999: 5–6). The roots of this industrial policy of strategic ignorance, reminiscent of other regulatory bureaucracies,[4] lie in the ambiguous status of gold as both money and commodity. Indeed, until the beginning of the twentieth century, gold refining was not yet an industry in its own right, but rather a sub-branch of the banking sector. The refining industry was institutionalized by the demand of central banks to calibrate the value of gold against chemical purity standards in order to serve as a benchmark for the issuance of paper money (Schenk 2013: 19). The artisan works of smelting, purifying, and hallmarking gradually merged into a single entity – the gold refinery – which delivered to the banks standardized and certified bars in terms of weight, shape, and purity. In this process, the refineries became the mediators of political considerations regarding the establishment of central banks and, later, of commercial banks and finance, with the transformation of a natural substance into an object of univocal interpretation, a standardized financial artifact, cleansed of its previous modes of existence.

Thus, through chemical purification to at least 99.95 percent, as defined by the LBMA Good Delivery Standard, gold is also purified of traces of its past. As Field (2019: 176) reminds us, gold's role in Western histories of money was accompanied by the erasure of other histories and ontologies of gold during colonialism. The golden adornments systematically stolen during European conquests were melted down in order to be reused as "money-commodity," in Marx's phrasing (1976 [1867]: 188). It is precisely this ambiguous status as a monetary asset and a fungible material that has contributed to making gold a specificity of the Western economy, in which it has historically played the role of a more durable and malleable fetish than

[4] See McGoey (2019) on the pharmaceutical industry.

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paper money for transporting value while hiding the conditions of wealth extraction attached to a specific "origin."

Through its strategy of guerrilla auditing, the coalition intended to "unveil" what can be considered one of the public secrets of Swiss history. In this sense, it was an extension of previous episodes of unveiling which had made public certain contentious modes of existence of gold before its requalification in the refineries. These include the role of Swiss banks in the refining and requalification of gold stolen by the Nazis during World War II (Ziegler 1997), the way Swiss neutrality was used to circumvent the UN embargo on apartheid South Africa to turn illegitimate South African gold into legitimate Swiss gold (Bott et al. 2005), and, more recently, gold's central role in various money-laundering schemes (Pieth 2019). Pressured by the political context of the upcoming vote and growing publicity about the role of refineries in processing gold from "illegitimate" sources,[5] the Swiss government commissioned an expert study of the gold sector and the associated risks of human rights abuses. The report unambiguously concluded that there is a compelling need "to increase transparency regarding the provenance of gold, [as] it is difficult [for the Swiss government] to decide on any policy measures without having access to primary sources of information" (Tratschin et al. 2017: 107). Against this backdrop, three types of veridiction define distinct configurations of visibility and responsibility with reference to the situation of importing gold. Rather than opposing notions of transparency and secrecy through clear-cut boundaries, as often assumed at least since Simmel's work on secrecy (1906), these veridictions instead seek to assemble the values associated with both terms. These veridictions result in being both discretely and discreetly transparent – that is, separated from legal responsibilities and accessible in loosely intelligible terms only to those actively seeking visibility.

Veridiction 1: Monetary Gold and Institutional Discretion

The Swiss government's recognition of its own regulatory impotence is certainly ironic. In Switzerland, opacity regarding the provenance of gold has been institutionalized since the beginning of the twentieth

[5] This term is used in the industry to qualify gold that is traded legally but questionable in terms of ethical responsibility.

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century. By then, the legal frameworks to regulate its circulation and trade were established by adapting the rules of the banking sector – then configured around the principle of banking secrecy – rather than those of customs regulations on the import and export of goods. Still today, the Swiss government considers that "the circulation of precious metals [is] more closely linked to payment transfers as a substitute for paper money than to the circulation of goods to be processed or used" (Swiss Confederation 2013: 5).

Gold thus exists physically as a substance to be mined, transported, and processed through technical and financial logistics, partly concentrated in Switzerland. However, its legal existence is that of an immaterial "liquidity" in circulation. As the former CEO of one of the leading refineries stated in the local economic press, "We are regulated by the Swiss Financial Market Supervisory Authority and we are considered a bank."[6] In this legal logic, the risks identified are those of money laundering, meaning those that may occur after the gold has been refined into bullion or once it is used as "currency," rather than those that may occur beforehand in the trade of illicit goods. As a result, the Swiss government admits that it leaves the monitoring of money-laundering risks to the indirect control of the banks that finance the commodity sector under the Money Laundering Act. This illustrates a "legal circularity" (Couture 2014) whereby one thing – here a natural commodity – is turned into another – a monetary asset – in a self-fulfilling and legally incontestable logic. By textually linking gold to a monetary mode of existence instead of a commodity mode of existence, such veridiction articulates the field of transparency outside of the circulation and material transformation of gold.

One of the main reasons for this is that Swiss refineries established their dominant position through their integration into the banking sector during the interwar period. Whereas in the early days of the industry in eighteenth-century London, refineries had to be accredited by the Bank of England in order to trade their bullion (Green and Murray 2011), Switzerland took this integration a step further by completely recharacterizing the commodity as money. Indeed, the boundary that separated the banking and refining sectors temporarily disappeared as the three main refineries were owned by the three major Swiss banks until the early 2000s. The fourth major refiner entered this

[6] www.fuw.ch/article/metalor-is-considered-a-bank/

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market later as a subsidiary of a commodity-trading firm, thereby making the reverse journey from gold as a commodity to be sold on spot markets and bullion exchanges to gold as money used as forward and financial swaps and as liquid and convertible currency.

This later, industrial trajectory illustrates another key aspect of the Swiss business environment. In addition to the banking sector, Switzerland has become a major hub for commodity trade, which has led some authors to speak of "Swiss extractivism" to highlight its central role in the "servicification" of global value chains (Dobler and Kesselring 2019). As these authors point out, Switzerland competitively provides all the necessary infrastructure for global commodity trade: "Fast and secure access to finance and insurance, excellent virtual and physical global connections, a dynamic freight industry, trader-friendly regulations, proximity to international standard-setting bodies and the plethora of international lobbying groups in Geneva" (Dobler and Kesselring 2019: 229). As with banks, Switzerland's reputation for business discretion is also mentioned as a comparative advantage of its business environment model for commodity trading.

The ramifications of gold refining in the banking and trading industries – the two main sectors contributing to Swiss GDP (Lannen et al. 2016) – help explain Switzerland's central position as a gold-refining hub, as well as the political cultivation of "discretion" in its business environment. Discretion has been institutionalized by bank secrecy laws since the 1930s; these laws offer a mirror to the public secret of gold provenance. As Genier (2014) explains, the legal entanglements underlying bank secrecy created exceptions that cannot be easily dismantled. This is the case because of the laws themselves, such as the 1934 Banking Act, which made the disclosure of Swiss bank clients a criminal offense. But more insidiously, a plethora of informal rules recommend that industry remains discreet about these very practices of discretion: for example, a note circulated by the Swiss banking association in 1962 urged its "members to avoid any promotion or publicity concerning the tax advantages offered by our country, or the qualities of banking secrecy" (Perrenoud 2003: 39).

Discretion is now often portrayed as part of "Swiss culture." Even the national tourist office promotes this narrative on its website, stating that "discretion is part of the Swiss character." In Swiss embassies, the promotional book *Swiss Made: The Untold Story Behind Switzerland's Success* (Breiding 2012) also describes the country as "the ultimate in

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discretion." Essentializing and turning discretion into a national marketing device is a continuation of political calculations from the beginning of the twentieth century to "position banking in an international environment as safe and discreet" (Swiss Federal Council 1934; cited by Leins 2018: 36). Beyond the banking sector, Swiss companies overall have "considerable discretion in reporting and the level of mandatory disclosure is low," according to Hail (2002: 742). To paraphrase Taussig, what these legal entanglements may veil – namely, the potentially contentious origin of material gold or of financial flows (it does not matter which, since the two are treated interchangeably) – is "known but difficult to articulate" (Taussig 1999: 6).

This was frequently experienced by my interlocutors from the coalition when they were confronted with rejections of their requests for information on potentially illegitimate gold in the flows of certain refineries. These refusals were justified by the fact that – like banks in terms of the assets they hold – refiners do not always own the gold they process, and therefore do not consider themselves to be in a "supply" relationship but in a "customer" relationship with their sources. The central role of trade secrecy in gold procurement was made very clear at a meeting organized by the Secretariat for Economic Affairs to which refiners, NGOs, accreditation bodies, lawyers, and scientists like myself were invited. In response to the call by one of the coalition members for greater transparency in procurement, a refinery representative stated vehemently: "What you want is to simply destroy our industry. If we disclose our customers [i.e., our sources of supply], others will be quick to attack our market. You don't ask insurance companies or doctors to reveal who their customers are. It's the same with us!" Certainly, none of the members present in this meeting would think that a shipment of gold, a health insurance contract, or a relationship with a patient were ontologically "the same" – especially in the context of a policy meeting on responsible sourcing. However, even though several organizations were able to trace the path of illicit gold in Switzerland, its entanglement through contract law, customs categories, trade secrecy rules, and banking regulations underpins a mode of veridiction in which this equivalence is true. The legal entanglements on which the mode of existence of monetary gold is based make it impossible to formally link a refined product, which nevertheless satisfies the LBMA's criteria of responsibility, to its provenance. Even when this link is known, as in the various reports

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published during the campaign, it cannot be legally articulated as such in this mode of veridiction.

Veridiction 2: Livelihood Gold and the Utopia of a Discrete Industrial Panopticon

In the face of mounting public pressure, neither refiners nor the Swiss government have remained impassive. Aligning with the trend toward supply chain governance through CSR and the ethical auditing regime, the Swiss government has been promoting a responsible sourcing program for gold from artisanal and small-scale mines since 2013. CSR commitments within the industry already existed, as well as Fairtrade-certified channels such as Max Havelaar's Fairtrade gold and the Association for Responsible Mining's Fairmined gold. However, the Swiss Better Gold Initiative for artisanal and small-scale mining is unique in that it is nationally coordinated at the industry level by the Swiss Better Gold Association, an ad hoc grouping of banks, jewelers, watchmakers, and the four major refineries. And, most importantly, it was publicly funded to the tune of CHF 8 million over four years, with a further CHF 6 million for an additional four years in 2021 (SECO 2021). The stated aim of the program is to increase transparency, accountability, and profitability in the gold value chain. It targets small-scale operations, especially those using artisanal methods, which are "high risk" according to OECD guidance and constitute 20 percent of global mining production.

Initially, the program was conceived as a support to small producers wishing to move toward fair trade certification, and introduced a premium on the market price in exchange for a monopoly on the certified mines. In order to meet the high requirements of traceability and the segregation of flows imposed by Fairmined or Fairtrade certifying bodies, the approach developed essentially consists of formalizing small producers and integrating them into a fully controlled supply chain. As with industrial mines, the main objective is to reduce the number of commercial intermediaries in order to reduce costs, and by the same token facilitate the work of traceability. Locally, however, initiatives of this type are not without ambiguity with regard to the exclusion mechanisms they inevitably establish (see, e.g., Fisher 2018), or even the new forms of control and dependence that the Fairtrade regime may imply (Besky 2013). From this point of view, Fairtrade

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certification manifests the opposite of the regime of discretion outlined above by seeking to realize the utopia of an integral top-down, panoptic view of a separate segment of the supply chain.

This is what its promoters emphasize. The secretary general of the association insists, for instance, on the technical challenges that the traceability of artisanal gold represents in the face of the permanent danger of "contamination" by other sources of gold. At the same time, such concerns largely evade the unspoken issue regarding the expansion of the few pilot projects to a larger scale. In our discussions, the partners who implement the program regularly mentioned the difficulty of recruiting new miners, who are hampered by the administrative and technical-legal burden of compliance, as well as by their reduced leeway within the informal sector. As a result, the few certified mines, located exclusively in South America, supply less than 1 percent of the total amount of mined gold imported into Switzerland from that region, and much less when compared to global gold imports from all sources. In commercial terms, the program is therefore marginal, to say the least, on a national scale and negligible on an international one. On the other hand, the initiative does not lack visibility at industry conventions, multi-stakeholder conferences, and other public events, where it illustrates the efforts of Swiss refiners to support the livelihoods of small-scale miners in the Global South. It thus paradigmatically illustrates common strategies in the "audit society" to decouple normative goals from operational ones (Power 1999), between discretionary CSR ethics of philanthropy for reputational purposes and the maintenance of core business operations.

While the decoupling of ethics and business in the CSR movement is frequently questioned as a mechanism for preserving the status quo, it nevertheless informs the separate social and material inscriptions of gold in plural normative frameworks. Strategic decoupling extends materially and legally, one might say, toward the establishment of an alternative mode of veridiction. While monetary gold is associated with an indefinitely fungible and provenance-free liquidity, certified "fair" gold is staged as a material good indexed to a supposedly inalienable local provenance. By preserving such gold from any "contaminating" interaction with other sources, fair trade certification establishes with the consumer the fiction of a relationship with the lives and livelihoods of the people who live and work in mining areas. Such gold is physically identical in every respect to gold that is not certified by the

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program. However, the gold differs by the content of the voluntary compliance and auditing standards to which it is subject, and by the extension of these standards along the supply chain to make its interpretation unambiguous. The program guards against the anxieties of "social pollution" (Douglas 2000 [1966]) that the artisanal sector represents due to its association with illegality, irrationality, and environmental irresponsibility in government and NGO discourses (Childs 2014). It does so by establishing a decoupled mode of veridiction articulated around the utopia of a dis-intermediated relationship between producers and consumers, which, paradoxically, multiplies the intermediaries – not in the production chain in this case, but in the verification chain.

Veridiction 3: Offshore Gold and Civic Rights to Information

One of the obstacles the coalition members encountered in their attempts to expose illegitimate commercial practices related to the administrative categories under which gold is registered with Swiss customs. While a commodity such as cocoa can be registered with Swiss customs under forty-five different categories depending on its form, use, and qualities, gold has only three subcategories: jewelry, raw (mined) gold, and recycled gold (already processed and refined). As customs bureaucrats unambiguously explained, as gold is considered a currency rather than a commodity, raw and recycled gold are treated indistinguishably as nontaxable assets. Due to the absence of tax requirements, customs officials do not need to distinguish whether the provenance is that of the last importer or the place of extraction. Once qualified by customs and tax regulations, this de facto conflation of terms renders the released data unreadable and useless for identifying jurisdictions of origin that might be considered more or less "at risk." The recent accessibility of customs statistics on gold, which were kept secret until 2014,[7] only performs the ideal of government

[7] According to the report commissioned by parliament on the publication of foreign gold trade statistics (Swiss Confederation 2013: 3–4), the main reason why foreign gold trade statistics were not published was to "ensure the required discretion to the gold trade." According to the report, a key element of the decision was to remain competitive with other financial centers where physical gold is traded, in particular London, whose jurisdiction (the UK) did not make gold foreign trade data accessible.

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transparency. As Birchall (2011: 14) argues, "the release of incomprehensible data" in turn helps to "keep certain practices opaque." In contexts where quantification is purposely unintelligible to outsiders – for example, in the global culture of finance studied by Maurer (2005) – the evaluation of offshore risks is subject to the ethical judgment of peers and the public, provided that situations can be contextualized in a "community of regard" (Maurer 2005: 476). This is what the coalition intended to do.

Some coalition members had indeed managed to circumvent the unintelligibility of Swiss customs' data by accessing detailed trade statistics directly from producing and transiting countries. The presence among the main exporters of jurisdictions known to be hubs for both trade and money laundering, such as the Dubai Multi Commodities Centre (DMCC) free zone in the United Arab Emirates, regularly aroused suspicion. In the name of companies' own claims to being responsible businesses, Jürg, one of the coalition's activists, took the initiative to write to the main Swiss refineries to ask them to clarify their commercial relations with Dubai. In his letter, he asked them, on behalf of his organization, to confirm that they were receiving gold from Dubai, to disclose the quantities and names of their Emirati suppliers, and to illustrate the due diligence measures taken to ensure that no gold from "high-risk or conflict-affected areas" – in line with the OECD wording – was traded in Dubai. He justified his request by pointing out that, in the previous year, import statistics showed that over 160 tons of gold had been imported into Switzerland from Dubai.

The responses he received followed a similar script. Each of the companies listed their commitments to "responsible sourcing," starting with their compliance program to meet the LBMA requirements – the first type of veridiction. In addition, they referred to their own codes of conduct and CSR programs in which they were engaged, including the Swiss Better Gold Initiative – the second type of veridiction. Finally, the replies consistently concluded that it was in any case legally not possible to disclose quantities or names of business partners for "obvious" reasons of confidentiality, thus referring to the protection of trade secrets.

Faced with this response, Jürg repeated the same undertaking, but this time he wrote as a Swiss citizen to the customs administration in the name of the federal law on the principle of transparency in administration. The subject of the request – Excel tables showing all gold

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purchases by each refinery between 2014 and 2018 – resulted, to his surprise, in a positive response from the customs administration under the application of the transparency law. As with most freedom of information laws in other jurisdictions, citizens in principle have a civic and political right to access "information that the state collects and holds on [their] behalf" (Calland and Bentley 2013: 71). The unexpected trajectory of Jürg's request thus suggests the possibility of a third mode of veridiction operating through the detachment of transparency claims to a specific product in favor of their attachment to a civic right. The dissociation of gold from its modes of existence as either a currency or a commodity also disentangles it from a producer–consumer relationship and from the main normative frameworks – industry norms and private contract law – that regulate such a relationship. Instead, it inscribes imported gold as a mere piece of information detained by the state *on behalf* of the sovereign, thereby enabling a reconfiguration of what ought to be made visible, by whom, and to whom.

Yet, the decision to disclose detailed trade data was immediately objected in an appeal brought to the highest court by the four main refineries acting together through the same law firm. The appeal brought before the Swiss Federal Court sought to challenge the entanglement of Jürg's claim with the protection of citizens' rights to information, by re-entangling it instead with the rights of companies to protect their business secrets. As summarized in the appeal, the name of the clients and the imported quantities are to be considered "business secrets, i.e. strategic economic data of great importance to four of the most important players in the economic sector concerned."

In law, for information to be considered a business secret worthy of legal protection, it must meet a series of conditions, including an "objectively founded interest in keeping the information secret" (Article 162 of the Swiss Criminal Code), meaning that the information itself has commercial value in that it provides a comparative advantage over competitors. Yet, as Levine (2011: 414) rightly points out, "the definition of commercial value as a prerequisite for trade secret protection has expanded dramatically over the past 75 years, with the result that more and more information falls under the protection of the trade secret doctrine." This expansion, which often strategically plays out in offshore outsourcing, together with the increasingly blurred boundaries between private and public entities in government, recreates

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barriers of access to information supposedly made accessible through freedom of information laws.

To several interlocutors, the question of whether details of provenance and quantities had any commercial value was questionable.[8] However, not having to disclose such information – concomitant of the ideal of Swiss discretion – was perceived as having value in itself. Thus, while claiming transparency as a core value of the industry, as in the two earlier veridictions, companies simultaneously sought to preserve secrecy in the third. What activists and a large share of the public might consider ethically and practically irreconcilable truths could therefore apparently cohabitate coherently, through strategically operating legal "cuts" (Strathern 1996) in the network of facts, persons, and things that define the situation.

One major element that enables such cuts lies in the ambiguities surrounding the notion of ownership. Ownership suggests responsibility toward the thing or situation owned, and for demands for accountability such as those made by the coalition. One recurring argument that surfaced again in the appeal was that refineries supposedly did not own the gold they processed: So why should they be responsible for it? Shifting definitions of ownership appeared clearly in the presentation of the facts provided to the high court by the refineries' consortium.

As argued in the appeal, if gold is considered a commodity "shipped from overseas by exporters," then the refineries in turn affirmed that they do not own the gold. They are merely providing a service to a "customer" – the true owner of the gold – and therefore are not responsible for its provenance or conditions of production. Yet refineries admit that they also import gold as buyers themselves. But in this case, gold would not be considered an imported commodity, but money to be transferred to financial markets, including banks and central banks. Despite the refinery being the de facto owner of the gold destined for the banking sector, the protection of confidentiality of business relations in the banking sector prevents the disclosure of any information. Terms such as "exporter" or "customer" thus operate as "shifters" (Silverstein 1976) that enable legal separations, and thereby

[8] Market intelligence firms already compile and compare such information, and sell it to refining firms. Besides, what interlocutors in the industry conceive as an object of competition is the terms of the contracts, such as the negotiation of the price per volume, or the duration of exclusivity clauses.

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the passage from the register of the right to information to that of the protection of trade secrets, all while the refineries claim transparency through separate veridiction registers.

The transparency struggles that occupied much of the Swiss vote on corporate accountability that I chronicled in this chapter illustrate that the conditions of veridiction of so-called responsible gold are never stabilized. Plural veridictions emerge in the weighing of hierarchies and relationships between various normative frameworks that define a situation. Such legal entanglements determine what, in a given situation, may or may not be seen, may or may not be evaluated, and by whom. They enable an industry, such as the Swiss gold-refining industry, to simultaneously tap into apparently opposite fields of value – transparency and discretion – by isolating contradictory claims within what could be termed after Krisch bounded "universes of statements" (2021: 6).

Conclusion

Despite the plurality of veridictions they encompass, responsibility claims – whether by Fairtrade certifiers, CSR officers in refineries, LBMA-accredited auditors, customs officers, or legal activists – are necessarily linked to the ideals of making visible and accessible both ownership (who is responsible for what at what point in time) and provenance (how responsibilities relate to the social life of gold along its journey from mine to market). The etymology of "discretion" both as a disposition for secrecy and as an act of separation helps make sense of the way in which "supply chain transparency" is differently fabricated through distinct legal framings of gold imports into Switzerland. Assuming that the different veridictions discussed in this chapter result from socio-legal mediations in a triangular relationship between an object, a provider of visibility, and an observer (see also the Introduction to this volume), we can finally distinguish the ways in which ownership and provenance are differently conceptualized and made "transparent."

In the first type of veridiction, notions of ownership and provenance are relatively autonomous and vaguely defined. Through self-narrated due diligence, retrospective views on the ownership and provenance of gold are provided by industry actors for industry actors themselves. This circularity is supposed to result from the technical and legal

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impossibility of tracing monetary gold, which is continually purified of traces of its past by discarding its commodity mode of existence and the set of regulations associated with it.

In contrast, the second type of veridiction intimately links the notions of ownership and provenance. Provenance is assumed to be made traceable to the mine and verifiable by identifying all the links in the "chain of custody." The underlying assumption is that of gold as an "inalienable commodity" (Ferry 2002) tied to the livelihoods of impoverished artisanal miners in the Global South. To exist as such, private systems of gold certification are given priority over national regulations and corporate codes of conduct governing monetary gold. Although negligible in terms of volume and, in their current form, unsuited to significant changes in scale even from the point of view of their promoters, they essentially consist in the company making visible a marginal form of production that meets the ethical expectations of certain consumers and investors for whom it is intended.

The third type of veridiction, finally, challenges both the discr*ete* (separative) and discr*eet* (secretive) dimensions of transparency promoted in the industry. By disentangling gold from its materiality and legal status either as money or as a commodity, coalition activists moved away from an ontology of individuals-as-consumers to an ontology of individuals-as-citizens. In the third type of veridiction, gold is no longer conceived in terms of its material or legal relation to a consumer, but as part of a stream of information ultimately owned by the sovereign. This approach potentially reconfigures the triad of the visibility provider, the object observed, and the observer through an alternative socio-legal mediation. This veridiction differs mainly because it places the firm as the object of scrutiny, rather than as the provider of visibility, in between the state giving sight and the citizen as observer. In so doing, it bridges two forms of transparency project that so far have relatively separate trajectories: the politics of transparency in government that emerged in the early 2000; and the more recent, and widely discussed in this volume, politics of transparency in international trade.

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