NEW FORMS OF GOVERNANCE: CERTIFICATION REGIMES AS SOCIAL REGULATIONS OF THE GLOBAL MARKET

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INTRODUCTION

In the past decade, a number of new forms of governance have emerged on the world stage, driven in part by the weaknesses and failures of traditional forms of regulation. The new forms include what might be called "social regulation of the market", in which advocacy groups promoting action on a specific issue partner with the private sector to regulate the behavior of corporations. This partnership typically constructs codes of conduct, systems for monitoring and compliance, standards for public reporting, and increasingly the use of certification regimes to create market incentives for particular kinds of behavior. These systems are designed to work both with and without government involvement. This goes against our traditional views of who governs whom, and how regulatory systems are constructed.

Regulation can be defined loosely as limits imposed on the behavior of particular actors, contained in rules and standards that are not voluntary. Typically, we view regulation as a function of national governments, and the targets of regulation are often the private sector. These two sides, public and private, stand in opposition to each other, especially in the United States. Increasingly, however, the borders between public and private sectors in the regulatory realm have become porous, and those doing the governance now include a variety of actors besides representatives of the state. This has changed our perceptions of what governance is, and how it is accomplished, especially in international affairs.

VARIETIES OF REGULATION

We can classify new forms of regulation in terms of those doing the regulating- the actors in charge of designing, monitoring, and enforcing the rules and standards. We can conceptualize regulatory action in terms of four broad categories: traditional regulation, co-regulation, industry self-regulation, and multi-stakeholder regulation. Traditional regulation is the kind that is developed, promulgated and enforced by national governments, either on their own or in cooperation with other governments. Many people have argued that, in recent years, economic globalization has increasingly undermined such traditional regulatory systems, as governments "race to the bottom" in an effort to attract mobile capital to

Errol Meidinger, Chris Elliott and Gerhard Oesten (eds.)
Social and Political Dimensions of Forest Certification, 2003

their borders. (Greider 1997; Berger and Dore 1996; but see Drezner 2000)

The political debate in many countries has revolved around economic efficiency versus social values in regulatory affairs. During the 1990s, when liberal economic policies dominated political agendas in national capitals and international bureaucracies, many governments across the world liberalized, deregulated, and sought more market-friendly ways to achieve regulatory aims. As a result, what might be termed "co-regulation" has emerged as an increasingly common practice. Co-regulation involves both the government and the private sector in the processes of regulation, with market actors often delegated the task of developing standards and the public sector applying sanctions for non-compliance. The U.S. Environmental Protection Agency, for instance, has experimented with such co-regulation, and the European Union delegates many regulatory tasks to the private sector (Harrison 1999; Egan 2001).

A third form of regulation is industry self-regulation, in which the private sector on its own develops technical standards and best practices. This has been particularly common in the development of standards for technical innovations (Spar 2001). These amount to a form of regulatory action in which firms cooperate among themselves in designing limits on their own behavior, but unlike traditional regulation, the system is based on voluntary standards and voluntary action. While this is not new when it comes to technical product standards, the industry has gone beyond this in recent years to regulate its behavior regarding the social and environmental effects of how they produce and market their goods and services. The 1990s are marked by the number and extent of new "corporate codes of conduct" in which corporations, either on their own or through business groups and trade associations, commit to protecting the environment, upholding high labor standards, and generally acting as good corporate "citizens" (Haufler 2001). These corporate codes can be simple statements of policy, or they can involve more elaborate implementation through internal management systems, auditing and accounting by third parties, and reporting of compliance results. Examples include global guidelines on labor standards developed by Levi Strauss for its sub-contractors, and broader policy statements such as the International Chamber of Commerce principles of sustainable industry. Throughout the 1990s, the adoption of corporate codes exploded from a handful to an almost ubiquitous element of corporate behavior.

Finally, the most unusual variety of regulation is what might be called "multi-stakeholder regulation". On a number of international policy issues, a variety of different actors from the public, private and non-profit communities have negotiated and developed a regulatory framework. Examples include the World Commission on Dams, the Global Reporting Initiative, and the Forest Stewardship Council. These initiatives typically establish a set of standards and/or goals, a framework for decision-making, and a process for achieving the standards. These programs often include the development of certification systems, which are intended to provide market incentives for compliance. Consumers become the ultimate enforcers of the system, with independent certifiers playing a key role in providing information on corporate behavior. Multi-stakeholder regulation generally encompasses a wide range of forms. It can be something as simple as a corporate code developed by a single-issue advocacy organization and presented to companies for adoption. For example, Amnesty International has developed a corporate code regarding human rights issues. Or, it may be something more elaborate, such as the Global Reporting Initiative, which is a massive worldwide effort to develop common standards for publicly reporting corporate environmental performance, involving the UN Environment Programme, the International Chamber of Commerce, numerous environmental activist groups, and extensive solicitation of public input. The latter type of effort is also referred to as a "global public policy network" (Reinicke 1998). Multi-stakeholder regulation is differentiated from the other three types by the influential role played by non-profit groups. In fact, they often become the auditors and certifiers of compliance. Social Accountability International (formerly the Council on Economic Priorities) moved from traditional activism, to development of a complete social auditing system which includes training and certification of the auditors.

The latter two kinds of regulation - industry self-regulation and multi-stakeholder regulation-have expanded tremendously in the past decade. Most people refer to these initiatives as corporate social responsibility, business ethics, and corporate citizenship. In referring to them this way, they are dismissing them as regulatory instruments, and emphasizing the voluntary nature of them. Certainly, they are voluntary, but this does not entirely diminish their regulatory function. Certification systems in particular have a kind of soft enforcement through market incentives. At this point, the emergence of new varieties of regulation has created great ferment. For instance, competition is emerging among different certification systems, and some companies are forum-shopping for the most "bang for the buck", i.e. the least costly certification that will still bring them consumer support. There also is some competition among local, national, and regulatory schemes; this is particularly true in the European Union. Some certification and standards systems overlap, such as the ISO14000, SA8000 and the Forest Stewardship Council, thus making it difficult for any one company to meet the expectations of each.

STRUCTURE, STRATEGY, AND THE EMERGENCE OF NEW FORMS OF GOVERNANCE

Why do we see such a multi-faceted trend emerging across issue areas, industries and countries at this time? Why are industry self-regulation and social regulation becoming more common, as they are? The answer lies in a combination of forces that have changed the structure of both markets and politics, and the strategies of actors operating within those structures.

The structure of markets has changed radically due to the opening of national markets around the world to trade and investment from abroad. Few countries today are completely closed off from world markets. This has led to increasing competition among firms and among countries to access markets, sell products, and attract investment. Corporations have extended themselves globally in new ways. Some firms have become more transnational, with one central hierarchy and strategic planning that spans the globe. Many firms have become linked through networks of joint ventures, strategic partnerships, and sub-contractor relationships. Today there are over 60,000 multinational corporations with literally hundreds of thousands of subsidiaries located around the world. (UNCTAD, 2001) This means that managers confront on a daily basis the difficulties of operating in multiple jurisdictions with very different cultures and political systems.

The structure of the world political system can be characterized by the relative failure of traditional inter-governmental institutions, and the success of transnational organizing by non-profit actors and activists. The failures of traditional regulation at the international level can be traced back decades, to the failure of the International Trade Organization proposed after WWII. The initial proposals for an ITO included rules for an emerging and troubling phenomenon - the development of the multinational corporation (MNC). In the 1970s, many developing country representatives expressed concern about the power these MNCs could wield in their weakly developed markets. In response, the United Nations established a Center on Transnational Corporations and launched international negotiations to establish a Code of Conduct for Transnational Corporations. These negotiations dragged on for over a decade and ultimately failed. This was due in part to the liberal consensus that emerged in the 1980s, even in the developing countries that formerly had been so critical of foreign investors. Although both the Organization for Economic Cooperation and Development and the International Labour Organization have developed voluntary codes of conduct for MNCs, most observers agree that corporations are not sufficiently regulated at the international level. Many fear the result is that companies will compete for the cheapest location for production, leading countries to a race to the bottom as they compete to lower their regulatory standards.[1] It appears to many that the development of an integrated global market has outstripped the governance capacity of the current international system.

In response to these changes, prominent actors have changed their strategies. Activists in particular increasingly organize coalitions that transcend national boundaries, bringing together interested parties across the globe. Starting in the 1970s but becoming more prominent in the 1990s, transnational activist groups have launched high profile campaigns against MNCs, accusing them of environmental destruction, complicity with government human rights abuses, and exploitation of workers in developing countries. This "corporate accountability movement", if it can be called that, seeks to change the policy of companies on key issues, often because the activists have been unable to change the policies of national governments on those issues.[2] They utilize sophisticated media campaigns and make increasingly effective use of the Internet. They mobilize consumer sentiment through calls for boycotts, and mobilize investors through shareholder resolutions and socially responsible investment funds. They initiate lawsuits in whatever court will take a case, in recent years using the U.S. Alien Tort Claims Act to attack behavior in foreign countries. At the extreme, they promote direct action against corporate facilities. This targeting of corporations today is combined with a more widespread anti-globalization movement which expresses popular

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1 For the view that corporations are running wild, see (Greider 1997; Korten 1995). For an opposing view, see (Drezner 2000).

2 Robin Broad and John Cavanagh originally labeled this a corporate accountability movement, while noting that it was still somewhat incoherent and loosely knit together. See (Broad and Cavanagh 1998).

doubts about the value of integrated markets and corporate power, generating protests at every international economic meeting from Seattle to Genoa and beyond.[3]

While the most visible portion of the activist community is clearly anti-corporate, there also exists a more moderate set of organizations. In a significant change of strategy, a number of prominent non-governmental organizations have been willing to engage in dialogue with the private sector. Such international advocacy groups as the World Wildlife Fund for environmental issues and Amnesty International for human rights have, in certain circumstances, been willing to work directly with companies to address specific problems. They have been willing to work in partnership with the private sector (within limits) to develop voluntary regulatory mechanisms.

Strategies have also changed among major business players. Despite the fact that the sweeping liberalizing reforms of the past decade have made it look as if they are always winning, a significant number of corporate managers are becoming increasingly sensitive to the bottom-line effects of criticism and activism. They are getting worried about the political backlash against globalization, and the increasing effectiveness of global campaigns launched by transnational advocacy groups. While economic competition heightens the need to produce goods and services at the lowest cost possible, there is a conflicting pressure to raise standards in order to capture the quality end of the market. The backlash they foresee potentially could lead to a return to stricter forms of government regulation and intervention in markets. Leaders of international corporations or companies that serve an international market are also concerned about their reputation, which is a corporate asset that is easy to lose and hard to gain.

Corporate executives and activist leaders are in a contest today to see which one can more effectively manipulate and leverage corporate reputation for their own ends. One way for business leaders to respond is to take the lead in developing alternative forms of regulation to meet social expectations expressed loudly and effectively by the activist community. This means they must participate in dialogue with their critics, develop internal policies that push standards higher, and develop new partnerships to resolve policy dilemmas. To date, a handful of business leaders are learning about the risks and opportunities presented by a strategy of industry self-regulation and multi-stakeholder regulation as a response to conflicting pressures.

FORESTRY AND NEW FORMS OF GLOBAL GOVERNANCE

There has been an international debate over the issue of sustainable forestry for well over a decade now. Sustainable forestry appeared to reach the top of the international agenda in 1992 at the United Nations Conference on the Environment and Development (the Rio Conference), during contentious negotiations over forestry management issues. At Rio, however, the participating states failed to reach agreement, and settled for a non-binding statement of principles, the Forest Principles. They had failed to establish a traditional

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[3] The literature on transnational social movements has been expanding rapidly in the past decade. See, for example, (Keck and Sikkink 1998; Wapner 1996; McAdam et al. 2001).

international regulatory framework, and it was clear to many observers that national regulatory systems were weak or non-existent in many of the countries most affected by deforestation. Many segments of the logging and paper products industries had become global, yet they were not globally regulated. Activists, finding themselves blocked at the national and intergovernmental levels, pushed to develop alternative mechanisms. The Forest Stewardship Council, the Sustainable Forestry Initiative, and other efforts were created as forms of multi-stakeholder regulation and industry self-regulation designed in part to supplement weak international law.

These new forms of global governance raise important questions about how the global political economy can be governed, and by whom. Political scientists and policy analysts have begun to develop a new agenda focusing on the relationships among globalization, global governance and non-state actors. Rosenau and Czempiel were two of the first to give sustained thought to the concept of governance without government, but struggled to identify and define the basic concept (Rosenau and Czempiel 1992). Stephen Kobrin refers to the "new medievalism", in which governance functions are located at multiple, overlapping sites involving local, national, regional and international institutions and both public and private actors. This points up the idea that authoritative decision-making can come from different "places" simultaneously, but without clearly defining the conditions under which specific decisions will be taken at a specific level and by a particular set of actors (Kobrin 1998). Prakash and Hart look at the links between globalization and governance from the perspective of political economy, and their work pays attention to variation across industries in the degree of globalization and the character of governance (Prakash and Hart 1999). Kahler and Lake describe governance as the manner in which groups manage their common affairs, entailing an authority relation between those who govern and those subject to governance (Kahler and Lake 2003). These all point up different important elements of the evolution of governance, - but raise more questions than they answer. They reflect the unsettled nature of current thinking about global governance.

The alternative regulatory initiatives covering forestry issues certainly take account of sectoral variation, by focusing on the forestry and paper products industries. The Forest Stewardship Council Initiative involved representatives of industry, indigenous groups, environmentalists, and others, while the Sustainable Forestry Initiative was launched by industry itself. The existence of these and other alternative regulatory systems alongside continuing international negotiations under the auspices of the United Nations certainly reflects a certain "medievalism" in the multiple sites of decision-making and multiple actors involved. The participants design, construct and maintain a variety of mechanisms to reach decisions concerning sustainable forestry. However, the enforcement is often by non-participants (major buyers, consumers and investors) rather than the decision-makers themselves. Often, the different pieces are governed by different actors-the design of the rules is accomplished by a multi-stakeholder group, the maintenance is by a special-purpose organization, the monitoring is by still other specialized groups, and the enforcement is by yet another set of actors.

These all raise a series of issues that have yet to be resolved. The first is the issue of how is a problem area defined for decision-making purposes? Problem definition often determines which collective group is brought together, but it is not yet clear that the decision-makers in these cases are the most appropriate representatives of "public" interests. Forestry issues have been defined as global ones, although most people experience it as a very local phenomenon. By turning it into a global issue, international environmental groups have tried to establish their legitimate right to protest local decisions about forest resources. On the other hand, many of the forestry activists are in fact locally-based, which gives the forestry initiatives much more legitimacy than they would otherwise have. In the case of industry initiatives, the issue of representativeness is particularly acute. Industry self-regulation, while a step in the right direction, often is designed with more attention to private interests than to public ones.

All alternative forms of regulation suffer from the problem of lack of accountability. In accountable systems, those who make decisions that the public deems to be wrong can be re-called, denied re-election or re-appointment, or otherwise held responsible. Both multi-stakeholder regulation and industry self-regulation are unaccountable. The participants are self-selected. The ill-defined "public" in these cases can hold people accountable only through indirect means, by their choices in the market place. They also can hold them more directly accountable through litigation in some cases.

One issue that has been raised in some circles is the impact of these alternative forms of regulation on the power and capacity of traditional regulators - the governments and international organizations that are commonly thought of as being in charge. Most of the new voluntary initiatives have been developed by activists and industry representatives based primarily in Western industrialized countries. Some critics have argued that codes of conduct, certification and labeling systems can be used as a disguised form of protectionism. Thus, wood products from certain countries may be informally barred from markets if they do not meet stiff standards of sustainability. The existence of these non-governmental mechanisms may undermine the capacity of developing country governments to develop and implement their own regulatory infrastructure. At this point in time, however, most of the forests being certified are located in the industrialized countries, so this has not yet become a pressing issue. Experience in other sectors, such as apparel and textiles, indicates that it may become a more prominent issue in future.

There is some indication that there will be increasing competition among different certification and monitoring systems, weeding them out and perhaps producing a widely accepted and legitimate global system - or lead to the least common denominator standards winning out. Governments may step back into the picture more strongly, and support certification programs through government policies, perhaps even moving into the realm of co-regulation. The line between delegation and usurpation of power and authority by non-state actors may be a thin and controversial one. On the other hand, governments may be too weak, uninterested, or politically divided to act, in which case, alternative forms of regulation may be the most effective means to achieve popular goals regarding sustainable forestry.

THE PROSPECTS FOR NEW FORMS OF GOVERNANCE

What will happen to the non-traditional forms of regulation discussed here in the future? Are they a permanent feature of modern governance, especially at the global level? Or are they an artifact of a particular confluence of trends at the turn of the century? Much depends on the will and commitment of governments, the continuing ingenuity and expanding influence of non-governmental actors, and the continuing internationalization of industry.

States will remain the most significant actors in world politics, but their influence will vary tremendously across issue areas. The balance between public and private action in economic affairs, however, is likely to vary over time. Historically, during periods of innovation and change, the private sector has pushed the boundaries of existing rules and developed new rules and standards of their own (Spar 2001; Cutler et al. 1999). As change slows down, technologies become more stable, and organizational innovations become more widely accepted, it is likely that public authorities will establish a regulatory framework. At the international level, however, the kind of cooperation needed for this is still difficult to achieve. States have different levels of development and technological sophistication, which means that not all will gain the same benefits from such a regulatory system. This is complicated further by the fact that governments have different degrees of regulatory capacity in their domestic affairs.

Non-governmental organizations of all stripes will continue to exert influence in international affairs for the foreseeable future. They have built transnational coalitions whose agendas are merging and becoming better focused, and thus potentially even more effective. The partnerships they have created with the private sector, international organizations, and governments have been hailed as the most appropriate and democratic means to overcome the differences among those affected by economic change (Reinicke 1998). Global civil society may even be strengthened and energized by current challenges, including economic stress and terrorist threat. In some cases, the participation of these groups in decision-making processes has become part of the infrastructure in such institutions as the United Nations and the World Bank, and this is unlikely to change. However recent successes may be undermined by the indeterminate nature of the benefits of these partnerships. In many cases, the dialogue that is the bedrock of multi-stakeholder partnerships may be the most important benefit of these relationships, and yet these benefits are difficult to measure. Some observers argue that the voluntary regulation that is emerging today only addresses the "low hanging fruit", i.e. the easiest and least costly changes to behavior. Pressure from activists and constructive engagement by the non-profit and for-profit sectors may be the most effective way to deal with global issues at this point in time. Ultimately, however, many of the most difficult social issues will need to be dealt with at the local or national levels by effective government authorities and democratic political processes.

The private sector shows no signs of slowing down in its drive to become truly transnational. Many companies from the developing world are now the ones that are becoming transnational at the fastest pace (UNCTAD 1998). Smaller firms will continue to have opportunities to reach global markets through networks of suppliers and buyers, and increasingly through the Internet. Will a deep economic recession turn back the clock on globalization, or undercut the commitment of the private sector to social partnerships? Will the war on terrorism be likely to disrupt international economic networks and erode the willingness of executives to promote corporate social responsibility? Will current corporate scandals undermine public confidence in the private sector and strengthen pressure on companies to demonstrate ethical behavior? Current events point in contradictory directions. During an economic downturn it will become more important than ever to seek out low cost production methods. This means that international sourcing of products and transnationalization of the corporation itself will continue. Industry self-regulation that provides solid bottom-line benefits will continue to have value, although there will be competition among different standards, given that different groups of firms benefit from different standards. When it comes to social issues and not technical standards, perhaps a "race to the bottom" was unlikely during an economic boom, but it becomes more probable when economic stresses intensify. At the same time, industry will be under pressure to demonstrate that it can be trusted, that it is part of the solution and not part of the problem. Some have already invested sufficient time, energy, and money into new standards and social partnerships that it will be difficult and costly to turn back.

The ultimate value of multi-stakeholder regulation and industry self-regulation must be assessed in both absolute and relative terms. From an outcomes-oriented perspective, industry self-regulation and multi-stakeholder regulation must demonstrate over time that they are effective in reaching their objectives. We are still at a fairly early stage in the development of initiatives such as the Forest Stewardship Council and the Sustainable Forestry Initiative. Over the course of, say, ten years they need to demonstrate that they are effective at slowing deforestation and, increasing the number of acres of sustainably managed forest.[4]

These bottom-line considerations are the most vital measures of success, and yet we cannot assess these new regulatory initiatives without looking at the viable alternatives. The main alternative is of course traditional, top-down regulation by governments. But we already know that governments are often barred from effective cooperation in creating an international regulatory framework by profound conflicts of interest. We also know that even traditional regulation at the local level is not completely effective, as numerous corporate scandals attest. For the foreseeable future, various forms of international regulation will co-exist, and global governance will be best described by Kobrin's "new medievalism" metaphor. This may be more than just a second-best solution, however. Perhaps the unstable balance between universalistic forces borne by global civil society, versus the localized understanding of what is valued by particular peoples, is best managed by such flexible and multi-tiered regimes.

[4] See other contributions to this volume for discussions of how to measure the success of these initiatives.

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