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Regulation and Economic Globalization

Prospects and Limits of Private Governance

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Introduction

The last two decades have witnessed a remarkable burst of innovation in 'private governance', i.e., non-governmental institutions that 'govern—that is they enable and constrain—a broad range of economic activities in the world economy'.[1] These institutions serve functions that have historically been the task of governments, most notably that of regulating the negative externalities of economic activity.[2] Private governance takes many forms: standards governing a vast array of environmental, labor, health, product safety, and other matters; codes of conduct promulgated by corporations, industry associations, and non-governmental organizations (NGOs); labels that rely on consumer demand for 'green' and 'fair trade' products; and even self-regulation by corporations under the banner of corporate social responsibility (CSR).[3]

The move towards private governance is best seen as a response to societal pressures spawned by economic globalization and by the inadequacy of public governance institutions in addressing them. As firms, production networks, and markets transcended national boundaries, public (governmental) systems of economic governance built on the unit of the nation-state proved inadequate for regulating an increasingly fragmented and footloose global economy. In the language of Polanyi, markets became 'dis-embedded' from societal and state institutions (Polanyi, 1944. See also Evans, 1985; Ruggie, 1982). Logically, economic globalization demands global regulation, but at the international level regulatory standards are generally weak and there is little capacity to enforce them. In the developing world, where production is increasingly concentrated, many states lack the capacities of law, monitoring, and enforcement needed to regulate industry, even when they have strongly worded legislation on the books. The failure

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of public governance institutions to keep pace with economic globalization has, therefore, created a global 'governance deficit'.[4]

As Polanyi would predict, workers, environmentalists, human rights activists, and others in civil society have mobilized to demand new forms of governance. Part of this response focused on attempting to alter public policies—i.e., pushing back against neoliberal economic prescriptions or demanding that market opening be accompanied by regulatory measures. Frustrated with the perceived inability of governmental institutions to respond to the governance challenge, however, many social activists and labor groups also turned to pressure campaigns targeted at corporations and to other strategies designed to use market pressure to regulate the behavior of producers.

That such developments have had an impact is not in question. Fair Trade coffee, 'sweatshop free' collegiate apparel, and Forest Stewardship Council-certified lumber have all altered specific production practices. Even Walmart, the poster child of corporate malfeasance in the eyes of many activists, is now beginning to respond to social pressures for reform by stocking energy-efficient light bulbs, using environment-friendly packing materials, and so on (Gereffi and Christian, 2009). But the questions are: How far will this go? To what extent can private governance address the global governance deficit? Will private governance require complementary forms of public regulation, and where might this public regulation come from?

Much is happening, but there is no good overall assessment of whether these myriad private governance initiatives are anywhere close to sufficient to address the full range of labor, environmental, and other social concerns. Most research to date has been largely descriptive and anecdotal. Clearly, more is needed if we are to understand the impact of private regulatory governance. A necessary first step is to develop clearer theoretical propositions about the conditions under which various forms of private government are likely to succeed and, just as importantly, where they are unlikely to do so.

In this chapter, we offer six hypotheses about the conditions under which private governance is most likely to arise and to be effective, as well as for thinking about the interaction between private and public governance. Before turning to those hypotheses, it is necessary to consider the forces that underlie the move towards private governance, particularly those changes in the global economy that both created demand for new governance and also enabled its supply. Although we are largely concerned in this chapter with private governance, public and private governance interact. Indeed, it was a failure of public governance that led private modes of governance to emerge and proliferate. Ultimately, as we will argue, the

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limits of purely private governance will likely spur renewed attention to public governance and to new forms of public and private governance interaction.

The Demand for Governance: Economic Globalization and the Public Governance Deficit

Private governance arose in particular historical circumstances. In the world before globalization, although there was economic interdependence among advanced industrial countries (Keohane and Nye, 1977), large regions of the globe were not connected to the global market. In the mid-1980s, the Soviet Union, China, and Eastern and Central Europe still had centrally planned economies; high levels of protection and state ownership characterized most of Latin America; and boycotts isolated South Africa while the rest of sub-Saharan Africa barely registered. The last 25 years have witnessed a dramatic restructuring of economic activity around the globe, in large part because of changes in the policy environment. The collapse of communism in Europe and its transformation in China, the abandonment of import-substitution policies in Latin America and elsewhere (driven in no small measure by the International Monetary Fund (IMF)), and the expansion and deepening of the international trading rules in the World Trade Organization (WTO) and in ever more numerous regional and bilateral agreements, dramatically transformed the environment for global commerce.

The global economy that has emerged since the 1980s has two distinctive features with profound implications for public governance. First, a substantial portion of global manufacturing production—and increasingly of services as well—has shifted from the developed to the developing world (Dicken, 2007). Once largely outside the global production system, China, India, Brazil, Mexico, South Africa, and other big developing countries are now host to a very significant and rapidly growing portion of international manufacturing output. By 2000, half of all manufacturing production was in the developing world, and 60% of exports from developing countries to the industrialized world were no longer raw materials but manufactured goods (Held and McGrew, 2002).

Second, and equally important for governance, the organization of global production has changed dramatically. Historically, the vast majority of manufacturing production was carried out either by national companies and their suppliers within single countries or by multinational corporations (MNCs) based in developed economies that typically owned all or most of their foreign factories (Kaplinsky, 2005; Ocampo, 2010: 1–12). Today, the global economy is increasingly organized around international production networks in which large lead firms, often located in developed economies, control to a significant extent the production of suppliers, who are typically smaller and likely to be

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located in developing countries (Dicken, 2007). Variously referred to as global commodity chains (Bair, 2009), global value chains (Gereffi and Kaplinsky, 2001), and global production networks (Henderson et al., 2002), this new form of international industrial organization has allowed for production to be coordinated on transnational scales but with far greater flexibility than the older MNC model of direct ownership (Gereffi, 2005).

Key to understanding the implications of global production systems is the role of lead firms in these networks and chains. Producer-driven chains dominate capital- and technology-intensive industries such as automobiles, aircraft, and computers. Buyer-driven chains have become the new model of global sourcing in labor-intensive manufacturing industries like apparel, footwear, and toys, a development led by large US retailers, marketers, and 'manufacturers without factories' (Gereffi, 1999; Gereffi and Korzeniewicz, 1994). More recent studies point to the emergence of new drivers, such as large supermarkets and concentrated food processors (Dolan and Humphrey, 2004; Gereffi et al., 2009; Fuchs and Kalfagianni, 2010). In all of these cases, lead firms enjoy some measure of market power over suppliers and some ability, therefore, to affect their behavior.

Changes in the global economy have profound implications for public and private governance. On the one hand, they undermine public governance. When production largely involved national firms or vertically integrated MNCs based in developed countries, regulation—whether labor, environmental, health, or other—was undertaken by individual nation-states (roughly coordinated in a system characterized as 'embedded liberalism') (Ruggie, 1982). The shift to offshore outsourcing over the past several decades meant that much of global production was now beyond the reach of national governance institutions in the advanced industrial states, and extended beyond the international system of embedded liberalism that was largely confined to the industrialized world. Governments in those developing countries where production increasingly took place lacked the ability, and to some extent the will, to regulate production in their jurisdictions. The formerly centralized economies of China and Eastern Europe had no tradition of market governance, the newly opened economies of Latin America had little regulatory capacity, and most of sub-Saharan Africa had weak public governance of any form.

Moreover, initially at least, the interests of most developing countries lay in attracting investment, which meant that they tended to give relatively short shrift to regulatory concerns, and at the international level, public regulation remained very weak. International organizations such as the International Labor Organization (ILO), the United Nations Environmental Program (UNEP), and the United Nations Development Program (UNDP) have extremely limited powers, and are

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certainly less well developed than are market-facilitative organizations such as the WTO, the IMF, and the World Intellectual Property Organization (WIPO). Indeed, the relative strength of these facilitative forms of international public governance may well have inhibited certain forms of regulation and exacerbated unequal income distribution at the global level (Ocampo, 2010).

Changes in the international economy, therefore, can be seen as creating a vacuum or deficit of public regulation. But it is important to recognize that new patterns of industrial organization, notably the concentration of power in lead firms within global production networks, also created possibilities for private governance.

Social Responses and the Rise of Private Governance

As Polanyi would predict, the disembedding of markets from governance provoked a social response. Initially, the targets of social activism were international organizations associated with globalization—the IMF, the World Bank, and the WTO—but progress from the standpoint of the activists was extremely limited.[5] Frustrated by the lack of governmental response, many social activists began to shift to direct pressure on corporations to change their behavior (Vogel, 2010). Beginning in the early 1990s, demand for corporate codes of conduct, perhaps the most visible and widespread form of private governance, became the opening wedge in a 15-year campaign to bring some elements of social responsibility to international subcontracting networks (Gereffi et al., 2001). The genius of this approach was in recognizing that the industrial governance structures established by lead firms to manage their global supply chains could also be leveraged to achieve social and environmental objectives.

Many innovations in private governance began in the apparel sector, which was a forerunner of globalization in other manufacturing industries because of its labor-intensive production and relatively low barriers to entry. Levi Strauss, the American jeans maker, was one of the first MNCs to tout its own corporate code of conduct in 1991, using provisions against employing forced labor and child labor to justify its unwillingness to source from China (unlike many of its competitors, who already were making clothes there). Other multinationals in the apparel industry such as Liz Claiborne, Nike, Reebok, and The Gap soon followed suit, but these first-party codes had little external credibility because individual firms proclaimed and monitored their own rules.[6] While first-party codes became commonplace in certain industries, second-party codes of conduct were developed by trade associations to apply to their industry members (such as Responsible Care in the chemical industry) (Gereffi et al., 2001).

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Second-party codes were soon followed by third-party certification arrangements, whereby an external group (often an NGO) monitored provisions adopted by particular firms or industries. While many argued that the early codes had no teeth and built-in conflicts of interest, these newer codes of conduct had stricter provisions and, most importantly, an independent monitoring mechanism that was not controlled by the firms whose behavior was being scrutinized (Kolk and van Tulder, 2004; Locke et al., 2007; Locke and Romis, 2007). This allowed domestic and international NGOs to play a significant role not only in detecting exploitative labor practices in global supply chains, but also to use well-coordinated campaigns to force leading multinationals with highly visible brands, such as Nike, Disney, and Starbucks, to improve working conditions in their global network of suppliers and to participate in equity-oriented programs like the Fair Trade movement (Esbenshade, 2004; Klein, 2000).

By the mid-2000s, a large number of multinational firms were publishing annual Corporate Social Responsibility reports (for example, Gap Inc., 2004) Furthermore, under pressure from a wide range of NGOs and labor groups, private governance regimes were becoming more pervasive: industry-wide codes of conduct proliferated and became more transparent (Kolk and van Tulder, 2005). The monitoring reports and complete lists of suppliers for well-known brands like Nike were made public, and instead of abandoning suppliers that violated the corporate codes, MNCs were pressured to get domestic suppliers to comply with the global codes.

Private governance has continued to evolve. The list of agricultural, craft, and other products in the Fair Trade line is expanding, as are organic and green-labeled goods. Examples abound of various types of socially responsible corporate practices. McDonald's recently tightened its procurement guidelines in response to the clear-cutting practices of Amazon soy producers and cattle ranchers who supplied the industry. Cadbury champions its commitment to the communities that grow its cocoa. Walmart has mandated energy savings throughout its supply chain. And in many sectors there are now jointly agreed upon codes and standards for such things as greenhouse gas emissions accounting (Green, 2010), sustainable timbering practices (Bartley, 2010), labor practices in apparel and footwear (Gereffi et al., 2001), electrical product safety standards (Büthe, 2010b), and many others.

Notwithstanding the impressive dynamism of private governance, however, it remains far from filling the public governance vacuum. For one thing, there is great variation in coverage. In some well-known sectors, private governance appears reasonably robust—apparel, for example—but even within that sector much production remains outside the private governance regime. Moreover, even when there are rules and standards in place, there is often less than meets the eye. The existence of a code does not guarantee that it will be observed or enforced.

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Although there is a large and growing literature describing trends in private governance, to date there have been few attempts to develop propositions that would enable us both to explain the observed pattern of private regulation, and to predict its likely trajectory. Notable exceptions are Vogel (2008) and Mattli and Woods (2009a, 2009b), whose conceptualization of private governance as arising from the interplay of demand and supply factors provides a very useful starting point for further theorizing. Central to their thinking, and ours, is the interaction between private and public governance. Developments in each realm have implications for the other. Indeed, as Whytock (2010) convincingly demonstrates, it is often impossible to disentangle the two.

Six Hypotheses

Based on our review of the extant literature and our ongoing research on numerous supply chains, as well as our assessment of the evolving dynamic between public and private governance, we propose six hypotheses about when and where private governance is most likely to succeed. The first four hypotheses can be thought of as predicting the domain in which we expect to see the most established and effective forms of private governance. Hypotheses five and six deal more explicitly with the relationship between public and private governance and are more forward looking. Our primary objective in this chapter is the development of a coherent set of hypotheses rather than theory testing *per se*. Nevertheless, for each of our hypotheses, we provide not only the theoretical rationale but also offer illustrative examples in support of their plausibility.

Hypothesis 1: The more economic leverage large lead firms have over smaller suppliers in their value chains, the greater is the potential impact and scope of private governance.

The existence of lead-firm leverage magnifies the importance of private governance to smaller firms in its chain, although the impact of this leverage will depend on the specificity of the relationship (as outlined in Hypotheses 2–4 below) rather than the relative size of the actors *per se*. To a great extent, this is a matter of market concentration: firms with large market shares, whether marketers, retailers, or producers, usually have the option to source from many smaller suppliers, each of which may have few options other than doing business with the lead firm. As Fuchs and Kalfagianni (2010) observe in the case of private governance in food retail, ‘the dominance of a few corporations fosters their ability to limit the choices available to other actors, specifically suppliers and labor, who desire entry’. Of course, it is possible that even a very large buyer might

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have little leverage if it is dependent on supply from a small but unique supplier, but this is less common. Given that they have a wider range of alternatives than their suppliers, lead firms tend to have considerable power in their supply chains.

The same leverage that can be used to demand lower prices and better quality from suppliers can also be used to press for better labor practices or greener production methods. This leverage is not simply a function of the lead firm's market share. Influence over supplier behavior may be limited by the relative transparency of practices, for instance. An implication of Auld et al.'s article on technological innovations is that some supplier practices are easier to monitor than others, and should be easier for lead firms to govern (Auld et al., 2010). Moreover, the larger the supplier, the more options it, too, is likely to have (to sell to other retailers or producers, for example), which limits the power a lead firm has in its chain. As Locke has pointed out in the apparel sector, for example, suppliers often have more options and lead firms less power than they might think. 'For most apparel suppliers, individual global brands constitute but a small fraction of their total business. In this context, it is not at all clear that global buyers have the ability/leverage (let alone credibility) to pressure these suppliers' (Locke et al., 2009: 12). It is no accident, therefore, that many of the most prominent cases of private regulatory governance involve very large lead firms with more-or-less captive suppliers. The success of the 'classic' forms of private governance in the apparel industry—codes of conduct adopted by lead firms such as Levi Strauss, Nike, and The Gap and imposed on their suppliers—depended on the power of those lead firms in their global value chains.

More recently, we have seen the adoption of private governance by a broader range of retailers. Walmart is perhaps the best publicized example. In the past few years, Walmart has launched a Sustainability Consortium through which it can use its considerable market power to demand certain environmental improvements by its suppliers (*GreenBiz*, 2010). Global supermarket chains have promoted new private standards for food quality and safety, including product and process specifications with labor and environmental implications (Memodovic and Sheperd, 2009). Many supermarkets have also established their own supply chains in cut flowers, which has created an opening for labor groups to press for better working conditions among suppliers (Dolan and Humphrey, 2004; Hughes, 2000; Reardon and Hopkins, 2006; Riisgaard, 2009; Riisgaard and Hammer, 2011). Powerful lead firms have also been important in pushing the adoption of new industry standards promoted by NGOs. For example, the decision by Home Depot and Lowes, the two largest home improvement retailers, to recognize the standards of the Forest Stewardship Council in the mid-1990s, led its major suppliers to adopt them as well (Bartley, 2010; Gereffi et al., 2001).

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Hypothesis 2: Private governance is most likely for highly branded products and firms.

When demand for a product is less a function of observable utility than of constructed brand identity, firms are more vulnerable to societal pressure. (Also, of course, being a highly recognized brand makes a firm an easily identifiable target for groups demanding regulation; a point to which we will return with our next hypothesis.) It is for this reason that many of the first lead firms to promote private governance regimes in their value chains were highly visible consumer brands such as Nike and Starbucks, whose market niche depends more on marketing than on the intrinsic qualities of their product. A comparison with other large lead firms, less vulnerable to attack on their brand, is instructive. For example, ADM and Cargill have enormous leverage in their agricultural chains, but because they have almost no brand identity with consumers, they are less vulnerable to societal pressure (Gereffi and Christian, 2010). Similarly, Flextronics—a very large supplier in the electronics industry—shapes supplier standards in its chains, but it faces little social pressure to drive private governance (Sturgeon and Lester, 2004).

Increasingly, firms who once competed solely on price and product have begun to see themselves as vulnerable as well. Walmart, for example, historically used its considerable power in its supply chains primarily to drive prices down, sometimes to the detriment of workers and the environment. But in the last few years, even Walmart has concluded that it needs to protect its reputation from social critiques (Gereffi and Christian, 2009). Large firms in every sector are now taking steps to reduce risks to their brand. McDonald's, for example, faced with criticism about damage to Brazilian rainforests from clear-cutting for feed grains and cattle ranches, has compelled its suppliers to participate in a 'Sustainable Cattle Working Group' (Downie, 2007; McDonald's Corporation, 2009: 18).

Defensive considerations appear to have been the biggest factor in these cases, but firms may also be pro-active with respect to their brand identity. So far, this appears to be most common with smaller niche firms. For instance, the Body Shop promotes itself as a socially responsible company, featuring its 'Values and Campaigns' prominently on its webpage, and Patagonia's 'Footprint Chronicles' portray a positive image in terms of environmental sustainability in the making and sourcing of its products. Social labeling is a special case in which products are differentiated by their impact on workers or the environment, but follows a very similar logic. The increase in consumer demand for goods produced in socially responsible ways has made this new form of branding possible, as illustrated by the now-established market for 'fair trade' coffee, Forest Stewardship Council certified lumber, and the like.

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It is important to recognize how hypotheses 1 and 2 interact. In chains with both powerful lead firm drivers and high brand vulnerability, we would expect, and indeed see, the greatest advances in private governance. The success of the classic forms of private governance in the apparel industry—codes of conduct adopted by lead firms such as Levi Strauss, Nike, and The Gap and imposed on their suppliers—depended on the market power of those lead firms in their global value chains, as well as these lead firms' vulnerability that resulted from being a highly recognized brand.

It is also useful to distinguish between firm-specific standards and those that are jointly adopted by several firms in the same sector in order to see how the former might evolve into the latter. In the apparel sector, once a critical mass of lead firms found it in their individual interests to adopt private codes, those firms had a collective interest in convergence on common standards—in part to minimize the compliance costs of suppliers who sold into more than one chain and in part because common standards allowed greater monitoring efficiency. The logic of this progression is very similar to that suggested by Büthe (2010a, 2010b) for the rise of the International Electrotechnical Commission and by Green (2010) in her discussion of the Greenhouse Gas Protocol, both instances in which industry-wide standards became focal points for coordinating the shared interests of firms in some common approach. Furthermore, once a common standard is established, first movers have a strong stake in persuading other competitors to adopt the standard, a dynamic that can also be observed in the apparel case.

Hypothesis 3: Effective private governance is most likely in the face of effective societal pressure, which, in turn, depends on the relative ease of mobilizing collective action.

Implicit in both Hypothesis 1 and Hypothesis 2 is the assumption that the ultimate driver of private governance is some form of external social pressure. Social pressure is necessary both in demanding new institutions of private governance—codes of conduct, for example—and, equally importantly, for ensuring that such regulations are actually observed (Vogel, 2010). Bartley's analysis of differences in the on-the-ground effectiveness of certification regimes for sustainably harvested timber and factory work conditions in Indonesia suggests the importance of sustained national and international pressure from civil society (Bartley, 2010). Such pressure, however, is far from inevitable, depending as it does on collective action, whether by individual citizens or organized groups such as NGOs and labor unions. Even when there is agreement about the desirability of some collective good, such as better labor conditions or environmental protection, to the extent

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that the accomplishment of that goal requires the coordinated efforts of many and the enjoyment of the good cannot be restricted to those who acted to procure it, the temptation to free ride creates a major obstacle to mobilizing collective action (Olson, 1965).

One determinant of successful collective action is the extent of prior organization relevant to an issue. The existence of environmental organizations and labor unions, for instance, significantly lowers the cost of collective action for their members.[7] When such organizations are present, we would expect to see greater social pressure on those issues on which they focus. Starobin and Weinthal's discussion of kosher food standards demonstrate the way in which existing social structures lower costs of collective action by reducing monitoring costs (Starobin and Weinthal, 2010). A related point made by Auld et al. (2010) is that technology may lower the costs of collective action.

A second factor in determining collective action might be called the inherent dramatic potential of the issue. As Bartley (2010) discusses with respect to the rise of private governance in Indonesia, public controversy regarding forest degradation and workplace conditions in footwear and apparel factories was essential. Drama may be related to the actual magnitude of a problem, but is far from identical to it. Some issues—abuses of children or the death of large marine mammals—are more emotive than others, and carry with them greater potential for both becoming an issue (because they are newsworthy) and spurring individuals to action.

The pattern of successful activism for private governance, as well as its absence when appropriate conditions are not met, appears to bear out our hypothesis. We see most mobilization when there are opportunity structures that lower the cost of cooperation and/or where the issue was successfully dramatized. The case of dolphin-safe tuna fishing methods illustrates the point. The death of dolphins at the hands of tuna fishermen became a cause célèbre in the late 1980s, in no small part because dolphins are such appealing animals. The prior existence of numerous environmental groups with memberships and communication channels, poised to seize upon the issue, also made a significant difference. Activism spawned by outrage over the practice has, over time, led to a 'dolphin safe' labeling regime and to decisions by large food retailers (including Walmart) to adopt the standard for their supply chains. Raising similar levels of awareness among activists and consumers for less easily dramatized practices has proven more difficult. Private governance has made only modest inroads in protecting other less glamorous fish.[8]

The 'anti-sweatshop' movement related to collegiate apparel also demonstrates the importance of drama in mobilizing social pressure. In this case, collective action was necessary on two levels: to organize students at multiple campuses

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and to coordinate a collective response by the universities. Well-publicized and extreme cases of exploitation provided a rallying point for college students, who were then able to pressure a consortium of universities to license only 'sweatshop free' collegiate apparel (Mandle, 2000).

In the case of activist campaigns, it may not be necessary to actually mount an attack if the threat is sufficiently credible. Regulation results from avoidance of possible activist campaigns targeted at embarrassing disclosures of poor practices. Many forms of private regulation are a form of risk management by skittish executives. The actions taken by McDonald's to address clear cutting of the Amazon forests by suppliers in its chain, for example, looks like a case in which the existence of environmental groups already actively working on deforestation, as well as a latent group of people ready to mobilize, created a very credible threat to McDonald's corporate image.

Before turning to our next hypothesis, it is useful to consider a related problem for collective action, that of failure in the market for information. The problem is that those who would demand accountability by corporations, whether in their role as consumers or as activists, cannot directly observe business practices. Such information is costly to obtain, and because it is a collective good, it is likely to be under-provided (Downs, 1957). Certification, as Starobin and Weinthal explore at some depth, is intended to solve the problem by providing an inexpressive signal, but the effectiveness of certification depends on the credibility of that signal. How, then, to certify the certifiers? In their analysis of kosher-food certification, the key is existing institutions. 'The success of kosher at a global scale derives from its continued reliance on the pre-existing social capital share among these tight-knit communities and the active participation of a vigilant consumer base in ongoing oversight' (Starobin and Weinthal, 2010).

Hypothesis 4: Private governance is most likely to be adopted when commercial interests align with social or environmental concerns.

It should not be surprising that the willingness of firms to adopt private regulatory measures, whether by lead firms driving their suppliers or adoption by the suppliers themselves, will depend in part on the cost of such measures. To the extent that standards can be met without incurring significant costs, or better yet, when they actually are cost-saving, they are much more likely to be adopted. Moreover, such measures will, in the long run, be most sustainable if there is a 'business model' for them, because they establish or protect consumer demand for the brand, hedge against risks of becoming a target of activism, or reduce production costs (Vogel, 2008).

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There is some reason to believe that, for instance, improvements in environmental practices—'greening the value chain' in the current parlance—are more likely to be aligned with financial interests of firms than are upgrades in labor conditions. To some extent this may be a function of differences between the cost of compliance for environmental rather than labor provisions. Walmart's recent well-published efforts to replace lights in its stores with LED lighting illustrates the point. These actions are good for the environment, but they are also, in the long run, a cost-saving measure.

To summarize before turning to our last two hypotheses: pressure for private governance should be greatest when there is a powerful lead firm in a stable value chain, when that firm is highly branded and therefore vulnerable to shifts in consumer preferences, when there is potential for mobilizing social pressure, and when private governance is most consistent with commercial interests. These propositions are consistent with Vogel's assessment of the rise and potential for 'civil regulation', particularly his emphasis on the role of societal pressures that create demand for it. And, like Vogel, we distinguish between the existence of rules and their effectiveness. To a greater extent than Vogel, though, we emphasize the implications of industrial structure for the supply of private governance, and the factors that affect collective action on the demand side.

Notwithstanding the successes of private governance that we have been describing, our four hypotheses also suggest the limits to what it can accomplish. A great deal of global production does not meet one or more of our conditions. Much production takes place in chains and networks with no clear drivers. For every highly branded product vulnerable to consumer pressure, there are many unbranded products. And there remain considerable obstacles to collective action needed to mobilize and sustain social pressure on business. Moreover, when private regulation is costly and does not fit a firm's business model, firms are quite capable of resisting. Even in the best of cases, as Locke et al. (2007) have shown, the ability of suppliers to evade costly measures remains quite high (as is, perhaps, the willingness of lead firms to appear to be doing more than they are).

So far, our hypotheses have not addressed directly the relationship between public and private governance, although implicit throughout has been the assumption of a deficit or vacuum of public governance. But the trajectory of private governance cannot be addressed without simultaneously considering the trajectories of public governance. We suggest, therefore, two final hypotheses about the future direction of private governance that reflect more explicitly the interplay between private and public governance. These two hypotheses are somewhat different in character than the first four, in that they seek less to explain the current pattern than to predict the way in which private and public governance might co-evolve in the future.

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Hypothesis 5: The more production becomes concentrated in the larger emerging economies, the more we should expect public governance in these countries to strengthen.

A recent World Bank study, *Global Value Chains in a Postcrisis World*, argues that the global crisis of 2008-2009 has not reversed globalization, but rather accelerated two long-term trends in the global economy: the consolidation of global value chains at both country and firm levels, and the growing salience of developing economies in the South as end markets for global production (Cattaneo et al., 2010). The consolidation of production in supply chains opens the door for a renewed emphasis on public governance. In an effort to reduce transaction costs and spread risk, lead firms are promoting rationalization of their global supply chains—with an emphasis on a smaller number of larger, more capable suppliers—in a handful of strategically selected countries. This can be seen in industries as diverse as apparel (Gereffi and Frederick, 2010), automobiles (Sturgeon et al., 2009), and electronics (Sturgeon and Kawakami, 2010; Sturgeon and Lester, 2004). In addition, some lead firms are returning to strategies of vertical integration, a reversal of the efficiency arguments that fostered the outsourcing and specialization of global supply chains in previous decades (Worthen et al., 2009).

As a result of these trends, production is increasingly consolidated a relatively small number of countries, most notably the large emerging economies of China, Brazil, and India. In the apparel industry, for example, China more than doubled its share of global apparel exports from 15.2% to 33.2% between 1995 and 2008; Turkey, Bangladesh, and India, the next three largest developing country apparel exporters, slightly improved their collective global market share from 8.9% to 9.8% between 2000 and 2008, while Mexico fell sharply from 4.4% of global apparel exports in 2000 to 1.4% in 2008 (Gereffi and Frederick, 2010: 8). Similarly, India has become a global leader in offshore services, with a peak 45% market share in 2008 (Gereffi and Fernandez-Stark, 2010: 20). Notwithstanding this growing concentration of production among a number of large emerging economies, most notably China and India, we also see continued outsourcing of production from large emerging economies to other lower-cost countries, such as Vietnam, Cambodia, and Bangladesh, as Chinese and Indian producers seek to climb the value chain to higher value and more skill-intensive activities.

Recall that private governance emerged to fill the void of public governance created by the diffusion of production across multiple governmental jurisdictions. To the extent that we now see consolidation of production in larger suppliers

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located in a handful of emerging economies, the ability of these governments to exercise control over production practices in their jurisdiction could be enhanced. Moreover, as China, India, Brazil, and other emerging economies grow, standards of living are more likely to rise, and with them societal expectations about labor, environment, health and safety standards (Inglehart, 1981, 2000). Unless actively checked by the state, those expectations may take the form of political pressure on the state to regulate such matters. Demand for greater public governance may also come from firms. This dynamic is evident in apparel value chains, for example, where Nike, The Gap, and other more socially conscious producers have an incentive to support government regulations that force their non-branded competitors to adopt similar practices in their supply chains.

There is growing evidence for a trend towards stronger public regulation in the large emerging economies. Most prominent, perhaps, have been the actions of the Chinese government, largely in response to growing pressure from domestic groups. On the labor front, for example, growing dissatisfaction with labor practices led in 2008 to passage of a new Chinese Contract Labor Law, which strengthened a variety of worker rights and gave greater standing to Chinese labor unions. By creating new contractual rights and a forum for presenting grievances, the Chinese labor law has enabled further activism. According to *The Economist*, by July 2010, more than 280,000 labor disputes had been handled by Chinese courts (*The Economist*, 2010). And in environmental policy, China has made significant strides in strengthening its policies and enforcement capacities.[9]

Similarly, Brazil has been moving in the direction of an increasingly mature public regulatory regime for some time. On labor, the government has pushed for increased formalization of work, improved its labor inspection capabilities, and raised minimum wages, among other policies (de Andrade Baltar et al., 2010). On the environment, as Hochstetler and Keck (2007) document, the rise of environmental activism in Brazil has translated into stronger state policy.

This trend towards greater public governance capacity is not limited to the large emerging economies. Bangladesh, which remains an extremely poor country, has recently adopted stronger labor regulations for its apparel sector, including a very large increase in the minimum wage, largely as a response to pressures from workers groups (*AFP*, 2010). Whether the new regulations will be observed is unclear, but notably, the changes were supported by many of the largest apparel buyers, including Walmart, Tesco, H&M, Zara, Carrefour, The Gap, Metro, J. C. Penney, Marks and Spencer, Kohl's, Levi Strauss, and Tommy Hilfiger, commitments that may give workers and their advocates a vehicle to hold employers accountable (*Just-Style*, 2010).

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Hypothesis 6: Stronger public regulation in developing countries will reinforce rather than replace private governance, and will promote multi-stakeholder initiatives involving both public and private actors.

The rise of state governance does not imply the abandonment of private governance for various reasons. First, for the foreseeable future, the global economy will remain characterized by distributed production that spans national borders. National governments, therefore, will continue to face difficulties in regulating actors outside their jurisdictions. Second, states can use private governance to their ends. By relying on the power of lead firms, countries can condition access to their markets on lead-firm participation in monitoring their suppliers rather than rely on direct state regulation. Third, states and international organizations may find it expedient to reinforce certain types of private governance (see, in particular: Vogel, 2005). States can help overcome information market failures by providing information directly or by standardizing labeling practices, for example, as has been the case with organic foods.

Given these considerations, rather than a simple return of the state, we envision the emergence of multi-stakeholder governance in which public and private modes of governance interact and reinforce each other. Synergies between public and private governance are possible, not only at the national level but also internationally. International organizations such as the ILO and the International Finance Corporation are interested in promoting such ventures. For example, the ILO's Better Work program seeks to improve work conditions of textile workers in export-processing zones in Cambodia, Haiti, Jordan, Lesotho, and Vietnam, through a multi-stakeholder approach involving NGOs, labor groups, firms, and national governments (Lukas et al., 2010). And the United Nations Global Compact among firms, NGOs, and other entities in the United Nations system, has helped to give impetus to corporate social responsibility (Ruggie, 2002).

Bringing the State Back In: The Evolving Pattern of Public and Private Governance

Looking to the future, it is reasonable to expect some maturation of private governance regimes. Notwithstanding the impressive momentum of the private governance movement, however, there are significant limits to what we should expect from codes of conduct, corporate self-regulation, social labeling, and other such initiatives. Although there have been comprehensive efforts to extend and evaluate private governance schemes (Locke et al., 2009, 2007; Locke and Romis, 2007), there are also significant limits to what can be achieved by any non-governmental regime. In the highly competitive global economic

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environment, unless there is a sustainable competitive advantage associated with socially responsible behavior, it will be hard to sustain meaningful corporate self-regulation (Orsato, 2009). Most of the progress in this arena to date has come as a response to (or in anticipation of) social pressure. But sustaining social pressure poses a significant collective action problem for labor, environmental, and other social activists.

In addition to the theoretical reasons for limited expectations, the empirical record should also give pause to private governance enthusiasts. For example, those who have looked more closely at the actual effectiveness of codes and other forms of corporate social responsibility generally come away somewhat skeptical (Locke et al., 2009, 2007). Codes adopted by corporations are generally quite vague. Those promulgated by NGOs or international organizations are tougher but rarely complied with (Kolk and van Tulder, 2005). Similarly, effective labeling campaigns are rare and even the most successful have had limited impact to date. Despite the use of Fair Trade coffee as an exemplar of such campaigns, world market penetration of Fair Trade coffee remains very low (by one estimate just 1% in 2008 (Pay, 2009)) and the world's largest roasters remain resistant to the campaign (TransFair USA, 2005).

In our view, unless private governance is supplemented and reinforced by public institutions of governance, it cannot provide adequate governance capacity for the global economy. Differences of interest among advanced, developing, and least-developed nations, as well as continued resistance by states to limitations on their sovereignty, will likely continue to prevent stronger international rules and enforcement capacity. Greater progress is likely to come from building greater capacity in developing-country governments. As we have discussed, the consolidation of production in the larger emerging economies and the maturation of those societies create both opportunity and demand for greater public governance in those countries. In the end, as Ruggie (2008) and others have argued, international coordination may be less in the form of formal agreement than in an enlarged version of 'embedded liberalism' in which international commerce takes place among countries with comparable systems of national governance.

This shift back to public governance is to be welcomed for several reasons. First, many corporate codes of conduct merely commit corporations and their suppliers to adhere to local law. Obviously, having strong national laws becomes the crucial determinant in the stringency of such CSR regimes. Second, only national governments can enforce these laws. Since the monitoring and enforcement of codes is costly to corporations, which have limited incentive to enforce them, and NGOs have limited monitoring and no enforcement capacity, only governments have sufficient clout to ensure that codes are followed. Third, corporations lack

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incentives to include workers in the formulation and implementation of codes. Only governments can ensure that workers are adequately represented. Fourth, in more competitive industries, where producers have an incentive to avoid compliance, governments are best positioned to ensure that all producers adhere to common standards.

Moreover, it is not clear that we should want to substitute private governance for public, even if we could do it. In addition to basic questions about the legitimacy of governance systems controlled by institutions not accountable to the public, private governance regimes are frequently driven by Northern interests, i.e., by corporations, non-profits, and consumers in the developed world. Büthe's account of the evolution of the International Electrotechnical Commission, for example, demonstrates that 'the material costs of participation clearly created a bias in favor of commercially successful stakeholders from rich countries' (Büthe, 2010b). Similarly, Fuchs and Kalfagianni note that, in the food sector, the power and legitimacy of retailers as rule setters 'results primarily from the dominant ideational structures in developed countries and the political and economic elites of developing countries' (Fuchs and Kalfagianni, 2010). Although private regulation may be an important element of economic governance, it cannot and should not stand alone.

To a great extent, private governance is a second-best and partial solution to the governance challenge posed by globalization. Because cooperation at the international level has been so difficult, and because national governments in developing countries were initially slow to adapt, the social pressures triggered by globalization have focused more on private governance solutions than they otherwise would. As globalization progresses, particularly as the larger developing country economies mature, it is both likely and desirable that some significant part of the private governance innovations be institutionalized within the national governments of those countries. In the longer run, this would provide more effective, stable, and representative governance for the global economy.

Notes

1. Our use of 'private governance' is essentially synonymous with 'private regulation' as Büthe (2010a, 2010b) defines it, but we draw on a broader governance literature throughout this chapter.
2. Private governance may also serve functions other than regulation of externalities, including facilitating the formation and efficient functioning of markets and redressing the distributive consequences of market activities, but regulation has been the primary purpose of most private governance. The taxonomy of facilitative, regulatory and compensatory modes of market governance is addressed more fully in Gereffi and Mayer (2006).

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3. Cafaggi and Janczuk (2010) do not include self-regulation in their definition of private regulation. We include it here on the grounds that corporations (or more precisely the people who run them) can internalize norms of appropriate corporate behavior that alter their behavior.
4. The phrase was first used by Peter Newell (Vogel, 2010). This line of argument is developed more fully in Gereffi and Mayer (2006).
5. In the North American Free Trade Agreement (NAFTA) negotiations, public opposition forced the Clinton Administration to add supplemental agreements on labor and environment (Mayer, 1998), and many bi-lateral and regional trade agreements have at least weak social clauses, but efforts to incorporate similar provisions at the global level have not been successful.
6. See Starobin and Weinthal (2010) for a discussion of the credibility problem in certification regimes.
7. In social movement theory, 'opportunity structures' are those institutions that facilitate collective action by lowering the costs of cooperation (see Tarrow, 1998).
8. The Monterey Bay Aquarium has, for example, led an effort to persuade restaurants and consumers to serve and buy only fish on its 'green' list and to shun those it lists as 'red,' categories that reflect its evaluation of the extent to which they are sustainably harvested. Whole Foods, the large organic food retailer, has now pledged to stop selling fish on the red list, but the major supermarkets have not adopted the standard and consumer awareness remains quite low.
9. See, for example, You and Huang (2009). It is also true that the number of reports of problems has increased, but it is much more likely that this increase reflects greater willingness to report than it does any increase in actual abuses.

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