Interactions in ‘Private’ Environmental Governance

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Summit on Private Environmental Governance
Washington, DC
June 10, 2013
Thesis

Must understand environmental governance as:

– Composite of activities
– Carried out by multiple actors
  → State and non-state
– Performing distinguishable but interrelated tasks
– Interacting in multiple ways
– Transnational
– Changing over time
– Goal: see overall pattern of governance
  • Highly dynamic
  • Hence ‘interactions’ (rather than ‘relationships’)

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Overview

• Outline
  • Importance of program interactions
  • Conceptual framework
  • Forest governance example
  • Key questions

• Goals
  • Open up the topic of regulatory interactions
  • Learn from the discussion
Rise of Private Governance

• Non-state actors take on functions traditionally thought to be reserved to the state
• Rule making, adjudication, enforcement, sanctioning, monitoring, etc.
• ISO, forest certification, organic foods, green building, etc.
Research Progression

Illuminating “private” environmental governance

- Have always seen ‘private’ environmental regulation as closely related to ‘public’

Illuminating the connections between private and public environmental governance


TEAM EFFORT needed *Transnational Business Governance Interactions: Conceptualization and Framework for Analysis*, with Kenneth Abbott, Burkard Eberlein, Julia Black, and Stepan Wood, Regulation and Governance (forthcoming) (contact me for the most recent version eemeid@buffalo.edu)
Transnational Business Governance Interactions (TBGI) Network

- **Kenneth W. Abbott**, Arizona State University Law School (nanotechnology, climate change, health, international relations)
- **Julia Black**, London School of Economics Law Faculty (financial regulation, risk assessment, regulatory legitimation)
- **Burkard Eberlein**, Schulich School of Business, York University (accounting standards, EU regulation, infrastructure governance)
- **Errol Meidinger**, SUNY Buffalo Law School (forestry governance, food safety, new modes of governance)
- **Stepan Wood**, Osgoode Hall Law School, York University (corporate social responsibility, ISO standard setting, smart regulation)

Growing network >60 researchers
Governance Task Categories (ANIMEE)

- Agenda setting, goal definition
- Norm formulation, rule and policy making
- Implementation by targets
- Monitoring, information gathering, verification
- Enforcement, compliance promotion, sanctioning
- Evaluation, review and adjustment
Actors

• Possible: individuals, organizations, institutions, structures
  • Framework allows for macro-meso-micro and agency-structure continuum
• Organized programs seeking to shape agendas, make rules, implement them, adjudicate compliance, monitor, and/or review and evaluate performance
  • Standard setting programs
  • Certification organizations
  • Advocacy NGOs
  • Monitoring organizations
  • Firms
  • Industry associations
  • Government agencies (local, national, international)
  • Et al.
Interaction

- **Def:** “myriad ways in which governance actors and institutions engage with and react to one another”
- **Competition:** turf, revenue, reputation, legitimacy, adherents, etc.
- **Coordination:** emulation, division of labor, division of constituencies
- **Cooptation:** incorporation, absorption, steering, domination
- **Chaos:** no clear pattern, possible mutual mutual oblivion
  - Can coexist
  - Patterns change over time
## TBGI Analytical Matrix

### Component of regulatory governance

<table>
<thead>
<tr>
<th>Dimension of interaction</th>
<th>Agenda, goal-setting</th>
<th>Norm formation</th>
<th>Implementation</th>
<th>Monitoring, information gathering</th>
<th>Enforcement, compliance</th>
<th>Evaluation, review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who/what interacts</td>
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<td>Drivers &amp; shapers</td>
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<td>Mechanisms &amp; pathways</td>
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Forest Governance Example

• Transnational forest governance in three movements
  – 80s
  – 90s
  – 2000s

• EU legality program

• Modern forestry Governance in the TBGI framework
1980s: Governance by Governments
“Tropical Forest Crisis”

1978 Amazonian deforestation 1988

(Skole and Tucker, Science, 1993)
Tropical Forest Crisis

• Causes (among others):
  – Agricultural land conversion
  – Growing global timber markets
  – Inadequate state control (underfunding, corruption)

• Governance failure
  – Developing country governments unable or unwilling to control timber practices
  – Failure to achieve binding forest convention in Rio, 1992
  – South: international forestry standards as a northern barrier to trade
  – ENGO despair
    • Desperate search for alternative governance mechanisms
1990s: Rise of Forest Certification

- Forest Stewardship Council (1993)
- Rulemaking by tripartite, non-state, global “General Assembly”
  - Notice and comment
  - Public explanation
  - National and regional adaptation
- Certification (adjudication) by third-party certifiers
  - Public consultation and ‘peer review’
  - Public summary and explanation
  - Formalized accreditation processes
- “Chain of Custody” product tracking
  - Heavy reliance on supply chain technology
- Logo on certified products
- Leveraged into place by brand threats by forest campaigners
Rapid Uptake of Forest Certification

- Forest campaigns with brand threats
- Government procurement programs
- Certification of state forests by non-state organizations
- Surprising and threatening to established forest governance actors
- Rise of competing/mutually adapting programs (FSC/PEFC)
- Imbricated with state legal systems
1990s Forest Governance
Similar Developments in Other Sectors

- Agri-food
- Apparel
- Coffee
- Finance
- Fisheries
- Green Building
- Mining
- Etc.

“Similar” but:
  - Also different
  - Highly dynamic
  - Need analytical framework
## Chilean Salmon Farming
(circa 2000)
(Loosely adapted from Iizuka and Borbon-Galvez, 2008)

### Component of regulatory governance

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</tr>
</thead>
<tbody>
<tr>
<td>Industry Association</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>State Agencies</td>
<td></td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️ (partial)</td>
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<tr>
<td>Public-Private Consult. Body</td>
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<td>✔️</td>
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<tr>
<td>Independent Natl Std Body</td>
<td></td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>Regional Government</td>
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<td>✔️</td>
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<tr>
<td>Norway and Scotland</td>
<td>✔️</td>
<td>✔️</td>
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</tr>
</tbody>
</table>
## Mexican Produce (circa 2005)
(Loosely adapted from Iizuka and Borbon-Galvez, 2008)

<table>
<thead>
<tr>
<th>Actor</th>
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<th>Evaluation, review</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Agency Group</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
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<tr>
<td>Government Ministers</td>
<td>✔</td>
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<tr>
<td>Japan Min. of Agriculture</td>
<td>✔</td>
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<td>✔</td>
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<tr>
<td>Industry Association</td>
<td>✔</td>
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<tr>
<td>Public/Private Consult. Body</td>
<td>✔</td>
<td>✔</td>
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<tr>
<td>Intl. Food Stds. Bodies</td>
<td>✔</td>
<td>✔</td>
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</table>

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2000s: Resurgence of State Centered Governance through Legality Programs

- **FLEGT: Voluntary Partnership Agreements** between producer countries and EU
  - Exporting countries promise to define and assure legality of EU bound timber
  - “Voluntary,” but expectation that exporting to the EU would get harder
- **Government Procurement Policies**: evidence of legal sourcing required
- **US Lacey Act Amendments** 2008: ban all transactions in illegally harvested wood products
- **EU Timber Regulation** 2010: bans first time placement of illegally harvested timber or wood products on the EU market
- **Australian Illegal Logging Act** 2012: criminalizes importation or processing of illegally harvested timber
EU Legality Program

- **Voluntary Partnership Agreements (VPAs):** exporting state treaty commitment to:
  - Define what counts as legality (participatory process)
  - Implement a legality tracing system so that legal wood can be identified
  - Heavily shaped by EU and other country practices
- **EUTR Illegal Timber Prohibition:** Bans first time placement of illegally harvested timber products on the EU market
  - Operators must use Due Diligence systems
    - **Risk Assessment:** information and risk classification
    - **Risk Mitigation** (for non-negligible risk): stricter controls, other suppliers, etc.
    - Can be done by certification programs, industry associations, individual firms
    - Externally audited
  - Enforced by a transnational network of EU, member state, and exporting state agencies, as well as timber producers, traders, and brokers
### Dimension of interaction

**Norm Formulation (Policy and Rule Making)**
(Working hypotheses: much variation and little research to date)

<table>
<thead>
<tr>
<th>Who/what interacts</th>
<th>Major importing and exporting states; certification programs, producers, timber traders, large retailers</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>In VPA countries: also local governments and local CSOs;</td>
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<tr>
<td></td>
<td>In EUTR: primarily operators, monitoring orgs (certifiers) and competent authorities</td>
</tr>
<tr>
<td>Drivers/Shapers</td>
<td>(among many others) <strong>shared state interests in asserting sovereignty</strong></td>
</tr>
<tr>
<td>Mechanisms &amp; pathways</td>
<td>Much <strong>rule borrowing and adaptation</strong></td>
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<tr>
<td></td>
<td>Working through ‘running code’ or ‘rough consensus’ on broad goals and principles</td>
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<tr>
<td>Character of interaction</td>
<td><strong>North → South dominance</strong>, through both state and market interactions</td>
</tr>
<tr>
<td></td>
<td>• Increased northern technical and financial assistance to willing countries</td>
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<tr>
<td>Effects of interaction</td>
<td><strong>Domestic legal reform</strong></td>
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<td></td>
<td><strong>Growing transnational harmonization of forest law</strong></td>
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<td></td>
<td><strong>Increasingly similar, interlinked policy making structures</strong></td>
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<td></td>
<td><strong>VPAs: growing CSO participation and transparency in developing countries</strong></td>
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<td><strong>Discussion of possible extension to other processes and commodities</strong></td>
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<tr>
<td>Change over time</td>
<td>From state centric to transnational network interactions, to intertwined North-South and economic supply chain centered policy making</td>
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<td>Possible <strong>upward trend in average stringency</strong></td>
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<td></td>
<td>• Possible lowering of strictest standards</td>
</tr>
<tr>
<td>Dimension of interaction</td>
<td>Enforcement, Compliance</td>
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<td>(Working hypotheses: much variation and little research to date)</td>
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</tbody>
</table>

**Who/what interacts**

- Northern and Southern state agencies, certifiers (can be MOs), timber producers, brokers, importers, processors, retailers, TENGOs (especially forest campaigners), local CSOs and whistleblowers

**Drivers/shapers**

- (among many others) global growth in adoption of management systems

**Mechs/paths**

- Best practice promulgation and diffusion; market chain regulation

**Character of interaction**

- Discussions to define RA and RM procedures
  - Dominated by EC staff, but many entrepreneurial projects
  - Both division of labor/cooperation and increased risk of confrontation due to mutual universal auditing
  - Background threat of penalties

**Effects of interaction**

- Apparent 20-30 percent decline in illegal logging worldwide
- VPAs (+?): Increased protection of indigenous and community rights
- Increased regulation of both market and state actors

**Change over time**

- Significantly increased number of enforcers
- Growth of a global surveillance system, heavily reliant on supply chain controls
- Proportionally decreased reliance on producing state agencies, but also likely increases in their activities.
- Possible creation of bifurcated domestic versus export enforcement systems
Critical Questions

- Efficacy
- Efficiency
- Equity
- Democracy

- Urgent need for focused research and dialogue among activists, practitioners, researchers