The Emergence of Private Environmental Governance

A Summit on Private Environmental Governance
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Papers available on Social Science Research Network at http://ssrn.com/author=426704:


- *Time to Try Carbon Labelling*, 1 NATURE CLIMATE CHANGE 4-6 (2011) (M. Vandenbergh, T. Dietz & P. Stern)


“Toward Sustainability: The Roles and Limitations of Certification”

A State-of-Knowledge Assessment of Standards and Certification

Available at http://www.resolv.org/site-assessment/towardsustainability/
Issued June 2012

- Mike Barry – Marks & Spencer
- Ben Cashore – Yale University
- Jason Clay – World Wildlife Fund
- Michael Fernandez – Mars, Inc.
- Louis Lebel – Chiang Mai University
- Tom Lyon – University of Michigan
- Patrick Mallet – ISEAL Alliance
- Kira Matus – London School of Economics
- Peter Melchett – Soil Association
- Michael Vandenbergh – Vanderbilt University
- Jan Kees Vis – Unilever
- Tensie Whelan – Rainforest Alliance
Major Pollution Control Statutes 1970-2012
(Vandenbergh, Private Environmental Governance)

Included:
- 1970: Clean Air Act, National Environmental Policy Act
- 1972: Federal Water Pollution Control Act, Coastal Zone Management Act
- 1974: Safe Drinking Water Act
- 1977: Surface Mining Control and Reclamation Act
- 1980: Liability Act
- 1984: Hazardous and Solid Waste Amendments (to RCRA)
- 1986: Emergency Planning and Community Right-to-Know Act, SARA Amendments (to CERCLA)
- 1990: Oil Pollution Act, Clean Air Act Amendments
- 1996: FQPA, SDWA Amendments

Excluded:
- 1986: SDWA Amendments
- 1987: Water Quality Act
- 1988: FIFRA Amendments
- 1996: FQPA, SDWA Amendments
- 2002: CERCLA Amendments
Trends in Public Support
(Vandenbergh, Private Environmental Governance)

Private Environmental Governance

- Context
  - What is it?
  - What types have emerged?
  - Why is it not on the radar screen?

- Significance
  - Environmental behavior?
  - Environmental quality?
  - Counterfactuals and spillover effects?

- Implications
  - Open questions?
  - New applications?
What Has Filled the Gap?

(Steering Committee of the State-of-Knowledge Assessment of Standards and Certification, Toward Sustainability: The Roles and Limitations of Certification (2012))

Total number of ecolabels by year of launch

Source: Ecolabel Index (www.ecolabelindex.com)
What Has Filled the Gap?

- **Fish** --
  
  McDonald's USA first national restaurant chain to serve MSC certified sustainable fish at all U.S. locations

- **Toxics** -- “‘The loss of public confidence [means] we’re going to increasingly have retailers that are regulators, like Wal-Mart and Target.’” (Inside EPA, 4/1/11)(quoting Ernie Rosenberg of the American Cleaning Institute)
What Do We Mean by Private Governance?

- Private governance occurs when non-governmental actors engage in activities that are designed to achieve traditionally governmental ends
- These ends include overcoming collective action problems to reduce externalities, provide public goods, manage the exploitation of common pool resources, or shift the distribution of environmental goods
- Involves traditional regulatory functions:
  - Agenda- and standard-setting (collective and unilateral)
  - Implementation
  - Monitoring
  - Enforcement
  - Funding (Abbott & Snidal 2009)
What Types of Private Governance Have Emerged?

(Vandenbergh 2013; Roberts 2010; Assessment Committee 2012)
What Types of Private Governance Have Emerged?

Standard-Setting


- Collective Standard-Setting
  - ISEAL
  - GRI, ISO, FSC, SFI, MSC, CDP
  - LEED, etc.
  - Responsible Care
  - Equator Principles, Carbon Principles

- Bilateral Standard-Setting
  - Supply Chain Agreements
  - Acquisition Agreements
  - Credit Agreements
  - Insurance Agreements
  - Real Estate Agreements
  - Good Neighbor Agreements
Why is Private Governance Not on the Radar Screen?
(Vandenbergh 2005, 2007; 2013; Roberts 2010)

- Off the Radar Screen
  - Not in most casebooks
  - Less than ¼ of top law schools
  - Limited environmental law scholarship
  - Policy debates: “what can government do?”

- Barrier: Public Law Model & Language
  - Actor is Government
  - Action is Statute, Regulation, Enforcement, Adjudication

- Barrier: Standard Metrics
  - Statutes
  - Major Regulations, Pages in the Federal Register
  - Costs and Benefits of Regulations
  - Enforcement Actions and Reported Decisions
Does Private Governance Matter?  
Effects on Environmental Behavior  
*(TOWARD SUSTAINABILITY 2012; Vandenbergh 2013)*

- **Forests.** 9% of global forests are managed to FSC or PEFC standards (14% of temperate forests).

- **Fisheries.** 7% of global and roughly 60% of US wild fish landings for human consumption are certified sustainable. 2.6% of global aquaculture is certified, and far more of U.S. aquaculture is certified.

- **Coffee.** 8% of global coffee sales were sold as certified in 2010. 17% of global coffee is produced as compliant with these standards. Between 2005 and 2010 global coffee certification grew by 433%.

- **Bananas.** 20% of global bananas are sold under a certification scheme.

- **Cocoa.** Only 1.2% of the global cocoa trade is compliant with UTZ Certified, Fairtrade, organic, or Rainforest Alliance standards, but certified cocoa expanded by 248% between 2005 and 2010.
Does Private Governance Matter?: Effects on Environmental Behavior

- Widespread Private Monitoring & Enforcement
  - More spent on Phase I’s (~$500 million) than the EPA enforcement budget (~$400 million)(Gerrard 2005)

- Widespread Impact on Legal Practice
  - 90% of the top 50 law firms by profits per partner

- Proliferation of Private Standards
  - Hundreds of domestic and global labeling systems
  - Private procurement standards common

- Large Potential Cross-Border Impact
  (e.g., Wal-Mart: ~10,000 Chinese suppliers/~$18B yr)
Does Private Governance Matter?
Effects on Environmental Behavior
The New Wal-Mart Effect
(Vandenbergh 2007)

- Public Disclosure in 8 Sectors, 74 Firms
  - Discount & Variety Retail
  - Home Improvement & Hardware
  - Office Products Retail & Dist.
  - Auto Manufacturing
  - Personal Computers
  - Lumber & Wood Production
  - Aluminum Production
  - Industrial Mach. & Equip. Mfring

- Frequency
  - 54% of Firms Impose Requirements (40/74)
  - 76% of Firms by Total Sales ($2.183/$2.825)

- Types
  - Environmental Performance (28%)
  - Law Compliance (29%)
  - Environmental Management Systems (15%)
### Effects on Environmental Behavior

The Private Life of Public Law

(Vandenbergh 2005)

<table>
<thead>
<tr>
<th>Type of Agreement</th>
<th>Total</th>
<th>Agreements with Environmental Provisions</th>
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<td>227</td>
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<tr>
<td>Credit Agreement</td>
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### Table 3

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<th>Type of Agreement</th>
<th>Environmental Performance Requirement</th>
<th>Law Compliance Requirement</th>
<th>Environmental Management System Requirement</th>
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<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Credit Agreement</td>
<td>15%</td>
<td>88%</td>
<td>10%</td>
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### Table 4
Does Private Governance Matter? 
Effects on Environmental Quality

( Toward Sustainability 2012)

- Substantial evidence exists of improvement in practices
- Limited evidence of longer term outcomes or impacts
- Difficult to attribute outcomes to certification
- Methodological challenges
  - Identifying an appropriate counterfactual
  - Dynamic nature of ecosystems and communities
  - Financial costs and complexity
- Challenges not unique to private governance
Does Private Governance Matter?
Counterfactuals & Spillover Effects

(Vandenbergh 2005)

- Counterfactual
  - Second-best Options
  - How do the costs and benefits compare with viable alternatives?
- Spillover Effects
  - How does private governance affect the development of other governance options?
    - Gap-filling?
    - Complementary?
    - Competitive?
    - Displacing?
New Applications
(Vandenbergh 2013)

- Private Actors and Actions
  - Fracking
  - Toxics
  - Commodities
- Climate: The Private Governance Wedge
  - Climate Futures
  - Climate Legacy
  - Carbon Labeling
Open Questions

- What unintended consequences may result (label fatigue, green washing, inconsistent standards, etc.)?
- Will private funding be adequate without co-opting private governance organizations?
- Why do individuals, NGOs, and firms participate (consumer demand v. consumer influence and other factors)?
- Is private governance just a reaction to the threat of government regulation or liability?
- Should government encourage or discourage private governance (procurement, antitrust, trade, consumer protection)?
- How do private governance regimes interact with one another and with public governance regimes?