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# LAW AND LEGITIMACY IN MULTI-LEVEL GOVERNANCE

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*Abstract*

Multi-level governance entails transformations of statehood, including significant changes in both the public sphere of politics and the so-called private sphere of economic activity, and in their modes of interaction, especially law. The fragmentation of the public sphere and the decentring of the state have led to new types of formalized regulation and the emergence of global regulatory networks, intermingling the public and the private. The transition from government to governance means a lack of a clear hierarchy of norms, a blurring of distinctions between hard/soft and public/private law, and a fragmentation of public functions entailing a resurgence of technocracy. Renewed international legalisation (WTO adjudication, International Criminal Court etc) has been viewed by some in formalist terms, as helping to provide certainty and predictability, and this has been used to try to buttress the legitimacy of global governance. Viewed more closely and critically, however, it is the indeterminacy of law that provides the space for interpretative practices, which can both exploit and exacerbate the fragmentation of the public sphere, and mediate the complex interactions. Indeed, the increasingly important role for regulation in global governance undermines the formalist view of law's legitimacy as deriving from national state political structures, and requires new approaches to articulating normative interactions that are more conducive to democratic deliberation, in order to establish the public interest firmly as the prime concern in all forms of management of economic activity. The paper will explore these issues using examples from different areas of international economic regulation.

# LAW AND LEGITIMACY IN MULTI-LEVEL GOVERNANCE•

## A. GLOBAL ECONOMIC GOVERNANCE AND REGULATORY NETWORKS

A number of commentators have described and analysed in various ways the shift from government to governance and the emergence of international regulatory networks (e.g. Jordana & Levi_Faur 2004, Kooiman 1993, Ladeur 2004, Picciotto 1996, Rhodes 1997, Sand 1998, Slaughter 2004). They are generally agreed that these changes involve a fragmentation, hollowing-out, disaggregation, or de-centring of the state, with a devolution or delegation of specific functions to specialised regulators, and new types of public-private interactions. There is also a general consensus that these are global trends, although perspectives vary as to the importance of domestic political processes compared to international influences as drivers of these processes.

*Governance and Legitimacy*

A key question raised by these changes is their implications for the legitimacy of governance processes. Here opinions are more varied. Some see these developments, especially the growth of international regulatory or governance networks, as essentially a further development or even strengthening of the classic liberal system of interdependent states. Thus, Anne-Marie Slaughter has painted a picture of what she describes as `the real New World Order' as essentially a growth of networks of cooperation between government officials at the sub-state level, who remain accountable to citizens through national state mechanisms (Slaughter 1997). However, in response to those who argue that this is a more far-reaching and problematic phenomenon which raises basic questions about political legitimacy (Alston 1997, Picciotto 1997), she has conceded that there may be some accountability problems (Slaughter 2001). While continuing to maintain the legitimacy of these forms of cooperation due to their inter-governmental character, she has responded with a `menu of possible solutions' and some `global norms' (Slaughter 2004, 230-260), generally aimed at making them `more visible'. However, she does go so far as to suggest mobilizing around them a `whole set of transnational actors', which might even amount to `a kind of disaggregated global democracy based on individual and group self-governance' (Slaughter 2004, 240), and has recognized that this entails alternative visions of `vertical democracy' through national states, or a more radical type of `horizontal democracy' (Slaughter 2004b, 148-52).

Much of the activity of international regulatory networks is done by technical specialists, sometimes described as 'epistemic communities'. This concept was developed within a neo-functionalist paradigm, to suggest that a stronger basis for international cooperation may be provided by delegating specific issues to be dealt with in a depoliticized manner by specialists deploying scientific, managerial or professional techniques and working within shared universal discourses (Haas 1992). This perspective fits with the traditional Weberian perspective of technocracy which sees it as the instrument of politics, a means of implementing policies which have been formulated through political processes. From this viewpoint, the growth of delegation to specialist regulators is a response to the problems of governing

increasingly complex societies, by giving greater autonomy to technocratic decision-makers within a policy framework set by government. In the international context it has been suggested that communities of experts working within a shared epistemic perspective can facilitate the resolution of global policy issues by 'narrowing the range within which political bargains could be struck' (Haas 1992, 378).

However, the complexity of governing modern societies has exacerbated the dangers which Weber already identified with the 'iron cage' of technocracy when it becomes based on instrumental rationality and loses any basis in social values (Rubin 2003, 146-150). The fragmentation of the state and the new forms of interaction of the 'public' and the 'private' spheres entail not a retreat but a remodelling of statehood, towards what has been described as a `new regulatory state' (Loughlin & Scott 1997, Braithwaite 1999). Roles previously considered as those of government have been recast as societal problems concerning a variety of actors (Pierre 2000). Influential commentators have argued for the redefinition of the role of government, to separate `steering' from `rowing', suggesting that politicians should define aims and targets but subcontract delivery, which should be competitive and aim to meet the needs of customers (Osborne & Gabler 1992). While maintaining a separation of policy-formulation and operational delivery, this approach devolves greater responsibilities on those responsible for implementation, who are more directly accountable for the effectiveness of service delivery, although through more diffuse, market-style mechanisms.

The fragmentation of the state and the shift away from hierarchical command-and-control towards more decentralised, networked forms of regulation can also be understood from a Foucaultian perspective of `governmentality'. The disintegration of hierarchical bureaucratic structures in both the public and private sectors can be seen as shift in modes of social control towards more dispersed and internalised disciplinary forms, `from the cage to the gaze' (Reed 1999). Thus, the new regulatory governance may be said to involve `a proliferation of a whole range of apparatuses pertaining to government and a complex body of knowledges and "know-how" about government' (Rose and Miller 1992, 175). In particular, Miller and Rose have developed Latour's concept of `action at a distance' into a notion of `government at a distance', as the construction of networks of interests allied by the adoption of shared vocabularies, theories and explanations (Miller & Rose 1990, 10). This entails a different and more critical view of expertise, and one which may have particular relevance to global governance.

The transfer of specific public functions to what have been described as 'non-majoritarian' regulators (Coen & Thatcher 2005) is often justified in terms of the need to insulate some areas of decision-making from influence by private special interests and the short-term considerations which dominate electoral politics. Hence, it also reflects changes in political processes, with the breakdown of representative government, which 'public choice' theorists have argued is prone to capture by private interests (Buchanan & Tollison 1984). In place of party-democracy there has been the emergence of what Bernard Manin has called 'audience democracy' (Manin 1997), increasingly based on populist forms of political mobilization. This in turn poses the question of whether the decentralization or fragmentation of hierarchical government based on formal or instrumental rationality, and the shift to networked governance requiring reflexive interactions and based on communicative rationality, may offer a basis for new forms of deliberative or discursive democracy (Dryzek 1990, 1999).

Hence, the emergence of governance networks makes it vital to find ways to remodel the sphere of political debate and decision-making. Central to this are questions about the nature of technocratic governance and the basis of its legitimacy. Technicism is one of the three major features which distinguish multilayered network governance from the classical liberal

international system (for further detail see Picciotto, forthcoming). These characteristics are inter-related, and derive from the fragmentation of the classical liberal international system, which largely resulted from the processes of liberalisation which it itself promoted. The next section will briefly outline these characteristics; this will be followed by some exemplary analyses, before returning again to the issue of legitimacy.

*Characteristics of Global Governance*

First is the destabilisation of the traditional normative hierarchy, in which international law bound states, while principles of jurisdictional allocation and choice of law determined which national system of rules applied to activities of private actors. The heterarchical character of networked governance means that the determination of the legitimacy of an activity under any one system of norms is rarely definitive, it can usually be side-stepped or challenged by reference to another system. Various forms of supranational and infranational law have created complex interactions between a variety of adjudicative and regulatory bodies at different levels. These involve both competition and coordination.[1] Various types of linkages have emerged between different but related regulatory networks, but their kaleidoscopic character makes it difficult to establish overall coherence. This gives private parties, both individuals but especially legal persons such as firms and organisations, opportunities to manage regulatory interactions through strategies of forum-selection and forum-shifting.[2] Indeed, as has been argued by Boltanski and Chiapello (1999, 444ff.), power in a networked world derives from mobility and connectedness.

Secondly, there has been a blurring between categories of norms, in particular between `hard' and `soft', and public and private law. Thus, regulation typically involves a mixture of legal forms, both public and private, and an interplay between state and private ordering, or frequently norms with a hybrid status. Public bodies may use private law forms, such as service contracts, for regulatory purposes (Collins 1999, Freeman 2000, Vincent-Jones 1999), while private bodies may operate regulatory arrangements. Global economic regulatory networks in particular use `soft law' forms, such as codes of conduct, Memorandums of Understanding (MoUs), and Guidelines. This results from several factors. One is the emergence of regulation based on the increased formalisation of norms, in place of informal and closed systems of `club rule' (Moran 2003). The second stems from the previously mentioned characteristic that global governance is increasingly heterarchical. From the perspective of the traditional hierarchical system, international or global norms governing non-state entities have no formal binding force, hence are regarded as `soft' law. This includes norms governing both private actors such as firms (e.g. business codes of conduct, and regulatory standards developed by international bodies such as the International Standards Organisation (ISO)), as well as public bodies (e.g. MOUs between national regulators). Even governments may resort to `soft' forms of

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[1] The debates about regulatory competition and the `race to the bottom', or to the top (Murphy, 2004) have tended to overlook the many ways in which regulatory regimes are interdependent and coordinated (Picciotto 1996).

[2] Braithwaite and Drahos (2000, ch.24) have analysed this, but mainly in relation to powerful states, i.e. governments, and for norm-creation; in fact (as they mention), forum-shopping was a tactic developed by lawyers acting for private parties, and it was extended beyond litigation to selection of jurisdictions of convenience to structure international business activities for optimal regulatory exposure (e.g. the use of `havens' for tax avoidance, flags of convenience for shipping, and offshore finance centres (OFCs) for financial activities). Many of the forum-shifting strategies Braithwaite and Drahos discuss were devised by and resulted from the pressures of business lobbies.

agreement to foster policy learning, convergence and cooperation, often between multiple layers of public and private bodies.[3]

The third characteristic of multilayered governance, as already suggested above, is the fragmentation and technicisation of state functions. Certainly, there is evidence that global expert action networks have been extremely effective in mobilizing and sustaining some global governance regimes, for example Canan and Reichman's sociological study of the 'global community' of environmental experts and activists which formed around the Montreal Protocol (2002). However, the contribution of technical specialists to international diplomacy is often to help gain acceptance for proposals which are put forward as objective and scientific, although actually carefully calibrated for political acceptability. Far from being depoliticized, such networks often include activists as well as technical specialists; and even if the issues are specialized, the participants share common social values.

*Regulatory and Business Networks*

Global regulatory networks can be said to have emerged especially in the past 30 years as a counterpoint to the increased international integration of business through corporate networks dominated by TNCs, and the weakening of purely national forms of regulation resulting from the liberalisation of trade and investment. Firms involved in international business have long had to manage regulatory interactions, and indeed the global dominance of TNCs could be said to be largely due to their ability to select and combine the most appropriate locations for their operations, based not only on social and economic conditions, but also political and regulatory factors.

Some firms and industries developed strategies which resulted in the virtual privatisation of sovereignty, notably `flags of convenience' (FoC) for international shipping. This dates back to the 1920s, when the US authorities encouraged registration of US-owned ships in Panama, to reduce costs while ensuring availability of the ships in wartime.[4] After the 2nd world war another group of US lawyer-diplomats developed Liberia as a flag state, with the added advantage that its shipping (and later corporate) registry business was sub-contracted to a US corporation based near Washington.[5] Thus, flag states essentially offer a ship registration

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[3] Even the EU, with its strong institutional framework, has resorted to the `open method' of coordination on sensitive issues such as social policies and taxation (Mosher & Trubek 2003, Radaelli 2003).

[4] Panama had seceded from Colombia in 1903, with US support, to facilitate construction of the Canal. William Cromwell, of the New York law firm Sullivan and Cromwell, having drafted some of the documents for that country's independence, became that country's representative in the US, and also acted for the shipowners; he was succeeded in this role by John Foster Dulles, the future Secretary of State (Carlisle 1981, 16).

[5] The Liberian International Ship and Corporate Registry is run from Vienna, Virginia USA. This is a continuation of an arrangement originally devised by a group including former US State Department officials, headed by Edward R. Stettinius, who after working in the corporate sector at General Motors and as chairman of US Steel, had been Roosevelt's Secretary of State. In 1947 he formed Stettinius Associates with other former State Department staff, and established a number of development projects in Liberia on a profit-sharing basis with the government, of which the ship registry became the most long-lasting, indeed it became the leading flag of convenience in 1955. The Stettinius group drafted Liberia's Maritime Code (with contributions from Esso and State Department lawyers), aiming to take over the flags of convenience business from Panama, one of its advantages (from the perspective of shipowners) being that the administration of the ship registry was sub-contracted to a private company based in the USA (Carlisle 1981). During the 1990-1996 civil war its contribution to the Liberian government budget increased from 10-15% to 90%. However, in 1996 Charles Taylor, who had launched the rebellion in 1989 and was at that time a member of a six-person Council of State, initiated challenges

service, the administration of which may have little or no physical contact with the state itself, being sub-contracted to private firms. The actual surveys and the issuing of safety certificates for ships are done by recognised private classification societies, including the American Bureau of Shipping and Lloyd's Register of Shipping.[6] Due to long-standing concerns about the safety standards of such 'open registries', spotlighted especially by the long-running campaign of the International Transport Federation (ITF) of trade unions, regulatory networks have emerged to try to deal with low-standard ships and registries. A key development has been cooperation between the maritime authorities of Port States. They now coordinate their inspection systems, based on checklists of internationally-agreed standards, deficiency reporting, a computerised database, and the sanction of detention of vessels found defective.[7] Thus, the seaworthiness and employment conditions of ships are governed by a variety of regulatory bodies, both public and private, national and international. None of them have definitive jurisdiction, although port authorities can apply the ultimate sanction of detention (Couper et al, 1999; Gerstenberger, 2002, Murphy 2004, ch.2).

The use of `havens' for avoidance of income and profits taxation, which was an element in the FoC system, also emerged in the first decades of the 20th century. It was kept within tolerable bounds until the 1960s by a combination of national measures (controls on currency, capital movements and asset transfers) and allocation of tax rights based on a network of tax treaties. The increased international integration of business by TNCs and corporate networks led to the growth of networks of international tax administration, although mainly amongst the leading OECD countries. With the shift to currency convertibility, the liberalisation of capital movements and trans-nationalisation of banking, tax havens also became `offshore' finance centres (OFCs), acting as a catalyst for the emergence of a new internationalised financial system.

The international financial system consists of a maze of networks involving banks and other financial firms, organisations such as exchanges and clearing houses, specialist traders of many kinds, and professionals such as lawyers, with both private associations and public bodies playing regulatory and supervisory roles (Porter 1993). A large amount of this regulation is generated by and among market participants themselves (Abolafia 1985), for example, the terms of complex transactions in financial derivatives are governed by the standard

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to International Registries Inc. of Virginia (IRI) which was running the registry, and from whom Taylor had been unable to obtain funds during the civil war. Legal proceedings were begun in the US courts alleging that IRI was diverting shipowners from Liberia to the Marshall Islands registry, and was failing to account properly to Liberia for its receipts. Taylor worked with a US lawyer, Lester Hyman, and on Taylor becoming President of Liberia the Liberian government signed an agreement with Hyman for the establishment of a new company, the Liberian International Shipping and Corporate Registry (LISCR), which took over the business in 2000 (United Nations, 2001). Competition for the ship registry business, as well as the costs of ensuring adequate safety standards for the ships it registers, mean that LISCR makes profits mainly from the corporate registry side of the business (United Nations 2001; interview information), which essentially facilitates tax avoidance.

[6] See http://www.liscr.com/. Ten such bodies have formed the International Association of Classification Societies (IACS), which in December 2005 adopted a set of Common Structural Rules for ship classification and approval, see http://www.iacs.org.uk/csr/index.html.

[7] The first was established by 20 maritime authorities covering Europe and the north Atlantic, based on the Paris MOU (Memorandum of Understanding), for details see http://www.parismou.org. This has been followed by Asia-Pacific, Caribbean and Latin American groups. The ITF also maintains an international network of inspectors (131 in 43 countries in 2003, see ITF, 2005: 7), who also liaise with the Port State Control system (interview information).

Agreements drawn up by the International Swaps and Derivatives Association.[8] Perhaps better known is the important role of rating agencies such as Moody's and Standard & Poors in evaluating the credit-worthiness of bond issuers, not only private firms but governments (Sinclair 1999).[9] Prudential regulation of financial institutions such as banks is carried out by public bodies (central banks or banking supervisors), and has been coordinated internationally in a loose but relatively effective manner by the Basel Committee on Banking Supervision (BCBS). The BCBS Capital Adequacy Standards are a good example of international economic `soft law'. The new approach in Basel II allows each bank to decide its own risk management system (which are generally based on well-known models), provided it meets specified minimum requirements, and subject to review by the local supervisor of the bank's systems and controls (BCBS 2005, 2). Thus, the BCBS essentially acts as a node of coordination in a network of public-private regulatory arrangements. Its activities are also linked with the International Organisation of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS), as well as the International Accounting Standards Committee (IASC). Although their work on developing international standards for example on capital requirements is clearly related, the attempts at coordination between them have met some difficulties (Picciotto 1997, Picciotto and Haines 1999).

Coherence and coordination between regulatory networks has been hard to achieve even though they may be linked through an institutional node, or by a broader political initiative. This is well illustrated by the issue of tax havens and offshore financial centres. Concern about the use of these jurisdictions for money-laundering led to the setting up of the Financial Action Task Force (FATF), which was formed in 1989 under the auspices of the G7, but actually housed at the OECD in Paris.[10] Its work deals with similar issues to that of the OECD Committee on Fiscal Affairs (OECD-CFA), such as exchange of information, and with similar problems, notably bank secrecy. Tax authorities would greatly benefit from being able to exchange information with agencies dealing with money-laundering, and this is possible at national level in some countries. Joint action might also be helpful in putting pressure on jurisdictions which may be reluctant to accept or enforce regulatory standards. Attempts have certainly been made to encourage links and cooperation. Indeed, another initiative by the G7 explicitly tied together the issues of financial stability, financial crime, money-laundering, and international tax evasion.[11] This certainly succeeded in giving a much stronger impetus to the work of the Fiscal Committee on tax havens, resulting in the more high-profile project on Harmful Tax Practices, launched by a report in 1998. However, this project has so far achieved only limited success, and links with the FATF have been minimal. Indeed, in many ways the strengthening of prudential and other financial regulatory standards in OFCs by improving financial security makes them more attractive for tax avoidance purposes.

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[8] ISDA: see www.isda.org.

[9] This is a good example of a phenomenon discussed by Colin Scott, of private regulation of public bodies (Scott 2002).

[10] It is in fact in the main OECD building, whereas the Fiscal Committee is in an Annex.

[11] See Economic Communiqué, *Making a success of globalization for the benefit of all*, of the Lyon Summit of 1996, and the Conclusions of G7 Finance Ministers, London 9 May 1998, both available from University of Toronto G8 Information Centre website http://www.g7.utoronto.ca/.

The development of the internet has been substantially driven by the formulation of norms and standards by non-official groups, networks and institutions. Probably most successful has been the Internet Engineering Task Force (IETF), which has been responsible for developing the technical standards that enable the internet to function and grow. The IETF itself developed in an entirely unplanned way, as a network of specialists, who evolved very non-bureaucratic methods of cooperation, based on principles which later became clarified as: open process, volunteer participation, technical competence, consensual and practical decision-making, and responsibility.[12] Of course, this work has been greatly facilitated because its subject-matter is specialist and the participants may be said to share a common commitment and understandings and hence form an 'epistemic community' (Haas, 1992). However, as Michael Froomkin points out in his fascinating analysis of the IETF and internet regulation (Froomkin, 2003), the commitment of the IETF community is not to a closed, apolitical, technicist task, but to the much broader normative value of ubiquitous global communication (ibid: 810-811). He contrasts the IETF with another key body, ICANN (the Internet Corporation for Assigned Names and Numbers). ICANN was also set up as a private entity, although at the suggestion of the US government, to take over from the IETF the task of managing internet domain names, and it claimed to model its procedures on those of the IETF. However, Froomkin demonstrates that in practice ICANN's methods have been closed and secretive rather than open, and its decisions made by fiat rather than consensus (ibid: 838ff, esp 852-3), resulting in severe legitimation problems. This he attributes to the greater political and especially economic contentiousness of the subject-matter, as well as ICANN's institutional design failures.

However, this is of course far from meaning that the internet has created a new realm of cyberspace beyond the reach of national state law and regulation, as some have claimed. As is well known, the internet began as a US military project (Leiner et al, 2003), and although the US government allowed the engineers and computer scientists considerable latitude, it could always assert ultimate authority, as was seen in the conflict over the internet's `root authority' in 1997-8 (Goldsmith & Wu 2006, 29-46). Furthermore, national law has been applied, in a relatively effective manner, to block access to websites considered to be for various reasons undesirable, ranging from a French court order against Yahoo in relation to Nazi auction sites, to the extensive controls over the internet operated by the government of the People's Republic of China, with the cooperation of key organisations, notably Google. It is therefore clear, as Goldsmith and Wu point out, that the internet has not abolished geography, and territorially-based community and state laws can still have a significant effect. However, their own analysis shows that only strong public bodies in countries with large markets can effectively regulate the internet. Even more crucially, they can only do so by working in conjunction with powerful corporate intermediaries, either internet service providers such as Yahoo and Google, or financial intermediaries such as PayPal.

These are examples of highly `globalised' activities, but similar trends are evident in a wide variety of business areas. Since the 1960s TNCs have complained of being subjected to diverse and sometimes conflicting regulatory requirements, but they have increasingly become governed also by corporate and industry `codes of conduct'. These are not necessarily purely private, but interact in various ways with both international and national law and regulation (Haufler 2001, Parker 2002, Picciotto 2003). Similarly, there has been a growth of private dispute-resolution amongst business firms, based on what some have described as a new `lex

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[12] See 'A Mission Statement for the IETF', Request for Comments 3935, October 2004; available from http://www.ietf.org/rfc/rfc3935.txt, accessed 15/2/2005.

mercatoria' independent of state law. However, these arbitration systems are ultimately anchored in national state law, and also depend on a framework of international treaties. The *lex mercatoria* is better understood as a doctrine put forward as part of the competitive struggles between nationally-based arbitration centres;[13] and although such centres have successfully lobbied for greater independence from state control, commercial arbitration is much more like a set of private-public networks than an autonomous system of private justice.

*Problems of Legitimacy*

The shift to heterarchical governance sketched out above has in several ways disrupted the channels of political accountability of the classical liberal international system, which hinge on national state governments. International arenas and institutions are generally considered to be the province of confidential diplomatic discussions, conducted under the cloak of executive authority and beyond the reach of national instruments of democratic accountability, even of liberal democratic states (Stein 2001). For example, freedom of information laws commonly have a broad exclusion for international relations.[14] Even when international agreements require implementation in national law, legislative consent may be reduced to a mere formality by the use of broad negotiating authority, umbrella legislation and other devices giving direct effect or applicability.[15] The wide range and complexity of laws and regulations generated in international arenas are in practice developed and implemented under the responsibility of officials of government or other public bodies, with very little supervision by elected politicians.

Paradoxically, however, international regulatory networks often operate in a more open and accessible manner than national government bureaucracies. Lacking channels of accountability, they seek to ensure effectiveness by working in close consultation and even cooperation with representatives of interested parties, usually corporate or business interests. The growth of public concern and critique has led to some broadening of these consultative arrangements to include civil society organisations. Some have made effective use of the internet to make their internal documentation openly available both to members and the wider public. Nevertheless, their actual decision-making processes are still seriously deficient in both transparency and democratic accountability.

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[13] The chief legal proponent of this concept has been Berthold Goldmann, but it has been hotly debated: see e.g. Carbonneau 1990 (which includes a chapter by Goldmann), Delaume 1989, Reisman 1992, Appelbaum et al. 2001 (differing views of De Ly and Dasser). Yves Dezalay and Bryant Garth have studied in sociological detail the competition between arbitrators, and between different national centres and styles of arbitration (including attitudes to *lex mercatoria*) that have transformed the field of international commercial arbitration into what they describe as `a sort of offshore justice' (Dezalay & Garth 1995, 54; 1996); while Claire Cutler has analysed how the recreation of the law merchant by a new emphasis on liberal values free from state regulation has contributed to the `disembedding' of liberalism (Cutler 1995, 2003).

[14] E.g. UK Freedom of Information Act 2000, s. 27.

[15] For example, `fast track' negotiating authority used by the US for WTO and other international economic agreements, and the `article 133' procedure used by the EU. EU law is given direct applicability in member states either by constitutional provisions or broad umbrella legislation such as the UK's European Communities Act. The UK also uses this type of legislation to provide virtually automatic implementation for agreements in many specific areas, e.g. international tax treaties, which in effect create a special legal regime within the tax code, and need only be `laid before' parliament with no real scrutiny.

Finally, the importance of expertise suggests that the dangers of technicism must be addressed. This is especially the case since so many decisions now entail inputs often from different specialist or expert fields, as well as an evaluation from the general public perspective. Indeed, Mikulecky, one of the pioneers of the new approach to science based on relational systems theory, defines complexity as `the property of a real world system that is manifest in the inability of any one formalism being adequate to capture all its properties' (Mikulecky 2001, 344). Technical rationality can operate in an autocratic way, if it seeks to claim a spurious authority. This can be counter-productive, as has occurred in the frequent episodes when it has resulted in a spiral of public mistrust of science, and scientists' despair at public ignorance. To avoid technicism, specialists need to acknowledge the ways in which their techniques rest on formal models based on assumptions which allow them to abstract the specific aspects of an issue or the data with which they are concerned from the entirety and complexity of the issue in the real world. Since the conclusions they can reach based on such assumptions can only have a partial or conditional validity, they should not be treated as determinative of the issue as a whole, but as important contribution towards more general public debates. Scientific responsibility should therefore include cognitive openness and reflexivity (Dryzek 1990, 1999).[16]

## B. Legalisation and Lawyers in Global Regulatory Networks

The law and lawyers have played a major role in the construction and management of these globalised regulatory networks. Much of this work is low-profile or behind the scenes. However, there has also been a more visible trend towards legalisation of global governance institutions, to a great extent in response to some of the legitimacy problems analysed above. An egregious example is the WTO, demonstrated by the great stress placed on the WTO as embodying the Rule of Law in world trade. Thus, after the organisation was shaken by the debacle at Seattle, the then Secretary-General Mike Moore delivering a speech on `The Backlash against Globalisation?' concluded as follows:

> The WTO is a powerful force for good in the world. Yet we are too often misunderstood, sometimes genuinely, often wilfully. We are not a world government in any shape or form. People do not want a world government, and we do not aspire to be one. At the WTO, governments decide, not us.

> But people do want global rules. If the WTO did not exist, people would be crying out for a forum where governments could negotiate rules, ratified by national parliaments, that promote freer trade and provide a transparent and predictable framework for business. And they would be crying out for a mechanism that helps governments avoid coming to blows over trade disputes. That is what the WTO is. We do not lay down the law. We uphold the rule of law. The alternative is the law of the jungle, where might makes right and the little guy doesn't get a look in. (Moore 2000).

The political acceptability of compliance with the wide range of WTO obligations rests essentially on the quasi-judicial form of its dispute settlement (DS) procedure, and principally

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[16] Michael Froomkin's interesting account and analysis of the governance of the Internet (mentioned already above), argues that the success of the IETF in terms of both efficacy and legitimacy was due largely to its essentially democratic participative procedures, which he suggests is an exemplar of Habermasian practical discourse ethics; in contrast, ICANN suffered a legitimation crisis, because its operations were secretive and claimed legitimacy from a rigid corporatist representation system (Froomkin 2003).

its Appellate Body (AB). Yet this role has been framed by a narrow mandate which formally reserves the power to interpret the agreements to the `political' bodies of member state representatives.

Yet WTO adjudication entails skilful navigation through a labyrinth of legal rules, not only within the complex structure of the WTO agreements themselves, but also the many related regulatory regimes with which they intersect. The key WTO obligations are expressed in terms of abstract general principles, subject to counteracting exceptions, involving a high degree of indeterminacy (Trachtman 2001). Despite this, the AB has adopted a formalist approach which stresses a literal approach to the rules, largely to avoid accusations of creative interpretation. It has done so with some subtlety, emphasising the objective application of the words of the agreements to placate the broader public, while hoping to convince specialists in trade and economic regulation through shared understandings of the interpretations which are desirable to achieve the goals of free trade. Unfortunately, it risks failing to convince insiders, while doing little to reach out to persuade a broader constituency of the fairness of WTO rules.[17]

Indeed, the powerful role of WTO adjudicators has led to accusations that they are exceeding their mandate, and even that they are `out of control' (Beattie 2007). Yet such criticisms often focus on the *inadequacy* of the extent of legalisation: that WTO Panels are composed of trade negotiators chosen ad hoc (although there is a right of appeal to the AB, which is a standing body, composed of lawyers), hearings are held in secret, and rulings are not formally obliged to follow precedent (ibid.).

*Differing Perspectives*

The role of law and lawyers in global governance has been analyzed in very different ways. One influential group of American commentators has discussed the legalisation of world politics from an essentially Weberian perspective. They assess the extent of legalisation along a spectrum according to three criteria: being based on rules which are regarded as binding, which are precise, and the interpretation of which has been delegated to a third party adjudicator (Abbott, Keohane et al, 2000: 404-6). This essentially limits law to formal state law, excluding any hybrid or private forms of governance, and has been criticised as taking a narrow view of law (Finnemore and Toope, 2001). Indeed, the view that 'hard' law provides precise rules, while quasi-legal 'soft' law is more vague or imprecise, does not stand up to empirical analysis. For example, financial market regulations discussed above, whether developed by private bodies such as the ISDA or public ones such as the BCBS, are as detailed as any legislation, but they are formally 'soft' law. On the other hand, from the formalist viewpoint, the WTO agreements rate highly as exemplars of legalisation, since they lay down an enormous quantity of formally binding rules, the interpretation of which has been delegated to the WTO's Appellate Body (AB) as an adjudicator. However, the suggestion that these rules are precise and unambiguous is highly dubious, and it can be shown that both the general structure and many of the specific provisions of the WTO agreements raise issues of interpretation which were known to be highly contestable, and indeed were being contested, in the period when the texts were negotiated and agreed (Alter, 2003; Picciotto, 2005). Furthermore, this perspective fails to capture the multiple forms and roles of law in the multi-level system described and analyzed above, nor the mode of their interaction.

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[17] This analysis is developed in greater detail in Picciotto 2005.

In contrast, the heterarchical character of regulatory networks has led some theorists to revive concepts of legal pluralism (e.g. Snyder, 2000), building on the challenge by earlier versions of legal pluralism to the privileging of state law in the classical liberal paradigm. However, while pluralism may help in drawing attention to the existence and interactions of multiple legal orders, it is prone to the criticism advanced by von Benda-Beckmann that 'talking of intertwining, interaction or mutual constitution presupposes distinguishing what is being intertwined' (cited in Melissaris, 2004: 61), or more sharply that it leaves us `with ambiguity and confusion' (Teubner, 1992: 1444).

The most sophisticated and complex attempt to establish a conceptual analysis which incorporates a pluralist approach has been that of Boa de Sousa Santos (1987, 1995). He distinguishes his perspective from that of traditional legal anthropology which conceived different legal orders as 'separate entities coexisting in the same political space', and cogently argues that '[w]e live in a time of porous legality or legal porosity, of multiple networks of legal orders forcing us to constant transitions and trespassings. Our legal life is constituted by an intersection of different legal orders, that is by *interlegality'* (Santos, 1995: 473). He suggests that the new legal pluralism is concerned with 'the identification of the three time-spaces of the legal field - the local, the national, and the transnational' (ibid, 117), and uses the metaphor of cartography to suggest that different types of laws are based on different scales, projections and symbolisations, and that social groups become more adept in the types of action suited to the legal order within which they are predominantly socialised (ibid: 465-6). However, his analysis tends to be structural: he conceives of different legal orders as overlapping but mutually exclusive and that 'each legal construction has an internal coherence' (ibid 473). For example, he argues that the new *lex mercatoria* and the proliferation of business and corporate codes constitute 'the emergence of new legal particularisms' which 'create a transnational legal space that often conflicts with national state legal space' (ibid: 469). Thus, Santos perhaps does not fully exploit the concepts of porosity and interlegality, nor does he explore how legal techniques can be used strategically, and can help to manage the interactions of different arenas and forms of law.

Analysts of regulation have attempted to capture the characteristics of different layers of regulation and their interaction. This kind of approach to regulatory interactions is based in concepts of responsive or reflexive law. As part of the response to the crises of the welfare state, Nonet and Selznick put forward a new modernist paradigm of responsive law, as an evolution from the repressive and autonomous phases of law, and envisaging regulation as an interactive process of developing methods to realise purposes expressed through law and thereby clarifying the public interest (Nonet and Selznick, 1978/2001). The concept was taken up in regulation theory notably by Ayres and Braithwaite (1992), seeking to reassert a civic republican tradition in which the layers of social institutions, from the state through industry associations and down to individual corporations, play their different parts in social regulation, lubricated by a two-way flow of public discourse. The interaction of public and private has been analysed within this perspective through the concept of `meta-regulation', or the supervision by public bodies of the adequacy of private regulation.[18] This seems an appropriate

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[18] The term 'meta-regulation' has been applied to national state laws which lay down overarching requirements or standards (for example, for environmental protection) with which more specific industry or corporate codes are expected to comply (Gunningham & Grabosky, 1998; Parker, 2002). This term has been extended to apply to describe the 'disciplines' laid down by WTO law on national states by Bronwen Morgan (2003), who has described WTO rules as 'global meta-regulation', or rules prescribing how states should regulate.

lens through which to view, for example, the approach in the BCBS's Basel II framework for financial risk management, discussed above.

A different analysis has been offered by Gunther Teubner, who argued that the emergence of reflexivity in modern law resulted from the `trilemma' created by the increased legalisation or juridification of the social sphere (Teubner, 1983, 1987). For Teubner it is the autonomy of the legal field that generates its autopoietic self-referentiality, but the politicisation resulting from increased application of law into social fields creates expectations which require instrumentalisation, perhaps through new forms of self-regulation. The pressure for legal regulation to go beyond the limits possible through the autonomous logics of self-reproduction means that it either lapses into irrelevance, or results in disintegration either of the social field to which it is applied or of the law itself, so that regulatory failure is the rule rather than the exception. Thus, in his work on globalisation he welcomes the potential it offers for law to become more detached from the political sphere of states, and instead to institutionalise constitutions for autonomous social sectors and the norms which they generate, which he suggests could enable new forms of repoliticization (Teubner 2004). He rightly criticises the view of globalisation as an economic process which reduces the prospects of regulation through law, and points to the many new normative forms underpinning globalisation, which seek validation through law. However, this systems-theoretical perspective significantly overstates the autonomy of the ill-defined social sub-systems, and the self-referential nature of `neo-spontaneous' generation of `global law without a state', of which *lex mercatoria* is given as an example (Teubner 1997).

A more actor-oriented approach taken by Bourdieu, who criticises the confusion in systems theory between the symbolic structures of the law and the objective orders of the legal and other professional fields, in which agents and institutions compete for the right to formulate the rules, 'le droit de dire le droit' (Bourdieu, 1986). This is perhaps especially valuable in providing a basis for empirical and sociological studies of the actual practices of lawyering, centring on the practices of interpretation of legal texts, which involves the appropriation of the 'symbolic power which is potentially contained within the text', in terms of competitive struggles to 'control' the legal text (Bourdieu, 1987: 818).[19]

Based on this approach, the extensive sociological research of Dezalay and Garth has provided a more convincing account of *lex mercatoria* than either Santos or Teubner, which also shows how law may mediate transformations of both the `private' sphere of economic activity and the `public' sphere of politics, and their interaction. Their work demonstrates that the concept of *lex mercatoria* was a strategic move in the competitive struggles between arbitration centres, in which lawyers mediated skilfully between the spheres of political and corporate power to create the new arena of international commercial arbitration (Dezalay and Garth, 1995, 1996). Certainly, the learned doctrine of *lex mercatoria*, backed by the neutral authority of the grand European professors which validated it in the eyes of their disciples in the third world, helped to provide a 'middle way' in the postcolonial clashes over the scope of state sovereignty, especially concerning the control of oil; but in practice the legal arbitrations were only one

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[19] He suggests that coherence emerges partly through the social organisation of the field, and partly because to succeed competing interpretations must be presented 'as the necessary result of a principled interpretation of unanimously accepted texts' (ibid). This explains the apparent paradox that, while lawyers spend much of their time disagreeing about the meaning of texts, they often do so from an objectivist perspective. They generally deny that indeterminacy is inherent, and tend to attribute disagreements to bad drafting and lack of clarity in the texts, which are said to create 'loopholes' in the logical fabric of the law.

strand (and a minor one) in the broader political negotiations (Dezalay & Garth, 1995: 83-91, 313). Rather than creating a purely private legal sphere outside the realm of state law, the two have been deeply entangled, and the authority of law, especially legal concepts of private rights, has been used to counter political notions of state sovereignty in the struggles to reconfigure economic and political power. Thus, as suggested above, it is essential to understand these shifting forms of governance as resulting from strategic moves in contests of power.

*Law as Mediation through Interpretive Practices*

I suggest that a clearer understanding of regulatory networks, and of the role in them of law, comes from dislodging positivist and instrumentalist views of law. Legalisation has certainly been an important feature of the management of economic globalisation. Under a formalist view of law, legitimacy is thought to be provided by law because it offers a process for decision-making which is technical-rational: a logical application of precise or unambiguous rules prescribing obligatory conduct, to implement politically-determined aims (Abbott et al, 2000). Yet the interpretation and application of legal rules is not a mechanistic but a flexible process, which allows scope for the overt or covert consideration of social, political and cultural factors, and adaptation to circumstances.

Law plays a key role in global governance not because of its precision, but its flexibility. This provides a possibility to help to accommodate the diversity of local and national social and cultural particularities to the increasingly globally integrated world market, and to manage conflicts resulting from power disparities. However, its failures and crises, of which there are many, result from the design failures which attempt to substitute the legitimacy of formal legal rationality for the political and social legitimacy (and efficacity) which can only come from a broader democratic structures.

Lawyers' skills have been deployed, in some ways to good effect, for example in WTO adjudications, as outlined above. However, the adoption of a formalist approach with a closed epistemology, based on an objectivism which treats the abstract concepts in the texts through an instrumental rationality, has resulted in decisions expressed in legalistic terms. This closure tends to exclude debate about the values involved in the interpretive choices made by the adjudicator, which would entail acceptance of a more extended and direct accountability to a broader political constituency, rather than through national governments. It is also technicist (taking its specialist part for the whole), since its closed rationality excludes reflexive dialogue with those outside its closed epistemological sphere. The accountability dilemma of the AB is reflected in the reasoning shown in its decisions, which are generally expressed in legalistic terms, but astutely tread a difficult political line aimed at ensuring their acceptability to its various constituencies.

Law has an important part to play, but it should not be regarded as a separate sphere through which public standards are applied to control private interests in otherwise closed arenas. Lawyers, like other professionals, are creative ideologists. Since they work as professionals for private clients or public bodies (and often both), lawyers are accustomed to working at the interface between the public and private spheres (Dezalay 1996). Furthermore, although law deals with universal principles of justice, it is also rooted in particular national cultures. Indeed, there is long history of legal interaction, mediated by techniques of international private and comparative law. Now lawyers, like other professionals, are active in the markets for the international production and circulation of ideologies and techniques of corporate and business management, and of modes of governance.

Hence, lawyers play a crucial role in accommodating public concerns to private interests. Lawyering entails interpretive practices which mediate between the public standards and values expressed in the wide variety of norms, and the particular activities and operations of economic actors, offering the hope that economic power might be exercised ultimately for the general good. However, this aspiration is illusory unless law operates within a broader democratic framework, in which legal practices themselves are also subject to high standards of transparency, accountability and responsibility.

## BIBLIOGRAPHY

Abbott, Kenneth, et al. (2000), 'The Concept of Legalization', *International Organization,* 54 (3), 401-19.

Abolafia, Mitchel Y. (1985), 'Self-Regulation as Market Maintenance', in Roger G. Noll (ed.), *Regulatory Policy and the Social Sciences* (Berkeley: University of California Press), 312-43.

Alston, Philip (1997), 'The Myopia of the Handmaidens: International Lawyers and Globalization', *European Journal of International Law,* 8 (3), 435.

Alter, K. J. (2003), 'Resolving or exacerbating disputes? The WTO's new dispute resolution system', *International Affairs,* 79 (4), 783-800.

Appelbaum, Richard P., Felstiner, William L. F., and Gessner, Volkmar (2001), *Rules and networks : the legal culture of global business transactions* (Onati international series in law and society; Oxford: Hart).

Ayres, Ian and Braithwaite, John (1992), *Responsive Regulation.  Transcending the Deregulation Debate.* (New York: Oxford University Press).

Beattie, Alan (2007), 'From a trickle to a flood - how lawsuits are coming to dictate the terms of trade', *Financial Times,* March 20th.

BCBS (2005), 'International Convergence of Capital Measurement and Capital Standards. A Revised Framework', Basel Committee on Banking Supervision, available from http://www.bis.org/publ/bcbs118.htm, visited 15th February 2006.

Braithwaite, J. (1999), 'Accountability and governance under the new regulatory state', *Australian Journal of Public Administration,* 58 (1), 90-94.

Buchanan, J. and Tollison, Robert D. (1984), *The Theory of Public Choice* (Ann Arbor: University of Michigan Press).

Carbonneau, Thomas (ed.), (1990), *Lex Mercatoria and Arbitration: a Discussion of the New Law Merchant* (Dobbs Ferry, N.Y.: Transnational Juris Publications Inc.).

Carlisle, Rodney (1981), *Sovereignty for Sale* (Annapolis: Naval Inst. Press).

Coen, David and Thatcher, Mark (2005), 'The New Governance of Markets and Non-Majoritarian Regulators', *Governance,* 18 (3), 329-46.

Collins, Hugh (1999), *Regulating Contracts* (Oxford: OUP).

Couper, A. D., et al. (1999), *Voyages of Abuse. Seafarers, Human Rights and International Shipping* (London: Pluto Press).

Cutler, A. Claire (1995), 'Global Capitalism and Liberal Myths: Dispute-Settlement in Private International Trade Relations', *Millenium,* 24 (3), 377-97.

--- (2003), *Private power and global authority : transnational merchant law in the global political economy* (Cambridge: Cambridge University Press).

Delaume, Georges (1989), 'The Myth of the Lex Mercatoria', *Tulane Law Review,* 63, 575.

Dezalay, Yves (1996), 'Between the State, Law, and the Market: The Social and Professional Stakes in the Construction and Definition of a Regulatory Arena', in W. Bratton, et al. (eds.), *International Regulatory Competition and Coordination* (Oxford: Clarendon Press), 59-87.

Dezalay, Yves and Garth, Bryant (1995), 'Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes', *Law and Society Review,* 29 (1), 27-64.

Dezalay, Yves and Garth, Bryant (1996), *Dealing in Virtue. International Commercial Arbitration and the Construction of a Transnational Legal Order.* (Chicago: Chicago UP).

Dryzek, John S. (1990), *Discursive Democracy* (Cambridge: Cambridge University Press).

--- (1999), 'Transnational Democracy', *Journal of Political Philosophy,* 7 (1), 30-51.

Finnemore, Martha and Toope, Stephen J. (2001), 'Alternatives to 'Legalization': Richer Views of Law and Politics', *International Organization,* 55 (3), 743-58.

Freeman, Jody (2000), 'The Contracting State', *Florida State University Law Review,* 28, 155-214.

Froomkin, A. Michael (2003), 'Habermas@Discourse.Net: Towards a Critical Theory of Cyberspace', *Harvard Law Review,* 116 (3), 749-873.

Gerstenberger, Heide and Welke, Ulrich (eds.) (2002), *Seefahrt im Zeichen der Globalisierung* (Munster: Westfalisches Dampfboot).

Goldsmith, Jack L. and Wu, Tim (2006), *Who controls the Internet? : illusions of a borderless world* (Oxford ; New York: Oxford University Press).

Haas, Peter M. (1992), 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization,* 46 (1: Special Issue on Knowledge, Power and International Policy Coordination), 1-36.

Haufler, Virginia (2001), *A Public Role for the Private Sector. Industry Self-Regulation in a Global Economy* (Carnegie Endowment for International Peace).

ITF (2005), *Campaign against flags of convenience and substandard shipping. Annual Report 2004*, International Transport Workers' Federation; available from http://www.itfglobal.org/flags-convenience/index.cfm.

Jordana, Jacint and Levi-Faur, David (eds.) (2004), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance* (Cheltenham: Edward Elgar).

Kooiman, Jan (ed.), (1993), *Modern Governance . New Government-Society Interactions.* (London: Sage).

Ladeur, Karl-Heinz (ed.), (2004), *Public Governance in the Age of Globalization* (Aldershot: Ashgate).

Leiner, Barry M., et al. 'A Brief History of the Internet', http://www.isoc.org/internet/history/brief.shtml, accessed 15/01/06.

Loughlin, Martin and Scott, Colin (1997), 'The Regulatory State', in Patrick Dunleavy, et al. (eds.), *Developments in British Politics 5* (Basingstoke: Macmillan), 205-19.

Manin, Bernard (1997), *The Principles of Representative Government* (Cambridge: CUP).

Mikulecky, Don (2001), 'The emergence of complexity: science coming of age or science growing old?' *Computers & Chemistry,* 25 (4), 341-48

Moore, Mike (2000), 'The Backlash against Globalization?' paper given at Liberal International, Ottawa, October 26; http://www.wto.org/english/news_e/spmm_e/spmm39_e.htm, accessed 27 January 2001.

Moran, Michael (2003), *The British regulatory state : high modernism and hyper-innovation* (Oxford ; New York: Oxford University Press).

Mosher, James S. and Trubek, David M. (2003), 'Alternative Approaches to Governance in the EU: EU Social Policy and the European Employment Strategy', *Journal of Common Market Studies,* 41 (1), 63-88.

Nonet, Philippe and Selznick, Philip (2001), *Law & society in transition : toward responsive law* (New Brunswick, N.J.: Transaction Publishers).

Osborne, David and Gaebler, Ted (1992), *Reinventing Government. How the Entrepreneurial Spirit is Transforming the Public Sector* (Reading MA: Addison-Wesley).

Parker, Christine (2002), *The Open Corporation. Effective Self-regulation and Democracy* (Cambridge: CUP).

Pierre, Jon (ed.), (2000), *Debating Governance* (Oxford: OUP).

Picciotto, Sol (1996), 'The Regulatory Criss-Cross: Interaction between Jurisdictions and the Construction of Regulatory Networks.' in William Bratton, et al. (eds.), *International Regulatory Competition and Coordination* (Oxford: Clarendon Press), 89-123.

Picciotto, Sol (1997), 'Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism', *Northwestern Journal of International Law and Business,* 17 (2/3), 1014-56.

Picciotto, Sol (2003), 'Rights, Responsibilities and Regulation of International Business', *Columbia Journal of Transnational Law,* 42 (1), 131-52.

Picciotto, Sol (2005), 'The WTO's Appellate Body: Formalism as a Legitimation of Global Governance', *Governance,* 18 (3), 477-503.

Picciotto, Sol (forthcoming), 'Regulatory Networks and Global Governance', in Olaf Dilling, Martin Herberg, and Gerd Winter (eds.), *Responsible Business: Self-governance and the law in transnational economic transactions* (Oxford: Hart).

Porter, Tony (1993), *States, Markets, and Regimes in Global Finance* (Basingstoke: Macmillan).

Radaelli, Claudio M. (2003), 'The Code of Conduct against Harmful Tax Competition. Open Method of Coordination in Disguise?' *Public Administration,* 81 (3), 513-31.

Reed, Michael (1999), 'From the 'cage' to the 'gaze'? The dynamics of organizational control in late modernity', in Glenn Morgan and Lars Engwall (eds.), *Regulation and Organizations. International perspectives* (London: Routledge), 17-49.

Reisman, W. Michael (1992), *Systems of Control in International Adjudication* (Duke Univ. Press).

Rhodes, R. A. W. (ed.), (1997), *Understanding Governance: Policy Networks, Governance, Reflexivity, Accountability* (Milton Keynes: Open University Press).

Rubin, Edward (2003), 'It's Time to Make the Administrative Procedure Act Administrative', *Cornell Law Review,* 89, 95-190.

Sand, Inger-Johanne (1998), 'Understanding New Forms of Governance: Mutually Interdependent, Reflexive, Destabilised and Competing Institutions', *European Law Journal,* 4, 271-93.

Scott, Colin (2002), 'Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance', *Journal of Law & Society,* 29 (1), 56-76.

Sinclair, Timothy J. (1999). "Bond-Rating Agencies and Coordination in the Global Political Economy", in Cutler, A. Claire, Haufler, Virginia, and Porter, Tony (1999), *Private authority and international affairs* (SUNY series in global politics; Albany: State University of New York Press), pp. 153-167.

Slaughter, Anne-Marie (1997), 'The Real New World Order', *Foreign Affairs,* 76 (5), 183-97.

Slaughter, Anne-Marie (2001), 'The Accountability of Government Networks', *Indiana Journal of Global Legal Studies,* 8, 346.

Slaughter, Anne-Marie (2004), *A new world order* (Princeton, N.J. ; Oxford: Princeton University Press ;).

Slaughter, Anne-Marie (2004b), 'Global Government Networks, Global Information Agencies and Disaggregated Democracies', in Karl-Heinz Ladeur (ed.), *Public Governance in the Age of Globalization* (Aldershot: Ashgate), 121-55.

Stein, Eric (2001), 'International Integration and Democracy: No Love at First Sight', *American Journal of International Law,* 95 (3), 489-534.

Teubner, Gunther (2004), 'Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sectors?' in Karl-Heinz Ladeur (ed.), *Public Governance in the Age of Globalization* (Aldershot: Ashgate).

Trachtman, Joel P. (1999), 'The Domain of WTO Dispute-Resolution', *Harvard International Law Journal,* 40 (2), 333-77.

United Nations Security Council (2001), *Report of the Panel of Experts Pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia*, New York: S/2001/1015, 17th October.

Vincent-Jones, Peter (1999), 'The Regulation of Contractualisation in Quasi-Markets for Public Services', *Public Law,* (Summer), 1-31.