1 Introduction: A world of governance: The rise of transnational regulation

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Introduction

On an experiential basis, many of us feel the impact of a "transnationalizing" world. French workers strike to prevent the de-localization of their jobs to Slovenia or China and most clothing in American stores is produced outside the United States. A German university professor is increasingly expected to belong to a transnational peer community and to adapt to career development standards greatly at odds with German academic traditions. What a European consumer gets when she buys chocolate in her local store has been defined and standardized by the European Commission. Companies around the world are going through multiple certification processes and are bound to various categories of standards – efficiency, quality, ethical or environmental ones. The list could be longer and all chapters in this volume provide further evidence of the impact of transnationalization in our daily lives.

As those examples suggest, a transnational world is not about the disappearance of rules and order. Rather, what appears striking about our times is the increasing scope and breadth of regulatory and governance activities of all kinds. The present world has been described as a "golden era of regulation" (Levi-Faur and Jordana 2005). The proliferation of regulatory activities, actors, networks or constellations leads to an explosion of rules and to the profound re-ordering of our world. Organizing and monitoring activities connect with regulation and represent other important dimensions of contemporary governance. New organizations, alliances and networks emerge everywhere. Particularly salient is the almost exponential growth of international organizations (e.g. Boli and Thomas 1999). An important task for many of these organizations is to issue rules but they may also be involved in elaborating and activating processes to monitor adoption and implementation of those rules.

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An increasing share of this intense governance activity takes place between and across nations. Regulatory boundaries do not necessarily coincide with national boundaries. National regulatory patterns can quickly get transnationalized and transnational initiatives are having a local impact. States are active but they are themselves embedded in and constrained by regulatory actors and activities. State agencies negotiate with non-profit associations, international organizations, standard setters and corporate actors. Interactions between organizations in state and non-state sectors are complex, dense and multidirectional. The allocation of responsibilities between them is in flux and the borders between public and private spheres are increasingly fluid.

This volume focuses on governance in the transnational world and more precisely on transnational governance in the making. There is now a rich literature painting the features of a re-ordered world (e.g. Ayres and Braithwaite 1992; Cutler et al. 1999; Hall and Biersteker 2002; Slaughter 2004). There is often a sense in that literature that transnational regulations are out there and just come about – with an associated feeling of determinism and ineluctability. In contrast, we emphasize the complex, progressive and highly historical dimension of the re-ordering process that is still, very much, in the making. In fact, we propose to focus on the re-ordering process itself. In this volume, we are interested in the genesis and structuration of new modes of governance – rules and regulations and the organizing, discursive and monitoring activities that sustain, frame and reproduce them. We want to understand how they are shaped, get stabilized and change. We explore transnational governance in the making and the concomitant re-ordering of the world.

The challenge behind this book is to make sense of the complex and dynamic topography of our re-ordering world. Making sense, however, goes well beyond the description of what is visible (cf. Weber 1949) and topography means more than a surface collection of elements. We propose, in this introduction, a re-visited field perspective to capture the multiple levels and dimensions of this dynamic topography. Beyond the apparent complexity and unruly nature of contemporary transnational governance, we search for those structuring dimensions and potential regularities that frame the visible landscape and its dynamics and allow for a deeper understanding.

Revisiting some key conceptual debates and definitions

Examples now abound that point to profoundly changing rules of the game across the world in many spheres of activities – be they social, economic or political. The very definition of "rules" and "regulations," the nature of actors involved, the modes of regulatory and monitoring activities are evolving quite profoundly. In the meantime, the conceptual frameworks at our disposal for understanding processes of re-regulation are mostly inadequate. They often are mere extensions of the conceptual frameworks originally developed to understand rule-making and monitoring in a Westphalian world – where sovereign nation-states with supreme jurisdiction over demarcated territorial areas functioned in an essentially anomic international arena (Martin 2005). As such, they have a tendency to marginalize transnational regulation (Cutler 2002; Kobrin 2002). We propose that a contemporary frontier for social scientific research is to extend and reinvent our analytical tools in order to approach regulation as a complex compound of activities bridging the global and the local and taking place at the same time within, between and across national boundaries.

Transnational and not global

The label "globalization" is often used to refer to the rapid expansion of operations and interactions across and beyond national boundaries. We find this label unsatisfactory; it has become such a catchword that its meaning is highly blurred.

Transnational, we suggest in line with Hannerz (1996), is a more suitable and focused concept to make sense of the world we live in. Hannerz commented upon the two concepts as follows:

I am also somewhat uncomfortable with the rather prodigious use of the term globalization to describe just about any process or relationship that somehow crosses state boundaries. In themselves, many such processes and relationships obviously do not at all extend across the world. The term "transnational" is in a way more humble, and offers a more adequate label for phenomena which can be of quite variable scale and distribution, even when they do share the characteristic of not being contained within the state (Hannerz 1996:6).

Although the term "transnational" does not imply the disappearance of nation-states, it suggests that states are only one type of actor amongst others (Katzenstein et al. 1998). Many connections go beyond state-to-state interactions. As Hannerz (1996: 6) again put it "(i)n the transnational arena, the actors may now be individuals, groups, movements, business enterprises, and in no small part it is this diversity of organizations that we need to consider." This fits with our conviction that the exploration of a re-governing world should neither neglect states nor treat them as the only or central mainsprings of the re-governing process.

The label "transnational" suggests entanglement and blurred boundaries to a degree that the term "global" could not. In our contemporary world, it becomes increasingly difficult to separate what takes place within national boundaries and what takes place across and beyond nations. The neat opposition between "globalization" and "nations," often just beneath the surface in a number of debates, does not really make sense whether empirically or analytically. Organizations, activities and individuals constantly span multiple levels, rendering obsolete older lines of demarcation.

Transnational governance suggests that territorial grounds and national autonomy or sovereignty cannot be taken for granted. It also implies, however, that governance activity is embedded in particular geopolitical structures and hence enveloped in multiple and interacting institutional webs. Kobrin (2002: 64) saw parallels between present governance structures and medieval states. "Although medieval 'states' occupied geographic space, politics was not organized in terms of unambiguous geography . . . Borders were diffuse, representing a projection of power rather than a limit of sovereignty. In the context, power and authority could not be based on mutually exclusive geography." With reference to Ruggie (1983), Kobrin characterized such political structures as "patchwork."

"Patchwork" political structures mean interdependence and entanglement. Actors converge across fluid boundaries in the ways they structure themselves, connect with others and pursue their interests. Interdependence and entanglement reflect in part re-regulation while driving it even further. Greater interdependence and entanglement foster the need for systematic comparisons and benchmarks and thus make it necessary to increase coordination across countries and regions. This in turn generates even more regulatory activity.

A re-regulated world

With the expansion of regulation has come an explosion of studies and
theories (see Baldwin et al. 1998; Levi-Faur 2005). Different definitions
and conceptions of regulation run through these studies. Baldwin et al.
(1998: 3–4) differentiate between three conceptions: (1) regulation as
authoritative rules, (2) regulation as efforts of state agencies to steer the
economy, and (3) regulation as mechanisms of social control. This cate-
gorization certainly corresponds to a need for conceptual clarification
in an expanding area of research (see Jordana and Levi-Faur 2004).
Still, and based on our characterization of the transnational world,
we find it necessary to refine further this conceptual categorization to
capture the complex dynamics of contemporary re-regulation.

The categorization by Baldwin et al. (1998) points to an evolution
from a narrow conception of regulation to a much broader one both
in theory and practice. As we read this categorization, it tells us about
four different dimensions. First, it tells us about who is regulating.
Narrow conceptions suggest the centrality of the state. The broader
conception points to the multiplicity of regulatory actors fighting for
attention, resources and authority in multi-centered and fluid arenas.
Most chapters in this volume explore the rapid de-multiplication of
regulatory actors in recently regulated or re-regulated spheres – such
as education, the environment, firm interactions, corporate ethics or
state administration (e.g. Cutler et al. 1999; Kirton and Trebilcock
2004; Sahlin-Andersson 2004).

A second dimension bears on the regulatory mode. Rule-making has
traditionally been associated, in a Westphalian world, with the coercive
power of the nation-state. As such it has generally been expressed in
"hard laws" and directives. A broadening conception implies a move
towards legally non-binding "soft" rules such as standards and guide-
lines (e.g. Mörth 2004). This move follows and comes together with the
explosion of regulatory actors but it also impacts upon states. The lat-
ter increasingly turn to less coercive regulatory modes as complements
to more traditional coercive pressures. A third dimension is that of the
nature of rules where a narrow conception assumes formal rules and a
broader conception points to more informal rules. Informal rules are
more flexible and thus open to interpretation and adjustment by those
being regulated (cf. Kirton and Trebilcock 2004; Sahlin-Andersson
2004). Standards and guidelines are in principle voluntary and

non-coercive but not always informal, as documented in this volume
and elsewhere (Brunsson and Jacobsson 2000). Standardization is in
fact often associated with formal reporting and co-ordinating proce-
dures that can be heavy and constraining. A fourth dimension, finally,
has to do with compliance mechanisms where the issue at stake is why
those regulated do or do not comply. The evolution, there, is from
the traditional association of compliance with the threat of sanctions.
Even though many rule-makers do not have the type of regulatory
authority traditionally associated with states, they can develop and
structure regulatory sets that can be more or less coercive, for exam-
ple through the connection between certain rules or standards and
access to membership, resources or certifications. Compliance can also
rest on socialization, acculturation or normative pressures (cf. Scott
2004).

In everyday language, a lot is being made of the contemporary trend
of "de-regulation." The conceptual elaboration above, though, shows
that what is at work is not so much de-regulation (in the sense of mov-
ing towards no regulation) as a profound transformation of regulatory
patterns (see also Braithwaite and Drahos 2000; Levi-Faur and Jordana
2005). We witness both the decline of state-centered control and the
rise of an "age of legalism" (Schmidt 2004). New regulatory modes –
such as contractual arrangements, standards, rankings and monitoring
frames – are taking over and are increasingly being used by states too
(Hood et al. 1999). Interestingly, the proliferation and expansion of
those new regulatory patterns is both shaped by market logics and has
a tendency to introduce and diffuse market principles everywhere. Mar-
ketization is a force that permeates and drives transnational governance
while transnational governance at the same times drives marketization
further (see Djelic ch. 3).

Transnational regulation is not new but has changed and expanded,
with diffusing logics going particularly from economic to social spheres
(Jordana and Levi-Faur 2004). Transnational regulation is a mode
of governance in the sense that it structures, guides and controls
human and social activities and interactions beyond, across and within
national territories. As is shown throughout this book, however,
transnational regulations are embedded in and supported by other
modes of governance. As a concept, therefore, governance captures
better than regulation the re-ordering patterns of our contemporary
world.

Governance with and without government

Governance in a world where boundaries are largely in flux is being shaped and pursued in constellations of public and private actors that include states, international organizations, professional associations, expert groups, civil society groups and business corporations. Governance includes regulation but goes well beyond. Governance is also about dense organizing, discursive and monitoring activities that embed, frame, stabilize and reproduce rules and regulations.

Theories of governance emerged in reaction to the dominant perspective that social control was mobilized by and confined in states. This was particularly striking in the political science and international relations literatures (Keohane 1982; Baldwin 1993). The catch phrase "governance without government" (Rosenau and Czempiel 1992) was precisely coined to express that reaction and as such should not be taken literally. Theories of governance do not suggest that states and governments disappear (e.g. Pierre 2000). They emphasize, rather, that the study of governance should not start from an exclusive focus on states. The role of states and governments in contemporary processes of governance should not be taken for granted (Rose and Miller 1992; Kohler-Koch 1996; Moran 2002). Rather, it should become the object of serious scholarly scrutiny (e.g. Zürn and Joerges 2005).

Governance spaces are formed as new issues arise and networks of actors mobilize to be involved, have a say or gain control (Hancher and Moran 1989). These networks are open to and inclusive of state actors but they also challenge state control (Knill and Lemkuhl 2002). Hence, research on governance needs to document the changing role of states and governments in addition to focusing on the identity of new governance actors – how they emerge, construct or transform themselves to play in the new governance game; how they interact and are interrelated.

The networks mentioned above are networks of actors – individuals and organizations – but are also discursive networks (Marcussen 2000; Kogut and Macpherson 2004). Knowledge claims and various forms of expertise shape the authority of governing actors and the legitimacy of governance activities. In other words, networks and governance processes are all institutionally embedded. Hence, research on governance needs to be sensitive to this institutional contextualization (cf. Johnston 2001; Lynn et al. 2001). Theoretical frameworks should be able

to capture not only the embeddedness of particular actors or governance activities but also the entanglement resulting from multiple and multidirectional connections between actors and activities.

Exploring the rise of transnational governance: existing theoretical repertoires

There is a rich collection of theoretical repertoires that talk to the issue of transnational governance in the making. Some of those theoretical repertoires take on the issue or deal with some of its important dimensions in an explicit manner. Others are more tangentially related but our reading suggests a contribution. We organize our review of a selection of those theoretical repertoires in three clusters, each of which relates to an important dimension of transnational governance in the making. The first cluster talks to the issue of governance actors. A second cluster centres on the nature of contemporary governance processes. The third cluster focuses on embeddedness and on those cultural and institutional logics that shape and drive the re-governing process.

Governance actors

Traditionally, issues of governance and regulation have been approached in political science and in the International Relations literature from a state-centered perspective. The idea that states are the central pillars of regulation and governance within but also across national boundaries is still shaping quite a share of that literature (Martin 2005). The influence of states can be direct, through law making or other forms of regulatory activity. It can also be more indirect, through delegation at a subnational or supranational level. A number of scholars have reacted to and started to modify such state-centered perspectives, including within the International Relations community. Other contributions, talking from different disciplinary and theoretical traditions can also be mobilized for the debate around governance and its actors.

The transformation of states
A first line of reaction has been to point to the progressive "retreat of the state" in a globalizing world (Strange 1996). Many contemporary regulatory reforms have been associated with privatization and the partial dismantling of public services and welfare states (e.g. Vogel 1996).

This has sometimes been interpreted as reflecting the exportation/importation of an American mode of governance that progressively assumed quasi-universal applicability. This mode of governance diffused around the world in parallel and close interaction with the diffusion of organizing and discursive principles, particularly those associated with marketization ideas and reforms (see Djelic ch. 3).

In the process, states have in fact not withered away. Granted they may be changing, potentially quite significantly. As used by Majone (1996) and others (for a review see Moran 2002), the concept of "regulatory states" points to a significant evolution of states and the way they control and influence activities and actors. Regulatory states are not less influential or powerful than more interventionist states but they are increasingly embedded in complex constellations of actors and structures (e.g. Higgott et al. 2000; O'Brien et al. 2000). As such, their input and identity is difficult to disentangle and separate from the inputs and identities of other actors involved.

Furthermore, it becomes less and less acceptable to treat states as monoliths. State institutions are complex patchworks and this complexity becomes all the more striking now that the porosity of state institutions has increased significantly albeit differentially. In fact, boundaries may now be tighter and more rigid between sectors of state administration than between particular state agencies and other actors in the same sector or field. Going one step further, Moran (2002) argues that the concept of "regulatory state" itself may be somewhat misleading – in that it still potentially sends the signal of a central role for states in regulation and governance. Along the same line, Scott (2004) criticized a state-centered bias and introduced the idea of "post-regulatory states." The defining characteristic of "post-regulatory state" thinking is a blurring of the distinction between public and private actors, states and markets, and the introduction of a much more de-centered view of regulation that relies on mechanisms not directly associated with state authority or sanctioning power (see also Black 2002).

A related discussion is a methodological one. Many studies focus on regulatory developments in individual countries, with rare extensions into cross-national comparisons. Cross-national comparisons are enlightening because they show great variation across the globe with regard to the emergence and transformation of regulatory patterns. Still, because these studies are articulated around the nation-state as the basic unit, they tend to disregard or play down the many

governing efforts that cut across and transcend national boundaries. Cross-national comparisons hence only have limited value for exploring the rise of transnational governance.

Bringing in multiple actors

Along with the idea of a retreat and transformation of states, there has been a focus on the widespread expansion of various forms of private authority (Cutler et al. 1999; Hall and Biersteker 2002). There is an interesting parallel with pre-modern (i.e. pre-nation-states) times when private authority spanning local communities was an important source of regulation and governance; the *lex mercatoria* (or merchant law) being a striking example (Berman and Kaufman 1978; Milgrom et al. 1990; Lehmkuhl 2003). The modern concept of private authority is wide and encompassing, referring to a multiplicity of governing and regulatory activities that emerge and are structured outside states. The notion of regulatory or governance networks has been a structuring intellectual common thread although the word "network" is used to mean different things.

Some contributions within the international relations literature pointed already in the 1980s to the importance of transnational social networks. Using the concept of "social networks" in its descriptive and first level sense, Kees van der Pijl and the Amsterdam school explored the sociology and political economy of transnational class formation (Van der Pijl 1984, 1998). They unearthed in the process important mechanisms of transnational governance that reproduced the class power of particular groups and associated structures of dominance – both reaching progressively a transnational scale and scope.

Haas (1989, 1992) also pointed to the importance of social networks as key mechanisms of governance crossing over state boundaries. Haas's concept of "epistemic communities" makes reference to communities of expertise and practice that are increasingly transnational while individuals in those communities retain some form of local or national influence and authority (Haas 1992). This mix can allow those groups to be powerful mechanisms at the interface between transnational and national governance activities. The understanding of "social networks" here is a more complex one. Epistemic communities are "faceless" and members generally have direct interactions only with small subsets of the community. Those communities are nevertheless powerfully connected. More than through direct and regular contacts,