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Transformations of global governance

The past few decades have seen major changes in the patterns and forms of international economic activity, and in their political, legal and institutional setting. The aim of this chapter is to outline the contours of these changes, to analyse and discuss the main concepts through which they might be grasped, and in that way to provide a basis for the more detailed studies in the succeeding chapters.

1.1 Globalization, regulation, legalization

1.1.1 Globalization or economic imperialism?

The transformations in global governance, and their contentious nature, have been debated through the concept of globalization, which became current especially in the 1990s. The controversies were partly due to the confusing character of the term. Perhaps inevitably for an abstract analytical concept, it was applied both descriptively and prescriptively. As description, the term globalization is unhelpful, since it implies a process of global unification, yet the world remains divided. Its use seemed to result from an abrupt awareness by some scholars and politicians that their assumptions and theories were too narrowly focused on the national state and economy, while failing to inquire whether such perspectives had ever been valid.[1] While the critics of globalization were right to argue that the trends of the 1990s were part of a much longer history and that capitalism has always been global, too often such arguments led them to overlook or minimize the real changes taking place.

1 Thus, economics has focused on the national economy, reinforced by the perspective of Keynesianism (Radice 1984), and found it hard to cope with phenomena such as the transnational corporation (see Chapter 4, at 4.2); and international politics has been dominated by a 'realist' perspective which reifies national states, while other theories just dissolve it (Rosenberg 1994).

The term globalization misleadingly suggests a trend towards global homogeneity, rather than an increased awareness of the variety and interconnectedness of the world's diverse and interacting societies, states and legal systems. Partly for that reason, the term was hotly debated, came under increasing criticism, and seemed to fall from favour, especially after the dramatic events of 11 September 2001 cast a pall over the generally favourable use of the concept (Rosenberg 2005). The concept of globalization should be distinguished from the issue of global governance. The sharp conflicts over many aspects of the emerging contours of this form of rule perhaps suggests that we are seeing struggles around a new form of imperial rule (Hardt and Negri 2000, 2005), or a renewal of the 'spirit of capitalism' in which power is based on new forms of commodification and on mobility through networks (Boltanski and Chiapello 1999).

The term globalization could more defensibly be said to refer to closer international economic integration. Yet even here things are not quite as they seem. It is generally thought to involve an increasing volume or velocity of international flows: in economic terms, of trade, investment and finance; in cultural terms, of artefacts, signs and symbols. Certainly, globalization could be said to have 'given a cosmopolitan character to production and consumption in every country', so that 'in place of the old local and national seclusion and self-sufficiency, we have intercourse in every direction'. Yet those are quotations from the description of the creation of industrial capitalism given in 1848 by Karl Marx and Friedrich Engels in *The Manifesto of the Communist Party*. While the nature of the world economy has greatly changed since then, it is not obvious that there has been any substantial increase in the degree of what they already at that time described as 'the universal interdependence of nations'. Attempts to quantify the growth of international transactions over the past century or more, when calculated in proportion to local or national transactions, do not generally show a significant *relative* increase.[2]

2 It has been frequently pointed out that although trade and international investment have grown faster than gross domestic product (GDP) in the 1970s and 1980s, the degree of openness and integration in the world economy has merely returned, in quantitative terms, to the pre-1913 period (e.g. Krugman 1994b: 258ff.; Bairoch 1996; Hirst and Thompson 1996: 26ff.); and this applies also to international communication (Thomson and Krasner 1989). There are quantitative counter-arguments (see Held *et al.* 1999), but the more cogent issue is the qualitative changes in the nature of social and cultural interactions (e.g. Featherstone 1990). The broader point, in my view, is that social change is neither linear nor circular, but dialectical.

What has been more important has been the increased potential for such flows. This results from what is generally referred to as *liberalization*: the reduction or elimination of national and local restrictions on cross-border economic and social flows and transactions. The gradual reduction of tariff barriers and elimination of exchange controls during the 1960s and 1970s widened in the 1980s into a more generalized drive to reduce other administrative, legal and even cultural barriers to economic access, opening up all kinds of economic activities to participation by outsiders, and facilitating access to foreign goods and services, as well as culture and ideas. This has resulted in a heightened awareness of the *differences* among the many regional, national and local arrangements or institutions within which economic activity is embedded, and the influence of such differences on international flows. Thus, globalization has often been seen as a primarily economic process, generally with negative impacts on local culture and institutions.

Liberalization also involved an important change in the nature of competition. Not only firms but also national governments came to feel under the pressure of competition (Porter 1998). Very often, a government's response to social demands from its citizens has been to point to the constraints of international competition and the need for economic discipline. It has also led to debate about 'regulatory competition': competition between states to attract business investment by providing the most favourable conditions. Much of this has focused on whether and in what circumstances such competition leads to improvement or deterioration of public provision – a 'race to the bottom' or 'to the top' (Vogel 1995; Murphy 2004). However, this depends on many unrealistic assumptions, and the debate tends to overlook in particular the more important question of how regulatory competition is structured by international coordination (see further Chapter 3, at 3.2.1).

Much of the debate about globalization has been about whether these trends are inevitable or desirable, and hence about the prescriptive implications of the term. Globalization is generally taken to imply a drive for free markets and economic efficiency. Looked at more closely, however, it can be seen that liberalization was as much a political as an economic process (Helleiner 1995). Furthermore, far from resulting in markets free from political intervention, economic activity has actually become more highly and explicitly governed by rules (Vogel 1996).

In fact, liberalization has been accompanied and facilitated by the emergence of *regulation*, and indeed what some have called a new 'regulatory state' (Majone 1993; Loughlin and Scott 1997; Braithwaite 2000;

Moran 2003), and even 'regulatory capitalism' (Levi-Faur and Jordana 2005; Braithwaite 2008). This has deep roots in processes of juridification by which 'the political system takes control of social processes', producing 'a new type of law, regulatory law' (Teubner 1987: 18). This trend to legalization gathered momentum in the 1970s and continued to accelerate in the 1980s and 1990s, even as central governments were privatizing state assets, subcontracting many activities and delegating a wide range of public functions to relatively autonomous bodies. Thus there has not been a retreat of the state but various processes of state *transformation.*

The shift towards more formalized regulation results from both internal and external pressures. The intrusion of newcomers into a previously closed economic and social space often generates an impetus to introduce or reform regulation, especially if it involves some dramatic event or crisis. Frequently this has occurred when groups cemented by traditional customary practices have come under pressure from outsiders. In such cases the impact of external economic forces has been mediated by the introduction of regulation, although often only following a crisis or conflict. Thus, the redefinition of the City of London as a global financial centre entailed its transformation from the closed world of a gentleman's club through a long series of regulatory reforms, initially sparked off when an influx of credit mainly through foreign bank branches triggered the secondary bank crisis of 1974.[3] Another example is the transformation of traditional agricultural practices with the growth of factory farming and agribusiness, and the way that these processes have been mediated by an enormous growth of regulation in relation to both the production and consumption of food.

Ideas and models of regulation have been devised and diffused internationally, mediated by competition within and between different groups of professionals such as lawyers, economists and accountants (Dezalay and Garth 2001, 2002), recycled through global arenas and imported, with more or less adaptation, into national systems. An awareness of the need for new forms of international cooperation and global governance often stems from pressures for reform of regulation at local or national level, and models or prescriptions from the international arena are used as catalysts or weapons locally. These new forms of regulation tend to displace closed and informal modes of supervision or management at national

3 Moran 1984, 1991; a similar pattern in the Asian financial crisis of 1997 involved talk of 'crony capitalism'.

level, so this process can perhaps be more accurately described as international re-regulation (Majone 1990; S. Vogel 1996). A dramatic example is provided by financial markets, where the breaking-down of relatively closed national systems of credit and finance in many countries around the world has been accompanied and facilitated by elaborate new regulatory arrangements, developed through complex international political processes, producing a raft of Brussels directives and Basel guidelines. These have introduced formalized rules and professionalized supervision in place of informal oversight by central banks and finance ministries (see Chapter 7).

This has involved some intriguing shifts in the *character* of rules and law, away from top-down direct instruments of control by central state bodies, and towards more complex decentralized modes of governance involving technical specialists and based on the construction of new professional regulatory cultures. These experts – economists, accountants, lawyers, scientists and managers – in many ways constitute a new 'cadre class' (van der Pijl 1998: ch. 5) of technical specialists.

1.1.2 The shift to post-industrial capitalism

These changes have been part of a prolonged process of social and economic restructuring of both the 'private' sphere of economic activity, and the 'public' realm of politics and the state, and of their interaction.

The reasons or causes have been equally diverse, but they are deep-rooted and have involved a mixture of political and economic factors. Importantly, these changes have generally been driven by social pressures from below. Since the 1960s, there have been widespread revolts against autocratic power in the family and the factory, the classroom and the boardroom, in the metropolitan centres and the dependent peripheries. In general terms, these entail a rejection of authoritarian domination and the power to control truth embodied in tradition, involving demands for increased personal autonomy and dignity, equality (notably, between women and men), the ending of coercion, and economic justice. Rather than the desire for economic liberalization bringing about political democratization, it has been the struggles against autocracy that have created an opening for economic liberalization.[4] While undermining

4 Political studies have found that domestic factors have had the strongest influence in democratic transitions, although the international context plays an important part through processes of emulation and influence (Whitehead 1996). However, as Philippe Schmitter

patriarchy and hierarchy, these anti-authoritarian movements have also paved the way to post-industrial capitalism, with its emphasis on flexible production and working systems, information management and a global outlook.[5]

Most visibly, there have been significant changes in the form and functions of the state, resulting from widespread experiences of state failure. This was most stark in the collapse of state socialism, which clearly experienced a systemic social breakdown, both of political autocracy and economic centralization (Kornai 1992). Indeed, all states have experienced major shocks and crises requiring radical reforms. However, there has been as much experimentation and failure as real success: this has been so for US-regulated corporatism, European-style social–democratic welfare states, the developmental states of Japan and the Asian 'tigers' and the post-colonial bureaucratized states of underdeveloped countries. Although the relationships between the political and economic processes have been less clear than in the case of state socialism, the connection has often been expressed as a fiscal crisis, the increased difficulty of legitimizing public expenditures from general taxes, in particular direct taxes on income (see Chapter 6, at 6.1). This not only affected social or welfare spending, but also led to privatization of state-owned infrastructure and utilities, as it became harder to raise taxes to fund renewal and development to keep pace with new needs and technologies, in areas such as transportation and telecommunications.

In the developed capitalist countries, political systems found it increasingly difficult to respond to demands for improvements and to resolve conflicting claims in relation to public services, as well as employment and wage policies. However, despite much political talk of 'rolling back the state', and the extensive divestments of state-owned assets, the process has largely consisted of remodelling the 'public' sphere of politics and its relationship to the 'private' sphere of economic activity. The role of the state has not diminished, as shown even by crude measures such as tax revenue as a proportion of gross domestic product (GDP), which strikingly has continued to increase in developed countries despite

indicates, the transmission belt for democratization has been the international communication outside government controls of images and information across borders (1996); he also points out that the hypothesis that economic freedom leads to political democracy is an inversion of Kant's view in his famous 'Perpetual Peace' essay, that republics would be more likely to engage in international commerce and renounce war ([1795] 1966).

5 What Manuel Castells has called the Information Age (1996, 1998).

extensive privatization.[6] However, there has been political pressure to reduce the tax burden on citizens, especially from general income taxes, and governments have resorted to sales taxes and other kinds of duties and charges, often aiming to reconnect the cost and benefit for the citizen (see Chapter 6). Also, new mechanisms have been devised to decentralize decision-making and introduce 'market' principles to public sector resource allocation. Although this was often presented as a devolution of power, this characterization was in many respects misleading, as the power devolved was generally limited to micro-management of limited resources within centrally defined parameters.

The former colonized or dependent countries, often dominated by patrimonial autocracies, experienced a crisis of state-centred 'developmentalism', the symptom of which was the debt crises that began to emerge in the 1980s (McMichael 1996). States which had carried out extensive nationalizations, especially of natural resources, had to bear the risk of fluctuating world prices for these commodities while repaying the former owners for the assets (Faundez and Picciotto 1978; Shafer 1983). Although state ownership sometimes succeeded in ensuring exploitation of resources in the public interest, nationalized industries were often dependent on foreign specialists hired to run the operations under management contracts, or stultified by corruption and top-down central planning (Bolton 1985). In many cases, the ballooning debt repayments and the bloated state bureaucracies could not be sustained by the revenues generated by primary commodity exports and import-substitution industrialization on which many former colonies have had to rely. This resulted in a crippling dependence on foreign investment and aid, which was inevitably subject to policy 'conditionalities' supervised by the World Bank and the International Monetary Fund (IMF). Greater success was achieved from the 1980s by China, India and Brazil, as well as the Asian 'tigers', which adopted new kinds of public–private mix, combining significant state direction with a controlled inflow of foreign investment for export-oriented industrialization (World Bank 1993; Wade 1994, 1996).

6 In developed countries the weighted average rose from 23% in 1965 to 33% in 1999, although in the USA it levelled out at some 28% while in a number of European countries it rose above 40% (OECD 2001a: 10). However, in developing countries the tax revenue/GDP ratio has been about half that of OECD countries in recent years (Zee 1996), and they have been unable to make collectively funded provision of social services, even those as basic as free primary education. See further Chapter. 6.

At the same time, major transformations have also been occurring in the so-called 'private' sphere of the market and the firm. Private enterprise or the business economy in reality is dominated by large corporations,[7] and these also have changed. Large-scale mass manufacturing has been reorganized, and the centralized bureaucratic firm has become the 'lean and mean' corporation, concentrating on its 'core competences', but operating within a web of strategic alliances, supplier chains, and financial and governmental networks.[8] In parallel, the public sphere has become much more fragmented, as many activities have been divested from direct state management through privatization and subcontracting, and operational responsibility for an increasing range of public functions has been delegated to bodies which are substantially autonomous from central government. In this 'network society' the public and the private, which were never truly separate social spheres, have become harder to distinguish, and their interactions and permutations have become more complex.

These changes have undoubtedly been very liberating for some, who in many ways constitute a new global elite, but the benefits have been limited, partial and exclusionary. Certainly, most people in Western Europe and North America enjoy higher living standards, and many in Asia and Latin America, and even some in Africa, have felt the benefits of economic development. At the same time, there has been an increased polarization both within and between states: the gap between rich and poor states has continued to widen, and income inequality has increased even in developed countries. Marginalization, poverty and social exclusion affect both the underclass in developed countries and wide regions of underdevelopment, especially in Africa.[9] Also, many of those who have benefited materially have nevertheless experienced greater insecurity and alienation.

The disintegration of traditional social bonds has also led to new assertions of identity, sometimes destructively based on ethnic or cultural exclusivity. The widespread outbreaks of ethnic, racial and religious conflicts, ranging from Northern Ireland to Rwanda, are not simply the

7 A cogent demolition of the 'myth of the market economy' has been provided by Lazonick 1991; see further Chapter 4.

8 See further Chapter 4. Bennett Harrison (1994) stresses that this has not been a matter of small-firm dynamism, but a reorganization of big business, adapting to an era of rapid technological change, shorter product life cycles, and specialized but globalized markets. See also DiMaggio 2001.

9 The data are evaluated by Manuel Castells 1998: ch. 2. A comprehensive database developed by the UN University is now available at www.wider.unu.edu/research/Database.

revival of ancient tensions but result from the disintegration of the 'imagined communities' of the liberal nation-states (Anderson 1991). In general terms, this is largely due to the failure not only of these states, but more crucially of the international system as a whole, to deliver economic as well as social justice.

1.2 The emergence of multilevel governance

The term governance has come into increased use, generally to describe changes in governing processes from hierarchy to polyarchy, or decentring. In international relations theory, it denotes the management of world affairs in the absence of a global government (Rosenau and Czempiel 1992), hence the term 'global governance' has become commonplace. For theorists of the state it refers to the 'hollowing out' of the unitary state, or the decentring of government, and the shift to 'governing without government' (Rhodes 1997).

As argued in the previous section, this has involved transformations of both the political or 'public' sphere of the state and the 'private' sphere of economic and social life, as well as in the relationships between the two. Most evident has been the extensive privatization of state-owned firms and assets, accompanied by the introduction of contracting into public arenas and the delegation of a range of activities (from waste disposal to the running of prisons) to service providers. Conversely, however, there has been a parallel and complementary trend, much less discussed, in which the apparently 'private' sphere of business and economic activity has become more public. The corporations and business networks which dominate the so-called 'market', even as they urged a reduction in intrusive state controls, found their activities governed by an increasing plethora of various types of regulation. Indeed, the biggest paradox has been the growth of industry and corporate codes of conduct, the private sector adopting public standards for itself, although this has generally been in response to pressures from their customers, workers and suppliers, and sometimes in order to forestall the imposition of legal obligations (discussed in Chapter 5, at 5.2.2). This has generated a 'moralization of markets', driven by practices of responsibilization involving new techniques of governance (Shamir 2008).

The second and interrelated process has entailed transformations in the international coordination of governance. The classical liberal international system of interdependent states relied on coordination through governments, operating on the international plane through public international law; while they had exclusive legitimate powers internally, and considerable scope to decide how to fulfil their international obligations through domestic law. On the domestic axis, national law governed individuals and legal persons, and governments could insulate their internal management of the national economy from external forces and shocks by controlling cross-border flows of money and commodities. However, as the demands on government have become greater, national economic management has become more difficult and complex. At the same time, there has been a movement towards deeper international economic and social integration, facilitated by international economic liberalization through the substantial removal of border barriers to economic flows (tariffs and currency controls), and greatly improved communications.

This shift towards more 'open' national economies did not create a unified and free world market but, like an outgoing tide, it revealed a craggy landscape of diverse national and local regulations. Trying to deal with these differences has generated an exponential growth of networks of regulatory cooperation, coordination and harmonization. These are no longer primarily of an international character, but also supranational and infranational, frequently bypassing central government. They also reflect and reinforce changing public–private forms, since these regulatory networks are very often neither clearly state nor private but of a hybrid nature. Indeed, a major reason for the growth of corporate and industry codes has been concerns that state-based regulation is ineffective and leaves too many gaps (Haufler 2001: 114–15).

Thus, there has been a movement from the classical liberal international state system, towards one that is often denounced as neo-liberal, but is perhaps better described as post-liberal.[10] The remainder of this chapter will sketch out some of the main elements of these changes, and then analyse three main problematic features of the new landscape: the destabilization of normative hierarchies; the blurring of distinctions between normative forms; and the political problems caused by the fragmentation of statehood accompanied by the growth of technocratic governance.

1.2.1 Changing public–private forms and relations

Privatization appeared to be part of a wider move away from a state-centred direction of the economy, especially as it was powered by

10 The term 'post-national' is also sometimes used (Habermas 2001), although this is also in many ways inappropriate in a period of increased nationalism and particularism. A more detailed account and analysis of this process is given in Chapters 2 and 3.