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Academic Foresights

Private Regulation in the World Economy



How do you analyze the present status of private regulation in the world economy?

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Private regulation in the world economy refers to the ability of private actors to establish rules and standards of behaviour across borders that end up as being recognised and implemented by agents who never formally delegated their sovereign rights to the bodies in charge of their definition and implementation. The current shift from domestic public law to global private rule-making goes much further than traditional lobbying because it allows private actors to play an active role in regulation itself. It involves a range of agencies far beyond intergovernmental organizations, conventional non-governmental organizations, and multinational enterprises. It moreover concerns issues well beyond narrowly defined technical scopes, and frequently impacts upon fundamental and contentious regulatory and distributive struggles in such domains as finance, industrial innovation, environmental policies or labour's rights. In addition, it covers a variety of mechanisms, from highly formal systems of power devolution to lax and informal platforms of interaction between private actors.

Within the broader context of the history of capitalism, one should bring into mind that the line that separates public from private forms of regulation has never been fixed; it reflects political struggles over the distinct reach of the state and market transactions. For example, rules for commercial relations across boundaries were first developed by private merchants and only later adopted by states. Private firms such as the East India Company had broad regulatory competences for several centuries. While a stricter separation between the public and the private realm began with the industrial revolution, it was during the twentieth century (and within the OECD-world of rich industrialised market-based economies) that it has gained its current attributes. In sharp contrast to the so-called fordist era which gave a prominent role to states, unions and employers' organisations within the confines of the national economy, the shift to private regulation stems from the rise of a more globally-oriented financial capitalism, which is heavily dependant on the global mobility of capital in a world economy expected to be free from state-imposed restrictions.



In your opinion, how will the situation likely evolve over the next five years?

We are in the midst of a global economic crisis the consequences of which could turn out to be as bad as in the 1930s. Yet, notwithstanding denunciations targeting lax and self-regulation among the major causes of the crisis, private forms of regulation have demonstrated an impressive resilience. In retrospect, speculation about the end of private regulation in the early days of the crisis proved to be a gross exaggeration. Excessive dependence on private and complex rules, as well as automatic referencing to them in public laws or regulation, will certainly be reduced in a number of fields, especially in finance. For instance, on November 15, 2011, the EU published proposals to revise existing rules on rating agencies. Yet, far from limiting the power of rating agencies in the context of the European public debt crisis which threatens the future of the Euro, the new rules will actually help to make them more acceptable. Similar comments could be made on the comprehensive set of measures developed by the Basel Committee on Banking Supervision to strengthen the regulation, supervision and risk management of the banking sector. Despite enhanced disclosure requirements, the so-called Basel III reform keeps the principle of market discipline as the third pillar of its regulatory framework.

What are the structural long-term perspectives?

In spite of additional caution in banking and financial supervision caused by the current crisis, we are likely to live with private regulation for a long time. It reflects a pragmatic response to a situation where neither world government nor the nation-state can be considered as feasible alternatives to the mismatch between the transnational scope of capital and the territorial basis of law enforcement. It is structurally related to the diffusion and the disaggregation of power and authority in contemporary capitalism.

In a long-term and structural perspective, new instruments are likely to appear in many fields. In contrast to what recently happened in finance, there may be less pressure for a more stringent distinction between the private and public realms of regulation in many of those domains. Private norms, standards and certification will become the rule in emerging and developing countries exempt from the path-dependant constraints of the welfare and regulatory state of rich industrialised countries. Significant developments can thus be expected in crucial domains for the future world economy which will be increasingly dependant on information and communication technologies, de-territorialised services, skilled labour and R&D for its privileged core, cheap workforce and residual land exploitation for the vast majority on its fringes, as well as on scarce and remote energy resources in a context of pressing environmental constraints.



For instance, life-long learning is the buzzword for education in the so-called knowledge-based economy. Many proponents see market-driven training and certification programs as the best way of ensuring a timely, flexible, and tailored provision of new skills in an economy tightened by shorter life cycles of knowledge. Similarly, with no clear outcome in view regarding the post-Kyoto intergovernmental climate regime, a growing number of private initiatives and public-private partnerships attempt to tackle the transnational governance of climate change in fields as diverse as carbon trading and clean technology transfers. Moreover, with an increasing number of goods and services following a disaggregated global value chain across many different legislative environments, some powerful actors advocate a shift in the protection of labour rights away from domestic law to voluntary codes of conduct; the thrust of the recently agreed ISO 26000 standard on social responsibility is significant in this regard. A final – but not less important– example is the field of security. With future warfare likely to rely on outsourced technology and logistic services, the private security companies involved in the market will increasingly follow private standards and codes of conducts as legitimate substitutes for national armed forces. The recently agreed International Code of Conduct for Private Security Providers (ICoC) is a show case for private regulation referring to such a minima oversight mechanisms.

The common factor in so many different fields of private regulation is a shared ignorance of its scope and the essential ambiguity of its status – two conditions that reinforce the authority of powerful private actors as highly specialised professionals and technical experts on a transnational basis. Any emancipatory potential in private regulation will therefore require broad and imaginative attempts to redefine the meaning of expertise and its relation to livelihood.

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