Int. Studies of Mgt. & Org., vol. 41, no. 1, Spring 2011, pp. 35–62.
DOI 10.2753/IMO0020-8825410102

MARIE-LAURE DJELIC

From the Rule of Law to the Law of Rules

The Dynamics of Transnational Governance and Their Local Impact

Abstract: *Globalization can be read as consequential reordering, where national rules of law increasingly have to confront the progress of a transnational law of rules. We use conceptual building blocks from political science and sociological institutionalism to approach two sets of issues. First, we explore the nature of this consequential reordering and some of its structuring dynamics. We underscore some of the key features of the emergent transnational law of rules system and contrast it with more traditional, nationally bound, rule of law systems. Second, we consider the potential local, or national, impact of such profound reordering. In the conclusion, we identify key channels and mechanisms of impact as well as potential sources of resistance or of local adaptation. An exploration of those early propositions would be useful to both scholars and practitioners as it would make it possible to read, understand, and even anticipate the variability of cases and situations.*

The literature on globalization takes the nation-state seriously, but the issue is contentious and polarizing. On the one hand, the argument goes that globalization implies a weakening, if not a decline, of national polities and their order-creating capacities with a parallel increasing role for markets and market logics (Held and McGrew 1998; Ohmae

1995;<**Ohmae (1995) is not in the References.**> Strange 1996,). On the other hand, the demise of the nation-state is contested, and its role is reaffirmed as central in the context of a multilevel governance landscape (Boyer and Drache 1996; Hirst and Thompson 1996).

This article starts from a different perspective. Globalization is not about the disappearance of rules and order. In fact, we have more and more evidence that globalization comes together with an increasing density of regulatory and governance activities of all kinds (Djelic and Sahlin-Andersson 2006; Levi-Faur and Jordana 2005). And nation-states indeed do not disappear. They remain involved, but they are also profoundly transformed, we argue, in the process. New organizations, networks, and communities emerge and come together around a multiplicity of different regulatory projects and agendas. This is increasingly taking place across and beyond national boundaries. An important task for those organizations, networks, or communities is to codify, frame, and standardize practices, in particular by negotiating and issuing rules, norms, or standards. They are also involved in the elaboration and activation of processes that make it possible to monitor the adoption and implementation of those rules, norms, or standards. From this perspective, the strength of national polities is not being merely displaced and replaced by the raw and anomic power of market logics. The constitutional rule of law characteristic of a Westphalian world does not, in other words, dissolve into the logics of a global runaway market. Still, we argue here that contemporary evolutions do reflect a consequential displacement—it is not simply business as usual. This displacement is one where the national rule of law has to come to terms with a dense landscape of rules often produced and monitored transnationally. The national rule of law has, in other words, to confront the progress of a transnational law of rules.

Hence, we view globalization as a consequential process of reordering, and our project in this article is double. A first objective is to explore further the nature of this reordering and uncover the dynamics of a governance world where the transnational law of rules tends to confront or subvert the national rule of law. A second objective is to assess the potential impact of such reordering on local structures and processes. There is now a rich stream of literature upon which we can build to approach those two sets of issues. In the next section, we identify in particular some key and useful insights from within political science and sociological institutionalism. Bridging those insights allows us to conceptualize the

dynamics of contemporary transnational governance. Beyond the apparent complexity and unruly nature of contemporary transnational rule making, we search for those structuring dimensions and regularities that frame the transnational governance landscape and its dynamics. We then turn to the confrontation between those dynamics and the more traditional logics of a national rule of law system. Finally, we probe in the concluding section the potential local affect of such a profound transformation of governance dynamics and outline a number of possible paths that may occur. We identify key channels and mechanisms of the impact as well as potential sources of resistance or of local adaptation. An exploration of those early propositions would be useful to both the scholar and the practitioner as it would make it possible to read, understand, and even anticipate the variability of cases and situations.

Exploring governance: Theory building blocks

The concept of governance implies not only rule making in a particular sphere of human or social activity but also the tools and mechanisms that allow implementation, monitoring, and control of the products of rule making. We start to have a rich base of empirical evidence telling us about a profoundly changing landscape of governance over the past few decades (e.g., Bostrom and Garsten 2008; Djelic and Quack 2003; Djelic and Sahlin-Andersson 2006; Graz and Nölke 2007; Levi-Faur and Jordana 2005). The very definition of rule making, the nature of its products, the types of actors involved, the paths to implementation, and the modes of control and monitoring are all going through significant transformation. For a great part of the twentieth century, governance remained essentially tied to nation-states and national rules of law. What has changed over the past few decades is the increasing degree of transnationalization, both of issues to be governed and of governance processes, actors, and mechanisms.

Political science and sociology are rich sources of theoretical insight on the question of governance, rule making, and rule monitoring. Both disciplines have had to confront and deal with the evolution of the nature of governance discussed here. They have adapted some of their theoretical tools to do so but in an uncoordinated manner overall. We identify here some of the most interesting insights we can draw from recent contributions in those disciplines. We then propose a way to bridge those disconnected insights in order to gain theoretical leverage.

Political science on governance actors

Traditionally, political scientists have approached issues of governance from a state-centered perspective. This has even been the case for the subset of contributions focusing, within political science, on international relations. The idea that states are the central pillars of rule making and governance, within but also across national boundaries, still shapes large parts of that literature (Martin 2005).**<In the reference and below in the text, it is (2003).>** The influence of states can be direct through law making or other forms of regulatory activities. It can also be more indirect through delegation at the subnational or supranational level.

In the face of a changing world, a first line of reaction, within political science, to this mainstream perspective, was to point to a progressive "retreat of the state" (Strange 1996). Many spheres of human and social activity were stretching beyond a given national jurisdiction. In parallel, privatization and the partial dismantling of public services and welfare states were then at the core of reform programs across the world (e.g., Djelic 2006; Kogut and MacPherson 2008;**<In the reference, it was Macpherson for both Kogut and Macpherson (2008) and Macpherson (2006).>** MacPherson 2006; Vogel 1996,). Arguably, though, states were not so much retreating as profoundly changing. The concept of "regulatory states" was coined precisely to convey this idea (Majone 1996; Moran 2002). Regulatory states are not less influential than interventionist states, but they are embedded in complex constellations of actors and structures (e.g., Higgott, Underhill, and Bieler 2000; O'Brien et al. 2000). Arguing that the concept of a regulatory state may itself be misleading as it still sends the signal of a central role for states in rule making and governance, Scott (2004) introduced the idea of "post-regulatory states." This concept suggests a blurring of the distinction between public and private actors, states, and markets, and a much more decentered view of regulation that relies on mechanisms not directly associated with state authority or sanctioning power.

Together with the idea of a transformation, if not a retreat, of the state came an interest, in the political science literature, for the expansion of private authority (Cutler, Haufler, and Porter 1999; Hall and Biersteker 2002). This notion has an interesting parallel in premodern (i.e., pre-nation-states) times, when private authority spanning local communities was an important source of rule making and governance. The *lex mercatoria* (or merchant law) is a fascinating example of this (Berman

and Kaufman 1978; Lehmkuhl<**In the reference, it is Lemkuhl.**> 2003; Milgrom, North, and Weingast 1990). The modern concept of private authority is broad and encompassing. It suggests a multiplicity of rule making and governance activities that emerge and are structured outside states. It also points, beyond the state and public agencies, to a diverse set of actors involved in one way or another in those activities. An important underlying concept here is that of *networks:* webs of connections, interactions, collaboration, and/or competition between many different actors, all interested by a particular governance challenge. The concept of networks, though, can conjure up different kinds of realities.

Starting in the 1980s already, Kees van der Pijl and the Amsterdam school looked at social networks and transnational class formation using the concept in its descriptive and first-level sense (Overbeek 2004; Van der Pijl 1984, 1988). A little later, Haas (1989, 1992) also pointed to the importance of networks as key mechanisms of governance crossing over state boundaries. He used the term "epistemic communities" to describe networks structured around shared expertise and practices. Within epistemic communities, the *glue* stems from common cognitive patterns and value schemes, stabilized in part through socialization processes, even more than from direct and regular social interaction (Haas 1992). More recent contributions talk about regulatory networks, underscoring the wide variety of public and private actors involved in rule making and rule monitoring (e.g., Schmidt 2004). The idea of regulatory networks points to complex interconnections between a multiplicity of individual and organizational actors, interconnections that can be direct or mediated. The idea also suggests organizational, cognitive, and normative frames or arenas in which those interactions take place and are structured.

Sociology and the embeddedness of governance

Political science hence contributes important insights to our understanding of a changing landscape of governance actors. It tells us less, though, about the structuring frames in which these actors function. For this, contributions coming from sociology—and particularly institutional sociology—prove useful. Institutional sociology takes us in two different and, we argue, complementary directions. Bridging the insights from those two strands of institutionalism can help us better understand the ways in which institutional embeddedness shapes the evolution of contemporary governance, and this evolving governance, in turn, progressively trans-

forms institutions and the nature of institutional embeddedness.

The world society school, or cultural institutionalism, provides us with a first set of interesting insights. The work of John Meyer and associates underscores the importance of bringing in cultural processes to understand how individuals, organizations, and states function and change (Krücken and Drori 2008). Beyond agency and strategy, what may be more important are the cultural frames in which they are located. World society is not only a society of powerful actors; it is a society permeated by and permeating actors with cultural values or institutional frames (Meyer et al. 1997). Another interesting insight is that these frames are increasingly shaped and diffuse as global blueprints that are used to benchmark and possibly transform states and other actors. There is no global state, but the alternative is neither chaos nor anarchy. This line of research and its elaborate theory of world society are enlightening. Studies within this tradition show that states remain important regulators but that they are themselves embedded in, and shaped by a powerful world society and its associated templates. This is also the case, naturally, for all other types of actors involved in one way or another in ongoing processes of governance. These studies, however, focus mostly on how global models and blueprints diffuse, potentially shaping localized discourse and/or structures and activities. We learn less, though, on where those models come from, that is, on the ways in which they are being negotiated and constructed. We also lack, within that perspective, an understanding of actual processes and mechanisms of diffusion and local reception.

Another strand of institutional contributions, often brought together under the label of "historical institutionalism," offers a different set of insights that are, arguably, quite complementary. The idea here is that contemporary forms of governance do not emerge *ex nihilo* but set themselves in relation to and against the background of earlier, mostly national, systems of rules and modes of governance (Dobbin 1994; Fligstein 1990; Hall and Soskice 2001; Maurice and Sorge 2000; Whitley 1999). This type of argument has had the merit of showing the contingence of arrangements and institutions, and the embeddedness of forms of governance, introducing in the process the idea of contextualized efficiencies. Naturally, in a world where transactions and interactions increasingly take on a transnational dimension, we cannot interpret action as merely the expression of nationally bound logics. Still, we should take this insight seriously, and this implies that questions of interface become important. Hence, we need to explore how previous governance efforts, often national, pave

the way for and lead to new modes of governance or how they may on the contrary resist or react to them. We need to understand how different rule systems and governance modes interact and interplay.

Transnational governance: Conceptualizing the dynamics

In *De la démocratie en Amérique,* his famous opus on American society and polity, Alexis de Tocqueville reflected in the following way:

> American society appears dynamic and agitated because men and things change constantly but it also appears monotonous because all those changes are always the same. (1993 [1840], vol. II, 281)

This turns out to be, in fact, an apt descriptive formula for our contemporary world of transnational governance. Transnational arenas of governance are highly dynamic and apparently in constant flux. It is easy, at one level, to point to intense activity and activism, dense and multidirectional interplays that can appear unruly if not chaotic. If we explore this activism further, though, we can identify a number of stable and regular patterns. Those patterns apply across the board in multiple arenas of governance. Building upon and combining the theoretical insights presented above, we can go beyond descriptive empirical accounts and conceptualize the dynamics of contemporary transnational governance.

An appearance of activism and chaotic agitation

A Westphalian—or state-centered—conception of governance would be associated with the relatively easy identification of well-delineated centers of decision and rule making. The topography of contemporary governance is very different in that respect. Rule making is decentered and often in fact multicentered. The topography of transnational governance is fragmented rather than unified. Instead of having a small number of powerful centers (i.e., nation-states) from which rule making irradiates toward multiple spheres of social and human life, we have a multiplicity of fields of governance that connect and overlap to a varying extent. Increasingly, these fields of governance are issue-based and issue-specific. They cross over traditional boundaries and have, most of the time, a multilevel component where the national meets the transnational but also, more and more, the local. Hence, those subfields are to quite an extent deterritorialized—if not sometimes altogether virtual. They are

also fluid and in constant evolution.

Such a complex topography comes together with a multitude of actors involved in the governance process. Governance fields are densely populated, and the tendency is toward increasing inclusiveness. This claim is not reducible to the notion of private authority and its expansion. In fact, regulatory arenas bring together multiple actors, blurring in particular the public/state and private divide. There are at least three main reasons for rising numbers of actors. First, many governance issues now have a transnational scope or at least they are being defined in that way. By becoming transnational, those issues are increasing in complexity and becoming of concern to greater numbers of actors or stakeholders across many boundaries (Engels 2006; McNichol 2006). Second, this evolution parallels a broad policy trend. The neoliberal revolution that started in the early 1980s initially in Great Britain and in the United States has led many nation-states to reorganize if not redefine themselves (Campbell and Pedersen 2001; Christensen, and Lagreid 2007; Djelic 2006; Plehwe, Walpen, and Neunhöffer 2005). This has often meant that nation-states have delegated some of their rule-making and rule-monitoring prerogatives to semipublic or independent agencies (Gilardi 2005; Thatcher 2005). In search of expertise, advice, or legitimacy, the latter reach out to many different groups. A third explanation for this evolution is the increasing democratic pressure in many societies in the context of rising levels of education. Citizens are asking for direct involvement and *flatter* and more equalitarian forms of interaction. Deliberation and participation are on the rise everywhere, in transnational fields of governance but also in local policy discussions (Fung and Wright 2001; Hajer and Wagenaar 2003; OECD 2001; Weeks 2000).

Rising numbers of actors means greater diversity and complexity in the governance process. States and state representatives remain involved. But they have to interact with many other "kinds" of actors: international organizations, private firms, lobbying organizations, professional associations, members of expert, scientific or epistemic communities, nongovernmental agencies of many different stripes, pressure groups, and civil society representatives. The media might also play a role, presenting, relaying, and commenting upon debates and discussions. Hence, there are many motives, objectives, perspectives, cognitive frames, and biases involved in transnational governance processes. And diversity is unmistakably a source of complexity. Another source of complexity is the striking blurring of boundaries between regulators and regulatees.

In a Westphalian world, those who regulate (i.e., mostly state actors) are clearly differentiated from those who are regulated. In contemporary processes of transnational governance, those who will be regulated tend also to be involved in regulatory framing and monitoring. Traditional regulators, that is, states, are on the other hand increasingly being regulated themselves.

In such complex, differentiated, and fluid fields of governance, we find logics of "coopetition"—a combination of cooperation and competition (Dagnino 2007). On the one hand, there is a clear temptation for a sense of inclusiveness. In principle, all those who are, in one way or another, concerned by a particular governance issue could or should be involved in regulatory framing and monitoring. On the other hand, in such an open and fluid regulatory space, we can also easily identify competitive logics and pressures. If an emerging set of rules does not appear to suit the interests and objectives of a particular actor or coalition, there is little that prevents them from launching an alternative regulatory initiative. The process of development and deployment of voluntary certification schemes in the forestry industry can illustrate this tension (McNichol 2006). The main umbrella organization coordinating certification efforts in that industry for the last fifteen years or so has been the Forest Stewardship Council (FSC). This is a consensus-based, multistakeholder, international body. In 2005, it counted over 645 members (individual or organizational) drawn from a broad spectrum of interests and geographical horizons. The work of the FSC, though, was regularly contested and disrupted throughout this period by the parallel launching of rival schemes, each time under the impulse of various partial coalitions (McNichol 2006).

This logic of coopetition explains in part the self-sustaining and self-reinforcing nature of contemporary dynamics of governance. Regulation and governance breed only, it seems, further regulation and governance. New rules call for even more rules in what seems to be a never ending spiral. The absence of an ultimate seat of legitimacy creates only further pressure. In processes of transnational governance, who or what empowers a particular regulatory coalition? Its legitimacy can always be attacked and doubted. Hence, the question emerges rapidly of who regulates the regulator, who controls the controllers. The only legitimate answer to this question in our transnational world of governance is the emergence of further rules, of further regulators, certifiers, evaluators, and controllers.

A regularity of patterns in the background

At a surface level, therefore, we see fluidity, agitation, extreme dynamics, and multipolar activism. However, when we consider different governance fields in parallel and compare them, we find that those dynamics are in fact framed. There is a surprising regularity of patterns, across fields, and a striking homogeneity of background trends. It is as if transnational governance fields, in spite of their diversity, were all crossed and structured by the same logics. A way to describe this is to use the imagery present in physics that fields are shaped and structured by powerful background forces (Martin 2003; Pire 2000).**<Previously, Martin (2005) was cited.>** Transnational governance fields, if we use this imagery, are also "fields of forces." In social sciences, the notion of force when it is used in this way refers to broad and constraining cultural or institutional frames (see, e.g., Bourdieu 1977, 1984;**<Bourdieu (1977) and (1984) as well as Lewin (1951) are not found in the References.>** Lewin 1951; Meyer and Rowan 1977). The insights of the world society school prove relevant here (Krücken and Drori 2008). We propose that processes of transnational governance, irrespective of the peculiarities of the issues or fields concerned, inscribe themselves in a set of institutional forces that altogether make up what we can call a "transnational culture" or a "transnational meaning system." The systematic comparative analysis of several different transnational governance fields allows us to propose that there are five main such forces (Djelic and Sahlin-Andersson 2006).

A first institutional force is scientization, or the "extraordinary and expansive authority of modern scientific rationalization" (Drori and Meyer 2006, page)**<Provide a page for the quote.>** as revealed in the overwhelming role and presence in our contemporary world of scientific agencies, scientists, scientific products, and argumentation. Science becomes a paradigmatic umbrella, in terms of which every aspect of the universe can and should be interpreted, framed, and regulated. A second institutional force shaping fields of transnational governance is marketization or the belief that markets are superior arrangements for the allocation of goods and resources (Djelic 2006). This belief in markets has been institutionalizing quickly since the late 1970s, and markets are therefore increasingly perceived as the *natural* way to organize and structure human interactions in all spheres of economic, social, or even cultural and moral life. Today, we find that marketization permeates and structures discourses and ideologies, policies, reforms, and regulatory

processes in many parts of the world. Organizing is a third institutional force being used to highly structure fields of governance. Organizing is a way to create a transnational order in the absence of a world state (Ahrne and Brunsson 2006). In the transnational context, organizing often takes the particular form of "meta-organizing," where organizational members are themselves organizations. Standardization and socialization are important mechanisms that reconcile transnational ordering and the perception of autonomy that often still defines member organizations. A fourth institutional force is moral rationalization (Boli 2006). Celebrations of virtue and virtuosity (and blaming as the negative counterpoint) are increasingly prominent in the global public realm via ritualized performance displays: world competitions, award ceremonies, and ranking and accreditation processes. Rationalized and scientific assessment of virtue and virtuosity act as a powerful sustaining and structuring force of transnational governance (e.g., Barysch, Tilford, and Whyte 2008). A fifth institutional force that shapes and structures the ground for transnational governance is democracy. However, rather than by traditional representative democracy, the transnational world is increasingly permeated by a view of democracy that emphasizes dialogue and deliberation and the autonomy of the participating actor (Mörth 2006).

The five institutional forces identified here are connected; in fact they nurture, foster, and reinforce each other. Deliberative democracy generates markets for rules. The progress of marketization has, in turn, a tendency to rely on both formal organizing and scientized expertise. The disclosure and transparency associated with deliberative democracy are often rationalized and can even be articulated with formal and scientized celebrations of virtue and virtuosity. As to moral rationalization, it is generally revealed and expressed through sustained organizing efforts. When characterizing these dimensions as institutional forces, we refer to four meanings of "institution" (Djelic and Sahlin-Andersson 2006).

1. Institutions are composed of actors, interests, relations, and meanings; they push and pull activities in certain directions. This is precisely why we can conceive of them as *forces* (cf. Hoffman and Ventresca 2002).
2. Institutional forces become taken for granted as the *natural* way of being and doing: they turn *transparent* (cf. Douglas 1986).
3. Institutional forces are self-reinforcing. As these forces shape relations, interests, and bases for activities, the actions taken carry

inscribed meanings and drive activities further along the same path.

4. These institutional forces constitute the *rules of the game* in the transnational governance world, providing frameworks for judging which behavioral, organizing, discursive, and interaction patterns are appropriate.

The close and mutually reinforcing interplay between those institutional forces generates, we propose, a highly structured and constrained frame (Djelic and Sahlin-Andersson 2006). This background frame explains quite well "the monotony" behind the "agitation" and why "changes" in the end appear "always the same" (Tocqueville 1993 [1840]).

Lo and behold, the regularity of patterns is striking. Still, we should remember the insight provided by historical institutionalism. The broad, common culture that frames processes of transnational governance does not operate in a vacuum. It encounters and has to come to terms with other governance traditions and legacies, structures, and practices. Hence, we should look at points of interface, and this will be the object of our conclusion.

The law of rules versus the rule of law

The dynamics of transnational governance, as explored above, do not give a sense of a world with no rules. The discourse on deregulation, free markets, or the retreat of the state hence does not give a fair picture, we propose, of the world we live in. This discourse is often used, interestingly, either by champions or by strong critics of globalization—in association in each case with a different value judgment. We argue that the dynamics of transnational governance tell a different story. There is displacement but in the direction of *re*regulation rather than *de*regulation. We are not moving toward less rules and order. In fact, we might be moving toward more rules and order (Levi-Faur and Jordana 2005; Vogel 1996).

As described above, it is clear that the displacement we are talking about is quite consequential. The background frame and structure of human and social action has been undergoing profound transformation and is deeply changing in nature. A shorthand way to characterize this displacement is the image of a dominant, nationally based rule of law increasingly having to confront the progress of a transnational law of rules. This is not to say that nation-states and national *hard law* do not

matter anymore. However, they have to compete with and confront other forms of rules and regulations, standards, and directives—so many *soft law* instruments that often have a transnational or supranational origin and projection. The difference between hard and soft law lies essentially in the fact that "soft law lacks the possibility of legal sanctions . . . and hence is not legally binding" (Mörth 2004, 1). National legislators have to compose with other rule-making fora that build upon different legitimacy bases (Héritier 2001). In fact, national hard law might even altogether become set within or defined by broader meta-rules or principles of a soft kind (Jacobsson and Sahlin-Andersson 2006).**<The reference says Jacobsson (2006), not Jacobsson and Sahlin-Andersson. Which is correct?>** The rule of law thus would seem to become, in the process, enmeshed in if not altogether subordinated to the law of rules.

From the rule of law . . .

The notion of a rule of law rests on the modern aspiration to a separation between law and politics. The humanist and rationalist heritage of the Enlightenment combined to delineate the features of a democratic and progressive state where no one, including the prince, should stand above an impartial and just law. The rule of law was meant to displace the premodern rule of men. The deployment of modern nation-states and their claim to a democratic nature has built upon this idea as a core principle and aspiration. In this idealized enlightenment conception, "law is developed and enacted through adherence to rational principles, producing a set of rulings that is impartial and just" (Edelman 2004, 8). The modern conception of the rule of law suggests the triumph of reason and democracy over arbitrary power; the legislator being neutral and competent, just, rational, and impartial. Thomas Paine, the eighteenth-century English pamphleteer who chose to emigrate, work, and live in America summarized it well.

> let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America THE LAW IS KING. (1776 section III)

The notion of the rule of law is generally associated with the notion of constitutionalism where the power of the government is framed and limited by a constitution. This constitution often—but not always—takes the form of a written text. In a continental tradition, the rule of

law is closely associated with a roman law heritage and combines with a strong notion of the state, where the executive and the legislator are the guardians of the law and share a quasimonopoly over the design and promulgation of legal texts. In the Anglo-Saxon tradition, the rule of law is instead associated with a common law heritage. It rests upon the necessary principle of a strict separation of powers: legislative, executive, and judicial. The judiciary has, in that context, a much more proactive role and impact as it reads, interprets, enacts, and transforms the inherited jurisprudence. This article cannot go much further in the exploration of the notion of the rule of law. From the short discussion above, I would merely like, at this stage, to underscore some key defining features of this notion, thinking in particular of the contrast with the contemporary evolution toward the law of rules.

First, the rule of law suggests the existence of a set of neutral, positive, and rational if not scientific laws and guiding frames. Second, this legal frame appears to be exogenous to all actors and entities in a given society or community, and it should rein above both those who are governed and those who govern. Third, even though nobody can be above the law, the legislator is clearly differentiated and separated from the mass of those who will have to follow the law. Fourth, the rule of law can easily beget a universalist temptation; the law applies to all equally and in equal ways, with ultimately little regard for particular contexts and conditions. Fifth, the notion of the rule of law has historically been associated with the emergence and development of nation-states. Hence, the rule of law often has a national dimension. Sixth, and as a consequence, the rule of law means hard laws. The national legislator, more often than not, is associated with a coercive apparatus. The legal frame is backed, therefore, by the hard capacity, in principle, to impose if need be enforcement and implementation. Needless to say that there is a fair amount of variability in the reality of this principle from one nation-state to another.

Naturally, the rule of law concept is in great part an ideal type, an idealized projection and aspiration (Edelman 2004, 9). There are many obstacles and limits, in real life, to a smoothly functioning rule of law system. First, the indeterminacy, neutrality, and impartiality of legal principles and processes can easily be questioned. Law making, law reading in common law systems, or law enforcing can always be manipulated or steered by those with more power, influence, and resources. This means, concretely, that proximity with law-making institutions and processes in the broad sense of the term can be a source of a powerful competitive

advantage for a given interest group. In contrast, an exclusion from those institutions and processes could turn out to be highly detrimental to the interests of another group. Formal and informal *lobbying*, that is, influence strategies that take different forms and scale in common and roman law systems, are evidence to this fluidity and malleability of hard law. The rule of law, in other words, is not impervious to capture. Second, the *hardness* of the law can vary quite significantly. It will depend upon the particular coercive capacity and resources of a given state. It might also be disturbed by different forms of patronage politics—a stronger word here being "corruption." Third, the universalist ambition of a rule of law system has its own intrinsic limits. Such a system might not be able to deal in a satisfactory way with the contextual and particular features of a given situation. As such, it might in fact encourage different forms of legal avoidance or by-passing. Since the 1970s, particularly in the United States, the alternative dispute resolution movement has emerged in partial reaction to those limits (Barrett and Barrett 2004; Fisher and Ury 1981; Nolan-Haley 2001). In the words of Lauren Edelman, alternative dispute resolution is "grounded in an ideology of community rather than liberal legal rights" and it "seeks to move away from the formal constraints of procedural rules and precedents and towards a model that empowers the parties to create their own solutions to problems" (2004, pages).**<Supply pages for the quotes.>**

. . . To the law of rules

These limits draw us back toward the dynamics of contemporary governance and the importance in that context of rules and soft law. The evolution described in the section above points to more (rather than less) order-creating activity. Rule-making activities and more broadly speaking order-creating activities are, furthermore, increasingly bound to have a transnational scope and impact. The equilibrium that we see emerging is not one of international *anomie.* But we do not see either the emergence of a global state that would have classical Westphalian features and prerogatives. There is no global institution that can produce legally binding principles and has control over a coercive enforcement apparatus giving its directives the biting power of hard law. What we do see, though, is the proliferation of order-creating activities of different kinds and the explosion, as a result, of soft law—codes, rules, contractual and negotiated arrangements, directives, standards, norms, evaluation, and

ranking schemes (Boström and Garsten 2008; Brunsson and Jacobbson 2000; Djelic and Sahlin-Andersson 2006; Lessig 1999; Mörth 2004; Tamm Hallstrom 2004;**<Tamm Hallstrom (2004) is not found in the References.>** Wedlin 2006).

Soft law progresses everywhere. Even hard law may have a tendency to become *softer,* in particular through the unmistakable "judiciarization" of many of our societies through the associated diffusion, across the world, of alternative dispute resolution mechanisms but also through the progress in several important spheres of law of a common law tradition across the world. This "softization" of hard law has sometimes been interpreted as reflecting an Americanization of the law across the world (Dezalay and Garth 2002; Kagan 2007; Magendie 2001). States themselves come to produce, adopt, and use softer regulatory modes and instruments (Hood et al. 1999).**<Hood et al. (1999) is not found in the References.>** The profound transformation of many states in recent years through a combination of privatization, delegation, and new public management reforms is certainly reinforcing this trend (Christensen and Lagreid 2007; Gilardi 2005; Kogut and MacPherson 2008). States are also increasingly enmeshed in, framed, and constrained by a dense web of soft laws bearing upon their identities, structures, and acceptable patterns of action (Jacobsson 2006; Meyer et al. 1997).**<See the previous note regarding Jacobsson vs. Jacobsson and Sahlin-Andersson.>**

The concept of soft law brings together and encompasses many different regulatory *products*. As suggested above, contractual agreements secured through alternative dispute resolution, directives and official guidelines or codes, formalized standards, norms and codes of conduct, so-called white books, evaluation, and ranking schemes are all different forms of soft law. Those different instruments fit together in the sense that they all lack the "possibility of legal sanctions . . . and hence are not legally binding" (Mörth 2004, 1). At the same time, there is unmistakable diversity within this broad category. Let us just underscore three important analytical frontiers. First, soft law instruments differ with respect to their degree of formalization. Standards elaborated by international standardization bodies and official guidelines produced by international organizations are more detailed and formalized than an industry or organizational code of conduct. Arguably, there is a trend on the whole toward the formalization of soft law. Second, soft law instruments can be differentiated with respect to their mode of production. In particular, what is interesting here is the degree of presence and involvement of

nation-states in the process. A related, interesting issue appears to be the extent to which a particular soft law product builds upon preexisting local hard law bricks or is an emergent and negotiated construct (Djelic and Quack 2003). Third, soft law instruments do not all have the same "bite," the latter presupposing the capacity, short of legal sanctions, to enforce and monitor them.

In spite of those within-category differences, the expanding law of rules associated with the progress of soft law has a number of characteristic features. First, soft law reflects a complex production process where many different actors are involved to varying degrees and in varying ways. State or government representatives will often be actors amongst others in a process where consultation, deliberation, confrontation, and negotiation play an important role. Second, this complex production process implies a blurring of boundaries between regulators and regulatees. Soft law regulation is often in part self-regulation. Third, soft law instruments are often legitimated by reference to expertise, if not science. They are often associated with or expressed through measurement scales (Power 2003; Wälti, Kübler, and Papadopoulos 2004). This, naturally, fosters the development and expansion of an industry of expertise and rule making; the process thereby has the marks of being expert driven rather than politically driven (Engwall 2006; Sahlin-Andersson and Engwall 2002). Fourth, soft law instruments are somewhat flexible, leaving space for interpretation and adjustment even after they have been enacted (e.g., Kirton and Trebilcok**<In the reference, it is Tebilcock.>** 2004; Sahlin-Andersson 2004). In that respect, soft law is undeniably closer in its nature to common law than to code law. Although flexibility is a feature of soft law in general, the degree of flexibility will be relative and will depend upon the degree of formalization of the soft law instrument as well as upon the organizational and enforcement bite associated with it. Fifth, soft law cannot rely on state and legal coercion to ensure enforcement. Many new rules are voluntary. This means that those who are to comply should, as far as possible, be attracted to following the rules rather than forced to do so. There is an array of possible alternative mechanisms there, which will be identified and described in the next section. Still, the inherent flexibility of soft law combines with the absence, most of the time, of a strong coercive threat to create opportunities for shirking and avoiding, for what John Meyer calls "decoupling" and Nils Brunsson calls "hypocrisy" (Brunsson 1989; Meyer and Rowan 1977; Meyer et al. 1997). This, undeniably, appears to be a striking feature of contem-

Table 1
Hard versus soft law: Some defining differences

	Hard Law	Soft Law
Production process	State centered	Multiplicity of actors
Production process: mechanisms	Vertical, top-down	Horizontal, negotiation
Regulators/regulatees	Strict separation	Blurring of boundaries
Legitimacy base	Political power or political representation	Science, expertise
Adaptability and flexibility	Low to medium	Medium to high
Principal enforcement mechanisms	Coercion	Attraction, socialization
Decoupling	Low to medium	Medium to high

porary governance, particularly as it reaches transnationally. There are different possible ways to deal with this problem. One is to harden the organizational effort, to tighten as it were the "cage" associated with soft regulation. This means more regulatory effort still, more rules, more control and audit schemes, and more evaluation and ranking. Another way to go, naturally, is to bring the state back in, at least in an indirect way. A powerful incentive and trigger of soft laws and self-regulation still remains the threat, like the Sword of Damocles, of state intervention and pending hard laws. The important differences depicted in this section between hard and soft law (as ideal types) are summarized in schematic form in Table 1.

Conclusions: The law of rules and some reflections on its local impact

This article points to a profound and consequential transformation when it comes to governance and rule making. Building upon rich conceptual building blocks from political science and sociology, we propose our own theoretical reading of this transformation. The multicentered nature of transnational governance combines with the dense ecology of actors involved to give a sense of complexity, agitation, conflict, and competition. Those are only trends at the surface level, though, we argue. We uncover a powerful structuring frame in the background that generates a kind of "monotony" in the dynamics of "agitation" to use the words of Tocqueville (Tocqueville 1993 [1840], vol. 2, 281). This coexistence between competition and cooperation, change and stability, and agita-

tion and monotony is a striking feature of contemporary transnational governance. We need, as shown in this paper, to combine insights from political science and sociological institutionalism to make theoretical sense of this.

While the core of this article has explored the changing logics of governance and rule making in our contemporary world, we turn in the conclusion to the issue of interface. The profound transformation of governance processes and governance frames described above is not merely affecting the sphere of transnational interactions and activities. It is also bound to affect local and national regulatory landscapes. We need, hence, to explore the nature and mechanisms of this interface.

The impact of transnational rules and rule making on national systems can happen through what we have called elsewhere "trickle down" trajectories (Djelic and Quack 2003, 315). In certain industries and sectors, for example, air or maritime transport, there is a fairly long tradition of international treaties, norms, or standards (what we would call here "soft law") being directly appropriated and integrated by national constituencies, sometimes in the form of hard laws. In this case, the proliferation of soft laws comes above and beyond an existing pool of national hard laws, not in replacement of them. This type of impact and mechanism has become increasingly important ever since the end of the World War Two, particularly with the multiplication of international organizations and supranational constructions. International organizations and supranational constructions elaborate and formalize different kinds of soft law instruments, and they have the capacity to either constrain or seduce a number of countries into adopting the regulatory provisions or even the regulatory instruments they favor or champion. The European Union is obviously a case in point. Quite a share of national hard law today within the European Union (and interestingly even beyond) is the legal translation of a European soft law instrument (Sandholtz and Stone Weet<**In the reference, it is Stone-Sweet. Amazon has Alec Stone Sweet. Is it A.S. Sweet?**> 1998; Schmidt 2006). Rule making triggers even more rule making. The proliferation of soft law can generate further rule-making activity of the hard kind.

With a focus on economic issues, other international organizations such as the International Monetary Fund (IMF), World Bank, European Bank for Reconstruction and Development (EBRD), Organization for Economic Cooperation and Development (OECD), or World Trade Organization (WTO) should also naturally be mentioned. These organi-

zations elaborate a multiplicity of rules and significantly contribute to their diffusion and local adoption. At the level of the "prescriptor," those rules often have the shape of soft law instruments. Locally, they might remain soft rules, but they could also become part of the national hard law apparatus as was argued above already for air and marine transport. The collision between those transnational rules and preexisting local or national laws, customs, or practices can be intense and violent and bring along a fair amount of local disruption, both anticipated and unanticipated (Rodrick 2002; Stiglitz 2002). A second type of trickle-down scenario connects transnational rule-making arenas that are much less formalized and structured to national institutional settings. Those transnational rule-making arenas have been described above as multicentered and fluid and involving a great multiplicity of actors, both public and private (e.g., Botzem and Quack 2006; Djelic and Kleiner 2006; Engels 2006; McNichol 2006). Those arenas produce soft law instruments that will have locally a varying degree of bite, as we explore below.

Trickle-down trajectories can work through different kinds of mechanisms. Soft law, we know, cannot directly rely on state and legal coercion to ensure enforcement. One simple mechanism is naturally the pure and simple translation of transnational rules into national hard laws. This can happen but is far from the only way in which transnational rules can have an impact. There is also space for more indirect coercive pressure, particularly when we talk about the impact of international organizations and supranational constructions. There, the concept of *conditionality* is useful (IMF 2002). The European Union or the IMF is able to tie membership or resources to strict regulatory conditions. Membership in the European Union is made dependent upon a profound transformation of local rule sets and hard law systems (Pridham 2007). Prior to the release of funds, the IMF can "suggest" and, de facto, even mandate compliance with policy guidelines and rule adjustment (Saner and Guilherme 2007). More generally, it is therefore possible to associate a particular transnational rule or soft law with positive (including financial) incentives for those who will use it and negative incentives for those who will not use it. Other kinds of mechanisms have to do with seduction and socialization. Short of the ability to impose conditionality, international organizations, supranational constructions, and transnational regulatory networks can market a particular set of soft rules and deploy rhetorical, symbolic, resources and network strategies to frame those rules positively. References to science, expertise, and best practice—a connection with notions

of efficiency, progress, development, wealth, or democratization—can be utilized. The structuration of socialization and acculturation spaces is naturally also used. Working groups, committees, conferences and meetings, virtual networks and working spaces, benchmark fora, and peer review processes are different expressions of a socialization and acculturation objective. Direct peer pressure and the risk of exclusion or more formalized strategies of naming and shaming, associated with transparency, information diffusion, or even ranking, might also be utilized in different ways. Finally, one could also identify a third type of mechanism, labeled here "mediation/expertise." The formalization of expertise, the training of a cadre of mediators or bridges, and the systematic deployment of local ad-hoc missions for those mediators are tools that transnational organizations and arenas use extensively (e.g., Djelic and Kleiner 2006).

The transformation of governance processes and governance frames is also having an affect locally and nationally in a slightly different, more indirect way. The transnational spread of the neoliberal ideology coupled with the diffusion of relatively homogeneous reform packages is leading many countries to rethink, nationally, their own institutional settings and their own policy and regulatory processes. Neoliberalism and new public management combined are putting pressure indeed on nation-states to redefine their own structure and role, in particular with respect to rule making (Christensen and Lagreid 2007; Hood 1995;<**Hood (1995) and Minogue et al. (1999) are not in the References.**> Minogue et al. 1999). Hence, as argued above, nation-states are themselves increasingly turning toward soft law instruments for national and even local issues. Those soft law instruments come in combination of but also sometimes in partial replacement of traditional national hard law systems.

While the transformations described here are clearly not without important consequences, obviously they are not uniform either. There is unmistakable variability across spheres of economic and social life as well as across countries. Depending upon the situation, transnational rules will be more or less locally present and will have a greater or lesser impact. Those rules can purely and simply displace preexisting national hard laws (e.g., Botzem and Quack 2006) or they can impose themselves as hard laws or their equivalent in a sphere that was not regulated before at the local level (e.g., Djelic and Kleiner 2006). Transnational rules can be formally adopted, on the books, and still stay very detached from daily regulatory practice in a clear pattern of decoupling (Meyer and Rowan

1977; Meyer et al. 1997). Finally, rules can be adopted selectively and in fact locally translated, adapted, and fitted to cohere with peculiar circumstances. There are a number of explanatory dimensions behind this variability. First, it seems that the degree of dependence of a given country upon the producer/champion of given rules can explain a lot. Coercive pressure applies particularly strongly in situations of strong dependence. Second, the adequacy of the preexisting regulatory frame is another key dimension. A country that altogether lacks a regulatory frame on a particular issue or finds that its traditional system is in crisis will be more likely to turn toward external, so-called legitimate regulatory solutions. Third, the existence (or absence) of adequate local resources, networks, or culture will be an explanation for the ease (difficulty) of implementation and hence for the degree of decoupling. Finally, one might wonder about the degree of centrality of a given country in the rule-making process itself. A country that is actively involved in a transnational process of rule making should normally have a greater sense of appropriation over the emerging rule set than a country that has been involved in a more passive manner (Djelic and Quack 2003, 318ff).

This brings us to a last few remarks that bear upon the democratic implications of the transformations we have described. The question has in fact two sides to it. First, we may ask whether the process of transnational rule making discussed here is an improvement, in democratic terms, over the Westphalian "concert of nations." This, clearly, is an open question and has to remain so at this stage of the paper. Approaching it would call for a reorientation of our collective work on transnational governance toward an exploration of power and hegemonic dynamics. Second, we certainly can wonder about what is happening at the national level. Does the progressive move from the rule of law to the law of rules represent, locally and nationally, a democratic advance? Future work should try to explore here the parallel redefinition of power mechanisms and a possible reshuffling of cards in the national game. Some groups are certainly benefiting from this evolution and others will be losing. The questions of who and why here again remain open ones.

References

Ahrne, G., and N. Brunsson. 2006. "Organizing the World." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 74–94. Cambridge: Cambridge University Press.

Barrett, J., and J. Barrett. 2004. *A History of Alternative Dispute Resolution.* San Francisco: Jossey Bass.
Barysch, K., S. Tilford, and P. Whyte. 2008. "The Lisbon Scorecard VIII: Is Europe Ready for an Economic Storm?" Center for European Reform, www.cer.org.uk/pdf/p_806_lisbon08.pdf (accessed April 8, 2008).
Beck, N., and P. Walgenbach. 2002. "The Institutionalization of the Quality Management Approach in Germany." In *The Expansion of Management Knowledge,* ed. K. Sahlin-Andersson and L. Engwall,**<Additions correct?>** 145–174. Stanford: Stanford University Press.**<Not cited.>**
Berman, H., and C. Kaufman. 1978. "The Law of International Commercial Transactions." *Harvard International Law Journal* 19 (1): 221–277.**<Addition correct?>**
Boli, J. 2006. "The Rationalization of Virtue and Virtuosity in World Society." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 95–118. Cambridge: Cambridge University Press.
Bostrom, M., and C. Garsten. 2008. *Organizing Transnational Accountability*. Cheltenham, UK: Edward Elgar.
Botzem, S., and S. Quack. 2006. "Contested Rules and Shifting Boundaries: International Standard Setting in Accounting," In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 266–286.**<Addition correct?>** Cambridge: Cambridge University Press.
Boyer, R., and D, Drache, eds. 1996. *States Against Markets: The Limits of Globalization.* London: Routledge.
Brunsson, N. 1989. *The Organization of Hypocrisy.* Chichester, UK: Wiley.
Brunsson, N., and B. Jacobsson, ed. 2000. *A World of Standards.* Oxford: Oxford University Press.
Campbell, J., and O. Pedersen, ed. 2001. *The Rise of Neoliberalism and Neoinstitutional Analysis.* Princeton: Princeton University Press.
Christensen, T., and P. Lagreid, ed. 2007. *Transcending New Public Management.* Aldershot, UK: Ashgate.
Cutler, C., V. Haufler, and T. Porter, ed. 1999. *Private Authority and International Affairs.* Albany: State University of New York Press.
Dagnino, G.B. 2007. "Preface: Coopetition Strategy—Toward a New Kind of Inter-Firm Dynamics?" *International Studies of Management and Organization* 37 (2): 3–10.
Dezalay, Y. 1993. "Professional Competition and the Social Construction of Transnational Regulatory Expertise." In *Corporate Control and Accountability,* eds. **<Supply first/middle initials of the names. Additions correct?>**Picciotto and Scott, 203–215. Oxford: Clarendon Press.**<Not cited.>**
Dezalay, Y., and B. Garth. 2002. *Global Prescriptions.* Ann Harbor: Michigan University Press.

Djelic, M.-L. 1998. *Exporting the American Model.* Oxford: Oxford University Press.<**Not cited.**>
———. 2006. "Marketization: From Intellectual Agenda to Global Policy Making." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 53–73. Cambridge: Cambridge University Press.
Djelic, M.-L., and T. Kleiner. 2006. "The International Competition Network—Moving Towards Transnational Governance." In *Transnational Governance,* eds. M.-L. Djelic and L. Sahlin-Andersson, 287–307. Cambridge: Cambridge University Press.
Djelic, M.-L., and S. Quack, ed. 2003. *Globalization and Institutions.* Cheltenham, UK: Edward Elgar.
Djelic, M.-L., and K. Sahlin-Andersson, ed. 2006. *Transnational Governance.* Cambridge: Cambridge University Press.
Dobbin, F. 1994. *Forging Industrial Policy.* Cambridge: Cambridge University Press.
Douglas, M. 1986. *How Institutions Think.* Syracuse: Syracuse University Press.
Drori, G., and J. Meyer. 2006. "Scientization: Making a World Safe for Organizing." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 31–52. Cambridge: Cambridge University Press.
Edelman, L. 2004. "Overlapping Fields and Constructed Legalities: The Endogeneity of Law." www.economyandsociety.org/publications/edelman_backgroundpaper.pdf (accessed March 8, 2008).
Engels, A. 2006. "Market Creation and Transnational Rule-Making: The Case of CO_2 Emissions Trading." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 329–348.<**Additions correct?**> Cambridge: Cambridge University Press.
Engwall, L. 2006. "Global Enterprises in Fields of Governance." In *Transnational Governance,* eds. M.-L. Djelic and K. Sahlin-Andersson, 161–179. Cambridge: Cambridge University Press.
Finnemore, M., and K. Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52 (4): 887–917.<**Not cited.**>
Fisher, R., and W. Ury. 1981. *Getting to Yes.* Boston: Houghton Mifflin.
Fligstein, N. 1990. *The Transformation of Corporate Control.* Cambridge: Harvard University Press.
Fourcade-Gourinchas, M. 2001. "Politics, Institutional Structures and the Rise of Economics: A Comparative Study." *Theory and Society* 30 (3): 397–447.<**Not cited.**>
Fung, A., and E. Wright. 2001. "Deepening Democracy: Innovations in Empowered Participatory Governance." *Politics and Society* 29 (1): 5–41.
Gilardi, F. 2005. "The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe."

Annals of the American Academy of Social and Political Sciences 598: 84–101.
Graz, J.-C., and A. Nölke. 2007. *Transnational Private Governance and Its Limits.* London: Routledge.
Haas, P. 1989. "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control." *International Organization* 43 (3): 377–403.
———. 1992. "Introduction: Epistemic Communities and International Policy Coordination." *International Organization* 46 (1): 1–35.
Hajer, M., and H. Wagenaar. 2003. *Deliberative Policy Analysis.* Cambridge: Cambridge University Press.
Hall, P., and D. Soskice. 2001 *Varieties of Capitalism.* Oxford: Oxford University Press.
Hall, R., and T. Biersteker, ed. 2002. *The Emergence of Private Authority in Global Governance.* Cambridge: Cambridge University Press.
Held, D., and A. McGrew. 1998. "The End of the Old Order?" *Review of International Studies* 24.**<Supply the pages.>**
Héritier, A. 2001. "New Modes of Governance in Europe—Policy Making Without Legislating?" In *Common Goods,* ed. A. Héritier, 85–104. Lanham, MD: Rowman and Littlefield.
Higgott, R., G. Underhill, and A. Bieler. 2000. *Non-State Actors and Authority in the Global System.* London: Routledge.
Hirst, P., and G. Thompson. 1996. *Globalization in Question.* London: Polity Press.
Hoffman, A., and M. Ventresca. 2002. "Introduction." In *Organizations, Policy, and the Natural Environment,* eds. A. Hoffman and M. Ventresca, 1–38. Stanford: Stanford University Press.
Horwitz, M. 1992. *The Transformation of American Law.* Cambridge: Harvard University Press.**<Not cited.>**
International Monetary Fund (IMF). 2002. "Guidelines on Conditionality." Legal and Policy Development and Review Departments, www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.pdf.**<Date accessed?>**
Jacobsson, B. 2006. "Regulated Regulators. Global Trends of State Transformation." In *Transnational Governance,* ed. M.-L. Djelic and K. Sahlin-Andersson, 205–224.**<Addition correct?>** Cambridge: Cambridge University Press.**<Was this cited?>**
Kagan, R. 2007. "Globalization and Legal Change: The Americanization of European Law?" *Regulation and Governance* 1: 99–120.
Kagan, R., and D. Vogel. 2004. *Dynamics of Regulatory Change.* Berkeley: University of California Press.**<Not cited.>**
Kirton, J., and M. Trebilcock. 2004. *Hard Choices, Soft Law.* Aldershot, UK: Ashgate.

Kogut, B., and J.M. MacPherson. 2008. “The Decision to Privatize: Economists and the Construction of Ideas and Policies.” In *The Global Diffusion of Markets and Democracy,* ed. **<Additions correct?>**B.A. Simmons, F. Dobbin, and G. Garrett, **<Pages?>** Cambridge: Cambridge University Press.

Krücken, G., and G. Drori, eds. 2008. *World Society: The Writings of John Meyer.* Oxford: Oxford University Press.

Lemkuhl, D. 2003. “Structuring Dispute Resolution in Transnational Trade: Competition and Coevolution of Public and Private Institutions.” In *Globalization and Institutions,* ed. M.-L. Djelic and S. Quack,**<Additions correct?>** 278–301. Cheltenham, UK: Edward Elgar.

Lessig, L. 1999. *Code and Other Laws of Cyberspace.* **<city?>** Basic Books.

Levi-Faur, D., and J. Jordana, ed. 2005. *The Rise of Regulatory Capitalism.* Annals of the American Academy of Political and Social Science, vol. 598. London: Sage.

MacPherson, J.M. 2006. “Palace Wars and Privatization: Did Chicago Beat Cambridge in Influencing Economic Policies?” *European Management Review* 3:190–198.**<Addition correct?>**

Magendie, J.-C. 2001. “L’Américanisation du droit ou la creation d’un mythe.” *Archives de Philosophie du Droit* 45: 13–19.

Majone, G., ed. 1996. *Regulating Europe.* London: Routledge.

Martin, J.L. 2003. “What Is Field Theory?” *American Journal of Sociology* 109 (1):1–49.

Maurice, M., and A. Sorge, ed. 2000. *Embedding Organizations.* Amsterdam: John Benjamins.

McNichol, J. 2006. “Transnational NGO Certification Programs as New Regulatory Forms: Lessons from the Forestry Sector.” In *Transnational Governance,* eds. M.-L. Djelic and K. Sahlin-Andersson, 349–374.**<Addition correct?>** Cambridge: Cambridge University Press.

Meyer, J., and B. Rowan. 1977. “Institutionalized Organizations: Formal Structure as Myth and Ceremony.” *American Journal of Sociology* 83: 340–363.

Meyer, J., J. Boli, G. Thomas, F. Ramirez.**<Changes correct? Are there four authors?>** 1997. “World Society and the Nation-State.” *American Journal of Sociology* 103, 1 (July): 144–181.

Milgrom, P., D. North, and B. Weingast. 1990. “The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges and the Champagne Fairs.” *Economics and Politics* 2 (1): 1–23.

Moran, M. 2002. “Understanding the Regulatory State.” *British Journal of Political Science* 32: 391–413.

Mörth, U., ed. 2004. *Soft Law in Governance and Regulation.* Cheltenham, UK: Edward Elgar.

Mörth, U. 2006. “Soft Regulation and Global Democracy.” In *Transnational Governance,* eds. M.-L. Djelic and K. Sahlin-Andersson, 119–138.**<Addition correct?>** Cambridge: Cambridge University Press.
Nolan-Haley, J. 2001. *Alternative Dispute Resolution.* **<city?** West.
O’Brien, R., A.-M. Goetz, J.A. Scholte, and M. Williams. 2000. *Contesting Global Governance.* Cambridge: Cambridge University Press.
Organization for Economic Cooperation and Development (OECD). 2001. “Engaging Citizens in Policy-Making: Information, Consultation and Public Participation.” OECD Public Management Policy Brief no. 10, July.**<Location/name of publisher?>**
Overbeek, H. 2004. “Global Governance, Class, Hegemony: A Historical Materialist Perspective.” Political Science Working Paper no. 1. Amsterdam: Free University of Amsterdam.
Paine, T. 1776. *Common Sense.* www.ushistory.org/Paine/commonsense/index.htm.**<Date accessed?>**
Pire, B., ed. 2000. *Dictionnaire de la physique–atomes et particules.* Paris: Encyclopaedia Universalis/Albin Michel.
Plehwe, D., B. Walpen, and G. Neunhöffer, eds. 2005. *Neoliberal Hegemony: A Global Critique.* London: Routledge.
Power, M. 2003. “Evaluating the Audit Explosion.” *Law & Policy* 25 (3): 115–202.
Pridham, G. 2007. “Change and Continuity in the European Union’s Political Conditionality: Aims, Approach, and Priorities.” *Democratization* 14 (3): 446–471.**<Addition correct?>**
Rodrick, D. 2002. “Feasible Globalizations.” NBER Working Paper w9129. Available at http://papers.nber.org/papers/w9129/.**<Date accessed?>**
Sahlin-Andersson, K. 2000. “Arenas as Standardizers.” In *A World of Standards,* ed. Brunsson and Jacobsson,**<Supply first/middle initials. Addition correct?>** 101–114. Oxford: Oxford University Press.**<Not cited.>**
———. 2004. “Emergent Cross-Sectional Soft Regulations: Dynamics at Play in the Global Compact Initiative.” In *Soft Law in Governance and Regulation,* ed. Mörth,**<Supply first/middle initials. Addition correct?>** 129–154. Cheltenham, UK: Edward Elgar.
Sahlin-Andersson, K., and L. Engwall, ed. 2002. *The Expansion of Management Knowledge.* Stanford: Stanford University Press.
Sandholtz, W., and A. Stone-Sweet.**<See the query in text.>** 1998. *European Integration and Supranational Governance.* Oxford: Oxford University Press.
Saner, R., and R. Guilherme. 2007. “The International Monetary Fund’s Influence on Trade Policy: A Legal Critique.” *Journal of World Trade* 41 (5): 931–981.**<Addition correct?>**

Schmidt, P. 2004. “Law in the Age of Governance: Regulation, Networks and Lawyers.” In *The Politics of Regulation,* ed. J. Jordana**<Additions correct?>** and D. Levi-Faur*,* 273–295. Cheltenham, UK: Edward Elgar.

Schmidt, V. 2006. *Democracy in Europe.* Oxford: Oxford University Press.

Schneiberg, M., and T. Bartley. 2008. “Organizations, Regulation and Economic Behaviour.” *Annual Review of Law and Social Science* 4: 31–61.**<Not cited.>**

Scott, C. 2004. “Regulation in the Age of Governance: The Rise of the Post-Regulatory State.” In *The Politics of Regulation,* ed. J. Jordana**<Additions correct?>** and D. Levi-Faur, 145–174. Cheltenham, UK: Edward Elgar.

Stiglitz, J. 2002. *Globalization and Its Discontents.* New York and London: W.W. Norton.

Strange, S. 1996. *The Retreat of the State.* Cambridge: Cambridge University Press.

Thatcher, M. 2005. “The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe.” *Governance* 18 (3): 347–374.

Tocqueville, A. de. 1993 [1840]. *De la démocratie en Amérique*. Paris: GF Flammarion.

Van der Pijl, K. 1984. *The Making of an Atlantic Ruling Class.* London: Verso.

———. 1998. *Transnational Classes and International Relations.* London: Routledge.

Vogel, S. 1996. *Freer Markets, More Rules.* Ithaca: Cornell University Press.

Wälti, S., S. Kübler, and Y. Papadopoulos. 2004. “How Democratic Is Governance?” *Governance* 17 (1): 83–113.

Wedlin, L. 2006. *Ranking Business Schools.* Cheltenham, UK: Edward Elgar.

Weeks, E. 2000. “The Practice of Deliberative Democracy: Results from Four Large-Scale Trials.” *Public Administration Review* 60 (4): 360–372.**<Addition correct?>**

Whitley, R. 1999. *Divergent Capitalism.* Oxford: Oxford University Press.