Universität für Bodenkultur Wien
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Disentangling governance: A synoptic view of regulation by government, business, and civil society

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InFER | Institute of Forest, Environmental, and Natural Resource Policy

Diskussionspapier / Discussion Paper 3-2013

March 2013

University of Natural Resources and Applied Life Sciences, Vienna
Department of Economic and Social Sciences

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ISSN 2072-764X

Also published as

Steurer, R. (2013): Disentangling governance: A synoptic view of regulation by government, business and civil society, in: Policy Sciences, 46/4, 387-410

The final publication is available at Springer via
http://link.springer.com/article/10.1007%2Fs11077-013-9177-y#page-2

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Eigenverlag des Instituts für Wald-, Umwelt- und Ressourcenpolitik, Universität für Bodenkultur Wien

Published by the Institute of Forest, Environmental, and Natural Resource Policy, University of Natural Resources and Applied Life Sciences, Vienna (BOKU)

Abstract

Governance became a catch-all concept for various forms of steering by state and non-state actors. While it pays tribute to the complexities of steering in poly-centred, globalised societies, its fuzziness makes it difficult to oversee who actually steers whom and with what means. By focussing mainly on actor constellations, the article disentangles governance into seven basic types of regulation, four of them representing public policies with varying degrees of government involvement and three depending solely on civil society (civil regulation), businesses (industry or business self-regulation), or on both (civil co-regulation). Although each of the seven types is well known and extensively researched, they are rarely joined in a synoptic view, making it difficult to grasp the totality of contemporary governance. After introducing the seven basic types of regulation and co-regulation, the article addresses the interactions between them and it adds the widely used concepts of hybrid regulation and meta-governance in distinct ways. The synoptic view provided here helps to comprehend how governmental deregulation has been accompanied by soft governmental regulation as well as "societal re-regulation". The concluding discussion emphasises that this "regulatory reconfiguration" is the cumulative product of countless, more or less spontaneous initiatives that coincide with forceful global trends. It also stresses that the various forms of regulation by civil society and business actors are not simply alternatives or complements to but often key prerequisites for effective public policies. Although the essentials of the typology developed here can be applied universally to a variety of policy issues, I focus it on how businesses are steered towards sustainable development and Corporate Social Responsibility.

Keywords

governance, new governance, regulation, self-regulation, co-regulation, civil regulation, hybrid regulation, meta-governance, sustainable development, Corporate Social Responsibility/CSR, stakeholder management, business-government relations, business-society relations

Acknowledgements

I thank the anonymous reviewers from Policy Sciences for their constructive comments and James Meadowcroft for helping me to improve the title of the article. I also thank Karl Hogl for giving me the opportunity to accomplish my Habilitation at BOKUs InFER which finally led to this article.

Table of contents

List of figures

1 "Who is in charge here?" An approximation to governance, steering and regulation

Governance became a catch-all concept for various forms of steering by state and non-state actors at all geographic levels (from local to international), and even across them. Since it aims at nothing less than capturing the full complexity of rule-making in poly-centred, globalised societies in which "the state is far from the only game in town" (Abbott & Snidal 2008, 48; see also Pierre & Peters 2000; Jordan 2008), there is not one single meaning of governance that can be pinned down easily. For the purpose of the present paper, governance is regarded as synonymous with the broad notions of steering and regulation,[1] all three referring to formulating, promulgating, implementing and/or enforcing societally relevant rules (binding or voluntary ones) by government, business and/or societal actors, whereby the rules can apply to others or to themselves (for a similar definition, see Levi-Faur 2010, 8f; for further details see section 2). In short, governance denotes "the ways in which governing is carried out, without making any assumption as to which institutions or agents do the steering" (Gamble 2000, 110), and as to with what means.

Despite (or perhaps because of) extensive research on the plethora of new forms of governance, it is still difficult to oversee how modern societies are steered, or – more colloquial – to determine "Who is in charge here?" (Meadowcroft 2007). Consequently, it is difficult to comprehend how public policies and non-state types of regulation relate with each other. This is not because governance scholars refrain from the daunting task of disentangling governance into distinct types of regulation. As section 2 shows, taxonomic contributions are abundant but either fail to differentiate adequately between actors from the governmental, business and societal domains, or they blind out important (often informal) types of regulation. The present paper aims to disentangle the governance concept holistically based on who steers and how. Although the typology presented here can be applied universally to a variety of policy issues, I focus it on how businesses are steered (or steer themselves) towards sustainable development or Corporate Social Responsibility (CSR), inter alia because the environmental and sustainability policy fields have been "crucial venues for real-life experimentation with new governance arrangements and the focus of a growing governance literature" (Tollefson et al. 2012, 3; for details see section 2). By differentiating various types of regulation, the paper puts the bits and pieces of contemporary governance into perspective. Although these bits and pieces are closely related in practice (see section 4), many of them are usually analysed separately from one another, sometimes even in different disciplines with little exchange.

The next section selectively reviews how existing typologies attempt to disentangle the governance concept and it highlights that the three research strands on regulation, environmental governance and Corporate Social Responsibility (CSR) provide valuable insights for the typology developed here. Section 3 disentangles the governance concept into seven actor-based types of regulation and it illustrates them with a focus on how businesses are steered towards sustainable development and CSR. Section 4 highlights how these types of regulation relate to each other and it adds hybrid regulation as well as meta-governance to the picture. Section 5 provides a concluding discussion.

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[1] For the synonymous use of governance and steering, see e.g. Rhodes (2000, 56). The synonymous use of governance and regulation is most obvious when scholars deviate from the standard vocabulary of "self-regulation" or "co-regulation" and speak of "self-governance" or "co governance" (Kooiman 2003, 79-113).

2 Governance aspects and typologies in different research strands

Who exactly steers businesses towards sustainable development with what means? Considering that the governance literature is mainly concerned with how societal steering has been dispersed across society (Rhodes 1996; Stoker 1998; Scott 2004), conceptual as well as taxonomic contributions pay surprisingly little attention to the actors engaged in particular governance settings as regulators (here referred to as actor constellations). What we often find in conceptual and taxonomic governance research is the too simple dichotomy of state and non-state actors (see e.g. Knill & Lehmkuhl 2002; Treib et al. 2007; NewGov 2004, 11ff; Tollefson et al. 2012; Doelle et al. 2012). A good example for a comprehensive stock taking of different types of business regulation that illustrates this weakness comes from Börzel and Risse (2010). Although they recognise companies and civil society as two distinct non-governmental actors (Börzel & Risse, 2010, 115), they relapse to the public-private dichotomy when organising different types of regulation. Based on a tripartite classification of governance by Zürn (2002), they propose one type of regulation for "governance by government" (i.e. "public regulation") and one for "governance without government" (i.e. "private self-regulation"), but five types of regulation representing "governance with government" (Börzel & Risse, 2010, 116f). [2] As the present article highlights, this widely used classification is too vague with regard to the manifold forms of governance without government.

For Mayntz (2004), governance scholars tend to ignore actor constellations not accidentally but systematically because they are usually preoccupied with the blurring of boundaries between actors from different societal domains (see also Salamon 2002, 41; Börzel 1998; Knill & Lehmkuhl 2002; Nelson 2004; Haufler 2001). Stoker fuels this explanation with one of his five propositions on "governance as theory" saying, "Governance identifies the blurring of boundaries and responsibilities for tackling social and economic issues" (Stoker 1998, 18). No matter whether governance scholars blur or dichotomise the boundaries between public and private actors: conceptual and taxonomic contributions often ignore that private or non-state actors are hardly a useful analytical or empirical category that helps to differentiate non-state regulation adequately. To recognise e.g. the significant differences between business self-regulation and partnering arrangements between businesses and civil society actors (or civil co-regulation), private actors have to be differentiated accordingly (Glasbergen et al. 2007; van Huijstee & Glasbergen 2010; Lambell et al. 2008; Abbott & Snidal 2008). The remainder of this section shows that valuable insights on this and other aspects of disentangling governance can be distilled from the literatures on regulation, environmental or sustainable development governance, and Corporate Social Responsibility.

Regulation can assume many different meanings. While it can be understood narrowly as "authoritative rules" usually set by governmental institutions, it can also be understood broadly as an umbrella term for "all mechanisms of social control, by whomsoever exercised" (Jordana & Levi-Faur 2004, 3; see also Levi-Faur 2010, 4f). The broad understanding of regulation is obviously very similar to the governance concept, with the difference that the former traditionally pays more attention to actor constellations while the latter usually takes in a more systemic perspective (Mayntz 2004; for confirming examples see e.g. Levi-Faur 2010; Jordana & Levi-Faur 2004, 11; Baldwin & Cave 1999, 63ff). Resonating the works of Scharpf (1994,

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[2] A similar pooling of business and civil society actors to "private actors" can be found in an EU context. Since the EU defines co-regulation as Community legislative acts that entrust the attainment of their objectives to non-state parties (European Parliament et al. 2003, C331/3), it overlooks not only all non-legislative forms of co-regulation such as public-private partnerships (see section 3), but also the difference between civil society and business actors. Accordingly, the EU defines self-regulation "as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level" (European Parliament et al. 2003, C321/3; see also Senden 2005). Since "economic operators" and CSOs do not constitute a homogenous group that could be referred to as "themselves", this notion of self-regulation is too vague for scholarly (and perhaps also for practical) purposes.

1997) and many other policy analysts, Levi-Faur emphasises, to "better understand regulation we need to pay close attention to the question of Who are the regulators? What is being regulated? and, How regulation is carried out?" (Levi-Faur 2010, 9), and he adds that the question of "how to regulate" is closely linked "to the question of 'who' regulates" (Levi-Faur 2010, 11; see also Cafaggi 2011).[3] Other scholars also emphasise the importance of actor constellations, but their typologies are, again, partial compared to what I propose here. Two examples: While Baldwin and Cave (1999, 58-63), e.g., do not address regulation by civil society actors (civil regulation) and by actors from more than one societal domain (co-regulation) at all, Abbott and Snidal (2008) focus their "governance triangle" on formal standard-setting schemes in international arenas, deliberately omitting less formalised steering practices such as civil regulation via stakeholder pressure or CSR management (for a similar approach, see Cafaggi 2011). The typology developed in section 3 appreciates the emphasis (global/transnational) regulation research puts on actor constellations and complements it with insights taken from the following two research strands.

Environmental protection and sustainable development often require profound governance changes (OECD 2001, 2002; Lafferty 2002, 2004; Jordan 2008). Consequently, policy makers as well as researchers recognised early on that sustainable development is not only concerned with first-order policy issues of "what to do" but also with second-order governance issues of "how to do it". This governance emphasis reflects strongly in international policy documents, although with varying emphases. As early as 1972, the Stockholm Declaration on the Human Environment noted that improving the human environment for present and future generations "will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts" (UNCHE 1972; for a brief review see Jordan 2008). While the Brundtland Report (WCED 1987) focused in particular on public governance, the Rio "Earth Summit" (UNCED 1992) shifted attention towards civil society actors, and the Johannesburg Summit on Sustainable Development (WSSD 2002) to the roles of businesses in the governance of sustainable development (Zadek 2004a). As the president of the World Resources Institute has pointedly put it, the two world summits (in particular the Johannesburg Summit) represent "a shift from the stiff formal waltz of traditional diplomacy to the jazzier dance of improvisational solution oriented partnerships that may include non-government organizations, willing governments and other stakeholders".[4]

Environmental policy and governance research traditionally pays close attention to actor constellations, inter alia because many environmental problems are negative external effects of businesses on society (Delmas & Young 2009a; Delmas 2009, 221ff; Arts et al. 2009). Consequently, respective research rarely speaks of public and private actors, but it differentiates the latter adequately (sometimes well beyond the general categories of civil society and business as used here). This applies to comparatively narrow empirical studies (e.g. Héritier & Eckert 2008) as well as to broad conceptual or taxonomic contributions (e.g. Arts 2005; Meadowcroft 2007). One of the most comprehensive typologies of environmental governance is proposed by Delmas and Young (2009b). By conceptualising the societal domains as three overlapping circles, they differentiate seven "environmental governance systems", three within a single domain and four between them (Delmas and Young 2009b, 7ff; for an illustration inspired by this heuristic, see figure 1 in section 3). Although the differentiation of three actor groups and seven governance systems is a logical (almost intuitive) way to organise the complexities of environmental governance that provides a

[3] Since Levi-Faur (2010, 11f, 26f) pays close attention not only to who sets rules with what means, but also to who monitors and enforces the rules, the typology he proposes mirrors the complexities of contemporary governance (e.g. in matrices displaying up to 36 types of regulation), but makes it difficult to identify some basic types of regulation. Cafaggi (2011, 32), in turn, pays close attention not only to the regulators and those who are regulated, but also to the beneficiaries of regulation. While this differentiation is highly relevant in focused empirical research, it is difficult to employ in taxonomic works because steering practices of the same type can have varying beneficiaries. An example: As Heritier and Eckert (2008) show, self-regulation can benefit society (e.g. when the PVC industry reduces its environmental impacts) and/or the industry itself (e.g. when recycling quotas stabilise the paper industry), let alone governments who aim to solve problems without enacting new laws.

[4] Since http://archive.wri.org/newsroom/wrifeatures_text.cfm?ContentID=371; retrieved on 10 December 2011.

clear understanding of who steers (with one exception[5]), their typology is less clear with regard to how different actors actually accomplish steering. Instead of exploring means or tools of governance systematically for each of the seven governance systems, the typology refers to organisations (such as intergovernmental organizations), governance modes (such as “non state market-driven”), and particular regulatory tools (such as negotiated agreements or public-private partnerships) rather unsystematically. Metaphorically speaking, the typology developed below makes use of the skeleton provided by Delmas and Young (2009b; for similar heuristics, see Abbott & Snidal 2008, 7f; Lemos & Agrawal 2006; van Marrewijk 2003, 100), but it aims to put more conceptual, as well as empirical, meat on its bones, taken from all three research strands described here.

Although rarely recognised as such, new governance and CSR are complementary concepts that both fundamentally reshape the roles of the public and the private sectors in similar directions. As outlined above, new governance accounts for the fact that governments rely increasingly on non-state actors for achieving public policy goals. When “crucial elements of authority are shared with a host of non-governmental […] actors” (Salomon 2002a, 2), the roles of businesses in society change to the degree that they accept the sharing of public responsibilities (Moon 2002; Midttun 2005; Steurer 2011). The worldwide rise of CSR indicates that the private sector has embraced the sharing of public responsibilities in recent years for whatever reasons, and certainly to varying degrees. By pursuing CSR as a management approach, businesses are supposed to widen their short-term profit-making focus by integrating “social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” (European Commission 2006, 2). Of course, not all activities pursued under the heading of CSR can be regarded as a taking over of public responsibilities, let alone as regulation. Apart from symbolic (or “greenwashing”) actions, businesses can pursue CSR in three basic ways: philanthropic, integrative (i.e. existing business operations are conducted more responsibly), or innovative (i.e. new business models are developed for solving social and environmental problems) (Halme & Laurila 2008). While philanthropic CSR can imply the taking over of public (funding) responsibilities by businesses, integrative and innovative CSR as well as stakeholder management (Preble 2005) can also represent different types of non-state regulation (see section 3). Although CSR management research provides nuanced empirical accounts of governance with and without government (Utting 2005, 10; Zadek 2004a, b; Haufler 2001), interdisciplinary ex-change between governance and management studies is still limited. While the typology developed below makes use of CSR and stakeholder management research, it ignores so far unsatisfactory attempts to organise CSR as a new governance phenomenon.[6]

3 Unfolding the typology

This section disentangles the governance concept mainly based on the criterion “who regulates”. Its main categories are government, business and civil society. Although these three societal domains are heterogeneous entities, each one consisting of a variety of actors with often conflicting political interests (for a brief discussion see section 5), actors from the same domain usually share at least a basic logic of

[5] The actor group referred to as “private sector“ mixes businesses, trade associations and consumers. Obviously, the latter usually represent societal rather than business interests and should therefore be regarded as civil society stakeholder group (Kurzer & Cooper 2007).

[6] Albareda (2008), for example, describes a transition from self-regulation to co-regulation but does not address civil regulation via stakeholder pressure. Auld et al. (2008), in turn, typologise “The New Corporate Social Responsibility“ based on incongruent “taxonomic categories“ such as actors (i.e. “Government traditional“ or “individual firms“), types of regulation („partnerships“) or particular tools of governance (i.e. “information approaches“ or “environmental management systems“). Although the authors aim to provide a comprehensive picture of “CSR innovations“ they overlook, inter alia, civil regulation, tripartite co-regulation and soft governmental regulation other than informational approaches (for details on these types of regulation, see section 3).

action as well as some domain-specific resources.[7] Therefore, and because the three actor categories already result in a complex picture of seven types of regulation and co-regulation (see figures 1 and 2), I do not differentiate them further, with one exception: the self-regulation of entire industries (e.g. by industry associations) is distinguished from the functionally different self-regulation of single firms.

Once actor constellations are assorted, numerous secondary characteristics can be used to further differentiate each of the seven types of regulation distinguished here, among them the underlying governance modes (hierarchies, markets, networks), the geographical scale of steering (local to global), the degree of formalisation (formal-informal), or the bindingness of rules (hard-soft; for the latter two criteria, see Tollefson et al. 2012[8]). To keep the typology lucid, I do not refer to all these secondary characteristics in all societal domains systematically but only to those that constitute important sub-types of regulation, namely the degree of formalisation in the societal domain and the bindingness of governmental regulation (for a brief discussion of the geographical scale, see section 5).

The remainder of this section describes the seven basic types and respective sub-types of regulation in terms of general characteristics, ideal-typical tools of governance that represent "the relatively limited number of means or methods" by which governments, civil society and/or business actors effect steering,[9] selected examples and the underlying governance modes. By doing so, the section shows systematically how diverse the governance of sustainable development among businesses actually is, and how important actor constellations are for fully comprehending this diversity. What section 3 cannot address are the strengths and weaknesses of the different types of regulation.

3.1 Regulation by governments: hard and soft

Despite the importance of "governance without government" (Rhodes 1996), governmental actors can still be regarded as the ultimate (although sometimes disoriented) regulators of society and businesses (Kooiman 2003, 115-130; Bell & Hindmoor 2009), in particular in the context of environmental and sustainable development policy making at national and sub-national levels (Meadowcroft 2007; Arts et al. 2009; Delmas & Young 2009a). With regard to the bindingness of rules, mandatory (or "hard") and voluntary (or "soft") governmental regulation can be distinguished as sub-types. Hard regulation means that legislatures, ministries or public agencies define rules that are binding for all (or for all members of a particular group), and that the executive and judicial branches of government (or the agencies themselves) monitor and enforce compliance. The obvious tools of hard governmental regulation are laws, decrees or (in the EU context) directives (metaphorically also referred to as "sticks") and, less obvious, economic instruments (also referred to as "carrots") such as taxes, fees and cap-and-trade schemes (Hood 1986). Although economic instruments represent relatively "new environmental policy instruments" that are often addressed together with soft governmental (co-)regulation such as voluntary agreements or partnerships (Jordan et al. 2005), they clearly conform to hard regulation as defined above. Key differences between legal and economic instruments of hard regulation are the underlying modes of governance. While hard law represents the hierarchical mode of governance, hard economic instruments make use of both steering hierarchically and via market forces. In addition, the two instrument types are different with respect to the

[7] As Abbott and Snidal (2008, 16ff) show in more detail, the ideal-type logic of action in the business domain is preoccupied with competitiveness and profitability, and the key resources of businesses are technical expertise and financial clout. In contrast, CSOs are "norm entrepreneurs" (Abbott & Snidal 2008, 17) that pursue special (rather than public) interests or values. Since their motivation is usually moral- rather than profit-oriented their key resources are legitimacy and trustworthiness (Mitchell et al. 1998). For governments, see the following sub-section 3.1.

[8] While Tollefson et al. (2012) consider actor constellations (or politics), the degree of institutionalisation and the regulatory dimension as three equivalent dimensions of governance, the typology developed here emphasises that actor constellations represent a primary criterion that shapes all other dimensions.

[9] This definition is based on a definition of policy instruments provided by Howlett and Ramesh (1993, 4).

leeway they give to those regulated (rigid versus flexible), and their impact on technological progress (favouring status quo versus facilitating innovation). For these and other reasons, economic instruments have been eclipsing legal instruments to an increasing degree in recent decades, in particular in environmental policymaking (Jordan et al. 2005).

Although soft regulation is probably as old as its hard counterpart, the rise of governance and CSR in recent decades leveraged and diversified respective practices into an increasingly important sub-type of governmental regulation. In contrast to hard regulation, the rules governments or public agencies formulate here are not legally binding, i.e. they suggest (or facilitate) certain behaviours politically rather than prescribing and enforcing them legally with sanctions (Mörth 2004b, 1-6).[10] Since soft regulation is usually a matter of persuasion, the legislative, executive and judicial powers of governments are mainly relevant with regard to (Hood 1983; Steurer 2011):

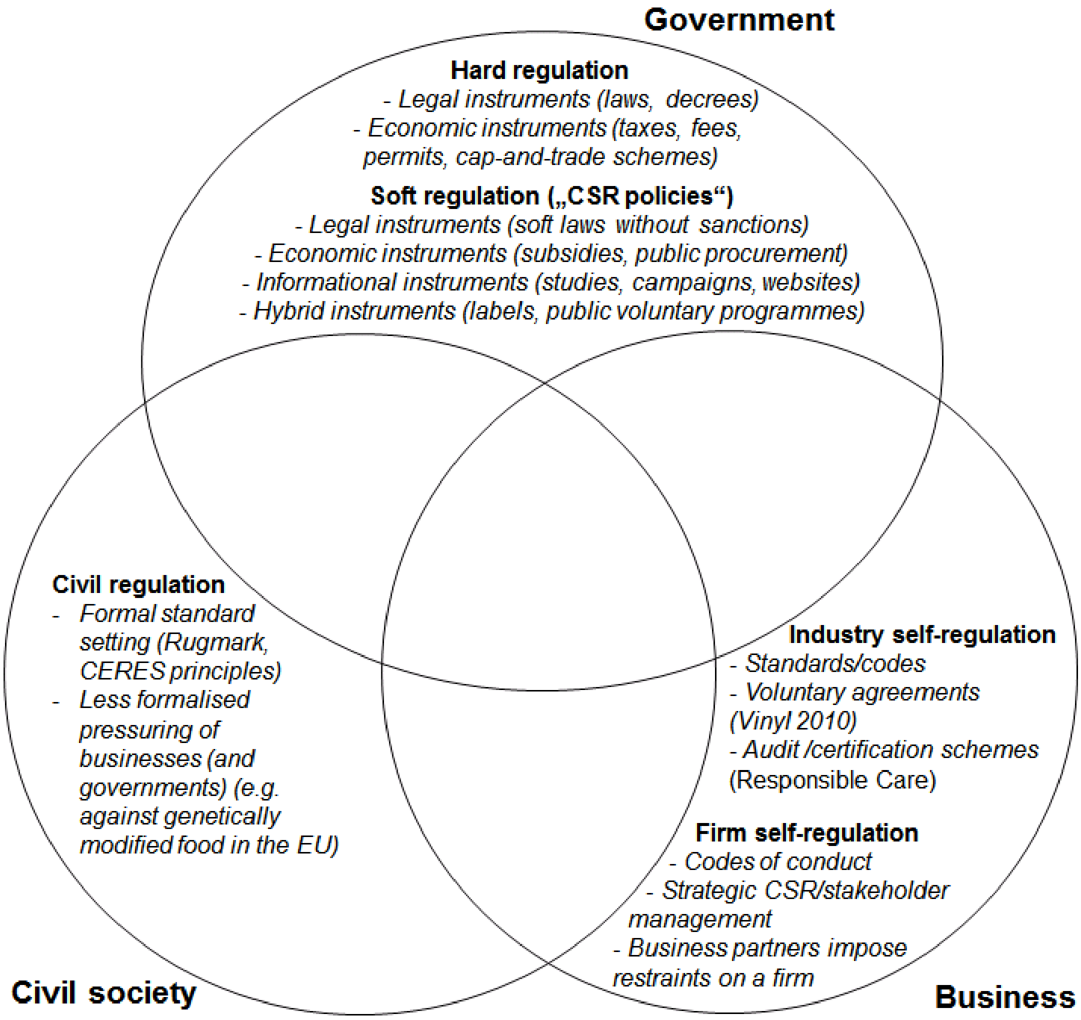
- "nodality", i.e. access to knowledge, monitoring data, dissemination and education channels (see also Hood 2007);
- organisation in the form of monitoring and benchmarking capacities, or as a means to lead by example (e.g. by applying sustainable management practices in the public sector);
- government legitimacy and authority in a persuasive, non-hierarchical sense (see also Hysing 2009; Bell & Hindmoor 2012); and
- fiscal means (e.g. subsidy programmes or sustainable public procurement) that can be used to create economic incentives for desired behaviour (see also Bell & Hind-moor 2012, 153).

Three of these four resources highlight that informational instruments (or "sermons", metaphorically speaking) are the ideal-type approach of soft regulation (Scott 2004, 161). These include endorsing statements, benchmarking reports, brochures, guidelines, websites, and media campaigns. Together with the legal and economic instruments described above, they constitute a widely acknowledged tripartite standard set of policy instruments (Howlett & Ramesh 1993; Bemelmans-Videc et al. 1997; Jordan et al. 2005). While legal and economic instruments play a key role in hard regulation, an analysis of public policies promoting CSR shows that they can also assume the characteristics of soft regulation (Steurer 2010; 2011). This applies to laws (e.g. on CSR reporting) that do not foresee sanctions in case of non-compliance (Joseph 2002, 97ff)[11] and to economic incentive instruments that are not obligatory (such as taxes) but optional (such as subsidies or green/sustainable public procurement). In addition, soft governmental regulation can also make use of hybrid instruments such as labels (combining legal, informational and economic incentive aspects) and public voluntary programmes (often combining informational and economic incentive aspects; for more details see Steurer 2010). While soft economic incentives correspond with the market mode of governance, informational and soft legal instruments rely mainly on persuasion (for a brief discussion whether persuasion is a governance mode in its own right or not, see Steurer 2011, 278ff).

[10] While Mörth (2004a) speaks of "soft law", I prefer the broader term soft regulation.

[11] For the important role soft law plays in the European context, see Mörth (2004c).

Figure 1: Domain-specific types and sub-types of regulation



3.2 Self-regulation by businesses: collective and individual

Although the self-regulation of businesses can be traced back to craft guilds who began to set professional standards independent of governments centuries ago (Baldwin & Cave 1999, 63), research on how businesses participate in societal steering in the era of government was often rather concerned with how they lobby governments (see e.g. Mazey & Richardson 1993). Although lobbying is still an important pathway of businesses steering society (in particular in the environmental policy field), new forms of business self-regulation gained increasing attention in the era of governance among both governance and management scholars (unfortunately without noteworthy interdisciplinary exchange). For governance scholars, business self-regulation implies that businesses self-specify rules, self-monitor their conduct and self-enforce compliance without direct and explicit interference from the state or from civil society actors (Gunningham & Rees 1997; Sinclair 1997; Bartle & Vass 2007). Since this definition makes it difficult to delineate self-regulation from management, it is important to add that the voluntary rules impose restraints upon a firm that are in the public interest (Maxwell et al. 2000, 584; see also Stiglitz 2009b, 13).

Business self-regulation can take place at the levels of single firms or entire industries (Gunningham & Rees 1997, 364; Potoski & Prakash 2005a, b). Industry self-regulation means that a group of major companies or a trade association establishes agreements, standards, codes of conduct or audit programmes that address all firms of a particular industry with varying degrees of formalisation and bindingness. Although more stringent (or “hard”) types of industry self-regulation usually do not force companies to participate, they at least monitor compliance and sanction non-compliance, e.g. with exclusion from the initiative (Christmann & Taylor 2006; Prakash & Potoski 2007). An example for a comparatively hard type of industry self-regulation is the "Vinyl 2010" voluntary agreement that was established by four European PVC associations as a response to legislative threats concerning environmental problems of the PVC industry (Héritier & Eckert 2008). Examples for comparatively soft industry self-regulation are the Cement Sustainability Initiative (major cement companies set individual carbon emission reduction goals on a voluntary basis) or even less formalised sectoral objectives, set e.g. by major players of the aluminium and the steel industry (Busch et al. 2008). Examples for industry self-regulation that foresee compliance monitoring but are very soft in terms of what members are required to do are the "Responsible Care" program launched by the US Chemical Manufacturers Association in 1989 "in response to declining public opinion about the chemical industry" (King & Lenox 2000, 699) and the "Sustainable Forestry Initiative" certification standard launched by the American Forest and Paper Association in 1994 as a response to the more demanding Forest Stewardship Council (McDermott et al. 2008; Cashore 2002; see the sub-section on co-regulation).

The self-regulation of single firms, on the other hand, encompasses various voluntary practices of triple-bottom line management, such as applying environmental management systems, developing and implementing company codes of conduct or more comprehensive CSR strategies, reporting on CSR, etc. (Post et al. 2002; Halme & Laurila 2008). Obviously, many of the countless practices that fall into this category are less formalised than what other authors regard as self-regulation (see e.g. Abbott & Snidal 2008). An often-overlooked form of business self-regulation at the firm level (usually considered as stakeholder management, see section 4) is when business partners such as large suppliers, bulk buyers, lenders or institutional investors demand certain CSR practices. A prominent example of this kind of "business-to-business self-regulation" is Nike's supply chain audit regime on labour conditions, established as a response to civil society pressure (Zadek 2004a, b; Midttun 2008, 414f). As this and the other examples given above emphasize and section 4 explores in more detail, business self-regulation at whatever level is usually not isolated from but driven by other types of regulation. What may appear as a business initiative is usually a strategic move that aims to ease or pre-empt other forms of regulation, in particular hard governmental and civil regulation (Maxwell et al. 2000, 583; Abbott & Snidal 2008).

3.3 Regulation by civil society: formal standard-setting and informal pressuring

In the "era of government", the spectrum of regulation was mostly limited to hard and soft governmental regulation and business self-regulation. The current "era of governance" is characterised in particular by a strengthening of societal actors such as civil society organisations (CSOs) and other societal stakeholders of companies (such as consumers, employees or local communities) as regulators or co-regulators. The manifold forms of civil regulation can be subsumed under two broad (often closely intertwined) sub-types: formal standard-setting and comparatively informal pressuring. Standard-setting means that CSOs aim to steer businesses by demanding compliance with formalised standards they have developed, such as Rugmark (a network of CSOs that created a label certifying that a carpet is made without child labour), the Amnesty International Human Rights Guidelines for Companies, or the 10-point code of corporate environmental conduct published by the "Coalition for Environmentally Responsible Economies" (CERES principles). Since these and most other standards of this kind target globally operating businesses, they are international in scope (Abbott & Snidal 2008, 7ff).

How does civil regulation work through informal pressuring? For decades, CSOs aimed to steer businesses by demanding legislation from governments. Since this "civil lobbying strategy" oftentimes failed, civil society actors now aim to regulate businesses by addressing them directly in confrontational ways (Gunningham 2005; Vogel 2010; Scherer & Palazzo 2010; Yaziji & Doh 2009; Lambell et al. 2008). As the references below illustrate, it was not primarily the political science literature on governance but the business literature on CSR and stakeholder management that has analysed this type of regulation most systematically since the 1990s. Zadek defines civil regulation as "the ability and willingness of society to create collective pressure on business beyond the rule of law by threatening the productivity" of businesses (Zadek 2004a, 26). As stakeholder theory shows in detail, this usually means that stakeholders, i.e. those who contribute to the wealth-creating capacity of a firm and that are therefore "its potential beneficiaries and/or risk bearers" (Post et al. 2002, 19), confront businesses with social and/or environmental claims. [12] These claims are usually not based on legal rights but on moral claims and legitimacy in the eyes of the public (Mitchell et al. 1998), most effectively transmitted to companies via market forces such as critical consumers and ethical investors (Maxwell et al. 2000; Post et al. 2002; Midttun 2008). As various management scholars have shown in detail, stakeholders can pressure companies directly on their own or indirectly via coalitions with other stakeholders. In both instances they either withhold resources (e.g. via direct blockades or indirect calls for boycotts), or they attach conditions to business transactions (e.g. directly by negotiating terms or indirectly via campaigns for certain improvements) (Frooman 1999; Hendry 2005; Yaziji & Doh 2009). Iconic examples of effective civil regulation via pressuring (usually resembling indirect withholding initiated by CSOs and enacted in a coalition with the media and consumers) are Shell's drawback from the legally authorised sinking of the oil platform Brent Spar in the North Sea (Zyglidopoulos 2002; Post et al. 2002), and the European movement against genetically modified food (Kurzer & Cooper 2007). As the latter case illustrates, the civil regulation of businesses (or respective attempts) often coincides with lobbying various levels of government (see also Hendry 2005).

Although the civil regulation of businesses obviously builds on networking among civil society actors, one should not overlook that the effectiveness of their networking relies ultimately on the ability to harness stakeholders representing market forces (such as consumers or small-scale investors in the societal domain and suppliers, large-scale investors or bulk buyers in the business domain) and/or governmental actors for their purposes (McWilliams & Siegel 2001; Vogel 2005; Webb 2005, e.g. 272; Christmann & Taylor 2006). If they fail to do so, their only viable alternative is to seek collaboration in co-regulatory arrangements.

3.4 Domain-spanning co-regulation: four actor constellations, four types

Co-regulation is an umbrella term for co-operative forms of steering in which actors from different societal domains aim to achieve common objectives or supply public services jointly. A key feature of co-regulation is that respective practices join not only regulators from different domains but oftentimes also those who are regulated and/or the beneficiaries of the regulation (Cafaggi 2011, 35). While some scholars restrict co-regulation to collaborations between governments and civil society (Palzer & Scheuer 2004) or to narrowly defined interactions between governments and private actors (Senden 2005), a look into the governance and CSR literature on the one hand, and at contemporary governance practices on the other reveals that civil society and businesses ("private co-regulation") as well as actors from all three societal domains ("tripartite co-regulation") also engage in co-regulation (for an illustration, see figure 2). Public co-management that involves civil society and government actors is usually not concerned with regulating businesses but with the joint management of common pool resources (Ostrom et al. 1999). Although respective practices rely on the network governance mode and are relevant for the pursuit of sustainable development, the literature concerned with new governance and CSR rarely addresses them.

Among the most popular co-regulatory tools in the three actor constellations that involve businesses (albeit with different characteristics that cannot be explored here) are certification schemes and partnerships (the latter often going far beyond standard-setting practices as described by Abbott & Snidal 2008). Partnerships are self-organizing alliances in which actors from two or three societal domains strive for

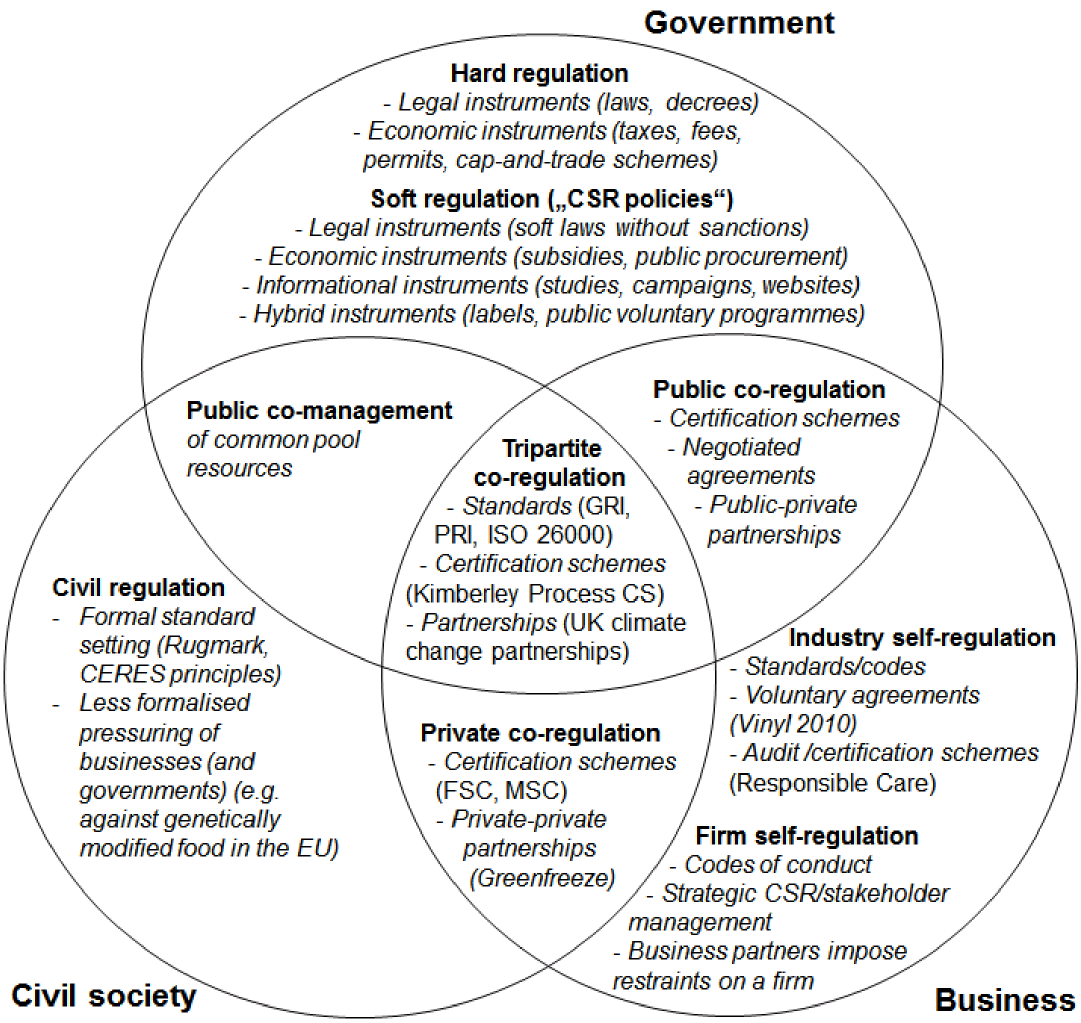
[12] Strictly speaking, civil regulation is concerned with pressure exerted by societal stakeholders such as local communities, small-scale consumers and investors, CSOs, churches, scientists and think tanks (some of which maintain contractual relations with businesses) and excludes pressure through major business stakeholders (such as institutional investors and suppliers; see the section on business self-regulation). The employee stakeholder group is somewhere between these two categories.

common goals and synergies by sharing their domain-specific resources (including expertise and skills) as well as risks in non-hierarchical, network-like interactions (Glasbergen 2007, 1f; Van Huijstee et al. 2007, 77; McQuaid 2010, 128). Prominent examples are private-private partnerships for sustainable coffee (Argenti 2004; Kolk forthcoming) and for environmentally friendly refrigerators ("Greenfreeze"; Stafford et al. 2000), the tripartite Regional Climate Change Partnerships in the UK (Salzmann et al. 2008; Bauer et al. 2012), and the numerous public-private partnerships launched by the US Environmental Protection Agency under the motto "reinventing regulation" (Balleisen & Eisner 2009). The latter also stands for dozens of voluntary environmental programmes, many of them being certification and labelling schemes developed or enacted in close collaboration with businesses (Darnall & Sides 2008). Well known and extensively researched (not to say iconized) instruments of private co-regulation involving civil society actors and businesses are voluntary certification schemes such as the Forest Stewardship Council (Cashore & Vertinsky 2000; Cashore 2002) and the Marine Stewardship Council (Cummins 2004). Apart from partnerships and certification schemes, public co-regulation between governments and businesses also relies strongly on negotiated environmental agreements (for the numerous examples in the Netherlands, see Bressers et al. 2009). Examples for tripartite co-regulation defined by actors from all three societal domains are the Kimberley Process CS that certifies diamonds that have been produced in socially responsible ways (Wright 2004; Yaziji & Doh 2009, 162-165), standards or guidelines such as the Global Reporting Initiative/GRI which guides CSR reporting (Brown et al. 2009)[13], the UN Principles for Responsible Investment/PRI (Sandberg et al. 2009), and the ISO 26000 guideline for social responsibility (Ward 2011).

Although collaboration and networking play a key role in co-regulation and respective practices represent the quintessence of both new governance and CSR, one should not overlook that the steering mechanisms at work here are, again, strongly aligned with the market mode of governance, i.e. with business concerns about brand reputation, competitiveness, and the urge to ease or pre-empt potentially costly civil regulation and hard governmental regulation. In this sense, co-regulation often represents network governance in the (sometimes hardly visible) shadows of both markets and hierarchies. This brings us to interactions and other linkages between the seven basic types of regulation described above.

[13] The government actor involved in the GRI since 1999 (first in the steering committee, since 2002 in the GRI board of directors, is the United Nations Environmental Programme/UNEP (see http://www.globalreporting.org/AboutGRI/WhatIsGRI/History/OurHistory.htm; http://www.globalreporting.org/AboutGRI/WhoWeAre/GovernanceBodies/Board/).

Figure 2: Adding four domain-spanning types of co-regulation[14]



4 Interactions, hybridisation, and orchestration (or meta-governance)

Thus far, I have portrayed the three domain-specific and four domain-spanning types of regulation as discrete approaches of steering. The interactions between them have emerged only in outlines. This section adds that the interplay between the three societal domains and respective types of regulation materialises in at least three distinct ways: as ordinary interactions, as hybridisation and, finally, as orchestration or meta-governance (for an illustration, see figure 3).

Whatever happens with regard to a particular type or tool of governance most likely has effects on other types and tools of steering (see also Abbott & Snidal 2008, 29f). As long as these interactions shape the use and contents of regulation but they do not result in new regulatory types with distinct steering characteristics, I frame them as ordinary interactions between the elements of a poly-centred governance system. These are the most obvious interaction patterns:

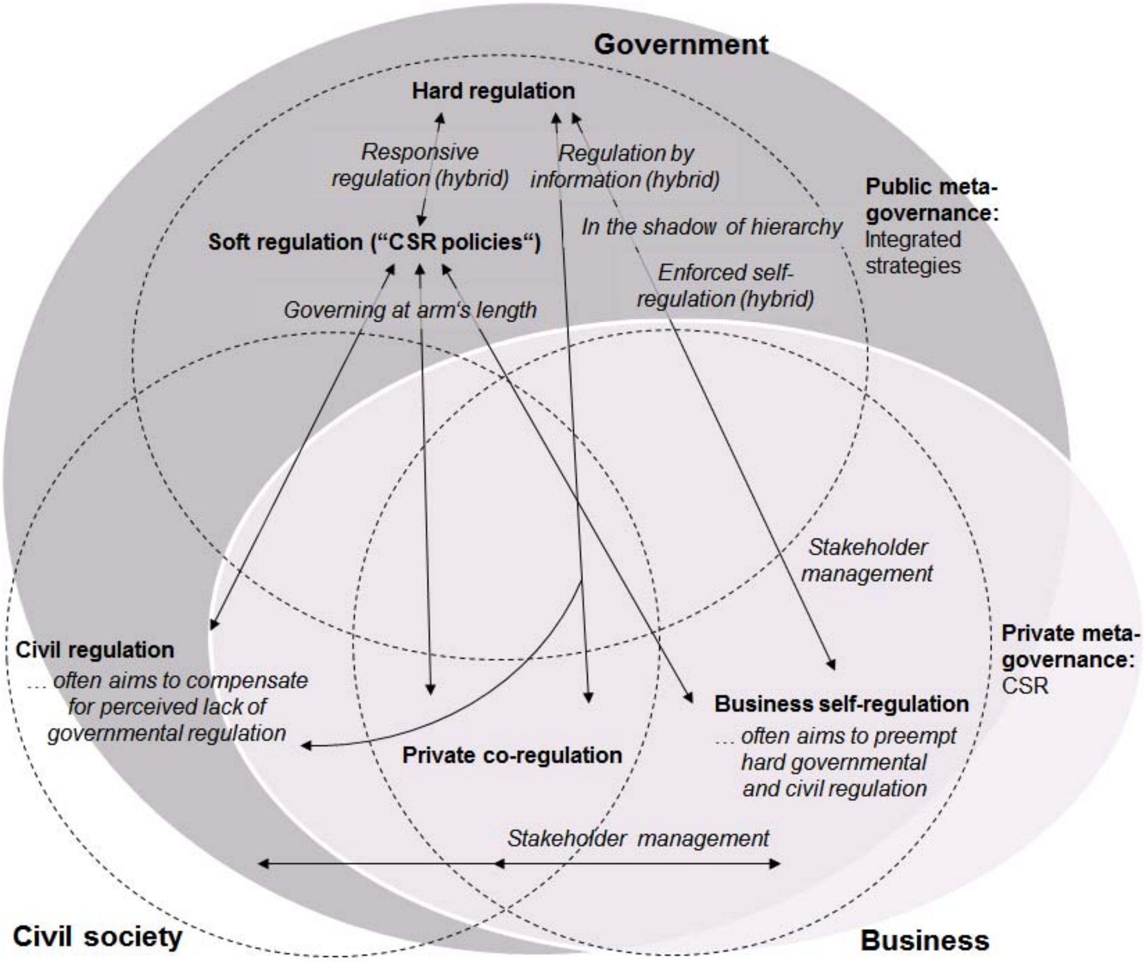
[14] For similar heuristics that inspired the development of this figure, see van Marrewijk 2003, 100; Lemos & Agrawal 2006; Abbott & Snidal 2008, 7f; Delmas & Young 2009b.

- soft forms of “governing at arm’s length” mean that governments do not engage directly with non-state regulation but rather hinder or facilitate respective practices from a distance, e.g. by informing, educating, providing guidance, appealing, approving/encouraging or disapproving/discouraging them or the actors involved. The relevance of governing at arm’s length is well documented for one of the “icons of new governance”: the Forest Stewardship Council (Hysing 2009; Bell & Hindmoor 2012; for other examples, see Bartle & Vass 2007; Héritier & Lehmkuhl 2008);
- “in the shadow of hierarchy” is a hard form of governing at arm’s length in which governments threaten co- as well as self-regulators with hard law in case they fail to achieve certain goals (Héritier & Eckert 2008; Héritier & Lehmkuhl 2008; Scharpf 1994);
- a hard legal environment is often a prerequisite for functioning industry or firm self-regulation (Short & Toffel 2010; Mathis 2008, 452-457; World Bank 2002), and some-times even for the success of civil regulation or private co-regulation.[15] Vice versa, new, hard governmental regulation is often a response to failed business self-regulation (currently and primarily discussed for the financial sector; see e.g. Moss & Cisternino 2009);
- business self-regulation and stakeholder management (including lobbying activities) usually aim to ease or pre-empt not only actual or threatened hard governmental regulation (Mazey & Richardson 1993; Héritier & Eckert 2008) but also pressure coming from civil society stakeholders, who themselves may have been mobilised by a lack of adequate governmental regulation (Zadek 2004a, b; Gunningham 2005; Christmann & Taylor 2006; Porter & Ronit 2006; Kurzer & Cooper 2007). In this sense, we could often speak of “business self-regulation in the shadow of stakeholder pressure”.

Since these and other interactions between the basic types of regulation are the norm rather than the exception, disentangling governance into basic types of regulation only makes sense if we do not regard them, metaphorically speaking, as “autopoietic games” but as the markings of a comprehensive “governance playing field” on which actors from at least three teams play their highly dynamic political games of who steers whom with what means and for whose benefit. While interactions originating in the governmental and societal domains usually aim to counterbalance the absence or failure of regulations in other domains (in particular in the business domain) (Gunningham et al. 2003, 149; Hysing 2009), interactions originating in the business domain usually serve a more defensive purpose. If corporate stakeholder management is successful in easing or pre-empting hard governmental regulation, regulatory capture (or government failure) may be the result (Laffont & Tirole 1991). In how far the notion of regulatory capture can be applied to corporate stakeholder management that aims to ease the pressure coming from civil society actors (e.g. by involving them in partnerships) has not been explored yet.

[15] As Bell and Hindmoor (2012, 155) show for the US, hard law that requires proof of legal logging can facilitate the private co-regulatory FSC scheme because it guarantees legal compliance.

Figure 3: Interactions, hybrid regulation, and meta-governance



In contrast to the widespread framing of co-regulation (or co-governance) as hybrid regulation (see e.g. Young 2009, 28; Lemos & Agrawal 2006, 2009; Levi-Faur 2010; Tollefson et al. 2012), I suggest that co-regulation represents basic (yet domain-spanning) types of regulation with unique rather than hybrid characteristics (for a similar conceptualisation of "co-governance", see Kooiman 2003). A look at private co-regulation located in the overlap of civil society and business underpins this as follows: CSO-business collaborations such as the "Greenfreeze" project between Greenpeace and the household appliance manufacturer Foron (Stafford et al. 2000) are clearly an alternative to, rather than a hybrid of, e.g. confrontational relations between civil society and businesses. Consequently, I propose to restrict hybrid regulation to those practices that truly combine two (or more) of the seven basic types of regulation to something new. Prominent examples for this narrower framing of hybridisation are as follows:

- "Responsive regulation" refers, inter alia,[16] to hard governmental regulation that is accompanied by soft forms of communication and persuasion in order to increase acceptance and compliance among those regulated (Ayres & Braithwaite 1992; Braithwaite et al. 2007; Braithwaite 2007).
- "Regulation by information" (Majone 1997; Lyon & Maxwell 2007) or "information disclosure regulation" (Doshi et al. 2012) is an increasingly popular regulatory approach that aims to steer companies and consumers towards more sustainable production and consumption by mandating the disclosure of company-, production- or product-related information in standardised ways.

16 Note that I use the concept of "responsive regulation" in a narrow sense, which is in line with the enforcement pyramid rather than with the pyramid of enforcement strategies (for details see Ayres & Braithwaite 1992, 35-39).

Prominent examples are the US Toxic Release Inventory (Konar & Cohen 1997) or the numerous energy efficiency disclosure requirements in the EU (mandatory for cars, various electrical appliances, buildings/apartments and car tyres). Although these disclosure regulations rely on binding and sanctioned laws, I regard them as hybrids because they unfold their steering potential only in combination with civil regulation (mainly market pressure via consumer decisions) and/or (pre-emptive) business self-regulation (Gouldson 2004).[17]

- "Enforced self-regulation" is business self-regulation that is subject to various forms of governmental oversight (Ayres and Braithwaite 1992, 101-123; Baldwin & Cave 1999, 39; Bartle & Vass 2007, 889). Governmental oversight usually starts with requiring firms to establish a tailored self-regulatory scheme, and it can entail monitoring and/or sanctioning its implementation. Thus, enforced self-regulation is a formal and transparent way of "subcontracting regulatory functions to private actors" (Ayres and Braithwaite 1992, 103). Obviously, this subcontracting hybridises hard govern-mental regulation with business self-regulation.

In contrast to the basic types of co-regulation explored in section 3 and the interactions addressed above, these examples deliberately combine basic types of regulation to a new (supposedly better) approach of steering. As the examples illustrate, governments play a key role in hybridisation, inter alia because they have the means to do so and they seem to be interested in making non-state regulation and co-regulation work.

While hybrid regulation is concerned with the deliberate combination of two basic types of regulation, meta-governance is concerned with "the governance of governance" more generally (Meuleman 2008, 67). As such, it includes but is not limited to hybridisation. Since the present paper focuses on the fragmentation of governance across three societal domains, the meta-governance that is the most relevant here is concerned with overseeing, reflecting on and orchestrating different types of regulation (for this and four other meanings of meta-governance, see Jessop 2009, 93). Thus, a key issue for meta-governance pursued by governments is to provide direction and control on the interplay of various types of regulation coming from whatever societal domain on a particular issue. By doing so, governments aim at "harnessing the capacities of markets, civil society, and other institutions to accomplish its policy goals" (Gunningham 2005, 338, see also Peters 2010; Meuleman 2008; Sorensen 2006), or at least "to ensure that the private regulatory tail does not wag the commonweal's dog" (Balleisen & Eisner 2009, 129). Governments can provide this kind of oversight by agreeing on strategic objectives, orchestrating different types and tools of regulation, monitoring their performance, and making adjustments (e.g. by introducing new governmental regulation), if necessary (Meuleman 2008; Peters 2010, 44f). In national environmental governance, the practices that come the closest to this version of meta-governance are comprehensive (often cross-sectoral) government strategies, e.g. on climate change mitigation or sustainable development (Howlett & Rayner 2006).[18] However, instead of orchestrating what actors from different societal domains ought to contribute to solving environmental problems, integrated strategies are usually restricted to communication and an often-piecemeal coordination of mainly soft governmental regulation (Steurer 2008; Casado-Asensio & Steurer, forthcoming).

Although many scholars view meta-governance as an exclusive governmental task that ought to serve public policy objectives (Meuleman 2008, 68f; Peters 2010), the previous section has prepared the ground for arguing that meta-governance can also take place in the two private domains, although with limited scopes and geared towards domain-specific purposes (see also Jessop 2009). While Sorensen (2006, 103) emphasised that "metagovernance can potentially be exercised by any resourceful actor – public or

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17 Although voluntary (often non-state) initiatives that aim to improve the transparency of CSR (such as the Global Reporting Initiative/GRI) can also be referred to as "governing by disclosure" (Pattberg 2012, 616), they must not be confused with the governmental version of regulation by information as described here.

18 Peters (2010, 44f) also recognises performance and strategic management in the public sector as key instruments of meta-governance.

private", neither governance nor management scholars have addressed the private side of governance oversight in ways that rise above the basic types of regulation and their ordinary interactions as described above,[19] with one noteworthy exception: According to Derkx (2011), meta-governance in the civil society domain is mainly concerned with defining and monitoring standards for other standards. A prominent organisation that aims to improve and promote a variety of sustainability standards (including the FSC and the MSC) is the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance (for this and other examples, see Derkx 2011). Obviously, its orchestration is limited to improving already existing standards in the civil society domain only. In the business domain, meta-governance is hardly researched as such, although corresponding practices exist. Here, the strategic management of CSR and of stakeholder relations can be framed as another limited form of private meta-governance. Although these management practices aim to reach beyond the business domain, they are usually geared towards easing or pre-empting civil and governmental regulation. Thus, improving the business-case of CSR through strategic (stakeholder) management can, but does not have to, coincide with public policy or societal objectives (Halme & Laurila 2008; Porter & Kramer 2006).

5 Discussion and conclusion

The present article has disentangled contemporary governance into seven basic types of regulation, several interactions and hybridisations between them, and it added the concept of meta-governance. Although the article emphasises that actor constellations are important for making sense of governance, it highlights that steering businesses today takes place in a complex, poly-centred and multi-actor governance system that eroded the boundaries between societal domains (e.g. by means of co-regulation). Of course, the typology developed here portrays ideal-types that simplify the reality of everyday governance routines. Two of the many complexities more or less ignored here stand out. First, although actors are a useful criterion for differentiating types of regulation, the three societal domains are, of course, no homogenous entities:

- in the governmental domain, different levels of government have different (complementary or competing) competencies that often result in diverging intentions (in particular in federal states), and at each level, different ministries/departments (or even different units within the same department) often have conflicting interests;
- although businesses all aim at making profits, the values, cultures and management practices standing behind this common purpose (in particular the management of CSR and stakeholder relations) vary widely: while some businesses accept societal responsibilities (and even advocated for stricter public policies), others remain defensive (for environmental protection, see Rowlands 2000; Gunningham et al. 2003);
- civil society is perhaps the vaguest of the three domains, consisting of very different "function systems" such as religion, art, education, science and special interest CSOs (Esmark 2009). In particular the latter pursue a variety of objectives, compete for resources and struggle with trade-offs between social and environmental concerns.

Despite these heterogeneities, the typology developed here shows adequately that all actors of a particular societal domain have a limited number of steering approaches at hand that are determined by their domain-specific resources.

Complexity increases further if we look closer at all the secondary characteristics of steering that I mentioned at the beginning of section 3, among them the bindingness of rules and the geographical scopes

[19] Glasbergen (2011) frames successful examples of civil or tripartite co-regulation (such as the Forest Stewardship Council and the Global Reporting Initiative/GRI) as private meta-governance because these schemes influenced other types of regulation. For Abbott and Snidal (2010), orchestration is, inter alia, what I frame as "governing at arm's length".

of steering. Regarding the latter, very similar (sometimes even identical) forms of new governance can be found at and between several levels of government. As the case of Shell in Nigeria illustrates, civil regulation often starts as a local movement that first gains national and eventually international momentum (Wheeler et al. 2002). While differences between international and national regulation still exist in the governmental domain, it seems that all other types of regulation blur not only the boundaries between the public and the private (see section 2) but also those of geographical scopes. Regarding the bindingness of rules, each type and sub-type of regulation described above can be broken down into several governance mechanisms and tools (such as voluntary agreements or partnerships), and most of them (also voluntary ones) can be designed to be more or less stringent, e.g. with regard to monitoring, reporting and sanctioning (see e.g. McDermott et al. 2008). Consequently, similar governance tools from the same type of regulation can be markedly different in terms of design characteristics and effectiveness. Since the typology presented above had to omit these and other nuances, it can certainly be criticised as too global. However, in the light of section 2, I consider it as an adequate and timely synoptic view of the increasingly complex governance playing field that leaves these and other nuances to narrower conceptual and empirical works.

Given the fact that neither public nor private meta-governance has been able to orchestrate the effective use of different types of regulation on a grand scale, the governance playing field sketched here is clearly the cumulative product of countless, more or less spontaneous initiatives that have been developed by a variety of actors in concurrence with forceful trends such as globalisation, neo-liberalism and the emergence of new governance as a new steering paradigm. Since it is unlikely that strong centres or grand meta-governance schemes will ever be able to effectively orchestrate the use of different types of regulation (Rosenau 2005; Jessop 2009), the fragmentation of steering and the lack of orchestration can pragmatically be regarded as an opportunity that “opens the door for multiple routes of intervention” through which many actors engage in polycentric governance (Meadowcroft 2007, 307; see also Braithwaite 2006, 894). Although nowadays corporations may be less likely to be the subject of hard state regulation than they were in Keynesian times, they are at least confronted with new types of steering (in particular civil and co-regulation) that played a marginal role back then (Mellahi & Wood 2003, 190f; Moon 2005; Abbott & Snidal 2008, 10f). Obviously, “hard governmental deregulation” is accompanied by soft or hybridised governmental regulation on the one hand and societal “re-regulation” on the other. Interestingly, civil regulation, business self-regulation and private co-regulation are not simply alternatives or complements to but often-essential prerequisites for public policies: Neither soft governmental regulation nor increasingly popular hybrids (such as regulation by information) could function without societal and/or business actors assuming significant regulatory roles (Gouldson 2004). Ultimately, this “regulatory reconfiguration” (Gunningham 2005, 335) implies a new division of powers between societal domains that goes well beyond the state-centric ideas of Montesquieu it complements (Braithwaite 2006, 894). In how far the new checks and balances between governments, civil society and businesses are sufficiently strong to minimise regulatory capture and governance failure remains to be seen. The financial crisis around 2010 and inadequate progress in climate change mitigation suggest that some large-scale governance reconfiguration trials resulted already in errors that call for changes. One of many prerequisites for this purpose is to understand and relate basic types of regulation, respective interactions and hybridisations properly in a synoptic view.

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