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Emerging Institutional Arrangements for Environmental Regulation

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Abstract

The United States is engaged in an important experiment in social governance. Central to this experiment, is the belief that government need no longer directly regulate behavior. Sound policy is no longer primarily about choosing the right set of rules and regulations, it has become "understanding private regulation -- by associations, by firms, by peers, and by individual consciousness" so as to better "steer the mix of private and public regulation (Ayres and Braithwate 1992: 3)."

This new regulatory world poses both empirical and theoretical opportunities. Scholars can directly observe these arrangements as they emerge and change, making empirical study of the formation and modification of institutional arrangements unusually tractable. This symposium unites distinguished scholars from several disciplines in a review of empirical analysis of new institutional forms in environmental regulation.

The first speaker, Joseph Rees, is the leading scholar of one example of these new institutional arrangements - industry self-regulation. He will explore the history of two industry initiative -- nuclear power's INPO and the chemical industry's Responsible Care. In both industries, a disastrous accident caused increased public concern about the industry and a tarnished public image. In response, both industries formed a coordinating institution to facilitate regulation of participants. Prof. Rees will discuss how these two programs represent a return to associationalism - the use of associations to provide a "middle way between governmental regulation and laissez-faire prescriptions". He will use differences in structure and outcome between the two programs to reflect on the future of associationalism in the U.S.

As Professor Rees himself has noted, associations of companies may face legal barriers in enforcing regulatory programs. By coordinating collective action, industry standards can restrict competition, and current anti-trust laws limit the use of coercive power by associations of companies. Thus, industry regulation may need to operate without relying on direct coercive mechanisms (Sigler & Murphy, 1991). Given limited legal power to penalize malfeasance, government may seek to remain the main administrator of regulation, but choose a new form for this regulation.

In the second presentation of our symposium, the legal scholar Professor Eric Orts will explore the use of "government contracts" in place of command-control regulation. Since these contracts have been in use in Europe for several years, he will compare two high-profile U.S. examples (Project XL and the "Common Sense Initiative") to their European relatives. He will examine broadly the theoretical issues that bear on the viability and wisdom of using such government environmental contracts within the U.S. legal system.

To be effective, new types of regulation must control not only the behavior of firms, but the activities of production supply chains. In the third presentation, Professor Andrew King will present research on the effect of industry self-regulation on their supply chains. In his research, Professor King assumes that firms act strategically in adopting environmental standards. He investigates how heterogeneity in firm capabilities and characteristics influences the decision to join voluntary regulations, and the behavior that companies choose to effect after joining. He shows that these conflicting strategies influence the efficacy and spread of voluntary programs.

New institutional arrangements can only operate effectively if they are stable, but they must also be able to change to meet new business, social, or environmental conditions. Our final speaker, Professor Franco Furger, will present a theory of institutional stability and institutional change. Using ethnographic materials generated during a two-year research project on the international maritime industry, he will demonstrate how economic, sociological and cultural factors combine to produce stable institutional arrangements. He will also discuss when and how institutions change.

In light of the distinguished speakers on the panel, I (Andrew King) propose leaving ample time (at least 20 minutes) for a panel discussion following the presentations. I expect the presentations to reveal differences of opinion among the panelists and to provoke interested reaction from the audience.