“Symbolic Politics in Environmental Regulation: Corporate strategic responses“

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Abstract

This paper examines recent developments and emerging tendencies in governmental regulation and their effects on corporate strategies. Environmental regulation has undergone some significant changes throughout the last decade of the 20th century. Though not entirely new in political science in general (Edelman), the concept of symbolic politics (in the following: SP) currently meets a vivid reception in law and economics, while yet little attention has been paid to SP from a business perspective. Elements of SP are nearly found in all fields of environmental legislation, and the paper will focus on those empirical examples that have a particular effect on markets, the competitive situation of businesses and corporate strategies in general. The consequences of SP for companies are analysed from two different perspectives. First, business will be seen as an addressee of SP. This focuses mainly on the rather critical aspects of SP mentioned above. On this basis an analysis of different tools and instruments of SP is given and specific corporate consequences and reactions are discussed. Secondly, corporations are assuming increasingly a role as political actor themselves. This results from certain developments in environmental regulation as well as from the fact that globalisation increasingly weakens national governments and their political power while at the same time corporate actors, such as multinational companies, assume more influence and responsibility.
1. Introduction

Environmental regulation has undergone some significant changes throughout the last decade of the 20th century. “Deregulation”, “Reflexive Regulation”, “Privatisation”, “Proceduralization” (Gouldson and Murphy, 1998), or even “Sub-Politics” (Beck, 1997) have been concepts under which these trends have been discussed. Furthermore, literature in management science, economics, law, and political sciences has discussed a wide range of consequences for business activities as well as for of industry’s changing role in the regulatory process in general.

One aspect of the more recent debate focuses on the symbolic use of governmental politics in environmental regulation. Though not entirely new in political sciences in general (Edelman, 1964), the concept of symbolic politics (or: the symbolic uses of politics, in the following: SP) currently meets a new reception in law and economics, while yet little attention has been paid to SP from a business perspective. The renaissance of the concept is particularly strong in Germany (Hansjürgens and Lübbe-Wolff, 2000), where a number of rather harsh and restrictive regulatory efforts in the early nineties have put environmental politics in a stage which presently is widely marked by SP. However, elements of SP are nearly found in all fields of environmental legislation.

SP can be defined (Hansjürgens, 2000: 147) as a political process, in which certain goals and measures are announced and enforced, which already at the very early stage of publication either

- represent sheer rhetoric and thus only target on a signalling effects or
- are designed in a way that those goals and measures should or could not be realised and implemented in the same way as they are announced.

2. A case study on Symbolic Politics
In 1996, the then new German waste management act with the presumptuous title “Closed Substance Cycle and Waste Management Act”¹ (in the following CSCWMA) was enforced by the Federal Government. In many aspects it was hailed as a very innovative piece of legislation (Matten, 1996) as it tried to implement quite radical changes towards a sustainable German waste management regime. The idea was to get rid of the entire idea of “waste” instead of treating and undesired output of production and consumption processes as input goods for other, new production or consumption processes. By this, the act was intended to be a straightforward implementation of the Sustainable Development concept as put forward four years ago during the Rio Summit: rather than using and disposing off resources which then would no longer be available for future generation, the act aims at a circular economy (Pearce and Barbier, 2000), which is build on an constant level of circulating resources and sees the economy only as an element of a wider circular flow of materials from “nature” through the economy back into “nature”.

Without going into any detail, the symbolic nature of this act could quite easily been exemplified by having a closer look at only one – maybe the most revolutionary at that time - element of the act. In Articles 22-26, the act codifies “product responsibility” for all “parties who develop, manufacture, process, and treat or sell products”. This concept shifts the responsibility for waste management from public bodies towards industry and could be regarded as one of the most radical implementations of the polluter-pays-principle () and the idea of product stewardship (). In Article 24, it is explained how the enforcement of this principle will be legally constructed:

“(1) For definition of requirements pursuant to Article 22, the Federal Government is authorised, after hearing the parties concerned (Article 60), to mandate, by statutory ordinance and with the consent of the Bundesrat [second chamber of the German parliament], that manufacturers or distributors
1. may sell or put into circulation certain products only after providing a possibility for returning the pertinent goods,
2. shall accept certain products when returned and shall provide for return, by suitable measures, especially by means of systems for accepting returned goods, or by levying a deposit,

¹ German: Kreislaufwirtschafts- und Abfallgesetz (KrW-/AbfG).
3. *must accept certain products at the place where they are sold or where they occur*, [...]” (italics by me, DM)

Two things are worth mentioning in this context: On the one hand, if one looks at the scope of the act (points 1-3) from an industry perspective, the act causes companies virtually to install waste management facilities for all their products after use, provide an entire retro-logistics system and in some cases even to collect goods where they are abandoned by their former users. On the other hand, this article states the pivotal role of statutory ordinances for the actual application of this act: However innovative and, from an industry perspective, costly all these new requirements might be – the law will be just an extensive declaration of government’s intentions as long as they are not followed up by statutory ordinances which codify concretely the elements and scope of product responsibility for a certain branch, product family or substance group. By this, the act has quite a substantial symbolic content in that it prescribes a certain regulatory intent of the government without at the same time transforming this intent into concrete and enforceable legal requirements. The act describes an intention of the government without implementing it in the same way.

The symbolic character of the codification of “product responsibility” becomes even more evident if asks the question - from today’s perspective - in how far these crucial ordinances have been implemented. It turns out that apart from some minor ordinances which pertain to judicial technicalities, up to the year 2000 only three of those ordinances finally had been realized: the end-of-life-vehicle directive, the packaging ordinance and the battery ordinance. A detailed analysis of these ordinances seem to endorse the impression of the strong symbolic character of the CSCWMA (Schink, 2000): as for the end-of-life-vehicle directive, the ordinance is full of vague formulations, there is no regulation on the design-to-recycle aspects (much apprehended by industry), there is no clear definition of pollutants and concrete levels of toxicity as well as a very limited timeframe and scope for the legislation. As a result – and the other directives effectually represent a liberalization of substantial parts of the hitherto existing regulatory framework – the high claims and revolutionary approach, which the Federal government proclaimed when passing the CSCWMA prove to have only seen rudimental implementation by the follow-up process of the act.
3. Reasons for the use of Symbolic Politics in environmental legislation

Why do governments use SP? In the light of our little case study, several answers seem to be obvious: the CSCWMA was an implementation of an EU-Directive on Waste (91/156/EEC), so one might conclude that the German government was rather forced to ratify this into national law rather than actually having the intention to do so. Furthermore, there have been quite widespread interpretations of the act as an attempt by the government to initiate voluntary initiatives by industry rather than forcing them to do so by law. And in fact, various branches in the aftermath of the act in fact got active in quite significant initiatives to set up take-back schemes and voluntary agreements to assume their product responsibility. Others have presumed that the act, which was only adopted at the very end of the 12th parliamentary session in Germany basically was an effort (among other things) of the Christian Democratic government to face the next election.

Looking at other forms of SP one can identify a number of reasons for the use of SP in environmental politics (Steinberg, 2000). The paper will look at these from two different angles. A first group of reasons would see SP rather as a problematic development in governmental action.

- „Disguise“ of true intentions

On the one hand, environmental politics is often abused for political goals other than the announced environmental objectives. A current example are certain tools of green taxation in Britain and Germany. Governments try to tackle the risk of global warming by imposing these taxes. An analysis of the concrete construction and set up of this instrument however reveals that in most cases this tax cannot function as an incentive to use less fossil fuels but that it serves as an easy-to-be-communicated way of balancing public budgets.

On the other hand, symbolic environmental politics often serves as tool to demonstrate a hands-on approach by government to those issues that are far too complicated to be tackled by governmental bodies alone. A good example is the German ordinance on summer smog, which is a huge and complicated piece of legislation – with virtually no effect on the actual reduction of ozone concentration in the air at the critical times.

- Uncertainty
SP often focuses on issues not yet fully explained by scientific evidence. Nevertheless, regulators feel the public pressure to regulate the issues. Numerous current examples are to be found in continental Europe, where national as well as EU administrative bodies hastily (over-) react to recent cases of BSE. The ban on certain foods for animals or the ban on imports of certain meats for humans reflects this situation: while there is still a considerable lack of knowledge about the reasons for BSE and the ways in which it could possibly infect humans governments have to act – or better – re-act to a public which sees basic elements of their everyday life under threat.

• Cost reduction
The BSE example reveals another reason for symbolic politics: in order to not only symbolically address environmental risks it would be necessary to gather further information. Since this is rather costly, governments refrain from it hoping that even mere symbolic action will result in the desired public consent of their electorate.

Whereas the aspects mentioned so far shed a rather critical light on SP there are also some more constructive ends to it.

• Integration by symbols
In industrial societies fragmented by division of labour in nearly all political, social, economic, and cultural fields environmental politics often has to tackle issues which affect society and all its sub-arenas as a whole. This problem specifically applies to risk regulation. A common example can be seen in waste management regulation. In this domain of environmental politics SP is quite helpful and emerges in various forms, tools, processes and instruments.

• Communication of abstract scientific concepts
Symbolic elements in politics are very useful in the entire context of communication about environmental risks. Risk is a psychological construction and political approaches to tackle risk find themselves regularly confronted with certain mental barriers. Symbolic elements of politics such as the use and creation of language (“regulatory newspeak”), the integration of environmental elements in government acts or even – as in Germany - the constitution, education programmes and other instruments target these issues. The dual waste management system introduced in Germany in 1992 is quite an expansive and in many aspect contestable piece of legislation. But there can be little doubt that the extensive inclusion of consumers in separating waste at home has fundamentally changed the entire attitude of people

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towards the environmental impact of consumer behaviour. Though many regulations in the end have rather contestable material benefits in terms of waste minimisation recent legislation has significantly shaped the relevance of environmental issues for consumers and companies in Europe.

4. A conceptual framework for Symbolic Politics in environmental politics

As described above, governments might find a variety of reasons to utilize symbolic elements in their regulatory approach to environmental issues. This leads to the question why - if after all these symbolic elements are not “real” – governments still find it effective to use them as a instrument of environmental politics. We could answer this question on various levels. First, we could interpret the necessity of symbolic use of politics as a symptom of institutional failure in modern societies. As Beck, Giddens and others have pointed out environmental degradation is a consequence of modernization but modern societies do not dispose of the appropriate institutional fabric to tackle these self-imposed problems (Beck et al., 2000). Consequently, the present age of “reflexive modernization”, the age of coping with self-imposed threats to our ecological environment generates new requirements for environmental politics, which ultimately aim at a deep and thorough reform of the institutional set-up of modern societies. In this paper however we will take this institutional fabric of modern societies as a given and rather look at how corporate actors can strategically respond to regulators utilizing symbolic elements in the legislative framework for business.

The theoretical framework for this analysis is a combination of the stakeholder approach with the approaches of new institutional economics, especially the transaction cost approach and the principal-agent-approach (Matten and Wagner, 1999). Figure 1 gives an overview over the different actors involved and their respective relations.
According to the interest group theory of government (Stigler, 1971; Mitchell, 1990) governments have to serve different groups, which we would call stakeholders, who are defined by the fact that they are somehow effected by governmental actions and/or whose rights are touched upon by governmental interference (principle of corporate effect, principle of corporate rights, see Evan and Freeman, 1993). For our analysis we can confine ourselves to business on the one hand and the general electorate on the other hand. The relation between government and the single stakeholder can be interpreted as a transaction. With regard to the general electorate this transaction consists of two elements: the government “delivers” political action – in our case this would be certain environmental regulations – which protects the interests and rights of the general electorate, which in return provides the government with the necessary (democratic) consent. Transactions are defined as an exchange of property rights within an institutional context and in our case, the interrelated exchange of legislation (granting - or at least protecting - property rights, such as health, property in the narrow sense, recreational functions of nature etc.) on the one side and consent on the other (transferring certain property rights for a fixed period to a government) can be very well interpreted as a transaction in this theoretical sense.

The other important stakeholder in this context is business. The transaction relation between government and business is characterized by a different approach:
Governments provide business with a regulatory framework, which is – if it is running according to business’s agenda – favourable to their interests. This, in our context, would normally imply environmental regulation, which does not inflate their cost structure or otherwise threaten their competitive position in domestic and international markets. Business, on the other side of the equation, provides government with tax payments, either direct through taxes on corporate gains or indirect, by generating other taxes such as VAT and – most important – providing the basis for income taxation. The latter aspect is closely related to another aspect namely the fact that corporations nowadays assume virtually the main responsibility for employment, which is probably even beyond taxation the most important function of business for governments.²

Governments have to keep the transaction relations to all stakeholders running and it is exactly this simultaneous interaction with all stakeholders that creates the necessity for SP in modern societies. If we focus on the two most important stakeholders in the context of this analysis government hast to issue regulation which on the one hand satisfies the demands of their general electorate but at the same time does not threaten the relationship to business, most notably, does not result in alterations of the political framework which might result, for instance, in relocation decisions with the consequence of job losses. From this angle, the contradictory character of SP appears to be nothing more than the rational reaction of governments to contradictory demands of their stakeholders (Hansjürgens, 2000: 145).

5. Business and Symbolic Politics – A double role

How should business react to this phenomenon of SP? There are two sides to the answer to this question. First, business can be regarded as addressee of SP following directly from the stakeholder view of government, which is the trivial side of the problem. More complex though is a second aspect. The more government

² There are still other elements in the relation between government and those two relevant stakeholder groups, but these are the most important ones in this context. So, for instance, also the general electorate pays taxes, but this is not something, which, in case government issues regulation which they dislike, could be withdrawn at a certain point (which is very well a constant threat as far as democratic consent in elections is concerned). And, on the other side, also business leaders vote and give government their consent. But this consent normally does not play a pivotal role since this social group normally only is a minority.
utilizes SP the greater the number of “real issues” remain unsolved. In nearly all of the examples cited above, SP has led to a situation where business had to tackle – to a greater or lesser extent – the unregulated issues itself. The example of the CSCWMA even shows that this in many cases of SP is another intention of the government: SP is not simply utilized in order to satisfy the general electorate while at the same time allowing industry to carry on with business-as-usual; SP rather serves as tool by government to encourage various elements of self-regulation. And in fact, most other governmental initiatives to encourage industrial self-regulation of environmental issues have this strongly symbolic element: governments signal clearly, that they are aware of the issues and that they want to have a solution to it – but at the same time they hand over the concrete realization and breakdown of these issues to the private actors. In the case of the CSCWMA, this law in fact encouraged and initiated several private initiatives to install company- or branch-wide take-back schemes and various voluntary agreements across industries. However, as soon as private actors assume the role of a political actor in environmental (self-) regulation, SP becomes an important tool within the range of their own instruments of environmental politics, as we will discuss in more detail below.

5.2. Business as addressee of symbolic politics

The simple question one might ask with regard to SP is why the general electorate is “stupid” enough not to see through the fact that a certain piece of regulation is mostly symbolic. If we analyse the role of SP from the perspective of new institutional economics we have to say that SP only works if there is an asymmetric distribution of information between the general public on the one hand and business and government on the other side. This could be described as a situation of moral hazard where one partner of the transaction is not able to control the performance of the other partner. The main reason in environmental politics is that the general “lay-“ public is not able – or only at prohibitively high costs of information search – to monitor the effectual implementation of environmental laws. There are

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3 It is obvious, that there are still more and diverse reasons for governments utilizing self-regulation in their portfolio of various instruments of environmental politics. This paper just confines itself to the aspects of self-regulation ensued by SP.
some fields where this transparency is particularly low – where SP consequently is more common – and there are other areas where transparency is higher. The latter areas are typically all those environmental issues, which pertain to nuisances, which are directly perceptible, such as noise, smoke, smell, or visible pollution of rivers or land. Less transparent areas are particularly those fields where either the environmental problem is not directly perceivable, such as various types of risk issues, or where the regulation involves complicated technical procedures and a broad variety of actors. The typical example of the latter could be the implementation of EU directives: lengthy procedures of implementation, multi-layered systems of bureaucratic enforcement and a variety of national specific exceptions from the rules have led to a situation where EU laws could be regarded as one of the vastest areas of SP (Karl, 2000). In the example of the CSCWMA, the symbolic character of the act is virtually only recognized in expert discourses, whereas the general public lacks the information to assess the actual scope of the legislation.

5.2. Business as user of symbolic politics

As indicated above, one consequence of the extensive use of SP by governments is a stronger political role for business, be it for the single company or a branch or an entire industrial sector. Privatization of environmental regulation however requires substantial awareness on the side of industry for the symbolic elements of their measures. This symbolic element, which is generally a decisive element in the firm’s environmental management system, has to be explicitly addressed and requires a corporate infrastructure, which is able to address the political issues. This is by no means self-evident: the textbook case for corporate learning in assuming the role of a political actor still is the Brent Spar incident of Shell in 1995. But there are numerous examples to be added. The crucial element seems to be that companies have to be aware of the fact the public assesses their actions in environmental issues with a certain normative judgement and the corporation has to know which are the public’s political preferences and effectively communicate that it actually lives up to these requirements. This requires a new orientation of the public relations and/or marketing functions of the corporation: the traditional focus on customers and other direct business partners has to be broadened in order to include
the variety of all those stakeholders, which play a role in the public acceptance of corporate actions.

6. Corporate strategic responses to symbolic politics

As discussed in section 5 there are two dimensions to SP from a corporate perspective: On the one hand, corporations can be the addressees of SP. The crucial factor for this to work is the degree of transparency in the regulated field of politics. SP only works, if there exists an asymmetric distribution of information between the general public on one side and governments and/or industry on the other side in the social arena of the regulated issues. On the other hand, corporations become the users of SP. The condition for this is, that corporations are involved in the political process and that their activities are subject to public acceptance of their stakeholders. The more this is the case, corporations have to become aware of the fact, that their environmental politics has to integrate this symbolic element. Given these two dimensions of the relevance of SP for corporations the strategic responses can be described in a matrix, which is depicted in Figure 2. One could identify four different sectors leading to four typical strategic responses to SP.
Figure 2: Corporate strategic responses to symbolic politics

The first case (sector 1) is the rather trivial case where a company is active in an area of environmental issues where there is low transparency but also low involvement in the political process. Low transparency implies that governments could make quite intensive use of SP which could result in considerable pressure on the company. But on the other hand the corporate involvement in the political process is low, which normally means that the public awareness of the corporate role in a certain environmental issue is considerably low. The cited case of EU regulation and the implementation of EU directives in national law could be regarded as an example here. So a recent study about the implementation of the EU directive on waste of electric and electronical equipment (WEEE) in Wales showed that despite the fact that this directive has become law, the enforcement process showed many typical elements of SP with the result that the companies potentially affected by the directive virtually were in a position were they could ignore or disregard the directive or where they could carry on just with the least required amount of implementation (Townsend et al., 2000). The typical reason for intransparency combined with low public awareness of the corporate role is a complicated political implementation process, which virtually hinders the announced regulation from having any effect on the corporation.

The case gets considerably different if we move on to the situation where the public is very much aware of the corporate role in the political process (sector 2). However, as the general public is not able to control whether the regulation really takes substantial shape the best reaction of corporation is to comply with the regulation (even if it has no real positive effect on the environment) and effectively communicate this to the general public. A good example here is the summer-smog ordinance in Germany, which has a very strong symbolic nature without any substantial difference from an environmental perspective; but at the same time ozone concentration in cities is subject to intense public scrutiny.

Moving on the sections 3 and 4 we are in a situation where the crucial condition for governmental SP is not very well met. This results in a situation where the general public, which at the same time to varying degrees counts among the stakeholders of business, is able to control if a certain legislative move by the government is only symbolic in nature. Consequently, it will be more on the side of
companies to actually fulfil the demands of the general public. If the public is very strongly interested in these issues, corporation have to be very careful to fulfil the demands (section 3). The above cited example of the CSCWMA in Germany is a good example. As public awareness of the corporate responsibility is high in those areas where the public has a direct contact (e.g. as consumers) to the regulated issues corporations not only have to assume a voluntary role in the legislation of the issues (for instance by self-commitments) but they also have to develop an effective infrastructure in order to communicate their activities. Their response to governmental SP then results in a use of symbolic elements in the communication of their strategies as well. A good example is the reaction of the car industry to the CSCWMA in Germany. Not only did they set up a private take-back scheme but also they were very successful in communicating this to the general public with the result that the environmental image of most German car manufacturers is still considerably high.

Another important element in this area is the use of industrial metastandards and the element of auditing corporate environmental performance, which is an integral element of these metastandards. ISO 14000 is one of the most common tools of corporate environmental politics because it signals to the general public that the company has certain measures in place. At the same time, it has a high symbolic content as well: ISO 14000 or the European EMAS (Environmental Management and Auditing Scheme) system does not certify the actual environmental performance of the corporation but rather certifies that the corporation has an environmental management system which lives up the certified standard (Rondinelli and Vastag, 2000). Despite these facts, industrial metastandards are increasingly popular in corporate environmental politics on an international scale: if a company is certified according to ISO or EMAS the symbolic content of the certificate helps to communicate a certain message to the public about the environmental awareness and performance of the corporation – regardless of all the differences in national legislation, culture and institutions (Corbett and Kirsch, 2001).

If the corporate involvement in the political process is low the situation for the company is especially delicate (sector 4). A good example is the decision of the German and Swedish government to exit nuclear power generation. This decision, especially in Germany is highly symbolic due to the long time span over which the exit is scheduled, without any immediate effect on the companies that run those nuclear power stations. The central problem for these companies lies in the fact that it
is highly uncertain if the public will accept such a policy which is clearly and for everyone identifiable symbolic in nature. A risk oriented strategy would be that corporations just hope that the public will accept SP and that the lifecycle of the issue will move into a phase with lower public acceptance – a strategy which seemed to have worked for the energy business in Germany so far. If however the public awareness is to be feared to mount than a more proactive stance might be the right strategy. In such a situation, SP would cause companies to anticipate that the corporate involvement in the political process might rise, resulting, as it were in a shift into section 3, which then would result in an anticipatory adoption of the strategies discussed for section 3.

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