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# FORUM

Invited article

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## TRANSNATIONAL GOVERNANCE REGIMES IN THE GLOBAL SOUTH: MULTINATIONALS, STATES AND NGOs AS POLITICAL ACTORS

While laissez-faire economy was the product of deliberate state action, subsequent restrictions on laissez-faire started in a spontaneous way. Laissez-faire was planned; planning was not. (Polanyi, 2001, p. 147)

### INTRODUCTION

Brazil recently experienced one of the world's worst environmental disasters when the Samarco mining company's Fundão tailings dam burst. This tragic disaster, which occurred on 5 November, 2015, killed 17 people, swept away a district of the town of Mariana, polluted the Rio Doce river valley and degraded the water supply of 35 towns, negatively affecting the lives of millions of Brazilians (Aragão & Paes, 2016), and even impacting the waters of the South Atlantic. This was the world's worst environmental disaster involving a tailings dam to date (Bowker, 2015). As of June 2016, polluted sediment was still washing through the river and Samarco had still not paid the fines imposed on it. The mining company, jointly controlled by Australian-based multinational BHP Billiton and Brazil's Vale, was previously recognized as a leader in environmental standards, receiving numerous international awards and certifications (as did its joint owners). Although it is still too early to confirm with any certainty, since the investigations are still underway, there is evidence that this disaster was the result of a lack of adequate regulation, both by the market and by the state (Phillips, 2015).

The Samarco case emphasises the dangers of allowing multinationals to operate without adequately monitoring their activities. There is an increased awareness that multinationals can cause serious problems for the environment, the workforce, the state, and communities at large. As many of these problems are transnational as well as national, they cannot be resolved by nations alone. However, creating international organizations through agreements between nation-states and then implementing international rules and legal sanctioning-mechanisms has proved problematic. Transnational social movements have used reputational mechanisms to embarrass firms in front of their employees, their customers and their shareholders when they have transgressed broadly-accepted standards. The goal of creating a structure that encourages good behaviour has led to the formation of systems of certified rules and labelling. In these multi-stakeholder contexts, social movements, firms and states have developed rules and monitoring systems that provide consumers, shareholders and states with certain guarantees. These ensure that particular products meet particular pre-agreed standards and they are labelled accordingly with recognisable badges, such as, for example, those of the Forestry Stewardship Council (FSC).

There are, however, multiple problems associated with this particular model, some of which are explored in our Forum. One of these involves competing labelling and regulatory brands, some established by firms to offer a more lenient regulatory regime than would otherwise be

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unacceptable if a transnational social movement were involved (Bartley, Koos, Samel, Setrini, & Summer, 2015). Another problem concerns monitoring and the considerable variations found in local contexts and practices that challenge the rather generic standards usually negotiated in global partnerships, such as in the case of aquaculture in Indonesia (Schounten, Vellema, & Wijk, 2016). The interaction between transnational social movements and national states is also problematic. States often legitimately claim authority over their territories and obstruct or object when transnational social movements become involved. This is especially an issue between states in the Global South, whose concern is with rapid development in order to reduce poverty, and social movements in the North, who often advocate caps on growth. Unlike governments, transnational social movements are not elected. On the other hand, governments can be subject to corruption that prevents hard laws, regulations and sanctions from being implemented properly, even when these governments have the capacity to do the job and a sufficiently extensive cadre of experts bound by bureaucratic rules and careers at their disposal. With these issues in mind, the focus of this Forum is on the development of transnational governance mechanisms, and how multinationals, social movements and states, particularly in the Global South, deal with the challenges they represent.

Drawing on Polanyi, we look at the transnational governance literature that is the subject of this Forum and consider three questions: (1) what is the role of the state within Polanyi's 'double movement' and the limitations of the state as a governance mechanism under globalisation; (2) how can transnational NGOs and social movements explore gaps in governance within capitalism as an alternative way of restraining the market powers exercised by MNCs, and finally; (3) under globalised capitalism, how can the Global South position itself within the global economy and the development of governance mechanisms.

## THE STATE, POLANYI, AND THE 'DOUBLE MOVEMENT'

Although 21<sup>st</sup> Century capitalism has its own unique features, its development can still be seen through the lens of Polanyi's 'double movement' (Block, 2008). Using this concept, Polanyi describes how social actors construct institutions that confine and regulate markets. Tension between two opposing forces tends to be a characteristic of capitalism. On the one side one has the pressure for a free market, a neo-liberal argument in favour of more self-regulating mechanisms. Free markets, however, tend to generate inequality and economic conflicts that threaten the

social order. This in turn creates pressure to tame these same markets by building institutions based on different principles, especially on the idea of citizenship and the rights of citizens to education, housing, healthcare and welfare provision and, more recently, a sustainable environment. The state has traditionally been the primary vehicle for providing such institutions, by using its monopoly over hard law and its tax raising powers to fund them. Thus, markets become socially embedded and free markets are no more than myths (Polanyi, 2001).

Nevertheless, the 'double movement' suggests that forces supporting the reduction of the state and the expansion of the market will continue their struggle to push the pendulum back the other way and away from the state. Block (2008) argues that the movement to disembed the market from society creates a great burden on ordinary people because they are obliged to endure the higher costs it implies. Consequently, the state's efforts are often necessary to ensure that these groups are able to tolerate such costs without engaging in disruptive activism. Thus, the 'double movement' creates a paradox, where the force of the state is necessary in order to impose the market logic and to control the associated risk of social disruption caused by increasing social tensions (Polanyi, 2001).

The Mariana disaster emphasises this paradox, paving the way for our first question about transnational governance: what is the role of the state in regulation as depicted in Polanyi's 'double movement'? Whilst one dimension emphasises the state as providing society with a safeguarding cushion to deal with the market's negative externalities, a second dimension emerges in the form of the need for state intervention as a counterweight to market influence. The Samarco case illustrates this issue, as concluded by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which visited Mariana a few months after the disaster:

(...) Federal and State authorities need to play a more active role in the disaster response. (...) While Samarco is responsible for repairing the damage caused, the State remains the primary duty bearer to uphold human rights of affected communities. (...) There needs to be a better balance in the power structure relating to investments to ensure that a regulatory or State framework (...) resolve the power imbalance that may allow irresponsible business practice to go unchecked. (OHCHR, 2015)

Such an analysis takes a traditional state-centred view of regulation; that is, failings on the part of the state were ultimately behind the Samarco disaster. However, the UNHCR view also points to the role of transnational forces in monitoring and

controlling markets. This is illustrated, in the Samarco case, by the role of the transnational social movement, Greenpeace, which has demanded justice for the victims, but has done so by using different methods, thereby reflecting the importance of going beyond Polanyi's initial formulation. Greenpeace Australia Pacific has organised protests at BHP Billiton's headquarters in Australia using information about the disaster received from Greenpeace Brazil to better inform its campaign (Greenpeace, 2015). This context emphasises that 21<sup>st</sup> century capitalism is global, not only due to the flow of capital and labour, but also to the rise of significant transnational actors and spaces interconnected via finance and networks of production (Morgan & Kristensen, 2012), which in turn creates new spaces for governance that are simultaneously embedded in local and global spheres.

We would suggest, therefore that one should add new levels to Polanyi's double movement. As firms become multinationals, and as social movements and problems become transnational and are no longer containable within national spaces, one must conceive new modes of governance that include and go beyond the nation state level and its capacity (or not) to regulate, monitor and control markets. In a complex globalised world, there are multiple potential levels of governance. In many cases, a transnational governance that is based on multiple stakeholders, all cooperating on building private/public hybrid forms of governance based on soft law and voluntary participation (where failure to participate generates significant competitive disadvantage and reputational damage) offers an essential complement to states. In contemporary capitalism, therefore, civil society at both national and transnational levels can play an important role in developing governance mechanisms. NGOs and social movements can assume the role of questioning and confronting such market powers by engaging with multilateral organisations or organising activities (e.g. campaigns and partnerships), in order to influence MNCs and their supply chains in favour of better practices (Perez-Aleman & Sandilands, 2008).

In this Forum, Vieira and Quack (2016) examine this question of how transnational social movements connect with national governance spaces, focusing on how local movements leverage transnational networks in order to influence domestic institutional regulation. They analyse the transnational mobilization of indigenous groups to influence the development of new institutions during the re-democratization period in Brazil. Identifying three trajectories of transnational mobilization between the 1960s and 1970s, Vieira and Quack show that transnational links created by these groups helped fashion a dense social movement able to influence national institution building. They analyse the links that bridge the local and global levels of this movement, and rather than just positioning actors

within these levels, they show the simultaneous embeddedness of state and social actors within both local and global spheres. Such links are key when analysing the capacity of transnational activism to change a local institutional context because actors use them to gain knowledge, organize, and leverage multiple levels.

Similarly, several papers in this Forum show the simultaneous interconnections that exist between the nation-state and the new spaces of governance. In the context of transnational markets and regulatory integration, countries in the South often lack the capacity to shape, implement, and benefit from global rules (Bruszt & McDermott, 2016). States in the South face certain challenges to improving their skills and resources in order to increase their capacities to produce national public goods. To achieve higher local capacity, the state must coordinate with civil society and global NGOs to complement resources and knowledge for addressing complex social and environmental problems (Schounten et al., 2016). Governments also create and leverage transnational alliances with other states, multinational companies, and global civil society organizations to develop their local economies. Srinivas (2016) shows how transnational forces influence the way in which local governments regenerate decaying urban infrastructure and manage development plans, whilst at the same time facing local civil society mobilization aimed at an equitable distribution of the benefits of national resources. Finally, as governments negotiate new global agreements and rules for regulating markets, transnational and local civil society demands to be included in global and local spheres so as to push for equitable and sustainable development (Delgado, 2016).

## TRANSNATIONAL NGOs AND SOCIAL MOVEMENTS AS GOVERNANCE ACTORS

How can transnational NGOs and social movements explore the spaces for governance that are emerging within 21<sup>st</sup> Century capitalism as an alternative way to restrain market power exercised by the MNCs? The phenomenon of transnational governance has emerged within contemporary capitalism as a result of the establishment of cross-border labour, capital and information flows and global supply chains. States have to compete for capital and foreign direct investment, and any 'excessive regulation' represents a potential threat to any competitive advantage they might offer. This feature of the neo-liberal order of recent decades, where states have shifted their focus to providing a favourable environment for foreign capital, has led to the offer of incentives to such firms in terms of reduced costs of doing business, lax taxation systems and a competitive edge on the back of reduced

regulation (Djelic & Sahlin-Andersson, 2006; Morgan & Kristensen, 2012). Such measures to reconfigure the state and adapt it to the current conditions of globalization have, however, frequently raised the level of discontent in relation to the broader order, either as a result of disasters, such as that involving Samarco, or the impact of crises like the Global Financial Crash of 2008, the Eurozone crisis, or the current slowdown in economic growth in China and its impact on leading commodity exporters, such as Brazil. This emerging discontent across national boundaries and the weak and ineffective government response to it has led to a search for other forms of resistance.

Transnational governance can assume two forms: soft law, such as certification, self-regulation, or co-regulated standards (public and private partners develop such standards together); and hard law, involving traditional command and control legislation (Djelic & Sahlin-Andersson, 2006). As hard law is difficult to achieve at the transnational level, soft law mechanisms tend to predominate although the two can be combined. For example, the US Lacey Act makes it illegal to import timber sourced from non-sustainable forests; having the seal of approval from the FSC is *prima facie* evidence of compliance with this rule. Therefore, in this case, soft law and hard law combine against the US importation of timber from unsustainable sources.

Transnational governance has three main characteristics. Firstly, it involves multiple public and private sector actors (e.g. companies, NGOs and states). Secondly, transnational governance is multilevel, encompassing local, national and transnational levels. Disentangling these different levels poses a challenge. Finally, it represents a steering form of governance, since its mechanisms are the outcome of different networks of influence and negotiation (Djelic & Sahlin-Andersson, 2006; Rasche & Gilbert, 2012).

Transnational governance has, however certain weaknesses. Are these systems accountable, for example? Certainly not to electorates. There is no real 'democratic' element to them, except perhaps obliquely through the role that democratically elected states may play, which is often weak compared to that of corporations. Transnational NGOs also offer limited accountability; their most important donors are often kept secret and policy is decided by officials that are often appointed rather than elected. Fontoura, Bharucha, and Bohm (2016) highlight the fact that civil society is not homogeneous and NGOs have their own distinct positions, as exemplified in the transnational agricultural and food system. While some NGOs advocate public-private partnerships, others resist or oppose partnerships with the state or firms. The arena of transnational governance is also a competitive space. This can allow big business to become the dominant player in a particular set of regulations as this leads to markets for regulation,

where there are multiple players operating in approximately the same space but with variations in the rules and mechanisms that apply. How are citizens supposed to understand these differences? How can these soft law systems ensure sufficient levels of monitoring and regulation that are protected from the influence of corruption? These are undeniably important research questions for the future.

The interaction between global standards emerging from multi-stakeholder partnerships in the North and local practices in the South is the focus of a paper by Schouten et al. (2016). In analysing the Aquaculture Stewardship Council experience in Indonesia, they show how global standards can transform and guide sustainable change in supply chains. This largely depends, however, on their flexibility and responsiveness to bridging the extensive gap between global norms and the great variety of local cultural, technical and political practices.

## The Global South and transnational governance

Why is transnational governance particularly important to the Global South? States in advanced economies have developed their regulatory systems over many decades. These have weakened somewhat under the impact of neo-liberalism and the discourse of deregulation, but they still maintain a role in many areas of social life. In structure, they are often Weberian bureaucracies that value expertise and neutrality in return for assured salaries and careers. Such systems also tend to have relatively well functioning hard law with a long tradition of jurisprudence and judicial neutrality. These systems can be corrupted, but in institutional terms, they tend to offer a degree of stability and path dependency that makes state regulation work, to a greater or lesser extent. These then constitute part of the state's capacity in advanced economies.

By comparison, nations in the Global South have widely varying capacities on this front, largely the result of their colonial past, civil wars and conflicts and traditions of authoritarianism, militarism and corruption. Efforts to develop state capacities along the lines of a Weberian bureaucracy struggle against rent seeking and notions that the state should 'belong' to a particular class, group or nationality. Reformers in the Global South struggle to create state capacities that are legitimate to the constituents and function as neutral instruments for the benefit of society as a whole. Creating a state regulatory system is a difficult process.

Recently, some authors have suggested the idea that transnational governance systems could work as substitutes for weak states in terms of building institutions in particular localities. However, this view further undermines the scope for populations to create their own spaces of governance. It could also lead to



conflicts between Global South states and NGOs, and Global North transnational social movements and states seeking to impose their agendas on the South. Whilst problems are global or transnational and impact broader populations, they are often specifically located in particular states. As Fontoura et al. (2016) illustrate, civil society does not speak with one voice, and in the context of food and agriculture, there are substantial differences in the positions and alternatives proposed by NGOs from the South and those from the North.

Furthermore, the Global South now constitutes a driving force within the global economy. The MNCs from developed countries have eagerly expanded into the Global South in their search for new markets and production centres to take advantage of cheap labour, existing natural resources, and weak regulatory systems. There is, therefore an urgent need for institutions and processes that can improve or resist market forces in the Polanyian way in these countries. Whilst creating cross-governmental international alliances as the BRICs did at the Copenhagen climate talks might be helpful, more effective would probably be to develop strong transnational governance mechanisms that link local populations and state agencies into effective alliances with powerful NGOs. This might then help shape agendas and create institutions that socially embed market processes.

How the Global South benefits from transnational governance is an issue addressed by several papers in this Forum. For example, Delgado (2016) examines the Nagoya Protocol Access and Benefit-sharing mechanisms developed to protect local communities from bio-piracy. Though traditional knowledge is an important source for new drug development, few indigenous communities receive any benefits from their knowledge. More commonly, groups face exclusion as knowledge and bio resources become privatised. Delgado examines how global regulation travels to South Africa, India and Peru, where it only materializes when translated into local practices. She concludes that transnational governance is established through translation processes and assumes new forms and uses depending on the interests and experiences of the local actors. Each translation can be understood as a form of resistance to exclusion in global environmental governance.

Srinivas (2016) analyses mega-events, such as the Olympics and the FIFA World Cup, as a form of transnational governance through which ideas and capital flows. Mega-events influence urban redevelopment, reconfiguring declining urban areas and building new infrastructure, while weakening the historical rights of urban residents. Additionally, Srinivas argues that mega-events also link local urban management and development to new transnational management alliances between market and state actors. As mega-events shift to the

South, he argues that local elites might begin to foster social and political reforms, drawing on international capital and ideas, while lacking national popular support.

Moreover, Bruszt and McDermott (2016) conceptualize dramatic variations in the capacities of public sector and non-state actors to define, implement and benefit from transnational regulation arising from regional and global integration strategies. The inclusion and empowerment of diverse domestic private and public sector actors in the design, monitoring and joint problem solving of transnational governance systems will affect the developmental and distributive outcomes in the Global South. The differentiated capacity of states, NGOs, and firms influences the distribution of economic benefits and the possibilities for local development.

Finally, Nogueira (2016) reviews Mark Schuller's book on humanitarian aid to Haiti. Nogueira emphasises how social and economic factors prevent Haiti's civil society and state from influencing the international aid system, largely because they are in too weak a position to compensate for the failures of international aid. Completing our Forum, Paola Perez-Aleman and Glenn Morgan recommend ten books that they consider classics of literature on this subject and also new and interesting books they consider as cutting edge in the field of transnational governance.

In this Forum we bring together a range of papers addressing this interaction between states, firms, social movements and transnational governance mechanisms in an effort to heighten awareness of the importance of this area of social research and its implications for public policy. We hope to encourage readers to examine the development of transnational governance in more depth and to consider its promise, limits, and challenges in terms of promoting a better world for all.

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