Who Rules the Global Rule Makers?

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Thirty years of misguided deregulation have brought us the 2008 collapse. Two books look at how we should create new rules democratically. While adopting widely different perspectives, both beg the same question: can rulemaking alone ensure the wellbeing of people in a global society?

Reviewed: Tim Büthe and Walter Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton University Press, Princeton, New Jersey, 2011; and Vibert, Frank, *Democracy and Dissent: The Challenge of International Rule Making*, Edward Elgar, Cheltenham, UK, 2011.

The world looks expectantly to the meeting of the G20 in Cannes in November for a solution to the global crisis. We don't look to a world government, but at least it is a gathering of the government leaders of the richest and most populous countries. Yet we are already prepared for disappointment. For after all the press circus, high level gossip and photocalls, what will the outcome be? Predictable declarations of intent, statements of principles, references to rules and rule-making bodies like the Basel group of central bankers. We will not feel the smack of firm global government, only the grip of "global governance."

It ought to be reassuring that we refer to the vast and ever developing fabric of international standards, rules and regulations, from which no government can escape with the ancient French word “gouvernance”. It nicely conveys how the benefits of peace and civil order are only available when rules of social life, of co-existence and co-operation, enjoy widespread acceptability. But when we speak of “global governance”, justice begins to appear far removed from our daily lives. In a democratic nation-state, we accept the legitimacy of laws and regulations and demand that those responsible for their creation and for their implementation should be publicly accountable. But who are the authorities in global governance? And how can we, now a “global public,” have any part in the process or exercise any kind of democratic control?

The democratic control and public accountability of those who make the rules in global governance is what concerns two recently published books. The fact that they address the problems of global rule-making in very different ways and quite independently of each other testifies to its complexity and current importance.

Is global accountability possible?

Tim Büthe from Duke University in North Carolina and Walter Mattli from Oxford have conducted empirical research into the power structures of the International Organization for Standardization (ISO) and the International Accounting Standards Board (IASB). In *The New Global Rulers*, they stress that, despite their vast influence globally, these organizations are basically consortia of private interests and they ask how public accountability can be assured.

Frank Vibert from the London School of Economics examines in *Democracy and Dissent* some of the current answers to that question. He questions the validity of two existing models of global accountability. The first, "multi-level governance," relies on the international networking of experts and civil society actors with government agencies to expand the sources of authority for global regulations. The second, the "diffusion approach," relies on national governments to represent their electorates' views on rules which international experts have crafted. For him, neither on their own solves the problem of the democratic deficit.

Both books then are concerned with what democracy might mean in a global society. With their very different methodologies and conclusions, they illustrate how fundamental the issues are and how difficult it is to find agreement on first principles even among those who, like these authors, are deeply committed to the improvement of global governance.

An example of the difficulties is an issue both books address, namely whether a system of global regulation can replicate national systems, in the sense of adopting the same methods of democratic and expert involvement in rule creation and administration. Büthe and Mattli find much to recommend in the European system of creating product standards. National standards boards in Europe are private organizations representing industry bodies, all of which in turn are members of ISO. But over the last twenty five years, the European Union has been increasingly active in enforcing a wider public interest requirement on these boards through the Comité européen de normalisation (CEN). In 1992 CEN agreed to introduce new "social partners" into membership, such as consumer bodies and trades unions. The European Union has also issued a "Directive on General Product Safety" which authorizes greater government supervision of the standards agencies. Büthe and Mattli see these measures as steps in the direction of improving public accountability, which need to be replicated at the global level. It is also an example for them of the merits of "institutional complementarity" where an international standards body, in this case European, secures a common environment for national standards bodies and increases their strength globally. In looking at the relative competitive advantages enjoyed by American and European firms in the global market place for products and finance, they argue that American firms are disadvantaged compared with their European competitors because they have no coherent national system for product standardization, although the converse is the case in respect of global financial standards. Basically, national firms gain when an international standards body is organised in a way that mirrors the way their own national standards bodies operate.

Vibert on the other hand is sceptical that a system of global regulation will be able to replicate the democratic national arrangements. Congruence between national and international institutions is very difficult to achieve given the diversity of the former and the rapidity of change. Moreover, attempts to secure some overriding consensus on basic values only draws attention to the lack of any democratic way of achieving this at a global level. Vibert doubts whether either environmentalism or human rights contain the potential for a democratic consensus that can operate globally.

Should national and international complementarity be pursued?

There is an underlying difference of emphasis that underlies these different outlooks on national and international congruence or complementarity. Aside from the question of national competitiveness which clearly drives Büthe and Mattli's research, they are concerned with the public benefit in the broadest sense. Although they report how the European Parliament in 2008 criticized the lack of transparency, legitimacy and accountability of the International Accounting Standards Board (IASB), they implicitly judge the European approach of combining public and private participation in product standardization as closer to democratic principles than American reliance on private business interests in finance.

On the other hand, Vibert's analytical study of the varieties of rulemaking currently to be found at the global level finds no particular democratic advance in a mix of public and private participation in global rule-making bodies. For him the fundamental weakness is procedural, the lack of opportunities to expose the rule makers to critical judgement, both from expert review and from democratic scrutiny. He argues for external experts to monitor and challenge embedded experts in the rule-making bodies. He also wants governments to submit international agreements to their electorates.

These different views on improving global governance illustrate the complexity and even contradictory nature of the ideas that we try to contain within our current thinking about democracy. It is ironic that Büthe and Mattli should commend the European precedent for combining public and private spheres in the regulatory process, when it is precisely in such European institutions where critics are so vocal in lamenting the democratic deficit. When Vibert advocates the creation of a sophisticated set of rules to govern the processes of creating rules, it suggests the philosopher king in Plato's Republic rather than the participatory democracy of ancient Athens. Both books assume global governance is here to stay, but neither engages with the calls for deregulation which feeds growing nationalist sentiment in both Europe and the United States.

How to set the right rules?

Yet these are serious and searching accounts of the importance of rules and of the ways rules are made for the workings of the economy and for political and social life generally. The catastrophic experience of the global economy in the last three years illustrates what thirty years of misguided deregulation can bring. After the Reagan/Thatcher scrapping of capital controls, nothing has had more disastrous effects than the repeal of the US Glass Steagall Act which protected the ordinary American's bank deposits from being used to fund the speculative activities of the bankers, thus providing the launch pad for the financial excesses that led up to the 2008 collapse.

Deregulation clearly has proved disastrous, but then neither can increased regulation be a panacea. Unfortunately neither making nor dismantling rules and regulations are processes that can be undertaken in full knowledge of the consequences. In that respect regulation and deregulation are similar. What we need are rules which are appropriate for the changing circumstances, and bodies that can ensure this happens. Whether this is done at local or global level depends on the substance and content of what is to be regulated.

Rules with global scope can and frequently do have as much routine, taken-for-granted daily acceptance as any approved by national legislators. We are probably quite relaxed about the way the International Telecommunication Union (ITU) allocates the wavelengths for our television reception. Founded in 1865, now with 193 member countries and over 700 affiliated bodies, it has a claim to be the oldest organization with an explicit globalizing mission, and here national rivalries give way to a general acceptance of the need for co-operation that is at the opposite pole of what happens in finance.

The contrast with economic globalization and financial regulation is profound. In particular with the global integration of capital markets, a toxic mix of national and regional rivalries and competing demands for regulation and deregulation has stifled any chance of world economic recovery in the last three years. At the London crisis meeting in April 2009 the G20 leaders pointed in their final communiqué to major failures in the financial sector and in financial regulation and supervision as fundamental causes of the crisis. They agreed on the need to strengthen financial regulation to increase trust and set up a new Financial Stability Board (FSB) including 24 member countries, 6 international institutions and 6 standard setting bodies (including IASB and the Basel Committee on Banking Supervision). The work of the FSB and its committees has continued ever since, but although last year new rules (Basel III) were agreed on bank capital and liquidity, they have yet to win legislative approval in Europe and elsewhere and are not due to be fully implemented until 2019! This will hardly relieve the current crisis while the banking industry worldwide is engaged in a rearguard action to amend what has already been agreed and while national leaders seek to defend whatever competitive advantages their own banks have.

The authors of these two books agree that the process of global rulemaking should come under closer public scrutiny and be subject to more expert debate. Yet they probably demand too much of rule making. Democracy is as much about the public will as it is about law and order. The question they beg is how far rulemaking in itself is adequate for ensuring outcomes that promote the wellbeing of people in a global society. Rules are no substitute for agreeing policies and sharing projects to combat poverty, promote health and protect the environment. We may all stick to the rules, pay our taxes faithfully and yet be ruined by rampant inflation.

In this respect our common global future may not be best served if the G20 meetings appear to be a quasi-legislative occasion, concerned with drafting complex rules. Global leaders are better occupied in crafting big interventions and the most powerful among them should provide the initiatives that will restore confidence in the global economy. If Barack Obama and Hu Jintao were to lead a joint long-term programme to develop green energy it would do more than any new banking rules to create the belief that there will in the future be a reward for investment and hard work in the present.

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