

Ethics Codes, Corporations and the Challenge of Globalization

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9. Three Questions about Corporate Codes: Problematizations, Authorizations and the Public/Private Divide

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INTRODUCTION

In recent years codes of corporate conduct have stirred a great deal of interest and controversy. This is a function, in part, of a growing conviction that many contemporary problems – the environmental crisis, globalization, etc. – increasingly challenge or exceed the capacities of conventional governmental institutions to respond to them effectively. Interest in codes and the accompanying controversy over their place in the governance of business are likely to intensify as the search continues for solutions to the puzzle of how to govern actors and processes that increasingly seem to elude regulation. There are not likely to be any simple solutions to this puzzle. One thing seems clear however: experimentation with and disputation over codes of corporate conduct are likely to continue for the foreseeable future.

This chapter is not an attempt to forecast the future of codes of corporate conduct. Nor is it an attempt to set out a normative vision for the future role of codes in the governance of business, society, environment or state. My goal in this chapter is more limited: to consider the questions we should be asking about codes as their role in the governance of corporate conduct unfolds. While the list of such questions is potentially unlimited, I would like to single out three that have been largely overlooked in scholarly and practical debates. They are:

1. What are the problems for which corporate codes are offered as solutions?
2. How is the authority of codes and the actors who promulgate them

established?

3. Is it useful to think about codes in terms of an opposition between public and private?

If these questions sound odd to those familiar with contemporary debates about corporate codes, it is because they are intended to excavate some of the foundations of these debates rather than entering the debates on their own terms. I believe that asking these questions will help to deepen our understanding of corporate codes at a time when experimentation with their use in the governance of business, state, society and environment is intensifying.

In this chapter I discuss codes of corporate conduct in terms of 'governance'. As I use the term, 'governance' refers broadly to any and all calculated efforts to steer or direct the conduct of the self or others. It also refers to the overall effects that emerge in socio-political systems as a result of these interacting efforts (see generally, Foucault 1991; Burchell, Gordon and Miller 1991; Rose and Miller 1992; Kooiman 1993; Hunt and Wickham 1994; Rhodes 1994, 1996; Rosenau 1997; Dean 1999; Rose 1999). In this view 'governors' include not just state actors but authorities of all kinds, from schoolteachers to psychiatrists, from factory bosses to fashion designers. The targets of governance are equally heterogeneous, ranging from the self, to others, to entire populations, societies, states or international systems (Rutherford 1999). Governance includes what we traditionally think of as 'government' – states, legislatures, government agencies, courts, etc. – but also all the other sites in the world where efforts to exercise authority are undertaken (see Rosenau 2002, p. 71).

There has recently been a massive surge of interest in governance understood in these broad terms. This interest is found in debates about self-organizing networks (for example, Rhodes 1994, 1996), socio-cybernetic systems (for example, Kooiman 1993), 'governmentality' (for example, Foucault 1991), regulatory reform (for example, Osborne and Gaebler 1992), 'governance without government' (for example, Rosenau and Czempiel 1992), 'good governance' (for example, World Bank 1992) and international or global governance (for example, Rosenau and Czempiel 1992; Commission on Global Governance 1995; Hewson and Sinclair 1999; Held and McGrew 2002; Wilkinson and Hughes 2002). It is found in a renewed fascination with decentralized and non-state systems of authority in international studies, law and the social sciences generally. And of course it is found in the widespread contemporary fascination and experimentation with 'corporate social responsibility', of which codes of corporate conduct are a leading example.

Codes of corporate conduct are concerned fundamentally with governance. They seek to govern the conduct not just of corporations and their managers, but – more subtly – a whole range of other actors including investors, workers, customers, suppliers, creditors, insurers, competitors, consumers, citizens, local communities, 'civil society' organizations, legislators, regulators, inspectors, prosecutors, judges and international organizations. Examining codes as instances of governance is a useful way to explore their manifold dimensions and implications.

ILLUSTRATION: ENVIRONMENTAL MANAGEMENT SYSTEMS (EMSs) AND EMS STANDARDS¹

Throughout this essay I will use the example of environmental management systems (EMSs) to illustrate what it might mean to examine codes of corporate conduct as instances of governance. Let me start by introducing EMSs and the ISO 14000 EMS standards.

An environmental management system (EMS) is a structured framework of policies and procedures which enables an organization to identify and manage its environmental impacts in a systematic way. Most EMSs are based on the cyclical 'Plan-Do-Check-Act' (PDCA) model. The PDCA cycle is intended to result in an upward spiral of 'continual improvement' in which the quality of an organization's management system and environmental performance are steadily improved.

The management systems approach first became popular in business in the 1970s and 1980s as part of the 'total quality management' movement. It spread quickly beyond quality assurance to other management fields, including environment and occupational health and safety. By the early 1990s many business firms, management consultants, consumer groups and standardization bodies were interested in developing uniform standards for environmental management systems. National standardization bodies in several countries began to develop voluntary EMS standards. The European Communities followed shortly with their own voluntary Eco-Management and Audit Scheme (EMAS) which took effect in 1995 (Council of the European Communities 1993).

Even before any of these initiatives were finalized, the International Organization for Standardization (ISO),² the premier source of global technical standards for business, got into the game. Established in 1946, the ISO's mandate is to promote the development of standards with the goal of facilitating international trade and fostering intellectual, scientific, technological and economic cooperation. It is a federation of approximately

one hundred national standards-setting bodies, representing virtually all the advanced industrial countries, the principal countries of the former Soviet bloc and the larger or more advanced developing countries. The majority of participants in ISO standards development are drawn from the industries that make use of the standards. The expense of participating in this work makes it difficult for many developing country, consumer and environmental representatives to participate effectively.

Standards quietly permeate every aspect of our everyday lives. They govern everything from screw thread sizes to bicycle helmet design. For all their pervasiveness, however, standardization bodies and their standards keep a remarkably low profile. Many people have heard of ISO photographic film speed ratings. Some have been momentarily curious when passing a highway billboard declaring a factory to be 'ISO 9001 Certified'. Some consumers may recognize and feel vaguely reassured by standardization bodies' symbols on consumer products. But this is the extent of most people's knowledge of ISO or other standardization bodies. These influential yet little-known bodies have gone almost entirely unnoticed in the recent wave of public controversy and grassroots protest regarding globalization and corporate power that has engulfed the major intergovernmental trade and financial institutions. Nonetheless voluntary standards and the organizations that develop them have significant implications for corporate conduct, environmental protection, economic development, politics and governance.

In the early 1990s, responding to requests from consumer groups, industry and the organizers of the 1992 Earth Summit, ISO decided to take a leadership role in the development of global standards for corporate environmental management. In 1993 it established a new Technical Committee, TC 207, for this purpose. From the beginning ISO's work in this field was characterized as an important part of global industry's contribution to the goal of 'sustainable development'. The approximately twenty-five standards so far developed by TC 207, known as the ISO 14000 series, address various subjects including environmental management systems, environmental performance evaluation, life cycle analysis and ecolabelling.

Two EMS standards, ISO 14001 and 14004, form the core of the ISO 14000 series. ISO 14001 is a 'specification standard', prescribing, in concise terms, EMS requirements that may be audited for purposes of third party certification or self-declaration (ISO 1996a). ISO 14004 provides more detailed guidance on the design and implementation of EMSs (ISO 1996b). Both are voluntary in the sense that individual organizations choose for themselves whether or not to implement them. Revisions of ISO 14001

and 14004 were launched in 2000, but are not supposed to result in fundamental changes to either standard.

From the beginning the scope of the ISO 14000 series was defined to exclude environmental performance standards. As a result, unlike many other voluntary environmental codes, ISO 14001 and 14004 do not require or encourage any particular level of environmental performance. Rather they provide a procedural framework within which organizations can set and achieve whatever environmental performance goals they decide.

An EMS based on ISO 14001 or 14004 has five main elements. First, an organization's top management must define an environmental policy and make it available to the public. The policy should include commitments to 'continual improvement', 'prevention of pollution' and compliance with relevant environmental laws and 'other requirements' to which the organization subscribes, such as voluntary codes of conduct or trade association membership rules. While 'continual improvement' is understood outside ISO as involving improvement of environmental performance, ISO 14001 and 14004 define it primarily in terms of improvement of the management system. While 'prevention of pollution' is usually understood as the reduction of pollution or waste at source, ISO 14001 and 14004 define it to include end-of-pipe pollution control. Finally some EMS professionals interpret the 'commitment to compliance' to require actual compliance with all applicable laws while others understand it only as requiring the organization to have in place an effective system for dealing with noncompliance.

The second element of an ISO EMS is a planning process. An organization must put in place procedures to identify all the environmental aspects of its activities, products or services that it can control and influence; to determine which of those aspects have or can have significant environmental impacts; and to identify the legal and 'other' requirements that apply to its environmental aspects. It must set environmental objectives and targets, taking into consideration, among other things, the views of 'interested parties'.³ Finally it must develop management programmes which specify how, when and by whom objectives and targets are to be achieved.

Implementation and operation make up the third main element of an ISO EMS. The organization must define roles and responsibilities required for the operation of the EMS and communicate them to the relevant people. It must appoint a management representative to oversee the EMS and report to top management on its performance. It must ensure that the EMS has adequate resources. It must ensure that any environmentally significant operations are carried out under controlled conditions to avoid deviations

from its environmental policy, objectives or targets. It must ensure the competence and awareness of all personnel performing tasks that can cause significant environmental impacts. It must ensure that key aspects of the EMS are documented and that all EMS documents are properly controlled. It must have emergency preparedness and response procedures. Finally it must have procedures for internal communication about environmental management. As to external communication, the organization need not disclose any information externally beyond its environmental policy, nor must it establish any mechanisms for consultation with external audiences beyond receiving and responding to complaints or inquiries. It may refuse to disclose information about its environmental impacts, objectives and performance, as well as other information about its EMS. In these respects ISO 14001 and 14004 run counter to the contemporary trend in industry to acknowledge the value of transparency and public participation in environmental matters.⁴

The fourth major element of an EMS is checking and corrective action. The organization must put in place procedures to monitor and measure all the key characteristics of its operations and activities that can have a significant impact on the environment, and to evaluate periodically its compliance with environmental legal requirements. It must have procedures for investigating failures of the EMS, mitigating any resulting environmental impacts and taking corrective and preventive action. Finally it must conduct periodic internal audits of the EMS.⁵

The final element of an ISO EMS is management review. Top management must periodically review the EMS 'to ensure its continuing suitability, adequacy and effectiveness' (ISO 14001, clause 4.6). Management review is intended to result, where appropriate, in changes to the EMS. It closes the PDCA circle and fosters continual improvement.

EMSs have spread rapidly through both the private and public sectors in recent years. While ISO 14001 and 14004 are not the only EMS standards, they have quickly emerged as the most popular. The number of ISO 14001 registrations worldwide has grown at a remarkable pace since 1996, reaching almost 50000 by December 2002 (ISO 2003g; see also International Network for Environmental Management n.d.).⁶ Some multinational corporations, including some major automobile manufacturers, now require their suppliers to have ISO 14001-style EMSs in place. Public authorities in numerous jurisdictions have begun to incorporate EMSs into their governance strategies (Coglianese and Nash 2001a; Wood 2002-03, 2003). Nonetheless whether EMS standards will become requirements for private- or public-sector organizations or will fade into irrelevance remains to be seen.

Three Questions about Codes

With this overview of EMSs and EMS standardization in mind, I turn to the three questions I posed in the introduction: (1) What are the problems for which corporate codes are offered as solutions? (2) How is the authority of corporate codes and the actors who promulgate them established? (3) Can we make sense of corporate codes in terms of an opposition between public and private?

WHAT ARE THE PROBLEMS FOR WHICH CORPORATE CODES ARE OFFERED AS SOLUTIONS?

Codes of corporate conduct are typically understood as attempts to solve problems, from negative brand image to human rights abuses. It does not take much imagination, however, to see that governance, through codes of corporate conduct or otherwise, is more than a problem-solving enterprise. To govern is not just to attempt to solve problems, it is also to invent them.

Problematizations

Problematizations can be understood as those moments in which particular aspects of human conduct come to be viewed as problematic and in need of intervention (Dean 1999, pp. 27-8; Rose 1999, pp. 20-22). Problematizations underpin all efforts to govern human conduct. They are present whenever any aspect of personal, collective or institutional conduct comes to be viewed as problematic and in need of intervention, from obesity to police brutality to corporate accounting practices. Yet they tend to be taken for granted in public and scholarly debates about codes of corporate conduct and governance generally. While plenty of attention is devoted to the question of whether and how corporate codes might or might not solve given problems, not enough attention is paid to the question of how particular aspects of conduct come to be experienced as problematic in the first place.

Problematizations have effects. They provide a kind of intellectual machinery for rendering reality thinkable, rationalizable and hence governable (Gordon 1980, p. 245; Rose and Miller 1992, p. 179). They put in place a specific way of knowing spaces, persons, problems and objects in relation to which governance projects can be articulated (Rose 1999, pp. 26-7). Not only do they define what appears to be a coherent problem – tropical deforestation, sustainable development, terrorism, etc. – they

condition the field of possible interventions upon that problem and the range of authorities or institutions best suited to make these interventions (cf. Hajer 1995, pp. 62-3). They can alter what is experienced as 'out of place', for example transforming smoke stacks from signs of progress to signs of trouble (ibid., p. 64). They presuppose governed 'subjects' in specific ways: as responsible citizens with rights and duties, consumers with preferences, members of a flock to be led, human resources to be exploited, stakeholders to be consulted, etc. (see Burchell 1991, p. 120; Rose 1999, pp. 40-47; Rose and Miller 1992, p. 179; Dean 1999, pp. 32-33). By privileging particular problem definitions, they can marginalize alternative ways of conceiving and addressing problems and inhibit contestation on these matters. Finally the problematizations that emerge as authoritative tend to be those which define problems that governing authorities and institutions can handle and for which solutions can be found (Hajer 1995, p. 15). Problematizations thus have powerful implications in terms of which governance projects are pursued, by whom, how, to what ends and with what effects.

Problematizations form part of the collective bodies of knowledge, belief and opinion in which we are immersed (Dean 1999, p. 16). These bodies of thought have been studied under various rubrics, including culture (for example, Fischer and Hajer 1999), ideology (for example, Althusser 1984, Gramsci 1971), rationality (for example, Weber 1976; Lash and Whimster 1987) and 'mentality' (for example, Foucault 1991). Whatever label is used to describe them, these bodies of thought condition what it is possible to think and hence how it is possible to act. They quickly become taken for granted, submerged and unthinkable (Dean 1999, p. 16; Fischer and Hajer 1999). A central task for analysis is thus to reconstruct the often taken-for-granted problems to which various governance schemes, such as codes of corporate ethics, pose themselves as solutions (Rose 1999, p. 58).

Finally problematization is a reflexive activity in that it addresses not just the conduct of governed subjects but that of governors themselves. The study of governance needs to concern itself with these reflexive moments when authorities of various kinds, from corporate managers to human rights activists to government officials, pose questions about how governors ought to govern. How should governors conduct themselves, toward what ends should they govern, how can they know what they need to know in order to govern, how can they govern better, how should they relate to other governing authorities, to whom should they be accountable and by whom will governed subjects accept being governed? Questions like these are central to all efforts to govern human conduct (for example, Foucault 1991, p. 87; Rose and Miller 1992, p. 177; Dean 1999, pp. 27-8). To study codes

of corporate conduct is to concern ourselves centrally with how governance itself is conceived and addressed as a problem.

The Problematizations of Environmental Management Systems

The problem of environmental degradation

EMS discourse assumes explicitly that the main problem behind environmental degradation is the failure of organizational management systems (for example, ISO 1996a, Introduction; Wolfe 1997; Hillary 1997; Sheldon 1997a). Typical management system failures include a lack of clearly defined responsibilities, inadequate supervision, communication breakdowns, inadequate planning, lack of standard procedures, inadequate emergency preparedness, poor training, inadequate equipment maintenance, inadequate monitoring and lack of follow-up when problems are detected (for example, Gunningham 1997-98, p. 353).

There is much to be said for this framing of the problem. Certainly management failures such as inadequate planning, training or monitoring may cause or contribute to many environmental harms. Being against a systematic approach sounds like being in favour of a haphazard or cavalier approach to environmental risks. But as a general diagnosis of the problem of the environmental impacts of industrial society, this account is severely limited.

First, it ignores the possibility, urged by many environmentalists, that the problem lies in the activities, products, services, technologies or substances that generate environmental risks and harms. EMS discourse resolutely avoids the question of whether certain activities, substances or technologies – such as genetically modified organisms, persistent toxic substances or the transportation of oil by supertanker to feed a seemingly insatiable demand for fossil fuels – pose intolerable risks to human or ecosystem health.

Second, to problematize environmental harm in terms of the inadequacy of organizations' management systems deflects attention from the possibility that the system of industrial capitalism itself may be part of the problem. Of course EMS discourse acknowledges that industrial society has produced serious environmental problems.⁷ It does not, however, view the environmental crisis as posing a fundamental challenge to the institutions of industrial society, as some versions of environmental discourse insist. Rather the discourse portrays the environmental crisis as more or less under control and robust management systems as one of the keys to its resolution (for example, Sheldon 1997b, p. 12; Cascio 1996c, p. 25). The central contemporary challenge and goal for industrial society, in this view, is 'sustainable development'. Of course substantial reforms will be required to

achieve this goal, but the basic point is clear. Rather than posing a fundamental threat to industrial society, the environmental crisis is seen as presenting an opportunity for its renewal (Hajer 1995). In this regard, far from offering a novel perspective, EMS discourse reinforces the dominant 'eco-modernist' mentalities of contemporary environmental regulation (Hajer 1995; Fischer and Hajer 1999).

Third, EMS discourse problematizes pollution and waste as avoidable costs rather than inevitable side effects of doing business. In this 'win-win' view, environmental protection saves money and enhances profitability, competitiveness, reputation, relations with regulators and so on (for example, Dodds 1997, p. 27; Hortensius and Barthel 1997, p. 19; Wolfe 1997, p. 15; Crognale 1999, p. 2; Coglianese and Nash 2001b, p. 11). This attitude is useful insofar as it challenges conventional beliefs that pollution is a cheap way to externalize the social costs of production or that environmental protection is a net cost that must be imposed externally on business by the state. On the other hand it tends to discount the considerable body of evidence and opinion suggesting that environmental protection and business success often do not go hand in hand.⁸

Fourth, by insisting that management system failures are the primary problem behind poor environmental performance, EMS discourse deflects attention from individuals. This is valuable insofar as it discredits the tactic of laying the blame for environmental harm at the feet of a few individuals whose conduct may have been the immediate trigger for the harm. Exxon, for example, mainly blamed the ship's drunken captain for the 1989 Exxon Valdez disaster. Similarly the Ontario government blamed the local water utility operators for a deadly water contamination episode in the town of Walkerton in 2000. Certainly a focus on management systems discredits such scapegoat tactics and redirects attention toward often serious systemic problems.⁹ But it deflects attention away from the question of the personal responsibility of other individuals: the top corporate executives and government leaders who deliberately place low priority on environmental protection, resist higher environmental standards or lie, obfuscate, bribe, intimidate and obstruct when their environmental conduct is questioned. Sadly such conduct by top corporate or government officials plays a part in many environmental disasters (see, for example, Palast 2003 on the Exxon Valdez incident and O'Connor 2002 on Walkerton). Rather than problematizing these individual choices or the socio-political contexts that enable and foster them, EMSs assume, indeed rely upon, the good faith of top managers.¹⁰

The problem of environmental governance

Problematizations do not just devise problems, they also predispose how these problems ought to be governed and by whom. Conceiving the main problem behind poor corporate environmental performance as a management system failure leads to a particular set of prescriptions about how to govern the environment.

First, EMS discourse problematizes the environmental crisis largely as a question of managerial technique, to be dealt with through the application of rational planning processes, objective technical expertise, standard operating procedures, emergency preparedness and training and motivation of individual personnel.

Second, these managerial techniques ought to be employed, so the logic goes, in light of the preferences and demands of actors in the marketplace (for example, Cascio 1996b; Crognale 1999; Coglianese and Nash 2001b, pp. 7-9). The firms that produce environmental harms should choose whether to implement an EMS and what level of environmental performance to pursue largely in response to market signals from customers, suppliers, consumers, competitors, creditors and investors. Consumers of environmental harms, or of the goods and services associated with those harms, ought to determine autonomously the harm they find acceptable by rewarding or punishing firms in the marketplace.

Third, EMSs problematize environmental degradation as a matter that exceeds the capacity of conventional governmental institutions (for example, Elliott 1994; Orts 1995; Cascio 1996a; Roht-Arriaza 1995a; Hillary 1997; O'Laoire 1997; Reiley 1997; Balikov and Cavanaugh 1997; Gunningham 1997-98; Lally 1998; Taylor 1998, 1999; Morrison, Cushing, Day and Speir 2000; Murray 1999; Pezzoli 2000; Stenzel 2000; Kollman and Prakash 2001; Coglianese and Nash 2001a). States, law and the interstate system are understood to have inherently limited capacity to respond effectively to contemporary crises. There is a widespread sense that they have failed to deliver the hoped-for environmental and social improvements or have achieved improvements at excessive cost. 'Command' regulation and direct service delivery by the state are seen as already having reached or exceeded their limits in many cases. Conventional regulation is portrayed as sclerotic, inefficient, costly, rigid, complicated, near-sighted, reactive, piecemeal, backlogged, adversarial and coercive (for example, Orts 1995; Cascio 1996b; Reiley 1997; Sheldon 1997b, p. 14; Lally 1998; Crognale 1999; Murray 1999; Pezzoli 2000; Stenzel 2000; Coglianese and Nash 2001b, pp. 7-9).

Finally the environmental crisis is conceived as a problem that requires the innovativeness only business can provide. States simply lack the

resources and competence to dictate in detail how the business processes that pose environmental risks ought to be designed (Cascio 1996b, p. 2). Business is in a unique position to generate knowledge and innovation that will contribute to a sustainable future. Rather than being part of the problem, as 'conventional' environmentalists and regulators might suppose, business is an indispensable part of the solution. Environmental management systems, in particular, are portrayed as having the potential to foster cleaner production, greater environmental protection, a transformation of corporate culture, progress toward sustainable development and a constructive new partnership with both government and the public (for example, ISO 14001, Introduction; Wolfe 1992; Cascio 1996b; Cascio, Woodside and Mitchell 1996, p. 71; Hortensius and Barthel 1997, p. 32; Gunningham 1997-98, p. 418; Crognale 1999, pp. 2-27; Stenzel 2000). EMSs represent, for many of their proponents, an innovative, flexible, consensual and proactive approach that promises to transform or at least complement conventional environmental governance (for example, Orts 1995; Gunningham 1997-98; Lally 1998; Stenzel 2000, pp. 287-95).

Conclusion

As we look to the future of codes of corporate conduct, we need to investigate the problematizations on the basis of which these efforts at governance are undertaken. In the case of EMSs, environmental degradation is problematized in a way that deflects any fundamental questioning of the institutions of industrial society, including corporations, markets, techno-science and a growth-oriented model of economic progress. By conceptualizing the environmental crisis as a matter for managerial technique and entrepreneurial innovation rather than a manifestation of the pathological character of industrial society, and by framing environmental protection, corporate prosperity and sustainable development as 'win-win' propositions, the problematizations on which EMSs are based predispose the environmental problem toward a techno-managerialist, incrementalist, self-regulatory mode of governance. In the process they ignore or marginalize a range of alternative problematizations that have played prominent roles in the modern environmental movement. Moreover in these respects, the problematizations of EMSs more or less duplicate and reinforce the very mentalities of contemporary environmental policy from which they purport to be fundamental departures.

HOW IS THE AUTHORITY OF CODES AND THE ACTORS WHO PROMULGATE THEM ESTABLISHED?

'To govern, one could say, is to be condemned to seek an authority for one's authority', writes Nikolas Rose (Rose 1999, p. 27). While some governors seek to enforce their authority with the threat or use of violence, most recognize that it is less costly and in the long run more effective if those who are governed acknowledge, to some extent, the governor's authority to govern them. Authorities are thus drawn perpetually to establish the authority for their authority. Such efforts include appeals to truth, justice, fairness, neutrality, objectivity, expertise, custom, consent, the will of the people, the will of God, etc. Certain institutions and discourses, such as those of science and law, purport to combine several of these features and as such play important roles in strategies for the authorization of authority in contemporary life (for example, Santos 2002).

Authorizations

In contemporary debates about codes of corporate conduct and in political thought generally, the problem of authority is often reduced to the problem of legitimacy. What makes particular institutions or exercises of authority legitimate or illegitimate? Does reliance on scientific or technocratic expertise run the risk of a 'democracy deficit'? Are codes of conduct developed by and for business illegitimate? These questions lead to a whole range of debates about the credibility, accountability, transparency, fairness, representativeness and effectiveness of codes and the processes and institutions through which they are developed and applied.

These are important questions, but I suggest we should be asking a somewhat different set of questions about the problem of authority. Rather than asking whether codes or the processes through which they are developed and applied are legitimate, we should investigate how particular authorities seek to establish their own authority and the authority of the codes they advocate. I am interested in what might be termed the authorization of authority (Rose and Valverde 1998) rather than its legitimacy *per se*. Authorizations, in this sense, encompass all the ways in which authorities of various kinds seek to establish their authority and secure respect for it. An investigation of such authorizations promises to reveal more about codes of corporate conduct than a mere evaluation of their legitimacy could.

Authorizations are closely related to problematizations. Recall that problematizations not only define problems, they do so in ways that lend

themselves to particular kinds of interventions by particular kinds of authorities. Problematization is as much about authorizing certain authorities to govern as it is about defining problems. Several aspects of the problematizations I discussed earlier could also be understood as authorizations: the appeal to managerial technique and market choice; the confidence in the capacity of business to devise solutions to environmental problems; and the corresponding lack of faith in the governance institutions of the state. Problematization is an important element in strategies for establishing, consolidating or challenging the authority of particular authorities.

One of the most common authorization tactics is to delineate a distinctive domain within which an authority purports to be authoritative. The notion of sovereignty was consolidated in the early modern period to delineate the territorial domain within which the emerging nation state would wield supreme authority. Many religious authorities seek to define their authority in terms of a sacred or spiritual domain. Expert disciplines such as the sciences, in turn, carve out specialized fields of knowledge and endeavour within which their authority can be asserted. One of the central tasks of these efforts at authorization is to delineate the proper domains, tasks and limits of different authorities: to define zones in which particular authorities are entitled to intervene in particular ways for particular ends. An investigation of authorizations therefore examines how authorities of various kinds seek to delineate a domain for their authority and to establish the appropriate relationship between their domain and those of other authorities.

Finally one cannot help but be struck by the heterogeneity of authorities involved in governance. A bewildering array of authorities seeks to govern conduct in any given field of human affairs. In the field of corporate social responsibility, for example, the list of actual and would-be authorities ranges from politicians, judges, regulators, diplomats and UN officials to business managers, public relations consultants, academics, scientists, activists, environmental NGOs, labour leaders, celebrities, pundits and news editors. These authorities often have widely different social and cognitive commitments, perceive their positions and interests according to divergent discourses and pursue conflicting interpretations, aims and agendas (Hajer 1995, pp. 13, 65). To be successful, authorizations must enable diverse authorities to communicate with each other and with governed subjects. Such communication enables linkages and alliances which authorities can turn to their own ends. As a result authorizations are not simply a matter of the utterances of individual authorities. Like problematizations, they are collective. They contribute to the construction

of a set of story lines, shared vocabularies, ethical principles and mutually intelligible explanatory logics, a 'zone of intelligible contestation' within which different authorities make sense of messy realities and pursue their various projects (Rose 1999, p. 28; cf. Rose and Miller 1992; Hajer 1995).

Authorizing Environmental Management Systems

Who are the authorities seeking to establish and secure respect for their authority in the field of environmental management systems? Since EMSs have become so closely identified with ISO and the ISO 14000 standards, one might be forgiven for assuming that ISO itself is the main authority in the field of global EMS standards. It is certainly the most visible entity in this field. It is a 'bricks and mortar' organization with a headquarters and permanent secretariat in Geneva. It is the premier global standardization body. Yet ISO is highly decentralized, with most of its work dispersed among hundreds of technical committees, thousands of working groups and tens of thousands of volunteer experts dispersed around the globe and operating in relative autonomy from the central organization. It is not particularly helpful to think of ISO as an authority, let alone *the* authority in the area of EMSs. ISO is better viewed as an institutional setting within which various authorities pursue their governance ambitions.¹¹

Such authorities include representatives of national and transnational industry groups; corporate environmental, health, safety and quality managers; professional standards writers and officials of standardization bodies; environmental management system auditors and registrars; management consultants from consultancies of all types and sizes; lawyers, accountants and other professional business advisors; and officials of government trade and industry ministries. These actors make up what might be considered a core transnational coalition of authorities who have developed, promoted and implemented EMSs and EMS standards.

Numerous other actors also seek to exercise authority in the EMS field. These include consumer and environmental groups, representatives of national environment ministries and officials of international organizations such as the European Commission. In the experience of many of these actors, 'big business' interests from advanced industrialized countries dominate the coalition while developing country interests, small business, public authorities and environmental groups are marginalized or excluded (for example, Krut and Gleckman 1998).

What one finds, in short, is a variety of authorities seeking to govern the conduct of a variety of actors through a variety of means. This transnational coalition is held together not by shared interests, goals or strategies but by

its employment of a particular set of claims and story lines – a particular discourse – about the character of the environmental problem and the appropriate tools and actors to address it (Hajer 1995, pp. 12-13, 58-68; Salskov-Iversen, Hansen and Bislev 2000). Continual invocation of these discursive elements helps to establish and sustain the authority of EMSs, EMS standards and the institutions, such as ISO, that develop and implement them.

Delineation of a Distinctive Domain for EMSs and Standardization

The principal way in which EMS discourse seeks to establish the authority of EMSs is by locating environmental management and standardization in a technical domain, insulated both from the conflict of politics and, to an extent, the naked competition of the market. This is no surprise considering the cultural context in which EMSs emerged. EMSs emerged out of a community of professionals – environmental managers, engineers, accountants, quality managers, management consultants – who understand themselves primarily as technicians. Their concern is to devise and operate the technical tools an organization needs to achieve its goals and fulfill its legal and other obligations. To this community an environmental management system is just such a technical tool.

When a demand arose for uniform guidelines for EMSs, the obvious institutions to develop such guidelines were standardization bodies, the organizations responsible for the quality management system standards and other technical standards around which much of these professionals' working lives revolved. Submitting the development of EMS guidelines to these institutions reflected and reinforced the conceptualization of these matters as 'technical'.

It is useful to think of the delineation of a technical domain of authority for EMSs as proceeding simultaneously in four directions: first, EMSs and standardization are characterized as technical rather than political; second, the pursuit of commercial self-interest is characterized as having no place in standardization; third, EMSs are characterized as neutral and universally applicable tools; and fourth, EMSs and standardization put in place a specialized language, mastery of which is essential for effective participation in the discourse.

The Expulsion of Politics

One of the central tactics in establishing a domain of authority for EMSs and standardization is to insist that they occupy an apolitical space. Politics

is imagined to occur in an external, 'public' domain. The implementation and operation of an EMS and the development and application of EMS standards are understood as technical matters. ISO 14001 and 14004 'depoliticize' environmental management in various ways, for example by giving each organization the sole authority to decide its acceptable environmental impacts and the appropriate degree of public transparency in managing those impacts (Wood 2002-03, 2003). Standardization bodies such as ISO are characterized as apolitical institutions whose mission is to produce the 'best solutions' for various technical problems (for example, Wraight 2003). Standards development, which ISO calls its 'technical work', is done by 'technical experts' under the aegis of 'Technical Committees' which are ultimately supervised by a 'Technical Management Board' (ISO 2003a, undated a). Conflicts about public health, environmental quality, competitiveness, corporate accountability and dominance among competing firms or trading blocs are acted out as if they were merely technical matters (see Salter 1993-94, p. 106). The standardization community consciously declines to characterize conflicting industry interests as 'political' (Salter 1993-94, p. 113), while frequently describing governments and public interest groups by contrast, as 'politically oriented bodies' (Cascio 1996b, p. 10).

Of course EMSs, like other codes of corporate conduct, involve stakes that are understood as political by many observers. As one commentator writes, 'the evaluation of environmental impacts, and the development of standards for acceptable firm behavior, are not neutral technical decisions but policy judgments' (Roht-Arriaza 1995a, p. 522). It is a mark of sophistication in this discourse coalition to acknowledge that the opposition between the technical and the political is slippery. Participants in ISO TC 207 frequently acknowledge the political stakes of EMSs and EMS standards by, for example, asserting that EMSs contribute to the achievement of public policy goals such as sustainable development; recognizing that EMS standards must keep pace with the changing expectations of governments, public interest groups and other actors outside the business community; and acknowledging that standards development ought to involve more effective participation by such actors.

So there is an ambivalence about the relation between the 'technical' and the 'political'. Yet this ambivalence is usually resolved in a way that reaffirms the expulsion of politics from the domain of EMSs and standardization. The way EMSs deal with official law and policy is a good illustration. ISO 14001 treats official legal and political systems as a special element of the EMS's external environment. An EMS internalizes official law and policy by translating them into internal management system

requirements and treating them much like any other performance parameter. Yet it does so in a way that reinforces the expulsion of political contestation from the domain of the EMS. It reaffirms the primacy of the state as lawmaker: only the state has the authority to define collective environmental values and goals and to translate these into binding legal requirements. Indeed it has a responsibility to do so. Individual organizations, by contrast, have neither the authority nor the responsibility to make such collective value judgments. Individual organizations can only make decisions based on their own needs and priorities. Some EMS proponents expressly defend the decision to leave substantive environmental performance targets to individual organizations on the basis that for a standardization body to set substantive performance requirements would be an invasion of states' sovereign rights to determine the environmental rules applicable in their jurisdictions (for example, Cascio, Woodside and Mitchell 1996, p. 14; Bell 1997a). In affirming the authority of official law and policy, therefore, EMSs and EMS standards reinforce the existence of a domain reserved for apolitical, technical management. It is in this domain that an EMS operates, erecting a barrier between the organization and its politico-legal environment and arrogating exclusive authority to the organization itself within this internal domain.

Ambivalence Toward the Market

The rise of 'private' authority in contemporary affairs is often identified closely with the rise of the 'market' and themes such as competition, entrepreneurialism, consumer choice and free trade. Certainly the market figures prominently in the discourse and practice of EMSs and standardization, but the expulsion of politics from the domain of EMSs and standardization does not imply a wholesale embrace of the market instead.

On the one hand the market supplies one of the central foundations for the authority of EMSs and standardization. First, the market is understood as a principal driver of EMS adoption: it will signal when and to what extent an organization should implement an EMS, whether the EMS should be certified and whether and to what extent the organization should be rewarded or punished for having done or not done these things. Second, the market is portrayed as a principal driver of standardization. As ISO maintains, 'ISO develops only those standards which are required by the market' (ISO 1998, unpaginated).¹² ISO competes with other standardization bodies. The success of its standards is judged in the marketplace, in the form of firms' decisions to purchase and implement particular standards. Third, standards are thought to foster healthy markets

by reducing trade barriers, creating a level playing field for competition and encouraging comparability and interchangeability. Fourth, the auditors and registrars who assess conformity to standards and certify organizations or products compete with each other for business.

On the other hand standardization discourse also seeks to temper the logic of the market by insisting that self-interested economic competition has no place in standards development. Participants in standards development are expected, and regularly reminded, that they should not seek competitive advantage for their preferred technologies, processes or products or their own firms, countries or regions.¹³ Standards should not erect barriers to market entry or to international trade. Rather they should be market neutral, embodying the 'best solution' to particular technical problems (Wraight 2003). Nonetheless standardization participants routinely pursue their own commercial self-interest, keeping an eye on their competitors and seeking outcomes that will benefit their own competitive positions. The vehemence with which standardization officials insist on expelling self-interested market behaviour from standards development reflects the pervasiveness and intractability of such behaviour.

This tendency to embrace the market as a driver and judge of EMSs and standards and yet to expel it from the 'purely technical' task of standards development may seem contradictory, but it is not. The main reason for expelling market competition from the task of standards development is to ensure the healthy functioning of the market (for example, Wraight 2003). This is the same logic that informs many state interventions in the economy: some matters must be withdrawn or insulated from the market in order for the market to function properly.

'Marketization' and 'technicalization' have both been employed to demobilize political contestation in modern societies. They are usually understood to reflect different ideological commitments and political programs. 'Technicalization' is usually associated with welfare state liberalism (for example, social insurance schemes), while 'marketization' is commonly associated with neoliberalism (for example, privatization and competition in public service provision) (Rose and Miller 1992, pp. 196-201). Interestingly EMSs and standardization share both tendencies. They depoliticize corporate environmental management by treating it simultaneously as a 'technical' matter to be resolved by the application of apparently neutral technique, and as a matter of commercial preference to be resolved by the exercise of autonomous choice in markets. If nothing else, this indicates some of the complexity that exists in encounters between welfarist and neoliberal mentalities in contemporary governance.

Neutrality and Universality

A third tactic in establishing the authority of EMSs and standards is to insist upon their neutrality and universality. EMSs originated and remain concentrated in environmentally destructive industry sectors such as manufacturing, natural resources and chemicals. Yet it is an article of faith in the EMS community that EMSs are applicable to organizations of any kind, any size, anywhere, whether governmental or non-governmental, public or private, for-profit or not-for-profit. ISO 14001 purports 'to be applicable to all types and sizes of organizations and to accommodate diverse geographical, cultural and social conditions' (ISO 1996a, p. v). This includes all business sectors, from mining and manufacturing to banking, tourism and farming. Beyond the business world it extends to universities, hospitals, charitable foundations, municipal government bodies, military bases, government agencies and Aboriginal communities (on the latter, see Evers 2000). Organizations implementing EMSs may be big or small, sophisticated or simple. Wherever organizations of any kind seek to manage their environmental impacts, EMSs have a place.

This is possible because the ISO 14000 standards are rigorously indifferent to the political, economic and cultural context. ISO embraces a resolutely globalist ethic: 'It seems self-evident that any document called an International Standard must possess, as a fundamental attribute, global relevance. Equally, it must be free of regional or sectorial bias' (Wraight 2003). An EMS based on ISO 14001 or 14004 is an empty vessel, a value-neutral framework to be filled with whatever environmental priorities the implementing organization prefers (subject, of course, to the commitments to legal compliance and continual improvement). This neutrality enables many of the more skeptical members of the EMS discourse coalition, such as environmental groups and environmental regulators, to support EMSs. To these skeptics ISO 14001's process-oriented neutrality means that it can accommodate the highest standards of environmental performance or public accountability, if organizations so choose or can be persuaded to do so. In this way the neutrality of EMSs and EMS standards is a key assumption across the discourse coalition.

This myth of neutrality and universality does not correspond well with experience, however. Although they have spread to other places and other kinds of organizations, EMSs remain concentrated in large, 'Northern', traditionally high-environmental-impact industrial firms and their supply chains. The development of international standards remains primarily the preserve of participants from the advanced industrialized countries. ISO 14001's universality myth also masks other important disparities. To the

uninitiated, an organization's adoption of ISO 14001 means that it has achieved a certain uniform standard of environmental stewardship. But the fact that an organization has an ISO 14001 EMS says very little about its social or environmental commitments and performance. It may be a leader in environmental and social responsibility or it may reluctantly be doing the absolute minimum. ISO 14001 allows vast differences in environmental and social performance. While this can easily be explained by an EMS expert, it is likely lost on the majority of people who encounter ISO 14001. What one has, then, is diversification of environmental and social priorities and performance in the guise of standardization of management techniques.¹⁴

The myth of globalism and neutrality provides a powerful rationale for a never-ending proselytizing mission to advance the spread of management systems in business firms, governments and civil society organizations around the world. One EMS advocate writes that you cannot support or oppose ISO 14001 any more than you would support or oppose a hammer since, like a hammer, ISO 14001 is simply a neutral tool whose value depends on how it is used (Bell 1997a, 1997b). Another EMS expert disagrees, saying:

... we must first dispose of the idea that any management tool is neutral, and only as good as the manager that uses it. Even that most basic of tools beloved of engineers worldwide, the hammer, comes in a variety of shapes and sizes. It is certainly possible to choose an inappropriate version for the job in hand (Sheldon 1997b, p. 15).

This argument is fine but it misses a larger point: when you're holding a hammer, everything tends to look like a nail. Governance techniques inculcate in both governors and governed certain modes of perception, roles, practices and ways of carrying on. They shape, in a subtle way, how we see our world, act upon it and in turn are acted upon (Rose 1999). A management system, viewed as a governance technology, begins to make all issues look like technical matters to be identified, planned and managed through its purportedly neutral managerial techniques. Hence the proselytizing zeal of management system proponents: for the converted, management systems are almost self-evidently appropriate for every issue facing every organization in every context.

In these respects EMSs and standardization recapitulate a familiar story of globalization. Like other contemporary globalisms including science, international law, human rights, economic development, free trade and 'good governance', the universalist ethos of EMSs and standardization is an example of a 'globalized localism' (Santos 1995). EMSs and standardization are technologies of large, 'Northern', bureaucratic,

hierarchical business organizations, imbued with the values of technocratic management and global free trade that have served their makers so well. While these localisms are made to appear universal, neutral and indispensable for progress everywhere, the local knowledge, practices, peoples, modes of governance and ways of carrying on that are subject to these globalizing projects are ignored, devalued, marginalized or erased.

A Specialized Language

Finally language itself is a powerful tool for the demarcation and consolidation of zones of authority. The authority of science, medicine, psychology, law and other expert disciplines and professions relies partly on specialized vocabularies and languages. In many fields mastery of a specialized language and vocabulary is essential for knowledgeable communication, effective participation and the exercise of authority.

To have authority in the domain of EMS standards one must master, or at least be competent in, the specialized languages of standardization and environmental management systems. Standardization is carried out in a specialized language that is full of peculiar terminology and nomenclature. EMSs in turn have their own highly specialized vocabulary and language. The result is a bewildering array of acronyms, terms of art and other linguistic devices with which I will not bore the reader. Suffice it to say that fluency with these specialized vocabularies is a prerequisite for the 'technical expertise' that confers discursive authority in this domain. Such fluency is usually gained through extended immersion in the professional cultures of environmental management and standardization.

Not surprisingly this tends to privilege actors who are already fluent in these specialized languages, including corporate environmental managers, management consultants, environmental auditors and standardization professionals. The lack of such fluency is experienced by many actors, including representatives of small business and developing countries, as a serious obstacle to participation. This is true, for instance, for many environmental or consumer groups whose broad mandates and limited resources require them to remain generalists and prevent them from fully entering these specialized discourse communities even if they desire to participate.

One interesting feature of the specialized language of EMSs is that it is shot through with ambiguities and at best partially resolved conflicts. Almost every major term of art found in ISO 14001, including 'prevention of pollution', 'continual improvement' and the 'commitment to compliance' conceals such conflicts and ambiguities. This became clear in the revision

of ISO 14001 and 14004, which began in 2000 and is expected to conclude in 2004. Partially submerged disagreements over the meaning of key terms surfaced repeatedly during the revision process. For example ISO 14001 requires an organization to identify and manage those environmental aspects that it 'can control and over which it can be expected to have an influence' (ISO 1996a, clause 4.3.1). Some participants, mainly from Western Europe, interpreted this phrase to require an organization to manage all environmental aspects over which it has some influence up and down its supply chain, from raw materials extraction to end-of-life disposal. Other participants, mainly from North America, insisted that ISO 14001 only requires organizations to manage environmental aspects within their immediate control (for example, the activities of on-site contractors) and does not require them to undertake environmental supply chain management. This was ultimately resolved by a classic ISO 14000 tactic: recognizing that each organization has sole authority to decide which environmental aspects are within its influence.¹⁵

While these sorts of conflicts and ambiguities should come as no surprise, the irony should still be apparent: a specialized language of technical management that promises to expel political contestation from its domain in fact crystallizes such contestation in the unresolved ambiguities of its own vocabulary.

Conclusion

An analysis of codes of corporate conduct should be alert to the strategies and tactics employed to establish, consolidate or contest the authority of codes and their proponents. In the case of EMSs and standardization, the principal authorization tactic is to delineate a tranquil, technical domain insulated from the messy world of political contestation and, to an extent, market competition. This delineation is characterized by ambivalence and tension, even if its overall effect is fairly clear. One of the tasks of an analysis of codes of corporate conduct is to attend to such complexities because they have subtle implications for thought and action, as I have attempted to outline above.

CAN WE MAKE SENSE OF CORPORATE CODES IN TERMS OF AN OPPOSITION BETWEEN PUBLIC AND PRIVATE?

The third question we should ask about codes of corporate conduct is

whether we can make sense of them in terms of a public/private dichotomy. Of course questioning the public/private divide is nothing new. What I would like to suggest is that the answer to this question is more complicated than we might have thought. The public/private divide remains fundamental to the way codes of corporate conduct are conceptualized, yet it fails to correspond to, and indeed obscures, the ways in which authority is actually exercised in this field. So we can make sense of codes partially in terms of a public/private divide insofar as that is how many codes are conceptualized; but we also need to look past this conceptual opposition to the complexity of practice to get a fuller sense of the significance of codes.

Rethinking the Public/Private Divide

Codes of corporate conduct are often portrayed as a new form of governance that signals the demise or at least transformation of conventional state regulation and defies the conventional categories of political thought. As many students of contemporary governance have observed, 'the political vocabulary structured by oppositions between state and civil society, public and private, government and market, coercion and consent, sovereignty and autonomy and the like, does not adequately characterise the diverse ways in which rule is exercised' (Rose and Miller 1992, p. 174). It fails to capture the complex interpenetration and hybridization of actors, domains and practices conventionally understood as public or private, state or non-state, coercive or voluntary. The discourse of corporate codes often acknowledges the slipperiness of these conventional dichotomies, admitting that 'private' or 'technical' initiatives have 'public' or 'political' implications, that the public/private distinction is blurry and shifting, that many 'voluntary' codes are not genuinely voluntary or that legal systems and voluntary codes are highly intertwined (for example, Webb 1999; Morrison, Cushing, Day and Speir 2000, pp. 8-10; Haufler 2001; Meidinger 2001; Webb forthcoming).

Nonetheless EMS standards and other codes of corporate conduct continue to be understood and debated largely in terms of the same conceptual oppositions and the same fascination with the state that have structured political thought throughout much of the modern period. The entire literature on corporate codes, despite its purported focus on non-state governance, exhibits a deep fascination with the character, possibilities, powers, abuses and limits of the state. The relation of corporate codes to states and law is an ever present theme, and it is almost always conceptualized in terms of familiar dichotomies such as public versus private. Codes of corporate conduct are usually portrayed as 'private'

initiatives undertaken by private authorities, operating in modes and spaces distinct from the 'public' sphere of official politics and law and involving, for better or worse, a privatization of governance (for example, Cutler, Haufler and Porter 1999; Webb, forthcoming; in the case of EMS standards, see Roht-Arriaza 1995a and 1995b; Reiley 1997; Gunningham 1997-98; Clapp 1998; Meidinger 1999; Murray 1999; Pezzoli 2000; Haufler 2001). Even when codes of corporate conduct are developed by state authorities they are typically conceived as attempts by 'public' authorities to foster or regulate 'private' initiative.¹⁶

As a result even if the conventional categories of political thought are often stretched or blurred, they still provide the basic framework for identifying and understanding corporate codes. This is particularly puzzling if we consider that attacks on the received categories of public, private, state, sovereignty, market and so on have been central features of social and political criticism for close to a century, if not longer. Proclaiming the retreat or demise of the state, law, sovereignty or the public sphere and proposing some revision of traditional conceptual categories has become part of the ritual of renewal in discipline after discipline (for example, Kennedy 2000). Why is it, then, that the sovereign state and the received conceptual categories of politics continue to exercise such an influence over our imaginations even in an era when events repeatedly challenge their relevance? Why have we still not 'cut off the king's head', so to speak, in the field of political thought? (Foucault 1978, pp. 88-9).

Perhaps it is because governance continues to need its 'kings' (see Dillon 1995). The problem of the state – its potentialities, limits and excesses – remains a central preoccupation of political thought (Rose and Miller 1992). The public/private dichotomy and other familiar binary oppositions are deeply ingrained in the structure of modern western knowledge (for example, Koskenniemi 1989; Walker 1993; Charlesworth 1999, 2002; Wood 2004). They remain basic building blocks of governance projects generally and codes of corporate conduct in particular. This does not mean, however, that an analysis of codes of corporate conduct should simply accept these conceptual categories at face value. The task of analysis is to investigate how these categories and their interrelations are produced and reproduced and how they are employed in particular governance projects.

Applying this insight to codes of corporate conduct leads quickly to a puzzle. At the level of deliberate discourse, corporate codes are conceived, championed or opposed largely in terms of received conceptual categories including the public/private dichotomy. Yet, at the level of practice, these oppositions break down in a complex web of hybridization and interpenetration. The analysis of codes of corporate conduct should

