Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies

Year 2002 *Introduction*

National Regulations in a Global Economy

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Abstract

The research project which produced this volume of essays grew out of the central issue addressed in Trading Up: Consumer and Environmental Regulation in a Global Economy by David Vogel, namely the impact of economic globalization on national regulatory policies. While popular opinion tends to assume that global economic competition produces a "race to the bottom," virtually all scholars who have examined this issue challenge this claim. Vogel goes a step further, arguing for the existence of a "California effect," e.g. a "race to the top" or toward stringency. This introductory essay reviews the extensive scholarly literature on this subject and then summarizes and analyzes the contributions of the ten essays in this volume to this debate as well as to the related question of the impact of globalization on regulatory convergence/divergence. On balance, these essays report both continued regulatory divergence as well as movement in the direction of more stringent standards.

Dynamics of Regulatory Change:
How Globalization Affects National Regulatory Policies

An Introduction

David Vogel and Robert A. Kagan

I. Introduction

The intellectual impetus for this volume emerged from the issues addressed in Trading Up: Consumer and Environmental Regulation in a Global Economy written by David Vogel (1995), one of the volume's editors. In Trading Up, Vogel explicitly challenged the claim made by globalization critics, especially those from the environmental community, that economic liberalization leads to a lowering of regulatory standards. Vogel argues that, on the contrary, under certain circumstances, global economic integration can actually lead to the strengthening of consumer and environmental standards. The result is thus more akin to a "race to the top" than to a "race to the bottom."

Trading Up primarily dealt with one category of national policies – those that governed the safety and environmental impact of traded products. The aim of this volume is to extend the focus of Trading Up by focusing on a broader array of issue areas. Since the impacts of globalization are likely to vary by policy area, we solicited essays on the impact of globalization on labor rights, women's rights and capital market regulations, in addition to environmental standards.

This volume both draws upon and contributes to an ongoing body of scholarship on the impact of globalization. In 1996, two edited volumes were published on the domestic impact of economic interdependence: National Diversity and Global Capitalism, edited by Suzanne Berger and Ronald Dore, and Internationalization and Domestic Politics, edited by Helen Milner and Robert Keohane. This volume expands the focus of these collaborative research projects in a number of ways.

Nearly all the essays in the Milner and Keohane volume deal with the impact of globalization on macro-economic and sectoral policies. One essay, by Haggard and Maxfeld, deals with financial regulations in developing countries, but only on one aspect, namely the impact of these regulations on international capital flows. The essays in the Berger and Dore volume are more diverse. Several deal with the impact of globalization on the nature of capitalism. Thus they examine the dynamics of convergence and divergence with respect to industrial policy, corporate governance and competition policy.

The focus of this volume is distinctive in that it addresses the impact of globalization on government regulation. We are interested in exploring not only the extent to which globalization impacts national policies, which is the central concern of the Milner/Keohane and Berger/Dore volumes, but the direction of this impact. To the extent that globalization affects national regulatory policies, to what extent and under what circumstances does it strengthen or weaken them? Thus this volume represents one of the first efforts to systematically investigate the existence and dynamics of the possible "race to the top," or "race to the bottom.

This introductory essay consists of three parts. The first provides an overview of the scholarly literature on the impact of globalization on regulatory policies. The second explores the scholarly debate on the "California effect," introduced in Trading Up. The third presents an analytical overview of the ten essays published in this volume.

We would like to express our appreciation for the generous financial support provided by the Center for German and European Studies at the University of California, Berkeley and as well as to the Center for the Study of Law and Society for hosting our seminars and workshop. This project would never have come to fruition without the dedicated assistance of Diahanna Post who worked with us closely from its inception to completion.

II. Race to the Bottom?

The impact of globalization on the regulatory policies of governments has been the focus of considerable public debate and scholarly research. The public debate has been largely shaped by critics of globalization, who claim that the integration of national economies has undermined national autonomy and forced nations to relax their regulatory standards. According to this perspective, as capital and corporations move more freely across national boundaries, governments are forced to engage in regulatory competition. In order to either retain current investments or attract new ones, they must lower the costs of doing business. One way of doing so is to weaken labor and environmental standards. The result is a "race to the bottom" as political jurisdictions compete with one another by progressively reducing the protections they provide to their citizens.

The political influence of the "race to the bottom" (RTB) imagery has been considerable. It informs much of the recent opposition to globalization in general and trade liberalization in particular, most notably in the United States, but also in Europe. In the United States, trade unions, along with environmentalists and citizen groups such as Ralph Nader's Public Citizen, have blamed globalization for undermining worker rights and working conditions and for impairing environmental quality and consumer protection. Much of their ire, as revealed by the demonstrations in Seattle against the ministerial meeting of the World Trade Organization in 2000 and at the World Economic Forum in Davos in January 2000 and 2001, has been directed at institutions and agreements that seek to facilitate international flows of trade, finance and investment (Wallach and Sforza 1999). Thus Donahue (1994: 47) writes: "The world has become a huge bazaar with nations peddling their workforces in competition against one another, offering the lowest price." According to Daley (1993: 27), whose critique of globalization has focused on its impact on environmental regulation, "unrestricted trade imposes lower standards."

Among scholars, the notion of a regulatory race to the bottom derives from the study of competition within federal systems, most notably the United States. Students of corporate law have employed it to explain the weakness of state corporate chartering laws in the United States. Because corporations could be chartered in any state, and this charter allowed them to conduct business in all the others, states competed to relax their chartering requirements in order to attract the revenues from chartering. The "winner" in this competition is Delaware, whose chartering rules are considered most favorable to management. In effect, Delaware's floor became a ceiling for other states. The concept of the "Delaware effect" was subsequently employed to denote other examples of devolution within federal systems, such as the existence of pollution havens that attract runaway factories. As trade liberalization made competition among countries more similar to that among American states, the Delaware effect became a model for a hypothesized international race to the bottom.

Over the last decade, an extensive scholarly literature has emerged on the impact of globalization on national policies. Most scholars have found little support for the claim that increased economic integration has undermined either the autonomy of governments or their ability to protect their citizens.[1] Geoffrey Garrett (1998) argues that globalization has been far less constraining than many of its critics have alleged. In fact, he observes that increased market integration has commonly been associated with more interventionist government policies and greater policy divergence among nations. Among OECD countries, government spending and effective rates of corporate taxation have tended to increase even as their economies have become more integrated – without resulting in capital flight. Nor has the autonomy of governments over their fiscal policies been reduced, although their ability to run substantial deficits has been constrained.

In seeking to explain why governments have not reduced either the size or scope of their welfare states in order to become more "competitive," Garrett argues that more conservative social policies do not necessarily improve international competitiveness. On the contrary, a more generous social safety net may actually strengthen the ability of governments to adjust to rapidly changing international market conditions. Thus, even to the extent that concerns about competitiveness do affect national policy-making, these concerns do not dictate either any particular mix of policies or less progressive ones. Globalization has produced neither policy convergence nor a race to the bottom.

The contributors to National Diversity and Global Capitalism also find limited evidence of policy convergence with respect to either macro-economic policies or micro-policies. National differences in interest rates, as well as corporate governance and the organization of production, remain substantial. They do find evidence of convergence in some policy areas, such as competition policy, but these they attribute to a gradual process of institutional adoption rather than to global economic constraints.[2]

Miles Kahler (1998) notes the difficulty of measuring and explaining possible gaps between popular preferences and national policies – a gap whose existence is asserted by RTB. He claims that the best indirect evidence of regulatory laxity as an instrument of international competition would be national policy convergence. "If policy convergence is absent, the case for a RTB is undermined" (Kahler 1998: 15). Yet he observes little evidence of increased convergence even in areas such as taxation where presumably differences in national policies would be expected to have important competitive consequences. He concludes: "If a RTB had been completed, no tax havens, offshore banking or Delaware effect would remain: the 'bottom' would have been reached" (Kahler 1998: 19).

While policy convergence may be a necessary sign of the existence of a RTB, factors other than economic pressures may lead countries to adopt similar policies. Bennett (1991) identifies four mechanisms of policy convergence. These are emulation, when state officials copy action taken elsewhere; elite networking, characterized by the role of transnational policy communities; harmonization though international regimes; and penetration by external actors and interests. According to Bennett, all but the lattermost are compatible with the maintenance of state autonomy. But even penetration is not necessarily associated with RTB, as transnational actors can use their influence to pressure countries to raise standards as well as lower them.

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[1] For an excellent summary and critical analysis of the "myth" of a race to the bottom, see Drezner 2000. For a dissenting view, see Rodrik 1997.
[2] See also Pauly and Reich 1997.

Much of the literature on the impact of globalization has focused on environmental regulation. One such study examines trends in urban air quality in China, Brazil, Mexico and the United States. David Wheeler, who works with the World Bank, reasons that if the RTB model were valid, then "after decades of increasing capital mobility and economic liberalization . . . pollution should be increasing everywhere. It should be rising in poor countries because they are pollution havens, and in high-income economies because they are relaxing standards to remain cost-competitive" (Wheeler 2000: 3). Yet Wheeler's data reveals that contrary to the predictions of RTB, major urban areas in China, Brazil, Mexico and the US have all experienced significant improvements in air quality.

According to Wheeler, empirical research has undermined each of the assumptions that underlie RTB. First, while the RTB model assumes that pollution control is a critical cost for most firms – hence their incentive to relocate to pollution havens – in fact compliance costs are relatively modest. Second, low-income communities do not passively accept polluting firms; they often mobilize to pressure such companies to improve their environmental performance, even in the absence of effective government regulation. Third, as countries become richer, environmental regulations invariably become more effective. Finally, large multinational firms generally adhere to OECD standards in their developing country operations.

This last point is documented in David Sonnenfeld's (2002) study of the impact of social movements in rich countries on pulp and paper manufacturing in developing countries. Sonnenfeld finds that these social movements, based primarily in northern Europe, along with government agencies, have played a critical role in transforming pulp and paper production in Southeast Asia. Thus foreign investment has served as a vehicle to improve environmental performance in developing countries. Ronie Garcia-Johnson makes a similar argument in Exporting Environmentalism (2000), which documents the role of American based multinationals in promoting a voluntary code of environmental responsibility among foreign and domestic chemical firms in Mexico and Brazil.

That is not to say that rich-world multinational corporations invariably impose identical pollution controls on their third-world factories. A Tufts University study found that in many cases American corporations' operations in developing countries were less protective of the environment (partly due to inadequate local infrastructure and a less experienced workforce) than their U.S. facilities. Yet others found cases where environmental measures in overseas operations "were more innovative than the comparable U.S. facility" (Rappaport and Flaherty 1992: 138; see also Fowler 1995).

Other cross-national studies of environmental standards and performance, primarily among relatively developed countries, demonstrate the extent to which globalization has proven compatible with improved environmental performance in many areas.[3] Note however, that such studies do not by themselves refute the claim that globalization has created a "political drag effect."[4] For even if environmental conditions have improved along with globalization, governments may still be reluctant to mandate the still higher levels of environmental protection preferred by their citizens because they fear a loss of competitiveness – even if such fears are in fact unwarranted. It is, of course, difficult to specify how much stricter some national environmental standards might be if the global economy was less integrated. Alternatively,

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[3] See, for example, the evidence cited in Vogel 2000.
[4] See, for example, Esty and Geradin 2000.

factors other than concerns about international competitiveness may temper the level of national regulatory standards and the vigor with which they are enforced.

The claim that political jurisdictions are not forced to lower regulatory standards to attract investment is supported by the extensive empirical literature on both the interstate and international effects of environmental regulation. These studies all come to a similar conclusion, namely that environmental regulations have had little impact on firm location decisions. Thus there is no evidence that either those American states or countries that have relatively strict environmental standards have experienced greater difficulty in attracting or retaining investments than political jurisdictions with laxer standards (Jaffee 1995; Levinson 1996; and Stewart 1993).

In this context, it is worth recalling that most international investment, as well as international trade, takes place among relatively rich countries, whose environmental standards are roughly comparable. While some studies point to large growth of direct overseas investment in high-pollution industries in lesser developed nations (Low and Yeats, 1992: 98), Anderson and Kagan (2000) found that US overseas investment in dirty industries" has grown more rapidly in *OECD* countries than in lesser-developed countries. Because OECD countries feature more strict regulations and more effective enforcement than lesser-developed countries, this investment trend tends to undercut the "pollution haven" hypothesis.

Of course, the environmental policies of all countries may not be equally unaffected by the constraints of international competition. Porter (1999) argues that the problem is not the existence of a RTB in relatively rich countries. As he notes: "no empirical evidence has been found that any OECD country has settled for suboptimal environmental standards in response to international competitiveness concerns" (Porter 1999: 138). Rather, he opines that the negative impacts of competitiveness concerns are to be found in rapidly industrializing countries, many of whom have been reluctant to enforce their environmental standards out of fear that their economies will suffer a competitive disadvantage vis-à-vis other relatively poor nations. The regulatory standards of these countries, he claims, are "stuck at the bottom." Thus, they are "dragging down" the regulatory standards not of rich countries but of other poor ones. Porter, however, does not offer any systematic evidence to support this contention.

Spar and Yoffie advance a theoretical explanation for why increased capital mobility has not invariably created a "downward spiral or rivalry that works to lower standards among all affected parties" (Spar and Yoffie 2000: 1). They argue that multinational firms are most likely to have a negative impact on national regulations when four circumstances hold: the products or key inputs for the firms are homogeneous, cross-border differentials are significant, and both sunk and transaction costs are minimal. Since all four circumstances rarely hold, firms in most international industries have neither the capacity nor the incentive to freely move their facilities around the world, thus pressuring governments into lowering their standards.

In addition to suggesting how races to the bottom are forestalled by the internal dynamics of various industries, Spar and Yoffie show how the establishment of common standards can curtail "races," even after they begin. These can either by imposed by agreements among governments, as in the case of international environmental treaties, or through private initiatives. The latter are playing an increasingly important role in the areas of human rights and labor standards, as well as in the environmental policies of some international industries. Their analysis points to an important dimension of globalization, namely that it involves more than the exchange of economic inputs and outputs. It also is associated with the spread of values and norms across national boundaries.

Bernstein and Cashore (2000) make a useful distinction between globalization, by which they refer to structural economic factors associated with rising levels of trade, finance and direct foreign investment, and internationalization, which involves the influence of transnational actors and institutions, and the rules and norms they embody, on domestic policy. They argue that "global economic factors alone generally do not determine the direction of domestic policy responses" to international pressures (Bernstein and Cashore 2000: 73). The four paths of internationalization they identify – market dependence, international rules, international normative discourse and infiltration of the domestic policy process – also have a major effect on domestic policy and may either complement or challenge the effects of economic globalization.

These latter two analyses point to an important insight: to understand the dynamics of globalization as well as the extent and direction of its impact on national policies, we need to examine not only its economic dimensions, but its legal and social ones as well. Globalization is associated not only with increased economic interdependence but with an expansion of international political and social interaction. The latter includes the adoption of common regulatory policies though international agreements, as well as the spread of international norms and advocacy networks.[5]

III. The California Effect

The "California effect" offers a model of firm behavior that is the mirror image of the Delaware effect and its "race to the bottom." The California effect is predicated on the existence of relatively large, highly regulated markets in the world's richest countries. Firms seeking to export to these markets must meet the latter's relatively strict environmental and consumer standards. Having been forced to adjust their exports to meet these standards, it is then in their interest to have their home country adopt similar regulatory standards, since this enables them to achieve better economies of scale by producing more similar products. Higher regulatory standards may also give them some advantage vis-à-vis domestic competitors who have not geared up to meet the standards of "stringent regulation" countries. To the extent that it is easier for domestic firms to comply with relatively strict regulatory standards than it is for rival firms from less regulated jurisdictions, the former will advocate stricter standards, often in alliance with non-governmental organizations (NGOs). Without global markets, there would be fewer such coalitions between Baptists (environmentalists) and bootleggers (certain regulated firms), since bootleggers would have less incentive to support stricter regulatory standards in order to disadvantage foreign competitors.

Thus trade liberalization can strengthen regulatory standards in two ways: it facilitates the "export" of stricter standards and it encourages firms to support stricter domestic standards than they otherwise might prefer. In short, stricter regulatory standards can be a source of competitive advantage. Kahler writes, "Essentially, Vogel argues that the scale of home country market in firm calculations forces transaction cost considerations to the fore, rather than production cost burdens" (Kahler 1998: 22). Yet at the same time, as Kahler notes, Vogel's model suggests conditions under which the export of regulatory standards might weaken or fail.

First, the model assumes that nations with larger markets prefer more stringent regulations. While this may be true in the case of environmental and consumer standards, since affluence and social regulation are strongly correlated, it does not necessarily hold for other areas

[5] For the latter, see for example Keck and Sikkink 1998.

of regulation, such as financial and telecommunications. In the latter areas, rich countries such as the United States may prefer less stringent standards -- due in part to the political influence of domestic firms --, which are then “exported.” In addition, “the contribution of home country regulation to production costs must not outweigh the transaction costs benefits of operating with similar standards abroad, and forcing competitors to meet host country standards at home” (Kahler 1998: 23). Kahler suggests that while environmental regulation in rich countries may pass this cost/benefit calculation, taxation probably does not.

Vogel (1995) acknowledges that the California effect does not even apply to all aspects of environmental regulation. Its effectiveness may be largely limited to product regulation, since these regulations directly affect environmental quality and health and safety in the consuming country. But much environmental regulation is geared toward production processes. Scharpf (1995) observes that there is no incentive for producers to adopt stricter foreign process standards since “such regulations do not affect the usability, the safety or quality of products so produced.” He adds: “Steel from furnaces with high sulfur dioxide emissions is indistinguishable from steel produced with the most expensive emission controls – and the same is true for automobiles produced by workers with or without paid sick leave in firms with or without codetermination.”

According to Swire, “Vogel’s analysis . . . shows the central role that public choice plays in driving competition among jurisdictions” (Swire 1996: 81). In addition to the two mechanisms of “trading up” that Vogel cites, namely that internationa~~l~~ oriented producers will support the stricter standards once they are already complying with that standard in the greener market,” (81) and that “domestic producers can hope to gain market share by helping craft environmental or safety standards to their own advantage” (82), Swire offers a third mechanism: “the demonstration effect of the strict standard – the ability of producers to meet the strict standard in one jurisdiction proves that the standard is technologically achievable at reasonable cost” (82). Yet, like Scharpf, Swire argues that Vogel’s “Race to Strictness” analysis applies to only a highly limited subset of environmental laws, namely those that govern product standards. But “a large fraction of environmental protection laws do not fit Vogel’s model” (85). There is no “race to the top” for air, water or ground pollution from stationary sources such as factories, nor for ambient air, water or groundwater quality standards. Moreover, “the entire and important realm of natural resources protection . . . also fall(s) completely outside the California effect.”(85). Thus “other jurisdictions can . . . kill dolphins, cut down rain forests, or destroy wetlands, without any sign of the California effect” (85). While Swire’s analysis of the limitations of the California effect is intended to demonstrate the need for federal environmental standards within the United States, his analysis applies with even greater cogency to the global economy.

On the other hand, another strand of Vogel’s thesis – the idea that political coalitions between Baptists (environmentalists) and Bootleggers (certain regulated firms) can drive domestic regulatory standards up – can apply not only to product regulations but to production or process regulations. Multinational firms that have learned to meet demanding anti-pollution controls in stringent-regulation nations sometimes can achieve reputational gains and an advantage over less-experienced competitors by allying with environmentalists and pressing for tougher regulations in less-stringent nations where they have operations. Similarly, in federal systems such as the United States, companies with installations in strict regulation states often have pressed for nationwide federal anti-pollution regulations that impose higher standards on their competitors who operate in states where laxer standards prevail. The extent to which this

Baptist-Bootlegger dynamic offsets business incentives to push for *weaker* process standards remains an open question.

There have been a number of empirical studies of the existence, or non-existence of the California effect. Golub (2000) finds a California effect operating within the European Union. A number of environmental product standards enacted by the EU's "greener" Member States, most notably Germany, the Netherlands and Denmark, have served as unilateral trade barriers, making it difficult for products from less green Member States to enter their markets. In many such cases, notably automobile emission standards or standards for energy efficiency, the EU has responded by harmonizing product standards at levels approximating those of its greener member states.

Thus there has been a "California effect" in Europe: green country preferences for stricter product standards have been exported to the EU's less green Member States. But the mechanism by which this upward harmonization has occurred is not exclusively a market phenomenon. Rather it has also required the involvement of a set of institutions that have the authority to establish uniform product standards among countries with diverse regulatory standards. In other words, in the case of the EU, while the California effect originates in the greener preferences of the EU's largest market, (Germany) and in use of regulations as trade barriers (as the theory predicts) the "export" of stricter standards to other EU Member States has taken place not through market mechanisms but through political ones. It is a supranational body, namely the EU, which has harmonized European standards upwards.

At the same time, Golub observes that *process* standards within the EU have followed a rather different dynamic. Not only do stricter production standards place firms in the EU's greener member states at a comparative disadvantage, the standards cannot be used to exclude products produced by less green Member States. Since such standards do not affect the single market, the leverage of nations such as Germany, the Netherlands and Denmark over the terms of harmonized standards is limited. Not surprisingly, the EU's harmonized production standards have often tended to reflect lowest-common-denominator bargains, often codifying existing standards in most Member States, rather than raising them to the level of the EU's greener members. "Examples of such minimal ratcheting include EU standards covering sulfur dioxide and nitrogen dioxide emissions, ambient lead levels, gas and fuel oil content, large industrial plants, detergents, aquatic mercury levels, PCBs, shellfish and freshwater fish, and waste disposal." (Golub 2000: 187) Golub's analysis provides empirical support for the lack of application of the California effect to production standards, as predicted by Swire and Scharpf.

Genschel and Plumper (1997), like Golub, expand the definition of the "California effect" to include the role of international cooperation in driving regulatory standards upwards. They present two case studies. One is the successful standardization of capital adequacy requirements in international banking, demonstrating that "multilateral cooperation among nation states can stop a deregulatory downward spiral and turn it into a *race to the top*" (Genschel and Plumper 1997: 627, italics in original). Their second case – the failure of the EC to counter tax competition by agreeing on a common withholding tax on interest payments – suggests the circumstances when such co-operative turnarounds are likely to fail.

Genschel and Plumper conclude that the likelihood of a negotiated "California effect" depends on two structural factors: the size of the smallest possible coalition that can gain from cooperation all by itself (the k-group) and the external effect of cooperation on non-cooperators. Thus a California effect is more likely to take place if the minimum number of countries that would benefit unilaterally from adopting a strict standard is relatively small, since under these conditions those countries will more easily agree on adopting such a standard even if they have to bear a disproportional part of the associated costs. Secondly, strict standards are more likely to spread if a network effect exists, whereby the benefits relative to the costs of adopting them increase as more countries adopt them. This dynamic held for strict banking standards, in which a few countries derived benefits from the adoption of a common set of strict standards and the benefits increased as more countries adopted the strict standards. It did not hold for tax policies, for in this case harmonization only made sense if a relatively large number of countries agreed to adopt common policies. Moreover, non-cooperators were not disadvantaged if a relatively large number of countries agreed to adopt common tax policies.

Sebastian Princen's (1999) research tests one dynamic of the California effect by examining the impact of the EU's environmental policies on its trading partners. He presents a two step process by which the California effect shifts standards for traded goods. Initially, a country has to decide to require other countries to comply with certain standards if they want to retain access to its markets. Subsequently, the exporting country has to decide to adopt these stricter standards. He argues that the successful completion of these steps depends on three groups of factors. First, the implementation of the California effect must be consistent with the trade rules under which the two countries are operating. If trade rules prohibit a country from excluding products, which do not meet its domestic standards, there can be no California effect.

Second, the California effect depends on the relative size of the two countries' markets. The larger the market size of the stricter country relative to that of the less strict country, the more likely there will be a California effect. Third, the willingness of a country to pressure a trading partner to adopt its higher standard depends upon the preferences and political strengths of public interest groups in the two countries. The more these groups have similar preferences for stricter regulatory standards, the more likely such standards will be adopted in the laggard country.

Princen compares two trade disputes which involved the EC, the US and Canada. The first case he examines is the EC's leg-trap ban, (a "process standard" for fur-bearing animal products). Here the EC was able to use its economic leverage to strengthen the regulatory policies of its trading partners, though its influence was greater on Canada than on the US. In his second case, the EC's beef hormone ban, there was no California effect: the US did not adjust its regulatory policies upward to reflect those of the EC, even though the latter's policies denied the US an important export market. While Princen is not able to isolate the relative importance of the three factors in explaining these different outcomes, his analysis points to the importance of incorporating the economics of "trading up" in any systematic theory of the California effect.

In a subsequent essay, which explores the differences in European and American regulations of genetically modified foods, Princen adds another dimension to this variable – namely the relative costs of target country regulatory adjustment. Thus, in the case of the EU's leg-trap ban, the costs of strengthening American regulatory policies to maintain its access to the European market were relatively modest, while in the case of the EU's beef hormone ban, the costs to the United States of meeting stricter European standards were substantial, as in the case of EU regulations for genetically modified foods. Hence a California effect occurred in the former case, but not the latter two.

The importance of the preferences of trading partners on whom one is dependent also underlies the work of Hoberg, Banting and Simeon (1997). According to this study, Canada has progressively tightened its automobile emissions standards as a response to changes in regulatory policy by both the state of California and the United States, while economic integration between the United States and Canada has also pulled Canadian newspaper recycling requirements upward. In addition "demands from European governments and consumers for chlorine-free paper products and more environmentally sensitive forest practices have encouraged the industry to adopt expensive controls to reduce emissions of dioxins and furans and the province of British Columbia to [strengthen] overall its regulatory regime" (Hoberg et al., 1997:19). Hoberg concludes that Canada is fortunate in that its largest trading partner tends to have relatively stringent standards. "If the balance of trade flows within NAFTA changed, and 80% of Canada's exports were to Mexico rather than the current level of 3%, the balance of pressures would obviously be quite different" (Hoberg et al., 1997:19).

In sum, the California effect focuses on the role of market forces in leading to the adoption of stricter regulatory standards by producers in a nation's trading partners. It is most likely to occur when four conditions apply. The first condition has to do with the nature of the regulation: product standards are more likely to produce a race to the top than production or process standards (Swire 1996, Scharpf 1995, Golub 2000). The second condition has to do with the relative size of the market of the two countries: the larger the market size of the stricter country relative to that of the less strict country the more likely is the latter to adopt the former's standards (Princen 1999). The third condition requires that the costs of the regulatory change be low relative to the benefits of market access (Princen 1999). The fourth condition has to do with regulatory policy of a nation's trading partners. The California effect is more likely to occur when a country's major export market has significantly stricter regulatory standards. (Hoberg et al, 1999)

However, it is important to note that these market mechanisms do not exhaust the vehicles through which nations may "export" stricter regulatory standards. Genchel and Plumper (1997) and Golub (2000), note that international agreements or institutions constitute an alternative mechanism though which stricter standards may be globalized. In addition, Swire (1996) argues that the California effect can work through more informal mechanisms. These include the demonstration effect of stricter standards, the decisions of MNCs to adopt uniform regulatory practices and the scrutiny of NGOs. While in the remainder of this essay, we use the term "California effect" to refer only to market mechanisms, all three mechanisms have played an important role in strengthening regulatory standards. Equally importantly, the latter two mechanisms, namely informational agreements or institutions and informal mechanisms can apply to production or process standards as well as product standards.

IV. The Research in this Collection

The ten essays in this volume attempt to contribute to the understanding of both the impact of globalization in general and the role of the California effect in particular. As is the case with much of the literature in this area, the majority of these essays address various aspects of environmental regulation. Carr and Scheiber explore regulatory regimes for marine conservation, Delmas examines the globalization of environmental management standards, Kelemen looks at federalism and environmental regulation, Post discusses environmental standards in East Central Europe, Murphy investigates the regulation of ozone depletion and marine mammal protection, and O'Neill focuses on hazardous waste management. The remaining four essays explore other areas of regulatory policy: Victor addresses food, plant and animal safety standards, Gelb looks at women's rights, Gitterman examines labor market regulation and Simmons explores capital market regulation. In addition, one of Murphy's case studies deals with shipping regulation, which entails labor and environmental standards.

These essays demonstrate that there are three primary ways in which globalization can affect national regulatory policies. One mechanism has to do with *the dynamics of market or competitive forces.* Murphy and Simmons posit a world in which both firms and governments seek to maximize their economic interests vis-a- vis the global economy and then explore how these interests affect regulatory outcomes. Murphy, like Vogel, emphasizes the ways in which market forces directly trigger changes in national regulations, as national governments, often pushed by domestic business interests, strive to gain competitive advantages.

Simmons, however, emphasizes the ways in which some configurations of competitive pressures trigger action through *transnational or international institutions.* Her focus is on international competitive dynamics, as when politically and economically powerful nations use transnational bodies, such as the European Union or push for international treaties that impose their own standards on other countries. Kelemen, Victor, Gitterman and Post also focus on regional and international institutions. Victor examines the role of the World Trade Organization, specifically its Sanitary and Phytosanitary Agreement on food safety standards, while both Post and Gitterman explore the regulatory impact of the European Union, the former on environmental conditions in East and Central Europe and the latter on Member States' labor regulations. Kelemen's essay is broader in focus, exploring the impact of a number of different trade agreements, primarily on environmental standards, in federal systems.

Of course, the intermediation of international or transnational institutions does not always cancel out the continuing influence of market pressures. Thus Carr and Scheiber's and O'Neill's contributions explore the interplay between institutions and market forces. Carr and Scheiber examine the relationship between various international agreements to promote fisheries conservation and market pressures while O'Neill looks at similar dynamics to understand trends in the shipment and treatment of hazardous wastes. Delmas' essay presents a variation of this theme: it examines the interaction among market forces, domestic regulations, and the adoption of a voluntary environmental standard, namely ISO 14,000.

The third mechanism of globalization described in this volume is the *internationalization of norms and international advocacy networks.* This is the subject of Gelb's contribution, which explores the impact of these mechanisms on the treatment of women (although she notes that transnational institutions, particularly the European Union, can enhance the effects of new normative developments).

In principle, these three mechanisms of globalization, acting either alone or with one another, may produce one of three outcomes. First, globalization may have little or no impact on protective regulations. Second, globalization may strengthen these regulations, resulting in a race toward the top (RTT). Third, globalization may weaken protective regulations, resulting in a race toward the bottom (RTB). It is important to note that these three outcomes are related to, though logically distinct from, the issue of policy convergence/divergence. Thus both a RTB and a RTT can produce either increased convergence or divergence, depending on the intensity of international pressures. That is, some countries may sprint ahead in the general direction of greater stringency or greater laxity, while others move only somewhat or not at all in that direction. Even if a race exists, not all countries may be contestants.

The essays by Simmons and Murphy each suggest a simple general model for understanding globalization's likely effect on national regulations, and then test or illustrate the efficacy of their models through several case studies of different spheres of regulatory policy. As we shall see, both models help explain the dynamics explored in many of the other chapters.

As noted above, Beth Simmons's essay, "The International Politics of Harmonization: The Case of Capital Market Regulation," makes nation-states and their perceived interests the keys to changes in national regulatory policy. Simmons focuses on regulations concerning capital adequacy standards, anti-money laundering, public offering accounting standards, and information sharing. In none of the four cases is there evidence of a race toward the bottom. Rather Simmons is interested in explaining when there is a race toward the top, rather than continued regulatory divergence.

When a dominant financial center initiates a stricter regulation, other countries may or may not have an incentive to emulate it. In the cases of both capital adequacy requirements and accounting standards for public offerings, Simmons observes that it is in the interest of other countries to adopt these stricter regulations since doing so maintains or enhances their ability to attract capital. Accordingly, as in Vogel's "California effect," we have a race toward the top based on market mechanisms.

In the case of both anti-money-laundering regulations and capital adequacy standards, Simmons points out a *second* dynamic that comes into play. In both cases, the heterogeneity of national policies generates strong negative externalities for the dominant financial centers since the latter are negatively affected if other countries do not adopt equally stringent standards. In the case of anti-money laundering regulations, however, other jurisdictions have no incentive to adopt similar restrictions; indeed, it might well be in their interest not to do so. Yet since there are negative externalities for the dominant financial centers, they have an incentive to pressure international institutions to force other countries to adopt similar policies against money laundering. The result is movement towards the top, but not in the form of a market driven "California effect," but rather due to the political control of international institutions by polities that favor stricter standards.

In Simmons's fourth case, information sharing among securities regulators, there are neither negative externalities experienced by the dominant financial centers nor an incentive to emulation on the part of other countries. Hence the outcome is continued divergence.

Simmons suggests that her framework can be useful in accounting for other issue areas in which there is a strong imbalance, or asymmetry, of standards and of economic or political power among countries. Implicitly challenging the RTB model, she posits that large, powerful jurisdictions which enact regulations that they believe are in their interest are not likely to retract them simply because other jurisdictions have not chosen to emulate them. The question then becomes, first, whether the choices made by a major jurisdiction give other countries incentives to emulate, to diverge, or make no difference to them; and second, whether the major jurisdiction suffers from the failure of others to emulate it. In the area of environmental policy, for example, the lure of access to rich greener markets might provide an important incentive for producers in laxer regulation states to emulate strict-nation product standards (e.g., for motor vehicle emissions), an incentive that would be lacking in the case of the green market's *production* standards. Hence "trading up" is more likely to occur in the former case than the latter.

This brings us to the second question. If the other jurisdictions do not have an incentive to emulate, what difference does this make to the country with higher standards? For example, if important political constituencies in rich greener countries believe the weak production standards of less-green nations impose negative externalities on their populations, then the green states, in Simmons's model, have an incentive to use international organizations or economic muscle to pressure the less-green states to make their production standards stricter. This might occur, for example, if competitive pressures from industry in non-green states threaten the jobs of rich green-nation workers, or if the non-green state's standards are seriously damaging particular environmental resources that are treasured by rich-nation environmentalists, such as an endangered species or the ozone layer.

Alternatively, if divergence in national regulations generates no negative externalities for the first jurisdiction, then there will be continued divergence. This analysis is useful in accounting for when greener countries seek to impose their higher standards on other jurisdictions through international environmental agreements, such as the Montreal Protocol analyzed in Murphy's essay, and when they simply maintain stricter standards unilaterally, as in the case of virtually all domestic production standards in rich countries.

Simmons, however, posits the impossibility of a race toward the bottom, since she assumes the dominant power or powers have the ability to impose their preferences on other countries if they need to do so in order to maintain the effectiveness of their own standards. This may well be the case with respect to financial regulations in which there are marked international power asymmetries. But what if the political jurisdiction or jurisdictions with a preference for stricter standards is unable to impose them on other countries? In other words, suppose there are no significant international power asymmetries?

In such a case, one could well imagine that if a strict-regulation country suffered significant enough negative externalities from its imposing higher standards than other countries, then it might be forced to lower its standards. In this context, it is worth recalling that the RTB model assumes that some nations experience significant competitive disadvantages as a result of maintaining adequate wages, a strong social safety net and stringent consumer and environmental standards, and jurisdictions that prefer more progressive policies are incapable of imposing them on other countries. Under these two circumstances, there would be, according to this analysis, a RTB. In none of the case studies in this volume, however, does that scenario unfold.

Dale Murphy's essay, "The Business Dynamics of Global Regulatory Competition," looks more closely at the kinds of market structures and international competitive dynamics that induce nations to change their regulations. He argues that variations in regulations among jurisdictions may generate three trajectories: convergence toward a lower common denominator (RTB), convergence toward a higher common denominator (RTT), and no impact, i.e. continual heterogeneity. He presents a three-part model to account for these outcomes. The first part refers to the asset specificity of investments and transactions. Firms whose investments are mobile, he hypothesizes, are likely to relocate to less restrictive regulatory environments, thus encouraging a RTB, while investments with high asset-specificity deter firms from moving to lax regulation countries. High asset-specificity in turn creates incentives for firms to push for common regulations across borders, which may encourage a RTT or at least harmonization at a higher level of stringency.

The second part of Murphy's analysis distinguishes between (a) process or production regulations, which he hypothesizes may spawn competition in laxity, and (b) product or market-access regulations, which may lead producers to favor stricter domestic regulations which can function as trade barriers and produce a RTT. The third part addresses market structure: Murphy hypothesizes that changes in regulatory policies are more likely to be achieved by dominant, established firms in large, concentrated markets.

Murphy employs his model to explain three cases. The first involves shipping registration, which exhibits competition in laxity toward a lowest common denominator, especially among less developed nations that establish ship registries. In this case, process regulations (concerning ship safety, environmental, and labor standards), low asset specificity (ships are movable), and competitive pressures combine to produce a segmented race toward the bottom, as standards in rich nations remain unchanged but become less relevant because many shippers have re-registered their vessels in poorer countries which have laxer standards. There is no RTT because stringent-regulation nations have not pushed hard, either by a "California effect" restriction on market access or an international treaty, to compel flag-of-convenience states to upgrade their standards – partly because stringent-nation corporate customers, and presumably consumers as well, benefit from lower shipping costs. For their part, the shipping firms in strict regulation countries have no incentive to either encourage their governments to lower their standards or to protect them from international competition, since they can simply reflag their easily moveable assets in lax regulation countries. The result is a de facto RTB among nations seeking to attract ship registration.

Murphy's second case examines the successful negotiation of the Montreal Protocol, which raised production standards in twenty-four countries to restrict the production and use of CFCs, thereby reducing the depletion of atmospheric ozone. Why did this RTT occur? According to Murphy, the chemical industry was characterized by high market concentration and its dominant producers favored a ban on CFCs in order to capture the benefits from selling CFC substitutes. The US was sufficiently powerful to pressure for the adoption of an international treaty that effectively made American standards international ones. The result was an international agreement that both protected the interests of American domestic producers and enhanced environmental protection.

Murphy's third case is one in which American tuna producers supported applying the strict American dolphin-protection standard not only to tuna caught by American vessels sold in the US but to tuna imported from Mexican tuna boats. Notwithstanding successful challenges from the GATT – which prohibited the exclusion of products based on their method of production -- this ban lasted more than a decade, thus enabling American tuna fishers to maintain their domestic market share, while maintaining stringent dolphin protection and thus appeasing American environmentalists. It eventually led to the strengthening of Mexican dolphin protection standards and an international dolphin protection treaty, thus producing a RTT, in the former case by "California effect" market mechanisms and in the latter through international institutions.

In both the CFC and the tuna-dolphin RTT cases, pressures for stricter regulations emerged from a Baptist-Bootlegger coalition, i.e. an alliance of business and environmentalists. By contrast, according to Murphy, "Baptists" have not played an active role in pressuring for more effective international shipping regulation – the RTB case. In strict-regulation countries, neither seamen's unions nor NGOs have been able to deny port access to reflagged foreign ships that fail to meet domestic labor or safety standards. Conversely, as Murphy notes, stringent-regulation countries *have* banned access by any oil tankers that do not meet stringent spill-prevention standards largely because both domestic NGOs and large petroleum companies – especially in the wake of the Exxon Valdez disaster – have a common stake in preventing oil spills within their territorial waters and globally. Not incidentally, such regulations helped reduce industry over-capacity.

Christopher Carr and Harry Scheiber's essay, "Dealing with a Resource Crisis: Regulatory Regimes for Managing the World's Marine Fisheries," addresses another kind of failure of regulatory governance: even if international institutions can bring about more stringent worldwide regulatory restrictions, they are not always able to assure their effective implementation and enforcement. Carr and Scheiber describe the inability of nations to develop an adequate regime to manage the world's marine fisheries, which are becoming depleted due to over-fishing. As Simmons's model would predict, there have been a large number of international efforts, many led by the United States, an important fishing nation, to promote the sustainable use of this critical global resource. Treaty has followed upon treaty. But in contrast to Simmons's model, these efforts have repeatedly faltered at the level of implementation and enforcement. The question is why.

As Carr and Scheiber demonstrate, many governments find it in their short-term political interest to continue to subsidize fishing fleets and encourage their domestic producers to harvest as many fish as they can. Meanwhile, countries that have tried to manage their fishing stocks in a more sustainable manner lack the capacity to force other countries to adopt similar policies. Complicating the efforts of all countries to more responsibly manage this resource are the difficulties of policing fishing catches by thousands of highly mobile individual fishing boats, a lack of scientific consensus regarding the size of worldwide and regional fishing stocks, and the ability of fishing vessels to shift their registration to countries whose conservation standards, as actually enforced, are less demanding.

Note however that as in the case of flag-of-convenience countries, Carr and Scheiber do not describe a universal race toward the bottom, in which "greener" countries have been forced to relax their own conservation efforts, but rather demonstrate how stringent-regulation countries' efforts have often failed as more boats from lax-regulation countries ply the seas, confounding schemes to enforce quotas and other restrictions. Even when stringent regulation countries are able to deny market access to fish caught in unsustainable ways, as permitted by a number of international treaties, such efforts often have failed because foreign fishing vessels can sell their catch in other international markets. In short, there is no "California effect" because stringent regulation countries lack sufficient market power. This reminds us that effectively enforced international standards are the exception rather than the rule: in all but a handful of cases, greener countries have been unable to force or persuade other countries to enforce common standards for marine conservation.

The fisheries example therefore shows the limits of Simmons's assumption that if powerful countries experience externalities from others' weak standards, they can force them, through international organizations or economic pressure, not only to adopt but also to enforce stricter standards. Her response might be that these particular negative externalities – declining high-seas fisheries – have not been so great as to be politically or economically intolerable to powerful polities. Americans and Western Europeans have been more concerned about the fate of whales than about the disappearance of cod from the Georges Bank. Alternatively, monitoring and enforcement may present more serious problems in the case of fisheries than in the case of capital market regulations.

A somewhat more hopeful scenario is described in "Globalization and Hazardous Waste Management: From Brown to Green," by Kate O'Neill. Her focus is on the problem of hazardous waste management, a problem that has been exacerbated by the fact that a significant share of these wastes is exported for disposal. A number of countries, most notably in northern Europe, have implemented policies to reduce the amount of wastes they produce and improve their treatment. Since these regulatory "steps toward the top" increase domestic disposal costs for domestic producers, there have been a number of efforts, as Simmons's model would predict, to export stricter standards for the disposal of hazardous wastes, both within Europe through the European Union and internationally through such agreements as the Basel Convention. The EU has attempted to improve waste management practices in Central Europe, and a number of developing nations have established state of the art facilities for the disposal of such wastes, yielding at least some further steps toward the top.

While noting some improvement in national practices in this area, O'Neill observes that the overall strengthening of waste management policies around the world is uneven. The illegal transfer and disposal of hazardous wastes remains common, especially to and within poorer nations. What she describes is not so much a race to the bottom, but rather a hydraulic effect, whereby stricter regulations in country A, by increasing costs, provoke increased efforts to evade them by seeking cheaper options abroad. Thus, the more comprehensively a country regulates waste disposal within its borders, the more likely it is that some of its waste will be exported to countries with laxer or more poorly enforced standards. In terms of Murphy's typology industrial wastes-- like ships, but unlike an industrial furnace that produces air pollution -- are moveable. In terms of Simmons's typology, poor disposal practices elsewhere impose only relatively small environmental and economic costs on greener countries, and green countries' power to impose higher standards on some lax regulation countries is limited.

Due to pressures from environmentalists, especially in Europe, the Basel Convention has been negotiated, seeking to limit exports of hazardous wastes to developing countries. Yet, as in the case of international fisheries agreements, the impact of this international treaty has been limited, O'Neill tells us, largely due to a lack of international consensus as to what constitutes a hazardous waste as well as the fact that the ban on hazardous waste exports is not yet in force. Moreover rich country producers continue to benefit from laxer standards in developing countries because this lowers their waste disposal costs, while, as in the case of fisheries, many poorer countries benefit financially from less stringent standards. The result is slow progress toward a RTT.

The difficulties powerful jurisdictions experience in exporting their standards also is an important theme in Diahanna Post's essay, "Closing the Deception Gap: Accession to the European Union and Environmental Standards in East Central Europe." Post examines the EU's efforts to impose its environmental standards on Poland, Hungary and the Czech Republic, three countries that are in the process of negotiating membership in the EU. In principle, the leverage of the EU over the environmental policies of the countries of east central Europe (ECE) is considerable: the latter eagerly want to join the EU and the EU is in a position to determine the conditions of their accession. In addition, reflecting an important factor in Simmons's model, the EU has incentives to require the ECE countries to adopt its environmental standards. For one thing, it faces the problem of negative externalities: its producers will be at a competitive disadvantage if they are forced to compete with imported products produced according to the much weaker standards currently prevailing in the ECE. In addition, European environmentalists very much favor an improvement in environmental conditions in the ECE, which are widely regarded as deplorable, if not catastrophic. Western manufacturers investing in the ECE already have environmental technologies and managerial know-how, and hence seem likely to support tougher standards. All the preconditions for the California effect appear to be in place. The stage is set for a race toward the top.

Post reports that such a convergence is happening on paper, but not in practice. She describes a phenomenon that might be labeled a "Potemkin harmonization." There appears to be an unspoken consensus to accept the ECE's promises to improve environmental quality and adopt EU standards, although in fact, there is an enormous gap between official policies of the ECE and their actual practices. Her essay depicts the enormous obstacles that can stand in the way of "exporting" stricter environmental practices. These include the lack of an adequate enforcement capacity, the weakness of domestic NGOs, modest public interest in environmental issues, and a lack of technical and financial resources on the part of many domestic industries.

The extent to which the EU is willing to overlook the shortcomings of the ECE's compliance with its standards may suggest that the negative externalities EU countries experience from ECE's relatively weak environmental performance may not be all that significant. For the same reason, the ECE's failure to strengthen its environmental standards is unlikely to pressure the EU to lower theirs. ("Deception" is not only an external phenomenon: there is substantial non-compliance with EU directives among the fifteen Member States.) In the long run, as in the case of developing country standards for the treatment of hazardous wastes, the environmental performance of the ECE is likely to improve. The primary problem is not a RTB; rather it is the slow rate at which national standards are converging upward.

The continued divergence of many environmental norms is the theme of Magali Delmas' essay, "Globalization of Environmental Management Standards: Barriers and Incentives in Europe and in the United States." Delmas traces the international dissemination of ISO 14001, a voluntary standard calling for formal corporate environmental management and mechanisms for continuous improvement, developed by the International Organization for Standardization in Geneva. ISO 14001 can be viewed as a market-based mechanism for pressuring firms in lax-regulation countries to upgrade their corporate environmental management standards: while governments of greener countries cannot, under WTO rules, exclude imported products made in countries with less stringent environmental production methods, companies in greener countries can (and often do) refuse to do business with firms that are not "ISO 14001 certified." This standard has been widely adopted by Western European firms and by firms in other countries (particularly Japan and Canada) that sell to those European firms. However, relatively few American firms have sought ISO 14001 certification.

Delmas attributes this contrast to differences in the nature of interaction between business and government. In Europe, government regulators have embraced ISO 14001 and provided companies with important incentives to adopt it. The more legalistic and adversarial nature of the business-government relationship in the US means that there are few advantages for American based firms to adopt ISO 14001. Indeed, its adoption may even make them more vulnerable to lawsuits. Since the US does not experience any competitive disadvantage from the adoption of formalized environmental management in EU firms, American government has not promoted its adoption in the US. And since production costs are escalated in the US by the legalistic American approach to regulation (Kagan & Axelrad, 2000; Anderson & Kagan, 2000), the EU does not suffer any negative externalities from the widespread adoption of ISO certification in

Europe and has therefore not pressured the American government to mandate or encourage ISO 14000 certification in the U.S. The result is continued policy divergence.

The persistence of national policy divergence in an increasingly globalized economy is also the theme of David Victor's essay, "The WTO's Effort to Manage Differences in Sanitary and Phytosanitary Policies." A Sanitary and Phytosanitary Agreement (SPS) was incorporated into the Uruguay Round trade agreement. In order to prevent nations from using human, animal and plant safety standards as non-tariff barriers, it seeks to promote the harmonization of national standards. The agreement specifically urges countries to adopt the SPS standards set by various international bodies, the most important of which is the Codex Alimentarius Commission established in 1962 under the auspices of the UN and the World Health Organization.

This agreement can be seen as an effort, led by major agricultural exporters including the United States, to develop an international legal mechanism to cope with the negative externalities of diverse national SPS standards. In contrast to the case of capital requirements regulation, in which NGOs displayed little interest, or the Montreal Protocol, where NGOs were highly supportive, this international agreement was opposed by many NGOs based on fears that it would undermine the stricter national standards of Europe and the United States. On the other hand, many developing countries feared that they would be required to adopt the generally stricter standards of the industrialized nations.

Victor's essay represents the first systematic effort to assess the impact of the SPS Agreement, now approximately six years old. His central conclusion is that the agreement has had little impact on national regulatory standards for food and related agricultural products: there has been no increase in convergence around international standards. Ironically, one of the results of investing the Codex with more authority over trade law has been to make it more difficult for this body to establish new standards. The standards it is now setting are increasingly broad, often providing nations with little guidance even if they wanted to adopt them.

Equally importantly, in none of the three disputes that have been adjudicated under the SPS agreement by the WTO were nations required to adopt international standards. In the case of two of the disputes, such standards did not even exist, while in the third case – the beef hormone dispute between the US and the EU – the appeals panel explicitly held that the EU was not required to adopt them. Nor does the fact that all three cases were decided in favor of the plaintiff suggest that the WTO's implementation of the SPS Agreement is undermining the ability of nations to protect humans, animal and plants. For in each case, the dispute panel was able to identify alternative SPS measures that would lead to the same level of protection with less distortion of trade.

Victor does suggest that the SPS Agreement is having an impact, although not the one anticipated by the nations that initiated it. While it is having little impact on either the level of food safety or the convergence of national standards, it is affecting the way countries go about establishing SPS standards. Specifically it is encouraging the use of risk assessments and the aligning of risks at "comparable levels," since such measures will enable national regulations to withstand challenges under WTO rules. Forcing nations to base their SPS regulations on scientific risk assessments is likely to encourage them to strengthen rather than weaken their standards – especially when such assessments are accompanied by the increased use of the precautionary principle – and ironically may lead to the increased diversity of SPS levels.

R. Daniel Kelemen's essay, "Globalization, Federalism and Regulation," addresses a related issue, the impact of international legal integration on national standards. Kelemen defines such integration broadly. His analysis encompasses trade organizations like NAFTA and the

WTO as well as international environmental agreements and the treaties that define the European Union. His specific focus is on the impact of international legal integration on the centralization of power within federal systems as well as on the stringency of regulatory standards. This is a central issue because, as noted above, concerns about RTB originated in the study of federal systems, where it was claimed that the concerns about attracting investments limited the ability of sub-national jurisdictions to establish standards as strict as they would like.

Kelemen notes that while there have been cases in which economic integration has impeded the establishment of social regulations, most notably in the case of US child labor laws early in the 20^{th} Century, he finds little empirical evidence in support of the RTB hypothesis in the area of environmental regulation. Thus he notes that within both the US and the EU, greener political jurisdictions continue to maintain stricter standards. In view of the fact that the competitive pressures added by globalization are minimal compared to those that already exist in federal systems, he finds no reason to believe that globalization will push states within federal polities into a RTB competition.

Globalization, however, has encouraged the centralization of regulatory policy in federal systems. Since federal governments are accountable for violation of international trade or environmental agreements by sub-national jurisdictions, the former have an incentive to restrict the latter's autonomy. At the same time, there is a growing trend within the EU and the US to devolve more regulatory responsibilities onto local jurisdictions and the EU has in fact upheld the legality of a number of *more stringent* Member State regulations, even though they interfere with the single market.

Kelemen finds a similar mixed picture with respect to the impact of international legal institutions on the stringency of standards. On one hand, dispute resolution bodies have successfully challenged a few stringent social regulations. While the immediate impact of such challenges has been limited, there is evidence that they may have had a "chilling effect." But on the other hand, international environmental agreements and the EU have had a much more substantial impact in precisely the opposite direction, that is, pushing them incrementally towards "the top".

Joyce Gelb's essay, "Globalization and Feminism: The Impact of the New Transnationalities" covers a diversity of international institutions. Gelb's focus is on the globalization of norms surrounding the treatment of women, encompassing such policies as maternity leave, child-care, equal pay, non-discrimination and sexual harassment. She explores the impact of international institutions, structures and agreements ranging from the UN Commission on the Status of Women and the Division of the Advancement of Women, to the Convention on the Elimination of Discrimination Against Women, the International Labor Organization and the European Union.

What makes the focus of Gelb's analysis distinctive is the absence of any role for business or indeed of market forces. Whatever negative externalities a country with weak gender equality laws may impose on those with stronger regulation, they seem to be modest. They do not compel nations whose policies toward women are relatively progressive to pressure countries with which they compete to adopt similar policies. Nor can progressive policies toward women function as trade barriers; in short, there are no bootleggers.

There are, however, Baptists. Indeed, the vehicle for the international dissemination of feminist policies is the international women's movement, working with international organizations to create high-visibility events such as the International Women's Year (1975) and the Decade of Women (1975-85). The vast number of NGOs who operate in more than one country – more than 15000 of them – has played a critical role in placing human rights issues affecting women on the international political agenda.

Gelb examines the impact of new international norms related to gender equality on the domestic policies of Japan, an industrialized nation in which women's interests have been relatively unprotected. She notes that Japan found itself under international pressure to ratify a number of important international agreements regarding gender equality, and their ratification required Japan to review and revise a number of domestic policies. In many cases the resulting policy changes were cosmetic, but at the same time, the ability of Japanese feminists to draw on international gender equality norms has raised awareness and produced new legislation. Thus "Baptists alone" have played a role in pressuring a laggard nation to bring its policies into closer alignment with new international norms.

Not surprisingly, the EU, a much more powerful institution than the UN and other international bodies, has had a more substantial policy impact. The EU's willingness to steadily expand the scope of its policies aimed at ensuring greater gender equality has provided domestic NGOs with greater political and legal leverage, especially in those countries in which such groups have historically enjoyed little influence. An important example of this dynamic can be seen in the case of Great Britain. EU directives and court decisions have had a considerable impact on British policies in areas such as equal pay, equity with respect to retirement pensions, maternity leave, sex discrimination and sexual harassment.

Gelb does not discern any RTB: nations with relatively progressive gender equality policies do not appear under any competitive pressure to modify them. But she notes that some gender equality policies – most notably equal pay, child care and maternity leave – can impose considerable costs on employers, making it in the latter's interest to oppose them. In such cases, international pressures, legal as well as extra-legal, still have a critical role to play.

In two important respects Daniel Gitterman's essay, "A Race to the Bottom, a Race to the Top or the March to a Minimum Floor? Economic Integration and Labor Standards in Comparative Perspective," offers the most formidable test of the impact of economic integration on regulatory policies. Gitterman focuses on public policies affecting labor – an area in which the impact of pro-labor regulations on firm costs is substantial. His geographic focus is the EU -- the region in which economic globalization has proceeded further than anywhere in the world. According to the RTB model, we should expect some "social dumping," expressed through the displacement of producers in high-cost labor policy regimes by those from Member States characterized by labor policies that impose lower costs, thus leading the former to lower their wages and standards and the latter to keep them low in order to remain competitive. A diametrically opposed prediction, based on Simmons's model, would be political pressure by strong labor-regulation states for the harmonization of labor policies by the EU, thus creating a level playing field.

Yet Gitterman finds that neither outcome has materialized, with the exception of some "harmonization up" with respect to regulation of working conditions. The core aspects of labor market regimes of the Member States show little evidence of convergence: the nature and character of labor market protection continues to be primarily set by national governments and the political systems in which they are embedded. Harmonization by the EU has attempted to reduce potential conflicts between the free movement of labor and national employment rules. In addition, the EU has harmonized regulations governing equal opportunity, health and safety and living and working conditions and these policies have had an important and progressive impact on national labor market regulatory systems – a movement toward the top in this realm of regulation. But the core features of labor market regimes, namely collective bargaining and pay determination, remain nationally specific. In sum, there is relatively little evidence of either policy convergence through legal mechanisms, or of a RTB through economic pressures.

Gitterman suggests that one solution to this puzzle may be that progressive or more generous labor market policies are not necessarily a source of competitive disadvantage, partly because compensation costs are not the only determinant of competitiveness. Indeed, high-wage countries often have compensating advantages over low-wage ones, such as a more skilled workforce, better infrastructure and higher productivity.

Other international trade agreements, namely NAFTA, MERCOSUR, ASEAN and the WTO, have been even less effective in harmonizing labor standards; indeed most have not even attempted to do so. While the adoption of some core labor standards has been supported by governments from some high-wage countries, as well as their unions, such effort have had little impact. This is in part due to opposition from many developing countries who worry that unions and domestic producers would use such standards to exclude their exports on the grounds that they are produced “unfairly.” In principle, international labor standards do exist: the International Labor Organization has adopted fundamental principles of labor rights. But it lacks any mechanism for enforcement. In short, while high-wage countries have not been pressured into lowering their labor standards, they have been either unable or unwilling to pressure their trading partners into raising theirs. The result is continued policy divergence.

V. Conclusion

The evidence presented in this volume weighs heavily against the notion that globalization induces a general regulatory race to the bottom, compelling nations to relax their regulatory standards in order to become or remain economically competitive. In most of the several regulatory policy fields discussed in these chapters, the direction of national regulatory policy has been toward greater stringency, toward the standards of the regulatory leaders. Even when divergence prevails, stringent regulation countries have not weakened their standards, and with some notable exceptions-- shipping regulations, fisheries conservation, labor standards, and waste disposal -- lax regulation states generally have taken significant steps toward greater stringency. Indeed, the primary reason for continued divergence noted in many of the case studies has been due less to the failure of more lenient-regulation states to enact tougher laws and regulations than to their inability to create effective on-the-ground enforcement systems -- a failure that often reflect reflects weaknesses in governmental capacity that is still common in many developing countries.

The European Union, where the international economic integration characteristic of globalization has been especially pervasive, has been one major mechanism driving all Member States, as well as states that want to be members, toward higher regulatory standards, partly because of the EU’s strength as a transnational governance institution, and partly because of its importance as an economic market. Thus EU regulators have pushed the environmental policies of member states both toward greater convergence and greater stringency. (Keleman) The EU has drawn regulatory laggards toward the stricter workplace safety standards of the EU’s regulatory leaders (Gitterman), has pressured member states to adopt more uniform and more stringent rules concerning women’s rights in employment (Gelb), and has induced the Czech Republic, Poland and Hungary to at least formally adopt stricter environmental standards (Post).

Even in the absence of the institutional leverage provided by the EU, globalization has facilitated international pressures for tougher national regulations. Gelb points out that globalization in the realm of communications and culture has abetted linkages between national and international non-governmental organizations dedicated to women's rights, generating new international norms and pressuring reluctant countries such as Japan to adopt more stringent regulations. In the realm of bank regulation, globalization has encouraged a race to the top in national regulatory standards concerning capital reserves and in corporate accounting standards (Simmons). Through the Montreal Protocol, twenty-four industrial nations agreed on a coordinated and rapid increase in the stringency of standards restricting the manufacture and use of CFCs, which have been eroding the earth's atmospheric ozone layer (Murphy).

Yet in the majority of the regulatory areas examined in this volume, policy convergence among the nations studied has been quite incomplete. Instead, the modal outcome is continued heterogeneity. Globalization has not been a juggernaut driving regulatory policy inexorably either to the top or to the bottom.

Businesses in the US, in contrast to their European colleagues, are wary of adopting ISO 14001 standards for corporate environmental management (Delmas). When national regulatory standards do converge on paper toward more stringent ends, actual practice often continues to diverge. Thus the SPS agreement on food safety, David Victor found, has had only a weak effect on countries' regulatory policies. East European countries, while adopting more stringent Western European environmental regulations, often have failed to implement them in practice (Post). In many countries, hazardous waste management regulations, driven by treaty commitments, have become more stringent, moving toward the top, but collection, transportation and disposal practices around the world remain uneven (O'Neill). The actual impact of Japan's laws concerning equal employment of women has been disappointingly limited (Gelb, 2000). Even within the European Union, where the removal of trade barriers has exposed all Member States to more intense competition, core labor policies, Gitterman tells us, continue to be set primarily by national governments and diverge considerably.

On balance, most case studies of continued regulatory divergence portray a heterogeneity that has moved in the direction of more stringent rather than more lax national regulatory standards. The regulatory course triggered by globalization has been toward the top, although the laggards remain sufficiently behind the leaders that it seems not so much a "race" as the movement of a migrating herd.

On the other hand, parts of some herds have drifted off in the opposite direction, toward lax regulatory standards. Years of international regulatory efforts have not arrested the depletion of many oceanic fisheries, as some national fishing fleets continue to fight against demanding regulatory standards or their strict implementation (Carr and Scheiber). Similarly, Murphy describes the ongoing competition among certain countries, from Liberia to Belize to Malta, to invite reflagging of commercial vessels by means of the implicit promise of weaker enforcement of international labor and environmental standards. In both of these cases, to use Murphy's helpful typology, the reasons for RTB lie in the fragmented character of the regulated industries and the ease with which the regulated facilities (ships) can be relocated or escape detection.

In neither case, however, is there significant evidence that the countries with more stringent standards have felt compelled to relax them; the race to the bottom has been selective. Rather, in these instances the stringent-standard countries have not been willing or able to use either political might, economic leverage, or import restrictions to impose and enforce more stringent rules on the lax-standard countries – partly due to WTO rules, and partly because in these regulatory arenas, the “negative externalities” that the lax-regulation states impose on the stringent-rule states (Simmons) have not been politically or economically intolerable.

The central shortcoming of global regulatory governance, these studies suggest, lies in the inability and/or unwillingness of strict regulation countries to impose their standards on countries with laxer standards, either through market or political mechanisms. In some cases, producers in the former countries may benefit from the continued disparity of standards, such as in the areas of labor rights, flags of convenience, and waste disposal. In principle, these economic interests could be challenged by NGOs, but the latter’s political influence is limited in these policy areas. In other cases, most notably fisheries and national environmental standards in central Europe, what is lacking is not so much the desire of strict regulation countries to export their standards but their inability to make other countries actually implement and enforce stricter standards – an inability compounded by the fact that many lax regulation countries either have no interest in investing in enforcement systems or lack the administrative capacity to do so.

Simply changing the values of the causal variables that Murphy and Simmons emphasize helps account for the cases in which national regulatory policies have converged on greater stringency. When the regulated markets are highly concentrated or production is location specific (that is, not easily moved to lax-regulation countries), “upward convergence” seems more likely, as in the case of the ban on CFCs. That is one reason why countries with relatively strict environmental regulations have not been forced to relax their policies due to competition from lax regulation countries.

When politically and economically dominant nations suffer substantial negative externalities, economic or perceived, as a result of lax regulation elsewhere, they face incentives, as Simmons points out, to use their economic and political power to find ways of imposing those standards on those other countries. They can’t always do so completely, partly because World Trade Organization rules prevent them from excluding imports from lax regulation countries -- as in the case of fisheries regulation. But sometimes, dominant nations can find a way, as when the U.S. ultimately pressured Mexico to agree to regulate fishing to protect dolphins.

Finally, as Simmons points out, sometimes it is the lax regulation countries that suffer economically from being in that position, as when capital flows not to them but to countries that have the most reliable bank regulation. This gives the lax bank regulation countries a strong incentive to emulate the strict regulation countries. Here, too, is where aspects of the “California effect” become relevant. In the lax regulation country, banks that already have high standards (perhaps because they also do business in the strict regulation countries) may lobby their government to make such standards mandatory. Simmons’s model helps explain why governments in areas other than bank regulation too may have an incentive to respond to domestic advocates of strict regulation, whether those advocates are businesses or NGOs. Still, as noted earlier, although lenient regulation countries not infrequently have incentives to strengthen their regulations, that is not always sufficient to bring about international regulatory convergence in practice (rather than merely on paper), since they may lack the resources, administrative capacity, and social support to adequately monitor compliance by regulated enterprises.

The upshot is that the manifold strands of globalization generate a variety of economic and political incentives and lead to a variety of regulatory patterns. Every important regulatory policy leads to benefits for some nations, industries and political constituencies while imposing costs and disadvantages on others. In some cases, the studies show, international institutions *impede* efforts by stricter-regulation nations to export their standards to other countries (as in the

GATT decision in the tuna-dolphin case) while in other cases, such as the Montreal Protocol on CFCs and the European Union's environmental, workplace safety, and gender discrimination policies, transnational institutions have been the key to "upward convergence" in national regulatory standards. In some cases, the drive to push regulatory laggards toward the standards of stricter-regulation countries is driven by dominant governments (with the support of business and labor interests as well as NGOs), as in the case of EU pressures on central European countries (Post) and the Basel accord on hazardous waste trade (O'Neill). But sometimes the pressures for diffusion of regulatory standards comes solely through NGOs, using international forums to generate normative expectations that regulatory laggards feel politically obligated to meet.

The general movement toward more stringent regulatory standards that these case studies reveal does not imply that globalization tends to produce optimal regulatory policies, for it simultaneously generates competitive pressures that lead to political resistance to tougher regulations. Everywhere, powerful business interests argue against costly increases in national regulatory stringency. Virtually no national government supports regulatory enforcement agencies well enough to ensure reliable monitoring and enforcement, and that shortfall is far greater in less developed nations. Harmonization on paper thus does not preclude considerable differences in methods and effectiveness of implementation.

Nevertheless, it is worth reiterating that the overall tendency of globalization, as indicated by these varied studies, is toward greater rather than less regulatory stringency. Although not explicated in the problem-focused case studies themselves, the overriding background factor, accelerated by globalization, may be a steadily if unevenly increasing political demand -- in all democratic nations and in many others as well -- for greater protection against risks to human safety and health, environmental destruction, and economic security. This political demand for what Lawrence Friedman (1985) has called "total justice" accelerated in the richer democracies in the latter third of the 20th century. Globalization, with its instantaneous communication of information about risks and solutions, helps enhance that demand around the world. Its vectors are multinational corporations and international NGOs, scientific journals, news media, and governmental reports. In stimulating the flow of news around the world, globalization increases the visibility of poorly governed, heedless business activity wherever it occurs. Multinational corporations know that their behavior in Indonesia and Nigeria, if severely violative of home nation standards, will not remain a secret from its customers and NGOs in rich nations.

This background political pressure for adequate regulation does not always prevail of course. The studies in this volume indicate the particular circumstances in which particular interests are most motivated and able to exploit it or to resist it. But it rarely fades away entirely, or rather is always available to be invoked. That, combined with the "California effect" political and economic mechanisms discussed in these chapters, suggests that most regulatory races are likely to continue to move, however haltingly, in the direction of greater stringency.

In conclusion, our understanding of the dynamics of regulatory convergence can be briefly summarized as follows. The first element has to do with the interests of strict regulation countries in having their standards adopted by their trading partners. Such interests may stem from a variety of causes, such as producers who suffer a competitive disadvantage from the lack of a level playing field, the existence of negative externalities, and pressures from NGOs. Alternatively, strict regulatory countries, or to be more precise, those interests which define national preferences, may benefit from the continued disparity of regulatory standards, in which case there is likely to be less pressure for convergence. If policy-makers in strict regulatory countries do support international regulatory convergence, the outcome then turns on their ability to create an effective international regulatory regime.

If such regulatory convergence is also in the interests of their trading partners, then the likelihood of regulatory convergence is considerably enhanced. However, if laxer regulatory countries do not benefit from the adoption of the standards of strict regulatory countries, then the issue turns on mechanisms of "enforcement." There are three primary mechanisms by which regulatory standards can spread across national boundaries. One has to do with market access, which the California effect specifically addresses. A second involves international institutions or agreements. The third involves pressures from international NGOs either directly or on multinational corporations. Each of these mechanisms, however, has both strengths and shortcomigs.

This suggests that an important research agenda for scholarship on regulatory policy is to focus on the dynamics of regulatory implementation and enforcement – particularly the mechanisms through which stringent-regulation countries, acting through restrictions on market assess, international institutions and NGOs can induce weak-enforcement states to improve compliance with international or harmonized regulatory standards by domestic firms.

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