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Corporate Social Responsibility and the State

International Approaches to Forest Co-Regulation

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Abbreviations

AF&PA	American Forest and Paper Association
AFS	Australian Forestry Standard
ATFS	American Tree Farm System
ANSI	American National Standards Institute
BCTS	British Columbia Timber Sales
BLM	Bureau of Land Management (US)
BMP	best management practice
CCFM	Canadian Council of Forest Ministers
CFSA	Crown Forest Sustainability Act (Ontario)
CLFA	Crown Lands and Forest Act (New Brunswick)
CPET	Central Point of Expertise on Timber Procurement
CORE	Commission on Resources and Environment (British Columbia)
CPPA	Canadian Pulp and Paper Association
CSA	Canadian Standards Association
CSR	corporate social responsibility
DCR	Department of Conservation and Recreation (Massachusetts)
DNR	Department of Natural Resources
EAA	Environmental Assessment Act (Ontario)
EMS	environmental management system
ENGO	environmental nongovernmental organization
EPA	Environmental Protection Agency
EU	European Union
FLEGT	Forest Law Enforcement, Governance and Trade
FAO	Food and Agriculture Organization of the United Nations
FPAC	Forest Products Association of Canada
FPB	Forest Practices Board (British Columbia)

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FRPA	Forest and Range Practices Act (British Columbia)
FSC	Forest Stewardship Council
GRI	Global Reporting Initiative
HCP	Habitat Conservation Plan
HCVF	high conservation value forest
ISEAL	International Social and Environmental Accreditation and Labelling Alliance
ISO	International Organization for Standardization
ITTO	International Tropical Timber Organization
LEED	Leadership in Energy and Environmental Design
LRMP	Land and Resource Management Plan (British Columbia)
MCPFE	Ministerial Conference on the Protection of Forests in Europe
MFL	Managed Forest Law (Wisconsin)
MNC	multinational corporation
MRNF	Ministère des Ressources naturelles et de la Faune (Quebec)
MTCC	Malaysian Timber Certification Council
NBF	National Board of Forestry (Sweden)
NGO	nongovernmental organization
NIPF	non-industrial private forest
NRDC	Natural Resources Defense Council
NSF-ISR	NSF-International Strategic Registrations
NSMD	non-state market-driven
OECD	Organisation for Economic Co-operation and Development
OMNR	Ontario Ministry of Natural Resources
OSP	Ontario Stewardship Program
PAS	Protected Areas Strategy (British Columbia)
PEFC	Programme for the Endorsement of Forest Certification
QFIC	Quebec Forest Industry Council
RAN	Rainforest Action Network
REIT	real estate investment trust
SBFEP	Small Business Forest Enterprise Program (British Columbia)
SCC	Standards Council of Canada
SCS	Scientific Certification Systems
SEPA	Swedish Environmental Protection Agency
SFA	Swedish Forest Agency
SFB	Sustainable Forestry Board
SFI	Sustainable Forestry Initiative

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SFL	Sustainable Forest Licence (Ontario)
SFM	sustainable forest management
SIC	SFI implementation committee
SSNC	Swedish Society for Nature Conservation
SWEDAC	Swedish Board for Accreditation and Conformity Assessment
TFL	tree farm licence
TIMO	timber investment management organization
TSFMA	Timber Supply Forest Management Agreements (Quebec)
UNCED	United Nations Conference on Environment and Development
UNECE	United Nations Economic Commission for Europe
UNFF	United Nations Forum on Forests
USFS	United States Forest Service
WBCSD	World Business Council for Sustainable Development
WCED	World Commission on Environment and Development
WTO	World Trade Organization
WWF	World Wide Fund for Nature/World Wildlife Fund

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Introduction

Over the past fifteen years, private environmental codes and transnational corporate social responsibility (CSR) standards have proliferated. Led by industry and/or nongovernmental organizations (NGOs), these standards now address sustainability issues in a wide range of sectors across the globe – from forestry, mining, oil and gas, fisheries, agriculture, finance, and chemicals to apparel, coffee, jewellery, and tourism. Governments, corporations, and NGOs have been enthusiastic about CSR, with many groups heralding these voluntary multi-stakeholder efforts as the path to sustainable development.

The CSR opportunity is enticing to all stakeholders. When a corporation voluntarily takes on greater responsibility for achieving societal goals, its long-term value can increase, negative environmental impacts ideally are reduced, and the regulatory costs to governments are ultimately lessened. It can be a win/win/win scenario. As CSR participation unfolds in a patchy, uneven pattern, however, and as environmental and social conditions worsen in vulnerable areas across the planet, skepticism about CSR standards is growing. The sense is that, on their own, they are falling short. Attention is shifting back to governments to "scale up" CSR efforts. Some states have heeded the call, whereas others remain on the sidelines. The role of the public sector is unclear and is a point of global debate. Should governments ignore, facilitate, compete with, or perhaps even mandate these voluntary private standards?

On the one hand, if they enable CSR, governments could be perceived as handing over the policy reins – effectively turning the fox loose in the hen-house in trusting the market with the public good. On the other hand, if they ignore or merely observe CSR, governments may lose the opportunity to leverage private resources for public benefit as well as to reward corporate virtue. The implications of state engagement with CSR are largely unexplored. This book addresses this knowledge gap.

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The following seven chapters assess the public sector role in CSR by evaluating government response to a well-established CSR standard, forest certification. The focus is on forest certification not just because it is a highly developed example of CSR but also because the pattern of certification adoption and its policy classification are puzzling: if certification was intended to fill a governance gap in lesser-developed tropical regions, why has 90 percent of adoption taken place in highly regulated, northern developed countries? And why have governance scholars and policy makers labelled certification a non-state, market-driven mechanism when the standards incorporate public forest laws and governments are directly engaging with the certification process?

This is the comprehensive story of forest certification governance that goes beyond a market-based narrative. Although governments have generally assumed a position of non-interference in forest certification, they are in fact responding to certification through a range of direct co-regulatory approaches – endorsing, enrolling, and even mandating the private governance mechanism as an additional policy tool alongside traditional forest regulation. Furthermore, in the highly regulated, developed countries where forest certification co-regulation is occurring, the contest between overlapping established public laws and new private forest rules is encouraging ongoing adaptive improvements in forest management policy and practices. In other words, forest certification is aiding governments to better manage their commercial forestry sector and forest resources.

There is optimism regarding the emerging benefits of co-regulation. Private forest owners are taking on greater responsibilities for forest sustainability. Public policy makers are learning from the ongoing contest between public and private rules, and from the increasing level of collaboration. Nevertheless, the story of forest certification governance is also a cautionary tale that highlights the limits of CSR. Although it is perhaps tempting for a government to employ forest certification as a replacement for often financially costly forest regulations and programs (such as planning, inventories, and audits), the cases in this book reveal how forest certification is *not* a substitute for the efforts of a public forest agency. Rather, success in forest certification hinges on state capacity and government engagement.

The remainder of this chapter is divided into three sections. The first section introduces the topics of CSR and forest certification, defines the concept of CSR co-regulation, and outlines the central arguments regarding certification co-regulation. The next section explains the objectives and parameters of the research, specifically the reasons for selecting Canada, the United States, and Sweden as the case study examples. The chapter concludes with a brief overview of the book's structure.

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Corporate Social Responsibility

Corporate social responsibility is fundamentally about the role of business in society and the balancing of public and private responsibility. To what extent does a company have a responsibility to go beyond the law to meet societal expectations? Is the corporate mandate solely to deliver a financial profit to shareholders, or do businesses also have a responsibility to create value for society? Are the two goals mutually exclusive? There is a long history of debate over these normative questions, with shifting emphases and fluctuating levels of societal concern.[1]

Since the United Nations Conference on Environment and Development (UNCED) in 1992, there has been a resurgence of interest in CSR, with attention directed in particular towards increasing the accountability and responsibility of multinational corporations (MNCs) in addressing environmental and social equity issues and contributing to global sustainability solutions. Groups across all sectors have reacted. The UN spearheaded the United Nations Global Compact to encourage multinational companies to voluntarily commit to the adoption of global CSR principles. The International Organization for Standardization (ISO) established the ISO 14000 set of international environmental management standards to help companies mitigate their environmental risks. NGOs initiated the Global Reporting Initiative (GRI) to provide a template for more standardized corporate sustainability reporting. Financial institutions introduced sustainability funds and socially responsible investment rating systems such as the FTSE4good and the Dow Jones Sustainability Group Index to identify and send stronger market signals about responsible companies. And industries from resource extraction to retail have developed and adopted multi-stakeholder CSR standards in their respective sectors.

Led in many cases by environmental advocacy organizations and companies in partnership, many of the CSR standards include certification programs that aim to encourage sustainable business practices by linking responsible producers and consumers through market supply chains. Independent auditors verify and certify a company's stewardship practices based on a checklist of environmental and social requirements spelled out in the private certification standards. Certified producers can then carry an eco-label on their products, providing them with opportunities to access growing eco-consumer markets.

Going beyond legal requirements, these standards have become prevalent across an increasing number of industry sectors. For example, the Marine Stewardship Council certifies and labels sustainably harvested seafood from wild fisheries. Coffee, cocoa, and tea producers seek sustainability labels of approval under international fair trade and organic certification bodies,

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including the private UTZ and Rainforest Alliance programs. RugMark International certifies carpet producers for responsible labour practices, including the elimination of child labour. The Global Sustainable Tourism Council oversees standards for certifying environmental and socially responsible tourist operations. The multi-stakeholder Initiative for Responsible Mining Assurance independently verifies compliance with environmental, human rights, and social standards for mining operations. And roundtables in many sectors, such as biofuels, palm oil, and soy, are defining requirements and developing standards and eco-labels to verify sustainable commodity production. Business practices around the world are now being shaped by these private environmental governance mechanisms.

CSR standards constitute a distinct form of environmental governance, with rule-making capacity that goes beyond traditional industry self-regulatory codes of practice (such as those in the financial, medical, and media professions). For example, many include democratic multi-stakeholder decision-making bodies that operate by consensus under the terms of written constitutions; innovative sustainability requirements that go beyond the law and that are regularly revised through public consultation; third-party audits conducted by independent professional auditors to ensure ongoing compliance; and an eco-label to create market incentive. As this book explores in the case of forest certification, these standards present an unprecedented co-regulatory governance challenge and opportunity.

Forest Certification and CSR Co-Regulation

Forest certification is a multi-stakeholder, voluntary CSR initiative that encourages sustainable forest management (SFM)[2] by leveraging market supply chains to link customer demand for certified forest products with responsible producer supply. To achieve certification, a forest operation undergoes an independent third-party audit to verify that the forest is managed in accordance with a checklist of ecological, economic, and social sustainable forest management principles spelled out in a forest certification standard. The certification standard is developed and revised by a multi-stakeholder decision-making body made up of a range of members representing different forest values and interests. Once an operator is certified, its forest and paper products can be awarded an eco-label by means of a chain-of-custody certification audit that traces the certified fibre down through the product supply chain from the forest to the end customer. Ultimately, forest certification aims to provide producers with a market incentive to adopt improved sustainable forestry practices.

Since the first forest management certifications in the 1990s (under the current third-party audited standards), many private companies and family forest owners as well as government public landowners have signed on, and certification continues to increase steadily. As shown in Figure 1.1, over the

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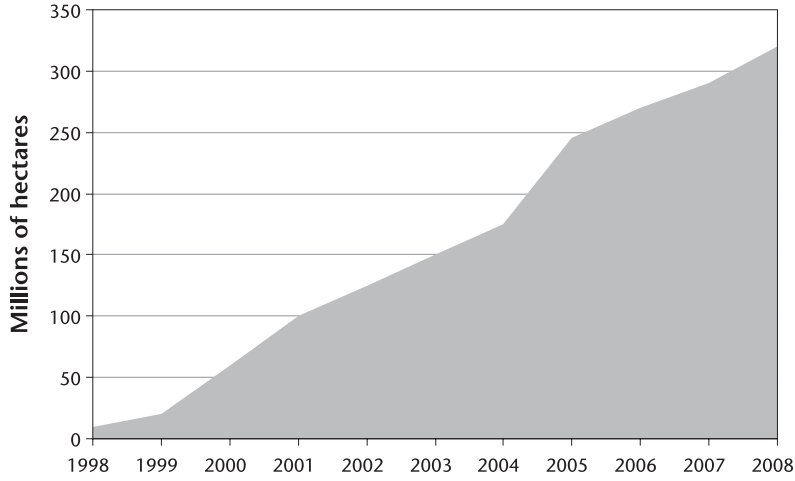
Figure 1.1

Growth in the global certified forest area, 1998-2008



Source: UNECE/FAO 2008, 109.

past decade the area of global certified forest expanded from approximately 10 million hectares in 1998 to 320 million hectares in 2008. Although the rate of adoption has recently slowed, the total area of certified forest around the globe continues to grow. Consequently, forest certification remains an important concern for the global forest industry and timber-producing nations.

Environmental nongovernmental organizations (ENGOs) initiated forest certification in the late 1980s and early 1990s in order to curtail deforestation and forest degradation, particularly in the lesser-developed tropical regions of the world that lacked sufficient forest regulation. Instead of addressing a capacity gap in developing countries, however, certification systems have been adopted as an overlapping forest governance mechanism in *developed* countries. For example, whereas over 50 percent of Western European forests and over 33 percent of North American forests are certified, less than one-tenth of 1 percent of forests in Africa and Asia are certified, and only 1.6 percent of Brazilian forest is certified (of which the majority is plantation forest) (UNECE/FAO 2008, 107). Factors explaining the low level of certification adoption in the Global South include high financial costs, complex property rights, inadequate regulatory capacity, and weak market signals (Cashore et al. 2006). Although certification has begun to slowly increase in lesser-developed countries, so far it has not been an effective

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governance mechanism to combat tropical deforestation. Instead, it is succeeding in promoting continual improvement in sustainable forestry practices in already highly regulated northern boreal and temperate regions of North America and Western Europe.

Rather than dismissing the pattern of lagging certification adoption in the South as a global regulatory disappointment or failure, this research has seized upon a window of opportunity to investigate the significance of public sector capacity to CSR. The inquiry is spurred by several underlying questions. Given that forest laws are already well established in the industrialized countries where certification is occurring, what regulatory purpose is certification actually serving? If certification is gaining a regulatory foothold, does this imply that the state has retreated? How are governments responding to certification, and why is there a variation in response? To what extent is the dynamic between public and private forest rule-making authority competitive versus cooperative? And finally, is co-regulation making a difference – are there positive forest management outcomes?

Traditional "statists" have interpreted the emergence of private authority as a retreat of the state, or governance without government. Political authority is assumed to be a zero-sum contest.[3] Contrary to this theoretical perspective, however, the empirical reality of forest certification governance demonstrates the coexistence of public and private authority. Governments are actively engaging in and even mandating certification. This book argues, therefore, that private environmental authority in the case of forest certification does not constitute a retreat of the state but rather a shift in the role of government towards greater multicentric governance. Until recently, political scholars have largely ignored this governance transformation. Governments *are* engaging in CSR private standard setting, and CSR is serving a policy role, but we have very little empirical or theoretical understanding of these newly forming "post-sovereign" co-regulatory governance systems.

In the absence of a theory of CSR governance, I introduce the concept of *CSR co-regulation* in order to provide an analytical lens through which to identify and assess the emerging public/private shared governance arrangements. CSR co-regulation refers to state engagement with CSR standards alongside public regulation so as to leverage private resources and initiative.[4] Beyond introducing the concept, I explain the process and challenges of CSR co-regulation, and present three new analytical tools to support and guide the case study evaluations of co-regulatory governance. The first is a governance typology that classifies and highlights the unique aspects of CSR standards such as forest certification among the array of traditional regulatory and emerging public/private cooperative policy instruments (see Figure 2.1). The second is a matrix for illustrating the overlapping public/private boundaries of CSR standards with traditional and emerging forms of regulation (see Figure 2.3). The final tool is a framework for mapping government

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response to CSR along a spectrum of engagement at the various stages of the policy cycle (rule-making, implementation, and enforcement) (see Figure 2.4). All three tools help to illuminate the concept of CSR co-regulation and reveal how it is occurring in practice.

Governance scholars have attached many labels to certification in order to emphasize its private regulatory capability. Terms include "civil regulation," "private hard law" (versus non-prescriptive *soft* law), and "non-state market-driven (NSMD) governance." NSMD has gained acceptance in the certification literature. Under the NSMD theory, CSR standards such as forest certification are considered purely private mechanisms, establishing private rules independent of state authority (Cashore 2002; Cashore, Auld, and Newsom 2004). As even the theory acknowledges, however, certification systems rely on a baseline legal framework, require regulatory compliance, and also incorporate formal international state-based sustainability principles. What's more, government authorities are overseeing, facilitating, legitimating, and, in some cases, even enforcing certification. Certification is neither purely private nor purely market-driven. It is both. This book therefore challenges the accepted NSMD theory, arguing that it is a partial classification. A transnational multi-stakeholder standard such as forest certification *is* unique with respect to its non-delegated private authority, but it also overlaps with public authority and, most importantly, achieves acceptance and success through state capacity and government engagement. In other words, CSR standards such as forest certification are more accurately classified as co-regulatory governance mechanisms.

By evaluating the role of government in forest certification in the leading global certified nations (Canada, the United States, and Sweden), the cases included in this book demonstrate that although certification has weaknesses as a stand-alone forest policy instrument (for example, it does not address overall forest health and does not necessarily fully align with broader government forest objectives), it can provide a supplementary regulatory resource. This includes potential contributions to the three key areas of governance: polity (decision-making forum), politics (decision-making process), and policy (decisions). Specifically, certification can expand the political arena, facilitate greater multi-stakeholder deliberation, and encourage more innovative forest rules. By strategically combining the dynamism and innovation of private certification standards with the stability and democratic accountability of traditional state-led regulatory approaches, certification co-regulation can establish a more flexible range of options for policy makers, which can in turn encourage continual regulatory improvements. Overall, this book argues that in developed countries with high state capacity, certification co-regulation can constitute a progressive step towards more responsive and adaptive rule making, and hence more effective collective sustainability solutions.

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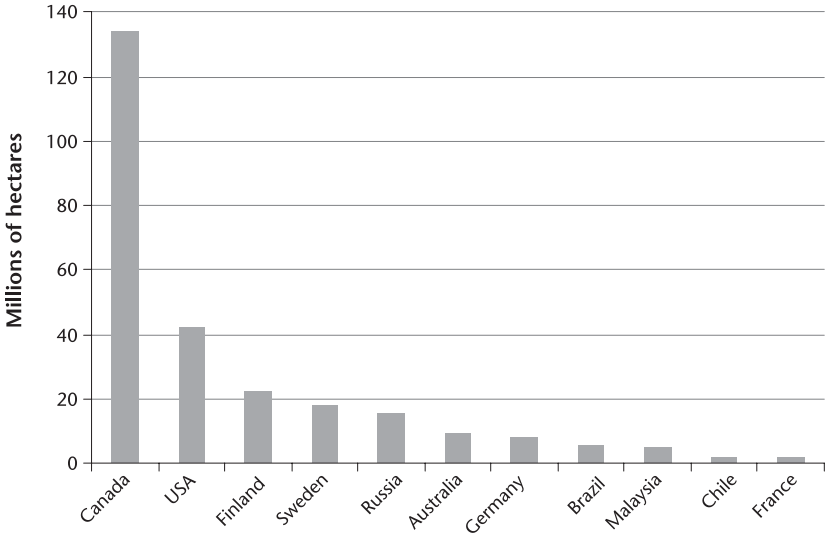
Figure 1.2

The lead countries in forest certification (forest area), 2007



Source: UNECE/FAO 2008, 111-12.

The Leading Certified Nations

Canada, the United States, and Sweden are major global forest product producers and exporters. They have also been global certification leaders in terms of their forest certification development and implementation efforts (see Figure 1.2). For example, Canada and the US account for the majority of the world's certified forest, and have also developed the world's leading national certification programs in terms of total certified area (e.g., the Sustainable Forestry Initiative [SFI] in the US, and the CAN/CSA-Z809 standard in Canada; see Appendix B). Sweden has also been a leading country in terms of certification adoption (achieving certification of over 60 percent of its forests), and has served as a flagship for the Forest Stewardship Council (FSC) certification program (initiating and adopting the first national FSC standard in 1998). In addition, these three countries have long histories of well-established yet varying forest regimes (Table 1.1).

Canada, the US, and Sweden are therefore logical cases to choose in conducting a certification governance analysis. Global timber production is an important selection criterion because certification achieves leverage through global supply chains. Certification leadership is essential, as certification needs to have gained a sufficient foothold in the region in order for co-regulation to be studied. Finally, varying forest regimes within the sample

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Table 1.1

Case study forest regimes

Country	Forest regime
Canada	Highly regulated at the provincial level, with majority public land
United States	Variable regulatory approaches at the state level, with majority private land
Sweden	Highly regulated at the national level, with majority private land

of cases provide an opportunity to examine the institutional influence of baseline regulatory structures on the co-regulatory policy dynamic.

An apparent omission from the research sample is Finland. Although Finland meets the case selection criteria, this large Nordic timber producer is not addressed, as my intent here is to focus on the "hard cases" with the greatest public/private tension (i.e., rule-making contest). Very early on, in April 1996, the Finnish government took a direct leadership role in initiating the development of a national certification standard based on the country's national forest program.[5] Thus, rather than tension in deliberations over public and private forest rules, what occurred in Finland was that over 95 percent of forestland was certified to the Finnish Forest Certification standard within two years of its approval in 1998. The forest certification co-regulatory dynamic in Canada, the US, and Sweden has been much more complex.

Another apparent omission is the southern tropical countries. Although it might seem intuitively obvious to focus an investigation into forest governance on places where the worst global forest degradation and deforestation problems are occurring (such as the tropical forests), the lack of consistently strong forest institutions and certification adoption in these developing regions limits the potential for a co-regulation analysis. As the aim of this research is to understand the dynamic of interacting public and private authorities, it is critical that the cases constitute jurisdictions with both high public and high private governance capacity.[6] High regulatory function and capability provide the context for the greatest potential public/private political tensions, and this enables an evaluation of co-regulation challenges, benefits, and optimal arrangements.

As shown in Figure 1.3, ensuring both high public and high private capacity places this research firmly within *developed* rather than *developing* countries.[7] It is important to note, however, that this book nevertheless has a bearing on forest governance decisions in the developing countries, where the most rapid global forest loss is occurring. This is particularly true in terms of the book's insights into the importance of public capacity, and the

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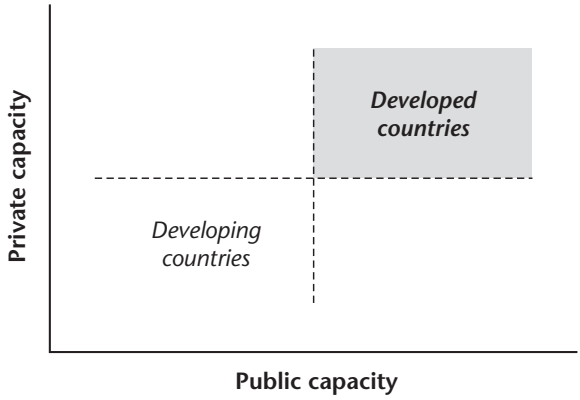
Figure 1.3

Case study target sample



cautionary warnings about how certification falls short as a substitute for well-designed and delivered government forest programs and regulation.

Because forest regulatory responsibility resides at the subnational level within Canada and the US, these cases include analyses of provincial and state governments. Within Canada, these include British Columbia on the west coast, Ontario and Quebec in central Canada, and New Brunswick on the east coast. Within the US, these include the twelve state governments across the country that had certified their state-owned forestlands as of 2008 (Massachusetts, Pennsylvania, Maryland, New York, North Carolina, Michigan, Minnesota, Wisconsin, Maine, Tennessee, Washington, and Indiana).

The four Canadian provinces were selected because they are the top forest product producing regions in Canada, and present a range of government certification responses and industry expectations of government's role (for example, two of the four provinces have mandated certification).[8] All twelve US certified states are included as this permits an assessment of the range, interaction, and implications of the various factors influencing each state's similar co-regulatory response. And Sweden is addressed as it provides a clear example of government's role in facilitating the competitive and cooperative forest certification co-regulatory dynamic.

Objectives and Parameters

As explained, this book presents three in-depth case studies that explore Canadian, US, and Swedish government responses to certification. It provides

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a historical snapshot of the period 1993 to 2008. Five objectives shaped the case study investigations:

- assess the emergence, evolution, and adoption of the leading certification programs
- identify and compare government responses to forest certification
- compare the rationale and drivers of government certification engagement
- analyze the dynamic of certification/forest policy interaction
- evaluate the forest governance implications of certification co-regulation.

The arguments and findings here are supported by evidence I gathered over a three-year period (2004-07) through interviews with over 120 key forest governance stakeholders and experts across Canada, the US, and Sweden (see Appendix A). The three central questions that I asked of the interviewees were:

- How has government responded to certification?
- Why has government adopted its particular certification co-regulatory approach?
- How has certification co-regulation affected forest governance?

This book offers insights into CSR co-regulation governance within specific research parameters. Six key areas define the research scope.

First, although the central aim of this book is to understand the broader question of the public sector role in CSR co-regulation, the research is concentrated on the specific case of government response to forest certification. As already noted, this is logical as forest certification is a well-developed and established example of a CSR governance standard. As private environmental governance standards gain institutional strength in other industry sectors, there will be future opportunities to apply the analytical framework presented here in order to compare government co-regulatory responses to several different CSR standards within and across political jurisdictions.

Second, unlike most forest certification governance studies, which address only the Forest Stewardship Council, this analysis concerns both the Programme for the Endorsement of Forest Certification (PEFC) and FSC systems. As of 2008, PEFC and FSC international certification programs accounted for 68 percent and 32 percent of the total global certified forest area, respectively. Although strong philosophical differences remain and debate continues over the various strengths and weaknesses of the PEFC versus FSC standards, over the past decade the two systems have been generally converging in terms of their multi-stakeholder participation, independent audit requirements, and SFM indicator content. Governments have taken officially neutral positions regarding support for one system over another.

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Environmental organizations continue to recognize only the FSC. Major retailers tend to accept either standard as legitimate and credible, while stating a preference for FSC-certified products if they are available. Producers have adopted both PEFC and FSC systems in all of the case study regions, with more and more examples of "dual certification." Consequently, unless otherwise specified, throughout this book the terms "certification" and "certification co-regulation" are inclusive and refer to both PEFC and FSC programs.

Third, in terms of the level of the analysis, the cases focus on the level of the bureaucracy (the lead forest departments and agencies within each jurisdiction) where co-regulatory policy development and implementation occurs. Broader speculative political questions regarding the degree of influence of the type of state and form of government (e.g., presidential versus parliamentary; federal versus unitary); the role of party politics (e.g., left- versus right-of-centre); or the comparative contribution of executive, legislative, and judicial actors in certification co-regulation are not systematically evaluated.[9] As all of the case study jurisdictions are democratic, however, and the bureaucracy is an agent of the elected government, concentrating at the level of the forest agency not only provides a means of evaluating certification co-regulation policy formulation and delivery but also permits an understanding of the influence of elected officials and internal administrative politics.

Fourth, although the cases provide an essential research parameter, the book is also bounded by the research questions. As the aim is to evaluate the interaction of public and private rule-making systems, the case evaluations focus on how and why certification co-regulation is occurring and the governance outcomes. The analysis does not include the on-the-ground effectiveness of certification co-regulation (i.e., the difference that a shared governance approach is making towards resolving specific forest problems such as deforestation, illegal logging, forest conversion, biodiversity preservation, endangered species, carbon storage, or Aboriginal rights). The effectiveness with respect to the positive *forestry management* governance outcomes is addressed, but the evaluation excludes actual *forest* outcomes.[10] Few studies have yet to tackle the question of certification "problem-solving" effectiveness, primarily because it has been too early to assess the impacts. In addition, measuring impact is difficult because forest certification requirements focus on improving management processes and site-level forestry practices rather than achieving specific landscape-level forest conditions. Isolating and measuring the on-the-ground forest effects attributable to certification versus other factors is inherently complex and uncertain. Given the lack of empirical data, this aspect of certification co-regulation is not included in the case study evaluations. As discussed in the conclusion,

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however, the effectiveness of certification in changing forest conditions is an important area for future investigation.

Fifth, although the cases are bounded by the same research approach and questions (such as how and why governments engaged in certification and what the implications were), each case presents a slightly different co-regulation puzzle according to local forest regime conditions. The focus in each case is therefore slightly different. This enhances the contextual details but also limits the direct comparison between the cases. For example, in the Canadian case, the compelling question is why, across *similar* forest regulatory regimes, did provincial governments respond differently to certification? In the US, the situation is the opposite. Why did *different* state forest regulatory regimes respond similarly to certification? And in the Swedish case, given the results-based "frame law" policy environment that enabled certification development and adoption, how did certification and public policy interact, and did the Swedish forest authorities retreat and hand off policy responsibility? Although limiting comparability between cases, this slight variance in focus facilitates an important progression. The cases evolve in their depth and focus from a broad examination of the range of government certification roles (Canada) to a concentrated study of the governance implications of a specific co-regulatory approach (US), to an in-depth investigation of the certification co-regulation policy dynamic (Sweden). Consequently, the key analysis occurs within each chapter rather than in a separate comparative evaluation of the cases at the end of the book. A synthesis of the case study results is presented in the conclusion.

Lastly, an important research parameter concerns the governance target. Both the Canadian and US cases concentrate on the governance implications of certification co-regulation on public land. In Canada, this is appropriate because over 90 percent of forestland is publicly owned. In the US, although the majority of forestland is privately owned, it is logical to focus on state government adoption of certification on state-owned, public forestland as state lands account for a surprisingly disproportionate percentage of the total certified forest area across the country. The analysis does not include US private non-industrial forestland, as less than 1 percent of family forest owners have certified their forestland and government certification incentives had only just begun to develop during the study period. As well, the US case focuses on state forests and not the national forests, as the US Forest Service position during the study period was to assess rather than implement certification.

In summary, this book constitutes a piece of a much larger emerging area of investigation concerning CSR co-regulation, and therefore necessarily has distinct parameters. In outlining the focus and boundaries of the research (the cases selected, the questions examined, and the research approach), it

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is hoped that these parameters will serve as a guide to the extent to which the study results can be generalized to other cases, as well as highlight opportunities for future research.

Structure

The seven chapters of this book develop the central argument that CSR co-regulatory arrangements are emerging whereby governments are engaging in forest certification, integrating private authority within their policy mix to enhance forest governance. The purpose of this first chapter has been to introduce the topic, present the main arguments, and review the research objectives and scope. Chapters 2 and 3 provide the background and the theoretical context for the three case study evaluations. Specifically, Chapter 2 explains the emergence of CSR, defines the concept of CSR co-regulation, and presents a typology as well as a mapping tool for evaluating the shifting regulatory role of the state with regard to the various new modes of co-regulatory governance. Chapter 3 follows a similar progression, but with respect to the particular CSR example of forest certification. It begins by explaining the emergence of forest certification and evaluating its unique classification as a non-delegated private governance mechanism. The chapter then introduces the specific case of certification co-regulation and, in particular, applies the co-regulatory matrix introduced in Chapter 2 to assess the range of regulatory instruments within a co-regulatory forest governance system.

Chapters 4, 5, and 6 comprise the three empirical case studies – Canada, the United States, and Sweden. Each case study has a similar structure. Each evaluation begins with background on the local forest regime and an overview of forest certification development and adoption within the respective jurisdictions. The role of government in forest certification is then assessed in terms of the approach, drivers, and governance implications of certification co-regulation within each jurisdiction. Chapter 7 presents a synthesis of the case findings, an evaluation of the limits and potential of CSR co-regulation, operational recommendations for policy makers on achieving optimal CSR co-regulation, and suggestions for future research.

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2
Co-Regulating Corporate Social Responsibility

Not only are corporate social responsibility (CSR) standards becoming increasingly prevalent but many are also gaining unprecedented private rule-making authority and governance function, essentially mimicking the policy role of public institutions. Transnational CSR standards are serving as a global environmental governance mechanism to supplement international laws and agreements, as well as behaving as domestic private regulations alongside established national laws and strong public institutions. This raises an interesting puzzle. How is CSR private authority interacting with state authority in domestic political environments with high public capacity? Are the public and private rule-making systems competing or cooperating? What is the policy role of CSR private standards, and what is the role of government in CSR private rule making in these jurisdictions?

This chapter presents three main arguments. First, CSR multi-stakeholder standards constitute not only a distinct mode of governance but also a new self-regulatory policy instrument. Second, with the emergence of private authority, governments are not in retreat but rather are transforming their role from policy delivery and delegation to also enabling private regulations alongside traditional regulation within co-regulatory governance systems. And third, there is a spectrum of interventions by which governments can co-regulate CSR so as to leverage private initiative and supplement governance capacity.

The chapter also introduces three new analytical tools: (1) a typology to distinguish private environmental governance from the traditional hierarchical and self-regulatory modes of governance; (2) a matrix that illustrates how a co-regulatory governance system includes a mix of private and public policy instruments; and (3) a regulatory scale to identify and position government response to CSR along a spectrum of indirect to direct engagement at the various stages of policy development, implementation, and enforcement. These tools provide an analytical lens for viewing CSR co-regulation

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as well as a theoretical framework to guide the empirical case study investigations in Chapters 4, 5, and 6. To begin, we turn to the definition and emergence of CSR standards and private governance authority.

CSR and the Emergence of Private Authority

Corporate social responsibility is about the role of business in society, and societal expectations that companies will "do good" by contributing skills, power, and resources to meet global sustainability goals. Nongovernmental organizations (NGOs), governments, and industries around the globe have promoted CSR as a progressive, self-regulatory approach to achieving sustainable development. For example, the European Commission designated 2005 as the year of corporate social responsibility. While there is no single accepted definition of CSR, fundamentally it concerns the voluntary choice of companies to integrate societal concerns (in addition to shareholder interests) into their business operations. Leading companies demonstrate CSR and corporate citizenship by going beyond legal requirements to meet stakeholder expectations regarding a triple bottom line of economic, social, and environmental objectives.[1] Specifically, exemplary corporations undertake *firm-level* sustainability management programs such as environmental auditing and reporting, life cycle assessments, stakeholder consultation, supply chain greening, socially responsible investing, and sustainability reporting. As well, many firms that embrace CSR cooperate in the development and implementation of *industry-level* CSR codes and standards. These are broader accountability and transparency initiatives that encompass general CSR principles as well as firm-level management programs.

CSR is not necessarily formally delegated or enforced by the state, and compliance with the voluntary private standards is achieved through audits, public reporting, oversight by the standards boards, and "naming and shaming" of non-cooperators (free-riders). Corporations are motivated to adopt voluntary CSR initiatives by many factors, including a desire to avoid regulation, reduce risk, and manage corporate reputation in the face of increased public pressures and advocacy group lobbying efforts (Hoffman 2001; Lyon and Maxwell 2004; Prakash 2001). Many companies have also sought to realize the potential win/win "sustainable development" and "ecological modernization" opportunities and advantages of combining economic growth with environmental and social considerations, and green technology innovation as promoted by academics, governments, business associations, and NGOs.[2]

Broadly speaking, a convergence of social, political, and economic factors in both the domestic and global arenas have contributed to the recent emergence of CSR initiatives. At the domestic level, during the 1980s and 1990s, governments in industrialized countries implemented public sector

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reforms that included performance-driven business management practices within government, outsourcing, and adopting greater self-regulatory policy approaches. The aim was to streamline government and achieve greater efficiencies in public administration and policy delivery.[3]

Running in parallel in the global arena, concerns were building regarding the increased power of multinational corporations (MNCs) and the growing prominence of global human rights, labour, and environmental issues. Problems associated with rapid economic globalization were deemed to be outpacing the governance capacity of state governments and international mechanisms to achieve timely, democratic, and effective outcomes. In reaction, transnational advocacy groups formed to address the global governance gap.[4] Overall during this period, global civil society organizations as well as domestic-level advocacy groups called on corporations to assume increased environmental and social responsibilities.

Corporate response to the global and domestic pressures for greater self-regulatory CSR efforts was mobilized within the United Nations' World Commission on Environment and Development (WCED; established in 1987) and at the United Nations Conference on Environment and Development (UNCED) in 1992. In both forums, governments introduced and promoted the win/win possibilities of sustainable development solutions as a means to help close the global environmental governance gap. This set the stage for individual company CSR efforts, unilateral industry codes of conduct, and the development of a broad spectrum of multi-stakeholder CSR standards.

Following UNCED, industry groups such as the World Business Council for Sustainable Development (WBCSD), the International Business Leaders Forum, CSR Europe, and Business for Social Responsibility formed to develop and promote CSR initiatives. It was not only corporations that were spurred towards initiating, developing, and implementing CSR standards. NGOs also played a key role.

During the 1980s, in the face of continuing evidence of corporate environmental abuses (e.g., the Bhopal chemical accident and the *Exxon Valdez* spill) and the mounting environmental effects of globalization (e.g., climate change, deforestation, depletion of the oceans, species extinction, and so on), environmental NGOs (ENGOs) recognized a need as well as an opportunity to develop new advocacy strategies. Instead of campaigning negatively against individual companies, they began working directly and collaboratively with corporations and industries to develop multi-stakeholder CSR standards. Their interest in working cooperatively grew not only out of concerns but also out of hopes that although increasingly powerful multinational corporations were a significant contributor to the worsening global environmental problems, these transnational firms, through their global

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supply chains, were also a potentially significant contributor to the solutions. Companies responded to the ENGOs to protect their reputations, avoid regulation, manage risks, and maintain their "social license to operate."[5]

The shift in ENGO strategy towards working collaboratively with rather than against industry was prompted not only by discouragement with the level of corporate commitments and what appeared to be ineffective business responsibility codes but also by a growing frustration with governments and with the inefficiency and ineffectiveness of state-based international processes. NGOs argued that neoliberal policies had brought forth "the competitive state," which was more focused on lowering trade barriers and creating financial incentives to attract mobile capital and achieve global economic competitiveness than on developing new international laws and multilateral agreements to halt environmental destruction (Barry and Eckersley 2005; Biermann and Dingwerth 2004; Eckersley 2004). Thus, in most cases, although the multi-stakeholder CSR initiatives leveraged international standards and agreements, they intentionally steered around government participation so as to avoid marginalizing the CSR outcomes. Industries supported this approach as they deemed governments to be inflexible and likely to stall the process.

Since UNCED, the result has been a rapid proliferation of CSR codes and standards developed by multinational firms and industry alone and/or in cooperation with civil society organizations, cutting across industry sectors and going beyond legal compliance and the reach of the state. Examples include company-specific codes of business conduct, unilateral industry codes of conduct,[6] multi-stakeholder industry-specific CSR standards, and cross-sector multi-stakeholder global CSR standards (Table 2.1).[7]

With increasing acceptance and adoption, these transnational codes and standards are becoming powerful governance mechanisms, and, as explained in the next section, many are gaining private rule-making authority.

The Institutionalization of CSR Initiatives

As noted earlier, the social roles and responsibilities of commercial entities have been debated for centuries. There is also a long history of governments permitting trades, industries, and professions to self-monitor their practices to ensure responsible conduct and fair play. So, is there really anything new about the present wave of CSR self-regulatory mechanisms? The answer is yes. Current CSR initiatives *do* constitute an important new governance phenomenon. In particular, an increasing number of CSR standards are becoming institutionalized – that is, they are gaining legitimacy and authority as private governance mechanisms that perform environmental policy functions similar to those of governments (Cashore 2002; Haufler 2001; Meidinger 1997, 1999).

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Table 2.1

Corporate social responsibility codes and standards

CSR initiative	Description	Examples
Company codes of business conduct	Company statements of commitment to environmental and social responsibilities	Nike, Royal Dutch Shell, PepsiCo, Gap Inc., etc., global sourcing and worldwide codes of business conduct
Industry codes of conduct	Responsible business practices as defined by industry associations	Chemical Industry Responsible Care Program, Electronics Industry Code of Conduct, European Retail Code for Environmentally Sustainable Business, etc.
Industry-specific multi-stakeholder CSR standards	Responsible environmental and/or social business practices defined for a particular industry sector by a range of interested parties	Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification (PEFC) certification programs, the Marine Stewardship Council, the Equator Principles, RugMark, the Kimberly Process, fair trade certified coffee, bananas, etc.
Cross-sector multi-stakeholder CSR standards	Responsible environmental and/or social business practices that cut across all industry sectors, as developed by a range of interested parties	AA1000, the Global Reporting Initiative, the UN Global Compact, ISO 14000, etc.

CSR standards and codes represent a new governance approach as they have distinct design features compared with traditional examples of industry self-regulation. First, they are "non-delegated" – that is, they have not been formally initiated or sanctioned by the state but rather gain legitimacy through the acceptance of external actors. Second, most of these non-state initiatives are multi-stakeholder, developed by corporations and NGOs in partnership. And third, they are typically transboundary and multiscalar in nature, going beyond jurisdictional legislative constraints and operating in expanded political arenas that bridge local and global concerns.

Beyond this, certain CSR initiatives, such as certification programs, eco-labelling standards, and multi-stakeholder codes, are gaining private authority

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as they have specific features that constitute unprecedented self-regulatory governance capacity. For example, they have democratically designed, multi-stakeholder rule-making and adjudication bodies that operate under written constitutions. They also have independent audit processes to enforce compliance with a prescriptive standard. Because of this unique governance capability, as these CSR mechanisms gain acceptance by markets and society as well as governments, they are acquiring legitimacy and rule-making authority, essentially mimicking the policy role of public institutions.

The standards are gaining *market* acceptance among suppliers, manufacturers, distributors, customers, and consumers by leveraging the various industry supply chains. *Social* acceptance is occurring through open, ongoing multi-stakeholder participation. And the standards are achieving *governmental* acceptance through their co-regulatory design (e.g., incorporating legal compliance) and their potential to enhance state governance.

The distinct institutional strength of certification, eco-labelling, and multi-stakeholder codes is revealed through the three key aspects of governance – polity, politics, and policy. In terms of the polity, these private mechanisms are providing a new decision-making forum beyond the traditional state-centred political arena. With respect to politics, the private governance bodies are encouraging multi-stakeholder policy deliberation and increasing direct stakeholder rule-making responsibility. And with regard to policy, the private standards are establishing rules that not only reinforce legal requirements but also go beyond the law. Thus, as will be evaluated over the course of this book, the emergence of private environmental governance authority has significant implications for policy making, the traditional role of government, and overall state capacity to address local and global sustainability challenges.

Classifying Private Environmental Governance

From Government to Governance

Governance refers to a decision-making system that provides direction to an organization or society. Although there is no single standard definition of the term, in common political usage governance is ultimately about how to steer the economy and society towards the attainment of collective goals. Governance has therefore been synonymous with government, as democratic governments are vested with the constitutional political authority to make and implement rules (Stoker 1998). Today, however, new modes of governance have emerged that go beyond the traditional hierarchical model, in which state authorities exert sovereign control over society. Rather than government being at the centre of governing decisions, there are now new multicentric and private modes of networked and market-based governance, with government's role shifted towards greater steering, coordinating, and

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Figure 2.1

Shifting modes of governance authority

Governance function	Co-regulatory governance system			
	Hierarchical	*Delegated*	*CSR co-regulatory*	*Non-delegated private*
Rule making	Command-and-control regulation	Market-based voluntary regulation Negotiated agreements	Multi-centric regulations CSR co-regulation	Private regulations CSR standards
Implementation (delivery)	Regulatory agencies	Industry self-regulation Policy networks Public/private partnerships	Public/private co-governance	Beyond compliance private initiative Multi-stakeholder self-regulation
Enforcement	Monitoring Compliance auditing	Shadow hierarchy Responsive regulation	Regulated self-regulation	Independent audits Public reporting Naming and shaming
	Public authority ⟵⟶ Private authority			

facilitating through partnership arrangements and co-regulatory governance approaches. There is a shift from government to governance, whereby private actors participate to a greater degree in the formation and implementation of public policy and global governance mechanisms.[8] As illustrated below, not only are CSR multi-stakeholder standards a new governance mechanism but also government response to CSR constitutes a new *mode* of co-regulatory governance.

Environmental Governance Typology

The field of environmental governance is vast and includes varied terminology and definitions of traditional and new forms of governance and modes of governance authority. The typology presented in Figure 2.1 categorizes the field, first, along a continuum of public, private, and hybrid governance authority, and second, by regulatory function (rule development, implementation, and enforcement).[9] In particular, the typology highlights the unique case of non-delegated private governance and the emerging mode of multicentric co-regulatory governance. The combination of all four modes of governance constitutes a co-regulatory governance system. As explained later, it should be noted that these categories represent theoretical ideal types. Overlap and mixed modes occur in practice.

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Hierarchical Governance

Hierarchical modes of governance concern the traditional bureaucratic, command-and-control style of direct government intervention through economic and social regulation. Legally binding standards are prescribed, policies and programs are implemented, and compliance is monitored through a government agency. With hierarchical governance, the state has central authority, makes the decisions, and enforces compliance.

Delegated Governance

Delegated governance refers to the state's handing off of governance functions to non-state actors. Governments maintain central authority but delegate certain self-regulatory responsibilities. This category of regulatory instrument constitutes the traditional forms of voluntary industry self-regulation. For example, in terms of rule making, rather than prescriptive, "hard law," command-and-control direct regulatory intervention, governments may use indirect approaches through "soft law," market-based voluntary instruments such as industry self-regulation and negotiated agreements and covenants, as well as informational tools and moral suasion.[10] The implementation of certain public services, provision of some public goods, and/or achievement of specific collective goals are formally delegated to the private sector through self-regulation, policy networks, and public/private partnerships. Governments focus less on "rowing" (direct delivery) and more on "steering" (enabling self-regulation) (Osborne and Gaebler 1993, 34; Rhodes 1996). Finally, regarding enforcement, government delegates responsibility for compliance to private actors under a *shadow of hierarchy,* meaning that they promote less coercive voluntary approaches but "move up" in terms of imposing direct intervention if there is industry non-cooperation.[11] In other words, the regulation is responsive (Ayres and Braithwaite 1992). Network governance scholars in particular refer to this as a form of *meta-governance* (government oversight of private networks).[12]

Non-Delegated Private Governance

As previously outlined, private governance refers to self-regulatory CSR codes and standards developed by private actors that have gained private rule-making authority. Unlike with delegated governance, CSR self-regulation occurs outside the realm of government sanction. Private governance concerns "non-delegated" private authority whereby the agenda, rules, implementation, and enforcement governance functions are carried out by private actors without necessary state participation and/or sanction. Implementation relies on voluntary corporate initiative to go beyond legal compliance to address social and environmental issues. Enforcement is achieved through independent third-party audits, transparency through public reporting, and "naming and shaming" by citizens, media, NGOs, and other firms.

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Policy and governance analysts classify private governance under many conceptual labels. As a mechanism of industry self-regulation, it has numerous descriptors, such as "pure self-regulation," "unilateral self-regulation," or "multi-stakeholder regulation." Other terms include "corporate social responsibility" (CSR), "non-state market-driven (NSMD) governance," "non-state global governance," "private regulation," "private hard law," "civil regulation," and "corporate codes of conduct."[13] All of these labels highlight the private governance capacity of CSR codes and standards.

CSR Co-Regulatory Governance

The final mode of governance in the typology is co-regulation. This refers to a hybrid governance approach whereby regulations are specified, administered, and/or enforced through a combination of public and private rule-making systems.[14] Although similar to delegated public/private cooperative arrangements, CSR co-regulatory governance is multicentric in the sense that public and private policy authority coexist instead of authority residing solely in the state.[15] With CSR co-regulatory governance, therefore, private actors have rule-making authority rather than just policy influence.

Public authorities co-regulate CSR private rule making, implementation, and enforcement through enabling legislation, hard law regulation, and/or soft law approaches. The different means of meta-governing CSR include endorsing and enrolling in the private decision-making processes, enabling implementation, and/or mandating the uptake of private standards. Governments can also ignore, compete with, or block CSR efforts. The particular case of government *enforcement* of a private governance standard in a co-regulatory system is an example of "regulated self-regulation" (Knill and Lehmkuhl 2002; Schulz and Held 2004).

In summary, private governance mechanisms are a distinct policy instrument compared with traditional voluntary instruments because they have not been formally sanctioned by the state, and also because they have gained private rule-making authority. With private governance, private actors formulate the policy agenda, implement the rules, and oversee enforcement, while governments are placed in a lagging role of having to decide whether and how to respond. Government engagement in CSR therefore constitutes a new mode of governance. As is examined next, with CSR co-regulation public and private authority are coincident within a shared governance system.

Co-Regulatory Governance Systems

Political scientists have an ongoing debate as to whether the transformation from government to governance has constituted a "retreat of the state,"[16] a "hollowing of the government,"[17] or "governance without government."[18]

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New governance scholars emphasize that instead of government retreating, traditional hierarchical forms of command-and-control intervention have been accompanied by other, more complex and fluid forms of governance that leverage the resources of private actors alongside state authority – examples of governance *with* government.[19] Rather than a hollowing of the state, there is a flux in regulation, with deregulatory and re-regulatory shifts occurring simultaneously (Ayres and Braithwaite 1992; Jordan, Wurzel, and Zito 2005; Utting 2005). Governance scholars refer to the rise of these many forms of regulation as the emergence of *regulatory capitalism*.[20]

Building on the new governance position, this section presents a conceptual tool for clarifying the mix of self-regulatory and co-regulatory tools of governance (beyond command-and-control regulation) that are emerging within co-regulatory governance systems. Before doing this, however, I review the traditional policy debate regarding the pros and cons of statutory intervention versus market-based voluntary self-regulation. This overview highlights the fact that although theorists generally paint a black-and-white distinction between these regulatory instruments, the public/private boundaries are in fact increasingly blurred. A comparative evaluation of several regulatory typologies reveals an increasingly complex array of unilateral, multi-stakeholder, delegated, and non-delegated self-regulatory and co-regulatory approaches that reflect varying public and private hybrid arrangements. This section concludes with an overview of the underlying objectives of an optimal co-regulatory policy mix.

Prescriptive versus Voluntary Policy Tools

Governments depend on markets for the efficient provision of goods and services that enhance social well-being. Markets depend on government rules to function efficiently and fairly. Achieving an optimum public/private balance of state intervention and market freedom is the subject of ongoing political debate. At one end of the spectrum are those who advocate "civic governance," whereby the state is required to intervene to protect the public good. Those on the opposite pole support an economic "consumer sovereignty" model of laissez-faire market dynamics and minimal government intervention. This fundamental political debate threads the environmental governance literature. Are sustainability goals best achieved by "hard law" legislated regulatory intervention or by "soft law" delegated voluntary approaches that leverage the power of the market to move firms towards better environmental performance?

Hard law and soft law approaches represent state-based regulatory and delegated voluntary mechanisms that range from high to low coercion (see Table 2.2). Assuming that policy instruments are substitutable, governments generally prefer the least intervention (lowest coercion) in order to maintain

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Figure 2.2

Scale of policy coercion

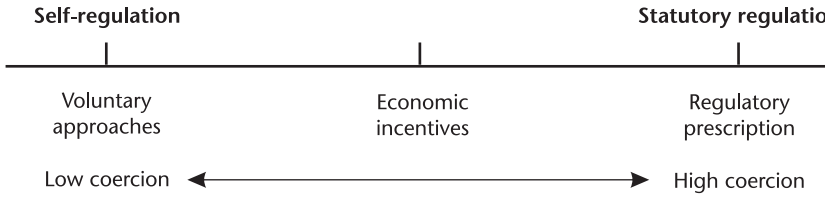

Table 2.2

"Hard law" versus "soft law" regulatory approaches

Type of intervention	Hard law (prescriptive)	Soft law (voluntary)
Setting standards	*Regulatory prescription* – traditional command-and-control regulation in which legally binding standards are prescribed	*Information* – influence constituents through the transfer of knowledge and the communication of reasoned argument and persuasion
Enforcing standards	*Economic regulatory instruments* – examples include pollution fees, emission taxes, and tradable permits to encourage firms to internalize environmental costs	*Voluntary approaches* – examples include industry self-regulation, codes, voluntary challenges, eco-labels, charters, co-regulation, covenants, and negotiated environmental agreements

legitimacy (policy acceptance). They then typically move up in level of coercion as necessary to overcome any social resistance to their policy goals and to achieve effective policy outcomes (Figure 2.2) (Phidd and Doern 1983).

Many studies have investigated the benefits and drawbacks of voluntary versus government-regulated approaches.[21] Traditional hard law regulation is generally criticized for being slow and expensive to develop, operate, and amend; for fostering adversarial relations; for dampening innovation and beyond-compliance behaviour; and for producing unintended outcomes. Voluntary approaches such as self-regulation are criticized for being difficult to apply, for being less rigorous in their performance requirements, and for

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their uncertain public accountability. Industry generally advocates the use of voluntary rather than regulatory approaches, as this avoids the imposition of inefficient regulation and offers policy direction while at the same time providing a flexible framework for innovation. Further, industry argues that self-regulation generates business process improvements and positive changes in corporate culture that are often hard to quantify. Policy scholars also argue that voluntary approaches can enhance efficiency and effectiveness by positioning the development and implementation of agreements in the hands of those closest to and most knowledgeable about the issues (Schulz and Held 2004).

Some analysts disagree with the generally held position that government regulations raise costs and encourage inefficiencies and competitive disadvantage. For example, Porter and van der Linde (1995) argue that properly designed environmental regulations can trigger innovations that can offset the costs of reducing the negative effect of operations on the environment, resulting in "enhanced resource productivity" (greater efficiencies) and making companies more competitive in the global market.

Research to assess the effectiveness of voluntary versus prescribed regulatory approaches has found that voluntary approaches as a stand-alone policy instrument generally fail to make substantial contributions to improved corporate environmental performance.[22] In particular, without the threat of government penalty, there is incentive for companies to have a "free ride," that is, to take advantage of benefits without participating and bearing costs. Research has also found that through processes such as negotiated voluntary agreements, governments can become "captured" by industry interests, thus compromising the achievement of performance targets.

Although most policy analyses emphasize the limitations of voluntary approaches on their own, these studies also highlight the fact that voluntary approaches, in fact, rarely occur as stand-alone policies. Rather, many voluntary approaches incorporate regulatory requirements and government oversight, and are seldom implemented in isolation from other policy instruments. This is demonstrated next with respect to the increasingly hybrid range of self-regulatory policy instruments.

Classifying Self-Regulatory Policy Instruments

From a political science perspective, self-regulation has traditionally referred to a state's delegation of regulatory powers to nongovernmental bodies. As explained above, self-regulation represents the low-coercion end of the scale of regulatory tools that governments can employ. Self-regulation is not a new concept. For example, there is a long history of governments sanctioning self-regulation in the broadcasting, communications, and financial sectors. Professional associations of engineers, actuaries, lawyers, medical doctors, accountants, and others continue to be largely self-regulated, although

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recently some have come under the increasingly watchful eye of the state. With neoliberal reforms, not only has state-delegated self-regulation become more prominent as a favoured environmental policy tool but also new forms of non-delegated CSR self-regulation have emerged. This has broadened the spectrum of self-regulatory approaches and created a varied landscape of regulatory terminology.

Here, I apply the previously introduced governance typology to the vast terrain of environmental regulation to sort and categorize the various theoretical definitions, distinctions, and approaches that scholars have employed to classify regulatory policy tools. Specifically, I review the self-regulation typologies developed by Haufler (2003), Knill and Lehmkuhl (2002), and Gunningham and Rees (1997).

The review begins with Haufler's classification of self-regulation based on rule-making authority, and then presents Knill and Lehmkuhl's typology of self-regulation in terms of policy implementation. It concludes with Gunningham and Rees's categorization of self-regulation based on the degree of government involvement in rule making and enforcement. The key point of the exercise is to illustrate how the three examples constitute different self-regulation classifications.

Rule-Making Authority

Haufler (2003) applies the criterion of rule-making authority to distinguish between four categories of regulation:

- Traditional regulation – Rules are developed, promulgated, and enforced by government.
- Industry self-regulation – The private sector develops standards and best practices on its own.
- Multi-stakeholder regulation – A variety of stakeholders, including non-profit groups, negotiate and develop a set of standards, a decision-making framework, and a process for achieving the standards.
- Co-regulation – Markets develop a standard and the public sector applies sanctions for non-compliance.

Responsibility for Implementation

Based on a consideration of the governance capacity[23] of public and private actors, Knill and Lehmkuhl (2002) offer a regulatory typology with respect to the locus of responsibility for the provision of public goods:

- Interventionist regulation (high public, low private capacity) – Overall responsibility for the provision of public goods lies with the state.
- Private self-regulation (high private, low public capacity) – Provision of public goods by private actors.

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- Regulated self-regulation (high public, high private capacity) – Cooperative public/private governance.
  - Private actors participate in policy making and implementation.
  - Competencies are delegated to private organizations.
  - Regulatory frameworks for private self-regulation are cooperatively developed.

Government Involvement in Rule Making and Enforcement

Finally, Gunningham and Rees (1997) combine aspects of the previous typologies by distinguishing self-regulatory approaches based on the degree of government involvement in both rule-making authority and enforcement:

- Voluntary self-regulation – Rule making and enforcement by the firm or industry itself, independent of direct government involvement.
- Mandated full self-regulation – Rule making and enforcement privatized but sanctioned by government, which monitors the program and, if necessary, takes steps to ensure its effectiveness.
- Mandated partial self-regulation – Privatization of either rule making or enforcement but not both.
  - Public enforcement of privately written rules, or
  - Government-mandated internal enforcement of publicly written rules.

In summary, this review of regulatory typologies highlights two main findings. First, the definitions of self-regulation vary according to the extent of government engagement; the stage of the policy cycle (rule making, implementation, or enforcement); the degree of corporate and/or NGO involvement and authority; and the focus on individual firms versus industries. Second, there is a lack of definitional consistency in the policy literature; that is, there is great variation in the regulation terminology.

To a large degree, the definitional confusion stems from the first finding. Rather than dichotomous "pure forms" of either self-regulation or government regulation, there is now a continuum of hybrid arrangements that reflect varying degrees of government involvement and different public/private arrangements of rule-making authority and of implementation and enforcement responsibility. This blurring of public and private boundaries is characteristic of emerging co-regulatory systems of governance. The conceptual map presented next helps to clarify the various categories of governance instruments within a co-regulatory policy mix.

Co-Regulatory Policy Mix

> Not only do public policy choices and public policy networks influence the emergence of non-state authority,

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> but it is now increasingly clear that private authority is influencing the emergence of new public policy initiatives, including their content and instrument design. (Cashore et al. 2009, 230)

As Cashore and colleagues note, there is an increasingly dynamic and synergistic interaction between public and private environmental rule-making systems. Peter Utting, the deputy director of the United Nations Research Institute for Social Development, describes this mixing of CSR and traditional policy tools as a re-regulatory trend towards "articulated regulation" – a coming together of different regulatory approaches in ways that are complementary and synergistic (Utting 2005). Gunningham and Grabosky (1998, 15) further explain that "recruiting a range of regulatory actors to implement complementary combinations of policy instruments, tailored to specific environmental goals and circumstances, will produce more effective and efficient policy outcomes."

Fundamentally, as multi-stakeholder CSR initiatives gain rule-making authority, there is increased interaction with public policy, and a growing prospect for the co-regulation of these private environmental governance mechanisms to enhance government policies and programs. The mixing and temporal sequencing of various public, private, and co-regulatory instruments at the different stages of the policy cycle constitute a co-regulatory governance system. This is illustrated in Figure 2.3 by the overlapping co-regulatory governance circle.

The circle encompasses traditional command-and-control regulation, delegated self-regulation, non-delegated self-regulation, and CSR co-regulation. Specifically, Figure 2.3 shows how the various tools of governance are situated according to the degree of public versus private rule-making authority, and the extent to which they are state- versus market-driven. For example, command-and-control regulation represents a traditional state-centric, government-driven policy instrument. Delegated self-regulation is also a traditional policy tool, with authority continuing to reside with the state but with self-regulatory policy responsibilities delegated to the market. Non-delegated self-regulation and regulated self-regulation constitute co-regulatory governance instruments that leverage private authority. And, as already noted, the overall mix of these various regulatory instruments constitutes a co-regulatory governance system.

Although the boundaries between the cells in Figure 2.3 are shown as theoretically distinct, in practice they are overlapping and porous. For example, regulated self-regulation combines command-and-control regulation and non-delegated self-regulation – that is, a prescriptive legislated requirement to comply with a voluntary CSR standard. As well, the categorization of non-delegated self-regulation as a purely non-state market-driven (NSMD)

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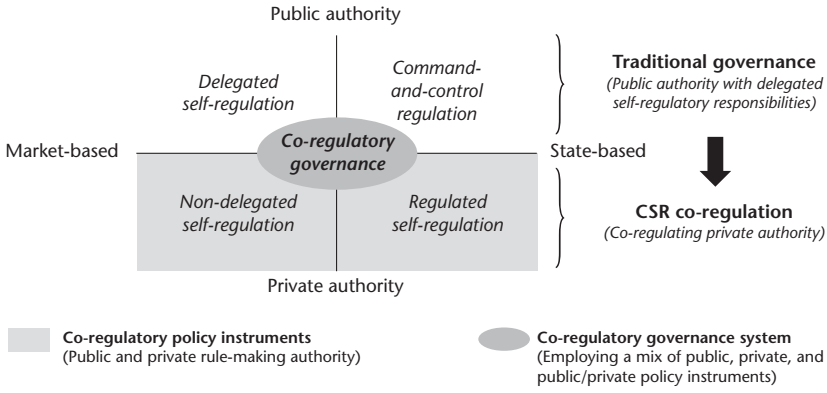
Figure 2.3

Co-regulatory policy mix



mechanism is only a partial account. As will be demonstrated later in this book, in the case of forest certification these private governance CSR mechanisms comprise public and private rules, and are developed and delivered with varying degrees of government engagement. Ultimately, non-delegated private self-regulatory regimes overlap with public governance and rely on enabling legal frameworks and overarching legislative oversight, and civil society actors and the state (not just markets) have also been drivers. Thus, NSMD mechanisms are not purely private but rather co-regulatory instruments that operate within co-regulatory governance systems.

Beyond the challenge of sorting the definitional categories of new modes of governance and co-regulatory policy instruments, there is also the question of how to combine the various governance tools so as to achieve an optimal mix that maximizes the strengths while minimizing the weaknesses of the various policy approaches. Although there is a growing body of literature on the "new tools of governance" that concerns the development and application of optimal mixes of direct and indirect policy instruments in response to new multicentric, collaborative modes of governance, there is still no established theory of regulatory choice in terms of optimizing the co-regulatory mix of state, market, and NGO-led regulatory mechanisms.[24] In the absence of a theory, three fundamental concepts can guide instrument selection: "responsive regulation," "minimal sufficiency," and "smart regulation." These are outlined below.

Ayres and Braithwaite (1992) argue for responsive regulation and minimal sufficiency (namely, that regulation will be more effective the more sanctions

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