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"By civil markets, we mean systems of exchange in which competing actors agree to standards for the common good and are capable of enforcing them. This means situations in which trade, professional, labor and community associations set codes of conduct, require certification procedures, and establish neutral observers (monitors) and regulatory systems that are authorized to issue penalties for members who break contracts." (207)

Evolving roles for governments, business and the third sector

It is becoming increasingly evident that the existing regime of inadequate corporate regulation is highly injurious to human and environmental health. Toxic substances that are being released into the air, soil and water are increasing rates of asthma, cancer, birth defects, learning deficiencies, and species extinctions. Yet we cannot look to government as the sole solution. There are too many different firms and facilities (over 15 million business establishments in the U.S., and millions more that reach into this country from the rest of the globe), and too many different kinds of specialized products and processes.

Governments have neither the resources nor the expertise to keep track of all of them, even though their bureaucracies have grown to stifling size and complexity. To give a couple of examples: the number of foods being imported into the U.S more than doubled between 1992 and 1997, from 1.1 million to 2.7 million. At the beginning of this period the EPA was able to inspect 8 percent of total imports; by 1997 it was inspecting less than 2 percent. " Of the 70,000 chemicals in commercial use in 1995, only 2 percent had been fully tested for human health effects. At least 1,000 new chemicals are introduced into commercial use each year, largely untested. If all the laboratory capacity currently available in the United States were devoted to testing new chemicals, only 500 could be tested each year." (150) The challenges facing government agencies charged with protecting consumers and the environment are literally overwhelming.

At the same time, a civil and civilized society cannot be sustained by unfettered market competition; that force must be tempered by cooperation among competitors and monitored by stakeholders and NGOs. Civil society groups such as NGOs have a long record of organizing to protect workers, consumers and the environment against the self-interested actions of firms.

These movements have usually taken the form of efforts to get governments to coerce firms, through laws and regulations, to internalize the costs they have been externalizing. This is not the most effective role for civil society groups. Instead they should encourage government to change its emphasis: to focus more on overseeing the rules according to which businesses cooperatively self-regulate, rather than trying to be the primary regulators; and to assist owners, managers, workers and consumers to solve problems at the point where they originate.

Significant steps towards this ideal have already been taken in the activities of trade associations such as the American Chemical Society, the Defense Industry Initiative on Business Ethics, or the American Industrial Hygiene Association. Trade associations set standards for the size or quality grading of shoes, light-bulbs, lumber, fireproof clothing, and myriad other products. Even though the firms represented in such associations compete with one another in product markets, they cooperate to pay the cost for experts who help to create and, to a varied extent, enforce the standards that are necessary to maintain the public's trust. "The fact is, however, that self-regulation requires systems of accountability. Without government laws or civil associations to enforce agreements, companies forget the rules." (162)

Examples of cooperation and self-regulation

The International Standards Organization (ISO) is a worldwide federation of businesses whose members come from more than 110 countries. ISO develops international manufacturing, trade and communications standards whose adoption by firms is voluntary. However, countries and industries are making use of ISO standards in ways that often make them obligatory for firms that want to stay in business. The most publicly known activities of this organization are the ISO 14000 series of standards for managing the environmental impacts of business. They include basic management systems, auditing, performance evaluation, labeling, and life-cycle assessment, and in places they invite third-party certification.

Environmentalists often complain that ISO 14000 does not go nearly far enough, and may give industry an excuse to resist more stringent standards proposed by groups less closely allied with industry. Despite this criticism, the continued evolution of ISO can be seen as moving towards closing the gap between industry preferences to act any way they please and society's requirement that businesses take responsibility for their impacts.

Toxic Use Reduction (TUR) is an environmental protection program that was established in Massachusetts to promote cleaner and safer production processes. It was founded in response to the Toxic Use Reduction Act passed by the state legislature in 1989. This act was sponsored by both business and environmental interests, after long negotiations between the two sides. It requires firms to file an annual report and to pay a fee that supports the TUR Institute at the University of Massachusetts at Lowell, where education and training is provided for professionals and the general public. The Institute also sponsors research and encourages the spread of cleaner and safer technologies. The TUR levels the playing field, making it harder for noncomplying firms to gain an unfair cost advantage. It is a model for business self-regulation in that it is self-financing and self-accountable.

A case involving the Federal Trade Commission (FTC) shows how a government monitoring system has worked in the past, and hints as to how it could be improved. Sears, Roebuck and Company repeatedly advertised inexpensive products, then told customers that the advertised product was not available, and suggested a higher priced alternative. FTC served an injunction against this "bait and switch" practice. The point here is that such practices diminish the value of all advertisements, teaching consumers not to believe them. It is therefore in the interest of industry itself to create and enforce the kind of regulation for which the FTC has been responsible. The new task of the FTC should be to encourage and pressure competitors and stakeholders to solve problems of this sort on their own.

We can, in fact, see this taking place in the new warranty rules that have been created by a coalition including the FTC, nonprofit consumer groups and automobile makers. Similarly, "[n]onprofit environmental groups and oil companies meet at the Interior Department to formulate air-pollution standards for offshore drilling rigs. Labor unions and manufacturers meet at the Occupational Safety and Health Administration to decide on new factory exposure limits for widely used toxic solvent." (160)

Extending existing practices

A variety of kinds of regulatory systems are possible in the private sector. Standards are codified in written contracts and formal agreements. Various kinds of tribunals and final arbiters are established, by the consent of the governed, to judge, and define penalties for, those who infringe the standards. A more sharply defined public policy could help to extend such practices further. Key to this is increasing transparency, starting with better accounting and more disclosure. "[G]overnment can require disclosure most effectively through trade, nonprofit and professional associations.... Regulatory authority often requires a balance of inside (private sector) and outside (government sector) authority for monitoring, but today the great need is to cultivate more public standards in the private sector." (174)

When we think about the economy along the division, "public" vs. "private", we preserve a vision from the past that can distort our appreciation of today's reality. The "private" (business) sector is composed of firms that compete; it is equally true that it is composed of associations that cooperate. Markets are as much public as they are private, in their effects on stakeholders, in the ways that stakeholders outside of firms claim a piece of their action, and in the ways that businesses respond to pressures from the rest of society. "When the government requires corporate transparency, it allows non-profit groups to be monitors of a business sector. When this happens, the economy moves further towards being considered public." (175) As all three sectors – government, business and nonprofit associations – learn to collaborate to deal with the technological and institutional complexity of modern economies, civil rules will reduce social costs.