

Theorizing Regulatory Governance Within its Ecology: The Structure of Management in an Age of Globalization

ABSTRACT: This paper examines regulatory governance within its own ecology. It considers regulatory governance as an ideology of governance, as its own set of techniques to that end, as a methodology and psychology of the relations of regulatory organisms to one another and to their physical surroundings. The object is to seek to chart the structures and modalities of this ecology to understand the character that makes it both coherent (singularly as the method of regulating a field, and in the aggregate, as a means of structuring regulation as an exercise of ordering power). After a brief introduction, the essay identifies the ecology within which regulatory governance arises. The context is Bangladesh and global supply chains in the garment sector. The paper then seeks to theorize the meta structures of regulatory governance within this ecology.

I. Introduction

Regulatory governance, like other terms that have become important markers of the discussion of power and governance in the 21st century—globalization (Stiglitz 2002; Friedman 2000; Falk 1999), law (Calliess and Zumbansen 2010), markets (Winn 2016, 193; Backer 2007) development and finance (Park and Vetterlein 2010, 3), the state (Ohmae 1995), sovereignty (Krasner 1999), religion (Backer 1999), and social norms (Posner 2000; Zumbansen 2008; Backer 2008)—has become a protean concept. At its core, it speaks to the management of people and human activity, and the means through which those can be implemented for specific purposes grounded in specific ideologies. Regulatory governance is also intimately tied to projects of good governance, at least in the sense that both discourses focus on a similar palette of means and ends (Ladegaard 2001). And it is a creature of globalization, especially in the sense that it appears to provide both the normative capacity and the methodological techniques necessary to overcome the governance gaps that have emerged as the logic of globalization has fractured state power and de-centered law.

The protean character of regulatory governance can be centered on its character and scope. Regulatory governance appears to be grounded in its techniques, that is that it has acquired a fundamental character of methodology (Arndt et al. 2015). Yet, at the same time it is meant to embody a set of premises about the efficiency of managing behaviors and compelling compliance with authority (Helleiner 2011, 131). It is a form through which public government can be expressed (Simons and Macklin 2014, 79--271)—expanding the administrative possibilities of democratic government,¹ and the essence of private governance regimes (Lindhal 2000, 223--246). Regulatory governance tends to be understood as much about the way one governs as it does about the institutions of governance themselves (Kjaer 2015, 146--66). Less

¹ It has been suggested that “functional international organizations can be supposed to rely on legitimating strategies that much more resemble those bureaucracies than those of state governments” (Steffek 2004, 81, 91).

attention is paid, however, to the interactions of these governance sub-systems within an ecology in which many operate simultaneously within the overlapping regulatory spaces (Lindahl 2013; Backer, 2013, 591--653). This problem of the ecology of regulatory governance also poses a number of important fundamental ordering questions, touching on issues of *aggregation* (regulatory governance and its connection to the ecologies of globalization) (Amao 2011, 110--248), *disaggregation* (distilling the complex interactions that together produce the sustainable habitat for global regulatory governance) (Purnhagen 2013, 35), *coherence* (a centered or anarchic ecology) (Winer 1999; Jones 1995), *sustainability* (systemicity and autonomy) (Kingsbury 2005, 27--29), and *ideology* (regulatory governance as instrument or as typology) (Zerk 2016, 243--306).

This paper considers these questions in the context of ecologies of public and private regulatory governance within a specific context—the global regulation of production chains and multinational enterprises from a legal and governance perspective. Its thesis is this: Regulatory governance is a normative system with its own ecology, a set of normative values and procedural constraints. That ecology serves first to structure the internal workings of each regulatory governance order to produce a coherent, sustainable and self-referring system and second to order the relationships and interactions among them—the structural couplings of regulatory governance in those spaces in which they meet, intermesh, and conflict. That ecology presents a reconstitution of law that admits a powerful role for soft law and suggests a structure for the compulsion of the moral obligations of societal norms. These are represented by the rise of hard and soft disclosure, monitoring and assessment systems that both construct moral-legal orders and that embed them in the law of contract, of the state and of the international sphere (Chiu 2010, 361). The rules of these interactions represents the new constitutional law of regulatory governance systems (and the apparatus through which they are activated); the rules of governance interactions represents the new international law of regulatory governance systems (through which they engage with each other within the global orders). These new orders hold together and constrain the emerging structures of power. But they also challenge the fundamental organizational basis on which the contemporary order rests—national sovereignty, democratic representation, the singularity of **law**, the separation of public and private orders, and the traditional separation of powers.

After this Introduction, Part II identifies the ecology within which regulatory governance arises. Part A develops a conceptual framework for approaching ecologies of regulatory governance within the specific structures of good governance as an objective and technique of regulatory governance.² Here is an ecology that is built on the coordination and conflict among law systems, soft and hard moral systems, disclosure and assessment regimes and their institutional sources in enterprises, international organizations, civil society, and the state. Part B

² “Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society”; It acquires a regulatory character as its substantive goals are included in the regulatory programs built into sovereign loan agreements, see also Council of Europe [2014]; IMF [1999]; United Nations 2009, 1.

focuses on the context—global garment supply chains as a complex interweaving governance of public, private, national and multilateral institutions. This context is usefully exposed through a flashpoint event—the collapse of the Bangladesh Rana Plaza factory building killing thousands (see, e.g., Labowitz and Baumann-Pauly [2014] and Backer [2016]). Part III then seeks to extract theory from the meta structures of regulatory governance and the caveats that follow from the effort. It points to a distinction to be made between the functioning of the ecology and its ideology, and suggests another complex interweaving of moral obligation and law, of structures of disclosure and market driven regulatory discipline, and of the regulatory effects of states in markets as both managers. The actions of governance actors in the wake of the Rana Plaza factory building collapse provides a glimpse of this emerging ecology.

II. The Ecologies of Global Regulatory Governance.

Regulatory governance achieves its current forms within contemporary economic globalization. The lens through which the ecology of regulatory governance—its conceptions as a function of its effects and within its environment³—can be brought into focus. The environment is the global production chain. The effects that give that environment substance can be seen around a staging event—the collapse of the Rana Plaza factory building (the succeeding parts of this section are taken and summarized from Backer [2016]). The object is not to focus on the collapse itself but to use it to more clearly see in its effects the manifestation of the conceptual framework that provides the logic of regulatory governance and its structures. This consideration is undertaken in the shadow of the possibility that the era of globalization under which this ecology of regulatory governance has emerged is now itself passing. The consequence of that possibility may well change the character, scope and function of regulatory governance—but its conceptual framework will remain suited to the ecology that emerges. And that is the point that makes its study relevant even on the cusp of change. Section A sketches the conceptual framework and its conceptual language. Section B then sketches the contextual environment that suggest the effects that authenticate the conceptual language. Section III then connects the conceptual language and contextual environment of this section.

A. The Environment and Effects of Regulatory Governance in Its Ecology: The Rana Plaza Building Collapse

From the end of the 20th Century, Bangladesh served as a site for manufacture of garments for foreign multinational enterprises whose brands were sold globally but especially in the West. This position was legalized through the thirty or so bilateral investment treaties to which Bangladesh was a party (United Nations 2013; including most major European countries, China, the United States and Canada). Many contain “most favored nation” provisions (U.K.-Bangladesh 1980), and some include provisions that effectively could internationalize Bangladeshi national law to the extent it might come within coverage of the BIT (U.S.-Bangladesh 1986, Art. II, ¶ 3).

³ Hookway [2012, 165-181, 167] notes Pierce’s expression of pragmatism as “the possible practical consequences of a concept constitute the sum total of the concept.”

Savar, on the outskirts of Dhaka, Bangladesh, housed a growing number of factory complexes built on the promise of the globalization of the garment sector. One of the garment factory buildings, eventually consisting of eight floors, was known as the Rana Plaza (Institute for Global Labour and Human Rights 2014). There were allegations of irregularities in its construction and approval. (Al-Mahmood and Harding 2013). The owner of the building, Mohammed Sohel Rana, was politically connected (Mustafa and Islam 2013). “Some 3,639 workers toiled in five factories housed in the Rana Plaza building.” (Institute for Global Labour and Human Rights 2014). Many of these workers labored on some of the floors of the building that had been added after initial construction, which had been added with permission of local officials, although it was later alleged that these may have been unauthorized (Magdaleno 2014).

The factories in the Rana Plaza building produced a variety of garments for about forty global retailers, including some of the largest and most well-known brands in North America and Europe. Many of the apparel retailers operated through sometimes complex systems of oversight of operations down their supply chains (discussed in Backer [2007]). These generally took one of two main forms. The first projects behavior and conduct standards onto factory operators that have been developed or form part of the terms of the relationship between downstream manufacturers, like the factories operating in the Rana Plaza building, and the global apparel enterprises who hired them. These terms and conditions are usually written into supplier codes of conduct or similar instruments that form part of the arrangements between manufacturer and apparel retailers. The substantive elements of supplier codes of conduct generally cover issues of legal compliance, and beyond that of ethical conduct, labor standards and practices, environmental practices, human rights, and community relations. Indeed, to some extent, supplier codes harmonize practices across jurisdictions and may impose standards in addition to those required by local law. Most supplier codes also include provisions related to worker health and safety. Beyond normative standards, company supplier codes of conduct also provided mechanisms for monitoring, technical assistance, investigation and sanctions. Suppliers who failed to conform to the supplier conduct codes may be disciplined, up to and including loss of the supplier relationship. These are matters handled internally for the most part. Courts have so far refused to extend their protections to third parties, especially workers (see *Doe v. Wal-Mart Stores, Inc.*).

The second also projects conduct standards onto factory operators. But in this case the standards are developed or certified by third party entities. These organizations both develop and monitor (and certify) compliance with their standards of conduct. In that way they provide an arm’s length assurance of compliance (discussed in Backer [2013]). By 2013 there were a substantial number of important public codes as well. These included notably the ten principles of the U.N. Global Compact (United Nations 2000), and the United Nations Guiding Principles for Business and Human Rights (United Nations 2011). The later developed an architecture of human rights due diligence (§§ 17-21) for companies to implement in monitoring their behavior and those of their downstream supply chain partners based on the so-called International Bill of Human Rights (§ 12; “understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work”). Both internal codes of behavior and third party certifications were developed to reflect international

norms (not law) that in turn were meant to reflect popular consensus about values and expectations.

On Tuesday, April 23, 2013, it was reported that a number of cracks had appeared in the Rana Plaza building (Hoskins 2015). “The building had been evacuated . . . but the workers had then been ordered back to work.” (Human Rights Watch 2014). The next morning many of the factory workers gathered outside the Rana Plaza building and refused to enter (Hoskins 2015). Though reports varied about threats of physical (Institute for Global Labour and Human Rights 2014) or financial intimidation (Ibid.), most workers entered the building and begun their shift. At 8.45 A.M., it was reported that power went out in the building and a number of internal generators kicked in, adding substantially to the vibration of machinery in the building. “Almost immediately the workers felt the eight-story building begin to move, and heard a loud explosion as the building collapsed, pancaking downward, killing 1,137 workers.” (Ibid.).

In the wake of the building collapse, Bangladesh was most successful in deploying its police power and its criminal law. Mohammed Sohel Rana fled but was caught attempting to cross into India (Al-Mahmood and Harding 2013). He was arrested and abandoned by the political and economic elites within which they operated (Mustafa and Islam 2013). In addition the owner and the managing director of one of the largest factories within the Rana Plaza building were also arrested, along with two engineers tied to the design of the building (Guardian 2013); Rana’s wife and cousin were arrested as well, likely for facilitating escape (Al-Mahmood and Bajo 2013). Rana was eventually charged in two proceedings, one for violation of building codes in constructing Rana Plaza (McCall 2014), and the other for loss of life (Daily Star 2014). Additional factory owners were soon arrested as well as the Bangladesh Prime Minister, ordered the arrests of all of the five factory owners as well as of Mr. Rana (Al-Mahmood and Bajo 2013). And efforts were made to confiscate his property along with that of the factory owners in accordance with Bangladeshi law (Devnath 2013). More property confiscations followed when twenty four of the forty one individuals criminally charged absconded before trial (Agence France-Presse 2015).

Almost immediately thereafter mass mobilizations produced well publicized protests within production chain apex states. These were directed not at the factory building owners or the factory owners themselves, or even at Bangladesh, but rather at the apex enterprises which had relationships with these local elements, and also with the states in which these apex enterprises operated. In 2015, a lawsuit was filed in the U.S. against apex manufacturers (Rahaman v. JC Penny Corp., Inc.) and in other states as well (Halkias 2015). Apex enterprises, in turn, deployed their own regulatory authority. Several intervened directly through their own programs with suppliers (Al-Mahmood 2014). Multinational enterprises sourcing product in Bangladesh also moved to modify their supplier codes of conduct. Some developed very specific governance regimes applicable to products sourced in Bangladesh (Wal-Mart 2016).

More importantly a large number of apex companies joined together in two camps, mostly along regional lines, the Alliance for Bangladesh Worker Safety (Alliance) (see Alliance for Bangladesh Worker Safety [2016]) and the Accord on Fire and Building Safety in Bangladesh (Accord) (see Accord on Fire and Building Safety in Bangladesh [2013]). The Alliance was formed by a group of North American apparel companies and retailers, numbering

26 in April 2015 (Ibid.). The Alliance operates through a Member Agreement (Alliance for Bangladesh Worker Safety 2013), which established the regulatory and governance objectives of the Alliance. First, Worker Safety Fund was created to underwrite factor-based fire and building safety initiatives applicable to factories from which member companies sourced products. An Affordable Capital for Building Safety fund was established to finance factory owner rebuilds. Second, Worker Participation Committees were created for all Alliance member factories to encourage worker reporting of fire and safety violations. Third, workers and managers in Alliance affiliated factories would undergo training for fire and building safety based on an Alliance developed uniform curriculum, taught by approved qualified trainers. Fourth, a common standard for assessing fire and building safety, “based on existing protocols and initiatives, and that meets or exceeds local legal requirements,” (§ 5.1) was developed to be applied to all Alliance sourced buildings. Fifth, the Alliance Fire and Building Safety Code would be applied by independent inspectors, in accordance with a process developed by the Alliance. Lastly, the Alliance committed to a program of transparency, and to prohibit unauthorized subcontracting.

The Accord, like the Alliance, was formed to aid in fire and building safety and inspections. It also was based on a “legally binding agreement between brands and trade unions designed to work towards a safe and healthy Bangladeshi Ready-Made Garment Industry.” (Accord on Fire and Building Safety in Bangladesh 2013). The basic goal of the Accord was to “establish a fire and building safety program in Bangladesh for a period of five years.” (Ibid.). Like the Alliance, its basic objectives were built around the creation of an independent inspection program, public disclosure, the creation of a fund to help factory remediation efforts, the creation of democratically elected safety and health committees, and worker empowerment through training programs and the institution of complaint mechanisms (Ibid.). The objectives were to be reached through programs of credible inspections, remediation, training, the institution of a complaint process, and programs of training and transparency.

In addition, apex enterprises also developed remediation measures beyond the judicial and legal systems of Bangladesh, the so-called “Arrangement” (see Rana Plaza Arrangement [2015]). It was administered by the Rana Plaza Committee was made up of representatives from the Ministry of Labour of the Government of Bangladesh, local and international garment industry, local and international trade unions (Ibid.) and local and international non-governmental organisations. The International Labour Organisation “acts as a neutral and independent chair.” (Ibid.). The objective of the Rana Plaza Committee was to develop “a comprehensive and independent process that would deliver support to the victims, their families and dependents in a predictable manner.” (Ibid.). The process might be grounded in the laws of Bangladesh, but only to the extent those might be “consistent with international labor standards.” (Ibid.).

Multilateral efforts also emerged, the most important of which was the 2013 E.U.-Bangladesh “sustainability compact.” (Joint Statement 2013). This compact focused on the reform of labor laws and effective enforcement of labor rights in Bangladesh and includes the active participation of representatives of the ILO (ICTSD 2013). Bangladesh also committed to assess the structural integrity of all export oriented garment factories by June 2014 and develop a public database to disclose the results of inspection (5-7) The European Union, for its part, committed to technical assistance and to the extension of the EU’s BEST program with

Bangladesh (7). The three also acknowledged the utility of the Accord (but not the Alliance) and the need to foster regimes of responsible business conduct by global enterprises (7-8).

B. From Environment and Effects to Conceptions of Ecologies of Regulatory Governance

The regulatory governance effects around the Rana Plaza building collapse suggest its nature as a thing apart. Regulatory governance serves as a framework within which productive forces may be managed, and through which the institutions of a governance apparatus can be legitimated and deployed. (Levy and Spiller [1994]⁴). It evidences preference for a particular manifestation and style of governance—regulation (in the sense of behavior control and accountability) *through* markets (Gohosh 2003, 1916--18). Product markets, trade management and the preservation of brand were the principle objects and techniques around which the building collapse was managed. On the basis of that preference the modern hierarchies of legitimacy in approaches to global problems are built (Bianculli, Jordana and Fernández-i-Marín 2015), one grounded on the regulation *of* markets (Brousseau and Glachant 2010), and the *instrumentalization of markets* as a tool of the regulatory state (Lobel 2012; Das, Quintyn, and Chenard 2004; Konefal 2012). This instrumentalization is founded on the role of regulation and is embedded in larger objectives—particularly risk management or liability reduction (Hood, Rothstein and Baldwin 2001)—and is embedded in influential soft law governance framework instruments such as the U.N. Guiding Principles for Business and Human Rights (United Nations 2011; the Commentary acknowledges the connection between the standard principles of business risk management (itself a regulatory governance sub-system) and the management of human rights risks in business operations through the UNGP). And, indeed, market instrumentalization in the service of risk management drove the Arrangement as well as it drove the private regulatory efforts of the large multinational enterprises. Rana Plaza points to the way that regulatory governance may be seen as the expression in the form of conventional law, policy and multilateral obligations of private risk management in the “enterprise” that is the state, managed through markets (Hood 2002; Rothstein, Huber and Gaskell 2006), understood in its related guise as a means for the efficient provision of services (Hood 1998), for the purpose of attaining specified objectives. What appears to be public law is stripped of its traditional meaning as the source of its expression, the state, assumes more the character of a private enterprise within a global production chain centered on the garment sector. It involves the traditional form of regulation—to command—but now embedded within new structures of objectives-based regulation that in function devolves and privatizes the actual implementation of rules, whose effectiveness is disciplined through disclosure and its effects in markets (drawing on notions of “markets based governance” and its connection to systems of extensive accountability in Donaghue [2002, 1, 4–8]).

Thus understood, one can elaborate its characteristics, the effects of which drove the governance systems put in motion by the building collapse. These are the characteristics that

⁴ The foundation of the modern notion might be attributed to Levy and Spiller [1994]; see, e.g., Levi-Faur [2011, 1–20]. But it has transcended its origins and appears to have been appropriated by those who seek to understand systems of governance or to craft them into something useful, as utility may be understood by its creator; see, e.g., Braithwaite, Coglianese, and Levi-Faur [2007, 1-7].

underlie the current dominance of a particular style of managing behaviors within and between institutions—states, business, societal and religious. What emerges from the observation of governance around the collapse of the Rana Plaza factory are the structures within which governance is understood and its authoritative pathways constructed. Embedded within the responses to the Rana Plaza building collapse are the basic premises within which the emerging constellation of key governance stakeholders—states, enterprises and civil society—now group themselves into effective multi-stakeholder governance systems (Backer Dec. 2, 2017).

First, it is the expression of a normative preference for protean governance of governance, the organization of systems of systems and their institutional endowments (cf. North 1990), that order systems of rules for management of behaviors that are themselves then controlled indirectly (Sunstein and Thaler 2003, 1161--62). What we see in shadowy form in the Forum is the construction and use of a new language of power, the language of the socio-culture of human rights. The shift reflects a movement away from the organizing language of power beyond which in the last century itself shifted from the language of politics (the traditional language the law-regulatory state), to economics (the language of global production and the enterprise” (Backer Nov. 28, 2017; Ruggie 2017; Backer 2017).

Second, it is a framework within which one can define and discipline the institution of power in conventional state-law systems. That framework is meant to impose government at a distance (Swan 2002. 11--14). The position of Bangladesh within the rule framework that emerged from out of the Rana Plaza building collapse suggests its contours. Multilateral actions (U.S.-E.U.-Bangladesh) provided the framework within the contours of legislative reform was fashioned. Another multilateral aggregation (ILO-OECD-UNOHCHR) sourced the normative framework within which reform was framed. And yet another multilateral effort (the Accord, the Alliance) produced the institutions through which reform of the Bangladesh inspection and building safety codes were refashioned, monitors trained, victims compensated, and the financing of building retrofits were arranged. States exist within but not at the center of regulatory governance ecologies. Consider the regulatory roles of Bangladesh, the United States and the European Union within the interwoven systems of regulation that emerged from out of the Rana Plaza building collapse. States are stakeholders in multi-lateral governance, in international organizations and as the public partners of industry regulatory systems. Bangladesh now includes a governmental unit dedicated to managing its public private partnerships operated through the Prime Minister’s office (Bangladesh 2017).

Third, it is technique—replacing the *command imperative* of law with the *sensibilities* of management (Foucault 2007). The emphasis of regulation is implementation rather than standards, on results rather than rules. Law systems are premised on the inevitability of law breaking; it is centered on command and punishment. Management systems are premised on the ideal of avoiding nonconforming behavior; it seeks to anticipate and correct behaviors that fall outside permissible options (Jacobzone, Choi and Miguet 2007, 7). While the command imperative of law assumes a structural role, the techniques of management—premiered on data, monitoring, reporting and guiding behaviors—moved to the center of regulatory forms. Corporate conduct and supplier codes, flexible loans for retrofitting, reporting and data based systems are all elements of techniques and application that become the operative center of

regulatory regimes where law articulates objectives but devolves operational authority to administrative actors to create operational systems grounded in discretion.

Fourth, it is a form of public government (democratic or party-state)—expanding the administrative possibilities of democratic government (Lenoble and Maesschalck 2010). Regulatory governance within multi-governance systems produces a spillover effect as the regulatory techniques of each of the regulatory stakeholders act with or against each other (Baldwin, Cave, Lodge 2011). In Bangladesh, the tensions between the United States, the E.U. and Bangladesh with respect to labor rights produced formal compliance with legislative responses but less than enthusiastic administration. Yet that response was blunted through the regulatory efforts of enterprises and international organizations whose management forms permitted a boarder range of effective action (Backer 2016). The same applied to building safety and was at its most evident in the Arrangement that effectively supplanted traditional forms of remedy (Freedland, Craig, Jacueson, and Kountouris 2007). This regulatory web may substantially reorder the premises of democratic governance attached to territorial states.

Fifth, it is *ideology* (considered in the context of mediation as a form of regulatory governance in Nussbaum [2016, 395--403])—and more generally the normative expression of self-constituting private power within non-governmental organizations (Teubner 2012). That self-constitutive power speaks the language of market democracy—grounded in atomistic decision making by stakeholders acting on perfectible information. That later point then drives regulation—not to command behaviors but to deliver information—disclosure, monitoring, reporting, to the market itself (Backer 2008).

Sixth, it is active, reflexive and reactive, and when successful sustainable. It constitutes its own forms of power and resistance to power-- ο ù ρ ο β ó ρ ο ζ ö φ ι ζ. Multiple systems of regulatory governance may exist simultaneously within the same physical space. Yet they can also manifest themselves in multiple forms through single individuals. And they occur simultaneously—so that the concept of regulatory governance itself can become unmoored from the individual object within which it had heretofore resided and with which it no longer necessarily shares an identify. The modern multinational enterprise becomes a space within which the regulatory governance regimes of states, of international legal orders co-exist and interact, all in- and inter-dependent with the enterprises' own system (Backer 2013).

The Rana Plaza building collapse reveals regulatory governance, at some great level of generality, as every self-conscious system in a universe of self-conscious systems whose self-absorption (reflexivity) is bounded by necessary interactions with other “bundles” of self-absorption (Kolben 2015; Eberlein et al. 2014, 3--4). But a self-absorption with the particular characteristics of the market. The interlocking of enterprise governance, driven by the need to organize its internal market (the supply chain) around its external relations, the organization of regulatory systems among aggregations of self-regulating enterprises, the interlocking of those

⁵ Ouroboros the serpent that ate itself. “Of design he was created thus, his own waste providing his own food, and all that he did or suffered taking place in and by himself. For the Creator conceived that a being which was self-sufficient would be far more excellent than one which lacked anything.” Plato [360 B.C.]; the metaphor arises sometimes in international law. See Merkouris [2007 1--31]

systems with both national legal orders and multilateral legalities produced an approach to regulatory management that avoided the classical premises of national law for an objectives driven system of relationships marked through managerial regulation.

These characteristics suggest an *ecology* that is at the base of regulatory governance, the systemicity of the operation of entities within a specific environment that produces sustainable relations governed by principles specific to that environment.⁶ The ecology of regulatory governance represents the way in which regulatory governance responds and adapts, the way it operates, within its environment. And in this case an environment framed by and through economic globalization. In this respect, it differs from notions of either custom and tradition based systems or systems grounded on anarchy—the absence of a central organizing principle, though regulatory governance could certainly exist within a meta-anarchic environment. But it also suggests a complex interplay between the intentionality of regulation (the embodiment of objectives based compulsion) and the anti-intentionality of markets (the embodiment of fractured interest enhancing decision making with substantial effect in the aggregate).⁷

But it is an ecology with a vengeance, an ecology with an ideology and a normative objective. It is an ecology, then, *grounded on the intentionality of regulatory governance*, the methods of which are meant to appear to *appear to rely on the efficiency and logic of anti-intentionality*, that is on the market (on the sum of private decision making in the face of the constraints of advantage and self interest). One moves beyond the usual subject of regulatory governance—the regulatory state (Majone 1997, 139--67; Loughlin and Scott 1997, 5)—to the regulatory organism (that is to all organizations capable of governance) within a complex ecology of regulatory organisms responding to activities that appear to move between them (Lidskog, Soneryd and Uggla [2010] with focus on environmental problems).⁸ Regulatory governance suggests a system—that after all is at the base of relation—and it assumes stability (a stable state and a means of defining and understanding shifts from stability to dynamic states). That, itself is the foundation of the ideology of regulatory governance grounded in definitions of stable states, of the “deal”, of “deviation” and of the legitimating methodologies to achieve “success” in governance through regulation. Regulatory governance also suggests the political movement, one that seeks to protect and enhance the ideological objectives of regulatory governance. Regulatory governance is not natural in the sense that it just happens in reaction to stimulus (market failures, mass desire, etc.)—rather it is constructed either by the aggregation of

⁶ I draw inspiration here from cultural and political ecology. See Steward [1955]; the ecology of regulatory governance means to suggest the way that regulatory governance is necessarily situated within its own Biopolitics, the strategies and mechanisms through which human life processes are managed under regimes of authority over knowledge, power, and human organization. See Foucault [2007].

⁷ Regulatory governance thus falls within that large spectrum of post Enlightenment governance theory that is ‘active’ in the sense that it is posited on the premise that systems can be both constructed and directed toward some end. In this sense, regulatory governance, of course, assumes the character of both tool (the “means” toward the attainment of some end (the way that Leninism is a means toward Marxist society) and the organization of those ends through its ordering mechanisms the “ends” toward which these mechanisms are directed and which in turn shape the mechanism themselves). See Lenoble and Maeschalck [2010].

⁸ In this sense, regulatory governance is not merely network theory, it is a variant of vanguard theory in the way that Leninism is another. See, Jones, Hesterley, and Borghatti [1997, 911--945]).

the action of regulatory actors, or by the direction of formally constituted governance institutions whose object is to engineer a particular ideal of the regulatory by regulatory vanguards—international organizations like the OECD for example (Delorme 1997, 32--56).

The structures and logic of regulatory governance, within the environment of Rana Plaza is ordered within narrow and broad premises. In its narrowest sense, might be understood as a set of techniques useful for understanding the way to manage a particular function in ways that are stable, predictable and freed of the vagaries of administrative discretion.⁹ It also suggested the assessment of these techniques and the forms through which such management could most usefully manifest. In a broader sense, it refers to the development of an ideology of governance, effectuated through international financial institutions and their lending regimes, that sought to discipline developing states within a particular institutionalization of governance (Asian Development Bank 1995). “A key element in the evolution of a framework of regulatory governance is the establishment of independent regulatory frameworks with a capacity to commit itself to credible policies.” (Jayasuriya 1999, 445). The focus was not merely on the role of states as regulators, but also as managers, and the development of ideologies of regulatory behaviors (Stewart 2005, 695). Regulatory governance, in this sense, is the sort of “good governance” that is at the heart of efforts by developed states (in the 19th century the civilized states at the heart of colonialization and empire) to help developing states assume appropriate form and adopt acceptable behaviors (Santiso 2001, 1--22), including human rights behaviors (U.N. Office of the High Commissioner for Human Rights).

In its broadest sense, regulatory governance transcends itself, from a means of organizing the manifestation of power through the state, to a set of principles for organizing power and managing behavior across organizational types. Here regulatory governance serves as the rule system of systems to useful ends—but one that is grounded on an intentional non-intentionality—the essence of the union of markets as technique and government as guardian of the “ends” of power. But this aspect of regulatory governance cannot be contained by the state and is not inherent in state system ideology. Rather, the gaze here lifts from the state—and its aggregations within international organizations—to all governance generating organs, from technique to principle, and from the state to the organization of functional areas across borders. Within that sense it also underlies the basic imperative of harmonization. Harmonization can be understood as an apex premise of regulatory governance—the principle that at bottom all of the techniques of governance and the organizations of states and other actors, must be bent to the aggregation of rule networks that together (1) make real an integrated global system of. . . . trade, discourse, politics, society, values, etc. (Vanda 2006, 269--283) or (2) by which such integrated global systems may be resisted (Backer 2007).

III. Theorizing Meta-Structures: A Possibility or a Conceit?

What Rana Plaza reveals about regulatory governance—as technique, framework, norm or ideology—suggests that when the analysis moves from a focus on the regulatory state to

⁹ For example, the World Bank’s lending may in the aggregate be understood as a system of regulatory governance in which loan agreements are the regulatory instruments to produce efficiency driven structural adjustments in response to meet overall objectives; see OECD [2005].

regulatory chains the concepts and operations of regulatory governance acquires its modern distinct form, embedded within production chains and layering governance within the polycentric governance units that together constitute the regulatory ecology of global garment production (Scott 2011).

A. As Technique.

Regulatory governance assumes the forms of law, but it rejects the traditional form of law as command for the use of law to constitute administrative apparatus and objectives standards to be implanted by regulators. Law enables the techniques of management (cf. Murray Li [2007]). This well-known insight has been a long time in the making (cf. Ayres and Braithwaite [1992]). Regulatory governance in its technical aspects gives form to the insights of Michel Foucault of almost half a century ago (cf. Foucault [1991]), one in which indicators play a critical role in and as governance itself (Sarfaty 2013, 575). Rana Plaza exposes the technical privilege of objectives based control structures, of the manipulative aspects of transparency and disclosure, of the power of application (and the rule systems that revolve around processes of application). All of this is clothed in the legitimacy of systems of law because they are either “regulatory” and thus derivative of lawful rule making, or contractual, bound up in the binding relations of parties. Though the Rana Plaza building *collapse* itself appears to be another iteration of the interplay of conditions (Weick 1995), the *response* suggests the way that regulatory governance now operates to create systems of response invoking and coordinating the governance mechanisms of multiple governance actors operating within and beyond the state and of law. In Rana Plaza, the techniques of governance stand at the center of the organization and operation of both the global garment production chain, and its dynamic resilience in the face of threat. Though they appear to run in parallel there is a world of difference between the Rana Plaza building collapse and the Bhopal tragedy. These include the rise of internal governance rules within multinational supply chains, the development of externally driven international standards touching on corporate social responsibility and human rights, the growing willingness of home states to respond to demands from their own constituencies and to project power outward to host states, and the ability of groups of multinationals to develop governance systems that substitute for those of the state.

At its limit regulatory governance in its global ecology signals the *death of law*, but *not the death of laws*. Even at its most benign and conventional, regulatory governance is grounded in the idea that law is becoming less relevant as a self-contained system ((Calliess and Zumbansen 2010; but see Thompson [2012])). States regulate less and less through law, especially actions of a transnational character, but they manage risk and optimize social forces to some end to other. Rana Plaza suggests that regulatory governance has become increasingly important as a tool for the disciplining of regulatory systems. That is, law assumes more a character as a means of systemic construction, rather than as a collection of rules in the form of commands or specific directions. In Rana Plaza law was at its most useful in its most ancient guide—as criminal law (Manik and Najjar 2015). As for the rest, the Bangladeshi law on the books proved ineffective, but more tellingly when reform was called for it was produced in law outside of Bangladesh for internal embedding, and within regulatory systems of participants in garment production chains, who developed their own remedial systems, their own substantive rules for building safety, their own inspector training programs, and their own monitoring systems. In that context law might have been the end product of bargaining for regulatory

structures among states—the United States, the E.U. and Bangladesh, for example—but regulatory governance was most effective on the construction of a regulatory environment in which such bargaining could take place within a legitimating norm structure of its own. And it was the regulatory governance of the system of the garment production chain that made the specific legal and contractual responses possible.

These are techniques that are unmoored from the state (Michaels 2013, 287--304). In Rana Plaza regulatory governance produced coherent sub-systems (the Accord, the Alliance, the Arrangement, etc.) within transnational corporations, within alliances of transnational corporations, among joint ventures of international organizations and transnational enterprises, within civil society actors offering regulatory commodities that might legitimate systems of behavior control. But conversely, the techniques of regulatory governance, of a demand for regulation that managed systems and the people useful therefor, do not retain any special character as public law (Harlow 1980, 241; cf. Zumbansen 2015, 84--110). Rana Plaza suggests that the most efficient producer of regulation driven management are economic enterprises embedded in global production chains; the worst are the least developed states within that production chain (cf. Grabosky 2013, 114--123).

Regulatory governance adds to the traditional hierarchy of law, a hierarchy of behaviors grounded in the normative consequences of monitoring and disclosure techniques (Zumbansen 2012, 1271; regulatory governance . . . is no longer fully consumed under the heading of “law”, but must instead be deconstructed through different disciplinary lenses, only one of which is law.”) This follows from the intimate connection between regulatory governance as guiding principles and markets as the structures and means of disciplining behavior (Seck 2012). In Rana Plaza the entwined hierarchies of public and private transnational regulation, disclosure, monitoring and implementation produced a system in which the object of law was to produce a system of management of objectives the rule systems of which were to be inscribed in the laws of a state (Bangladesh), and the operating systems of enterprises individually and in organizations of enterprises (the Accord and the Alliance). The result is not traditional colonialism precisely because the state is directly absent. And yet the effects feel colonial because Bangladesh appears to be absent as well. Disaster occurred when the regulatory governance environment was sufficiently stressed (by unchecked corruption) made possible by the gaps in governance among the governance systems simultaneously operating in layers on the Rana Plaza factory building.

B. As Framework

Regulatory governance can be understood as the framework principles, the factory, within which standardized assembly of a regulatory commodity is produced (Haines 2005). In this respect it resembles law but in globalized systems. It is produced, consumed, assembled and traded to suit the needs of those entities for which regulation is necessary as a means to an ends (political control, production of profit, etc.). Regulatory governance provides the framework within which law, as a consumable, is produced, used and recycled. Regulatory governance, then in its framework aspect, touches on the management of regulation. This represents a function different in quality from its traditional understanding as focused on the regulation of markets, and on efficiency and risk management. It signifies the boundaries of markets for regulation—it

provides the framework rules for the production line that is global regulatory production. These production lines are complex. But regulatory governance provides the framework for judging its quality—as technique—and its sufficiency for its purpose. Rana Plaza pointed to production lines in states, international organizations, transnational corporations, and various alliances among them. These produce regulation according to a framework that makes it possible not merely to produce regulation, but to combine them, or work them together for the construction of rule systems beyond the factories of rule making that produced them.

This regulatory factory exists alongside the traditional law producing factory that is the state. It stands apart but both operate in similar ways. Its workings are sometimes misunderstood as species of conventional law (Arato 2015). Both look toward the production of instruments of control—societal, economic, cultural, political, or religious. Regulatory governance as framework does not have an ideology. Rather it directs itself toward those framework structures that maximize the aggregate production of rules. In this sense regulatory governance, *as a rule of rules*, is driven by its ordering premise. The object is maximization of effectiveness—for single regulations and systems of regulations. But that object can be quite specific, as in the efficient production of a legal conduit for global production chains. That was the object of the United States and the European as apex public regulatory governance producers, in their production of systems of regulation to be embedded within the domestic legal order of Bangladesh. That was the object of the various efforts at reworking the rules of building and fire safety by Alliance, Accord, Bangladesh and the NGOs and the ILO.

At its limit, might it be that regulatory management suggests the prettier face of an urge toward the sort of totalitarianism that was the hallmark of the 20th century and in the failures of its extreme leftist and rightist forms, but one marked by technocratic control (cf. Elwell 1991; on the two forms of totalitarianism, one grounded in force and the other in management). In this it stands in marked contrast to law—which commands or which constitutes systems of commands. Regulatory governance constitutes systems of management that at their limit may seek the substantially complete authority over an aspect of social, political, economic or cultural life. And this may be produced even in the process of seeking to blend its principles with mediating norms, such as restorative justice (cf. Braithwaite 2002). One sees bits of this in the internationalization of the domestic legal order of states that occupy the lower rungs of production chains. The price of participation in global production chains for states like Bangladesh is acceptance of control over its domestic legal and social orders, at least to the extent that these affected the operation of global production chains within Bangladeshi national territory. Bangladesh's price of admission to the lower rungs of garment sector production chains tied Bangladesh's internal policies to the overarching requirements of its multilateral partners. Yet that dependence also governed the extent to which Bangladesh was required to accept a measure of non-state actor involvement, an opportunity for “private sector groups, unions or NGOs to contest the entitlement to the GSP programme, by filing a petition when they have concerns about respect for workers' rights.” (ILO 2016, 98).

But the possibility of *technocratic totalitarianism* does not have a political ideology—just a regulatory one. And that quite significant distinction may well propel regulatory governance beyond technique, beyond its origins as a means of making government better, to a systemic ideology of control (discussed in Backer, “Ideologies of Globalization and Sovereign

Debt” [2006]; Backer [2006] “Economic Globalization Ascendant”). This may be both good and necessary. But it represents a choice for choosing among those structures in which governance communities invest with authority and legitimacy. The essence of this movement toward technocratic totalitarianism is hinted in the consequences of the Rana Plaza building collapse itself. Control shifted from the state (Bangladesh) embedded in its public multilateral framework (those BITs and other arrangements that made Bangladesh attractive for the global market sector) to the Alliance and the Accord, the controlling organizations within the garment production chains. The movement also represented a draft away from issues of politics within Bangladesh (including labor rights and building safety) to issues of economics (including the imposition of managerial measures designed to enhance consumption of garments within home states). And in that choice comes ideology; an ideology of risk (van Loon 2002)—which is at the center of a regulatory project that is managerial in fundamental characteristic (see, e.g. Moller 20016). But it is error to conflate framework with an animating ideology.

Within this framework, the individual becomes as much an object, a commodity, as the regulations produced for the management of these individuals. Rana Plaza suggests an advancing state of *biopower* (Foucault 2007) in the form of regulatory governance emerging from the interactions of multiple regulatory systems focusing on efficient global production chains. Regulatory systems serve institutions, and institutions serve individuals understood as an aggregated incarnation of the sum of a population for which regulation is produced, the success of which is measured by the effectiveness of the rules in managing the behaviors of those for whom they are developed.

C. As Ideology

The retreat of law has significant political consequences that touch on the ideological character of regulatory governance (Backer 2016 “Fractured Territories”). Law was legitimated by its connection to democratic institutions and the authenticity of the processes for their enactment. Regulation is not. Law is tied to the state for its legitimacy. Regulation is not. The retreat of law also signals the retreat of the state as the centering institutional element in the production of legitimate and authentic (binding) regulation and regulatory systems. In the context of the Rana Plaza building collapse, law becomes deeply embedded within the regulatory webs of social norm structures. These take a number of forms. The first include the disclosure regimes of many states in which the apex multinational enterprises are resident. These range from the usual provisions of securities law related disclosures to the emerging disclosure regimes tied to corporate social responsibility and human rights concerns.¹⁰ The second include a range of corporate social norm regulations of its production chain through supplier codes of conduct and similar regulatory devices (Backer 2008 “Multinational Corporations). The third include the

¹⁰ See U.K. Modern Slavery Act of 2015; requiring companies to disclose the steps taken to ensure that slavery and human trafficking are not taking place in the business (or in any supply chain) or declare that no steps to confirm the existence of slavery or trafficking have been taken); Dodd-Frank Wall Street Reform and Protection Act § 1502; which directs the SEC to enact a regulation requiring companies to disclose whether any of the products manufactured or contracted to be manufactured by the company contains conflict minerals that originate in the Democratic Republic of Congo (DRC) or any of the adjoining parties.

regulatory frameworks provided by public and private third party certification programs (de Boer et al. 2004). Each of these was invoked in the aftermath of the collapse, and together they provided a grounding for regulatory responses, including the development of additional mechanisms for reimbursement of those injured (beyond those provided by the state), new standards for building inspections, new standards and facilities for training building and safety inspectors in Bangladesh, and new approaches to labor relations beyond the law of Bangladesh.

And indeed, *the retreat from law to the law of the market* as both a site for regulation and its form marks the fundamental premises of regulatory governance. The role of actors within this framework consists of both infusing the market with normative values with which to weigh choices and to ensure transparency. Mandatory conduct is replaced with the obligation to disclose activity. State enforcement of conduct norms is replaced by the creation of spaces within which behavior is disciplined by market actors grounded in the performance of their normative values universes. The separation between norm making and conduct regulation becomes more pronounced. States, religions, non-governmental organizations and enterprises fight for the control of the master narratives of norms and values, norms and values that then are used to weigh the conduct of these very institutions. Rules set objectives, grounded as well in these values, which constrain markets and guide the individual choices of actors (Backer 2007). Rana Plaza provides a model application of these premises. Non state actors and enterprises developed soft law regulatory frameworks grounded in international norms which themselves were meant to reflect a consensus of values among consumers and investors. These eventually formed part of multilateral agreements that imposed on a state the obligation to embed these regulatory initiatives, and the values they represented, within the domestic legal order of Bangladesh itself. This is a strong statement, especially where in the case of Bangladesh there was some popular sentiment for the reform eventually carried out. But the success of that internal movement was critically dependent on the imposition of substantial pressure from outside—through the management of multilateral agreements, through the efforts of private enterprises with substantial investment in the garment sector and through the management of internal popular politics. “These findings highlight the interaction between legal reforms, capacity-building and monitoring mechanisms – with the support of social dialogue – and labour market outcomes.”(ILO 2016, p. 104).

But this does not suggest the lack of framework representational ideology (De Búrca 2008, 221). Rana Plaza suggests its elements. First the importance of mass mobilization as a means of gauging popular sentiment, the satisfaction of which is legitimacy enhancing. But note here the complications of mass mobilization; it exists on several levels not necessarily coherent. At one level is the mobilization of local populations, at another the mobilization of consumers (in home states) or of the investment community. Within global production chains there are multiple “masses” whose mobilization may push in quite different directions. The connection between mass mobilization and choices that affect the position of participants on production chains. In Rana Plaza the possibility that consumers might react adversely to the building collapse served as a motivator and legitimator of regulatory choices and the constriction of regulatory objectives. Thus regulatory governance speaks to a *Rechtstaat*, just not one centered on the state or its polity (Shaffer 2001, 1). And yet it must be noted that both the mass mobilization and their institutional manifestations tends to ignore almost entirely the voices of those who are the objects of all of this activity. The Accord and the Alliance were motivated by mass mobilizations among their

consumers outside of Bangladesh; that this mobilization converged with the aspirations of local trade unions, ten of which were Accord partners in 2017, was fortuitous but not decisive (on Fire and Building Safety in Bangladesh 2013, Signatories). One focuses on consumers, on investors and on institutions, but not principally on the workers or factory owners well downstream the supply chain (cf. Backer 2012).

However, the retreat from law and the state does not necessarily suggest an ideological element to regulatory governance. Regulatory governance does not suggest its own *Sozialstaat* notions beyond its ideology of risk management (see Gomes 2014; see generally Van Loon 2002). And, indeed, there is no necessary ideology that is embedded in regulatory governance other than this: the principle of regulatory coherence across rule and system of rules. That is the fundamental animating principle of regulatory governance within a global ecology. But it is a powerful one. It suggests no principle of political, economic, societal or cultural organization other than the drive toward ordering it in the service of some objective or other. In Rana Plaza the ideological issue was not so much the details of the system of building fire and safety rules, but in the construction of a coherent system that embraced the jurisdictional limits of those bound thereby. Yet at the same time there was contestation. Regulatory governance seeks to make an *Ancien Regime* garden out of forests of regulatory communities and the deserts of de-regulated space—“high quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while conversely, co-ordination and coherence can vastly expand the benefits of reform.” (Rodrigo, Allio and Amo 2009, 9).

Regulatory governance, then, is ideology enhancing in ways that laws could not be as efficiently. It is ideology enhancing precisely because it is grounded in its own meta ideology of efficiency and risk management (see OECD 2010; Seitzinger and Puane 2015). Thus, it is not necessarily bounded by a single political or economic ideology—other than ideologies centered on the control of risk. Regulatory governance does not suggest the locus of control, but permits residence in virtually any governance space—the internal governance of transnational corporations, the normative structuring of civil society, the structures of inter-enterprise organizations, the norm building structures of international organizations and the like. It is that ecology that is itself regulatory and risk reducing, even if it has no organizing center (Backer 2016 “Governance Polycentrism”). Rana Plaza evidences the way that control moved among a variety of actors across a production chain. Control was organized along that chain rather than as conventionally understood through the chains of power grounded on the supremacy of the state.

But the techniques and frameworks of regulatory governance themselves may be bent to the control—the management—of ideological frameworks which particular systems of regulatory structures are meant to enhance. The regulatory structures of supply chain may be bent to the ideology of supply chain production as well as to the production of efficient systems of regulation originating in states, enterprises or elsewhere (Sobczak 2006; Grainger 2003; Westervelt 2012). Rana Plaza suggests the sources of that ideological framework—in the internationalized normative framework of the two great projects of transnational governance—the first is human rights and the second are economic rights of enterprises, that is the internationalization of the norms of labor and capital.

Regulatory governance, then, suggests technique, the aggregation of technique and the construction of systems of technique whose ideology is grounded on the enhancement of the systems of techniques in the service of ideological objectives that suit the taste of those with the power to engage in regulatory governance (Foucault 2007). It suggests a new architecture of multi-level regulatory control (Scott 2010, 43--63). At its limit, it is as useful for the enhancement of market economies in transactions, social relations, politics and culture as it is for the enhancement of tightly controlled structures of regulatory discipline. But it is a technique that is not necessarily connected with or the subject of the conventional architecture of law or otherwise tied to states (see, e.g. Calliess and Zumbansen 2010).

Yet there is an ideology to this technique as well. The ideology is central to its systemicity. Regulatory governance is something apart from regulations, it is animated by core premises that *regulatory systems exist to protect systemic integrity and to ensure system self-preservation*. Regulatory governance becomes powerful when it is animated by this ideological core of self-constitution (for the concept see e.g., Teubner 2012). But this is a *structural ideology* quite distinct from the ideologies that drive the forms of implementation and provide the normative content of regulatory systems in context. Thus, the Rana Plaza building collapse may serve as evidence of transnational legal order, as a normative system grounded in an ideology of governance embedded in production chains (drawn from Backer 2016 "Are Supply Chains Transnational Legal Orders?"). That ideology of the operation of production chains is distinct from the ideology that gives regulatory governance its own distinctive character, but also provides the normative context, the ecology, the way in which regulatory governance operates within its environment.

Rana Plaza also reveals that a complex ecology, such as a global garment production chain, cannot exist in the absence of a complex ecology of governing ideologies around which the techniques of regulatory governance (given form through application of structural ideology), and the psychology of its manipulations (cf. Skinner 2002), can be most effectively constructed. Ideology is a predicate to technique *in context*. But that predicate does not produce uniformity or coherence. The actions of the key regulatory actors in the wake of the Rana Plaza building collapse suggests that every actor within the regulatory ecology might be driven by distinctive ideologies that in turn color the form and scope of the techniques of regulatory governance deployed. Polycentric ideology follows from polycentric governance connected by core ideology of system preservation. In Rana Plaza those ideologies are built around mass movements that produce societal consensus that may be reflected distinctively in the normative agendas of states and civil society organs who leverage their respective constituencies through the harmonizing structures of public international organizations. For the key outside regulatory stakeholders connected to the Rana Plaza building collapse, that meant the application of the frameworks of regulatory governance around internationalized "law" and the corporate social responsibility-human rights norms reflected in the various instruments produced by these international public organs. This suggests that regulatory governance itself is enmeshed in the epistemology of complexity, of the "impossibility of depicting a 'complex' phenomenon in a reduced or simplified way. Thus, the phenomenon can only be depicted in its full form, which is in itself a complex task." (Delorme 1997, 32--56). One speaks to regulatory governance in the singular and yet that singularity washes out the complexities of subsystems operating in the same space. An example, of course, are the differences between the Alliance and the Accord in both their

normative assumptions and the regulatory systems they each created. It is both radically certain and contains within its own radical uncertainty and unpredictability. It is *radically certain* precisely because it is meant to structure, and is *premised on the belief, that societal systems may themselves be regulated to some sort of instrumental ends*—social harmony, economic welfare maximization, political or religious ideals, etc. Or in the micro arena, to the management of the global production chain for the ends of its stakeholders. But *radical uncertainty* comes because regulatory governance may be perfectly deployed but only in the face of the convergence of interests and ideologies of those regulating and regulated. In the absence of this harmonization and disciplining of ideology, resistance and reaction must be built into a project that itself may not achieve perfection (Kordela 2013, pp. 166-168. The “radical” in certainty and uncertainty, then, references the core premises that orders the normative principles for which regulatory governance is used, as well as the thoroughgoing certainty in the rejection of those principles.

And, of course, the caveats. Among the most important is the most obvious—perhaps the Rana Plaza factory building collapse was both unique in its context and the response. Another is that the global production chains in garment work might also be quite distinctive. It might be more mature than other production chains, it might have characteristics that make it distinctive from other production chains and the like. Bangladesh might itself be a unique state at the center of these convergences of regulatory governance. Perhaps other states might have presented different approaches to regulatory governance in globalization. And certainly, the scenario might have played out quite differently in Germany, Denmark, or the United States. These are all questions worthy of additional study. But it is likely only to enrich theory by sketching variation, not by challenging its basic direction or character.

IV. Conclusion

Regulatory governance, then, is indeed an ecology with a vengeance. It evidences a complex interplay between the intentionality of regulation and the anti-intentionality of markets. Here regulatory governance serves as the rule system of systems to useful ends—but one that is grounded on an intentional non-intentionality—the essence of the union of markets as technique and government as guardian of the “ends” of power. But this aspect of regulatory governance cannot be contained by the state and is not inherent in state system ideology. It is a space within which the state loses its central position as regulator and assumes a stakeholder role within multi-stakeholder environments consisting of states, enterprises, international organizations and civil society organs. Among systems, regulatory governance itself augments its own characteristics and produces a reflexivity that reinforces the power of the organizing language (and structure enhancing) ideology of market democracy—grounded in atomistic decision making by stakeholders acting on perfectible information. As system structuring, this drives the form of regulation (but not the political ideology that it may be used to further)—not to command behaviors but to deliver information and reduce risk of noncompliance with expectations.

While its deployment within governance institutions is interesting enough, regulatory governance becomes far more interesting conceptually when it is theorized as a regulatory and communicative framework among regulatory institutions. This article suggests the theoretical structures of the ecology of regulatory governance. That ecology has an ideology—an ideology about the expression and management of governance; even as the expression of regulatory

governance *within* governance organizations has no necessary or built in ideology. Regulatory governance within governance institutions assumes the ideology of the system itself—democratic, authoritarian, Marxist Leninist and the like. Yet the ideology of the system of regulation itself exists beyond the ideology of specific objectives for its use. Regulatory governance appears to embed an imperative of harmonization—ought that to be problematic? As a matter of politics perhaps this is problematic, as it might be as well for theories of political democracy grounded in territorially bounded states; yet as a matter of economics the opposite might be true. Where regulatory governance applies economic imperatives then harmonization is strong. And globalization suggests the power of the language of economics over that of traditional politics.

Global regulatory governance has made irrelevant the once irreducible self-conception of law, state and governance—one Tsar, one faith, one nation. This has not ended the drive for order; it—and ordering—persists. And indeed, the regulation of regulation—as science, system, normative framework, as disciplinary tool, appears to have metastasized into a vehicle for the disciplining of the global political order formally (OECD 2005 Guiding Principles for Regulatory Quality and Performance), and perhaps the economic, social and cultural orders as well. This is regulatory governance with a goal—ideology that provides the mouth that makes it possible for system structures that permit our regulatory *ouroboros* to eat itself without end—better government through better regulation (1--2). Yet at some level of generality regulatory governance can dissolve into itself and become nothing more than the name of the thing that manages individual and collectives' lives, that sorts individuals into various aggregations with similar and dissimilar characteristics.

It is an ideology that abhors deregulated space, and as well-regulated space that is itself unregulated. Regulatory policy is necessary to overcome the twin horrors of market and regulatory failures (15). But it is also a psychological space (see e.g., Rupp 2011, 581; Rose 1992, 351--369; “Psychological techniques have come to infuse, dominate, or displace theological, moral, bodily, dietary, and other regimens for bringing the self to virtue or happiness”)—one in which the technologies of behavior management drive the forms and structures of regulation itself. The triggering effects of the Rana Plaza building collapse provides a window into this systemicity within the particular context of global garment production chains. Its principal ideological characteristics are systemic—the rejection of the constraints of law and politics, of democracy and the primacy of the state. It describes and serves an ecology of rulemaking built around a production chain beyond the state, but one in which regulatory systems built to respond to parts of that system can be aggregated and combined into something like a seamless whole. That whole may respect the outward forms of law but provides for a quite distinct internal operation. The same principles might be as applicable to the operation of any global political or operational system. The value of these changes remains contested, and its effects a judgement left to future generations. (“As a result, the gap between the practice and the theory is unusually wide. A global multicultural society is still something new and still experimental, which has not yet found a form the adequately fits the realities of the system” Watson 1992, 309).

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