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# Corporate Sociability: Analyzing Motivations for Collaborative Regulation

Mark Findlay<sup>1,2</sup>

## Abstract

The article explores the features and charts the principle theorizing of regulatory sociability from collaboration rather than intervention, whatever the interest-based motivation behind transforming crisis, toward orderliness. A key theme is the role played by corporations in facilitating and benefiting from sociability. A particular explanatory focus on the way in which corporate culture can change from predatory jurisdiction shopping to embracing mutuality of interests in the context of environmental sustainability is employed. The article concludes with a discussion of how, as compulsory discipline increases, it may produce compliance but at costs for regulatory sociability. The alternative regulatory paradigm is one that moves to resolve the antimony between desire (profit) and reason (sustainability) in a manner that relies on and endorses the constituents of collaboration. Collaborative regulation, the article suggests, can arise out of crisis and be justified through desires for orderliness without compulsion. But for collaborative regulation to be sustainable, it must complement certain positive “orderly” aspects within political economy. The analysis determines some observations concerning the shape and shaping of collaborative regulation in an atmosphere of more pluralist knowledge-based (disciplinary) engagement involving trust, comity, and sustainability.

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## Keywords

sociability, collaborative regulation, sustainability, corporate governance

## Overview

The article is interested in *regulatory sociability* as an undervalued mechanism for corporate governance. As developed here, sociability is not a natural consequence of protecting the libertarian entitlements (or excesses) of a rights-based regulatory environment (individualist or communitarian).<sup>1</sup> Rather, sociability is collaborative relationships which, from a variety of motivations, can lead to positive, pluralist regulatory directions (Berman, 2009). The central theme of this brief analysis of the conditions of regulatory sociability is to explore regulatory theories entertaining organic cooperation as opposed to mechanical intervention, when progressing from crisis to orderliness.<sup>2</sup>

Collaborative regulation goes further than “interest group” or “capture” theories (discussed in detail in Posner, 1974). The argument to follow progresses the idea that for whatever reason in the context of reactions to crisis modified through the particularities of political economy,<sup>3</sup> collaborative regulation is more than a product of public calls for market correction or the particular demands of pressure groups struggling to reconcile the diverse preferences of their members.<sup>4</sup> Organic collaboration should be viewed as a regulatory resolution emerging as a conscious choice away from mechanical intervention, both available as possible policy strategies to resolve larger political and ideological conflict.<sup>5</sup>

In the wake of the recent global financial meltdown,<sup>6</sup> and the apparent failure of the Copenhagen and Cancun climate change talks, questions are being asked of conventional global regulatory strategies, particularly those wedded to law, regarding even their capacity to appreciate the essential conditions of global crisis (Ayak, 2010). In particular, if an analysis of global crisis moves away from concerns about state to corporate responsibility, what are the possibilities through collaborative regulation to shift corporate behavior from predatory adaptations of regulatory influence toward embracing mutuality and common good? The example of jurisdiction shopping for short-term profit gain is juxtaposed against the recognition of medium-term market and resource sustainability, when seeking to better engage corporate responsibility with environmental protection.

The aim of this summary analysis is to position an intersection between crisis theories and political economy to explain an emergent predisposition

among critical crisis stakeholders, such as multinational corporations (MNCs) exploiting third-world resources, toward collaborative regulation, and thereby the conditions of regulatory sociability. For the present purpose, crisis flash points in recent political economies, such as environmental sustainability, will be taken as given, and their common features will be enunciated. From there, the article speculates on the nexus between crisis and political economy as it motivates cooperative regulatory strategies.

Collaboration is employed beyond ideas of “best practice” (Gunningham & Sinclair, 1999) and compliance (creative or otherwise; Black, 1996), although both these established regulatory contexts will rely to differing degrees on cooperation, convergence, and mutualities of interest. Collaboration is central to theories of responsive regulation<sup>7</sup> but differs, as I see it, in the essential characteristic of emerging common interest (crisis to ordering) within *communities of shared risk* (crisis disordering).

For the sake of expedience, and so as to confine the analytical focus to noncompulsory regulatory forms, cooperation will assume a background in prevailing domestic and international polarities of political and economic interest.<sup>8</sup> Despite the article’s consideration of the active nexus between the features of political economy and crisis theories<sup>9</sup> in real time, I will not at this stage move from theoretical modeling into empirical testing. That is a larger, later project.

At an additional level of consideration, the regulatory “crisis” for major corporations in resisting mechanical interventionist regulatory strategies in favor of self-regulatory social responsibility is critiqued for its capacity to exacerbate global disorder in the face of recent and catastrophic economic, environmental, and social chaos (Purcell, 2002). If as the article argues, the consequences of crisis and the necessities of political economies (even beyond the jurisdictional considerations of nation states) promote noncompulsory regulation, then to what extent can regulatory discipline be sharpened through the cooperation of compliant above coercive strategies (Ogus, 1995)? Collaboration, more than compulsion, depends on the relationships between compliant actors. In the motivations driving these actors, we can find a synergy between *rationality* (sustainability) and *desire* (profit), which the article sees as fueling cooperative and collaborative regulatory situations.

Herein, regulation is toward ordering and orderliness. Such a foundational assumption of the regulatory purpose is directed to orderliness for *now*. Even so, orderliness is aspirational and ongoing. In this way, the article’s regulatory theorizing recognizes orderliness as present and prescient. It encompasses the “ought/is” debate by recognizing the social relativity in asking,

“Whose law and what order?” (Chambliss & Mankoff, 1976). Adopting such a purpose for the progress from crisis traces ordering along a dynamic continuum, onto which regulatory strategies locate and operate in different transitional market and resource contexts.

The order/disorder dichotomy is here replaced by Durkheimian appreciation of mechanical and organic order (Durkheim, 1893/1997). Organic order can be seen as addressing the *is to ought* transition for regulation and mechanical order, the *ought to is*. Sociability as both the incentive for and outcome of a transition from crisis to orderliness is a present consideration in collaborative regulatory relationships and a future aspiration for the maintenance of reciprocal regulatory interests. Regular order, as is and ought to be, is the dynamic context of comity wherein a commonality of interest can be forged and sustained.

The article suggests that unbridled corporate self-interest driving short-term environmental resource degradation is disorderly for market and resource sustainability. When the major corporations involved in such short-term profit rush are exposed, along with the natural environment and its dependent stakeholders, to joining in communities of shared risk and shared fate, the potential for medium-term mutualities of interest (general interest—common good) fueling positive regulatory collaboration is increased.

The social *comity* (Uslauner, 1991) essential to progress crisis to orderliness, I argue, results from appropriate regulation emerging through regulatory “collaboration” more effectively than disciplinary regulation. Nonconsensual, imposed, or mechanical regulation works from a state of resistant and “trustless” disorder, and the propensity to strain orderliness. Collaboration, on the other hand, has order at its essence, even if only at the level of reluctant or superficial comity. So saying, the article recognizes that disciplinary regulation has a declaratory and moral dimension (Sunstein, 1990a), and from this can flow collaborative possibilities. Where the following analysis diverges from disciplinary regulation is in the motivation to approach orderliness in the first place, common good operating in communities of shared risk.

That said, by looking behind the theme of *general interest*<sup>10</sup> (and reflecting on compatible reasons for regulation and governance), the article tests the appearance of comity and the altruism of collaboration. It is suggested that compromise drives collaboration and dominant interests strike compromise. This sets up a realist and skeptical understanding of regulatory collaboration within the tensions and contradictions of crisis (global catastrophe), and toward orderliness (stabilizing political economy).

Regulatory sociability depends on the orderliness of civil society or global community.<sup>11</sup> An orderly or harmonious social world is not ensured by balancing antimonies of self-interest or shared value (Vincent-Jones,

2002), where such claims are normative at best and illusory at least (Gabel & Kennedy, 1984).

Order can be reconciled with freedom only through interpersonal rules that embody more than the values of a single person. Consequently, rules must be separated from values to avoid the appearance that they are only the “social face of desire” (Kennedy, 1981). But the antimony between rules and values gives rise to social paradoxes that are as troubling as those that the antimony between reason and desire generates on the psychological level. (Hutchinson & Monahan, 1984, p. 1495)

The article works its way through the features and theorizing of regulatory sociability from collaboration rather than intervention, whatever be the interest-based motivation within crisis and toward orderliness. I argue that as compulsory discipline increases, it may produce compliance but at costs for regulatory sociability. The alternative regulatory paradigm is one that moves to resolve the antimony between desire (profit) and reason (sustainability) in a manner that relies on and endorses the constituents of collaboration.

Collaborative regulation, the article suggests, can arise out of crisis and be justified through desires for orderliness without compulsion. But for collaborative regulation to be sustainable, it must complement certain positive “orderly” aspects within political economy (Purcell, 2002). The analysis determines some observations concerning the shape and shaping of collaborative regulation in an atmosphere of more pluralist knowledge-based (disciplinary) engagement.

## **Sociability—More Than Responsive Regulation<sup>12</sup>**

For the purposes of an analysis that looks at regulation in the context of *sociability*, corporate interest management as a challenge to sociability is crucial if we are to trace the progress from global market and resource crisis to ordering through environmental sustainability. By locating regulatory strategies within specific political economies, it is possible to provide some predictive potential regarding such a trend, with a variety of crucial sociopolitical and economic variables held constant. Moving from crisis to orderliness within specific political economy contextualization marginalizes a *single event focus* (such as corporate commerce = global warming) when evaluating regulatory efficiency, and encourages consideration of the manner in which multiple variants influence and are influenced by a chosen regulatory strategy. Cooperation in regulatory challenges and outcomes relies on the multiple social and market variables that transform self into general interest.

Cooperation is facilitated but not forced by rules. Noncooperative theory is intimately concerned with processes and rules defining the game. Cooperative theory operates away from such rules and looks only at more general descriptions that specify what each coalition can obtain. As such, cooperative game theory is not intimately concerned with processes and rules. Rather, it specifies what each regulatory coalition might achieve, as opposed to how they will achieve beyond cooperation. Rules as legitimating compulsory (and often external) intervention are eschewed in a collaborative regulatory model. Rules that enable the foundation and perpetuation of game conditions for collaboration, however, are desired.

The discourse of regulation within a game theory frame is a significant variable when advancing collaboration instead of compulsion:

The constitution of discourse represents a process which is struggled over, and at the same time it forms “spaces” and “rules of the game,” in and according to which conflicts are settled. Discourses have effects on power when they become institutionalized, are linked to action and become carriers of valid knowledge (Link, 1983, p. 60). Discourses are hegemonic when they become the “historical-organic ideology” (Antonio Gramsci) of ruling actors, who in this way gain consent in society for their particular interests (usually by making concessions and compromises). Of course, this cannot just be manufactured by elites but must have a material basis in society. This process is part of complex struggles and their institutionalization over societal regulation. (Baskerville, 2007, p. 3)

Discourse essential in a collaborative regulatory environment is conversation more than dialogue, conversation providing a crucial language on which to found *sociability*. As will be advanced in more detail after the discussion of interest management in the context of environmental sustainability, sociability implies trust, respect, conditions of comity, and cooperative relationships of friendship. These relationships are responsive to, and foster, orderliness from chaos at domestic, regional, and international levels of political economy. Regulatory strategies compatible with effective friendship relationships, the article argues, are likely to be pluralist rather than dependent on state-centered solidarism. From the pluralist perspective, sustaining order in a diverse international system lacking solidarity requires emphasizing the importance of international rules and norms in reason-guided action. Even so, the more the rules are removed from the constitutional legality of particular political economy, the more they rely on goodwill

for compliance. But pluralism may underestimate the scope of reasons available for international cooperation even as it may correctly point to the risks to international legal norms that those expanded reasons for cooperation (even among friends) may create.

The solidarism implied by international friendship is likely, when it comes to resource exploitation, to be parsimonious. It does not necessarily extend to the whole of international society, and certainly not to global commercial interests, and hence may be viewed with suspicion by those who hope to bring together the international community of states into a greater solidarity in pursuit of global orderliness through resource and market sustainability. Friendship itself provides a set of reasons that can have standing in regulatory decision making. These reasons do not necessarily trump reasons of narrow self-interest, human rights, international solidarity, or international law, but they are reasons that go some way to explaining regulatory preference for collaboration rather than solidarist prescription.

Perhaps a manageable place to start efforts at reconciliation between regulatory prescription and collaboration when addressing environmental sustainability is with the capitalist view of nature as a resource rather than a delicate and diminished responsibility—neither limitless nor expendable. To achieve corporate social responsibility (CSR) as an active constituent in environmental protection, a fundamental shift in self-interested opinion cannot be produced in moral terms alone. The transition will need talking through in economic language and by moving the commercial depth of field from short-term profit to medium-term market sustainability. Only then can private preferences for environmental goods be adapted to existing environmental options through explaining social demand for environmental regulation and impeaching purely economic preferences that otherwise input into environmental regulatory policy (Gunningham & Sinclair, 1999).

Ayers and Braithwaite (1992) argue that there is no useful separation between public and private interests in theorizing regulation.

Social life seems “almost always to involve a combination of pecuniary interest-pursuit and citizenship.” In practical terms, citizen concerns about themselves motivate their identification of public concerns: “reason is most likely to be applied by passion—in the form of interests.” This is not to support the “crude deals” thesis that one sometimes sees in law and economics writing. Regulation is largely contested in a public-regarding discourse; it is a shallow analysis to view interest groups as unashamedly using the state regulatory apparatus as no more than a vehicle for advancing their private interests . . . Achieving



regulatory effectiveness through a balance of control is not about simply striking a compromise of interests. It is about understanding each other's needs and then sharing ideas in the pursuit of risk management strategies that deliver acceptable protection at an acceptable cost. (p. 59)

## Order and Regulation<sup>13</sup>—Playing the Game<sup>14</sup>

Putting regulation somewhere in a transition toward ordering (and the outcome of orderliness) intends to break down the dialectic of market and resource order/disorder. Having said this, the orderliness imperative of regulation depends on understanding and tackling what constitutes disorder. Misunderstanding the incremental nature of orderliness in favor of a simple dichotomous approach is central to why many compulsory (command and control) regulatory expressions fail or underperform. It is unhelpful to work in the shadow of this order dialectic if theorizing is to concern itself with the forms and sources of regulatory choice toward states of orderliness. Rather than order/disorder, it is more helpful to view regulatory options as progressing on a continuum from crisis (chaos) to orderliness.

The need to regulate order out of chaos is a perennial consideration in global regulatory convergence and coexistence. However, the contextual contingency of regulatory strategies both directed at chaos and order has led to the rich theorizing on “the game” as a regulatory choice frame. The game can be the metaphor for contextual contingency and at the same time common rules of the game can enable some universal analytical considerations that are not constantly derailed in contextual relativity.

Collaboration, I argue, diminishes

- principal/agent control problems and
- collective action problems associated with any implementation strategy,

which can lead regulatory policy beneficiaries to oppose other effective but intrusive implementation strategies in the broader sociopolitical games.

Issues of political economy may construct the preferred choices of principal and collective game players so that they act out of self-interest, and thereby sometimes against the effectiveness of collaborative regulation and implementation policies. As with our contextual location of sociability, game theory transposed into regulatory policy choices essentially requires political economy location. Brand suggests these in a contemporary sense as different phases of bourgeois-capitalist socialization. He sees any of these phases in a

heuristic way to indicate from a regulationist perspective the contradictory and, on a more concrete level, the diverse transformation of capitalism toward a new phase of political economy (Brand, 2005). Regulatory discourse, therefore, as a language “for sorting complex societal relations, makes them plausible and serves as a point of orientation for political action” (Brand, 2005, p. 156). The “game” of bourgeois-capitalist economy (Fordist politics), Brand suggests, is now subject to the political reregulation of economic globalization, seen wherein certain developments and reasons for them are unavoidable and legitimate, and other concepts of societal development are pushed aside or rendered implausible in view of the dominant patterns of sociability. The emergent trend toward collaborative regulation in the global banking sector, for instance, in response to impending increased state regulation following the recent global financial meltdown (or any boom and bust cycle for that matter) is evidence of new rules in a previously deregulated game. As Brand concedes, such regulatory transition may not adequately be viewed through discourse analysis alone. It is more than all talk.

Even if it is plausible that there is no meaningful reality for actors outside of discourses, relatively “independent” structures exist which are reproduced through actions and, at the same time, are very difficult to change for the actors. Structures are a theoretical construction, but—without grasping reality in full—they point to “corridors” for action in the sense of restrictions and opportunities which are beyond non-theoretical discursive practices. The opportunities of certain forms of action to establish themselves are clearly less at certain times, or even non-existent. . . . According to this (historical materialist) concept, in bourgeois-capitalist societies structural principles such as the separation of the political and the economic, wage labour and the private ownership of the means of production take effect which are more deeply anchored than explicit norms. From a historical-materialist point of view it is therefore a question of more than simply inter-subjectivity and communicative action because communication about the fundamental structures of bourgeois-capitalist socialization usually does not take place. (Brand, 2005, pp. 157-158)

Participatory regulatory governance serves as a framework to deal with crises in political economy and to make their management more effective. Brand reflects that even post-Fordist politics is based on relationships of compulsion and coercion. The procedures of representative democracy are rescinded at the global level. The global system is directed and regulated by

oligarchical power structures that tend to merge into ever more efficient and better integrated networks that circumvent nation state governments (Group of Lisbon States, 1997). Global governance discourse on problem-solving and order-creating political regulation seems detached from the prevailing deregulated/semiregulated economic discourses around competition. Successful economic politics breaks down regulatory barriers to improve the conditions for the utilization of capital. Global order, in contrast, is seen as the product of interventionist regulatory securitization. Herein lies a central contradiction within the global regulatory game.

### **Teleologies of Regulation and Crisis—Evolutionary Mechanisms**

Brand argues that the dynamic transformation of international politics (with crisis to ordering as a central governance concern) can be understood very well through regulatory theory. In doing so, he exercises the notion of contradiction. Chaos theorizing, where crisis is a critical transformation point, employs contradiction that, I suggest, ranges between regulatory order and deregulated disorder.

Crisis not only fuels choices for reestablishing order but can also give meaning to the regulatory methodology preferred for ordering. Crisis can be viewed as cathartic, as occurring for a purpose and giving purpose to its response. The purposes behind crisis-led regulation ultimately precipitate resolution through the progress to ordering. In this way, crisis states are temporal, contradictory, and self-defeating, but essential to the rejuvenation of ordering.

Crisis as the antimony of ordering is determined against the conditions of chaos theory. Chaos theory takes its root in the study of nonlinear dynamic systems.<sup>15</sup> The interests of economists and physical scientists in such dynamics have been mainly stimulated by these systems' capabilities in representing what were previously perceived as noise and randomness.<sup>16</sup> Much of the work done of this type focuses on regularity, equilibrium, stability, and predictability, rather than the apparent unexplainable, the complex, the "stable-unstable." Therefore, the study of chaos is as much a theory of ordering and its realization out of chaos. Chaos itself is studied to reveal potentials for ordering rather than the uncertainty of disorder. In attempting to transform predatory corporate exploitation of natural resources (chaos for markets and resources in the medium term) into corporately responsible mutualities of interest, it is necessary to explore the motivations for self-interest and the impediments to collaborative regulation, which are in the medium term

socially and economically chaotic. Regarding what they determine to be interest-based regulation, Sprinz and Vaahtoranta (2010) observe,

Despite growing international environmental interdependence, the international system lacks a central authority to foster environmental protection. As a consequence, countries have adopted different policies to reduce international environmental problems. More specifically, costly regulations are not universally supported. In order to explain the success and failure of international environmental regulation, it is necessary to systematically focus on the factors that shape the environmental foreign policy of sovereign states. Since such an approach is missing from the literature, we develop an interest-based explanation of support for international environmental regulation and postulate what impact it should have on state preferences for international environmental regulation. (p. 78)

These authors advocate the prospect for environmental sustainability of international environmental interdependence. To stimulate this position, they explore an interest-based approach to international environmental regulation as a partial but parsimonious view of how a country's preferences for international environmental regulation are shaped.

The interest-based explanation of the international politics of environmental management focuses on those domestic factors that shape a country's position in international environmental negotiations. In other words, the interest-based explanation is a unit-level explanation of international relations. Unit-level explanations refer to elements located at the national or sub-national levels, whereas systemic explanations suggest that differences at the unit level produce less variation in outcomes than one would expect in the absence of systemic constraints. While unit-level explanations emphasize the varying characteristics of countries, systemic theories suggest that countries with different internal characteristics tend to behave in the same way if they are similarly positioned in the international system. (Sprinz & Vaahtoranta, 2010, p. 78)

Approaching questions of internationalization from the domestic focus might present an analytical constraint in itself. That noted, the authors see a pragmatic and interest-based correlation between environmental vulnerability and abatement costs.

In addition to these mass political pressures on national governments, a differentiated industry pressure model could be developed. By explicitly linking abatement costs and international trade in environmental technologies, on the one hand, to the interests of major polluting industries and the abatement technology sector, on the other hand, a differentiated model of industry support for international environmental regulation can be developed. (Sprinz & Vaahantoranta, 2010, p. 104)

What must be done therefore to transform parsimonious interest into an atmosphere of collaborative international interdependence?

- The absence of a central governance authority to foster environmental protection at the global level means that interdependency cannot rely on the mechanical coordination that state agencies offer at the nation state level—Diverse and unconnected national approaches add to the difficulty of connecting and networking.
- The factors that shape the environmental foreign policy of sovereign states need adaptation so as to recognize the importance of transforming self-interest into mutualities of interest at a variety of networked levels.
- The reconstitution of what is difference and what is a mutual approach recognizing different sources—Is it about difference at state and substate levels or about similarity in the behavior of different characteristics when the positioning of interests is similar at the international level?
- Interdependence is not to be confused with dependency. Interdependence implies moving from positions of legitimate self-interest, beyond negotiation theory where parties are fundamentally different in the power they bring to the table—Internationally, this may require political and economic compensation for weaker players based on (a) a country's ecological vulnerability to pollution and (b) the economic costs of pollution abatement.
- Is the assumption that states are self-interested and rationally weigh sustainability in terms of domestic measures of cost/benefit intrac-table and in what circumstances?—*Parsimony rules?*

A route to converting parsimony into mutuality is to interrogate global supply chains and expose the key medium-term considerations for resource and market sustainability, and the way in which these depend on productive international interdependency. To this end, the following features are important:

- pressure for responsibility from nongovernmental actors
- concerns about the ability of states to regulate these firms' environmental conduct in the global economy
- nongovernmental organizations (NGOs) extending their reach into global supply chains
- international voluntary environmental initiatives as a realistic approach to self-regulation where there is a regulatory voice at state and supranational levels
- enhancement of firms' capacity to address environmental issues, and their strategic importance to the firm and to its community
- manifestation of real regulatory commitment rather than just the preemption of higher regulatory threat

With these considerations in mind, "What are the prospects for 'trading' in favor of environmental sustainability within international networks of dependency?" Productive trading will be effected by

- the background of bitter social disputes driven by conflicting interests, values, and discourses
- the reengineering social values above profit—industrial health and safety as an example
- expanding the reflexivity of the contractual package—flexible participation procedures for extracontractual community
- overcoming the technocratic orientation of ecomanagement—to recognize the external community as parties to business "deal" due to their carriage of environmental risk
- promoting commensurability between environmental quality and the things against which this good must be traded off—Can the value of environmental and other goods be assessed on the same metric?

Ultimately, productive interdependency moving toward mutualizing self-interest depends on significant changes in value preferences:

- The vigorous promotion of postmaterialist values wherein the domestic interest representation of mass political attitudes is orchestrated as a medium-term sustainability commitment.
- Redirecting industrial lobbying away from profit and toward sustainability—Resource rationing becomes justified in terms of

the protection of medium-term market trade. This transformation is not necessarily state dependent and can be promoted through a *differentiated industry pressure model*, linking abatement costs and international trade in environmental technology to major polluters and the abatement technology sector.

- But how do any of these initiatives counter status quo bias? How can they be represented as being beyond welfare economics and its recent negative connotations in neoliberal democracies? Or electoral self-interest of legislators? Or unenforceability? The answer to these reservations lies in a conscious qualification on rational actor model, a qualification that exposes the negative imperative of a choice restrictions underlying the celebration of rampant self-interest. In this respect, market and resource preferences are endogenous to existing legal policy if it focuses only on sustaining the limited private rights of commercial parties outside the general interests of civil society at large.

Having set the scene for the growth of mutualizing interdependencies beyond the nation state, the next consideration is locating responsibilities for these interdependencies back within crisis-centers such as polluting commercial and industrial concerns. What mechanisms can be employed to heighten responsibility within the interests of key adversaries of the sustainability frame?

## **CSR—Turning Self-Interest Into Common Good**

CSR needs to be considered against the view that as an economy grows, it will experience negative economic conditions, Kuznets theory. In this context, large commercial interests will construct with the compromised leaders of fragmented states relationships of power and dependency, which become an essential and unfortunate backdrop for the development of CSR programs. Kuznets theory (Stern, 1996) predicts that at the start of the development cycle, the country will experience environmental degradation. However, as development and wealth increase, the environment will become of greater importance, and steps will then be made to reduce the damage caused through unbridled modernization and resource development (Barbier, 1997). That said, with the explosion of MNCs investing in developing economies, the speed at which the environmental damage is occurring has accelerated, and by the time environmental control becomes important within a nation, the damage may be irreversible (Gonzales, 2001).

A failing in the reality of CSR has been the commercial habit of major MNCs to *jurisdiction shop* so as to avoid the bite of domestic regulatory force, and to maximize their capacity to pressure weak nation states for favorable commercial terms against their capacity to pollute and to exploit natural resources. This alliance is exacerbated by corrupt relationships between MNCs and political leaders in the developing world, which not only conceals from the general population the extent of the depletion of their natural environment but also keeps to the few the commercial benefits of such exploitation. On top of this, shows of CSR can be critically evaluated for the cynical trade-offs that they offer to further mask the destructive outcomes of corporate greed and political self-interest.

The response to greater globalized networks of responsibility that Christmann and Taylor (2001) identify as turning the tide away from third-world resource exploitation toward responsible sustainability remains patchy in some areas of greatest economic dependency and strongest profit motivation (such as oil exploration and repatriation). Despite continued evidence that some MNCs are damaging the environment (using jurisdiction shopping to do so), there is a lack of concerted global action to correct and stop the damage (Christie & Jarvis, 2001). CSR programs only seem to emerge in such circumstances where the heat on the company is too strong to avoid.

Despite the broadcast positives, CSR has attracted a great deal of criticism with many arguing that in the developing world markets and environmental contexts, it is simply a case of “greenwashing,” setting minimal standards to prevent costly backlash from consumers (Watts, 2005). Furthermore, some argue that CSR is simply a method that companies use routinely and inexpensively to prevent the implementation of international regulation (Watts, 2005).

CSR is increasingly promoted as an instrument for global governance to address the regulatory vacuum surrounding transnational business activities, while encouraging business to contribute to sustainable development at the national level. It is important to remember, however, that CSR no longer remains the province of business alone. In recent times, a variety of governmental and multilateral institutions have developed CSR perspectives for their own activities. Because the sociopolitical model underlying CSR as a product of American business is anything but neutral, Gjolberg (2010) identifies different typologies for CSR’s in distinct administrative contexts. Her analysis suggests,

Pre-existing political-economic institutions and cultural norms deeply affect the interpretation of CSR, and that this, when combined with



on-going national political processes, leads to a highly transformed concept of CSR. (Gjolberg, 2010, p. 2003)

one in which a much more collaborative and inclusive sharing of responsibility is possible.

CSR can, if effectively pursued in atmospheres of trust, create safe spaces within which public–private linkages are forged, with sustainability at their heart.

## **Public–Private Linkages to Regulate Environmental Conflict**

Perez rejects the “simple binary story” when it comes to interest amalgamation, which he suggests are kept apart through “multiple dilemmas-constituted and negotiated by a myriad of institutional and discursive discourses” (Perez, 2002, p. 78). The remedy he proposes is by a selective collapsing of public/private legal sectioning through a method of global legal pluralism where the assumed “trade and environment” conflict is reconstructed and governed by multiple systems of law rather than any single system (Perez, 2002).

Perez represents the modern built environment as a context of highly contextualized activity, currently mechanically webbed into ecological and social location. He sees this embeddedness as highly incongruent with the image of an isolated business relationship due to what he suggests as a stylized and underproductive division between the world of private contracting parties, and the wider environmental community excluded from but necessarily effected by contractual rights. If it is possible to externalize the environmental cost of the impact of contractual rights onto the extracontractual community, “How can this evidence anything but law’s *blindness* to its wider function in protecting the mutual essence of human existence?”

A purely *economic view* of this narrow contextual division is that law is used as an economic tool to enhance the economic value of business deals for private contracting parties. In this interpretation, law fails more than just by ignoring community impact; it encourages parties to allocate environmental risk to the external community without economic consequences.

This private/public law distinction is particularly dangerous in political contexts where the regulatory level is low and public participation is scarce. As we have seen with the predatory activities of MNCs in resource-rich and regulation-poor states, private legal relationships mask corruption and exploitation, whereas effected communities exist excluded from legal claim. Trust

cannot emerge as a force for mutualizing self-interest where law maintains boundaries to discriminate private rights from collective responsibilities.

## **Trust<sup>17</sup> and Friendship as Conditions of Orderliness Away From Chaos**

The progress of chaos to orderliness, particularly in an economic context, needs motivation from either general or specific interest (*self* or *mutual*). The causal nexus between crisis and ordering, facilitated by cooperation rather than managed by intervention, is nicely understood within the relative as opposed to absolute gains debate. This is a debate that also interrogates (and some might say invigorates) the friendship bonds that might otherwise be suspect in regulatory environments where crisis at least grew from competitive distortion, excess, and operational suspicion. Friendship paradigms are particularly apposite for non-state-centered regulatory domains.

The idea of “communities of shared risk” and “shared fate” is proposed as a foundational context wherein common interest replaces self-interest, and absolute rather than relative gains prevail. For instance, the recent shift to medium-term sustainability and away from short-term profit is the explanation for a growth in “de-materialist” corporate decision making when mega-corporations realize the expendability of say fossil fuels in the wider context of environmental degradation. This trend is evidence of sociability against previous competitive market positioning and immediate self-interest.

The aim of a regulatory strategy such as *collaborative sociability* designed on the dynamic mechanisms of trust engenders greater compliance through the development of confidence and obligation in preferring conditions of sociability. Such a strategy evolves from a consequentialist theory preferring goal maximization as a trust-based strategy where the goal becomes maximum adherence to regulatory standards.

Rather than constraining the regulatory game, as is the habit of external coercive strategies, a trust-based approach enables regulatory models to be designed around more dynamic and innovative frameworks where networks of regulatory conversation predominate in a global setting. The trust infused regulatory preference can shift between praise and punishment, regulation and self-regulation, and citizenship and self-interest where virtue is nurtured, and its failure is met with a closure of cooperative pathways (Braithwaite, 2008).

Trust-based regulation can be wrongly dismissed as model or utopian. If dispositions of trust are proposed and analyzed outside particular political economies, then trust can regress into the realm of normative aspiration and

the collaborative outcomes of trust atmospheres are lost as mechanisms of regulatory force. Trust-based regulatory strategies in practice and action provide scope for realizing the rewards of collaborative regulation, chaos to orderliness, in a far more sustainable fashion than through external compulsory intervention.

Trust as a regulatory context need not be disempowered as utopian or purely aspirational. Conditions fostering trust are measurable and operational. These conditions are not only relative to political economy but are also extractable in more universalized expressive and facilitative forms. Evaluating conditions for maximizing or diminishing trust, even so, need to be understood within particular temporal and spatial situations of political economy. The recent emergence of a discourse of collaboration in the global banking sector has its roots in empirically measurable financial stress, and the “trust” essentials for this discourse are equally open to material measurement and evaluation.

Obviously, total trust environments remove the need for regulation. However, trust is a dynamic social state. Trust maintenance and collaborative sociability may require reenforcement through regulation, preferably internal to that relationship and hence co-opted to the restoration of trust. Cooperative rather than interventionist and prescriptive regulation is more naturally aligned with and fostered within organic rather than mechanical conditions of trust. In the following section, the article explores expressive and facilitative relationships from trust to pluralist regulation.

## **Cooperation or Contingent Necessity?**

Whether cooperative regulation emerges organically out of the smoke of crisis or is accepted reluctantly as the preferred alternative to mechanical regulation, the cooperative partners will to differing degrees dabble in trust.

The threat and use of the legal apparatus within the regulatory environment can be counterproductive for generating sustainable atmospheres of trust, even though pending legal sanctioning can give strength to the boundaries within which trust flourishes in safety. The most productive way to achieve genuine acceptance of, and adherence to, regulation is not by an exclusive or regular punitive reliance on legal coercion but rather through the use of strategies that attempt to bring out best practice and creative compliance responses from dependent agencies by nurturing virtue or the capacity for good.<sup>18</sup>

Rather than regarding regulation as a zero-sum game with compliance only being motivated through rewards or punishments, regulatory encounters

are more sustainably and less confrontationally conceptualized as dynamic relationships demanding flexible strategies that recognize the existence of a range of motivational diversity in adhering to regulatory demands. Generating the responsibilities of citizenship to sociability rather than exclusion through sanction fosters the internalization of regulatory objectives and increases voluntary compliance.

Collaborative regulatory theory appreciates and confirms the productive capacity and dynamic nature of basing regulatory encounters on trust relationships, an approach that secures compliance by eschewing threat, and training dependent agencies to value, maximize, and exploit trustworthy capacities. The regulated and the regulators coexist within an interdependent milieu but can often demand opposing regulatory outcomes. Therefore, interdependent mechanisms by which mutually cooperative interventions can be injected into the regulatory environment should within atmospheres of trust replace the choice of sanction-focused interventions for ordering away from chaos. Preceding atmospheres of trust that support collaborative regulation, it becomes essential for theory to explain the dynamics of trust relationships in particular environments as well as their erosion.

Sociability depends on trust forming a constituent part of social, economic, and political relationships that allow for regularity, predictability, and continuity in orderly, not chaotic, relationships. Paradoxically, risk is an essential feature of trust relationships, in the same way that crisis and chaos are crucial for the recursive understanding of processes to orderliness. In bestowing trust, the choice to trust is a discretion based on subjective assessments and presumptions that another dependent agent will act in a particular way in the future that is not at least contrary to the initiator's own interest. It is expected that the trustee will act in the interest of the trustor, without direct coercion to act in the desired way. However, trust relationships have symmetrical and asymmetrical constituents, the former being trust as confidence, relating to internalized human expectations, that arise from intellectual and emotional understandings or beliefs that the natural, social, or moral order will persist, be stable, and predictable. This conception of trust is based on notions of positive intent, goodwill, and sociability toward civil society. Asymmetrical trust relationships are due to power differentials grounded in knowledge and expertise, with the expectation that the expertise and knowledge will be used in a technically competent manner. These are the sorts of professional ethics that can be termed *trust as obligation*, relating to the undertaking of fidelity whereby one regards others in a relationship as having ideal obligations and responsibilities to demonstrate and place the interest of the weaker party (the trustor) above his or her own (the trustee).

Luhmann<sup>19</sup> argues that the delegation of trust is particularly functional in modern societies, because due to their complexity it is impossible to develop actions or plans that take into account all possible contingent futures. He states,

Without trust only the very simple forms of human cooperation which can be transacted on the spot are possible, and even individual action is much too sensitive to disruption to be capable of being planned, without trust, beyond the immediately assured moment.

Sanction-based and external compulsory regulation cannot entirely replace any degree of trust because total enforcement is unachievable. A complete absence of trust would not even allow for the formulation of distrust in a direction on which action can be based, for this would force one to presuppose trust in another direction. Trust is functional in the sense that by investing in it, we can motivate others to do likewise and create the conditions under which greater productive relationships can be achieved. Essential for the resilience of these conditions is the collaborative modification and compromise of specific interests toward the general interest of sociability.

## **General Interest of Global Sociability**

Brand sees the issue at stake in global governance and regulation as *general interest*.

That this general interest is always a societal construction as the result of social conflicts and the formation of compromises, will hardly be disputed. At the same time in most of the contributions on global governance this fact that this is constructed is not scrutinized further.

In an effort to advance such scrutiny, Brand offers an analysis of conditions for general interest that may promote and consolidate collaborative regulation globally.

There are three ways in which this (general interest) is related to dominant perspectives: the state can in this way become the embodiment of precisely this general interest, which provides the reason for the necessity of the ability of the state to exercise control. The question as to the concrete processes and the subject-matter of state politics can safely be put aside because as the expression of the general interest it

*a priori* does not need a reason. Secondly, societal conflicts can be represented here as basically reconcilable or—politically more pointed—certain political self-images and strategies can be delegitimized. And finally, a general interest of “world society” is formulated largely from the perspective of the “OECD world,” which not only knows where the problems lie but also has available the means to deal with them. (explicitly the Group of Lisbon, 1997, p. 27)

Brand goes on to suggest that the sponsorship of general interest by state regulatory capacity can lead to tension or crisis:

A remarkable tension arises here: “World society’s” general interest in political cooperation is not at all seen as being in conflict with “national interests,” which are in part quite different from the former. In national societies, it has become the general interest to be competitive as a location vis-à-vis other societies.

But the competitive nation state advocating a general regulatory interest in economic deregulation may not complement the general interest of global communities that seek solutions to world problems through a collaborative rather than a competitive approach to political and economic relations.

From my perspective, this paradox between cooperation and competition is solved in the following way. The above described essentializing and inviolability of the economic will make it possible to regard political cooperation as the “solution to world problems” as *not* being in open contradiction to the competition among locations, capital and labor, and the safeguarding of them by the competition state and by global.

Therefore, the imperative for individual political economy may be competitive, whereas the approach to global problems is cooperative without challenge to either regulatory milieu provided the latter has the appearance of normative or ideological neutrality.

A general interest in cooperative solutions to obvious problems with which everybody is faced to the same extent is formulated in which capitalist competition is no longer seen as a problem but exists as something more or less natural. Precisely, due to this ignoring of various aspects, it is possible to organize certain consensuses in post-Fordism. This is not at all new: The various forces in society always

struggle for the generalization of their specific interests. What has changed, however, is the concrete historical forms in which this takes place. The actors themselves are more or less aware—usually much more strongly than the social sciences that reflect on them—that they cannot establish their interests completely but must be prepared to make compromises.

At this point, Brand proposes the essential underpinning of general interest as it is seen in the context of global governance: compromise. The same can be said of global regulation in a collaborative vein. What remains is to chart the achievement of collaboration through compromise in particular transitions from crisis to orderliness in specific political economies.

Some “truths” seem to be unquestionable: that globalization is untouchable in its (economic) core which means the fundamental shift of power relations, a concept of politics which refers to cooperation and *realpolitik*. With this, world problems which seem to affect all people can be resolved. The discourse is so attractive because it contributes to the generalization of dominant interests. (Brand, 2005, pp. 168-169)

Common interest pushing and enjoying regulatory collaboration, arising mechanically out of compromise, crafted organically from dominant interest: as the reality of global governance.

## **Political Economy and Global Community—Necessary Simplicities**

Economic and political realities in nominated political contexts mediate the reasons for the crisis and the imperatives for regulation. They also incubate dominant interest, and negotiate protective and beneficial compromise as a precondition for cooperation.

Whether organic or mechanical in origin and operation, regulatory alternatives work best in an atmosphere approaching equality of arms (or minimum justice). By this, I am not suggesting that the fundamental contractual myth of parity in standing is necessary among and between parties facing the need to regulate crisis to order. However, comity is a key contextual feature for regulation serviced by trust, imbuing friendship and giving legitimacy to game choice and differential value.

Choice and capacities to choose are dependent on conditions of comity (as suggested above) that promote rather than distract from sociability.

“Comity”<sup>20</sup> is more than simply being nice to one another. It requires a certain degree of manners within conventional compliance. Manners are conventions, and conventional compliance requires respect for “laws and usages” in an exchange of reciprocity within conventions. Against the civility of conventions are rules for achieving and regulating comity.

However, comity as a reason for regulatory collaboration may be as misconstrued as the simple causal assumption that private sector interests cooperate to self-regulate to stave off impending interventionist and compulsory state regulation. Collaboration, masquerading comity rather than compromise reflecting dominant self-interest, can also benefit from the legitimacy of organic rather than mechanical origination. In addition, the allusion of comity gains credibility from its natural alignment with regulatory socialization.

Brand suggests (in similar terms for global governance) that it is hegemony rather than harmony at the heart of collaborative alliances:

Finally, one important question remains, namely whether Global Governance opens up opportunities for a new, higher evaluation of societal processes (cf. e.g. Ruppert, 2000, p. 56). This cannot be decided abstractly. As a counterpoint to US unilateralism it is certainly possible and currently urgently necessary. And at the fringes, too, more critical positions can emerge, as the feminist debate for example has shown. How far Global Governance will become a hegemonic discourse depends not only on the struggles over interpretation but is also a question of international and inner-societal conflicts over institutional developments, material concessions, etc. (Brand, 2005, p. 172)

## **A Regulatory Anthropology of Cooperation— Reshaping Catastrophic Collective Risk?**

As Ayers and Braithwaite (1992) argue, in modern regulatory thinking, there is a need to transcend debates about regulation/deregulation and about the limits of command.

High levels of regulation are necessary both on grounds of economic efficiency and risk management. Effective regulation in conditions of great complexity depends on fostering norms among the regulated such that they will voluntarily comply, and depends on the creation of a constant dialogue between regulators and the regulated: hence “responsive regulation,” the coinage for which Braithwaite is best known. (Moran, 2002, pp. 388-389)



So the “smart regulation” literature answers the question of when we can abandon command by looking toward a “community of shared fate”—where poor performance on the part of one damages the prospects of all (Gunningham & Grabosky, 1998).

Is this reflected in the recent trend in global regulation to transcend legal formalism by trading in broad definitions rather than sharp rules? Where it is “creative opportunism” such as tax avoidance that is the focus of regulation, legal formalism is undermined regularly by the creativity of strategic actors searching for the advantage toward self-interest. Yet an alternative self-regulatory approach to controlling creative, individualist advantage is itself undermined when

tensions in legal ideology, conflicts with legislative and regulatory approaches, disagreements over how to best achieve efficient control and at what price, vested interests, powerful lobbies against the broad approach all voiced in the discourse of formalism, have provided the first nail in the coffin of anti-formalist control. (McBarnet & Whelan, 1991, p. 849)

The tension here is not between legal rules and creative avoidance but within the foment of competing self-interest ungoverned by law. The foundation of the regulatory conundrum is not so much the choice between formality and compliance, intrusiveness or collaboration, but rather within the spirit of individual self-interest. The rational choice of the individual creative opportunist outside the general interest will undermine any and all regulatory strategies. The failure to recognize minimum utility in regulation even for self-interest removes the critique from preferred regulatory styles to further strategies of avoidance. It is the recognition of multiple interests playing out for each regulatory stakeholder that invites consideration of mutuality. Therefore, the key to regulatory success is the manipulation of the motivation for collaboration: exploiting the community of shared fate. Inducing cooperation in adverse individualist contexts of self-interest will produce at best creative compliance, which ignores the general interest spirit of collaborative regulation in preference for comparative advantage.

Creative compliance is stimulated by strong motivations for resisting control. These motivations do not disappear with the first threat of a different form of control. On the contrary, they become motivations for resisting and undermining anti-formalism. (McBarnet & Whelan, 1991, p. 870).

In the context of the “regulatory society” where risk is the driving force for regulation, a transition from self-interest to general interest may be motivated out of the peculiar social entities, which are “post-financial-melt-down,” “no-turning-back global warming” political economies.

The basis of their solidarity and sense of collective identity have been eroded and at the same time the substantially realistic expectations of their citizens as to security, well-being and improvement in their circumstances are constantly increased by the application of science and technology. (Clarke, 2000, p. 23)

As that faith in science and technology is wasted within crises of uncontrollable proportions, the triumph of self-interest over general interest in a growing and desperate community of shared risk will no doubt be short lived. The emerging age of CSR from a world of “fortress corporation” at the close of the last century is evidence. This transition in interest motivation will provide an impetus for collaborative regulation not known in recent postindustrial ages of political economy and globalization.

The suggested “science” of crisis to ordering through regulatory collaboration is more suited to a political climate that sees the need for regulation as conflict resolution or even crisis management within a reactive and diminishing state that is limited to providing a framework within which citizens can pursue their chosen goals toward the general interest of cooperative sustainability rather than individualized advantage. This organic regulatory atmosphere is contrary and often alien to more recently conceptualized state-driven mechanical ordering more suited to interventionist and imposed policy within an activist state dedicated to the “material and moral betterment of its citizens.”

Cotterrell (1995) in *Law's Community* sees the move to a more inclusive conception of regulation as requiring a new way of thinking, wherein regulation becomes a central cohesive force behind motivations for sociability.

We ought . . . to stop thinking of legal regulation primarily as something imposed on the rest of social life; and to think of it equally as something that might grow spontaneously out of every day conditions of social interaction, and might provide a part of the cement that gives moral meaning to social existence. (Cotterrell, 1995, p. 308)

The pressure toward collaborative regulation in a more generalized interest to ensure the sustainability of communities of shared fate cannot be separated from an impending sense of millenarianism. As Hood suggests, individual choice will be regulated and constrained through group choice, “by binding the individual into a collective body” (Hood, 1998, p. 8).

Hood sees this as generating a simple but powerful typology of styles of public management: fatalist, hierarchist, individualist, and egalitarian. Despite the inevitability of collaboration in communities of shared risk, this does not tell us, beyond a greater mutuality of interest, what will be the styles, techniques, instruments, and languages of regulation, which will emerge. Interrogating sociability rather than vague notions of communities united in the face of catastrophe and crisis may assist in understanding the features of regulatory transitions to modern global ordering

### **Sociability—New Nonstate Relations**

This analysis has considered *regulatory sociability* as the characteristic and consequence of relevant corporate self-regulation, countering the criticism of modern regulatory intervention as reflecting little more than politicized popular responses to economic crisis. In the richest, most representative and benign governance structures regulation abounds, charged as it is with obtaining and retaining the quality of life for citizens and civil society. That said, we need to interrogate beyond self-interest, “What makes regulation efficient in achieving any such political and social aspiration?”

Recognizing the reality that regulatory regimes are vulnerable to capture by the commercial, political, and social interests that they are set to regulate (Stigler, 1971), the article has revealed those foundational social bonds that are strained in crisis and restored in orderliness. This is the framework of *regulatory sociability*. The outcome of *regulatory sociability* should reflect culturally sensitive and contextually efficient institutional and process adaptations of governance to a complex and globalized world. The measure of this at the sharp edge is the way in which conciliatory and collaborative (not just responsive or reflexive) regulation moves chaos and crisis to orderliness. An essential precondition for sociability, and for the effectiveness of collaborative regulation, is trust.

Cooperative compliance as a cause and consequence of regulatory sociability entails the creation of regulatory relationships based on trust. Only where externalized incentives to cooperate trump the need for trust, and these could include legal compulsion, will these trust relationships recede and sociability diminish in any organic form. But in conclusion, mechanical

and imposed regulatory regimes of reordering crisis are unsustainable due to a variety of critical reasons. For crisis, particularly global, to be convincingly converted to orderliness that lasts, the following is required if sociability is to emerge:

Regulation wherein players

- can be taken at their word and
- dialogue is honest between them
- where interests are mutualized and
- agreed rules are fair and applicable, and there is a resultant
- preference for cooperative regularity

The aspirations for regulatory sociability are neither naïve or altruistic. They require rigorous analytical engagement if they are to translate from speculative contemplations to pressing policy agendas. Much more can be said about the externalization of risk to communities who do not share in the private (and legally endorsed) interests and protections of regulated commercial environments. The need to break into that legalized, privatized domain to advance through pluralist regulation strong and shared notions of public (general) good is well recognized.<sup>21</sup> The inducement to collaborate, not from any reformist acceptance of mutual as opposed to self-interest at least in the short term, is the organic consequence of living in communities of shared risk and shared fate. The fragility of cooperative compliance whether it depends on best practice or good corporate citizenship is the daily experience of tensions in CSR. A hard look needs to be cast at the possibility of realigning global preferencing from economic wealth and material profit to sustainability in all its life-forms. Finally, risk aversion and crisis reduction cannot be causally assumed, and orderliness is not naturally expected as a consequence of sociability without a very critical appreciation of the vulnerable conditions that create and continue any collaborative regulatory frame.

## **Conclusion—Corporate Governance Through Mutuality**

The sustainability of the planet facing the avaricious resource consumption of the north and south worlds, and the prevarication of self-interested nation states, is creating a global crisis demanding much more creative and holistic regulatory invention and commitment. As a crisis of such imminent, inescapable, and invasive proportions, it also represents a test for the potential of regulatory sociability in collaboratively addressing communities of shared risk and shared fate. The challenge is sharpened by the following realities:

- Up until recently, those corporations that might be said to have precipitated the crisis have been actively opposed to its regulators.
- Regulatory initiatives by nation states directed at the crisis have been distinctly unsuccessful.
- Regulatory commitment as to how success might be improved has been divided or absent.
- Competing knowledge bases regarding the nature and extent of the problem have made a unified conception of public interest problematic.
- Public scrutiny and community activism has been sectarian, sometimes violent, and further divisive.
- Economic self-interest has merged between commercial polluters and sensitive or corrupted political policy makers to produce a destructive environment of regulatory capture.

Therefore, if corporate regulatory sociability is to advance order from crisis around environmental sustainability, it must

- work from a more consolidated understanding of common good;
- either neutralize or compromise commercial self-interest through repositioning the gaze of polluters and regulators from short-term economic profit to medium-term market and resource sustainability;
- incorporate the polluters and the regulators, and the wider public interest into communities of shared risk and shared fate; and thereby
- invigorate collaborative regulation options away from failed state sanction, which recognize the differential capacity of large corporations and fragmented states to negotiate common interests.

The transformation of self-interest to mutuality depends on a mix of trust and friendship relationships to accept a repositioning of corporate focus from immediate profit maximization to medium-term resource and market sustainability. Trust stimulates communication and mutual understanding beyond prospective oppositions and antimonies. Trust relationships offer dependent market and community stakeholders the power to decide mutually beneficial outcomes within an environment where defection from such relationships is less likely due to the negative contingencies of defection. The productive capacity of trust relationships cannot be fully realized without presupposing conditions of corporate governance wherein the mutualist opportunities of trust-based relationships can be recognized and realized through collaborative regulation producing *sociability*.

## Author's Note

Professor Findlay is soon to publish (Palgrave MacMillan) *Challenges in Regulating Global Crisis* in which he elaborates on the central theoretical theme in this article: regulatory sociability.

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## Notes

1. This conclusion is based on writings about the deontological strain of liberalism. Individual sovereignty in the choice of personal action throws into sharp relief the more general libertarian rights that are to varying degrees dependent on institutional restraints and regulation; see Fried (1983, Note 3).
2. The specific context selected to test the resilience of regulatory sociability is crisis and post crisis, evidenced through chaos theory. The regulatory expectation and the condition for prevailing sociability is orderliness, demonstrated in the conditions of civil society.
3. The modern influence of political economy theories in regulation, located within considerations of state reconstruction and reassertion, is well discussed in Purcell (2002).
4. These themes are introduced in the context of public choice theory and its limits by Sunstein (1990b).
5. Here, we take up the analysis by Elkin (1985).
6. As discussed and foreshadowed in Posner (2009).
7. In the context of late capitalist political economies, responsive regulation is discussed in Braithwaite (2008).
8. This can mean many things. Within the general conditions of political economy employed here, we adopt a similar appreciation of the role of the market in global crisis and its potentials for regulation as does Lie (1997).
9. For an interesting discussion of chaos theory and how it has the potential to plot crisis (in the global catastrophe sense as it is employed in this article), see Thietart and Forgues (1995).
10. Interest group theory is discussed in comparison with public interest and capture specifically in economic regulation by Posner (1974).

11. In employing this hegemonic concept, it is easy to recognize its slippery and politically malleable representation that governs exclusionist notions of standing and benefit within a sectarian globalized political economy—see Findlay (2008).
12. For a discussion of responsive regulation, see Ayers and Braithwaite (1992).
13. This section is informed by the thinking of Brand (2005).
14. Game theory can be used to define an optimal disclosure decision in such an interactive situation. It may also be used to analyze these “solution concepts” in general as well as in particular instances.
15. Nonlinear dynamic systems have specific properties that mathematicians have studied.
16. Thietart and Forgues (1995) observe chaotic systems, and their properties have received a considerable amount of attention in the natural sciences.
17. Trust-based regulation is depicted in Cherney (1997).
18. Braithwaite (2008) vice to virtue debate, Chapter 2.
19. Luhmann (1979) as described in Teubner (1997).
20. Comity is expanded as a regulatory parameter in Uslauer (1991).
21. For a discussion of this in the context of promoting general interests into construction contracts where agreements for advancing the built environment risk the quality of life for noncontracting communities, see Perez (2002).

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## Bio

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