

FROM CIVIL DISOBEDIENCE TO OBEDIENT CONSUMERISM? INFLUENCES OF MARKET-BASED ACTIVISM AND ECO-CERTIFICATION ON FOREST GOVERNANCE[©]

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This article looks at the implicit politics of eco-certification as an activist strategy. Drawing on the example of the Forest Stewardship Council and forestry activism in British Columbia during the 1990s, this article considers underlying norms of the certification approach, the inherent limitations of its institutional setting, and the empowering and disempowering implications for participants in forest policy debates. These implicit politics may have a disciplining influence on public debate regarding the future of environmental regulation, and governance more generally, at a time when wider experimentation with alternative approaches is both necessary and otherwise timely. The analysis draws attention to the continuing need to focus on issues of democratic control and authority, rather than settling for governance mechanisms consistent with neoliberal ideology.

Cet article analyse les politiques implicites de l'éco-certification comme stratégie militante. S'inspirant de l'exemple de « Forest Stewardship Council » et du militantisme dans le secteur forestier en Colombie-Britannique durant les années 1990, cet article sonde les normes sous-jacentes de la démarche de certification, les limitations inhérentes de son cadre institutionnel, ainsi que l'agrément et le non-agrément des participants aux débats concernant les politiques du secteur forestier. Ces politiques implicites peuvent avoir une influence organisatrice sur le débat public concernant l'avenir de la réglementation environnementale et la bonne gestion des affaires publiques dans son ensemble, à un moment où une expérimentation plus généralisée des démarches alternatives s'avère à la fois nécessaire et opportune. L'analyse attire l'attention sur le besoin constant de s'attacher aux problématiques de contrôle et d'autorité démocratique, plutôt que de se cantonner à des mécanismes de gouvernance cohérents avec l'idéologie néolibérale.

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The concept of civil disobedience conjures images of peaceful protesters against oppressive governments and unjust laws. But with the expansion of economic globalization and perceived losses in states' abilities to regulate companies, activists have sought alternative ways of more directly addressing corporate power. Market campaigns, involving boycotts on the one hand and endorsements of companies committed to particular practices on the other, have taken on prominent status in the emerging response to domestic and transnational influences on states' regulatory capacity.

Taking activism against unsustainable logging as an example, transnational environmental non-governmental organizations (ENGOS) and their allies have developed a new, civil society-based, global institution, the Forest Stewardship Council (FSC), which develops standards for sustainable logging and oversees the certification of companies' operations that meet those standards. The FSC is recognized as a model NGO-initiated, multi-stakeholder certification regime with high environmental standards, third party monitoring, and substantial provisions for transparent and participatory procedures. Since its inception in 1993, the FSC has grown rapidly and has come to play a significant role in tropical and temperate forest protection campaigns by prominent transnational ENGOS. Such market-based activism has spurred individual and collective responses from the industry side, notably efforts to develop competing standards and rapid expansion of the certified land area, as well as from governments intent upon certifying public forest lands and developing policy perspectives that make efficient use of voluntary initiatives. In the academic literature, commentators have greeted the emergence of civil society-based monitoring and certification with mixed, but generally enthusiastic, response. They emphasize ideas of flexibility, legal pluralism, and pragmatism in a world largely without social and environmental regulatory capacity at the international level and, in many cases, limited domestic capacity.

The forests of British Columbia during the 1990s were a site of intense market campaigning. Market campaigns have the goal of furthering wilderness protection for some highly desired locations and promoting eco-certification to ensure appropriate logging practices for the rest. These tools adopt market pressures and private regulatory systems as primary tools for achieving these goals. One consequence is that over the decade, environmentalist activism around industrial forestry in British Columbia shifted—not entirely, but significantly—away from agitation directed at government and toward the direct targeting of logging companies. The major environmental groups, in particular, embraced this shift. Through market campaigns, these groups discovered new leverage, and an ability to move forward with civil society-based initiatives that can influence logging companies' activities, without getting bogged down in state-based processes.

This embrace represents a profound change in the way those groups objecting to extractive, industrial forestry conceive of the challenges facing them, express themselves, and exert their power. While some of the achievements of this effort are indisputable, the shift also reflects some troubling trends. While the ENGOS' turn to market campaigning has been likened to the discovery of dynamite, the shift can also be described as a move from civil disobedience to cranky, but nevertheless obedient, consumerism. Implicit is a subtle shift in norms of governance, including a redrawing of the public-private divide. Is this a social justice enhancing, ecologically effective reworking of the best markets have to offer? Or, is this a version of what Steven Bernstein calls the "compromise of liberal environmentalism"¹ in which environmental protection, social goals, and ultimately democratic authority become secondary to the liberal economic order? The market campaigns by transnational ENGOS in British Columbia owe their success in part to the strategy's embrace of the liberal economic order as being not just consistent with, but at the heart of, environmental protection.² The FSC, being the most stringent and demanding certification regime available in the forestry context, is an important testing ground for what compromises might be inherent in the certification approach.

This article looks at the implicit politics of the certification approach and draws out the counterproductive elements of a strategy that has generally been viewed as a great success within the environmental community. Drawing on the British Columbia example, I consider underlying norms of the certification approach, the inherent limitations of its institutional setting, and the empowering and disempowering implications for participants in forest policy debates. I argue that these implicit politics have a disciplining influence on public debate regarding the future of environmental regulation, and governance more generally, at a time when wider experimentation with alternative approaches is both necessary and otherwise timely. This analysis draws attention to the continuing need to focus on issues of democratic control and authority, rather than settling for governance mechanisms consistent with neo-liberal ideology.

¹ Steven Bernstein, *The Compromise of Liberal Environmentalism* (New York: Columbia University Press, 2002).

² Steven Bernstein & Benjamin Cashore, "Globalization, Internationalization and Liberal Environmentalism: Exploring Non-Domestic Sources of Influence on Canadian Environmental Policy" in Robert Boardman & Deborah VanNijnatten, eds., *Canadian Environmental Policy: Context and Cases*, 2d ed. (Don Mills: Oxford University Press, 2002) 212 at 216.

I. ACTIVISM AGAINST UNSUSTAINABLE LOGGING IN BRITISH COLUMBIA DURING THE 1990s: FROM CIVIL PROTEST TO MARKETS

Logging has long been a central part of the British Columbia identity and economy. The province's natural supply of timber fueled its early development, and although the forest industry accounts for only about 6 per cent of the provincial gross domestic product,³ it remains an important export industry. Canada accounts for 13.5 per cent of world softwood lumber harvest, and British Columbia alone accounts for 6.6 per cent. The Canadian role in world exports is proportionally greater. About one-quarter of world softwood lumber exports come from British Columbia, and almost one-half derive from Canada.⁴ Most of British Columbia's exports go to the United States, Japan, and the European Union.

Environmentalist protests against poor logging practices, especially clear-cutting in the coastal rainforests, became a major political issue in British Columbia during the 1980s. The regulation of the industry had traditionally been carried out by corporatist bargaining, and during the early part of the decade, the industry enjoyed a period of so-called "sympathetic administration," in which the provincial government left the industry much to its own devices. But by the late 1980s, environmentalist concerns about the ecological damage being caused by the logging industry were becoming well-known. Unsustainable harvest levels, poor regeneration on cut over land, damaged streams and rivers, landslides, and enormous clear-cuts were apparent and increasingly public problems.

Opportunities for accountability seeking by the public were limited. The companies had tight control over most of provincial forest land through a tenure system established in the 1950s. The province's economic reliance on the industry made the provincial political leaders vulnerable to dissuasion from tighter regulation or strict enforcement whenever jobs and provincial revenues would be impacted. Given the relatively closed policy process and few opportunities for accountability within the legal system, civil disobedience became an important part of political participation during the late 1980s and early 1990s. In some places, environmentalist concerns and frustration with lack

³ Lillian Hallin, "Logging and Forest Products" (17 April 2001), online: *A Guide to the B.C. Economy and Labour Market* <<http://www.guidetobceconomy.org/chap4/chap4-3.html>> (date accessed: 18 May 2003) at Figure 7.

⁴ British Columbia Forest Industry, "Fact Book 2000," online: Council of Forest Industries <<http://www.cofi.org/reports/factbook2000/FACTBOOK%202000.pdf>> (date accessed: 1 August 2003) at 6, 9.

of progress on Aboriginal title have led to new political coalitions and unprecedented civil disobedience.

In 1993, this groundswell peaked at Clayoquot Sound. Nearly eight hundred people were arrested at logging road blockades. Protesters held demonstrations on the lawn of the provincial legislature, at Ministry of Forests' offices around the province, and at courthouses where civil disobedience trials were being held. The civil disobedience trials were, for a time, a focus for debate on the democratic process.⁵ There was also widespread public sympathy and debate in the British Columbia media about the issues.

During this period, the major environmental groups, and some local groups, took steps toward international campaigning. They took tours of Europe, visiting parliaments as well as major buyers of British Columbia forest products. Leaders of First Nations also toured Europe, spreading the word that companies were logging in their traditional territories without respecting Aboriginal title to the land and in a manner unacceptable to them.

In 1992, European environmentalists called for a boycott of British Columbia forest products. Greenpeace and Friends of the Earth campaigned in the United Kingdom, Germany, and other European countries highlighting British Columbia's forest practices. British Columbia Forests Minister Claude Richmond predicted that given the failure of the Earth Summit in Rio de Janeiro to achieve an international convention on forests, more boycotts were inevitable.⁶ As early as October 1992, major companies began losing contracts with buyers. During the summer of 1993, a coalition of British environmental groups held protests in London. Robert Kennedy Jr. of the U.S.-based Natural Resources Defence Council gave his organization's support to the Tla-o-qui-aht First Nation of Clayoquot Sound. Cultural Survival and Conservation International were also involved. Greenpeace organized an international day of action on Canada Day, emphasizing the heritage being lost with rallies in London, Canberra, Sydney, Germany, Japan, Austria, and several Canadian cities. Greenpeace asked European forest ministers to adopt trade embargoes against wood and paper products from Clayoquot Sound. In the fall, First Nations leaders were also calling for a boycott.

By 1994, Greenpeace was coordinating a highly successful international campaign, with Clayoquot Sound achieving notoriety comparable to the Brazilian Amazon. Reports from this period emphasized the significance of the markets at risk. One report estimated that a \$1 billion European market for pulp

⁵ Ronald MacIsaac & Anne Champagne, *Clayoquot Mass Trials: Defending the Rainforest* (Gabriola Island, B.C.: New Society, 1994).

⁶ Claude Richmond, "Rio Summit: the real message for us" *Vancouver Sun* (9 July 1992) A17.

and paper was in jeopardy given Greenpeace's involvement and the credibility that organization enjoyed in Europe.⁷

The eco-certification movement also had its beginnings in this period. In 1993, under the leadership of the WWF and allies, the founding assembly of the FSC was held in Toronto. The idea was to create an eco-label recognizable worldwide, which could serve as the carrot to balance against the stick of boycotts. FSC members initially developed principles and criteria that would apply globally, and since then, regional FSC affiliates have been developing standards which interpret the principles and criteria at the regional level. The Forest Stewardship Council of British Columbia (FSC-BC) recently completed its process for developing standards, which as of February 2003, were pending approval by the International Board of the FSC.

The Canadian Pulp and Paper Association (CPPA) began considering a code of ethics as a response to the environmentalist campaigns as early as January 1992, and opened a Brussels office in November 1992. By this time the federal government was also investing \$1.5 million in a counter campaign, promoting Canadian forest products internationally. In 1993, the year the Clayoquot Sound protests peaked, major industry actors formed the Canadian Sustainable Forestry Certification Coalition, which in 1994 asked the Canadian Standards Association (affiliated with the International Standards Organization (ISO)) to develop standards for sustainable forest management.

Also in the early 1990s, the provincial New Democratic Party (NDP) government brought in a series of policy reforms, including: the treaty process to address First Nations' demands; a stakeholder-based planning process to establish and build consensus around land-use decisions; a new Forest Practices Code to improve logging practices on public land; a strategy for park creation; and a new Timber Supply Review to take stock of existing forests and set allowable harvest limits. Clayoquot Sound received special treatment. The provincial government created a scientific panel to develop rules for how logging would be carried out in the region, instituted a regional board with representatives from local First Nations to make development decisions, and declared much of the land off limits to logging. Meanwhile, the federal government pursued the development of criteria and indicators for sustainable forest management, attempting to build international support for standardization and a forests convention, all of which could enhance Canadian access to international markets. The federal-provincial Canadian Council of Forest

⁷ Keith Baldrey, "A billion-dollar war of the woods: Greenpeace takes on B.C.'s forest industry in Europe" *Vancouver Sun* (29 January 1994) B1.

Ministers launched a \$4.5 million program to define and create guidelines for sustainable forestry, and to promote the Canadian industry as a sustainable one.⁸

After the Clayoquot Sound crisis, public support for civil disobedience on the logging issue dwindled. The great push for change that had driven grandmothers and high school students to stand alongside more veteran protesters at Clayoquot Sound had yielded results. For a few years, the NDP government enjoyed a relative peace. When the major environmental groups geared up again in 1997 to protest logging in the Central Coast region of British Columbia, they had difficulty winning support in the province for their campaign. This time, acts of civil disobedience were carried out by small groups of people with a very strong local concern, relatively radical environmentalists, and international visitors coordinated by Greenpeace.

While market campaigning was part of the Clayoquot effort, this time market campaigning was the centrepiece. Visits to public institutions took a lower profile, replaced with visits to company offices, and small acts of civil disobedience designed to make a good news story and support the market campaigns, for example, by hanging banners from barges carrying logs for export. European environmentalists again called on European buyers to boycott British Columbia timber products, and held protests in London, England. Through 1997 to 1998, the campaign expanded to British home-renovation stores and chemical companies. Two targeted companies, Western Forest Products and Interfor, announced they would pursue FSC certification, while MacMillan Bloedel announced it would move from clear-cutting to “variable retention” in its British Columbia operations.⁹

Although British Columbia’s environmental community was also voicing the message that the new Forest Practices Code was illusory, and that it was business as usual in the forests, this message was not embraced by the public in British Columbia. A backlash ensued, with the Premier calling environmentalists who were working with American lumber interests and European environmentalists “enemies of British Columbia” for purportedly undermining the British Columbia forest economy.¹⁰

Despite the backlash in British Columbia, the strategy was in many ways successful for the major ENGOS. Transnational and U.S.-based ENGO involvement increased. In December, 1998 a coalition of environmental groups

⁸ Canadian Council of Forest Ministers, *Sustainable Forests: A Canadian Commitment* (Hull: Minister of Natural Resources, 1992); Canadian Council of Forest Ministers, *Defining Sustainable Forest Management: A Canadian Approach to Criteria and Indicators* (Ottawa: Natural Resources Canada, 1995); Gordon Hamilton, “A Global War with Cold War Techniques” *Vancouver Sun* (30 June 1993) A1.

⁹ Edward Alden, “Canadian logger bows to green pressure to end clear-cutting” *Financial Times [London]* (10 June 1998) 16.

¹⁰ Justine Hunter, “Forest protests promised” *Vancouver Sun* (22 April 1997) B6.

placed an advertisement in *The New York Times* listing the companies that had committed to phasing out products from old-growth forests, including IBM, Kinko's, Levi Strauss, and Hallmark. By this time, the British buyers' group known as the "95+ Group" was estimated to represent a market of 2.5 billion British pounds per year. By May 2000, the *Vancouver Sun* reported that the "[p]ublic relations battle of the war in the woods is over ... [C]ompanies are turning to audited eco-certification schemes" ¹¹ Former Council of Forest Industries Vice-President John Powles attributed the end of the "war in the woods" to U.S. buyers changing from resisters to demanders of certified products. ¹²

In the Central Coast campaign, the companies operating in the region entered private negotiations with the ENGO coalition, leading to an agreement that largely met the ENGOS' demands: there would be a conflict-free period of eighteen months in exchange for no logging in thirty undeveloped watersheds. ¹³ Further negotiations brought others into the dialogue, including the Province and other recognized stakeholders, leading to a final agreement: the market campaigns would stop for two years while a two-year planning process could be carried out, 13 per cent of the land would be park, logging on 11 per cent would be deferred, and logging on the remaining land would be ecologically-based (an undefined term). ¹⁴ The NDP government, which previously waged public relations campaigns to rebut the transnational ENGO's market actions, now adopted Greenpeace's "Great Bear Rainforest" language when describing the agreement and region. The only loud voices of discontent came from the Industrial, Wood and Allied Workers of Canada labour union and coastal mayors. Tseporah Berman of the Coastal Rainforest Coalition commented: "The government has no choice but to engage in the process." ¹⁵

When the Liberal party was elected in British Columbia in the fall of 2001, the new government endorsed the Central Coast deal and announced they would use a similar process for the North Coast. The Minister of Sustainable Resource Management stated explicitly that while the Liberals had not intended to follow through with the plan, they had changed their minds to prevent the

¹¹ Gordon Hamilton, "B.C.'s Green Tag Revolution" *Vancouver Sun* (5 May 2000) A1.

¹² *Ibid.*

¹³ Gordon Hamilton, "Coastal loggers seek eco-truce" *Vancouver Sun* (16 March 2000) D1. Prominent companies active on the Central Coast included Interfor, West Fraser Timber, Western Forest Products, Fletcher Challenge Canada, Canadian Forest Products, and Weyerhaeuser.

¹⁴ Gordon Hamilton, "Forest firms expect the role of hero will cost them" *Vancouver Sun* (5 April 2001) A5.

¹⁵ Gordon Hamilton, "Poll finds majority agree coastal rainforest should be protected" *Vancouver Sun* (29 April 2000) E2.

market campaigns from restarting.¹⁶ In other parts of the province, however, the new government rejected land-use plans that had already been drafted at stakeholder tables. British Columbia Sierra Club Executive Director Bill Wareham attributed the failure of at least one plan for an interior region to the absence of market campaigns: “In those places where we didn’t have market pressure, they have taken those plans apart.”¹⁷

The certification trend also had an impact on the provincial government’s small business program under which the government offers small businesses licences to harvest timber but carries out much of the management work itself. The NDP began an initiative to enable these licences to include certification standards in 2000 with test projects, and the Liberal government recently made the necessary legislative amendments to allow licences to require licensees to meet certification standards in addition to legislated ones.¹⁸ Which certification standards may be required were not defined, although initial efforts appear directed at ISO 14001 certification.

At the same time, British Columbia continues to face many of the challenges that were apparent in 1990. A group of policy researchers who reviewed the extent of forest policy change in British Columbia over the 1990s concluded that “the government’s search for sustainability, whether measured by environmental, social, economic, or political indicators, had failed.”¹⁹ One key finding that researchers found was that policies dealing with harvesting rights and the volume a licence holder is licensed to cut per year dominated policy choices made in other areas, for example, forest practices and land-use planning.²⁰ Over the decade, although the NDP had success with park creation, it had little impact on the underlying policy context of the forest industry. The province has continued unsustainable harvest levels, falling employment in the forest sector, a legislative code for forest practices that no one calls a success and that is now being replaced with much reduced environmental standards, unresolved conflicts with First Nations, ongoing vulnerability to U.S. allegations of subsidy, retaliatory trade-related actions, and further entrenchment of the power of the few large companies that control most of the

¹⁶ Vaughn Palmer, “Liberals Bow to Big Guns on Preservation” *Vancouver Sun* (23 May 2002) A20.

¹⁷ Gordon Wilson, “Liberals sign on to NDP forest plan” *Vancouver Sun* (16 November 2001) D1.

¹⁸ *Forest Statutes Amendment Act*, S.B.C. 2002, c. 45, s. 3.

¹⁹ Benjamin Cashore *et al.*, *In Search of Sustainability: British Columbia Forest Policy in the 1990s* (Vancouver: UBC Press, 2001) at 252.

²⁰ *Ibid.* at 247.

harvesting rights on public land.²¹ The British Columbia-based industry also faces growing international competition in the commodity markets it has traditionally relied upon. While British Columbia has had an abundance of high-quality standing forests, this old-growth timber supply is dwindling, and the industry is having to move both to lower quality and more difficult to reach forests. The province has an oversupply of mills and a mismatch between the types of logs the mills were designed for and the logs being harvested. Labour costs are relatively high, and the growing cycle is long compared with countries in warmer climates. The industry is therefore widely recognized to be in the middle of a lengthy and painful period of restructuring caused by a mixture of domestic and international factors.²² Patricia Marchak, a long-time observer of the British Columbia industry, has argued that jobs in industrial forestry in British Columbia are on the way out and that the province should “move away as rapidly as possible from forest-based industry.”²³

The combination of increased transnational ENGO involvement, the industry’s focus on external markets, and dependence on the industry that is built into the provincial forest management framework mean that both the industry and the provincial government are shifting to external sources of legitimacy and approval, designed around the needs of both transnational ENGOS and the industry. Researchers concluded that market campaigns and First Nations’ property-based claims held the most promise for shifting the status quo.²⁴ Does, however, the certification approach hold reasonable promise to help address persistent problems with unsustainability? Certainly by the end of the 1990s and early 2000s, the major environmental groups’ market campaigns had become the focus of much of the media attention to environmentalist commentary and activity. These campaigns had not become the exclusive focus of British Columbia’s environmental community, but they had taken on a prominence that no other form of activism enjoyed.

The appeal of market campaigns is not hard to fathom. The boycott/certification strategy is facilitated by the concentration and export-

²¹ As of July 2003, five companies controlled about 40 per cent of all allocated timber harvesting rights in the province. See Ministry of Forests, “Provincial Linkage AAC Report” (Victoria: Resource Tenures and Engineering Branch, 11 July 2003) online: <<http://www.for.gov.bc.ca/ftp/hth/external/publish/apportionment/APTR043.pdf>> (date accessed: 23 July 2003).

²² Patricia Marchak, Scott Aycock & Deborah Herbert, *Falldown: Forest Policy in British Columbia* (Vancouver: David Suzuki Foundation and Ecotrust Canada, 1999); Ministry of Forests, *Ready for Change: Crisis and Opportunity in the Coast Forest Industry* by Peter Pearse (Vancouver: Minister of Forests, November 2001), online: <<http://www.for.gov.bc.ca/hfd/library/documents/phpreport>> (date accessed: 18 May 2003).

²³ Patricia Marchak, “Commentary” (1998) 119 B.C. Stud. 73 at 77.

²⁴ *Supra* note 19 at 252.

oriented character of the British Columbia industry, and the relative simplicity of the international ENGOS' demands for rainforest protection. These campaigns are able to go wherever the campaigners consider the markets to be sensitive to this type of pressure. In practice, this has meant going to northern Europe and the United States. The non-local aspect of these tactics matches the mobility of transnational corporations, and also sidesteps local resistance to environmental groups' messages from unions, rural mayors, and domestic publics sensitive to immediate job losses. The commitment to market campaigns among transnational ENGOS also makes sense given the absence of a global democratic political process through which non-domestic publics can express their concerns and be represented. Markets are a good option for environmentalists outside of British Columbia with no effective voice.

For those within British Columbia who had attempted more traditional forms of activism and political participation, the market campaigns have also enabled an end run around conventional state-based politics, with its attendant commitments to the status quo and big business, and an end run around conventional methods of seeking accountability within the provincial legal framework. This legal framework has functioned to deflect criticism of the underlying structural and institutional problems plaguing British Columbia forestry. Path-determining elements of the legal framework, for example the issuance, renewal, and terms of logging tenures (issued by the Minister of Forests to private companies), or determinations by the Province's Chief Forester of the volume a tenure holder may cut, have proven resilient against new legal and policy developments during the 1990s that on their face might appear to imply significant change.

For example, the 1994 *Forest Practices Code* ostensibly provided greater opportunity for accountability seeking by the public. The *Code* was introduced and publicly marketed as a major overhaul of logging practices that would change the industry from an environmentally damaging one to one based on the maintenance of ecosystem integrity. This regulatory instrument was contained in a number of ways. A 6 per cent ceiling was imposed for impacts on harvest levels. Administrative delays and refusals to implement some provisions and amendments to provisions that had the potential to slow the flow of fibre to mills all limited the impact of the *Code*. Additionally, the administrative design of procedures apparently created to enhance accountability to the public and enable greater public participation actually constructed those opportunities in ways that dissipated their impact while legitimating business as usual. Although the *Forest Practices Code* was promised as an accountability-enhancing statute, it generated few opportunities for judicial review, because of its discretionary design and a new complaints procedure managed by an independent board with little power.

Judicial reviews by environmental groups that have been aimed at other critical aspects of forest policy, including licensing and volumes harvested, have also generally proved unsuccessful. For example, in 1993 the Sierra Club brought a judicial review testing the meaning of a requirement for sustainability under the *Forest Act*, as applied to the Chief Forester's determination of how much a licensee was permitted to harvest.²⁵ While the Chief Forester had attempted to bring the harvest levels closer to amounts sustainable in the long term, the British Columbia Court of Appeal deferred to a lower Appeal Board ruling that the harvest level should be higher to allow a more gradual transition to sustainable harvest levels.²⁶ In practice, harvest levels in British Columbia remain well above the Ministry of Forests' estimates of what is sustainable in the long term. A systematic timber supply review carried out by the Chief Forester from 1992 to 1996 resulted in an overall reduction of provincial allowable annual cut (AAC) by only 0.5 per cent.²⁷ As of 1999, the provincial "overcut" was estimated as at least 18 per cent.²⁸

With regard to tenures and licensing, a group of woodworkers who lost their jobs when a licensee closed a mill attempted judicial review of the Forest Minister's decision not to penalize the licensee. The workers alleged that, in exchange for long-term security under the *Forest Act*, the company's licence required it to continue operating the mill. The workers were unable to overcome judicial deference toward the Forest Minister's decision.²⁹ The Council of the Haida Nation appears to be the only entity that has had any success with reviewing tenure decisions, basing their attack on conflicting property rights.³⁰

²⁵ *Forest Act*, R.S.B.C. 1979, c. 140, s. 28(g)(i).

²⁶ *Sierra Club of Western Canada v. Chief Forester (British Columbia)* (1993), 22 Admin. L.R. (2d) 129 (S.C.). This decision was appealed, but the appeal was dismissed for mootness following an amendment. See *Forest Act*, (1995) 126 D.L.R. (4th) 437 (C.A.).

²⁷ Ministry of Forests, "Summary of Timber Supply Review Results 1992-1996" online: *Timber Supply Branch, Ministry of Forests* <<http://www.for.gov.bc.ca/tsb/other/review/review.htm>> (date accessed: 18 May 2003). Summary data for a second round of timber supply reviews for 1997-2002 is not yet available.

²⁸ Marchak, Aycock & Herbert, *supra* note 22 at 30 (based on data from the British Columbia Ministry of Forests).

²⁹ *Woodworkers for Fair Forest Policy v. B.C. (Minister of Forests and Chief Forester)*, [2000] B.C.J. No. 2180 (S.C.) (QL). The author of this article was counsel for the petitioner.

³⁰ The Haida Nation argued that their asserted Aboriginal title was an encumbrance that by law, or through the Crown's fiduciary duty, prevented the Minister from legally renewing a logging company's licence, or alternatively that the Minister ought to have consulted with them before renewing the licence. The Haida won recognition that Aboriginal title, if proved, could be an encumbrance, and recognition that they are entitled to consultation, but were unsuccessful in invalidating the licence renewal. The British Columbia Court of Appeal upheld the lower court's view that the Haida must prove their title before it would constitute an encumbrance on the land, but granted a declaration that the Crown and the licensee (Weyerhaeuser Company Ltd.) owed a duty to consult with the Haida, based on the strength of the Haida's claim, the Crown's fiduciary duty, and the Crown and Weyerhaeuser's awareness of the Haida's claim. See *Haida Nation v. B.C.*

In contrast, licence holders have had much more success in getting courts to treat licences as a form of vested property that needs protection against government interference, despite ambiguities in their statutory character. For the general public, the major types of licencing agreements between the provincial government and forest companies are effectively perpetual (except where companies choose to give up a licence and be compensated) and unreviewable.

Instead of fighting this disempowering legal framework, the ENGOS were able to use market campaigns to create new space for debate about forest policy on something closer to their own terms. They brought in new policy actors (major buyers), actively marketed their list of demands, and nurtured a new institution: the FSC. This new space created by ENGOS deserves, however, more scrutiny than the “on their own terms” description suggests.

II. ECO-CERTIFICATION AND THE FOREST STEWARDSHIP COUNCIL

The FSC exists to develop and promote standards for sustainable forestry. It does not directly certify companies, but rather certifies organizations and consulting firms to carry out certifications of other companies’ logging operations according to FSC policies and procedures. Its headquarters are located in Oaxaca, Mexico, and there are now regional FSC groups in eight European countries, Canada, the United States, Brazil, Colombia, and Bolivia. The regional FSC groups develop standards for their region based on global the FSC’s Principles and Criteria document.³¹

The WWF was a driving force behind the FSC’s creation, and remains a staunch advocate. As recounted by the FSC, the founding assembly in 1993 included “representatives from environmental institutions, the timber trade, the forestry profession, indigenous peoples’ organizations, community forestry groups, and forest product certification organizations from twenty-five countries.”³² Since then, the FSC has grown dramatically, so that there are now more than twenty-nine million hectares certified under FSC rules worldwide, in fifty-six countries. About two-thirds of the land area managed by certified entities (that is, companies, governments, or other associations responsible for logging operations) is located in Europe, a further 17 per cent in North America,

(*Minister of Forests*), [2002] 6 W.W.R. 243 (B.C.C.A.).

³¹ Forest Stewardship Council, “FSC Principles and Criteria,” online: <<http://www.fscoax.org/html/1-2.html>> (date accessed: 18 May 2003).

³² Forest Stewardship Council of Canada, “FSC History,” online: <<http://www.fsccanada.org/about/history.shtml>> (date accessed: 18 May 2003).

12 per cent in Latin America, and 2 to 3 per cent each in Africa and the Asia-Pacific region.³³

The FSC is composed of a General Assembly, Board, and Secretariat. The FSC is carefully structured to balance the voting power of different social groups. The General Assembly has three chambers: economic, environmental, and social. Members with an economic interest in the forest products trade must be in the economic chamber. The environmental chamber is “limited to indigenous organizations and social movements and assigned individuals active in promoting environmentally appropriate, socially beneficial and economically viable forest management.” The social chamber is “limited to not-for-profit, non-governmental organizations and assigned individuals with a demonstrated commitment to” these same goals. Each chamber’s votes are weighted so that they have one-third of the total voting power for the General Assembly. Furthermore, within each chamber, northern-based organizations and southern-based organizations—as defined by United Nations (UN) criteria for high income countries on the one hand, and low, middle, and upper-middle income countries on the other—each have half the voting power. General Assembly resolutions will only pass if they receive a two-thirds vote in each chamber. All members of the FSC may vote in the General Assembly.³⁴

The General Assembly elects a nine-member Board which must include two economic chamber members, and three or four members (alternating) from each of the environmental and social chambers. The bylaws call once again for north-south parity, not just in the overall composition of the Board, but among the representatives from each chamber. Decisions are by consensus or, if none, by six votes in favour.³⁵

Membership in the FSC is limited to organizations and individuals that support the FSC’s mission. Prospective members of the economic chamber must “demonstrate commitment to implementing FSC principles,” for example, by getting some of their operations certified. The Board may consult with FSC members in the country where the applicant is based to evaluate whether the applicant is bona fide. A member may also be stripped of membership if the member “engages in activities contrary to the interests of the FSC or no longer meets the membership criteria... .”³⁶

³³ Forest Stewardship Council, “Information on Certified Forest Sites Endorsed by the Forest Stewardship Council (FSC),” online: <<http://www.certified-forests.org/global.htm>> (date accessed: 18 May 2003).

³⁴ Forest Stewardship Council, “Forest Stewardship Council A.C. Bylaws,” online: <<http://www.fscoax.org/html/1-1.html>> (date accessed: 18 May 2003) at s. 22.

³⁵ *Ibid.* at s. 56.

³⁶ *Ibid.* at s. 41.

The FSC derives its revenue from licensing fees charged to organizations that are accredited to certify companies on behalf of the FSC, fees paid by these certifying bodies to the FSC to recover costs associated with the certification process, grants and donations, membership dues, and returns on investments and services. The FSC accepts grants and donations from NGOs, foundations, governments, multilateral agencies, and individuals.³⁷ The FSC states that it does not accept funding from industry, although it does accept membership fees from economic chamber members, and fees from companies that are accredited to certify forest companies under the FSC regime. These companies are hired by the forest companies who apply to receive FSC certification.

The bylaws provide for the addition of national and regional advisory boards and assemblies if there is sufficient interest in the region. Canada has a working group that was created in 1996 to facilitate the development of regional standards through which the FSC's overarching principles and criteria will be applied in various regions in Canada. British Columbia has its own working group and steering committee. The Steering Committee has developed regional standards for British Columbia. The first draft of the British Columbia Regional Standards was prepared initially by a volunteer committee, and completed by a group of consultants. FSC-BC made the draft available and accepted comments from the general public, and some fifty-six organizations submitted comments.³⁸ The FSC-BC Steering Committee then appointed a technical team and invited the provincial government to appoint a non-voting member. The team prepared a second draft, held further public consultation, and submitted a final draft to FSC-Canada. The standards are now pending approval by the FSC's international board.

Most FSC certifications are carried out by transnational consulting firms.³⁹ Certifications by SGS-Qualifor alone account for over 50 per cent of the land area under FSC certification.⁴⁰ The Rainforest Alliance's Smartwood

³⁷ The FSC has received funding from the Austrian, Dutch, and Mexican governments, the European Commission, Ford Foundation, MacArthur Foundation, WWF-Netherlands, IUCN-Netherlands, Swedish Society for Nature Conservation (SSNC), and Summit Foundation (Forest Stewardship Council, "Frequently Asked Questions," online: <http://www.fscoax.org/html/fsc_faq.html> (date accessed: 18 May 2003).

³⁸ Forest Stewardship Council-British Columbia, "History of the FSC-BC Initiative," online: <<http://www.fsc-bc.org/showpage.asp?pageID=188>> (date accessed: 26 May 2003).

³⁹ For example, accredited certification bodies include: Swiss transnational KPMG's Canadian affiliate, Germany-based GFA Terra Systems, Italy-based ICILA, Switzerland-based Institut für Marktökologie IMO, Netherlands-based SKAL International, UK-based SGS-Qualifor and Soil Association (an NGO), and U.S.-based Scientific Certification Systems, and the Rainforest Alliance Smartwood Program (an NGO). See Forest Stewardship Council, "FSC Accredited Certification Bodies," online: <<http://www.fscoax.org/html/5-3-1.html>> (date accessed: 18 May 2003).

⁴⁰ Forest Stewardship Council, "% Total Certified Area By Certification Body," online: <<http://www.certified-forests.org/data/bodies.htm>> (date accessed: 18 May 2003).

Program has also played a dominant role as a certifier. The only accredited certification body based in Canada is the Silva Forest Foundation, an organization committed to the promotion of eco-forestry.

The procedures by which a certifying body or a forest company becomes FSC-accredited also make provisions for stakeholder consultations. For example, when Western Forest Products applied for FSC certification, Greenpeace and others made submissions to the certifying body, SGS-Qualifor, detailing why Western Forest Products' operations were inappropriate for FSC certification. However, it is difficult to identify which companies are applying for certification at any given time.

Demand for FSC products has been driven by NGOs, particularly through the organization of buyers' groups. The WWF has been a strong advocate, leading to an agreement with the World Bank to set a target for two hundred million additional hectares under FSC certification by 2005.⁴¹ Industry journals were complaining by 1998 about the high demand for certified products and lack of supply. The vast majority of current supply comes from Europe, and to a lesser extent, North America. The twenty-nine million hectares managed by FSC-certified operations is approximately 0.7 per cent of worldwide forested area.⁴² In British Columbia, FSC-certified operations have responsibility for some eighty-nine thousand hectares. Competing certification regimes, including the ISO 14001, the Canadian Standards Association, and Sustainable Forest Initiative of the American Forest and Paper Association, cover far more of British Columbia's territory. Companies with ISO certification have responsibility for about forty-seven million hectares and about two-thirds of provincial AAC.⁴³

III. CERTIFICATION SYSTEMS AS A FORM OF GOVERNANCE

The small but growing academic commentary on regimes like the FSC identify them as a form of social regulation or, more broadly, governance. For example, Errol Meidinger has argued that the FSC is among the most developed of private organizations that are taking on functions of government, claiming

⁴¹ Errol Meidinger, "'Private' Environmental Regulation, Human Rights, and Community" (1999-2000) 7 *Buff. Envtl. L.J.* 123 at 146.

⁴² Based on the total forested land area estimate of 3.9 billion hectares in the *Forest Resources Assessment, 2000*, online: Food and Agriculture Organization of the United Nations, Main Findings <<http://www.fao.org/forestry/fo/fra/index.jsp>> (date accessed: 18 May 2003).

⁴³ Ministry of Forests International Relations Unit, "BC Forest Management Certification Status Report—December 2002," online: <<http://www.for.gov.bc.ca/het/certification/CertificationStatusReport.pdf>> (date accessed: 18 May 2003); Ministry of Forests Timber Supply Branch, "Current Allowable Annual Cut," online: <<http://www.for.gov.bc.ca/tsb/other/tsa.htm>> (date accessed: 18 May 2003).

to represent the public interest, and effectively acting as “private regulatory systems.”⁴⁴ Commentators on forest politics in British Columbia have heralded certification as a “major avenue for the privatization of forest policy” and the FSC in particular as having “the potential to revolutionize the governance of the forest sector,” based on its venue-shifting character and ability to influence firms’ financial incentives.⁴⁵ Stepan Wood has argued that standards regimes such as the ISO 14001 are not so much a form of private regulation as a form of governance that reflects an interpenetration that subtly redraws conceptions of the public and private. Consequently, Wood asserts this type of regime “suggests the need for an alternative conception of ‘government’ that moves beyond the metaphor of a public-private divide, one that defines government as the entire array of ideas, goals and techniques by which a diversity of state and non-state authorities seek to shape human conduct to desired ends.”⁴⁶

A conceptual foundation for the categorization of regimes like the FSC as a form of social regulation can be found in legal pluralist perspectives on law. Within this literature, the rise of *lex mercatoria* has been the focal example of the transnational development of regulatory systems outside of conventional state-based law-making;⁴⁷ corporate codes of conduct, related NGO monitoring, and institutionalized certification initiatives are other nascent examples. As articulated by Gunther Teubner, “global law” emerges from multiple social groups, not just the state; it emerges as new discourses become dominant; and it emerges from social peripheries. Applied to the FSC case, as functional networks (initially the transnational environmental NGO network that organized around forest loss) became frustrated with the lack of institutional capacity within the state-based system of regulation, they developed an alternative mechanism with growing authority and prominence transnationally.

I do not intend to engage in a debate concerning whether this kind of social ordering is accurately characterized as law. Rather, my aim is to describe the functional character of the regime as one of governance, and to signal normative messages and characteristics that make the FSC and like approaches to social regulation worrisome, in my view, as emerging influences in the larger debate about how we govern ourselves.

⁴⁴ *Supra* note 41 at 232.

⁴⁵ *Supra* note 19 at 256.

⁴⁶ Stepan Wood, “Greenwash or Green Revolution? Voluntary Environmental Standards, Public Law and Private Authority in Canada” (Paper prepared for the 2001 Annual Legal Dimensions Initiative, 17 November 2001) [unpublished]. On the interplay of public and private in standard setting, see also Liora Salter, *Mandated Science: Science and Scientists in the Making of Standards* (Dordrecht, Netherlands: Kluwer, 1988).

⁴⁷ Gunther Teubner, “‘Global Bukowina’: Legal Pluralism in the World Society” in Gunther Teubner, ed., *Global Law Without a State* (Aldershot: Dartmouth, 1997).

Under the FSC, the regulation of consumer behaviour comes most directly from the regime's coordination of information available to consumers and its quieting effect on boycotts, as markets once disappearing or fraught with risk reopen. The FSC regulates producer behaviour by defining principles, criteria, and standards that a company must, according to the rules of the regime, meet to achieve and maintain access to the logo and implicitly, those markets sensitive to the logo. Producers and consumers alike are drawn into the FSC's processes for defining and implementing the standards. The FSC becomes thus an important forum for debate on the meaning of sustainable forest management, within the institutional and structural constraints of its design. Perhaps less obviously, the regime also spills out of consumer-producer relations into citizen-state-producer relations when FSC rules incorporate state rules and vice versa, when government officials participate in the FSC's processes, and when the FSC becomes seen as an alternative (albeit partial) to state-based policy development and regulation.

The certification approach is part of larger trends toward market-oriented forms of governance, and has a fitness with contemporary conditions that makes it attractive to pragmatists, but at the same time should raise warning signals for those concerned about neo-liberal influences on governance. For example, the standardization of expectations suits transnational companies that wish to simplify their regulatory burden, reduce risks along the supply chain, open access to markets, and avoid conflicts with ENGOs. The institutionalization of a non-state-based regime addressing industry behaviour creates opportunities for reduced government expenditure and downsizing at a time when this is fiscally and ideologically attractive. Standards developed by apparently private entities, and voluntarily adopted by companies are less likely than statutory law to be considered barriers to trade under World Trade Organization rules.⁴⁸ The ability of the regime to reach across borders and address popular concerns about unsustainable or inappropriate trade provides a means of promoting sustainable development, economic growth, and prosperity via foreign trade, without having to address states' varying capacities to regulate via conventional means.

The more civil society-based regimes, like the FSC, are often advocated as a response to the democratic "deficits" created by globalization. Enthusiasts about the potential of greater civil society involvement in governance, especially globally, see the flowering of non-state centered institutions and functional groupings as a solution to the democratic deficits created by globalization. For example, Ronnie Lipschutz imagines a future condition in which "regulatory authority is likely to be distributed among many foci of political action, organized to address specific issue-areas rather than to exercise

⁴⁸ Matthias Finger & Ludivine Tamiotti, "New Global Regulatory Mechanisms and the Environment: The Emerging Linkage Between the WTO and the ISO" (1999) 30(3) IDS Bulletin 8 at 11.

a generalized rule over a specific territory.”⁴⁹ He sees the growth in functional authority of non-state actors as more likely than state-based institutions of global forest governance.⁵⁰ In the labour context, David Trubek, Jim Mosher, and Jeffrey Rothstein argue that given both corporate power and that a return to state centrism is not realistic, the best solution is a “multi-layered approach,” where

[t]ransnational public and private actors would operate not only at the national level but also in public and private arenas within and beyond national borders. Such actions could create a mosaic of normative orders and norms that would, taken together, establish a multi-level, public-private, cascading, transnational regime for labour regulation.⁵¹

Drawing on administrative law principles, Alfred Aman, while identifying that “democracy requires the means by which issues can be drawn, information shared, and a meaningful politics created,” proposes improving the transparency, participation, and accountability of privatization steps taken by governments as a way of redressing the imbalance. Examples include reforming the procedures for contracting out functions previously handled by government, making greater use of independent, third party monitors, and taking steps to improve information flows and opportunities for political discourse. Aman suggests organizations like the FSC can assist with conflict of interest problems when they provide the third party monitoring function.⁵²

Implicit in these pragmatic (or resigned) assessments of certification approaches as better-than-nothing solutions to an intractable and inevitable problem is a shift in governance at the levels of norms, institutions, and power, even if one would prefer it to be simply another tool alongside a strong or reconstituted state. As articulated in more detail below, at risk is a freer exploration of reinventions of the state and collective action for public ends. Pragmatism about corporate power and enthusiastic trust in existing NGOs should not blind us to this; rather, careful attention to alternatives and the ways these alternatives fall away from public discourse is imperative.

⁴⁹ Ronnie Lipschutz, “Why Is There No International Forestry Law? An Examination of International Forestry Regulation, Both Public and Private” (2000/2001) 19 *UCLA J. Envtl. L. & Pol’y* 153 at 162.

⁵⁰ *Ibid.* at 163.

⁵¹ David M. Trubek, Jim Mosher & Jeffrey S. Rothstein, “Transnationalism and the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks” (2000) *L. & Soc. Inquiry* 1187 at 1189.

⁵² Alfred C. Aman, Jr., “Globalization, Democracy and the Need for a New Administrative Law” (2002) 49 *U.C.L.A. L. Rev.* 1687 at 1712-13 [Aman, “Globalization”]; Alfred C. Aman, Jr., “The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy” (1998) 31 *Vand. J. Transnat’l L.* 769 [Aman, “The Globalizing State”].

IV. IMPLICIT POLITICS

In the enthusiasm for building an alternative voice to counterbalance economic forces, commentators on the rise of civil society-based, market-oriented responses have not yet developed a thorough analysis of the implicit politics of certification as a form of governance. The remainder of this article is meant to move this project forward by considering three types of implicit politics.

First, those commentators who take “governance” seriously, whether from within political science, legal pluralism, or global civil society literatures, emphasize the significance of norm generation as a form of social control. Much of the strength behind transnational advocacy networks rests on their ability to mobilize norms—regarding human rights, ecological sustainability, labour conditions, and so on—in effective ways, yielding institutions and regimes with demonstrable impact on corporations and other involved entities’ behaviour.⁵³ What then are the underlying norms of the certification approach?

Second, the FSC has a particular institutional form and relationship to state-based regulatory institutions. In many ways it is a model institution, with carefully designed voting mechanisms, opportunities for consultations, and transparent procedures. But considered as a whole, the institutional characteristics of the regime give cause for concern. Given its institutional form, what can be reasonably expected from the regime in terms of transparency, participation, and accountability, and in what ways might the institutional structure be path-determining in terms of outcomes?

Third, if the certification approach is promised as an answer to the problem of expanding private power at the expense of democratic polities, what shifts in power dynamics are in fact taking place? Perhaps not surprisingly given their origins, labour lawyers have had more to say in this regard about codes for labour standards than commentators on environmental codes. But we can take our cue regarding what questions to ask from them: who is empowered by the structural, institutional, and normative dynamics of the certification approach?

A. *Governance Norms Implicit in the Certification Approach*

A fundamental norm of the certification approach is its preference for individual action within markets over collective action via public institutions. There are many ways in which this root orientation manifests itself.

⁵³ Paul Wapner, “Politics Beyond the State: Environmental Activism and World Civic Politics” (1995) 47 *World Pol.* 311; Margaret Keck & Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

One way is by decentering the state. Government officials become one more stakeholder in standards-development processes and fade into the background in the day-to-day mechanics of administering a certification regime. The role of government is not to lead and create capacity for the achievement of collective goals; rather, the certification regime does that for its membership. Democratic legitimacy, as a foundational justification for actions with governance implications, fades from view and is displaced by discourses of voluntarism and the avoidance of interference with markets. The FSC does provide substantial opportunities for member and public input as well as procedures for transparency, especially in the processes for creating standards. Also, as described, great pains were taken to balance economic, social, and environmental sector members within its federal structure. But the FSC does not, ultimately, have the democratic legitimacy of a state-based process. It speaks not for all those in a given territory, or all those affected by companies bearing its certification, but for its members. Its reason for existing, responsibilities, and accountability relate to a single-issue mission.

The role of government as an entity that creates conditions for collective living and effective markets, and that sanctions bad actors, also takes a backseat. In relations with government officials, co-operation, as opposed to sanctioning, becomes the operating metaphor.⁵⁴ One can find requirements to obey domestic law written into standards as well as implicit dependence on existing public institutions and legal regimes to provide conditions for the achievement of the certification regime's stated goals. This dependence, however, is only implicit. Certification regimes hide this reality,⁵⁵ promoting themselves as drawing their dynamism and regulatory power from market forces. This devaluation of the state's role can lead to circular referencing, where governments demand certification as a substantial element of regulation, while the certification standard demands compliance with government regulation. Critiquing the ISO 14001 standard, Martin von Mirbach warns that what can result is "a perfect con game, with regulations everywhere in appearance but nowhere in effect."⁵⁶

Even when the certification regime demands more in terms of substantive standards, as the FSC does in comparison to the management systems orientation of the ISO, the emphasis on markets as the more effective mechanism for regulating behaviour remains. The promise is that markets can deliver not just consumer goods and services, but public goods, political rights,

⁵⁴ Wood, *supra* note 46 at 44.

⁵⁵ Adelle Blackett, "Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct" (2001) 8 *Ind. J. Global Legal Stud.* 401 at 415-22.

⁵⁶ Martin von Mirbach, "Demanding Good Wood" in Robert Gibson, ed., *Voluntary Initiatives: The New Politics of Corporate Greening* (Peterborough: Broadview Press, 1999) 211 at 223.

fair treatment for indigenous peoples, sustainable and well-functioning ecosystems, and so on, better than public institutions. In the FSC case, these aspirations are written into the principles, criteria, and regional standards in a variety of ways. We must ask, however, what the reasonable expectations are from this codification, given the larger context in which the FSC functions.

The states versus markets debate is obviously a deep and extended one. My purpose for the present is simply to point to some of the ways the certification approach supports market organization as a norm of governance, even in the model form represented by the FSC. For example, the implicit message that markets are more effective than governments sidelines policy debates that demand state action. In the British Columbia case, there are some key things only the state can do. Tenure reform is an example. The existing tenure regime substantially confines opportunities for more ecologically sustainable logging.⁵⁷ Reforming this regime requires major restructuring of the legislative framework within which logging occurs, with complex implications for the work force, forest ecosystems, organization of government, public revenues, and so on.

Advocates of the certification approach suggest it can help generate political will to develop better legislative frameworks for sustainable logging, but the evidence here is far from clear. On tenure, for example, the British Columbia regional standards provide scope for conventional tenure holders to gain FSC certification.⁵⁸ The certification approach is also consistent—in fact, more so than the existing tenure system in British Columbia—with privatization of public forest land in British Columbia, a policy pursued from time to time by the provincial government and advocated by the U.S. softwood lumber lobby. The provincial government's move to a more performance-based *Forest Practices Code*,⁵⁹ the form of which has been strongly opposed by the

⁵⁷ See Cheri Burda *et al.*, *Forests in Trust: Reforming British Columbia's Forest Tenure System for Ecosystem and Community Health* (Victoria: Eco-Research Chair of Environmental Law & Policy, 1997); Marchak, Aycock & Herbert, *supra* note 22; Cashore *et al.*, *supra* note 19.

⁵⁸ Standard 2.1.1.(c) provides that Tree Farm Licence holders are eligible, while 2.1.1.(d) provides that the volume-based Forest Licences will also be sufficient if the licensee applies together with the Province or the Province provides written assurance it will demand adherence to the FSC principles when it issues licences, permits or approvals of plans, and the Province commits to ensuring the volume cut matches FSC's Criterion 5.6 (that the rate of harvest does not exceed that which can be permanently sustained). See Forest Stewardship Council Regional Certification Standards for British Columbia, online: <<http://www.fsc-bc.org/SiteCM/U/D/FSC%20Cda%20approved>

<[http://www.fsc-bc.org/SiteCM/U/D/FSC%20Cda%20approved](#)> (date accessed: 7 August 2003).

⁵⁹ Ministry of Forests and Ministry of Water, Air and Land Protection "A Results-Based Forest and Range Practices Regime for British Columbia," online: <www.for.gov.bc.ca/code/discussionpaper/dpaper.pdf> (date accessed: 19 May 2003); Bill 74, *Forest and*

environmental community in British Columbia, is also conceptually consistent with the certification approach. While introducing its proposed code, the provincial government gave the move toward certification as a reason why the risks associated with adopting a more hands-off, performance-based approach in provincial legislation were “manageable.”⁶⁰ During consultations on the new code, the Council of Forest Industries (COFI) lobbied for much greater recognition of certification. COFI suggested certified companies should be in a separate category, such that certification requirements become code requirements, compliance and enforcement efforts target uncertified companies, and random audits by the Forest Practices Board focus only on uncertified companies.⁶¹ How certification will affect regulatory oversight, compliance, and enforcement of forest practices remains unclear, but it could play a role in justifying a lower level of scrutiny and deferential substantive rules, and in redefining due diligence. The form of legal ordering implied by the certification approach seems to suggest more, not less, private control.

Outside the British Columbia context, Hale Sheppard has argued that certification—he refers to the ISO and FSC as two examples of the same overall strategy—provides a means for Chile to enhance its forest protection and may “permit the fortification of existing legislation.” Sheppard argues that change is inevitable and certification is the means, citing Chile’s export orientation and the national government’s desire to secure access to foreign markets. Additionally, Sheppard notes that environmental groups shifted from boycotts to acceptance of international trade, provided that sustainable methods of production could be established. In response to the criticism that certification could remove incentives for the development of domestic legislation, Sheppard argues that certification could “substantially facilitate the administrative procedures associated with national legislation” by such means as easing requirements for management plans prepared by forest companies, and simplifying environmental impact assessment requirements. He also suggests the incorporation of FSC standards into national legislation as a means of enhancing regulatory capacity.⁶² Sheppard cites a national certification initiative of the Chilean government, which has the objective of improving access to

Range Practices Act, 3d Sess., 37th Leg., British Columbia, 2002 (obtained Royal Assent 21 November 2002), S.B.C. 2002, c. 69.

⁶⁰ Ministry of Forests and Ministry of Water, Air, and Land Protection, *ibid.* at 5.

⁶¹ Council of Forest Industries, “First Approximation of an Alternative Approach to Changing the Forest Practices Code and Other Key Forest Management Policies to Better Achieve Government’s Objectives,” Written Submission to the British Columbia Government Consultation Process, June 2002, online: <http://faculty.forestry.ubc.ca/rbc/Alternative_approach_final.pdf> (date accessed: 1 August 2003).

⁶² Hale Sheppard, “Timber Certification: An Alternative Solution to the Destruction of Chilean Forests” (1999) 14 J. Envtl. L. & Litig. 301 at 323.

export markets, as evidence of the government's willingness to act.⁶³ But this example also reflects the displacement of alternatives less compatible with neo-liberal demands on the Chilean government, in favour of certification as an apparent but unproven method of making the best of a bad situation. Certification—developed through non-state based processes—becomes accepted evidence of good behaviour in place of other forms of regulation.

Another implicit message of the certification approach is that public regulation is always directed at market failures.⁶⁴ Such a presumption denies the existence of bona fide public goals that are not efficient for markets. If a certification regime includes significant requirements that are not efficient, the regime cannot be expected to be attractive to companies operating in a competitive environment. The transformation of corporate culture to embrace the profitability of “green” practices cannot, after all, be expected to go beyond profitability. The goals of a *demos*, in contrast, are not necessarily so limited.

Mark Sagoff has argued that people have different identities as citizens than they do as consumers, such that their motives, concerns, and preferences are different when they act as citizens from when they act as consumers.⁶⁵ The message that one's actions as a consumer are more effective denies this distinction. It implies that these identities can be subsumed within the consumer, and that individual action is the same as collective action. Implicit in Sagoff's argument is an understanding that participating in a democratic polity is constitutive of identity. Redefining participation as consumer action implies a different constitution of identity, one based on individual wants, that equates worth as a participant with buying power and devalues experiences of collective effort toward common goals. Power becomes the ability to satisfy preferences, while structural and institutional power fade to the background. Citing William Simon, Sagoff argues that this personalization of power:

‘resists understanding power as a product of class, property or institutions and collapses power into the personal needs and dispositions of the individuals who command and obey...’ Once the affective, that is, the economic, self becomes the source of all value, the public self becomes merely ‘apparent’ and cannot participate in the exercise of power. Power, indeed, appears to be entirely private; it is the power to satisfy one's personal preferences. It ceases to be the power to join with others in effective political action to define and pursue collective values and shared aspirations.⁶⁶

⁶³ *Ibid.* at 341.

⁶⁴ Mark Sagoff, *The Economy of the Earth: Philosophy, Law and the Environment* (Cambridge: Cambridge University Press, 1988) at 14.

⁶⁵ *Ibid.* at 16-17.

⁶⁶ William Simon, “Homo Psychologicus: Notes on a New Legal Formalism” (1980) 32 *Stanford L.R.* 487 at 495.

The emphasis on consumer power also perpetuates the myth that consumers drive certification systems. The FSC's motive forces are far more complex. The membership develops standards based on a multi-stakeholder model. A major tension at this stage has been the balancing of environmental and social ideals against the desire to facilitate certification by industrial producers so that the supply can be greater and the logo can have greater influence in larger markets. The demand for FSC-labelled products appears so far to depend largely on the advocacy efforts of transnational ENGOs. These efforts must inevitably be narrowly and selectively focussed. In the end, the choices that are eventually available to consumers are much constrained by upstream processes. These processes, however, are shadowed by the normative emphasis on the consumer as an agent with free and effective choice.

The emphasis on green consumerism bolsters the notion that consumption is a good in itself. Critics of the FSC have pointed to the consequence that markets that were dwindling due to purchasers' concerns about the impacts of their purchases have reopened.⁶⁷ In this way, the certification movement provides legitimation for the neo-liberal ideology of growing and trading our way to prosperity. The FSC addresses this criticism by promising that its products are sustainably produced, but the problem here is twofold. First is the question of effectiveness. The ecological and social justice credentials of the FSC are yet to be proven as the regime is still in its infancy. The regime has not been immune to criticism on this front.⁶⁸ Second is the question of contribution to the discourse on environmental governance. No matter how well the FSC may function on the margins, it implicitly supports the larger ideology of attack on non-market forms of social ordering and experimentation with alternative, democratic forms of collective governance.

In addition to its emphasis on markets and individual action, the certification approach suggests that the best way to "green" a large-scale, industrial, extractive forest industry such as exists in British Columbia is via a mitigative code, as opposed to addressing more fundamental structural and

⁶⁷ Klemens Laschefski & Nicole Freris, "Saving the Wood" *The Ecologist* (26 October 2001), online: <http://www.theecologist.org/archive_article.html?article=1067> (date accessed: 19 May 2003); Sharon Beder, *Global Spin: The Corporate Assault on Environmentalism* (Totnes, U.K.: Green Books & Chelsea Green, 1997) at 176.

⁶⁸ For example, see World Rainforest Movement, "The FSC should review plantation certification" *World Rainforest Movement Bulletin* (February 2001), online: <<http://www.wrm.org.uy/bulletin/FSC.html>> (date accessed: 1 August 2003) critiquing the certification of plantations and providing links to other critiques; Chris Lang, "Smartwood's Certification of the Forest Industry Organisation in Thailand: Why FSC Should Revoke the Certificate" (November 2002), online: World Rainforest Movement <<http://www.wrm.org.uy/countries/Thailand/FIO.html>> (date accessed: 1 August 2003); Lars Johansson, Ulf Lindh & Anders Tivell "Swedish villagers object to FSC certification – but nobody wants to know" (2000) 43 *Forest Trees and People Newsletter* 38.

institutional conditions of production. The FSC distinguishes itself from certification systems such as the ISO by asserting its performance-based, as opposed to management-based, character. The FSC criteria and standards incorporate substantive elements that applicant companies must achieve, in addition to requirements to adopt management protocols. Commentators from the environmentalist community point to these performance standards as the critical difference between the FSC and other competing certification standards.⁶⁹

The underlying message that better company and technical management can achieve the desired goals, whether aspirational or required by the standard, nevertheless remains. Alternatives that require more fundamental reorganization, for example the British Columbia movement for community-based forms of decision making and property holding, are implicitly suggested to be unnecessary. The promise that the FSC would help create pressure for this kind of policy change by making it impossible for conventional operators to meet the criteria has yet to be born out. The immediate evidence seems to suggest otherwise. Communal tenure holders account for a small and decreasing proportion of the land area managed by FSC-certified operators, while industrial and government operators in the North account for the majority and an ever increasing proportion.⁷⁰

In sum, the certification approach narrows the debate around appropriate responses to the ecological crisis. Although the FSC is a model of the best that the certification approach has to offer, normative underpinnings remain. Even with the FSC, the certification approach channels ideas and debates about how to govern for improved environmental sustainability toward individual as opposed to collective solutions, market organization, and managerial solutions. These characteristics discipline public debate in ways that undermine the environmentalist critique of unsustainable logging and the diversity of solutions under consideration.

B. *Institutional Form*

If we think about certification systems as a form of governance, what can be reasonably expected from the institutional character of the certification approach? Although it is too early to have clear evidence as to the mechanism's

⁶⁹ Fred Gale & Cheri Burda, "The Pitfalls and Potential of Eco-Certification as a Market Incentive for Sustainable Forest Management" in Chris Tollefson, ed., *The Wealth of Forests: Markets, Regulation and Sustainable Forestry* (Vancouver: UBC Press, 1998) 278 at 290.

⁷⁰ Karin Beland Lindahl, "Certification toolbox—The why, how, what and where of certification" (2000) 43 *Forest Trees and People Newsletter* 67 at 71-72 (based on data from the Forest Stewardship Council).

effectiveness in terms of environmental protection, it is not too early to consider its institutional character as a method of governance.

The FSC's organizational structure appears designed to provide affirmative balancing of environmental and social concerns as against economic ones, as well as a balancing of Southern members in relation to Northern members. It further provides for regional difference with its federal structure and provision for regional standards development. Its procedures for standards development are quite transparent and participatory. Membership, in the British Columbia example, appears quite diverse, although the FSC as a whole has struggled to expand beyond Europe and North America. This forum for debate on the meaning of sustainable forestry thus seems less constrained by the institutional design of the membership rules and internal decision-making structure than by the kinds of factors discussed in the previous section. These factors include such considerations as how to balance stringency against greater possible market share for the logo, subtler influences on participation such as capacity and resources, and the utility and relevance of the regime given local conditions. It must also be remembered that the institutional design of the certification approach raises democratic legitimacy questions as rules developed by entities without democratic accountability come to be applied, perhaps pervasively, and influence legislative processes.

Regarding institutional design for accountability, the presumption of effective market pressure links to limited accountability measures within the FSC framework itself. Certification bodies, themselves accredited by the FSC to be hired by applicants for FSC certification, control much of this side of the FSC's institutional arrangements. Certification bodies decide whether an applicant has met a sufficient proportion of FSC standards to merit certification. Certification bodies monitor progress and determine whether a successful applicant is continuing to maintain FSC standards. As Errol Meidinger points out, these decision-making processes are poorly understood outside certifier circles and are essentially opaque to other observers.⁷¹ The FSC system depends substantially on the professionalism of certification bodies, which tend to be large management consulting firms.

The FSC's oversight of its certification bodies is necessarily minimal, given its own limited administrative capacity. Furthermore, private control of information collected by certification bodies inhibits dialogue among certifiers and the public—dialogue that Meidinger asserts is necessary to develop consistency and legitimate definitions of appropriate practices.⁷² This institutional form inevitably favours the expertise of the technical consultant,

⁷¹ *Supra* note 41 at 152.

⁷² *Ibid.* at 153.

drawing any dispute about a certifier's actions into an arena defined by the consultant's professional standards. In comparison to the day-to-day practices and authority generated here, the monitoring and public disclosure of bad practices by NGOs and other outside observers must, at best, be an occasional and blunt tool for keeping the FSC and its agents accountable to the standards. Doubtless there are hot spots, and British Columbia's coastal rainforest is one, where the NGO community is watching carefully to see how FSC certification will progress, but the FSC structure does not itself generate such watchfulness. In other regions, the scrutiny cannot be expected to be as strong. Even where NGOs are on alert and have substantial capacity, the threat of discrediting the logo remains a blunt tool and those NGOs most involved are also most committed to the success of the FSC and the continuing viability of the label.

Meidinger also highlights the discretionary character of standards that allow much professional judgement and balancing on site.⁷³ Alfred Aman has proposed extending administrative law principles to private regulatory systems as a means of redressing this problem.⁷⁴ Just how this might be done is unclear. In British Columbia, the public law regime has also been characterized by much discretion being accorded to Ministry of Forests officials, and despite administrative law protections, this discretion has proved largely elusive to substantive review. The certification approach arguably provides less here than the existing, already ineffective arrangement, with less formal protection and less access to information.

The FSC's dispute resolution protocol favours informal negotiation, but provides a mechanism for bringing disputes to the international board. Complaints under the protocol must be brought by members or a certification body. A potential complainant who, for example, believes a certified forestry operation is violating FSC standards is expected to pursue informal negotiation or arbitration. The complainant is expected to bring the matter to the certifying body, and then to the certification body's independent committee, before making use of the procedures in the protocol. Once under the protocol, the FSC will again attempt negotiation before falling back on a formal process of dispute resolution.⁷⁵ The British Columbia standards define involvement in "outstanding disputes of substantial magnitude involving a significant number of interests" as a "major failure," that, if breached, would be grounds for denying certification.⁷⁶ What "outstanding," "substantial magnitude," and

⁷³ *Ibid.* at 232-33.

⁷⁴ Aman, "Globalization," *supra* note 52.

⁷⁵ Forest Stewardship Council, "Interim Dispute Resolution Protocol" (April 1998), online: <<http://www.fscoax.org/download/interim31ene2000.zip>> (date accessed: 1 August 2003).

⁷⁶ *Supra* note 58 at 2.3.3.

“significant number of interests” may mean is unclear. Accreditation decisions may be appealed by a member of the FSC under the dispute resolution protocol.

The bureaucratic character of the certification process is another institutional dimension that influences participation by smaller logging companies and other forms of association for managing forests. The cost and administrative capacity required to move through the certification process mean that large-scale producers and producers organized along bureaucratic lines as opposed to traditional forms of forest use and management are at an advantage.⁷⁷ The FSC has attempted to redress this barrier to participation by developing group certifications, but the problem remains. As noted, the evidence to date indicates that large-scale producers account for the dominant and increasing share of certified hectares.

The certification approach also imports institutional weaknesses of market organization. The market pressures to grow the logo, loosen standards, and ignore violations are strong. The lure of attracting big business is evident in concessions on certifying plantations and the percentage content required for products bearing the FSC logo.⁷⁸ The demand remains small, consumer attention to any particular campaign is fleeting, and the quality of available information tends to the aggregate and general. The FSC must compete with other standards, marketing to distinguish it from the others which do not have the performance standards required by the FSC. Standards such as the ISO 14001, for example, and American Forest and Paper Association’s Sustainable Forestry Initiative are growing faster than the FSC in British Columbia.⁷⁹

Given the limits of the accountability mechanisms within the FSC itself, the regime depends on NGOs and consumers to maintain vigilance over its integrity, implying requirements of time, money, and capacity for competent monitoring. But the capacity of the NGO community is easy to overestimate and commitments here inevitably mean less commitment elsewhere. The FSC itself is heavily dependent on the support of U.S.-based foundations, European states,

⁷⁷ Wood, *supra* note 46.

⁷⁸ As of August, 2002, forests classified as “Plantations” and “Plantation/Natural” accounted for over 60 per cent of the land area subject to FSC certification (FSC, “% Total Certification Area by Forest Type,” online: <<http://www.certified-forests.org/data/types.htm>> (date accessed: 26 May 2003)). The FSC’s percentage claims policy is currently under review, having been previously adjusted in 1997 and 2000. The existing policy varies by product type but the FSC-content required for a product to bear FSC marks ranges from 17.5 per cent to 70 per cent (“FSC Policy on Percentage-Based Claims,” online: <<http://www.fscoax.org/download/finalversion310102.pdf>> (date accessed: 26 May 2003)).

⁷⁹ A KPMG survey suggests possible reasons behind the faster growth of management-oriented certification. KPMG found that 93 per cent of respondents sought certification to ensure compliance with regulations and 73 per cent cited concerns about risk of directors’ liability—results that confirm the ongoing relevance of state-based regulation as a motivator (Paul Muldoon & Ramani Nadarajah, “A Sober Second Look” in Robert B. Gibson, ed., *Voluntary Initiatives: The New Politics of Corporate Greening* (Peterborough: Broadview Press, 1999) 51 at 60).

and NGOs for operating funds.⁸⁰ In sum, important institutional dimensions of the certification approach work against the FSC's apparent aspirations, contain opportunities for environmentalist protest, and limit what can reasonably be expected from this approach to environmental governance.

C. *Effects of the Certification Approach on Power Relations*

The above discussion suggests that the certification approach brings with it distinct conditions of empowerment and disempowerment. Commenting on labour codes, Naomi Klein concluded that at issue is who gets to decide both what rules will be imposed and how those rules will be imposed.⁸¹ In the FSC case, the who is more diverse than in industry-developed codes of conduct. But while the FSC may be a best-case scenario, it still transfers power, normatively and institutionally, from public institutions to its major actors: consulting firms, logging companies, and a few transnational environmental organizations. Consumers in Europe and North America with discretionary income also take on greater stature.

Bureaucratic and managerial characteristics mean large, integrated companies gain advantage and greatest return from the regime.⁸² These same characteristics may reasonably be expected to undermine performance-based standards in relation to management-oriented ones, giving advantage to industry as against accountability seekers. In the labour context, the management framework for monitoring used by consulting firms has been observed to systematically enhance the position of companies in relation to workers.⁸³ These same kinds of questions need to be examined in the environmental context, but the logic appears transferable.

⁸⁰ The FSC's Annual Report for 2000 states that 85 per cent of the FSC's budget came from donations that year, just over 9 per cent from accreditation billings, and about 3 per cent each from membership fees and "other," *supra* note 37.

⁸¹ Naomi Klein, *No Logo: Taking Aim at the Brand Bullies* (Toronto: Vintage, 2000) at 435.

⁸² *Supra* note 41 at 229.

⁸³ A study of labour code monitoring by PricewaterhouseCoopers showed that because the monitors took a management perspective, they failed to note key conditions at the factory, such as hazardous chemical use, barriers to free association, overtime violations, wage violations, falsified time cards, health and safety violations, sexual harassment, discrimination, and inappropriate disciplinary practices. Dara O'Rourke concluded that either NGOs or workers themselves should monitor labour practices. See Dara O'Rourke, "Monitoring the Monitors: A Critique of Third Party Labor Monitoring" in Gill Seyfang, Rhys Jenkins & Ruth Pearson, eds., *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan, 2002) at 196-208.

The limited capacity of the NGO community suggests that the empowerment trumpeted by advocates of greater civil society involvement in governance via, among other things, certification regimes like the FSC may be significantly overstated. Considering ENGOS in North America in the context of North American Free Trade Agreement activism, Steven Clarkson concluded that “the existence of North American environmental governance from below must be heavily qualified,” that NGO organizing tended to be fragmentary, evolutionary, and reactive, and that “[c]ivil society’s capacity to engage at the continental level in effective ways to combat social degradation or to enhance environmental and societal sustainability is ... dangerously limited.”⁸⁴

In one of the more thorough treatments of transnational civil society-based advocacy, Margaret Keck and Kathryn Sikkink argue that the concept of networks of activist communities better describes the organization and content of NGO activities than “global civil society.” After researching a cross-section of activist networks, Keck and Sikkink concluded that their findings

[d]o not yet support the strong claims about an emerging global civil society. We are much more comfortable with a conception of transnational civil society as an arena of struggle, a fragmented and contested area where ‘the politics of transnational civil society is centrally about the way in which certain groups emerge and are legitimized (by governments, institutions, and other groups).’⁸⁵

To the extent the certification approach depends on the NGO community replacing states as monitors, sanctioners, and regulatory influences, the limitations of NGO capacity can only be expected to become more apparent as states retreat.

This dependence on NGOs also raises questions about NGO accountability and, returning to earlier themes, democratic legitimacy. It should be noted that the transnational ENGOS that have been most prominent in the FSC regime are European and U.S.-based. This aspect of the FSC reproduces Northern dominance within the FSC regime, despite the attempts noted to redress North-South power imbalances through the voting structure. Transnational ENGOS’ goals are not always consistent with more local groups such that the empowerment of one does not necessarily imply the empowerment of the

⁸⁴ Steven Clarkson *et al.*, “Continentalism From Below: Trinational Mobilization Among Labour Unions, Environmental Organizations and Indigenous Peoples” (Paper prepared for the Third EnviReform Conference, Toronto, 8 November 2002) [unpublished] at 20 and 32.

⁸⁵ Keck and Sikkink, *supra* note 53 at 33-34, cited in Andrew Hurrell & Ngaire Woods, “Globalisation and Inequality” (1995) 24 *Millennium* 468.

other.⁸⁶ In British Columbia, the carrot of certification and stick of boycotts has been used effectively for wilderness protection goals, which tend to be a top priority for transnational ENGOs. However, this preservationist emphasis runs the risk of sidelining some of the most important issues on the domestic scene including First Nations' self-determination and control over traditional territories, sustainable community development, access to land for community-based small businesses, and the problem that reduced harvests in those coastal rainforests that are the focus of campaigns will be compensated for by over-harvesting elsewhere in the province absent a province-wide solution. The overall problem that the institutional framework promotes unsustainable forestry in the province remains intact.

The certification approach inevitably involves a redistribution of power in complex, subtle, and contradictory ways. This issue must be addressed before realistic assessments of the potential of the certification approach to deliver improvements in environmental governance can be made.

V. CONCLUSION

The above discussion raises important factors for assessing what can reasonably be expected from the certification approach, even in a model situation like the FSC, as a mechanism for working out the meaning of sustainable production and making it a reality. At stake is more than accountability, as liberal commentators frequently reduce the democratic challenge posed by globalization, or substantive effectiveness in terms of a particular social goal as typically framed by commentators on codes of conduct. Rather, the turn toward markets and certification involves a more fundamental shift in governance.

As summarized by Meidinger, these regimes "reshape domestic and international policy institutions by changing the locus, dynamics, and substance of policy-making."⁸⁷ Solutions proposed tend to suggest reforming codes for greater transparency and accountability,⁸⁸ but the analysis presented here suggests that the deeper limitations of voluntary codes as a form of governance need to be clarified and recognized. Idealized descriptions of a civil society renaissance face serious limitations within neo-liberal governance frames. Further efforts to explore the potential here may benefit from considering the

⁸⁶ For a Southern example, see Bernard Eccleston, "Does North-South Collaboration Enhance NGO Influence on Deforestation Policies in Malaysia and Indonesia?" (1996) 34(1) *J. of Commonwealth & Comp. Pol.* 66.

⁸⁷ *Supra* note 41 at 125.

⁸⁸ *Supra* note 55 at 431-34; Aman, "Globalization," *supra* note 52.

conditions described by theorists of associative democracy as necessary to make that model of democracy work.⁸⁹

Perhaps of most concern are the ways that the certification movement appears to be disciplining public debate about alternatives as pragmatic or resigned commentators on the one hand, and advocates of neo-liberal reforms on the other, confine themselves to market-based solutions. In this assessment, although progress can be made to improve certification regimes, and the FSC is in many ways a model here, the possibilities appear limited by structural, institutional, and normative conditions and characteristics of the approach. If this assessment is accepted, then the bigger issue to address is how to generate renewed emphasis on experimentation with democratic forms of governance, taking care to identify their implicit politics.

⁸⁹ Paul Hirst, *Associative Democracy: New Forms of Economic and Social Governance* (Amherst: University of Massachusetts Press, 1994).