

Certification as a Mode of Social Regulation

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Abstract: Recent decades have seen a proliferation of initiatives that certify products or companies based on the social or environmental conditions of production. More than merely a marketing ploy or vehicle for providing information to consumers, certification has become a form of social regulation. Numerous questions about the power of certification initiatives and their operation in practice remain largely unanswered. This paper unpacks the rise and significance of certification by first situating it as a regulatory form and then by reviewing the existing state of knowledge about three crucial topics—(1) the ascendance of social and environmental certification, (2) the evolution of this regulatory form in the midst of competing initiatives, and (3) the impacts of certification “on the ground.” In general, the paper suggests that certification systems are more intertwined with states and less straightforward in their effects than many previous discussions imply.

Certification as a Mode of Social Regulation

Certification of products and companies has long been used as a signal of quality, but its transformation into a mode of social regulation is more recent. Over the past two decades, numerous initiatives have emerged to certify conditions in global supply chains, typically addressing environmental sustainability, labor conditions, human rights, or some combination of these. These include early and influential programs like organic, Fair Trade, and Forest Stewardship Council (FSC) certification, a second wave of programs like the Marine Stewardship Council (MSC) and Social Accountability International (SAI), and a seemingly endless array of newly emerging initiatives, focused on shrimp farming, cocoa production, palm oil, and many others. Such initiatives are typically privately organized and supported by coalitions of NGOs, firms, and foundations, though they are also profoundly shaped by governments. Industry associations have also developed their own certification initiatives, such as the Sustainable Forestry Initiative (SFI) and Worldwide Responsible Apparel Production (WRAP) systems, or have added certification to prior initiatives, like Responsible Care in the chemical industry.

The proliferation of certification and labeling initiatives has led many observers to worry about confusion among consumers and “certification fatigue” among companies. Yet the growth of certification also raises important questions for scholars of regulation and transnational governance. Why has this form emerged

across so many industries? Under what conditions can voluntary, privately operated certification initiatives gain governing authority? Does the rise of certification complement or “crowd out” other forms of regulation?

This paper sheds light on these questions by discussing the character, emergence, evolution, and impacts of certification as a way of addressing the environmental or social conditions of production. It begins with a discussion of certification as a regulatory form, considering its linkages to other modes of “regulation by information,” market-based tools, and private governance. It then turns to questions about certification’s emergence and evolution. Finally, the paper considers certification’s impacts “on the ground,” showing that the relevant mechanisms of influence are varied in type but often limited in consequence. In general, this paper suggests that certification systems are more intertwined with states and less straightforward in their effects than many previous discussions imply.

Certification as a regulatory form

While companies make a variety of claims about their environmental or social responsibility, the most credible way to do so is through third party systems that set standards, require external monitoring, and certify compliance. Most commonly, this occurs through an association that develops standards, accredits auditors and grants the use of a certification mark or label for consumers. Yet certification is not merely—or even primarily—a marketing device or signal for consumers. It has become a mode of regulation, being put to use by various NGOs, governments, and industry bodies. This is not to suggest that certification carries the authority, coercive

power, or legitimacy of state regulation. In most instances, certification is voluntary and administered by private bodies that depend on the support of firms and must compete with other certifiers for credibility and recognition. The authority of certification is certainly patchier than that of states, and the logic of “one dollar, one vote” is ultimately less transformative than the “one person, one vote” logic of democratic citizenship. There are numerous examples of certification systems that are lax in standards or weak in enforcement, as well as evidence that even the most credible programs often fail to significantly improve conditions “on the ground” (Seidman 2007).

Still, calling certification a mode of regulation recognizes that it involves standards that are often precise and prescriptive, plus rationalized procedures for assessing compliance. In addition, certification initiatives’ structures for setting standards, enforcing compliance, and adjudicating disputes have evolved to look strikingly similar to state and legal structures (Meidinger 2006). In some countries and supply chains, certification systems have gained substantial, albeit partial, governing authority (Cashore, Auld and Newsom 2004), and at the transnational level, they have intertwined with state-based actors to generate hybrid fields of governance (Djelic and Sahlin-Andersson 2006). Furthermore, to make sense of certification, one must consider broader trends in regulatory theory and practice, which have gone beyond the administrative procedures characterized (usually derisively) as “command and control.” This includes a number of experiments that use markets, information, deliberation, and “soft law” as regulatory tools (Schneiberg and Bartley 2008). (See Figure 1.)

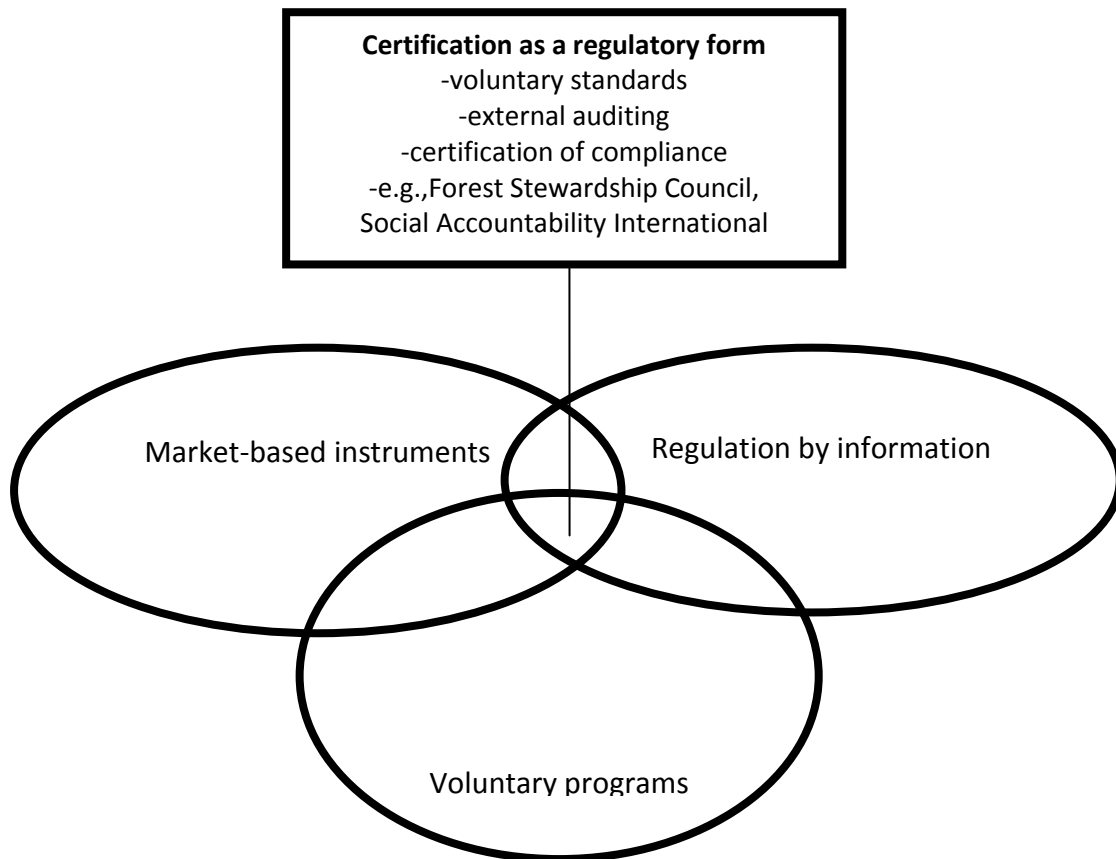


Figure 1: Certification as a regulatory form

Calls to make regulation “market-based” have motivated a variety of policy proposals, from the strengthening of property rights to “cap and trade.” Certification is market-based in that its power to affect behavior derives mainly from market demand. This may come from end consumers practicing “political consumerism” (Micheletti 2003), investors, retailers promoting a particular brand image, or the procurement/licensing policies of large organizations (e.g., governments, universities) (Seidman 2007). In any case, the “price” of non-compliance is set by market forces, not by administrative authority. Certification does not embrace market mechanisms as fully as cap and trade, which uses markets not only to set the price of pollution but also to identify the

most efficient ways for firms to improve their performance. Because certification initiatives set particular performance standards, they rely on market forces while also inserting alternative “conventions” (Renard 2003) or “orders of worth” (Boltanski and Thévenot 2006) based in some non-market form of expertise or morality.

Certification also resonates with ideas about “regulation by information.” Scholars are increasingly investigating the effects of disclosure, reporting, and public rating, whether related to pollution, financial markets, or universities (Espeland and Sauder 2006; Rona-Tas forthcoming). As Fung et al. (2007) point out, a core feature of information-based initiatives is that the application of rewards and penalties is left to external audiences, which includes not just consumers, but also citizens, workers, and advocacy organizations. Viewing certification in this light suggests that its enforcement might happen not only within markets but through political and legal mobilization. Yet unlike programs that disclose relatively “raw” data or grade performance on some scale, certification reveals an aggregated, discrete judgment. In contrast to *mandatory* disclosure initiatives, certification only generates “positive” information on firms that choose to participate and meet the standards. For both of these reasons, certification is a very circumscribed form of regulation by information. If standards or auditing are especially lax, certification may even generate “disinformation” in the form of “greenwash” labeling.

Social and environmental certification initiatives are also types of voluntary programs. As in all voluntary programs, whether publicly or privately run, firms must have some incentive to join, which creates a tension between stringency and participation (Potoski and Prakash 2009). Furthermore, since most certification programs are privately run (with the exception of government sponsored ecolabels),

they face challenges of establishing authority while still garnering support from firms (Cashore, Auld and Newsom 2004). Combined with the fact that participants can easily exit and develop their own standards (discussed later in this), this sets up a complex politics of credibility (Boström 2006). Certification programs can be differentiated from other common forms of voluntary regulation primarily in terms of monitoring and validation. While many codes and principles of good conduct (e.g., industry codes, Global Compact) lack monitoring or rely solely on self-reporting, the certification programs discussed here typically include third party systems for monitoring performance “on the ground.” In contrast to those codes that do require external auditing, certification systems go one step further in using that auditing to award a “seal of approval” of some sort.

Scholars sometimes refer to certification as “soft law.” Though certification lacks “hard” enforcement powers, calling it soft law is in many respects misleading. The core idea behind “soft” forms of governance is that behavior can be affected by stimulating informal social pressures, deliberation, and learning within the community of the regulated (Schneiberg and Bartley 2008). Often, this means jettisoning “standards” in favor of guidelines and evolving systems for peer review and benchmarking. In contrast, certification systems tend to embrace standards and develop detailed indicators for auditing. In this sense, they depart from soft law advocates’ focus on dialogue among firms, though some certification associations might use collective deliberation to revise their standards over time.

In sum, certification resonates with a range of ideas about how markets and information can be used as regulatory tools, as well as broader shifts toward voluntary

programs and private governance. Yet ideas alone did not spawn certification, and its impacts may be far different than what advocates of regulatory innovations suggest.

The rise of social and environmental certification

Social and environmental certification is not entirely new. Progressive-era activism over tenement sweatshops in the US led to the National Consumers' League "White Label," which certified garments "made under clean and healthful conditions" from the 1890s to early 1920s (Sklar 1998). This gave way to the "union label" promoted by American organized labor in the mid-20th century (Frank 1999). Consumer watchdogs that emerged in the 1920s—such as the forerunner to *Consumer Reports*—initially included labor standards in their ratings of products, though this later got sidelined by an "impartial testing" approach focused narrowly on quality (Rao 1998).

For the most part, certification efforts in the 20th century focused on product quality, safety, or technical standards. The Underwriters Laboratories (UL) label signified electrical safety for the American market (Cheit 1990)—as did similar certificates in other countries. The International Organization for Standardization (ISO), founded in 1947, promoted certification to a wide range of technical standards to facilitate global trade (Murphy and Yates 2009). In one move toward the expansion of certification into new terrain, the ISO began developing standards for management systems (ISO 9000) in the 1980s and for environmental management systems (ISO 14001) in the 1990s.

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The current wave of social and environmental certification purports to go beyond management systems, however, to assess whether practices “on the ground” conform to standards for sustainability or social justice. Much of the inspiration for this wave came from organic agriculture. As a movement of farmers, organics can be traced to the 1930s, but it was in the 1970s that *certification* of organic food began in the US and Europe (Guthman 2004) and standards began to be developed by the International Federation of Organic Agriculture Movements (IFOAM). Government sponsored ecolabels also began to emerge in the 1970s, starting with Germany’s Blue Angel label (Gulbrandsen 2005). Fair Trade certified coffee and bananas first came on the market in the late 1980s, as a result of partnerships between Northern activists and farmers in Central America, and drawing on an older tradition of alternative trading organizations (Jaffee 2007; Linton, Liou and Shaw 2004).

With organics, Fair Trade and various government eco-labels as partial models, a major wave of certification arose in the 1990s, with the founding of programs like Rugmark, the Forest Stewardship Council, Social Accountability International and Marine Stewardship Council. It is this wave of certification that has most captured the attention of social scientists. Scholars tend to agree that the rise of certification is in some fashion a response to the globalization of production and consumer concerns about exploitation. But beyond this baseline, attempts to explain the emergence of certification tend to follow two different tracks.

One style of explanation is rooted in theories of self regulation and private ordering among firms (King, Lenox and Terlaak 2005; Potoski and Prakash 2009), drawing inspiration from institutional economics and public choice theory. By this account, certification is a solution to information asymmetries and collective action

problems, which arise via activist “naming and shaming” of firms as well as consumers’ interest in “shopping with a conscience.” As activists put companies in the spotlight for exploiting workers or ecosystems, companies begin to make a variety of claims of social or environmental responsibility. Conscientious consumers may be interested in supporting responsible companies but find it difficult to assess the accuracy of their self-serving claims. Given this information problem, the market for responsible production is expected to fail unless credible systems of certification can be created to separate the “wheat from the chaff” (Akerlof 1970; Viscusi 1978). For their part, companies face collective action problems that certification has the potential to solve. In particular, theorists of the “reputation commons problem” (King, Lenox and Barnett 2002) and similar accounts (Potoski and Prakash 2009), argue that naming and shaming campaigns leave entire groups of companies “tarred by the same brush.” One way to address this problem is to construct external systems of certification. These can distinguish the good apples from the bad, provide “club benefits” to firms that contribute to an improved reputation, exclude free riders, and stabilize competition among leading firms (Potoski and Prakash 2009; Spar and Yoffie 2000).

A second account views certification less as a solution to problems in the market and more as a political settlement and institution-building project (Bartley 2007b; Cashore, Auld and Newsom 2004). Here, following Polanyi (1944), scholars see markets as deeply embedded in social structures and unlikely to self-regulate effectively. The pressures to re-embed markets in social relations that have typically generated state regulation are increasingly giving rise to private certification initiatives (Guthman 2007; Reynolds 2000), as political challenges are mobilized,

channeled into particular arenas (i.e., markets), and crystallized into institutional arrangements. As social movements demand standards that can somehow regulate global supply chains, questions arise about the appropriate arena for this. Standards can conceivably be institutionalized in national governmental regulations or in inter-governmental agreements or organizations (e.g., trade agreements, UN, WTO). Yet the strategies of states and NGOs in a context of neoliberalism have tended to channel regulatory politics over international labor and environmental standards to the private sector (Bartley 2007b). Unlike governments, private certification initiatives are relatively immune to WTO restrictions on non-tariff barriers to trade (Bernstein and Cashore 2004). Private efforts have also been perceived by many NGOs as a way to bypass political roadblocks (Cashore, Auld and Newsom 2004; Seidman 2007) and by many powerful governments as consistent with a neoliberal agenda. So by this account, the rise of certification results largely from a kind of forum-shifting by policy entrepreneurs, congealing into a relatively coherent institution-building project with support from government agencies and philanthropic foundations (Bartley 2007a).

As Bartley (2007b) shows, both theoretical perspectives can help to explain the rise of certification, though neither does so perfectly. The theory of certification as a solution to problems within markets explains the role of firms in the coalitions that created several leading initiatives (like FSC and SAI). This perspective can also help to explain why private regulatory initiatives take different forms (i.e., certification instead of self regulation without sanctions). But it tends to overstate the causal influence of capitalist collective action and consumer demand. Industry associations have often developed certification systems, but in nearly every case, this

occurs *after* the development of an NGO-endorsed system in a particular sector. Substantial consumer demand more commonly follows than leads the formation of certification initiatives (Conroy 2007; Gulbrandsen 2006; McNichol 2006), though there is clearly variation between sectors (like coffee) where consumer demand grew rapidly and those (like forest products) where “market building” campaigns have struggled to stimulate consumers.

Political theories explain why NGO-endorsed programs were the initiators in most sectors and how NGOs, governments, and foundations played major roles in developing them. WWF, for instance, became a key developer of the FSC following disappointments in the UN and other inter-governmental arena, then went on to catalyze or cultivate numerous other certification initiatives, including the MSC and the Roundtable on Sustainable Palm Oil. Governments in Europe and North America provided important early funding for most forms of certification and have sometimes turned their procurement policies into key market drivers. On the other hand, this political account has less to say about the precise form that private regulation takes or the conditions under which firms and consumers might expand their participation in certification. Further inquiry can help to clarify the explanatory scope of these theories and consider ways of integrating them.

Competition and evolution

The evolution of social and environmental certification has been dynamic and contentious. Many sectors feature multiple, competing initiatives. Competition appears to be an inherent feature of private certification, since firms that are

dissatisfied with one initiative can exit for a different program or start their own (Seidman 2007). Not surprisingly, competition between NGO-endorsed programs and those originating with industry associations has been especially intense. Competition between the FSC and industry-based programs like SFI and the Programme for the Endorsement of Forest Certification (PEFC) has led to public relations wars (e.g., “Don’t buy SFI” campaign), strained relationships in the conservation community, and a series of public comparisons of standards. Similar patterns of competition exist among labor standards initiatives (e.g., SAI, the Fair Labor Association, and WRAP) and increasingly in the coffee sector, where multiple initiatives certify fairness and sustainability (including Fair Trade, Rainforest Alliance, Utz Kapeh, and the Common Code for the Coffee Community).

Given the existence of competing programs, it would appear that certification would be plagued by a “race to the bottom,” leading to an overall decline in the stringency of standards. Yet at least two other trajectories are also possible: Competition might breed a “ratcheting up” of standards, generated by credibility contests, or by learning and benchmarking in the world of certification (Sabel, O’Rourke and Fung 2000). Or, multiple programs might co-exist (without one undermining another), especially if the markets they target are segmented.

The conditions under which competition breeds laxity, ratcheting up, or market segmentation are not yet clear. However, it is clear that in at least some circumstances, competition has not undermined relatively strong standards. In forestry, the FSC was able to fend off industry-based challenges in some regions (especially those with export-dependent forest products industries, weak industry associations, and high degrees of public involvement in forest policy) (Cashore, Auld

and Newsom 2004). Furthermore, public comparisons led industry-based programs to strengthen their standards over time (Overdevest 2010). While some fear that FSC's standards were watered down in the process (Rainforest Foundation 2002), it is at least clear from this case that competition need not produce a net decline in standards, though it might facilitate a "race to the middle."

Evidence from other sectors suggests that a "ratcheting up" of standards may not always translate into improvements in implementation. While best practices for labor standards auditing and certification have arguably improved over time—consistent with Sabel et al's (2000) account—initiatives in this sector have also increasingly struggled with audit fraud, falsified records, and recalcitrance (Locke, Amengual and Mangla 2009). This reminds one that standards "on paper" and norms in the certification community may be strengthened over time without necessarily generating improvements at the point of production.

Conflicts over credibility in the world of certification have also bred a variety of meta-standardization activities, that is—standards for the standard-setters and certification of the certifiers. This includes the ISO 65 standard for certification systems themselves and umbrella groups like the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance. Such initiatives appear to be facilitating both greater interconnectedness among certification initiatives and greater homogeneity in their organizational form (Bartley and Smith forthcoming). This kind of meta-standardization signals the crystallization of certification as a mode of regulation, though it also poses difficulties for implementing certification equitably across diverse local settings (Mutersbaugh 2005).

Impacts of certification

Serious questions remain regarding the consequences of certification initiatives. Are their impacts, transformative, marginal, or non-existent? How are standards “on the books” put into practice? Might certification have unintended, perverse consequences? The research literature is too undeveloped to offer full answers to these questions. However, it is clear that the transformative power heralded by many champions of certification and political consumerism is both over-simplified and over-stated. Far from transcending socio-economic conflicts, power struggles, and governance failures, even the most credible certification program’s operation is deeply influenced by configurations of power and interest at the local, national, and transnational levels. In one striking example, Ponte (2008) shows how MSC certification in South Africa was appropriated by white-owned fishing groups to maintain market control and exclude black-owned companies. This sort of finding reminds one that certification does not operate in a vacuum and may have wide range of effects, both intended and unintended.

The difficulties of assessing certification’s impacts are partially methodological. Identifying causal impacts poses serious data and research design challenges—including accessing appropriate negative cases for comparison (i.e., uncertified firms) and problems of self-selection (i.e., better-performing firms choosing to get certified) (Hiscox, Schwartz and Toffel 2009). Furthermore, some impacts of certification may arise over long periods of time (Bernstein and Cashore 2007), raising additional challenges for researchers.

Nevertheless, several findings about impacts have been rigorously established: ISO 14001 certification increases US facilities' compliance with government regulations for air pollution (Prakash and Potoski 2006). Fair Trade certification increases the household nutrition and satisfaction of coffee farmers in Kenya (Becchetti and Costantino 2008). Other analyses have found important differences between certified and conventional producers—as with the prices received by coffee farmers participating in Fair Trade or organic certification (Bacon 2005; Jaffee 2007)—even though questions about causality and countervailing costs remain (Mutersbaugh 2005). In many other instances, however, comparisons of certified and uncertified firms have found differences that are small or ambiguous (Agnew et al. 2006; Lima et al. 2009; Sharma, Sharma and Raj 2000).

The difficulty of assessing certification's impact is also partly theoretical. Scholars have often glossed over or conflated the *variety* of processes through which certification might shape the conditions of production. A closer look at five conceptually distinct but empirically overlapping “mechanisms of influence” can shed further light on the significance and limits of certification.

First, managers may improve particular production practices in order to get (or stay) certified. Studies of forest certification under the FSC, for instance, show that essentially all certified operations have been required by auditors to make some changes (Gullison 2003; Klooster 2006; Newsom, Bahn and Cashore 2006). This may mean altering harvesting or conservation practices, though most commonly it means adopting managerial processes that may not necessarily translate into behavioral changes (Nussbaum and Simula 2004). Research on fisheries certification similarly finds that the changes required by auditors are numerous but only

occasionally linked directly to discernable “on the water” outcomes (Agnew et al. 2006).

Although much research assumes that spurring managerial improvement is the only way in which certification matters, this ignores several other potentially important processes. Even if it does not cause a *change* in behavior, certification may matter if it provides support for alternative production models (like cooperatives or community-based organizations) or firms that are already “above the bar.” Fair Trade certification has boosted the incomes of coffee cooperatives (Bacon 2005; Jaffee 2007), and forest certification has sometimes helped community forestry operations improve access to markets and financing (Klooster 2006; Nebel et al. 2005). Furthermore, this support may generate demonstration effects in which alternative practices spill over from certified to conventional farms—as has happened with some organic farming methods (Jaffee 2007).

Third, certification could conceivably shape dispersed decisions about investment or land use. For instance, supporters of forest certification have often hoped that by building markets for certified forest products, they could reduce the incentives for large-scale clearing of forests for conversion to agriculture (Johnson and Cabarle 1993). In theory, if certification adds value to socially just or environmentally friendly practices, this could reduce the relative profitability of the most exploitative practices. Yet there is little evidence that this hypothesized influence has actually occurred. Whatever premiums exist for certified products appear far too small to significantly reduce the incentives for exploitative investment and land use. Forest certification has rewarded firms that are already managing forest land for wood and paper production, but the reward has proven far too small to

discourage others from converting forests to plantations or cattle pasture (Gullison 2003). Neither does sustainable fisheries certification appear to have altered the fundamental calculus of the industry, as yields and ocean biodiversity have continued to decline (Worm et al. 2006). The ability of certification to alter the logic of resource exploitation throughout a sector appears to be quite limited at the current time.

A fourth mechanism of influence comes through certification's interaction with social movements and transnational activism. Certification may provide a platform for challengers to expose exploitative practices or mobilize global forces to rectify local injustice. Under some conditions, activists may be able to *leverage* certification to *force* changes that companies would otherwise resist. Labor rights activists have occasionally leveraged transnational standards to gain recognition of insurgent unions, although this strategy has only rarely been successful (Barrientos and Smith 2007; Rodríguez-Garavito 2005). Engagement with certification may also carry dangers of co-optation and de-radicalization (Hughes 2007). More research is needed to assess the conditions under which social movement leveraging of certification can bring about significant changes.

Finally, certification may shape the conditions of production by influencing public authority and government regulation. The direction of this influence is the subject of much debate. Some scholars worry that even if certification spurs marginal improvements, its net effect may be negative if it crowds out more powerful interventions, like the strengthening of state capacities and citizenship rights. Seidman (2007) argues that Rugmark certification has deflected attention from the Indian state's complicity in child labor and from more promising strategies for reducing it. Vandergeest (2007) suggests that effective local regulation of shrimp

aquaculture in Thailand is being crowded out—or at least ignored by—sustainable shrimp certification initiatives. Yet other scholars see certification and government regulation as complementary. Some work suggests that the expansion of private auditing may allow government agencies to focus their limited resources on other parts of the market, thus generating a kind of “uncoordinated complementarity” (Amengual 2010). In other cases, government regulation may explicitly endorse certification or provide regulatory relief to certified operations, as has happened with forestry law in several countries (Nebel et al. 2005; Pattberg 2006). Another account of complementarity suggests that firms that have been certified to high standards may participate in “Baptist-bootlegger” coalitions that lobby for increased regulatory stringency (Bernstein and Cashore 2007; Vogel 2005). Much work remains to be done to understand how certification and governments complement or contradict one another, especially at the point of production in developing countries.

Overall, the ascendance of certification as a mode of regulation—especially for transnational supply chains—has opened up a variety of questions for scholars of regulation. This paper has sought to guide scholars interested in further developing this literature and citizens and policymakers interested in understanding the character and limits of the certification model. Most importantly, the has shown that what may look like a simple consumer label is a complex set of institutional arrangements, intertwined with states, transnational governance, social movements, and the organization of communities and workers in developing countries. Unpacking the “certification revolution” means taking each of these factors seriously.

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