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# Experimentalist Governance

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# Abstract

A secular rise in volatility and uncertainty is overwhelming the capacities of conventional hierarchical governance and 'command-and-control' regulation in many settings. One significant response is the emergence of a novel, 'experimentalist' form of governance that establishes deliberately provisional frameworks for action and elaborates and revises these in light of recursive review of efforts to implement them in various contexts. Robust examples can be found in the United States and the European Union (EU) in domains ranging from the provision of public services such as education and child welfare to the regulation of food and air-traffic safety, and the protection of data privacy, as well as in transnational regimes regulating, for example, global trade in food and forest products. In this chapter we analyze the properties of these experimentalist governance processes, and show how their distinctive mechanisms for accountability, monitoring, and compliance enforcement respond to the demands of a world in which precise policy goals and methods of achieving them cannot be determined ex ante, but must instead be discovered in the course of problem-solving. By way of conclusion, we

contrast conventional and experimentalist governance approaches to the problem of power disparities, and discuss the distinctive way experimentalist reforms aim to overcome such structural barriers to change.

# Short Bios

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# Transnational Transformations: The Emergence of Experimentalist Governance

Far-reaching transformations in the nature of contemporary governance are underway, within and beyond the nation-state. They can be observed across multiple levels and locations, from the reform of local public services such as education and child welfare to the regulation of global trade in food and forest products. At the heart of these transformations is the emergence of what may be called 'experimentalist governance', based on framework rule-making and revision through recursive review of implementation experience in different local contexts. Robust examples can be found in many jurisdictions, including the United States and the European Union (EU). In this chapter we analyze the properties of these experimentalist governance processes.

Most generally, put in terms applicable to public regulation of private firms as well as provision of education and other services by public institutions, experimentalist governance is a recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing them in different contexts. (We use 'recursive' here in the sense familiar from mathematics and computer science, whereby the output from one application of a procedure or sequence of operations becomes the input for the next, so that iteration of the same process produces changing results.) Experimentalist governance in its most developed form involves a multi-level architecture, whose four elements are linked in an iterative cycle. First, broad framework goals and metrics for gauging their achievement are provisionally established by some combination of 'central' and 'local' units, in consultation with relevant civil society stakeholders. Examples of such framework goals, to which we will refer in this chapter, include 'good water quality', 'safe food', an 'adequate education', and 'sustainable forests'. Second, local units are given broad discretion to pursue these goals in their own way. In regulatory systems, the 'local' units will typically be private actors such as firms or the territorial authorities (state regulators in the US; or member state authorities in the EU) to whom they immediately respond. In service-providing organizations, the 'local' units will typically be frontline workers, such

as teachers, police, or social welfare workers, or the district or regional entities supervising them.

But, third, as a condition of this autonomy, these units must report regularly on their performance and participate in a peer review in which their results are compared with those of others employing different means to the same ends. Where they are not making good progress against the agreed indicators, the local units are expected to show that they are taking appropriate corrective measures, informed by the experience of their peers. Fourth and finally, the goals, metrics, and decision-making procedures themselves are periodically revised by a widening circle of actors in response to the problems and possibilities revealed by the review process, and the cycle repeats (Sabel and Zeitlin 2008, 2010b; Sabel and Simon forthcoming).

Governance processes organized according to these principles may be considered experimentalist in the philosophical sense of American pragmatists like John Dewey (1927) because they systematically provoke doubt about their own assumptions and practices; treat all solutions as incomplete and corrigible; and produce an ongoing, reciprocal readjustment of ends and means through comparison of different approaches to advancing common general aims (Sabel 1994, 2005). These governance processes may also be considered a form of 'directly deliberative polyarchy' (DDP). They are *deliberative* because they use argument to disentrench settled practices and open for reconsideration the definitions of group, institutional, and even national interest associated with them. They are *directly deliberative* because they use the concrete experience of actors' different reactions to current problems to generate novel possibilities for consideration rather than buffering decision-makers from mundane experience, the better to elicit their principled, disinterested response to abstractly posed problems. And these governance processes are *polyarchic* because, in the absence of a central, final decider, their constituent units must learn from, discipline, and set goals for one another (Cohen and Sabel 1997, 2003; Sabel and Gerstenberg 2002; Sabel and Zeitlin 2008, 2010a).

Experimentalist governance architectures of this type have become pervasively institutionalized in the EU across a broad array of policy domains. These stretch from regulation of energy, financial services, and competition through food and drug safety,

data privacy, and environmental protection to justice and internal security, anti-discrimination, and fundamental rights. They take a variety of organizational forms, including networked agencies, councils of national regulators, open methods of coordination, and operational cooperation among front-line officials, often in combination with one another (Sabel and Zeitlin (2008, 2010). Governance architectures with similar properties are also widespread in the US, both in the reform of public services like education and child welfare, and in the regulation of public health and safety risks, such as nuclear power, food processing, and environmental pollution (Sabel and Simon forthcoming).

# Experimentalist Governance in Action

The experimentalist architecture in regulation is well illustrated by the EU Water Framework Directive (WFD) and its Common Implementation Strategy (CIS). This legislation was adopted in 2000 after years of intense negotiation and replaces seven detailed prescriptive directives from the 1970s with a single broad, overarching regulatory framework (Holder and Scott 2006; von Homeyer 2010; Sabel and Zeitlin 2008: 309-10, 315). The directive aims to improve the quality and sustainability of water resources across the EU through integrated management of river basins, while requiring member states to achieve 'good status of water quality' by 2015. The concept of 'good water status' is explicitly open-ended, with the methods, tools, metrics, and values for its assessment to be developed through the implementation process. The WFD also requires member states to 'encourage the active involvement of all interested parties' in its implementation, particularly in the 'production, review, and updating of…river basin management plans' (Barreira and Kallis 2003: 102).

Central to the implementation process is an institution not formally envisaged in the directive itself: the Common Implementation Strategy (CIS). Conceived by national Water Directors and agreed by the European Commission, the CIS is designed to help member states implement the WFD and avoid regulatory conflicts arising from incompatible approaches. Its primary outputs are non-binding technical guidance documents, such as indicators and values for measuring water quality and defining 'good' water status. These are supposed to be 'developed in a pragmatic way based on

existing practices in member states', embodying best available knowledge, and are conceived as 'living documents' subject to ongoing review and updating. But member states are also obliged to submit regular reports on the implementation of the directive, including both river basin management plans and programs for monitoring water status. The Commission in turn produces its own regular implementation reports, including reviews of EU water status, surveys of member state plans, and proposals for future improvement, all of which draw on scoreboards and benchmarks developed through the CIS (Holder and Scott 2006: 229-31; von Homeyer 2010: 141-4).

Not only the outputs of the CIS, but also its organizational arrangements are 'regarded as provisional and subject to revision in the light of experience'. CIS activities more generally feed both directly and indirectly into revisions of the WFD. Thus, legislative proposals for new 'daughter' directives are developed 'in a spirit of open consultation' through multi-stakeholder expert advisory fora, with representatives from NGOs, industry associations, and outside experts, as well as from national authorities and the Commission. CIS guidance documents may also be given legally binding status by the Commission, subject to approval by member state representatives under 'comitology' procedures for scrutinizing use of its delegated regulatory powers (Holder and Scott 2006: 231-3, 237; von Homeyer 2010: 144-7).

In both the EU and the US, experimentalist regulation of private economic activity typically seeks to work through public oversight of firms' own experimentalist governance processes or to induce their development where they do not already exist. This approach responds to the widely acknowledged failures of 'command-and-control' regulation in a turbulent, fast-moving world. In such a world, fixed rules written by a hierarchical authority become obsolete too fast to be effectively enforced on the ground, and the resulting gap between rules and practice is bridged by an unaccountable proliferation of discretionary waivers and exceptions. The alternative approach is to build on and monitor firms' own error detection and correction mechanisms by requiring them to develop systematic, verifiable plans for identifying and mitigating possible hazards in their operations in light of available knowledge about safety failures in similar settings (Sabel 2005; Sabel and Simon forthcoming).

A well-documented example is the worldwide diffusion of Hazard Analysis of Critical Control Points (HACCP) systems for ensuring food safety. These systems replace historic command-and-control methods based on periodic 'poke-and-sniff' inspections of finished products for compliance with minimum health standards. HACCP, by contrast, is a process-based approach, whereby firms are required to analyze their entire production chain for potential hazards; identify critical points where contamination may arise; develop a testable plan for controlling and reducing such hazards; monitor its implementation, verify the results, and take remedial action to correct any performance shortfall. Public authorities review the adequacy of these plans and verification procedures. They may then require their revision to meet rising health and safety standards established by the best performers, although the precise regulatory arrangements vary widely. Increasingly, too, such regulation extends beyond individual firms to require full traceability of products throughout the supply chain (Zeitlin 2011: 7-10; Sabel 2005: 138; Sabel and Simon forthcoming; Henson and Humphrey 2009). In air-traffic safety systems, or the regulation of nuclear power-generation, this form of hazard analysis is augmented by rigorous event-notification systems, which require local actors to notify the system regulator of 'out-of-control' sequences—near misses, or accidents that only accidentally did not result in catastrophes. The system regulator then reviews the event, collaborates with the local actor to determine its root cause, alerts all other actors in the system to the results of the investigation and potential threats to their own operations, and periodically reviews responses to these alerts (Sabel and Simon, forthcoming).

Analogous developments are evident in the provision of public services or the provision of local public goods in domains such as child protection, health care, both "special" and general education, job training, mental health services, disability capacitation (Noonan et al. 2009), and economic development and community policing (Simon 2001; Fung 2004). The impetus to change is the realization is that services must be customized to the needs of individuals or small groups to be effective (Sabel et al. forthcoming). The new institutions accordingly emphasize highly individuated planning, pervasive performance measurement, and efforts to aggregate and disseminate information about effective practices.

The cornerstone of these new programs is the redefinition of the conventional relation between center and frontline. The center's role is no longer merely to monitor frontline compliance with promulgated standards. It is responsible for providing the infrastructure and services that support frontline efforts. Thus, the role of the principal in the experimentalist school is not just to verify that the teacher's class is studiously at work, but also to organize the specialized services and framework conditions—remedial reading, testing to diagnose learning difficulties, coaching in team building—on which the teacher's team must rely in formulating and implementing individual learning plans. In child welfare, caseworkers rely on a center that trains and otherwise qualifies foster parents, facilitates contracting with outside specialists, and marshals resources that respond to the unexpected needs of particular families or sudden community-wide problems.

The solitary 'street level bureaucrat', whose tacit discretion under the radar of her superiors in the broad interstices of poorly enforced rules has haunted the organizational literature and limited the ambitions of policy makers since 1970s, does not figure in these emerging experimentalist regimes. Experimentalist design departs from the organizational features that gave rise to the street level bureaucrat in three important ways.

First, the ambiguity and complexity of frontline issues, and hence the need for a flexible response, are openly acknowledged. The social professions increasingly see individual problems as functions of multiple and diverse causes that call for interdisciplinary diagnosis and intervention. In the most highly regarded child protective service programs, the case worker's chief responsibility is to form and periodically convene a team that typically includes key family members, a health professional, lawyers for the child and the state, a therapist, and perhaps a teacher (Noonan et al 2009). In schools, analogous interdisciplinary teams—the classroom teacher, the reading specialist, the behavioral therapist—formulate plans for students with learning difficulties. Group decision-making promotes accountability in two ways. Team members act under the scrutiny of a shifting array of peers, which creates informal pressures to avoid error and excel. Furthermore, collaborative decision requires articulation, and diversity of the team members' background ensures that matters likely

taken for granted in a more homogeneous setting are explained and subjected to examination.

The second feature of experimentalist service provision that distinguishes it from street-level and other bureaucracies is a distinctive form of monitoring. Like event notification practices in experimentalist risk regulation, social services monitoring engages in intensive scrutiny of individual cases to reveal systemic problems. But where event notification is triggered by unexpected disruptions, core monitoring in experimentalist service provision is part of the organizational routine. A particularly well developed example is the Quality Service Review (QSR) used in child welfare programs in Utah and several other states. The QSR begins with selection of a stratified random sample of cases. A two-person team, including an agency official and an outside reviewer, examines the case over two days, beginning with a file review and proceeding to interviews with the child, family members, non-family caregivers, professional team members, and others with pertinent information.

The reviewers then score the case numerically in terms of one set of indicators concerning the well-being of the child and his or her family and a second concerning the capacity to build teams, make assessments, formulate and update plans, and execute the plans. The initial scoring is refined in meetings among the reviewers, and then between review teams and the caseworkers and supervisors whose decisions they have reviewed. The final report presents the aggregate scoring and identifies recurring problems with illustrations of these from specific cases.

The QSR is both a process of norm elaboration and compliance enforcement. Agency goals like child safety and family stability (‘permanence’) are indeterminate in the abstract. The QSR helps establish paradigmatic instances of their meaning and the processes for achieving them. Participation by officials from the child welfare department’s central administration promotes consistency across regions. Similarly, QSR data measures performance and helps diagnose systemic problems. The scores can be compared over time, giving rough but serviceable indications of where to focus remedial effort (Noonan et al. 2009; Sabel and Simon forthcoming).

Third, rules have a different relation to accountability in experimentalist administration than in conventional governance. Workers often have discretion to

depart from rules where they believe it would be counter-productive to follow them. This discretion, however, is limited by the requirement that she do so transparently in a manner that triggers review and, if her judgment is sustained, prompt re-writing of the rule to reflect the new understanding. These regimes challenge the premise of the street-level bureaucracy literature that the only escape from the rigidity of mechanical rule following is low-visibility, *ad hoc* frontline discretion. Instead of the familiar combination of rules and furtive discretion they rely on what might be called 'dynamic' accountability, in which actions are justified, or compliant, if they can plausibly explained as efforts to advance organizational purpose, well informed by reflection on the best efforts of actors currently responding to like situations.

As these examples suggest, the proliferation of experimentalist governance processes across different sectoral and institutional settings can be understood as a widespread response to a secular rise in environmental volatility and complexity over the past few decades. Some of this can be linked directly to globalization, such as the problems of managing transborder common-pool resources like water or of ensuring the safety of imported food and other products as they move through transnational supply chains. In other cases, the transnational connection is only part of the story, as with the accelerating pace of technological innovation, which has undermined the effectiveness of 'command-and-control' regulation in many industries, or the diversification of household and family structures, employment patterns, and populations that have reduced the effectiveness of standardized public services in fields like education and child welfare. But whatever the precise combination of transnational and domestic factors, the resulting increase in *strategic uncertainty* has overwhelmed the capacities of conventional hierarchical management and principal-agent governance in many settings. The foundation of principal-agent governance is monitoring of conformity to fixed rules and detailed instructions by subordinate agents, incentivized through positive and negative sanctions—rewards and punishments, in ordinary language. In a world where 'principals' are uncertain of what precisely their goals should be and how best to achieve them, they must be prepared to learn from the problem-solving activities of their 'agents'. Hence 'principals' can no longer hold 'agents' reliably accountable by comparing their performance against predetermined rules, since the more successful

the latter are in developing new solutions, the more the rules themselves will change (Sabel 2004, 2005; Sabel and Zeitlin 2008, 2010a).

Experimentalism correspondingly diverges not only from conventional hierarchical governance, but also from other contemporary reform movements focused on reinforcing principal-agent relations, whether from the top-down, as in the New Public Management (NPM), or from the bottom-up, as in devolved or 'interactive' governance. Experimentalism is based neither on a sharp separation between policy conception and administrative execution as in conventional hierarchical governance and NPM, nor on their fusion in the hands of local communities or citizens' councils as in interactive governance (Sabel 2004). Instead, it is based on the reciprocal redefinition of ends and means through an iterated, multi-level cycle of provisional goal-setting and revision, thereby giving structure to apparently fluid practices of 'network governance'.

Very generally, experimentalist 'dynamic accountability', which anticipates the transformation of rules in use, offers a potentially effective response not only to contemporary challenges of strategic uncertainty, but also to longstanding legitimacy deficits of principal-agent governance within the nation-state itself. For it is an open secret of the modern administrative state that neither legislatures nor courts have ever fully succeeded in controlling the discretionary exercise of delegated bureaucratic authority in complex technical fields such as regulation and service provision. By obliging administrative authorities to justify their choice of rules publicly, in light of comparable choices by similarly placed peers, the dynamic accountability of experimentalist governance allows old and new political actors of all kinds to contest official proposals on the basis of much richer information about feasible alternatives than has been traditionally available. In this way, experimentalist governance processes, though not intrinsically democratic in themselves, have a potentially democratizing destabilization effect on domestic politics, especially in transnational settings such as the EU. But whether the potential participants make use of the possibilities thus created, and what effects this may have on public decision-making if they do, remain empirical as much as theoretical questions (Sabel and Zeitlin 2008, 2010a; Sabel and Simon 2004, forthcoming).

Experimentalist governance can be understood as a machine for learning from diversity. It is thus especially well-suited to heterogeneous but highly interdependent settings like the EU. There, local units face similar problems and can learn much from each another's efforts to solve them, even though particular solutions will rarely be generalizable in any straightforward way. In this sense, experimentalism transforms diversity from an obstacle to integration into an asset for its advancement. If strategic uncertainty is one scope condition for experimentalist governance, then another is a polyarchic or multi-polar distribution of power, where no single actor has the capacity to impose her own preferred solution without taking into account the views of others. Because the EU has had to face problems of rising strategic uncertainty under conditions of deep internal diversity and firm polyarchic constraints, it appears to have found its way more quickly and consistently than other polities to experimentalist solutions (Sabel and Zeitlin 2008, 2010a).

Experimentalist governance in the EU is not confined to policy fields where the Union has weak competences and produces mainly non-binding guidelines, action plans, scoreboards, and recommendations. Recent research has shown that the experimentalist architecture of framework rule-making and revision outlined earlier is also well-developed in domains where the EU has extensive legislative powers. Examples include energy, telecommunications, financial services, competition, data privacy, drug authorization, food safety, environmental protection, and anti-discrimination rights. In many such cases, the EU's experimentalist decision-making architecture regularly results in the elaboration of revisable standards mandated by law and the enunciation of new principles which may eventually be given binding force, as in the WFD and CIS. In others, the ensuing changes may influence only the behavior of national administrations, with no immediate impact on the legal framework of the EU itself (Sabel and Zeitlin 2008, 2010).

Either way, however, dynamic accountability in EU experimentalist governance does not operate through moral suasion or 'naming and shaming' alone. Participation in its processes and respect for its outcomes are underpinned by an ensemble of devices that may be called destabilization regimes: mechanisms for unblocking impasses in framework rule-making and revision by rendering the current situation untenable while

suggesting—or causing the parties to suggest—plausible and superior alternatives. Some of these mechanisms operate directly, like the requirement to provide public justification for disagreements over scientific risk assessments in EU food safety, or the right to challenge the handling of individual cases by national authorities in the new European Network, which extends horizontally to other members of the network as well as vertically to the Commission (Vos 2010; Dąbrowska 2010; Svetiev 2010; Sabel and Zeitlin 2010a: 13-14). Other destabilization mechanisms, like the penalty default, work indirectly. Rather than obliging the parties to deliberate, the central authority creates stiff disincentives for refusal to do so, by imposing rules sufficiently unpalatable to all parties that each is motivated to contribute to an information-sharing regime that allows fair and effective regulation of their interdependence. In a world where standard rule-making produces such unpredictable consequences as to be unworkable, the easiest way to generate penalty defaults is to (threaten) to engage in traditional rule-making (Sabel and Zeitlin 2008: 305-9; Sabel and Simon forthcoming; Karkkainen 2006). A well-documented example can be found in EU energy policy. There the Commission has periodically threatened to invoke its delegated regulatory and competition law powers to spur member states and private actors to cooperate in framework rule-making (Eberlein 2010; Sabel and Zeitlin 2010a: 14-16.)

Yet even where such destabilization regimes draw on official authority to induce participants to explore novel possibilities and respect the outcome of informed deliberation, they cannot be assimilated to the conventional idea of bargaining in the 'shadow of hierarchy.' In that view the parties compare two knowns: the value of the payoff to each of the officially imposed solution, and the value of the jointly bargained outcome. They prefer their bargain because it makes both better off than the official solution. But bargaining under conditions of strategic uncertainty, the parties compare two unknowns. The hierarchical authorities are no longer credibly able to take over the regulatory functions directly. They can in effect promise only to make things unworkable: the penalty default is a warning, *in terrorem*, of an incalculable harm. Nor can the regulated parties precisely calculate the payoff they may eventually achieve through mutual engagement: They would not face strategic uncertainty if the outcome of their joint problem solving was ex ante knowable. All that is clear is that the parties will have greater control of their fate, and hence greater chances of finding solutions

workable for both, by engaging with each other than by choosing the penalty default. In sum, the experimentalist architecture of EU governance is not 'soft law' in the sense of monitory guidance that can be flouted without consequence; but neither is it traditional 'hard law' of a form derivable from principal-agent rule-making.

# Extending Experimentalism Transnationally

Experimentalism appears particularly well-suited to transnational domains, where there is no overarching sovereign with authority to set common goals even in theory, and where the diversity of local conditions and practices makes adoption and enforcement of uniform fixed rules even less feasible than in domestic settings. Yet the very polyarchy and diversity that make experimentalist governance attractive under such conditions can also make it difficult to get a transnational regime off the ground. Thus, too many participants with sharply different perspectives may make it hard to reach an initial agreement on common framework goals. Conversely, a single powerful player may be able to veto other proposed solutions even if he cannot impose his own.

One possible way forward, though by no means the only one, is for a large jurisdiction like the EU (or the US) to take the lead in extending experimentalism beyond its own borders, for example by unilaterally regulating transnational supply chains as a condition of market access. An obvious danger, however, is that such unilateral extension will produce resentment and resistance by regulatory addressees in other countries, unless they are given a voice in shaping the standards they are expected to meet. Such one-sided extension may also denature experimentalism itself by cutting out the feedback loop between local learning from rule application to rule revision. Hence some further destabilization mechanism may be required to unblock this impasse by opening up such unilateral regulatory initiatives to joint governance by affected parties in other countries.

Here the disciplines of the world trading system may prove unexpectedly helpful. World Trade Organization (WTO) rules permit member states to restrict imports in order to protect public health and the environment. But they also require states wishing to

restrict imports on these grounds to ensure that their proposed measures are non-discriminatory and proportional to the intended goals, take account of relevant international standards, and consult with their trading partners to minimize the impact on affected third parties (Weinstein and Charnovitz 2001; Parker 2001; Scott 2004). These disciplines, when they permit such extensions at all, can thus provide a potential mechanism for transforming unilateral regulatory initiatives by developed countries like the EU into a joint governance system with stakeholders from the developing world, if not a fully multilateral experimentalist regime. This role for the WTO points towards the operation of a more general mechanism, whereby the rules of existing multilateral institutions, though not experimentalist themselves, can nonetheless push unilateral extensions of experimentalism in a more reciprocal direction.

By way of illustration, consider the EU's recent initiative on Forest Law Enforcement Governance and Trade (FLEGT). This innovative initiative is aimed at combating illegal logging, an endemic problem in many developing countries, which depresses prices for legally harvested wood and undercuts the adoption of sustainable forestry worldwide. FLEGT responds to the failure of previous attempts by northern governments to tackle the problem of global forest deterioration by negotiating a binding international convention and imposing unilateral trade restrictions, as well as to the limited take-up of private forest certification schemes in developing countries (Cashore et al 2007). FLEGT seeks to control exports of illegally logged wood by negotiating Voluntary Partnership Agreements (VPAs) with developing countries to create 'legality assurance' licensing systems. These licensing systems are based on jointly defined standards, regular monitoring and performance review, and third-party verification. Local civil society stakeholders participate both in the definition of 'legally harvested wood' and in monitoring its certification, each of which are explicitly conceived as revisable in light of the other. The EU provides development assistance to build up the regulatory capacity of both public and private actors. Agreements with these experimentalist features have been signed with Ghana, Cameroon, Congo-Brazzaville, and the Central African Republic, while negotiations are currently underway with a number of other Asian and African countries (Overdevest 2009; Brack 2010; Lawson and MacFaul 2010; van der Wilk 2010).

To reinforce FLEGT's effectiveness and extend its geographical scope, the EU has enacted legislation requiring all businesses placing wood products on the European market to demonstrate 'due diligence' in ensuring that they had not been illegally harvested, with full traceability throughout the supply chain. Such due diligence can be demonstrated in three possible ways: (1) possession of an export license under a FLEGT VPA; (2) establishment of a private risk management system, with full traceability, risk assessment, and risk mitigation procedures; or (3) participation in a recognized monitoring scheme, based on independent verification of compliance with local forestry legislation. The European Commission, in cooperation with national authorities, is responsible for determining that recognized monitoring bodies are maintaining effective systems of due diligence against illegal logging, including procedures for remediation of violations (Official Journal of the European Union 2010).

The EU's approach to combating illegal logging appears likely to be accepted as legitimate not only by the WTO but also by developing countries themselves, because it offers them an opportunity to participate in a jointly governed system of legality assurance, while imposing reciprocal obligations on European importers. These EU initiatives are likely to interact productively with parallel efforts to control illegal logging by other developed countries, including the US, which lack some of their experimentalist features, while at the same time reinforcing private forest certification schemes and placing them under public scrutiny. They can likewise be expected to have a major impact on China, now the world's largest trader in wood products, which has signed bilateral coordination agreements with both the EU and the US to reduce illegal logging and promote sustainable forestry in developing countries (Brack 2009, 2010; Lawson and MacFaul 2010; van der Wilk 2010).

FLEGT is just one example of how extension of experimentalist regulation along global supply chains, disciplined by the rules of the world trading system, may stimulate the construction of a jointly governed transnational regime involving a multiplicity of public and private actors from developed and developing countries. But other pathways are also possible, and comparison among them is likely to prove fruitful (Zeitlin 2011).

**Experimentalism and Structural Barriers to Reform**

So far experimentalism has been presented largely as a response to strategic uncertainty: the situation where the parties face urgent problems, but know that their preferred problem-solving strategies fail, and therefore are willing to engage in joint, deliberative (potentially preference changing) investigation of possible solutions. But there are of course many situations where at least one party with the power to block reform has doubts about the workability of current arrangements, but defends them nonetheless because of the advantages the present system confers on it, but not others, or (when direct benefits are less salient) because potential alternatives threaten cascading disruptions of ways of life long taken for granted. In these cases there are structural obstacles to reform: deep seated features of institutions—hiring policies in firms, admissions policies in schools, sentencing practices in courts—or widespread beliefs—about the kinds of people who are 'reliable' or 'dangerous'—that perpetuate inequalities and the domination of some over others that they express. Because these obstructions are so deep-seated, the concern runs, they are likely to resist, and ultimately to thwart, most efforts at reform. The failure in the waning decades of the last century to improve schools—and especially to improve, through effective schooling, the educational outcomes predicted by a student's social and economic background—was taken as a near-conclusive demonstration of this futility. Experimentalist reforms, however, are proving most promising in some of the domains, such as education, child welfare, and anti-discrimination, where structural obstacles seem most daunting. By way of conclusion, therefore, we briefly contrast conventional and experimentalist responses to the problem of deeply rooted barriers to change.

In the conventional view the best response is to attack the barriers head-on, at the outset. If disparities in power, as evidenced in differential access to authoritative decision makers, will eventually check change, then power-sharing, in the form of some guarantee of equalized access, is the first objective and precondition for reform. Community organizers in the US have honed this strategy to an art, using collaborative 'power mapping' of the decision-making processes in schools or policing to develop the skills of movement leaders, and using skillful leadership to wrest some measure of control from those identified as having it (Oakes et al. 2006). But the general strategy is familiar from the history of the labor movement and the many social movements that arose subsequently. At the limit, expressed in some variants of Marxism, revolution in

the sense of a thoroughgoing change in distribution of the political and economic control rights is the precondition of any fundamental change.

Experimentalism shares with many other 'post-modern' or 'post-sovereigntist' views the assumption that decision-making powers, and structural obstacles to reform are not localized at this or that hierarchical apex. Rather, power relations and other such obstructions are diffused throughout society, and therefore present in every locale. Experimentalism belongs to the 'optimistic' side of the post-modern family of views in holding further that the absence of a controlling hierarchy of authority, explicit or not, suggests not the omnipresence of controlling disciplines, but instead that local changes can have local effects, and that these effects can percolate horizontally and even upwards (Kjaer 2010: ch. 5). Hence the emphasis in experimentalist reforms is on creating space for local innovation—delegating authority for decision making, under conditions of dynamic accountability, to local units and frontline workers—rather than formal power sharing at the institutional apex.

But the contrast between experimentalism and conventional views of reform in relation to power disparities and other structural impediments is less stark than this juxtaposition alone suggests. Experimentalist reforms plainly recognize that many actors will resist creating spaces for local innovation precisely because of attachment to things as they are. Hence the recourse to penalty defaults and other destabilizing devices imposed by courts (as in the case of reform of schools and child welfare institutions in the US), by legislatures (as in the case of US statutes requiring school systems to adopt experimentalist reform programs) or by administrative authorities (as in the EU examples discussed above). The assumption is that given strategic uncertainty and background recognition of the need for renewal out of which it grows, the parties will prefer joint exploration, even if this leads to a change in preferences and the deep-seated behaviors that go with them, to impotent submission to external forces that no one—including the authorities in whose name they are exercised—truly controls. The assumption, in other words, is that structural impediments can best—and perhaps only—be identified and surmounted in the course of a reform process that generates concrete solutions, not in anticipation of it.

There is some important evidence that reforms of this type work even in the presence of what are conventionally regarded as deeply rooted structural obstacles to change. School systems in US cities such as New York, which adopted experimentalist reforms either by explicit political decision or in response to penalty defaults, are significantly improving the learning outcomes of the least well-off students (Kemple 2011). In Finland the national school system, using a variant of experimentalist reform, has achieved overall results that rank at the top of international league tables, while all but eliminating the effect of the parents' social and economic background on the pupil's performance (Sabel et al. forthcoming). But it is still too soon to know whether these successes will be further generalized. And even if they are, questions remain about the inclusiveness of reform. Experimentalist reforms of child welfare often involve the children concerned—for example, as members or even leaders of the teams elaborating plans for their future. But the role of parents in school reforms, or of citizens in experimentalist regulatory systems is less clear. There are related questions about the legislative oversight of experimentalist governance arrangements.

Nonetheless, these open questions and more not withstanding, it is fair to say that experimentalism has created the plausible hope of reform in areas of social life where well-founded concerns about social impediments to change long seemed to allow none.

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