Concerning gold, Tiffany, Wal-Mart and governance: How does variation amongst firms affect the regulatory capacity of nonstate actors?*

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Abstract:
Private actors are creating global governance through their interactions and this raises concerns about the possibility and implications of a movement from public to private authority in the international sphere. If these emerging nonstate arrangements do reflect such a movement, it is paramount to ask what these institutions can hope to achieve. This essay will investigate how variation amongst business actors, even within the same industry, affects the governance arrangements that emerge. This facilitates a preliminary evaluation of what the regulatory capacities of nonstate actors are in the seeming absence of direct state participation. Findings from a firm-level analysis of the US jewellery industry, as the targeted node of the global gold supply chain, are presented to evaluate the argument and investigate the potential and limitations of nonstate governance.

The empirical evidence suggesting that NGOs and firms are creating public policy outside of the legalistic institutions of the state has stoked major debates in International Relations and International Political Economy over the broader implications of such activities. While many have welcomed these events as the rise of a global civil society and the emergence of a 'global public sphere' (Wapner, 1996), others have connected these events to a movement from public to private authority (Cutler et al., 1999) and the further entrenching of a neoliberal hegemony (Ford, 2003). A third perspective argues that both viewpoints overstate the transformational nature of these events by exaggerating the autonomy of 'private' governance from the state and ignoring the variation present within each type of actor (Falkner, 2003).

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While leaving aside for the moment the issue of how private these ostensibly 'private' institutions are, this essay will investigate how variation amongst business actors, even within the same sector, affects the scope of the emerging governance arrangements. This facilitates a preliminary evaluation of what the regulatory capacities of nonstate actors are in the seeming absence of direct state participation. Findings from a firm-level analysis of the US jewellery industry, as the targeted node of the global gold supply chain, are presented to evaluate how variation within this sector influences the power dynamics between these firms and the NGOs targeting them and how this, in turn, shapes the prospects for regulating the industry.

The argument proceeds with a brief definition of private governance before introducing the global gold supply chain and the issues that raise the ire of the environmental community, some of whom have been targeting firms directly to induce them to change their practices. Turning to the jewellery industry, distinctions are made between firms and their relative vulnerability to NGO pressure. The next section focuses on firm responses, with the luxury jeweller *Tiffany* and the discount jeweller *Wal-Mart* serving as cases. The differences in the governance strategies pursued are connected to the different organisational characteristics of the firms and the prospects for each are considered. The conclusion discusses the impact of the findings for the potential and limitations of private governance theory and practice.

Private governance

While nonstate actors may be involved in official, public policy by influencing its formation or engaging in its implementation, 'private' governance refers to nonstate actors creating non-official, public policy through their interactions (Scholte, 2000; Falkner, 2008). These arrangements range from single-firm corporate social responsibility (CSR) policies to certification of products based on the practices undertaken along their supply chain.

CSR policies certainly stretch the concept of governance, but when powerful firms begin dictating non-market norms and rules, systematically shaping practices along multiple supply chains, these practices may well become institutionalised to the extent that they could be considered governance. The example we use from the jewellery industry is *Wal-Mart*'s multi-pronged sustainability initiative, which makes sustainability a critical factor in company procurement and requires suppliers from all sectors to complete sustainability report cards (Vogel, 2005; Esty and Winston, 2006; Heal, 2008).

Social and environmental certification bodies are perhaps the most institutionalised form of nonstate, public policy. Many of these are certainly approaching the status of global governance organisations with the Forest Stewardship Council being the strongest example (Bernstein and Cashore, 2007). As such, the Responsible Jewellery Council (RJC) certification focusing on gold, diamonds and platinum as well as the Initiative for Responsible Mining Assurance (IRMA) certification for all commodities will command the spotlight in this analysis.

What are not considered governance are the strategic calculations of actors or mere cooperation between actors. For the term 'governance' to maintain its analytical power, it must be limited to something more than ad hoc calculations of interest (Falkner, 2003; Pattberg, 2005). As Robert Falkner has argued, 'governance… emerges out of a context of interaction that is institutionalized and of a more permanent nature [where actors]… adjust their behaviour out of recognition of the legitimacy of the governance system' (Falkner, 2003, p. 73).

Additionally, we can think of governance as comprised of two components, an input dimension and an output dimension. Building from Fritz Scharpf's (1999) input-oriented and output-oriented elements of democratic legitimacy, the legitimacy of any governance arrangement can be thought of along these lines. Input legitimacy is a procedural element that refers to how well the governance process incorporates the preferences of its stakeholders. It is about the perceived legitimacy of the governance process. In contrast, output legitimacy considers the functional elements of a governance system and is based on the effectiveness of the outcomes or, as Scharpf has put it, 'achieving the goals that citizens collectively care about' (1997: 19). With governance thus defined, we will now turn our attention to the global gold supply chain.

Global gold

The gold supply chain makes for an interesting and important case for many reasons. As mentioned above, we can observe variation in firm responses to NGO pressure in most industries and the gold supply chain offers a valuable mix of leaders, laggards, and followers for study. There is an active campaign, the *No Dirty Gold* (NDG) campaign, targeting the jewellery industry as the most branded node in the supply chain. This is because gold, and the processes required to meet the demand for it, is socially and environmentally significant on a global scale with vast and variable impacts – especially for developing countries and indigenous populations in areas that produce it. To battle the image of 'dirty gold', the industry has responded in various ways, including cooperating with NGOs on some issues, drafting individual corporate social responsibility policies, and creating industry-led social and environmental certification of the commodity.

Supply of this precious metal comes from all corners of the world and while demand is also geographically varied, it is largely concentrated in one product category: jewellery. Gold was mined by the ancient Egyptians perhaps earlier than 2000 BC and today gold is mined on every continent save Antarctica, where there is an international moratorium on the practice (CRB 2009).[1] There are two mining industries existing side by side, the artisanal mining sector and the large-scale mining sector. The former includes mostly small, local operations while the latter includes some of the largest corporations in the world.[2]

Demand for gold is extremely concentrated with just over seventy percent going to jewellery and the arts, around twenty percent destined for various industrial uses with electronics being the most prominent, and just under ten percent earmarked for dentistry. Therefore, jewellery drives the demand for gold and is thus the focus of market-based NGO campaigns attempting to change practices along the chain. The most prominent campaign has a global focus, but concentrates on targeting jewellers in the US market, for now at any rate. But the creation of a gold ring, for example, is the product of an international affair. The gold may be mined by a Canadian company in South Africa, where the ore is then shipped to a refiner in Dubai, after which the gold bullion is sold by a bullion bank to a gold

[1] Geographically speaking, China has recently overtaken South Africa as the largest producer of gold with 12.7% of the global total, compared to 10.7% for South Africa, 9.9% from the US, 9.7% coming from Australia, and Russia being responsible for 7.1% to round out the top five (CRB 2009).

[2] When Toronto-based *Barrick Gold* acquired Vancouver-based *Placer Dome* in early 2006 it became far and away the largest gold mining company in the world. In 2008, *Barrick* produced 238.3 tonnes of the stuff, with Nevada-based *Newmont Mining* (161.8t) and London-based *Anglo American* (155.0t) a distant second and third, respectively (GFMS 2009).

dealer through the Shanghai Gold Exchange, who then ships it to a manufacturer in Thailand, where it is converted to 18K, made into a ring in accordance with a standing order, and shipped to a gold retailer in the US (example adapted from Solomon and Nicholls 2010: 6). Before discussing the dynamics of the corporate campaigns targeting these firms, it is important to include an additional section on the gold sector as a whole, namely, its environmental and social impacts worldwide.

Impacts of industry and state intransigence

Disagreements abound as to what the net effects of these movements are for the planet and those who inhabit it, but the potential impacts range from driving development and funding social programs to compelling human rights abuses and engaging in environmental destruction. The state is often perceived as either unable or unwilling to mitigate these impacts.

The environmental impacts of gold mining vary with the industry practices employed and the ecosystems in which they take place. Practices differ from one legal jurisdiction to another, from one method of mining to another, and from one company to another. Gold mining moves tonnes of rock, which alters the landscape and creates tonnes of waste rock. Additionally, mining requires great quantities of water, which can lead to distributional conflicts with local communities. It is common practice to use cyanide leaching to extract the ore in hard rock mining and the sludge left over from this process is then stored in enormous tailings ponds where it remains isolated from the ecosystem, barring accident.

The threat of tailings dam collapse is an ongoing liability for companies and the ecosystem for years.

In addition to the environmental impacts of gold mining, there are numerous social impacts, both positive and negative. Gold mining can be a very valuable source of foreign currency for countries and is often the main source for developing countries. Mines bring money and employment to rural communities and contribute to infrastructure while transferring technology and management practices to developing economies. However, there are some downsides. In addition to distributional conflicts over water, for example between farmers and miners, the introduction of a mine often shifts labour from generations old agricultural practices to the higher, but short-term, wages in the mining sector. Relocation, voluntary or otherwise, is common. The opening of a large mine can lead to an influx of male workers and money to a community, which can have disastrous effects, such as an increase in alcoholism, violence and prostitution.[3] The level of environmental and social impact of mining will depend on the quality of governance in the region.

While artisanal mining often takes place in the informal sector beyond the reach of host country regulators, both home countries and host countries struggle to regulate globetrotting mining companies. State sovereignty is often evoked as reason not to regulate companies operating abroad, but economics also factors prominently. Home countries are

[3] There are also many hotly debated macroeconomic issues surrounding a reliance on gold mining for income. Trade in commodities makes up a significant portion of world trade for both developed and developing countries, but this trade is depended on much more heavily by developing countries (Sapsford and Morgan 1994: 5). Reliance on primary commodity production is fraught with risk. Quantities of primary commodities traded tends to grow less rapidly than other goods; therefore, the value of a region's commodities is more dependent on price movements than anything else (Sapsford and Morgan 1994: 5). An additional social impact shared by natural resource-reliant regions is the so-called 'Dutch-disease', part of the resource curse, first introduced by Richard Auty and later expanded upon by Jeffrey Sachs and Andrew Warner among others, the effects of which are well documented elsewhere (Auty 1993; Sachs and Warner 1995).

reluctant to risk the competitiveness of their companies by regulating them in foreign lands and lobbying activities of corporations include explicit threats of relocation and the concomitant loss of jobs and revenue for the state.[4] Host countries often lack the capacity to monitor and enforce existing regulations. Corruption and inefficiencies decimate already inadequate regulatory budgets in many developing countries and so, in lieu of incentives beyond the presence of a particular resource, the pressure to keep costs down can be immense.[5] In the face of government intransigence, nonstate actors from the private sector and civil society have begun exploring alternative modes of governing.

Current nonstate initiatives

Earthworks, a small environmental NGO, joined forces with *Oxfam America* to launch the *No Dirty Gold* (NDG) campaign aimed at targeting retailers of gold jewellery in an attempt to gain leverage in the supply chain that they hoped would eventually trickle upstream to the mining companies themselves, incentivising them to implement practices that the campaign deem to be responsible. The results have been mixed as companies have reacted in diverse ways, from proactive cooperation to deafening silence. Some have joined NDG in publically calling for mining law reform and boycotting gold from certain mines while others have opted to resist involvement. Some have joined multi-sector groups, such as IRMA, or industry-led groups, such as RJC while others have opted to go it alone by devising CSR

[4] An example of these explicit threats by industry can be seen in the lobbying blitz that ended in the demise of the Canadian proposal Bill-300, which attempted to link government assistance (financial and political support via trade commissioners, foreign affairs, Export Development Canada and the Canadian Pension Plan) to the good practices of Canadian companies operating abroad (Koven, 2009).

[5] For developed countries, there are incentives to locate industry within their borders beyond simply low regulatory costs, including proximity to markets, high-grade infrastructure, highly-skilled workers, and political stability, to name but a few. Developing countries that lack many of these tangibles are more susceptible to pressure to keep costs down.

policies and 'green' product categories, developing their own criteria in consultation with more moderate NGOs. The result is a mixed-bag of policies with many divergent views on the effectiveness of any given initiative. While the RJC certification is ploughing ahead despite dissenting voices questioning its input legitimacy (it only has firms as members and only allows NGOs to consult on standards), the IRMA certification is facing problems achieving output legitimacy as it struggles to develop standards with both business and activist groups as members. Large-firm CSR policies and labelling are questioned at both the input and output dimensions of governance as criteria are formulated in-house, in consultation with only select NGOs. Some NGOs accuse these companies of 'greenwashing', insisting these policies are nothing more than marketing campaigns. What is clear is that much of what unfolds depends on the characteristics of the firms involved and the next section details this argument before introducing the cases chosen to illustrate its significance.

Firm variation in the jewellery sector

Variation amongst business actors affects the pressure NGOs can bring to bear, how these firms will respond to such pressure and, when all things are considered, the potential and limitations of regulation by nonstate actors. While it has been demonstrated how a firm's position in the commodity chain affects their vulnerability to NGO pressure (Sasser 2003; Bartley 2003), there is also variation in how susceptible firms are to this pressure within each node of the commodity chain, which also affects the response and policy preferences of firms. While every firm is unique once the organisation is unpacked, it is possible to demarcate some broad typologies across sectors. To illustrate how variation in nonstate actors influences the governance arrangements that emerge from firm-NGO interaction, the jewellery industry is split into two quite distinct business models: firms that specialise in jewellery and compete in the luxury market and firms that sell many products, including jewellery, and operate in the discount or price conscious market. While there are obviously additional differences between firms in this sector, right down to the individual managers, this particular division serves as a stark illustration of why scholars need to pay attention to variation between nonstate actors when evaluating their regulatory capacity and the implications of their seemingly increased role in global governance. The specialty firm in the luxury market is *Tiffany* while the large and diversified discount retailer is *Wal-Mart*, both of which are among the top five jewellers by sales (Datamonitor 2009b). The cases to follow trace the history of these firms' interaction with the NDG campaign, paying particular attention to their response to NGO claims and their preferences for mitigation strategies.

Luxury/specialty case study: Tiffany

Tiffany was one of the prime targets of the NDG campaign from the very beginning. Its name features prominently on the original campaign blueprint, a bar napkin on which the campaign organisers originally hashed out the plan in schematic form, now framed and hanging in the office of the organisation for which Steve D'Esposito, then president of *Earthworks*, now works in Washington DC.

According to D'Esposito, *Tiffany* was in its own category from the very beginning (Personal Communication 20/09/2010a). The campaigners identified high-end jewellers as principal targets because of their brand value. They wanted to raise the threat of damage to brand value to garner the leverage necessary to influence mining practices. They were confident that *Tiffany* would go to bat for its brand and once they had a core of high-end jewellers they would then take this added credibility to the other, lower-end jewellers, armed with a model of how companies had adapted and a gold standard by which to judge all within the industry (Personal Communication 20/09/2010). And *Tiffany*'s name was first on the list.

This was an approach that had already proved effective in other industries, notably the forestry sector where Rainforest Action Network and others targeted large DIY retailers to force them to shift their sourcing strategies away from old growth timber (Bartley 2003; Sasser 2003).

Contrary to the tactics utilised in the forestry case, however, the NDG campaign leaders decided, against the wishes of many in the activist community, to directly approach some of the companies first. This went against the then current logic amongst activists, which was to hit the companies with demonstrations, boycotts, and other forms of negative publicity with the hope of forcing the company to acquiesce to the campaign demands. Approaching the companies beforehand to negotiate, and possibly cooperate, was anathema to activists.

In this case, the campaign leaders decided that leveraging the risk of a shame campaign was worth more than actually pulling the trigger. One of the main concerns was that if they did go through with the planned actions, they ran the risk of losing their leverage. That is, if they held demonstrations outside storefronts and there was no noticeable decline in sales, they would lose the leverage that the threat offered. They felt that the uncertainty and risk itself may in fact be the most powerful motivator (Personal Communication 20/09/2010a).

Once the decision to contact the companies directly was made, the campaign leaders then put their minds to figuring out how to go about doing this. During this process of gathering information on target companies, which included *Tiffany*, *Cartier*, *Bulgari*, and *Rolex* among others, Steve D'Esposito received a call from *Tiffany*. In other words, *Tiffany* approached the activists.

Tiffany explained that they had heard about the campaign and that the company was doing many of the same things – assessing the landscape and trying to make sense of it all (Personal Communication 20/09/2010a). Tiffany, and the industry as a whole, had been caught off guard when the 'conflict diamonds'[6] controversy first surfaced and they were determined to not let this happen again (Wharton 2004). They were going through their supply chain, post conflict diamonds, and evaluating their vulnerabilities. They came up with gold.

Their gold supply chain constituted a considerable latent problem and environmental concerns could potentially pose an even more significant threat than 'conflict diamonds' as conflict diamonds were relatively containable. So *Tiffany* was looking to have a conversation – a move that would have certainly been as appalling to those in the industry as the campaigners' engagement was to other activists.

As Steve D'Esposito explains, *Tiffany* was out in front; they were in their own category (Personal Communication 20/09/2010). They had done their analysis and were completely

[6] 'Conflict diamonds' was the name attributed to diamonds taken from alluvial deposits in African conflict zones, notably Angola and Sierra Leone. They were labelled as such due to the role these diamonds played in funding the brutal campaigns against local populations by armed military groups with kidnappings and forced labour in the mines commonplace. Activist pressure drove the issue and, by 2002, a joint government-industry program was in place to control the cross-border trade in diamonds. The now familiar Kimberley Process Certification Scheme compels diamond traders to track their supplies via 'certificates of origin' that must accompany the diamonds through the supply chain.

different from everyone else in the industry. They had learned a lesson from the conflict diamonds issue. While other jewellers finished with the conflict diamonds, seeing that it was at least moving along the Kimberley Process track, they went back to doing what they did best – selling jewellery. *Tiffany* went further and saw something deeper here. They began an ongoing process of engaging with key people from the NGO sector as well as with their suppliers, including some of the major mining companies. The result was that by the time the campaign launched, *Tiffany* had already done its analysis and had a sense of the lay of the land, their company's position in it, and a strategy moving forward. They were going to do things that were in *Tiffany*'s perceived interest. Post-conflict diamonds, they were the ones who had already thought this all through and were not going to be surprised again (Personal Communication 20/09/2010b).

Response of company to NDG

Tiffany has shown itself to be a leader right from the beginning. One of the first major jewellers to sign on to the NDG campaign's 'golden rules', *Tiffany* has gone beyond campaign expectations and has actually pushed for increased regulation in a number of areas affecting their operations.

On 24 March 2004, *Tiffany* surprised the industry and activists alike by placing a full page ad in *The Washington Post* lobbying against a proposed mine in Montana. The ad took the form of an open letter to Dale Bosworth, Chief of the US Forest Service, and was signed by

Michael Kowalski, *Tiffany* Chairman and Chief Executive.[7] The letter very publically opposed the Rock Creek project near Libby, Montana.

This move quite naturally triggered divergent responses from environmentalists and representatives from the extraction sector. ‘Given the impact of mining for gold, silver and platinum,’ explained D’Esposito, ‘they are a company who cared about how they were viewed and what their customers think’ (*Associated Press* 27/04/2004). Laura Skaer, head of the *Northwest Mining Association* in Spokane, had a different take: ‘I was stunned that a person of Mr. Kowalski’s stature and obvious business acumen would write a letter like that’ (*Associated Press* 27/04/2004).

In fact, many in the industry were very publically upset with the company’s stance. Industry groups attacked the company, accusing Kowalski of being the lapdog of the environmental movement and claiming the advertisement was factually inaccurate, that the company had failed to consult with those working on the project, and had wasted an estimated US $50,000 of shareholder money on the personal agenda of the CEO (Norwest Mining Association 2004, 6). However, it is worth noting that much of this inflammatory language is originating from the same source – a regional industry group catering to mining interests – and in the same document refers to the NDG campaign as an ‘anti-mining crusade’ (Northwest Mining Association 2004, 2).

Despite these negative feelings from industry, *Tiffany* has continued down the same path of corporate advocacy. In a talk centred on *Tiffany*’s CSR policies and delivered to his Alma Mater, the Wharton Business School at the University of Pennsylvania, Kowalski opened up about the impetus for and backlash against some of *Tiffany’*s actions.

[7] You can view the letter at http://www.earthworksaction.org/pubs/TiffWaPoAd.pdf.

Kowalski has admitted that *Tiffany* did not expect the tenacity of the industry backlash that the Washington Post advertisement produced. Kowalski himself considers *Tiffany*'s stance to be 'a-political' as 'unlike other environmental issues today, mining issues traditionally cut across party lines' Kowalski explained; however, his perception began to change once newspaper headlines began announcing *Tiffany Battles Administration over Mining Reform*. 'It was something that we certainly didn't anticipate', admitted Kolwalski (Wharton 2004).

'Certainly all of our fellow retailers, and almost everyone in the mining industry, consider our degree of engagement suspect, stupid or insane – pick your poison," Kowalski told the students. "Many of the mining communities in this country absolutely believe that we act as a front for the NGO community, that I am a radical environmentalist who is out of control, that we have been corrupted by the NGOs – none of which is true. In terms of brand leadership on this issue, we are at a turning point right now. To some degree, we could walk away from this today and say … We have done more than any jeweler in the past by basically putting mining reform back on the national political agenda through our open letter ad in The Washington Post." (Wharton 2004)

But *Tiffany* did not walk away. In 2009, *Tiffany* ran an ad in an industry magazine aimed at jewellers, urging peers to boycott gold from Pebble Gold mine in Alaska run by the Pebble Partnership of Anglo American and Northern Dynasty. *Tiffany* says it objects to the proposal 'to build an enormous gold and copper mine in the very heart of Alaska's Bristol Bay Watershed, home of the world's most productive salmon fishery.' The ad continues with the statement that 'there are certain places where mining cannot be done without forever destroying landscapes, wildlife and communities. Bristol Bay is one such place.'[8]

In an email to Mine Web, an online industry hub and newspaper, Michael Kowalski said, 'We have been opposing the Pebble mine in every public forum we have spoken at – the FT and Fortune Green conferences, the EMA awards in Hollywood.' Kowalski said *Tiffany* has discussed its objectives to the Pebble Project with Anglo American, the company behind the proposal (Kosich 2009).

In a different interview, Kowalski has stated that he thinks it is 'a matter of risk assessment' and, after visiting the proposed site for a fly fishing expedition, has even put together a documentary film that helped convince the *Tiffany* Board of Directors to back the campaign (Novellino 2009).

One of the interesting aspects of this ad in particular is that it is directed at industry actors and is, therefore, less public than the Washington Post challenge. This suggests two things: First, that *Tiffany* did not wish a repeat of the attention and backlash of the same scale that the first advertisement in a widely-circulated publication created. Second, that *Tiffany* is not simply attempting to create publicity through its activism.

From the examples outlined thus far, one could easily get the impression that *Tiffany*'s response to the issue of 'dirty gold' was simply taking out inflammatory advertisements in newspapers. However, the company has also been active in the creation of industry groups set up to deal with these issues. It was one of founding members of both the World Diamond Council (WDC) that works toward the elimination of 'conflict diamonds' from the diamond supply chain (previously mentioned) as well as the RJC (formerly the Council for

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[8] To view the advertisement, go to http://www.nodirtygold.org/pubs-others/200909TiffanyAdforNJ.pdf.

Responsible Jewellery) created in response to the issue of ‘dirty gold’. The company has played a central role in gathering industry support for collective action as well as reaching out beyond it.

Additionally, the company formed the *Tiffany Foundation* in 2000 to act as the philanthropic arm of the firm. One of the many activities of the *Tiffany Foundation* has been to financially support a feasibility study for both Fair Trade Diamonds and Fair Trade Gold (Standard Zero) in cooperation with the Fair Labour Organisation and the Association for Responsible Mining (ARM), two prominent NGOs (Madison Dialogue 2007).

Kowalski swears he does not have a problem selling its proactive position to shareholders. During the Wharton talk, one student asked Kowalski directly if investors ever criticize Kowalski, as the CEO, for spending so much time promoting environmental and social responsibility issues, taking his focus off other daily and strategic initiatives. ‘That's a fair question, but investors have not asked. When the subject comes up and when we outline our programs, those investors who are concerned are predisposed to be supportive of what we are doing. And I would say that my role is not to focus on daily operations. My role is to focus on issues of strategic importance. I would place this near the top of our list. It really is about our social license to continue to do business. That is about as fundamental a CEO-like responsibility I can imagine’ (Wharton 2004).

Discount/diversified retailer case study: Wal-Mart

As discussed in relation to the targeting of *Tiffany*, the NDG campaigners were not confident that they could muster any real impact on consumer behaviour over issues surrounding 'dirty gold'. This may have been as true for the high-end jewellery customers as it was for the mid-range to lower-end consumers of jewellery, but they were especially unconvinced that they would be able to gather a critical mass of *Wal-Mart* customers to begin asking the retail giant about its sourcing (Personal Communication 20/09/2010a). Therefore, the campaign only ever targeted *Wal-Mart* half-heartedly. They had limited resources and did not want to risk losing any credibility, and thus the threat, by hitting companies that they did not think would budge while doubting they would feel any bottom-line impact.

Additionally, the campaign started with a very small niche set of groups with Earthworks taking the reins initially. *Earthworks* was itself just a small organisation and this is why they were adamant about getting Oxfam onboard; they needed to get 'a big NGO of note' and *Oxfam* had the brand equity (Personal Communication 20/09/2010a). Even once they had *Oxfam*'s name behind them, they still felt they 'were much too small and needed to be focused' (Personal Communication 20/09/2010a). The idea was to concentrate on the high-end jewellery specialists, hopefully get one or two gold companies onboard – or better yet a diversified mining company so they could transfer the impact to other metals as well – and then the entire mining sector (Personal Communication 20/09/2010a). They didn't feel they could get, or really even needed, *Wal-Mart* onboard. This is not to say that the campaign did not target *Wal-Mart* at all. They sent letters to *Wal-Mart* every few weeks and included the company in their 'laggards' lists, but never received a response (Personal Communication 20/09/2010a).

So the NDG campaign against *Wal-Mart* consisted of sending regular letters and public shaming to the extent of including the company's name in lists of laggards on their own site, sites of other networked environmental groups, and any media source that would publish the information.

Response of the company to NDG

For years NDG continued to send letters calling on *Wal-Mart* to endorse their campaign and adhere to its principles. The group never got a response, except one, from the communications department (Shin *et al.* 2008). This is hardly surprising despite *Wal-Mart* being the largest jewellery retailer in the world ('Jewelry Network Fact Sheet' available at Walmartstores.com).

The NDG campaigners were not alone in seeing *Wal-Mart* as just too big to target effectively. At the time, nobody really had a strategy to get *Wal-Mart* to the table using consumer pressure or public pressure more generally. They were seen as just too big, and despite their enormous jewellery sales, it was still seen by the campaigners to not be a proportionally large enough part of the company's business to be able to leverage (Personal Communication 20/09/2010a).

However, the moderate campaign pressure from NDG coincided with the intense pressure *Wal-Mart* was facing on labour initiatives. In 2006, Lee Scott, the CEO of *Wal-Mart* at the time, had his epiphany that they could use their purchasing power to create positive change, or so the official narrative goes (Scott 2005). Others note that this came at a time when the company was facing resistance to its expansion into urban areas with opposition groups manifesting power from claims of poor labour standards and predatory pricing (Mui 2007; Heal 2008); the implication being that the sustainability drive was a strategic decision to deflect attention away from these issues and improve the image of the company. Regardless of intent, *Wal-Mart* launched its sustainability initiative, creating twelve sustainability networks with jewellery as one of them. Each network had to internally set up a goal for achieving sustainability results. This all had nothing to do with the NDG campaign, which continued to send letters and continued to receive no response. Until, all of a sudden, the phone rang.

The NDG campaign ran a full page ad in the *New York Times* listing leaders and laggards – and *Wal-Mart* was on the 'companies lagging behind' list.[9] Almost immediately they received a call from Bentonville asking them to come down to have a conversation as the company wanted off the laggards list. And so the campaigners went to Bentonville and began working with *Wal-Mart*.

So what made *Wal-Mart* respond after all these years? 'I am convinced that if they never had the sustainability initiative, they would have never played' says Steve D'Esposito, who was leading the campaign at the time, **'**whether somebody could have gotten them… maybe, but not us' (Personal Communication 20/09/2010a). He felt that the campaign was just too small and lacked the necessary leverage. What turned *Wal-Mart* was the pressure it was facing on labour issues. 'I am convinced that if we ran the ad and there was none of that going on, we would not have gotten the phone call – it wouldn't have happened' (Personal Communication 20/09/2010a).

The immediate result of this collaboration was that *Wal-Mart* publically joined the NDG campaign by signing on to the 'golden rules' in 2007. They partnered up with Conservation International (CI), a moderate NGO with which they had a board connection, and launched

[9] To see the advertisement, go to http://www.nodirtygold.org/pubs/LeadersLaggards_lores.pdf; to see the accompanying letter to the companies, go to http://www.nodirtygold.org/laggard_ltr.cfm.

the 'Love, Earth' line of higher end, sustainable jewellery. Each piece of jewellery comes with a batch number that allows the customer to go online, enter the number, and trace the item all the way back to the mine where it originated. The line is comprised of 10 karat gold and sterling silver items at *Wal-Mart* while Sam's Club (also part of the *Wal-Mart* company) carries 14 karat gold and sterling silver – all of which have 'earthy' themes like 'starfish' and the 'tree of life' (Washington Post 17/07/2008). All the materials are responsibly sourced – as defined by the company – from Rio Tinto mines (Financial Times 8/11/2008). The plan is to add a collection of ethically sourced diamonds and to have 10% of all jewellery it sells coming from a traceable source by 2010 (Financial Times 8/11/2008; Walmartstores.com). Eventually, the company claims all of its jewellery will meet these standards (Washington Post 17/07/2008).

The 'Love, Earth' line has been very controversial within the NGO community (Personal Communication 20/09/2010a). The media has picked up on both the praise and caution expressed by various groups, including NDG.[10]

The charge is that *Wal-Mart* is over-selling the 'responsible' nature of the mining practices, inflating the attributes of their sourcing when there has been neither an agreed definition of what constitutes responsible mining nor third-party verification that the company is even meeting its own standards (Personal Communication 18/09/2010; Personal Communication 20/09/2010a; Personal Communication 20/09/2010b).

In response, the *Wal-Mart* spokesperson's statement at the time was '*Wal-Mart*'s objective is to have a long-term, fundamental and positive influence on the jewellery supply chain by selling jewellery that is made from precious metals and gems that are produced following

[10] To see NDG official statement, go to http://www.nodirtygold.org/loveearth.cfm and check pressroom for media coverage.

Wal-Mart's supplier standards and the Jewellery Sustainability Value Network's environmental and social sourcing criteria' (Martin 2008).

The criteria *Wal-Mart* came up with are closely aligned with current best practices in the industry. Much of the criticism is based on how it was decided upon, in other words, the input dimension. *Wal-Mart* needed something quick and, the fact is, all mining sites have issues. If there are no agreed upon criteria by which to judge good mining sites from bad ones, then there are going to be disputes; they needed something to base their 'Love, Earth' line of sustainable jewellery on and they needed this within a business climate of needing things urgently (Personal Communication 20/09/2010). According to campaigners, the sites that *Wal-Mart* sources from are relatively good, but still have issues (Personal Communication 20/09/2010b). With the lack of agreed upon criteria in place, *Wal-Mart* and a number of environmental groups, including NDG representatives, compromised over issues and hashed out the sourcing criteria *Wal-Mart* would incorporate into its new 'Love, Earth' line of jewellery.

In addition to its 'Love, Earth' line, *Wal-Mart* participates in IRMA, although in practice this amounts to financial support and not actively taking a seat at the table (Personal Communication 20/09/2010). Additionally, the company has begun distancing itself from NDG campaigners since the organization recently released a 'report card' grading companies on their response to the goals of the campaign that included what *Wal-Mart* considers to be factual inaccuracies (Personal Communication 18/09/2010). Meanwhile, the NDG campaign seems to have ratcheted-up its attacks on the 'Love, Earth' line.[11]

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[11] For example see http://www.earthworksaction.org/PR_LoveEarth-is-DirtyGold.cfm and http://www.nodirtygold.org/loveearth.cfm.

How variation matters

There is variation amongst nonstate actors within the categories of business and civil society and this variation must be considered when evaluating the potential and peril of an increasing reliance on nonstate governance arrangements. Dividing the jewellery sector into the broad category of specialty firms in the luxury market and diversified firms in the discount market, the representative cases demonstrate at least three ways in which variation influences the regulatory capacity of nonstate actors: First, different types of firms are more or less susceptible to direct pressure from NGO direct targeting and this will influence the level of firm participation in nonstate governance. This, in turn, affects how NGOs strategise and determines the limitations of their strategies. Second, differences amongst business actors influence which NGOs and which governance institutions they engage with. Naturally, this is true for NGOs as well. Third, different firms bring different strengths to the table and, therefore, will lead in different ways. Similarly, different NGOs will also have different strengths, emphasising either contestation or cooperation.

Effectiveness of campaign pressure

The goal of market-based campaigns is to create a crisis situation in which the targeted firm is jolted into action by a threat to their market interests. They aim to achieve this through shame tactics, a strategy that leaves some firms more vulnerable than others. Campaign strategists know this better than anyone and target those they perceive to be the most susceptible. The goal of campaigners in the NDG campaign was to change mining practices on the ground. They targeted the gold supply chain as they believed they could gain leverage through the nature of the commodity. The end-use market is highly concentrated with over 70% of the demand coming from the jewellery industry. It is highly visible in these same end-use products. As a luxury item, it is not a necessity but desired for its cultural significance and the status it conveys. At best, this suggests that NGO campaigns will be less effective regulating the supply chains of commodities that are less visible, are used for diverse products, and are more useful. Worse, it may mean the effectiveness of these campaigns is limited to a small population of commodity chains. However, it must be reiterated that the campaigners hope that by targeting the most vulnerable node, these companies will incentivise the mining companies to implement better practices when mining gold and these practices will eventually permeate their operations across the range of commodities mined.

The cases also demonstrate that variation between firms within a particular node in the supply chain also impacts the effectiveness of campaigns. The campaigners target the specialty firms working in the luxury market as they have more invested in their individual reputation and in the reputation of the gold mining industry as a whole. Although *Tiffany* is a somewhat special case due to additional elements, such as leadership on its management team and the depth of its branding, the evidence shows almost all specialised, luxury firms were quick to cooperate with activists.[12] The more diversified firms in the discount market compete on price, not brand image, and face less risk from shaming, are less invested in gold jewellery, and tend to be too big for a small campaign to get on their radar. While the NDG campaign was able to influence *Wal-Mart*, it was seemingly due to long-term and coordinated attacks from large unions and NGOs concerned about labour issues. The NDG campaign was simply in the right place at the right time. The case of *Target Corporation*, a

[12] To view a list of firms that are working with NDG and a history of the campaign go to www.nodirtygold.org.

similarly large and diversified discount retailer, is probably a truer representation of the response from this market. The company has not even recognised the campaign (NDG, 2011). Parallel to the limitations at the supply chain level, NGO campaigns may only be effective in creating crises for certain types of retail firms, and so they are restricted to the leverage these smaller, specialised firms can bring.

Different ways to lead

Each type of firm brings a specific set of strengths and limitations to the governance mix. Focusing on gold, the aforementioned *Target Corporation* could be considered a laggard due to its intransigence in even acknowledging the concerns being voiced about their gold sourcing, but both *Tiffany* and *Wal-Mart* must be considered leaders on some level, even though they lead in quite different ways.

Specialist, luxury firms tend to have less direct market power than the more diversified retailers, but they have powerful brands and so are especially suited to leading with their voice. In the case of *Tiffany*, the company sources a lot of gold, but it was mostly coming from one arguably, and relatively, benign mine in Utah. They did not need to shift their supply chain for social or environmental reasons; therefore, bringing them onside did not have much of a direct, economic effect on mining companies. However, they are a very well-known and well-respected company and so their opinions and actions carry significant weight in the industry and in the marketplace. Their work in promoting responsible gold is helping to shift expectations of buyers at all stages of the supply chain. The company is contributing to the institutionalisation of governance structures and setting the stage for a potential long-term shift in the nonmarket, normative structure of the mining industry. Obviously, it is important to not get carried away with the still fledgling progress that has been achieved thus far. Specialist, luxury jewellers constitute approximately one-third of the North American jewellery and watches market, which is highly fragmented (Datamonitor 2009b). Even if all were committed to the goals of responsible gold sourcing, there would still be a very valuable market for the 'dirty' varietal.

Large, diversified retailers competing on price do not carry the same relative, intangible value in their brands. What they do possess is market power and lots of it. These firms have the latent ability to shift processes in multiple supply chains; they lead with their procurement policies. *Wal-Mart*, through a history of conflict on labour issues, does not possess the persuasive voice that *Tiffany* does on nonmarket issues. But the persuasiveness of their market policies is unrivalled. Their market power relative to their suppliers is perhaps the greatest the world has ever known (Fishman 2005). This asymmetrical relationship allows the company to dictate practices in virtually every product range they carry. By harnessing this market power and steering it toward sustainability, this could constitute a coup for the environmental movement. There are, of course, many downsides to such a first-party approach. The processes at the input stage of defining their sustainability initiatives in general, and the criteria for the 'Love, Earth' line of jewellery in particular, is opaque and exclusive. While the output of these efforts, such as the 'Love, Earth' sustainability criteria, are quite innovative and effective in many instances, they will have trouble gaining widespread support due to this lack of input legitimacy.

Strategic preferences for institutions and partners

Specialty firms tend to be smaller than the more diversified retailers. Smaller firms in an industry with a somewhat shared reputation are much more likely to band together with similar firms and join collective governance arrangements (Sasser 2003). They also may have more opportunity to reap the benefits of any 'responsible gold' niche market. While the discount firms compete on price, heavily-branded specialty firms escape competition through product differentiation, whether it is derived from exclusivity or social responsibility. This allows them to operate with smaller sales volumes while benefiting from larger profit margins.

Diversified firms operating in the discount market compete on price and, therefore, have very little room for adding overhead costs to the price of an item. *Wal-Mart*, for example, operates very successfully at a profit margin of just over 3% whereas Tiffany will operate with a 10-15% margin (Datamonitor, 2009). These large retailers are loath to relinquish their control over their meticulous costing.

Furthermore, their size and complexity leads to prohibitive transaction costs that dissuade such companies from joining certification schemes. As most such arrangements, including the RJC certification, calculates membership fees based on a small percentage of company sales, they cannot make this percentage miniscule enough to persuade a store like *Wal-Mart*, with annual sales in excess of $400 billion, to agree to this – not to mention the precedent this would set for its other product categories (Personal Communication 18/09/2010; Datamonitor 2009c). Additionally, the complexity of their supply chain simply does not allow for a quick transition to monitoring and so the company needs significantly more time than a specialised company to get its house in order.[13] There may also be a fear of surrendering supply chain information to third-parties as this can also be a significant competitive variable (Madison Dialogue 2007).

While Wal-Mart may protect its autonomy even more ferociously than other firms in this category, the tendency of very large firms to go it alone is pervasive. Instead of joining forces with those firms that have targeted them, they seek the expertise and legitimacy of hand-picked partners in the form of more moderate NGOs.

This illustrates an inherent limit to the adversarial strategies of NGOs that fall into the contestation category, namely, that they are often excluded from the governance process that they helped to induce. Firms do not want to risk entering into an agreement with these organisations as they fear these NGOs will continuously ratchet-up the standards (Sasser et al., 2006). We see this with the majority of firms, including *Tiffany*, opting for the industry-led RJC over the stalled IRMA, the latter of which includes these contentious groups.

Of course, *Wal-Mart* opted to develop its own system, recruiting moderate NGOs to consult and lend their legitimacy to the program. These moderate NGOs do not engage in direct targeting and prefer constructive engagement with corporations, cooperating on the development of CSR policies. The benefit of such an approach is that they are able to influence events deep into the institutionalisation process. The downside is that they enable corporations to escape stricter regulations by legitimising what many would consider second-best solutions.

[13] The complexity of a firm's supply chain also affects specialised firms to a certain extent as Signet (parent company of Kay and Jared jewellers and a pure retailer) has mentioned that tracing their gold is more difficult and takes more time than for jewellers who also manufacture their products (Carter 2011).

Conclusion

Clearly the private sector and civil society are not monolithic blocs; however, many analyses of the implications of nonstate governance continue to treat them as such by ignoring how variation amongst these actors limits their power and capacity to regulate. While there is great potential in the governance functions nonstate actors can, and often are, performing, there is a danger to overstating either their emancipatory potential or the peril of allowing them a role in governance. What is needed are more empirical studies investigating the possibilities and limitations of nonstate initiatives to contribute to a nuanced account of when and how nonstate governance is appropriate and when it falls short of the regulatory support needed.

This paper attempts to make a modest contribution to this endeavour by demonstrating how variation amongst business actors is affecting the governance choices being made in the US jewellery industry and what we can expect from these burgeoning institutions. Different types of firms are more or less susceptible to NGO pressure, which influences which firms will engage in governance creation, which governance strategies they will employ, which institutions they will support, and what strengths they bring to the regulatory task at hand. On the NGO side of the equation, variation amongst business actors affects which firms they target and which are immune, which governance initiatives the NGO will support, which firms will be willing to work directly with them, and what role the NGO will play in governance creation.

The division between specialty jewellers operating in the luxury market and diversified retailers that sell jewellery in a more price conscious market sheds light on how variation amongst firms affects the regulatory capacity of nonstate initiatives. Clearly, this is not the only division in the jewellery sector, not to mention in the gold supply chain as a whole. Analysts can divide and sub-divide firm differences right down to individual managers and these divisions may also affect the power relations between business and civil society actors and the governance arrangements they create. While it is a difficult, if not impossible, task to make grand generalisations about these multi-causal factors and rank them hierarchically from most relevant to least significant, rigorous and theoretically-driven case analysis can help gauge the ways in which these variations affect particular outcomes and thus allow analysts to draw-out implications for theory and practice.

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