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The Role of Civil Society Organisations in Regulating Business

Bridget M. Hutter, Joan O'Mahony



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Business Regulation: reviewing the regulatory potential of civil society organisations¹

1. Introduction

Definitions and conceptions of regulation have changed over the past fifty years. Conceptual boundaries have expanded, moving from technical and narrowly defined meanings that refer specifically to state intervention in the economy, to broader definitions of regulation that encompass non-governmental forms of regulation and also supranational regulation. Traditional notions of government regulation have been supplanted by the notion of ‘layered webs of regulatory influence’ (Grabosky, 1995:528- 9): a move that has been captured in the shift in language from government to governance. An important part of this shift from government based regulation to broader regulatory governance is the attempt to establish dialogues with civil society organisations (CSOs). Increasingly, these organisations are being incorporated into regulatory decision-making processes often very directly and formally, in an attempt to democratise participation in regulatory decisions. The growing recognition of CSOs makes this an opportune moment to consider what is currently known about the position of civil society organisations in the regulatory sphere. This paper gives a broad overview of the role and potential of CSOs in regulating business. The key issues are established through a consideration of diverse and disparate literatures which span a number of disciplines. We argue that while CSOs have the potential for significant influence over business and government regulatory agendas, there are some serious issues which may limit their regulatory prospects.

2. Civil Society Organisations (CSOs)²

The term civil society organisation (CSO) is broad and inclusive of non-governmental organisations (NGOs), charities, trusts, foundations, advocacy groups, and national and international non-state associations, which are all particular types of organisation within civil

1 Bridget Hutter is Peacock Professor of Risk Management and Co-Director of CARR and Joan O’Mahony is Leverhulme Special Research Fellow in CARR. We would like to thank the anonymous referees for their helpful comments.

2 In the western world, the ‘third sector’ organisation emerged out of the decline of feudalism and the rise of the modern state. While these new political arrangements gave birth to ‘the citizen’ with his corresponding freedoms, these freedoms have, nevertheless, always been ones to privilege the individual with freedom from government over freedom to government. Organisations too have always had rights protecting them from state interference, but the idea of institutionalising opportunities to participation is relatively recent. Indeed, the new Constitution for Europe which posits just such rights is the most recent example. See Article 46: “The Principle of Participatory Democracy,” at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>

society³. Broad as the term is, it is useful because it captures a central feature that is common to organisations as diverse as Greenpeace, the Catholic Church, or the British Medical Association, namely their autonomy and independence, in principle at least, from the state. In any society, it is the institutionalisation of this norm, or principle of independence, that allows for such organisations even to exist. This principle has been taken for granted for a long time in western Europe, a fact which was underlined by the experiences of the ex-Soviet states of Europe and their move into the post-Soviet era.

For the new ex-Soviet states of Europe, the legal arrangements (constitutional, charitable and tax laws) that demarcate, develop, and protect the civic sphere of social action are relatively new, and in many areas they are absent or exist only in embryonic form. Civil society in these countries remains a contested term; disagreements and consensus about the concept continue to have visible policy and political implications⁴. Yet, for western Europe too, despite a lengthier and more secure existence, aspects of civil society are persistently negotiable. Foremost among these aspects is the question of the precise lines to be drawn between state and civic sphere, and in particular the lines between the state and those civic organisations held to have some public purpose - university, newspaper, or indeed professional association - organisations whose remits all commonly reflect a deep concern with protecting their associational independence. Since the early 1990s such debates have appeared in academic journals and within the universities, where politics degrees have expanded to include more detailed coverage of the role of the citizen, of social movements, and of the civic sphere. More recently, concerns and debates about the independence of formally non-state organisations have been given added significance in the UK with the labour party's commitment to a model of governance that emphasises a greater partnership role for CSOs in the design and delivery of services (see Deakin and Taylor (2001) for a detailed discussion of these issues).

Apart from signifying separation - both normative and institutional - from the state, the term 'civil society' or civic organisation is also commonly used to denote a distinction from the economic sphere, or from organisations which are *primarily* about profit. Non-profit is often the key condition for tax exemption and charitable status. Hence the use of the term 'the third sector' by some authors (see for example Evers, 1995; Hudson, 1999; Anheier, 2002). There is of course considerable interaction between the political, economic, and civil spheres. Distinctions drawn in this paper are analytic, and are used to facilitate discussion about the role of the civic organisation as a source of regulation that is distinct from other important sources of regulation such as state agencies and, indeed, self-regulation by the commercial sector itself. Discussions of regulation have hitherto mainly been cast as a dialogue between representatives of the polity and

³ For example, NGOs, as Wallace and Lewis (2000) note, operate within a fairly circumscribed regulatory space, with a particular focus on poverty reduction.

⁴ The Czech Republic is one well known case, due in part to the media coverage of the polarisation of views between ex-President Vaclav Havel and ex-Prime Minister Vaclav Klaus on the definition and role of citizen and civil society in the Post-communist period. (see Havel, V. and Klaus, V 1996). The elite, schumpeterian, 'winner take all' philosophy of Klaus's party (ODS), which dominated the Czech Political scene for most of the 1990s, was reflected in the parties failure to introduce legislation that would secure the development of the civic sphere. Additionally, party policy effectively concentrated power in the executive and ensured few opportunities for access to the policy making process by outsiders, whether individual or organisation. (see O'Mahony, 2003a; Potucek, 2000; Green and Leff, 1997).

economy. It is clear that moves to widen participation in regulatory dialogues demand that discussions of regulatory governance now require more thorough consideration of the role of CSOs.

CSOs vary enormously in their focus and organisation so we need to exercise caution in treating them as if they represent a homogeneous grouping. Their membership may be local, national, or international. Some have relatively few members, whereas others form extensive global networks. The International Amateur Athletic Federation, for instance, has 21 more member states than does the United Nations. The organisational structures of CSOs are also varied: unitary, hierarchical structures, such as the church, trade unions, and the professions; centralised associations, such as Greenpeace; federations such as Amnesty International; confederations such as the World Council of Churches; and informal networks which are non-hierarchical and egalitarian, such as the women's movement (Braithwaite and Drahos, 2000:497; Clark, 2003b). Some CSOs are entirely staffed by volunteers, while others employ paid staff. The focus of CSOs is also highly variable. National and international CSOs often campaign for the enactment of new legislation or for the negotiation of international agreements. They may have very broad ambitions, such as global environmental improvement or the elimination of particular forms of discrimination. Local groups tend to be more concerned with the enforcement of existing laws and pressurising companies to comply. They may have local/ global connections, so local campaigns and CSOs may be part of a broader social movement such as the labour movement, the environmental movement, or the anti-global capitalism movements. Finally, these organisations are very often related to a particular domain; prominent examples of these may be found in the areas of food, health, the environment, human rights, and protection of wildlife.

CSOs are formed for a number of reasons, but a central motivating factor is a belief that the state, or the government, is failing in some respect; this is especially the case with NGOs. An international survey of NGOs identified a number of shared common characteristics. For example, 97 per-cent of NGOs demand that transnational corporations observe the rules of fair competition when pursuing goals in the global market place. They expect these companies to encourage economic development and play a significant role in combating illicit operations (Enderle and Peters, 1998:27ff). Corporate social responsibility is a key message and ambition of this sector of civil society. This embraces economic development, social development and research. It may also involve efforts to influence law and policy and to play an advocacy role.

2.1 CSOs and Regulation

CSOs have a long history; since the rise of the modern state elected governments have used, or relied upon them, as a source of regulation. The first CSOs to have a major influence on business regulation were associated with the temperance movement in the UK and the US. Later opportunities for CSOs to have an impact on policy making emerged in western Europe in the 1970s alongside the growth of corporatism. And there were, even then, direct relationships amongst private or non-state groups where the government's role was at most facilitating (Grabosky, 1995). Over the past decade the role of CSOs has become significantly more prominent. Their numbers have dramatically increased, their activities have spread and there has been a change in attitudes towards them. For example, today's Friends of the Earth International

has groups in 68 countries compared to four in 1971 (Durbin and Welch, 2002:215), ‘and the 176 existing in 1909 that could be described as ‘international NGOs’ had grown to 28,900 by 1993’ (Edwards and Hulme, 1996:3). The public have high levels of trust in civic organisations: Mori polls for 1999 show that the public have far greater trust in CSOs than in Government ministers or scientists when it comes to advice on pollution. Equally, Mori results consistently demonstrate the public’s greater confidence in scientists working for environmental groups than in those working for industry or the government; on average a 40 per-cent lead (Worcester, 2002:28- 29).

Along with this growth there has been an extension in the activities of CSOs, most notably from the local to the national and international arena. Lester Salamon has claimed that ‘a veritable associational revolution now seems underway at the global level that may constitute a significant social and political development of the latter twentieth century as the rise of the nation state was of the nineteenth century’ (Salamon and Anheier, 1996:32). Along with their increasing incorporation into national and international governance, there has been a broadly positive change in attitudes to CSOs, especially with regard to their involvement in policy debates and to their monitoring and implementation of laws and treaties. CSOs have been particularly active in environmental regulation and in the work of human rights agencies (Charnovitz, 1997). Indeed, the central concerns of the recently published World Resources Report 2002-04, a joint project of the UN, the World Bank, and the World Resources Institute, is that of including and empowering the public, both individuals and CSOs, in processes of environmental governance⁵.

There are a number of explanations for the development of civil society and the growing involvement of CSOs in regulatory projects. First, notions of governance were introduced partly to counteract growing concerns about a deficit of democracy in overly centralised governments. This move was spurred on in part by the collapse of communism, which gave impetus to both democratic and economic critiques of state dominance. Such a climate created space for the encouragement of democratic norms which ‘has raised expectations about the transparency of international organizations and the opportunities they provide for public participation’ (Charnovitz, 1997:265- 6) and this has potentially afforded CSOs a much enhanced role. Indeed, debates about the third way have emphasised the political space created for greater CSO activity (see Giddens, 1998; Ling, 2002).

Second, CSOs have gained greater prominence in the regulatory changes attendant upon the decentralisation of the state and the fragmentation of regulation. We have witnessed a diversification of the ways the risks of business are managed and, more broadly, a diversification of the general sources of regulatory control. These include state regulatory agencies, self-regulating organisations, third party regulators, and American style independent regulatory agencies (Braithwaite, 2000; Majone, 1996). As Charnovitz writes, these changes have ‘been conducive to a greater role for [CSOs]. When governments downsize and privatise, they may perceive [CSOs] as a substitute’ (Charnovitz, 1997:284).

⁵ The World Resources Report is available at the World Resources Institute website at http://pubs.wri.org/pubs_pdf.cfm?PubID=3764

A third major factor in the prominence of CSOs and attitudes towards them is the emergence of a world-wide media that has enabled CSOs to publicise their views much more readily and more widely and to exploit as a regulatory vehicle the concerns that companies have to protect their business reputations.

3. CSO Regulatory Activities

CSO regulatory activities operate diversely at local, national, and international levels. They try to influence both governmental and corporate agenda-setting to include and promote regulatory objectives (Eichener, 1997: 597;604- 5). Their relationship with governments and businesses vary widely. They may be consensually incorporated into the political process; Charnovitz for example notes the critical role allocated to NGOs at the 1992 UN Conference on Environment and Development (1997:265). But relations between civic groups and governments and corporations may also be highly antagonistic, such as that between the British government and anti-GMO groups. Sassatelli's and Scott's research suggests that 'public' debate on this issue was characterised by technocratic management and that it sidelined the concerns and principles of major anti-GM groups (see Sassatelli and Scott, 2001). Similarly, Toke's and Marsh's research - an interesting examination of the tensions between the UK government and the major anti-GM groups (Friends of the Earth, Greenpeace, and the Soil Association) - argues that, on the whole, the Government's formal commitment to inclusivity in the GM debates was largely cosmetic with relevant civic organisations simply excluded from the process (Toke, 2002a; Toke and Marsh 2003). Despite the differences amongst CSOs and between these groups and government, it is clear that CSOs contribute to all three of the control components of risk regulation regimes identified by Hood et al (2002), namely information gathering, standard setting, and behaviour modification. Let us consider each of these in turn.

3.1 Information gathering

In pursuing their objectives CSOs employ a number of techniques with the intention of exerting democratic pressure. They can play a key role in providing information, analysis and policy alternatives to state regulators (Charnovitz, 1997; Grabosky, 1995). At the most basic level they report 'the facts' and hope to influence, or indeed to create opinion in accord with their own interpretation and ambitions (Braithwaite and Drahos, 2000). They operate at formal and informal levels. Formally they are regularly included on national and international delegations. Increasingly, they also work directly with companies and can thus serve as 'an important barometer against which companies can test opinions and evaluate decisions' (Enderle and Peters, 1998:5). Lewis and Wallace believe that there is great potential for these organisations to suggest alternative ways of thinking and to trigger innovation which '... has become one of the assumed areas of comparative advantage that NGOs have over government' (Lewis and Wallace, 2000: ix). Enderle and Peters make a similar point concerning the innovatory potential of CSOs arguing that they sometimes:

Initiate a dialogue which opens up new ways of dealing with controversial issues between business and civil society; a good example being the two-day workshop organized by the World Bank and the World Conservation Union about large

hydro-electric dams as a motor for development.

(1998: 1)

Another important aspect of information gathering is that CSOs increasingly undertake a monitoring or auditing role, helping to monitor governmental policies and to evaluate their effectiveness (Charnovitz, 1997; Grabosky, 1995). Again, this may be formal or semi-formal. Sometimes governments may co-opt CSOs to help with these tasks or may even delegate regulatory tasks to them. Indeed, Braithwaite and Drahos (2000:574) suggest that CSOs often have better information about compliance and enforcement than states and international organisations. Kelemen (2000) also argues that individuals and civic organisations can be especially important in the role as watchdogs of the implementation process.

3.2 Standard setting

National governments may be highly dependent upon the skills and knowledge of the civic organisations that assist and advise them on regulatory legislation. For example, the recent road pricing scheme in London's city centre relied heavily on consultations with a variety of organisations from local cycling groups to the Confederation of British Industry. Likewise, CSOs and companies may enter into a more formal relationship for improving corporate ethical standards, many of which relate to regulatory issues such as working conditions and environmental protection. For example, in 1997, Oxfam GB collaborated with Levi Strauss to produce a code of ethics for the clothing company to regulate its relationship with suppliers from the Dominican Republic (Clark, 2003a: 118). More recently, the US campaign group, the Environment Defense Group worked with McDonalds to develop more environmentally friendly burger packaging (Clark, 2003a: 204).

These opportunities for increased involvement of CSOs with companies or with governments, are increasingly supported by global and international institutions promoting the inclusion of CSOs into formal standards-setting and regulatory processes. The World Bank for example 'is now requiring as a condition of debt relief that evidence is provided to show that poor communities are fully involved in new programmes' (Deakin and Taylor, 2001:11). Change is evident at the European level too 'where the involvement of NGOs has gained particular relevance... given the accusations of a democratic deficit' (Hutter and O' Mahony, 2003:109). As Dunkerley and Fudge note:

Many interest groups have now begun to see the European Commission in greater terms as an 'opportunity structure' and an agenda-setting institution that is more permeable and open to negotiation than many national governments. Simultaneously, the Commission, and to a lesser extent Parliament, have been more inclined in recent years to draw upon the specialist information afforded by many of the groups representative of civil society networks.
(Dunkerly and Fudge, 2004: 245)

3.3 Behaviour modification

A major concern of many CSOs is to try to influence business and corporate agendas. Very often these efforts are targeted directly⁶. In the last few years, large numbers of CSOs - local, regional, and global - have come together in highly visible public demonstrations against international financial institutions. There are also major CSO campaigns directed at what are seen as unethical practices of private corporations such as NIKE and McDonalds (See, www.cleanclothes.org; www.mcspotlight.org).

CSOs attempt behaviour modification by engaging in a variety of forms of civil action such as protests, press conferences, demonstrations, organising petitions, and sometimes even arranging publicity stunts. The Greenpeace campaign over the disposal of the Brent Spar oil rig is just one of the most well known campaigns to employ a repertoire of such techniques; the Mexican Zapatista opposition to World Bank policies is another (Clark, 2003a: 158- 162). The key objective here is to mobilise mass opinion, something which CSOs are particularly successful at doing at times of disasters, and something which has become easier with the spread of mass-communication. Braithwaite and Drahos (2000:500) found that public anxieties 'had substantial effects in globalizing new forms of regulation'. As a result these authors argue that CSOs do not necessarily need large budgets to be effective but 'they do have to be able to convince regulatory policy-makers that they might, if push comes to shove, be able to mobilize mass publics around their concerns'.

Critical to the power of CSOs to effect outcomes is their ability to manage or 'frame' the issue at stake. The central role played by Greenpeace in the Brent Spar debate was largely consequent upon their success in presenting the disposal of waste as a normative issue rather than a purely scientific one. In Germany, in particular, a public increasingly committed to an ethical view of the sea as inviolate tended to view the scientific arguments about levels of toxicity as mere quibbling; for this public, the sea was to be shielded from the dumping of waste regardless of whether that waste was toxic, dangerous, or otherwise (see Jordan, 2001 and Holzer, 2001).

CSOs may also become involved in formal processes aimed at behaviour modification⁷. For example, where CSOs find persistent non-compliance with regulations, they may become directly drawn into the formal legal system. A notable example of this is their involvement in private legal actions in pursuit of regulatory objectives. Since 1970, the US government has allowed private parties to pursue non-compliant firms that are not pursued by the state regulatory authorities. It also gave the public a right to be heard in enforcement decisions and provided them with reimbursement of expenses they have incurred. The number of these citizen suits has

⁶ Of course, the activities of CSOs can take place within the civic sphere itself, bypassing the predictable economic or political circuits and directed instead at other citizens and organisations. Sometimes this activity represents not so much an attempt to regulate business as an attempt to defend against business risks. Examples include the creation of alternative currencies to protect communities of people from rapidly devaluing national currencies; for example, the 'Alternative Local Currency Project' in Thailand (see Malhotra, 2002). Small credit unions and lending pyramids have often been the solution to stringent lending criteria and even more stringent default penalties. Failure to regulate is often the kickstart for new and innovative approaches to problems. For example, some parents and teachers who have failed to have their anxieties about poor quality school dinners addressed, have opted out of council run schemes and set up their own alternative school dinner programmes. (See details on the Local Food Works organisation website, www.localfoodworks.org)

⁷ Some commentators regard CSOs as a form of social control (Cable and Benson, 1993), and from a governmental perspective they are, of course, a cheap form of control.

dramatically increased since the 1980s (Heyes, 1999). Boyer and Meidinger (1985) view these mass actions in the environmental domain as an attempt by private organisations to take over the administration of regulation. Rather than representing private enforcement in pursuit of private wrongs, these actions are primarily about the content of public policy and the routine enforcement of cases. The purpose of the action is to change the behaviour of polluters by changing the incentives to comply.

4. Assessment of CSOs as a Source of Regulation

As one might expect the role of CSOs as regulators has been uneven. Braithwaite and Drahos (2000:31) claim that CSOs are most successful when they capture the imaginations of mass publics in powerful nation states and when they can influence scientific and knowledge producing communities. Some commentators believe that CSOs may be especially well placed to regulate in a transnational capacity where organisations such as NAFTA, GATT, WTO, and MAI have gained prominence. Labonte (1998) for example, argues that MAI (the Multilateral Agreement on Investments) ‘effectively elevates private corporations to the same status as nations’. One response to this has been what Labonte refers to as the ‘social closure campaign’ where CSOs build support for appending social clauses to trade and investment agreements.

Normatively, CSOs appear to have great potential as regulators. They encourage the development of ethics and of the norms of citizenship. Indeed, according to some authors, the key task for such regulators is to make organisations think like responsible individuals (Stone, 1975), and to capitalise on the desire of business to be socially responsible. Enderle and Peters (1998:8) regard the Corporate Social Responsibility (CSR) movement as a ‘learning process’ sustained by interactions between business and civil organisations. And Bruyn argues that civil associations have ‘the potential to infuse the economy with a new morality’ (1999:30), that ‘under certain conditions they serve as a countervailing power to reduce the need for government controls over business. They become the twentieth-century equivalent to Smith’s ‘invisible hand’ in which a non-profit’s moral concern has matching power over a business interest’ (36).

CSOs also contribute to the democratisation of regulation. The co-option of CSOs into government policy-making may empower citizens, give them a voice and help to build political support and legitimacy for the resulting state regulation (Grabosky, 1995). Ayres and Braithwaite (1992: 54ff) advocate the inclusion of what they refer to as ‘public interest groups’ (PIGs) in tripartite arrangements that give these groups power in the regulatory process by allowing them rights to information and to prosecution equal to those of state regulators, and by giving them a seat at the negotiating table alongside regulators and the regulated.

But there are some drawbacks too. Including CSOs in regulation is commonly justified and promoted on the grounds that it makes for more representative and more democratic regulation. Yet, paradoxically, questions of democracy and representativeness are precisely those which arise when considering the potential disadvantages of CSO involvement. There are particular concerns about the geographical distribution of CSOs: the majority are based in the north and west rather than south or east. Braithwaite and Drahos (2000) note that international NGOs are predominantly European, and that although the fastest NGO growth has been in poorer nations

this has not outstripped what has also been substantial growth in northern countries. There is concern about who regulates the CSO. As Edwards and Hulme comment ‘there is clearly a level at which the absence of accountability begins to make the likelihood of ineffective or illegitimate actions by an organization much more probable’ (1995:9). There is a real possibility that CSO involvement in regulation could undermine democratic norms, as they are not democratically accountable for their activities; they are rather, as Grabosky (1995:537) notes, ‘one step removed from the democratic process’. This is not to claim that they are entirely unaccountable; on the contrary, they have multiple accountabilities to trustees, donors, staff, and supporters. They are however generally less open to public scrutiny than government bodies, and the multiple accountabilities they do have create difficulties of prioritising and reconciling the many demands placed upon them. Indeed, to the extent that they represent particular interest groups they do not necessarily act in the interests of the wider public. Ayres and Braithwaite (1992: 58) argue that the debate should not be about representation but about contestation. And though there is arguably no such thing as ‘the public interest’, but rather a collection of private interests (Meidinger, 1987), nevertheless, as Ayres and Braithwaite note (1992:58) regulation is largely discussed and contested in terms of public interests. As such, these authors argue, PIGs may be best placed to contest ‘the public interest embodied in a particular regulatory statute’.

CSOs share some of the potential difficulties commonly associated with government regulatory agencies. For instance, there is always a danger of CSO capture of the policy making process, where policy is shaped by CSOs and serves their organisational interests and projects (Charnovitz, 1997: 275; Grabosky, 1995: 540). They may also suffer from problems of bureaucratisation and of relying on funding sources that create timetables and reporting requirements that detract from more studied reflection of issues (Edwards and Hulme, 1992, 1994). Moreover, their ability to speak out may be compromised by dependence upon their funding sources (Bratton, 1989). In the US, the largest operational NGOs that are also heavily dependent on USAID tend to avoid a campaigning role, fearful perhaps of the consequences of speaking out against government policy (Salmon and Anheier, 1993; Smith and Lipsky, 1993). The European Commission has a large budget for the funding of environmental organisations which helps many groups to carry out their activities, but this funding comes with the condition that ‘the proposed activities must not, directly or indirectly, send messages which conflict with Community policies or be associated with an image, which is not in keeping with that of the institutions’⁸.

There is evidence that CSOs perform less effectively than their popular image suggests when they are dependent upon either official funding or a single source of funding. For example, such CSOs often perform poorly in the task of ‘local institutional development’, that is, the gradual strengthening of local capacities among grassroots organisations to enable them to play a more effective and independent role in development (Esman and Uphoff, 1984). This is because the short term objectives of many official agencies are in conflict with the characteristically long term nature of successful institutional development (Carroll, 1992; Fowler, 1992), and this work is difficult to ‘sell’ to politicians on whom the aid agencies depend for their budgets (LaFond,

⁸ The European Commission’s funding document ‘Financial Support for European Environmental Organisations’ can be viewed at <http://europa.eu.int/comm/environment/funding/finansup.htm>. The relevant section comes under point 3. ‘Exclusion criteria’.

1995).

Clearly, dependence on public authorities can have serious consequences for the independence of organisations. Larger organisations, for example Greenpeace and Médecins Sans Frontières, may more easily avoid these consequences by simply refusing funding from public authorities. Poorer organisations, however, do not have such a choice. These examples illustrate well the paradoxes of patronage - what Habermas described as the ‘ambivalence of guaranteeing freedom and taking it away’ - where it is the ‘very means of guaranteeing freedom that endangers the freedom of the beneficiaries’ (cited in Stewart, 2001:165). These are critical issues. Funding processes that make self-censorship a rational choice are in serious conflict with one of the central tenets of liberal democracy: freedom of speech. Likewise, funding processes that fail at least to question associational reliance on the state strike at the heart of an even deeper regulating norm of democracy: the self-managing society (O’Mahony, 2003b: 41- 42). But not only does too much reliance on the state have democratic implications, it also means that CSOs need to be cautious that close relationships with major donors, whether government or business, do not lead to an undermining of public trust in them (Grabosky, 1995).

There are also more pragmatic advantages surrounding CSO regulatory activities. As we have seen they have the potential to contribute to a number of key regulatory areas as knowledge providers, watchdogs, auditors, and rule-enforcers. CSO involvement can produce innovative ways of thinking and approaching regulatory problems. It can also revitalise government. This is also true in the international context. Charnovitz (1997:285), for example, cites the UN system as one which could benefit from this stimulus to change and re-appraise its constitution. Indeed CSOs can also succeed in attaining regulatory ends where governments fail. Bruyn, for instance, cites the example of NGOs in the US which ‘had a significant effect in stopping the use of MMT’ (Bruyn, 1999:36).

CSOs have a potential advocacy role to play in helping business. Their role here very much parallels the role they play for government, namely the provision of information and legitimation. CSOs can help companies engage in reciprocal rather than exploitative relationships with local communities by providing local knowledge and by helping companies contribute to local economies. Civil organisations are also increasingly likely to enter partnerships with business to help improve their public image. Enderle and Peters argue that:

Business and the economy can flourish only if they are widely accepted by society in general and by the civil society in particular. The more articulate civil society becomes the more it is depended upon by business and the economy. Reputation and trust are precious assets, and cynicism over business exclusively seeking its own interests damages business inescapably (as is the case about government)’.
(1998:8)

Certainly there is evidence that some businesses are quite reliant on the social licence to operate (Gunningham et al, 2003). But the picture is a complicated one, and currently there is little evidence to suggest that companies’ profits are actually affected by the extent to which they are, or are not, ethical. The public, as Clark notes, tend not to put their money where their morals are.

Nevertheless, a responsible reputation has become increasingly important: many leading companies are anxious to position themselves as ‘corporate citizens’. Clark suggests three main reasons for this: concerns about future customer loyalty, the rapid growth in ethical investment strategies, and, finally, staff morale and commitment (Clark, 2003a: 202-203). In this context, civil organisations – particularly in the absence of similar government initiatives - find many opportunities to advance themselves as the ethical advisors, consultants and auditors to major businesses, with the capacity to endow those businesses with the ethical brand that so many of them now crave.

As yet however, little is known about the comparative advantages of the different kinds of relationships established between CSOs and businesses. Early research (Ashman, 2001) suggests that the collaborative partnerships, encouraged by the World Bank and other global institutions, may be no more fruitful, in terms of development benefits, than the traditional ‘resource-based’ relationship, where business simply donates. Moreover, in collaborative partnerships, business tends to dominate the CSR agenda, with CSOs being co-opted and often shouldering the major costs in terms of time and resources.

There are a number of disadvantages attached to the practical role that CSOs can play in regulation. In one very real sense the dramatic growth of CSOs hampers their wider participation in regulation, as it is not possible to involve all of them in regulation, nor is it easy to determine how to weight the participation of each (Charnovitz, 1997:275). Moreover, CSO involvement in regulation may also be piecemeal and opportunistic, thus contradicting attempts to put in place a coherent strategy for regulation. Grabosky (1995: 542) argues that the decentralisation of regulatory functions to these organisations may result in a loss of overall coherence and may not necessarily focus attention on the most important issues; in fact, CSOs may even divert attention away from more serious, but less visible, problems. Similar concerns have been expressed about private enforcement actions undertaken by CSOs, namely that they might undermine the overall enforcement effort (Heyes and Rickman, 1999:368; Naysnerski and Tietenberg, 1992). It is argued by some that the citizen suits pursued by CSOs in the US may be less successful than public regulatory bodies. Heyes (1999) argues that the private enforcement actions ‘may undermine the incentive properties of the enforcement system’ by undermining the negotiation process. For example, the US Environmental Protection Agency practices is tolerant towards some failures to comply, a strategy that can ultimately produce greater compliance over time than a punishing regime of maximum enforcement.

CSOs have come under intense criticism for the way in which they represent issues. Concomitant with the growth of CSO power in policy networks, civil society organisations have suffered a backlash. They are now increasingly vulnerable to accusations of distorting facts, manipulating evidence, exaggerating or amplifying risks⁹, misleading their supporters, and, in general, of behaving irresponsibly. Many CSOs that have been tainted by association with the worst cases support calls for codes of conduct, peer review, and greater transparency in their own dealings.

5. CSO Potential

⁹ See Pidgeon et al (2003)

As we have seen CSOs have had a variable track record in occupying regulatory space and in achieving regulatory change. There have been some notable examples of their influencing governments and business, such as the campaign against Nestlé's marketing of synthetic baby milk, the protests against GMOs, and the Brent Spar case. Indeed authors such as Braithwaite and Drahos (2000) regard the potential of such organisations as the key to future regulatory developments. Theoretically, this does not appear to be a misplaced ambition. The challenge is to involve CSOs in regulation in a way that maximises the advantages of doing so and minimises the disadvantages.

The most serious limitations centre on the representativeness of CSOs and their independence (EPF et al, 2003). In some respects, the growing number of CSOs appears to exacerbate these difficulties, as it is difficult to determine which CSOs, of the many in existence, to select as the representative. But there are formal and informal methods which may overcome this. The system for selecting representatives to the World Summit for Sustainable Development at Johannesburg in 2002 received broad support from participating groups. And there are approaches that are less formal, such as the European Environment Bureau's management of the multiplicity of environmental CSOs, that contribute to policy making at the European level (Charnovitz, 1997:275). But if the growth in CSOs create problems of representativeness, it also provides opportunities. Larger memberships can enable greater participation by civil society, as a growth in membership generally brings more of the resources necessary to fuel participation. The growth in organisations has been particularly marked in the global south and east and this has gone some way to correcting the historical dominance of northern European NGOs. Finally, CSOs offer avenues to representation in non-democratic states, and they may also, of course, represent transnational issues and cut across political boundaries, thus offering broader representation in transnational and even national forums:

...voluntary association do not coincide with political boundaries. Associations of mathematicians, chemists, astronomers, business corporations, labor organizations [and] churches are transnational because the interests they represent are worldwide. (Charnovitz, 1997:276)

It is the opportunity for representation that leads authors such as Braithwaite and Drahos to place such optimism in the development of civil society for the future regulation of economic life. For these authors this is the way to empower individual citizens and poorer nations, as CSOs often have a greater capacity for information gathering and action than either individual or government. So CSO involvement in global business regulation is part of an egalitarian agenda which, in turn, requires a political programme to strengthen civil society, and which is seen by some commentators as the only real possibility for regulatory agendas that are not dominated by largely economic interests.

The question of independence is delicately balanced. Without funding CSOs may cease to operate, but funding brings with it the dangers of co-option and bureaucratisation. As Edwards and Hulme (1996:5) indicate, while funding enables greater participation 'NGOs also run the risk of being co-opted into the agendas of others and seeing their independent social base eroded'. The literature offers a number of solutions to this. Accountability systems including

transparency and disclosure requirements:

Performing effectively and accounting transparently are essential components of responsible practice, on which the legitimacy of development intervention depends.

(Edwards and Hulme, 1996:5-6)

Other commentators return to the state as the arbiter of fair play. Grabosky (1995:543- 45) argues that governments should play a key role in facilitation, brokerage, oversight, monitoring, reviewing, fine-tuning, and intervention. Charnovitz similarly argues that policy makers need to structure NGO involvement so as to optimise the benefits for international organisations. And, as he observes ‘we need continuous experimentation with new methods to permit ‘interpenetration of extranational and extragovernmental forces’ (1997:282- 283). On the face of it, relying on the state seems a peculiar way to achieve independence, but a form of symbiotic sharing of regulatory space and mutual monitoring of activities may well be possible. But it does, as Grabosky cautions, depend upon whether ‘the fiscal constraints which have contributed to the shrinking state will... permit investment in the new and more sophisticated forms of managerial capacity which will be required to oversee and guide these hybrid systems’ (545-546).

Apart from organisational and procedural techniques for maximising the potential of CSOs, we need a great deal more information about their activities. In particular, we need a research agenda that develops our knowledge of the circumstances most associated with CSOs’ regulatory successes, failures, and limitations. We need to explore further how best to secure their representation and independence. There is also a need to differentiate more clearly between the various constituent parts of civil society, and to examine further its relationship with state and economy. Most research to date focuses on NGOs rather than the broader range of organisations embraced by the term CSOs. We need to learn more about other not-for-profit organisations which may be involved, professional associations, for example. It is likely that the motivations and philosophies of CSOs are very different and that some are more suited to regulation than others. We might also consider the positive benefits of the traditional relationship based on antagonism. Henderson (2000) argues that it ‘is essential that the radical transformers... remain outside the process. These groups play a critical role in defining the argument and establishing the benchmarks. There is a role for both transformers and reformers’ (375).

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