Three models of "distributed administration": Canopy, baobab, and symbiote

Benedict Kingsbury*

The present paper proposes three basic organic models for the generation of distributed administration systems in global governance. These are here termed the canopy, baobab, and symbiote models. These models are analytically distinct, but in many sectors and institutions elements of two models or all three models may be found in one system as it evolves.

1. Introduction

The scholarship of global administrative law (GAL) has brought into focus an immense variety of bodies and interactions which otherwise have received little or no attention in legal scholarship—the flows of quotidian, often capillary-scale decision-making and rule-making which GAL characterizes as "administration" in global governance. One immensely important pattern in this practical organization of power is "distributed administration," whereby one entity's standards or decisions are given practical effect by national or non-territorial entities interpreting, varying, implementing and enforcing them, or by companies specialized in certification, verification, inspection or audit.

An early articulation of the idea of distributed administration in GAL scholarship was too confined, in taking as its parameter the basic observation in relation to inter-state global regulatory governance institutions that they frequently depend on national (state) governments, including national or sub-national ministries and regulatory agencies, to take the rule-making, decision-making, and enforcement steps necessary for an agreed international regulatory scheme to actually have operational effect.[1] In practice, however, the entities whose activities give real effect to some other entity's global standards may be governmental or not governmental. They may be territorially structured or instead be functionally defined but not territorially structured;

* Murry and Ida Becker Professor of Law, New York University School of Law. Email: benedict.kingsbury@nyu.edu.

1 Benedict Kingsbury, Nico Krisch & Richard Stewart, *The Emergence of Global Administrative Law*, 68(3) Law & Contemp. Prob. 15, 21–22 (2005).

 doi:10.1093/icon/mov026

and in both territorial and non-territorial cases the distributed entities may relate to the central global governance institution as member entities, endorsed or accredited non-member entities, or separate entities. The structure under which a global entity requires that there be one and only one member body in each participating state, and specifies many rules of conduct for those national member bodies, is used by entities ranging from international sports federations to the International Organization for Standardization (ISO) to the United Nations, but it is far from ubiquitous. The various morphologies by which these whole structures of distributed administration are formed and operate can reflect and entail important differences, which have received little systematic inquiry.[2]

The present paper proposes three basic organic models for the generation of distributed administration systems. These are here termed the canopy, baobab, and symbiote models. These models are analytically distinct, but in many sectors and institutions elements of two models or all three models may be found in one system as it evolves.

2. The canopy model

The canopy model envisages different "distributed" entities that are already well established and deeply rooted (usually as national entities), beginning to reach out and for functional purposes to send emissaries to weave together with counterparts to form a new global institution. This is something like a forest canopy, in that its formation and continued sustenance and on-the-ground influence depend on the different nationally rooted entities. (That the different national entities exist already is likely due to diffusion or seeding from one country to another, a process that the canopy institution may in the future encourage.) Buthe and Mattli implicitly utilize such a model in the cases they study to show that a nation's degree of success within some global governance institutions is a function of "institutional complementarity" between a country's national institutions in the relevant field and the international institution.[3]

3. The baobab model

An innovative form in global governance employs a baobab model, and represents what might be termed "institutional complementarity reversed." Under this model, a global governance institution is first created, often by a small but influential group, and then seeks (in tandem with this group of founders) to promote establishment of new special-purpose territorially defined entities, typically one in each country, whose identity and activities are tied to and often quite dependent on the identity and work of the international institution. Thus in the style of a baobab tree the global

[2] A multi-author volume using a standardized template to investigate numerous entities in Global Hybrid and Private Governance, edited by Benedict Kingsbury and Richard Stewart (in preparation), seeks to provide some systematic insight into these questions.

[3] Tim Buthe & Walter Mattli, The New Global Rulers: The Privatization of Regulation in the World Economy (2011).

institution from its trunk spreads as an umbrella but then sends down aerial roots to embed itself in each territory. This model was championed in initiatives dating from the early 2000s to create non-treaty market-leveraging hybrid public–private global institutions. These aimed to break out of inter-state institutional forms, and so could not be canopy model institutions, nor could they rely simply on existing government ministries or agencies for distributed administration. Emblematic is the Global Fund to Fight HIV-AIDS, Malaria and Tuberculosis (founded in 2002), which, as a condition for spending funds in a country, requires that it have a Country Coordinating Mechanism (CCM), to include government ministries, research institutions, and civil society organizations ideally involving some representing persons living with the diseases the Global Fund targets. The Extractive Industries Transparency Initiative (EITI, founded in 2003) requires that countries seeking full membership each have a local entity broadly resembling the EITI's set of constituencies: government, oil and gas and mining industries as relevant, and civil society entities concerned with corruption and use of revenues from natural resources.

In practice, where local entities created (and sent down as aerial roots) under the auspices of a global institution really succeed, this is likely to be because they take root in the national polity and begin actively to pursue agendas and objectives that are not simply those of the global institution. Reverse institutional complementarity can help a new global institution to build up the wide-reaching and highly dispersed network of local presence that both enables it to operate and makes it more likely the global institution will be continued rather than replaced by a new competitor institution unable to take over the network or create its own. The baobab model may thus be a strategy promoting institutional longevity.

A case of distributed administration blending the canopy and baobab models is where a global governance body (typically inter-governmental) effectively requires each state to establish and operate a specific form of national agency, facilitates supply of technical assistance and even financial support to help it operate, and aggressively monitors and reports on the performance of the national agency and associated national government activities. A strong version of this is the Financial Action Task Force (FATF, established 1989) and its multi-country regional affiliates, which effectively requires each country (whether a member or non-member) to have a Financial Intelligence Unit, and it assesses (with site visits and peer review) and reports on each country's performance in relation to a set of detailed standards. Other global entities conscript existing national institutions for their particular new purposes, for example the Organisation for Economic Co-operation and Development's (OECD's) Guidelines for Multinational Enterprises requires a National Contact Point in each country, usually established within an existing government ministry.

4. The symbiote model

Global governance institutions in many cases rely, for operationalization of their standards or decisions, on other entities that are not members and that have a separate existence for other purposes. In some cases, these are separate international governance institutions (studied as part of the increasing GAL focus on inter-institutional interactions). Frequently, however, the separate entities are commercial, engaged in the marketplace to certify or otherwise secure conformance with standards. An inter-governmental example is the Clean Development Mechanism (CDM), which has delegated to separate and usually commercial designated operating entities not only the function of certification that greenhouse gas-reducing projects conform to the CDM's standards, but also preparation of sector-specific methodologies used by the CDM in eventually issuing valuable Certified Emissions Reductions to project sponsors. A non-governmental example is the Forest Stewardship Council (FSC, established by NGOs in 1993), which, like the CDM, in effect outsources certification to specialist entities, enabling concentration of expertise, cost savings, and streamlining and focusing of the FSC's operations and efforts. Where these entities become invested in the standards they are certifying, and become dependent on the market those standards and associated product labels generate, their relation with the global institution becomes symbiotic. The FSC established its own specialist body, Accreditation Services International, to administer its accreditation system for validators and verifiers, and that body is now also used by other institutions such as the Roundtable on Sustainable Palm Oil (RSPO). Conversely, certifiers may exercise a lot of influence on the global institution through voice, expertise, or the implicit threat of exit.

5. Conclusion

Under all three models, effective supervision and control by the global institution of the distributed administration entities depends on leverage, some level of asymmetric dependence (enhanced where the global institution is able to exert coercive power or is effectively a monopoly or dominant and non-substitutable supplier of undersupplied goods sought by the entities), and organization of a cost-effective means of monitoring, assessment and approval or sanctioning. Global institutions lacking these attributes are unlikely to operate a tightly disciplined system of distributed administration. From the perspective of principal-agent models, entities with multiple principals spurring them in different directions are unlikely to be faithful agents of any one principal. This is a structural feature of most forms of distributed administration. In the canopy model, local territorial entities are by stipulation already embedded in the national polity, as well as linked to the global institution. In the most extreme cases, some local entities may be bigger and much more powerful financially and politically than the global institution (for example, the American Red Cross is much larger than the International Federation of Red Cross and Red Crescent Societies), and their interactions may come to dominate it. In the baobab model, the artificial local entities may initially have few local roots, but their avowed aim is to build up local constituencies to whom they will also become answerable. In the symbiotic model, service-providing commercial entities are usually dependent for payment from owners of projects they certify, as well as on the global institutions which in turn have to accommodate them.

Investigating to what extent and with what effects GAL is deployed in different distributed administration systems is a promising research program, recently begun and with much to be done.