

## Part III

# Case Studies on the Dis-embedding and Re-embedding of Transnational Markets

## (B) Organising and Legalising Services Transnationally



# *International Standards and the Service Economy*

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## I. INTRODUCTION

THIS CHAPTER EXPLORES how international standards are likely to be used for either dis-embedding or re-embedding transnational markets in the service economy. Standards refer here to voluntary technical specifications explicitly documented and published for organising the production and the exchange of goods and services. While a number of them are defined within the International Organization for Standardization (ISO) framework, others result from agreements reached within private *consortia* such as the new DVD format of the Blu-Ray Disc Association. They all codify, in one way or another, technical specifications regarding the measurement, design, performances, or side effects of products, industrial processes, or services, which affect virtually every aspect of our daily lives. Both steel or condom resistance is standardised and thousands of standards define the inter-operability of computers, credit cards and mobile phones. The few studies which have specifically focused on the role of international standards in the service sector share the assumption that, although they were almost non-existent until very recently, their significance is likely to surge with the greater importance of services and the internationalisation of activities previously provided on a domestic basis.<sup>1</sup> This view strongly echoes positions upheld by high-ranking officials of standardisation bodies. When asked what fields of standardisation will be the most active in the coming years, Alan Bryden,

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<sup>1</sup> 'Service sectors turn to standards', (2006) 3 *ISO Focus*, 7–40; K Blind, *Standards in the Service Sector: An Explorative Study* (European Commission, Enterprise Directorate-General, 2003); CHESS Consortium, *Consolidated Report on the Feasibility Study in Response to EU Mandate M/ 371* (CEN's Horizontal European Services Standardisation Strategy, 2009).

former ISO Secretary General, was straightforward in stating that 'one of our biggest challenges is precisely how to address the service sector'.<sup>2</sup> While standards supposedly seek greater rationality and coherence in distinct industries and services, all of them involve ongoing struggles in complex configurations of power, which involve such actors as multinational enterprises, organised interests, and state regulators.

Scholarly research on standards has so far mainly been confined to engineering, business, and economic studies on technical innovation and market structure. These studies tend to downplay the importance of international standards in the rules governing the world economy. While recent social and political science studies have begun to look more closely at the issue, they often rely, on rational choice and game theories to formalise systematic explanations of collective action and conflicts of distribution in the institutional framework which grants standardisation a new role in the world economy.<sup>3</sup> Among the few studies that have shifted their attention towards the larger patterns of authority which mediate between the political and economic spheres, the focus is primarily on product and management systems standards.<sup>4</sup> As attention has begun to focus on governance issues in the world economy, it is worth drawing on globalisation studies which emphasise the role of non-state actors in the closely-integrated relationship between states and markets in such a context.<sup>5</sup> Although in its infancy, there is a burgeoning literature in the field of international relations and global political economy, which analyses the connection between the freedom of private actors to set technical specifications, and the institutional framework required to impose some order on these practices on a transnational basis.<sup>6</sup>

By relying on global political economy approaches which try to uncover structural power relations exercised on a transnational basis, this chapter extends to the area of service standards the assumption that the process of globalisation is not opposing states and markets, but a joint expression

<sup>2</sup> Personal interview with the author, Geneva, 8 June 2007.

<sup>3</sup> W Mattli (ed), 'Governance and International Standards Setting', (2001) 8 *Special Issue of the Journal of European Public Policy*.

<sup>4</sup> C Murphy and J Yates, *The International Organization for Standardization (ISO)*, (London: Routledge, 2008); K Tamm Hallström, *Organizing International Standardization*, (Cheltenham: Edward Elgar Publishing, 2004); N Brunsson and B Jacobsson, *A World of Standards*, (Oxford: Oxford University Press, 2000).

<sup>5</sup> K van der Pijl, L Assassi and D Wigan (eds), *Global Regulation*, (London: Palgrave, 2004); K-G Giesen and K van der Pijl (eds), *Global Norms in the Twenty-First Century*, (Cambridge: Cambridge Scholars Press, 2006); S Sassen, *Territory, Authority, Rights*, (Princeton NJ: Princeton University Press, 2006).

<sup>6</sup> J-C Graz and A Nölke (eds), *Transnational Private Governance and its Limits*, (London: Routledge, 2008); AC Cutler, V Haufler and T Porter (eds), *Private Authority and International Affairs*, (New York: SUNY Press, 1999); H Krause Hansen and D Salskov-Iversen (eds), *Critical Perspectives on Private Authority and Global Politics*, (Houndmills: Palgrave Macmillan, 2008).

of both of them, which includes new patterns and agents of structural change through formal and informal power and regulatory practices. It shares the assumption made by scholars of legal pluralism that global standardisation processes reflect 'among the most important sources of global law'.<sup>7</sup> While studies in legal pluralism attempt to establish how such private regulatory practices can meet acceptable criteria, in particular, within the European and World Trade Organization (WTO) framework, this chapter focuses on the power and social configurations underlying the phenomenon. From a Polanyian perspective, understanding the rise of international standards in the global political economy of services calls for appraising more systematically the significance of technical specifications among the wide range of tools forged to embed and dis-embed transnational markets. Service standards epitomise an institutional innovation which is supposed to respond to the distinct sensitivity of society in trading services. As Krajewski shows in this volume, the availability, provision and use of services all rely on social constructs with intrinsic limits to their dis-embeddedness from society. Some rely on public services, others raise the concerns of consumer protection or relate to security matters involving liability issues for users and providers alike.

While Schepel considers that standards may constitute a 'useful and meaningful framework of deliberative supranationalism',<sup>8</sup> this chapter qualifies the argument by showing that both the ambivalent status of the private and public actors involved and the inclination to intermingle physical measures with societal values are likely to re-inforce the commodification of services and their dis-embedding from societal concerns. It argues that service standards reflect the significant development of a form of transnational hybrid authority which undermines the functional differentiation between the different spheres of society, and re-inforces the potential of political capture in the deliberative process of regulatory practices in contemporary capitalism.

The chapter begins with some background on the service sector, service standards, and, more generally, the international standardisation in goods and services. It then fleshes out the theoretical framework along which it analyses service standards as a form of transnational hybrid authority, with a particular emphasis on how the rise of standards impinges upon bureaucratic practices and state law. Finally, the chapter examines, on an empirical basis, the institutional setting of the emerging power of service standards in the ISO context and at European level. The conclusion summarises the argument.

<sup>7</sup> G Teubner (ed), *Global Law without a State*, (Aldershot: Ashgate-Dartmouth Publishing, 1997) 3; H Schepel, *The Constitution of Private Governance*, (Oxford: Hart Publishing, 2005) 8.

<sup>8</sup> Schepel, *ibid*, 413.

II. SERVICE, GLOBALISATION AND  
STANDARDISATION—BACKGROUND

The growing significance of the service economy has become a prominent feature in the current structural change towards a knowledge-based global economy. Services now account for more than 70 per cent of GDP and employment in the advanced economies of the OECD, and for more than 50 per cent in the developing as well as in the central and eastern European countries. The significance of services not only pertains to their growing share in the economy and their close connection to technology and knowledge, but is also related to their swift internationalisation and to an important regulatory reform. Many services now supplied on a commercial basis used to be predominantly provided by the state in the form of public utilities and social services. Krajewski and Batura analyse, in this volume, the prominent examples of telecommunications and health services; other major cases in point are transport and education. Even though privatised, these services have remained regulated by state bureaucracies, and by corporate standards emanating from management decisions and industrial specialisation, or from domestic standard-setting bodies. The internationalisation of services challenges these national regulatory arrangements. It is in this context that international voluntary standards come into play.

The ability to subordinate the delivery of services to the requirements of a global market is not just a matter of suitable technology designed for a distinct economic logic. It also supposes an ability to define the gradual decomposition of complex work into sequences of more simple work. The more fragmented the nature of the labour and consumption processes is, the more requirements there are to codify them. This is why services are often described as intrinsically resisting relocation.<sup>9</sup> Intangible and interpersonal services, such as teaching, consulting, and health and personal services, are conventionally seen as the most difficult services to move offshore, industrialise and standardise. According to Blind, one of the few economists specifically carrying out research on service standards, it is precisely 'because of the intangible nature of services and the information asymmetries thus caused between management and service provider, [that] the need to introduce quality standards for each stage of

<sup>9</sup> R Dossani, 'Globalization and the offshoring of services: the case of India', in L Brainard and SM Collins (eds), *Brookings Trade forum 2005: Offshoring White-Collar Work*, (Washington DC: Brookings Institution Press, 2006); C Du Tertre, 'Activités immatérielles et relationnelles: quels nouveaux enjeux de régulation pour les secteurs et les territoires?', (2002) 4 *Géographie, Économie, Société*, 181–204; C Du Tertre, 'Intangible and Interpersonal Services: Toward New Political Economy Tools. The French Case', (1999) 19 *Service Industries Journal*, 18–34.

the service production is especially high'.<sup>10</sup> Micro-economic approaches value standards as a means of lowering the uncertainty in quality and security, which characterises a large portion of the service economy. In this view, standards positively affect the production and the competitive environment of services as they lower the level of suspicion regarding their nature and their use.

However, the logic at work in defining standards dedicated to the provision of services on a transborder basis is not confined to the micro-economic realm. Service standards have gained significance in the structural transformations of contemporary capitalism. By linking the global marketplace to distinct national economies, international service standards respond to the conflicting understanding of quality and security uncertainties. On the one hand, they can promote a broadening and deepening of minimal market rules; on the other, they can include a number of provisions with the aim of defining a number of socially- or environmentally-based specifications likely to be crucial for the proper delivery or usage of distinct services. In Polanyian terms, they relate to overlapping moments in which dis-embedding and re-embedding forces diverge in their response to the role of market mechanisms in society.<sup>11</sup> This prompts us to explore further the extent to which international standards reflect a distinct form of market power in the reorganisation of the global economy towards services.

Long before current national and international standardisation bodies existed, mercantilist authors emphasised a peculiar juncture between market freedom and the protection of international exchanges. In contrast to many conventional accounts of mercantilism, Perrotta makes it clear that the use value of the goods to be exchanged was a key criterion in the mercantilist understanding of the balance between freedom and the protection of trade.<sup>12</sup> The guiding principle of state intervention was the productive potential that was considered to be the most socially useful. While these early considerations were framed in the 'lineage of the absolutist State'<sup>13</sup> and in an environment largely deprived of transborder services, apart from transport and merchant finance, their understanding of the relationship between market and non-market articulations in an internationalised economy were remarkably similar to Polanyi's reflections on the intrinsic limits to the commodification of fictitious commodities

<sup>10</sup> K Blind, *The Economics of Standards*, (Cheltenham: Edward Elgar Publishing, 2004) 167.

<sup>11</sup> See Chapter 1 in this volume by Alexander Ebner.

<sup>12</sup> C Perrotta, 'Is the Mercantilist Theory of the Favorable Balance of Trade Really Erroneous?', (1991) 23 *History of Political Economy*, 310–36. For further elaboration, see J-C Graz, 'Transnational Mercantilism and the Emergent Global Trading Order', (2004) 11 *Review of International Political Economy*, 590–610.

<sup>13</sup> P Anderson, *The Lineage of the Absolutist State*, (London: Verso Books, 1979).

such as labour, land and money. To translate this understanding into the contemporary debate, the tension which exists when state practices in the area of non-market issues are put to the test by those involved in the transnational drive of capitalism can be referred to as a form of transnational mercantilism. The shift from a trade agenda focused on tariff reduction to the harmonisation of domestic regulations in consequence of their impact on international exchanges suggests that international standards play a crucial role in transnational mercantilism: they contribute to an acceptable balance between market and non-market provisions on a comprehensive scope and worldwide basis.

Against this background, standards are an object of enquiry which are closely related to globalisation studies, and highlight new patterns and agents of change beyond state and market power. Research on standards is dominated by business, economic, and applied science studies, which focus on industrial choices, market forces, and technological innovation.<sup>14</sup> A more political science-oriented perspective assumes that the drive for technical specification in international standardisation requires a distinct institutional framework to ensure some order at transnational level. Neo-institutional approaches have tried to explain the nature of the relations between private actors involved in standardisation and the institutional environment in which their actions take place. Borrowing the concept of transaction costs from institutional economics, these studies consider how the practices of agents can be defined by their environments to a considerable extent. From this perspective, standardisation provides an institutional guarantee for improving trust in transactions and curbing the free-riding risks among actors not willing to pay the full cost of the expected benefits. Rational choice and game theories formalise systematic explanations of co-operative games and the conflicts of distribution in the institutional framework of standardisation.<sup>15</sup> In this view, the logic of action trumps its content, and the understanding of the power relations involved in standardisation is confined to quantifiable and *a priori* defined criteria based upon rationalist assumptions.

<sup>14</sup> RB Toth, *The Economics of Standardization*, (Minneapolis MN: Standards Engineering Society, 1984); CF Cargill, *Information Technology Standardisation*, (Bedford MA: Digital Press, 1989); P Swann, *The Economics of Standardization. Final Report for Standards and Technical Regulations Directorate Department of Trade and Industry*, (Manchester: Manchester Business School, 2000); J Drèze, 'The Standard Goods Hypothesis' in A Jacquemin and A Sapir (eds), *The European Internal Market*, (Oxford: Oxford University Press, 1989); H de Vries, *Standardization*, (Boston MA: Kluwer, 1999); OECD, *Regulatory Reform and International Standardisation* (Paris: Organisation for Economic Co-operation and Development, Trade Committee Working Party, 1999); Blind, note 10 above.

<sup>15</sup> K Abbott and D Snidal, "International 'standards' and international governance", (2001) 8 *Journal of European Public Policy*, 345–70; Mattli note 3 above; W Mattli and T Büthe, 'Setting International Standards: Technological Rationality or Primacy of Power?', (2003) 56 *World Politics*, 1–42.

Other studies adopt a more critical perspective on the socially- and historically-constructed framework of standardisation and its diversity across the globe. They provide accounts of the formation of the institutional architecture of standard-setting, the beliefs underpinning standards, their organisational environment, the democratic controls of the so-called independent regulatory authorities, the conflicts of power in specific negotiations, and the broader scope of ISO-like standards.<sup>16</sup> Such analyses shed light, for instance, on the debate between the strongly institutionalised ISO and European systems, the more competitive pattern in the US, and the oligopolistic nature of consortia agreements.<sup>17</sup> Yet their account fails to recognise the structural nature of the power relationships affected by standardisation and the role it plays in the organisation of a capitalist world economy.

The concept of structural power refers to material and discursive structures which are able to affect (intentionally and unintentionally) the practices of agents; hence, those able to wield this power can modify the general environment for their own benefit.<sup>18</sup> The Schumpeter-inspired approach developed by Dudouet, Mercier and Vion highlights an important point in this regard, as it uncovers how standards may re-inforce path-dependant oligopolistic innovation trajectories.<sup>19</sup> However, it seems better suited to appraising innovation systems in technology than the increasing social scope and political implication of standards as exemplified in a number of service standards. In addition, the approach is not meant to uncover the broader and structural power relations taking place in standardisation. The distinct practices of standardisation call to mind the *nébuleuse* that Cox portrayed in the mixture of official and unofficial transnational and international networks, with representatives of business, the state and academia working towards the formulation of a consensual policy for global capitalism.<sup>20</sup> The structural power of standardisation epitomises one, among other, new forms of non-state authority that have evolved over the past decade in the global political economy. The scope

<sup>16</sup> Brunsson and Jacobsson, note 5 above; S Schmidt and R Werle, *Coordination Technology*, (Cambridge MA: The MIT Press, 1998).

<sup>17</sup> K Nicolaïdis and M Egan, 'Transnational market governance and regional policy externalities: why recognize foreign standards?' (2001) 8 *Journal of European Public Policy*, 454–73; M Egan, *Constructing a European Market*, (Oxford: Oxford University Press, 2001).

<sup>18</sup> S Gill and D Law, 'Global Hegemony and the Structural Power of Capital', (1989) 33 *International Studies Quarterly*, 475–99; S Guzzini, 'The use and misuse of power analysis in international theory', in R Palan (ed), *Global Political Economy: Contemporary Theories*, (London-New York: Routledge, 2000).

<sup>19</sup> F-X Dudouet, D Mercier and A Vion, 'Politiques internationales de normalisation: Quelques jalons pour la recherche empirique', (2006) 56 *Revue Française de science politique*, 367–92.

<sup>20</sup> RW Cox, 'Global *Perestroika*', in R Miliband and L Panitch (eds), *Socialist Register*, (London: Merlin Press, 1992).

of international standards not only pertains to their potential worldwide reach, but also to the whole range of conflicts emanating from the capitalist system.<sup>21</sup> Assessments of the relationship between standard-setting agencies and society as a whole are, therefore, bound to be controversial. Thus, the rise of international standardisation as a privileged form of devising technical specification typically encroaches upon two core issues which crystallise social struggles in capitalism: the opposition between labour and capital, and the separation of the economy from the state. Standards intervene into the struggle between capital and labour. Workers may look to standards to ensure a safer workplace (for example, standards on machine safety or maximum noise pollution) or to obtain quality guarantees on the goods which they purchase. In contrast, entrepreneurs, merchants and financiers will equate standards with risk reduction, technological progress, strategic competitive behaviour, and profit. With regard to the separation between the economy and the state, the voluntary market-oriented dimension of standards may re-inforce free market claims to keep economic constraints and appropriation separated from politico-legal coercion. At the same time, however, the authority conferred on standard-setters by state agencies and intergovernmental agreements may narrow down the conventional Weberian view of state autonomy. This prompts us to elaborate further on how the rise of standards impinges upon bureaucratic practices and state law.

### III. STANDARDISATION AND BUREAUCRACY

The larger scope of standards in the organisation of transnational markets substitutes, to a certain extent, the role of bureaucracies in the foundations of authority and the domination of modern states in capitalism. As stressed by Joerges and Rödl with regard to the European context, standardisation 'has detached itself from state law', but, at the same time, 'remains in contact with government actors'.<sup>22</sup> A central assumption of Weber's analysis of modern state power is that any legal rational form of domination relies on functional differentiation in order to exercise its power and claim legitimacy. To a large extent, such a functional differentiation rests upon the state bureaucracy. Civil servants provide a rational administration thanks to the stock of knowledge that they

<sup>21</sup> C Murphy, *International Organization and Industrial Change*, (Cambridge: Polity Press, 1994); C Murphy and J Yates, note 4 above.

<sup>22</sup> Ch Joerges and F Rödl, 'Reconstituting democracy in Europe's post-national constellation by dint of conflict of laws', in: I Lianos and O Odudu (eds), *Regulating Trade in Services in the EU and the WTO: Trust, Distrust and Economic Integration*, (Cambridge: Cambridge University Press, 2010) 326.

acquired at school and subsequent professional training, as well as the skills and expertise built up throughout the years in which they occupy their positions. The supposed autonomy of the bureaucracy is identified as a guarantee against state capture from ruling élites as well as from all sorts of organised private and associative interests.<sup>23</sup> A great number of studies have discussed over several decades how Weber may have over-emphasised the efficiency of bureaucratic administration and its supposed monopoly of factual knowledge and technical expertise.<sup>24</sup> Moreover, Weber's disenchanted view on modern life, which would bring about an ineluctable spread of bureaucracy leaving no more space for individual freedom and creativity is, to a large extent, contradictory to his analysis of a knowledge-based administration as the bulwark of the collective good against the ability of private organised interests and government executives to capture the state.<sup>25</sup> Finally, many problems may be related to the proliferation of autonomous administrative entities re-inforced by functional differentiation, be it a concentration of power at the top of the hierarchy, or the dominance of one rationality over all the others.<sup>26</sup>

However tricky the analysis of bureaucracy may be, standardisation challenges the conventional Weberian legal-rational view of organising state bureaucracies along distinct functional tasks relating to technical issues. Support for industry-based and timely voluntary standards is, indeed, often made on such claims as the lack of knowledge and expertise supposedly embodied by regulatory practices prompted by state agencies. Standards would provide efficient rules for global co-ordination and help to clamp down on cumbersome inter-governmental regulatory agreements. As Schepel explains, from a legal pluralist approach 'self-regulation, in this conception, is no longer necessarily seen as an alternative to state regulation; rather, the regulation of self-regulation is conceived of as regulation by other means'.<sup>27</sup>

From this standpoint, standardisation looks like a comprehensive procedure that plays out various normative orders and levels of governance in order to provide structural coupling between fragmented social

<sup>23</sup> M Weber, *Economie et société*, (Paris: Pocket, 1995).

<sup>24</sup> J Meyer and B Rowan, 'Institutionalized Organizations: Formal Structures as Myth and Ceremony', (1977) 83 *The American Journal of Sociology*, 340–63; J Meyer et al, 'World Society and the Nation-State', (1997) 103 *American Journal of Sociology*, 144–81.

<sup>25</sup> M Weber, 'Parlement et gouvernement dans l'Allemagne réorganisée. Contribution à la critique politique du corps des fonctionnaires et du système des partis', in M Weber (ed) *Oeuvres politiques* (Paris: Albin Michel, 2004).

<sup>26</sup> G Teubner, 'Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory?' in Ch Joerges, I-J Sand and G Teubner (eds), *Transnational Governance and Constitutionalism*, (Oxford-Portland OR: Hart Publishing, 2004); Ch Joerges and E Vos (eds), *EU Committees*, (Oxford: Oxford University Press, 1999).

<sup>27</sup> Schepel, note 7 above, 31.

systems. It constitutes one of the pillars of a 'global law without a state'.<sup>28</sup> Provided that society is fairly, substantially and thoroughly included, legal pluralism views standardisation as a blueprint for deliberative supranationalism which is likely to re-embed transnational markets with other means.<sup>29</sup>

However, far from coupling fragmented and differentiated social systems, the growing influence of standards is likely to undermine the functional differentiation of politics. The wide range of social forces which promote standards re-inforces the lack of distinction between an authority founded on scientific knowledge, technical expertise, and market power, on the one hand, and an authority built upon a formal mandate which establishes procedures for delegating the sovereign power of political subjects, on the other. Such functional differentiation strengthens the authority of non-state actors, founded on their expertise as well as on their market power, to the detriment of the cognitive authority claimed by professional civil servants. At international level, non-state actors may obtain extra advantage from the absence of a supranational government. The decline of functional differentiation born with modern state power gives way to undifferentiated private and public bodies in charge of setting rules on issues indeterminately related to the sphere of hard science or societal values. This argument challenges the assumption made in most of the literature on the regulatory practices of non-elected bodies and private actors, which underestimates their ability to capture the state.<sup>30</sup> Borraz has, for instance, re-assessed this assumption for the case of French standardisation in water utilities.<sup>31</sup> Political capture should not be identified only in reference to outcomes and procedures. More structurally, it relates to a control of resources, access, and the capacity of actors to modify durably the environment of their practices to their own advantage. Part of the ability of non-elected bodies and private actors to capture supranational deliberative procedures relates to the ambiguous and ambivalent status of such non-state actors in international relations. Standards definition, implementation and monitoring may well be privileged vehicles for exercising such a structural power.

<sup>28</sup> Teubner note 8 above.

<sup>29</sup> Schepel, note 7 above, 412–13.

<sup>30</sup> Egan, *Constructing a European Market*, note 18 above; G Majone, 'Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance', (2001) 2 *European Union Politics*, 103–21; J Jordana and D Levi-Faur (eds), *The Politics of Regulation*, (Cheltenham: Edward Elgar Publishing, 2005).

<sup>31</sup> O Borraz, 'Les normes: instrument dépolitisé de l'action publique', in P Lascombes and P Le Galès (eds), *Gouverner par les instruments*, (Paris: Presses de Sciences Po, 2005).

#### IV. THE TRANSNATIONAL HYBRID AUTHORITY OF STANDARDS

The growing influence of standards brings about a new form of transnational hybrid authority in international relations. Both the nature and the implications of the rise of non-state actors as standard-setters who shape the global political economy call for new conceptual tools. This complex and multi-faceted process evolves extremely rapidly. It reflects the significance of a phenomenon which I have elsewhere referred to as the rise of global hybrids. Global hybrids are defined as

a form of authority that blurs the subjects legitimately involved in it, pertains to objects undermining the distinction between science and society, and pursues a fragmentation of the space where the endogenous logic of territorial sovereignty gives way to an exogenous logic reinforcing the transnational underpinning of capitalism.<sup>32</sup>

In the field of international relations, studies of private international authority have pioneered ground-breaking analysis in order to appraise the influence of a distinct type of non-state actor.<sup>33</sup> They explain how inter-firm co-operation can confer a political role on actors traditionally associated with the private sphere of economic transactions. They prompted a shared understanding on the importance of implicit or explicit consent—instead of coercion or forceful compliance—in such configurations of power. According to Cutler and her co-authors, ‘those subject to the rules and decisions being made by private sector actors must accept them as legitimate, as the representations of experts and those “in authority”’.<sup>34</sup> The rise of non-state actors and less conventional forms of sovereignty is, however, not confined to the co-operation of firms across borders.<sup>35</sup> Djelic and Sahlin-Andersson consider, for instance, that the non-state authority which enables various forms of transnational governance hinges upon ‘powerful institutional forces that altogether constitute a transnational culture or meaning system’.<sup>36</sup> Studies should not narrow down who may actually have such authority.

<sup>32</sup> J-C Graz, ‘Hybrids and Regulation in the Global Political Economy’, (2006) 10 *Competition and Change*, 230–45. For further elaboration, see also, J-C Graz, ‘Quand les normes font loi: topologie intégrée et processus différenciés de la normalisation internationale’, (2004) XXV *Etudes Internationales*, 233–60; J-C Graz ‘International standardisation and corporate democracy’, in K-G Giesen and K van der Pijl (eds), *Global Norms in the Twenty-First Century*, note 5 above.

<sup>33</sup> Cutler, Haufler and Porter, note 6 above.

<sup>34</sup> *Ibid.*, 19.

<sup>35</sup> Graz and Nölke, note 8 above; E Grande and L Pauly (eds), *Complex sovereignty*, (Toronto: University of Toronto Press, 2005); RB Hall and T Biersteker (eds), *The Emergence of Private Authority in Global Governance*, (Cambridge: Cambridge University Press, 2002); S Strange, *The Retreat of the State*, (Cambridge: Cambridge University Press, 1996).

<sup>36</sup> M-L Djelic and K Sahlin-Andersson (eds), *Transnational Governance*, (Cambridge: Cambridge University Press, 2006) 23.

The range of private actors to be taken into consideration undoubtedly depends on how we define the private/public distinction. While accounts may vary in each society, the separation between the modern state and the economy has shaped social relations along the distinction between the private and the public sphere. The two spheres should be analysed as being closely related, reflecting two faces of the same coin. While the public sphere confers inclusive and universalistic rights of citizenship, the private sphere brings into play exclusive and bounded contractual rights. Non-state actors span both spheres, as exemplified by trade unions, activist groups, women's organisations, professional associations, cadres and experts organised in ad hoc bodies, advocacy or policy networks, élite clubs and religious groups. In each case, the range of private actors is greater than firms—which we refer to as the 'private sector' in narrow economic terms.

The distinction between the private and public spheres in which standardisation practices take place may, therefore, be seen as located in an *institutional continuum* which defines *who* can standardise. Both market mechanisms and policy choices affect the agents involved in the field, although they do so in different ways. Technical specifications belong to the private sphere of economic activities governed by market constraints, and affect social and technological change from that angle. They nonetheless remain related to the public sphere of political action directed at the general interest of society—for instance, by determining a certain level of risk or by setting principles of liability. Hence, even in the circumscribed field of technical specification, norms relate as much to capital accumulation and technical progress as to social improvement or the various instruments of the welfare state.

Moreover, the ability of non-state actors to co-operate across borders in order to establish rules and standards which are accepted as legitimate by agents not involved in their definition, requires explicit or implicit state recognition. A critical source of non-state authority in the global political economy is, therefore, what Sassen calls 'de-nationalisation', that is, the process which contributes to the endogeneisation of private and transnational agendas within the public sphere.<sup>37</sup> Governments and intergovernmental institutions often support and fully recognise the power of non-state actors, who, in turn, may gain legitimate authority. The territorial basis of politics, of the state, and of the structural power of governments and markets still exists beyond various forms of transnational private governance. It is against this background that particular attention must be paid to the mixture of private and public actors in

<sup>37</sup> S Sassen, 'The Participation of States and Citizens in Global Governance', (2003) 10 *Indiana Journal of Global Legal Studies*, 5–28; *idem*, *Territory, Authority, Rights*, note 5 above.

standardisation, and to the reasons why these standards become effective.

The transnational hybrid authority of standards entails numerous agents who play or claim to play a role not only as new subjects (private/public actors), but also on the nature of the objects (natural/societal) upon which exerting their power. The authority conferred on standards changes the properties of these categories and alters the hierarchy of their relationship. Regarding the distinct classes of the objects concerned, technical specifications are situated along a *material continuum* which delineates *what* can be standardised. Taken as a whole, the continuum gives support to standards likely to aggregate any relation between human beings and nature. The so-called technical specifications range from natural and invariable physical measures to constructed and historically-bound societal values. The increasingly large scale of capitalist industries and the rapid technological innovations of the Second Industrial Revolution led to material product standards defining performance and interoperability. Health and safety concerns linked to the welfare state prompted the development of standards in domains more directly related to consumers than producers. More recently, outsourcing in the development of global value chains and increasing concerns about environmental regulations potentially used as non-tariff trade barriers contributed to the shift towards quality and environmental management standards in the 1980s and 1990s. International standardisation is now bound to make headway into even broader societal concerns, which are tackled by the implication of the intangible and relational features of some aspects of the service sector. In a context of technological convergence, the disaggregation of productive processes, privatisation, and growing foreign competition triggered by the offshoring of services, the material continuum along which privileged objects to be standardised are situated, reproduces the hierarchy of the North–South divide. Apart from a few exceptions in large emerging countries, international standards are not widely spread in developing economies, where services nevertheless account for half of the economic activity; and when they are, developing countries are standard users—not makers. A very limited number of standards concern issues of distinct relevance to developing countries, such as those related to the cross-border trade of second-hand goods discussed in the recently created ISO Technical Committee 245 under the auspices of the Standardisation Administration of China.

To sum up, drawing upon the assumption that globalisation involves new patterns and agents of change through formal and informal regulatory practices of a wide range of nonstate actors, service standards reflect the significant development of a form of transnational hybrid authority that blurs the distinction between private and public actors, whose scope spread all along from physical measures to societal values, and which

reinforces the deterritorialisation of regulatory practices in contemporary capitalism. It is now time to further explore the institutional setting of the emerging power of service standards.

#### V. THE INSTITUTIONALISATION OF SERVICE STANDARDS

The entry into force of the WTO Technical Barriers to Trade (TBT) Agreement and the revision of the Sanitary and Phytosanitary Measures (SPS) Agreement in 1995 validated a formal devolution of power to international standard-setting organisations. Unlike the loose provisions regarding technical regulation of the old GATT, the TBT and SPS Agreements, like some provisions of the General Agreement on Trade in Services (GATS) and the plurilateral Agreement on Government Procurement (GPA Article VI: 2b), give international standards a major role in harmonising the technical specifications of goods and services traded on the global market. State regulation in this domain must comply with 'legitimate objectives'. With regard to goods, such concerns are related to health, safety and environmental issues. In contrast, competence, capacity to deliver, and quality are the major objectives in the sphere of services. The goal of removing 'unnecessary' barriers to trade should, furthermore, be pursued so far as possible by substituting international standards for domestic standards. GATS Article VI: 4 assigns to the Council for Trade and Services (through its Working Party on Domestic Regulation) the largely market-inspired task of developing 'any necessary discipline' to ensure that domestic regulations 'do not constitute unnecessary barriers to trade [and are] not more burdensome than necessary to ensure the quality of the services'. The agreement furthermore specifies that 'account shall be taken of international standards of relevant international organizations' determining whether a Member is in conformity with such discipline (GATS Article VI: 5b). Since the launching of services negotiations in 2000 independently from the so-called Doha development agenda, no decision has been reached within the WTO on further defining discipline in the global market for services. Despite the careful wording of the WTO,<sup>38</sup> a whole range of international bodies still has the capacity to define generic as well as detailed technical specifications which affect how swelling offshore services are expected to be traded on a worldwide basis.

<sup>38</sup> In a footnote, the Agreement specifies that 'the term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO'.

## A. The ISO Setting

As the world's largest developer and publisher of international standards with a membership of 160 mixed private and public national standardisation bodies, the ISO represents a core arena for assessing the current developments of service standardisations. The move into the standardisation of services was kicked-off in 1995 by a COPOLCO (Committee on Consumer Policy of the International Organization for Standardization) workshop that took place in Beijing. Lawrence Eicher, then ISO Secretary General, emphasised that the manufacturing industry was already changing with the move into generic management system standards, and, from here on, 'the emphasis could change even more to take into account the needs of the burgeoning service industries'.<sup>39</sup> Six workshops took place in the following years with various *foci*, such as tourism, exhibition management, banking and insurance, and engineering consultancy, as well as multi-sectoral methodological issues for developing service standards. In 2001, a new working group was established to draft a guide on the use and development of service standards from a consumers' perspective. After seven years of intense negotiations, the 'ISO/IEC Guide 76, Development of service standards—Recommendations for addressing consumer issues' was eventually published in January 2008. So far, 14 new technical or project committees have been set up to develop service standards at the ISO.<sup>40</sup> Some developments have taken place with regard to the requirements for professionals who provide personal financial planning such as in pensions per capitalisation (ISO 22222:2005), in the vocabulary and service requirements for market, opinion and social research (ISO 20252:2006), in safety requirements for scuba diving (ISO 24801-1:2007), and as a first attempt to develop a common terminology for defining hotels and other types of tourism accommodation (ISO 18513:2003). These distinct sectoral standards remain marginal in terms of the global service economy. Clearly, large portions of the service economy, such as finance and insurance, use instruments developed within their own sector, even if their ability to legitimately claim a large authority in

<sup>39</sup> *ISO Bulletin*, January 1995.

<sup>40</sup> New ISO committees specifically focused on services standards are extremely diverse as the following list demonstrates: ISO/TC 204, Intelligent transport system; ISO/TC 215, Health Informatics; ISO/TC 222 Personal Financial Planning; ISO/TC 223 Societal Security; ISO/TC 224 Service activities relating to drinking water supply system and wastewater systems; ISO/TC 225 Market, opinion and social research; ISO/TC 228 Tourism and related services; ISO/TC 230 Project Committee: Psychological assessment; ISO/TC 231 Project Committee: Brand valuation; ISO/TC 232 Educational Services; ISO/TC 235 Project Committee: Rating services; ISO/TC 236 Project Committee: Project Management; ISO/TC 237 Project committee: Exhibition terminology; ISO/TC 239 Project committee: Network services billing.

self-regulation has been seriously challenged in the context of the global economic crisis. Transborder service providers also heavily rely on more generic standards, which may be indifferently applied in both the production and the exchange of goods and services. Among those most widely used are the quality, environmental, and information security management system standards ISO 9000, 14000 and 27000 series, as well as the guidance on conformity assessment provided by the ISO 17000 series.

More than five years after the 2005 ISO workshop ‘Global trade in services—new challenges for international standardization’ and almost two decades after the launching of the institutional process, little progress has been accomplished within the ISO. While some of these early developments may later have profound impact on the service sector, it is worth noting that, so far, maturity in service standardisation remains weak within the ISO environment.

## **B. The European Setting**

More developments take place at the regional level, especially in Europe, as the European Union is at the forefront of both service integration and international standardisation.<sup>41</sup> In 1985, Council Resolution 85/C 136/01 on a ‘New Approach’ to technical harmonisation and standardisation instigated a completely new regulatory technique and strategy.<sup>42</sup> The resolution was a response to the growing role of the European Court of Justice in solving conflicting regulatory policies in the internal European market. It was also an early move towards the completion of the Single Market by devising procedures to avoid turning technical specifications into a structural impediment to trade. Although Member States were wary about seeing regulation in this domain transferred to the European authorities, they did perceive the threat of a race to the bottom in public-purpose standards as integration progressed. The New Approach provides a framework for the harmonisation of EU public law only on the general and essential requirements of goods and services traded on the European market, in particular, in the field of health, the environment, safety, and consumer protection. Depending on the sectors affected,

<sup>41</sup> There are regional standardisation bodies in the Americas (Pan American Standards Commission, COPANT) and in Asia-Pacific (Pacific Area Standards Congress, PASC). As compared to the European system, however, their influence is still weak.

<sup>42</sup> For a discussion of the increasing reliance on standardisation in European law making and public policy from a deliberative supranationalist perspective, see Ch Joerges, H Schepel and E Vos, ‘The Law’s Problems with the Involvement of Non-Governmental Actors in Europe’s Legislative Process: The Case of Standardisation under the “New Approach”’, (EUI Working Paper LAW, San Domenico di Fiesole: European University Institute, 1999).

technical specifications, performance criteria and quality requirements are either based upon mutual recognition of national standards, or delegated to European standard-setting bodies such as CEN (Comité européen de normalisation), CENELEC (Comité européen de normalisation électrotechnique), and ETSI (European Telecommunications Standards Institute). In most sectors, the procedure for monitoring standards is a matter of business self-regulation, since products put on the market are granted a presumption of conformity through the sole declaration of the manufacturer (the CE marking). Thus, the European New Approach has not merely strengthened the importance of voluntary standards in the Single Market. By avoiding costly third-party testing and certification, and by providing the procedural means for a simultaneous adoption of European standards as international ones (through the so-called Dresden and Vienna Agreements), the EU has also won over non-European countries to its standardisation system. This (largely unintended) outcome has led to a powerful strategic positioning of European standards in the global market.<sup>43</sup>

The European Commission is well aware that the emergence of an increasingly dense and extensive European standardisation complex with global reach should also be able to support the Lisbon Agenda agreed at the European Council meeting in March 2000. Services are a core feature of the Lisbon Agenda, which aims 'to become the most competitive and dynamic knowledge-based economy in the world'. New emphasis on service standards occurred after the 2005 mid-term review of the Lisbon Agenda and the developments leading to the adoption of Directive 2006/123/EC on services in the Internal Market, the so-called Bolkestein Directive eventually agreed upon at its second reading in December 2006 and fully implemented since the end of 2009. A horizontal approach to the harmonisation of different regulations at European level lies at the centre of this directive, which aims to minimise the limits to the free movement of services and service providers by discrimination based upon nationality or local residence. The controversial 'country of origin' principle has now been substituted for the formula 'freedom to provide services'. The service must conform to the regulations of his or her 'place of establishment'. But, in order to further unify the internal market for services, the Directive sees the promotion of quality as a key objective. To this end, it explicitly encourages the work of professional independent or community bodies of standard-development and certification (such as CEN, CENELEC, and ETSI) in order to develop voluntary quality marks and labels (Preamble 102 and Article 26).

<sup>43</sup> Egan, *Constructing a European Market*, note 18 above; D Vogel, *Trading Up*, (Cambridge MA: Harvard University Press, 1995).

It is against such a background that DG Enterprise and Industry of the European Commission addressed, in October 2003, its first Programming mandate (M 340) to CEN, CENELEC and ETSI in the field of services in order to identify priority sectors in which intra-community trade in services was already occurring or was likely to surge. Issues could include horizontal cross-sectoral generic standards and vertical sector-specific standards, as well as service providers or end-users. After several events organised in 2004 in response to this mandate, a second programming mandate (M 371) was addressed to CEN in the field of services in 2005 following the transfer of responsibility for business-related services to DG Internal Market and Services. In 2007, 11 projects were developed among half a dozen European standardisation bodies in response to this second mandate.

The CEN Horizontal European Service Standardization Strategy (CHESSS) is the largest of the 11 projects formed in response to EU Mandate M/371. This initiative is organised as a consortium of national standards bodies led by the British Standards Institute (BSI), in association with those from Spain (AENOR), Germany (DIN), Denmark (DS), Estonia (EVS) and the Netherlands (NEN), as well as participation from *CapGemini*, one of the world leader in IT consulting and management services. The initiative examined the feasibility of taking a generic approach to European service standardisation, in focusing on the extent to which standardisation could apply across multiple service sectors and the benefits of doing so, as opposed to following a sector-specific approach. By taking a generic approach, CHESSS seeks to establish the underlying principles for an ongoing programme of European service standardisation capable of facilitating the delivery of services across the EU, unimpeded by national borders.<sup>44</sup> In its final report published in 2009, CHESSS formulates five recommendations.<sup>45</sup> In addition to the development of a single generic European service standard, it supports the establishment of a guidance document for drafting future standards, the creation of a standardised Pan-European Customer Satisfaction Index (CSI), the clarification of services glossary and equivalence issues, and the elaboration of a guidance document for customer centricity and interface. The topics expected to be included in a future single horizontal standard are confined to the design of the service, information provision to customers, billing, complaints and redress, as well as innovation and review. Unsurprisingly, the report points out the likely difficulty of involving a wide range of stakeholders

<sup>44</sup> Quincy Lissaur, Senior Business Consultant, BSI-British Standards, interview with the author, London, 23 January 2007.

<sup>45</sup> CHESSS Consortium, Consolidated Report on the Feasibility Study in Response to EU Mandate M/371.

when a lot of them lack the necessary awareness and resources to do so. This clearly bodes no good to the expected deliberative quality in the production of such a standard. It is worth noting, however, that, throughout the modules, significant differences exist with regard to the approach to horizontal standards: some are in favour of multiple horizontal standards as opposed to a single horizontal standard; some prefer horizontal standards completed by vertical standards, while others remain very sceptical about the capacity of horizontal standards to deal with the diversity of the service economy. A distinct module of the report focused on business to business (B2B) services even suggests a so-called ABC-standard system as a suitable response to the antagonism between horizontal generic standards and vertical sectoral standards. (The idea would be to establish an institutional hierarchy between different types of standards, A-standards being for all services, B-standards or semi-horizontal standards for a group of services, and C-standards being sector specific.) By and large, it remains unclear whether the CHESSE strategy will be successful; however, the interest in a single horizontal generic standard with a possible certification scheme is clearly an attempt to promote services standards on a par with the worldwide achievement of the ISO 9000 series.

In contrast, the other ten projects address the specificity of distinct markets of services. As a pioneer in national standards developed and supported by private and public service providers in well-defined service sectors, AFNOR, the French national standardisation body, initiated these projects in consultation with a few European standardisation bodies, in particular, those from the Netherlands and Denmark. The recommendations made in the final report on the feasibility of European service standards thus identify a number of service activities likely to be standardised at various levels of institutionalisation, be they European Standards *per se*, or guidance materials and workshop agreements.<sup>46</sup> The quality of the deliberation process is an important rationale in defending the superiority of a vertical and sectoral approach. According to Pascal Gautier, in charge of the unit management and services at AFNOR, generic standards in services would soon become burdensome and unrealistic as 'they require phenomenal efforts which would eventually generate opposition'; in his view, 'it is much better to privilege a niche approach in service standards so as to keep a sector-specific proximity, to privilege in other words

<sup>46</sup> CEN Management Centre, *Summary, Background and Proposals related to European Commission Programming Mandate M/371 in the Field of Services* (April 2009). According to the Report, standardisation work should be initiated in the following areas: accessibility of transport and tourist services, project management services in the field of engineering consultancy, services for residential homes and older persons, reception services, IT- and non-IT service outsourcing, and smart house services.

a so-called Swiss army knife effect where each blade has its distinct use'.<sup>47</sup> However, the ability to capture deliberative standardisation processes remains important as long as the ambiguous mixture of private and public actors involved is not curbed and the issues concerned continue to be ambivalent with regard to their societal or more strictly technical objects of reference. In this regard, a narrower sectoral approach is certainly not a sufficient condition for securing standards which would become alternate instruments of auto-protection of society. A proper differentiation of actors among stakeholders and issues spanning from physical measures to societal values, as well as clear-cut incentives to mitigate representation biases would be necessary to ensure a fair, substantial and thorough representation in standardisation processes.

## VI. CONCLUSIONS

The picture emerging from the ongoing institutional developments at European and worldwide ISO level suggests that the transnational hybrid authority of international standards in the service sector will have a growing influence on the regulatory environment of the economy and society at large. Such developments remain, however, more difficult than commonly expected, and are supported by two sets of competing profiles. Those in favour of horizontal standards endorse the development of generic specifications cutting across distinct sectors and dis-embedding transnational markets thanks to narrow definitions of requirements such as transparency and quality. In contrast, supporters of vertical standards claim that the internationalisation of the service economy should remain embedded in concrete market practices, labour processes, and, arguably, society at large. In their view, services can only be standardised according to the specificity of the production configuration in which they are provided and the context of their usage. While the motto of the former is what Ziva Patir, ex-Vice President of ISO, calls the 1-1-1-dream of 'one market, one standard, one test, globally accepted',<sup>48</sup> the latter are more inclined to restrict such a motto to 'one sector, one standard, one test, accepted wherever relevant'. From a Polanyian perspective, these conflicting claims reflect opposing types of relationships between standards and society at large. As Ebner stresses in this volume, the double movement of commodification and auto-protection of society should be understood as overlapping moments in which dis-embedding and re-embedding forces reflect clashes of social

<sup>47</sup> Pascal Gautier, Head of Unit 'Management and Services', AFNOR, interview with the author, Paris, 18 April 2007.

<sup>48</sup> Ziva Patir, ISO Vice President, interview with the author, Geneva, 8 June 2007.

principles, contradictory market systems and non-market modes of social integration. Similarly, international standards can be used either as driving forces for broadening the domain of market self-regulation, or as alternate instruments of auto-protection of society. The direction on which the balance will tilt depends on the degree to which society is fairly, substantially and thoroughly included in standardisation processes; it is also subject to the differentiation of issues likely to be appropriate for such alternate tools of market organisation.

