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Contesting Accountability and Legitimacy in Non-State Regulatory Regimes

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The paper considers the challenging issue of accountability and legitimacy in decentred regulatory regimes. Such regimes are marked by fragmentation, complexity and interdependence between actors, in which state and non-state actors are both regulators and regulated, and their boundaries are marked by the issues or problems which they are concerned with, rather than necessarily by a common solution. However, the paper asks not what mechanisms are necessary to make actors in decentred regulatory regimes accountable or even legitimate, nor even in accordance with what values, or with respect to whom should they be made accountable in the regulatory process. Rather it develops a relational understanding of both accountability and legitimacy, suggesting that both are socially and discursively constituted. Secondly, it suggests in turn that actors within and outside the regulatory regime have different perceptions as to the relevance and validity of different legitimacy claims with respect to different regulatory actors, in other words that there are different legitimacy communities. Thirdly, that different legitimacy claims, and associated discourses, are not always compatible but may compete. Fourthly, that although organisations can often participate in a number of different legitimacy discourses simultaneously, and thus satisfy a range of different legitimacy communities, this can not only have a deleterious affect on the organisation (which may suffer 'multiple accountability disorder') the differences between communities may be such that organisations can face a legitimacy dilemma: that actions that they need to take to render them legitimate for one legitimacy community are in direct opposition from those they need to adopt to satisfy another. The paper then seeks to explore two main consequences of these propositions for regulatory accountability and legitimacy. These are: first, that different accountability or legitimacy mechanisms are not necessarily substitutable, as some may suggest, as not all will satisfy every legitimacy community. Secondly, that how organisations respond to these competing legitimacy demands is structured by the particular institutional context in which the regulatory regime, and the individual organisation, operates. Regulators are not ciphers – the insights of the 'ungovernability' of actors apply as much to them as those they seek to regulate. The paper thus calls for closer examination of how organisations respond to the accountability and legitimacy claims that are made on them, and the role that they themselves have in shaping those demands.