

Regulation and voluntarism: A case study of governance in the making

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Abstract

In this article I analyze a multi-stakeholder process of environmental regulation. By grounding the article in the literature on regulatory capitalism and governance, I follow the career of a specific legislative process: the enactment of Israel's Deposit Law on Beverage Containers, which aims to delegate the responsibility for recycling to industry. I show that one crucial result of this process was the creation of a non-profit entity licensed to act as a compliance mechanism. This new entity enabled industry to distance itself from the responsibility of recycling, and thereby frustrated the original objective of the legislation, which was to implement the principle of "extended producer responsibility." Furthermore, this entity, owned by commercial companies and yet acting as an environmentally friendly organization, allowed industry to promote an anti-regulatory agenda via a "civic voice." The study moves methodologically from considering governance as an institutional structure to analyzing the process of "governancing," through which authoritative capacities and legal responsibilities are distributed among state and non-state actors. Two key findings are that this process and its outcome (i) are premised on an ideology of civic voluntarism, which ultimately delegates environmental responsibilities to citizens; and (ii) facilitate an anti-regulatory climate that serves commercial interests.

Keywords: environmental governance, governancing, market–state–civil society relations, regulatory capitalism, voluntarism.

Introduction

The literature of recent years on law and governance identifies a new distribution of authority among state and non-state actors, shaped by the emergence of public–private regulatory regimes. It is often argued that these new arrangements bear the potential to facilitate transparency, cost-effectiveness, and a greater degree of democratic participation in realizing policy goals, to foster public–private partnerships, and to enhance individual and collective responsibility (Rose 1996; Scharpf 1997; Pierre 2000; Jordana & Levi-Faur 2004; Lobel 2004; Jessop 2007). Within this literature, some scholars have developed the notion of "regulatory capitalism" as the overall matrix within which various forms of "new governance" come into being (Levi-Faur 2005; Braithwaite 2008). Regulatory capitalism is said to be driven by two complementary processes: a shift of states away from the provision of social goods and services toward more intensive

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regulation, and a proliferation of non-state regulatory instruments and state/non-state regulatory partnerships. In line with this approach, Parker and Nielsen (2009) identify two mutually constitutive governing techniques through which regulatory capitalism is deployed on the ground: first, the decentralization of regulation, that is, a shift from the state as the focal site of regulation toward plural regulatory networks; and second, the “responsibilization” of non-state players (Shamir 2008), that is, delegating responsibility for realizing and implementing public policies from state agencies to non-state entities (both market players and non-profit civil society organizations).

Regulatory capitalism is conceptualized by Parker and Nielsen as a specific institutionalization of the power relations among state, market, and civil society, generated by ongoing processes of decentralization of regulation and responsibilization of non-state actors. Accordingly, in outlining a research agenda, they suggest that the new governance literature now needs empirical analyses of the actual workings of regulatory capitalism. That is, understanding this specific historical institutionalization as well as concrete policy outcomes requires the uncovering of the power relations among state actors and non-state responsibilized actors who take part in various regulatory set-ups. Indeed, by examining the way policy objectives (rules, guidelines, standards, best performance practices, etc.) are perceived, framed, reconstructed, and subsequently deployed by various actors, we may better evaluate the social impact of the new governance regime and the way it shapes contemporary arrangements of authority and social relations.

Grounded in this scholarly literature, the present article analyzes a case study of “governancing.” The term “governancing” is preferred here to the more common “governance” to capture the dynamic process of constructing and diffusing schemes of governance. Governancing thus refers to governance-in-action: the process through which non-state actors are responsibilized and in turn constituted as moral, political, and authoritative actors. Accordingly, this article uses a bottom-up analysis of a regulatory framework, whereby authoritative capacities and legal responsibilities are distributed among state and non-state actors to enhance a national policy of environmental sustainability. The article focuses on a specific case study: the origins and career of Israel’s Deposit Law on Beverage Containers (hereafter “the Deposit Law”).

Hailed by legislators, industry, and environmental groups as a pioneering move in the implementation of a national environmentally friendly policy, the Deposit Law came into effect in 2001 (Reingwertz & Malchi 2004). In principle, the law, guided by the logic of environmental economics, aimed to place an economic value on used beverage containers in order to reduce litter and divert recyclable items from the waste stream. The lengthy and complicated legislative process as well as the prolonged deliberation over how to implement it and comply with its stated objectives involved the participation of public officials, legislators, commercial players, environmental activists, and many professional experts. As I show below, this multiplayer deliberation and negotiation process led to the birth of a new stakeholder: a non-profit corporation, to be owned by industry and sanctioned by the law, which would assume responsibility for the operational and financial aspects of recycling.

The case of the Deposit Law and its implementation offers an opportunity to consider the social implications of governancing, and to critically reflect upon the relationship between business interests and civic virtues and between public policy and individual responsibility. I show that the creation of the recycling corporation allowed industry to distance itself from direct responsibility for the harms and hazards of untreated waste. In

this sense, the creation of the recycling corporation undermined the original purpose of the law, which was to delegate the responsibility for the costs for collection, recycling, and final disposal of used beverage containers to industry. Furthermore, the industry – through various symbolic means and gestures – depicted the recycling corporation as a “civil society organization” which, beyond its compliance with the law, engaged in disseminating an ideology of civic voluntarism. In turn, the recycling corporation, in its constructed role as a civic organization, further delegated environmental responsibility to individual citizens. One of the consequences of this responsabilization process was that the recycling corporation and its sponsors in industry began to emphasize the benefits of voluntary compliance rather than pursue the legally sanctioned requirements of the law. That is, an entity invested with authority to implement the law had been reframed by industry as one engaged in “voluntary compliance,” thereby also serving as proof that no further regulation was required. All in all, the analysis shows that the new regulatory regime does not live up to expectations and that commercial players may utilize civic voluntarism as an anti-regulatory instrument.

The first part of the article traces the logic and origins of the Deposit Law, identifying the actors and their various positions with respect to the regulatory regime that would have ensured effective recycling. The second part analyzes the process of implementation, specifically focusing on the activities of the recycling corporation. I distinguish between the activities of the recycling corporation within the parameters of the law (“direct compliance”) and its activities beyond the parameters of the law (self-constructed “beyond compliance”). In the final part of the article I discuss the implications of the findings in terms of the theoretical framework outlined above.

The deposit law: Logic and origins

The Deposit Law – under which consumers pay a small deposit (approximately seven US cents) per beverage container, to be reimbursed upon the return of the used container – was drafted in the light of deposit legislation in Europe and in North America. In particular, the law was based on the principle of “extended producer responsibility,” which was designed to remedy a situation in which the costs of pollution, resource and energy consumption, and disposal (i.e. externalities) were subsidized by governments and therefore were not reflected in the production costs (Lifset 1993). Thus “extended producer responsibility” implies the internalization of externalities; that is, the shifting of the costs of the externalities from governments and taxpayers to producers. Along these lines, the Deposit Law was originally designed to place financial responsibility on beverage producers, who were accordingly expected to cover the costs of collection, recycling, and final disposal of used beverage containers (Reingwertz 2007).

The legislative process took seven years to complete and involved the active participation of multiple actors, such as members of parliament, beverage producers, retailers, recycling corporations, environmental non-government organizations (NGOs), and consumer groups. Generally speaking, the various actors included both proponents and opponents of the law. Both groups lobbied for their institutionalized interests through members of parliament and members of the parliamentary Economic Affairs Committee,¹ and both leaned heavily on the media to launch public relations campaigns. A key move in the legislative process was the initiative of Soda-Club Group (an Israeli manu-

facturer of home beverage carbonation systems) to cooperate with five leading environmental NGOs and to jointly establish the Forum for the Deposit Law.²

The Forum for the Deposit Law (hereafter “the forum”) acted as a lobby group, emphasizing both the environmental significance of the deposit bill and its economic efficiency, and focused on three main objectives (interview with D. Firer, Deputy Executive Director of Soda-Club Group, 7 May 2006): recruiting MPs to support the legislation, drawing public attention to the issue of recycling, and applying direct pressure on beverage producers to withdraw their objection to the law.³ In this sense, the involvement of a market player such as Soda-Club was indeed crucial as it enabled the forum to manage a costly campaign, including the hiring of environmental consultants, professional lobbyists, and a public relations (PR) firm soliciting reports, large-scale waste management surveys, and other relevant materials.

The actors

Before the enactment

The main actors who voiced opposition to the law included the Manufacturers Association of Israel (MAI), which represented the interests of the packaging and beverage producers; the Federation of Israeli Chambers of Commerce (FICC), which represented the interests of the retailers; and several MPs.⁴ While other opponents of the law tried to shape it to fit their specific interests and concerns,⁵ the initial strategy of the MAI was to abolish the initiative altogether. Thus the MAI actively participated in decisionmaking forums promoting alternative mechanisms for the collection and recycling of used beverage containers, arguing that the bill would have costly effects on both the public and the producers (Arie 1998). The MAI also argued that the bill was too narrow; it preferred the establishment of a governmental committee with a mandate to shape an overall national solution for the problem of solid waste management. It asserted that in order for a recycling policy to be successful the government should support the local recycling industry by investing in and developing recycling infrastructures. Of specific interest to this study was the attempt by the MAI to promote the British model of Packaging Waste Legislation, which relied on the “social responsibility” of producers. The British model (DETR 1997, 1998) encouraged non-binding guidelines for industry self-regulation, and specifically relied on meta-regulation requiring actors along the beverage supply chain to report on their performance in the light of specified best targets.⁶

Another core argument of the MAI against the bill was that an already existing and legally mandated Cleanliness Maintenance Fund (managed by the Ministry of Environmental Protection), to which producers were obliged to pay fees on a regular basis, should invest in a national container collection system (interview with A. Rosen, the first CEO of ELA, 9 January 2006). Indeed, a central element in the producers’ anti-regulatory strategy had been their persistent promotion of a national recycling system that would have relied on the principle of voluntary waste collection by a “responsibilized” public (interview with Y. Tamir, CEO of Coca-Cola Israel, 3 July 2005; interview with M. Sheizaf, MAI’s special parliamentary lobbyist for the Deposit Law, 1 June 2006). In an attempt to prove the feasibility of such a model, producers initiated various ad hoc waste collection projects and reported on their achievements to the Parliamentary Economic Affairs Committee. Furthermore, the MAI expressed its willingness to initiate and finance, together with leading beverage producers, a national campaign for “the cleanliness of the

public domain,” which would have included a statewide deployment of facilities for voluntary package collection, backed by various public consciousness raising campaigns.⁷

All in all, opponents of the bill activated a strategy of dual response: on the one hand, they lobbied forcefully for the total elimination of the bill or otherwise strove to significantly limit its scope and application. On the other hand, they launched campaigns that were designed to shape public policy along lines of self-regulation, voluntarism, and public responsibility.

In April 1999 the deposit bill was adopted by the Israeli Parliament in second and third readings. While opponents failed to kill the bill, their lobbying yielded two significant amendments to the law: setting the deposit at a very low sum and limiting its applicability to beverage containers larger than 150 mL and smaller than 1.5 L (the latter being the standard size of “family” containers).⁸

After the enactment

Having failed to prevent binding regulation, the beverage producers and their institutional allies changed course and became active participants in drafting the final version of the law and in shaping its mechanism of implementation.⁹ The central demand of the MAI was that implementation should follow the Swedish model, stipulating the creation of a new non-profit entity that would be owned by producers and retailers and assume the task of container collection. Proponents of the law, seemingly perceiving the suggestion of the MAI as a signal of willing cooperation, welcomed the idea of establishing such a new entity.¹⁰ Accordingly, all parties joined forces at this stage to secure the smooth establishment of a collecting and recycling non-profit corporation.¹¹ Consequently, the Israeli Deposit Law was amended in 2001 to empower the Minister of Environmental Protection to authorize a non-profit recycling corporation that would be jointly owned by major beverage producers and importers. In the following analysis, I argue that the creation of the new entity served producers’ interests by reducing their direct accountability for recycling, thereby undermining the legislators’ original intention to implement a working principle of “extended producer responsibility.”

The recycling corporation: Founding principles

The idea of a recycling corporation was based on the Swedish deposit model. Indeed, a non-profit recycling corporation existed in Sweden, but its creation had not been mandated by law. The Swedish Act on Recycling of Aluminum Beverage Containers (1982) did not specify a mechanism of implementation and left it to the beverage industry to come up with an adequate collection and recycling system.¹² In order to ensure the fulfillment of their legal responsibility and specifically in order to meet the mandatory recycling targets that were set under the act, the Swedish producers formed a joint recycling company on a non-profit basis. Nonetheless, the establishment of such a company did not alter the producers’ accountability for implementing the recycling policy, but left them directly responsible for both operative and financial duties of recycling (Hage 2007).¹³

Thus, whereas the Swedish recycling company was formed independently by the producers and was never an integral part of the legislation, the Israeli recycling corporation was created by the Deposit Law itself as an independent entity to be regulated directly by the Ministry of Environmental Protection. In this sense, the new version of the

Israeli law partially shifted responsibility for implementation and compliance back to the Ministry of Environmental Protection. Furthermore, while according to the Swedish law and to the original Israeli bill mandatory collection rates were part of the legal responsibility of the producers, the new version left the matter of meeting these targets in the hands of the recycling corporation.¹⁴ The amended legislation set incremental annual recovery rates that would reach 85 percent of all beverage containers covered by the law in the fifth year.¹⁵ The law stipulated that failure to meet the set annual rate would result in fines paid to The Maintenance of Cleanliness Fund. The practical result of the amendment was that the recycling corporation, rather than the producers, would be held accountable for meeting the recovery rates and for paying potential fines in the case of underperformance. In other words, while the Swedish law treated the producers as directly responsible for meeting collection and recycling standards, the legally mandated creation of the non-profit entity in Israel established a buffer between the producers and the collecting targets. Consequently the original principle of the deposit bill – shifting the operative and financial responsibility for recycling beverage containers from public authorities to private producers – had been violated. The producers, allowed to establish a recycling corporation, were left with the sole legal obligation of collecting deposits and transferring them to the recycling corporation.¹⁶ Moreover, instead of the burden of financing the recycling corporation being placed on the shoulders of its owners, the corporation was designed to cover its costs by the difference between the deposits it would receive from the producers and the refunds it would pay to consumers for used containers.¹⁷ That is, the financial model of the new corporation was based on the presumption that there would always be a constant difference between the sales of beverage containers and the amount of recovered used containers. In this sense, the producers' strategy was successful not only in outsourcing the law's implementation aspects, but also in distancing the producers from the responsibility for recycling: the costs of externalities were after all to be covered by consumers rather than by producers.¹⁸

In the next section I turn to the consideration of the actual operational and discursive practices of the recycling corporation.

ELA: A non-profit recycling corporation in action

ELA (the abbreviation of "Collection for the Environment" in Hebrew) – a non-profit recycling corporation responsible for the operational and financial aspects of the Deposit Law – was established in 2001.¹⁹ ELA is owned by the four leading Israeli beverage producers²⁰ and provides services to some 70 beverage producers and importers. The producers and importers (including ELA's owners) transfer to ELA the deposits they charge on selling light beverages covered by the law. In return, ELA collects used containers and reimburses consumers. At the other end of the supply chain, ELA manages 17 collection centers and some 100 automatic redemption machines available to the general public. In addition, ELA works with some 8,000 registered clients – individuals and institutions that collect large amounts of waste containers on a regular basis. A registered client is entitled to door-to-door collection services and to receive reimbursement directly into a bank account. ELA's client base consists of retailers, collection contractors who operate several "professional" bottle collectors (often homeless and working poor), and institutional clients such as schools, military units, community centers, workplaces, and other public and private organizations. ELA's recycling infrastructure consists of two

processing centers where collected containers are sorted and from which they are transported to recycling factories. ELA has an annual return of more than US\$25 million and provides a living for several thousand people.²¹

As a mechanism of compliance, ELA has been criticized by environmental groups ever since it came into effect, mainly for hampering the successful implementation of the law and for being essentially anti-regulation. In particular, ELA has been criticized for not investing in automatic redemption machines and other facilities that would have created a consumer friendly infrastructure for consumers who wished to return used containers. It is also criticized for its underperformance and for constantly lobbying the Parliamentary Economic Affairs Committee to reduce its annual mandatory recovery rates so as to avoid fines. Lastly, ELA is criticized for campaigning against a new bill that would expand the scope of the law and place direct responsibility for recycling on producers. For its part, ELA actively promotes voluntary modes of container collection and, as part of its campaign against the bill, it also promotes the voluntary collection of containers that the law does not cover.

ELA is being operated as a market-NGO (MaNGO); that is, an NGO that is owned by market actors and works, whether explicitly or not, to associate its corporate owners with voluntary and altruistic attributes of civil society (Shamir 2005, p. 240). Based on this understanding, in what follows I distinguish between two modes through which ELA operates: compliance within the framework of the law (“direct compliance”), and its “beyond compliance” voluntarily initiated practices. In both instances, I trace the process whereby ELA reappears as a “civil society” organization which, beyond its compliance with the law, engages in disseminating an ideology of civic voluntarism.

Direct compliance activities

The Parliamentary Economic Affairs Committee initially defined “the recycling corporation” as an entity whose sole objective was “to form and operate a mechanism for carrying out the law’s instructions in regard to refunds and the collection and recycling of containers.”²² However, the President of the FICC, representing retailers, suggested a broader mandate that would include the investment of resources in educational programs concerning the collection and recycling of beverage containers.²³ None of the participants in the parliamentary meeting – environmental activists, economic consultants, government officials, the producers’ representatives, recycling industrialists, and members of the committee – objected to the (seemingly constructive) idea of broadening the legal definition of the recycling corporation. Subsequently, the committee decided to modify the original version so as to allow the recycling corporation to initiate and conduct any activity concerning the promotion of collection and recycling.

Consequently, various civic and educational activities were part of ELA’s operations from the outset. ELA targeted the educational system as a prime and fruitful channel for promoting the importance of recycling beverage containers. The mission was to lead “a cultural transformation” in the way the public thought of waste (interview with A. Rosen, the first CEO of ELA, 9 January 2006). Furthermore, ELA realized at a very early stage that, as the deposit on beverage containers was set so low, consumers tended to trash them without seeking a refund. Thus, in an explicit attempt to meet the mandatory annual recovery rates, ELA developed what it termed “community markets:” marketing its services to organizations in general and schools in particular, encouraging them to collect containers and to invest the refunded deposits in communal causes.²⁴

The cooperation between ELA and the educational system has become further institutionalized over the years. In 2002 the Ministry of Environmental Protection, the Ministry of Education, and the Society for the Protection of Nature launched the “green school” and “green educational institutes” certification project. The environmental criteria for educational institutes – nurseries, elementary schools and high schools, university campuses, and community centers – that wished to receive the green certification included the disclosure of quantitative data on their collection of bottles under the Deposit Law (Israel Ministry of Environmental Protection 2009). In this sense, the green institute project served as a public marketing channel for ELA’s services, the latter being practically the sole mechanism for implementing the Deposit Law. At the same time, it positioned ELA as a key player in a public project that had been run by state agencies.

In 2004 the Ministry of Education published its program for implementing the Governmental Strategic Plan for Sustainable Development within the educational system.²⁵ The program was presented in a bulletin of the Director General of the Ministry of Education under the sub-chapter “Education for Values,” which included a relatively extended section dedicated to the Deposit Law. The program specifically encouraged schools to subscribe to ELA’s services.²⁶ Four years later, in September 2008, the Ministry of Education took a step further in implementing the governmental plan by inaugurating the 2008/2009 academic year as a “Green Year” with a special emphasis on recycling. Thus, along with the introduction of a new educational curriculum that focused on the problem of waste, all elementary schools were now required, rather than merely advised, to set up a “recycling corner” and to become registered clients of ELA.²⁷

Nowhere do the Ministry of Education’s bulletins refer to the beverage producers’ ownership of ELA. Instead, ELA is presented as “a corporation authorized by the Minister of the Environmental Protection to implement the Deposit Law.” In other words, the legal responsibility of producers is obscured from the public eye while ELA is effectively depicted as a civic entity.

Along the same lines, ELA has launched an educational project that includes an annual bottle collection competition among schools. It supplies schools with educational materials on recycling, and supports a wide range of local recycling projects. ELA also co-launched (with the Association for the Wellbeing of Israel’s Soldiers) a public campaign titled “Returning Love in a Bottle,” encouraging consumers to donate refunded deposits to “the welfare of IDF soldiers” (ELA 2001).

Thus, since its establishment ELA has succeeded in achieving the objective of penetrating what it termed the “community markets.” Concurrently, penetrating community markets reflects ELA’s further success in positioning itself as a civic player within the field of environmental education in Israel, while downplaying, if not totally obscuring, its economic model and its ties to commercial players.

Beyond compliance activities

The Deposit Law, as a result of negotiations and compromises, covered only used containers smaller than 1.5 L. Advocates of the bill therefore treated the law as incomplete and pressed for extending the scope of the law to larger containers as well. At the same time, aware of the limitations created by the establishment of ELA, advocates also sought to revise the law so as to assign direct responsibility to producers and importers. The Ministry of Environmental Protection backed the proposed amendments, but ELA and the producers’ lobby strenuously opposed them.

Specifically, ELA claimed that, despite the unquestionable importance of recycling, a collection platform should first and foremost be economically efficient. Accordingly, it proposed a thorough examination of the option of separating containers from other types of waste at public landfill transfer stations.²⁸ While clearly articulating the commercial interests of its owners, ELA nonetheless succeeded in downplaying its relationship to producers, and framed its position as a civic organization solely concerned with improving the environment. Other parties to the deliberations seemed to accept this self-positioning. For example, the Chairman of the parliamentary committee stated that “the recycling corporation is a public corporation [and] not a private entity,”²⁹ implying that ELA represented public interests.

Along with the lobbying of parliament, ELA initiated a range of other activities whose purpose was to discredit the amendments and to further bolster the voluntary collection of large bottles that were not covered by the law. For that purpose, ELA joined forces with Aviv Recycling Ltd (2009), a for-profit corporation producing plastic flakes from used bottles for the packaging, strapping, and fiber industries. Ever since the Deposit Law came into effect, Aviv had purchased used plastic bottles from ELA. However, in order to obtain plastic bottles that were not covered by the law (i.e. 1.5 L and above), Aviv signed contracts with local municipalities according to which the latter paid Aviv for the service of installing street-corner collection facilities. In turn, the public was encouraged to voluntarily place used large bottles in these facilities. Recognizing the “anti-regulatory potential” of Aviv’s voluntary collection mechanism, ELA launched a promotional campaign with the explicit objective of alerting the public to the alleged perils of the amendments.

In 2005 ELA together with S. Neaman Institute (an independent public policy research institute) carried out both an economic assessment of the Israeli Deposit Law (Ayalon *et al.* 2005a) and an examination of the implications of expanding the Deposit Law to 1.5 L bottles (Ayalon *et al.* 2005b). The studies found that the Deposit Law in its present form imposed excessive costs on the Israeli economy, whereas its environmental impact was very small. The studies also concluded that the extension of the law to cover 1.5 L containers would cost 70 million NIS annually. Their recommendation, accordingly, was to replace the Deposit Law with a packaging law, by which it would be possible to institute an overall solid waste policy achieving a broader scale recycling with more efficient utilization of resources. Environmental NGOs, for their part, claimed that, while they viewed a packaging law as a good platform in itself, there was no way to understand ELA’s promotion of it except as yet another move in its fight against the Deposit Law. However, despite this criticism, ELA did manage to establish itself as a source of authority within the economic–environmental discourse. The fact that ELA succeeded in engaging other civic groups in a dialogue on environmental public policy, coupled with its sponsorship of expert studies, went some way to legitimize ELA’s position as a political and professional player within the Israeli regime of environmental governance.

In 2006 ELA signed a treaty with the Union of Local Authorities in Israel (ULAI) for the “Encouragement of Collection and Recycling of Beverage Bottles in Local Authorities.” In signing the treaty, ELA committed itself to the national deployment of voluntary collection facilities for bottles that the law did not cover and to the funding of an accompanying promotional campaign. A ULAI press release stated that a national deployment of bottle collection facilities and an effective promotional campaign would pave the way for reaching voluntary recovery rates similar to European rates. It claimed

that such a project would be the first to engage the public in an environmental activity, representing a breakthrough for the environmental struggle as a whole. The President of ELA was also quoted in the press release, claiming that this joint initiative would prove that it was indeed feasible to reach significant volumes of collected and recycled beverage bottles on a voluntary basis.

In February 2007 the government decided to push the amended legislation further.³⁰ In response, the President of ELA warned that the amendments would lead to a higher price for beverages, complicate refund mechanisms, and enhance the involvement of organized crime in bottle collection (Rinat 2007). ELA also published paid advertisements, claiming that the new law was anti-educational and anti-consumer in its nature, and in particular that it would serve as a further encouragement to criminal activity.³¹ Highlighting the link between the deposit bill and organized crime enabled ELA to express social concerns and to promote a voluntary collection platform not only as a more cost-effective option but also as a green and good citizenship practice.³²

Promoting a voluntary recycling system for large bottles had not been part of the legal mandate of ELA and had not been one of its financial or operative goals. Thus, by dispensing funds and expending considerable effort to achieve such a goal, ELA altered its own constitutive legal mandate. Furthermore, its activities beyond the framework of the law allowed ELA to transform itself from a mere operational mechanism into an expert environmental authority on the one hand and an interested economic player on the other. Finally, these two new aspects of the positioning of ELA also account for its substantive agenda, namely, an anti-regulatory stance on the one hand and the promotion of recycling policy based on voluntarism on the other.

Discussion: Governancing in the age of regulatory capitalism

The analysis of the Deposit Law, at both the legislative and the implementation stages, demonstrates the complexity of understanding and assessing the social implications of the new governance regime. From the outset, the regulated (i.e. the beverage producers and importers) took an active part in shaping the scope of the law and its compliance mechanisms. The overall strategy of industry consisted of two elements: one, it tried to block state regulation or at least to limit its scope and application; and two, it launched campaigns that were designed to shape public policy along the lines of self-regulation, voluntarism, and individual responsibility. Such a strategy has been identified in other contexts of the new governance framework, where the question of “corporate social responsibility” had been debated among advocates of binding regulation and promoters of voluntary self-regulation (Shamir 2004; Rowe 2005).

A crucial move in this dual strategy had been the establishment – sanctioned by law as an element of compliance – of a privately owned non-profit recycling cooperation. The creation of a new responsibilized actor made it possible to delegate the operative and financial legal responsibilities for implementing the law from industry to a new type of authority, namely, a hybrid entity fusing commercial principles of operation with civic–environmental ones, transcending the public–private divide. However, the bottom-up consideration of governancing presented in this article suggests that the multi-stakeholder process associated with the new governance regime – one which brings together commercial players, civic organizations, and state agencies, and moreover, one

which often breeds new types of authority (Hall & Biersteker 2002) – does not necessarily produce a more democratic and equal regulatory process and outcome.

At least in structuring the regime of environmental governance discussed in this study, the creation of a new institutional entity invested with authority to implement the law has not only distorted the original intention of legislators but has also allowed industry to further its interests through a “civic voice.” That is, the recycling corporation being operated as a MaNGO has enabled industry to resist regulation and to narrow the scope of compliance while perfecting a voluntary regime whereby responsibility for “compliance” is consistently pushed “downwards” to the level of the individual consumer. The career and the outcome of this governancing case seem to corroborate the understanding of regulatory capitalism as deployed through two mutually constitutive governing techniques: decentralization of regulation and responsabilization (Parker & Nielsen 2009). In other words, the case indicates the shift from the state as the focal site of regulation toward plural regulatory networks and authorities, and reflects the delegation of responsibilities for realizing and implementing public policies.

Indeed, the career of the Israeli Deposit Law is a story of accelerating responsabilization (Shamir 2008). At first, the regulation aimed to shift responsibility for recycling from public authorities to industry. In the next phase, industry succeeded in delegating much of its responsibility for complying with the law to the newly established recycling corporation. From then on, the recycling corporation – reframing its duties of implementation – activated and deployed an ideology of voluntarism whereby ultimate responsibility for recycling came to rest with the public at large. In this respect, this study of governancing also demonstrated that responsabilization is a crucial technique of the new governance regime. This technique, however virtuous and in line with the aspirations of new governance arrangements it may be, also raises grave questions concerning the ability of organized commercial interests to use it to shape regulatory frameworks in ways that may undermine business’s own responsibility for the public good.

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Notes

- 1 The Parliamentary Economic Affairs Committee was assigned to prepare the deposit bill for readings at the parliament plenum.
- 2 Soda-Club Group markets carbonation systems as environmental friendly substitutes for beverage containers. Thus, it seems that Soda-Club’s campaign for a bill that highlights the harmful environmental effects of disposable beverage containers has been motivated not only by environmental concerns but also by commercial interests (interview with E. Ben-Yamini, Director of the “Green Course” [a member NGO at the Deposit Law Forum], 26 April 2006).
- 3 Similar to the strategies activated by American environmental groups, the forum decided to focus its pressures on Coca-Cola “as they are the richest and the most significant player within the beverage industry” (interview with D. Firer, Deputy Executive Director of Soda-Club Group, 7 May 2006). In particular, it used public shaming practices targeting the local bottler

- as well as raising the issue with the corporate headquarters in Atlanta, hoping to influence the policy of the local bottler.
- 4 Taking the position that priority should be given to an overall Packaging Law, the Ministry of the Environment initially refrained from supporting the law. Nevertheless, in 2000 the Ministry joined the supporters of the law in advocating its passage.
 - 5 For example, preliminary negotiations led to the exemption of milk and other dairy products and of paper and cardboard containers, and to application only to containers larger than 100 mL and smaller than 1.5 L. I discuss the proposed amendment of 2003 to expand the coverage of the law to 1.5 L containers in the second part of the paper.
 - 6 The British regulation stipulates a shared responsibility for recovering packaging waste across the whole supply chain. Accordingly, those nearer to the final user, that is, retailers, assume a greater share (followed by a lesser share by packers) than the packaging manufacturers, and lastly raw material producers (Fernie & Hart 2001). On the shortcomings of the British producer responsibility model in comparison with other European regulative systems, see European Environment Agency (2005).
 - 7 These suggestions were raised in letters sent to the Chair of the Parliamentary Economic Affairs Committee from the MAI's Managing Director (15 February 1998), and from the Director of MAI's recycling committee (26 October 1998). It should be noted that the Deposit Law set forth three principal objectives: (i) to improve cleanliness and reduce litter; (ii) to reduce waste quantities and landfill volumes; and (iii) to encourage recycling and reuse of beverage containers. Thus, while the aforementioned campaign addressed the objective of the cleanliness of the public domain, it played down the issue of recycling of beverage containers.
 - 8 The latter was presented in the Parliamentary Economic Affairs Committee by MPs from Shas (the Sephardic-Ultra-Orthodox party), which argued that the deposit is practically a tax. Thus, if large containers were to be included in the law it would inflict too heavy a burden on large families (Minutes of the Parliamentary Economic Affairs Committee, no. 62, 12 January 2000: <http://www.knesset.gov.il/protocols/data/html/kalkala/2000-01-12.html> [last accessed 5 November 2009]). However, this limitation was perceived by the forum and in the public discourse as a direct outcome of the producers' lobbying.
 - 9 As the government postponed the inception of the law until January 2001, to allow the completion of all the required preparations for a successful implementation of the law, the Economic Affairs Committee continued to consider models of implementation of the law.
 - 10 "I'm enchanted by this idea. . . There's no better model than one which all main parties are willing to cooperate with rather than forced to do so by law" (MP A. Poraz, Chair of the Committee of Economic Affairs, in Minutes of the Parliamentary Economic Affairs Committee, no. 62, 12 January 2000: <http://www.knesset.gov.il/protocols/data/html/kalkala/2000-01-12.html> [last accessed 5 November 2009], in Hebrew).
 - 11 In particular, efforts were made to guarantee that the recycling corporation would be given a statutory exemption, thus avoiding its treatment by The Israel Antitrust Authority as a monopoly (Minutes of the Parliamentary Economic Affairs Committee, no. 93, 13 March 2000: <http://www.knesset.gov.il/protocols/data/html/kalkala/2000-03-13-01.html> [last accessed 5 November 2009], in Hebrew).
 - 12 In 1991, following the Act on Certain Beverage Containers, the Swedish deposit system was expanded to include polyethylene terephthalate (PET) bottles; and from 2006, a new ordinance included all cans of metal (steel and aluminum) and plastic. Also, during the 1990s, the deposits became mandatory after all. However, the mandatory system applies only to aluminum cans and PET bottles, whereas glass bottles are still collected under a voluntary system.
 - 13 The Swedish recycling policy has been developed further. In 1997 the Ordinance on Producers' Responsibility for Packaging was enacted, serving as a broad framework for the former beverage container recycling acts. Under the new ordinance, producers were responsible for

- ensuring that packages are recoverable; providing suitable collection systems; and reporting performance in regard to the mandatory container recovery rates to the Swedish Environmental Protection Agency (SEPA). It was only when this ordinance came into force that collection and recycling companies were regulated by SEPA, mainly to ensure fair competition (Hage 2007).
- 14 As beverage producers are not obliged by law to form a recycling corporation. Thus, non-unionized beverage producers retain the responsibility to meet the mandatory container recovery rates (see Note 16).
 - 15 In comparison, the Swedish mandatory recovery rate stands at 90%.
 - 16 As the formation of a recycling corporation is a legal option rather than an obligation, the law refers also to the category of beverage producers and importers who are not unionized within the recycling corporation. The latter's obligations are to receive empty containers, to refund consumers, to transfer the difference between the paid deposits and the refunds to The Maintenance of Cleanliness Fund, and to recycle at least 90% of the containers returned to them. Thus, while unionized beverage producers and importers are exempt from the active obligation to meet mandatory recovery rates (which the Deposit Law stipulates to be the obligation of the recycling corporation), non-unionized producers and importers have a passive obligation to receive empty containers and refund consumers.
 - 17 In the case of non-unionized producers and importers, the difference between deposits and refunds should be transferred to The Maintenance of Cleanliness Fund.
 - 18 A similar point was made by the Israel State Comptroller and Ombudsman (2007). It should be noted that the State Comptroller's mandate does not cover examinations of privately owned bodies such as the recycling corporation. Thus, in examining the recycling corporation it did not consider its efficiency and mode of operation, but focused on the extent to which the objectives of the law were achieved (Minutes of the Parliamentary State Control Committee, no. 233, 16 July 2008: <http://www.knesset.gov.il/protocols/data/html/bikoret/2008-07-16-01.html> [last accessed 5 November 2009]).
 - 19 The main change was the addition of Clause 8 to the law, setting forth the opportunity for beverage producers, importers, and retailers to form a joint non-profit recycling corporation.
 - 20 ELA was jointly established by the major beverage producers and retailers in Israel. Yet in 2003 the retailers resigned from ELA. Therefore, I refer to the beverage producers as ELA's owners.
 - 21 Terminology and data in this paragraph are based on ELA's website. However, as ELA's annual return is not reported in the website, it is calculated on the basis of its reports on actual annual quantities of container collection.
 - 22 Minutes of the Parliamentary Economic Affairs Committee, no. 102, 20 March 2000: <http://www.knesset.gov.il/protocols/data/html/kalkala/2000-03-20-02.html> [last accessed 5 November 2009], in Hebrew.
 - 23 Minutes of the Parliamentary Economic Affairs Committee, no. 102, 20 March 2000: <http://www.knesset.gov.il/protocols/data/html/kalkala/2000-03-20-02.html> [last accessed 5 November 2009], in Hebrew.
 - 24 In its first year of operation ELA managed to recruit 800 elementary schools and a couple of hundred nursery schools as registered clients (interview with A. Rosen, the first CEO of ELA, 9 January 2006).
 - 25 The governmental strategic plan for sustainable development was a follow-up to the World Summit on Sustainable Development held in Johannesburg in August–September 2002, and was published as a governmental decision in May 2003. See decision no. 246, Ministry of Environmental Protection, 14 May 2003: [http://www.sviva.gov.il/Environment/bin/en.jsp?enPage=BlankPage&enDisplay=view&enDispWhat=object&enDispWho=News%5E11487&enZone=gov_decisions&enVersion=0&'\)](http://www.sviva.gov.il/Environment/bin/en.jsp?enPage=BlankPage&enDisplay=view&enDispWhat=object&enDispWho=News%5E11487&enZone=gov_decisions&enVersion=0&')) [last accessed 5 November 2009], in Hebrew.

- 26 Bulletin of the Director General, Ministry of Education (Jerusalem), no. 5(b); 1 January 2004: http://cms.education.gov.il/EducationCMS/applications/mankal/arc//sd5bk9-4_5.htm (in Hebrew).
- 27 Ministry of Education (2008) [last accessed 5 November 2009] Available from URL: <http://meyda.education.gov.il/files/owl/hebrew/SanaYeruka.doc> (in Hebrew).
- 28 Minutes of the Parliament Economic Affairs Committee, no. 39, 14 July 2003: <http://www.knesset.gov.il/protocols/data/html/kalkala/2003-07-14-01.html> [last accessed 5 November 2009].
- 29 Minutes of the Parliament Economic Affairs Committee, no. 39, 14 July 2003: <http://www.knesset.gov.il/protocols/data/html/kalkala/2003-07-14-01.html> [last accessed 5 November 2009].
- 30 It should be noted that in order for these amendments to come into force the aforementioned governmental decision should be further approved by the Parliament in second and third readings.
- 31 Over the years the Deposit Law has often been criticized for contributing to the rise of crime rates in Israel by allowing organized crime to take over the bottle collection market. Environmental groups, for their part, argue that these claims have been spread and exaggerated by ELA and the oppositional lobby in general. Yet they also argue that placing the responsibility for recycling directly on the producers would remedy this specific situation (Israel Union for Environmental Defense 2009).
- 32 The connection between collection practices and issues of crime and poverty is beyond the scope of this study. In general, the social consequences of deposit systems were examined in a series of environmental–economic studies looking at the effects of American state bottle laws on labor markets (Ashenmiller 2006, 2008, 2009). Some ethnographic works looked at the lives of homeless and low income people, describing bottle collection as an essential source of income (Hill & Stamey 1990; Gowan 1997). One particular ethnographic work framed bottle collectors as a new social phenomenon directly emerging from beverage container deposit legislation (Kryger Olsen & Hanson 2007).

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