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The private governance of food: equitable exchange or bizarre bazaar?

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Abstract In recent years, we have witnessed three parallel and intertwined trends: First, food retail and processing firms have embraced private standards, usually with some form of third party certification employed to verify adherence to those standards. Second, firms have increasingly aligned themselves with, as opposed to fighting off, environmental, fair trade, and other NGOs. Third, firms have embraced supply chain management as a strategy for increasing profits and market share. Together, these trends are part and parcel of the neoliberal blurring of the older liberal distinction between state and civil society. In this paper I ask what the implications of these changes are from the vantage point of the three major approaches to ethics: consequentialism, virtue theory, and rights theory. What are the consequences of these changes for food safety, for suppliers, for consumers? What virtues (e.g., trust, fairness) are these changes likely to embrace and what vices may accompany them? Whose rights will be furthered or curtailed by these changes?

Keywords Governance · Retailing · Certification · Standards

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Introduction

In recent years, we have witnessed three parallel and intertwined trends in the food sector: First, food retail and processing firms have embraced private standards, usually with some form of third party certification employed to verify adherence to those standards. For example, many supermarket chains have joined GlobalGAP (2008) (previously known as EurepGAP), an association designed to create and implement common private food safety, environmental, and worker health and safety standards among its members. Farmers wishing to sell to these firms must engage an approved third party certifier to audit for compliance to the standards. Similarly, CIES (2002),[1] an association of the larger supermarket and food processing firms, has established a Global Food Safety Initiative in an attempt to create a common benchmark for food safety globally.

Second, firms have increasingly accommodated, as opposed to rejecting, the demands of environmental, fair trade, and other NGOs. Put differently, firms have begun to treat (some) NGOs as the new superbrands, able to mobilize a small but highly influential segment of the public that is strongly concerned about farm worker health and safety, animal welfare, environmental degradation, local sourcing, organic production, or some other issue (Wootliff and Deri 2001). Given the rather low profit margins in both food processing and retailing, firms can ill afford the adverse publicity associated with NGO campaigns. In contrast, they are happy to have the support—and free advertising—that NGOs can bring them.

[1] CIES started as the Comité International d'Entreprises à Succursales in 1953. In recent years, the full name was dropped; it is now known only by its acronym.

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Third, firms have embraced supply chain management as a strategy for increasing profits and market share (Konefal et al. 2007). Until about 20 years ago, food processing and especially food retailing was a rather inefficient sector of the economy. Food processors depended on consumer recognition of their brand names, while retailers purchased whatever processors concocted, bringing it in through the back door and moving it out through the front door (Brown 1997; Cochoy 2002; Lyon et al. 2004). Initially, given the small size of most retailers and the much larger size and visibility of the processors, retailers had little choice. But even after the creation of the first wave of large supermarket chains, the business model remained largely unchanged.

All this shifted with the creation of a new wave of retailers who were determined to reorganize the retail business so as to increase its profitability. The watchword for food retailing became 'efficient consumer response,' an approach that emphasized adapting techniques developed in manufacturing to food retailing (Brown 1997; Caswell et al. 1998). Hence, companies such as Wal-Mart, Carrefour, and Aldi began to shift from individual store management to supply chain management. Put differently, executives at the larger chains began to treat their stores as the end of a long and complex pipeline through which many goods might flow. Moreover, they began to dominate those supply chains, dictating to suppliers a variety of quality characteristics of food products, timing of deliveries, and stocking of shelves. Indeed, they could and did coordinate vertically such that package size and shape, brand labels, organoleptic qualities, and supplier business models were all influenced or even controlled by the supermarkets (Busch 2007).

Together, these trends are part and parcel of the neoliberal blurring of the older liberal distinction between state and civil society (e.g., Friedman 1962; Hayek 1973–1979). In their quest to limit the power of the nation-state proponents of neoliberalism worked hard for more than a half century to reduce direct state regulation of markets, create international institutions that limit state power, and whenever possible employ markets as distributive systems. In so doing, they have opened the door to the creation of private governance systems such as those described here.[2]

State power is backed up by state sanctions, e.g., violation of food safety laws may be punishable by payment of a fine, time in prison, and/or forced closure of a business. In contrast, private power is backed up by market sanctions, e.g., removal from a given market. Hence, the shift from food government centered on the state to food supply chain governance is best understood as (1) an enhancement of the ability of certain firms (usually food retailers) to dominate supply chains, reducing costs by imposing a new form of discipline on other (usually upstream) firms in the chain, and (2) the realization by NGOs of their potential to pressure the dominant food firms.

In this paper I ask what the ethical implications of these changes are. In representative democracies the state is the final arbiter of many critical moral and ethical issues. Elected legislative bodies are charged with creating uniform laws that are to be uniformly enforced across some defined territory. Clearly, critics of state power rightly argue that (even democratic) states can be quite oppressive in their actions (Constant 1988 [1815]; Scott 1998). Yet, as this paper attempts to make clear, private governance structures pose an analogous, and perhaps more intractable, set of problems.

A central feature of private governance is an expanded role for the market. The modern market[3] is, virtually by definition, based on a particular interpretation of commutative justice (i.e., the apportioning of goods and services based on choice in the marketplace). The medieval term, 'just price,' assumed that commutative justice could only be had if the state protected both buyer and seller. This was accomplished by fixing the price of each good based on the labor required to produce it and the quality of the good produced; in this way it was claimed that the price would be fair and just. In contrast, in modern markets, the equivalence is based on the so-called laws of supply and demand, or in other words, scarcity is explicitly included in the calculation. Moreover, the modern principle of commutative justice asserts that, if the parties to an exchange are uncoerced, the price reflects an equivalence between two articles exchanged; hence, it is said to be just. Thus, equivalence is presumed to exist when a monetary exchange takes place; the power relationship—what Samuels (2004), building on earlier work by Robert Lee Hale, calls a 'structure of mutual coercion'—often found in the market is excluded from the analysis (or at least from the view of the some economists and often from the view of participants).

Yet, as Ayres suggested in 1957,

> It simply is not true that scarce resources are allocated among alternative uses by the market. The real determinant of whatever allocation occurs in any society is the organizational structure of that society – in short, its institutions. At most, the market only gives effect to prevailing institutions. (quoted in Samuels 2004, p. 364)

[2] Hayek played a particularly important role as the founder of the key neoliberal organization, the Mont Pelerin Society (2006). Curiously, it appears that the major proponents of neoliberalism did not foresee the rise of private governance institutions, including standards, certifications, and accreditations.

[3] Thompson (1963, 1971) noted some years ago that pre-modern markets developed in the context of a moral economy, i.e., a means for grappling with issues of distributive justice. The creation of capitalist markets involved a long struggle to eliminate these distributive mechanisms.

It is precisely because mainstream economics largely avoids discussion of how markets come to be structured in particular ways that concerns about equitable exchange have arisen.

This suggests, in turn, that there are two conceptually different critiques of private systems of governance. The first emerges from a concern that commutative justice is not obtained through existing markets because of the unequal power of the participants to alter the structure of the exchange. The second, and more profound critique, argues that attention paid to commutative justice to the exclusion of distributive justice is unacceptable. The former argument suggests tinkering with the structure of the marketplace, but accepts the notion that the market is the proper mechanism for handling the problem posed. The latter position argues that other non-market institutions (e.g., based on need or dessert rather than exchange) must intervene to satisfactorily resolve the problem.

Ethical dilemmas

Philosophers generally acknowledge three major approaches to ethics: consequentialism, virtue theory, and rights theory. While purists may insist that one approach is invariably better than the others for the resolution of all ethical problems, I make no such claim here. In fact, quite to the contrary, I argue that each approach asks a different set of questions and thereby reveals a different aspect of the issues at hand. Hence, from a consequentialist perspective one may ask: What are the consequences of these changes from public to private governance for food safety, for consumers, and for suppliers? From a virtue ethics perspective one may ask: What virtues (e.g., trust, fairness) are these changes likely to embrace and what vices may accompany them? And, finally, from the perspective of rights theory one may ask: Whose rights will be furthered or curtailed by these changes? While space does not permit a thorough examination of all of these issues, let us examine several of each in turn.

Consequences

Multiple tiers of safety

We take for granted when we enter any shop that goods will vary in price, quantity, and qualities. If I wish to buy chocolate, I may buy a very cheap type containing relatively little cocoa, or an expensive type containing mostly cocoa. Prices are likely to vary accordingly. The same applies for virtually any food product I buy. In contrast, when I purchase a food product at any supermarket in any industrialized nation, I am quite confident that it has passed all the necessary tests of safety. This was not always the case. As Stanziani (2005) has noted, prior to the late nineteenth century, food safety was in the hands of the buyer. *Caveat emptor* was the order of the day. Indeed, it was the failure of markets to set a minimum standard that protected *all* consumers that prompted state intervention in the form of the first food safety laws a century ago (e.g., the US Pure Food and Drug Act of 1906, and the French law on food frauds and falsifications of 1905) (Stanziani 2005).

But the shift to private governance of food raises the possibility of a shift in food safety from a single standard to one that has multiple tiers, e.g., of unknown safety, barely safe, safe enough, very safe. Under such a system of governance, food safety becomes a matter of market affordability rather than of general protection of the public by the state. Indeed, unwittingly, and perhaps only temporarily, the Chinese system for food safety is already a three tier system with organic food, 'green food' (certified as using agrochemicals within safe limits), and everything else (Yamei et al. 2008). The Chinese appear to see this as a temporary measure on the way to a single uniform standard of safety set by the state, and the recent events surrounding the addition of melamine to infant formula will surely help to make that a reality. That said, it could also evolve into a permanent three tier system.

Moreover, in a somewhat paradoxical manner, the recent efforts on the part of CIES (2002) to develop a single, global benchmark for food safety, may actually encourage the creation of multiple tiers. On the one hand, CIES's actions are clearly raising the bar on food safety, since the benchmarked standards appear to satisfy the food safety agencies of numerous nations. On the other hand, such benchmarking is not cost-free and might well spur the creation of another, weaker standard.

For consumers

Consequences for (many) consumers are often quite positive. Worldwide, the presence of supermarkets is growing, and they are no longer reserved for the wealthy and middle classes (Dries et al. 2004; Reardon et al. 2003; Weatherspoon and Reardon 2003). Indeed, because supermarkets can reorganize supply chains, and because they often operate under conditions of acute competition among themselves, supermarkets can and do sometimes offer consumers lower prices, better quality, greater variety, and safer food than they might have purchased in open-air wet markets or small family-owned grocery stores. However, in many cases consumers find that they need to travel further to purchase food. Furthermore, supermarkets often promote foods that are higher in fat and sugar than traditional diets, thereby contributing to the worldwide concerns about obesity.

For suppliers including farmers and farm workers

The private governance of food poses several major although largely unintended consequences for farmers and farm workers. Let us first examine the situation for farmers. On the one hand, farmers who are able to become certified to supermarket standards tend to find themselves in long term relations with buyers. This may result in lower prices for goods sold in some years, but it likely also results in more stable prices as farmers are able to put far more of their production under contract (Busch et al. 2005). At the same time, however, such farmers find themselves in direct competition with other farmers growing the same crops or livestock in other parts of the world. Farmers have relatively few means of protecting themselves from this: through the continuous development of new niche markets for particular products (e.g., new varieties of fruit), by technological innovation (a path not usually open to small farmers), or by taking advantage of the seasonality of production.[4]

On the other hand, farmers who—for whatever reason—fail to meet supermarket standards are often forced into a declining market segment in which prices received are lower, markets are more volatile, and quality premiums are extremely variable. Likely, many of these farmers will move, or have already moved, to the ever-burgeoning cities where they add to urban slums.

For farm workers the situation is likely far more serious, but equally bifurcated. Given the downward pricing pressure put on farmers by supermarkets—either directly through contracts, or indirectly through farmer competition—all farmers are likely to press for low wages and/or replace farm workers with machinery. Beyond that, it appears that a two tier system is developing whereby provisions for full time workers are reasonably good as a result of certification requirements—this would include a variety of things from protective clothing for use in spraying pesticides, to provision of toilets and cafeterias—while part time and temporary workers are poorly paid and exposed to pesticides (see, e.g., Bain 2007; Brown and Getz 2008).

That said, I see no reason to make the world safe for poverty. A decline in the number of persons on small farms, and a similar decline in the number of farm workers is far more problematic if they wind up unemployed in the slums, *bidonvilles*, *barrios*, than if they find jobs elsewhere in the economy at higher wages. Unfortunately, the latter rarely happens; instead slum populations are growing faster than the general population and now include more than one billion people (United Nations Human Settlement Programme 2003). Arguably, it would appear that a case could be made that despite bucolic images of the family farm, policies designed to alleviate poverty by creating urban jobs would likely be far more successful than would attempts to increase incomes and protections for small farmers and farm workers. Indeed, in most nations attempts to organize farm workers for higher wages and better working conditions have been only marginally successful.

Virtues

Trust

Perhaps the key virtue that is transformed by the restructuring of the food system is trust. We may consider trust as consisting of two interrelated parts (Beekman 2004). First, there is trust in persons. This sort of trust, which must at least initially be displayed in face to face settings, is dialogical. This dialogue includes exchange of words, but it is also an exchange of gestures (Mead 1962 [1934]), and of things (Latour 1987). Moreover, as Goffman (1993) has suggested, face is also dialogical.

Consider how this plays out in everyday life. Those persons around me are trusted to varying degrees based on my experiences with them. Someone who appears trustworthy is someone on whom I can rely. For example, I may trust the local butcher to provide me with cuts of meat that meet my desires. But he may also trust me, by offering to sell on credit, trusting that I will indeed pay the debt within a reasonable period of time. Importantly, this form of trust goes far beyond dependability; it includes the ability to extend trust to new kinds of relationships.

However, our everyday understanding of trust goes yet further, incorporating our relationships with things. This is certainly true of simple tools which we come to know as our own to such a degree that they become extensions of our bodies (Idhe 1979, 1990). Dental tools and hammers are excellent examples of this kind of trust. Nor does it stop there. Automobiles become extensions of one's body, such that an experienced driver knows when the actions of a vehicle are 'abnormal.' These relations, although far less rich than those with fellow humans, are also dialogical. We come to communicate with and through these objects. We come to 'know' these objects as having certain properties, and performing faithfully certain actions. But, unlike the trust we place in other humans, trust in objects is generally understood solely as dependability.[5] Nevertheless, dialogue,

[4] Chile has built its entire fruit industry on this counterseasonal production.

[5] Beekman (2004) argues that humans may also be trusted in this way, where trust is viewed as consistent—but not necessarily desirable—behavior.

I submit, is essential to both of these everyday understandings of trust.

In contrast, the trust that is created through conformity assessment is quite different in that it is essentially monological. Indeed, some would not call it trust at all, but rather a poor substitute for it. In each instance, a person or thing is certified to meet a given set of standards that appears to us as largely opaque. We are typically confronted by a logo, a seal, a brand, a certificate, that proclaims conformity to some (often hidden and sometimes secret) set of standards. Indeed, many of these brands and logos have been around far longer than certification schemes, but now take on greater significance because of the standards and certification schemes they imply or 'summarize' and as a result of weakened state regulation.

Yet, we are normally neither a party to the determination of those standards, nor do we know the details of their contents, nor are we party to the certification of a person or thing to those standards, or to the accreditation of the certifying body. And, we must either blindly trust the logo or seal (and what appears to stand behind it) or flatly reject it.

Importantly, even if we trust the certified person or object in this limited monological sense, we must later convert it—through experience—into dialogical trust. But this is not a matter of learning what the standards are, how the certification was conducted, or how the accreditation agency works. It is a matter of converting, translating, reshaping the monological trust in the logo into personal experience and dialogue with the certified person or thing. Put differently, even when it is used effectively, even when it provides a strong justification of the market world, viewed from the civic or domestic world the trust that emerges out of conformity assessment is and must be impoverished (Boltanski and Thévenot 2006 [1991]). Even as such forms of trust are necessary in some settings, living in a world in which *all* forms of trust were monological, I submit, would be nearly intolerable; it would replace the richness of dialogue and experience with a focus on surface characteristics. Moreover, it would require constant auditing and certification of everything and everyone (Power 1997; Walzer 1983).

Fairness

Fairness is commonly claimed by proponents of certain certifications (e.g., fair-trade certifications). But, as with trust, claims to fairness are and must remain problematic for many of the same reasons. In everyday life fairness is something that we claim or deny for particular situations. We note that certain exchanges are unfair, while others are fair. But in the case of fair-trade and like certifications, we must accept the decision made by some unknown person or persons as to the fairness of the exchange that is likely made somewhere far removed from where we are. This is not to suggest that the persons determining that an exchange is fair are in any way attempting either to force their views on us or to conceal what are in fact unfair practices. Rather, we are likely unfamiliar with the formal criteria employed, nor do we fully understand how they are employed. We must accept on faith that those doing the certifying have an understanding of fairness that is similar to our own.

Doubtless, other virtues such as honesty and integrity are displayed differently in systems of private governance. But I shall leave to others the task of examining those differences. Let us now turn to rights.

Rights

To manage one's own affairs

Conformity assessments can and often do challenge the rights of persons to manage their own affairs. Consider a 1905 contract for the production of tomatoes in New Jersey, reproduced here in its entirety:

> This is to certify that we ___ have bought of ___ the product of ___ acres of tomatoes for the season of ___ at $___ per ton, delivered at our cannery at ___. Stock to be in first-class mercantile condition, To be planted about ___. (Corbett 1905)

To readers a century later, it is astonishing for what it does not include. Similar contracts today would not only specify just what is meant by 'first-class mercantile condition;' they would likely also include one or more certifications. These certifications would focus on myriad other details about planting, spacing, farm worker housing conditions, availability of toilets, use of pesticides and other farm chemicals, etc. Thus, one aspect of certifications is that they often impose considerable constraints on the actions of upstream actors. (GlobalGAP has a wide range of major and minor 'musts'. Growers are required to meet 100% of the major musts and 95% of the minor musts.) And, while it is true that certifications are voluntary, they are often de facto mandatory. Nor is the problem limited to standards promulgated by companies. NGOs, despite having often the very best of intentions, may make equally strong demands on upstream actors (Gereffi et al. 2001).

To redress of grievances

Moreover, of particular concern is that these new forms of private governance rarely if ever have anything even vaguely resembling an appeals process or a separation of powers. In general, once one fails to comply with the standards, as evidenced by failure to become or remain certified, there is little that one can do about it. And, even if appeals are permitted, they are usually appeals to the same persons or organizations that rejected the action in the first place. An analogy would be an appeal by a serf to a medieval lord over the lord's actions. Of course, it might be argued that the serf was bound to the land and hence could not go elsewhere. However, while in principle supply chain linkages are voluntary, they are often de facto mandatory, either in the sense that no other options exist or that other options involve considerable losses.

The right to choose

It would seem that the new system of private governance enhances consumers' right to choose. After all, it creates markets in which there is a seemingly endless array of products, both fresh and processed. In the supermarket in my hometown, I can now buy certified fair trade coffee, free range eggs, organic carrots, and sustainably harvested fish. I am confident that I will soon be able to choose foods that minimize carbon emissions. And, I can choose among foods produced in dozens of nations.

Nor is this unique to the industrial world. In China, India, Kenya, Guatemala one sees a similar growth in the diversity of products found on the shelves. Without a doubt, the range of food choices available to many people has grown exponentially in the last several decades and it appears to continue to expand. But at the same time, the drive to private governance tends to turn choice into a burden. Consider that, in addition to price and quality considerations, coffee may be certified as organic, fair trade, bird friendly, shade grown, protective of biodiversity, from a given region of origin, and/or kosher! Which, or which combination, if any, of these certifications should I choose? Can any consumer be expected to make the myriad *ethical and moral choices* now demanded in the supermarket? Empirical evidence and personal experience suggest that, since shoppers are nearly always pressed for time, they tend to buy those items with which they are most familiar and that few if any consumers ponder the information on the labels of all the products they purchase.

In sum, private governance of food poses a number of ethical issues, regardless of the ethical perspective one takes on it. So what can we conclude?

Conclusions: equitable exchange or bizarre bazaar?

One may argue that state intervention in the form of law shares many of the problems described above. However, let me suggest that legal frameworks differ from conformity assessment in at least four important ways: First, legal frameworks are homogeneous (although admittedly they may be enforced unequally) across some defined area of territory. In general, one does not choose which laws to follow, or when to follow them. In contrast, it is commonplace to have multiple systems of conformity assessment, some of which overlap and others of which are contradictory.

Second, laws (with a few exceptions) remain valid only within national borders. In contrast, certifications commonly extend far beyond national borders; hence, downstream expectations may well conflict with expectations upstream. For example, Hatanaka (2006) found that shrimp farmers in one region of Indonesia found organic certification requirements imposed by foreign buyers to be problematic in several respects, given local knowledge and conditions.

Third, laws often provide severe sanctions for violations, but they are very rarely specified at the level of detail as are conformity assessments. Hence, laws provide multiple ways of achieving (or avoiding) the same results. Paradoxically, although laws provide no escape clause from state sanctions, certifications are often more restrictive of personal liberties.

Finally, certifications always depend on the existence of laws for their enforcement. Without contract law, (intellectual and physical) property law, corporate law, and the like, certifications would be meaningless. Put differently, the implementation of private governance depends ultimately on the power of the state—to permit and define the conditions of the existence of corporate entities and NGOs, to provide for contract adherence, and to prevent theft, among other things. As the proponents of neoliberal reforms know well, neoliberalism is not about deregulation, but about shifting from regulation *of* the market toward regulation *for* the market. This is justified based on the belief that markets, because they are not natural, demand positive state intervention to make actual markets conform to the theoretical model. Moreover, the proponents of neoliberalism claim that in so doing liberty will be enhanced far more than in any other form of governance (e.g., Friedman 1962; Hayek 1973–1979, 2007 [1944]).[6]

This brings us back to the two very different critiques of private systems of governance. Nearly all NGO-led interventions into such governance systems are focused on rectifying what is perceived as the unequal power of the participants in the exchange relationship. This is certainly the case for NGOs concerned about the treatment of farmers and farm workers. There are many examples of

[6] For insight into the rise of neoliberalism, see Foucault 2008. For a clear and succinct early statement of neoliberal premises, see Simons 1948 [1934].

success in these endeavors (e.g., Conroy 2007), although many of these successes tacitly accept the neoliberal assumptions (Guthman 2008). For example, a recent analysis concluded that fair trade now accounts for €1,000 million per annum (Eyre 2008). The same may be said about those NGOs concerned about other non-human actors such as forests, fish, animals, and 'the environment.' In contrast, relatively few NGOs have adhered to the more profound critique, demanding a reworking of the institutions that govern trade such that issues of distributive justice are taken more seriously as well as demanding more state intervention in the form of new laws.

In short, the reader looking for a simple answer to this question will be disappointed by my conclusions. For while the private governance of food permits and even stimulates some forms of (more) equitable exchange, it also creates a bizarre bazaar where goods are differentiated by a growing and often bewildering array of standards, most of which are only made visible to consumers through claims embodied in certifications. This dual process simultaneously (1) addresses some of the worst excesses of the food system even as it largely avoids state intervention and reform of global institutions, (2) provides greater choice to consumers even as it makes choice into a burden, and (3) appears to be leading to ever greater concentration of ownership and control of food.

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