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Having your cake and eating it too:  
Toward a deeper understanding of the potential of  
self-regulation to address private and public goals

A Thesis  
submitted in fulfilment  
of the requirements of the degree  
of  
Doctor of Philosophy  
at  
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by

BRENNAN GERARD ALLEN

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## **Abstract**

The purpose of this thesis is to help develop a deeper understanding of the potential of self-regulation in fields where private and public interests converge. The focus of the research was on [i] the development of standards for Environmental Management Systems (EMS) by the International Organization for Standardization Technical Committee 207 (ISO/TC207); [ii] applications of EMS in environmental regulation; and [iii] future developments in the area. ISO/TC207's vision statement promises;

the worldwide acceptance and use of the ISO14000 series of standards ... will provide an effective means to improve the environmental performance of organizations and their products, facilitate world trade, and ultimately contribute to sustainable development (1993).

The private interest goals in this statement are; acceptance and use of the ISO14000 standards, and facilitation of world trade. The other two goals - improvement in environmental performance, and sustainable development (SD) - both have significant public good aspects (Bosselman, 1995).

The application of voluntaristic, private initiatives to public good goals presents some problems. Conventional thinking in this area tends to assume a tension between 'public' and 'private' perspectives, and questions can be asked about whether self-interest can in practice be adapted to public ends (Korten, 1995).

The thesis reports on a journey of research in three parts. The first part outlines the results of an investigation into the development of the ISO14001 standard, which is based on my involvement in ISO/TC207, representing New Zealand. The analysis highlights the problems that TC207 had integrating private and public interest issues. It is found that TC207 processes and outputs are informed by a narrow interpretation of EMS potential, and reflect a strong bias toward short-term private interests.

The second part reports on an investigation into broader contexts of regulation and self-regulation. The discussion starts with the analytical framework from Streeck & Schmitter (1985), and develops the 'skeleton' of a novel conceptual model of regulatory structure. This is used to analyse forms of environmental regulation and the applications of EMS-related initiatives.

The third part is devoted to developing the model using the results of an empirical programme which was based on interviews with actors in environmental regulation in NZ, and participant-observation in the ISO/TC207 strategic revision of 2001-2003. The 'edified' model is employed to help address the issue of the potential of self-regulation in private-public convergences. The structural aspect of the model indicates promising regulatory configurations, and is used to suggest that principles of *participation*, *balance* and *harmony* may also be useful. The process aspect of the model is utilized to make suggestions for the conception, creation and management of self- and semi-self regulatory initiatives in areas of possible public-private dichotomy.

Overall, it is found that EMS is a sophisticated and multifaceted form of social regulation, but that this is not always recognized in practice. It is argued that voluntarism has not only very high potential in mediating the public and private, but is an essential tool for addressing problems where the public and private interests traditionally clash. The final part of the thesis reflects on the artifice involved in demarcating between 'public' and 'private' interests in regulatory praxis, and concludes that in addressing really big and important issues, such distinctions might hinder, rather than help the emergence of solutions.

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## CHAPTER 1: Introduction to the thesis

### 1.0 The public-private dichotomy in environmental management

In recent years, the use of private-sector, market-based instruments to address social problems normally associated with the 'public good' has become very popular (OECD, 1993). An important issue with a significant public good dimension is management of the environment. Maintaining the capacity of biospheric functions to sustain life is clearly in the interests of all, and in recognition of this fact the task of regulating human use of the environment is in most countries vested in the public sector, that is, it is generally seen as the responsibility of government (Fisher, 1993). It is also usual however to see the ownership and exploitation of environmental resources for production and profit as the preserve of private concerns (Cairncross, 1991). Consequently, a strong interest has developed within the private sector in initiatives which seek to combine public and private aspects in their approach to environmental management (EM) (see OECD, 1993; 1996).

A significant initiative arising from this movement is the development and standardization of a management systems approach to EM by the International Organization for Standardization's Technical Committee 207 (ISO/TC207). The ISO14000 series of international standards is seen by many as an exemplar of the melding of private interests with public good goals (see for example, Hortensius, & Barthel, 1997; Roht-Arriaza, 1995; Tibor, 1999). The 'vision statement' adopted by ISO/TC207 at its inception notes this combination explicitly;

Our vision is the worldwide acceptance and use of the ISO14000 series of standards which will provide an effective means to improve the *environmental performance* of organizations and their products, *facilitate world trade*, and ultimately contribute to *sustainable development* (ISO/TC207, 1993; emphasis added).

There are two private interest goals in this statement; acceptance and use of the ISO14000 standards, and facilitation of world trade. The two other goals mentioned - improvement in environmental performance, and sustainable development (SD) - both have significant public good aspects (see for example, Bosselman, 1995; WCED, 1987; Daly & Cobb, 1989).

The task of developing voluntary, private initiatives which aim to meet public good goals in modern economies/polities presents some unique problems. For example, the conceptual foundations for each of the two perspectives - private and public - differ substantially. Briefly, the idea of the private interest is based on a principle that the individual knows his or her preferences better than anyone else, and will act rationally to satisfy them in a competitive marketplace. Private interest (or *self-interest*) dictates that decision-makers will make decisions that are in line with their own individualistic perception of value, and will reject any course of action that deviates from such perceptions (see, for example, Daly & Cobb, *op cit*). The notion of the general public good by contrast, is based on the principle that the provision of some types of good, such as community infrastructure, scientific knowledge, and environmental qualities (eg. wildlife, parks, clean air) is intrinsically valuable, and would benefit all. However, since no private incentive exists to provide them, they will tend to be underprovided by the market (*ibid*).

It is usual in the literature to see social issues as related to either of the 'realms' of public or private, and their regulation and management as occurring within specific policy and institutional frameworks. Government policy is the traditional means of societal response to public good issues. An example is seen in management of the environment. Tensions between private interests in use of the environment, and the public good in its protection are typically mediated by the public policy apparatus, and subject to public scrutiny and accountability (Anderson, 1994). States are seen by many as the only institutions capable of deploying sufficiently well-informed and authoritative instruments to address public good issues (Hollingsworth *et al*, 1994). Corporations (and similar organizations) are seen as the most appropriate agents for the pursuit of private interests (Streeck & Schmitter, 1985).

In recent years however, governments have been criticized for an over-reliance on prescriptive and 'command-and-control' approaches to social regulation, ignoring in the process possible negative effects on rights of private property (see for example, Taylor, 1984; McArthur & Porter, 1991; DeJasay, 1990). Central to this criticism is an ideologically motivated commitment to reducing the impact of 'burdensome' state-regulatory regimes on business, and to promoting 'free market' principles of property rights, self-regulation by management control, and corporate voluntarism (see, for example, Krut & Gleckman, 1998; OECD, 1999). Another critique has arisen which sees a regulatory approach characterized by a collection of individual efforts by nation-states as inadequate to meet the challenges of now-globalized problems, such as cross-boundary environmental pollution and sustainable development (Bosselman, 1995).

It should also be noted that some issues - by virtue of their complexity, scope, and/or scale - are not readily amenable to arbitrary public-private distinctions. Many pressing issues - global climate change for example - exhibit strong public good characteristics (eg. the collective interest in stable, temperate biospheric conditions), but also have important implications for private interests (eg. reduction in productive capacities in affected areas; diminution of asset values; potential increase in property-damaging storms, etc.). The multidimensional and increasingly globalized nature of an increasing number of problems presents a powerful challenge to conventional understandings and practices of regulation of social issues.

As noted above, interest is growing in voluntaristic approaches to management of the environment. This is driven by a belief that 'natural' human impulses to self-interest may be harnessed and channelled 'intelligently' to the overall good of the system (Friedman, 1995; Korten, 1995).<sup>1</sup> By creating incentive and management structures to allow individuals and organizations to choose ways to meet the environmental outcomes most suiting them, the praxis of 'enlightened voluntarism' is an unconventional approach to addressing environmental problems (see for example, UNCED, 1992; Beder, 1997; OECD, 1991; 1993; 1999; IISD, 1996; WBCSD, 2000).

While arguments for voluntary approaches to public good-type issues - such as environmental management - are persuasive, combining private interests and public good goals is in fact quite problematic. At the level of underlying theory, for example, private interests are generally seen as contradictory, if not inimical, to public welfare, and therefore in need of restraint (usually by the power of the state). The question could be asked: *what has changed to make public and private more compatible?* The issue of compatibility between public and private is in need of closer investigation: *in what areas are theories of public and private in conflict, and where might commonalities be identified?* At the level of practical implementation, it seems little is known about the actual efficacy of private instruments in meeting public goals: *what are the advantages and limitations of this approach in practice? And what can be learned from current practice to help identify important factors in the conception, design and operation of voluntary initiatives?*

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<sup>1</sup>Voluntary approaches include the following; economic instruments, industry and professional codes of good conduct, industrial/technical standardization; management systems etc. OECD (1998) contains a comprehensive list of voluntary approaches used in the pursuit of environmental and sustainability goals worldwide.

## 1.1 An opportunity to see how these problems are addressed in ISO/TC207

The study reported in this thesis has its origins in a 1994 invitation to participate in the work of ISO/TC207 as a member of the New Zealand (NZ) delegation coordinated by Standards NZ (SNZ). My specialty at the time was environmental accounting, so I began an investigation into the literature on EMS and its standardization to improve my usefulness to SNZ. Preliminary analysis showed that much of the literature on environmental management systems (EMS) and standardization emphasises its technical, systematic, processual and voluntary aspects (Hortensius & Barthel, 1997). Conventional perspectives tend to see EMS principally as a technical tool to enable corporate managements to address chosen environmental issues in the ways seen as most efficient for that particular organization (Sayre, 1996). The efficacy of voluntary EMS standardization in addressing public good concerns seemed to be tacitly assumed in the literature. It was more difficult to locate any acknowledgement of a potential public-private dichotomy in the use of voluntary instruments in public good domains.<sup>2</sup>

Notwithstanding the silence in the literature on this issue, the ISO/TC207 vision (noted above) expressed an ambitious goal, with potentially far-reaching ramifications. It is a test case of the potential for fusion of public and private interests in a single private sector initiative, and as such, presented an opportunity to conduct interesting and fruitful research.

## 1.2 Research purpose

The purpose of the research reported in this thesis is to develop a deeper understanding of the potential of self-regulation in fields where private and public interests converge, via an investigation into the use of the environmental management systems (EMS) approach<sup>3</sup> in environmental regulation.

## 1.3 Overview of the research project

This section overviews the structure of the thesis, introduces the methodological issues addressed

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<sup>2</sup>More critical perspectives emerged in subsequent years; see for example, Krut & Gleckman, 1998; Welford, 1997; Beder, 1997).

<sup>3</sup>As developed by ISO/TC207.

in the thesis, and gives a precis of each chapter.

### 1.31 Structure of the thesis

The thesis is structured in three main parts. Part one comprises chapters 2 and 3, and its purpose is to report on the initial research programme undertaken in ISO/TC207 from 1994-97. The original intent of the research was to develop a comprehensive understanding of EMS, and its development via standardization in TC207. This part covers the original literature based investigation, the empirical programme conducted in TC207, and the analysis and interpretation of results. This part is later referred to as the *short project*.

The problematic nature of the findings of the short project made a revision of the direction and scope of the research necessary. This involved an expansion of the research question; an upgrade in methodology; an extension of the empirical programme; and the formulation of an ambitious plan for theoretical development. The revision of the project and the establishment of the new research direction is covered in part two of the thesis. The mechanics of project revision is addressed in chapter 4. In chapters 5-7 a new 'skeletal' model of social regulation is constructed, and used to reflect on the multiple roles played by the EMS approach in environmental regulation.

The third part of the thesis starts by introducing and reporting on an empirically-based exercise which tested the model using feedback from participants in real-world environmental regulation in NZ. In chapter 8 the results of this programme are used to flesh-out, or 'edify' the model, and to consider its contribution to addressing the research purpose. The emphasis of the model on 'structures' of regulation is augmented in chapter 9 by a process-based approach, which is developed from my involvement in the strategic revisioning of ISO/TC207. The final chapter reflects on the achievements of the project, and speculates on the potential of the model to contribute to changes in theory and in practice.

### 1.32 An introduction to the methodology employed in this thesis

This research project was originally conceived to examine the development of the EMS approach to environmental management, and to see how standardization by ISO contributed to this development. Special attention was paid to how TC207 addressed the tension between private

and public aims. The methodological approach employed in this phase of the research was generally positivistic, and based on empirics generated via a participant-observation method (Lincoln & Guba, 1997; Chalmers, 1985).<sup>4</sup> The research was conducted in three stages; literature-based background investigation; followed by an empirical stage involving observations of TC207 meetings and written correspondence/outputs (eg. standards), plus a small number of interviews with participants; and the third stage culminated in an analysis of impressions and results.

Initially, the results of this were seen as disappointing; questions were raised as to the depth of understanding of EMS/voluntarism prevailing in TC207, and also as to the adequacy of the original research plan in addressing public-private dichotomies in EMS development. A decision was made in 1997 to use these research results as a platform for a revised and expanded project.

Several methodological issues arose out of the expansion of the project. A new methodological framework was necessary to meet the unusual challenges of the research, and is reported in detail in chapter 4. 'Middle range theory', informed by Laughlin (1995) was favoured for its support for innovation and creativity in research. A plan was developed to facilitate further theoretical and empirical development. This involved three broad steps; first was the creation of a 'skeletal' theory, derived from initial fieldwork and analysis; second was further empirical investigation and analysis intended to generate further insights on the theory, which informs the third step - edification of the theory, to make it more unified and 'whole'.

### 1.33 Chapter precis

Chapter 2 describes the literature review and empirical findings of the original project. The aim was to examine EMS standardization with special emphasis on how the tension between private and public aims is addressed in ISO/TC207 and the ISO14000 standards. The first finding is that literature on EMS development and practice reflects simplistic and limited understandings. The second finding is that conventional wisdom on EMS is inadequate to account for the politicized processes and subsequent outcomes of standards development. The third finding is that problems in TC207 discourse, process and outputs undermine its ability to support public goals because of a strong bias toward entrenched industry interests. These findings are problematic in the light of claims made for EMS (and other similar forms of voluntary self-regulation).

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<sup>4</sup>The methodological approach is explained in more detail in chapter 2.

Chapter 3 seeks to facilitate understanding of causes of the issues raised in the previous chapter. It starts by critiquing conventional views of EMS, and uses this to generate six different ways of looking at EMS. It ends by arguing the need for a new theoretical approach to EMS/voluntarism. It is suggested that a new theoretical approach should possess a capacity to integrate the variety of ways EMS is used in practice; and should recognize the part(s) played by EMS within larger regulatory systems. It is decided here that the structure and aim of the original project are inadequate to address the issue of the common-good potential of EMS/voluntarism. The work of chapters 2 and 3 is therefore recast as a foundational 'Part I' of a more expansive project.

Chapter four starts off Part II of the thesis by considering how the research project overall might be redefined. The research question is revised - to focus on the public-private dichotomy in EMS/standardization and voluntarism more generally - as is the scope, methodology, empirics and theoretical underpinnings. A plan is developed to facilitate the rejuvenation of the project. The chapter also gives an updated overview of the components and overall structure of the thesis.

The purpose of chapter 5 is to construct a conceptual foundation for new theorizing by developing a better picture of the context of the research, ie environmental regulation. The starting point is a proposition that EMS is itself a form of regulation. The chapter focusses first on regulatory procedures, and considers how EMS is used in multiple ways in many environment-regulatory systems. The second focus is on contextual aspects of regulation, addressing the questions of *who regulates* and *how*. The investigation employs the Streeck & Schmitter (1985) *modes of regulation* model as a theoretical starting point. A picture is painted of regulation as both the process and outcome of interactions within complex systems made up of four modes of state, market, community and association. Actors 'representative' of the modes are seen as interacting in a wide variety of ways, and as utilizing different strategies to achieve their aims. EMS is classified as a type of market-oriented regulation.

Chapter 6 develops key concepts for a new approach to understanding environmental regulation. The discussion bridges from broad understandings to more formalized theorizing. Important conventions and conceptualizations are developed in the chapter, including; a *relational approach* to regulation; the idea of regulatory relations being facilitated by *overlaps* between modes; and the creation of a conceptual system, or *complex*, formed out of the simultaneous interaction of the modes introduced earlier. This way of thinking is analysed briefly by reference to environment-regulatory relations in practice. It is found that thinking along these lines is

promising, but that the approach needs further work and refinement.

Preliminary understandings of the regulatory context as developed in chapters 5 and 6 are integrated in chapter 7 to form a 'structural' model of regulation. The model is developed to a skeletal stage in the first part of the chapter, and subjected to a brief 'bench-test' in the second part by using it to categorize 40 commonly used environment-regulatory initiatives. The model shows promise in helping appreciate the larger context within which environmental-regulatory initiatives, such as EMS, are shaped and implemented, but would benefit from further development. This chapter marks the end of Part II of the thesis.

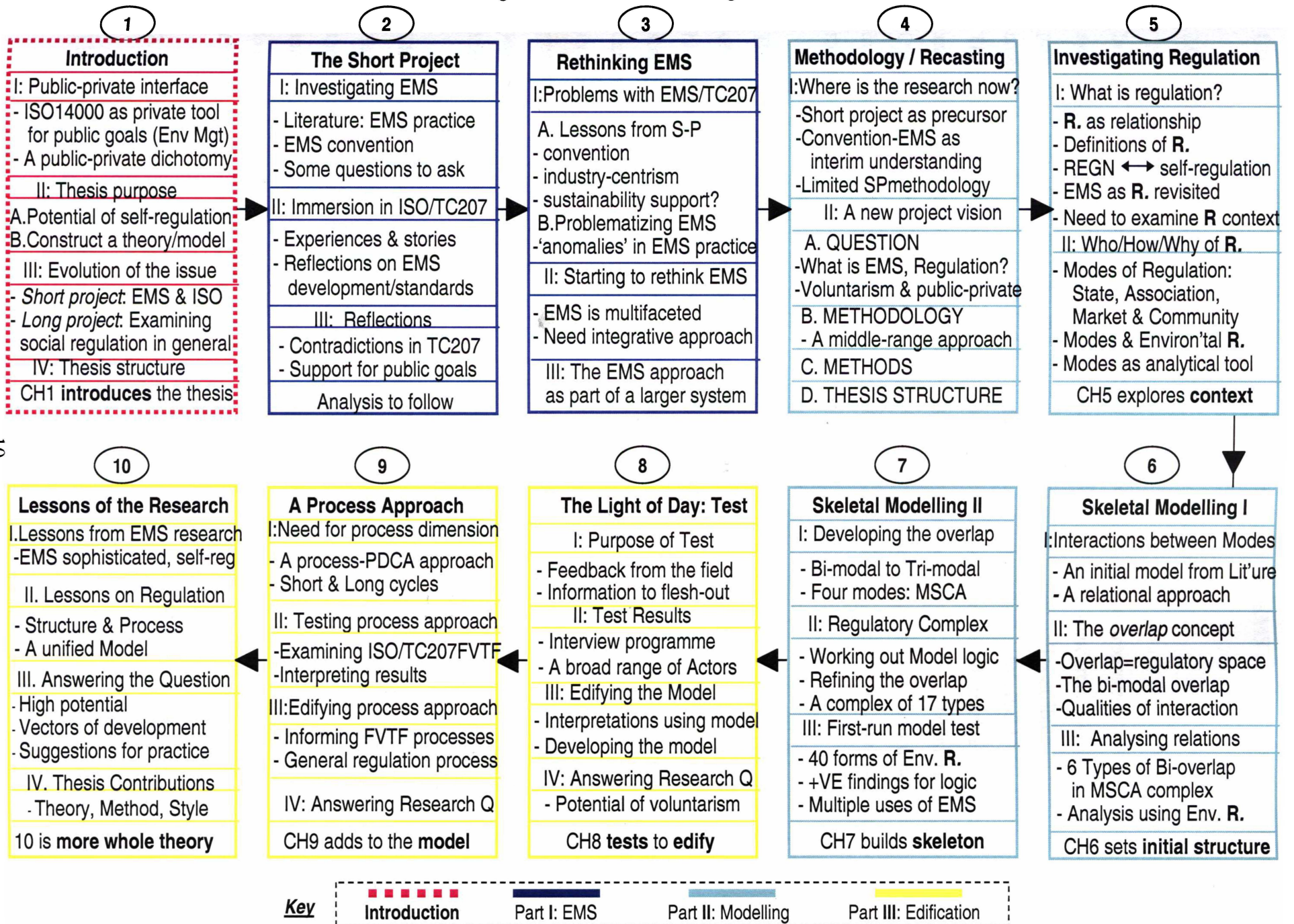
Part III of the thesis starts with chapter 8. To enable development of the model, an empirical programme involving participants in real-world environmental regulation was developed. The first part of the chapter discusses the test and its results. The model was well-received by participants, and was found to be useful in helping analyse environmental-regulatory contexts. Feedback from the test is used to improve and edify the model, in terms of its mapping/cartographic qualities, its analysis of how regulatory initiatives are formed and maintained, and its critique of regulatory evolution. It is argued that the edified model facilitates valuable insights into the potential of voluntarism in environmental regulation, but its structural emphasis means that it has less to say about *how* this potential might be accessed.

The purpose of chapter 9 is to add to the understandings developed over the course of this thesis by considering the process dimension of regulation. A cyclical 'process approach' to regulation is developed, and employed to inform an analysis of the long-run development of ISO/TC207, and in particular its strategic planning in the period 2001-2003. Feedback from this investigation is used to improve the process model, its usefulness in thinking about the development of EMS, and in helping address the overall research issue. The process model helps to clarify the mechanisms by which the interests of stakeholders and constituencies are translated into tangible actions by regulatory initiatives. It also highlights the importance of periodic assessments of how well an initiative has met its goals, as opposed to the much more common emphasis - in the literature and in practice - on conformance/compliance with the regulations produced. The process model is seen to contribute strongly to the theoretical development of the thesis.

Chapter 10 concludes the thesis by reflecting on how the research addresses the problem of voluntarism in addressing public-private dichotomies, and by considering the contributions of

the project to research methodology, and the theory and practice of regulation. It is concluded that while the EMS approach is a sophisticated and multifaceted form of social regulation, this is not always recognized in practice. It is argued that voluntarism has not only very high potential in mediating the public and private, but is an essential tool for addressing problems where the public and private interests traditionally clash; such as in the new, large and pressing global 'macro-problems' (such as widespread environmental degradation, climate change and sustainability) now facing humanity. The structural aspect of the model of regulation is used to suggest certain regulatory configurations and vectors of development that might be expected to enhance the potential of self-regulation. The process aspect of the model casts new light on how the potential of voluntarism might be accessed or improved in practice. It is used to make suggestions for the conception, creation and management of self- and semi-self regulatory initiatives in areas of possible public-private dichotomy. Theoretical contributions of the thesis to the areas of EMS, voluntarism and regulation are discussed, and the methodological and stylistic aspects of theory-building developed in the course of the research are considered. The final part of the chapter reflects on the artifice involved in demarcating between 'public' and 'private' interests in regulatory praxis, and concludes that in addressing the really big and important issues, such distinctions might hinder, rather than help the emergence of workable solutions.

Figure 1.1: The thesis at a glance



## CHAPTER 2            *The short project reported: research into EMS and ISO/TC207*

### 2.0    Overview of the short project and its place in the thesis

In 1994 I started a research project to study the development of environmental management systems (EMS), and the part played in this process by setters of EMS standards. A key aim of the project was to examine the claim that voluntary EMS standardization will contribute strongly to environmental improvement and sustainable development (ISO/TC207, 1994; ISO 14001:1996). The project was envisaged as a short-term one, and was grounded empirically in my experiences and observations as a participant in the work of Technical Committee 207 of the International Organization for Standardization (ISO/TC207). ISO is a major player in the coordination of international standards, and TC207 drafts the ISO14000 standards for environmental management (EM).

The research raised some questions about differences between promise and action in EMS development. It was unsurprising perhaps to find in ISO/TC207 a preference for simple, industry-biased views of how private interests might best serve public goals. ISO is after all, a long-standing facilitator of trade. Research findings are interpreted as illustrative of the problems that can arise when a narrow perspective of the potential of voluntary standardization predominates in the development of EMS-standards. The analysis makes a start in evolving thought on the potential of EMS-based self-regulation by first problematising EMS, and second by developing several novel interpretations of EMS. These are used to start a new discussion about EMS and the place of voluntarism in the achievement of social goals.

The literature-based and empirical parts of the project are covered in this chapter, and the analysis is written up in chapter 3. The discussion makes clear that more questions are posed by the project than are answered, and suggests that further research is needed. The discussion on methodology in chapter 4 revises and extends the research programme, and the original project is reconceived as important foundational work for a much longer, in-depth project, and is referred to thereafter as the *short project*.

### 2.1    Introduction to the chapter

The potential for voluntaristic and ‘market-based’ schemes and arrangements to underpin and

guide corporate action on environmental issues has attracted much interest in recent years (OECD, 1991; 1993). In the 1990's significant efforts were devoted to developing instruments to satisfy the desire of corporates to pursue both the image and reality of self-responsibility with regard to environmental improvement and sustainable development. Central to this movement is an ideologically motivated commitment to reducing the impact of 'burdensome' state-regulatory regimes on business, and to promoting 'free market' principles of property rights, self-regulation by management control, and corporate voluntarism in the area of the environment (see, for example, Wildavsky, 1994; OECD, 1993).

EMS is often promoted as a model of how voluntary application of management tools can help business organizations meet emerging expectations of the role of business in promoting the good of society as a whole (OECD, *ibid*). The ISO14000 series of international standards for environmental management - and ISO14001:EMS in particular - is perceived by many commentators as an exemplar of corporate voluntarism in service of public interest goals, such as sustainable development (Sayre, 1997; Hortensius & Barthel, 1997; Bell, 1997; Elkington, 1997; Tibor, 1998). This sentiment is founded, in large part, on the following claim;

*that voluntaristic and market-friendly approaches - such as EMS - will be effective in promoting social macro-level goals, such as environmental improvement and sustainability.*<sup>5</sup>

This chapter reports on the short project, which set out to examine this assertion.

The chapter is written in three parts. The first part is a literature-based examination of the development and standardization of EMS from the late 1980s to the mid 1990s. This serves as conceptual support for part two of the chapter, which discusses empirical research into EMS standardization by ISO/TC207. The third part discusses the implications the findings have for the research.

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<sup>5</sup>Proposition adapted from ISO/TC207 vision statement (ISO/TC207, 1993). See also Dodds, 1997; Sutton, 1997.

## 2.2 Introduction, purpose and overview: the short project

The genesis of the research lay in an invitation to participate in the New Zealand representation to ISO/TC207 in 1994. At the time, I was teaching environmental accounting and management issues in a business school, and perceived this as an opportunity to kick start my research career with a chance to study EMS development at the highest level. I was very interested in the potential of EMS to help businesses and organizations globally in their social responsibilities, among other things.

The research has two main purposes. The first is to critically assess the strength of support given to broad public goals by EMS, and especially as standardized by ISO/TC207. The second and related purpose is to explore the EMS approach in more depth and from a broader perspective, using the findings of the empirical programme as a base.

The project is written up in three parts. The first part is based on a review of the literature, and asks *what is the EMS approach?* A couple of pictures are drawn. The prevailing model of EMS is a voluntary, market-based, technical management tool intended to assist organizations regulate themselves to achieve self-set goals (ISO14001, 1996, CAN/CSAZ750; Cascio, 1995; ICC, 1992; Gough, 1995). A minority view challenges this logic, pointing out the privileging of private interests over the public good in the theory and practice of EMS (see, for example Krut & Gleckman, 1995) This part serves as a conceptual foundation to inform the empirical investigation.

The second part reports on the construction, conduct and results of the empirical part of the project. The site/context of the research is covered in more detail, issues in approaching and constructing the investigation are discussed, and research findings are noted.

The third part covers research findings, noting that the project raises more questions than it answers, and speculates on how to progress the analysis.

### 2.21 Methodological considerations

This project was constructed with some haste following the invitation to participate in ISO/TC207 in 1994. This necessitated a methodological approach which was both simple, yet

capable of evolution (as necessary) over the course of the project. At the outset, it was decided that methodology should be as simple as possible; that is, informed by a generally positive/inductive methodological approach (Lincoln & Guba, 1997; Chalmers, 1982). The key beginning assumptions of the project are as follows; (a) *positive*: there is an 'EMS approach' capable of being found or 'discovered', described, analysed and verified as existing, or exemplified (or not) in a real-world context; (b) *inductive*: an objective, 'real' phenomenal world exists, separate from the observer. Properly defined and controlled, the research context is enterable by an observer, and conclusions are capable of being drawn from a 'sufficient' aggregate of relevant observations, guided by rules of engagement intended to preserve the objectivity and integrity of observations; (c) *reductive/generalistic*: the EMS approach (ISO14001 in this case) is a flagship, or exemplar of voluntary means of environmental management and corporate self-regulation, and thus lessons drawn from a defined context (eg ISO/TC207) are, within reason, capable of being applied to other, similar contexts; (d) *question-generating-and-testing*: questions were developed from a conceptual/theoretic analysis carried out prior to entry to the research context, to be tested for congruence with observations in TC207 and related empirical contexts (eg NZSSG); (e) *predictive*: such conclusions, rules or 'laws' as 'discovered' in the research process can be applied to sufficiently similar phenomena in comparable contexts to make predictions or projections.

## 2.22 Research method in ISO/TC207

In mid-1994 the empirical programme was initiated, and completed in 1996. It was conducted in two phases. The first phase centred on observations of meetings and communications in ISO/TC207 and related sites as a participant. Major events studied were meetings of SC1 (Environmental Management Systems); SC3 (Environmental Labelling) and SC5 (Life Cycle Assessment) at Surfers Paradise, Australia (1994) and Oslo, Norway (1995). These observations were augmented by participation in behind-the-scenes developments, and processes carried out remotely (eg document drafting, proposal making, discussions and feedback on proposals, voting, etc). The second phase of the programme was based on formal, semi-structured interviews conducted with a number of senior delegates to TC207 from NZ, Australia, US and Norway.

## 2.3 Literature review

This part of the project overviews the development of EMS (ie. the EMS approach). EMS is

generally seen as a voluntaristic, market-based, management-oriented tool for managing and controlling environmental effects and impacts. It emerged in the late 1980's as part of a broad ideological movement opposing 'excessive' and 'inefficient' state control and influence in society, emphasising instead 'free market' principles of property rights, management control, and corporate voluntarism in selecting (a) specific goals to be pursued; and (b) means of achieving principally self-set goals (see for example Schmidheiny, 1992; OECD, 1993; Wildavsky, 1994).

EMS has achieved high levels of acceptance and credibility in corporate circles and is increasingly recognized by public authorities. Formal expressions of EMS - such as the British Standard BS7750, the EU Eco-Management and Audit Scheme (EMAS) and the ISO14000 series of standards - have helped crystallise and legitimate the EMS approach and to facilitate its dissemination globally.

EMS can be differentiated from other potential methods of managing and controlling environmental impacts and effects. These might be seen as ranged from prescriptive 'command and control' regimes such as direct intervention and regulation by state bureaucracy in the 'public interest' (Ogus, 1994); through self-regulation at the level of the community or individual by means of cultural and customary rules (Goldsmith, 1992; Hardin, 1999); to extreme *laissez faire* formats where economic imperatives outrank environmental considerations to the extent that control of physical impacts is seen as unimportant (Rand, 1943). The EMS approach could therefore be seen as something of a 'moderate' approach to managing the environment, embodying key elements of free-market ideology, but also recognising the importance of regulatory compliance (ISO14001, 1996: v). In seeking the 'middle ground' between complete freedom of corporate action, and compulsion by the state, the EMS approach is seen by some as an expression-in-action of 'corporate environmental responsibility' (Schmidheiny, 1992; IISD, 1992). By exercising credible self-responsibility, via EMS for example, corporates might be seen by wider society as genuine contributors to the common good, and therefore deserving of increased freedom of action.<sup>6</sup>

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<sup>6</sup>For more on corporate social responsibility, see Gray, 1993; Freeman, 1995; Bowie, 1995.

## 2.31 EMS/standardization development path: late 1980's to 1996

The EMS approach has several related origins. In no particular order of importance, these are; first, the Business Council for Sustainable Development - a non-government organization (NGO) established in the late 1980s by a coalition of major transnational corporations to address environmental issues and policy - was instrumental in promoting industry-initiated standards as a means to improve environmental performance and in bringing this concern to the attention of the international standards development bodies.<sup>7</sup> Second, management and technical standards were discussed as a means of achieving broad-based sustainability goals in preparatory meetings for the 1992 Earth Summit, United Nations Conference on Environment and Development (UNCED) at Rio de Janeiro. Third, the potential of voluntary standards to assist in the simultaneous achievement of international environmental and trade goals were deliberated at the Uruguay Round of the GATT. Fourth, individual companies, frustrated at having to deal internationally where there are no common rules, and increasingly affected by pressure from governments, environmental and consumer groups, tend to seek standards as a means of conformity to an accepted norm.

While this thesis focusses on ISO14001 as an archetypal expression of the EMS approach, it is important to note that its development is founded on several precursors. Chief among these are; BS7750; EMAS; the Canadian Standards Association (CSA) Environmental Management Program; the Global Environmental Management Initiative (GEMI) Environmental Self-Assessment Program; the Chemical Industry's 'Responsible Care' program; and the US EPA Environmental Leadership Program (ELP). Each of these is discussed in brief below.

### A BS 7750: Specification for Environmental Management Systems

The British Standards Institute (BSI) published a draft British Standard, BS7750 Specification for Environmental Management Systems, in March 1992. A second edition was published in 1994. A technical 'specification', rather than a guidance document, it provides details about how an organization can ensure compliance with its chosen environmental policies and objectives,

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<sup>7</sup>See <http://www.wbcds.ch>.

and direction on processes to assure conformance<sup>8</sup> with the specification. It also provides guidance on how to implement an EMS. BS7750 is designed to improve the environmental *performance* of all types and sizes of organizations and is underpinned by a systematic and integrated managerial approach, the creation of corporate environmental policy and objectives, and by the practice of environmental auditing.<sup>9</sup>

The specification provides details on the following requirements: the environmental management system; environmental policy; organization and personnel; environmental effects; environmental objectives and targets; on environmental management program; operational control; environmental management records; environmental management audits; environmental management reviews. However, being a voluntary mechanism, it does not define or seek to set specific environmental performance criteria, objectives, indicators, targets, or timetables for a business or organization (BSI, 1994).

Although BS7750 was designed to be compatible with the EU EMAS voluntary regulation (1993), and was a major influence on the development of the ISO14001 specification document (see for example, ISO/TC207/SC1/WG1 N47, 1994), under the terms of the Vienna Agreement<sup>10</sup>, if an ISO document is ratified by the Union then all competing National standards must be withdrawn. The EU agreed to accept ISO14001 in 1997 and BS7750 was officially withdrawn in March of that year.

## B The European Eco-Management and Audit Scheme

Environmental initiatives in the European Union (EU) are guided by specific action plans. The Fifth Environmental Action Programme of 1992, is based on a proactive governmental approach

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<sup>8</sup>The terminology of voluntary standardization requires elaboration here. An organization is said to *comply* with the requirements of compulsory legislation/regulation. On the other hand, it *conforms* with the specification/s of a voluntary standard.

<sup>9</sup>BS7750 shares common management system principles with the BS5750: Specification for quality management systems - though the latter is not an operational prerequisite.

<sup>10</sup>The Vienna Agreement is a cooperative agreement to facilitate the coordination of standards development work between ISO and CEN (the standardization body of the European Union) (ISO/TC207 N31, 1993:17, note 1).

to sustainable development. It is supported by Article 130R, paragraph 2 of the Single European Act of 1987 which states:

Action by the Community relating to the environment shall be based on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community's other policies.

The Fifth Environmental Action Program includes the Eco-Management and Audit Scheme (EMAS) to encourage the private sector to improve its environmental performance. EMAS was adopted June 29, 1993 by the EC Council of Ministers as a regulation effective April, 1995 (European Council of Ministers, 1993).

Registration to EMAS is site specific. This means that a company cannot register on behalf of its subsidiaries. The EMAS regulation requires:

- Company adoption of an environmental policy;
- Policy commitment to continuous improvement;
- Definition and implementation of environmental program and environmental management system;
- Procedures for monitoring and verifying compliance;
- Environmental audits at the sites concerned;
- Preparation of a periodic site based Environmental Statement;
- Independent verification of Environmental Statement;
- Public access to verified statement;
- Quantified improvement targets set at the highest management level (EMAS, 1993)

One of the major differences between EMAS and BS7750 is the requirement for an Environmental Statement which must be prepared for every site participating in the scheme. The Environmental Statement should:

- Describe company activities at each participating site;
- Assess all the significant environmental issues;
- Summarise figures on pollutant emissions, waste generation, consumption of raw

- materials, energy and water, noise, and other significant data;
- Consider other factors concerning environmental performance;
- State the company’s environmental policy, and describe its program and management systems;
- Emphasise significant changes since the previous statement;
- Give details of the deadline for the submission of the next statement;
- Identify accredited environmental verifier.

The standardization body for the EU, the *Comite Europeen des Normes* (CEN) was directed by the European Council to develop standards to meet the needs of EMAS. CEN in turn created an environmental standardization Programming Committee (PC7) to address; environmental measurement standards; measurement methods for environmental properties of chemical substances and chemical products; pollution control methods and equipment; environmental management tools; methods for evaluation of environmental effects of products; and general aspects (terminology, symbols, definitions). PC7 agreed that it would not duplicate the work being done within ISO/TC207 if the ISO committee could develop its standards within an ‘appropriate’ time frame. EMAS was therefore a significant force driving the pace and scope of work of TC207.

#### C Canadian Standards Association Environmental Program

The CSA has developed consensus based information for a range of environmental initiatives, including EMS and auditing systems. By way of a voluntary Environmental Management Program, the Association aims to assist business and industry in improving their environmental performance. The CAN/CSA Z750-94 specification ‘A Voluntary Environmental Management System’ is based on the premise of prevention rather than end-of-pipe control. The design of a company’s Z750-based EMS should emphasise prevention by identifying the organization’s significant environmental effects, applicable laws and regulations, and priorities, and by facilitating corrective actions, systems auditing, and operation processes and procedures.

The framework is based on four general principles for management systems: purpose, commitment, capability, and learning. *Purpose* concerns the organization’s environmental policy; the risks associated with its activities, processes, products, and services; and its environmental objectives and targets. *Commitment* refers to motivation according to environmental values;

organizational alignment and integration; and accountability and responsibility. *Capability* refers to human, physical and financial resources; knowledge, skills, and training; and information management. *Learning* is about measuring and monitoring, communication and reporting, system audits and management review; and continuous improvement (CAN/CSAZ750, 1994).

#### D ICC/GEMI Environmental Self-Assessment Program

In 1993, GEMI published its Environmental Self-Assessment Program (ESAP), an 'environmental' expression of the International Chamber of Commerce Business Charter (GEMI, 1993; ICC, 1992). GEMI is a group of twenty-three leading multinational companies dedicated to fostering environmental excellence in businesses worldwide. Member companies include AT&T, Dow, DuPont, Kodak, Procter & Gamble, and Union Carbide, among others (GEMI, 1993).

ESAP is a voluntary self-assessment tool designed to evaluate whether a company is operating in consistency with sustainable development objectives. That is, the ESAP is designed to measure and improve corporate environmental management performance over time, with a focus on corporate-level policy, systems, and performance measurement programs. The program is promoted on the basis of its ability to assist a company, regardless of its size, business sector, or geographic scope of operations, in evaluating its 'environmental management performance' relative to the sixteen principles of the ICC Business Charter (GEMI, 1993).<sup>11</sup>

The ESAP allows a company to 'score' its performance in each of these categories and to assess performance over time, as well as allowing the company to compare performance against four absolute and escalating standards:

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<sup>11</sup>The sixteen principles are: Corporate Priority; Integrated Management; Process of Improvement; Employee Education; Prior Assessment; Products and Services; Customer Advice; Facilities and Operations; Research; Precautionary Approach; Contractors and Suppliers; Emergency Preparedness; Transfer of Technology; Contributing to the Common Effort; Openness to Concerns; Compliance and Reporting (ICC, 1992).

*Level 1 - Compliance*

*Level 2 - Systems Development and Implementation*

*Level 3 - Integration into General Business Functions*

*Level 4 - Total Quality Approach*

The ultimate goal is to assure the highest level of performance (i.e., Level 4), which assumes that integrated environmental management systems are applied to operations globally and evaluated continually for improvement opportunities.

Of course, GEMI as an organization is neither a standard-setting body nor a regulatory authority and, as such, cannot impose its expectations on industry unilaterally. However, peer pressure and many companies' public commitment to sustainable development have resulted in early adoption of the ESAP as a tool used to assure that a company is meeting its environmental objectives.

#### E      *The Responsible Care Program*

The chemical industry worldwide has historically been under tremendous scrutiny related to its environmental, health and safety practices. In an effort to better manage its environmental liabilities and exposure to public liability, the industry developed the *Responsible Care Program* in the late 1980s. In the US, this has been spearheaded by the Chemical Manufacturers Association (CMA), which includes in its membership all major U.S. chemical companies. Adoption of the Responsible Care Codes of Practice is a requirement for membership in the CMA. The six codes are introduced in Table 2.1 below:

Table 2.1: *Responsible Care* codes of practice

Community Awareness & Emergency Response	Process Safety
Product Safety	Distribution
Employee Safety	Pollution Prevention

Each of the codes given above prescribes the management system(s) that should be expected in a company in order to meet the objectives of a 'sound program' (CMA, 1993). Each year, member companies are required to evaluate or audit how far along they are towards full

implementation of an 'effective program'.

The Responsible Care Program is an example of how and why expectations can become fragmented and confusing. The Responsible Care concept was initially developed by the Canadian Chemical Producers' Association (CCPA) and modified by CMA for use in the US. While the US and Canadian codes are similar, they are not identical. Variations have typically occurred in such standard-setting programs, either due to the variation in geo-politics of the individual country or because, frankly, most organizations wish to place their own particular signature on developing trends. Hence, difficulties in integration experienced in programmes such as Responsible Care give an indication of the reasoning underpinning the 'unification' of disparate EMS approaches sought by subsequent international standards development eg. TC207/ISO14001.

#### F Environmental Protection Agency Environmental Leadership Program

A US Federal Register notice from June 21, 1994 requested proposals for Environmental Leadership Program (ELP) pilot projects and outlined the criteria that facilities must address to be considered for participation (EPA, 1997b). The pilot projects would explore ways that the Federal EPA and State governments might encourage facilities to develop innovative auditing and compliance programs and reduce the risk of noncompliance through pollution prevention practices (EPA, 1997a). In addition, the projects may assist in helping EPA design a full-scale leadership program and determine if implementing such a program can help improve environmental compliance. The ELP is conceptually similar to the Occupational Safety and Health Agency (OSHA) Voluntary Protection Program (VPP), which has been in place for several years. The benefits of program participation could include fewer regulatory agency inspections and mitigation of fines and enforcement actions should a problem with compliance occur.

Facilities applying to the pilot projects must describe their existing or proposed environmental management and auditing programs, their systems for resolving issues raised by these programs in a timely manner, their systems for evaluating and adjusting these programs on a regular basis. EPA is currently evaluating its environmental auditing policy, and intends to base any decision to reinforce or change existing policy on empirical data. The ELP pilot projects may generate useful data on auditing measures and methodologies, and may permit experimentation with

different incentives. Facilities applying to the ELP must demonstrate a willingness to disclose the results of their audits.

#### G Commonalities in the precursors to the ISO14000 series

By 1994, it was fair to say that, while still disparate in practices and emphases, the EMS approach had developed to a point sufficient to interest one of the world's preeminent standardizers. The external rationale of EMS as a market-based, voluntaristic management tool was well established by the initiatives introduced above. Internal to the firm, the EMS is intended to function inside organizations in three main ways:

##### *Integration*

The EMS integrates the deliberations and decisions of other internal systems (such as Financial, Legal, Marketing, Health and Safety, Quality etc) having environmental implications;

##### *Facilitation*

The EMS as a vehicle to facilitate flows of environmentally-relevant information and decision-making internally ie between (a) top management and EMS; and (b) EMS and operational systems (those systems which *cause* physical impacts);

##### *Communication*

The EMS as a conduit through which environmentally-relevant dialogue between the organization and stakeholders/interested third parties is maintained.

However, if not for the introduction of ISO into the fray of EMS development, the EMS approach might well have remained effectively a collection of more-or-less experimental individual and disparate codes and practices administered by a wide variety of organizations.

#### 2.32 The role of ISO/TC207 in EMS development

In June of 1991, the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) jointly established an *ad hoc* group, the Strategic Advisory Group on the Environment (SAGE). The objective of SAGE was to directly address the potential

for excessive proliferation of EMS standards, codes and practices by developing a set of ISO standards. Recognising that such a move would “widen the terms of ISO standards and as a consequence the terms of national standards”, SAGE saw its purpose as taking steps to, “include environmental considerations in product standards, testing procedures, quality management, and quality assurance as a complement to the traditional requirements that are mainly focusing [sic] on the performance in use” (ISO/IEC SAGE 75, 1991).

The terms of reference for SAGE were as follows:

*- to assess the needs for future international standardization work to promote world-wide application of the key elements embodied in the concept of sustainable industrial development, including, but not limited to consumer information and eco-labelling; the use and transport of resources, in particular raw materials and energy; and environmental effects during production, distribution, use of products, disposal and recycling;*

*- to recommend an overall ISO/IEC strategic plan for environmental performance and/or management standardization; including primary objectives, proposed new work areas, timing needs, and guidance for the inclusion of environmental considerations in product standards and test methods within the existing ISO/IEC technical committee system;*

*- to report its recommendations to the ISO and IEC Councils (ISO/IEC SAGE 75, 1991; ISO Council Resolution 31/1991).*

In December 1992 SAGE submitted a report and recommendations to the ISO and IEC Councils. The group recommended that ISO establish a new technical committee to oversee and coordinate development of international standards for environmental management. In January of 1993 the ISO Technical Management Board (TMB) approved the SAGE recommendations and established a new technical committee, TC207 to manage the development of these standards. In March of 1993 the management of the TC 207 secretariat was awarded to the Standards Council of Canada - largely on the strength of its pioneering work in CSAZ750 and related initiatives - and the Canadian Standards Association took on the task of administering the secretariat on behalf of the Council. In June, 1993 the first plenary meeting of the new technical committee was held in Toronto, Canada.

The new technical committee was given the following statement of authorization by the ISO Technical Management Board:

- Title:** Environmental Management
- Scope:** Standardization in the field of environmental management tools and systems
- Excluded:** Test methods; Setting limit values; Setting performance levels; Standardization of products

At its first meeting in Toronto, TC 207, established six subcommittees (SCs) and a working group, as recommended by SAGE, to address a comprehensive range of environmental issues as they impact business organizations. Each of the SCs was to be managed by secretariats based in different countries (noted in parentheses) to reflect the globalized standardization effort being undertaken:

- SC1* Environmental Management Systems (UK)
- SC2* Environmental Auditing (Netherlands)
- SC3* Environmental Labelling (Australia)
- SC4* Environmental Performance Evaluation (USA)
- SC5* Life Cycle Analysis (France/Germany)
- SC6* Terms and Definitions (Norway)
- WG1* Environmental Aspects of Product Standards (Germany)

The model developed by SAGE, guiding the development of standards, designated the EMS as a credibly 'separate' system, although 'integrated' with other such systems (governing quality, finance, OSH etc) within an organization (ISO/IEC SAGE/SG1 N55, 1993). The individual EMS, created by the organization implementing the specification, thereby serves as a 'shell' within that organization, into which various support sub-systems and/or procedures (eg environmental auditing; life-cycle assessment; performance evaluation etc) effectively 'plug-in' (ISO/IEC SAGE/SG1 N52, 1993:*Annex*). There is a hierarchical relationship between the management system (EMS, QMS etc) and supporting procedures, eg auditing, LCA, impact assessment, management review, performance evaluation and others (*ibid*). This does not mean, however, that standards for supporting procedures (such as those produced by SCs 2-6) are in any way 'subservient' to the core EMS specification.

The standardization effort undertaken by ISO/TC207 substantially expands the scope of the EMS approach. Whereas other attempts to codify and propagate the EMS approach (as discussed above) mainly focus on the purpose and structure of the EMS itself, TC207 broadened its ambit to address a much wider range of issues, some of which are in early stages of development (eg performance evaluation; LCA; eco-labelling). Key rationalizations of TC207 involvement and the subsequent expansion in scope of the EMS approach include; harmonization of international practices for trade facilitation; a need for a credible standard for the purposes of EMAS, and; to contribute to environmental protection efforts and sustainable development (ISO/IEC SAGE/SG1 N55, 1993). The guiding 'vision' adopted by TC207 clarifies these points:

Our vision is the worldwide acceptance and use of the ISO14000 series of standards which will provide an effective means to improve the environmental performance of organizations and their products, facilitate world trade and ultimately contribute to sustainable development (ISO, 1993).

It was clear by the early to mid-1990s that the initiative and impetus driving development of EMS was shifting from experimentation with disparate codes toward uniformity in EMS practice. This was needed to facilitate acceptance of EMS as a legitimate and credible tool for environmental management worldwide. A 'confluence of needs' precipitated the entry of ISO into the fray of EMS development. These are briefly; the needs of corporates for certainty when dealing with each other, the need for industry to be seen to be committed to addressing environmental problems and issues of sustainability; the needs of interested parties and the community for reassurance with regard to action on environmental matters; and the need for governments to be seen to be considering and/or promoting alternatives to so-called command-and-control approaches to creating improvements in environmental conditions. These factors all contributed, in one way or another, to the 'drawing-in' of ISO to the development of the EMS approach.

There are a number of strongly positive aspects to ISO involvement in EMS development. By most criteria, ISO is a heavyweight in the area of standardization; "ISO is a worldwide federation of national standards bodies from some 130 countries...[t]o date, ISO's work has resulted in over 11000 international standards".<sup>12</sup> The ability of ISO to access expertise, to generate technical

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<sup>12</sup>See [www.iso.ch/infoe/intro.htm#](http://www.iso.ch/infoe/intro.htm#) (pp1,7).

specifications with industry consensus, to enable their uniform application, and to ally them with a global reach, marks the organization as a major player in economic globalization.<sup>13</sup> These abilities, combined with ISO's historically validated locus deep within international trade systems, and long-standing linkages with other major players<sup>14</sup> make it a truly powerful entity.

The formalized process of standards development followed by ISO can also be seen to be promising for an EMS standard taking into account the views of a wide range of stakeholders. The principles guiding the process are described in ISO documentation;

**Consensus** *The views of all interests are taken into account:* manufacturers, vendors and users, consumer groups, testing laboratories, governments, engineering professions and research organizations.

**Industry-wide** Global solutions to satisfy industries and customers worldwide.

**Voluntary** International standardization is market-driven and therefore based on *voluntary involvement of all interests in the market-place.*<sup>15</sup>

It could be said that the potential contribution of ISO to the credibility and broad acceptance of the EMS approach, especially in commercial and trade-related contexts, is enormous.

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<sup>13</sup> *Objectives of ISO Products*

1. High quality, international (ISO) information provided in a timely manner
2. In a way that:
  - facilitates the trade of goods and services;
  - enhances the competitiveness of industry;
  - improves the prosperity of business, industry and nations worldwide;
  - contributes to the improvement of environmental performance of business and industry; and
  - contributes to overall improvement of our global environment.
3. Considerations:
  - Trade Agreements - GATT, FTA, NAFTA, etc...
  - Standardization initiatives - CEN, etc...
  - Other Initiatives [unspecified in this document]

(Source: ISO/TC207 N34:13; 1994)

<sup>14</sup>Including major policy making NGOs (eg OECD, UN), nations and federations of nations (eg EU) trade arrangements (eg NAFTA, WTO) and major transnational corporations.

<sup>15</sup>*Ibid*, emphasis added.

### 2.33 Standardization and certification of EMS

A number of different formats for EMS, each with their own idiosyncratic features and emphases, emerged in the early 1990s. Certain formats highlight different aspects of the general EMS approach. BS7750, for example, specifies as an EMS objective improvements in environmental performance. ISO14001 by contrast makes no mention of environmental performance in its specification. Subtle, and not-so-subtle differences between EMS formats, codes, and specifications make for uncertainty when organizations deal with each other and with interested parties.

The argument for rationalizing disparate EMS specifications under a single globalized standard is supposed to result in a number of benefits. These are generally categorized as follows; (i) uniformity of practice and transparency; as all organizations choosing to uptake EMS practice the same way(s), mutual understanding is improved, and barriers to interaction (eg trade relations) diminish; (ii) increasing acceptance and applicability as a common standard is developed, or emerges; (iii) increased legitimacy of a standard results from consultative and/or representative processes as interested parties have a (varying amount of) say in the 'final' specification, thus increasing the mandate of the standard and buy-in from users and interested parties (ISO14001, 1996; Gleckman & Krut, 1997).

Once the specification is set - in the form of the standard - it is used by organizations to systematize EM processes in a common format. Certification by independent third parties is required at regular intervals to maintain the organizations claim to be 'standard-compliant'. Certification is the act of formally attesting - by means of independent, third-party review and audit - to the existence of an EMS meeting the requirements of the relevant standard. According to ISO, this may done to "assure interested parties that an appropriate environmental management system is in place" (ISO14001, 1996:vi).<sup>16</sup> Parties interested in the EM-related activities of the organization might include customers, communities affected by the activities of the organization, and government agencies, any of whom may affect its ability to operate.

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<sup>16</sup>As at 2001, the preeminent standard for EMS is ISO14001. For better or worse, EMS has now become synonymous with ISO14001. The standard is recognized in over 80 countries (ISO/TC207 N435, 2000), and good estimates put the number of certifications to ISO14001 at over 20,000 (ISO/TC207, 2001).

### 2.34 Creating a population of standards-conforming organizations

As a population of organizations conforming to generally accepted EMS specifications is established, each pursuing individually chosen goals, but by the same method, the standard generates a sort of 'gravity' of its own. For example, as businesses respond to customer demand for 'environmental' assurances, they may choose to encourage (or force) their suppliers to become intimately familiar with EMS.<sup>17</sup>

In this way, the proliferation of EMS and the formation of 'population' of standard-conforming organizations is assumed by the conventional account of the EMS approach to lead to improvements in environmental conditions in aggregate. As each EMS-conforming organization experiences improved environmental performance (ISO14001, 1996:s. 3.1, p1), contributions are made to improvement in environmental conditions at the level of the individual site. Cumulatively, the improvement potential of widespread application of the EMS approach should be much larger. This effect is the main promise of the EMS approach in achieving macro-level, and long-run societal objectives, such as sustainable development (SD). ISO standardization brings EMS to a worldwide set of users and vastly increases the credibility and reach of the EMS approach. In this discussion, the term 'EMS approach' now must include 'EMS-standardization'.

### 2.35 Three EMS cycles

It is well-recognized in the literature that the EMS approach is founded on a cyclical conception of the internal management process (ISO14001, 1996; ISO 14004, 1996; Tibor, 1995). What is not so widely recognized is the fact that no less than three separate EMS- related cycles can be identified. These are briefly introduced below:

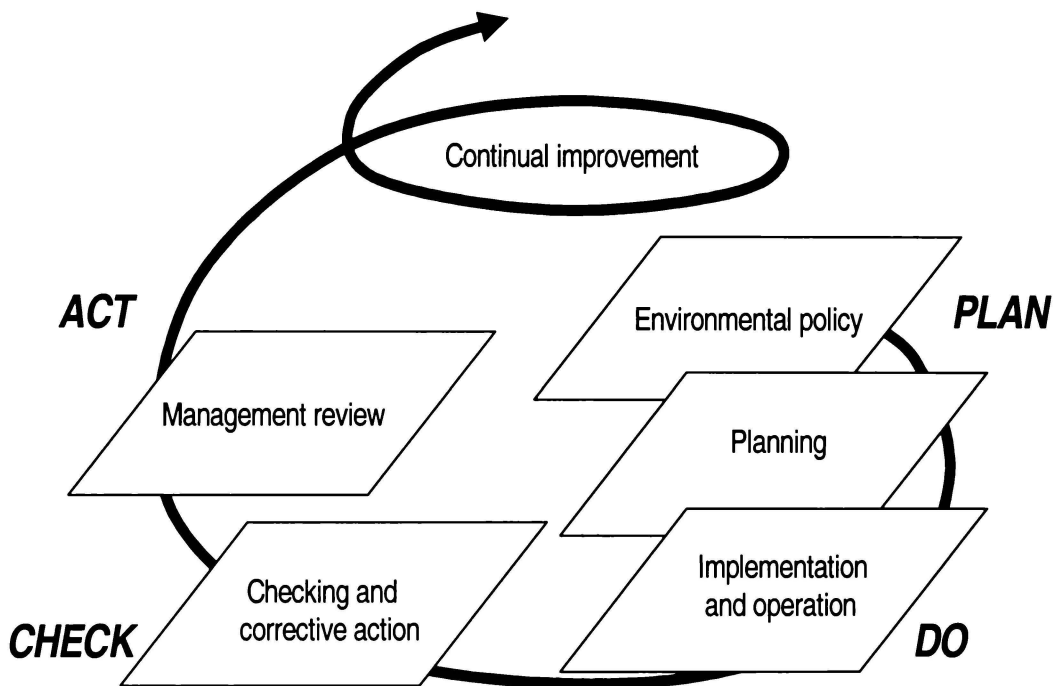
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<sup>17</sup>In the deliberations of TC207 SC1, the talk on this subject was that supplier compulsion was to be 'discouraged' to preserve the much-vaunted 'voluntary' nature of ISO14001. However, the pattern of supplier compulsion was established in practical application of the 9000-series of quality management standards, and privately, many TC207 members wondered whether supplier compulsion - a common behaviour in practice - could in fact be prevented or counteracted.

(1) *Internal cycle* - Management tool

This cycle is introduced in s. 2.2.1 above. Based on the **Plan** (planning and policy development); **Do** (implementation and operation); **Check** (monitoring); **Act** (corrective action and management review) template, it is the most readily identified in the literature (ISO14004, 1996; Voehl, 1995). This is the *internal EMS cycle*; that is, an internal management process focussed on improvement of the capacity of the EMS to satisfy the objectives of self-set organizational policy.

Figure 2.1: EMS model as used in ISO14001



Adapted from: ISO14001:1996, p.vi.

(2) *Short-run cycle* - Certification to EMS specification/standard

Extant demand factors, such as customer and/or stakeholder pressure may lead the organization to seek public recognition via certification to an appropriate EMS standard (such as ISO14001). Such action obliges the organization to engage in periodic cycles of internal and external review and may result in improvements in the EMS on an ongoing basis (cf. 'continual improvement'). As the organization exploits (possible) market and

public relations advantages by publicising such registration, this cycle may become self-reinforcing and institutionalized.

(3) *Long-run cycle* - the relation of EMS to environmental macro-goals

The cyclical character of the EMS approach can be seen to extend outside the individual organization as it is encouraged to respond to shifting market demand, regulatory and societal expectations, and changing ecological conditions. The EMS may develop into an engine of improvement in environmental performance, as awareness of environmental and sustainability issues percolates through the organization. Systems within the organization may experience increasing integration, and environmental policies and goals may evolve to become more strategic and long range in nature. Thus the 'continually improving' EMS may provide information and impetus for development of new technologies and initiatives like waste reduction, resource efficiency, cleaner production, and industrial ecosystems. Market niches for environmentally sound products and technologies will become easier to spot and enter as sustainable development becomes the accepted vision and policy of the organization. In broader terms, the long EMS cycle, combined with the improvements generated by the population of standards-conforming organizations, may be seen to contribute to macro-level goals, such as improvements in general environmental conditions and/or contributions to sustainable development. The long-run EMS cycle can therefore be seen as consistent with a movement of 'technologically optimistic' views of bringing about environmental and social improvement, and as an expression of the promise of deep change in the way organizations interact with the environment (see, for example, Sutton, 1997).

### 2.36 A model of EMS

The conceptual model underlying EMS standards development is defined as follows: a tool for assisting organizations to more effectively and efficiently manage interactions having environmental attributes and implications. EMS is intended to facilitate management control over organization-generated environmental effects and impacts by means of formal and comprehensive internal control systems (ISO14001,1996: v). The choice to implement such a system, along with policy content, goals and objectives to be pursued, and performance requirements, are assumed to be at the discretion of the management of the individual

organization.

The conventional account of EMS can be expressed in nine key principles as outlined in the table below;<sup>18</sup>

Table 2.2: Principles of the EMS approach

<b>Principle</b>	<b>Explanation</b>
Internal management tool	The value of the EMS lies in its technical attributes; ie its ability to facilitate management control via formal, systematized and procedural qualities.
Voluntarism	This has three main aspects; (a) choice to implement an EMS or not; (b) choice of policy goals/performance objectives; (c) choice to publicly certify the EMS or not.
Self-regulation	The purpose of the EMS is to provide a basis for processes of self-regulation process aimed at achievement of self-set policy goals. Use of an EMS-standard serves as assurance to stakeholders that such processes are in place.
Market-based	This has two main aspects: (a) 'demand' for specification of EMS (eg ISO14001) initiated by market-players; (b) uptake/certification of EMS not to be coerced.
Systems and Integration	The EM system is treated as equal to others in the organization (conceptually at least) and integration of internal systems for efficient decision-making is a key goal.
Mediation	The EMS mediates all environmentally-relevant information flows internally and externally.
Process over Performance	Improvements in 'environmental performance' <sup>19</sup> of the organization are assumed to result directly from the systematic, procedural qualities of the EMS. Any specification of desired performance outcomes is at the discretion of management and not a component of the EMS approach itself.

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<sup>18</sup>Sources: ISO14001, 1996; IISD, 1996; Hortensius & Barthel, 1997; Gough, 1994; Bell, 1997; EPA, 1998f.

<sup>19</sup>References to environmental 'performance' typically allude to reductions, ameliorations and/or mitigations of actual physical impacts caused by the activities of the organization in question.

Plan-Do-Check-Act & Continual Improvement	Cyclical processes are seen as the main driver of EMS development with the ultimate objective being 'continual improvement' of the system itself (rather than other possible measures of EMS effectiveness).
Potential benefits of EMS	Generally speaking, private benefits of implementing EMS are emphasized (eg efficiency gains, leverage in negotiations with regulators, potential to assure third parties that a control system is in place etc) <sup>20</sup> , and benefits to the wider community are assumed to be secondary and arise largely as a result of the agglomeration of private benefits, across the population of EMS users.

Here, the need of business organizations for an internal control instrument to deal with environmental problems as they are perceived by management to affect the firm is clearly emphasized. Responses to potentially more problematic aspects, for example CSR and stakeholder responsiveness, are left to the discretion of individual managers.

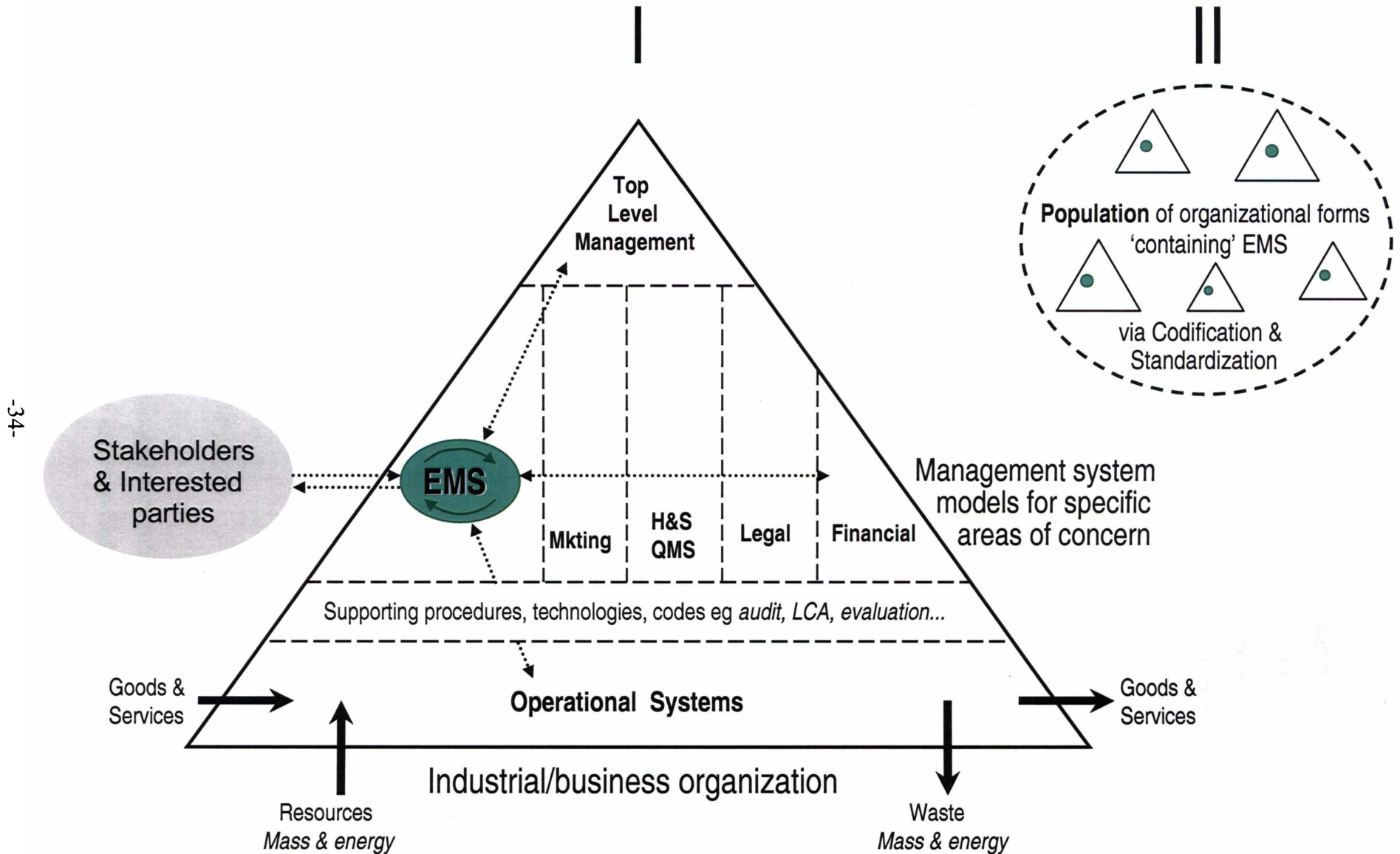
A view of EMS as derived from convention is represented in Figure 2.2 below. The individual hierarchical industrial/business organization is central to the diagram. The EMS is modelled as functioning internally as a semi-self-contained 'management system', which mediates information flows internally between other management systems, and externally with 'stakeholders' and 'interested parties'. The section at the top left corner represents a 'population' of standards-conforming organizations whose collective 'power' or ability to effect change grows with (a) unification under the 'banner' of the EMS approach, and; (b) increased scope of uptake of the system-standard.<sup>21</sup>

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<sup>20</sup>See, for example, ISO14001, 1996.

<sup>21</sup>This Figure is an adaptation and amalgamation of discussion, commentary and diagrams from several sources; (1) those circulated among SAGE Subgroups and ISO/TC207 Subcommittee 1 working groups in 1993-4 (eg SAGE/SG1 N52); and (2) other literature cited in this chapter.

Figure 2.2: Basic technical EMS model: I – single organization & II – multiple organizations



### 2.37 A more critical picture of EMS

The literature reviewed concentrates on the evolution of EMS standardization and the conventions of thought informing that process. This account however is not immune to challenge. More critical assessments have emerged which question the ideological agenda driving the EMS approach, and the balance between private interests (in, for example profit, extending property rights and economic growth) and the broader public good; in, for example, environmental improvement and sustainability (see Gleckman & Krut, 1997).

Alleviation of the tension between public and private interests is typically seen as the proper preserve of the political process, and generally not associated with private sector bodies (De Jasay, 1990; Fisher, 1993). However, Krut & Gleckman (1998) are of the view that ISO14000 represents a significant encroachment of private sector interests into an important area of public policy. The objectives of ISO/TC207 are most often stated in purely technical terms: first, to harmonize/unify disparate standards, codes, procedures etc in a timely manner; and second, to create a internationally credible body to promote a standardized approach to EM. However, ISO is not the only credible international standardizer, and its foundation in trade facilitation and its technical 'bias' might seem to make ISO a strange bedfellow for broad-based ecological and social sustainability agendas. This point, combined with the apparent haste with which ISO entered such a newly formed and highly contested arena, could be argued to be the result of a politically motivated 'move'. That is, it could be seen as a move designed to 'own', or at least control, the evolution of management tools for the environment, and to provide the business sector with 'ammunition' to discourage, preempt, counter, and/or prevent the 'threat' of further regulatory encroachment into the 'private' affairs of corporates (*ibid*).

This section reviewed EMS and the conceptual model guiding its development. The model emphasises technical, managerial aspects. A minority view makes a more critical point. The section following addresses issues arising from this conflict, to inform the questions for the empirical part of the project.

### 2.4 Issues informing the empirical part of the project

The discussion above indicates a broad acceptance of convention in the literature and practice of EMS. Alternatives to this understanding are harder to find, but are important as they raise

issues which may affect the ability of ISO/TC207 to achieve the public good objectives set for EMS. The key issues and questions to be addressed by the empirical study of TC207 are; interests being served; TC207 authority, mandate and scope; corporate social responsibility; a strategic vision; the status of EMS convention, and; commitment to sustainability. These points are discussed briefly below.

#### 2.41 Whose interests are being served by ISO/TC207?

Very many can be seen to have a deep interest in the international standardization of the EMS approach (and support systems). This is recognized within ISO/TC207; at its first plenary, Michael McSweeney of the Standards Council of Canada (the TC207 secretariat),

pointed out that this group [TC207] will be responsible for the development of the most important series of standards ever produced, and that they will provide many benefits for both the public and private sectors, as well as the public at large (ISO/TC207 N31, 1993:13).

Under such conditions, then, representation and ability to input into ISO/TC207 processes is crucial. Those that have a 'say' (and/or vote) in the forum will be heard; those absent will not. The national standards body-centric representation, and industry/trade mission of ISO and its TC structure could be seen to be in conflict with broad-based input. Further, the narrow trade-related expression of the objectives to be met by ISO products calls into question the capacity of TC207 to produce outputs representative of a broader constituency than partisan, industry wishes. Clarification of the interests driving TC207 processes, and the ways these are reflected in its outputs are important issues for the empirical investigation.

#### 2.42 ISO/TC207 authority, mandate and scope

The issues of who is being served by ISO/TC207 prompt questions of mandate. As noted above, the TC derives its authority to act from the ISO Technical Management Board (TMB). At inception, it was given the scope of *Standardization in the field of environmental management tools and systems*. The authority of the TMB and indeed, the entire ISO organization, derives from a historic mandate to pursue standardization of a technical kind, so as to promote

internationalization and world trade.<sup>22</sup> EMS standardization has the potential to affect the behaviour and interests of a very wide range of actors and actions; from individual businesses, to economic sectors, to governments, to trade systems; to the potential of global initiatives to achieve macro-level goals. It is important to clarify the authority and scope of TC207 to act (and that of other standard-setters of course) in the investigation.

#### 2.43 Corporate social responsibility

It is important to note that EMS standardization and use affects social and environmental macro-systems to a much greater degree than is the case with other ISO outputs. By standardizing EMS, ISO moves into new territory. The long-standing guide to the merging of private and public interests is generally called *corporate social responsibility (CSR)* (Gray, 1993). It is well-recognized in the literature that to be effective, industry action affecting the public good must be predicated on a more substantial conception and recognition of corporate responsibility than mere single-minded pursuit of self-interest (see, for example, Schmidheiny, 1992; Freeman, 1995; Bosselman, 1995). The empirical programme searches for expressions of support for CSR in ISO/TC207.

#### 2.44 A strategic vision

One of the assumptions underpinning the research is that institutionalized contributions to long-range macro-goals (such as sustainable development) require, among other things; a strategic vision; an ability to balance (conceptually at least) the needs of the short- and long-terms; an ability to see through to the roots of present predicaments; and a willingness to push the boundaries of traditional and taken-for-granted understandings. In short, a high level strategic and policy vision is needed to successfully create appropriate and strong contributions to social and environmental macro-goals. A goal of the empirics is to search for such perspectives within ISO/TC207. It may be expected that in such a group, recognition (if not outright acceptance) of

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<sup>22</sup>The traditional role of ISO arises from a broad project of internationalization initiated in the period following World War II. This project also produced several related macro-initiatives: the World Bank/International Monetary Fund; the General Agreement on Tariffs and Trade (GATT); Bretton Woods; and the United Nations (UN), among others. The mandate for this project derived from the authority of the main national powers, and large-scale trade interests.

the issues mentioned here might serve as a proxy, or signal for high-level preparedness to recognize notions of corporate responsibility wider and deeper than those dictated by established understandings of national and/or corporate interests.

#### 2.45 The status of EMS convention in TC207

A goal of the research is to determine the degree to which conventional understandings of the EMS approach serve as foundations for the ISO14001/4 standards. It could be expected that conventional thinking might play a large hand in ISO/TC207 outputs. However, some recognition of the limitations of convention might still be expected to find its way into deliberations. This would be an encouraging sign for the ongoing development of the EMS approach. The hazard is that EMS development based entirely on convention, without recognition of alternative interpretations may find itself stunted by prematurely 'freezing' it into a format which is unamenable to further growth and enlightenment.

#### 2.46 Commitment to sustainability

ISO/TC207 makes frequent allusion to the key role of Agenda 21 (UNCED, 1992) in its formation, and links the 14000 standards to industry efforts aimed at achievement of forms of development which are sustainable (eg ISO14001, 1996: v). The work of ISO/TC207 is underpinned by a stated intent to contribute to improvement of the environmental performance of corporate organizations, and to the broader goal of sustainable development (ISO/TC207, 1993). A goal of the research is to determine just how much an industry-based, trade-favouring initiative, does in actuality contribute to sustainability.

### 2.5 Conducting the empirical programme

This part of the project write-up reports on the construction, conduct and results of the empirical part of the project. The site/context of the research is explained, and issues in approaching and constructing the investigation are discussed.

#### 2.51 Introduction to the context/site of immersion

The first phase of the empirical component of the short project was based on my professional

involvement in ISO/TC207 as a member of the *New Zealand ISO14000 Standards Steering Group* (SSG). Standards NZ, as the NZ member of ISO, provides the administrative and technical coordination for NZ participation in ISO standardization activities via the SSG (SNZ, 1995a:2)<sup>23</sup> and serves as the official linkage between NZ and ISO/TC207. The scope of the SSG is as follows:

The ISO14000 Standards Steering Group (SSG) is a committee of Standards New Zealand and will be exclusively focused on directing, coordinating, and communicating the development of New Zealand's positions and expertise with regard the [*sic*] ISO 14000 series of international standards on environmental management ISO/TC207. The SSG will be assisted as required by a network of persons representing interested organizations and ad-hoc Standards Task Groups (STG). The SSG must therefore be representative of the major interests within New Zealand (SNZ, 1995:3).<sup>24</sup>

The principal objectives of the SSG are; (a) to communicate NZ's position regarding environmental management standards to ISO/TC207 and its SC structure; (b) to provide effective communications processes in order to establish NZ's requirements for the ISO14000 series, and; (c) to ensure that adequate resources are available for NZ input to development of the ISO14000 series of standards as desired by the community, industry and government (*ibid*:3). Membership in the SSG is open to persons who, "represent a substantial sector or *interest group* of NZ environmental stakeholders...drawn from and nominated by organizations that have an *interest* in the development and application of the ISO14000 series of standards...[i]t is *essential* that the committee remains *balanced* in its membership and continues to represent as *broad as possible a cross section of the New Zealand community*" (*ibid*:4, emphasis added).

As a member - a technical expert - of the ISO14000 development community, I was permitted access to the 'inner workings' of standards development from 1994 onward.<sup>25</sup> This entailed work

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<sup>23</sup>Ref. SNZ, (1995a). Participating in International Meetings - Guidelines for Members of ISO and IEC Committees: Standardization Guide No. 6.1, May, Standards New Zealand.

<sup>24</sup>Ref. SNZ, (1995b). ISO14000 Environmental Management Standards Steering Group Terms of Reference, SNZ.

<sup>25</sup>It should be noted that my early involvement in ISO/TC207 came about as an 'alternate' to Professor M J Pratt to attend NZ SSG, QR/11 and TC207 meetings in the event

with several groups: the NZ SSG, Joint Australia/NZ Committee QR/11<sup>26</sup>, the short lived (1993-97) *NZ Steering Group on Trade and Environment*, the Waikato Environmental Business Network (WEBN), and of course, the deliberations and meetings of ISO/TC207. By the time of my inaugural 'ISO experience' at the 1995 TC207 Plenary at Surfers Paradise, Australia, it would be fair to say that I had deeply immersed myself in the 'real-world' context of EMS development.

## 2.52 Interviews

The second phase of the programme was based on informal, semi-structured interviews conducted with nine senior delegates to TC207 from NZ (3), Australia (3), US (2) and Norway (1).<sup>27</sup> It was employed to augment the 'immersion experience' by examining more closely the personal views on EMS and standardization held by individual country representatives/technical experts. The interviews aimed to explore the following issues; whose interests were being represented by participants; what such interests expected to gain by participation; how participants viewed TC207 objectives, and; to what trends and/or pressures was TC207 being responsive?

## 2.53 How results are written up

Partly as a result of the immersion/participant-observation approach, results are written up in a more informal, narrative style, clustering feedback generally around the issues outlined in s.2.4 above. 'Stories' from the field are used to illustrate and clarify relevant points. Observations are frequently analysed and interpreted immediately following their depiction. This mode of interpretive description was preferred over drier, reductionist discursive technique to preserve

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of his absence. His involvement in TC207 from its inception in 1993 to 1995 created the conditions for my involvement in the area. At the time of this project, I participated in the work of several TC207 Subcommittees: SC1: EMS; SC3: Environmental Labelling, and; SC5: Life Cycle Assessment.

<sup>26</sup>The task of QR/11 is to coordinate Australian and NZ input, as far as is possible, to relevant forums of EM standardization (eg ISO/TC207).

<sup>27</sup>In terms of the time constraints experienced at ISO gatherings, this is a large number of people to see individually. This research is indebted to the participants indicated here and the many others who gave their views in more informal settings. Further information on the interview programme is reported in Appendix 2.

the drama of the research experience - since a defining feature of proceedings within ISO/TC207 is drama and tension - and to keep the narrative 'alive' to the reader.

## 2.6 Results of the empirical programme

Findings of the empirical programme are discussed below.

### 2.61 Interests: A self-interested industry-centric bias in ISO/TC207

ISO is clear about its technical, industry-centric bias. An integral part of the global trade structure, ISO sees its role and mission thus; "to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, technological and economic activity" (ISO, 1993). This imperative permeates all work that ISO engages in. It is therefore unsurprising to find in ISO/TC207 a very strong technical, industry-centric 'bias'. Discussed below are the ways this skewness finds expression in TC207/ISO14000 series.

Analysis of the underlying understanding, or 'conceptual model' guiding development of management system standards within ISO is instructive. Described in a position paper produced by SAGE (SG1), which served as the basis for the creation of ISO/TC207, the 'strategic vision for integrated management standards' requires that the following qualities be present in standards to be developed by TC207: *generic* (to be applicable to/useable by any organization); *hierarchical* (to facilitate management control in a top-down manner); *institutionalized* (to reinforce organization-centric conceptions of the aims of environmental management); *reductive* (to enable management control by breaking down EM tasks into separate parts)<sup>28</sup>, and; *integrative* (the EMS as a management system model for a specific area of concern) (ISO/IEC SAGE/SG1 N54, 1993:9, *Annex*). All these qualities, while appropriate for purely technical purposes, such as specifications for screw threads, credit card thickness and quality management systems, can mitigate against seeing EM in a more holistic manner.

The historical justification for ISO; that is, to promote trade by reducing and/or removing barriers

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<sup>28</sup>This 'reductionism' is further illustrated/reinforced by the 'divisional' construction of TC207 itself.

of a ‘technical’ nature; can be seen to be not wholly in harmony with SD goals. The stance that promotes the continual expansion of trade, on the basis of ‘free-access’ and at all costs, has come to be viewed increasingly as an outmoded concept, and in opposition to demands of sustainability (see, for example, Goldsmith, 1992; Rifkin, 1991; Korten, 1995; Schmidheiny, 1991; IISD, 1996). ISO/TC207, in its deliberations, has attempted to navigate a pathway through this impasse by bundling together trade and sustainability objectives in a way that overlooks any potential for contradiction.

Finding such uncritical acceptance within ISO/TC207 of an inflexible project valuing expansion of trade above all else is a disappointing result, in terms of the search for recognition of emerging vectors of sustainability. It is understandable perhaps that TC207 finds itself promoting a project, while not entirely discredited as yet, suffers from serious and escalating challenges to its legitimacy: representation to TC207 is industry-heavy and generally leans toward unquestioned acceptance of the ‘trade project’ or ‘globalization agenda’, as laid down originally in the late 1940s.

The issue of representation and membership serves to lead into the issue of ability to contribute to discussion, and to vote on proposals and drafts. While ISO requires its standards drafting groups to be representative of ‘all interests’, in ISO/TC207 this is far from being the case. The industry- and consultant-heavy representation in TC207, allied with the voting restriction to ‘member’ countries (and not extended to ‘Observer’ countries and ‘Liaison’ organizations), resulted in a strong reflection of accepted commercial logics in TC207 discourse. Some in TC207, recognising the risk of the TC being perceived as a ‘closed shop’ run by industry, and the danger of ISO14000 being seen as a mere expression of developed country interests, made calls for ‘increased membership’ (see, for example, ISO/TC207 SC1 Nxx, 1995). However, for many delegations, the lack of TC207 access to viewpoints other than those of first-world industry had less to do with having more delegations, and more to do with not allowing delegation members freedom to express non-conventional perspectives. A tendency for delegations to favour industry views as a matter of course is illustrated by a personal experience in the NZ Standards Steering Group in 1996. At a SSG meeting in Wellington to prepare for the TC207 plenary at Oslo, Norway, I was summarily informed that my status as a voting NZ representative, held since 1994, was to be downgraded to that of non-voting Observer.<sup>29</sup> The reason for this, given by the

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<sup>29</sup>Voting status was restored the following year.

industry members present, is breathtaking in its narrow-mindedness, but instructive nonetheless;

These standards [the ISO14000 series] are being written for industry, by industry, in the interests of industry... this isn't a theory or a game - serious interests are at stake... representation in TC207 by any other group, not just academics, is not appropriate. You will attend the Oslo Plenary as an observer (pers. comm, 1996).

## 2.62 CSR: The dominance of a self-referential technical discourse in ISO/TC207

Deliberations within ISO/TC207 reflected the self-referential nature of the 'community of members'. That is, discussions in committee - especially within SC1 - were of a industry-serving, technical nature, and attempts to turn the course of proceedings toward wider discussion and consideration of, for example, alternate interpretation of key conceptions (eg 'environment'<sup>30</sup>, 'interest'<sup>31</sup>, sustainability<sup>32</sup>) - initiated mostly by non-voting observers and liaisons - were stymied by calls to limit discussion to technical issues. This tendency was illuminated at meetings of SC1 at the 1995 TC207 plenary. The discussion at the time was focussed on the object(s) of an EMS (according to ISO14001) and the relationship between *environmental policy*, *continual improvement* and *environmental performance*. This was a contentious issue, and the meeting split quickly into two factions; the first, comprising mostly European members (*position A*); and a second including US, Canada, Australia and NZ (*position B*). Position A favoured an approach closely linking the EMS and physical/environmental outcomes, preferring a requirement that a standard/specification conforming environmental policy include organizational commitment to *continual improvement of environmental performance* (as in BSI, 1994:s.4.2). In addition, position A maintained that the objectives for the EMS should be specified in terms of quantified goals for environmental performance of the organization.

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<sup>30</sup>*Conventional* meaning: surroundings in which an organization operates...including their interrelation (ISO14001, 1996:1); *Alternate* meaning: biosphere, planetary life systems, *Gaia* (see, for example, Goldsmith, 1992; Lovelock, 1991).

<sup>31</sup>*Conventional*: a party having close and economically or legally justifiable concern; *Alternate*: any party having a concern about, or interest in sustainability.

<sup>32</sup>*Conventional*: sustainable industrial systems (ISO, 1993); *Alternate*: indefinite continuation of meaningful human existence and preservation of biological diversity on the planet.

Position B, by contrast, favoured an approach explicitly de-linking environmental performance and the requirements of the standard. Instead, it was asserted, any requirement for continual improvement should apply only to process improvements in the *system itself*, and the policy should not be required to specify any commitment to progress in environmental performance. The thinking behind this proposal seemed then, and now, to rely on very loose logic. To explain; as the processes ‘driving’ the EMS are improved on a continual basis via proper use of the standard, improvements in e-performance can be expected to *occur as a natural consequence*, and of their own accord. Individual organizations may well choose goals of improving environmental performance, but the stipulation (and quantification) of such goals in the environmental policy of the organization is not appropriate or necessary for purposes of conformance and certification to an environmental management standard.<sup>33</sup>

A serious deadlock on this issue thus ensued, lasting many hours at the meeting and even upon resolution in favour of position B, the issue was revisited several times.<sup>34</sup> The reasons for this difficulty are complex and require elaboration. The basis for each position cannot be explained with sole regard to logical premises and conclusions. The proponents of Position A had several considerations in mind. These included the fact that the EU EMAS contains requirements for assessing the environmental performance of applicable organizations. It was averred that any compatible standard must similarly emphasise environmental performance. In addition, BS7750, then perceived as the most ‘advanced’ EMS model available, and one used as a reference by SAGE and TC207 (see ISO/IEC SAGE SG1 N55, 1993; ISO/TC207N26, 1994), placed considerable emphasis on environmental performance.

The backers of Position B also had several, but different considerations in mind. These were firmly based on pragmatic factors and rooted in US experiences and preferences with regard to

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<sup>33</sup>In effect, an organization could, should it so desire, create conditions of continual worsening of environmental performance, and still obtain certification to ISO14001. One may be forgiven for wondering at the quality of reassurance provided to stakeholders by certification to such a standard.

<sup>34</sup>It is worth noting here that the lessons from this difficult and prolonged ‘incident’ passed into the annals of informal ISO/TC207 history. For years after, in SC and WG work, whenever the threat of ‘renegotiation’ of a difficult issue (or the terms of a compromise agreement) reared its ugly head, cool heads could be heard warning against a repeat of the unpleasant experience of the ‘continual improvement’ issue in SC1.

environmental regulation. There was a widespread and strongly held opinion in ‘camp B’ that in order to encourage the uptake of the standard in industry, it was necessary to increase the flexibility in the standard for more liberal interpretations of what constitutes a commitment to environmental performance and sustainability. In addition, if required to assess conformance with clauses specifying improvements in e-performance, standards certifiers may find themselves in the inappropriate position of *de facto* regulators. Actual regulators, for their part, were to be dissuaded strongly from seeing the standard as a potential regulatory instrument. Removing any reference to actual physical output measures, such as environmental performance, in this view would remove any possibility of seeing qualities of compulsion or regulation in ISO14001.

Observing the process described, the arguments of neither position seemed particularly compelling. The argumentation on this issue only served to reinforce a perception (in my mind at least) that in the *ad hoc* and politically-motivated manoeuvring the essential point had been missed. The following section elaborates on this.

#### 2.63 TC207 mandate, authority and scope: A narrow and traditional interpretation

Key issues for ISO/TC207 in EMS standardization are its mandate, authority and scope. TC207, in choosing position B (above), acceded to a bad deal. There seems to be no rational explanation for this apparently dichotomous behaviour. On one hand, TC207 promises that through its standards, it “will provide an effective means for improvement of the environmental performance of organizations and their products...and contribute to SD” (ISO/TC207, 1993). But on the other hand, it downplays and avoids commitment to environmental performance in the standard itself. A predictable result of this is an erosion of the credibility of TC207. If stakeholders cannot be convinced of the contribution of the ISO14000 series to public goals, they will fail to be ‘satisfied’ by assurances based on the standards, there will exist no incentive for organizations to use the standard, demand for the standards will fall away, and TC207 will be superseded in this area by standard-setters perceived as more responsive to stakeholder and societal needs. This risk does not seem to be well-recognised in TC207. It is suggested that members were *unable even to see* the problem, because of the selective and interest-seeking representation in TC207, and its essentially closed and self-referential nature. Pragmatic and political considerations were the only issues raised, because of the dominance of trade and commercial interests within TC207.

It could be argued that delegates/representatives could not *at that time* have been expected to see

the importance of widespread credibility and esteem to the standard. And in addition, technical specifications and management tools - which are what most ISO/TC207 participants are most accustomed to working on - hardly rely on broad acceptance by the public (ie. 'stakeholders') for their credibility and acceptance among users.

Both these assertions are contestable. First, the 'time' argument - ie that in 1992-6, participants were less than fully informed on possible consequences of their actions - is weak. At the time, I taught in the area of environmental accounting, and rather less acquainted with the intricacies of international standardization. It was clear to me even then, that issues of accountability were inextricably linked with acceptance of (and demand for) standards. In response to a proposition circulated in TC207/SC1 effectively downgrading the importance of public rights to environmental information, I submitted a formal response to the Australian coordinator of QR/11 on 28 April 1994, noting my concerns on the subject of public interest in the key ISO14001 standard;

I disagree very strongly with the deletion of [the requirement for a] 'public' statement of [environmental] policy from this clause.<sup>35</sup> Its deletion will, very likely, have several effects: (1) the public will be very suspicious that any standards activity will be self-serving for industry, in terms of 'secret' policies and objectives, to [*sic*] the expense of a public that has to bear the costs...Further, secrecy on the part of business, may induce some interested parties to persuade authorities to accelerate the trend toward regulation, on the basis of lack of public accountability; Secondly, the value of an international standard may be undermined by public skepticism about the motives of business in secrecy about environmental management (Allen, 1994:2).

It is improbable that similar thoughts had not occurred to others in ISO/TC207. And yet, no recognition was made of these issues (and/or corresponding logical argument) in any meeting I attended, or correspondence made in TC207/SG1. A predominance of myopic and competitive industry-centric mindsets seems the only possible explanation for such a gaping omission in proper thought.

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<sup>35</sup>S.3.13 of *Version 4* of the first preliminary draft of EMS specification, Wednesday March 16, 1994 (ISO/TC207 SC1/WG1 N47, 1994).

The second argument, that ISO/TC207 participants, being more used to technical standardization, were unaware of the need for public buy-in, is perhaps a stronger explanation. However, this is inexcusable in a group having such extensive reach and influence. The logic here is elementary; standardization claiming environmental and sustainability credentials is a 'different kettle of fish' altogether to standardization of technical management tools. There are very strong public interest and policy elements to the subject matter of TC207. Its single-minded focus on a 'management tool' orientation does not change this a jot. It is unfortunate that while TC207 makes great outward show of recognising macro-goals (such as SD), internally, and under the baleful gaze of ideologically-motivated trade-centric convention, it seeks to play them down. I made reference to the importance of being responsive to issues of public interest in the letter mentioned above;

I do not...comment in detail about system elements etc, as they are...perhaps more the business of actual industry representatives. My chief interest lies with [TC207] accountability (or the lack of it) to interested parties and/or stakeholders, and the utility of...standards [in] sustainable development (*ibid*).

Increasingly frequent reference is made in the literature of 'free-market' approaches to environmental management to the importance of corporate responsibility (Schmidheiny, 1992; Welford, 1995). Some of those involved in ISO/TC207 are contributors to this literature. Others in the TC claim knowledge of it. It seemed somewhat odd then, to see so little of such fine sentiments evident in the deliberations and eventual outputs of TC207.

It appears that those with most influence in ISO/TC207 proceed on the basis of an 'automatic' authority, derived from a mandate originating in the key role played by ISO in economic globalization. Certainly, this is an adequate mandate with regard to standardization of activities having a technical basis, but the issue here is whether the traditional mandate retains its legitimacy and power when the scope of TC207 crosses the 'boundary' of the purely technical. In preceding discussions, we have addressed how the activities of TC207 can easily be seen as extending some significant way past such boundaries. It is regrettable - from a perspective hoping to see recognition of the wider responsibilities of business - that the drafters of the ISO14000 standards have so comprehensively overlooked the need for a reexamination of the basis for, and limits to, their authority. A mandate deriving from an unreflexive and ideologically-motivated commitment to 'free' trade for the promotion of uninterrupted economic growth is a poor foundation indeed for an initiative purporting to be, (1) a true reflection of 'all interests' in

environmental improvement and, (2) a strong contribution to public *and* private goals. Continuing and unquestioned dominance of market-based interests and constituencies in TC207 leads inexorably to the very real risk of the ISO14000 series being seen externally as merely an instrument for the satisfaction of the preferences of the globalized corporate elite. This would indeed be a shame, since there is real potential for the EMS approach to serve as a tool to address the public good as well as private interests.

#### 2.64 Overlooking contradictions in TC207 vision

As noted above, underpinning the EMS approach can be seen an commitment to reducing the impact on business of state regulation and to promoting principles of property rights, management control, and corporate voluntarism in EM. With such powerful motivation, clear incentive exists for setters of standards for EMS and EMS users to use the format to further corporate agendas, at the (possible) expense of building-in strong contribution potential to macro-goals, such as sustainability. A brief deconstruction of the ISO/TC207 vision statement (ISO/TC207, 1993) as shown in Table 2.3 illustrates how TC207 focus might be interpreted as an ideological device to privilege ‘free-market’ agendas over others by bundling together trade and sustainability objectives in ways that overlook any potential for contradiction.

Table 2.3: Deconstructing the ISO/TC207 Vision statement

Vision statement component	Interpretation/analysis
<i>Our vision is the worldwide acceptance and use of the ISO14000 series of standards</i>	A clear statement of the primacy of the ‘business objective’ of ISO (as reflected in TC207); that is to promote the use of ISO products.
<i>which will provide an effective means to improve the environmental performance of organizations and their products</i>	Component built on two core assumptions requiring ‘blind’ faith for their acceptance, by reason of a lack of evidential foundation;  1. That ‘improvements’ in process-systems inevitably lead to positive environmental performance-related outcomes; 2. That application of a generic, systemic approach to EM is an effective means of achieving environmental goals.

<i>facilitate world trade</i>	A first-order objective and <i>raison d’etre</i> of ISO (ie. by harmonizing industrial standards) presented as a second-order objective for TC207.
<i>and ultimately contribute to sustainable development</i>	A third-order objective; the achievement of SD as an ‘incidental/accidental’ outcome of the application of conventional, technical praxis. This assertion has an ideological (free-market) basis; and quantification, nature, quality, and timing of contribution unspecified.

2.65 The status of EMS convention: A ‘very strong’ preference in TC207

There have emerged in the discussions above, indications of a strong dedication and adherence to conventional understandings of the EMS approach in ISO/TC207 deliberations. The ‘EMS-principles’<sup>36</sup> invoked most frequently, and with most persuasive effect in TC207 were; EMS as management tool; voluntarism; process over performance, and; plan-do-check-act (PDCA) for continual improvement of the system. A number of opportunities for more ‘critical’ EMS-interpretations arose - during the period covered by the short project - to cast more light than seemed available on the implications of the EMS approach in practice and with regard to contribution to macro-goals (eg sustainability). Given the contentious issues navigated within TC207 (esp. SC1), the durability of allegiance to the conventional account is quite impressive indeed.

Contributing to the uncritical acceptance of the conventional approach in ISO/TC207 discourse is the facts that; (1) the openly displayed dominance of traditional trade interests in the work of the subcommittees (SC) and working groups (WG), and; (2) ‘team’ instructions, where scope for individual interpretation is constrained by the overall ‘national interest/s’ being pursued. These factors often override more critical faculties in individual delegates.

2.66 Manifestations of geopolitics in ISO/TC207

Although I had acclimated myself with the technical nature of ISO work prior to my entry into

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<sup>36</sup>See Table 2.1 above for an explanation of the key principles of the EMS approach.

the arena of ISO/TC207, I was ill-prepared for the highly politically-charged atmosphere surrounding deliberations and decision-making (especially at SC and WG levels). Upon reflection, I realized this was an entirely ‘natural’ consequence of the ‘contest of interests’ as described above. Participants in the work of TC207 displayed a tendency to perceive the subject matter as some sort of ‘high-stakes game’, where interests and points of principle were tradeable commodities. The tendency of whole delegations and individual representatives to ‘play’ strategies commonly seen in political contests (eg manoeuvring/jockeying for position; ‘horse-trading’; allegiance shifting; filibustering; factional/bloc voting, etc) were observed in TC207. It was quite disconcerting to the uninitiated.

A salutary example of *realpolitik* in ISO/TC207 arose in SC3: Environmental Labelling, on the issue of Type III labelling. There are two widely accepted formats of eco-labelling; (1) *Third-party criteria based*, where a label is awarded on the basis of product performance against pre-set environmental performance criteria (Type I in TC207/SC3 parlance); and (2) *Producer self-claims*, where the producer itself makes an unverified environmental claim, such as *recycled*, *environmentally-preferable* etc (Type II). Most eco-labelling schemes globally are Type I formats. In the early 1990's there arose in the US and Sweden, an new type of eco-labelling scheme, which made no actual claim, but was based on a measurement of the environmental impacts created in the production, use and disposal of a product or service. The *environmental report card*, as it was known then, was given the nomenclature of ‘Type III’ by SC3.

Proponents of Type III hoped in 1996 to have the system recognized and incorporated into standardization processes in SC3. Unfortunately for them, delegates from countries with established Type I programmes were subjected to strong encouragement from eco-label owners to oppose any recognition of Type III. These delegates were persuaded by the following reasoning: the ‘interest’ of existing eco-labellers in the continuation of competition-free market conditions constitutes a ‘national’ interest, and thus is to be defended against interlopers like Type III. The argument supporting recognition and standardization of Type III was that the ‘interest’ of consumers (both end consumers and corporate (intermediate) consumers) is best met by allowing a choice of label format.<sup>37</sup>

The net effect was an impasse which arose out of factionalization. At SC3 meetings in Oslo,

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<sup>37</sup>These positions simplify the arguments employed in SC3, but retain their essence.

Norway, delegates representing countries with Type I schemes voted in a bloc to expel Type III from SC3. A smaller number of other countries, either with Type III schemes in operation or interested in the issue of choice of label voted in favour of retaining it in the business of SC3. At that time, Type III gathered sufficient support to remain in SC3 deliberations, but not enough to avoid the ISO/TC207 equivalent of purgatory - not really in the business of SC3, but not completely out. The impasse has not yet been resolved.

## 2.67 Exploring issues further in interviews

The participants interviewed generally made vague and limited expressions of the interests they represented in ISO/TC207. ‘National interest’, ‘economic’, ‘commercial’ and/or ‘industry’ interests were mentioned as important by all participants. When pressed further to describe more specifically the nature and/or components of such interests, participants became curiously unamenable to articulation in detail, relying instead on well-worn, but still ideologically serviceable clichés;

Players in the free market are interested in anything that promotes competition. Full stop. Barriers to trade, too much regulation, bad publicity for us [business/industry] - that sort of thing - that’s why we’re here [in TC207] (US respondent, pers. comm, 1996).

Table 2.4 summarizes the issues investigated in face-to-face discussions. The left hand side shows the issues addressed, and the right column shows the prepared options/prompts for interviewees.

Table 2.4: Key issues explored in interviews

Key Issue	Additional/explanatory factors
Representation of ‘interests’ in TC207	Employer; Industry; Nation
Expectations of benefits for employers and/or sponsor organization by participation in TC 207	Ability to represent national interest during drafting; competitive benefits (consultants: claim to greater knowledge/expertise; industry: tailor standards to needs; professional reputation)

Affiliations with other groups	Industry Associations; 'Interested parties' and/or Groups
Views of the objective(s) of TC207	<ul style="list-style-type: none"> <li>- Pursuit of market efficiencies;</li> <li>- Harmonizing international standards to enable increased efficiencies in trade;</li> <li>- Environmental improvement/sustainable development;</li> <li>- Industry efforts to pre-empt/prevent legislation;</li> <li>- Formation of first-world trading bloc;</li> <li>- Establishment of monopoly over environmental standardization/regulation/specification by ISO</li> </ul>
A personal assessment of the pressures and/or 'forces' to which TC207 is responding	<ul style="list-style-type: none"> <li>- Economic</li> <li>- Regulatory/legislative</li> <li>- Service to industry</li> <li>- National self-interest</li> <li>- Industry self-interest (eg economic/competitiveness and legal pressures)</li> <li>- Popular concerns</li> <li>- ISO self-interest; increasing political-economic influence of ISO</li> <li>- Facilitation of <i>Sustainable Development</i></li> </ul>

In responses to these issues, participants had trouble separating 'national interests' from the interests of business in that country; so much so that clear expression of what they perceived as constituting each proved near-impossible. I suggest that this was partially a function of the unique structure of ISO, and partly an outcome of the industry-favouring selection process.

The ISO 'construct' occupies a unique position in the international firmament. It is two things (at least) at once. In one view, it is clearly an 'independent' NGO, pursuing openness in trade relations via efficiency-based technical standardization. From another perspective, it is a political forum where various 'interests' - *national, industry* and *economic* - 'fight it out' in a contest where the winner takes all. This, combined with the fact that industry interests are required to predominate in TC delegation selection processes, results in a conflation of national and commercial interests - they are seen by participants as being *identical* - and a situation arises where any other interests or viewpoints are thereby rendered 'invisible'. This seems to be what

has happened in ISO/TC207. In many standards development contexts, this is an unexceptional finding. However, it is one with enormous significance for TC207.

It seems that in the excitement generated in the contest of which commercial interests and imperatives will prevail, key 'interests' - that of the *environment* and the *greater community* in sustainability - have become lost to ISO/TC207. This is very bad news. It appears that TC207 has forgotten its environmental improvement and SD goals. The clearest expression of this was seen in the story of the non-role of 'environmental performance' in the core ISO14001 standard. The preference for an incidental connection between EMS and environmental improvement resulted from an inability to break free from the grip of conventional understandings of the EMS approach. Industry and trade-centric views (such as Position B on e-performance) proved 'winners on the day' by reason of their greater consistency and alignment with conventional ideology. The issue, in the minds of most participants was a simple one, and the solution even simpler. It was explained to me in no uncertain terms by the then head of the NZ delegation;

What you don't understand is that we are drafting a management standard, not an environmental standard. It's very simple really (pers. comm, 1995).

The preference expressed by participants for ISO-traditional interpretations of the interests being negotiated and served within ISO/TC207 was reinforced by responses to questioning on the benefits of TC207 participation. Mentioned most often was the ability to represent national/trade-related interests during standards drafting. Micro-level competitive benefits were mentioned next (eg (a) consultants could claim greater knowledge or expertise; (b) industry professionals could claim enhancement in professional reputation; companies could claim competitive advantage from (a) and (b) above, etc). Benefits to the environment, and/or the wider community and/or in terms of SD were not mentioned (without a prompt from the questionnaire - a question mentioning SD was next on the list). These responses, while surprising, could easily have been predicted by reference to the almost uniform affiliation with trade and industry interests among respondents.

Reactions to queries on ISO/TC207 objectives were interesting. One question asked participants

to agree or disagree with a list of eight propositions about the objectives of TC207,<sup>38</sup> and to subsequently rank them in order of importance according to their personal estimation. The subtle (and not-so-subtle) nonverbal cues given in tandem with spoken responses were instructive. The first few propositions, being so consistent with convention, presented as largely self-evident to respondents. Vigorous nodding, explanatory gesticulation, and smiles of agreement accompanied enthusiastic assent to the centrality of the tenets of *market efficiency*, *harmonization* of standards to enable *increased trade*, and contributions to environmental improvement and sustainable development. All indications were that I had successfully apprehended the purpose of our work in TC207. When, however, the list moved on to more problematic possibilities, such as TC207 as an *industry effort to pre-empt and/or prevent legislation*, or as establishing a *dominant position for TC207 in the 'market' for environmental standardization/specification*, the degree of acceptance shrunk dramatically. It was actually somewhat humorous to watch the increasing puzzlement, confusion and even anger move across the faces and body language of respondents as they struggled to cope with the increasingly challenging nature of the propositions (although this of course was not the intent of the exercise). The experience of opprobrium was so strong that one might be forgiven for likening the situation to a theological discussion drifting into heresy.

A similar experience was had when respondents were asked to likewise comment on and rank propositions regarding the responsiveness of ISO/TC207, although respondents were by this stage much more wary of the potential for unorthodoxy in the line of questioning. Unsurprisingly, TC207 was seen as being much more *responsive to economic considerations*; as giving commerce/industry a voluntary instrument to help deal with increasingly onerous regulatory/legislative requirements; equally, in the ISO14000 series, *industry self-interest* was perceived as being in (more-or-less) 'perfect' alignment with *national self-interests* (in promoting economic competitiveness); *responsiveness to 'popular concerns'* was given short shrift; and strangely, so was the idea that ISO itself could be seen as *self-serving* (ie. increasing its political-economic influence). *ISO as facilitator of SD* was an 'odd man out' in this list. On one hand, as a driver of TC207, it was given spirited assent, but when queried on exactly how this might be expected to happen, respondents gave explanations relying heavily on conventional assumptions

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<sup>38</sup>From Table 2.4; (a) Economic (b) Regulatory/legislative (c) Service to industry (d) National interest (e) Industry self-interest (eg economic/competitiveness and legal pressures) (f) Popular concerns (g) ISO self-interest (ie. increasing the political-economic influence of ISO) (g) Facilitation of SD.

and ideology. Some versions were more elaborate than others, but few went much beyond statements of faith.

## 2.7 Starting to interpret research results

I had entered the ISO/TC207 context with hopes of finding a forum with a clear vision of what voluntaristic, private interests might achieve for the common good. I found instead a confusing morass underpinned by crass rationalizations. I realised that, in common with ISO/TC207 participants, I knew much less than I had thought about EMS.

The empirical part of the project left me with a deep impression of tension. Two crucial contradictions were inferred from observations in ISO/TC207. The first is between the preference in TC207 for technical understandings/rationales, and the politics of power expressed as negotiation between competing interests. Another can be seen between the promise to serve the public good, and actions privileging private goals. These two points constitute the main findings of the short project, and are discussed in more detail below.

### 2.71 A technical mindset v the politicized ‘reality’

The research found that the prevailing mode of thinking within ISO/TC207 was narrowly technical in nature. The technical view found in TC207 was more occupied with the ‘business’ of promoting uniformity in management practice, and less concerned with other goals. This tendency can be explained by reference to the industry-heavy representation in TC207, and to ISO’s technical *raison d’etre*. Referring to the scope of ISO helps,

the scope of ISO...covers all technical fields except electrical and electronic engineering, which is the responsibility of the IEC (ISO, 1993; emphasis in original).

ISO is therefore seen as predisposed to technical understandings of everything that comes within its ambit, including EM. A reductive approach, narrowing down EM to technical elements is the preferred way for ISO to respond to environmental issues.

A more surprising finding was the politicized nature of ISO/TC207 deliberations. An understanding was built up of TC207 as a model of political pluralism; as a forum where selected

'interests' come together to compete, negotiate, and come to some sort of 'balance'. Political manoeuvring and deal-making by delegate factions dominated negotiations, and determined the content and directions of problematic standards.

The contrast between simplistic technical assumptions and the politicized reality was clearly illustrated in the research by two examples. These were the 'environmental performance' issue in TC207/SC1; and the 'type III' eco-labelling problem in SC3. Conventional views of EMS and its implementation are heavily slanted toward technical understandings and make no explicit mention of political factors. This conundrum clearly requires further investigation.

#### 2.72 Public v private

The search in ISO/TC207 for evidence of support for CSR and commitment to broader public goals came up with little. However, the search for a picture of how delegates see what they are doing was successful. Participants see their actions very clearly. They are pursuing a technical and interests-dominated agenda which is only incidentally related to the environmental and sustainability objectives as laid out in TC207 statements of intent. Worse, the policy implications of TC207 outputs and the potential uses being mooted for them, seem to be beyond the analysis of participants.

It seems inexplicable that those having responsibility for forming the only set of global standards for EM might simply be unable to cognize the policy implications of their actions. It may be more likely that they have blanked them out of their consciousness in an eagerness to serve the private business and industry interests. This problem requires further investigation.

#### 2.73 Where to from here?

Several questions are suggested from the interpretation above. These revolve around two issues. First is the potential of EMS to serve macro-social goals. All forms of self-regulation are implicated here. In many areas, self-regulation leads to many benefits. Is it possible to model and then construct the EMS approach in a way that leads to the common good?

The second issue concerns ISO/TC207, and its capacity to produce standards in the area of environment and sustainability which contribute strongly to the common good. ISO is a rule-

making body with considerable influence on the international trade system. Its principal responsibility is to harmonize disparate national standards in a way that promotes trade. While the experiences related above highlight very strong commitment within TC207 to private interests, it cannot be said conclusively that it will not also serve the good of all.

There is a clear need for new ideas on EMS and the achievement of social macro-goals by voluntary means. The next part of the short project - analysis - expands the ambit of the research by exploring how the conceptual model of EMS may be evolved to address the issues noted above. The analysis goes beyond convention and standardization, and considers EMS (and ISO/TC207) within the socio-political-economic contexts it is found.

The issues raised in the empirical programme complicated the short project, rather than bringing it answers. The difficulty of the task of unravelling the tangled strands posed by the TC207 experience was portended by a throwaway comment made by a couple of participants;

Here, I'll introduce you to [name]...He'll have something interesting to say. Hey [name], come over here, this guy is doing a PhD on TC207 [*laughs*].

[Name]: You poor bugger. Mine was in organic chemistry. That was easy compared to this [TC207]. Good luck mate! You're going to need it!

[*Both laugh*]

(Australian respondents, pers. comm, 1995).

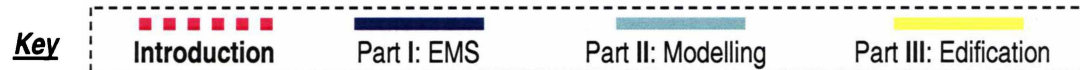
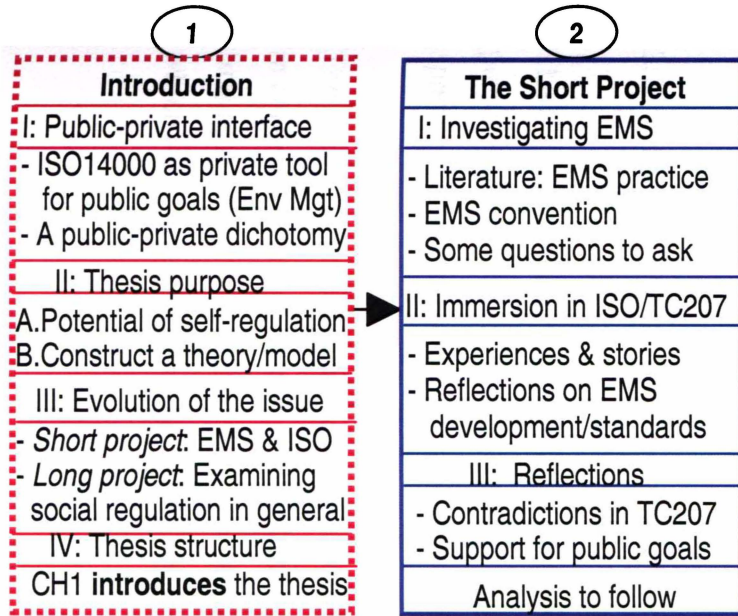
## 2.8 Summary of the chapter

This chapter describes the literature-based and empirical findings of the initial research project which was conducted between 1994-7. The aim of the project was to assess the degree to which the EMS approach, and ISO/TC207's interpretation of it supports the achievement of both private interest and public good goals. The first finding is that literature on EMS development reflects a simplistic view of EMS. The second finding is that conventional thinking about EMS is inadequate to account for the politicized processes and the subsequent skewed outputs of standards development. The third finding is that ISO/TC207 discourse and process only weakly supports the achievement of private interest and public good goals.

These findings present a number of issues for the research project. For example, the empirical

programme allowed only speculative assessments of the causes of the problems identified in (a) conventional thinking in EMS, and (b) ISO/TC207 interpretations of EMS. Also, the analysis lacks breadth, and as such does not examine EMS use in practice. Finally, the initial research was inadequate for remedial suggestions to be made. It is suggested instead that the research project be revised and expanded, with the work reported in this chapter forming the groundwork for future research. The chapter following bridges the initial research with the expanded project by exploring the issues raised here by expanding the analysis of the EMS approach and TC207.

Figure 2.3: The thesis at a glance



## **CHAPTER 3: A deeper investigation of EMS**

### **3.0 Introduction**

The discussion of the previous chapter ended on a less than emphatic note. The research found disquieting aspects of the EMS approach as currently conceptualized and practised. One might be forgiven for wondering what potential there is for EMS - and standards-setters and users - to contribute to goals other than short-term objectives of trade and industry. However, there is, at the core of EMS-standardization, a powerful message:

*Take self-responsibility for the resolution of environmental and sustainability problems.*

This message exists even in conventional thinking on EMS, if only in nascent form. And in my view, this is the saving grace of the approach. Prescriptive, legislative approaches are necessary, but insufficient means to addressing complex problems where private and public interests are intertwined. By the same token, self-regulation must take into account a wider perspective than that of business. 'Watering-down' the potential in voluntary initiatives in an effort to advance industrial-economic interests (at the expense of others) will inevitably become self-defeating as public confidence in its promises erodes away.

The discussion of this chapter explores how thinking about EMS may be evolved to help improve the capacity of EMS to support self-responsibility in addressing public and private dichotomies.

### **3.1 Purpose and structure of the chapter**

The literature review and empirics of the research were covered in the previous chapter. The purpose of this chapter is to analyse the implications the research findings have for the EMS approach, and to explore new thinking on EMS.

The chapter is structured in three parts. In the first part, an argument is made that a lack of depth in conventional understandings of EMS is a major contributor to problems reported in research findings. A start in rethinking EMS is made by noting aspects of EMS thinking and practice which are contrary to conventional explanations.

The second part builds on EMS rethinking. It proposes that there are at least six valid ways to define or interpret EMS, and that convention addresses only two of these. It argues that a conceptual model adequate to guide EMS development must be capable of integrating all of these views.

The third part suggests that more may be learned about EMS by seeing it as part of a larger system of social regulation. In wrapping up the project, it is concluded that more questions were posed than were answered, and further research is proposed.

### 3.2 Problematizing and rethinking EMS

In the previous chapter, a number of issues were raised in connection with the development of EMS-standardization by ISO/TC207. It is argued that a principal cause of these issues is the lack of depth in conventional understandings of EMS. The conventional conceptual model of EMS failed to address many of the questions raised in project empirics. It is suggested that uncritical acceptance of this model undermines the capacity of EMS to meet important goals desired by both standards-setters and users of the instrument. There is therefore a clear need for a better, more complete model.

A process of rethinking EMS is commenced below by exploring aspects of EMS thinking and practice which fall outside the assumptions of convention. Earlier discussion noted the critical query over the interests being served by EMS, and pointed out the politicized nature of the standards-setting process in the ISO/TC207. This analysis focusses on ways EMS/standards are used and applied in ways that convention fails to account for. The key issues and questions to be addressed are; ideological motivation behind EMS; policy-like characteristics of EMS; the unclear relationship of EMS and regulation; constraints on voluntarism in the EMS approach; and the quality of the claim of the EMS approach to environmental credentials. These points are discussed below.

#### 3.21 The primacy of ideological functionality in the EMS approach

Convention generally advances the EMS approach as an outstanding exemplar of a technical, rational tool for corporate management of environmental issues (Hortensius & Bartel, 1997). At other levels of analysis however, the consensus is not nearly so clear. Some see the EMS

approach much more dimly. Riva Krut and Morris Gleckman for example, criticize EMS development for its myopic pursuit of ideologically-motivated corporate agendas, and explore hitherto unexamined policy implications of widespread and uncritical application of ISO14001 (1995; 1998). A critical view is developing which sees champions of the EMS approach as going significantly further than merely defining and practising 'rational' systemic management techniques. Rather, they are seen to be engaged in a project of developing corporate-based strategies to help shape societal expectations of environmental management and the scope of its potential for achievement of environmental goals. This in itself may present few problems. However, the combination of lack of recognition of views alternative to industry consensus in ISO/TC207 and its influence on global rule-shaping processes are worrying.

### 3.22 EMS as potential instrument of Policy

An implication of the argument above is that the EMS-approach can be seen to be assisting in shifting the burden of environmental responsibility of the organization away from providing evidence of achievement of acceptable organizational environmental performance<sup>39</sup> in favour of demonstrations of conformance with self-set goals within the framework of a 'standardized' EMS.

To explain; this view holds that as the EMS approach becomes the prototypical method of organizational management of interactions having environmental implication, something of a 'forcing' effect will occur, where stakeholders will increasingly be encouraged to accept assurances based on the mere existence of a process-system, rather than the outcomes and/or performance achieved by the organization (Krut & Gleckman, 1998). Inevitably, the same pressure will influence the expectations of even strong social actors, such as state/bureaucratic regulators, and the underlying ideological promise of the EMS approach - that is, the promotion and proliferation of corporate self-regulation on their terms - will be fulfilled.

### 3.23 Unclear relationships with state-regulatory systems

On one hand, much inherent in the EMS approach can be seen to be potentially antagonistic

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<sup>39</sup>As defined by legislation and wider public interest as opposed to industry preference.

toward regulatory authority; for example, ISO14001 (1996:v) notes that organizations operate in a context of, 'increasingly stringent legislation', and discourages regulator input into both standards for, and individual EMS (Gleckman & Krut, 1997; Krut & Gleckman, 1998; EPA, 1997a; Welford, 1997b).

On the other hand, many proponents of the EMS approach see potential for EMS outputs to serve the organization in its relations with regulators (Clements, 1997; Roht-Arriaza, 1995). This potential is explored in the discussion below, focussing on the three main functions in the regulatory cycle (development of policy and favoured instruments; compliance; enforcement).

#### A Input-end: policy and instruments

Governments worldwide are showing increasing levels of interest in the potential of so-called voluntary arrangements to meet regulatory objectives (OECD, 1993; Jacobs, 1994). The descriptor 'voluntary arrangement' is used to unify a wide range of emergent policy instruments (including industrial covenants, cooperative regulation, negotiated agreements, self-regulation, codes of conduct, eco-contracts and EMS-based approaches) but the common theme is to encourage 'cooperative' negotiation of environmental objectives and targets, and to allow firms increased flexibility of choice of means of achieving these goals in a manner which best meets their circumstances (OECD, 1993:5). Experiments with incentives, property rights regimes, and voluntary agreements are now in train in many OECD countries (OECD, *ibid*;1997; EPA, 1997a).

The increasing popularity of the EMS approach in industry circles, coupled with the influence corporate lobby groups have with governments, has resulted in moves by public policymakers to recognize formally the EMS approach as a potentially viable method of achieving policy objectives. In New Zealand, for example, the Ministry for the Environment, via its Sustainable Management Fund, financially supports efforts by regulators and companies to integrate the EMS approach into the national regulatory framework (MfE, 1999). Similar encouragement (with or without inducement) occurs in many other countries (IISD, 1996; ISO/TC207, 2000).

#### B Compliance

Outputs from the checking and monitoring processes of the EMS approach are acknowledged to be potentially useful for regulatory purposes (Clements, 1997). However, the potential for

confusion is high. The EMS approach is founded on internal systems, procedures and processes to ensure achievement of organizationally-set environmental goals (regulatory compliance among them). However, regulators require information on performance relative to the organization's environmental effects or 'outputs'. Some proponents of the EMS approach maintain that the process-output conflict does not represent a problem:

In order to ensure that the desired environmental outcome is achieved, the authorities will need to monitor all relevant factors. An EMS can be designed so that it meets the informational demands of the regulators in an efficient manner (IISD, 1996:16).

The issue arising here is: how exactly can a private, corporate EMS be designed so that its outputs meet the informational demands of the regulator? Unfortunately, advocates of the EMS approach are rather silent on this issue. This is because such design requirements rely on regulator input into the EMS, while the traditional view resists powerfully any and all 'interference' by regulators. This contributes to the perplexing picture forming in this section.

### C Enforcement

One of the least popular acts of a regulator, among corporates at least, is enforcement and sanction. The potential for the EMS approach to be of use to regulators is present here too. For example, the Alberta Provincial Court, in 1996, as part of a judgement against Prospec Chemicals Ltd under the Alberta Environmental Protection and Enhancement Act, ordered the company to undertake several measures involving EMS. Prospec was required to;

complete the ISO/CD14001 Environmental Management Systems Specification Program and to serve a certified copy of certification on the Department of the Environment. Prospec was also ordered to post a letter of credit in the amount of \$40,000 to Alberta which would be forfeit if it did not comply with the order (*R. v. Prospec Chemicals Ltd.* [1996] A.J No.174 DRS 96-04072).

### 3.24 Constraints on voluntarism

It has already been established that conventional approaches to EMS see it as a definitive example of a technical, voluntaristic means of corporate environmental management.

Unfortunately for this view, some applications of the EMS approach exhibit qualities close to coercion. The clearest expression of this is the market-compulsion seen most frequently in supplier relations. As noted above, a key strategy driving the proliferation of the EMS approach is through the relationship between key EMS users, and their suppliers. Ford Motor Company, Ciba-Geigy, Daimler Chrysler, General Motors, IBM, LG Semiconductor, Nokia, Rover, Shell UK, Siemens, Toyota, and Volvo are examples of companies that have publicly stated that they do now, or will in the near future, require or encourage their suppliers to become certified to ISO14001 (ISO/TC207 N435, 2000:7,8). Such a stance is understandable; for a corporation to make statements of environmental preferability, defensible knowledge of the qualities of all inputs and the processes which produced them is necessary. Unfortunately for suppliers, they are compelled to comply, unless, of course, they wish to forfeit their supplier status.

Another factor potentially implying an erosion of voluntarism in the application of the EMS approach is the possibility of creating a *de facto* market entry requirement. De facto market entry requirements arise as (1) a country restricts entry to goods and/or services that are EMS standard-compliant (eg. ISO14001), or; (2) market conditions (eg. demand for environmentally-preferable products, competition on the basis of environmental qualities; stakeholder expectations) are such that a producer seeking entry encounters compulsion to conform to 'accepted' norms (which may include EMS). A producer in the position of (1) above where the conditions are created by the government may be able to seek recourse via World Trade Organization (WTO) rules. If the restriction arises as part of a voluntary 'soft law'<sup>40</sup>, or if 'market conditions' force compliance (category 2 above), then no recourse is available and voluntarism principle is therefore violated.

### 3.25 The quality of the claim of the EMS approach to environmental credentials

TC207 is painted in the discussion above as something of a 'Jekyll-and-Hyde' construct. On one hand, it makes overt reference to the importance of environmental considerations, while on the other cynically de-linking EMS and environmental performance-related outcomes. This is somewhat dispiriting for perspectives hoping to see clear, unambiguous commitment to environment and sustainability in ISO interpretations of the EMS approach. It should come as no surprise therefore to see increasingly serious questioning in the literature of the 'environmental credentials' of the ISO14000 series and corporate environmental management

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<sup>40</sup>For a short discussion linking the EMS approach to soft law see s.3.33 below.

more generally (see, for example Gleckman & Krut, 1997; Welford, 1997b). There is tremendous risk in the strategy TC207 has chosen; it is now coming to be seen to have produced an instrument which lends only very weak support for self-regulation and self-responsibility among corporate managements.

The almost complete failure of ISO/TC207 to integrate wider constituencies than just those most closely identifiable with industry, business and the market represents, in this view, a wasted opportunity to strongly promote corporate responsibility with regard to the environment. Should TC207 (and other expressions of the EMS approach) continue unabated with the discredited project of economic globalization on first-world terms, it gambles what little environmental credibility it possesses among stakeholders. It will pass into history as yet another attempt to restore the economic hegemony of first-world corporate rule. This would be a sad and ignominious end indeed for an initiative with such strong potential to serve as an instrument of self-responsibility.

This section examined problems found in practice for conventional views on EMS. This was done partly to show that findings arising from immersion in ISO/TC207 are not to be seen as anomalous, and partly to instigate a process of rethinking EMS.

### 3.3 Building momentum in EMS rethinking: six interpretations of EMS

EMS is clearly a complex phenomenon. If development and use of EMS continues to be based on simplistic conceptions, there arises a grave risk of inappropriate development and application; and its capacity to meet important goals desired by both standards-setters and users of the instrument will be undermined. There is an urgent need for new thinking on EMS.

The following analysis builds on the previous discussion by proposing multiple interpretations of EMS, which are noted below;

1. EMS as voluntary technical management tool for self-regulation;
2. EMS as voluntary industry contribution to social macro-level objectives;
3. EMS as an emergent 'private' environmental law;
4. EMS as a mechanism for corporate governance and legitimation;
5. EMS as corporate *firewall*;
6. EMS as a policy-regulatory instrument.

It is noted that convention addresses only two of these. An argument is developed which posits that a conceptual model adequate to guide EMS development must be capable of integrating all of these views.

### 3.31 EMS as voluntary technical management tool for self-regulation

The EMS approach in the conventional, technical view is very much about enabling management control over organizational environmental impacts and effects by developing management systems. The ISO14000-series of standards facilitates the spread of the EMS approach by creating, through industry-led fora, tools and techniques for environmental management aimed at increasing efficiency and effectiveness in achieving those environmental goals set by each individual entity. The absence of mandatory or compulsory targets and measures encourages, rather than discourages, uptake of EMS and related tools, such as Life Cycle Analysis (LCA) and environmental audit, since the EMS approach allows an organization to choose its own targets and means of achieving them. The approach encourages selection of the most appropriate environmental objectives and most efficient and effective techniques *for that particular organization*.

International acceptance and credibility of ISO standardization contributes further to the spread of the EMS approach by; (a) certification addresses the various environment-related demands of downstream clients and end customers; (b) international standardization reduces barriers to trade by allowing comparability of organizational environmental achievement; (c) regulators are encouraged to accept EMS outputs (eg. certification) as evidence of compliance, and; (d) stakeholder and community concern over environmental impacts of organizations should be assuaged by third-party certification to EMS standards such as ISO14001.

### 3.32 EMS as voluntary industry contribution to social macro-level objectives

The two social macro-level goals most commonly mentioned in connection with the EMS approach are *facilitation of trade* and *sustainable development*. Conventionally, the EMS approach posits that organizations operate in contexts characterized by factors perceived to constrain organizational ability to profit, ie. ‘increasingly stringent legislation, the development of economic policies and other measures to foster environmental protection, and a general growth of concern from interested parties about environmental matters including sustainable development’ (ISO14001, 1996:v).<sup>41</sup> Convention has it that the EMS can function so as to harmonize such competing factors by *integrating* trade and sustainability objectives. Acknowledging that such an integration is not without problems,<sup>42</sup> this section explains this claim briefly.

As noted in the previous chapter, the proliferation of EMS and the formation of ‘population’ of standard-conforming organizations is conventionally assumed to lead to improvements in environmental conditions in aggregate. As each EMS-conforming organization experiences improved environmental performance (ISO14001, 1996:s. 3.1, p1), contributions are made to improvement in environmental conditions at the level of the individual site. Cumulatively speaking, the improvement potential of widespread application of the EMS approach should be much larger. This process can be understood as being the result of the *long EMS-cycle*.<sup>43</sup> The long cycle extends the ‘capacity’ of the of EMS approach, with respect to its ability to contribute to macro-goals. This might happen in the following way; as organizations are encouraged to respond to shifting market demands, regulatory and societal expectations, and changing ecological conditions, the impetus is provided for the EMS to act as an engine of improvement in environmental performance. Environmental policies and goals may evolve to become more strategic and long range in nature. Thus the ‘continually improving’ EMS may provide information and impulse for development of new technologies and initiatives like waste

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<sup>41</sup>The ISO/TC207 claim of direct ideological lineage to the Rio Declaration - a macro-level expression aimed at protection of the ‘global environmental and developmental system’ (UNCED, 1992) - is significant. To reinforce the link, ISO14004 includes a transcription of the 1992 Declaration as an informative annex (ISO14004, 1996:25-8).

<sup>42</sup>As the analysis of Chapter 2 shows.

<sup>43</sup>Originally explicated in s.2.2.8(3).

reduction, resource efficiency, cleaner production, and industrial ecosystems. Market niches for environmentally sound products and technologies will become easier to spot and enter as sustainability becomes the accepted vision of the organization.

In broad terms, the long EMS cycle may be seen to contribute to macro-level goals. The EMS, via the long-run cycle, can therefore be seen as consistent with a movement of 'technologically optimistic' views of bringing about environmental and social improvement. These views see salvation, or at least sustainability, as arising from doing what we do now, but doing it better and more efficiently (see, for example, Welford, 1995).

### 3.33 EMS as an emergent 'private' environmental law

When policymakers and scholars think of global environmental rulemaking, they generally think of treaties and declarations of states. The public law model...has predominated. But alongside that effort...a system of private standards and obligations is developing. This private law model is applicable to producers of goods and services rather than to states (Roht-Arriaza, 1995:480-1).

In the past few years, legally-binding agreements and treaties of an environmental nature and at the international level have proliferated. They address a wide range of issues, including climate change, loss of biodiversity, marine pollution, ozone depletion and desertification (Carley & Christie, 1992; Dunoff, 1995; Kennedy, 1993). The United Nations Conference on Environment and Development (UNCED) in 1992 compiled a 800-page digest of commitments that governments agreed to undertake to improve environmental conditions (UNCED, 1992). However, systems of public law require immense resources: regulatory design, generating international agreement and ratification, monitoring compliance, and structures for incentives and effective sanction (Jacobs, 1994). Moreover, while international regulation has advanced rapidly, it has only addressed in detail discrete threats to the global environment, such as ozone depletion, climate change (addressing mainly CO<sub>2</sub> emissions) and certain types of marine pollution. The broader the area of concern, however, the less specific the commitments (Roht-Arriaza, 1995:481-2).

Systems of 'soft' law - international environmental codes of practice, recommendations, guidelines, resolutions, declarations, and standards adopted by international organizations (or

states) - have been promoted as tools to address the increasing problems faced by traditional regulation. Although not formally binding like treaties or 'hard' black-letter law, there exists a strong expectation that participating states and organizations will comply with the norms articulated in these agreements (Dunoff, 1995:251). While soft law does not cede authority to legislate to non-state institutions, it seeks to broaden the public-private interface, to include private initiatives, institutions, measures and outputs in furtherance of policy objectives (Dunoff, 1995; Jacobs, 1994; Roht-Arriaza, 1995).

The EMS approach, as exemplified by ISO14001, can clearly be seen as a system of soft, private law. Relevant characteristics include the following; it arises from private industry concern about the environmental improvement; it emerged from a consensus-based process of international standardization; it has the status of an international agreement;<sup>44</sup> it relies upon voluntary modification of producer behaviour through standards, systems and guidelines; it generates independent verification via certification to satisfy stakeholders (including regulators) of compliance with the standard/s, and; it provides scope to negotiate and work more closely with stakeholders to achieve policy objectives.

### 3.34 EMS as a mechanism for corporate governance and legitimation

Proponents of the EMS approach argue that by adopting a wide range of systematic managerial practices that take into account the linkages between business organizations and the environment, the goals of economic growth and sustainability can be reconciled (Elkington *et al*, 1991; Levy, 1997; Sheldon, 1997; Sayre, 1997). The EMS is intended to support self-identification and management of those environmental goals the organization wishes to address. In this view, the EMS serves as a legitimate instrument of corporate governance.

A more radical view however, asserts that the EMS approach can (and should) be seen as a 'political accommodation' to growing public concern about environmental problems that potentially threatens the autonomy and market position of dominant corporate interests. David Levy for example, argues that as current systems of production come to generate increasingly unacceptable levels of environmental degradation, growing levels of public concern could provoke a challenge to the prevailing 'hegemonic coalition' of business, government,

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<sup>44</sup>See [www.iso.ch/infoe/intro.htm#What are standards](http://www.iso.ch/infoe/intro.htm#What%20are%20standards).

professional and intellectual elites, ‘that is at once dominant in society but neither stable nor unchallenged’ (1997:126). EMS is thus understood as an instrument with at least as much to do with pre-empting such a challenge, as truly addressing environmental and sustainability problems; it could be seen as

an integrated response on the practical and ideological level that serves to deflect more radical challenges to the hegemonic coalition...EM [environmental management] serves to construct products and companies as ‘green’ and legitimizes corporate management as the primary societal agent responsible for addressing environmental issues (*ibid*:127).<sup>45</sup>

This, more critical, view sees the EMS approach as embodying certain features which cross over the ‘line’ of legitimate corporate governance (internal management) into areas of governance and policy traditionally (and rightly) *ultra vires* to corporations. The EMS approach becomes primarily concerned with *political* rather than *ecological* sustainability. On the one hand, while EMS/standards are oriented toward achieving ‘sound’ environmental performance through organizational commitment to a systematic approach and continual improvement of the system (ISO14004:1996:v), they are more to do with developing an ‘accommodation’ that addresses some of the worst environmental excesses, while deflecting demands for more radical change (Levy, 1997; Welford, 1997a).

### 3.35 EMS as corporate *firewall*

The term ‘firewall’ has arisen in the area of information systems. It refers to the security ‘layer’ found at the remote user interface which governs access to deeper system levels; databases, records, intranets, and the like.<sup>46</sup> The EMS, in its function as the arbiter of the access outside parties have to environmentally-relevant information, may be seen to act in much the same way as the computerized firewall.

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<sup>45</sup>An example of the construction of companies and products as ‘green’ is seen in EMS promotional material. Standards New Zealand (SNZ), in material publicising the EMS approach (and its related services) asks the question, on the cover, ‘*Who says your company’s green?*’ The answer of course, is that the *company itself* can, via a “SNZ registered EMS” (SNZ, 1997).

<sup>46</sup>See for example; <http://www.tribecaexpress.com/firewallfaq.htm>.

The conventional account of the EMS approach has a strangely schizophrenic attitude to the issue of information dissemination. On one hand, the (self-determined) environmental policy of the organization is to be made publicly available (ISO14001, 1996:2), and certification/registration is almost certain to be publicized. But on the other hand, any additional information on environmental processes and performance is strictly confidential, and disclosure of such is at the discretion of the organization. A very wide range of environmental information on corporate effects and impacts on the environment (and its contributions, or otherwise, to sustainability objectives) may be gathered for the purposes of helping track and manage the EMS. Despite the fact that a broad range of stakeholders may have strong interests in such information, such is viewed as company- confidential and its release is a matter for management to decide;

The organization shall consider processes for external communication on its significant environmental aspects and record its decision (ISO14001, 1996:4).

It is in this way that the corporate EMS can clearly be seen as a *firewall*: an informational interface that shapes the type, level of detail, audience and frequency of organizational reporting on, and representation of, its actions. At more collective, and macro-levels, the EMS approach actively shapes the discourse possible on environmental issues (as they relate to corporate activity) by framing the information in certain ways, and further by habituating stakeholders to corporate-controlled information flows by ‘normalising’ this state of affairs.

### 3.36 EMS as a policy-regulatory instrument

The conventional account is founded on an expectation that EMS, applied in a standards-conforming manner, will provide support for organizational self-regulation. The ISO strategy group SAGE noted this in its deliberations on EMS;

A voluntary standard encourages the setting of high performance criteria, and a self-regulatory process to demonstrate the achievement reached. The standard is intended for use by all organizations [*sic*] to ensure themselves and others that their environmental performance is consistent with their policy and is managed and monitored in a cost-effective manner (ISO/SAGE SG1 N54, 1993:8).

Unfortunately, this particular conception relies exclusively on technical understandings of self-

regulation, impairing severely its capacity to assist organizations to reach macro-level goals. In attempting to take a path seeking to emphasise aspects of ‘value-neutrality’<sup>47</sup> and ‘management tool orientations’, the EMS approach overlooks the need for a true form of self-regulation to be supportive of goals wider than mere industry preferences. It is deeply disquieting to see such little recognition of this fact in conventional accounts.

A perspective has developed that criticizes the conventional orientation of the EMS approach for being overly focussed on development of corporate tools for environmental management, and correspondingly less concerned at the resultant industry-led encroachment into a domain of public interest and public policy (Gleckman & Krut, 1997; Levy, 1997). In this view, developers of the emerging field of environmental management - as embodied in the EMS approach - are not at all value-neutrally defining and using systemic and ‘rational’ tools and techniques. Rather, they are seen to be engaged in a project of developing corporate-based strategies to shape community expectations of environmental management and its potential for achievement of environmental goals. By explicitly shifting the burden of environmental responsibility of the organization away from providing evidence of achievement of acceptable organizational environmental performance, to demonstration of conformance with standardized, processual requirements based on setting and achieving self-set goals (Gleckman & Krut, *op cit*). This can be clearly seen in, for example, ISO14001 (1996) which states the purpose of the EMS is to, ‘establish, and assess the effectiveness of procedures to set an environmental policy and objectives, [and] achieve conformance with them’ (p.v).

Further, in developing what is essentially a ‘private-sector’ definition of environmental management, Gleckman & Krut (1997) assert that the developers of the EMS approach undermine and potentially reverse notable corporate, government and NGO experimentation and initiatives that were significantly raising the level of international corporate management. It does this, ‘because it will grant an easy ‘A’ to companies with ISO14001, even if they have low environmental performance standards’ (p.49). Thus EMS can thus be seen as an instrument which seeks to ‘validate’ corporate self-regulation. However, it is validation on industry/corporate

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<sup>47</sup>Of course, taking such a stand is equivalent to making a value statement after all. By accepting and validating the preferences of trade and industry for a narrow interpretation of responsibility (by, for example, weakening the link between EMS and sustainability) over the needs of the wider community for more and wider corporate responsibility, the claim to value neutrality is thus negated.

terms, not public interest terms.

### 3.37 The case for an integrative approach

The discussion above has outlined no less than six ways EMS approach can be approached. While not completely invalidated by this analysis, convention has been 'exploded' into a much more complex picture. Which is the *correct* version of EMS from the list above? Certainly, it can be said that the champions, drafters and architects of the EMS approach see the first two as accurate, and the others as dubious at best. It must be admitted however, that the four perspectives in question; soft law; instrument of corporate governance; firewall, and; regulatory tool; are persuasive, and can be seen in practice. Therefore, any account or explanation or conceptual understanding or theory of EMS must be capable of integrating all six perspectives (and others that may arise). The conventional account does not even come close. This is unsurprising perhaps, since it arises from an essentially ad hoc and pragmatic approach to EMS development. As one commentator has noted,

changes [in thinking about management systems] would appear to have occurred progressively...largely as a result of experience gained and not as the result of any specific attempt to develop a new methodology (Rodgers, 1993:2).

This view is held in ISO/TC207 as a self-evident truth, and seen as a strength of the approach taken in that forum. The research has shown some of the problems that have arisen as a result.

The following section considers ways a new perspective capable of integrating all perspectives noted above might be approached.

### 3.4 Concluding the initial research: EMS as part of a larger system

The discussion above indicates that understanding of EMS may be enhanced by considering a much wider range of factors than is conventionally accepted. Standardized formats of EM and EMS - the ISO14000 series is the obvious example - are a small part of a larger system of social regulation. However, the use of voluntary means to achieve social objectives has become very popular in corporate and very many public policy circles, making EMS something of an exemplar of the type. Much of the analysis of EMS, as reported above, could easily be applied to the theory

and application of other voluntaristic, self-regulating, and market-based (hereafter *VSMs*) instruments and schemes. EMS shares many principles and characteristics with other forms of self-regulation, including; industry/professional codes of conduct/best practice; customer assurance and certification programmes (eg. food labelling, quality assurance; building codes); industry and sectoral semi- and self-regulation<sup>48</sup>; and of course, all forms of technical standardization.

As this type of initiative comes to be applied more in pursuit of public policy objectives, they come to have greater effect than perhaps was envisaged in their development. The analysis of EMS in the short project shows this clearly. In addition, many otherwise ‘innocuous’ and technical-oriented instruments, when combined with others, form foundations for new permutations, or ‘morph’ into programmes and initiatives with far-reaching consequence. For example, there is a strong movement observable in OECD countries toward so-called ‘voluntary arrangements’ in the achievement of macro-level economic and environmental policy (OECD, 1997). The category includes; industrial covenants; ‘cooperative regulation’; negotiated agreements; voluntary agreements; self-regulation, and ‘eco-contracts’ with third parties (OECD, 1997:5). What is observable in this movement is the predominance of market tenets and often institutions too.

The mixing of private and micro-level interests (eg. profit, trade, economic growth etc) and overarching macro-level interests (eg. the concerns of the civilization/society/planet as a whole) is, as the research shows, problematic. It is important to consider in more depth the potential outcomes of applying ‘market principles’ (*viz.* those based on ideological propositions of self-interest, private property rights, management control, and corporate voluntarism) in spheres of public interest and macro-level policy (*viz.* the good of all; sustainability).

With these comments, we return to the original purpose of the research; that is, to comment on whether voluntaristic approaches - such as EMS - support social macro-level goals. The research set out to test this assertion, but seemingly raises more questions than it answers. Part of the reason for this, it must be admitted, is in faults in the project itself. For example, preparation for

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<sup>48</sup>Such as are found in the fields of accounting/auditing; finance; banking; advertising; medicine; media; and others. See, for example, Hollingsworth *et al*, (1994); Schmitter & Streeck (1985).

the research failed to properly inform the empirical programme as to the political issues that were encountered in ISO/TC207, and also gave little guidance as to the wider contexts important to EMS and its standardization: ie regulation, policy and social macro-goals. The project was also too short to properly analyse the issues raised. Nevertheless, the research produced a number of interesting findings. These are briefly outlined below.

1. EMS is an archetypal expression of private-interest based voluntarism in pursuit of public-good type goals. ISO/TC207 is a key player in the spread of EMS.
2. There are weaknesses in the conceptual model of EMS as employed and promoted by TC207.
3. Several characteristics of the way TC207 approaches EMS standardization limit achievement of stated macro-goals. These negative characteristics include; self-referentiality; technical/trade orientation; a bias toward industry/private interests; and, highly politicized processes.
4. The EMS approach is more innovative than is generally acknowledged. A wide variety of configurations are found in the practice and application of EMS.

The research also raises a number of new questions (and re-asks some old ones) about EMS:

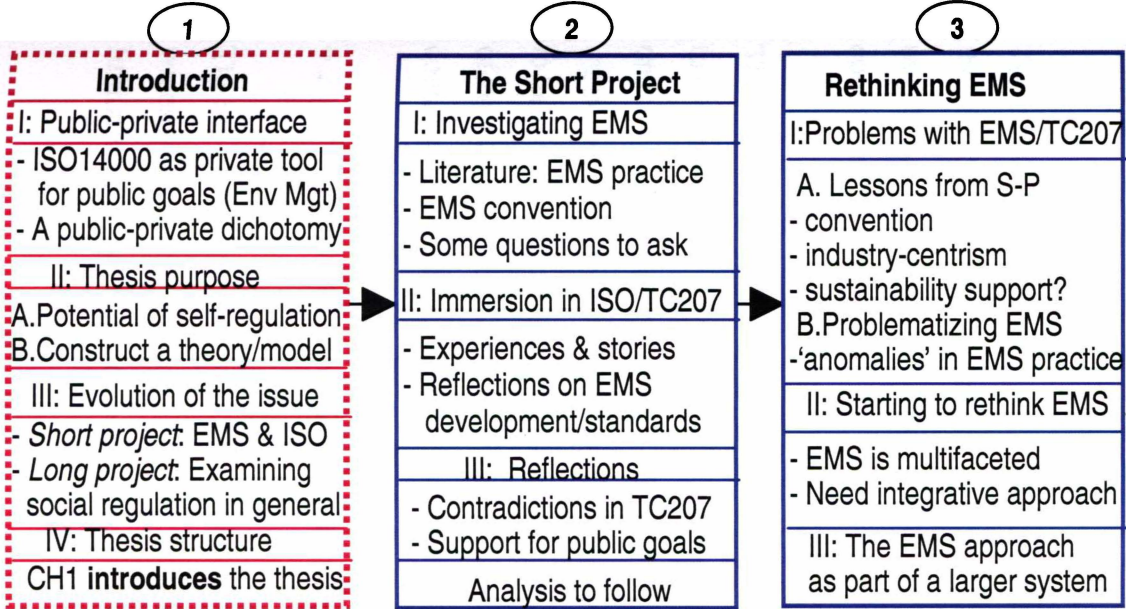
- I. What is EMS? On the face of it, this is easily answered. However, research findings point to the need to move beyond taken-for-granted understandings, and to take into account the contextual complex within which EMS is developed and used.
- II. EMS as a form of regulation? Analysis suggests stronger regulatory and policy-like aspects to EMS than is acknowledged in convention.
- III. What is the overall potential of EMS and TC207 in addressing public and private goals?
- IV. What is the overall potential of voluntarism/self-regulation in addressing public and private goals? What are the proper roles, place, and limits of voluntarism? What advice can be given to guide their development?

The research as presently configured is not well suited to answering these questions. However, they are interesting issues, and addressing them does not entail a major change of direction. The main conclusion of the project so far is that more research is needed in the area.

### 3.5 Summary of the chapter

This chapter sought to better understand the causes of the problems with EMS praxis that were raised in the previous chapter. It started by problematizing conventional views of EMS. The analysis generates six 'ways of looking' at EMS, and argues for a new theoretical approach to EMS (and other voluntaristic, systematic, market-based techniques for meeting private and public goals). It is suggested that two qualities such a new approach should exhibit are; (a) integration, that is capable of accounting for the variety of ways EMS is used in practice; and (b) recognition of the part(s) played by EMS in larger regulatory systems. Explanations provided by conventional thinking about EMS fall short of the detail required this new analysis. It is decided therefore that the project, as originally specified, is inadequate to the new task. Hence, it is resolved to undertake an expansion of the research project in terms of scope and time. The following chapter considers the practicalities of such an extension, and the original project is reconceived as important foundational work.

Figure 3.1: The thesis at a glance



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## **CHAPTER 4: Constructing a new methodological basis for the thesis**

### **4.0 Introduction**

The analysis of the previous chapter raises new questions for the research, and recommends a continuation of the project. The project will be extended beyond its original parameters. This chapter considers the methodological issues arising in this extension.

### **4.1 Purpose and structure of the chapter**

There are two aims to be met in this chapter. The first is to report on the reconfiguration of the research, to present the logical basis for such revision, and to describe the enhancements needed to re-vision the project. The second is to give a view of the thesis overall, showing how research activities tie together to enable development of the conceptual models that are principal thesis outputs.

The chapter has two main parts. The first part addresses issues surrounding the evolution of the thesis from an initially limited project to a more comprehensive one. A case is made for upgrading research methodology, and the decision to expand the scope of the research is considered.

The second part of the chapter assesses how a new methodological programme more adequate to the challenges of the new research vision might be constructed. ‘Middle-range’ thinking, based on the ideas of Laughlin (1995; 1997) is employed to inform a comprehensive upgrade of the methodological foundation of the thesis. Considered also is a preliminary theoretical framework to help define the areas to be researched. Issues of method are addressed, including the question of how to weave together sometimes disparate pieces of information, from different (but related) contexts, into understandable theoretic frameworks.

### **4.2 The need for a new vision in the research**

The use of voluntary approaches as tools in the pursuit of public interest goals is becoming more widespread. There is a need for in-depth and detailed understanding of their qualities and limitations. The findings of the short project make a case for improving conventional thought on

EMS and voluntarism. From theoretical and practical perspectives, these questions are both interesting and important.

Personal attributes and preferences of the researcher must also be considered in the reconstruction of research. The mind of the seeker after knowledge must be engaged by research questions and the phenomenal reality under investigation. The researcher is not wholly mind either; the resonance between questions and the heart of the researcher powers the search for knowledge. The research must be *involving* for the researcher, and in line with core beliefs and values. In the case of this research, as it stands at this point, there is a chance to combine voluntarism, policy and sustainability. This may be possible, theoretically at least, in a way that reflects my deeply felt reverence for freedom, for diversity, and for life.

#### 4.21 What were the lessons of the short project?

The short project traced the development of the EMS approach via the ISO14000-series of international standards with the intent to critically evaluate the veracity of claims to environmental and sustainability credentials. It was originally envisaged as a limited, short-term project, focussed mainly on the work of ISO/TC207. The analysis questioned the capacity of the EMS approach, and more specifically ISO14001, to serve broad-based sustainability objectives in any more than a cursory manner. TC207's claims of environmental and sustainability credentials are found to be unsupported by the evidence produced by the research. This unhappy result is seen as arising from two interrelated causes; (1) an excessive reliance on a limited interpretation of EMS and its development (ie the 'conventional account'); and (2) a singularly industry-serving mindset in TC207.

The findings of a small research project hardly threatens the momentum of the established EMS industry<sup>49</sup> and the work of ISO/TC207. What it does do however, is raise doubts concerning the advisability of continuing apace on presently established vectors of EMS development. Given the combination of conceptual deficiencies of the conventional account, and its centrality in the

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<sup>49</sup>Which includes, among others; [A] conceptual developers/proponents of EMS and commentators; [B] EMS consultants (often the same individuals/groups/companies as [A]); [C] writers of EMS specifications and standards writers (again, often the same as [A]); [D] certifiers and verifiers of organisational EMS; [E] government bureaucracies evaluating/approving EMS for use in state-regulatory systems.

EMS development discourse, it is perhaps unsurprising to find in TC207 an inability to address anything but narrow, industry-preferred views of sustainability.

From a public good perspective however, the finding of a weak link between the high-sounding environmental performance and sustainability objectives of ISO/TC207 and their expression in ISO14001 is somewhat disturbing, as well as an inauspicious debut for an archetype of voluntarism. The issue of how the research project might be adapted to address the new line of questioning is considered below.

#### 4.22 Arguing about continuation

Two arguments support the case for redrawing the research; the former deals with *question* and the latter with *opportunity*. First, the research is focussed on an issue which remains valid and significant. Second, through nomination by Standards NZ (SNZ), and the related NZ Standards Steering Group (NZSSG), I was able to continue in my role as a NZ representative in ISO/TC207, thus remaining involved 'in the loop' of ongoing environmental management standards development at national and international levels.

The argument against continuing the research centred on a limitation in the capacity of the methodological structure established for the short project to serve as a basis for a longer, more in-depth project.

#### 4.23 Limitations in short project methodology

The first step in reconstructing a project is to identify how the original direction can be adapted to new information. In this case, the short project suffered from two main problems; one, an imperfection in the fit between the interpretive framework and the fluidity of the context being researched, and two; a shortcoming in the capacity of the methodological framework to adapt and grow in response to new information.

The short project was informed by a generally positive/inductive methodological approach (Lincoln & Guba, 1997; Chalmers, 1982). The key assumptions underpinning the project were generally positivistic; inductive; reductive/generalistic; question-generating-and-testing; and predictive (see s.2.21).

Following the short project, it became evident that some of the methodological qualities as described above are not amenable to an expansion in research scope. The conditions assumed in points (a) and (b), for example are ‘violated’ by the fluidity of the ISO/TC207 context. In addition, the expanded research question affects the specification of the phenomenal context of relevance. The problematisation of conventional thinking on EMS<sup>50</sup> suggests that in-depth analysis of the potentiality of EMS and of voluntarism more generally requires consideration of a much wider range of factors than most literatures on EMS might indicate. The design of the short project underestimated the complexity of the contexts in which EMS is embedded. A longer, deeper research project needs to go beyond a narrow focus on TC207.<sup>51</sup> Point (c), ‘generalism of findings’ may be possible, but given the uncertainties of the new research, only the most limited of hypotheses (d) can be constructed.

The following section discusses key issues of concern in methodological redevelopment.

#### 4.3 General concerns to be addressed in methodological redevelopment

A number of aspect of the context of research must be accounted for in the development of a new methodological framework. The first is the constructed, contingent, flexible and politicised nature of ‘reality’ in ISO/TC207 and related sites. The convention of ideological functionality, combines with political and interest-bound contest and compromise inside the system of ISO standards setting, which promotes a charged atmosphere in TC207. Scope, terms of reference, and principles are constantly up for negotiation, in ‘games’ of geopolitics. A mode of investigation based on an assumption of a fixed reality (or at least a reality of some solidity and endurance) is inappropriate in a phenomenal world of such fluidity. This was one of the lessons of the short project.

A second factor is the choice to open up the scope and context of the research. By broadening the focus of the project in the way described above, the investigation is subject to a wide range of variables and influences. The research context is imprecisely defined, and is not well described by conventional theory. A new methodological foundation must be able to support understanding,

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<sup>50</sup>See s.2.8.

<sup>51</sup>And its ancillary and related contexts.

interpretation and integration of many variables, some of which might seem at first glance to be unrelated to primary research issues, but which may prove to be key to later understanding.

A third factor of relevance is the conviction that only by ‘digging deeper’ into the contexts, ideologies, motivations and theories underpinning the praxis of ‘EM/self-regulation for private and public interests’ will the potential of EMS (and other voluntaristic instrumentation) be properly understood. My experience in ISO/TC207, and related sites, illustrated the constructed nature of reality. It will be essential to contextualise and integrate the regulatory, governance, political, and economic aspects of the study.

Fourth is the need for ‘navigational support’ for the study where little guidance is given by conventional thinking. As scope broadens, so too must the array of theoretical constructs necessary to unpack and make sense of concepts and experiences. Similarly, as the research accumulates observations from a number of sources, processes of conceptualisation developed in the thesis must be capable of integrating them into theoretical structures. As the research diverges from conventional understandings, a creative, inventive and organic approach to theorizing is expected to become more useful.

In summary, any project extension, in entering and seeking to make sense of a phenomenal reality characterised by considerable indeterminacy and fluidity, should itself mirror certain of these traits, methodologically-speaking. These include; *flexibility* and *open-endedness* in its approach to context, theory and empirics. In the absence of a ‘roadmap’ of the territory to guide the investigation, research must proceed somewhat *intuitively* and; given the nature of the research question, processes of theorizing must tend toward the *holistic* and *unifying*, rather than being overly dissective.

This section considers the continuation of the research, and the necessity of methodological adaptation. It was determined in 1996-7<sup>52</sup> that the problem of methodological inadequacy could be overcome by a suitable redesign of the project, and that the promise presented by both *question* and *opportunity* was considerable, although not without risk. The process of upgrading the methodology is reported in the following section.

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<sup>52</sup>By the researcher and supervisors.

#### 4.4 Upgrading the methodological basis of the thesis

The expanded scope and context for the newly reconstituted (ie *long*) project necessitates a comprehensive upgrade for the foundation constructed for the short project. This section covers the methodological redevelopment of the research. It makes a case for a broadly qualitative approach to rebuilding the research, and introduces a 'middle-range' approach to methodology, as developed in Laughlin (1995; 1997). The discussion explores Laughlin's thinking on methodology in general terms, and then turns, in the section following, to consider how the middle range approach informs the practice of the research described in this thesis.

##### 4.41 Starting to build a new methodology

Methodology is concerned with the principles and foundations of the research process, and with researcher decisions about what might constitute knowledge. That is, it addresses how we gain knowledge of the world (Chua, 1986; Denzin & Lincoln, 1994; Habermas, 1987; Laughlin, 1987). The main task of methodology is to provide and define the frame of reference that informs and guides the construction and practice of research.

Methodology is concerned with norms of the research process...[it] sets out a program to guide the progress of science...In part, methodological viewpoints set standards for research, and in part they anticipate its general objectives. Taken together, these two functions establish the system of reference within which reality is systematically explored (Habermas, 1987:44).

The natural starting place for a search for a methodological approach suitable to meet the demands of the research was the qualitative domain. More quantitative and positive approaches were rejected, on the basis that the quality of the phenomenal 'reality' being studied is imprecisely understood and loosely defined. It is clearly dependent on, and a product of, human agency (on this point, see Chua, 1986; Guba & Lincoln, 1994, Laughlin, 1987). In addition, the research is firmly situated within an experiential, rather than experimental setting;

Qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them...[they] deploy a wide range of interconnected methods...[in] an attempt to secure an in-depth

understanding of the phenomenon in question (Denzin & Lincoln, 1994:2).

The scope of the research also helps shape the appropriate mode of inquiry. The demarcation between relevant and irrelevant aspects of the scope/field of inquiry will determine what is analysed, and what is taken-for-granted and left unexamined. In addition, analysis of the phenomenal world under investigation will be shaped by, and will reflect, to some extent, the values and interests the researcher brings to the inquiry. It would be inappropriate to claim any ability to represent objectively the institutions and practices studied in this research. In any case, there is in this research an intent - one among others - to investigate the transformative potentials of new initiatives (ie voluntarism). Hence, the methodology must be capable of going beyond the purely descriptive.

The framework must also be able to support a process of theorizing which taps into a wide and eclectic range of conceptual/literature and empirical sources; it must be capable of sustaining a long-term investigation of broad scope; and it must assist a complex processes of knowledge generation, accretion, synthesis, and validation.

#### 4.42 Narrowing the search: *middle-range* theory

The methodological framework developed for the thesis takes a ‘middle-range’ approach, as elucidated by Laughlin (1995; 1997) as a starting point.<sup>53</sup> This approach is promising in terms of meeting the ‘general concerns’ considered above, and may support the extension and evolution of the research project.

Drawing from the schema of Burrell & Morgan (1979), Laughlin (1995) argues that a key requirement for any form of academic research is to clarify and make transparent researcher decisions on three ‘broad bands’: *theory*, *methodology*, and *change*. Choice at the ‘theory’ level refers to the level of prior theorizing engaged in by the researcher, and the use of prior theories to inform empirical investigations. The dimension of ‘methodological’ choice is concerned with

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<sup>53</sup>In a sense, to refer to a *singular* middle-range approach is to miss the point. The strength (and weakness, see for example, Lowe, 2003) of the approach is that research and theory development takes place within certain ‘ranges’ of often great flexibility. Hence, two researchers may choose very different criteria to inform their investigations, but can still be said to be employing broadly middle-range approaches (see Laughlin, 1995).

'locating' the researcher *vis a vis* the researched - that is, defining the 'spectacles' through which the researcher 'sees' the phenomena under observation. The 'change' plane concerns the researcher's views on alteration, adaptation, evolution or revolution in the situation being researched. Clarification of these factors is important to illuminate the sources of researcher bias, and to avoid the illusion of objectivity;

the inevitable truth [is] that all empirical research is partial and incomplete and that theoretical and methodological choices are inevitably made whether appreciated [by the researcher] or not' (Laughlin, *op cit*:65).

These choices are negotiable and contestable, and *all* researchers must make them (whether they recognize them or not), so they must therefore make these choices as clear and unambiguous as possible. A deeper discussion of middle range follows, which examines each 'plane' in turn.

#### 4.43 The *theory* plane

The 'theory' plane involves 'the level of prior theorizing and prior theories that can legitimately be brought into the empirical investigation' (*ibid*:66). The level of theorizing prior to fieldwork is related to the researcher's ontological position. For example, 'high' levels of preliminary theorizing tends to indicate an assumption of a 'concrete' material world, existing outside the observers' observations, interpretations, projections and bias, and in spite of some empirical diversity, displays sufficient order to make it amenable to generalizability across other, sufficiently similar situations. By the same token, a researcher taking a 'low' application of prior theory to the empirical experience would likely be inclined toward an assumption of a plastic and fluid 'reality', where since projections/interpretations differ across observers, generalities are impossible. Equally, learning from or relying on previous theoretical studies and insights is 'both inappropriate and potentially corrupting of the diversity and detail of the present study' (*ibid*:66-7).

Laughlin suggests that these approaches to theory represent polar opposites of a 'continuum', between which a 'medium' level approach seeks to steer (1995:78). This approach,

recognizes a material reality distinct from our interpretations while at the same time does not dismiss the inevitable perceptive bias in models of understanding. It also recognizes

that generalizations about reality are possible, even though not guaranteed to exist, yet maintains that these will always be ‘skeletal’ requiring empirical detail to make them meaningful (*ibid*:81).

The role of *a priori* theorizing in a middle range approach is therefore to enable the researcher to gain insight into the ‘lay of the land’ that is to be entered; to get a more-or-less rough idea of the research context and other variables that might be found and dealt with in the practice of research. These may be seen as ‘skeletal’ understandings, which give an overview but not the detail of the phenomena of interest (Van Peurse, 1999:416). These preliminary, skeletal understandings are of course contingent and dependent on further findings. Such ‘skeletal frameworks’ are to be worked out early in the research process, and are intended to inform subsequent empirical investigation.

It is important to note that the purpose of research subsequent to forming skeletal understandings, is not to ‘prove’ or ‘falsify’ them. The ‘acquisition’ of empirical detail is crucial to ‘complement and complete’ the skeletal framework, a process is referred to by Laughlin as ‘refining’ the theory or ‘fleshing out’ the initial skeletal framework to arrive at more developed and ‘whole’ theoretical structures or ‘bodies’;

it is assumed that the empirical detail will always be of importance to make the ‘skeleton’ complete in particular contexts. The ‘skeleton’ metaphor is intended to paint a picture of incompleteness yet also reasonable stability. It is also intended to register the point that the metaphorical ‘flesh’, ‘sinews’, ‘psychological makeup’ etc. are important additions leading to...the resulting ‘whole being’ (1995:81).

#### 4.44 The *methodology* plane

Methodological choice is concerned with locating the researcher *vis a vis* the researched; that is, clarifying where the researcher stands. It is the point at which the researcher defines the ‘spectacles’ through which they observe, or ‘see’ the phenomena under observation. A ‘high’ position demands a tight theoretical definition of its ‘way of seeing’, originating from the positivistic inclination toward testing clearly stated and unambiguous theories/hypotheses. This approach comes unstuck in contexts of complex, fluid and not well understood social phenomena and structures, resulting in risk that the highly specified mechanism will end up ‘defining the

world according to its (own) limited perceptual categories' (*ibid*). The strength of the high position however, is that it compels the researcher to make clear and public the design of their methodological 'spectacles'.

By the same token, Laughlin (*op cit*) maintains that lack of clarity about methodological choices is the main weakness of the 'low' position. Use of low levels of methodological 'development', unencumbered by rigid, artificial rules is assumed by its proponents to allow greater flexibility in the grounds of research, and particularly in the observation gathering process (Laughlin, 1987; Denzin & Lincoln, 1994). While this freedom permits a degree of variability in respective researchers' subjective and variable interpretations - a strength in terms of methodological capacity in analysing fluid, contingent social situations - it may also tend to 'create a closed picture concerning the rules which are being used in the perception process' (Laughlin, 1995:84). Of course, the use of a low position allows the researcher to enter a wider range of research contexts than might be accessible to 'higher', more rigid positions.

One middle-range requirement, in relation to this plane, is that the researcher makes clear their own personal biases, preferences, and values, and how they relate to the practice of research. This would include of course, their choice of methodological framework (*ibid*; Broadbent & Laughlin, 1997).

A medium level approach to methodological choice seeks to steer a pathway between the extremes of, 1) positivistic distance and objectivity, ie 'high' level of methodological choice, and; 2) ethnographic observation processes 'completely uncluttered' by theoretical rules and constraints on what is to be 'seen' and how the 'seeing' should be undertaken, ie a 'low' level of choice (*ibid*:67). Van Peursem's (1999) analysis amplifies the theme of the middle-range,

The middle-range probably resembles the latter (ethnographic) position most closely as communication and consensus-building are key to Habermasian understandings, and such activity is unlikely to occur unless the researcher takes an active role in identifying the players and formulating the skeletal framework...such involvement is less than...an interpretivist study, but more...than traditional science (p.416).

From a methodological perspective, a 'medium' position attempts to preserve the 'strengths' of both the 'high' and 'low' positions while avoiding the 'weaknesses' of both (Laughlin, 1995:83).

A medium position on methodological development therefore requires observational rules to be stated clearly and publicly, but such 'rules' are necessarily 'loose', and able to be modified in the research process to either allow or encourage flexibility and diversity in the approach to the research 'arena'. Too constrained an approach is harmful for flexibility in interpretation of phenomena, and for integration of information from disparate sources. Too 'loose' an approach is similarly undesirable as it may provide insufficient support for the longitudinal aspects of theory evolution (Guba & Lincoln, *ibid*). So, middle-range, in being 'part-constrained' and 'part-free' in its attempt to avoid extreme interpretations, seeks to combine the strengths of 'high' and 'low' positions. And, presumably, avoid their weaknesses.

#### 4.45 The *change* plane

The third and final dimension of researcher choice to be clarified in the middle-range approach is that of *change*. The stance/meaning of change here Laughlin (1995) maintains that choice in relation to change involves, 'taking a position on whether the investigation is intentionally geared to achieve change in the phenomena being studied' (p.66). This in turn is reflective of the researcher's attitude toward, 'the worth or otherwise of maintaining the current situation...as well as views about the necessity of actually doing something about this situation' (p.67).

Researchers adopting a 'high' position (such as might be expected from certain critical schools), might proceed from a value-assumption that systems and thinking underlying the status quo, because of basic inadequacies, inequities and alienations arising from historically constituted power relations (among other things), is in need of extreme revision (see, for example, Foucault, 1980). Once again, a 'low' position is its opposite. The imperative is conservative, based on assumptions that there are few problems with existing state/s of affairs, and that the role of the researcher/scientist is to 'neutrally' observe and report on extant conditions (ie, the status quo), while change is a policy issue and is therefore separate from and subsequent to research activity. Much of traditional positivistic investigation would fall into this category.

A middle-range perspective allows the researcher more flexibility. It approaches change as a type of continuum, allowing for a 'medium' level choice that might attempt to steer a course somewhere between 'high' and 'low' propensities or attitudes to change. It calls for a more 'balanced' or 'realistic' attitude to the status quo, as opposed to the simplistic and sometimes naïve attitudes toward change implied by the (admittedly somewhat extreme) polar opposites

described above (Laughlin, 1995:84). Researchers thinking in more ‘middle-range’ terms may be, ‘more strategic in their attitude toward change - open to maintaining certain aspects of current functioning but also open to challenging the status quo’ according to Laughlin (*op cit*:68). The researcher might approach or assume certain existing social relations, institutions, and ideologies as ‘going concerns’, or worthy causes. Other extant circumstances may be seen as amenable to (or requiring) some level of change, for varying reasons. Assessing when critique and change are suitable necessitates a sophisticated and deliberate policy of evaluation. It is important for the researcher to construct a position(s) on such things and make that known as they enter the empirical field.

#### 4.46 German critical theory and middle range

It should be noted that Laughlin (1995; 1997) sees German critical theory as an exemplar of the middle-range;

Only German critical theory seems to satisfy this demand [for middle-range thinking]...Habermas [in particular]...provides the most complete example of “middle-range” thinking to empirical research in not only accounting but also other social dimensions (Laughlin, 1997:84).

The reason for this endorsement is the importance placed in critical theory on recognising, (a) the social embeddedness of practice (ie the lived reality experienced by actors in the empirical context), and (b) the inevitability of researcher values and bias affecting the practice of research. In critical way(s) of thinking, knowledge-gain arises out of a process of intercession between the researcher and the researched. These two parties are assumed to be interactively linked, with the values, norms, and interests of the investigator inevitably affecting the inquiry. Findings are therefore, in Guba & Lincoln’s terms, ‘value mediated’ (1994). The world of the researcher is as value-laden as those that s/he seeks to understand. The theorist informed by critical understandings rejects the positivist claim to objectivity, on the grounds that the latter fails to recognise the intrinsic embeddedness of the theorist in the world under examination. As a member of the social world, as an active participant in its social construction, my appraisal of any phenomenon is situated in my own history and experiences in the world, and therefore inevitably partial and positioned.

The discipline of research conducted within the 'church' of the critical, is not to satisfy the requirements of objectivity, such as they may be. Rather, it attends carefully to the subjective point(s) of view of research participants in order that analysis is informed by *their* version of the world rather than by second order constructs of the researcher. The transactional nature of the inquiry requires a close dialogue between the researcher/theorist and the participants in the inquiry. The dialogue between researcher and participant should be oriented toward a transformation of 'ignorance' and 'misapprehension' (ie accepting historically mediated structures as immutable) into more informed consciousness (ie seeing how those structures may be changed and apprehending the actions that may be required to effect change). In this way, critical methodology might be seen as both emancipatory (and therefore potentially transformative) and as the total processes by which the science of knowledge-gain may be carried out (Guba & Lincoln, 1994; Habermas, 1985, 1987).

At this point, it may be useful to clarify my interpretations of critical theory. It should be noted that critical theory is not some homogeneous and uniform body of thought. Rather, it is a broad-based designation, encompassing a range of concerns, but in general connoting a common desire to 'raise consciousness' about the social structures and processes that form reality. For the researcher, reality is assumed to be apprehendable, but plastic and emergent (over time) as a series of social constructions shaped by,

a congeries of social, political, cultural, economic, ethnic and gender factors, and then crystallized (reified) into a series of structures that are now (inappropriately) taken as "real", that is, natural and immutable (Guba & Lincoln, 1994:110).

But in most practical senses the structures are 'real' to those living in them.

It is important to note that differentiations and schisms exist within the broad sweep of critical theory. There are clear distinctions between, for example, understandings arising from German and French critical traditions. Gallic critical predispositions tend more toward exposing 'alienating' (but typically concealed) exercises of power and discipline underlying the status quo of social relations, with the purpose of 'overthrowing' the established order (see Foucault, 1980;

Levy, 1985).<sup>54</sup> Understandings informed by Germanic critical thinking tend more toward critique as a form of, or prelude to, social transformation in pursuit of the ideals of ‘perfect’ communication, emancipation and freedom, among others (see, for example, Habermas, 1987).

#### 4.47 Acknowledging limitations of a middle range approach

While a middle-range methodological approach seems quite appropriate for this research project, it is important to recognize its limitations. The first to be considered here is that it is difficult to define its boundaries clearly. Laughlin and others seem to have a wont to describe middle range by reference to what it is not - such as positivistic or interpretive - or to the parameters between which it sits - ‘high’ and/or ‘low’ ranges of theory, methodology and change. In common with many other ‘categorical’ approaches (such as that found in Burrell & Morgan, 1979), the distinctions between ‘divisions’ are often simplistic and open to researcher interpretation, and there is a temptation to leave choices fuzzy and indistinct, rather than made rigorously and openly.

Related to this point is the tendency toward dichotomization of theoretical positions which is inherent in the middle-range. In order to have a ‘middle’, one must have two extremes which exist on the same axis (see the diagrams in Laughlin, 1995, for example). It could be argued that the positions chosen to occupy the high and low positions are frequently not perfect opposites at all, and that to posit them as such is to make a major error. The latent leaning in the middle-range toward totalizing meta-theorizing, overlooks recent trends in philosophical thought (eg ‘postmodernism’, poststructuralism) (see, for example, Lowe, 2004).

A third weakness in the middle range is that the counsel on middle-range found in the literature is very broad, and little guidance or criteria is given as to how researchers might choose between alternatives open to them. There is a danger of a researcher selecting the ‘worst’ of the ‘high’ and ‘low’ positions available in a given theoretical endeavour, and to find oneself in the invidious situation of seeking to combine incompatible theoretical/methodological/change perspectives (Broadbent & Laughlin, 1998). Any resultant structure of research would suffer from serious internal problems.

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<sup>54</sup>Although later discussion usefully employs certain conceptions and interpretations, from the French critical school, such Foucault’s approach to ‘power’ (see Chapters 6 & 7, for example).

The final potential limitation to be discussed here is that the middle-range has the appearance of a 'methodology of convenience'. It could be seen as being 'all things to all men'. There is a certain comfort to be had in the 'middle ground'; it is the customary domicile of the fence-sitter. It could be argued that as a result, middle-range as an approach to research methodology is both everything and nothing.

Having said all this, choice of methodology comes down to the researcher's interpretations, motivations and the characteristics of the research context. And the researcher is the best judge of what is best for a particular situation. Laughlin (1995) recommends that ambiguity be minimized in researcher choices, through a rigorous process of self-examination and by trying to be as clear as possible about the options that are chosen. I have tried to follow his advice in the discussion following.

#### 4.5 Using middle range thinking to inform the new methodological foundation

Laughlin (1995; 1997) calls for researchers to clarify their decisions and/or positions on theory, methodology and change. The so-called middle range approach informs a research 'pathway' between extreme ranges of investigator choice. This section explains how middle range theory is interpreted (or 'read') in the light of the developmental needs of this thesis.

Middle-range counsels the researcher to be clear about choices made in the construction and practice of research. Aspects of this research project make methodological choices quite difficult. On one hand, the flexible, contingent and experienced nature of the research context and activity seems to require a 'low' methodological position, while the variety of sites explored and roles played in information gathering (eg participant, arms-length interviewer) for research purposes indicates a need for a 'high' methodological position, to inform and guide the acquisition and analysis of empirical data. Quite clearly, some rules of information recognition and significance assessment are required, while a degree of flexibility is needed in research practice to reflect the lived experience of participation in, and creation of the phenomena central to this research.

Certain qualities of the contexts within which this research takes place encourage a 'medium-position' methodological approach. The experience of the short project showed the limitations of a 'high-approach'; most significantly, the fluidity of phenomenal reality under investigation, and the involved nature of researcher engagement. By the same token, a fully interpretive, in-depth

single-site ethnographic ('low-position') approach has serious limitations in this situation, and was rejected for the following reasons: (a) a need to integrate material/findings from a wide variety of research sites<sup>55</sup>; (b) a need to recognise the diverse contributions of multifaceted historical factors/developments to the research context; (c) the growth process required for a 'skeletal' approach to theory building; and finally; (d) the impossibility of apprehending, or 'seeing', in any great depth, all perspectives constituting the context of research. The discussion below outlines how the 'three dimensions' of the middle-range inform the research methodology.

#### 4.51 Theory

The open-ended nature of the two questions which restart the research: *what is the EMS approach and how best might EMS (and similar voluntaristic approaches)*<sup>56</sup> *contribute to public good goals*; adds to the argument for a medium level approach to theory-building. The short project found serious deficiencies in conventional thinking on EMS, and limitations in ISO/TC207 processes and outputs, in terms of contributing to stated environmental and sustainability objectives. Any attempt to investigate these questions requires a flexible attitude toward what may or may not be important on the trail of the research. If the methodological apparatus/lens is set too narrowly, crucial details (or 'clues') may be lost to a tightly defined 'scientific' approach. By the same token, if the range of the research is tuned too broadly, in methodological terms, the risk increases that the investigation may wander the desert of little or trivial findings indefinitely, the researcher never being sure of the significance of phenomena falling into the scope of research. In a sense then, the research question requires an approach more akin to one a forensic investigator or crime detective may employ; seeking patterns and congruencies in sometimes obtuse and non-linear interconnections, rather than searching (vainly) for concrete, fixed, verifiable, repeatable, cause-effect relationships.

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<sup>55</sup>Over the period 1994-2002, these included; participation in ISO/TC207 SCs 1, 3, 5 and the *Future Vision Task Force*; NZ Standards Steering Group; participation in the work of Australia-NZ Committee QR/11 (environmental management); involvement in numerous workshop and seminar sessions in NZ and overseas; participation in the *coregulation project* at *Environment Waikato Resource Use Group*; participation in local EM initiatives, eg *Waikato Environmental Business Network*; interviews with participants in ISO/TC207; interviews with key actors in NZ environmental regulation, policy and management.

<sup>56</sup>And other voluntary management instruments dedicated to achievement or creation of 'public' goods or aims, such as improvement in environmental/biospheric conditions or sustainability.

Middle range thinking encourages iterative, organic approaches to theory building. It suggests the researcher follow a three stage discursive process; first, the researcher(s) remain distanced from the researched while they construct 'critical theorems'. Second, the researchers and researched meet to discuss the research - ideally as equals - and third, become 'enlightened' about each others perceptions of the situation (Broadbent & Laughlin, 1997: 634-5). The skeletal framework can then be 'fleshed out', or 'refined' (Laughlin, 1995; Van Peurse, 1999) through input from relevant parties. The process rests on an assumption that theoretical understandings can only be contingent and 'skeletal', requiring empirical investigation to 'flesh' them out to form more 'whole' theories.

In the light of the middle-range then, the short project may be seen less as a stand-alone structure, but can be reconceived as part of the underlying theoretical structure to inform the work of the long project. It is part of the process of the construction of 'critical theorems'. In the second stage, the empirical part of the investigation, I make another 'medium' level methodological choice (Laughlin, 1995: 67), where as a researcher, I become 'involved' in the research/observation processes, and shape the terms of reference of the inquiry. While subjectivity and bias can (and does) result from this 'choice', these might not be seen affect the research so negatively since much of the empirical work done in this project is based on processes of generating, interpreting and analysing responses to theoretical understandings anyway.

The theory-building processes described in this chapter is founded upon an *imperative to synthesis*. There is, in this researcher, a deep dissatisfaction with the separateness and ultra-specialisation celebrated in much contemporary intellectual discourse. This researcher seeks to reverse the trend toward reductive understandings (in his own work, at least). The middle-range is seen as holding an opportunity to assist in the resolution of (often unnecessarily) opposing pairs - for example, 'high' and 'low' structure, change, methodology - by fusing the strongest/best aspects of each 'position'. Likewise, the adaptations and innovations developed in this thesis are oriented toward synthesis, enabling new and unique combinations and configurations that transcend the limitations previously extant. By 'cutting across' the often artificial demarcations of descriptive/discursive/categoric 'planes', a synthesising approach to theory creates 'new space' for theory-building, and might open a way to 'unthought-of thoughts'.

#### 4.52 Methodology

A central requirement of middle-range thinking is that researcher decisions be made clear in the construction of methodology. This section discusses my own aims and biases, and explores how these might affect the practice of research. It clarifies the character of my personal 'presence' or reflection in the research, and shows how research interpretations are drawn.

Something of my own intent in pursuing this research should be spelled out. I am guided by three key and related motivations. They are; first, to contribute to the creation of a unified and sustainable global civilisation. I select and interpret research problems according to this imperative. Second is a belief in the importance of actor choice (or 'free will') in the reproduction and regulation of social relations. This leads me to explore the potential role(s) of voluntarism to serve sustainability goals. A third idea - that the public good potential of voluntaristic tools can be (unnecessarily) undermined by self-seeking, separative, and ideologically/politically motivated forces - bring a harder, more critical edge to the research. The character of my personal motivation to research can be seen in the exploration of idealistic themes, but with a pragmatic scope. Table 4.1 below summarizes important methodological choices made in the framing and conduct of the research.

Table 4.1: Clarifying the foundations of the long project

	Why is research being done?	What is hoped the research will achieve?	Where is the research being conducted?
<b>Key research assumptions</b>	Researcher purpose	Research questions/issues	Research context
<b>Stated as:</b>	<p><u>Primary aim:</u> Contribute to the creation of a unified and sustainable society</p> <p><u>Secondary aim:</u> Enhance understanding of the potential of self-regulatory approaches to achieve public and private goals</p>	<p>[1] <i>Understanding self-regulation via the EMS approach</i></p> <p>[2] <i>What is the potential of self-regulation vis a vis public and private goals?</i></p>	<p><u>Micro:</u> ISO/TC207 SCs 1,3,5,FVTF; NZSSG; Environment Waikato RUG; WEBN.</p> <p><u>Macro:</u> Key actor opinion on NZ env-policy/regulation [mkt, state, assocs, civil-soc].</p>
<b>Character</b>	<p><u>Primary:</u> Idealistic</p> <p><u>Secondary:</u> Pragmatic-applied; Critical</p>	Object-oriented/pragmatic	Practice-oriented - varies with levels of detail and theorizing

Being clear about behind the consciousness of the researcher is important in the research process. There is a gulf between the lived reality of the phenomenal world and its interpretation by the researcher. In the case of this research, the researcher must maintain a persona as an ‘observer’, while also participating in the ‘real-life’ processes so observed. Questions of methodology must help clarify how researchers, as knowledge seekers, and the phenomena being studied might be so differentiated as to support the generation of valid knowledge. It is suggested that some amount of neutrality on the part of the researcher is called for.

Some guidance on researcher neutrality is found in the ideas of the middle-range. The theory supports an approach to maintaining neutrality, premised as it is on the always contingent nature of research findings. It is suggested that interpretations of both theoretical and empirical findings be left open in the conduct of research, and all that should ever be claimed for them is that they ‘contribute to the construction of a skeletal framework’. At some point, of course, the skeleton must become ‘solidified’ - or *fleshed out* - and something must be made of the findings and

interpretations, in order for them to qualify as knowledge. Even here, ‘truth’ is not claimed; instead, the theory produced is characterised as one view among the many possible, albeit a very well researched and constructed one.

This research was conducted in ways intended to promote researcher neutrality. Two examples serve to illustrate. The first arises in participation in ISO/TC207-related contexts. My prime goal is to contribute to sustainability. At the time of entering the phenomenal context, I had no clear idea of how EM standardisation might serve sustainability goals, therefore no attachment to any one potential position, interest or outcome over any another. As the project progressed (from *short* to *long*), and the ways that the sustainability-potential of TC207 outputs are constrained became increasingly obvious, it became appealing to support, in my role as a country representative, certain positions perceived personally as more sustainability-oriented, over others in standards development and/or voting. However, in NZ, conventions and guidelines governing participation in ISO-related are very strict on this subject. Participants in all ISO-related activity are bound to support positions/s developed within the country, personal preference is strictly proscribed, and participants are responsible for input and votes made on the country’s behalf. Added to this externalised system of checks and balances is my own internalised bias toward ‘letting the cards fall where they may’. That is, the challenge of the research is sufficiently compelling of my attention to preclude attempts at subverting the ‘natural’ course of events in the world-context (ie events as they would occur if I were not present).

A second example illustrative of the measures taken to preserve neutrality can be seen in the construction and conduct of the second empirical phase of the research (which described in more detail below). This part revolved around collecting views from selected representatives of business, government, NGOs, associations, and community-based movements on EM standardisation, in the light of a (skeletal) model of social regulation, as outlined in chapter 7 below. The model is grounded in an intensive and broad study of environmental regulation (covered in chapters 4-6), which concludes that a very wide range of social actors engage in what can be described as ‘environmental/sustainability regulation’. There are, of course differences in types of regulation employed, and in their rationales and applications. One corollary of this is that there is no such thing as a ‘bad’ form of social regulation; only inappropriate application. In addition, it was found that regulation (or, for that matter, self-regulation) functions via certain *combinations* of action by different actors. Consideration of these points freed me - to an extent - from pre-judgement as to what types of regulation might be ‘preferable’ or not, in pursuit of

environmental and sustainability goals. Since all actors relate, interact and regulate in the phenomenal milieu, certain types of regulation could not be singled out (by this researcher anyway) as any more or less significant at the level of the 'macro' social-system.

#### 4.53 Change

While positivistic-reductive approaches might call for strict means-ends separation and seek to restrict researchers to objective, descriptive analysis, and Marxian perspectives might call for a radical revision of the status quo (Chua, 1986; Laughlin, 1995), I am comfortable with a 'medium-level' approach to change (cf. Laughlin, 1995; Van Peurse, 1999). Two factors contribute to this attitude. First, my own personal evaluation of the needs of sustainability encourage a view that very many things may need to change in order to achieve a social order capable of indefinite duration in conditions of increasing volatility (although I am not so arrogant as to presume exactly *which* things need changing, by how much, and in what direction/s). And second, the findings of the short project suggest both limitation and scope co-exist in conventional approaches to EM and regulation, in terms of supporting sustainability. Together these considerations point a way to both the possibility of radical change to present structures and practice, and retention of elements of the status quo. That which might be retained and what should be changed was not altogether clear at the conclusion of the short project; hence the need for flexibility and an exploratory attitude toward change potential.

#### 4.6 Supporting correspondences between theory development and the phenomenal world

This section assesses how methodological considerations as discussed above can be applied to the research. It aims to bridge from an abstract discussion of methodological issues to the more practical, 'nuts and bolts' problems of entering and making sense of empirical contexts. The discussion below is structured in four parts. Considered first is the role of methodology in maintaining coherence through the life of the project. The second part outlines the contexts relevant to the research. The third part discusses how these contexts might best be theoretically apprehended. A clear understanding of the points above is necessary to help develop an appropriate method for entering such contexts and emerging with valid knowledge; which is covered in the fourth part of this section.

#### 4.61 Assisting project coherence

Methodology must assist in, or enhance researcher ability to develop, hold, amplify or otherwise edify an argument or line of theorizing (Guba & Lincoln, 1994). The research described in this thesis makes great demands on its methodological framework; it must be able to cope with input from diverse sources, yet be helpful in integration; it should produce raw material for building on high level theory, while providing for empirical 'collection' in often mundane and pragmatic situations. And it must be able to assist in drawing out appropriate inferences and strands from observations and impressions gathered from the often very different world-contexts 'visited' in the course of the research.

The activity of research, in line with middle-range thinking, is guided by a methodological stance which sees research as a processes of 'knowledge distillation' rather than 'extraction' of facts from a platform of neutral observations. The methodology allows for a more-or-less organic process of 'knowledge accretion' in the research, with each observation from each context adding to a broad and inclusive theoretical construct. Of course, an accretive approach requires researcher interpretation as to what in the phenomenal world may or may not be significant to the research.

The research described in this thesis takes place over a period of several years, and within a number of contexts. The end result of this work is quite complex. The methodological construct developed in this chapter helps support the process of theory development.

#### 4.62 The phenomenal context of relevance to the research

One of the main shortcomings in the ability of the short project methodology was a limitation in its view of the contexts of relevance to the research. A singular focus on ISO/TC207 makes sense in terms of finding out about the history and development of the ISO14000 series of standards. However, if more is to be learned about the applications and potentials of EMS (and other voluntary approaches), the scope of research must be likewise expanded. The list below outlines some areas an expanded project must take into account the following areas;

- a. Environmental Management (EM) - tools, techniques, and practice;
- b. Management systems;
- c. Standardization - development, administration and conformance assessment;

- d. Corporate governance;
- e. Corporate social responsibility (CSR);
- f. Environmental law and regulation - ie by the authority of the state;
- g. Regulation by extra-state bodies - eg standards setters, NGOs;
- h. Economic theory and voluntary/incentive based means of producing public goods;
- i. Sustainability/sustainable development.<sup>57</sup>

#### 4.63 Understanding phenomenal contexts

It is one thing to produce a list of relevant contexts, and quite another to understand their properties, why they are relevant, and how they may interrelate. For example, the experience of the short project showed that the work of ISO/TC207 impacts on a much wider range of actors and institutions than convention might admit. The properties of, and interrelationships between the contexts noted above are not well described in the literature, and must be explored more deeply before a plan for empirical engagement can be developed.

The phenomenal world-contexts to be researched are multifaceted and difficult to describe with precision. Middle-range views suggest that the construction of ‘skeletal’ and contingent understandings of the context to be entered in the research process will help in such conditions. Just such a ‘picture’ was abstracted as a lesson from the short project and is outlined below.

The context of the research is conceptualised as consisting of several *planes*. A ‘plane’, in this sense, is an abstraction or assumption about the activities, states of being, or conditions prevailing in the empirical context of the research (see Figure 4.1). One plane can be seen as relating to private/market/corporate activity and another to state/government.<sup>58</sup> Activities are undertaken ‘within’ or ‘on’ the planes at ‘macro’ and ‘micro’ levels; so ‘states’ may be said to act at local/decentralised or institutional/centralised levels, and ‘markets’ may be seen to function equally at the levels of both the individual business or an intra-nation economic sector, or globally via the actions of giant transnational corporations.

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<sup>57</sup>It should be noted that the scope of the short project explicitly considered points (a) - (c); and only touched briefly on points (d), (f), and (h).

<sup>58</sup> The basic distinction or schism here is between *public* and *private*; Policy, interests, goods, serving institutions, rules, regulations, and so forth.

Figure 4.1: Early picturing of the phenomenal context: abstractions of market and state as *planes*

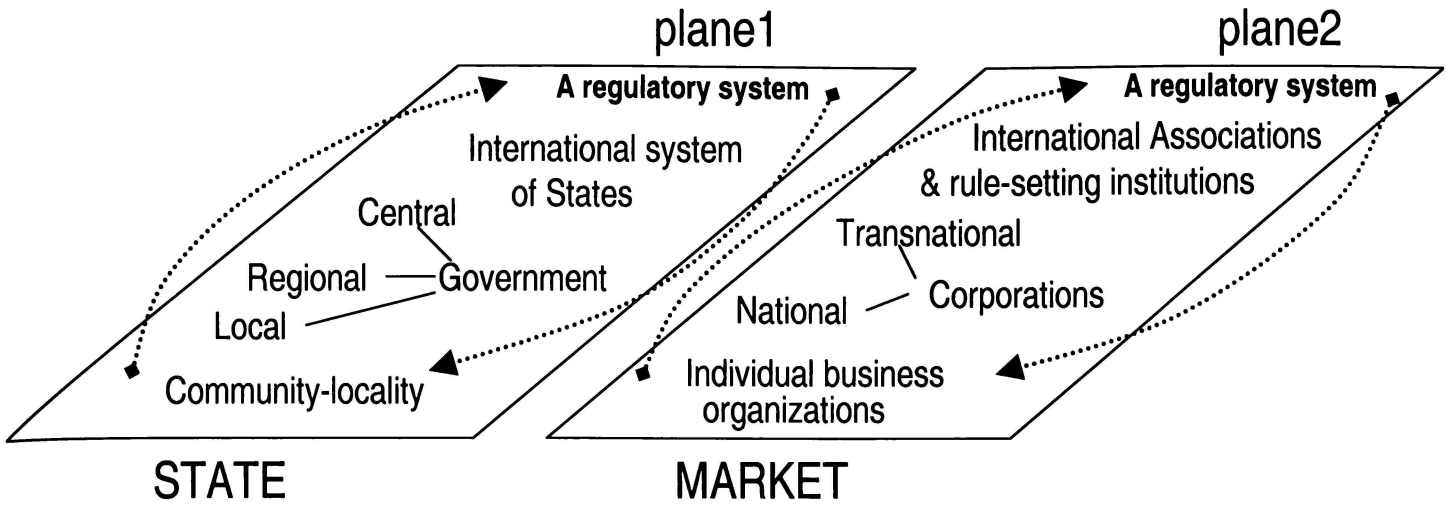
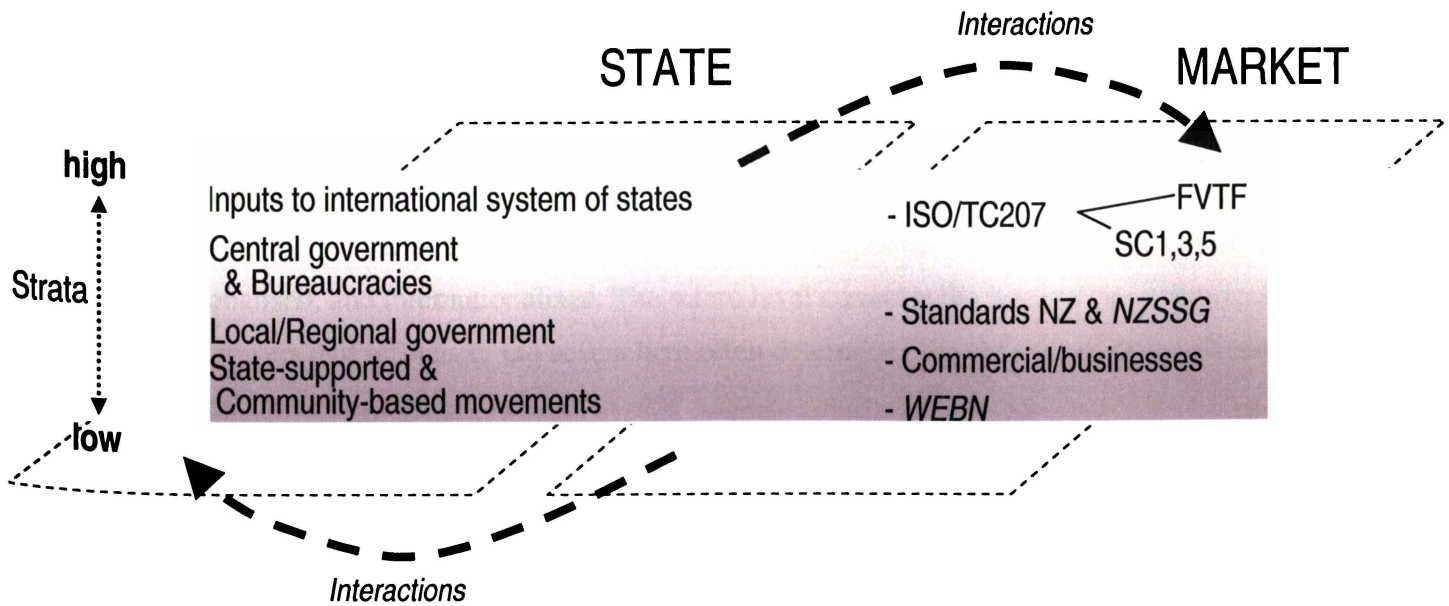


Figure 4.2: Filling in depth: Context and inter-plane interactions



The appellation *plane1* refers to a realm of state-praxis. In this realm, relevant institutions, activities, and processes should help determine and filter the environmental preferences of individuals and communities (ie in the public interest), translate them ‘upward’ to regional governance (in NZ this includes, District and Regional Authorities etc), and to writers of legislation. The judiciary and bureaucracies interpret and enforce regulations. Action in this realm, extended to include relations between nations, may include national activities or positions on matters of global concern (eg environment, the global commons: atmosphere, ocean), and contributes to the evolution of an international regulatory system. Power and political process are key here, and determine the logic, ideology, interests, and views incorporated in regulatory rules.

The construct *Plane2* refers to a realm ordered by the ‘discipline of the market’. In the ‘market’ it is generally assumed that action is (principally) directed by the profit motive, and the preservation of private interests is of crucial concern to associations responsible for drafting rules governing business and trade globally (Friedman, 1995; Aglietta, 1986; Wallerstein, 1972). Relations are enlivened by commercial interests, and involve individual business managements, corporations, and sectoral interests. Competition is the most recognised ordering principle (see, for example, Schmitter & Streeck, 1985), but certain forms of cooperation - for example, rules for trade, electronic interconnectivity, industrial specifications and measurement systems, professional standards and codes of conduct - are essential requirements to ensure planar coherence.<sup>59</sup> Cooperation is facilitated by often powerful trade associations and non-government organisations (NGOs) - such as ISO, the World Trade Organisation (WTO), the UN, and others - which together, constitute a formidable international regulatory system.

Actor activity ‘on’ each plane is ordered according to ‘where’ they take place in the *strata*, ie whether they take place more at *macro* or *micro* levels (see Figure 4.2). The distinction between macro and micro is not absolute or concrete, but more of a continuum. The macro level implies larger-scale influence, enabled by aggregated interests, power and actors. Actors are more institutionalised, and internationalised. The micro level connotes the level of the individual and smaller powers and influence; but action here often determines the efficacy of policy dreamt of at ‘higher’, more aggregate levels.

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<sup>59</sup>Or in other words, to ensure commercial systems function in intended and fruitful ways.

Applying the strata concept to research-relevant world-contexts (ie planes 1&2), an order can be inferred as follows: Plane1 (state); at the 'lowest' level are posited concerned individuals, groups and/or movements which seek to focus the attention of others on particular issues of concern; movements may seek recognition from the state, and if the issue in question is sufficiently identifiable with the broader 'public interest' (eg environmental protection/improvement, ecological and social forms of sustainability), the state may agree to take up, or otherwise support the development and/or resolution of the issue (see, for example, Ogus, 1994; Fisher, 1995). As state-based entities become involved in the process(es) of addressing the issue, responses become more rule-based and formalistic, and middle-levels of government (eg local and regional government) and the functions and powers of the bureaucratic complex are invoked. As certain issues are deemed sufficiently important at the international level (relevant examples are ozone depletion, global warming, sustainable development), states interact at a the highest levels to negotiate bi- and multi-lateral treaties and agreements.

In Plane2 (market), the strata of concern to the research is illustrated by a short analysis of the workings of ISO/TC207. TC207 is comprised of actors (deemed 'technical experts') mainly from commerce and industry, but also from government and educational sectors (SNZ, 1995; ISO, 1993). The development process for standards generally follows this process: (a) practitioners in industry develop certain tools and techniques from practical experience; (b) those tools and techniques found to be useful in the coordination of industry activities, interconnectivity of products, or perceived within industry to be sufficiently beneficial for widespread use may be chosen as candidates for standardisation by standards bodies (such as ISO); (c) the interests of ISO member countries on proposed standards (or subjects for standardisation) are assessed and weighed via national processes, involving meetings among industry representatives and interested parties, and national positions are distilled and stated in form of policy resolutions/decisions to be taken to the international level; which is formalised by (e) discussion and voting by national members on standards content in ISO forums.

This section discusses the role of methodology in supporting the process of research, expands the context of the research and notes some characteristics of the context, in an exploratory manner. With these points now made, the discussion proceeds - in the next part - to consider which research methods might be appropriate to the project; that is, to assist researcher entry into empirical contexts, and to support the generation of valid knowledge.

## 4.8 Discussing method: collecting valid information from the empirical domain

The middle-range is now an accepted, if still controversial methodological approach (Laughlin, 1997; Van Peurse, 1999). However, a problem facing researchers seeking to use it to inform their work, as Van Peurse (*ibid*) points out, is that it alone, 'does not provide enlightenment as to appropriate techniques [ie methods] to carry it out' (p420). However, the wide domain of qualitative research practice embraces an extensive range of methods, including case study, personal experience, introspective, life story, interview, observational, historical, interactional, visual texts, and participant observation; many of which are consistent with the middle range, and in line with the demands imposed by phenomenal world-contexts (Denzin & Lincoln, 1994:2;13). The aim of this section is to outline the empirical programme of the research, discussing first the 'multimethod' approach developed, moving to briefly describe each of the methods used, and concludes by overviewing the empirical programme, conducted in the period 1994-2002.

### 4.81 A multimethod approach

The choice of method, or methods, involves matching the demands of three dimensions of research; *context*, *purpose*, and *information* sought (Brewer & Hunter, 1989). To clarify in the case of this research: the context is ISO/TC207 and related sites (micro-context), and the practice of environmental/sustainability regulation in general (macro-context). The purpose of the research is mentioned above (esp. in s.4.52), and revolves around (a) making a contribution to the creation and maintenance of a sustainable society, and (b) assessing the potential self-regulation in the achievement of sustainability. And the research seeks information on actor behaviour, explanations for same (eg motivations and logic), and processes and outcomes of regulation (at micro and macro levels). This is a complex and demanding set of requirements, and no one method is capable of fully meeting all of them. Hence, after Brewer & Hunter (*op cit*), a 'multimethod' approach was developed for this research. Inherent in this approach is a recognition that while individual methods may have flaws, the flaws in each are not identical. So for example, where observation of human subjects may prove susceptible to the values and biases of the researcher, findings generated in this way may be subject to verification, or support by other means, such as direct questioning, or experimentation (*ibid*; Guba & Lincoln, 1994; Birley & Moreland, 1988). Strengths of each individual method may be combined; for example,

*combining* the observations with interviews may actually increase the validity of the findings because one method may turn up findings which can be explored by the other (Kellehear, *op cit*:10; emphasis in original).

In this way, information on the phenomenal world being studied is ‘triangulated’ in expectation of yielding stronger conclusions. The multimethod strategy used here seeks to,

*attack a research problem with an arsenal of methods that have nonoverlapping weaknesses in addition to complementary strengths...*For if our various methods have weaknesses that are truly different, then their convergent findings may be accepted with far greater confidence than any single method’s findings would warrant. Each new set of data increases our confidence that the research results reflect reality rather than methodological error (Brewer & Hunter, *op cit*:17; emphasis in original).

Hence, one method can be used to augment another. Even the finding of divergent results may have positive results, since; ‘[t]hey signal the need to analyze a research problem further and to be cautious in interpreting the significance of any one set of data’ (*ibid*).

There are three key problems in designing multimethod-informed empirics; the first is to develop a systematic programme of empirical inquiry; second is to choose methods appropriate to the methodology, the research context(s), and the purpose(s) of the project; and the third is to devise ways of integrating those methods, such that valid and defensible results are produced. These issues are addressed next.

#### 4.82 Overview of the empirical programme

The empirical content of this research is generated in two main phases, differing according to the context and nature of researcher engagement. The three-part first phase is focussed on ISO/TC207 processes, and the development and use of ISO14000, and is informed by participant observation method, augmented by document analysis and actor interviews (Denzin & Lincoln, *op cit*; Jorgensen, 1989; Kellehear, 1993). The second phase is based on a programme of interviews with actors participating in the ‘real world’ of environmental regulation (Denzin & Lincoln, *op cit*; Guba & Lincoln, 1989; Bollens & Marshall, 1973; Birley & Moreland, 1988; Cicourel, 1964). The two phases are introduced below;

- (1a) *Involvement in ISO/TC207 and related fora (1994-2002)*. This is the empirical foundation of the short project, but also extends in time (ie longitudinally) to support the thesis overall. The emphasis here is fourfold; (i) on gaining an overview of standardisation processes and influences in the development of the ISO14000-series of standards (esp. ISO14001); (ii) on gaining an ‘inside view’ of said processes and influences; (iii) on building up a picture of the ‘evolution’ of the EM standards; and (iv) on gathering information about the use(s) of EM standards/other voluntary initiatives in practice;
- (1b) *Involvement in strategic development in the ISO/TC207 Future Vision Task Force (2001-2002)*. This caps my experiences in TC207, enabling insight into planning, policy and strategy-setting at a high level. This phase of the empirical programme supports the testing<sup>60</sup> and evolution (edification) of a process model of self-regulation as developed in chapter 4 below. It also enables insight into the (not uniform) views of participants on the function, purpose, and direction of TC207/ISO14000;
- (1c) *Work with Environment Waikato regulatory/enforcement section (Resource Use Group) on the recognition and use of voluntary instruments - and ISO14001 in particular - by state-regulatory authorities (1996-98)*;
- (2) *Seeking input from participant-actors in environmental regulation (2001)*. This phase of the empirical programme focussed on gaining information and perceptions on the social regulation of environmental/sustainability objectives and action from a broad range of active participants (actors) in the phenomenal world-context.

The principal methods used are; participant observation and interviews.

#### 4.83 Participant observation

Observing the relating, negotiating, and decision making behaviours of humans in specific contexts connected with the development of voluntary instruments for the management of

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<sup>60</sup>The term ‘testing’ as used here is meant less as a rigorous ‘true/false’ test, as may be employed in many positivistic methodologies, and more as an assessment of the ‘fit’ between the model and the process(es) used in the ISO/TC207 *FVTF*.

environment and sustainability is the basis for the first phase of the empirical programme. Observation, as Shipman (1997) notes, is the basic and ubiquitous technique for researchers in the field;

It is our usual way of obtaining information, requires no necessary instrumentation and is endlessly fascinating. It seems ideal for developing theory grounded in evidence, is unlikely to disturb the natural situation...and enables us to detect even the most subtle clues in human interaction (p71).

The researcher observing the behaviours of humans must systematically analyse the occurrences observed to find patterns and to link them with methodological concepts in order to build a deeper understanding about the situation (Bollens & Marshall, *op cit*:35). The researcher, when employing observation as a technique, must determine how close he or she is to get to the context and behaviours being observed. Hammersley & Atkinson (1983) suggest a range of degrees of researcher involvement, ranging from complete detachment to deep involvement; a. *complete observer*; b. *comparative detachment*; c. *objectivity and sympathy*; d. *comparative involvement*; e. *subjectivity and sympathy*, and; f. *complete participant*.

It is useful to note that these are not seen as hard-and-fast distinctions, but a schema more properly to be conceived of as a continuum. In addition, the observation style adopted by the researcher may vary between degrees of involvement, depending on conditions encountered during fieldwork.

The contexts to be researched in this project are specialised and generally inaccessible to more 'objective', arms-length approaches, and participation as an actor is one of the few means of gaining access to them. Hence, using the scheme above, the observation styles most used in phase one of the empirical programme are *comparative detachment*, *comparative involvement*, and *complete participant*. These three are grouped and discussed together under the broad rubric of 'participant observation'.

To Jorgensen (1989), the participant observation methods are built on a 'logic of discovery', a process which seeks to investigate concepts, generalizations, and theories which are grounded in contexts created by experienced human reality. Participant-observation, 'encourages the researcher to begin with the immediate experience of human life in concrete situations and settings, and make the most of whatever opportunities are presented' (*ibid*:18). The approach,

requires that the researcher become directly involved as a participant in people's daily lives. The participant role provides access to the world of everyday life from the standpoint of a member or insider...[it] is a very special strategy and method for gaining access to the interior, seemingly subjective aspects of human existence (*ibid*:20-1).

Participant observation requires the researcher become *part* of the activity he or she is observing; therefore the approach implies an *immersion* in the activity or behaviour being studied, in an attempt to see the world the way the subjects of research see it (Bollens & Marshall, 1973; Peshkin, *op cit*). Participant observation, as an approach which aims to gain first-hand experience of the phenomena being studied, or 'lived', can be classified as more-or-less 'unobtrusive', as opposed to approaches which gather 'reported' information, such as interviews, questionnaires, manipulative experiments, and tests (Kellehear, *op cit*:5). As such, participant observation seeks to assess the 'actual' behaviour of actors, as observed in their 'normal' contexts, rather than relying on actor reports of their behaviour. The close involvement implied, 'can enable the researcher to uncover meanings and motivating factors that the more objective (external) observer might well miss' (Birley & Moreland, 1988:52).

The strength of this approach is that it makes human behaviour - in contexts normally closed to remoter scrutiny - more likely to be 'revealed', by privileging the researcher with the status of an insider. The two key assumptions underlying the logic of the approach are; (a) that the human subjects under study will be more inclined to show their 'true' selves to a 'researcher as colleague' (or at least be less on their guard against revealing too much to an 'outsider'); and (b) that the researcher, by virtue of an 'insider status', may gain access to contexts normally hidden to more arms-length empirical approaches. With participant observation, the researcher's involvement may be *overt* (ie with the knowledge of insiders), or *covert* (ie without the knowledge of insiders), or some combination, where selected insiders are aware of the researcher role being played simultaneously (Jorgensen, *op cit*:21).

While there are good reasons to conduct fieldwork by close involvement in the context being researched, it must be borne in mind that observing as a participant carries with it certain risks. These are classified as; subjectivity (Lincoln & Guba, 1994; Chalmers, 1982); representativeness; researcher effect on actors and context (Brewer & Hunter, 1989); and, potential for role conflict (Peshkin, 1988). These issues and steps that can be taken to mitigate them are discussed in turn below.

Observations, like any sort of sense data, involve interpretation on the part of the researcher. Events situated in social contexts are not perceived identically by everyone. Our perceptions of the world are structured by our attitudes, beliefs, values, prejudices, expectations and through learned mental models (Chalmers, 1982). Hence, researcher determination of 'what is happening' in the field is problematic, especially in complex situations. Additionally, the researcher in observing and inferring - that is, in making *an* interpretation of an event - is unavoidably selective, and simultaneously closes off other possible explanations;

The social researcher in a natural setting is particularly at risk while observing. The conviction that reality is socially constructed means that truth is relative. The search for key episodes that will serve as grounds for theorizing further increases the incentive to see selectively (Shipman, 1997:71).

The participant observer has two main choices; first, to seek the 'holy grail' of neutrality; by for example, surrendering any personal interests in the situation being studied (see Peshkin, *op cit*). The second possible choice is to embrace the inevitability of selectivity and subjectivity. Shipman again:

But the selective nature of observation is universal. A Marxist will see class struggle not just in history, but in everyday life...To some contemporaries, particularly in academia, the whole world seems to be deconstructing. Fashions change, but our current theories tend to determine what we see (*op cit*:71).

In practice, the researcher as participant does both these things. He or she brings to the context 'two selves', in the terminology of Peshkin, 'the human self that we generally are in everyday situations, and the research self that we fashion for our particular research situation' (*op cit*:270).

Like an espionage agent, a participant observer must function simultaneously in two frames of reference: he is an insider who must still maintain his ability to see the phenomena from the outside, and he must constantly guard against both aversion and overidentification' (Bollens & Marshall, *op cit*:36).

#### 4.84 Using a participant observation approach in ISO/TC207

With the above thoughts in mind, the discussion now deliberates on the application of a participant observation approach in ISO/TC207. The first thing to consider is the possibility of researcher influence on the research context. ISO and Standards NZ documentation and practice make it clear that representatives to TC work are first and foremost ‘transmitters’ of national interests and preferences, as determined in national-level processes (such as NZSSG meetings). Personal bias and/or conflicts of interest on the part of representatives are guarded against by ISO processes and vigilant delegation management (see, for example, ISO, 1998; SNZ, 1995). My personal role and status within the activities of the NZSSG and NZ delegations was constrained by the rules referred to above. Further contributing to the distance between myself as researcher/observer, and the activities of TC207 (esp. between 1994 and 1996) was the NZSSG decision to designate me as a ‘technical expert’, which permitted participation but did not allow me to vote on proposals. To these two ‘protections’ can be added my careful preparations, my thoroughness of methodological development, and my openness about my research practice with all who participated in my research. I expended considerable efforts in TC207 to maintain distance from my role as participant/representative and researcher.

#### 4.85 The interview programme

The interview programme was based on a programme of 21 semi-structured interviews with an extensive range of expert stakeholders - including regulators at the central and local levels, environmental managers and consultants, politicians, academia, standards developers, and interest group representatives.<sup>61</sup>

In the discussion above, an initial theoretical view of the varied contexts to be researched (based on the work of the short project), is developed to help inform choices of method. The discussion acts as a bridge between the more abstract discussion on methodology, to a ‘nuts-and-bolts’ programme for researcher engagement in empirical domains.

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<sup>61</sup>A list of interview participants, along with copies of interview transcripts is given in Appendix 2.

#### 4.9 Integrating methodological factors in thesis construction

The research enterprise [is] an investigation which takes place partly in the head, partly in the library, and partly in the field' (Kellehear, 1989:5).

The function of the empirical work to be done in this project is to support the development of new theory, which is then used to answer the research question. With the multiplicity of empirical sources used in the project, some sort of iterative approach is needed, where the findings of each foray into the empirical context can be 'downloaded' or sublimated into a theoretical structure, so that it 'grows' - in terms of complexity, depth of analysis and explanatory power - over the course of the project. Theoretical and empirical work is woven into the theory-building process, in often quite organic ways, to form the more integrated, 'edified', and 'whole' theory found at the conclusion of the thesis.

It should be noted that the research process undertaken demanded much from the researcher, combining as it did, professional involvement and work in standards development at national and international levels - as a technical expert and at high or 'responsible' positions<sup>62</sup> - and 'purer' or more arms length activities usually associated with more 'academic' roles. The abstractions as developed above proved invaluable to help structure researcher thought and guided understanding of the myriad different actions, perspectives, jargons, assumptions and ideologies contributing to, underlying, and driving situations being observed. By helping maintain a 'global' perspective, I believe that the methodological approach developed here helped enhance my value as both technical expert and researcher. In addition, it proved vitally important as foundations for the theorizing developed in subsequent chapters.

The earlier discussion of general and specific methodological issues is seen as important insofar as it informs the conduct of the research and the construction of the thesis. All the elements

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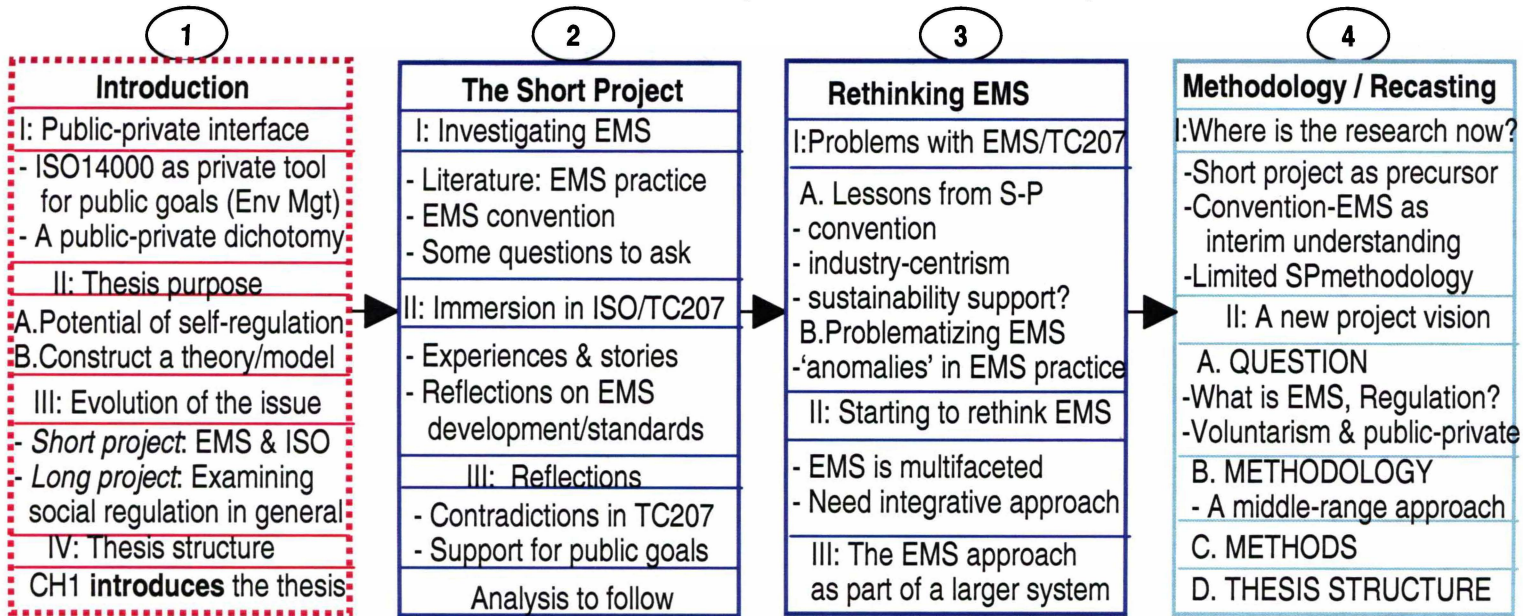
<sup>62</sup>In the period 1994-2002, my professional participation involved, but was not limited to the following: *National level*; NZSSG meetings, seminars and conferences; professional activity and involvement in industry circles; *International level*; ISO/TC207 plenaries, meetings of Subcommittees, Working Groups; Task groups, Future Vision Task Force. All relations, communications and interchanges that took place in the relevant period whether personally or remotely, in writing or verbally, were conducted in line with conditions and recommendations laid out in pertinent NZSSG/SNZ/ISO guides (see, for example SNZ 1994; 1995; 1995a,b; 2000; ISO, 1991; 1999).

covered thus far are woven together below to form the internal structure, direction and overall narrative of the thesis.

#### 4.10 Summary of the chapter

This is a key chapter in the development of the research. The project is extended past its original parameters in order to support further research. This chapter considers the methodological issues arising from such an extension. A new methodological framework is developed to assist in meeting the unusual challenges of the project. 'Middle-range' thinking is favoured for its support for innovation and creativity in research. A plan is developed to support further theorizing about EMS, self-regulation and their roles in environmental regulation. This will involve the creation of 'skeletal' theories, which will be subsequently fleshed-out, and made more 'whole' via further empirical investigations. The scope and detail of the empirical investigation is expanded also. The following chapter recommences the investigation into EMS, informed by the expanded research framework developed above.

Figure 4.3: The thesis at a glance



## **CHAPTER 5:           Expanding the context of research: what is regulation, who regulates, why and how?**

### 5.0     Introduction

The analysis of the short project indicated that the potential of the EMS approach to address both private interests and the broader public good is undermined by poor understanding of both the approach itself, and of the social, political and economic contexts within which it is developed and applied. The analysis made a start in improving said understandings, and indicated that more could be learned by examining regulatory and policy aspects of the makeup and use of EMS. This chapter builds on that argument, to expand the conceptual foundation for the newly revised research project.

### 5.1     Purpose and structure of the chapter

The purpose of this chapter is to develop a broader picture of the context of relevance for the research. The starting point for the discussion is a suggestion that research of the EMS approach might usefully be progressed by thinking about its regulatory dimensions. This is an unusual approach, but precedent can be found in conventional thinking (although it is slanted more toward seeing EMS as *self*-regulation). Literatures on regulation are reviewed in an effort to cast more light on EMS, voluntarism and their roles in wider regulatory contexts.

The chapter is structured in two parts. The first part explores concepts of regulation to assess the potential usefulness of this line of reasoning. The discussion shows how the EMS approach is used in variety of regulatory systems. It is suggested that there are strong regulatory elements in the EMS approach.

The second part of the chapter makes a start in developing a deeper understanding of EMS by examining the larger regulatory context. It addresses the questions of *who regulates* and *how* via an examination of literatures on regulation. The investigation uses Streeck & Schmitter (1985) conceptual model of *modes of regulation* as a theoretical starting point for an exploration of concepts and practices of regulation, and especially regulation of the environment. In the discussion, regulation is seen as both the outcome and the process of interactions between a complex system ordered by modes: state, market, community and association. This analysis forms

the theoretical basis for the modelling of chapters 6 and 7 below.

## 5.2 Investigating regulation

This discussion explores more deeply the nature of regulation, and especially regulation as applied to the environment. The intent here is to expand the terms of reference for an investigation into the still-unanswered question of ‘what is EMS’?

### 5.21 Introductory comments on the nature of regulation

Literatures on regulation tend to concentrate on regulation as intervention by governments in social and economic relations. Typically, recourse is made to the following justifications for such intervention; the control of monopolies; the control of economic rents or ‘excess’ profits; to ‘correct’ market failure in provision of public goods; to ‘correct’ information deficits in markets; establish conditions for the definition of and enforcement of property rights and contracts and; the control of externalities (Breyer, 1982; Ogus, 1994; Hollingsworth *et al*, 1994). Grounds for regulation of the environment typically call on the last point mentioned, but significantly, can potentially fall under each of the categories above.

The justifications above rest on the maxim of protection of the ‘public interest’. A *naive* view sees the government political and bureaucratic apparatus - the ‘embodiment’ of the state - as an agent of the ‘public’ or of society in general. The state is assumed to have no interests of its own, and wields power and acts to control the actions of those favouring private over public interests to the detriment of the latter (Anderson, 1994). More sophisticated perspectives add to this understanding by, for example, inquiring into cooperative and/or collusive behaviour by regulators and subjects of regulation (Breyer, 1982); and examining motivations of regulators. Public choice theory, for example, sees public and political decision-making as motivated by the same individual material self-interests as impel private decisions (DeJasay, 1990). Thus, such public interest as can be said to exist is best served by a regulatory regime(s) aimed at constraining the self-seeking of individuals within the regulatory apparatus. More recent and fashionable developments of regulation theory certainly shed more light on relations within the state and between it and other parties, but the view of regulation as the tool of the state-as-agent for the public *against* private interests persists.

Relations between parties subject to environmental regulation based on this conception can be seen to pivot on two sets of polarities: *public* <—> *state* and *state* <—> *private interest*.<sup>63</sup> The former is virtually ignored in the literature on environmental regulation, except in references to varieties of governance, in which it is generally assumed that the public interest is served adequately via democratic formats such as elections, assorted constitutional safeguards, and occasionally, by formalized expressions of community will, such as large-scale protest and petition (Ortolano, 1997).

By contrast, discourse on the second polarity set dominates the literature. Neo-classic economic perspectives, for example, decry ‘excessive’ compliance costs, discuss the manifold inefficiencies and general ineffectiveness of government regulation, suggesting instead much increased use of incentive-based economic instruments and various forms of corporate self-management (Cairncross, 1991; Schmidheiny, 1992; Beder, 1997; OECD, 1991; 1993). It is evident that state-market environmental-regulatory relations have come to exhibit an ‘us-and-them’ form of polarity, in the light of which private actors have come to see regulation as something that is done *to* them. In the war of discourse that has subsequently developed,<sup>64</sup> coercion, prescription, and command-and-control are the pejoratives many ‘free-market’ advocates have coined to describe what they see - at core - as unjustifiable constraints on rights of private property.

As with all polarities, this way of conceiving breeds certain charged and antithetical mental attitudes within the general sphere of environmental regulation. By empowering one limb (eg state) of the body social ‘against’ others (eg market actors; resource users), the latter perceive disempowerment, engendering, for example, an antagonistic ‘us and them’ mentality among participants. This may be seen to result in (among other things) what can be described as a ‘compliance mentality’, manifesting itself in a reduction in inclination on the part of polluters to take individual responsibility for their own actions, focussing instead on compliance with the letter of the law, rather than its spirit. Allied to this is increased risk of fostering an ‘avoidance mentality’, where some may be encouraged to seek to evade compliance with regulations. In

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<sup>63</sup>Or alternatively, *State-Market*.

<sup>64</sup>It is probably useful to note at this point that environmental regulation, as a subset of state-regulation, has only come into existence in the last 25-30 years. This is by no means a long time, and brief enough to have seen only the beginnings of skirmishes over its legitimacy and scope.

addition, vesting powers to regulate environmentally solely in the state<sup>65</sup> sets it up for failure, making it an easy target: clearly, one limb of society by itself is unlikely to get even close to adequately addressing what are now endemic environmental and sustainability problems.

## 5.22 Introducing the idea of regulation as *relationship*

Of course, any understanding of regulation as something that is *imposed* on one party by another (ie a 'one-way street', as it were) is doomed as a explanation sufficient unto itself. The act and process of regulation should be understood as the mutable outcome or process of complex interactions between two (or more) actors or 'sets'<sup>66</sup> of actors. As one actor (or set of actors) seeks to affect the actions of another, a dimension of regulation as a 'relationship' is brought into being. Such relationships are proliferating in type and number. This is well understood by Scott Jacobs, who, despite a focus on government-initiated regulation, encourages a recognition that;

Regulatory actors and processes are crossing national, regional, and local borders, with initial caution but increasing confidence...to coordinate the design, analysis, drafting and enforcement of regulations. As a result, a web of formal and informal intergovernmental regulatory relationships is emerging (1994:15).

The issue of to whom the descriptor *regulatory actor* is intended to attach is further developed in Jacobs (1994) to include; supra-national institutions (eg European Community); international multilateral agreements (eg GATT/WTO, North American Free Trade Agreement - NAFTA; Decisions of the OECD Council); bilateral treaties and co-operative agreements (eg NZ-Australia Closer economic Relations agreement - CER), and; international standardizers (eg ISO, CEN) (*op cit*:17). Strong 'currents' of internationalization and interdependence in trade and environment (for example) has forced a new recognition of how regulatory systems have become

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<sup>65</sup>There are, of course, some good reasons for vesting regulatory powers in the state; clear lines of accountability are laid out via political processes; and coordination of action through agencies and bureaucracies ensures control in line with the wishes of the electorate as filtered through the legislature.

<sup>66</sup>That is, categories of actors possessing and/or exhibiting certain similar characteristics, motivations, features etc. Often such categories take their descriptions from the 'macro-sphere' they identify with, such as *State* or *Market* (see, for example, Schmitter & Streeck, 1985). The issue of actor 'categories' is taken up again and expanded in chapter 5.

simultaneously intertwined and expanded. Out of this analysis, a categorization of regulatory relationships emerges; (a) negotiated; (b) co-operative; (c) delegated, and; (d) semi-governmental (*ibid*: 39-42). This understanding and categorization is picked up again and expanded in the discussion on *regulation as a continuum* below.

### 5.23 Definitions of regulation

The analysis has now reached a point at which definitions of regulation may be explored in order to build a more comprehensive understanding. It should be clear by now that the concept of *regulation* being developed here is fairly broad. Of course, the expression 'regulation' is used in a number of ways, and has acquired a perplexing variety of meanings. It may be seen by some as appropriate to develop or assume tightly defined meanings and contexts of regulation; for example, regulation as an expression of legislative-bureaucratic will: "sustained and focussed control exercised by a public agency over activities that are valued by a community" (Ogus, 1994:1). From other perspectives and in other contexts, the designation may be seen as applying to, "any form of behavioural control, whatever the origin" (*ibid*; see also May *et al*, 1996; OECD, 1991; Ortolano, 1997).

In order to initiate development of a new conception of environmental regulation, it might be useful to examine general and specific meanings of *regulate* and *regulation*. The *Random House Dictionary of the English Language* defines the act *to regulate* as;

to control or direct by a rule, principle, method; to adjust to some standard or requirement (1987).

*The New Shorter Oxford English Dictionary* specifies similar terms;

control, govern or direct by rule or regulations; subject to guidance or restrictions; bring or reduce to order (Brown, 1993).

Interestingly, this approach is used in legislative definitions; for example, the exact wording as above is used in Section 17(2)(g) of the NZ Law Practitioners Act (1988) (Saunders, 1990).

References to the verb *regulate* in more specialized legal literature place similar emphasis on ‘control by use of rules’; *West’s Law and Commercial Dictionary*, for example, defines the act *to regulate* as

To fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws (1985).

*Ballentyne’s Law Dictionary* is more general;

*regulate*. To replace confusion with order. To control or direct...To foster, protect, control and restrain (Anderson, 1969:1081).

To no-one’s surprise, understandings of *regulation* derive from the definitions above, defining *regulation* as the act of regulating;<sup>67</sup>

a law, rule, or other order prescribed by authority, esp. to regulate conduct (Brown, *op cit*);

**regulation**, *n.* 1. The act or process of controlling by rule or restriction (Garner, 1999);

the act of regulating; a rule or order prescribed for management of government; a regulating principle; a precept. Rule of order prescribed by superior or competent authority relating to action of those under its control (West’s, 1985).

The often artificial, and commonly made distinction between an act intended to ‘regulate’ and somewhat ‘softer’ behaviour intended to merely ‘influence’ (especially in the commercial

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<sup>67</sup>Insight into ‘alternate’ dimensions of meaning is given in Burton’s *Legal Thesaurus*;  
*regulate*

administer (conduct), arrange (methodize), conduct, coordinate, determine, direct (supervise), discipline (control), govern (manage), operate, organize (arrange), prescribe, qualify (condition), rule (govern);

*regulation*

act (enactment), administration, bureaucracy (bar), codification, condition (contingent provision), control (supervision), direction (guidance/order), edict (customary), fiat, government (administration), instruction (direction), law, management (supervision), mandate, ordinance, precept, prescription (directive), principle (axiom), restriction, rubric (authoritative rule), rule (legal dictate), statute, supremacy (1992:891).

situations) is addressed by *Ballentyne's Law Dictionary*;

It is sometimes difficult to define the distinction between that which affects or influences and that which regulates (Anderson, *op cit*).

What exactly a *rule* might be is addressed thus;

a principle, regulation, or maxim governing...conduct...a principle regulating practice or procedure; a dominant custom or habit; accepted or prescribed principles, method (Brown, *op cit*).

While *to rule* is to;

guide, influence, manage, control, moderate or restrain; exercise or administer (some power or authority); govern, exercise authority or sovereignty over (a person or thing) (*ibid*).

Regulation is therefore understood now, and for the remainder of this thesis, as;

*any act intended to affect the behaviour of the self or others.*

While there are many permutations in meanings of regulation observable in concept and practice, they are argued to be all 'reducible' to this simple principle. The subject of variations in regulation is taken up again and expanded in chapter 6.

#### 5.24 A skeletal model of regulation as a *continuum*

This section, building on the broader contexts and understandings of regulation as given above, seeks to integrate them into a single analysis. By thinking about regulation as a mutable construct, and as participated in by many and varied parties, a concept of regulation as a type of *continuum* emerges.

Several points raised by the discussion on definitions above require clarification. First, authority and ability to regulate are not seen as necessarily confined to state bureaucracies. Any actor, given

sufficient power and/or influence can (seek to) regulate the behaviours of others, within a suitably defined scope, choosing means and instruments most appropriate for particular circumstances. Second, it allows a much wider conceptual and practical differentiation of regulation. Regulation (and efforts to regulate) can be seen as more or less *authoritative, formal, legalistic* and *binding*. Regulatory forms could be seen as applying to wider or narrower ranges of *issues, practices, actors* and *themes*. Means and mechanisms of regulation may be seen to have more or less recourse to *rule, prescription, standard, custom* or *code*. Third, it might be fair to aver that increases in the severity and frequency of criticism of state-regulation and proliferation of instruments requiring certain concessions in power (from states to market actors, for example) arise not from an inherent conflict of interest, but rather as a result of a feedback evaluation of the question of whether particular applications of regulation had the effects intended.<sup>68</sup> And fourth, regulation can be viewed as an iterative process, where at junctures in time and space (including but not necessarily limited to electoral processes), the efficacy of existing regulatory systems and components are evaluated and as a result, certain adjustments might be suggested and/or initiated. These may include shifts in legitimacy; change in parties making, and subject to regulation; increase or decrease in the variety of favoured regulatory instruments; increased inventiveness in or proliferation of regulatory schemes; or even creation of new regulatory forms, or deletion of outmoded ones.<sup>69</sup>

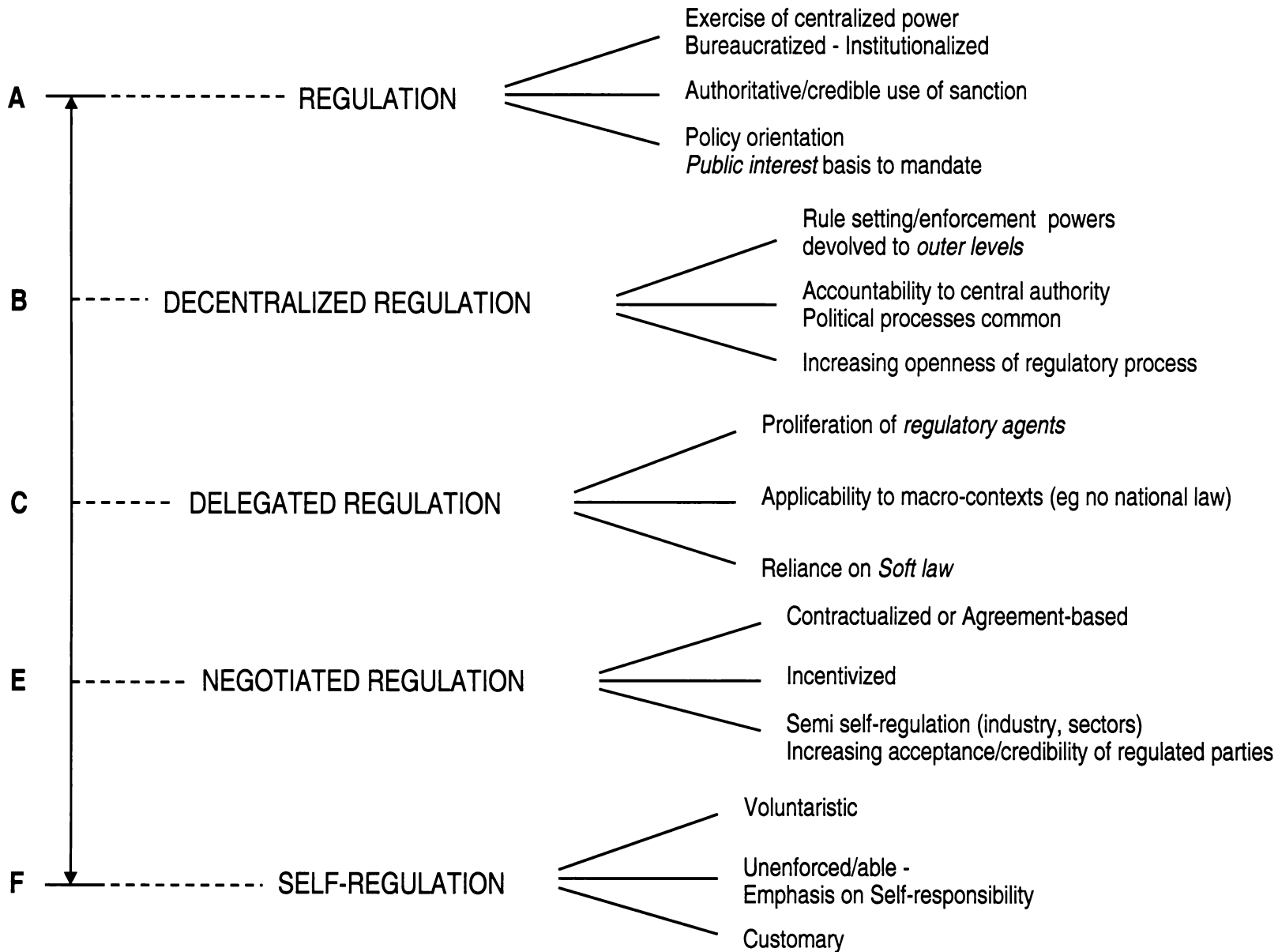
From this analysis, an understanding of regulation as a *continuum* is constructed and depicted in Figure 5.1. The first point to note in this depiction is that there are five different categories of

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<sup>68</sup>As opposed to other effects, which are generally seen as ‘unintended side-effects’, and include; a perception of loss of individual sovereignty (ie to determine one’s own disposition or ‘fate’); unhappiness with the objectives of regulation; real and imagined losses arising from coerced (regulated) actions, and; a generalized dissatisfaction arising from the imposition of the ‘will’ of one on another (see, for example, Streeck & Schmitter, 1985; Ogus, 1994).

<sup>69</sup>It should be stressed at this point that this explanation, as it stands, constitutes neither a critique of existing regulatory regimes nor an argument for change in regulatory relations. Instead, it is intended to facilitate a wider and deeper understanding of the nature of regulation as a foundation for a new perspective on environmental regulation.

Figure 5.1: Regulation as a continuum I



regulation modelled there.<sup>70 71</sup> These range from; first, *regulation* in rigid, prescriptive and ‘black letter law’ formats, reliant on centralized power (such as that exercised by states via legislatures, bureaucracies), authoritative use of sanction (eg legitimate control over the means of coercion/enforcement), and with a mandate based on public interest rationales (category A).

The regulatory types making up the broad middle ground of the continuum are more ‘derivative’ and/or ‘synthetic’ than those at either pole. They are seen as integrated, to greater or lesser extents, with prescriptive, centralized and coercive regimes, but with varying emphasis placed on the perceptions and preferences of regulated parties. Progressing ‘down’ the continuum, regulatory forms are seen generally as more flexible than their ‘harder’ state-centric cousins (Jacobs, 1994).

As regulation becomes more *decentralized* (category B), ability to set and/or enforce rules devolves to ‘outer’ levels of government or authority. The emphasis on centralization of power remains, but is attenuated somewhat by an increasing ‘openness’ in the regulatory processes, allowing increased levels of input from interested parties. Decentralized regulation is often used where regional and/or local bureaucracies (such as city and regional authorities/councils) are trusted sufficiently by central bureaucracies to administer rules originating centrally. Devolution of enforcement powers by NZ’s Resource Management Act (1991) to the system of Regional Councils is an example.

The trend of allowing interested parties input into regulatory processes becomes more obvious as powers to regulate become more *delegated* (category C). ‘Agents’ of regulation, independent of the centralized bureaucracies proliferate. These include; ‘third party’ certifiers, professional associations (eg common in accounting, law, engineering), and often supra-national bodies (eg UN, WTO, OECD) (Jacobs, 1994; Streeck & Schmitter, 1985). There is much more reliance in delegated regulation on non-enforceable instruments and conformance mechanisms than in other categories.

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<sup>70</sup>The ideas underlying this line of reasoning and representation rely on several sources; see, for example, Streeck & Schmitter (1985); Jacobs (1994); Ogus (1994); Hollingsworth *et al* (1994); Bosselmann (1995).

<sup>71</sup>An analysis seeking to go even deeper than this will, no doubt, ‘discover’ more than those categories given here. However, such an analysis will do nothing to change the two ends of the continuum, and will only involve so much ‘hair-splitting’. Five types suffice for the purposes of this discussion.

Arguments averring failures of traditional, prescriptive state-based regulation (ie forms falling into category A) to take proper cognizance of its negative effects, such as losses in economic efficiency, have gained a large and influential following in recent years (Stretton & Orchard, 1994; Boston, 1995). One of the outcomes of such criticism is an upsurge in credibility and use of more *negotiated* forms of regulation (category D). Voluntary arrangements, industrial contracts, codes of conduct, standardization, and various forms of pact and covenant, are now seen in many areas of regulation, particularly of commercial activity (OECD, 1997). Incentivized formats, where preferred behaviours are sought through incentives and promotion of self-responsibility, rather than by threat of sanction, are also seen in this way of thinking as ‘negotiated’ regulation.

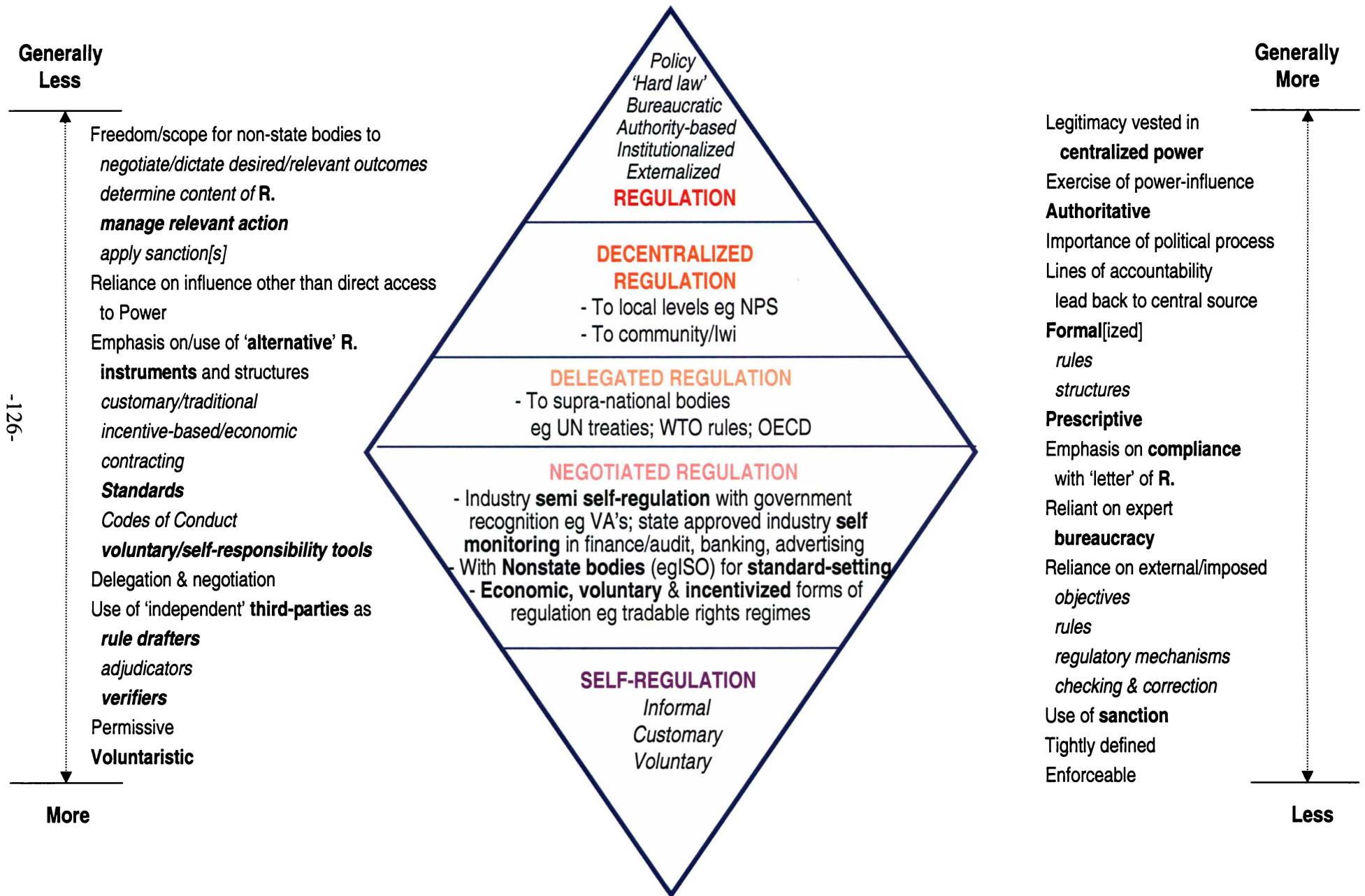
*Self-regulation* (category E) is seen as something of an antithesis to regulation by coercion. There is strong emphasis in this type on the responsibility of the individual (group or person) to regulate, manage, conduct, direct and/or control, its own activities in order to achieve (self-chosen) regulatory objectives. The ends sought by self-regulation may make greater or lesser reference to goals set by parties other than the self-regulator. It is important to note that self-regulation, in the sense the term is used here, does *not* imply absence of regulation.

The explanation above leads to a second significant point to note about the depiction given in Figure 5.1. There is a ‘gradient’ to the continuum. Each ‘step down’ from ‘regulation by force’, toward ‘self-regulation’ is seen as a gradation, implying less and less use of power/force to achieve regulatory objectives, and correspondingly more discretion allowed to the actors regulated to negotiate, and contract the terms, means and sometimes even the objectives of regulation.

The gradient convention is further developed in Figure 5.2. Gradient characteristics are shown on each side of the continuum. As the slope is traversed, from *regulation by other* toward *self-regulation*, the emphasis (and components) of regulatory formats change. Generally, moves toward *self-regulation* imply more voluntarism, involvement of third-parties, and non-traditional instruments; and less use of sanction and prescription. Moves toward *regulation by other* (ie coercive) imply more reliance on centralized power/authority, political processes and public interest mandate; and generally less negotiation and involvement in regulatory activity by actors not directly linked to centralized governing authorities.

A general implication of this conception is that all forms of regulation, whether in concept or in practice, are seen as essentially *variations on a theme*. That is, regardless of differences in

Figure 5.2: Regulation as a continuum II



composition or philosophical foundation, the object of each regulatory ‘type’, format and configuration is identical. That is, the intent of regulation is to *affect the behaviour of the self or others*. It is only the purposes and mechanisms that differ.

### 5.25 Using the gradient conception to investigate EMS

The discussion on regulation above is now used to inform the analysis of EMS. The model is matched with the six interpretations of EMS found in the previous chapter. The results of this comparison are shown in Table 5.1.

Table 5.1: Matching EMS perspectives with *regulatory continuum* elements

	EMS Perspective	Continuum-relevant explanation
1	Voluntary technical management tool for self-regulation	Emphasis clearly on <i>self-regulation</i> .
2	Voluntary industry contribution to social macro-level objectives	Emphasis on self-regulation <i>as a collective</i> ; macro-level policy-type goals adopted.
3	‘Private’ environmental law: <i>soft law</i>	Features of <i>negotiated regulation</i> (1) ISO standards often used as technical framework/support in national/International agreements and macro-goals; (2) ISO EM standards as a codified system of <i>rules</i> ; (3) not enforceable in ‘traditional’ sense; (4) EMS facilitates industry semi-self-regulation when ‘recognized’ by state-systems.

4	Mechanism for corporate governance and legitimation	Correspondences with <i>delegated regulation</i> ; (1) EMS standards support semi-self-regulation when ‘integrated’ with state systems; <sup>72</sup> (2) ISO/TC207 as supra-national rule-setting body with government recognition of same.
5	<i>Firewall</i>	Becomes <i>decentralized</i> as (1) corporate policy-orientation [as ideologic motivator] becomes sufficiently strong to cast EMS-conforming organization as responsible arbiter of its own goals; (2) as state-regulators persuaded to accept this stance, ‘powers’ to (self) regulate flow legitimately to EMS holders and developers.
6	Policy-regulatory instrument	(1) EMS as (unjustified, unwelcome) encroachment into public interest, public policy domains; (2) EMS as shaping and validating corporate self-regulation on its own, interest-seeking, terms; <b>(3) EMS as support for taking self-responsibility for the resolution of environmental and sustainability problems.</b>

The close matching achieved by this analysis is highlighted by the representation in Figure 5.3 below. ‘Overlaying’ EMS perspectives on the previous development in this way is instructive. It shows EMS to have strong resemblance to regulation, as defined in the above discussion. The insistence of the conventional account of the EMS approach on the self-regulatory aspect is not invalidated by this analysis, and the emphasis on macro-goals (eg contribution to sustainability) remains intact also. Added to these understandings though, is a dawning recognition that EMS has either latent, or unexamined tendencies toward regulation as it is more commonly exercised by states and other powers accepted as regulators. Indeed, the propensity found in the EMS approach to ‘emulate’ regulation is most clearly seen in ‘match no.6’ of the table above. In lending support for further encroachment of private interests and corporate ‘influence’ in domains more properly

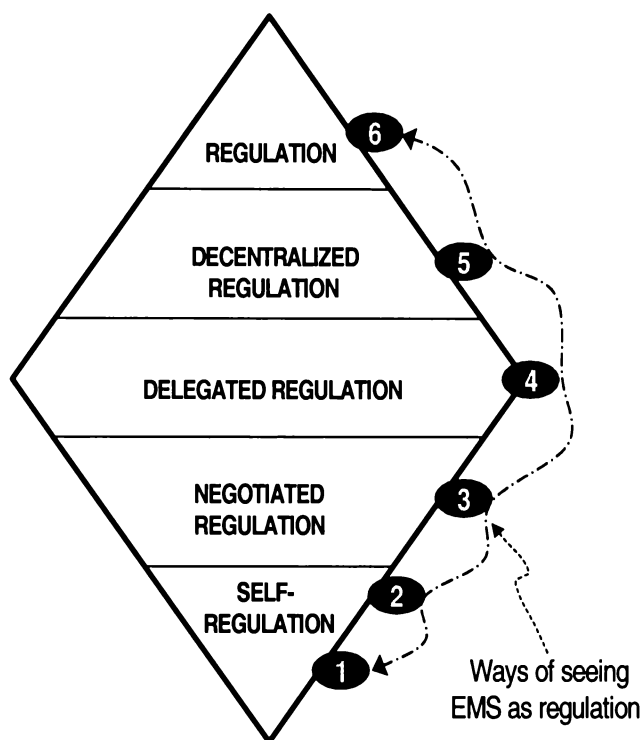
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<sup>72</sup>The differences between EMS (A) *recognized by state-systems* and (B) *integrated with state-systems* is explained below;  
(A) occurs as standards or codes for EMS are recognized or recommended by government authorities as credible/valid tools for meeting regulatory objectives [as specified by legislation for example], or alternatively; as ‘credit’ is given by external regulators as a ‘reward’ for EMS, such as via awards, relaxing negotiable compliance rules [eg monitoring levels, frequency].  
(B) occurs as EMS-related considerations make their way (as increasingly integral components) into the input-end, compliance and enforcement phases of state-regulation. See s.2.5.3 above.

the concern of institutions directly and visibly accountable to the ‘public interest’, EMS could be seen as lending support for a ‘transfer’ of regulatory powers to the corporate sector.

However, finding some ‘similarities’ does not necessarily mean we can conclude emphatically that the EMS approach is a form of regulation. More analysis of regulation is required.

Figure 5.3: Situating EMS interpretations on the continuum



### 5.26 Is EMS a form of regulation, and does it matter?

The analysis of regulation suggests strong regulatory elements in the EMS approach. EMS is used in practice to systematically induce, monitor, and sanction certain behaviours, and to achieve purposes closely resembling regulatory/policy purposes. In contradiction to convention, this analysis supports progressing thinking about EMS through a deeper investigation of the theory and practice of regulation. This is an important step in the research. Conventional thought on EMS and its standardization emphasizes an essentially voluntaristic, technical nature. Such assumptions tend to narrow the boundaries of legitimate investigation, leaves out vital aspects, and limits analysis generally.

It is argued that limited understandings do no favours to either setters of EMS standards, industry users of standards, policy makers seeking advice on how to promote voluntarism, or members of the community wondering whether to accept assurances based on certification to ISO14001 (or any other voluntary initiative). In addition, by accepting limitations in thinking, analysts shield themselves from seeing anomalies in practice, and the unexpected complexities and permutations often found in the phenomenal world. Actors too can suffer from under-information. Action based on incomplete understandings leads often to misapplication, misunderstandings, and failure to meet desired goals. Actions of ISO/TC207, as reported in the short project, can be explained in this way. The need for new lines of investigation are clearly indicated, and the outcome of the discussion on *EMS as regulation* is interpreted as a promising sign for the new research direction. The subject of the larger regulatory context within which EMS is developed and used is taken up below.

### 5.3 Regulatory context

This part of the discussion addresses issues of *who regulates* and *how*. The investigation uses a broadly corporatist approach - as exemplified by the Streeck & Schmitter (1985) *modes of regulation* model - as a theoretical starting point for an exploration of concepts and practices of regulation, and especially regulation of the environment. In the discussion, regulation is seen as both the outcome and the process of interactions between a complex system ordered by conceptual conventions of states, markets, communities and associations.

#### 5.31 Modes of regulation

Broadly speaking, this thesis is concerned with the creation and maintenance of social order, or in other words, how activities might be coordinated to achieve often disparate social and environmental goals. In order to address such an ambitious and wide ranging subject we must necessarily use and develop models (or systematic abstractions) to assist our understanding. Three general models of social order have virtually dominated thought about regulation in the social sciences. These tend to be identified by the central institution embedded in their respective and ideal/typical principles: the state, the market, and the community - but it might be more accurate to address each according to their ordering principles: bureaucratic control, self-interested competition and spontaneous solidarity (Streeck & Schmitter 1985; Hollingsworth *et al*, 1994; Ogus, 1994; Lane, 1995). Still another mode of regulation has attracted wide attention of late. This

is the association, or where they are strongly institutionalized, ‘private interest government’ (Hollingsworth *et al*, 1994). The associative mode is guided by the principle of concertation of action by and within interest-based collectivities and/or alliances.

Internally, modal relations are ‘governed’ by identifiable philosophies, institutions and processes. Presaging some of the material to follow, state-based bureaucratic agencies rely on legitimate control of means of coercion via legal authorization to provide public goods and security. By the same token, market actors (ie firms and corporations), defined and stratified by their ability to pay and sustained by the doctrine of economic/calculative rationality seek to provide and secure private goods. Again, the families, clans, tribes and groups comprising communities, bound by principles emphasising spontaneous solidarity and cultural values, reliant on recognized status and respect, act to solidify, preserve and transmit collective and cultural identity/ies. Similarly, associative actors tend to coalesce around specific issues and/or interests and seek to exert (or effect) concerted action through their membership structure and/or their ability to affect actors within other modes. While many will argue for the primacy of this or that mode in regulatory systems, however dominant any of the modes have been as explanations and normative arguments in social and philosophical thought, this thesis concurs with the view of Streeck & Schmitter: “almost everyone would concede that modern societies/economies/polities can only be analysed in terms of *some mix of them*” (1985:2, italics added).

This thesis is interested in questions of how and why mixes or fusions of regulatory modes come to pass, using the general context of environmental regulation to illustrate the analysis. The arena of environmental regulation, apart from being a particular passion for the author, is compelling because relations within the environmental-regulatory complex are characterized by haphazard amalgams of conflicting, fractured and sometimes mutually exclusive visions, ontologies, values, philosophies, principles, motives, objectives, rules and goods/outputs (Daly & Cobb, 1990; Fisher, 1993; Korten, 1995; Ogus, 1994; Welford, 1997). Issues of regulation, then, are understood here as intimately related to matters of how order, stability, and predictability are produced and sustained, to expressions of value-choice, wants and needs by social actors, and to judgements on the vector/s of development that are, or could be chosen.

### 5.32 Understanding concepts of ‘environment’ and ‘regulation’

It might be useful at this point to consider understandings of what ‘the environment’ might be, and

specifically its connections with 'regulation'. The subject matter of environmental regulation can be approached from a number of different perspectives. For example, what social, cultural and physical domains does it deal with and/or exclude? The answer is complex. One way of seeing would include, "land, water, and air together with other environmental resources related to these such as vegetation, minerals, artificial structures, fish and fauna" (Fisher, 1993:1). However, this view is overly simplistic for present purposes. The environment clearly encompasses all that is social too, within its physical attributes. Hence meanings of environment can be flexible;

The word 'environment' is an elusive concept whose meaning reflects the context of its use. It means literally the surroundings, or surrounding conditions of the matter under consideration...The environment may be physical, chemical, biological, social or cultural...human beings are linked environmentally in all these senses...Society has always accorded a value to the environment but this value is a matter of political and social controversy (*ibid*).

Some may choose to play down the descriptor 'controversy' and emphasise 'negotiation' instead. The values attaching to the 'environment' are a *composite*, resulting from constantly shifting, conflicting and evolving social preferences and ideologies. The important thing here however is that in consideration of the environment, its physical attributes are inseparable from the values attached to them by elements in society. Thus, any analysis of the environment - in its connections with regulation - must include the particular value of any (environmental) attribute to society, the relative value of each, and consider in an integrated manner the value of each of these to each other and the value of the relationships between them. Of course, this view is firmly rooted in anthropocentric conceptions of environment, that is, it privileges human perspectives and ignores (or plays down) the interests, preferences, and wants of biotic (or *Gaian*)<sup>73</sup> systems.

Just how and why environmental values come to conflict (and become subject to negotiation), arises from the can be illustrated by a consideration of the particular problems of environmental regulation. Environmental regulation involves processes intended to resolve conflicts between

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<sup>73</sup>This is a reference to the pioneering theories of Gaia, developed by biologists James Lovelock, Lynn Margulis and others, which proposes that the earth (environment) is "a single physiological system [Gaia], an entity which is alive at least to the extent that, like other living organisms, its chemistry and temperature are self-regulated at a state favourable for life" (Lovelock, 1991:11).

often opposing social objectives. The most obvious tension arises as forces wishing to *utilize*, and forces desiring to *conserve* the environment come to interact. Users of the environment emphasise its extrinsic qualities and tend to see it as a 'resource' to be exploited - as useless unless employed in furtherance of human 'development' goals (Carley & Christie, 1992; Rifkin, 1991; Daly & Cobb, 1991). More conserving viewpoints might emphasise 'intrinsic' values of the environment, or instead seek appreciation of the unpriced services provided by the biosphere (such as clean air/water; global cooling) and undiscovered benefits which may be destroyed through unenlightened exploitation (eg unknown medical qualities) (See for example, Gray, 1993; Henderson, 1997; Pearce *et al*, 1990).

In practical terms, environmental regulation can be seen as an attempt to mediate tensions between preferences for use/development of the environment, and preferences for its conservation and/or protection. In conceptual terms, the tension is between the currently dominant metanarrative of *development*, emphasising intensification and expansion of industrial/economic/consumptive activity, and 'alternate' perspectives emphasising a different basis for our relationship with the environment.<sup>74</sup>

This analysis suggests that to regulate the environment, a course must be navigated between often conflicting systems of thought and value. Environmental regulation should not be seen as a static rule-enforcing exercise, but rather as a dynamic process which seeks to mediate between multiple and often competing interests, and which involve manifold parties, who at some points may be regulated, and at other times may regulate. The discussion turns now to analysis of each of the four modes, and the different approaches taken to regulation of the environment.

#### 5.4 The *state* as a mode of regulation

The modern state is well-accepted as a key arbiter of regulation. In fact, some identify regulation exclusively with the state bureaucracy (see for example, Anderson, 1994; Fisher, 1993, Lane, 1995). The state has commonly accepted legitimacy in the definition and protection of property rights, the enforcement of contracts, and the setting of general rules for (business) competition (Hollingsworth *et al*, 1994), to encourage or direct behaviour which would not occur without

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<sup>74</sup>For 'alternative' perspectives on development, see for example, Goldsmith, 1991; Schumacher, 1973; 1978; Daly & Cobb, 1990; Rifkin, 1991; Pearce *et al*, (1990).

intervention (ie to correct ‘market failure’) (Ogus, 1994), to promote and/or protect the ‘public interest’, to supply ‘public goods’, to discourage, suppress or otherwise control the production of ‘public bads’, (such as pollution) (Fisher, 1993; Lane, 1995; Krut & Gleckman, 1998), and generally to act as a conduit for the achievement of the wishes of the electorate.

The authority of the ideal-typical state rests ultimately upon the monopoly of the state over legitimated coercion, and is made visible through processes of public policy. Resultant rules and procedures are implemented by civil servants, assumed to be interested in career advancement and bureaucratic stability. In their application to subjects (who are assumed to strive to avoid sanction), such rules are intended to preserve administrative predictability and to protect internal actors from domination by external ones. Relations between rulers and the ruled are sometimes far from unproblematic. Schisms develop between rulers, as they ascribe to themselves unjustifiable or excessive privileges, and the ruled, who may come to perceive unreasonable escalations in the scope and scale of obligations (Streeck & Schmitter, 1985:6; see also Puxty *et al*, 1987; Hollingsworth *et al*, 1994). State-based, or public regulation has a directive function; to achieve the objectives desired by the ‘rulers’, individuals are compelled by the authority and force of the state,

to behave in particular ways with the threat of sanctions if they do not comply...in general it is for the state (or its agents) to enforce the obligations which cannot be overreached by private agreement by the parties concerned...because the state plays a fundamental role in the formulation, as well as the enforcement, of the law, it is centralized (Ogus, 1994:2).

#### 5.41 Environmental regulation and the state

In modern societies, formal responsibility for regulation of the environment typically falls within the ambit of the state. The ‘quality’ of the environment can be seen as a matter of public interest, or as a public good, since it fails the critical criterion of private goods. That is, ownership (or non-rivalry in consumption) and excludability (nobody can be excluded from ‘enjoyment’ of the environment), and more generally, unconstrained market activity will tend toward overconsumption of ‘unowned’ environment/resources, (or overproduction of negative externalities<sup>75</sup>; see for example, Pearce *et al*, 1990; Cairncross, 1991). This point is put rather

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<sup>75</sup>These also may be referred to as ‘public bads’.

more colourfully by Nicholas Ridley, a free-market ideologue in Margaret Thatcher's government of the 1980's:

Pollution, like fraud, is something you impose on others against their will so that you can perhaps gain financial advantage. It is an ill for which the operation of the free market provides no automatic cure. Like the prevention of violence and fraud, pollution control is essentially an activity which the State, as protector of the public interest against particular interests, has to regulate and police (Ridley, 1989, cited in Cairncross, 1991:17).

So governments, as agents of the rule-setting and enforcing state, intervene in 'regulatory space', invoking their responsibility to legislate in the public interest, to 'protect' human interests in the environment. Thus, "[e]nvironmental [regulation by the state] necessarily places restrictions upon the holder of rights of property and these restrictions are designed to promote objectives that are desirable in the public interest (Fisher, 1993:261).

The concept of *protection of the environment* deserves expansion, since it underlies and justifies almost the whole of state intervention in the area (Bosselmann, 1995). The notion of protection rests on an assumption that human activity necessarily involves the potential for adverse effects on the environment. Of course, public interest requires both the use of and the protection of natural resources. Protection of the environmental protection by the state seeks some sort of balance between these two objectives by direct intervention in exercises of private property rights. Typically, in the western state-system, statutory authority recognizes that human activities which alter the state of the environment, by either resource consumption or waste emission, must be permitted to continue so long as the environment can absorb them without detriment to its overall quality and amenity. How states seek to achieve, or rather more accurately mediate, this undeniably difficult balancing act is the subject of the next section.

#### 5.42 Processes of environmental regulation by the state

Modern state systems of environmental regulation operate at three distinct levels, governing;

- A Access to the environment;
- B Management of the environment;
- C Enforcement.

These levels are briefly introduced below.

## A Access to the environment

The first responsibility of the state-environmental regulator is to assess whether or not access to the environment should be granted to a potential user. The role of the state agency here is to (a) develop rules governing relevant activities (eg statutes) reflective of societal expectations, and (b) to apply the relevant rules in generating decisions allowing access or not. The emphasis is on “determination [of] what conditions or restrictions should be imposed and how the decision can be implemented” (Fisher, 1993:264). Application, or implementation of the rules is the role of the administrative arm/s of the state, such as Environmental Ministries, Agencies, Courts, and relevant local bodies. The role of such bodies is consider the potential for impacts arising from environmental use/development proposals. Once access has been granted, the concern of the state-environmental regulator turns to ensuring that the resource user manages its activities in accordance with terms set out by the state.

## B Management of the environment

The purpose of ‘management of the environment’ is to ensure, as far as possible, that the environment-using activities comply and will continue to comply with the rules laid out. Activities may be subject to greater or lesser degrees of control or restriction by the public authority. This may involve setting and applying standards governing (among other things) responsibilities with regard to environmental impact/s,<sup>76</sup> technological standards (allowable limits, approved processes/technologies), measures to be taken to avoid and/or prevent pollution, and procedures for enforcement of the above measures. Mechanisms of management typically take the form of permits, licences, consents or other such instruments.

While legislative rules are often much more broad statements of policy, statutory intent and/or strategy, management requires more specific, detailed regulatory frameworks (Fisher, 1993; Krut & Gleckman, 1998; OECD, 1993). Hence, responsibilities for rule-setting and management

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<sup>76</sup>These may address type and volume of emission to land, air and water; allowable levels of nuisance, involving variables such as noise, visual, odours, electromagnetic radiation; hours of operation; emergency procedures and responsibilities to report such situations; requirements to consult interested parties; access to the facility; wildlife and habitat preservation, and any other operational aspect the authority may be entitled to be interested in.

activities are often separated within the state-apparatus. Statutory rules will frequently leave details of actual regulatory design - including standards, targets, limits, mechanisms and preferred instruments - to the discretion of the regulatory agencies responsible for enforcing them. Management of the environment also,

relates to the day-to-day nature of the relationship between the regulator and the regulated. Broadly the regulator has the option of adopting either a hands-on or an arms-length approach (Gouldson & Murphy, 1998:51).

The manner in which public agencies manage resource users and their development proposals/activities, is subject to some variability. In other words, the management style adopted by the regulator may vary in design, delivery, and enforcement (Gouldson & Murphy, 1998). Hands-on approaches imply that both (sets of) parties search for regulatory solutions in cooperative and interactive ways, while arms-length approaches allow little scope for negotiation between interested parties, emphasising instead a reliance on rigid and prescriptive standards of behaviour (*ibid*). Clearly, the management role of the state-public environmental regulator is variable, but at core interventionist. Management, in this context, connotes a right to exercise control over the manner in which rights of property and rights of access to the environment are exercised by those wishing to undertake action which transforms the environment.

## C Enforcement

The right of the state to enforce regulation arises from its perceived responsibility to protect the environment in the public interest. In an ideal sense, enforcement is a matter of ensuring compliance with environmental and ecological values subscribed to by society as a whole (as reflected in the rules laid out). These values, as has been discussed, are not only mutable over time, but also extremely difficult to formulate with precision and certainty. Enforcement of this type is difficult, if not impossible to achieve. In practice, the focus of enforcement activity by public environmental agencies is on ensuring compliance with the conditions specified in consents, permits etc. Enforcement has two main facets; the first is monitoring the operation's compliance with the law in general and with permit conditions in particular; while the second focusses on remedies and/or sanctions for breaches of conditions.

Monitoring of ongoing environmentally-relevant activities by the agency is required to determine compliance with the rules. In many cases, the agency will rely on information prepared by the entity being monitored, but will employ devices such as independent verification, or surprise inspections, to help ensure the reliability of the information (Gouldson & Murphy, 1998:42-3).

Should monitoring reveal that the activity results in higher levels of impact than those allowed, enforcement action may be initiated. Such action will vary according to jurisdiction, but in general, states assign to themselves wide-ranging powers to revoke, vary, and amend consents. An example is seen in s.314 of New Zealand's Resource Management Act (RMA 1991);

- subsection 1(a) provides for an enforcement order to require a person to cease or prohibit a person from contravening any provision in the Act or consent/s, or is generally having an adverse effect on the environment;
- subsection 1(c) requires a person to remedy or mitigate any adverse effect;
- subsection 1(e) allows for the enforcement order to change or cancel a resource consent if the information supplied to the relevant authority is inaccurate;
- subsection 4 allows the authority to require restoration of the environment to a state existing before the adverse effect occurred.

In addition, many public/legislative systems allow for harsh and punitive penalties for non-compliance, including in some cases - including NZ - provision for personal liability on the part of the managements of persistently noncomplying resource users.

The style of enforcement chosen by a public regulator is important too and subject to some variability. While relying extensively on the state's monopoly on legitimate coercion and having access to powerful legal sanctions, the state-apparatus may choose to use such powers judiciously in the interests of 'persuading' compliance with rules. If it chooses to treat non-conformance with consent conditions on a conciliative, managed basis, consensus and negotiation might be used to enlist the resources of resource users themselves to achieve improvements. Alternatively, the regulator may choose to approach breaches litigiously, employing 'letter-of-the-law' and other adversarial techniques with non-compliers.

## 5.43 Summary

It is important to note that while there are many homogeneities among state-based systems of environmental regulation, they will tend to differ in their scope, purpose, mechanisms, the relative importance attached to environmental, social and economic values, and will certainly change over time and as circumstances change. The analysis above does not mean to imply that all public regulatory systems will follow precisely the processes detailed above. Regulation by the state apparatus is a matter of application of a wide range of principles and processes within a general framework, and is subject to an equally wide range of variables in development, implementation and enforcement. The discussion above outlines general issues, choices and procedures faced in modern systems of public regulation. The discussion now turns to an analysis of market (or economic) systems of environmental regulation.

## 5.5 Environmental regulation and the *market*

The discussion of the previous section it was argued that the state was well-accepted as a mode of environmental regulation, and well-practised at it too. The basis for such acceptance rests on the proposition that market actors, acting self-interestedly, are unable to produce effectively or reliably public goods, “such as fresh air, a stable currency, general education, and protection against fires, crime, worker rebelliousness, political insurgency, foreign armies, and so forth” (Hollingsworth *et al*, 1994:4). Thus intervention by the state is necessary, in this way of thinking, to (1) create and maintain those minimal conditions without which markets would not be possible; and (2) to provide and protect collective (public) goods, without which a viable society would be impossible. Market actors themselves are generally seen as being *constrained* by the demands of regulation in general, and environmental regulation in particular (Cairncross, 1991; Wildavsky, 1993). This view might be extended to a proposition that markets and states should ‘stick to their knitting’; states should provide the ‘playing field’, while markets attend to coordinating exchanges among economic actors in order to facilitate the allocation of goods and services (Hollingsworth, *op cit*:5).

However, a shift is becoming apparent in the thinking guiding market actors with regard to provision of goods having ‘public’ qualities. Such repositioning is visible in the trend among market actors away from outright denial of and opposition to environmental issues, to acceptance of the need to ‘take the environment into account’ in their decision making (see for example,

Cairncross, 1991; Carley & Christie, 1992; Elkington, 1991; Gray, 1993; Hawken, 1993; Tasman Institute, 1991; Welford, 1996, 1997a). Ortolano (1997) argues that this shift can be seen, in part at least, as an effort to reduce the amount of 'regulatory risk' to which business interests can become exposed. Regulatory risks encompass, for example, economic and financial hazards associated with complications and constraints imposed by state agencies on development projects and/or environment-affecting activities.

In response to an escalation of environment-related demands by stakeholders (eg states, interested/affected parties, customers and the general public) market actors have developed an extensive array of tools and techniques to help them meet new expectations. These include reactive strategies (such as lobbying governments for 'market-favourable' rules, active participation in international conventions, sophisticated public relations campaigning to influence community opinion, voluntary environmental audits); and more proactive strategies, like environmental codes of practice, environmental labelling schemes for consumer identification of 'environmentally friendly' goods, and environmental management systems.<sup>77</sup> Such initiatives are seen here as exemplars of an emergent philosophy of market-based rule-making; or *environmental regulation by the market*. This theme is expanded in the following sections.

#### 5.51 The market as a mode of regulation

Actors within 'ideal/typical' markets, according to neo-classic models, are motivated by the principle of self-interest (DeJasay, 1990). Operating in competitive markets, economic entrepreneurs seek to maximize private profits by efficiently providing material benefits to customers. Competition between business firms and corporations (archetypal market actors) ensures "greater than otherwise obtainable economic prosperity" (Streeck & Schmitter, 1985:6). It is this claim - market as the chief creator of material prosperity - which underpins and legitimates the market mode. The market regulates chiefly by coordinating exchanges of resources, such as finished goods and services, and inputs to such goods, like labour, and capital (ie the factors of production), using price as the fundamental allocation mechanism. In general then, markets are seen as;

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<sup>77</sup>This is not intended to be an exhaustive listing. For more information on this point see for example, Beder, 1998; Bennett & James, 1998; Cairncross, 1991; Elkington, 1987; 1991; Krut & Gleckman, 1998; Maxwell *et al*, 1998; Ortolano, 1997; Roht-Arriaza, 1995; Welford, 1997b.

arenas in which individual or corporate actors holding separate property rights in different resources voluntarily engage in free, legally enforceable contractual exchanges...[they] are the place for buying and selling, with prices providing more or less distorted information for the allocation of goods and services (Hollingsworth *et al*, 1994:5).

Relationships between market actors, while generally theorized as based on 'rational' transacting (Arrow, 1977), are far from uniformly harmonious. The classical source of tension within markets is the basic conflict of interest between buyers and sellers of rights to property (such as environmental resources) (Streeck & Schmitter, 1985:6).

#### 5.52 Philosophies of environmental regulation by markets

Traditional neo-classic views tend to portray environmental regulation as something that is 'done to' market actors - against their will/s and frequently to their detriment (Tasman Institute, 1991; Wildavsky, 1993). However, market institutions can be seen as engaged in a project of actively constituting environmental regulation. This project covers an array of actions, ranging from passive approaches, such as lobbying government, challenging or participating in content of state-environmental rules, to more active approaches, for example, instigating self-policed agreements or codes to intended to protect the environment (Beder, 1997; Roht-Arriaza, 1995; Welford, 1997b).

Before an in-depth analysis of the project of market-environmental regulation can take place, it is necessary to explore explanations of how and why environmental problems arise;

A combination of [government] policy and market failures causes dissociation between scarcity and price, benefits and costs, rights and responsibilities, actions and consequences...The end result is an incentive structure which induces people to maximize their profits by appropriating other people's resources and shifting their own costs onto others, rather than by economising on scarce resources and investing in their own productivity (Panayatou, 1990, cited in Markandya and Richardson, 1992:21).

Distortions in (or a complete lack of) information about negative environmental impacts of economic transactions, according to this view, degrades the linkages between the scarcity of public/environmental goods and their consumption. Limits to natural resources and waste

absorption capacities of the environment are ignored and exceeded with impunity because of the limitations of price as a signalling mechanism (Pearce, 1989; Bertram, 1992). The pricing structure for environmental resources tends not to include components reflecting their degradation and misuse. This is not because the market lacks the ingenuity or ability to include environment-relevant factors in price. It rather comes down to a question of values. Markets recognise economic transactions, which elevates utility or transformative values over all others. This focus on extrinsic, anthropocentric values downplays and disregards other values which might attach to the environment. Such 'other' values tend not to carry prices, which leads to a serious 'blind spot' for the market;

The market, which so marvellously directs human activity to supply human needs, often has no way of putting a proper price on environmental resources...It is easy to put a price on a tree as timber. But that price will take no account of its value as a mechanism for preventing soil erosion, or as a home for rare birds or insects, or as a store of carbon dioxide that might otherwise add to the greenhouse gases in the atmosphere (Cairncross, 1991:17).

Further, because resource users face little or no direct costs arising from excessive resource consumption<sup>78</sup> and often succeed in passing off the adverse effects to parties external to priced transactions (ie 'negative externalities'), much ingenuity is directed to the continuance of this practice, rather than to central tasks of creating genuine capital wealth (Markandya & Richardson, 1992; Pearce, 1989). The reason externalization of costs occurs, according to economic analysis, is simple: a lack of clearly defined property rights over environmental resources in regimes of free access encourages their overconsumption. Since no individual party faces the costs of depletion, all users will freely consume until the resource is ultimately exhausted. This is the classic 'tragedy of the commons' as originally expressed by Garrett Hardin (1968). The market fails to allocate resources in a rational manner because there exists no 'owner' of the rights to enclose the resource against competing users.

While advocates of market 'ways of seeing' are generally inclined to abhor the role/s of markets

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<sup>78</sup>Apart, of course, from the costs of severe global ecological problems, which because those costs are socialized, are shared by all, regardless of level of involvement in their initial cause/s.

and market actors in the creation of environmental problems and the market failure causing them, they hold governments mostly responsible. A state-regulatory system based on direct controls and sanctions, while “attractive to legislators as it involves minimum upset to the status quo and is generally perceived to be ... more politically viable” (Markandya & Richardson, 1992:15), seen from a welfare economics perspective inevitably results in inefficiencies in resource allocation (Arnold, 1995) and attracts high real enforcement costs (Baumol & Oates, 1992). In addition, experience shows it to be difficult, if not impossible to enforce effectively (Fisher, 1993).

It will be remembered that at core, the market project of environmental regulation is predicated on a philosophy of self-interest. That is, efforts to develop programmes of market-environmental regulation must be justified by clear reference to expected private benefits. In this sense, market environmental regulation has little to do with protection of the environment *per se*. Instead, economic rationality dictates that corporate environmental initiatives be oriented toward achieving, as ‘cost-efficiently’ as possible, ease of access to markets, avoidance or mitigation of (actual and/or expected) state regulation, reduction in exposure to environmental risks, reductions in environmental liability, satisfaction of customer expectations, and tend to be only peripherally related to preservation of the ability of the environment to sustain life (Gray, 1995; 1997; Korten, 1995). Where ideal-typical state-environmental regulation is directed to balance its use and preservation, market-environmental regulation assumes a right of access - via property rights - and seeks to reassure other social actors that ‘enlightened’ corporate use of the environment serves the broader interests of society (Schmidheiny, 1991; IISD, 1992; OECD, 1993; 1998).

The ideal of the ‘enlightened’ corporate actor is central to market justifications for self-regulation. The claim of corporate self-regulation to environmental credibility is built on an ingenious argument. It goes something like this:

while business and other market actors acknowledge their role/s in environmental degradation, they have learned from their mistakes (which is more than can be said for government) and are now avid supporters of environmental goals, ready to harness the ‘power of the market’ for environmental ends. Accordingly, producers are now shifting to a more ‘socially responsible’ attitude favouring ‘wise use’ (or alternatively ‘prudent’ or enlightened’ or ‘multiple’ use) of resources,<sup>79</sup> and are actively developing wide-ranging

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<sup>79</sup>See Beder (1997:ch3).

initiatives such as 'eco-efficiency' and 'responsible entrepreneurship' in good faith to demonstrate their commitment to overarching environmental goals, such as sustainable development. Because of this shift in corporate philosophy with regard to disposition of the environment and vectors of development, there now exists little or no tension between the social objectives of use and protection of the environment. Due to the transmogrification professed above, corporates can now be viewed, effectively, as agents for the protection of the environment; while still making profits.<sup>80</sup>

The corollary to this argument is of course, that corporates increase their claim to free(r) access to the environment.

### 5.53 Means of market environmental regulation

Evaluations of the causes of problems often carry the seeds of remedy within them. So it is with environmental problems. If a resource, especially a scarce one, lacks a price which it should have attached to it, clearly one should be created. If free access regimes allow externalization of costs, then enforceable property rights should be created. And, if government policy and management is lacking in efficacy, it must needs be 'adapted', or supplanted by VSMs (voluntaristic, self-regulating, market-based approaches/instruments). These are the conceptual foundations of key market-environmental strategies and are discussed below. Note that the first two are somewhat beyond the scope of this thesis, but are included for the sake of completeness.

#### A Modifying prices

Implicit in a free-market capitalistic production and trading system is a mechanism which allows costs to be borne by third parties rather than either the producer or consumers of the firm's products. The accounting system generally fails to recognize such costs whenever the 'market' does not incorporate them into its pricing model (Freedman & Stagliano, 1991:70-1).

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<sup>80</sup>See, for example, Beder, 1997; Bennett and James, 1998; Bosselmann, 1995; Daly & Cobb, 1990; Enzenberger, 1988; Goldsmith, 1992; Hawken, 1993; Hutchinson, 1997; Korten, 1997; Krut & Gleckman, 1998; Lipietz, 1992; OECD, 1993; Tasman Institute, 1991; UNEP, 1998; Wallace, 1996; Welford, 1996; 1997a; 1997b.

It is a maxim of economics that when goods are underpriced or not priced at all, they tend to be overexploited (Cairncross, 1991; Hardin, 1968). By the same token, when effects 'external' to the direct producer-customer relationship are unpriced, they can tend to exceed socially and environmentally desirable levels. Taken together, these factors result in 'inefficiencies' in the market. A solution lies in the incorporation of such costs (or proxies for difficult-to-calculate costs) into the exchange between seller and buyer (Baumol & Oates, 1988). The 'polluter pays' principle is the intellectual basis for such an approach; it is grounded in the economic principle of removing the divergence between private and social costs. More specifically, costs of reducing, mitigating or compensating for external effects should be reflected in the costs of goods, the production and/or consumption of which cause such effects (Meister, 1990).

However, in a 'free' market, there is little incentive for producers to voluntarily internalise 'external' costs that are presently socialized - such as those associated with ill-health caused by pollution, or loss of biodiversity arising from human development encroaching into wilderness, or anthropogenic atmospheric emissions. The reduction in profits implied is unconscionable to most corporate actors. In addition, internalization of externalities requires, i) compulsion to force polluters to pay; ii) value judgement as to how much external effects should be weighted and valued in money terms; and iii) a framework to apply internalization evenly across relevant transactions. It will be noted that markets do not 'do' any of these very well at all.

Despite these issues, some see that we do not have much choice but to develop new or 'enhance' existing pricing systems;

Except for the very slightest extent, the physical environment is not reflected in a company's bottom line. The environment and the pursuit of profit may actually be in conflict...If companies continue to make the health of the bottom line a (perhaps even the) primary objective, we cannot seriously expect much in the way of substantial change in an organization's environmental interactions until that interaction is reflected in the primary statements - the scorecards of the profit and loss account and balance sheet (Gray, 1993:204).

## B Extending property rights

Picture a pasture open to all. It is expected that each herdsman will try to keep as many

cattle as possible...as a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?"...Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1...Since, however, the effects of [resultant] overgrazing are shared by all herdsman, the negative utility for any particular decision-making herdsman is only a fraction of -1. Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another...But this is the conclusion reached by each and every rational herdsman sharing in a commons. Therein is the tragedy (Hardin, 1999:73-74).

From such reasoning flows most, if not all, market-thinking on property rights. It should be noted that the term 'commons' is used by Hardin to refer to an open-access regime, or unowned resource. Hence, the reasoning can be (and has been) applied to 'resources' such as state-owned lands and forests, the atmosphere (as waste-receptor) and the high seas (as waste receptor and source of fish resources). Lack of rules governing access encourage 'taking' behaviour: in an open access regime, consumption naturally and 'rationally' continues until the resource is eventually depleted.

The market solution to the problem of overconsumption is to allocate ownership rights to that resource/property in question. State-regulation is seen as inferior to a system of private property rights because; (1) the state is open to the political process and pressure groups will use these to induce sub-optimal/inefficient consumption decisions; (2) state bureaucracies may be unable, or not inclined to enforce their decisions; (3) ownership reduces uncertainty in cases of competing claims to a resource, thus encouraging investment to increase productivity; (4) 'owners' of property rights are assumed to have clear incentive to 'care' for or preserve the productive capacities of the resource, so as to maximize its utility to them; and (5) costs of overconsumption fall to owners, hence decreasing problems of externality (Bertram, 1992; Hardin, 1968).

Property rights based regimes are becoming increasingly popular in fisheries management, and in air pollution control (see US Clean Air Act, 1991). However they have not proliferated to the extent seen with private systems of environmental management, discussed below.

## C Voluntary, self-regulating, market-based approaches and instruments

One of the key planks of the market-claim to regulate environmentally is that existing regimes of state-environmental regulation present businesses with large, and unjustifiable compliance costs, incommensurate with actual environmental gains achieved (Cairncross, 1991). The remedy, according to neoclassic economic theory, is to allow business more of a free hand in environmental regulation. Sharon Beder notes that 'free-market' thinkers promote increasingly;

the virtues of a 'free' market unconstrained by a burden of red tape. They have recommended using the market to allocate scarce environmental resources such as wilderness and clean air and replacing legislation with voluntary agreements, reinforced or newly created property rights and economic instruments (1997:99).

It is in the area of regulatory arrangements incorporating voluntary, self-regulating, market-based approaches (VSMs) - which, it will be recalled, includes the EMS approach - that the development of formalized efforts to augment, or even replace state-environmental regulatory initiatives is clearest. The emerging importance attached by market actors to environmental self-regulation via voluntary instruments is illustrated by UNEP (1998);

Industry 'self-regulation' is in an early stage of development. The term can be used to include any industry initiative for the environment which is 'voluntary', meaning not legally required by law. This might include environmental codes of conduct, policies, management systems, audits, reports, third-party certification schemes or agreements...There is thus a great diversity of voluntary industry initiatives. However, voluntary codes are perhaps the most essential because they can provide the general environmental principles for the tools [of environmental management] (1998:7).

As mentioned earlier, an overriding objective of market-based management of the environment is to attenuate the potential for tension between corporate aspirations for use of the environment and the potential for negative feedback effects arising from perceptions of industry contributions to degradation in environmental conditions (such as increased state regulation, public backlash, customer resistance). Advocates for market models argue accordingly that VSM approaches seek to produce both private and public goods. Most of the benefits arising from application of VSMs accrue to implementers, in the form of financial savings from improved resource efficiency,

reduced waste treatment and clean-up costs; better access to insurance and finance; improved public image and stakeholder approval; and ultimately, it is hoped, increased rights of access to the environment (IISD, 1996).

Gains from implementation of the market-model may not be restricted to the realm of the private; society in general may benefit too. As noted in chapter 2, improvements in environmental conditions can result as implementation of VSMs contribute “to industry’s overall improved environmental performance (reduced pollution and improved resource and energy efficiency as companies adopt preventive and cleaner production measures)” (UNEP, 1998:8). One may also see gains from a shift in corporate culture, as “business practice [moves] from a minimalist...approach to a proactive, cleaner production and sustainable development strategy” (*ibid*); and the economy in general may benefit from reduced direct and indirect pollution costs, increasing resource and energy efficiency, reducing accidents and clean-up efforts, and from reductions in society’s overall regulatory costs (Schmidheiny, 1991).

Market models reject enforcement in the traditional coercive sense. However, VSM mechanisms can produce compulsion.<sup>81</sup> An obvious form of ‘market compulsion’ is the contract condition. This arises when one corporate will do business with another only after certain conditions - addressing, for example, output or process quality - have been met. Insurance against risk with environmental content is another example: an insurer may choose to make new policies contingent on the condition that the policy-holder takes active steps to reduce the risk of environmental liability (by means of, for instance, a market-model) (UNEP, 1996). Conditions imposed by investors and/or financiers are similar; increasingly, finance may be approved, or not, on the grounds of tangible evidence of acceptable standards of environmental management or performance on the part of investment-seeking firms.

#### 5.54 Summary

This section argues that market institutions have developed more-or-less formal systems, processes and institutional arrangements aimed at regulating the environment. Of course, these are not seen as directly corresponding to patterns of state-environmental regulation. Market-environmental regulation is founded on different philosophies and is managed by specific

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<sup>81</sup>See chapter 2 for a discussion of the ways compulsion is present in EMS.

structures, processes and mechanisms. The 'market-model' is seen as an archetype or pilot of market-policy aimed at supporting, augmenting, preempting or supplanting state-environmental regulation. It should be obvious that, as with the state, effective market-regulation requires the input or cooperation of actors within other regulatory modes (state, community and associative). As an example, industry associations play vital roles in the development and administration of 'market-models' of environmental regulation, such as Responsible Care, ISO 14001 and others. The topic of interdependencies within and between modes is developed later in the chapter. The discussion now turns to the subject of community-environmental regulation.

## 5.6 The community as a mode of regulation

Before consideration of the community as a mode of any sort of regulation, it is useful to consider what may be meant by the term 'community'. According to the Streeck & Schmitter (1985) model, the community arises 'spontaneously' as humans identify closely with each other on the basis of 'common values' (or 'solidarity'). The guiding principle of community action is therefore informed by spontaneous solidarity.<sup>82</sup> Generally speaking, communities and/or informal networks can be seen as;

loosely joined sets of individuals or organizations in which transactions are conducted on the basis of mutual trust and confidence sustained by stable, preferential, particularistic, mutually obligated, and legally nonenforceable relationships (Hollingsworth, et al, 1984:6).

In an 'ideal-typical' community, leaders are assumed to govern on the basis of the esteem of their followers or families, while the latter desire a sense of "belonging to and participating in the group" (*ibid*:6). These two groups, in their separate roles, "satisfy their mutual needs for a shared affective existence and a distinctive collective identity" (*ibid*). Relationships within and between informal networks are characterized and defined;

either by value consensus or resource dependency - that is, through 'culture' and

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<sup>82</sup>This mode is also referred to as *informal networks* and the *clan* (Hollingsworth *et al*, 1994). In the discussion below, the terms 'community' and 'informal network/s' is used interchangeably.

‘community’ - or through dominant units imposing dependence on others. In either case, they coordinate...action in ways clearly different from markets, hierarchies and states (Hollingsworth, et al, 1994:6).

The community regulates its members principally by establishing and policing norms of behaviour having basis in culture and custom. Order within communities can be maintained;

through devices such as a fear of violent conflict, ostracism and ridicule of those who transgress norms, shared myths and common socialization...felt obligations on the part of members...and convergence of expectations around agreements (Dryzek, 1987:427).

Communities also regulate by organising and mobilising human, natural and monetary resources (Hardin, 1999); by developing activities within their economies (eg ‘grass roots’ economic development defined principally by locality, family, region etc.) (Henderson, 1997); and exercising cultural rules (eg oriented toward preservation of the environment, family, tribe or other community unit) (Manatu Maori, 1991). Communities tend to look ‘inwardly’ for their sense of identity and support. It is in this tendency that they can be seen as separate from other, institutionalized regulatory frameworks, depending not on formal, but informal social relationships;

this sense of ‘community’ ...indicate[s] the characteristic of holding something in common, a feeling of common identity and, most positively of all, a quality of mutual caring in human relations...This kind of community requires the continual practice of mutual support from the people within it: it is community made by people for themselves. It is not provided or defined by an already existing ruler or state (Yeo & Yeo, 1988:231).

Like the market, and the state to some extent, it makes little sense to speak of ‘the community’ as if were internally consistent and comprised of homogeneous units, alike in aim, orientation, purpose, interests, and resources.<sup>83</sup> Having said this, insofar as social units can be identified and differentiated on the grounds described above, the term community remains useful as a descriptor

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<sup>83</sup>The market is of course, composed of vastly differing competitive firms/corporates and their customers, whose interests often conflict; the state is comprised of agencies, whose responsibilities and roles often intersect, overlap and conflict.

of a mode of regulation with properties and characteristics distinct from state, market and association.

### 5.61 Environmental regulation and the community

In an echo of the protest of market actors, environmental regulation is often seen as something that is *applied to* community-actors as resource users and accessors of the environment. Further, community tends to be seen as comprised of individualized, unqualified, and inherently weak parties that require a high degree of protection for their own good from the multifarious hazards produced by industrial development. The philosophy of the paternalistic state is characterised not a little cynically by John McClaughry of the Schumacher Society;

[it] calls for the administration of all public business in accordance with the standards of uniformity, efficiency and bureaucracy. Uniformity, because we are all entitled to the same whoever we are, and whatever circumstances we are in. Efficiency, because we must be careful not to waste any motion or energy. Bureaucracy, because it takes a trained cadre of professional experts to make sure that all these plans and rules are uniformly obeyed by a submissive population...the idea is that planning done by the right people ...will minimize the chances of going wrong, which they will certainly do if the future is left to the whims and vagaries of ordinary unwashed citizens who don't pay enough attention to how the world ought to work (1997:135-6).

Market actors too can have a tendency to see 'community actors' variously as; atomized individuals comprising potential consumers of what producers choose to bring forth (Korten, 1995; Daly & Cobb, 1989); as (potentially) malicious or uninformed objectors to industrial developments or troublemakers that must be kept in line, vigorously rebuffed or otherwise distracted and/or mollified (Goldsmith, 1992; Carley & Christie, 1993); or as 'stakeholders', interested only in specific issues, who need to be placated or bought off by marginal and/or peripheral adjustments to development dictated by conventional economic ideology (Beder, 1997; WBCSD, 1998).

Only recently have communities themselves been recognised as sites of sophisticated mechanisms for regulation of access to and disposition of the environment (Hannum, 1997). According to some, communities are in fact the most promising site/s of development of innovative and

sustainable environmental regulation (Schumacher, 1976; Henderson, 1997; Carley & Christie, 1991). The discussion now seeks to analyse how communities develop and maintain systems of environmental regulation.

#### 5.62 Environmental regulation by the community

Because of large variances in type, scope, orientation and interests of communities, this analysis focusses on three key forms of community-environmental regulation;

- A communal resource management
- B popular movements and activism
- C other forms of regulation involving community actors

Each of these forms of regulation will be discussed in turn below, focussing specifically on context, philosophy, purpose, and management structures, processes and mechanisms.

#### A Communal resource management

In the modern world, we have come to assume that management of the environment and access to resources is only viable with large, expert bureaucracies, with cooperation by highly organized economic entities. We have a tendency to forget, or overlook the fact that, for many hundreds of years, the environment was 'managed', often sustainably, by cultural means. The discussion that follows illustrates this by reference to two approaches; traditional Maori resources management in New Zealand/Aotearoa; and, the village commons of medieval Europe.

#### (I) Maori and the environment

One of the defining logics defining communities is maintenance of self-generated rules, based on respect for, and sustainability of biospheric systems, which govern access to natural resources (Sachs, 1993; Rifkin, 1991). This characteristic is particularly strong among indigenous peoples, or 'vernacular societies', where conventions and principles for resource management are seen as inextricably intertwined with traditional worldviews and ontologies (Goldsmith, 1992). For example, in NZ/Aotearoa, the traditional Maori worldview is very specific about the place and responsibilities of people in the world. The central elements of this worldview are summarized

by the Muriphenua Report (1991):

A reverence for the total creation as a whole; a sense of kinship with fellow beings; a sacred regard for the whole of Nature and its resources as being gifts from the gods; a sense of responsibility for those gifts as appointed stewards, guardians and rangatira; a distinctive economic ethic of reciprocity; and a sense of commitment to safeguard all of Nature's resources (taonga) [or 'treasures'] for future generations (cited in Horsley, 1991:17).<sup>84</sup>

Hence, Maori conventions governing use of the environment spring not from outcomes of conflict or competition between objectives of environmental protection and economic development, as in institutionalized western systems, but arise from a special and profound sense of responsibility. This has its roots in a belief that humans are descended directly from the *Atua* (god) *Tane* and *Hineahuone* (the 'earth-formed maid'). This pairing links humans with divine forces; "whakapapa [lineage] explains how Maori are connected to the environment and its manifestations. Humans are related to the environment and its manifestations since they are descendants of Tane" (Awatere, 1997:7). In this way humans are seen as firstly; essentially inseparable from the rest of nature; and secondly, able to assert control over the use of or access to nature and its resources by virtue of the *mana*, or spiritual authority delegated to them by the *Atua* (gods/ancestors/deities/divine forces); hence, the Maori

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<sup>84</sup>It is important to note that Maori social systems, like many vernacular social systems, are not to be seen as homogeneous and identical in beliefs, attitudes, values, traditions and customs. There is a great diversity in thought among the iwi and hapu of Maori, and differences may only be apparent after consultation with them all. In addition, the values and systems described here arise from pre-modern Maori societies. Our ability to 'decode' such systems and worldviews into the modern idiom is hindered by several factors; first, Maori culture was transmitted *aurally*, holders of knowledge passed it on through myths, stories and legends; and if he or she died without 'speaking it', it died too. Second, many Maori terms, concepts and philosophies do not translate easily; they are culturally contextualized, and not perfectly assimilable outside a Maori domain. Third, Maori is a dynamic culture. The values of Maori are able to adapt to changing circumstances and vary from person to person and tribe to tribe (Patterson, 1992). Finally, we must be sceptical of assertions about traditional Maori views made by persons in the modern world; the 'modern' culture of the Maori has developed through a process of colonialism in NZ/Aotearoa and has been influenced by 'western' cultures. However, the discussion that is presented here is a *general* overview of social systems and beliefs and are derived from extant literature.

view of the world...recognised the tapu, the sacredness, of other life forms and the landscape itself. By seeing themselves in the natural world and thus personifying all aspects of the environment, they acquired a fellow-feeling for all life forms and other entities that surrounded them, and they saw a kinship between all things (Orbell (1995), cited in Ward, 1991:27).

This 'kinship' with the land/environment is articulated in the concept of *mauri*. This has been defined as an enervating 'physical life force' (Patterson, 1992).<sup>85</sup> Everything in the physical world possesses *mauri*, and it is one of the prime responsibilities of Maori to preserve it. This is explained by Manatu Maori and Puketapu-Hetet;

Through the creation process, divine forces were transcended into all objects, animate and inanimate, a life-force principle, or *mauri*. In the traditional Maori view everything in the natural world, possesses *mauri*. The presence of *mauri* in all natural objects is necessary for survival and entrusts people to appreciate and respect the resource (1991:2).

It is important to me as a weaver that I respect the *mauri* (life force) of what I am working with. Once I taken it from where it belongs, I must give another dimension to its life force so it is still a thing of beauty. I am talking about a whole way of living in harmony with natural things - nature itself, natural line, natural movements, and being at one with these things (Puketapu-Hetet (1986), cited in Patterson, 1992).

The concept of *tapu* is one of the main forms of regulation of human action - with respect to the natural world - in the Maori tradition. Tapu signifies sacredness. It refers to the state or condition of a person or object placed under the patronage of the Atua; "accordingly, tapu is the status befitting all elements of the natural world in recognition of the *mauri* that exists in them" (Awatere, 1997:14). When tapu is applied places of significance to iwi and hapu, they become *waahi tapu* (*ibid*). The literal translation is 'sacred place'. When employed in a proscriptive manner, ie exercising power/authority to prohibit access to elements of the environment, *waahi tapu* "implies a prohibition, which violated, would have disastrous consequences, possibly even death" (Baggott, 1997:11). The system of tapu as a mechanism to preserve social order in the community is recapitulated by Manatu Maori (1991);

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<sup>85</sup>Although this is inevitably an incomplete translation: see the note above.

a tapu site has been described as being protected by an unseen gate and has also been likened to an area of harmful radiation. That is, even though nothing is visible, a person who violates the area knows the awful and inescapable consequences to follow (p3).

The use of tapu, and other socially-imposed restrictive mechanisms, such as *rahui* (usually temporary prohibitions on access to resources designed to ensure their preservation), on access to resources spatially (eg areas of allowable access) and time (eg seasons of access), arises from the responsibility to exercise guardianship and cultural custodianship over natural and physical resources in a manner which incorporates spiritual values. This responsibility is articulated in the principle of *kaitiakitanga*. Kaitiakitanga provides the interface, or bridge, between spiritual and physical dimensions of natural resource management (Awatere, 1997);

The Maori of old accepted the responsibility of his supernatural ancestry that made him guardian priest of the deities that controlled the relationships among the human, animal, vegetable, insect, reptile, fish, bird, mineral and spirit worlds. It was because of these ancestral and spiritual relationships that the Maori fished, hunted, and cultivated only to the degree necessary to secure his well-being. It was inconceivable for him to develop senseless exploitation to the degree required by the so-called civilized world (Sinclair (1977), cited in Patterson, 1992:145).

Maori were therefore required by their ancestors to safeguard the environment - taking only what they needed, and to use it appropriately - both for themselves, and for generations to come (Tutua-Nathan, 1992). The relationship between mana and kaitiaki is described below;

Man being descended from the gods is...imbued with mana although that mana can be removed if its violated or abused. There are many forms and aspects of mana, of which one is the power to sustain life. Maoridom is very careful to preserve the many forms of mana which it holds, and in particular is very careful to ensure that the mana of kaitiaki is preserved. In this respect Maori become one and the same as kaitiaki, becoming minders of their relations, that is, the other physical elements of the world. As minders, kaitiaki must ensure that the mauri of their taonga is healthy and strong. A taonga whose life force has become depleted, presents a major task for kaitiaki. In order to uphold their mana, the tangata whenua [the people] must do all in their power to restore the mauri of the taonga to its original strength (Report and Recommendations of the Board of Inquiry into the NZ

Coastal Policy Statement (1991), cited in Tomas, 1994:40).

In summary, traditional Maori forms of resource management are inextricably intertwined with a general worldview that sees humans as a vital part of the spiritual and physical dimensions of the world. The responsibility to sustainably manage the environment was a sacred duty, passed on through the generations by direct lineage to the deities. 'Environmental management' mechanisms, such as tapu, waahi tapu and rahui, were implemented by tribal authority in their responsibility as kaitiaki, or guardians, and accepted by the community as necessary to preserve resources for present and future generations. Maori see careful guardianship of the total environment as absolutely necessary, for it is "permanent and lasting, while they themselves were doomed to die as mere mortals" (Rangimarie Rose Pere, 1988:22).

## (II) European commons

In medieval Europe an arrangement of common ownership (the commons, or village commons) maintained a system of access to resources which ensured its productivity for over six hundred years (Rifkin, 1991:39). The commons rested on a complex system of customary tenancy agreements between feudal owners of common lands and peasant farmers;

Although feudal landlords owned the commons, they leased it to peasant farmers under various tenancy arrangements. Freeholders enjoyed perpetual tenancy, from generation to generation, and could not be arbitrarily removed from their land by the landlord. Leaseholders enjoyed a limited tenancy agreement, generally extending through three lifetimes, at which point the landlords could renew or change the conditions of the lease or withhold the lease altogether. Customary tenants, on the other hand, were without rights and their tenancy depended solely on the goodwill of the landlord (*ibid*:38, emphasis added).

In return for the right to work the land, tenant farmers turned over a percentage of their harvest to the landlord, or devoted a comparable period of time working the landlord's fields. With the introduction of a moneyed economy in the late medieval era, peasant farmers were increasingly required to pay rent or tributes in return for the right to occupy and cultivate the land (*ibid*). The concept of the commons was extended to include communally-owned, organized and cultivated open fields, pooled from the holdings of individual farmers.

The commons system was thus both spatially and temporally located;

land across generations was seen as the common property of particular families or communities. Thus land was owned by a family over many generations, or held in common by a community with a stable set of families over generations (O'Neill, 1993:39).

Far from being the environmentally disastrous social arrangement depicted in Garrett Hardin's famous analysis of the 'tragedy of the commons', village commons "were self-sufficient and proved to be highly resilient to climate and other environmental and political assaults" (Rifkin, 1991:39). This stability arose, in major part, from the orientation toward sustainability implicit in the social organization of the commons:

Each generation had a sense of identity with future owners. They understood themselves to be members of a collective with continuity over time, and saw their own interests as bound up with those of future members of that collective. They engaged in projects the success of which relied on successive generations (O'Neill, 1993:39).

The management of the commons, like in the example of the traditional Maori above, relies on a complex system of social relations. While neo-classical economic analysis assumes 'instrumentally rational' behaviour on the part of the individual farmer/community member is to 'maximize returns' or 'takes' from common lands/resources (Dryzek, 1987; Hardin, 1977), the commons model rests on a principle of unconditional cooperation based on mutual support;

The most remarkable feature of the village commons, and unfortunately the least known, is their democratic form of governance. Peasant councils administered the commons. Decisions on crop rotation, the time to plant and harvest, the number of animals that could graze on the commons, the introduction of new crops, the cutting of forests, the allocation of water, and the use of farm animals and plows were all made jointly and democratically by members of the commune (Rifkin, 1991:39).

Social convention of unconditional cooperation, and temporal continuity, for the preservation of natural resources, as practised in commons systems is elucidated by Christine von Weisacker in her analysis of biodiversity protection;

Local varieties [of valuable crop plants] were collected from wild places and the fields of traditional farmers. They entered the gene banks as 'commons', inherited gifts for the community. They were given for free according to old rules of decency (1993:126).

## B Popular movements and activism

It can be asserted that the threat and actuality of ecological (and subsequent social) calamities erodes the legitimacy and regulatory power of nation-states, often in direct proportion to their inability to resolve them (Taylor, 1995). At the same time, popular environmental movements, ie 'grassroots' organizations, he notes, have proliferated and become increasingly assertive (*ibid*).

It is difficult say what defines a 'popular environmental movement' with exactitude. However, it may be useful to start with a continuum from *less* to *more* 'energetic' and/or organized forms of social activism. At the lower end of the scale, we see the beginnings of activism in the form of moderate change in individual behaviours or ways of living, reflecting concern(s) about environmental issues. Such actions include "walking upstairs instead of taking lifts, and riding bicycles to work...[and] attend[ing] the occasional meeting of local residents...when new motorways threaten their property values" (Young, 1992:174). While actions such as these may not in themselves greatly postpone environmental crises, Young argues the usefulness of individual action of the sort described above should be seen as creating, "a context in which more consistent and thoroughgoing greens can become more radical without frightening the respectable" (*ibid*). Progressing up our scale of energism/organization, an increasing tendency can be observed on the part of individuals to become more radical in their activism. Voluntary psychological and physical withdrawal from 'industrial/consumer society'(by, for example, formation of self-sufficient communities); participation in demonstrations, boycotts, vigils and protests; and even violent forms of action - such as 'spiking' trees in forests, or vandalism of production sites/equipment, are all manifestations of increasing environmental radicalism.

The formation of more or less formalized 'groups' to increase the reach or influence of movements represents an increase in the complexity of movements - a shift 'up' in the continuum introduced above. Escalating individual concerns about the hazards of toxic industrial waste provide instructive examples of how movements develop. Incidents such as the Love Canal

disaster,<sup>86</sup> the Seveso disaster in Italy, numerous sinkings of oil tankers, and others of varying severity, provide focal points around which communities and groups congregate to form movements to communicate their grievances and desires - for instance, recompense, punishment and reform (BBC, 1991). Szasz illustrates how this process unfolded in the US during the 1980's;

concern about toxic industrial waste sparked a widespread, dynamic social movement. Thousands of local, community-based groups formed. In less than a decade, a rich infrastructure of more permanent social movement organizations appeared...the movement's earliest groupings had little that could really be called an ideology. They acted out of a relatively narrow, simple NIMBY ("not in my backyard") consciousness. From these humble beginnings, impressive things grew. The movement expanded its focus to include other local contamination issues, municipal waste, military toxics, pesticides and others...At the same time, the movement's understanding of the toxics problem deepened, becoming...more radical. The movement's combination of radical critique and direct, grass-roots tactics is perhaps best described as "radical environmental populism" (1994:5-6).

This demonstrates the high degree of potential for 'escalation' in objectives inherent in ecological/environmental movements. While at the outset, the goals of the movement may be modest, focussing on preserving open spaces or trees, organising litter collection on roadsides or on redressing harms suffered by specific communities. However, the German philosopher Hans Magnus Enzenberger, speaking in 1973, reminds us of the latent, and not-so-quiescent power that a movement possesses;

The harmless impression made by projects of this kind can easily blind us to the reserves of militancy they conceal. There only needs to be a tiny alteration in the definition of goals and these groups spontaneously begin to increase in size and power. They are then able to prevent the carrying through of large-scale projects like the siting of an airport or an oil refinery, to force high-tension cables to be laid underground or a highway to be diverted. But even achievements of this magnitude only represent the limits of their effectiveness

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<sup>86</sup>A community sited on an old waste site in New York State in the late 60's and 70's suffering appalling health problems formed a citizen's movement and successfully sued the State of New York and Occidental Petroleum for damages. See Tinker (1985) for a revealing analysis of the role of taken-for-granted market-financial logics in this tragedy.

for a time. If the hypotheses of the ecologists should come even partially true, the ecological action groups will become a force of the first order in domestic politics and one that can no longer be ignored (1988:260).

This brings us to the next stage of organizational complexity on the continuum being developed here: the powerful pressure group. Groups such as Greenpeace, Friends of the Earth, and the Sierra Club were all once thought “extremist by society which never doubted the wisdom of pressing on with growth regardless” (Young, 1992:176), and now find themselves in the enviable position of possessing wide and sympathetic world audiences and widespread and influential networks of support.

### C Other forms of environmental regulation involving community

The fact of state monopoly over coercive systems of environmental regulation, combined with a concentration of economic power in the hands of the market mean there is limited scope for individuals or communities to initiate or maintain systems of environmental regulation. Both state- and market-based systems of environmental regulation leave, to varying degrees, openings for the involvement of members of the ‘community’. Many state-systems, for example, allow scope for persons (or institutions) “to enforce the system [itself] against either another person or institution or against government” (Fisher, 1993:606). It should be noted that, such a person or institution is doing nothing more than ensure compliance by everyone else within the community with the legal system. In terms of development of legislative rules the state will often allow the input of individuals and groups as stakeholders by

- enabling public participation in the development of environmental policies;
- enabling public participation in certain decision-making processes (eg hearings) granting rights to the environment;
- enabling public participation in formulation and selection of plans and other instruments for managing the environment;
- enabling public participation in decision-making processes that regulate pollution of the environment;
- conferring rights of appeal against decisions affecting the environment upon members of the community other than the applicant and the determining agency;
- conferring upon members of the community a right to seek remedy from a court for a

breach of an environmental law or an environmental obligation (Fisher, 1993:606; RMA, 1991; Ogus, 1994; Pardy, 1996).

Market actors also allow limited (but widely varying) degrees of community involvement in their environmental regulatory activities. This may include information-sharing, reporting of environmental information and performance, and limited input into corporate decision-making such as site-selection. This trend is to be encouraged; Professor Richard Welford, for example, argues that, “open communications with all stakeholders...consultation frameworks and dialogue must be at the heart of [corporate environmental and] sustainability measures” (1996:246).

### 5.63 Summary

Some of the regulatory mechanisms arising from the community-mode, as discussed here, suffer from a number of drawbacks in their potential efficacy as modern systems of regulation; indigenous/traditional networks rely on paradigms, social mores, and moral and ethical bases often long-colonized or rejected by other ideologies or worldviews. Systems of *commons*, by the same token, require strong social bonding prevent the overuse lamented by Hardin and others.<sup>87</sup> The structures and processes of popular movements differ by being very relevant to modern systems of environmental regulation, but because of their reformist agendas and tendency toward formation of interrelationships with the initiatives and frameworks originating from other modes, may lose their claim to a ‘true’ basis in community. This brings us to an important point. It is becoming obvious that regulation of the environment has less to do with a strictly reductionist application of mechanisms by the relevant mode of regulation, but should be viewed as more of a contingent, fluid outcome of interactions between modes of regulation. The fourth, and final mode to be discussed - the associative mode - reflects this aspect of the ‘reality’ of environmental regulation, being itself based on a philosophy of inter- and intra-organizational concertation.

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<sup>87</sup>Although some commentators have revived the idea of the commons as a viable resource management system, most notably with regard to the high-seas and the atmosphere. However, their conception of commons has more in common with the economists idea of *public goods* and unregulated/open access regimes, than the structured social frameworks discussed above (see, for example, Stone, 1993; Imber, 1994).

## 5.7 The association as a mode of regulation

Returning to the Streeck & Schmitter (1985) model, there remains one mode of regulation left to discuss in the context of environmental regulation - the association, or in the case of strong institutionalization, “private interest government” (Hollingsworth, et al, 1994). At the core of the associative order is a rationale of interaction and allocation of resources and responsibilities among a membership of privileged actors. The ideal-typical association is composed of ‘clusters’ of organizations which identify with a, “common purpose of defending and promoting functionally-defined interests, ie class, sectoral and professional associations” (Streeck & Schmitter, 1985:10). The central principle is one of concertation, based upon a broad agreement on common interests among members;

concertation, or negotiation [arises] within and among a limited and fixed set of interest organizations that mutually recognize each others status and entitlements and are capable of reaching and implementing relatively stable compromises (pacts) in the pursuit of their interests (*ibid*).

Hollingsworth, et al (1994) expand on this understanding;

Associations are collective organizations formed around specific categories of actors in identical, similar, or adjacent market positions that define and promote public (or “categorical”) goods (p7).

In other words, the association acts not to safeguard its own organizational ‘self-interests’ against possible attack from competing, colonising or protesting/reforming forces (such as may be expected in ‘pure’ market, state, and community contexts), but rather seeks to provide useful ‘services’ designed to be as accessible and beneficial as possible to its membership. Agglomeration of individuals and individual organizations into the associative form creates an ‘entity’ which has greater potentiality for intercession in social, political and community forums for the benefit of its members, than its members as individuals or any smaller, less well-coordinated social units.

An associative social order at the ‘macro’ level can arise in three main ways (1) out of the outcomes of interactions between associations themselves; (2) in relations between the association

and ‘interlocutors’ - outside actors whose resources, input and/or endorsement are necessary for ‘concerted negotiation’ to take effect; and (3) in the results of associative activities flowing-on to those whose interests are indirectly affected by the externalities generated by such interactions and agreements (Streeck & Schmitter, 1985; Hollingsworth, *et al*, 1994; Hollingsworth & Streeck, 1994; Grant & Paterson, 1994).

The ideal-typical association is, at core, an arrangement for regulating. It exists to develop and implement measures intended to promote and further the interests of its members, who seek and hold such membership for the purposes of contingent and/or strategic interdependency. Associative-regulation acts in three main ways:

(1) Unifying and focussing member interests under an associative umbrella (often with power and resources greater than any individual member):

- by the creation of a group with identifiable and cohesive interests, cause(s), and viewpoints;
- in creating and presenting a ‘united face’ to possible threats to either it and/or its members;
- by developing member support services, such as information clearinghouses, libraries and think-tanks;

(2) Imposing discipline on membership/constituency:

- by creating and preserving uniformity in member behaviour in demarcated/specific channels<sup>88</sup> by establishing often binding standards, codes, conventions and policies;

(3) Seeking to influence the actions of third parties:

- by engaging in collective contracts with other associations;
- by forming interlocking arrangements or relationships, with actors ‘residing’ within other modes, designed to promote member interests;
- by mobilizing and/or influencing private and public policy to their own and their members’ advantage;

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<sup>88</sup>By ‘specific channels’, I mean those areas of policy and action demarcated as legitimate grounds, scope or ‘turf’ for associative attentions (ie provision of categorical goods), as opposed to areas intended to remain outside their purview (ie private goods).

- intercession in forums of policy debate and formation (ie 'lobbying');
- by engaging in public relations activities aimed at influencing public perceptions of members, members interests, and to help to shape public and private understandings of issues;
- by means of 'hands-on' activity, such as funding and/or undertaking projects.<sup>89</sup>

#### 5.71 Types of association

Associations have developed extensively in relation to regulation of economic activity; associative arrangements formed by both workers (such as trades union) and businesses (like trade and industry associations) are common in the regulation of economic sectors in Europe and Japan, and can also be found in the US and other countries (Schneiberg & Hollingsworth, 1989). The association exists to give voice, clarity, force, influence, and above all, cohesion to the interests of its members. The actions it might take to achieve these objectives will vary, but in general, market organizations associate to,

collect information about production levels and prices, to conduct joint research and development, to promote standardization, to engage in technology transfer and vocational training, to channel communication and influence to state agencies, to formulate codes of conduct, to negotiate with labor and even to decide on prices, production goals and investment strategies (Hollingsworth, *et al*, 1994:7).

Worker-based associations tend to be active, as one might expect, in the areas of wage-setting, regulation of working conditions and job specifications, determination of working hours, management of employment levels, the regulation of investment, setting of prices (if only indirectly via wage-setting), and in setting and application of standards for worker health and safety (*ibid*).

The non-government organization (NGO) is another type of association. Attempts to generically define NGOs usually focus on their non-state, non-market aspects;

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<sup>89</sup>Categories adapted from Hollingsworth, et al, 1994; Streeck & Schmitter, 1985; Beder, 1997; Fernando & Heston, 1997; Lipschutz & Conca, 1993; WBCSD, 1997; Welford, 1997; Jacobs, 1994; OECD, 1998; IISD, 1997; WBCSD, 1998.

The legitimacy of the claims made about NGOs is derived from the criticisms of the state and the private sector; the mission and practices of NGOs are considered to be radically different from the other two sectors (Fernando & Heston, 1997:11).

The objectives that many NGOs are oriented toward further illustrate the 'schism' between themselves and older, more established forms of regulation,

These organizations provide assistance to millions of people around the world...[through] local, regional, and global networks [which] function as new venues for dialogue on social transformation and for influencing forums that are traditionally dominated by state actors...Protagonists argue that the increasing influence of NGOs is evidence of a historical break from the conventional wisdom that social development is primarily the responsibility of the state and the markets (*ibid*:8).

The term 'non-government/al organization' has come to encompass a wide range of organizations, in a vast array of roles: some examples, with their roles noted, are; the United Nations (UN): security and social development; UN Environment Programme (UNEP): environment; World Bank and International Monetary Fund: international development finance; International Organization for Standardization: industry standards; World Trade Organization (WTO): furtherance of international trade; Amnesty International: humanitarian goals; International Olympic Committee: Olympic games, and; the World Federation of Trade Unions: support for national trades unions (Taylor, 1984; Fernando & Heston, 1997; Edwards & Hulme, 1992).

In the discussion of *community* above, it was averred that in some cases, organizations arising out of environmental movements may become sufficiently institutionalized to be accepted members of (or even be subsumed within) extant power structures, thereby becoming distanced, or 'estranged' from their communitarian roots. This 'shift' manifests itself in a number of ways, including; (i) alterations in orientation of the association (such as from a local/ized to a global emphasis); (ii) in an evolution in the views and aims of a movement's constituency, from radical beginnings demanding a split from accepted paradigms, to positions of moderation, seeking accommodation of proposals of more 'progressive' nature, within conventional structures and worldviews); (iii) formation or entrenchment of a powerful group of members ('capture' by special interests), which then 'steers' the organization toward fulfilment of its own interests (as opposed to others that may exist within its membership), and; (iv) in expansion of organizational

powers or influence beyond the intent (or capacity) of the originators of the movement. Shifts of these sort may generate or confer a sort of organizational 'gravity', and raises the possibility of higher degrees of acceptance within the established order. In the logic being developed here, organizations which experience transformation of these kinds (or modal shift) become *de facto* associations. That is, while an organization or movement may have origins in other modes, they become sufficiently autonomous, self-governing and 'representative' of member interests to become classified as associations. Examples of associations evolving in this way abound. Environmental organizations such as Greenpeace, Worldwide Fund for Nature (WWF) and Friends of the Earth (FoE) have all grown out of popular movements to become mainstream and influential international NGOs (see for example, Edwards & Hulme, 1992; McCormick, 1993). And the World Business Council for Sustainable Development has grown from modest origins as a loose coalition of businesses, to be today a credible and powerful mouthpiece for the promotion of the interests of business and industry in policy development forums in the private and public sectors at the national and international levels (WBCSD, 1999).

It could be argued that association-ism does not represent a 'true' mode of regulation, with unique defining characteristics and specific logic governing action. In this understanding, the 'association' may function only as a descriptor designed to 'catch' all organizational forms not 'fitting' market, state and community categories. As an example, Puxty et al (1986), in their development of a framework for examining how professional accounting practices are regulated in an international context, reduce associations to the status of a 'diluted combination' of market, state and the 'remnants' of communitarian principles. I argue however, with Streeck & Schmitter (1985), Hollingsworth (1994) and others, that the associative mode of regulation has become distinctive enough, and sufficiently accepted as a recognisable style of social action - both conceptually and empirically - that it constitutes a mode of equal status as (theoretically, at least) those of market, state and community:

the conditions that enable interest associations to enter and be included in certain influence games are so specific, and the rules of these games so distinctive, that they constitute a separate logic of collective action and social order (Schmitter & Streeck, 1985:11).

#### 5.72 Environmental regulation and the association

Because of the extensive and varied array of orientations, purposes, structures and styles adopted

by associative actors, it is difficult to define conclusively the ways associations engage in environment-regulatory relations. However, through an analysis of individual associations (or categories of association), it is possible to paint a rough outline. For the purposes of this analysis, it may be useful to conceptualize each regulatory mode - ie MSCA as effectively 'autonomous' and self-contained, possessing definite boundaries (encompassing and reflecting their unique philosophies, orientations, and management structures, mechanisms and processes) which separate them from each other. Actors are therefore 'confined' within these boundaries, but seek to interact with and influence in varying degree, and for differing purpose, actors 'residing' (or having their 'basis') within the bounds of other modes.

One of the identifying characteristics of the associative mode is the high degree of modal interaction desired by a large proportion of actors within it (eg 'industry' and 'worker' associations). These seek more or less close interaction with Market (M), State (S) and Community (C), for environment-regulatory purposes. Yet other associative actors may seek separation, or 'autonomy' from other modes - in their environment-regulatory activity - on the basis that M, S and sometimes C are outmoded, exploitative or excessively authoritarian (Sanyal, 1997).

Three types of relationship emerge from this analysis and are described below.

#### A Association - State (A-S)

In this class of relationship the associative actor desires interaction primarily with state-based actors. The relationship sought may be cooperative, such as in the following situations: a) an NGO may collaborate with state agencies in the delivery of services, or programmes to do with the environment; b) state-based agencies may choose, or be persuaded, to delegate specified regulatory competencies or responsibilities, such as monitoring compliance, or development of technical rules, to a suitably 'expert' NGO; c) rules for industry self-regulation, such as those generated by industry associations and private standards-setters (eg ISO), may be formally accepted within state-environmental regulatory construct/s (semi-governmental regulation) (Jacobs, 1994; OECD, 1998), or; d) NGO/s may openly express support for specific public environmental policies and/or for selected political actors (individuals or parties) (Fernando & Heston, 1997:11).

On the other hand, this type of relationship may be chiefly antagonistic, as in the case where an industry association representing vested interests of members criticizes or attacks state environmental policy and/or policy implementation when those interests are (potentially) affected (Beder, 1997; Elliott, 1998). Of course, associative actors whose concerns are not business concerns can express antipathy toward the state also. McCormick (1993) claims that multiple environmental NGOs have arisen out of a frustration with the perceived slowness, or ineffectuality of state-environmental regulatory efforts, and have taken it upon themselves to exert pressure on governments for change. In yet other cases, the association may fear state attempts to co-opt them so as to make another (ineffective, bureaucratic, cumbersome) arm of the state, or even that they may become 'engulfed' and 'tainted' by the 'wheeling and dealing' of the 'usually corrupt political process' (Sanyal, 1997:22).

In some circumstances, associations representing interests affected by social, economic, and environmental policies might attempt to persuade state-bureaucratic actors to accept its views (or even suggestions for alternative policies) and/or incorporate them into public policy frameworks, using mechanisms such as direct lobbying, public relations activities, and other inputs into policy debates. They may also seek to convince state actors/agencies of their competencies - as exemplified by associative-disciplinary mechanisms like standardization, codification and other rule-setting activities - in efforts to advance self-regulation or to pre-empt laws potentially (or actually) threatening member interests.

## B Association - Market (A-M)

Associations may be oriented principally toward interaction with market actors. Again, the relationship fostered may seek close collaboration with corporations, as in the case of the ubiquitous trade association. Other situations where associative actors foster cooperation with market actors in the arena(s) of environmental-regulation are:

[a] business-environmental NGOs, such as the WBCSD, International Institute for Sustainable (IISD) and the International Chamber of Commerce (ICC) have been active in the 1990's promoting the concept of congruence between business and environmental interests, and expressing 'commitments' to environmental goals, such as sustainable development (WBCSD, 1995, 1997; IISD, 1997; ICC, 1998);

[b] environment/development-oriented NGOs sometimes seek to align themselves with, or enlist the aid of international financial institutions in order to finance 'environmentally-appropriate' development (Fernando & Heston, 1997; Sanyal, 1997);

[c] environmental NGOs may, in conjunction with market actors, promote market-oriented economic and policy reforms.

Association-Market relations may also be characterized by antagonism. An association which sees its purpose as promoting equality and equity in social and economic development may decry the exploitative and unequal relationships perpetuated by 'free-trade' ideologies and multi-national economic entities. It might instead advance 'anti-free-market' proposals such as local and individual self-sufficiency, 'small-is-beautiful' communal social, local development, reductions in consumption, etc (McCormick, 1993; Riviere *et al*, 1996; Streeten, 1997; Taylor, 1995; Schumacher, 1973).

#### C Association - Community (A-C)

Many associative actors have as their primary goal to affect the way the 'public' perceives environmental issues. Environmental NGOs and institutionalized movements in particular are masterful in their use of widely accessible and newer media channels (such as the Internet) to influence public opinion on issues as diverse as social and economic development in developed and developing countries, pollution, by-products of industrial activities, recycling, free trade, exploitation of workers, biodiversity, logging of rain-forests, and humanitarian causes. Industry associations and business-oriented NGOs have been slower to directly address the public at large, focussing instead on more concentrated centres of influence (in for example, market and state modes). However, recognising the latent power of public opinion (to shape consumer preferences, public inputs into public policy, ) such associations are now actively advertising in conventional and new media channels and circulating public relations materials generated by their think-tanks, and research institutes (Beder, 1997).

Other associations have their roots in community-movements, and may choose to maintain close links with that part of their constituency 'remaining' in the community (mode) (such as individual supporters and volunteers). This may be for the purposes of; maintaining an ability to 'mobilize' large numbers of people (for rallies, demonstrations, letter-writing campaigns, etc); maintaining

as large as possible funding base; maintaining a 'power-base' of people informed (or perhaps 'indoctrinated') about the issues the particular association is concerned with, and its position on them, and; as part of general efforts to maintain the visibility or public profile of the associative actor.

Sanyal, in his analysis of NGO relationships with market and state actors, illustrates exactly why some associations may favour relationships with community-actors;

The organizational priorities of NGOs are very different to those of state and market institutions, which are primarily motivated by the need for social coercion and profit, respectively. In contrast, NGOs are interested mainly in building communities...rely[ing] primarily on solidarity between the members of civil society, and this solidarity is nurtured by NGOs (1997:22).

#### 5.73 Environmental regulation *by* the association

The discussion below outlines in more detail environmental-regulatory structures, practices, processes and mechanisms employed by associations. It takes as its starting point the three mechanisms employed by associative actors to regulate activities possessing environmental characteristics or resulting in effects/impacts. After s.5.6 (1)-(3) above, they are:

- a. Unifying and focussing member interests under an associative umbrella
- b. Imposing discipline on members
- c. Seeking to influence third parties

##### a. Umbrella

The 'umbrella' structure serves to unify constituent 'forces'; to confer profile and strength beyond the abilities of individual members. For example, environmental NGOs, such as Greenpeace, now have profiles (and resultant influence) exceeding that of even their most well-known individual members. Many market-oriented 'environmental' associations have formed around a perception that public environmental policy takes too little account of their interests, and the competitive, self-interested and 'atomized' nature of business relationships robs them of any collective impact they might create (Wallace, 1996).

The umbrella provided by the association creates a group with identifiable and cohesive interests, cause(s), and viewpoints. Resources vested within the associative form by memberships allow it to provide support services (described elsewhere as ‘categorical goods’), such as information clearinghouses, libraries and think-tanks. Members can therefore be apprised in timely fashion of association positions, developments in markets and policy, and how best to act in their collective interest/s. The website and e-mail list operated by *Infoterra* (an arm of UNEP) is a case in point. These provide a focal point for thousands of individual members to confer and share information on environment and development related issues.<sup>90</sup>

b. Discipline

One of the principal mechanisms of associative-environmental regulation is the collective acceptance by members of measures designed to encourage uniformity in member behaviour with regard to actions having environmental effects. Measures falling into this category include standards, codes, conventions and policies. Listed in Table 5.1 below are some examples of environmental codes of conduct crafted by a wide range of industry and business associations.<sup>91</sup>

In some cases, arrangements (or contracts) between members of several associative bodies may form an interlocking and self-contained system for formation of standards, performance of standard requirements, and verification of member conformance. Such a system can be seen in the accreditation and certification arrangement operated by ISO, its member standards bodies and groups of ‘accredited’ auditors/verifiers. ISO, through processes of member input, sets the standards; national standards bodies accept the standards into rule structures governing specified industry activities; and the auditors admitted into the arrangement have responsibility for verifying subscriber compliance (or not) with the requirements of the standard. Long confined to technical and product-based standards, the ISO has recently moved into the area of standards for environmental management (ie the ISO 14000-series of international standards) (ISO, 1996a, 1996b; Gleckman & Krut, 1997).

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<sup>90</sup>See [www.infoterra.org](http://www.infoterra.org).

<sup>91</sup>Source: UNEP (1998).

Table 5.2: Selected environmental codes of conduct

International Chamber of Commerce (ICC) Business Charter on the Environment (1990)
World Coal Institute (WCI) Mining and Environment Guidelines
International Federation of Consulting Engineers (FIDIC) Consulting Engineers and the Environment (1990)
Statement by Banks on Environment and Sustainable Development (1991)
Statement of Environmental Commitment by the Insurance Industry
International Iron and Steel Institute (IISI) Statement on the Environment (1992)
International Council on Metals and the Environment (ICME) Environmental Charter (1993)
World Travel and Tourism Council (WTTC) Environmental Guidelines (1991) and Green Globe Programme (1994)

c. Influence

This, more than the two mechanisms (umbrella and discipline) discussed above, embodies the ‘spirit’ of associative-environmental regulation. To amplify; associations form to exert greater influence than is possible by remaining ‘single’ (as it were). Organising umbrellas and exerting discipline among members are means to an end, that is, demonstrating sufficient levels of credibility to other regulatory actors in order to enable associative-regulatory action. Unsurprisingly in practice, we find a large amount of associative resource and ingenuity devoted to such activity. The influence sought by associations is often prodigious. In areas of environmental regulation, associative actors promote influence by means such as engaging in collective agreements with other associative actors; by forming interwoven relationships with parties acting from within other modes; by mobilizing and/or influencing policy to their own and their members’ advantage; by engaging in public relations activities aimed at influencing public perceptions of members, members interests, and to help to shape public and private understandings of issues, and; intercession in policy debate and formation. The use of such techniques is illustrated by an example from Beder (1997);

The Global Climate Change Coalition, a coalition of fifty US trade associations and private companies representing oil, gas, coal, automobile and chemical interests, [formed] to fight restrictions on greenhouse gas emissions. Its tactics have included distributing to journalists a video which claims that increased levels of carbon dioxide will lead to increased crop production and help to feed the hungry people of the world. In the lead-up to the Rio Summit the Coalition successfully lobbied the US government to avoid mandatory emissions controls; and in 1994 it called for the Clinton government to resist international agreements to reduce greenhouse gas emissions because they “would damage the US economy and the competitiveness of American business in the global marketplace”. The chair of the Coalition at the time was also president of the National Association of Manufacturers (p29).

#### 5.74 Summary

Associations are emerging as powerful sites of environmental regulation. The associative mode possesses some definite regulatory advantages over other modes; associative actors tend to be faster-moving than state bureaucracies, can be representative of a wider range of interests than markets, and tend to be more influential and credible than purely community-based initiatives. Associative actors, reflecting their wide resource and member bases are capable of mobilising an impressive array of regulatory instruments. The term ‘association’ is not however intended to convey a false sense of definitional uniformity. We see instead a heterogeneous mixture of actors large and small, local, national and transnational, interest-guarding and community-building, focussed and popular, and loosely organized and formal.

#### 5.8 The question of *who regulates* revisited

The answer to this question is outwardly simple: *everyone* regulates. Taken to a high level of detail however, the answer is more complicated. The discussion above portrays regulation as an act of social creativity, as arising out of an interactive *complex* where competing, cooperating, power-wielding, and influence-exercising social actors seek - in more or less organized and institutionalized ways - to act upon the behaviours and perceptions of others.

The sphere of activity designated as *environmental regulation* is of singular significance. The importance of the environment to the ongoing lives of civilization and species acts as a sort of

magnet, drawing a wide variety of actors from all four modes into regulatory activity. Some are regulators, some are regulated, some are both in turns. This is the lesson of the discussion above. We have become accustomed to seeing complications and failures in the realm of environmental regulation; state imposition of economically inefficient and inflexible regimes; self-serving schemes, hatched by vested interests; an extensive and growing array of regulatory initiatives; confusion over regulatory objectives and means; conflict and reproach over use of resources; obfuscation of which actors constitute environmental regulation, and so on. The reason for these and related maladies, is that in disarray, we have forgotten that we are creators of our own destiny. It is insufficient as an explanation of why problems exist, to point the finger of fault at another. All social actors are 'responsible', to varying degrees, for extant systems of environmental responsibility and regulation. The discussion and analysis above merely illustrates how this point might be clearly conceptualized.

Having said this, it is important to note that the analysis of modes as (environmental) regulators has weaknesses. The potential for criticism is therefore addressed here briefly under four headings; origins of the modes; the evolution of the modes; modes as self-contained and autonomous; and a focus on the nation-state.

#### 5.81 Speculating on origins of the modes: modes as expressions of the *lifeworld*

The analysis of Streeck & Schmitter (*op cit*) in particular, and many others in general are predicated on a premise which frames social interactions in a context defined by the interweaving of four *modes* of regulation - markets, states, communities, and associations. While this is a suitable starting point from which to build a theory of regulation, to leave the issue at that begs the question; *where do the modes themselves come from?* While this issue is beyond the scope of the thesis, it is addressed in brief and speculative terms here, since the understandings flowing from its consideration assist in model building in chapters 6-10.

The issue of the origins of the four modes (hereafter the appellation MSCA is used for the four modes together) is most properly dealt with using concepts from more philosophical reflections. An interesting approach to the 'origin question' is seen in *lifeworld-systems* theory, especially as seen via Jurgen Habermas' theory of *communicative action* (see Habermas, 1985; 1987). Habermas' critical theory of societal development sees modern societies as 'composites' of 'lifeworld', 'steering media' and 'systems'. In simple terms, lifeworlds can be seen as symbolic

spaces, or normative contexts within which culture, tradition and identity can be formed, sustained and reproduced (Power & Laughlin, 1996:444). The lifeworld is interpreted here as a virtual, discursive space, more-or-less vaguely defined by a mix of undeveloped, unspecific, undifferentiated ideal(s), stories, and 'narratives' about human creative potentialities (Habermas, 1987). Lifeworlds arise out of a coalescence of discourses and cultural milieus, and are in constant flux, as people make decisions about identity at individual and collective levels. Broadly speaking, lifeworlds are seen as the most general, 'largest', and least differentiated level of social organization. The lifeworld is the origin, or generator of the informing narratives which produce the highly specialized, stratified social constructions found in modern societies, polities, cultures, and economies.

Habermas sees societies as evolving through a process of increasing differentiation, facilitated by increasing levels of discursive skills: "the greater the sophistication of our discourse the greater the lifeworld is differentiated...and the greater the resulting complexity and diversity of the organizational systems" (Broadbent, et al, 1991:4). Lifeworlds are characterized by lower levels of differentiation, but as the complexity of the body social increases via discursive specialization (among others), *systems* 'spin off' of the lifeworld.

Systems are seen as *expressions* of the lifeworld; of lifeworld level desires taking the shape of functionally defined and tangible institutional arrangements. Indeed, it is from the lifeworld that systems draw their normative, purposive resources; in other words, *their object and will*. Desired objectives, such as economic growth, environmental improvement and sustainability have their origin at the lifeworld level of the social organism.

Lifeworld desires, expressed and enabled via the activity of the systems (eg economic and administrative systems) are guided by means of 'steering media'. Among the most important of these are money and power (Habermas, 1987). Distinct administrative and structural arrangements, enlivened by steering media, mediate between specialized systems and lifeworld, allowing the latter to determine - in theory at least - the priorities of the former. The comprehensive overall body social can then be understood as a 'complex' comprised of lifeworld as 'base' or foundation; systems as 'functional distillations'; and steering media as communicative channels.

In terms of the concepts outlined above, modes of regulation can clearly be seen as types of *system*, as expressions of the lifeworld. They are functionally and objectively differentiated articulations of lifeworld-level thoughts about social development (of a particular type). They are the result of an ‘original’ lifeworld desire for experience, in and through the particular formats available via systems ordered and organized by the modes.

The ‘boundaries’ of the modes are defined by how far commonalities in core ideologies, experiences, norms, narratives, metanarratives, paradigms (and so on) can be maintained. The modes are internally consistent (in terms of narratives, theories, ideologies, rationales, etc) and externally differentiated (by, for example, aims, purposes, praxis, institutions, etc). However, since relationships are maintained both intra- and inter-mode, some ability for interaction between modes must be fostered. Indeed, much of the literature contains detailed analysis of structured and informal interactions between key ideologies and institutions ‘representing’ the modes of MSCA. Systems must therefore be capable of furthering shared understandings for the resolution of problems, negotiating outcomes, and so on. Therefore the boundaries of the system-modes must be ‘semi-permeable’ and not so ‘hard’ that sharing is impossible. This point is taken up again in s.5.83.

#### 5.82 Conjectures on the *evolution* of the modes

The inadequacy of the Streeck & Schmitter (1985) model as a full explanation of regulation is recognized by Puxty *et al* (1987) who see the model as hindered by its ahistoric and asocial character, resulting in less than satisfactory explanations of the “origins, reproduction or transformation of the modes of regulation” (p274). The understanding explored above, that is, *modes as expressions of the lifeworld*, gives potential for insight into the issue of the how modes might be seen to reproduce, or to transform.

A narrative could be constructed - using the understandings generated above - along the following lines; the desire of actors at the level of the lifeworld for increased experience of distinctiveness and differentiation results in the ‘creation’ of separate systems, or modes. The motivating ‘force’ behind the ‘vector of differentiation’ is the separative, outward, creative force behind the modes themselves. Those wishing to experience a commercial, or bureaucratic, or mutualistic, or associative meaning or basis to their existence, have the opportunity, via identification with specific modes. Through processes of differentiation, increasing levels of separation are available

to those wishing to explore them.

In opposition to differentiation-vectors can be seen other vectors, seeking some sort of ‘restoration’ of the original, perceived ‘unity’ at the lifeworld level. A yearning for one-ness (eg of humanity; of a nation; of a society; of a culture; of a family, etc) is a driver of the communion and sharing of meaning seen in many inter-mode interactions. In acts of intermodal relationship, communication, and/or transaction, ‘overlaps’ are incepted that act as conduits for discourse, which can thereby flow (more or less freely) between modes. This could be seen as a sort of ‘shadow’ (or remembrance) of the undifferentiated lifeworld. This integrative, ‘inward’ force allows modes to interact, share ideas, concepts, paradigms with one another, as they must, for society to be viable. What is not so often recognized, is that the individuals, actors and institutions engaging in such relations are altered in the interaction (usually in small increments). For example, states may recognize and take on market philosophies; communities may become colonized and subject to state claims to legitimacy and rule; associations may influence the outcomes of allocative decisions made by market actors, and so on.

The ‘evolution’ of the *lifeworld-system* complex, in this view, might be conceived in terms of the tension, or balance between the ‘differentiation-outward’ and ‘integrative-inward’ vectors. At a point in history, the outward force could be seen to prevail, at another, the inward. At all times, of course, there will be a dynamic tension between them. Thus, the modes evolve and develop, and indeed the entire complex can be seen as being on an evolutionary pathway.<sup>92</sup>

### 5.83 Modes as self-contained and autonomous

The discussion above introducing the modes as simultaneously progenitors and sites of environmental regulation explains modes as more-or-less autonomous, internally consistent *vis a vis* commonality in discourse (among other things), and externally differentiated. Phenomenal reality, while bearing some resemblance to this simplification, is more complicated, and less amenable to strict categorization. The discussion below outlines two behavioural tendencies exhibited in mode-related, or mode-justified action to illustrate this complexity: *multiple choice* in regulatory relations and *incursion* by one mode into the ambit of another.

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<sup>92</sup>A conception of the ‘destination’ this path may lead is explored in more detail in chapter 10.

Calls for pure self-regulation notwithstanding (DeJasay, 1990; Ogus, 1995), it is clear that environmental regulation arises from a single or set of actors imposing, or seeking to induce behavioural adjustment on the part of another or set of actors. 'Initiators' can be seen as regulators and receivers, as regulatees or regulated (Lane, 1995). Even this formulation is not without flaw; regulatees may respond to regulatory efforts by regulators in varied ways not anticipated by such a simple 'one-way' conceptualization. For example, a market actor (eg company) may be subjected to rules developed and imposed by a state/bureaucratic agency, which affect actions with environmental consequences. The company has two basic options - comply or not - but has also multiple 'secondary' options, which may include the following; (a) lobbying officials in an attempt to have the rules changed; (b) challenging the rules, or the agency's interpretation of them in a court of law; (c) engage in research and/or public relations activities in order to demonstrate the costs to the entity/the economy of the rules in question; (d) seek to join with other similarly affected actors in pursuit of either/all the strategies listed above; (e) go beyond requirements for compliance, to demonstrate self-responsibility and/or 'corporate citizenship' in order to establish a case for abolition of state-rules on the basis of redundancy of such rules; and so on (OECD, 1998; Sutton, 1997).

Actors identifying with other modes are free, to varying degrees, to respond flexibly to regulatory attempts by others. Environmental regulation can be thought then as arising out of a dynamic context, a kind of 'regulatory complex', within which are refined and distilled modes, actors, rules, responses and feedbacks. Clearly no mode can be truly 'autonomous' - that is, propounding, implementing and enforcing environmental regulation exclusively within its own bounds.

Another tendency observable in the real world of environment-regulation is occasional 'incursion' by actors from one mode 'into' the customary/typical domain of another. For example, an association established to serve corporate concerns may seek to convince others that those interests and the interests of others do, in fact coincide, and that regulatory action designed to address environmental issues (such as genetic engineering or global warming) may in fact be misguided, ineffective or economically damaging. An association may be formed as a vehicle to forward such views, and choose to take the form of a popular movement. Beder elaborates;

When a corporation wants to oppose [state] environmental regulations, or support an environmentally damaging development, it may do so openly and in its own name. But it is far more effective to have a group of citizens or experts - and preferably a coalition of

such groups - which can publicly promote the outcomes desired by the corporation whilst claiming to represent the public interest...The use of such 'front groups' enables corporations to take part in public debates and government hearings behind a cover of community concern (1997:27).<sup>93</sup>

The incursion illustrated here is by the market and associative modes into the community and government modes. Repeated or sustained incursion/s take the form of a kind of 'colonization'. Attempts at colonization such as that characterized are arguably on the increase (Beder, 1997; Korten, 1995; Goldsmith, 1991). Any explanation of regulation must be capable of reflecting and explaining attempts by actors to exercise hegemony over others.

#### 5.84 A focus on the nation-state

The discussion on modes of (environmental) regulation above reflects the acceptance in the Streeck & Schmitter (1985) model of the nation-state as the appropriate level of analysis. This clearly neglects important vectors in the globalization of regulation (Jacobs, 1994). In arrangements intended to regulate activities of individuals and organizations situated within an 'area' demarcated by state boundaries, such an analysis makes sense. However, an increasing number of actors, such as transnational corporations, NGOs, and even states now exert influence in transnational contexts. Commentators now recognize limitations to state-driven regulation in an increasingly globalized world-system, where the autonomy or 'sovereignty' of states has steadily been shrinking over the last few decades (OECD, 1993; Jacobs, 1994; Korten, 1995).

However, while it is true that many actors engaging in activities having environmental consequences operate across the jurisdictions of multiple nation-states, and that some of the gravest environmental issues do not recognize state boundaries, the state remains a useful and necessary site of environmental regulation. Useful, because the state mobilizes well-established networks of environment-regulation, serving presently as a locus of influence to reflect social desires and values. And necessary because it is difficult to imagine an extra-state regulatory regime possessing the necessary attributes and resources to govern and monitor actions simultaneously at global and local levels. Even where environment-regulation is negotiated and

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<sup>93</sup>Such front groups taking on the aspect of a 'grass-roots' community groups are known colloquially as 'astro-turf' organizations (Beder, 1997).

developed at the international level, such as in multi-lateral environmental-regulatory agreements<sup>94</sup> - where states agree on regulatory objectives to be set and sought - achievement of such objectives rely on regulatory mechanisms which govern actors and actions within boundaries demarcated by state boundaries. Actors from other modes operate at the local level, whether it be a factory, a mine, a pressure group, a letter-writing campaign, a chain of stores - whether or not that actor is active at a global level.

However, this is not to be taken to mean that the state is interpreted here as the only, or chief player in regulation. The globalization of regulation - especially environmental regulation - has shown some of the limitations of state-centric approaches. The understanding being developed as this thesis progresses must be able to take into account environmental regulation in both state-confined and globalized aspects.

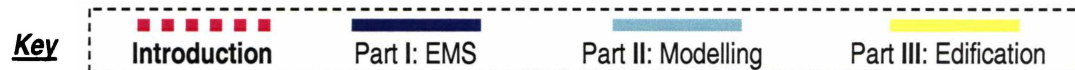
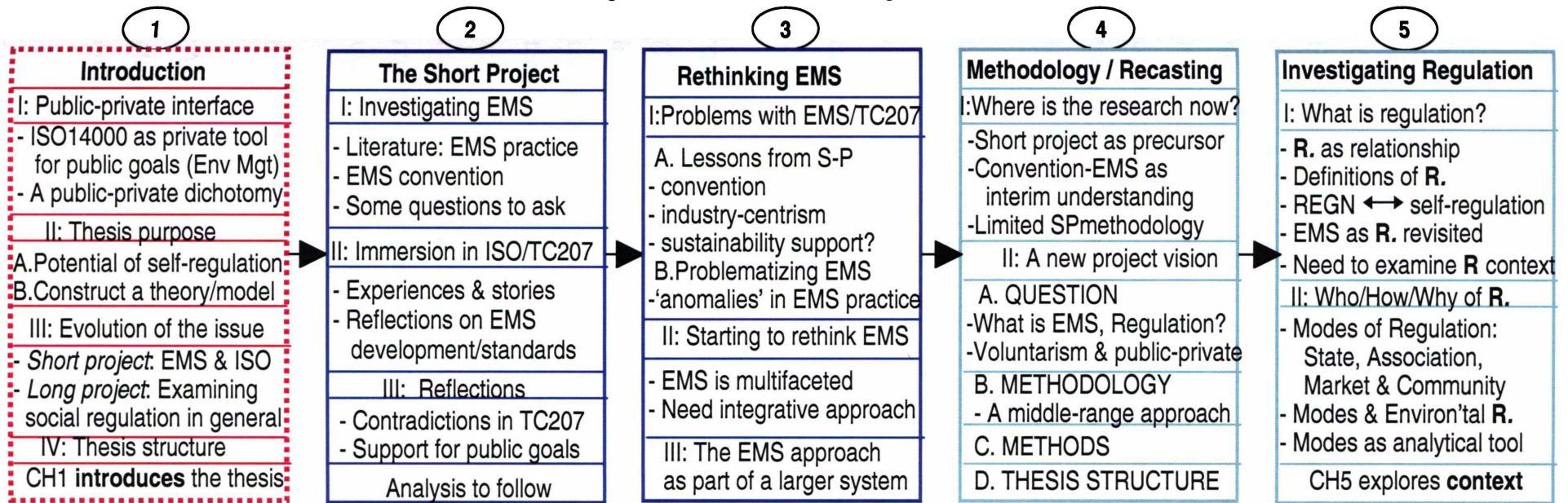
## 5.9 Summary of the chapter

The purpose of this chapter is to construct a conceptual foundation for theorizing about the EMS approach, and the contexts within which it is developed and applied. The starting point for the exploration is a proposition that EMS is as a form of regulation. This is an unusual approach, but support for it can be found even in conventional thinking (although this tends to be biased toward seeing EMS as *self*-regulation). The first part of the discussion focusses on concepts and structures of regulation, and shows how the EMS approach is used in variety of regulatory systems. The second part of the chapter discusses structural aspects of regulation, addressing the issues of *who regulates* and *how*. The investigation uses the Streeck & Schmitter (1985) *modes of regulation* model as a theoretical starting point. In the discussion, a picture is painted of regulation as both the outcome and the process of interactions within a complex system of states, markets, communities and associations. Actors representative of the modes are seen as interacting in a wide variety of ways, and use many different strategies to achieve their aims. EMS is classified as a type of market-regulation. The idea that a complex is formed by the interaction of modes is introduced, and this forms an important conceptual bridge to the modelling of chapters 6 and 7 following.

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<sup>94</sup>Such as the Montreal Protocol (1987) - covering CFC production; and Kyoto Protocol (2001) - emissions of greenhouse gases.

Figure 5.4: The thesis at a glance



## CHAPTER 6:        **Skeletal modelling I: Interactions between *modes***

### 6.0     Introduction

The previous chapter examined regulatory aspects of EMS and the larger context within which EMS is developed and applied. The purpose was to establish a conceptual foundation for new understandings of the potential of EMS - and voluntarism - to address both private interests and broader public goals. Out of that analysis arose ideas of complex regulatory systems, where acts intended to directly and indirectly affect the interests and actions of others, are propagated and communicated by a variety of actors. This chapter draws on that analysis in order to draw a better theoretical picture of the complex, one that is better able to account for the myriad regulatory forms found in a continuum between principles of 'externalized' regulation, and *self*-regulation.

### 6.1     Purpose and structure of chapter

The main purpose of this chapter is to explore and develop a set of concepts to enable the theoretical investigation to transition from broad and foundational understandings to the 'skeleton' of a more formal model.

The chapter is structured in three parts. The first part examines how the Streeck & Schmitter (1985) approach to theorizing regulation is interpreted and criticized in Puxty *et al* (1987). Their use of the model to explore regulatory interactions in the accounting profession is potentially useful for this investigation, and further developments are suggested. The second part develops the idea that regulation can be modelled as 'relations' between modes. Basic regulatory relationships are conceptualized as occurring within a virtual space created by the overlap of two modes. The overlap concept is expanded by an analysis of relations between regulator and regulated in environmental regulation. The third part of the chapter uses a conception of 'modal overlap' to analyse interrelationships in a regulatory system defined by four modes.

### 6.2     Starting model development

This section marks the start of conceptual modelling. The discussion starts by examining how others interpret the Streeck & Schmitter (1985) approach to theorizing regulation, to gather ideas on how to progress thinking on EMS.

## 6.21 The Puxty *et al* abstraction as a model precursor

Puxty *et al* (1987) use the Streeck & Schmitter (1985) model in their analysis of accounting regulation in four countries. While they criticize the model for (i) an overemphasis on the nation-state as the focal point of analysis; (ii) its neglect of the origins and development of the modes; and (iii) its constitution of associationism as a separate mode<sup>95</sup>; it is acceptable enough to form a foundational element of their analysis. While a discussion of the content of their analysis is beyond the scope of this thesis, certain aspects of the *manner* in which the Streeck & Schmitter model is interpreted and employed are of interest here.

Acts of regulation are understood by Puxty *et al* (1987) in similar ways to the analysis being developed in this thesis. They conceive of institutions and practices of (accounting) regulation as;

an outcome of interactions between parties...positioned within a structure of politico-economic relations...the actions and accounts of these parties will be theorized as an expression of a fusing of the principles of Market, State and Community (p282).

Therefore, in the ‘fusing’ or mixing of the ordering principles/modes, regulatory expressions (in accountancy as with other areas) can be conceptually ‘positioned’ between the two ‘extremes’ of *liberalism* and *legalism*;<sup>96</sup>

Liberalism whereby regulation is provided exclusively by the discipline of Market principles. That is to say, activity occurs, and information is provided only if it is found to be commercially demanded. At the other extreme is...Legalism, which relies upon the unreserved application of State principles. In this case, behaviour is sanctioned only if it follows the letter of the law (*ibid*:282-3).

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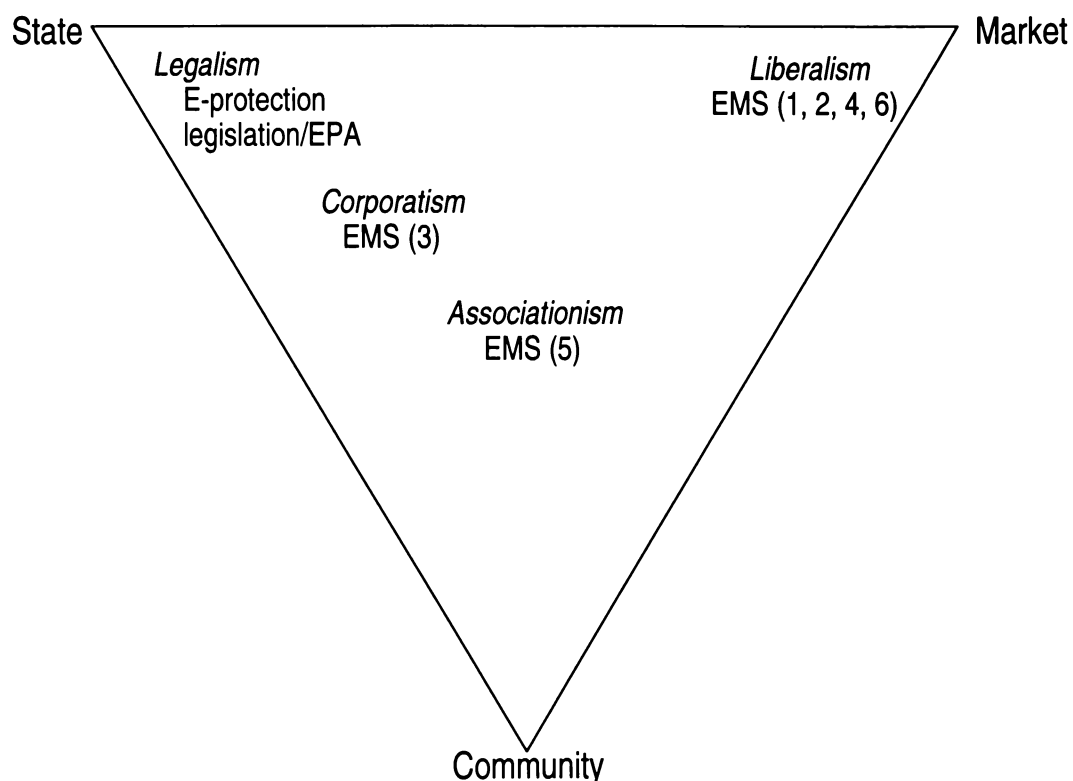
<sup>95</sup>Puxty *et al* prefer to see associations as more of a particular ‘strategy’ of regulation; as a specific combination of interactions of market, state and community (1987:275, 283). See also Figure 6.1.

<sup>96</sup>It is noted that the Puxty *et al* (1987) analysis does not overlook the ‘principle’ of community, but rather its importance in accounting regulation in actual practice is ‘downgraded’ in importance relative to the other two; “our argument [is] that...the organising principles of Community are subordinated to those of Market and State” (p282).

In this formulation, most regulatory practices will in practice fall somewhere in between these two extremes as ‘diluted combinations’ of, for example, *corporatism* and *associationism* (p283).

The understanding outlined above is expressed in an interesting diagrammatic format allowing regulatory practices to ‘mapped’ according to their ‘positioning’ along the three continua or ‘axes’; M $\leftrightarrow$ S; S $\leftrightarrow$ C; and M $\leftrightarrow$ C. The representation developed in Puxty *et al* (1987) is shown in Figure 6.1.

Figure 6.1: Environmental management tools classified in relation to models of social order



Adapted from Puxty *et al*, 1987

Several things are noted about the ideation underlying Figure 6.1. Firstly, it effectively ‘creates’, on the two-dimensional page, a concept of ‘regulatory space’, the limits to which are circumscribed by the lines of the triangle. Secondly, acts, strategies, and instruments of regulation are ‘positioned’ within the space relative to the modal ‘corners’, according to their ‘affinity’ to, or origins in, the modes. And thirdly, there is a dynamic element introduced, as the model has a

capacity to reflect/depict ‘shifts’ or changes in regulatory strategy, or conditions prevailing in different contexts. By ‘(re)positioning’ the ‘places’ that strategies occupy (eg the two examples given in the figure above are *corporatism* and *associationism*) in different ‘places’ within the ‘regulatory space’ shown, the model reflects regulatory change. For example; additions/subtractions in parties to regulation; shifts in regulatory powers (eg. from market to state or vice versa); or even the ‘morphing’ of one type of strategy into another, as regulatory contexts, goals and parties change.

The Puxty *et al* abstraction is a potentially useful device to promote a theoretical understanding of regulation. However, it has several problems. These are; (1) as it stands, it is still an *ad hoc*, discipline-specific model (ie accounting); (2) it does not meet the criticisms of the Streeck & Schmitter (1985) model (ie ahistoricity; development paths), although, to be fair, it did not set out with this objective; (3) it is overly generalistic, giving little or no guidance for the conduct of actual regulatory relations; (4) Puxty *et al* themselves make little use of the abstraction/model as method or technique in itself; (5) it goes against the Streeck & Schmitter (1985) view of associationism as a functionally differentiated and separate principle/mode in its own right; and most importantly, (6) it fails to explore the essential nature of modal relations/interaction, especially the issue of *how modes induce action*.

Having noted these points, several qualities of the approach outlined above - including abilities to conceptualize a ‘regulatory space’, to model ‘relations’ between modes, and to reflect dynamical aspects of such relations - help to inform the modelling of this and the next chapter.

## 6.22 Applying a relational approach to conceptualising regulation of the environment

From this point onward, this analysis and discussion will rely increasingly on representations of a ‘system’ based on the understanding of ‘regulation as relation’ within a virtual ‘space’ created by the interplay of the four modes - MSCA. The Puxty *et al* abstraction is seen and used in this section as a precursor to model iterations of steadily increasing sophistication.

The first model iteration is outlined in Figure 6.2. This is seen as one step removed from the Puxty *et al* abstraction via enhancement and re-purposing to regulation of the environment. In adding back the ‘missing’ association mode, it creates a ‘regulatory space’ denoted by a square ‘box’, thus forming a ‘2-by-2 matrix’ within which various regulatory strategies can be ‘plotted’ by

reference to their relationship (ie 'proximity') with the modes.

Figure 6.2 explores how one might 'see' common strategies of environmental regulation through the understandings built into the model. *Legislation* for the protection of the environment, as an expression of state-principles, is seen as 'occupying' the top left corner. By the same token, voluntary corporate initiatives, such as *EMS* (in its purely technical sense; see EMS category 1&2 from s. 4.2 above), are seen as expressions of market-principles, and hence are 'placed' top right. Representation of more complex forms of regulation is enabled by placing them on certain continua between the modes. For example, property-rights based schemes, such as *tradeable permits*, will be seen as a combination of market<sup>97</sup> and state<sup>98</sup> principles, and generally not much to do with those of community or association, therefore positioned top middle. Similarly, systems of '*green taxes*' will fall somewhere 'in between' market and state. *Industry codes of conduct* (such as Responsible Care), being organized, cooperative and/or collective expressions of corporate willingness to self-regulate, are placed in between association and market. The actions and initiatives of *business-oriented environmental advocacy*, such as those developed by BCSD, IISD, GEMI, and others, are more associative by nature, but are intended for the use of market actors, and hence are placed bottom-right in the model.

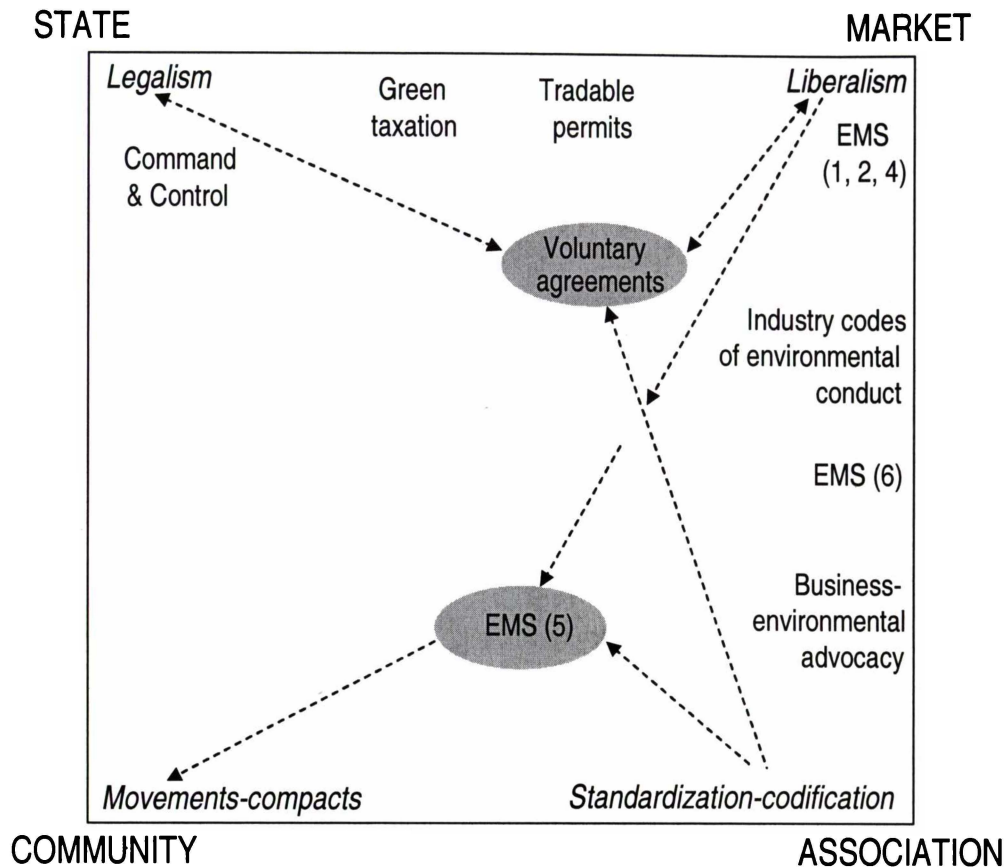
This iteration is a useful development. It addresses problems (1) and (5) of the Puxty *et al* approach (as identified above) but is limited in its ability to address the remainder of the criticisms made by virtue of its very close relationship to the former model. Thus another iteration is required.

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<sup>97</sup>Such as permissions/permits to generate emissions to air, water and land as 'assets'; transactions in/trading of permits, etc.

<sup>98</sup>Such as centralized administration, setting overall limits, number of permits in circulation, etc.

Figure 6.2: Strategies of environmental management & regulation situated in relation to modes



6.3 A new starting point: a focus on the *modal overlap*

The key criticism of the Puxty *et al* (1987) abstraction of regulation (and, by inference, the initial relational model above) is that it does not get to grips with the central issue of modal relationships and interactions, in particular the issue of *how modes induce action*. The second iteration of the model of regulation being developed here takes this criticism as its starting point. It has been noted that all regulatory actors - regardless of modal 'origin' - seek relationships and interactions with others, for this is the only way regulation can occur. The 'meeting place' of actors seeking to influence the behaviours of others (or actors so influenced) is defined as the *modal overlap* and is the focal point for model development below.

Overlap between modes arises as an actor(s) 'resident' within, or identifying most closely with one mode influences, motivates, provokes, agitates, stimulates, or otherwise induces behavioural change on the part of an actor 'from' another mode. One 'regulates' another by specific exercise of influence via the overlap. It is important to note that overlap does not necessarily imply an

exclusively one-way exercise of influence. As observed above, regulated parties may choose to respond in multiple and sometimes unpredictable ways to regulatory efforts; including reciprocal attempts at regulation.

The modal overlap is perhaps best understood as a sort of virtual interstice, a representation of a discursive 'space'; a space where actors, 'carrying' 'bundles' of interests and powers reflecting modal philosophies, characteristics and regulatory intent, engage in discourse with others. Actors enter this space as a result of desires to influence, or effect change in, the behaviour of others.

Conceptualising the overlap in this way 'creates' a framework within which regulatory relations are 'visible'. It is argued that the theoretical abstraction of the modal overlap affords richer understandings of applications, effects, and potentialities of regulation by focussing on the reciprocal and interactive nature of relations between regulatory actors. It is seen therefore as a key 'building block' of the model.

### 6.31 Bi-modal relations

Many forms or strategies of regulation are amenable to analysis using this understanding of modal interrelationships. I argue that the concept of modal overlap holds considerable potential for development - as a potentially powerful tool for analysing environmental-regulatory relationships. It is important to develop the modal overlap concept, and to describe it in more precise terms.

Regulation is seen not simply as the outcome of a unilateral exercise of power by one party over another, but rather as a mutable outcome of complex interactions between two (or two sets of) regulatory actors. To illustrate; an actor, wishing to regulate, will possess or exhibit more-or-less specific interests, powers, responsibilities and resources explicable in major part through a consideration of key aspects of their 'home' mode. Such characteristics determine the focus, forms and strategies of regulation the actor may seek to develop. On the other 'side' of the regulatory relationship, any actor/s subjected to regulatory strategy thus developed have certain options for 'feedback' to the regulator. Their choice of feedback is delimited however, by their own interests, influence, philosophies, history, objectives and access to resources - again determinable (in large part) by reference to their principle modal identification.

In seeking and enacting strategies designed to regulate, participating actors must engage in

regulatory relationships, that is; (i) *recognize* and *interact* with other actors; (ii) *formulate*, *transmit* and *receive* regulatory purpose, policy, information, interests, responsibilities and powers via communicative and regulatory instruments; (iii) *negotiate* desires and trade-offs; (iv) *implement* regulatory strategy/ies through institutions and other formal and informal mechanisms; (v) *monitor* achievement of regulatory goals; and (vi) develop structures, incentives and sanctions intended to *enforce* the strategy and bring about intended regulatory outcomes.<sup>99</sup> Regulatory relations are seen therefore as outcomes of action and reciprocal-action between parties acting ‘within’ a space created by their interaction. This space is denoted by point *O* in Figure 6.3.

Figure 6.3: Regulation as an outcome of modal interaction

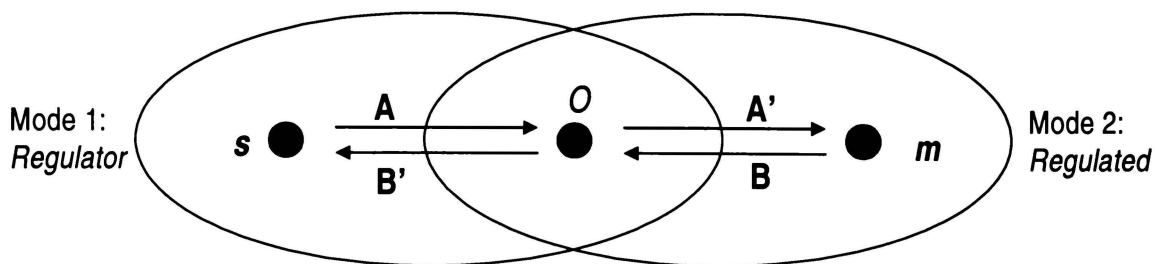


Table 6.1: Regulatory relations within a bi-modal overlap

Category	Relation characteristic	Corresponding action in Fig 6.3
(i)	<i>recognize</i>	A
	<i>interact</i>	A, A', B, B'
(ii)	<i>formulate (regulation)</i>	O, A, B'
	<i>transmit</i>	A
	<i>receive</i>	A'
(iii)	<i>negotiate</i>	O
(iv)	<i>implement</i>	O, <i>m</i>
(v)	<i>monitor/feedback</i>	B, B'
(vi)	<i>enforce</i>	A, <i>s</i>

<sup>99</sup>Sources for this categorization include; Ogus (1994); Ortolano (1994); Gouldson & Murphy (1997); Fisher (1994); Streeck & Schmitter (1985); Bosselman (1995).

Table 6.1 explains the relations depicted in Figure 6.3 in terms of the generic categories (i) to (vi) above. The two actors *s* (regulator) and *m* (regulated) are seen as ‘coupled’ by a system of relations having as an aim a change in behaviour on the part of *m*.

### 6.32 Applying the bi-modal system to the modes MSCA

Applying the bi-modal conception to a system comprised of the four modes MSCA produces a total of six possible bi-modal overlaps. These are shown in table 6.2 and are discussed in more detail below.

Table 6.2: Six possible interrelationships involving two modes

Market $\longleftrightarrow$ State	State $\longleftrightarrow$ Community	State $\longleftrightarrow$ Association
Market $\leftrightarrow$ Association	Market $\leftrightarrow$ Community	Community $\leftrightarrow$ Association

### 6.33 A note on typology of modal interrelationship/overlap

The following analysis examines six general modal overlaps. It has already been noted that inter- and intra-modal relationships are potentially complex and multifaceted. So far, in the discussion on the characteristics of the associative mode, we have considered regulatory relationship only in broad and *ad hoc* terms. Illuminating though this is, the analysis developed here requires somewhat more descriptive, and distinctive classifications. Hence, four broad categories/qualities of regulatory relationship are used to explore the complexities of intermodal regulatory relations: accepted legitimacy; modification seeking; conflictual; and colonizing. These categories are not intended to convey ‘hard’ boundaries, but are seen rather as occupying points on a ‘continuum of regulatory relations’, between which regulatory relations between actors may ‘oscillate’.

#### A Accepted legitimacy or mutually respecting

‘Accepted legitimacy’ describes a category of relations where an actor (the regulated), subjected to regulatory attentions by a second actor (the regulator), accepts uncritically claims by the latter to authority to regulate. The implication is that the regulated party seeks to cooperate with the demands of the regulator. The regulator-regulated relationship under conditions of ideal/typical

accepted legitimacy is distinguished by a clear and comprehensive regulatory framework, possessing the following characteristics; 1) mutual acceptance of specified domain/s of authority, influence and/or power; 2) specified regulatory goals or objectives to be achieved; 3) clear statement of such goals as may be reached; and 4) specialized systems for assessing compliance with regulatory measures. Disagreement over regulatory conditions may lead regulated or interested parties to ‘protest’ against offending aspects of regulatory influence, but the legitimacy of the regulator’s claim to regulate is essentially unchallenged.

## B Modification seeking

This category introduces an opportunity for regulated parties to feed-back information (other than simple confirmation of compliance) to regulators. While relations classified under the descriptor ‘modification seeking’ do not challenge the authority of the regulator in any serious manner, this is not the point: what is desired by actors party to the regulatory relationship is modification - in regulatory objectives, behaviours, mechanisms, and/or means of compliance assessment. Modification may be sought to improve regulatory efficiency; for example, regulated parties may seek to self-monitor achievement of regulatory objectives. In other cases flexibility in enforcement may be sought to allow the regulated actor to make perhaps expensive and time-consuming adjustments to processes and outputs. Modification may also be sought in order to make improvements in efficacy of regulation; regulated parties may suggest alterations in regulatory policy and/or mechanisms to improve overall regulatory outcomes.

## C Conflictual relations

Regulatory relations may, for varying reasons, deteriorate beyond the point where marginal or incremental modifications on the part of regulators are insufficient to mollify the concerns of regulated parties. The latter may choose to embark on a strategy of openly criticising and/or challenging regulatory policy or mechanisms. Regulators also may engage in action designed to put pressure on regulated parties to conform to established or customary regulatory norms, and may be seen by regulated parties to be insufficiently responsive to changes in behaviour, or changes in the situations or conditions covered by the regulation. Resultant regulatory relations are seen as ‘conflictual’, and characterized by high levels of tension between parties; extended, sometimes acrimonious debate over multiple aspects of regulation and enforcement; and, generally uncooperative behaviours.

## D Colonizing relations

‘Colonization’ here refers to a category of relations where ideologies and/or institutions of one mode seek to ‘infect’, supplant or dominate those of another. Opportunities for colonization, in general, arise out of situations where legitimacy of the principles and institutions of an accepted social order is challenged seriously enough to cause substantial erosion of their authority and regulatory potency. This is a dangerous state of affairs for actors occupying positions of authority within established regulatory frameworks;

The loss in legitimacy in [regulatory] institutions reduces trust in institutional constraints, reduces voluntary compliance, and makes explicit guidelines more critical. The lack of general compliance and inconsistency of enforcement in turn feed greater motivation and legitimation difficulties (Deetz, 1992:41).

Questioning of established regulatory norms may result from; a) temporary or permanent power asymmetries between modes and/or modal actors; b) a general decline in the popularity of accepted regulatory frameworks, which may or may not be accompanied by; c) increased social acceptance of arguments favouring ‘alternative’ systems of regulation; and, d) attempts on the part of one (or a set of) actors to expropriate authority from another.

## E A concluding observation on the regulatory categories

It should be noted that although the four categories of regulatory relations are represented here as existing on a continuum, the boundaries and distinctions between them are not seen as ‘hard’; ie, certain relations may possess characteristics of two or more categories, or may be better conceptualized as positioned ‘between’ categories. In addition, any ‘movement’ or evolution in regulatory relations ‘along’ the continuum may not occur perfectly ‘linearly’. Relations may suddenly change in character, ‘leaping’ from, for example, legitimacy to conflict or even to colonizing. Or movement could occur in the reverse direction, given a sufficiently severe or long-lasting impetus, or ‘kick’.

## 6.4 Modelling bi-modal relations/interaction

The discussion now turns to consider how ideas of environmental-regulatory relations between

modes can be developed in the light of the understandings generated earlier in the chapter. It should be noted that this analysis is not intended to be comprehensive. Rather it has as its object further refinement of (as-yet) 'skeletal' understandings of the complexities of modal relations, by reference to selected examples of accepting, modifying, conflictual and colonizing relations between modes.

#### 6.41 Market-state overlap

Efforts to regulate are seen (in this discussion) as essentially fluid and evolutionary. They arise out of the outcomes of multiple and ongoing social interactions between different mixes of actors, institutions, mechanisms and interests. But it remains always contingent and in a constant state of flux. Part of the reason for this is that regulatory relations theorized as taking place 'within' modal overlaps reflect both incompatibilities and mutual complementarities. Streeck & Schmitter (1985) contemplates general issues of market-state overlap;

state intervention may distort markets, just as the outcome of free contracts and competition may contradict state policies. At the same time, markets require a legal framework and the authoritative enforcement of contracts, and even the most etatistic states seem to require markets as a supplementary mechanism of allocation (p2).

#### - *Accepted legitimacy*

In the area of environmental regulation, there would seem to be an intrinsic conflict between the interests of state and market actors. While states have a direct concern in 'protecting' the environment, markets tend to be more interested in the disposition, or use of elements of the environment in their continual search for profit-making opportunities.<sup>100</sup> Hence, we often find much and vocal criticism (mostly by corporations) of alleged propensities of state-environmental regulators to reduce their freedom to use 'owned' rights of property over the environment as they see fit (Moran, 1991; Ross, 1994; Winter, 1987). Having said this, relations between corporations and state agencies are in general cooperative and mutually accepting, with one laying out

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<sup>100</sup>Section 5.2 above explains how environmental regulation can be seen as a (contingent) outcome of a process aimed at resolving conflict - or the potential for it - between opposing social objectives.

negotiated rules, and the other broadly complying. This has of course much to do with still-extensive coercive powers maintained by the state.

Two ideologically related forces add their weight to stability of mutually accepting relations. These can be identified as 'state-shrinkage' and the ascent of the 'market narrative'.<sup>101</sup> The first of these, most evident in the West over the past two decades, refers to increasing acceptance of the desirability of a shrinkage in the role of the state. This has resulted in a kind of 'fall-back' to residual goals of providing and encouraging conditions conducive to economic growth (Korten, 1995). States are thereby forced to retain importance through the need to assure stable market conditions by providing a regulatory framework enabling clear definition of private property rights and enforcement of contracts (Deetz, 1992; Jacobs, 1994). Hence a trend is observable in state-environment policy away from command-and-control mechanisms (ie directing that certain activities should or should not be undertaken), toward more permissive regimes which allow (almost) any activity entailing environmental consequence if it can be demonstrated that such consequences can be "avoided, remedied, or mitigated" (eg RMA, 1991; see also Pardy, 1996). In addition, state-created and operated legal frameworks aimed at specifying and attaching liability for environmental impacts are seen as crucial supports in this 'new' view of market-state regulatory relations.

The shift of the state-environmental regulatory apparatus toward specification of liability is crucial for market-initiated systems of regulation. It works something like this: suppose a ship owned by X corporation has run aground and a quantity of heavy oil has escaped, polluting the surrounding area. There exist real and incidental damages; the flora and fauna in the immediate area is damaged; substantial costs are incurred by ensuing damage control and clean-up operations; the livelihoods and incomes of nearby communities (eg fishing, tourism, hunting etc) are adversely affected; and values of nearby properties are affected. Shipping activities undertaken by X are covered by an insurance company - Y corporation - which underwrote the

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<sup>101</sup>It is noted that some level of conflict is unavoidable, and possibly desirable in market-state interactions in relation to the environment. However, high levels of, or prolonged conflict can be seen as deleterious to parties in either mode, as such a situation would lead to uncertainties in the regulatory framework (such as delays in obtaining permits, extended litigation, distrust between actors etc). These would result in negative flow-on consequences in important areas requiring complementary action, such as economic growth and development.

policy for X only after extensive investigation and audit of its environmental policies and practices. Hence, one market actor regulates the environmentally-relevant activities of others; ie 'market regulation'. However, some clear specification of the linkage between cause and effect is necessary: in this case, who is at fault? Clearly, X owns the ship, but another company might be involved in its operations in that area or at that time. Fault could also be ascribed to other parties: a pilot may have been steering the ship at the time of the incident; the ship may have run aground on a new hazard; another ship or object may have impacted the ship, causing it to sink, etc. The state-regulatory system is crucial in assigning liability. The insurer Y is unlikely to pay damages under the terms of the policy without clear liability being established. Through legislative, institutional, legal and court systems, fault and therefore liability for the incident can be determined authoritatively.

- *Modification*

To further reinforce the move away from 'prescription' in regulation, many within the state-environmental regulatory system are now recommending modification in state-regulatory behaviours. An example of this movement can be seen in the increased use of market instruments, within state-centred frameworks, to address issues of price and property rights. Such instruments include transferable permits, direct charges (for use of the environment), taxes, and management systems (EPA, 1997; 1998; Roht-Arriaza, 1995; Baumol & Oates, 1988; OECD, 1991; Cairncross, 1991).

- *Colonization*

The second 'ideological force' referred to above is the increasing strength and confidence of what is called here the 'market narrative'. In a trenchant analysis of free market ideology, David Korten summarizes the main characteristics, or beliefs of this narrative;

- sustained economic growth, as measured by gross domestic/national product, is the key to human progress;
- Free markets, unrestrained by government, generally result in the most efficient and socially optimal allocation of resources;
- Economic globalization, achieved by removing barriers to the free flow of goods and money anywhere in the world, spurs competition, increases economic

efficiency, creates jobs, lowers consumer prices, increases consumer choice, increases economic growth, and is generally beneficial to all;

- Privatization, which moves functions and assets from governments to the private sector, improves efficiency;
- The primary responsibility of government is to provide the infrastructure necessary to advance commerce and enforce the rule of law with respect to property rights and contracts (1995:70; see also Daly & Cobb, 1991).

The strength - or perhaps 'forceful persuasiveness' since it is after all the powerful corporates promoting it - of this narrative is such that governments in most developed countries now subscribe to it, and have moved, over the past two decades or so, in the directions implied by the narrative. State-regulatory actors tend now to see their role as facilitators of economic development, and measure their success (or otherwise) in terms of the speed, efficiency and effectiveness by which they promote goals determined by the narrative above (Daly, 1996; Krut & Gleckman, 1998; Welford, 1997; Enzenberger, 1973; Bosselman, 1995; Gorz, 1980; Lyotard, 1984; OECD, 1994). Such an obvious substitution of explicit consideration of social/welfare goals with economic ones, arises, it is argued here, from a process of colonization. Market actors and apologists have been successful at impregnating state-policy and regulatory frameworks with market narratives. It could not be said however that colonization arises entirely out of relations that are conflictual. On the contrary, the state is often a willing participant in processes of colonization. Some examples serve to illustrate; (1) states have established, and participate in forums specifically designed to attenuate the sovereignty of the state (such as the World Trade Organization - WTO); (2) states often advance economic justifications for seeking low or no reductions in calculations of environmentally-damaging national outputs in international negotiations; and (3) states themselves have developed trans-state regulatory regimes in which statutes and rules promulgated by individual states are able to be overturned on the basis of economic, or free trade arguments.

#### 6.42 State-community overlap

Demarcations between the state and community are less clear than with states and markets. Some see the state as the distillation, or institutionalization of community-serving philosophies and efforts, while others point instead to corrosive effects on familial, community and cultural bonds of state-dominated political-economic structures (Ross, 1994; Goldsmith, 1991; Ekins, 1988).

Both these accounts contain elements of truth - as was found in the discussion of market-state relations above - in modern systems of regulation, community and state are interdependent;

there are a number of ways a community may suffer disintegration as a result of state growth and government intervention, just as communitarian tribalism can frustrate the development of a stable nation-state. Nevertheless, a state without some kind of spontaneous solidarity among its citizens is no more than a bureaucratic or military conspiracy, and modern communities without a state would always be in danger of losing their identity and independence (Streeck & Scmitter, 1985:2).

There would appear to be strong grounds for assuming harmonious environmental-regulatory relations between states and communities. Theoretically, states - being interested in protecting the (re)productive and absorptive capacities of the environment - actively promulgate rules restricting access to those who can demonstrate that their proposals for its use are justifiable, manageable, and/or 'sustainable' (RMA, 1991). States can be seen, in this way at least, as 'champions' of the environment, acting on behalf of 'society' in general as 'residual owners' of the environment (Arrow, 1977; Power, 1991). States in this view thus are not only 'guardians', but also mediators and arbiters of societal preferences with regard to the environment, carefully balancing the interests of all users and beneficiaries of the environment.

In actuality however, states are interested in often conflicting objectives, for example, development/ disposition of environmental amenities, and economic and social development; and protection and conservation of the environment. The wide range of actors making up a community mode are interested in the same sorts of things. However, these interests do not necessarily coincide in space and time. Hence, where a government agency may approve a new motorway or oil refinery on the basis of fostering economic development and increasing the tax base, community actors might protest on grounds of increased potential for environmental damage and loss of amenity. By the same token, state-bureaucratic actors may reject large scale development projects as ecologically risky and/or unsustainable, while communities could feel aggrieved at the employment opportunities and prestige potential thereby denied them. This is an important point. Relations between modes are not often straightforward, nor easily classified. On a single point, we may observe actors from both state and community adopting positions simultaneously in favour of, and in opposition to, the same proposal. This can make it difficult to categorize specific sets of relations (as cooperative, modifying, conflictual and/or colonizing).

- *Accepted legitimacy*

In general though, it is possible to identify a 'moderating factor' which effectively narrows the range of state-decisions subject to qualification by community-actors. I refer to the power of the state; that is, the legitimate and monopoly control over the means of coercion and authority to render authoritative judgements. The community, by contrast, being reliant on informal networks and 'populated' by groups of varying size and orientation, can be said to lack the credibility, and entrenched and institutionalized nature necessary to 'engage' on an equal basis with state-actors. It instead relies on a haphazard and conditional mix of 'concerned individuals', volunteer organizations, popular movements, and tribal groups, toting more-or-less vague claims - such as 'community-right-to know' and 'not-in-my-backyard' (NIMBY) - to give it force in its negotiations with the state.

The effect of this power asymmetry requires a subtle understanding of state-community environmental relations. Unable to 'overcome' outright the regulatory influence by the state, or modify it in a generalized manner (as markets have been able to do), elements of the community tend to accept the legitimacy of the state claim to regulate. Acceptance is seen as a 'natural' choice by Enzenberger, who claims that, "ecological protests [by the community], at least in Western Europe, almost always ends up with an appeal to the state...[which is] then answered by government programmes which promise an 'improvement in the quality of life'" (1988:264).

- *Modifying*

However, apparent acceptance underlying community-state relations conceals a latent tendency in such relations toward 'modification'. In a type of 'deal', in return for their support of states and state-regulatory objectives, community-actors have proven adept at encouraging or forcing concessions in state-environmental regulatory behaviour. An example of this is the emerging recognition of the importance of 'stakeholder consultation' in policy development and decision-making (Gouldson & Murphy, 1998). Community groups have also been successful in legal actions aimed at forcing state reconsideration of approval development projects and modification of environmental-regulatory frameworks to enable increased levels of community participation (Fisher, 1993). 'Decentralization' and 'devolution' of state decision-making to local and community levels can also be seen as examples of close and 'modifying' state-community relations. The state may be motivated to,

attempt to marshal collective other-regarding interests for social purposes; [the] underlying premise is that people hold solidaristic values and communitarian identities that...can contribute to social order directly and without state intervention (Streeck & Schmitter, 1985:16).

Popular environmental movements too have experienced success at modifying state-policy, through strategies like publicity campaigns (to highlight popular causes such as genetic modification, threatened species), and through 'seeding' state-institutional structures with members and groups drawn from their own ranks - the 'green' political party is an example.

- *Colonizing*

Attempts to place community-friendly individuals within the ranks of the state structure, or to seek closer relationships with sympathetic bureaucratic actors, can sometimes develop more 'colonizing' tendencies. Via 'friends on the inside', community-actors may seek to 'burrow' into the state regulatory framework to encourage 'the system' to more reliably and/or predictably produce community-sought regulatory outcomes. Commentators argue that this strategy has produced tangible results in Germany in particular (Bahro, 1984; 1994; Frankel, 1987), and many are hopeful of similar results with the election of the Green party to the New Zealand Parliament in 1999 and subsequent integration within the ruling coalition. Of course, colonizing relations may go in the 'other way'. As illustrated in a previous discussion, states are seen by some as having gained their position of power via a process of colonizing the community and removing and/or progressively dismantling competing claims to regulatory authority.

6.43 State-associative overlap

A key *raison d'etre* of associations, it was noted above, is to influence other powerful actors. Accordingly, regulatory interactions between state- and associative-actors are wide-ranging and almost invariably lively. Wide-ranging, because associative actors represent a dizzying array of interests, and lively since associative exercise of influence may in some cases impinge on areas of regulation reserved by custom or tradition for actors originating in other modes (Hollingsworth et al, 1994). It is this second tendency of associations which has attracted the ire of political scientists and public lawyers, who see various and perhaps unwelcome incursions into domains not properly theirs. Such commentators have,

in their great majority, regarded associations as a threat to liberal democracy, parliamentary rule and state sovereignty, pointing to phenomena such as industrial action in defiance of legislation, 'colonization' of state regulatory agencies, or the undermining of parliamentary sovereignty by 'social pacts' negotiated between governments and strong interests groups (Streeck & Schmitter, 1985:4).

Actions of state actors in phenomenal reality show however, a more mutable attitude toward the usefulness, and potential applications of associative instruments and/or actors within state-regulatory frameworks; often seeing in them potential resources or allies in the furtherance of state ends.

an alternative to direct state intervention...the public use of private organized interests takes the form of the establishment, under state licence and assistance, of 'private interest governments' with devolved public responsibilities - of agencies of 'regulated self-regulation' of social groups with special interests which are made subservient to general interests...[such] delegation of public policy functions...represents an attempt to utilize the collective self-interest of social groups to create and maintain a generally acceptable social order (Streeck & Schmitter, 1985:16).

Regimes of close inter-mode cooperation by state and association - sometimes referred to as 'regulated self-regulation' are common (Hollingsworth *et al*, 1994). Highly self-organized economic sectors and professions (eg finance; banking; accounting; law; engineering; advertising, etc), where standards and associative coordination of members can be high, are favoured sites for cooperative relations. Such arrangements tend to be rare in the area of environmental regulation, where states have traditionally been reluctant to allow associative intervention in the fabric of state-environmental rule-making and enforcement. This is often to avoid risks of accusation of collusion with private interests, against a general public interest in environmental protection.

An associative environmental-regulatory framework, launched in 1994, represents a potential challenge to this stance. The ISO14000-series of international standards for environmental management have emerged from the ISO framework for 'regulated self-regulation' of industry (ISO, 1997). The ISO14000 standards are specifically designed to form an integrated framework for organizational/corporate management of their interactions with the environment, and cover conceptual and functional aspects of environmental management systems (EMS), e-auditing, e-

labelling, e- performance evaluation, and life-cycle assessment (*ibid*; Sheldon, 1997).

The connection - or overlap - of this type of associative-regulation with those of states occurs in three ways; first, representatives of government agencies from countries all over the world participate in committee work developing standards; second, the participants in the ISO Technical Committees<sup>102</sup> are almost all formally nominated by government-affiliated, or state-sponsored standards organizations;<sup>103</sup> and third, standards thus produced frequently have government-backing or support (eg, construction and safety standards are integrated within mandatory rules in many countries) (ISO, 1997). The ISO 14000-system currently possesses the first two of these characteristics, and work is proceeding on how they may be integrated within formal state-environmental regulatory frameworks (see for example, NZ Ministry for the Environment, 1997).

Whether this type of overlap is seen as cooperative, reflecting mutual acceptance of state and associative legitimacy, or as more conflictual, depends perhaps on one's perspective. Krut & Gleckman, in their critical analysis of ISO14001, clearly fall into the latter camp, arguing that standards can often end up 'competing' with governmental environmental-regulatory initiatives, leading to increased potential for confusion over their respective standings in law and corporate practice (1997:39). Others, such as Hortensius & Barthel (1997), fall into the former category, maintaining that the ISO14000-standards, "will not interfere with any national environmental legislation" (p22). What is clear however, is that this is a new strategy of environmental-regulation, and time will tell whether it tends more toward cooperation or conflict with existing (state-centric) systems.

Another area of state-associative overlap in the environmental area is action oriented toward influencing state environmental policy by associations representing the various interests or 'rights' of industry, the public, consumers, or even elements of 'the environment' (such as endangered wildlife and habitats). Such actions may cover the full gamut of regulatory categories

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<sup>102</sup>Technical Committees, or TCs, are the forums for development and actual wording of ISO international standards. TC207 is the TC charged with the 14000-series of standards.

<sup>103</sup>The NZ standards organization is *Standards NZ* (the corporate body of *The Standards Council of NZ*) and is technically a 'quasi-government organization' (quango). Similar situations exist in Australia (Standards Association of Australia), the US (American National Standards Institute), Canada (Canadian Standards association), the UK (British Standards Association), and in most other countries.

- cooperative, modifying, conflictual and colonizing. Which category any particular action will fall into will depend on a wide range of factors, including: (i) historical and existing relations; (ii) the agenda of the association in question; (iii) the nature of concession(s) or action(s) sought; (iv) the degree to which the association can exercise influence on and in governments; (v) the amount of collateral support able to be mobilized by an association (eg through direct public support; corporate sponsorship; support of notable individuals, etc) ; and (vi) the receptiveness of the state/agency subjected to associative attentions.

#### 6.44 Market-community overlap

Relationships between markets and communities - in the arena of environmental regulation - can be seen as holding perhaps the highest potential for conflict among the six overlaps possible. Communities, fearful of the power of the market to shape or damage the environment, often have historical reasons to become active in protesting against, or undermining corporate activities. Part of the reason for this is that communities tend to be more interested in longer-term environmental viability, while market actors typically incline more toward exploiting the profit-potential of environmental resources, often ignoring issues of long-term sustainability. Sometimes, these objectives are not exclusive; development of resources, sensitive to surrounding conditions, can work to enhance the ability of proximate communities to satisfy their interests through, for example, economic transfers and employment of local persons.

To help understand the contradictions in relationships between markets and communities - sometimes antagonistic, but often accommodative - linkages at the conceptual level should be considered;

communities may undermine markets by facilitating informal collusion and supporting clientelistic arrangements whereas market competition may decompose community bonds and erode common value orientations. But it is also true that communities encourage mutual confidence and good faith which are necessary for stable economic exchange, while markets provide communities with opportunities for 'extended reproduction' (Streeck & Schmitter, 1985:2).

Market actors can tend to see communities (or informal networks) as falling into two broad categories; those contributing to, or participating in the production process; and those outside

such processes, who may be either supportive or unsupportive of them (see for example, Korten, 1995). Community participants are seen as willing (or sometimes captive) players who partake in the activities of market actors as firstly, factors of production, and secondly, as consumers of end products. As factors of production, in a market-dominated process, the power or influence of the worker is carefully circumscribed;

Employee obedience to those in power supersedes any private romantic loyalty to church, family, community or nation-state. The employee is first a resource, never a citizen (Deetz, 1992:15).

- *Accepted legitimacy*

While the dominance of the market actor/corporation over the worker is generally unchallenged - ie the worker accepts the legitimacy of market-regulation (often because of limits on the choices open to an employee) - the exercise of power in the relationship need not be seen as altogether one-way, as fruits of corporate largesse can fall to workers. Deetz is sardonic on this point;

While the ongoing wars [competition between corporates] are psychologically costly to this mass of corporate workers, the largely benevolent lord [chief executive] offers support in terms of retraining and relocation payments, through paid physical and mental health plans, through maintaining a pleasant work environment...and through the openness of the system, so that anyone might him- or herself become a lord (at least hypothetically) (*ibid*).

In terms of environmental-regulation, because the power in market-worker relations is so skewed toward the market, it hardly bothers to expend efforts aimed at affecting or influencing the environmental behaviours of workers (outside the confines of the workplace).<sup>104 105</sup>

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<sup>104</sup>Corporate influence over environmental actions of workers *inside* the workplace is aimed at reducing the potential for liability; keeping down the accident rate for example. Such regulatory action is therefore not truly intermodal, but aimed merely at protecting the rate of profit.

<sup>105</sup>A possible exception is where a company, in attempts to recruit new talent (who may find a positive environmental stance attractive in a potential employer), might seek to project a positive image with regard to their environmental policies, records of achievement,

The opposite is the case with the second group of community-participants: consumers. Corporations spend enormous amounts of money on marketing and advertising, with the ultimate aim of convincing the community-as-consumers to purchase their product/s. A new emphasis on the environmental 'qualities' of products<sup>106</sup> is observable in media channels today. In order to take advantage of the spending potential of the emerging 'green consumer', corporations have developed a range of tools to convince them of increased levels of 'environmental acceptability' of products and processes. The most prominent of these are based on specifically marking, or labelling products as such. The international standard ISO14023 on environmental labelling classifies labelling activity into three categories: type I - (corporate) self-declarations; type II - third-party criteria-based declarations, and type III - third-party report-card (ISO 14023: 1997).<sup>107</sup>

Corporate moves to directly address consumers in this way and for this purpose can be viewed from at least two different perspectives; first, and most charitably, it could be seen as a modification in corporate behaviour, an outcome of consumer 'pressure' on markets to become more environmentally sympathetic (Schmidheiny, 1992). On the other hand, it could be seen as an attempt by market actors to colonize the community-as-consumer by shaping (or lowering) their expectations of what is possible in terms of reducing or ameliorating corporate-generated impacts on the environment (Korten, 1995; Beder, 1997; Goldsmith, 1992).

Market relations with community actors perceived to be 'outside' production and consumption processes can tend to be less harmonious than those described above. 'Community-as-outsiders' is a heterogeneous grouping which might include environmental groups/movements; people living near, or otherwise affected by corporate activities; and other 'stakeholders'. Corporations seek to influence such groups by, for example, public relations devices designed to shape public debate and (potentially) sway public opinion. This influence can take many shapes, including like sponsorship/support of community groups and objectives; production of information for schools

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etc. (see Gray, 1993, for example).

<sup>106</sup>Examples of such claims are: 'natural'; biodegradable; recycled; recycled content; recyclable; not caught using driftnets; low emissions to air and water; low mass packaging; not containing hazardous or harmful ingredients such as CFCs, lead, phosphates etc; not developed using experiments on animals; low power consumption; and so on and so forth.

<sup>107</sup>We are more interested here in type I labels, since both alternatives require the input of *associative* third parties, making a 'tri-modal' overlap. More complex overlaps such as these will be introduced in chapter 5 below.

and universities; production of corporate reports and 'audits' on 'social and environmental performance'; and direct advertising on immediate issues, such as placement of facilities and access to resources (Beder, 1997; Hildyard, 1995).

Such action can be interpreted in different ways. One view might see efforts directed toward increases in quantity (or quality) of information on environmental issues in circulation within the public domain - to reinforce the legitimacy of market-regulatory action. Another view might instead see the influencing behaviour as an attempt to colonize communities with 'corporate propaganda', seeking to artificially demarcate and contain the discussion on environmental issues within terms dictated by market actors.

- *Conflict*

Relations between corporates and environmental groups are worthy of special mention for their typically conflictual nature. Market actors bring formidable resources to bear in combatting various findings and assertions of environmental movements, and in presenting alternative accounts for mounting environmental problems (Beder, 1997; Korten, 1995). Frank Mankiewicz, a senior executive at transnational public relations (PR) firm Hill and Knowlton explains one reason why;

The big corporations - our clients - are scared shitless [*sic*] of the environmental movement...They sense there's a majority out there and that the emotions are all on the other side - if they can be heard. They think the politicians are going to yield up to the emotions (cited in Beder, 1997:22).

A corporate reaction of fear to the assertive strategies employed by environmental movements is a little difficult to understand. Quite why, despite their obvious standing, power and command over resources, market actors expend such large efforts in rebutting the claims and endeavours of the movements is not altogether obvious. That is, until one considers the problem as a 'hearts and minds' issue, where nothing less than the hearts and minds of consuming, voting, viewing, reading, dissenting, approving publics are at stake. Such publics have the potential to make things 'difficult' for corporate actors; they are perceived to have extensive powers including most importantly, "the power to support or undermine a company's market position, through organizing consumer boycotts or blocking planning permission" (Zadek *et al*, 1997:5). In this

understanding, it is imperative that nothing stand in the way of the dominance and dissemination of corporate visions for society and 'development'. Markets, not governments, nor communities, it is now claimed, hold the key to environmental improvement;

In general, during the past 20 years business has tended to be overcautious and conservative in its approach to these [environmental] challenges, underestimating the possibilities for positive change. Society can no longer afford this. It is time for businesses to take the lead, because the control of change by business is less painful, more efficient, and cheaper for consumers, for governments, and for businesses themselves (Schmidheiny, 1992:83).

This is a basic mandate claim by markets to a competence and authority to environmentally regulate. This claim and subsequent suggestions for action cover the range of classifications of modal relationship discussed above by virtue of its power and breadth: that is, market claims to environmental-regulatory rights are legitimate because such regulation is 'less painful, etc'; markets are responsive to the desires of other groups in society by modifying their practices (of the past 20 years); conflictual, because not everyone in the community recognises (yet) the necessity of letting corporates 'take control of change'; and, colonizing, since those who don't recognize the hegemony of the market attract very serious efforts directed at convinced doubters of market authority and such benefits as flow from acceptance of same.

#### 6.45 Market-association overlap

Markets enjoy strong and close relations with many types of associative actor; indeed, the *raison d'etre* of many associations is to promote private interests in public policy arenas. The close linkages implied by associative coordination are seen by some however, as too 'cosy' and deviant from tenets of competitive market conditions - as leading to increased potential for inefficiencies in allocation (Baumol, 1975). Associative coordination of production, and/or corporate action, according to this view, constantly threatens to become languid, clientilistic, self-regarding and ultimately destructive of competition and societal welfare based on collective productive efficiency. By contrast, others argue that as the price system is never perfect in conveying all aspects of the goods being exchanged, other, and 'moral' considerations, such as trust, honesty, and mutual obligation, become essential complements to the smooth workings of the market (Sako, 1992:18). Associations in this view are seen as promoting market interests by facilitating

free(er) movement of information (particularly amongst producers) and coordination of otherwise disparate and diffused corporate action (as are presumed to arise in perfectly competitive conditions). Of course, not all associative actors see their interests as coincidental with those of the market. Unions, consumer groups, and 'institutionalized' social and environmental groups are associative types which may, at different times and for varying reasons, find themselves at odds with markets.

Market actors, in their efforts to appraise state bureaucracies and communities of their position(s) on environmental issues, are keen to exploit the potential for associations to provide a focus for the development and application of 'market' environment-regulation. Associative actors such as corporate alliances, trade associations, private standards-setters and business-NGOs which espouse environment-regulatory aims are multiplying rapidly (Murphy & Bendell, 1997). Partnerships with associative actors to help channel and amplify corporate messages on regulating environmentally relevant action have been embraced enthusiastically by market actors in their efforts to shape the terms of the debate on what is necessary and achievable. To be fair though, market-associative partnerships have potentially much to recommend them; several reasons are noted below;

1. Associations, given sufficient corporate support (or more colloquially 'buy-in'), find themselves in a strong position to encourage or influence business recognition of its ethical 'responsibilities' to 'assist' in the move toward long-term/ecological goals such as sustainability (examples of this type of associative-market collaboration are: World Business Council for Sustainable Development - WBCSD; International Institute for Sustainable Development - IISD; Global Environmental Management Initiative - GEMI);
2. Associations, in partnership with corporate actors can be instrumental in developing instruments designed to manage and improve environmental conditions and performance (examples are: ISO/TC207's ISO14000 series of international standards; Forestry Stewardship Council - FSC; International Council of Chemical Associations - ICCA *Responsible Care*);
3. Associative-market institutions may concentrate resources (such as information, expertise and in some cases finance) for access by businesses and related entities to support action aimed at environmental management/regulation (an example is the International Network

for Environmental Management - INEM).

Some however remain unconvinced of the reformatory capacity of associative-market partnerships. To them, such partnerships are nothing but the newest iteration of a tired and outmoded corporate paradigm of technological fixes for social and environmental problems. Worse, such initiatives profess to be new and innovative, and reflective of the adoption of alternate visions of the world within the global corporate edifice, while in fact seeking minimal adjustment to the corporate conventions of free trade, economic growth, globalization, and the all-importance of allowing the market to control the greening of development through technology transfer via private capital (Welford, 1997). Associative-market alliances of this type are nothing new to Sharon Beder; citing a study by Susan Bovet (1994), she notes that,

The coalition building [between corporations] which began in the 1970s continues to grow. A survey of the thirty largest firms in the US found that each firm was involved in an average of 5.7 coalitions, such as The Business Roundtable; most of them “formed for legislative and regulatory purposes and focused primarily on national issues” such as the environment. More than a third of the corporations surveyed spend over a million dollars a year on “coalition activity” (1997:23).

Not surprisingly, relations between markets and associative actors professing philosophies and directions not necessarily congruent with corporate goals in respect of the environment are inclined to be somewhat less harmonious and mutually-supportive than those described above. In general, markets distrust non-market associations, such as environmental groups and NGOs, seeing their suggestions for more radical change (than corporates are willing to entertain) as ‘unrealistic’, ‘costly’ for business and society in general, ‘excessive’, and potentially superfluous anyway (since doubt might still be cast on the seriousness of environmental problems) (Welford, 1997).

An emerging trend in (environmental) association-market relations is one of cooperation to effect modification in the behaviours of both corporates and the movements. For example, in their discussion of several ‘partnerships’ between businesses and environmental NGOs, Murphy & Bendell (1997) promote a ‘new wave’ of environmentalism, one which simultaneously recognizes the need for change and the practical impediments to change. This new attitude, they claim, is observable in new relations being forged between,

pragmatic environmentalists and idealistic business managers...Although few, if any companies worldwide have fully embraced sustainability, key business people are beginning to influence corporate agendas in significant ways...These new partnerships are founded upon a belief that incremental change is possible in the short term, whilst acknowledging that there must be ongoing negotiations about the longer-term social, economic, political and cultural changes needed for sustainable development (p216).

#### 6.46 Association-community overlap

Many associative actors have historically close links with the community, or have emerged out of process of institutionalization of what were originally community groups. In the sense that associationism represents a movement toward formally organising the “collective responsibility of interest organizations for controlling their members in the public interest” (Streeck & Schmitter, 1985:23), interactions between both associative and community modes can be seen as potentially cooperative with, and mutually respecting of, each others legitimacy. Where communities typically,

lack authoritative means to mobilize resources above and beyond what can be obtained on a voluntary basis...[and] with increasing mobility of individuals and cultural identities, the sense of altruistic obligation - of ‘other-regardingness’ - has tended to become weaker in most social groups (*ibid*:24).

Associations, by virtue of their more formal organization, greater access to ‘pooled’ collective-member resources, and (typically) more entrenched positions within state or market regulatory structures, are potentially forceful allies for the less powerful and/or influential community actors.

On the other hand, associative actors representing ‘other’ interests, such as those of the market or state, may look toward the community for a number of reasons: to gain recognition or approval; to seek input or assent to regulatory proposals; to recruit ‘converts’ to their worldviews; to mobilize public pressure; to break down community bonds in favour of more formalized, economically ‘efficient’ contractual relations; and so on. Relations thus engendered - in particular environmental relations - can be seen to run the full gamut of regulatory categories (ie cooperation/legitimacy, conflict, modifying and colonizing). The discussion below focusses on examples which illustrate the contingent and essentially mutable nature of association-community

regulatory relations.

- *Mutual legitimation*

In an analysis examining what are in his view, 'flawed and partial' solutions to a four-sided 'global problematique'<sup>108</sup> pursued by extant power elites, Paul Ekins notes approaches to economic and social development which rely instead on collectives of 'people's organizations' to address such problems directly, without state or market interference. He cites associative organizations such as; the Six S Movement (Burkina Faso); Grameen and South Shore (community) Banks (Bangladesh and US); Seikatsu Consumers Cooperative (Japan); Council on Economic Priorities (US); the Chipko Movement (India); Environmental Defense Fund (EDF) (US); and the Working Women's Forum (India) as examples of associations which promote the idea(l) of associations activating and sustaining community initiatives to address local development issues (1992).

- *Modifying*

As mentioned earlier, the principal objective of associative actors, such as NGOs, is to maximize their influence, or, as Clark (1992) puts it, 'impact'. He expands; "They [NGOs] seek to move into the fast stream of social change by 'influencing' attitudes, policy and practice" (p191). Examples of associative environmental-regulation aimed at modifying community behaviour are commonplace, ranging from boycotts (to shift consumption patterns away from 'damaging' products and/or producers); 'third-party' environmental labelling of products or attestation of environmental achievements of producers and/or service providers (such as environmental audits or certification to standards like ISO 14001 and EU EMAS); programmes promoting individual action on the environment (such as is referred to by the axiom reduce, re-use, and recycle); and even corporate-association sponsored programmes, which, in downplaying the extent of the environmental crisis, promote no, or minimal, change in the consumptive behaviours of the public (Hildyard, 1993).

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<sup>108</sup>Of war/insecurity, poverty, human rights abuse, and environmental destruction (see Ekins, 1992).

- *Conflictual*

Associations, mindful of their core purpose of maximising their influence and impact on the public mind, are (usually) careful to not alienate the public at large. However, some associative actors, corporate-sponsored ones in particular, are sometimes unafraid to attack community groups whom they perceive as obstructive of their (members) interests.

- *Colonizing*

In their efforts to influence public thought and discourse on environmental issues, associative actors of all colours are assiduous in their courting of community actors. Murphy & Bendell, for example, argue that,

Environmental groups are in the public attention market, having to compete for the sympathies, and charitable giving, of the public...and look to generate public participation through by targeting the emotions of creativity, compassion and responsibility” (1997:53-4).

The ‘battle’ over the hearts and minds of the public, noted above, is especially intense in this particular modal overlap. Advertising and coverage of environmental issues by environmental groups on topics ranging from pollution to global warming to nuclear testing will be familiar to almost every adult with access to a television or newspaper. Corporate-backed associations are also active in the media; strategies employed by industry and trade associations, public relations agencies acting for business, think-tanks and research institutes are all ‘privileged’ commentators in media channels, by virtue of the substantial resources they are able to mobilize (Beder, 1997). In a somewhat ominous move, companies, directly, and via corporate-associations, are targeting schoolchildren in the US and in other developed countries, including Australia and New Zealand. Beder provides several examples,

The American Nuclear Society has a kit which tells children about the beneficial uses of nuclear technology and attempts to describe the problem of waste disposal in harmless terms...The American Coal Foundation’s materials [for schools] manage to avoid mention of global warming and acid rain when they claim...that, ”To keep coal from harming our land, air and water: coal is cleaned before it’s burned”...The chemical industry has

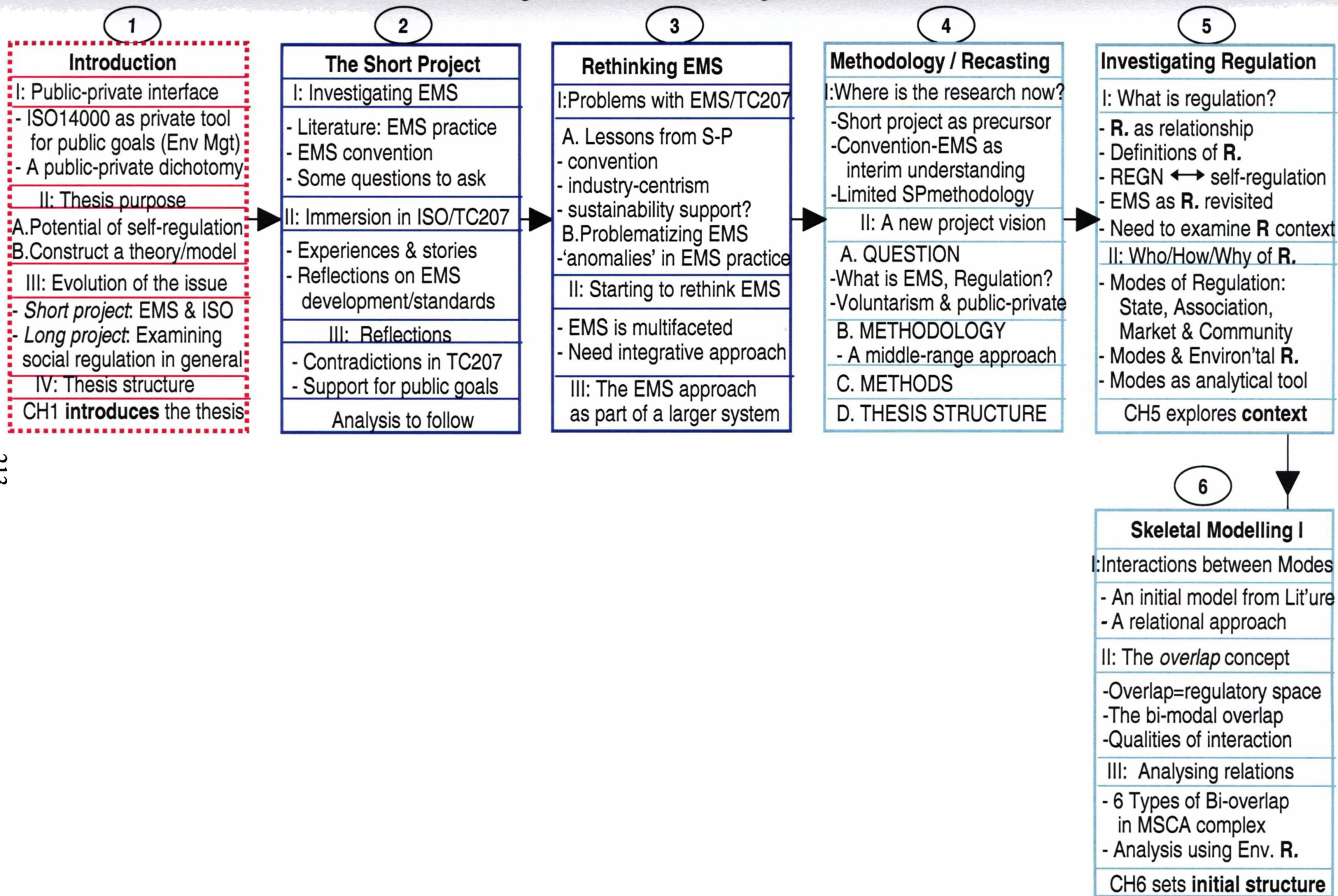
concentrated on science education...expand[ing] its role to an active one of “helping to train teachers, encouraging employee volunteers to teach courses, and guiding school curricula”...giving “kids a balanced view of how science improves our daily lives”, producing “well-rounded students, who, one day, may be decision makers affecting industry policy”...the BC [British Columbia] Council of Forest Industries ran an essay competition for high-school students on ‘Why Clearcut Logging is Beneficial for British Columbia (*ibid*:170-1).

Clearly, the ‘colonizing’ capacities of associations in the public/community arena are strong. Environmental groups have been, by any measure, incredibly successful in mobilising public concern over the past three or so decades. Keen to ‘catch-up’, and to present their views, corporate actors, utilising associative ‘covers’ are seeking to influence a public increasingly wary and sceptical of messages too obviously originating from corporations.

## 6.5 Summary of the chapter

This chapter contributes to thesis evolution by developing concepts and an initial structure for a new theoretical approach to regulation. In doing this, the discussion moves from broad and foundational understandings to more formalized modelling. Three key conceptualizations are developed. The first is the *relational approach* derived from Puxty *et al*’s (1987) analysis of accounting regulation. The second is the concept of the *modal overlap*, which is used to expand understanding of the third key concept of *regulatory relations* between the modes of market, state, community and association. The multifaceted nature of regulatory relations is further explored via an analysis of environmental regulation. It is found that thinking along these lines is promising for development, but that it needs further refinement and expansion. This chapter and the one following are closely related. Chapter 7 below integrates all the conceptual building blocks discussed thus far in a new ‘skeletal’ model of regulatory structures.

Figure 6.4: The thesis at a glance



## CHAPTER 7:        **Skeletal modelling II: crystallising the *regulatory complex***

### 7.0     Introduction

The main issue addressed in this project is the potential of voluntarism to serve both private and public interest goals. The first step in the investigation was to obtain knowledge of EMS - an exemplar of voluntarism. The second was to appreciate the larger context within which EMS is developed and applied. The first step was covered in early chapters, and the latter is the subject of chapters 5-7. This chapter seeks to bring the theorizing to a place where a working model, a skeletal conceptual framework can be formed.

### 7.1     Purpose and structure of the chapter

The purpose of this chapter is to sketch out the outlines of a new way of looking at regulation, to explore its character, and to assess its capacity to model chosen phenomenal contexts. The chapter is structured in three parts. The first part proceeds along the lines of the theorising started in chapter 6. The simple, bi-modal understanding found there is expanded, and a ‘skeletal’ structural-contextual model of regulation is formed. A system of plotting and analysing different types of interaction between the modes is suggested by the geometric method used to support theorizing. Other aspects of the model are explored.

The second part discusses a first run test of the model. Forty different forms of environmental regulation and management are categorised using the model. EMS and related voluntaristic initiatives are closely examined. This first application of the model is a conceptual experiment aimed at determining its capacity to reflect phenomenal reality. It is adjudged that the experiment was a ‘success’, and justifies further examination via a new empirical investigation.

### 7.2     Developing the concept of the modal overlap

The discussion of chapter 6 established important theoretical foundations. An understanding of regulation as outcome of relations within *modal overlaps* is a key element. Unfortunately, the concept of modal overlap, at its current (fairly elementary) level of development, is based on an unrealistic assumption. To explain; the bi-modal overlap is capable of ‘seeing’ only two-way relations. Clearly, many strategies of regulation are products of interaction between two, three

or more ‘types’ of regulatory actor. This can be demonstrated with the aid of a short example. A government bureaucracy (*s*) seeks to control the actions of a commercial resource user (*m*). *S* engages in processes (permitting; consenting) aimed at controlling impacts created by *m*, under the broad *aegis* of ‘protecting the environment’.<sup>109</sup> Generally, such processes involve setting limits according to rule-sets as laid out in policy and legislation. However, third parties may seek to enter the relation. Residents in nearby areas (*c*) affected (or potentially so) by the environmental effects of *m*’s activities may seek to intercede in these processes to protect their interests (in clean surroundings etc), by means ranging from community activism (eg petitions, protests, boycotts) to formal objections (in court or other deliberations) to direct negotiation with the management of *m*. Clearly, to provide a fair representation, a theoretical model must go beyond two way relations.

### 7.21 From bimodal to tri-modal overlaps

Figure 7.1 and Table 7.1 together illustrate how relations within a complex comprised of three modes might work, using the example given above. Actors from each mode ‘meet’ at point “*O*”, each ‘transmitting’ and ‘receiving’ regulatory ‘impulses’, and corresponding data/information content. These were defined in the previous chapter as follows; (i) *recognise* and *interact* with other actors; (ii) *formulate*, *transmit* and *receive* regulatory impulses; (iii) *negotiate* desires and trade-offs; (iv) *implement* regulatory strategy/ies; (v) *monitor* achievement of regulatory goals; and (vi) *enforce* the strategy.

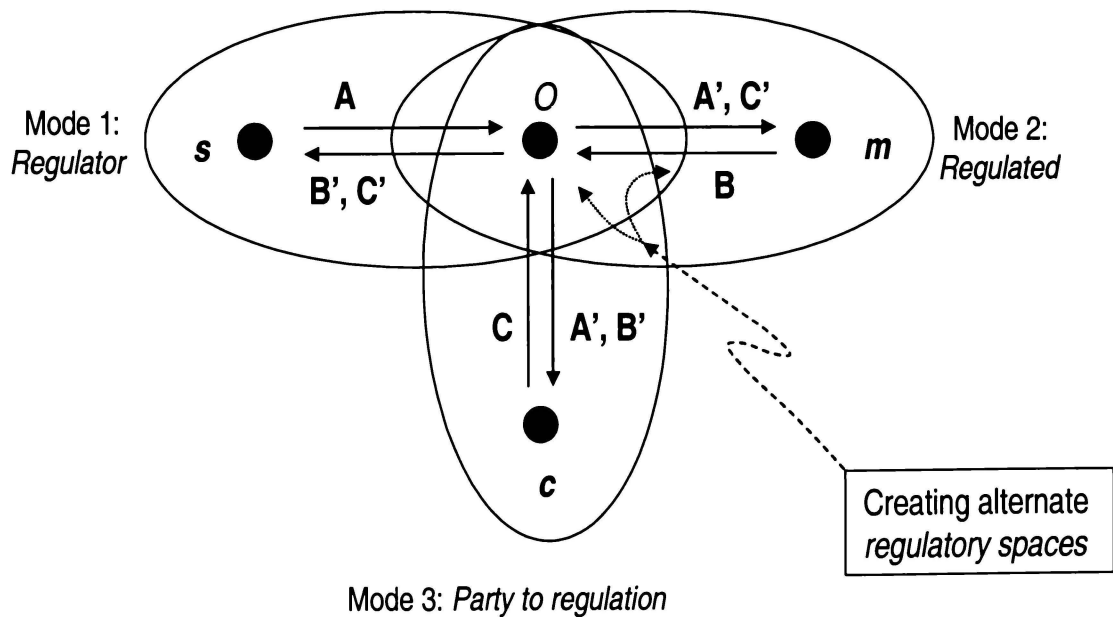
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<sup>109</sup>Or an equivalent mandate claim. In New Zealand, for example, the purpose of the central plank of environmental legislation, the *Resource Management Act 1991*, is to promote the ‘sustainable management’ of resources (s. 5).

Table 7.1: Regulatory relations within a tri-modal overlap

Categories	Relation characteristic	Corresponding action in Fig 7.1
(i)	<i>recognize</i>	A, B, C
	<i>interact</i>	A, A', B, B', C, C'
(ii)	<i>formulate (regulation)</i>	O, A, B', C'
	<i>transmit</i>	A, B, C
	<i>receive</i>	A', B', C'
(iii)	<i>negotiate</i>	O
(iv)	<i>implement</i>	O, m
(v)	<i>monitor/feedback</i>	B, B'
(vi)	<i>enforce</i>	B, s (may also include A & C) <sup>110</sup>

Figure 7.1: A tri-modal system



<sup>110</sup>If, for example, degrees of self-assessment of 'compliance' or conformity to regulatory requirements are permitted in a particular regulatory strategy/form.

## 7.22 The need for a multi-modal framework

The 'tri-modal' conception allows for a larger number of overlaps of greater complexity than was previously available. However, the conception still lacks power to explain the sophisticated regulatory systems emerging in the area of the environment. A development of the simplified example of environmental regulation introduced above shows why. As related already, the example involves a government bureaucracy (*s*) exerting regulatory influence over the activities of a resource using company (*m*) with active presence of community-based affected parties (*c*). This particular regulatory 'confluence' is described as *m.s.c* in the terminology of the model.

In some cases, the situation might develop in such a way that a fourth type of 'modal actor' (*associative*) enters into the established relational confluence. This could occur in two ways at least, as noted in points A and B below;

(A) the community may seek to increase the leverage or influence available to them by developing a formalized organization or entity constituted separately from involved individuals (eg via incorporation etc). This organization may then become an intermediary between the original parties and/or generate inputs to the established relationship (eg by expert opinion, alternative proposals etc).

(B) Second, the regulated party in this relation (*m*) may engage assistance from independent parties, outside the established relationship, in order to increase the chance of outcomes perceived as more favourable to itself (eg technical, legal, business support). The strategy chosen might be to increase levels of trust between itself and the other two established parties (*s* and *c*).

Associative input may manifest in *indirect* ways; such as voluntary corporate implementation of systems and tools for environmental management (eg ISO14000 standards); or more *directly* by, for example, verification of such processes by independent certifiers accredited or approved by credible associative actors. Either way, as outputs and/or actions of an actors of an associative nature affect the relationship, it alters significantly (conceptually, if not always in actual outcomes).

The possibility of particular forms of regulatory relation involving actors of all four 'modal types' is of great importance. Clearly, the model of regulation being built in this thesis must address the

increasing complexity of relations involving two, three *and* four modal types.

### 7.3 Crystallising a structural model of regulation: a multi-modal *regulatory complex*

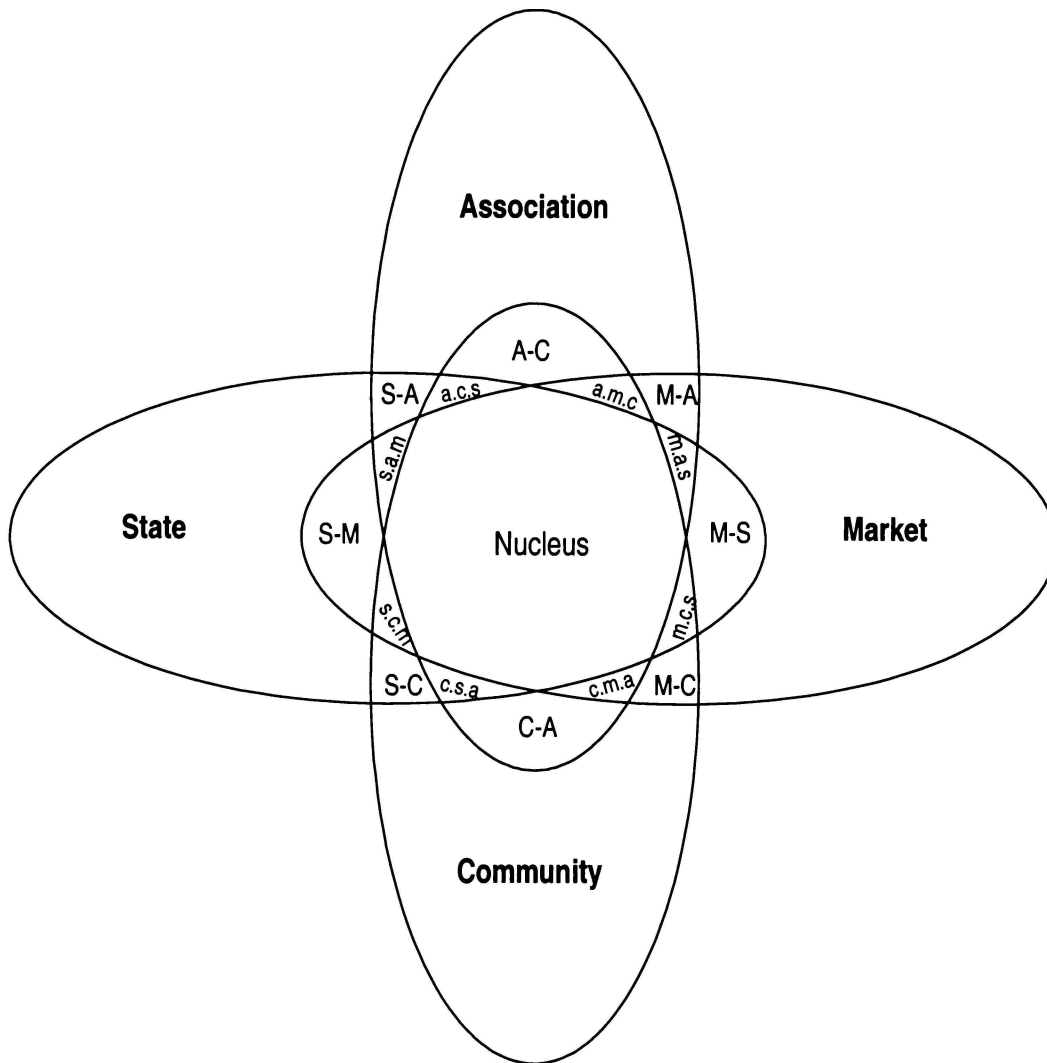
Using the format of overlapping ellipses developed previously, the contours of a multi-modal *regulatory complex* are depicted in Figure 7.2. By ‘allowing’ multiple interactions, the model-in-development permits analysis of more complex forms of regulation. It will be noted immediately that the system formed through concurrent overlap of all four modes is much more intricate than that produced by previous iterations.

The number of overlaps, within which regulatory strategies are ‘formulated’ and ‘enacted’, now numbers seventeen in total,<sup>111</sup> which helps support theorization of a very wide range of regulatory forms. While the option of basic, two-way relations between modes remains (that is,  $M \leftrightarrow S$ ;  $S \leftrightarrow C$ ;  $C \leftrightarrow A$ ;  $A \leftrightarrow S$ ;  $A \leftrightarrow M$ ;  $M \leftrightarrow C$ ), an array of additional relations between three (m.s.c; s.m.a; c.m.s, a.s.c etc), and even four modes is introduced. In earlier discussions, it was argued that the abstraction of the overlap represents a kind of ‘virtual space’ for discourse and interaction between parties to regulatory relations. An increase in number of overlaps therefore implies an addition in number, and alteration in character of the modal overlaps ‘available’ for ‘use’ by actors for regulatory interaction.

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<sup>111</sup>Sixteen *tri-modal*, and one *four-modal*. The latter is the *regulatory nucleus*, a development discussed in more detail in s.7.36. It should be noted that the diagram produces an apparent anomaly in denotation of the overlaps S-A, M-A, M-C, and S-C. Whereas the two remaining bi-modal overlaps find a mirror image opposite each other eg S-M/M-S (the left-right axis in the Figure) and C-A/A-C (up-down axis), the four noted above do not. The theory makes the assumption that each of the four noted are in every way equivalent to the two (four) axial bi-modal overlaps. It is important to note that the diagram is an aid to reason, and does not ‘drive’ the reasoning to illogical inference.

Figure 7.2: A regulatory complex



The four modal iteration of the model introduces complexities such that the simple analytical tools utilised so far (see Tables 6.1 & 7.1 above) are now too unwieldy to function effectively. Refinements in conceptualising regulatory relations are required. The following discussion lays out ways to unpack and interpret the idea of a ‘four-mode’ regulatory complex. It should be noted that while the discussion following is detailed, and refers often to practical examples, it is intended as an overview of still-contingent ‘working understandings’, and is presented in terms retaining scope for flexibility in interpretation and development.

Six features of the newest iteration of the model are noted for exploration in the analysis below. First is the geometric-symbolic representational format; the four mode arrangement is not

'constructed' haphazardly. This conceptualization is shaped by observations of and inferences from regulatory relations as seen in actual practice. Second, this conception has each mode as a (potential) influence/participant in ten types of overlap, and as 'excluded' from others. Third, the connection between modes and the actors carrying, reproducing, and/or reflecting modal narratives and values is presently unclear. Fourth, the nature of the overlap concept needs further theorization and explanation. Fifth, the concurrent overlap of all four modes produces a central 'area', called here the *regulatory nucleus*. This 'space' possesses unique features, and represents an important regulatory ideal. And sixth, the model as it stands assumes a certain 'equivalence' in regulatory influence or *power*. This premise is clearly simplistic, and is addressed in more detail below.

### 7.31 A note on representational format

The representation above shows the modes as interacting in a formation of two crossing axes. *State* and *market* form one, and *community* and *association* the other. The first of these is consistent with theory and practical experience. The workings of commerce are inconceivable without much state-provided public goods and services; for example, infrastructural frameworks, security of clearly defined and defensible property rights, and enforcement of contracts in law. This closeness of relationship is mutually felt; the 'performance' of states has long been assessed, by commentators and states themselves, on the basis of the degree to which they have fostered conditions necessary for (continuing) expansion of economic output, ie economic growth as measured by GDP/GNP (see for example, Galbraith, 1992).

Of course, other modal actors interact closely with the market (and the state for that matter); for example, business is impossible without consumers or a workforce, both provided by the community; and state rule in the public interest is nonsensical in the absence of a public. However, market-state relations take the lion's share of attention in the literature on regulation of all kinds. In addition, state and market players display a curious tendency to become infatuated (or at least interested to a fault) with their mutual relations, especially in management of the economy and the environment.<sup>112</sup>

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<sup>112</sup>And rightly so, some may say, given that whole vectors of economic development (and other forms) are predicated on access to resources, which itself hinges on the outcomes of deliberations and negotiations between bureaucratic power and capital; see for example Tinker (1986).

The second ‘axis’ - *community* and *association* - lacks similarly obvious theoretical justification. It might however be usefully argued that associative impulses of cooperation, concertation, inclusion and collectivity are related more to communitarian ideals of solidarity and unity than the formalistic functional/rational philosophies embedded in the modes of market and state. Adding to this, examples abound of associative formation and function to ‘aggregate’ or ‘solidify’ community concerns, or serving as facilitators for relations between the state (and/or market) with community-based actors. Certain industry groupings and business-serving associations, for example, have as stated aims the re-presentation of business to communities as ‘friendly’ or credible in order to modify perceptions of corporates as remote, impersonal and unconcerned at the impacts of their decisions on individuals and other stakeholders.<sup>113</sup> In a similar vein, many environmental NGOs have as their core purpose the provision of research, information or opinion about certain environmental issues and risks to identified publics and/or communities.

When overlaid upon each other, the two axes form a ‘complex’; a conceptual system within which various forms of regulatory relation - between markets, states, communities and associations - might be categorized and modelled. It should be noted that the ‘axes’ as depicted, are best seen as conceptual devices to assist in ordering thought on regulation, rather than understood as intrinsically important in themselves. Similarly, the generic diagram depicted in Figure 7.2 (and subsequent ones) is intended as an aid to understanding, since this is at core a relational model.<sup>114</sup>

### 7.32 Modal involvement in overlaps

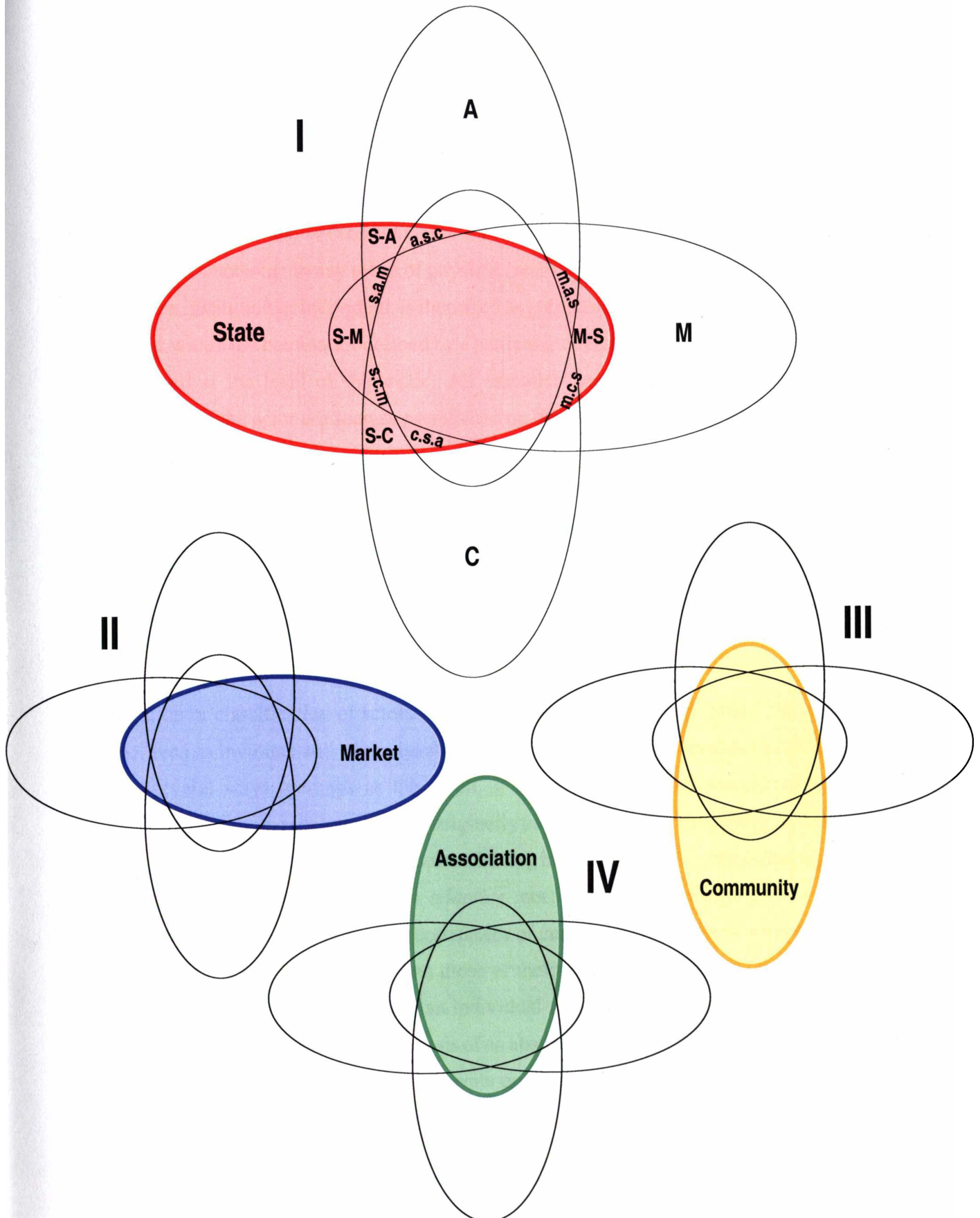
Figure 7.3 depicts the regulatory complex as seen from mode-centric perspectives. This analysis

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<sup>113</sup>For example, the *International Chamber of Commerce* (ICC) in its *Business Charter for Sustainable Development*, includes among its *Principles*: “15. Openness to concerns. To foster openness and dialogue with employees and the public, anticipating their concerns about the potential hazards and impacts of operations, products, wastes, or services, including those of transboundary or global significance” (UNEP, 1998).

<sup>114</sup>Rather than a strictly geometrical model. The ‘shapes’ and arrangements of the modes should not be seen as important in themselves, but rather as conceptual tools to *illustrate* the nature of overlaps and interactions between modal actors. The overlap-intersections are illustrated by graphical manipulations of lines denoting modal boundaries, but they are best seen as mental constructs and cannot be said to exist in a concrete physical sense.

Figure 7.3: Mode-centric perspectives on the complex



shows that each mode is potentially ‘involved’ - through the activities of ‘its’ actors - in ten bi- and tri-modal overlaps, plus the central *nucleus*. Not all overlaps are ‘open’ to all modes, ie some are seen as outside the semipermeable ‘skin’ defining and containing the mode. The modal boundaries are such that some overlaps are by definition unavailable to certain types of actor.

### 7.33 The relationship of actors to modes

The conception of the *regulatory complex* has actors as ‘agents’ of the mode, as tangible ‘reflections’, ‘expressions’ or ‘embodiments’ of the more notional attributes of the mode. The mode itself does not exist in any sense of physical ‘reality’; it is a concept. The actor is not. The actor, be it an institution or individual, is theorized as guided and motivated in its relations - with other actors within the boundaries defined by a particular overlap - by narratives, ideologies, and values shaped at the level of the mode. All essential ‘templates’, ‘dimensions’ and other characteristics of the actor are seen as established or ‘formatted’ at the level of the mode.

Modal ‘character’ is made available to, ‘imprinted’ on, or reflected by actors through processes of mutual identification. Actors, be they bureaucracy, agency, corporation, firm, association, NGO, popular movement or individual, will tend to identify themselves more closely with one particular mode, over others. In addition, key actor characteristics are easily identifiable with corresponding modes eg corporation with *market*, popular movement with *community* and so on.

Identification or classification of actors with the modal principles/institutions of *m*, *s*, *c* or *a* is itself not seen as inviolate and unchangeable. Shifts in the ‘modal orientation’ of an actor may occur in several ways; perhaps as the result of a ‘schism’ (a hypothetical example is; an individual participant to regulation acting originally as a state-based enforcement officer resigns and takes a position with a commercial concern having interest in the outcome of that regulation). Modal ‘orientation’ may change as an *adaptive* mechanism (eg several market actors may aggregate resources ‘outside’ accepted boundaries of competition to form an associative entity having broader objectives and scope than those of the constituent parties); or it may shift with personal *preferences* of individuals (eg an individual may desire strong government action to limit pollution by industrial sites, on the basis of an abstract concern for the environment, but also be in favour of exploitation of old growth forests on the basis of market arguments of economic value). Orientation may vary according to particular issues, or by actor choice of affiliation.

### 7.34 Further examination of the overlap

The conception of the overlap requires some elaboration. The starting point for description of the overlap, used earlier, is the idea of ‘discursive space’. The ‘space’ conception is complicated. Many forms of exchange between parties to regulation are theorized as taking place ‘within’ the overlap. Exchanges based on discursive ‘instruction’ and ‘response’ were discussed previously (ie. chapter 6 and the discussion on tri-modal overlaps immediately above), as were underlying relational ‘qualities’ of *acceptance*; *modification-seeking*; *conflict*; and *colonization*. Also discussed were outcomes of relations as contested and mutable. This section seeks to weave these initial premises together via a deeper and more detailed theoretic analysis of the overlap concept.

### 7.35 The overlap as virtual *transactional space*

The overlap represents a virtual ‘space’ where those involved (or potentially so) ‘meet’ and negotiate the goals, terms, scope, instruments etc for given forms of regulation. Any particular overlap therefore must be seen as arising from a certain combination of constituting modes. The depiction of Figure 7.2 above shows the totality of overlaps available or produced within the *regulatory complex*.

Not all overlaps are equally available to, or preferred by actors. Certain overlaps can be identified with the penchants of specific actors. For example, a state-bureaucracy with a historical preference for prescriptive, ‘command-and-control’ policies may be expected to favour conceptually simple normative strategies and instruments. Such strategies might be seen theoretically as more compatible with ‘basic’ overlaps such as *S-M* and *S-C*. Newly self-confident market actors seeking autonomy and freedom from state-dictated norms and standards may instead prefer instruments compatible with overlaps *M-S* and *M-A*. Communities seeking input into corporate and state policy might choose to develop self-determining (and/or dissenting) initiatives falling into, for example, the overlaps of *C-M* (eg so-called grassroots environmental movements protesting industry-created impacts on the environment), or alternatively may negotiate terms of power devolution from centralised state authorities (eg overlap *C-S*). Community actors may also seek alignment with associations to form sophisticated intermediative instruments categorisable under the denotations *c.s.a* and *m.c.a*.

Each of the overlaps ‘offers’ a different set of characteristics or premises for the conduct and

outputs of regulatory relations. These characteristics are determinable largely by reference to the modal orientations of participating actors. The conceptualization of regulation developed here sees actors as motivated by certain narratives, values, objectives and styles of thinking, observing and acting. These are unique to each mode, but mix and meld via intra-overlap actor intercourse, coalescing in the constitution of regulatory forms, instruments and strategies.

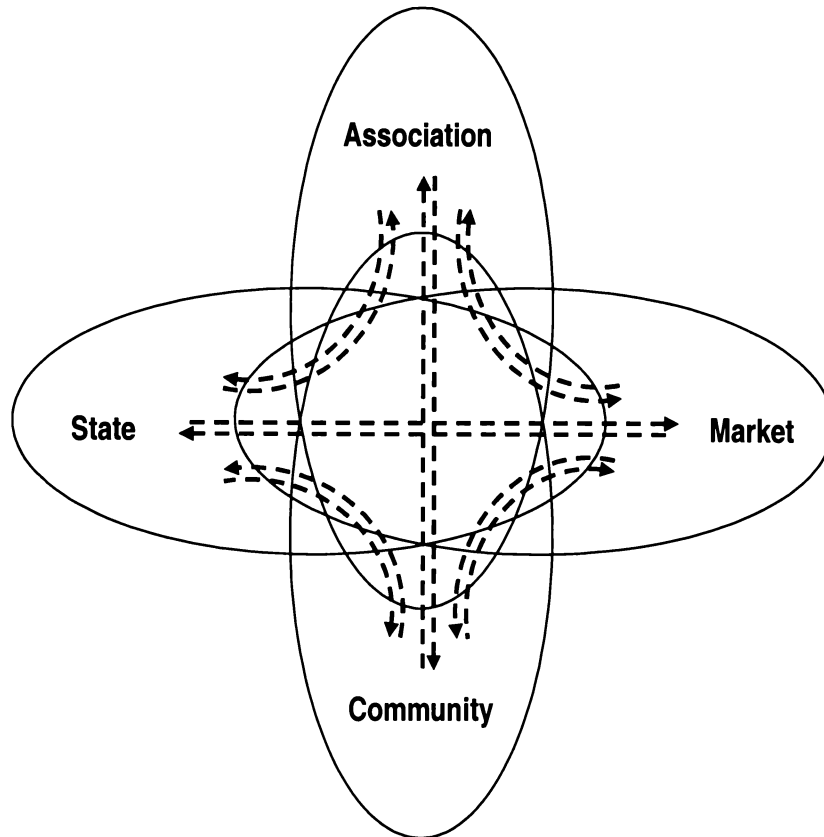
Actors are theorized as ‘carrying’ into this space ‘bundles’ or ‘packets’ shaped at the level of the mode. Packets are defined by, reflect, or ‘contain’ actor interests; expectations; intents; powers; philosophies; interests; ideologies; preferred explanations; preferences; tools etc. The theory sees these *packets* as principal ‘media of exchange’ - enabling and facilitating actor relations within the overlap. Their ‘contents’ determine the ability of a particular actor to exert *facilitative influence*.<sup>115</sup> The type and extent of facilitative influence wielded by an actor is most often determinable (again) by reference to the mode to which a particular actor ‘attaches’ or can be seen as identifying with most closely. Facilitative influence will take various forms; for example political power, legitimate monopoly over the means of coercion and bureaucratic apparatus (eg state); monetary wealth and ownership of resources/means of production (eg market); public opinion/approbation and collective action (eg community); or concertation and (often global) influence (eg association). A representation of intra-overlap relations as a type of ‘exchange’ is depicted in Figure 7.4.

Actors, or *regulatory participants*, rely heavily on such *packets* in their behaviours intra-overlap. Market actors, for example, may seek to induce government to accept market-dictated objectives (such as economic efficiency or self-regulation) as legitimate outcomes of regulatory relations. To induce action serving the general and specific interests of ‘the market’, actors draw on resources contained in *packets* available to them. These might be classified as (a) *indirect resources*; for example, seeking to persuade officials (in ongoing campaigns with think tanks, seminars, workshops, advertising, etc); promoting and reaffirming concepts such as private property rights and the intrinsic desirability of ongoing GDP growth; or (b) *direct* exercise of *resource* eg lobbying of government officials and organs by industry representatives. By the same token, other modal actors will respond, utilising packet-resources accessible to them as state, associative or community actors.

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<sup>115</sup>Defined loosely as the ability to effect and/or affect (regulatory) action.

Figure 7.4: Internal structure of the complex: intra-overlap relations as exchange



### 7.36 The *nucleus*

The *regulatory complex* formed by simultaneous overlap of all four modes has at its centre a unique type of overlap. While other overlaps/intersections provide ‘homes’ or ‘spaces’ for two and three ‘actor types’ (ie. ‘representing’ the modes), the area of the central overlap allows interaction between actors from all modes. It is therefore described as the *nucleus*. The *nucleus* is a special case, an ‘ideal-form’ of overlap, in which all modes are represented. The discussion below makes a start in thinking about what exactly a nucleus might be, and raises issues which will be integrated in the testing programme to follow.

A two-part theoretical definition of the *nucleus*, using concepts already introduced, is given below:

- i. In abstract, model-based terms: *a central overlap comprised of all four modes;*
- ii. In relational terms: *a format of regulatory relation featuring interaction between all actor types (ie. MSCA).*

Theoretical development has reached a point allowing of some speculations and interpolations to be made about the nature of the *nucleus*. Some ideas are explored below.

## I The nucleus as a 'free' regulatory space

In the discussion of the EMS approach in chapter 2, ISO/TC207 was criticized for its uncritical bias toward market-industry preferences, which might be seen to undermine the capacity of the ISO14000 instrument to meet its public-good objectives (ie to contribute to improvement of the environment and sustainable development). In the terminology of the theory being developed here, such behaviour could be described as 'mode-serving' (ie, market), with a strong tendency to subscribe to very tightly defined objectives, often at the expense of alternate perspectives. ISO 14000 cannot therefore be classified in the nucleus overlap.

The nucleus is an ideal configuration: the product or result of the interactions of all modes on a basis of equal modal 'input' or influence in regulatory relations. Understanding of the nucleus is greatly facilitated by reference to conceptions of *freedom*. Approaching the *nucleus* finds it reflective of three key aspects of 'freedom';

(1) *Freedom of participation*: the first defining feature of *nucleus*-based relations is freedom of participation by actors representative of MSCA;

(2) *Freedom of discourse*: The second feature is freedom of discourse, meaning free flow of information and no restrictions in the right/ability of actors of all kinds to enter into regulatory discourses (on for example, the purposes, scope, content and form of regulation);

(3) *Freedom from asymmetric exercise of influence*: The third feature is freedom from asymmetric exercise of influence; that is, actors involved in *nucleus*-relations must not be subjected to actions intended to delimit their legitimacy as 'representatives' of the mode.

The nucleus can therefore be understood as a type of ‘free regulatory space’; a discursive space where all parties affected by regulation have an opportunity to interact on an equal basis with those who would regulate. From a theoretical perspective, the nucleus can be considered as somewhat analogous to two concepts developed by Jurgen Habermas; that of the *public sphere*, and the *ideal speech community*. These concepts emphasise opportunities for free flows of communication through society, unencumbered by the interests of the commercial life, and the desirability of facilitation of free statement of intent by actors in social discourse (1985; 1987; 1989).

## II The nucleus as an expression of regulatory integration and evolution

The discussion in chapters 2 and 3 refers to a trend among governments worldwide in applying VSM (voluntaristic, self-regulating and market-based) instruments in the pursuit of policy goals. This trend is conceptualised here as the combining of normally mode-specific norms, initiatives, goals (etc) to form new vehicles and varieties of regulation, ie *regulatory integration*. The analysis of bi- and tri-modal overlaps above describes ways of understanding how (and why) regulatory ‘elements’ can be combined in composite formats of some ingenuity.

The concept of the nucleus can be viewed in much the same way; as the penultimate potentiality of regulatory integration. It does not stretch the imagination too far to see the *nucleus* - the simultaneous overlapping of all four modes together - as a logical end point of an extrapolation of existing trends in regulatory integration. The hypothetical example of regulation developed in s. 7.2 above shows how in practice, regulation may evolve to become increasingly integrated and sophisticated. In that example, a company wishing to develop some resource was compelled to enter into relations with government. The relationship was complicated by the involvement of affected third parties in the community, and subsequently reached a high level of sophistication with the ‘insertion’ of associative actors into the relationship. This development (or progression) can be represented by the denotation in Box 7.1.

### Box 7.1: Progression toward the nucleus

M → M-S → *m.s.c* → MSCA OR *nucleus*

There is evidence of broad trends in regulatory integration in practice. The emergence of regulatory regimes incorporating VSMs within state frameworks (eg ISO 14001 has an important place in the EU EMAS regulation)<sup>116</sup> is an example of integration. Another is found in the New Zealand context; environmental legislation requires state-regulators to pay particular regard to values not typically invoked in state-resource user relations. The Resource Management Act (RMA 1991) specifically mentions the *Maori* community-cultural principle of *kaitiakitanga* (which can be understood as a form of stewardship)<sup>117</sup>, and those enshrined in the *Treaty of Waitangi* (s.8). In addition, the Act requires state-regulators to broaden their repertoire of instruments of regulation; they are to:

(a) Have regard to -

(ii) *other means* [of regulation] in addition to or in place of such objective, policy, rule, or *other method* which...may be used in achieving the purpose of this Act, including the provision of information, services, or [economic] incentives;

(b) Carry out an evaluation...of the likely costs and benefits of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be *effective* in achieving the objective or policy;

(c) Be satisfied that any such objective, policy rule, or other method (or combination thereof) -

(ii) is the most *appropriate* means of exercising the function, having regard to its efficiency and effectiveness *relative to other means* (RMA, 1991: s.32, emphasis added).

The increasingly globalized nature of regulation, especially in the area of environmental regulation, provides further examples of integration. The larger NGOs are now very influential and active regulatory participants, often advising governments, corporations and communities (IISD, 1996). And emerging global regulatory initiatives, such as the *Kyoto Protocol* (aka *Convention of the Parties - COP*) integrate action by governments, corporations, and associations (in roles of, among other things, facilitators of carbon trading; see for example, ISO/TC207 N503, 2000) to produce public goods at the global level. These examples of regulatory integration contain lessons on how to create a pathway to the nucleus.

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<sup>116</sup>See chapter 2.

<sup>117</sup>See RMA (1991) s.7; and the discussion of *community-regulation* in chapter 5.

### III A definitional approach to nucleus development

The nucleus concept can be approached by definitional means. The *Collins English Dictionary* defines 'nucleus' as; "1 a central or fundamental part or thing around which others are grouped; core. 2 a centre of growth or development; basis; kernel: *the nucleus of an idea*"(1998). Similar specification is given in *The New Lexicon Webster's Dictionary of the English Language*; "n. the central part of a whole, having its own identity, about which the rest of the whole gathers or grows || a centre of activity, influence etc." (1989).

Several aspects of dictionary definitions of 'nucleus' are helpful to this discussion; first; the nucleus is a core element, a central, fundamental part of the model as a 'whole'; second; the nucleus has its own identity, apart from its constituent parts (ie. the modes); third; the *nucleus* is a centre of (conceptual) development (eg n. as 'ideal' endpoint of regulatory integration); and fourth, at the heart of the concept of the nucleus is the essence or kernel of an idea - the ideal of a *free regulatory space*, a space within which *balanced relations* might be possible.

This part of the discussion might be seen as 'putting the cart before the horse'; as using the dictionary definitions to infer more meaning than can be justified. It must still be admitted, at the very least, that the label word chosen to identify the central core of the model - nucleus - is particularly resonant with the concept being developed here.

### IV The nucleus as ideal

Discussion of the nucleus puts it at the core of the theory of the regulatory complex. The model assigns to the nucleus concept a role of key importance. As the central 'hub' of the *complex*, as a reflection of the possibility of modal actors entering into relations simultaneously and in 'balance', the idea of the nucleus is of singular importance to the theorising developed in this thesis. The nucleus is certainly an idealistic notion, and perhaps even aspirational. In allowing (theoretic) synthesis of all modal narratives and goals, the model exhibits a transcendent character; an elusive quality of inspiration and hope. It raises the possibility that relations in reality may at some point be capable of integrating the views and preferences of all in society, rather than merely reflecting the wishes of a powerful few, as is generally the rule at present.

As it stands, however, the model is not well-suited to deeper exploration of relations found in

phenomenal realities of regulation. A problem lies in an assumption of modal ‘equality’ in relations. It is noted that discussion of the regulatory complex and accompanying depictions assume an ‘ideal-typical’ modal configuration.<sup>118</sup> That is, modes and actors are seen as equally valid as participants in regulation, and further, as capable of asserting equal influence in regulatory situations. This is far from being the case in relations in practice; influence to affect regulatory outcomes varies widely among actors. Theory development therefore requires a consideration of asymmetries in modal power or influence.

### 7.37 Introducing a *power* dimension to the model

Participants in regulatory activities do not always experience freedom to act as they will. They must often be prepared to accept some degree of abrogation, or at least attenuation, of their desires and/or rights as regulatory goals, structures and strategies come up for negotiation. Actor ability to exercise facilitative influence in regulatory contexts varies widely. Clearly, some classes of actor have access to high levels of influence (eg government enforcement agencies; resource owning corporations), and others generally less (eg community-level movements; individuals). Asymmetrical exercise of influence and/or power affects the degree of freedom, or scope to act, experienced by particular actors in regulatory contexts. It must also be observed that in most regulatory situations, *balance* - defined (and assumed) by the model at its present state of development as *equal ability of modal representatives to affect regulation* - does not prevail.

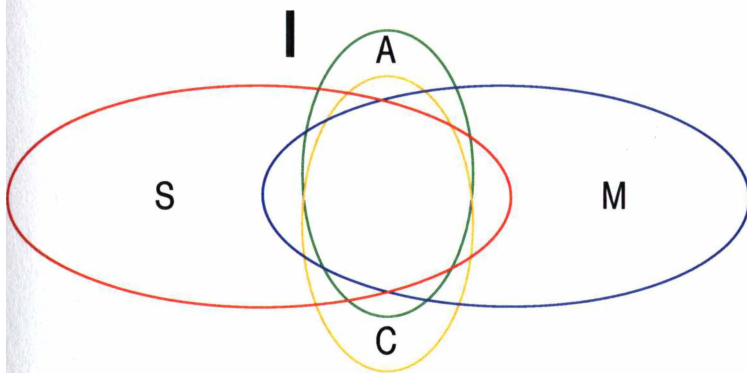
In phenomenal reality, regulatory relations are often ‘imbalanced’, in terms of actor ability to influence regulatory outcomes etc. The three illustrative examples of modal imbalance (ie. reflecting differentials in modal influence) shown in Figure 7.5 are discussed next.<sup>119</sup>

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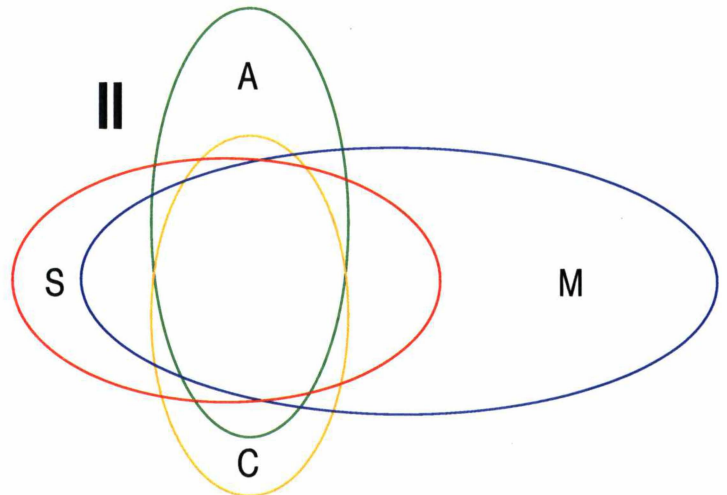
<sup>118</sup>For example, Figures 7.2 to 7.5 represent modes as ellipses of equal proportion.

<sup>119</sup>It should be noted that these three examples are selected as exemplars of imbalance in modal relations, chosen from a wide range of possibilities.

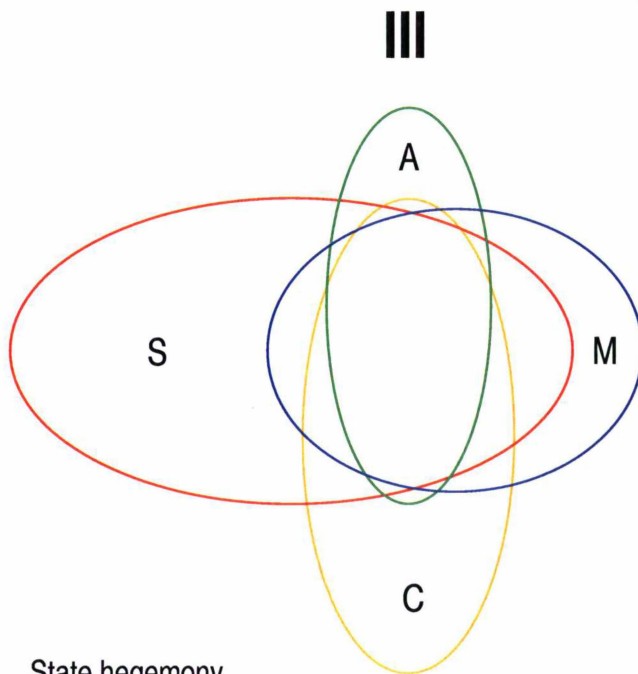
Figure 7.5: Representations of modal imbalance



State-Market confederation  
A, C undeveloped or subsumed/  
supplanted by M & S power-influence



Market hegemony  
large M-S overlaps; undeveloped  
or colonized C; functioning Associative  
networks (eg as mediation between M & S)



State hegemony  
S assumes &/or directs a high degree of M activities;  
C more developed than A

(1) *state-market confederation*: arises when regulation turns principally on the outcomes of *state-market* relations. Other actor-types either do not exist, are low in number and/or influence (as, for example, *m* and *s* subsume, supplant or obviate the formation of *c* and *a* actor types) or are otherwise prevented from exerting influence in regulatory contexts;

(2) *market hegemony*: arises as *market* interests dominate regulation. In this representation, *state* influence is diminished, along with that of the *community*, but *m* has developed the *associative* mode as an intermediary between it and residual ‘vestiges’ of *s* and *c*;

(3) *state hegemony*: arises as the *state* dominates regulation. In this example, *market* influence is diminished (perhaps by social ownership of the means of production) along with that of the *association*, but *s* has allowed the *community* to develop via, for example, processes of decentralization.

The conception of *modal im/balance* is the last of the new elements introduced to the model in this chapter. The *theory of the regulatory complex* has reached new levels of complexity, and is now a much more capable model of regulation. The theorization is now at a point suitable for ‘testing’ and development via reference to the conditions of phenomenal worlds. This is done in two stages; the *first-run model test*, reported below, uses the model to analyse an extensive range of strategies, instruments and formats of environmental regulation. The second phase of the test assesses the views of actual participants/actors in regulation, and is reported in chapter 8.

#### 7.4 *A first-run test*: Categorizing environmental regulation

The discussion of the first part of this chapter has produced a novel theoretical model of regulation. It is used in this part of the chapter as a ‘lens’ through which to examine environmental regulation. The ‘bench test’ reported below seeks to identify, classify and ‘position’ a wide range of regulatory instruments and strategies, using the logic of the model. As the discussion above implies, the conception of the overlap, in the overall context of the model, can be seen to provide (more-or-less) convenient domains or fields for the analysis of a wide range of regulatory strategies/forms. In addition, regulatory strategies, either in use or proposed, can be identified, compared, distinguished and classified, according to the particular modal overlap they might be theorized as originating, occupying or inhabiting.

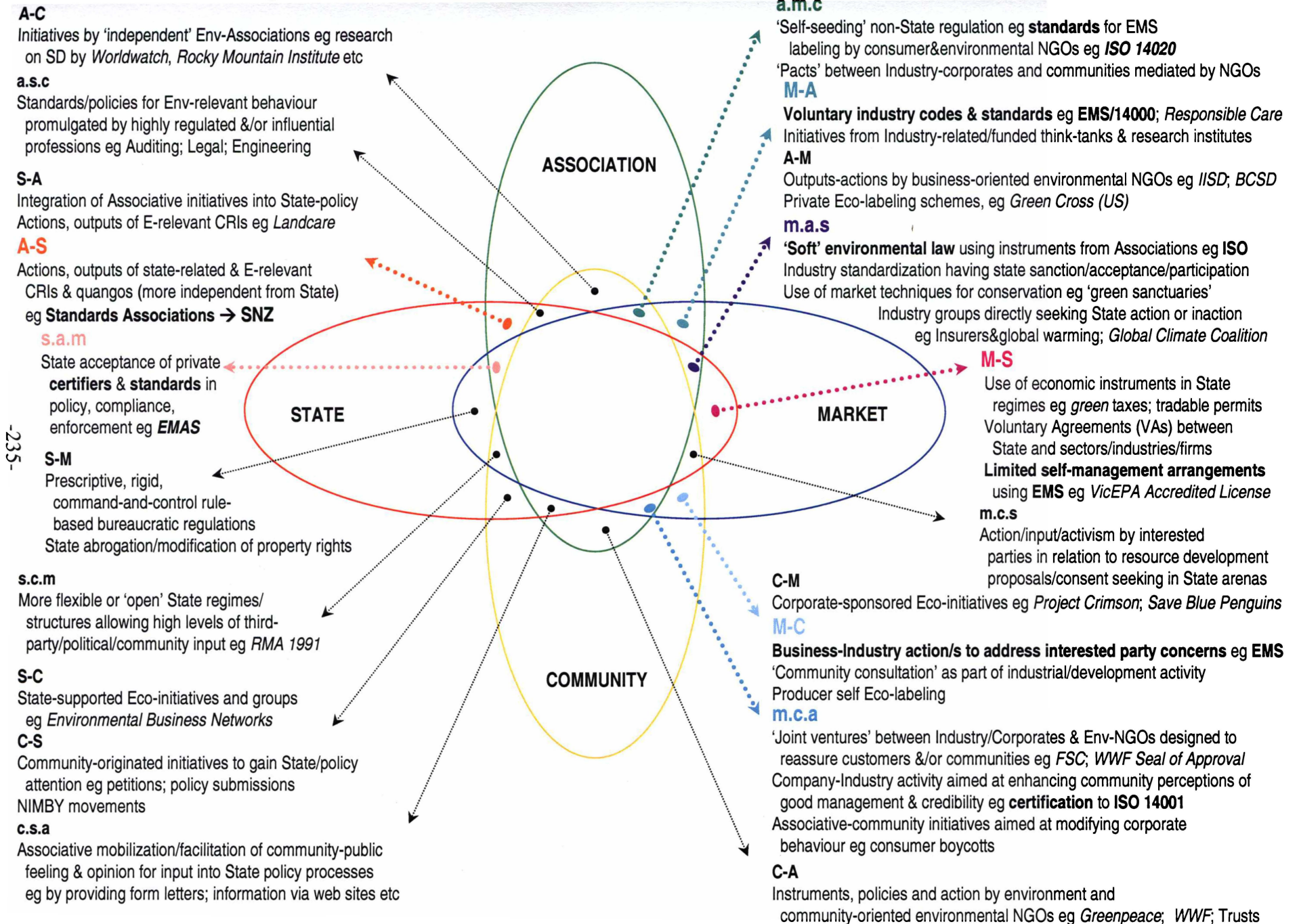
This is a significant development. By conceptually and graphically re-presenting particular regulatory forms using the means provided by the model, key characteristics may be determined. Such characteristics may include (but are not restricted to): (a) the modes (and hence) types of actors participating in specific regulatory strategies; (b) the relationship(s) of a particular regulatory form with others (including precursors and/or derivatives of that form). In addition, application of the model may allow some determination of; (c) appropriate (or typical) regulatory structures and instruments for given regulatory situations; and (d) the likelihood of regulatory effectiveness of specific regulatory strategies in particular circumstances. It may be expected that such findings as are available via the model will be of deep interest to a wide range of parties, including analysts of regulation, producers of regulatory forms (esp. government and the emerging associations), resource users, community groups and interested stakeholders.

Figure 7.6 gives an overview of the following analysis. It depicts, in abbreviated form, a classification of strategies/forms of environmental regulation using the theoretical model as a guide. It is derived from the analysis below. The analysis is structured in the following way; discussed first are the major, bi-modal overlaps; and covered second are the tri-modal overlaps. Key actors 'implicated' in each overlap are defined, and regulatory forms characteristic of each overlap type are introduced, along with the rationales typically employed to justify their use. Special attention is paid to those overlaps conducive to the development and application of regulatory forms relying, in any measure, on the EMS-approach; these overlaps are designated in Figure 7.6 by the coloured 'pointer lines' and further elaborated by the use of **bold type** to identify distinguishing aspects. The third and final part of the discussion briefly considers whether any existing environmental regulatory forms can be seen as categorisable in the terms of the *nucleus* concept.

#### 7.41 *Bi-modal* overlaps

The bi-modal overlap, as the denotation indicates, fosters conditions amenable to two-way intermodal relations only. As such, instruments conceptualized as bi-modal are seen as conceptually straightforward (and are probably unviable in practice by reason of that simplification). Whilst reservation could doubtless be expressed regarding the simplification and exercise of judgement required in such categorization, an important object of this exercise is to explore the theory, to assist model development.

Figure 7.6: First test of the structural model: mapping types of environmental regulation



The theoretical characteristics of six main bi-modal overlap types are discussed in detail in chapters 5 and 6 above, along with analysis of the ‘quality’ of relations enabled under each overlap category (see for example s.6.4). Hence the principal purpose of this section is to review and classify environment-regulatory initiatives (or types, forms), and a secondary one is to explain and refine important points of theory, and ‘rules’ of model categorization.

### S-M

This overlap covers a wide range of interactions between the modes of market and state, excluding all unrelated actors. The instruments and strategies to be ‘found’ in this overlap arise from the application of state powers to change or reinforce certain behaviours of market-based users of resources, and/or corporate producers of environmental ‘bads’ (eg pollution). All *prescriptive*, rule-based *bureaucratically-set* and enforced *regulation* fits into this category, as do state-initiated *abrogations of private property rights*. State power to limit the exercise of property rights is sometimes invoked to remove ecological systems considered sufficiently important from market exploitation, as was seen in the prohibition of beech logging on the West Coast of the South Island of NZ in early 2000. Owners of forests and interests in downstream processing were deprived of the opportunity to harvest old-growth forests for the sake of preservation.

Fiscal instruments, such as so-called ‘green’ taxation<sup>120</sup> also fit into this category. Relations classed as *S-M* tend to be based on state interpretations of the ‘public interest’, and are firmly rooted in legislative authority.

### M-S

While the previous overlap emphasises state-initiated regulatory forms (ie. ‘closer’ to the state),

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<sup>120</sup>The intent of such tax instruments is typically to force internalization of negative environmental costs - otherwise externalized - into costs of production. It could be said that producers will merely pass on increased costs to customers thereby inducing shifts in consumption away from environmentally-damaging production (see Milne, 1993) thus introducing the community mode (via consumers) into the relation. However, this is seen as a secondary effect. Environmental taxation policy is aimed at directly influencing producer behaviour: the principal intent of the tax is to force markets to adjust prices to more realistically reflect *actual* costs of production.

*M-S* based strategies are seen to be more ‘market-led’. An example is *voluntary agreements*, where groups of corporations collectively agree to certain principles, or to take specific steps, in order that environmental goals are achieved. Such ‘gentlemen’s agreements’ may be more specific and technical in nature, such as the CO<sub>2</sub> reduction agreement negotiated in NZ in 1997 between the then Minister for the Environment, Simon Upton, and several larger emitters of atmospheric carbon. Agreements may also formalize specific and general commitments to the environment, such as the *Valdez Principles* of the Coalition for Responsible Economies (CERES), or recognise private efforts at environmental management (by means of, for example, EMS). Market actors may see it as in their interest to promote self-initiated schemes such as these to assist in a perception that they are ‘doing their part’ to address environmental issues, thereby forestalling potentially more intrusive state-regulatory action.

### S-A

The designation *S-A* implies regulatory activity employing associative actors in strategies initiated by the state. The object of a regulatory strategy falling into this category could be seen as serving the interests of state agencies, or perhaps as assisting in the pursuit of state-mandated objectives. Semi-autonomous bodies such as ‘quangos’ (ie. quasi-governmental organizations) or crown research institutions (CRIs) can be seen as agents or administrators of *S-A* initiatives.

### A-S

This category is the partner ‘opposite’ to *S-A*. Where state-associative strategies can be seen to be oriented toward serving the interests of the state (ie. ‘close’ to the state), organizations and initiatives in this overlap can be distinguished as more independent from state-influence (ie. ‘far’ from the state). Organizations falling into this category are *quangos* performing more-or-less independent advice and other service useful to the state (eg Standards NZ coordination of input to ISO), or perhaps scientific research and monitoring services (such as the NZ *Landcare* environmental research initiative). Association-initiated and/or coordinated lobbying of state representatives also falls into this category.

### S-C & C-S

This overlap category, as with all bi-modal groupings, is conceived of as a continuum, with state

at one end and community at the other. Environmental-regulatory initiatives and strategies can be classified according to the 'closeness' of the initiative to either mode. Hence, a community group pursuing environment-related goals supported by grants and other resources distributed by state agencies could be seen as 'closer' to the community (ie. C-S). There are many such forms; for example, several *Environmental Business Networks* (EBNs) exist in NZ, whose objectives relate to assisting small businesses implement environmental management programmes, supported in part by research grants distributed by government agencies such as the Ministry for the Environment's (MfE) Sustainable Management Fund (SMF). By contrast, local groups, if they are formed specifically or principally as implementers of central government policy should be seen as 'closer' to the state (ie S-C).

### C-M

This overlap type addresses interactions between community actors and those identified with the market. Regulatory forms characteristic of C-M will tend to originate as expressions of community-interests or concerns, such as *direct action* (protests, consumer boycotts of perceived corporate wrongdoers) by popular grassroots groups and popular movements (eg 'not in my backyard'). The point of focus offered by such movements sometimes confers significant influence to actors more usually seen as powerless and fragmented.

### M-C

Market-community interactions are similar to C-M discussed above, but tend to be aligned more closely with market, rather than community values (ie emphasising instrumental values obtainable by exploitation of the environment, as opposed to the more 'intrinsic' value of a clean, unspoilt environment available to all). An example of relations in this overlap might be *voluntary community consultation*, aimed at assuaging concerns by market actors, prior to site development, or in response to community criticism of site management. Companies often seek formal input from communities during planning for resource use with the aim of reducing potential resistance to propositions involving environmental impacts or exploitation (Ortolano, 1997). This can be seen as market-community interaction with the overall aim of increasing general levels of acceptance of market use of environmental amenities.

Voluntaristic initiatives emphasising responsibility to the community, or environmental

enhancements for their own sake (for example) can also be categorized in the *M-C* overlap. *Self-initiated corporate measures to enhance the environment* or to ameliorate/address community concerns about environmental effects of corporate activities fit here. Examples can be seen in corporate sponsorship of environmental programmes (such as *Project Crimson*, sponsored by Carter Holt Harvey, aimed at preservation of the NZ *Pohutukawa* tree), and corporate involvement in programmes intended to support endangered species (eg Mainland Dairy Company's sponsorship of a campaign to *Save the yellow-eyed penguin* (Mainland, 2000); or Comalco's support for preservation of the endangered NZ-native *kokako* bird species). Initiatives aimed at averting community concern over the potential environmental harm represented by large-scale resource users can also fit into this overlap category. For example, Electricorp in NZ (now Mighty River Power) expended significant corporate resources in construction of eel races at its hydro power stations over the period 1995-8 to allow juveniles (elvers) to bypass turbine systems (Electricorp, 1998).

Another illustration of relations indicative of the *M-C* overlap is seen in *corporate self-proclamation (labelling)* of environmental product claims. Many companies engage in such strategies. Using devices such as pictures of animals (frogs, penguins, trees, many species of bird and whale are in common use), marks signifying approval (positive symbols like ticks and official-looking seals are used regularly) and claims of environmental quality and/or superiority, market actors seek to capture the mind - and money - of the community-as-consumer by differentiating their products from others not carrying such devices. Self-labelling of these kinds is often far less costly than more sophisticated programmes involving independent (eg associative) verification (such as are found in *m.c.a*), but may also be less credible and believable in the public mind.

### A-C & C-A

Two-way environmental-regulatory interaction between associative and community modes are embodied in the regulatory actions of environment and community-oriented<sup>121</sup> 'environmental'

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<sup>121</sup>As opposed to, for example, business-oriented environmental NGOs. The 'environmental' environmental NGO can be differentiated by its emphasis on thought and action on the environment for its own sake. 'Business' environmental NGOs, addressed in the discussion of *m.c.a* above, tend to emphasise such environmentally-relevant actions as deemed appropriate to market interests (eg IISD, BCSD).

NGOs. Greenpeace is an exemplar of this type; it exists to provide a focus for non-state, non-market action on issues like toxics, climate change, ocean exploitation, nuclear power and weapons, genetic engineering, forests, and whaling (Greenpeace, 2000).

Many other NGOs with similar aims have been formed over the past couple of decades. In NZ, several exist; for example, the *Ecologic Foundation* (formerly the *Maruia Society*), *NZ Forest and Bird Society*, and numerous trusts all have at core, a commitment to preservation of the environment *for its own sake*. This does not prevent them from coordinating with other types of organization (from market or state, for example) to achieve environmental-regulatory goals, but such actions would fall into other overlaps (*m.c.a* or *a.s.c* for example).

### M-A

The overlap region *M-A* is the scene of much activity. Market actors, not slow to see the potential of creating and mediating regulation via associative formats, have assiduously fostered linkages and initiatives in conjunction with associations. The designation *M-A* implies strategies 'close' to, or more harmonious with market objectives - that is, seeking to enhance profit-making potential and/or productive efficiency. Increasingly however, the concept of 'market objective' is extended to protecting or reinforcing market claims to self-regulation. An example of this is seen in the movement promoting *voluntary industry codes of conduct*, such as the *Responsible Care* (R-C) programme (introduced in chapter 2). It will be remembered that R-C was developed by a coalition representing chemical interests (Chemical Industries Council) to reassure governments and the public - in the wake of several severe industrial accidents - that stronger forms of state-environmental regulation were unnecessary, and that industry self-regulation under the auspices of a semi-autonomous body was adequate to bring about sufficient changes in practice. Related to this form of 'arms-length' market-based environmental regulation is *actions and proposals of industry related or funded think-tank and/or research groups*. Such market-associative organizations often seek to regulate relations by shaping the thoughts, perceptions and actions of market-related actors under the guise of independent exploration of the issues (see Beder, 1997). These conceptions are intended to shape the behaviour of market actors in all regulatory contexts.

Voluntary standardization of environmental management techniques also falls into the *M-A* overlap designation. As certain techniques, such as technical and/or management programmes,

become sufficiently widespread among market actors, codification is sometimes sought to ensure the spread of ‘best’ and/or generally-accepted practice by associative means. The goal of ISO, for example, is to collate existing practices (in specified areas), and to foster their spread via standardization. In the area of the environmental regulation, this can be seen in the production of the ISO14000-series of standards.

### A-M

The *A-M* designation implies strategies and forms ‘closer’ to the associative ‘ideal’ of concertation, and correspondingly less concerned with uncritically promoting narrowly defined interests in profit. This sometimes subtle difference can be illustrated by reference to private eco-labelling initiatives, such as the Type III ‘Report Card’, and *Green Cross* labels founded and operated by Scientific Certification Systems (SCS) of Oakland, California. SCS is a private not-for-profit organization (associative) which provides environmental assessment and labelling services for companies wishing to reassure others of their commitments to reduce environmental impacts. While SCS is remunerated for such work, its reputation and continuing value to society lies in its independence and even-handedness, rather than promotion of client interests *per se* (SCS, 1995).

The outputs and actions of associations connected with business interests, yet independent of them, may also be seen to fall into this category. NGOs such as the *International Institute for Sustainable Development* (IISD) and the *Business Council for Sustainable Development* (BCSD) exhibit some bias toward market narratives, yet are widely perceived as being independent of them. Hence their proposals can carry significant weight in policy and community circles.

#### 7.42 Tri-modal overlaps discussed

The junctures formed by simultaneous relations between three modes/actor types are more complex than those permitted by bi-modal overlap structures. The additional ‘layer’, or level of complexity afforded to regulatory relations by three-way interactions helps facilitate more sophisticated initiatives. The analysis below discusses regulatory forms, strategies and instruments and categorizes them using the overlap conception. Each overlap is identified with a key mode, which plays a major, or orienting role; for example, relations and initiatives categorized in the overlap *s.m.a* involve actors identifiable with *market* and *association*, but

generally have the purpose of supporting regulatory objectives of *state*. State is the *orienting* mode in this case, and so start the discussion with s.m.a.

#### A State-oriented overlaps

##### s.m.a

This overlap category is increasingly used in modern systems of environmental regulation to achieve state objectives in cooperation with market actors, using associative instruments or mediation. Under certain conditions, a state regulatory agency may seek to reward and/or promote corporate uptake of good environmental practices by arrangements allowing *limited environmental self-management* to corporates able to demonstrate good management, eg EMS. An example is found in Australia. The Victorian state Environmental Protection Authority (Vic EPA), via the *Accredited License Program*, seeks to recognise the efforts of market actors beyond simple compliance with environmental legislation. The program is intended to,

offer companies the opportunity to avoid some elements of prescriptive legislation or benefit from reduced fees. In return for these benefits companies must *demonstrate a high level of environmental performance* and the ongoing capacity to maintain and improve that performance...while Accredited Licensing aims to ease regulatory conditions for industry, it is in no way designed to reduce the legal obligations businesses have regarding environmental protection (Allen, 1998:20; emphasis in original).

An organization applying for an Accredited License must have in place an EMS which produces information regarding environmental performance. It must be developed according to the requirements of one of the 'recognized' codifications of EMS, including ISO14001, BS7750 and EMAS (Clements, 1997). These instruments are provided by associative actors.

Another example is seen in NZ legislative rules governing the actions of resource users engaging in hazardous activities. The RMA (1991) requires resource users to provide 'management plans', specifying how proposed activities are to proceed. In the case of environmentally-relevant activities, such as aerial spraying of toxic substances, the relevant state agency (such as Regional, District or City council) may allow certain restrictions to be lifted or otherwise relaxed, if the applicant can verifiably prove user competence. Certification to the standards of a 'recognized

authority' - which includes associative actors such as third-party certifiers or accreditation agents - qualifies as proof.

A further example of increasing integration of associative instruments and philosophies into state-regulatory apparatus in efforts to increase corporate responsibility for the environment is provided by the General Assembly of the House of Representatives of the State of Connecticut in the US. On April 13, 1999 it enacted a Bill which attempts to attract to the state, or otherwise support business activities in the state by recognizing 'best' environmental performance. Bill No.6830 inaugurates a programme relaxing certain conditions of compliance to businesses;

hav[ing] a history of providing for the best protection of the natural environment...such [a] program may provide for (1) less frequent reporting...(2) a facility-wide permit for all approvals required from the commissioner...(3) a permit that would allow for changes in individual processes at a facility without the need for permit provided the total pollutant emissions or discharge does not increase or (4) reduced fees for any permit (State of Connecticut, 1999: File No. 194; Substitute House Bill No.6830).

The Bill notes that the key entry condition is conformance to ISO14001;

the commissioner may provide the benefits of the program to the business if the commissioner finds that the business is registered as meeting the ISO14001 Environmental Management System Standard or employs an equivalent environmental management system satisfactory to the commissioner (*ibid*).

Mentioned in chapter 2, in the discussion linking the EMS approach with the exercise of regulatory powers, is the legal case of *R. v. Prospec Chemicals Ltd.* in the Alberta Provincial Court.<sup>122</sup> It will be recalled that one effect of the judgement against Prospec was an expansion in the types and means of enforcement available under the Alberta Environmental Protection and Enhancement Act. This expansion took in associative instruments, which in that case, it was mandatory conformance with, and certification to the ISO14001 standard.

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<sup>122</sup>See s.2.7.3.3

*s.m.c*

The conjunction of *s.m.c* opens up possibilities for state and market actors to demonstrate their alignments with community values and goals. More flexible or 'open' state-regimes than those possible in other overlaps, such as *S-M*, are categorized in this overlap. The RMA (1991), for example, allows extensive input to be made in state-regulatory processes from third parties normally seen as outside of the regulator-regulated relationship (eg actors affected by or interested in the effects of resource use proposals; community-cultural interests). Input, in this sense, also includes situations where legal clarification or redress is required; for example, relations surrounding specific use(s) of the environment may in some cases deteriorate to the point where community-actors seek *legal redress or sanction against market-based resource users within state regulatory arenas*, such as the courts.

B Market-oriented overlaps

*m.a.s*

The flexibility of the associative form is seen in initiatives involving associative actors as 'go-betweens' or mediators, interceding in, or extending market interests in the sphere of the state. A diverse range of activities including direct *lobbying of officials and legislators*, performing research contracts, and policy submissions, and other tactics aimed at *inputting market narratives and discourses into state-regulatory apparatus* are well-accepted and acknowledged as legitimate means of encouraging state-recognition of market interests.

These activities can be seen to employed to in different directions. For example, a stated purpose of the Global Climate Coalition (GCC), an influential lobby group associated with many large corporations, is to oppose any US domestic or international policy perceived to be contrary to interests in maintaining the status quo with regard to industrial emissions (Beder, 1997). McKie (2000) cites GCC activity as one of the main reasons the US Congress has long blocked ratification of the *Kyoto Protocol*, which would require a 7% reduction in CO<sub>2</sub> emissions by that country. In another example, 1996, a major association representing 58 of the world's largest insurance companies was established to directly lobby OECD governments to support treaties and agreements seeking increased commitments by states to *reducing* carbon outputs (Infoterra,

1996).<sup>123</sup> The associative form is seen in both cases above as a sophisticated and less-threatening, or as more removed from direct interests in market activities, and therefore credible actor type to intermediate between market and state. The state, for its part, may see advantage in ‘allowing’ associative input into policy in order to protect itself from inferences of collusion in the minds of the public.

Another example of innovative environmental regulation within this overlap is seen in the formation and operations of the Foundation for the Protection of Tropical Forests (FPTF) in Costa Rica. This non-profit association intends to protect forests by purchasing parcels of forest, then to vest them as ‘green sanctuaries’, thus removing them from commercial exploitation (while property rights are held). While the Costa Rican government is involved via the appointment of a member of the environmental ministry to the board of the foundation, the objective of the initiative remains outside the scope and justifications of both state and market (see Dinsmore, 2000).

#### *m.c.a*

In ways similar to those employed in the overlap *m.a.s* (described above), market actors may seek to employ, or form themselves, associative actors to intercede in, or extend market interests in the sphere of the community. Organizations and strategies developed under associative auspices can be used to address a wider range of issues and audiences than market actors on their own. The initiatives and strategies produced by market-oriented ‘environmental’ NGOs, such as the Business Council for Sustainable Development (BCSD) and the International Institute for Sustainable Development (IISD) are examples of *m.c.a* type regulation. These organizations exist to input into community discourses market views on what constitutes ‘sustainable development’ and what sorts of initiative are adequate to the task (IISD, 1999; BCSD, 1998; Schmidheiny, 1998). Market actors could also, in some cases, be seen as seeking to exert influence via associative forms. By so constituting and setting the goals of an associative actor, the market expands its options in its ongoing project of to attenuating the potential for community antipathy toward market actors and market-specified regulatory objectives (see also Beder, 1997; Krut &

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<sup>123</sup>On the grounds that environmental damage related claims arising from climate change (eg increased incidences of storms, greater weather oscillations) could be expected to be exacerbated by increasing industrial outputs of greenhouse gases (Infoterra, 1996).

Gleckman, 1998).

Forms of environmental regulation having less close ties to the market than those described above can exist in *m.c.a. Joint ventures* between environmental NGOs and corporates designed to address community-environmental concerns are possible. For example, the World-Wide Fund for Nature (WWF) in 1998 formed an alliance with the industry-association Forest Stewardship Council (FSC) with the object of independently certifying forests (and resultant production) being 'sustainably managed' (FSC, 1999). The FSC can be seen to be leveraging the public credibility and exposure of the WWF, which it itself does not possess, in furtherance of industry goals. And the WWF, for its part is afforded increased ability to affect (ie.. regulate) the actions of the forestry industry - and promote this ability to the community - in ways not possible prior to the existence of the alliance.

## C Community-oriented overlaps

### *c.a.s*

A favoured strategy of environment-oriented associative actors (eg NGOs; formalized environmental movements), when seeking change on the part of state rules and actors, is to mobilise and/or provide a *focus for public opinion* on issues deemed significant by the association. State stances on environmental issues as diverse as genetic engineering, global warming, whaling, nuclear and toxic waste, and global free trade have recently come under intense scrutiny by environmental-associations both in NZ and globally. Community feeling on such issues is 'marshalled', focussed, and forwarded to state arenas by means of *petitions* and 'blanket' *submissions*, by association-supported discussion forums (on websites for example), and by the proliferation of 'form letters' for public input through outlets such as supportive retail outlets and community-level forums.

### *c.m.s*

Relations between markets and states are notable for their intricacy, but when community actors are introduced, the combinations and permutations resulting become numerous and complicated. Some of this complexity is signalled in the similarly constituted, but state-oriented overlap *s.m.c.* The community-orientation of *c.m.s* makes it a home for multitudinous instruments of grassroots

activism aimed at gaining the attentions of state agencies with regard to activities of market-based resource users. These may range from the very informal, such as initiatives sponsored or coordinated by state agencies (eg negotiated agreements between site managements, and affected parties), to larger scale accords involving formal dispute resolution by state actors (eg in cases of extreme polarization between large resource users, and substantial popular movements).

#### D Association-oriented overlaps

##### *a.m.c*

This overlap is the site of some of innovative and experimental strategies of environmental regulation. Direct relations between NGOs, corporations and community actors/representatives, without mediation or involvement of states, is becoming an increasingly popular instrument of environmental regulation, due to the flexibility, and sometimes global reach of such arrangements. An example is seen in recent activity by the UN. In July of 2000, it, “recruited many well-known multinational companies to help workers and the environment where governments do not” (Kahn, 2000). It coordinated the inception of a ‘global compact’ linking over fifty (and sure to grow) multinational corporations, including DaimlerChrysler, Nike and Royal Dutch Shell, with twelve labour associations and environmental watchdog groups that is intended to,

commit them to support human rights, eliminate child labour, allow free trade unions and refrain from polluting the environment wherever they do business (*ibid*).

Environmental labels, endorsements or product certifications developed, performed or promoted by environmental groups and/or NGOs for satisfaction of end-consumer needs for credible testimonial as to ‘environmental’ qualities of products (or processes) are further illustrations of formalized interactions categorized as *a.m.c*. Many of these could be described more-or-less independent from established institutional frameworks, or as ‘*self-seeding*’<sup>124</sup> *non-state regulation*, including instruments such as standards, principles, protocols, codes of conduct, and charters. Such instruments and strategies classifiable in this overlap tend to be oriented toward environment-related improvements rather than initiatives directly induced out of corporate profit-

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<sup>124</sup>As opposed to being initiated by state or market actors.

seeking, or exercises in market differentiation.

Another exemplar of environmental-regulatory interactions taking place ‘within’ *a.m.c* is seen where environmental groups and/or NGOs *mobilising and organising public action* in response to perceived abuses of the environment (or ecological values) by market actors. The *consumer boycott* is an example. Such groups use threatened and actual boycotts to encourage or force business organizations to modify their behaviour, or face adverse publicity and resultant loss of demand via ‘consumer resistance’. While corporates can tend to see these sorts of action as unfair infringement on their market positions, associative and community-based actors might be more inclined to think of them as legitimate (and effective) tools in regulatory relations.

#### *a.s.c*

Environment-regulatory strategies fitting into the overlap *a.s.c* include *standards and policies guiding relevant actions by professional bodies* which are ‘influential’, ‘highly regulated’ and/or ‘well-integrated’ with state-systems<sup>125</sup>, such as those governing legal, accounting, auditing and engineering professions. Many of these professional groups have developed policies and/or guidelines regulating environmentally-relevant behaviour of members (see chapter 5 above, esp. s.5.7; Table 5.1).

#### 7.43 The *nucleus* - MSCA

Earlier discussion established an idealistic quality to the *nucleus* overlap. Regulatory forms and strategies characterized by exclusivity, that is, limited capacity to influence relations, regulation will be adequately described by reference to bi- and tri-modal overlaps. It is possible however, theoretically at least, to classify relations as falling into the definition of the *nucleus*.<sup>126</sup>

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<sup>125</sup>The accounting profession is an archetypal example. While the profession itself is independent and exists to provide services to commercial and state bodies, it is *well-integrated* into legal structures, via for example, the Financial Reporting Act (1998) which dictates that listed companies provide regular reports developed according to the standards laid down by the Institute of Chartered Accountants of NZ (ICANZ).

<sup>126</sup>The reader will recall the conditions necessary for such categorization were initially introduced in s.7.3.5 above.

Consideration of the *nucleus*-potential of specific regulatory forms is assisted by the logics of integration and evolution, introduced earlier (s.7.36B). It was argued that certain trends in regulation, observable in the phenomenal world, toward increasing sophistication in forms, strategies and instruments, can be explained in terms of *integration*. That is to say, as problems of regulation escalate in complexity and scale - seen clearly in environment and sustainability - more actors (and actor types) come to be interested in, and seek input to regulatory objectives and processes. It is averred that the innovation increasingly seen in regulation of the environment arises largely as a result of integration of 'new' actors, such as the associations and community-level groups and movements, into regulatory relations tending to be dominated by state-bureaucratic interpretations of the 'public/national interest' and corporate concern to ensure continuing exploitation of natural resources for profit.

One corollary to this line of reasoning is to see in the trend of integration a kind of 'vector of evolution' in regulatory relations. By progressively 'adding' modal actor-types into relational 'mixes', potential pathways toward the balance required by the *nucleus* may be seen. Table 7.2 outlines, using specific examples, how evolution toward *nucleus*-based relations might be achieved from tri-modal conditions by 'addition' or incorporation of actors from the 'missing' fourth mode (ie. any tri-mode → MSCA).

Table 7.2: The logic of 'shifting' from tri-modal overlaps to the *nucleus*

	Tri-modal overlaps	'Missing' mode	Changes in tri-mode conditions implying shift toward <i>nucleus</i>
1	<i>c.a.s</i> <i>a.s.c</i>	<i>M</i>	(1) 'buy-in' by corporates to goals of <i>c.s.a</i> initiatives; (2) market actor conformance to <i>a.s.c</i> -type promulgations
2	<i>m.c.a</i> <i>a.m.c</i>	<i>S</i>	(1) state 'recognition' or approval of <i>c.a.m</i> -type 'joint ventures'; (2) state agencies 'crediting' mkt-actors for participating in <i>m.a.c</i> -type 'pacts'; (3) govt backing-sponsorship of <i>m.a.c</i> schemes eg <i>eco-labelling</i>
3	<i>m.a.s</i> <i>s.m.a</i>	<i>C</i>	(1) involvement of community-level groups/movements/preferences in regulatory processes esp. <i>reg</i> objectives, accountability, reporting; (2) recognition of community interests in otherwise policy-level <i>s.a.m</i> & <i>m.a.s</i> initiatives

4	<i>s.m.c</i>  <i>c.m.s</i>	A	(1) introduction and acceptance of credible codification/standardization of voluntary/customary practices in established <i>s.c.m</i> relations; (2) insertion of ‘independent’ associative mediation to <i>m.c.s</i> -type interests-conflict
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In the short discussion following, two selected regulatory strategies are analysed for their *nucleus*-potential; these are the NZ RM Act (1991), and voluntary standardization.

#### A      *The Resource Management Act*

The RMA, as a state-regulatory strategy, is an instrument used to serve the ‘public interest’ in the ‘sustainable management’ of natural and physical resources (RMA, 1991 *s.5*). However, a number of features make it somewhat more than a narrowly focussed device for unilateral exercise of state power. Two have been introduced already; they are: (1) integration of extra-state (modal) principles (eg *kaitiakitanga*; *Treaty of Waitangi*) in policy deliberation and/or determination, and; (2) responsibility on the part of regulators to seriously investigate ‘means’ other than those typically employed in bureaucratic agencies (eg policy, rule) (RMA, 1991, *s.32*). Two further distinguishing features raise the possibility of interpreting the RMA as approaching the ‘ideal’ of the *nucleus*. These are; the provision for transfer of regulatory powers to non-state authorities (*s.33*); and the so-called ‘any person’ clause (seen most clearly in *s.40*; *93*; *96*). These points are discussed in turn below.

Under certain circumstances, a local authority that has ‘functions, powers, or duties’ under the RMA may choose to transfer or otherwise delegate such powers etc to another ‘public authority’ under the auspices of *s.33(1)*. On the face of it, there is nothing particularly innovative about this clause. However, *s.33(2)* notes that the definition of *public authority* includes ‘*iwi* authority’. An *iwi authority* is a NZ-specific form of Maori tribal governance. It is not formally part of the state apparatus, rather it derives its mandate and powers from the wider tribal group. Hence, an *iwi* authority is a *community actor*, in the terms of the model being elaborated here. In this sense, section 33 of the RMA (potentially) cedes state-power to (specified) community actors. This is an important development, if not always widely practiced, and one definitely evocative of the *nucleus* concept.

The ability of different actors to affect (and effect) regulatory objectives, processes and outcomes has been noted as a key characteristic of ‘balance’ in regulatory relations. The RMA recognises that very many parties may have interest in propositions for use of environmental resources. Section 96, for example, notes that, “(1) Any person may make a submission to a consent authority [state-regulator] about an application for a resource consent that is notified”.<sup>127</sup> Further, s.40(1) allows any person to speak and call evidence at formal public Hearings. The definition of ‘person’ is important; “Person” includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate” (RMA, 1991, s.2(1). Therefore, processes of state regulation in NZ, as defined by the RMA, are notably open to actors of all modal ‘colours’.

## B Voluntary standardization

Given certain conditions, it is possible to interpret voluntary standardization as a *nucleus*-oriented regulatory format. The discussion on tri-modal overlaps above (esp. *m.a.s*) points out how associative standards-setters, such as ISO, have been active in (a) aggregating, collating and codifying systems of management popular among market actors, and; (b) obtaining state recognition of standards as legitimate regulatory devices. The ISO14000 series of standards was analysed and explained in this way. It is conceivable that standardization of this type may evolve, from a tri-modal type (eg *m.a.s*), to become categorizable as a *nucleus*-type regulatory format (see 4(1) in table 7.2 above).

The logic of a shift in the ‘direction’ of the *nucleus* is demonstrable by reference to a simple example. One interpretation has the ISO14000 standards as a form of ‘soft’ environmental law (see s.3.33). Examples of this can be seen in situations where companies possessing ISO14001-conforming systems negotiate certain flexibilities in compliance (eg monitoring, reporting, compliance costs) under state-legislated rules (eg the Accredited License scheme in Victoria, Australia). This type of arrangement is described, in the terms of the model, as *m.a.s*. It is conceivable that the company in question may seek to further benefit from ISO certification and state recognition, in its relations with the community at large. It might, for example, initiate public relations programmes designed to portray itself as an exemplar of environmental awareness and proactivity (on the basis of ISO certification). Or alternatively, it may seek to engage in ‘joint ventures’ with other like-minded companies and environmental- community

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<sup>127</sup>See also s.93(2)(c) which repeats this provision.

groups, with the aim of promoting better corporate-community relations. The introduction of community-based actors to the relation described as *m.a.s* leads to the (theoretical) possibility of a qualitative ‘leap’ to relations having *nucleus*-qualities.

It might seem strange that the object of such trenchant criticism in previous chapters features prominently in connection with speculative discussion of the *nucleus*. It will be remembered however, that a major emphasis of the previous critique was on the rigid and myopic adherence to market-narratives observed within the TC207 context. It must be noted that references to ISO and its promulgations are not used in this analysis as shorthand for ‘standardization’. Rather, ISO (and its products) is seen as a leading exponent of voluntary, internationalized standardization.<sup>128</sup> It is the regulatory form represented by standardization (a strategy typically linked with the associative mode) which is of interest in this part of the analysis. It is clear that, from discussions above, there exists considerable reason to see voluntary standardization - backed by credible associative expertise, coordination, monitoring/control and conformance assessment systems - as a potential *nucleus*-oriented strategy.

#### 7.44 Outcomes of the first-run model test

The discussion above uses the theoretical model of the regulatory complex as a tool for analysing environmental regulation. A key finding is that a wide range of regulatory strategies and instruments are amenable to this sort of analysis. Of particular note is the perspective the model gives to regulatory forms not of state origin.

Conventional thinking in this area is inclined toward associating state-developed tools with ‘regulation’, and to understanding more voluntaristic approaches to societal coordination as altogether separate. As noted in earlier discussions, the approach developed here sees this distinction as arbitrary and contrived. One unfortunate consequence of uncritical acceptance of this convention is seen in a tendency for regulatory relations to polarize, especially in the area of

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<sup>128</sup>Voluntary standardization is a regulatory form used in many contexts and promulgated by a wide variety of organizations typically regarded as associative. In many areas of regulation, standardization is a favoured means of maintaining order; for example, voluntary standards are used as key means of regulation in accounting, finance, banking, advertising, medicine, and engineering, to mention a few (see, for example, Hollingsworth *et al*, 1994).

the environment. Corporates and their apologists have fallen into a habit of discursively linking the concept of regulation with the practices of constraint - by states - on freedom of business to act as it sees fit, whether or not such action is in the best interest of the public and biosphere in general (Korten, 1995; Beder, 1997; Krut & Gleckman, 1997). The protestations of communities visited by all too common environmental degradation, coupled with the increasingly sophisticated critique and activism of movements dedicated to addressing perceived causes of ecological depredations, add to already-high tensions in the area. The strains of such polarizations in regulatory 'landscapes' has resulted in deep rifts along lines disciplinary and functional, ideological and theoretic. So endemic have these schisms become that analyses of social action found in the literature now seem permanently fragmented.

The theoretical picture being developed here is founded on an argument that the fragmentation seen in thought and practice is apparent only. The theory interprets the schisms and polarizations found in initiation and/or regulation of social action as 'striations' between 'strata' of difference *within a larger construct*. These strata take form as similar regulatory forms - and their rationales - 'cluster' together, sustained and nurtured by particular modal narratives and powers. By encapsulating the 'whole' of relations having regulatory intent and/or effect within a unitary, panoptic gaze, this regulatory complex offers some potential for helping describe and analyse regulation. The *first-run test* of the model is intended to give preliminary indications as to whether this object is achievable. The findings of the test are discussed briefly below under four headings; categorization; concepts; the EMS approach; and model logic.

#### A      Categorizing regulatory forms

The first task in the test was to categorise a wide range of regulatory forms/instruments/strategies using the logic of the 'regulatory complex' (ref. the 'star' diagram of Figure 7.2). This proved to be a relatively straightforward exercise, given the simple indications of actor/modal involvement in specific forms. Some discretion had to be exercised in cases of subtle difference between overlaps (eg *M-A*; *A-M*; *m.a.s*; *s.a.m*). In such cases, determination of which category a particular strategy might fit into, depends on two related factors; (a) the 'initiating' mode/actor; that is, assessing from which mode the strategy (etc) originates; and (b) 'accent', ie which modal narratives and/or values are most clearly reflected/embodyed in the strategy. An example of this is seen in the categorizations of *s.a.m* and *m.a.s*. While the involved parties are conceptually identical, the *initiating* modes and *accent* of strategies classifiable under the two categorizations

differ markedly. The primacy of market principles in *m.a.s* is reflected clearly in *industry standardization* and *market techniques for conservation*; while acceptance of state authority/policy underlies *s.a.m*-type strategies, eg. formal *recognition* and *integration of private certifiers* and *standards* in *state-regulatory apparatus*.

## B Concepts

A second purpose of the first-run model test was to clarify and assay important theoretical concepts, such as the *overlap*, *power-influence* and the *nucleus*. The overlap is a crucial concept. It is seen as providing the 'space' necessary for the inception of regulatory forms. Specific overlaps engender, or 'foster' certain regulatory forms, and not others. In the test, the overlap concept provided a ready means to enable the categorization described above. Further, the test served to illuminate how the tremendous range of regulatory relations/strategies seen in practice are related to the modes, and to each other, by reference to the finite set of overlaps within the *regulatory complex*. The clearest expression of the unitary view enabled by this system of thinking is depicted in Figure 7.6. The (intentionally) limited nature of the test did not however reveal much about the nature of actor relations/*transactions* intra-overlap or, for that matter, about the workings of *power* relations between modes and actors.

The test included an initial exploration into the question of whether any regulatory strategies could, in practice, be seen presently or potentially falling into the category of the *nucleus*. A conceptually simple pathway *nucleus*-ward was constructed (see Table 7.2), and as a subtest, two promising types of instrument - the RMA-legislative approach and voluntary standardization - were considered in more detail. The discussion concluded that while there exists certain potentiality for *nucleus*-oriented relations in practice, more investigation is needed on the subject.

## C Thinking about the EMS approach

The test provided an interesting perspective on the EMS approach. It was found that the EMS approach is categorizable, in the terms of the theory, in no less than eight overlaps<sup>129</sup> (and perhaps nine, if one counts the *nucleus* potential; see *s.7.4.3.2*). This illuminates an important characteristic of versatility in the EMS approach. The variations arise from a wide range of

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<sup>129</sup>They are: *A-S*; *M-A*; *M-S*; *M-C*; *s.m.a*; *a.m.c*; *m.a.s*; *m.c.a*.

factors, for example; (a) how a particular EMS-based initiative is developed (eg as an industry-based management tool; as a codified expression of ‘best practice, etc); (b) how it is applied or administered (eg privately intra-industry - as with *Responsible Care* - or coordinated with government agencies - as with *EMAS* or *Accredited Licence*-type arrangements); (c) what types of actors are involved, and how they interpret and/or use it (eg corporate use of EMS to assuage community concerns; government use of EMS outputs to reduce costs of monitoring the environmental performance of industry; (d) the purpose of the EMS initiative (eg management efficiency; reinforcement of corporate legitimacy and/or hegemony; environmental improvement; sustainability); and (e) the underlying power relations served/negotiated in the application of the EMS approach.

Testing the theory in this way gives a certain amount of credence to claims of comprehensiveness. However, this is a single case, and more could be learned in further work.

#### D The logic of the model

The logic of the model is simple: regulation arises as an outcome of specific types of relation between the modes MSCA. The set of possible interactions in a system of four modes is finite (see, for example, Figure 7.2). By determining certain parameters (eg participating actor types), given regulatory forms can be described and ‘plotted’ in relation to the modes, and other forms. A macro-view of a particular regulatory area, or issue can thereby be obtained; showing, for example, the types of regulatory form/overlap typically employed in practice, or potentially applicable, or overlooked. In addition, some potential exists for the model to describe developments in regulatory practice, in terms of ‘regulatory shifts’ or evolution from one overlap to others.

Nothing arose in the first-run test to challenge the logic of the theory. It is noted that this initial test was fairly undemanding theoretically, the emphasis being mainly on categorization. However, all preliminary indications for the theory of the regulatory complex are positive; the illuminative, descriptive powers of the model are now established, the unitary theoretical ‘gaze’ of the model has proven adequate for an analysis of environmental regulation, and the unique symbolic-theoretic ‘language’ of the model assists greatly in tasks of conceptual elucidation.

While several important elements of the theory were not assessed in this phase of ‘controlled testing’, it is fair to describe the outcome as a success. The results are considered to be sufficiently promising to warrant a second phase of testing. It is clear that further and more demanding empirical investigation is needed to flesh out the preliminary understandings generated thus far in the thesis.

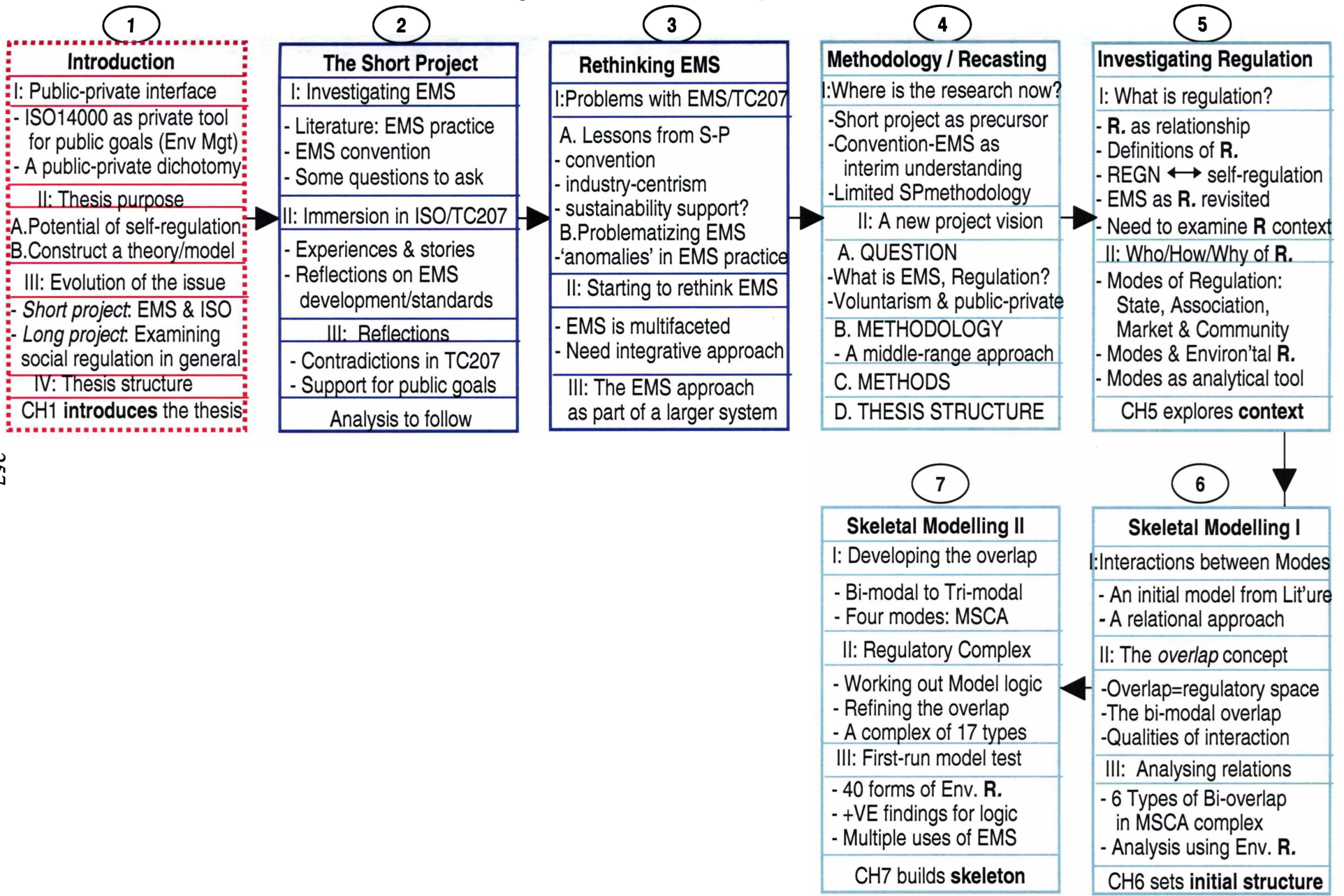
## 7.5 Summary and significance of the chapter in thesis

This chapter synthesises a new, composite way of looking at regulation. It arises out of a process of seeking understanding, which involved literature, experience and a fair amount of theorizing. The model of the regulatory complex is the culmination of part II of this thesis. The discussion builds an innovative analysis on foundations developed in previous chapters. The model is a system of plotting and analysing different formats and types of regulation. The underlying theory is developed and extended; and conceptions are clarified. Key ideas are; the *overlap*; the idea(l) of the *nucleus*; and an interpretation of *balance* in terms of (a) ability to participate in regulatory relations; and (b) the powers and influences exercised by actors.

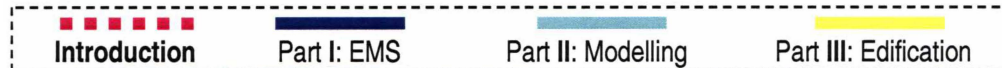
A diagrammatic approach to theorizing has evolved alongside the model. This approach uses symbolism, representation, shape, colour and geometric arrangements to support theory development. The method has proven invaluable to guide thinking and to explore correlations, and implications generated in the use of the model.

It is recognized that without some reference to empirical foundations, the still-skeletal theory as it stands risks being seen as a conceptual abstraction, albeit an elegant one. The second part of the chapter reports on a first-run test ‘bench test’ of the model to assess its usefulness as an analytic lens. The area chosen was environmental regulation. It was suggested that the model produced meaningful analysis, and that the test was a ‘success’. This is taken as justifying further model development via a new empirical investigation aimed at fleshing out the model to help form a more whole theory.

Figure 7.7: The thesis at a glance



Key



## **CHAPTER 8:           The Light of Day: Testing the skeletal model**

### **8.0     Introduction**

The goal of the chapters immediately above is to develop a skeletal model of regulatory structure. This model is intended to help appreciate the larger context within which environmental-regulatory initiatives - such as EMS - are developed and implemented. While certain descriptive and analytical qualities of the model are clear, it is still at an early stage of development, and without further reference to actual contexts, remains the product of my own cognition and interpretation. To enable further development, an empirical programme was devised to test the model by reference to events in phenomenal contexts and feedback from actors in those contexts. This programme and its findings are discussed in this chapter.

### **8.1     Purpose and structure of the chapter**

The purpose of this chapter is to report on the test performed on the 'skeletal' model, to explore how the results might be used to flesh out or 'edify' the model, and to consider its contribution to a better understanding of the potential of voluntarism and self-regulation to address private and public interests in environmental regulation.

The chapter has four main parts. The first part discusses the test - what was hoped to be achieved by the test and the issues to be addressed. The second part covers the test of the model of regulation. It introduces the interview programme used to introduce the model to the critical gaze of actors and participants in the 'real world' of environmental regulation in New Zealand, and discusses their comments and feedback.

The third part is focussed on 'edifying' the model in the light of test results. The aim of this part of the chapter is to (a) examine the implications of the test for the model, (b) to employ the model to help interpret test findings, and (c) to explore avenues for model development. The final part of the chapter considers the strengths and weaknesses of the edified model in contributing to a better understanding of the research issue.

## 8.2 The purpose and meaning of testing

It is important to clarify the meaning of, and intent behind the ‘testing’ described in this chapter. The emphasis in the thesis in chapters 4-7 (ie Part II of the thesis) is on developing theoretical understandings based on interpretations gathered from literature, and from personal experience. Hence, the theoretical understandings underlying the model are acknowledged to be reflective of my own biases and choices; the product of individual deliberation. The model is also acknowledged to be quite conceptual and abstract, therefore its validity in real-life situations is contingent on further information on, for example, the phenomenal contexts which it aspires to re-present.

Middle-range thinking on methodology gives some guidance on how theory might be developed. A suggested process is described in Chapter 4, and is summarized briefly here: the researcher should follow broadly a three stage process, where first, theorems are developed separately from the directly researched; second, the researchers and researched discuss the research; and third, they can thereby become ‘enlightened’ about each others perceptions of the situation, that is, relate and share discourses.<sup>130</sup> Via an iterative and organic research process based on these three steps, the empirical programme supports the ‘fleshing out’, or ‘refinement’ of the previously skeletal framework, to contribute, it is hoped, to a more robust and valid structure, and ‘whole’ theory.

The test was conducted using interviews with a group of participants with the common characteristic of experience in the field of environmental regulation. My intent was to first sample their reactions to and feedback on the model, and then in analysis, to assess what, if any, meaning these had for the model. At the outset of the programme, little was known about what receptions were likely, be they positive, negative, or indifferent, and so little was assumed. The ‘test’ was therefore of how well the model withstood potential problems; for example, dissonances between conceptual representation and reported/experienced ‘reality’; errors or gaps in the understandings and logics employed in thinking; explanatory shortcomings; and overall relevance to participants. I also looked, of course, for things that might be less problematic and more gratifying; that is, any and all positive correspondences between the theory, and participants’ experience.

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<sup>130</sup>See esp. s.4.51.

The testing is therefore less inclined toward assessments of the truth or falsity of hard and fast theoretical 'laws'. A more relaxed, yet still rigorous approach was used in gathering information and empirical testing - based as it was on free exchange with fellow participants - than is found in more remote and controlled approaches. Participants were aware of, and respected my own involvements in their worlds, which was often, but not always peripheral. I cannot pretend therefore that these tests give results that have specific, 'correct' meanings, since they were not oriented toward 'proving' or 'falsifying' prior hypotheses. The conceptual, relational, iterative, integrative and global nature of the theorising lends itself to a more gentle and discursive approach to testing. The results are themselves inevitably partial and interpretive, and it would be a mistake to portray them as generalities. The research attitude shaping the testing was that 'positive' findings were as welcome as 'negative' ones. Hence, a test would be considered 'successful' under any criteria involving increased understanding of the empirical context and actor views.

### 8.3 Discussion of the test

This section discusses the construction, conduct and results of the programme of 21 interviews carried out in 2000-2001. The two main objectives to this phase of the research were; (a) to assess what actors involved in actual regulatory relations think of the model, and how it might be used (or not) to help interpret and communicate aspects of their worlds;<sup>131</sup> and (b) to generate more and deeper information to help further researcher understanding of phenomenal realities as experienced by participants, so as to enhance the capacity of the model to fairly represent reality.

The section is structured as follows; the first part overviews research objectives and questions of significance; the second part addresses issues in the construction and conduct of the interview programme; the third part reports and discusses research findings; and the fourth part is a summary.

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<sup>131</sup>Participant-respondents to be interviewed were selected from a broad pool of actors, such that perspectives from all 'modes' (market, state, community, association) were represented in the feedback process. A list of participants is included as an appendix.

### 8.31 Test objectives

As noted above, the main objective of the test was to seek participant feedback on logical, representative/interpretive and communicative aspects of the model, while the secondary objective was to generate new information to help edify the model. In practice however, the interview dialogues freely mixed both objectives. This section explains the issues that the test sought to illuminate or clarify; these served as points around which points of discussion could cluster. The issues are introduced below in the order in which they were covered in interviews.

#### (1) Understandings of *regulation*

The model is founded on a broad understanding/definition of regulation. One of the key issues to be investigated in the test is the degree of correspondence, or agreement between this general approach and participant understandings and experiences of regulation. By clarifying and sharing underlying assumptions and understandings, the likelihood of genuine shared discourse between interviewer and participant is enhanced.

#### (2) Model conceptualisations

The structural-model is built on specific conceptualizations and theoretical devices. A key point of investigation is the reasonableness, representativeness and tenability of these constructs in the light of informed feedback. The more important ones are listed below.

##### a) *Modes*

Modes are seen in the model as identifiable by reference to certain ordering principles. They are conceptualized as fairly homogeneous 'entities', and coherence is encouraged by the sharing of core/founding values, purposes, discourses, actions, and actors. I am interested in respondent's views on issues of modal identity and difference.

##### b) *Modal actors*

The model posits and categorises a wide range of social actors according to the model concept. One issue to be investigated is the reasonableness of these assumptions.

c) *Relations*

A key model concept is the *overlap*. Regulation is theorized as arising from specific transactions between actors, which in turn are modelled as modal confluences, or overlaps. An important issue to be investigated therefore is the degree of participant acceptance of this conception.

d) *Categorization of regulatory forms*

The model suggests that difference in overlap constitution is a key factor in the production of regulatory forms. 40+ regulatory devices were categorized using this logic. I am interested in participant feedback on the validity and cogency of this approach.

e) *Normative aspects*

While the model was developed initially as a descriptive account to assist researcher understanding of the place and role of voluntarism in environmental and sustainability regulation, there can be seen some idealistic and potentially normative elements in it. An example is the conception of the *regulatory nucleus*; where all modes have some 'presence'. An important issue to be investigated is the participant feeling on ideals in the regulatory world (eg the existence, or potential of the nucleus; the desirability of the nucleus; determinants of nucleus-oriented regulatory form, etc).

(3) Working with the model

The model is designed to be easily understandable and communicated, without sacrificing either theoretical rigour or representational capacity. A key goal of the investigation is to assess how participants related to the model; how they engaged with it; and whether they thought it attractive and/or useful.

(4) Seeking new information

The model is presently at a skeletal stage of development. The testing must therefore be oriented not only to gaining feedback on identified issues, but also be open to unanticipated information, to help take the theory beyond my singular perspective. An open-ended and dialogic approach to interviewing was adopted in this test to encourage participants to be free and expansive in their observations and feedback. Open-ended questioning was pursued on the following issues.

i) *Finding out more about modes*

Their composition; characteristics; institutions; structures; interactions. How to identify and 'measure' their influence; dimensions.

ii) *Finding out more about actors*

Identifying and classifying actors in relation to modes. Their interests; motivations; actions/activities. Ideas about how actors identify and/or connect with modes. Seeking ideas on identifying and measuring actor influence; and how influence is exerted.

iii) *Finding out more about relations*

Seeking ideas on transactions/relations between actors. How power is seen and/or experienced by participants. Clarifying power relations between actors (singular) and modes (collective); how power is exercised; and the determinants of influence. Measuring and conceptualising power and influence.

iv) *Exploring normative aspects*

Investigating the nucleus. Actual/theoretical nucleus-expressions? The prospects and desirability of regulation nucleus-classifiable. Ways to achieve the nucleus-ideal.

v) *Trends in environmental/sustainability regulation*

Any information on participant perceptions and interpretations trends in national and international regulation is sought; eg increasing use of voluntary instruments?

vi) *Weakness in the model*

Any information on participant perceptions of problems or weaknesses in the model is sought.

vii) *Seeking suggestions*

Any suggestions to improve the logic and/or utility of the model are sought.

### 8.32 Issues in conducting the interview programme

This section discusses general issues in the construction and conduct of the interview programme. Much soul searching preceded the development and execution of this part of the empirical work.

A key problem lay in working out how to gain meaningful feedback on a skeletal, yet still elaborate theoretical model, from participants having no prior experience with it. This issue was reduced to three smaller problems; commenting on a new idea; interviewer bias in responses, and; insufficient basis for comment. These points are discussed in turn below.

The first issue revolved around the question of how much, and what quality feedback on the model was possible, given that respondents were presented with a new and systematic way of thinking about regulation (and their part in it), and asked in that same moment, to comment meaningfully on it. I considered this problem to be so serious, that I delayed my entry into the phenomenal context for a year, to explore alternative empirical options (eg show selected parts of the model; hold focus groups; and investigate a different question). In the end however, it was decided that a simple narrative, coupled with a graphical overview of the model, giving a straightforward overview of the model and its main features, would provide respondents with a base understanding sufficient to make relevant comment. Additional information was made available, as and when respondents queried aspects of the model, or if the discussion moved into areas requiring explanation.

This concern was borne out in practice. During interviews, participants tended, initially at least, to be reserved about their 'expertise', in giving responses, and in some cases, perhaps wary of being quoted in a way that may have made them seem less than knowledgeable. The following quote typified this stance;

*Brennan:* I'd like to know your thoughts [about the model].

*Respondent2:* Well, obviously it's difficult to say having just been introduced to it, and I would be interested to look at it more, or perhaps read more of what you've actually written around it to see how it pans out when you actually start to get into the specifics of what we were talking about. I guess my initial thought is...

The second problem centres on the issue of interviewer prompting, shaping or otherwise biasing respondent feedback by over-directing their thought processes, or by suggesting - via verbal or non-verbal cues - that certain interpretations are more or less preferred or 'correct'. This may occur in at least two (related) ways. On one hand, creators of new things or explanations may be tempted to 'protect' them (or themselves) by preferring certain interpretations over others.

Questioning, and cues given in real-time may influence respondent behaviour. On the other hand, those asked to comment on that thing may perceive, or be persuaded, that there are 'correct' rules and interpretations, seek intuit such, and to give those back to the interviewer/creator (Guba & Lincoln, 1994).<sup>132</sup>

The third problem lay in the potential for under-explanation of the model in the interview context. The desire to present as neutral or unbiased a 'face' may lead the researcher to under-inform the respondent, and thus reduce the value of the feedback by producing, a lack of specificity or detail in comments, low levels of respondent understanding of the model, or lack of relevance in responses (Denzin & Lincoln, 1998).

In line with the middle-range methodology developed for this thesis, I tried to create a space for respondents speak for themselves, by guiding them as lightly as possible. Some degree of guidance was required, but excessive researcher direction reduces the value of the data, thereby imperiling the validity of findings. An interview objective therefore was to see how respondents related to the model, and to ask them to assess the attractiveness, understandability, validity, usefulness or any other attribute or meaning, *to them*. Since participants' ideas and commentary emerge from, and are expressed in the context of individual perceptions of their lived experience, I have tried to shape the analysis following around actual feedback on the model.

#### 8.4 Findings of the test

The findings section is divided into four parts; it initially checks for correspondences between the model and the experienced reality of research participants; the second part covers respondents' feedback on model conceptions of regulation - ie as resulting from interactions

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<sup>132</sup>Each researcher must go through processes of clarification of their own stance, bias, or position *vis a vis* new information. I have stated earlier, in chapter 4, my own policy on honesty in research, and this phase of the empirical programme is founded on a desire to increase my understanding about regulation in practice. It was inappropriate for myself or the model to 'drive' potential understandings. Through these thought processes, I freed myself from the fear of the potential of 'negative' responses, and fostered an attitude of welcoming whatever respondents had to say about the model. As my supervisors noted at the time, even apparently 'negative' responses have value, in that it allows you to modify your thoughts in the light of new information. Prejudging what might be 'good' or 'bad' information limits one's capacity to know.

between modes; the third part examines how the model is used by participants as an interpretive and communicative tool to frame their responses to queries; and the fourth part concentrates on how participant insights might be used to help develop theory.

#### 8.41 Part I: Respondent feedback on model structure, understandings and components

Feedback was prompted in the interviews by identifying important theory referents and seeking to what degree they are recognized, or even shared, by respondents. The question is; *does the model's portrayal of environmental regulation correspond in a meaningful way to respondent thinking and experience?* Confirmation at this level would indicate that it is 'safe' to go further in theoretical exploration and interpretations with participants. Similarly, dissonances between key model concepts and respondent feedback, or even non-recognition might contra-indicate proceeding without more explanation, or in recurring cases, further development of the model itself. This section checks for correspondences between the model and the experienced reality of research participants by addressing the following points; (A) initial impressions of the model; (B) discussion of the modes; and (C) practices of regulation.

##### A Initial impressions of the Model

When planning the interview programme, I was concerned that respondents might be unable to comprehend the model sufficiently well to make meaningful comment; this result could have arisen from either excessive complexity or a limited time to for me to explain in interviews. These concerns proved groundless. Initial comments indicated a ready understanding.

*Interviewer:* The first thing I would like to talk about is the...model. What is your general feeling about it?

*Respondent1:* Well, I think it is almost a model of the universe, it's balanced, there is an order to it. It looks very symmetrical... as a conceptual model I can see what you are driving at, and there is a spot there for everything. I mean, everybody should find their place in the universe with that (p.1).

*Respondent2:* Well, I quite like it. I can see those examples [categorization of regulatory forms] seem reasonable to me. It describes them quite nicely. I think it is pretty

simple. I agree it's dynamic (p.1).

*Respondent4:* I guess my initial thought is that it seems a useful way of approaching it [regulation] (p.1).

*Respondent9:* Very interesting! (p.8)

*Respondent15:* There's something logically appealing about the way it comes together (p.1).

## B Discussion on Modes

Modes are conceptualized in the model as semi-self contained conceptual 'entities', where coherence is encouraged by the sharing of core/founding values, purposes, discourses, actions, and actors. This part of the analysis focusses on respondent views on modal categorization, character and difference, in part to ensure that understandings of basic concepts and terminology are clear and shared before moving to more complex ideas.

Generally, participants readily grasped the idea of the mode, and model portrayals of them;

*Respondent1:* I can see the market players, I can see the state players, association, community players (p.1).

Several participants explored mode characteristics by reference to actions. The state, for example often acts by exerting influence on other modes/actors. Respondent 3, a top executive with the Ministry for the Environment (MfE) talked about the actions and instruments used by the Ministry. He refers to the range of state-based instruments indicated in the model;<sup>133</sup>

*Respondent5:* We, in terms of this sort of range of instruments, we would probably act in all of those things [state-related instruments], and try to, or have done indeed, either directly or indirectly encouraging others to do things (p.1).

A feature of the NZ regulatory context is reflected in this response. 'Encouragement' is preferred

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<sup>133</sup>See Figure 7.6.

over force. The regional emphasis in the Resource Management Act (1991) implies that the Ministry for the Environment's responsibilities lie less in prescription and enforcement, and closer to goal-setting and moral suasion.

The importance of shared ties between actors 'within' a mode was emphasised by several participants. Respondent 4, a sitting Member of Parliament with a long history of participating in community movements and associations, explains the importance of personal relationships in the community;

*Respondent4:* The groups I've been involved in... people come together and just do stuff...In terms of social [community] groupings, obviously people develop relationships around people with common interests... talking about environmental issues... I'd choose to hang out with people who have a similar frame of mind or head space (p.3).

Another participant, on the subject of shared understandings in helping define a mode, noted that not all defining characteristics can be approached in a rule based manner;

*Respondent3:* The majority of what we call community are coming to [environmental] debate as a matter of the heart... its an emotional subject... its like; 'my god, I don't want to be eating food that's been messed around with!' (p.3).

The issue of mode structure arose in several interviews. Participants warned against too structured a conception, noting that in practice, modes may not always exhibit a clean homogeneity. In the literature, the state is often portrayed as a unitary body. However, interviews with state actors showed a hidden complexity. A senior executive of a large regional council noted complex distinctions within the state apparatus, particularly between elected representatives and bureaucracies. The comments below bring to light often large differences in purpose and values;

*Respondent1:* From my own observations of elected people's behaviour, which is the highest level of state, underneath the Governor General sort of thing, is that they see an accountability to the communities that put them there, and a regard for the statutes under which they operate...[its] a genuine motivation that is held. The

rewards for elected service are not a heck of a lot.

I think that there are values in the bureaucracy to be professional, and provide appropriate technical advice in a professional manner... [there is] the political wing and the management wing. In management we like to think we're solving problems. The players are the representatives of the people. In the management area we think we're the experts... We present reports with big long technical references. The pieces they [representatives] work on are symbolic things.... we're into the tangibles, the currency of the game is reports, we operate with the knowledge, with the dynamics. These guys [politicians] are always in conflict, then they compromise and they change (p.3).

Differences can also be seen between the institutions constituting a mode. A senior analyst in the Office of the Auditor-General (OAG) notes how divergences in the objectives of different departments within the state may result in impasses, which might only be addressable by the use of power;

*Respondent3:* There are whole lot of government [regulatory] responses in the sense that they all sit round the table. But they don't necessarily recognise common interests or common outcomes. So what you have is a bloody policy shop or talking base that continues to go around the same issue... [which is often caused by] diametrically opposed officials. Whilst those officials are briefed to provide free and frank advice from that particular position, you know, Treasury versus MFE, or Commerce versus MFE you are always going to get the stand-off. And traditionally it comes more down to the power of the department, rather than the power of the argument. This is not scientifically provable but, you know [this is my experience] (p.7).

And often difference arise from demarcations between central and local layers of state organization;

*Respondent3:* The state thing as well can be sliced the way that the RMA... works. A good deal of power is vested in regional and local government. And a community that represents local and regional government is a very different community [to one

related to central government]. [I] get out to the provinces quite a lot...And Wellington [ie. central government] is irrelevant...Twenty-eight or thirty local authorities, they're all busily trying to put the world to rights, as they see it... And those local body elected citizens distill down whatever represents in that area, you know, in Taranaki [for example] (p.8).

The conception of the mode, as expressed in the model, has a difficult job. It must be capable of reflecting the complexities of the state, the ephemeral nature of community, the profit-motivated corporations of the market and the difficult to define association. The multi-faceted nature of the association was commented on by several participants. A professor of public policy noted that the idea of association described a potentially huge range of organizations, from large established institutions, 'big organizations imposing disciplines upon their members', through to a diverse range of smaller forms. And a former Commissioner for the Environment opined that non-government organizations (NGOs) can be seen as 'single-issue associations'.

#### C The meaning of regulation

Much of the literature on regulation automatically assumes the term refers to rule-setting by the state. The structural-model as tested uses a much wider interpretation, based on the ability to influence others. Care was exercised to explain this to participants, and the feedback was that once the fact was explained, they were happy to work with such a broad conception. For example;

*Interviewer:* Is that a fair way to describe regulation?

*Respondent5:* Yeah... If we're talking about the way in which one party or parties tries to affect or influence the behaviour of another, then yep, I can relate to that (p.1).

Another participant, a senior official in Standards NZ, agreed with the interpretation, but wondered how much influence might be mobilized by modes other than the state;

*Respondent7:* Where is the influence?...I mean the state can influence by saying 'fair shout' [referring to the adjudicating role of the state], but the market and the associations and the community, how much influence do they really have in the long run? (p.4)

Another frequently expressed sentiment concerned the importance of recognising the varied interactions in analysis of regulation;

*Respondent13:* Regulation is all about interrelationships. I think the model shows that usefully (p.2).

This section looks at how basic model elements are comprehended by participants. The feedback was that the mostly static elements dealt with here were easily assimilated. The next section discusses responses to logic deeper in the model construct.

#### 8.42 Part II: Clarifying model logic - feedback on *regulatory relations*

This part covers respondents' feedback on model conceptions of regulation - ie as resulting from interactions between modes, and as described in the overlap concept.

Participants quickly understood and easily used the model to communicate their thoughts and experiences, which was a happy surprise. The diagrams used in interview sessions helped immensely. The way the theory represents particular regulatory forms, arrangements, linkages, alignments and interrelationships, etc as arising from different combinations of modes, got a lot of thought going. Results in this section are discussed under headings covering the six main, bi-modal overlaps.

##### A Market ↔ State

Relationships between markets and states are central in regulation of the environment. Comments on this relationship confirmed its importance, and clarified its nature. For example, the role of the state in setting frameworks for the activities of market actors was emphasized by several participants. An example follows;

*Respondent1:* If the state had a role in relation to the market, it is to set the bottom line [of what is and is not permissible] in a clear way, that the market can then go do what they like above that bottom line...anything above that becomes a tradeable commodity in a consumer market (p.3).

As noted in early theory development, much of conventional thought on regulation assumes some level of tension between the market and the state. Market actors are often portrayed as resenting 'interference' in their activities by the state, and there is evidence that state bureaucracies vigorously pursue the public interest, sometimes at the expense of property rights. Not everyone thinks the relationship is so simple though.

*Respondent3:* I think the one thing you are missing in your explanation... is the fact that the markets is always portrayed as a free player and the state... as kind of intrusive, restricting. I've experienced [situations] in resource management areas where the market in fact really loves legislation because it gives certainty... [so] the market and [state] regulation aren't always diametrically opposed... what they're saying is 'we want regulation that suits us' (p.5).

*Respondent5:* People love to regulate other people, but not themselves, and one of the huge problems with the Resource Management Act is just that. Because it deals with people's property at a very intimate scale, it offers the opportunity through its processes, to have control over their neighbours (p.4).

The issue of the ability of the state to regulate the market came up for discussion in many interviews. A significant number of participants saw this ability as on the wane;

*Interviewer:* Do you think the state is... more powerful than the market?

*Respondent5:* On balance, I think the global economy has tipped the [balance] in favour of the market... [this has caused] huge changes that affect our society, over which the government has no control at all (p.6).

Relationships between market and state actors are seen by participants as complex and as going both ways. There are often large problems at stake, with mutual interests in addressing them. Participants noted how cooperative relationships between modes are essential, and are often found in practice. A senior manager of a major consultancy talks about contaminated sites;

*Respondent6:* Its not widely advertised, I think, the level of communication that does exist [between state and market]. There is a real understanding that one [mode]

cannot exist without the other... Contaminated sites is a real issue... there is an ongoing dialogue between the market and the government on how to deal with this, because government realized you can't impose ridiculous legislation. I mean, if its ridiculous no one will be able to do it (p.6)

It was not made clear what precisely constituted 'ridiculous', but the important point was clearly that 'acceptability' of regulation depended on agreement, or at the least negotiation, between the actors involved.

## B Community ↔ State

Respondent comments on the importance of linkages between the community and the state were illuminating. A key theme in theories of regulation is that states work on the basis of a mandate that arises from the community (ie. serving the public interest). Participants almost uniformly agreed with this proposition. The Minister for the Environment was one of those interviewed, and noted this underlying relationship; but also raised a proviso;

*Respondent12:* The state needs 'buy-in' [ie. acceptance, approval] from the community to pass laws...communities often say they want me to regulate more, but the state can't regulate 'willy-nilly' [ie. to produce ever-increasing numbers of laws on an expanding range of subjects]. Laws must be supported by the market too, or they just won't work (p.2).

Just how the public interest is communicated to the state from communities was explored. It was noted previously how elected representatives are responsible to their constituencies. One participant referred to this relationship as the 'constitutional setting';

*Respondent1:* Our elected representatives see themselves being elected within a pluralistic democratic framework, and not accountable back to a pressure group or a sector interest area... [as an example] we've got a councillor here that's got strong industrial connections, but he's elected by the community at large. He advocates very strongly in terms of where he's coming from. But his accountability is through the ballot box to a group of people here (p.3).

Another type of relationship lies in the ability of communities (and other actors) to make input into policy- and law-making processes. Using a practical example, one participant explains how this can work;

*Respondent3:* So the [state-regulatory] system... is structured for the community to influence the rules and regulations [ie. policy] through consultation and democratic representation... And the community in fact has quite powerful influence over the base line policy, [it is] the founding rock, if you like (p.6).

That this system has imperfections in practice, resulting in community influence being sometimes more potential than actual is indicated by his next comment;

*Interviewer:* Do you think so?

*Respondent3:* Yes, only I don't think we're getting the right outcomes. But I don't think the mechanism is to blame. I think the issues are I think that the issues are things like the legalistic [and] adversarial process... The fact that to some extent the RMA relies on adversarial positions coming forth, and [interested parties] taking part in that debate. So if you lack the access to the understanding of the system, or if you lack the money to engage better lawyers... then you have difficulty engaging in the debate... Unfortunately the RMA has become a series of cuts. [these] can... chisel away at significant issues [and] I don't know what the answer is. I just think that those are the kind of failings that we're starting to peel away (p.5).

## C Community ↔ Association

Other inter-modal relationships are not quite so formalized. The model posits that one path to the associative form is to 'grow' out of community-based movements. Generally, those participants with experience in the area agreed with this principle. One of the key issues discussed was the differentiation between 'movement' and 'association'. The exchange below helps illustrate some important considerations in the transition;

*Respondent4:* I guess the distinction is when they [a movement] become formally

incorporated... or a develop a charter or some kind of written formal guideline. And that's where the focus moves away from being a group of people who are related together socially [to] where you envisage an organisation carrying on outside of you personally; where you go, OK this is beyond me...but I want to see the whole thing keep going... you get to a point where there is a need for an organisation to do this kind of work. So it's not a personal thing, you can envisage dropping out of it and yet still maintaining a distance. Then [we might ask] 'how do we insure that this continues, regardless of any individuals who come along and get involved?' 'How do we try and insure that keeps going in that direction and doesn't do a right hand turn at the next corner?'

*Interviewer:* How do you do that?

*Respondent4:* Well, by putting together charters, goals, aims and mission statements and looking at the kinds of structures that you put in place... When you're operating out of a community, you just come together to do stuff, then people come together, do something and then it will evaporate. And where the people who are involved in something realise that they would like to have duration, then it's a question of well, how do you do that? I guess key individuals will kind of identify what needs to happen, and if people are in agreement they they'll go along with it. The thing is what kind of organisation you set up in the sense of the level of hierarchy that you set up and how [it is done].

*Interviewer:* So once there's a 'critical mass' of people who have made that realization, how do you go about developing a charter or making a more formal working structure?

*Respondent4:* I guess through discussion of what is it you're [ie. the group] trying to do. In charter [development] come to some kind of consensus or general agreement around what is the overall purpose... I think its really important to include everyone. If you can all agree on your basic goal it allows you freedom to disagree about details, but maintain good relationships, because you're just arguing about implementation. So, it doesn't guarantee, but it allows you to take for granted the intentions of other people. You say what [are] your overall goals

- that's your guideline throughout. So inclusiveness is really important because if you don't start with total agreement with everyone, then people are going to drop out, and you're going to be starting from a flawed base (pp.2,3)

Often, associations may be formed by people who were unable to get attention as private individuals, or low profile movements;

*Respondent7:* If you get two people together in the community [who have] a bit of a bone to pick about something, actually form an association. Community people actually become associations pretty quick. Individuals don't necessarily get a heck of a lot of air [opportunity to access an audience]. You write a letter to a Minister complaining about something simple like costs or something or other and the first thing they'll do is write back and say 'thank you very much we've got your letter [but won't necessarily do anything about it]. Yet if it was an association, or the market, stood up and did that, then there's a lot more power behind it. I think the community voice is... relatively weak unless they're sitting in one of these other areas [modes]. I feel individuals find it very difficult [to participate in regulation] (p.3).

In the mind of one respondent, rapid development and proliferation of associations can have the effect of muddying the differences between modes. The managing director of the major NZ standards-setter;

*Respondent8:* I've always been amazed at how many associations there are in New Zealand. You know, it's amazing the overlap that goes on and on and on. So... that's an interesting one, to get a pure, if you like, trying to find a pedigree community person, you know, who's not related to some sort of association, some sort of group, the state or some other thing. That's quite a grey [difficult to define] group (p.4).

It is perhaps because of this indefinite quality to communities, and the very wide variety of associations that initiatives originating with them, in the modern regulatory system tend to be less visible and formal;

*Respondent14:* Regulation originating from the community and the associations, to a lesser degree, does tend to be more ephemeral [than, for example state, or market strategies] (p.2).

#### D Market ↔ Community

The skeletal model being assessed in this chapter has the market related to the community in two main ways; as *consumer* and as *employee*. In terms of environmental regulation, it is argued that the effect of the consumer - via market demand - on the behaviour of business and industry is far greater than that exercised by employees. Respondents emphasised the importance of consumers to markets. In a discussion on voluntary certification schemes for wood products, one noted;

*Respondent6:* The one thing I was wondering about was the consumers; where they fit in [the model]. Because everything I can see is consumer driven, which then feeds back into either consumers. It could be through community doing [pressuring] the state or consumers badgering the market. And this is what has happened you see, consumers have badgered the market and said we are not going to buy wood that is not from a sustainable source... [another initiative] is another voluntary code but it's New Zealand specific, again in response to market demand (p.1)

However, the importance of demand can vary. In many cases, the 'demand' for 'market' environmental initiatives arises from corporation-to-corporation business, and is not so dependent on the willingness of individuals to engage with the issue;

*Respondent7:* The moment you're thinking about environment, the community might be jumping up and down and you might have mass movements... But a lot of the environmental stuff is being driven by the market at the moment, in my view. I think as far as the market driving things, it is very much the procurement part of the market that is driving it. The end customer - to make the point, I don't mean this quite as black and white as I'm going to say it - but the end customer doesn't really give two hoots. If I'm going out to buy a car, I go out and buy it because it's got certain features and what have you. And environmental issues are not really that large in my purchase decision, and I would suspect that's the

case in most countries (p.4).

Other participants were less certain of the irrelevance of end customers in the development of market-environmental regulation;

*Respondent10:* The NZ Forest Industry Council are doing a certification scheme with other forest industry councils around the world. Now why are they doing it? Because they think they can sell it to a customer, being presumably the community (p.4).

## E State ↔ Association

In the development of the model, several examples were found to substantiate the assertion that a main motivation behind the formation of many associations is to exert more effective influence on state processes and outputs than is possible as an individual and/or movement. This argument found support in the test;

*Respondent4:* A lot of associations are probably aiming at the state...[the reason is that] the power which the state monopolizes - and the market gets a bit of that as well - communities and associations are kind of cut out of that (p.3)

This point is echoed by the Minister for the Environment in a direct way;

*Respondent12:* The message from the NGO's is that they want me to regulate more (p.2).

The associations being talked about here are not necessarily just the community-oriented or single-issue environmental NGO's. Many business-oriented associations seek input into state processes, or even are sought out by government. In a discussion on the rise of the NZ Business Council for Sustainable Development (BCSD), a participant with close links to the Council implied they had very high level government links;

*Respondent6:* This Council has in effect replaced the Business Roundtable [right-wing think tank]. You've probably got NZ's top thirty to forty companies in there, CEO's only [and] they're talking about the sustainability of NZ as a product... So that Council is actually quite powerful; Helen Clark [Prime Minister of NZ] taps

into it a lot (p.6).

Other types of associative initiative may want the reverse relationship with government. To some participants, the motivation behind associations is to stabilize markets by increasing self-responsibility. Voluntary standardization is an example of this;

*Respondent7:* You'll actually increase the size of your market, or reduce the need for intervention by the state [by using standards] (p.3).

## F Market ↔ Association

In the development of the model, several types of relationship between the market and associations were mentioned. One type; the 'coalition' of businesses to form pressure groups was alluded to in the discussion above. The process by which this can occur, and by which the association becomes formalized and an institutional fixture is worthy of mention;

*Respondent6:* What happens is that after a while the association takes on a life of its own, whereas originally it was set up by the market with guidelines. The association becomes so experienced that it then starts to recreate its own rules and auditing guidelines, with which the market must then comply to still retain [the associative seal of approval/certification/label]. It really does shift...

*Interviewer:* It becomes institutionalized?

*Respondent6:* Exactly. And if there's enough consumer acceptance and demand and awareness, then the association will get that power very quickly (p.2).

Processes of associative development came up for discussion in several interviews. In one, the issue was discussed at length, and a concept of associative development and 'maturity' arose. It is worthwhile quoting from extensively;

*Respondent7:* We have also speculated that an association develops over time. And the example we have used is in the bungee jumping area, where there's a standard. And **stage one** of the maturity of an association in that industry is Hackett

[innovator/originator of the activity] throws himself off the Kauwerau Bridge and there's no association, it's just an entrepreneur having a good time and making a few dollars. **Stage two** is that somebody opens up on the next bridge or whatever, up the river and the two of them get together and form an association. It's got very little to do with regulatory issues and has got everything to do with marketing. **Stage three** you've got a couple of cowboys in the industry and someone gets hurt, or worse, and the association transitions from a sales/marketing type arrangement to one of raising the barriers to entry to the industry or whatever, through some form of voluntary standard, code or whatever you might want to call it. And **stage four** is that standard transitions, well the association transitions, from a national to an international area... I think the model certainly explains quite a few things that we have thought about ourselves [Standards NZ] (p.1, emphasis added).

The idea that associations can function to ensure commonalities of practice in the marketplace was raised;

*Respondent8:* The standard is really the pinnacle I think, in [associative] maturity... a mature market says there's always ways to share this pie for everybody if we get our act together, rather than half of us doing things worse than the other...[an example is] Sony mini discs - how many people are buying those?... the trouble is there's no standard player for them yet. You see the market's not mature. They're out there but no one can see the benefits yet, or [they might be] forced into a standard through maybe three manufacturers associations getting together (p.2).

This section mostly concentrates on 'checking' on the correspondence of basic model conceptions with respondent understandings. The review above highlights areas of consistency and establishes common points of reference (eg modes; modal interactions; simple overlaps). It is useful to note that the graphical representations used in the interviews helped immensely in framing the discourses.

#### 8.43 Part III: Representation in the model - using it as an interpretive tool

The discussion above illustrates the ease with which all participants were able to grasp the model

and use it to structure immediate responses to questions and their analysis. This section explores in more depth how participants engaged with the model, focussing on how they used it to communicate more complex ideas on the development, growth, and variables of regulation. It is noted that there are no 'correct' or 'incorrect' ways to use or apply the model. In the interviews, I encouraged participants to interpret the model in any way(s) they saw fit;

*Respondent10:* Now, I'm probably using the model in a totally different way to the way you've actually put it...

*Interviewer:* That's OK. Use away (p.5).

The discussion below centres on three main issues which illustrate different aspects of how participants worked with model conceptions to explain their opinions and interpret their experiences. It proceeds under the following subjects; variety in regulation and regulatory forms; qualities of regulatory relations; comments on power-influence; the regulatory *nucleus*; and explorations of the potential of voluntarism in environmental regulation.

#### A Examining the variety of and changes in regulation and regulatory forms

The model is based on a certain assumptions about and representations of the multiplicity of regulatory types found in the literature and in practice, and also on how they might come into being and develop over time. The novel way it categorizes regulatory forms was of interest to almost all of the participants, and they each read into it meanings source from their own experiences and reflections;

*Respondent4:* So I found that quite interesting, because the distinction between what is community and what is association is actually one that is often quite confused; because we talk about the market, we talk about the state and we talk about community organizations. We lump those things in together and this [the model] actually separates them in, I think, a very useful way (p.1).

This system of categorization implicit in the model is 'inclusive', in the sense that all forms can be 'seen', and none are privileged. This 'meta-view' capacity was used by one participant to illustrate a regulatory innovation based on an unusual combination of public and private interest;

*Respondent5:* I mean, just to use your model here, one [a regulator] uses all sorts of dimensions [and] forms of influence [to achieve regulatory ends] and I don't think there's any particular place that's better than any other... It's funny, you know, how the crass world of global advertising can fit together with certain other objectives. Have you seen wine called 'Banrock Station'? Every time you buy a cask, you contribute X amount to saving the Banrock wetlands, or something. What that really is about is that someone sold them a marketing idea. They are actually saving the wetland. They wouldn't have done it if they hadn't made money out of it though. So there's a fascinating juxtaposition of two different philosophies (p.10).

The 'two philosophies' being alluded to here are of course the private interest in profit and the individual interest in rescuing a degraded environment. Using the way of seeing afforded by the model, this initiative would qualify as a regulatory form, and be classified under the rubric **M-C**.

A key research issue of this thesis is the regulatory qualities of EMS standards and other forms of market-initiated voluntarism. The research has found that associations often perform crucial roles in creation, mediation, and certification of these forms. An interview with a very senior manager at Standards NZ afforded the opportunity to sample his opinion on the view that voluntary standardization can be seen as a type of regulation;

*Interviewer:* [The position was] that standardization [is a form of regulation... a form of negotiated or management regulation... It's voluntary, yes, but it doesn't escape being a management regulation. What are your feelings on that assertion?

*Respondent10:* Yes. I would agree with that... The other point I would make is that we do differentiate between minimum practice, which is usually quite closely aligned with regulation or legislation, and best practice, which can tend to fall outside of the legislators and regulators... Through technical standardization, you're able to bring alternative instruments to the table which have the same outcome as your means of compliance. And this is quite important in our building regulation; 'right you can do it with NZE3604', so that becomes a default regulation. Though it does not preclude... building a house with grass on the roof, for example, just they have to go through the same checking stages (pp

2,3).

This was a clear answer. Standards are a type of regulation; an 'alternative instrument', but still related to state-regulation. However, the next part of his response opens up the scope for the regulatory applications of standards, in different contexts;

*Respondent10:* Why that's important is that in other economies, standards are used as the only singular means of compliance. We use them differently; we use them as an alternative means of compliance, they're not the only ones (p.3).

The importance of having access to alternative regulatory instruments was recognized by other participants; the Minister, for example;

*Respondent12:* An enlightened state achieves its regulatory ends by intelligent use of the different tools provided by the modes (p.2).

The motivation and/or bias of the regulator can help determine the type of instrument preferred in particular circumstances;

*Interviewer:* So what's the best way to address the problems you point out [ie. exercise influence to generate behavioural change]?

*Respondent5:* I'm not so sure there is *one*. You've got to have horses for courses. So, you've got to decide who it is you want to influence. That may sound manipulative, but you've got to use the techniques and devices that reach them most easily. In a democratic society one would hope that there's been a reasonable and reasoned debate about the ends at some level... In terms of conventional regulation [ie. by the state], my feeling and observation is that its disproportionately used because its visible. And so to pass a law or an act about something give politicians a sense of having achieved (p.4).

And, presumably, the higher profile the legislation, the more the sense of achievement on the part of its creator. But flippancy aside, the lesson implied here is that regulatory actions must be appropriate to the actors to be addressed, and the behaviour sought. There is a need to analyse this

clearly. The theme explored above is continued;

*Respondent5:* As I see it Acts are a means to an end... Your model I think draws that out - there are a whole variety of ways you can influence people. If you're really serious about influencing to an outcome as opposed to just showing you're powerful, you might go about it very differently. But politics is short term. It doesn't tend to go for monitoring or evaluation, at least not in any serious ways... It has short term inbuilt [bias toward] results that do affect things rather dramatically but, in things like environment where issues are long term, they're interconnected, they're somewhat complex and you're not sure what's happening anyway, it's not easy to have political actions because they don't tend to deliver stuff frequently [and] obviously. And that's where you can get a big emphasis on the wrong things [expressed as] 'We'll fix it!' 'We'll ban it'! (p.4).

Of course, the various regulatory forms seen in practice arise out of dynamic processes; what is conventional accepted and taken for granted in one context or time frame, may decline and give way to other ways of doing things. In a conversation about how the influence of associations has waxed and waned in NZ environmental regulation, an example of a regulatory trend was described;

*Respondent1:* Over time this thing [the model] could look like a developing embryo, couldn't it? The modes coming and fading and going. Because one of the big associations, I suppose, in the early to middle part of the [20<sup>th</sup>] century was the engineering association. They essentially built the country and it took the Ministry of Works [MoW] to be established for that influence [over regulation of the environment] to wane. It was a professional trade union I suppose. So I agree with what you say [about model assumptions - see discussion below] (p7,8).

Two points of significance are raised here are, first, that modal influence in environmental regulation change over time. Other actors, acting under the rules, principles and institutional frameworks of the state bureaucracy (MoW) might be seen to diminish that influence. The second point is that the respondent readily based his feedback on my query (about changing influence in the regulatory complex) on the theory of the model and its representation (in graphical form).

This section examines whether participants were able to agree with the way the model interprets differences between different types of regulation. Respondents found the model easy to navigate, and readily connected their own observations and experiences with the theoretical understandings inherent in the model.

## B Discussions on qualities of regulatory relations

The model places ‘labels’ on the modes to express the underlying principles of the modes, and also to refer to its realization in phenomenal contexts. For example, the appellation: *state* encompasses the principle of control via legitimate means of coercion in the interest of the public good, and also the plethora of bureaucratic apparatus created to realize and enable that principle (including houses of representatives, ministries, agencies, councils, courts etc).<sup>134</sup> The qualities of relations between actors is but a reflection of the interplay of modal principles, modified by the intent(s) of and influence exercisable by actors.

Relational qualities are labelled in model development as broadly; accepted legitimacy; modification seeking; conflictual; and colonizing.<sup>135</sup> The last of these qualities is perhaps the most problematic for the model to conceptualize, since actor intent can sometimes be opaque, to say the least. However, participants found it easy to express opinions on colonizing qualities, such as the use of power, in certain regulatory contexts. One noted that, from his perspective, market and state actors exercise large influences over the community, the legitimacy of which is contestable;

*Respondent4:* Well actually both power and money derive from the community. I mean those powers are actually derivative powers in a sense, although obviously if you have money you can buy peoples’ activity. If you have power you can force people to do stuff. But at the same time these [modes/actors] only monopolise those sources, those instruments, those media, with the compliance of the community.

*Interviewer:* Why does community comply then? You’re implying that money and power

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<sup>134</sup>See, for example, the discussion of chapter 5.

<sup>135</sup>See chapter 6; esp. s.6.33.

has been wrested from them.

*Respondent4:* Yes, and not only has it been wrested from them but the process of colonization that you talked about [in my introduction to the theory] has gone on and the community has come to believe that it is legitimate; that's the way things are supposed to be. And so, in a way, the key struggle is actually over the minds of people and the kinds of things the community thinks is legitimate. A question of legitimacy is what it comes down to, and the whole process of the last fifteen years has been legitimizing the market as the primary measurement of value (p.4).

The influence of the modal narrative, as communicated or transmitted by actors, is can be seen as 'multidirectional'. The sentiment expressed by the respondent above is seen in the model as a type of colonization of community (values, narrative, etc) by market ideology (ie. the market as the primary arbiter of what is valuable in a society). Relationships between the market and other modes could also be seen as coloured in the same way, and sometimes with far-reaching ramifications. These can include one mode having a greater-or-lesser hand in determining the priorities and structures adopted by another. An excerpt from a conversation between two respondents on the relationship between market and state illustrates the point;

*Respondent3:* I mean what's the job everyone wants [Ministerial post in government]?

*Respondent2:* Treasury.

*Respondent3:* Treasury, yes. I mean everyone wants Michael Cullen's job. No one wants Marion Hobbs' job [Minister for the Environment]. And I think all of those things reflect, to some extent, the way the market rolls over the state. I mean we can't see them any other way. Ten years of market ideology, it's produced a very different bureaucracy... that has imbued within it a very strong...intellectual and academic and ideological market orientation (p.3).

Of course, the infiltration of market ideologies into other modes may have positive results. A trend toward liberalization and a less prescriptive approach to state-regulation over the past few years, and the evolution of a particular type of intervention in NZ is noted by a senior executive

in the Ministry for the Environment;

*Respondent5:* Have a look at the volume of legislation pouring out the hopper, it doesn't seem to have altered [but] the content of it is a little less directives and controlling... I mean you no longer have quite the controls on prices, behaviours and thoughts that we used to have. And that, in my view is because when you give people more freedoms and so on, it's very hard to take them away again. You can always liberalise an economy in society, it's very much harder to, unless you get into some cathartic moment, to change that around and tighten it up again.

*Interviewer:* So do you think we're in a liberalizing vector?

*Respondent5:* Unquestionably.

*Interviewer:* Does that extend to the environment?

*Respondent5:* Yes, well, of course you've got to look at where we started from, and that was not very many rules anyway... But certainly a lot of the work we've done, the preoccupation of governments has been not to regulate, or not to 'hard wire' regulate for particular outcomes and to use other mechanisms (p.5).

The view that liberalization has had wide-reaching effects was echoed by another respondent in the context of local government;

*Respondent1:* I would say right now that the trend is towards a greater liberalization and willingness to consider [alternative approaches to regulating]. For two reasons; one I think is the technical reason of the polluter-pay thing, whereby the industries themselves and individuals themselves ought to see all their activities internalized and therefore to be responsible for that activity, is part of doing business and hence allows a self-monitoring role... And the other one is the cost to the community of public agencies doing it [directly regulating and monitoring] is starting to stretch the public budget... perhaps to a degree that's unacceptable (p.6).

The trend identified here of liberalization has had the effect of promoting approaches to regulation of the environment which involve closer relationships between the modes; not only between market and state (eg. voluntary initiatives), but also between state agencies and community groups (and surely others). This is relatively new territory however, and important issues need to be addressed, such as the accountability of the regulator to their constituency;

*Respondent 1:* So [liberalization has resulted in a] a trend in a sort of co-management [of the environment]... We got the idea from Tainui [Waikato-based Maori tribal authority] that they want to co-manage the Waikato River with Environment Waikato [which has statutory authority]. Now we're not quite sure what that means, and where do accountabilities lie when you use words like co-management... But in terms of co-management of broader policies, there might be some crossed wires when it comes to the accountability side of it. You see within the resource management act there's already provision under sections 32 and 33 on Transfer of Powers, which is a sort of co-management... I think there would be a trend - I think it's quite a way away yet - where, as groups demonstrate skill levels and relevance to the issue in question that more of these transfers of power, if you like, could happen. And there are a few around (pp6,7).

This is a key issue for state-regulators in particular. Their mandate, and hence accountability, rests on the degree to which they bring about the public good. Other actors, from other modes have no such responsibility, and can be seen to be motivated by less broad interests; for example, to make profits (market); to preserve community and/or kinship ties (community) or to serve the interests of defined memberships (association). Having said this, there is nothing preventing non-state actors from taking the common good into account in decision-making, and there is an established literature which is based on the assertion that state actors are principally motivated by self-interest, and that the assumption that they serve the public interest only is not well founded in reality (see for example, the literature on public choice theory).

The discussion considers next the issue of power and influence exerted by actors and in particular samples participant comments on the different scenarios of imbalance shown to them.

## C Comments on power-influence

In chapter 7, all earlier theory development was crystallized into a model of the regulatory complex. Several versions, or iterations of the model were developed; one 'ideal' form, where all modes are equally sized, and three others, reflecting various types of systemic 'imbalance' (see Figure 7.5). The concept of 'imbalance' represents inequality in the exercise of power, or influence by actors in given regulatory situations and/or issues. The discussion below reports on participant comments on this subject.

*Respondent9:* So what's the dominant mode?

*Interviewer:* It depends on what issue you address. And, here we go [indicates the '3 types of imbalance' diagram]... There are different options and different contexts...

*Respondent9:* But in say, more corporatist political cultures, you'd have a greater weight on the associations and regulatory mechanisms... Then of course, in societies with very limited state apparati, I guess the community element becomes more dominant, doesn't it? Or the market (pp.8-9).

*Respondent14:* Something like this [indicates imbalance type 1 on the diagram; ie 'state-market coalition'] is the dominant model [of environmental regulation] in NZ (p.2).

This interpretation found support from others; for example,

*Interviewer:* So what about the proportions? [referring to type 1, which had been chosen earlier by the respondent as characterising environmental regulation in NZ]

*Respondent1:* I think you got the proportions right. I'll have to reflect on that a bit. Whether the market is bigger than the state, I think it's marginally bigger probably. That's what the 1980's and 1990's have set up for us, I wouldn't disagree with that. Those ones at the bottom [community and association] might be a wee bit fatter. The influence of a consultative process that has come through the RMA and indeed the Local Government Act. The consultative procedure has given the community quite a big say in things... Now local government has to put out its

annual plans and any financial strategies for consultation. We're going through several river schemes at the moment, and the Taupo water quality matter that's involving huge public consultation... I think that the various associations are important to that process too. So they could be a wee bit fatter than they are maybe... And if you take the ability of people to go to the environment court [that increases the influence of the community] (p.8).

The discussion now turns to consider how participants saw the mixing of the different modal 'flavours' in practice, and issues arising from any nucleus-orientation in environmental regulation.

#### D Comments on the *nucleus*

In the final phases of development of the skeletal model, characteristics of the *nucleus* - the conceptual space created by the simultaneous overlap of all four modes - were explored.<sup>136</sup> From an aesthetic perspective, the nucleus conception arises naturally as a consequence of the specific graphical configuration chosen to represent the modes. From a theoretical perspective, the nucleus is not seen as a normative goal of regulatory action, but is described more neutrally as an 'ideal-type' of regulation, which may or may not be applicable (or practicable) in real world contexts. The purpose of this part of the commentary on the interview programme is to assess participant feedback on this 'extreme' form of regulatory integration.

Participants were curious about the nucleus, and its character;

*Respondent 10:* In terms of where all of the regulatory elements meet, you've got that separately described [as the nucleus]. Is that the optimum position for the model, or is it a value judgement?

*Interviewer:* No, its not a value judgement. I'm not saying everyone should go here (p.4).

The importance of going beyond vague concepts and idealistic representations of the nucleus, and of examining the potential for practical realization was emphasised by several participants, or

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<sup>136</sup>See chapter 7, esp. s.7.36.

example;

*Respondent13:* The nucleus, or co-regulation, or whatever you want to call it; it needs practical examples, so that it goes beyond just theory (p.2).

In the discussion of chapter 7, integration of voluntary instruments (eg ISO14001:EMS) into existing (state-based) regulatory arrangements was raised as a possibility for classification in the nucleus. My interviews with participants involved in standardization included questions designed to explore this possibility, and they were most helpful in exploring the connotations of the nucleus concept;

*Interviewer:* It [the nucleus] has special characteristics; when [for example] you have a balancing of the interests of these modes, you can actually see a point where standardization of EMS [might] make its way into the nucleus, but it may not be appropriate for every single type of environmental regulation.

*Respondent10:* That position is often where we try to get a standard, in terms of the involvement and participation of the people. So that regulatory nucleus to me represents, in graphical form, a balanced committee. To move off that would ... tend to suggest a degree of imbalance which may affect the [standard] that the committee might develop... So that would be my major comment on it [the nucleus]. I can see that the model is good in that it describes interests, but to me, the centre is where you've got the balancing of interests (p.5).

The term 'balanced committee' has a specific meaning in standards terminology. It refers to a desirable situation where all major stakeholders potentially affected by a particular standard - not just the main users of the standard - are represented in the committee writing it. Imbalance in the composition of the committee, it was noted, has the potential to affect the standard, and presumably, its efficacy in use.

It was significant that standards-setters were quickest to grasp the nucleus concept. This was due perhaps to their perception of the role they play in regulation in NZ and globally;

*Respondent8:* We're [Standards NZ] probably a little bit different [to other actors] in that we

actually depend on the influences [exerted by actors/modes] being relatively balanced... and getting some sort of consensus... Because what we're trying to do is get into the market area and I guess, in the community area, state and associations... So we see ourselves as well I guess, as an independent body that can bring these issues together for you [eg, customers for standards-regulation], and have them discussed and thrashed out and come out with some sort of documental product at the end... that's going to suit [everyone involved in, or affected by the standard] (p.7).

Having a balance of stakeholders in the drafting committee is important, but should ideally be accompanied by a consensus of views on important issues, otherwise the relevance of the standard to stakeholders is reduced;

*Respondent8:* Yes I mean, this is quite interesting, we... look at who is going to use the end document in the environmental sense. [Although] we give the state effectively show-stopper status on a document [the final say on whether the document becomes a formal standard], we are looking for consultation, and we are looking for consensus if we can possibly get it... If there's a major stakeholder involved and they can't use it [a standard], then there's no point in writing it (p7).

The discussion of chapter 7 mentions a second possibility for classification in the nucleus. This is the Resource Management Act (1991). My dialogues with participants involved in state-regulation included questions designed to explore this possibility, with interesting results;

*Interviewer:* That brings us to another point which is in the middle of the [complex]. Now this is not some sort of empty space. [it is] an idea of co-regulation, or co-management, call it what you will... I imagine a forum where people come in and negotiate mutually accepted outcomes. That became this area here, which I call [the nucleus]... it is a zone, or a space of co-regulation, where community, state, market and association interests, meet... and balance out their interests, they examine their own, and then work out some sort of objective. [I am interested in] the potential for the RMA to act as a co-regulatory tool.

*Respondent3:* I think it's actually quite a strong argument... I'll take real estate [as an]

example, where there are different interests in the market and associations, who in fact want certainty. So they want regulation, and they want that because the community wants the product to be certain. So the [RMA] system... is structured for the community to influence the rules and regulations [ie. policy] through consultation and democratic representation... Association has it's bite of the cherry, in terms of the development of policy and planning, as well as a representation of the market. And the state has its obvious influence in drafting the legislation. On top of that, each individual application of itself requires the debate around that policy to take place... So you have a number of - I'm not arguing that it's perfect - levels at which each of those [modes] can engage in the debate over any one particular development, or any one policy or any one environmental issue (p.6).

Out of the discussions arose three key determinants of nucleus-regulation. The first is the *comprehensiveness* of the issue, or area subject to regulation. It must be sufficiently broad, such that it potentially affects parties from all modes. The second is *participation*. This refers to the ability of all parties affected by a particular form of regulation to have input into the development and implementation of that regulation. There must be representation from all modes in the regulatory relationship. And the third is *balance*. This means that the influence exerted by actors - being physical expressions of the modes - in the development and implementation of a particular regulatory form must be equal; if not to each other, then to the degree that their interests are affected by how the issue is regulated. This part of the discussion does not comment directly on the desirability of a nucleus-orientation or -direction in regulation, but several participants were clearly of the opinion that such a trend might have merit, for example;

*Respondent14:* I think a general movement toward your co-regulation space, especially in the environment, is desirable. It makes sense in the long term (p.2).

## E Exploring the potential of voluntarism in environmental regulation

The issue of the how self-regulation can address areas of private and public interest is a key focus of the research reported in this thesis. This section reports on participant feedback on this subject. Unsurprisingly, the more market-oriented the participant, the more favourably they saw voluntarism. One of the main reasons given for the use of voluntarism was that it was not seen

as suffering from the same limitations faced by the state; such as confinement to national boundaries. An example is found in a discussion on codes for sustainable resource management;

*Respondent6:* So the market then got together and said OK, we need some kind of voluntary code because it's got to be international, it's got to go across borders, no one state is going to be able to provide that for us (p.1).

Although it should be noted that favourable comments on voluntarism-potential were not limited to market actors. The following comment comes from very deep within the state;

*Respondent12:* The more self-regulation there is in a society, I would say, the more sophisticated it is... although self-regulation must go hand-in-hand with responsibility (p.2).

How exactly extra-state voluntary regulation might promote responsibility and accountability was discussed with participants. The importance of consistent criteria and independent audit was raised by several respondents, for example;

*Respondent6:* So what happened, FSC [Forest Stewardship Council] came through as a world wide kind of regulation, if you like, a voluntary regulation but it was driven off consumer demand... So they, the market as such [a coalition of producers], set a list of criteria - standards that had to be achieved, and then conferred upon particular organisations that ability to go out and audit to ensure that those who were claiming FSC status were of a consistent standard (p.1).

In most formats of voluntarism in regulation, the state plays more peripheral roles than in traditional legislative approaches. Respondents were asked about these roles, and their responses covered a wide range, from contributing organizational and monetary resources to extra-state regulators, to setting bottom-line criteria, to standing aside to let other parties sort it out;

*Respondent5:* One of the things they've negotiated [in Australia] is a National Packaging Covenant [NPC] which would fit into one of these boxes up here [indicates overlap **m.a.s** on the model]... So it's an agreement between various players in the packaging industry; the soft drink and beer markets, to minimise and recycle

and re-use their packaging. And each side of this partnership; the state, the commonwealth governments and the industry, are putting equal money in to effectively make a more efficient economy in recycling... So that's a fascinating example [of a voluntary approach]... with the state having a regulatory thing to back it up, which the industry wanted for a bit of security, to keep the competitors sorted too actually - they always like that. So that the people who won't win voluntarily can't opt out and compete unfairly...So what that leads me to conclude is that [in NZ] we're certainly here I think [indicates overlaps M-S; S-A] and I think we're going in that sort of dimension [**m.a.s; m.s.c**], but that's premised on what you're dealing with [issue/activity being regulated] (pp.11-12).

The fact that the state, as the traditional regulator in the public interest, will view some issues as allowing more flexibility, and others as less so, was raised by another participant;

*Respondent8:* If you've got an issue where the state is saying to start off with, 'we'll consult; that is we'll listen to the other three quadrants or circles or whatever [modes], but at the end of the day, we reserve the right to have the final say, or even more extreme, and I guess you could relate this to different governments if you like, around the world; 'we do give, or don't give a brass razoo what anybody else thinks, this is what you'll do' (p.6).

The attitude of the state, with regard to allowing voluntary approaches, in this view, comes down to attitude, culture and habit. If the state in question has a long-established history of using command-and-control approaches, they are less likely to allow voluntarism. If, like in NZ, a more permissive regime is in place, voluntary approaches are more likely.

This section focusses on reporting on how participants communicated their thoughts and experiences on questions of environmental regulation, and on how they used the model as an interpretive tool. The experience of interviewing and the subsequent critique lends strong support to an assertion that participants related easily to the model and found it a useful tool to frame their analyses. In addition, more evidence was found to support the theoretical understandings built into the model.

#### 8.44 Part IV: Feedback on the potential uses of the model

In earlier stages of theoretical development, I was motivated principally by a desire to better understand the phenomenal contexts I had found myself a part of in the mid-1990s, and less concerned at what might be produced in the process. Right up to the period of the interview programme, I was focussed exclusively on the construction of a tool to help *me* comprehend. That this might have been naive was first indicated to me by a participant who I had taught as a mature student at the University of Waikato, and at the time of my interview with him, was a veteran of several years involvement in environmental regulation, in both private and public sectors;

*Respondent13:* Yes Brennan, this [the model] is all very nice, but what exactly is it good for? (p.2).

The fact that I had no ready answer to this query was a wake-up call. However, participants had a few things to say about how they thought the model could be used.

Participants expressed enthusiasm about the way they could use the model to communicate aspects of regulation. Several participants noted how the graphical format made relations more 'visible';

*Respondent14:* I like the way it [the model] makes regulatory interactions visible (p.2).

Another respondent expands on this point;

*Respondent3:* Well I think the diagram is really useful because it provides a basis for people to express the dialogue and the position they're coming from, and their understanding of the relationships...What it allows people to come up and do, as [his colleague] was doing, was to put his hands on it to express how he feels the things interact and move and it [the model] provides a really good vehicle for that. And I think that if you try to express that in text, you'll be into some seriously long paragraphs, and it wouldn't work for everybody. But because you've got a combination of those relationships, not geographically but representationally, I think that really helps (p.10).

The way the model interprets regulation as a 'result' of interactions between modes, and symbolizes relations as taking place within overlaps and interstices attracted favourable comment. An example;

*Respondent6:* How would I use it? Probably I'd use it as a communication tool first and foremost. I could see it being quite useful to students... When I was a student I was of the understanding that everything existed in separate bubbles. And the state was a big stick or carrot. The market was doing it's own thing. Now that I'm integrated totally into it [the empirical context], I realise that this [the model] is a far better representation of what actually does happen in interactions between the four [types of] players (p.7).

The capacity of the model to be used to illustrate, or 'capture' aspects of real-life contexts was a frequently mentioned theme;

*Respondent9:* So you can map this [the regulatory system/complex] in terms of different policy sectors, different regulatory systems, over time... So from an empirical point of view this is a very useful mapping mechanism (p.9).

*Respondent3:* And I think really ... that the diagram [pointing at Figure 7.5] is incredibly useful for debating any one particular point, because it allows people to express the dimensions [of a problem] (p.6).

Some participants were struck by the ways that the model represents and communicates dynamic aspects of actual regulation and relations - for example, balances of power;

*Respondent6:* One of the things I can see this working for is it illustrates the balance of power quite clearly and from that you can see you could put it up in a facilitation role if you were explaining, trying to explain the effect of regulation, state imposed or voluntary to people, and actually just model it through as your regulation develops. Because it's so dynamic. I mean this model would never ever be static, ever, even if you chose just one small slice of legislation it would still change depending on consumer acceptance, market acceptance, community acceptance, it would just change all the time, I would think...(p.7)

The communicative qualities of the model were seen by some participants not only a good descriptive instrument, but also as a potentially useful tool in regulatory situations. For example, this respondent thought the model could find an application as a support in negotiation;

*Respondent3:* But it's a very...I just come back to the fact that it's a very good tool.

*Interviewer:* A good tool? What could it be used for?

*Respondent3:* I could see how if you were deadlocked in a situation... I was involved in a project where, simplistically, we were going to build a bridge. But to build that bridge we had to widen the river to increase the flood protection. And to widen the river we had to take property. Now, as soon as you're into that, we had a wide range [of benefits to the community] - good flood protection, better access, safety. But we also had this thing which encroaches on people's rights. We were going to compulsorily take property to do this. And one of the things you have to do is you have to take people through the arguments... What I'm saying is that you have to draw people out of their own corner. You recognise that they have that position. But then you have to get them to the point where they say, 'I'm in this position and these are the other people'. And to get them there I would say in the right hands, a tool in a diagram like this would enable someone to take them through that (p.10).

In a few of my conversations with participants, the discussion turned to what improvements could be made to the model. Most respondents, having only been introduced to it, expressed a reluctance to go beyond commenting on their interpretations of the model. However, one suggestion to improve model functionality in supporting negotiation by introducing a capacity to manipulate the relative dimensions and orientations of the graphical representations is worthy of note;

*Respondent3:* If you could turn it into a moving thing it would be incredible ...If you had people round a table and you have this in an almost a flexible pullable, moveable version. As people talk the facilitator could say 'well this is your view' and move [the elements] to reflect that influence. And get other people to see how that was changing. And that might bring them to see [other

perspectives]... When you work in government, people say to you 'but you're really powerful'. You think 'gee I'm just doing my job, I didn't know I was encroaching on your life like that'... And a lot of people don't think in words and we often bombard them with words. We don't give them a chance to express themselves in a more dramatic or diagrammatic way. And dialogue takes us so far... I think this would be another tool (p.11).

In the end analysis, respondents were intrigued by the model, and the generally reaction was very favourable. The following comment summed up my impressions of participant feedback in a memorable and typically concise Kiwi way;

*Respondent2:* It's a bloody interesting way of thinking about things actually (p.11).

#### 8.45 Summary of findings from the test the skeletal model

This section introduces and overviews the test of the structural-model, which was based on an interview programme with participants in environmental regulation in NZ. The test sought feedback on logical, representative/interpretive and communicative aspects of the structural-model, while a secondary objective was to generate new information to help edify the model. The test focussed first on assessing model conceptions, logic, representation and interpretation. A high degree of support was found among participants for the original and clear way the model conceptualized regulatory systems, relationships and developments.

A second focus of the test was on evaluating the validity of model conceptions and ideals. Feedback contributed an enormous amount of detail to key model concepts, especially *relations*, and noted the complexity of actual regulatory relationships. Modelling relations is a challenging task. Participant comments on model ideals (such as *nucleus* and *balance*) were positive, and some were able to see how they might work in practice (eg the Standards NZ ideal of the 'Balanced Committee') but some also noted the potential for difficulty in actually achieving them.

The third focus in the test was on assessing the potential usefulness of the model and the applications to which it might be put. Participants felt that the model may be useful in communicating aspects of regulation, analysing regulatory situations and developments, as a

teaching tool, and as an instrument for assisting negotiation and resolution of difficult regulatory issues. Some suggestions for model development were also reported.

The test provided a large amount of information which will be valuable in helping edify the still-skeletal model.

### 8.5 Using test results to edify the model

The previous section reported on the empirical programme designed to test the model, and discussed findings. This section assesses the implications of test results for the model, and considers avenues for improving its descriptive, explanatory and analytical capacities in the light of insights generated in testing.

The discussion is in three parts. The first part explains the two-stage process of edification used on each model in turn. The first stage - *illustration* - examines the significance of test insights for the model, and uses model elements to interpret empirical feedback. The second stage - *speculation* - explores opportunities to grow and develop the model.

The second part of the section applies the edification process to the model. The following areas are examined in an illustrative analysis; the cartographic capabilities of the model, its structure and conventions/rules, and the contexts which it may be applied to. The model is extended via 'speculations' on relations; the overlap; the theoretical ideals expressed in the model; and on its multiple levels of resolution.

The discussion concludes with a positive assessment of the outcomes of the analyses. It is found that the model is theoretically robust, with much to recommend it logically and aesthetically. Areas for further development are also indicated.

### 8.6 The edification process

In the discussion on methodology in chapter 4 above, a comprehensive plan for research and theory development was developed. Using 'middle-range' ideas, the plan outlined a research process based on a 'skeletal' approach to theorising. Chapters 5 through 7 cover the first part of the plan; that is development of a skeletal model built up through an analysis of regulation of the

environment.

The second part of the plan - the fleshing-out - is covered in this chapter. The first part of the chapter reported on the testing programme. It generated feedback on the models and yielded new insights on practices of regulation. In this part of the chapter, the results from the tests are applied to the model, with the intent of edifying it. The term edification is used here to describe my own interpretation of the middle-range call approach to 'fleshing out' initially contingent propositions and frameworks to produce better, more comprehensive and 'enlightened' theory (cf. Laughlin, 1994). More specifically, edification is intended to enhance the overall quality of theory in terms of the following parameters;

- (i) *Description* - ability to report on events and contexts in ways corresponding with independent observations and understandings of phenomenal reality(ie.s);
- (ii) *Adaptation* - capacities to integrate new information;
- (iii) *Modelling* - accuracy in assumptions, conventions, rules, and structure of the models so as to support interpretation and analysis;
- (iv) *Communication* - capacity to produce meaningful information;
- (v) *Projection* - capacities to suggest developments and ideals in regulation;
- (vi) *Aesthetics* - attractiveness, elegance, utility/usability, and the 'look & feel' of the models.

#### 8.61 Two stages in edification

As noted above, the models are edified via a two stage process. The first stage is called 'illustration'. The process aims to improve the model being examined in the light of the insights made in testing, and uses the model to explain and/or interpret feedback from the empirical programme. Key themes emerging from testing are identified, and the analysis builds on these. The illustrative analysis combines participant commentary, my interpretations of those, and reflections on my own experiential learning. Model understandings and logics are thereby critiqued and improved where needed. The aim of edification is to enhance models in terms of the first four of the qualitative parameters noted above: (i) description; (ii) adaptation; (iii) modelling; and (iv) communication.

The second stage - called 'speculation' - explores opportunities to grow and develop the theorising potential of the models. Speculation aims to expand the model by drawing inferences,

developing assumptions, and extending logical points, rules, and structure. This is a freer, more imaginative process than illustration. Where illustration is a more grounded, incremental approach, speculation aims to achieve definite leaps in model evolution. The process is necessarily more creative; it is part logic, part invention, and part artistic interpretation. A key tool used in the speculative process is the ‘thought experiment’, where different scenarios are ‘run’ through the model to test its understandings and logic; to explore model attributes; or to otherwise clarify, refine, or elaborate on model propositions. As such, the speculative procedure is oriented toward an open-ended exploration of the potentialities of the model. The aim of speculation is to enhance the models in terms of the following qualitative parameters: (iv) communication; (v) projection; and (vi) aesthetics.

#### 8.62 A note on the role of graphical representation in the write up of the analysis

Some novel devices were used in the research and theory-building described in this thesis. Key among these is extensive use of a graphical method to support the theorizing process and communication of results. The graphical representations are intended to be ‘read’ closely with the words, and are at least as important as words in conveying the story of the research.

The figures have been constructed to be as self-explanatory as possible. However, care should be taken in reading them. Flexibility is built into the signification and symbolization process, to enhance creative aspects of theorising. The rules governing, for example, the placing of boundaries; the determination of symbol shape and dimension; and configurations of graphical objects; are all based on judgement and insight. Later sections on edifying the model and speculating about further developments freely mixes discussion, tables and diagrams.

#### 8.7 Edifying the model

The discussion of the test above found firm support among participants for the model in terms of structure, logic, representation, and usefulness.<sup>137</sup> The following discussion expands the list of themes to six, in developing a more sophisticated analysis.<sup>138</sup>

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<sup>137</sup>See esp. sections 8.34 to 8.38.

<sup>138</sup>The specific subject of model usefulness is also explored in chapter 10.

Model edification starts with an ‘illustrative’ analysis which seeks to clarify model understandings by examining in more detail; (a) the cartographic capabilities of the model; (b) its structure and conventions/rules; and (c) its powers of representation. The following ‘speculations’ on the model use more creative methods to consider how it might be extended and developed. The areas discussed are; (d) the concept of regulatory relations, and the overlap; (e) the theoretical ideals expressed in the model; and (f) the multiple levels of resolution produced by the model. Table 8.1 shows how these themes expand on the original themes introduced in the previous chapter.

Table 8.1: Expanding and correlating themes

THEMES	s.	<i>structure</i>	<i>logic</i>	<i>representation</i>
Cartography	8.71	✓	✓	✓
Structure	8.72	✓		✓
Contextualization	8.73	✓		✓
Relations-overlap	8.74,5		✓	✓
Ideals	8.76		✓	✓

8.71 The cartographic capabilities of the model

An important use of the skeletal model is in categorizing or mapping regulatory initiatives according to the mix of market, state, community and associative involvement in the creation and implementation of particular forms. One goal of the Test was to assess the robustness of this capacity. In all cases, participants were able to grasp the model quickly and model categorizations were generally accepted. Testing also suggested that by exploring dynamic aspects of the model, mapping functions could be improved. To facilitate this, the discussion turns to consider the development of regulatory initiatives.

The research found that regulatory initiatives come into existence and develop in certain ways over time. Model logic interprets the creation of regulatory initiatives as a result of interplays between modes (ie. between modal actors). Interplays are theorized as taking place within forums or at sites which are conceptualized in the model as ‘overlaps’. As initiatives evolve, they may

become more complex, more integrated with other regulatory systems, or come to involve wider audiences. The model sees such evolution as a path comprising a series of steps between specific overlaps.

This part of the discussion investigates how the model can be used to track the development of EMS-related initiatives. The starting point for the analysis is the map shown in Figure 8.1, which spotlights the 8 overlaps found in the initial bench-test<sup>139</sup> to be related in some way to EMS. The in-depth test reported in the previous chapter also found another four overlaps which could be considered to relate to EMS-type initiatives (ie. a.s.c; m.c.s; C-A; c.s.a).

In testing, it was found that some initiatives categorized in tri-overlaps (eg m.a.s; m.c.s; etc) had features in common with simpler types, and that as initiatives evolve, classifications should change too. Figure 8.2 overviews development pathways for seven types of EMS-related initiative. Each path is discussed below.

#### 1 Associative endeavour

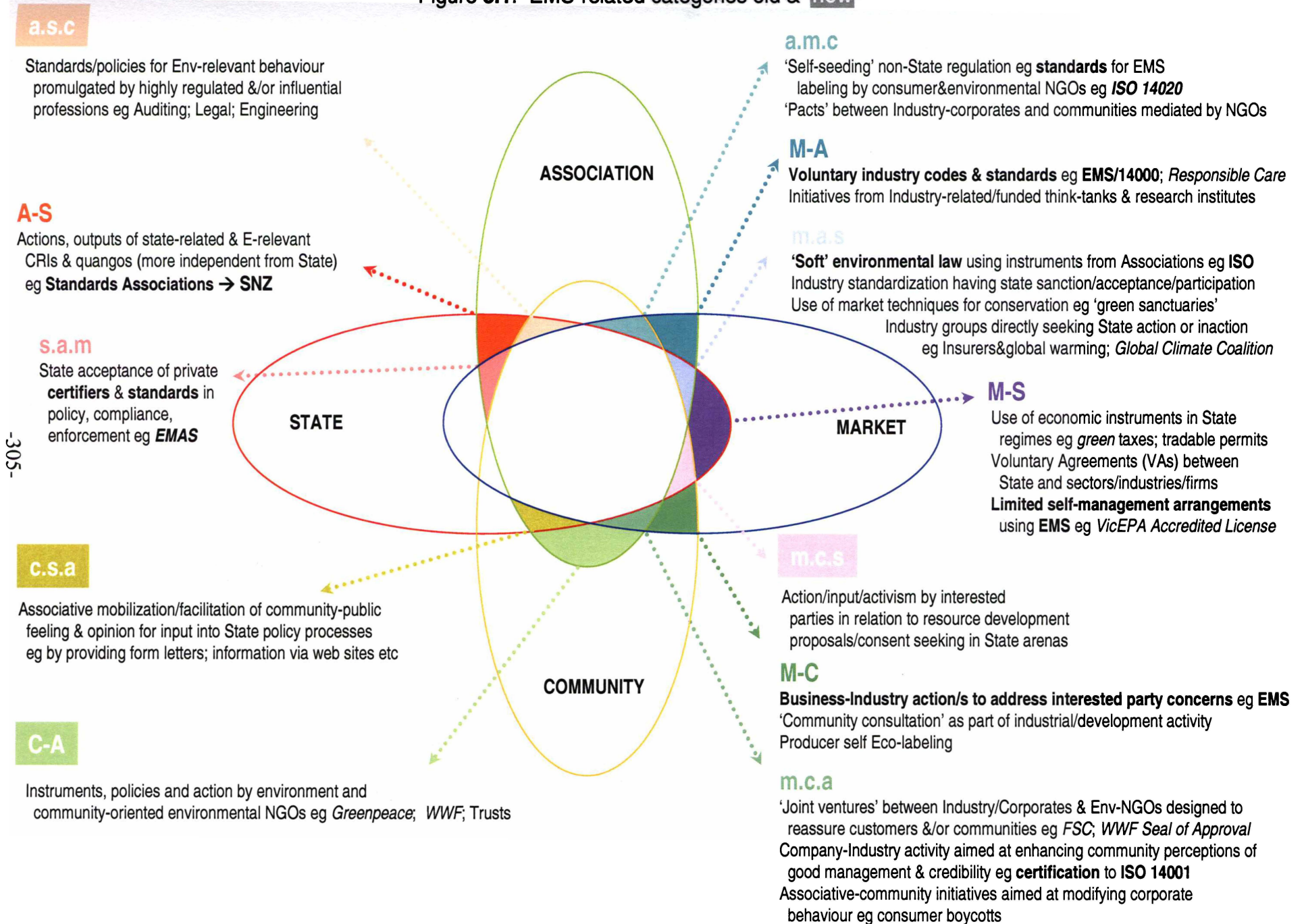
This path starts with an associative move. An association may instigate a partnership with market players to promote environmental goals. Associative input might take the form of expertise in drafting and administering systemic codes of good conduct; coordination among competing firms; or creating discipline and conformity in group behaviour. The resulting initiative can be theorized as forming in the space M-A. Examples of this type can be seen in multitudinous local level partnerships between NGOs and businesses worldwide. It could also be a way to describe the original impetus behind the formation of the ISO14000-series of standards for EMS, where ISO created SAGE and TC207 in response to the 1992 Rio Conference.

An evolution of this path may occur with an expansion in scale and/or scope of the initiative. The operators of the initiative may wish to engage wider community-based audiences, such as end consumers, or people affected by environmental impacts generated by industry. The resulting 'evolved' initiative forms in the overlap a.m.c. Audience engagement typically takes the form of certifications, or reports created using a common template. The associative connection in the initiative is sought to enhance the credibility of business claims (eg 'an ISO-14001 compliant

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<sup>139</sup>At the end of chapter 7.

Figure 8.1: EMS-related categories old & new





site', conforms to 'good practice') in the mind of the community. Examples of this type are; the Global Reporting Initiative (GRI); and the formalized agreements or 'pacts' between local communities and businesses mediated and/or administered by NGOs (see, for example Carley & Christie, 1992).

A second path of evolution from M-A type initiatives can be seen in the track to overlap m.a.s. In this case, the wider audience sought would be state bodies, and the motivation to encourage acknowledgment of industry efforts coordinated by means of an associative form. This type would include 'soft' environmental law, and recognition (by state-regulatory systems) of conformance with formal voluntary regulations.

## 2 Promoting *best practice*

Path 2 originates in the sphere of the market. The impetus underpinning market-regulatory initiatives comes from a desire to self-regulate. It might be understood like this: 'mature' corporations and industries may want to see 'best' or 'industry standard' practices - in environmental management for example - in wider use. Or larger firms might pressure suppliers to meet common industry standards (to help control quality, for example), or to support environmental claims for final products.

It may be seen as in the collective interest of industry members to collaborate to codify and promote systems and techniques of 'best practice'. Often this will be done via industry associations, business-oriented NGOs (eg WBCSD) or by membership of individual companies in NGO-run programmes (eg Forestry Stewardship Council). The standards, codes, statements and principles produced by these kinds of collaboration are categorized in the M-A overlap. The public good rationale for codification of 'best practices' is as follows; as the use of 'best practice' instruments spreads (through an industry, sector and/or economy), the collective impact on the environment created by users of the instrument is attenuated, or 'managed'. Conventional understandings of EMS and its standardization by ISO/TC207 are generally consistent with this rationale, and with path 2.

This path vectors similarly with path 1 described above, as the M-A initiative evolves further. As target audiences for the initiative expand to include community and/or state audiences, the categorization generated in the model changes. Firms and/or industries may try to reassure

stakeholders of their good environmental practice and/or performance (a.m.c). Or they may wish to present a case to state-regulatory agencies to formally recognize conformance with associative tools, or even persuade them to allow levels of corporate self-regulation (m.a.s). State agencies may become involved in the drafting of the (self)regulatory instrument. In both evolutionary pathways, links to associations support the credibility of environmental claims by firms.

Table 8.2: Summarizing development paths for EMS-related initiatives

#	<i>Init</i>	Regulatory motivation	1 <sup>st</sup> overlap	Evolution of motivation	2 <sup>nd</sup> overlap
1	A	Coordination & discipline	M-A	Credibility/mediation Self-responsibility	a.m.c m.a.s
2	M	Promote <i>best practice</i>	M-A	Credibility/mediation Self-responsibility	a.m.c m.a.s
3	M	State recognition of <i>b-p</i>	M-S	State acceptance of <i>b-p</i>	s.a.m
4	M	Community recognition of <i>b-p</i>	M-C	State approval Assurance by 3 <sup>rd</sup> parties	m.c.s c.m.a
5	C	Assisting self-regulation	M-C	Formal recognition	m.c.s
6	C	Foster cultural means of env. regulation/mgmt	C-A	Influence/input to <i>b-p</i> State acceptance	c.m.a c.s.a
7	S	Diversify state regulation	S-A	Assurance Promote good practice	a.s.c s.a.m

### 3 Getting the state on board

In some state jurisdictions, firms can apply for limited self-management arrangements with environmental agencies. Such arrangements rest on confidence on the part of state agencies that the firm or site represents a lower level of risk of legal non-compliance. It is therefore usual in self-management arrangements for the state to require the firm to demonstrate application of ‘best practice’ techniques and/or systems. Initiatives such as economic and market instruments, and single-site/firm voluntary arrangements also fall into the category M-S.

Evolution of this development path might occur as; (a) self-management initiatives are widened to apply to a larger number of sites, an industry as a whole, or an economic sector; or as (b) state agencies look to independent bodies for relevant codes, principles and techniques to help quantify and verify the performance of firms in the arrangement. Under such conditions, associative input to M-S initiatives may be sought by both firms and state agencies for efficient, effective, credible standards and codes, and support for independent certification. An example of such an initiative is the EU EMAS regulation<sup>140</sup>, which explicitly recognizes specific M-S-type instruments - ISO14001 for example - as recommended devices for corporate environmental self-management. In the terminology of the model, this is 'regulatory integration'. The model category s.a.m therefore encompasses all kinds of formal state recognition and integration of voluntary, self-managing, market-based instruments and certifying bodies.

#### 4 Getting communities on board

A wide range of instruments are available to firms to support direct engagements with stakeholders and wider communities on environmental issues. Self-declarations of good practice, communicated via product labelling, or by advertising is a common exercise. Also included in this category are corporate environmental 'outreach' programmes and 'community consultations' (eg via community meetings and more formalized channels) especially where it is important to educate the public about company processes, technologies and how environmental risks and contingencies are managed. Initiatives designed to support direct corporate interactions with communities are categorized in M-C. An example is labelling products with self-declarations of environmental quality of the product and/or process. Another is where local firms enter into good behaviour 'compacts' with communities, in exchange for local operating rights, or in response to NIMBY movements.

Evolution of this development path might occur as a decision is made to involve another party or set of parties. Continuing the case of industry self-declarations, Corporations may choose to enhance the credibility of its environmental reporting to communities, by for example; (a) using independent parties to audit information produced by firms, utilizing an associative instrument as an audit device (eg ISO14001; ISO14010-series of standards); (b) using an associative tool to guide the production and communication of self-declarations (eg ISO14020-series). Firms may

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<sup>140</sup>EMAS is discussed in more detail in chapter 2.

choose to enter into a association-mediated initiative to help assuage community and/or customer concerns. An example mentioned in testing was the Forestry Stewardship Council (FSC) initiative. Another example fitting the m.c.a description is the 'joint venture' (JV) between firms and NGOs designed to improve environmentally-relevant industry practice (such as the now-famous arrangement between Greenpeace and McDonalds Corporation). Such JVs often use awards, 'seals of approval' and labels as devices to communicate with stakeholders. These examples illustrate a shift from M-C to a.m.c.

An M-C initiative may evolve to include state agencies, rather than associations. Firms may seek recognition - of its good relations with the community and other EM efforts - from state-agencies responsible for legal compliance. Another conceivable situation is where an industry promotes EM-based compacts (and other arrangements) as evidence of best practice in use in forums where legal allowance for self-regulation might be obtained (in NZ for example, Parliamentary Select Committees; Resource Consent hearings; Environment Court). Alternatively, state-agencies may be invoked as community-campaigns initiate legal action to encourage corporate resource users to recognize and abide by cultural values. Or in other cases, an industry may invite state intervention to set legal frameworks to ensure an even application of good practice minima across all firms (to encourage, for example, uniformity of practice, and/or certainty of process). This may be done to forestall possibly more stringent state-regulation, or to enhance the maturity of the market. These types of integration - of M-C initiatives with the state apparatus - are classified as m.c.s.

## 5 Assisting self-regulation

There is another path into overlap M-C. Community-based groups and movements may feel (or be) entitled to make suggestions to business and industry on norms of acceptable practice in, for example, access to, and resource use on the basis of local-historical and/or culture-based knowledge. Such groups might initiate consultation, and in some cases seek to collaborate on corporate EM goals, systems and controls. They may also seek to promote effective self-management/regulation by educating resource users as to culturally-appropriate practices, and biospheric characteristics and limits.

Another form of community initiated interaction with market actors is the customer/demand driven EM-related initiative. End users/customers may seek to communicate to firms their desires

with regard to environmental qualities of products and processes.

Community-initiated relations with market actors may expand to involve the state. In contrast with the previously explained path to m.c.s, which was initiated by market-actors, the impetus comes from the community. This type of pathway evolution may be seen in the following situations; (a) stakeholder groups may wish to challenge applications made under resource use laws; (b) community groups may encourage state authorities to require applicants to abide by culturally-defined norms of behaviour; or (c) an environmental movement may invoke parts of the state apparatus (eg Environment Court) in attempts to force users of the environment to implement best EM practices. In all such cases, what is sought by communities is formal recognition of their perspectives in decision-making on resource management.

## 6 Cultural means of environmental regulation

Forms of environmental management founded in culture and tradition are often systematic, well-developed, codified, and effective,<sup>141</sup> although they are often disregarded as credible options because their profile in conventional/modern environment-regulatory regimes is generally low. Communities can try to counter this problem by creating associative forms, such as NGOs, to develop and/or promote culture-based means of regulation, or by encouraging already-extant associative forms to use and promote cultural regulatory initiatives. In the case of NZ, this may be seen to occur as Maori tribal (Iwi) authorities manage resources, or provide other public goods - on the basis of a cultural mandate - by using cultural means. This example is classified under the C-A category.

As community-initiated relations with associations expand to involve state actors, the development path moves from C-A to c.s.a. This type of shift can be seen, for example, in the inclusion of Maori cultural values in the RMA (1991). In addition, the development in NZ of 'co-management' agreements on the environment - where specified powers to regulate the environment are 'shared' between regional councils and Maori Iwi authorities - heralds another possible c.s.a type initiative.

It can also be seen that community-initiated relations with associations can expand to involve the

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<sup>141</sup>Cultural means of environment-regulation are described in more detail in chapter 5.

market function; thus the development path steps from C-A to c.a.m. This may occur as Iwi authorities apply cultural means of EM to their own business/resource use activities. Or perhaps as an association with strong links to community movements and/or values is able to influence practice (best or otherwise) in business and industry EM.

## 7 Diversifying state regulation

Much of the literature on regulation characterizes state-action on the environment as prescriptive and 'command-and-control'. This is a far from uniformly valid representation. States have available to them a wide range of instruments and techniques to help achieve policy goals. A commonly used example of non-compulsory means of achieving environmental policy goals is education; of the general public, of consumers, and of business operators. Many states rely on and support standards associations to assist in the dissemination of information on best practice in EM (ie. via overlap A-S). Standards NZ, for example, is a semi-autonomous organization operated under the auspices of the Standards Act (1976). It is the NZ member of ISO, is a participating member of ISO/TC207, and has the franchise for all ISO products in NZ, including the ISO14000-series of standards.

As wider audiences come to be addressed in A-S type initiatives - consumers may be the target of educational efforts, or just as likely business operators - the development path diverges to either a.s.c. or s.a.m.

This section explores cartographic attributes of the structural-model, and examines how it can be used to track developments in regulatory initiatives, using EM-related examples. The discussion adds to the findings of the skeletal 'pre-test' model in terms of its portrayal of regulatory dynamics, and adds depth to the analysis of the multiple ways EMS is used in practice. The examples used are generalized, but are not unreasonable interpretations of developments in phenomenal reality.

The above discussion does omit one important detail; that is, whether it is possible to map a regulatory development pathway ending at the nucleus; that is, involving all four modes. The preliminary answer is yes, but only under special circumstances. This subject is picked up again in section 8.75 below.

## 8.72 Developing the basic structure of the model

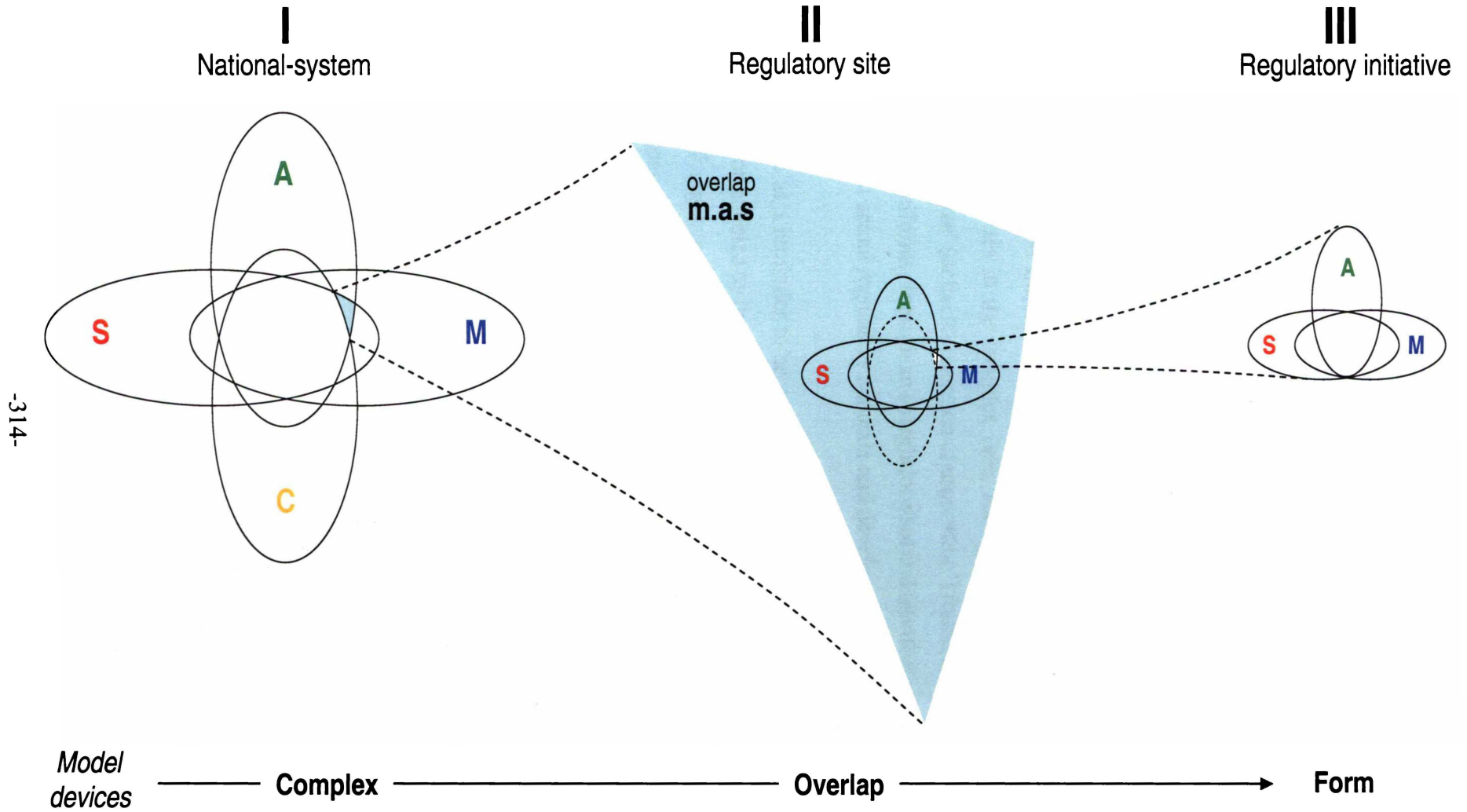
The purpose of this section is to see if more can be added to the framework of understandings and conceptualizations making up the structural-model (ie. its structure). In skeletal development, the model was built up out of a conceptual system formed by the simultaneous overlap of four 'modes' of regulation; this is known as a 'regulatory complex'. A regulatory complex is a theoretical representation of a regulatory system defined by its political, economic, and socio-cultural identifications, boundaries and ties. The model was initially developed as a means of theorizing about voluntary forms of regulation. A graphical representation uses ellipses of varying proportions arranged in particular ways to produce a range of intersections, which are used to inform the concept of the overlap. The overlap conception is a type of 'virtual' space, within which more-or-less organized 'relations' are theorized as taking place between conceptualized human 'actors'. They interact specifically to produce/achieve certain regulatory objectives, which are related - in this model - to the mode they can most closely be identified with in relevant regulatory contexts. The kinds of interactions possible within each overlap vary with the constituent modes, and so similarly do the types of regulatory initiative created through those interactions. Hence the model can be used to categorize regulatory forms by reference to specific overlaps (and, as noted in the previous section, the paths that might be taken to arrive at certain types of initiative, rather than others).

None of these understandings were seriously challenged in the test. The test did suggest several avenues to explore to help develop the theoretical structure-framework of the model, which in turn may enhance its capacity to support sound theoretical interpretations of the complexities found in phenomenal contexts. The first area explored in this section is the layering implied in the model; the second investigates the effect of changes in assumption at the level of the complex; and the third emphasises the importance of contextualizing theoretical investigation.

### A Layers in the model

As testing progressed, I came to see the model as a multi-layered edifice, allowing analysis to focus on, or resolve, at least three 'layers'. This convention is depicted in Figure 8.3. At a broad, system-level of resolution, the focus is on the complex in total (see part I in the figure). The complex is a construct formed by a confluence of 'clusters' of ideologies, practices, discourses, institutions, steering media - and most importantly actors - related and represented by the modal

Figure 8.3: Three levels of representation in the structural model



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principles MSCA. It defines, in very general way the overall relationship between the modes, in terms of capacity to inform and empower related actors in a given area of regulation. Modal capacity to empower actors, or ability to exert influence is represented graphically as larger in relation to 'weaker' modal capacities. The relative sizes assigned to the modes constituting a given context convey something of the nature of power relations at the largest, most aggregate levels of social regulation within a given boundary (including, but not limited to; national politics, domestic economy, collective cultural identifications, etc). Hence, the diagrammatic representation of a particular regulatory complex will say something about the relative distribution of power-influence in that complex.

Testing showed the complex to be a useful device for reflection and analysis. Alternate possibilities or scenarios can be simulated using the model by varying assumptions about the influence of constituent modes in the complex (see, for example Figure 7.5). The idea of representing influence as 'size' (or the 'convention of proportion') found favour among research participants, who almost uniformly found it an straightforward and intuitive approach to thinking and communicating about actual regulatory contexts and developments.

Test findings serve too as a reminder to be cautious about reifying conceptions. The clinical manner of categorization enabled by the conception of the complex should not blind the analysis to the 'messiness' of regulatory relations in practice. The idea of the complex is a vast generalization and glosses over much of the richness found in practice. An example of this is found in the one-dimensional representation of modal power-influence. To reduce the myriad influences found in practices of regulation - some relating to institutional dimensions (eg monopoly over legitimate means of coercion, command of capital, ability to mobilize collectives, memberships, etc), others relating to cultural/ideological dimensions (eg the popularity, or generality of acceptance of certain narratives, values and discourses) - to a single measure of 'power-influence' requires an enormous amount of subjective judgement. The issue of how subjectivity might be transcended, or at least reduced, in determining and assigning measures to modes is considered in more depth as the discussion evolves.

At a 'medium' level of resolution, the focus is on the overlap (see part II in Figure 8.3). The virtual space of the overlap represents the sites at which various types of regulatory initiatives come into being. Specific types of overlap are suggested by the structure of the complex. The concept of the overlap abstracts a wide range of fora, meeting places, settings and situations - in

fact all the places that regulation is developed. The overlap can therefore be seen as a conceptual point of origin for regulatory initiatives-strategies. The overlap device describes an ‘area’ where all relations and actions contributing to the production of a given regulatory initiative are collected together, in a theoretical sense. In practice, regulatory acts culminating in the creation of regulatory forms are often separated in time and space. The overlap concept is therefore an abstraction designed to simplify analysis by grouping all transactions, meetings, exchanges, and conversations connected with given initiatives.

Testing emphasised the diverse range of regulatory sites found in practice. Some are specific and institutionalized, and are readily identifiable as sites, and others, particularly those linked to community or market are less so. In addition, testing accentuated the need for more in-depth questioning and theorizing about the nature, content and defining characteristics of overlaps; eg *what is ‘in’ the overlap? how are modal discourses transmitted ‘within’ overlaps? and how can the conversations and exchanges that ‘take place’ in the overlap be conceptualized?* These issues and others are considered in more depth later (particularly in section 8.74 on relations).

At a ‘tight’, or close-up level of resolution, the focus of the model is on the regulatory initiative produced out of the overlap (see part III in Figure 8.3). The conception of the regulatory ‘form’ is the actualization, or distillation of all contributory actions and relations. It is seen as a creation in itself, but it inevitably bears an imprint of the system that created it.

The discussion on model cartography illuminated how the model can be used to track initiative development. It also highlighted the diversity of initiatives seen in practice. Testing emphasized the desirability of going beyond purely abstract thinking about regulatory forms. At a skeletal level of model development, forms are seen as a derivative outcome of macro-system arrangements. Further research showed the need for a ‘theory of form’ to account for the diversities observed in practice, and to reflect, among other things, the social and cultural embeddedness of regulatory practices. It also indicates likely directions for theory development, some of which are explored as the chapter evolves.

## B Changes in the complex

The second area examined and illustrated in the structural analysis is how the overall complex changes with shifts in relative influence exercised by the various modes in a system. Participants

readily agreed with model differentiations between the 'ideal' of complex balance and actual imbalances;<sup>142</sup> and gave revealing interpretations, often based on their experiences. Material from one interview in particular was used to illustrate how the model can be used to translate changes in the overall distribution of inter-modal influence.<sup>143</sup>

The respondent, in giving feedback on the issue of relative modal influences in regulation, related a view of how the present system of environmental regulation in NZ developed over the twentieth century. The conversation started as he was asked to comment on the present system;

*Participant 1:* I think you got the proportions right (in diagram 1 - *state-market confederation*<sup>144</sup> - of Figure 7.5)...Whether the market is bigger than the state, I think it's marginally bigger probably... Those ones at the bottom [community and association] might be a wee bit fatter (p.8).

He saw a 'transfer' of influence from the association to the state - which occurred between the early 1900s and the 1960s - as one of the main determinants of the present state of the overall environmental-regulatory context.

*Participant 1:* [O]ne of the big associations...in the early to middle part of the was the engineering association. They essentially built the country and it took the Ministry of Works [MoW] to be established for that influence [over regulation of the environment] to wane (p8).

An attempt is made to paint this picture, in broad strokes, using the tools provided by the model. The representation in Figure 8.4 contrasts past (I) and present conditions (II) in environmental regulation in New Zealand. It shows present power-relations in the complex (using solid lines) contrasted with conditions prevailing earlier (dotted lines). Since the early 1900s, it could be said that in NZ the state, the business sector and communities have all undergone greater-or-lesser

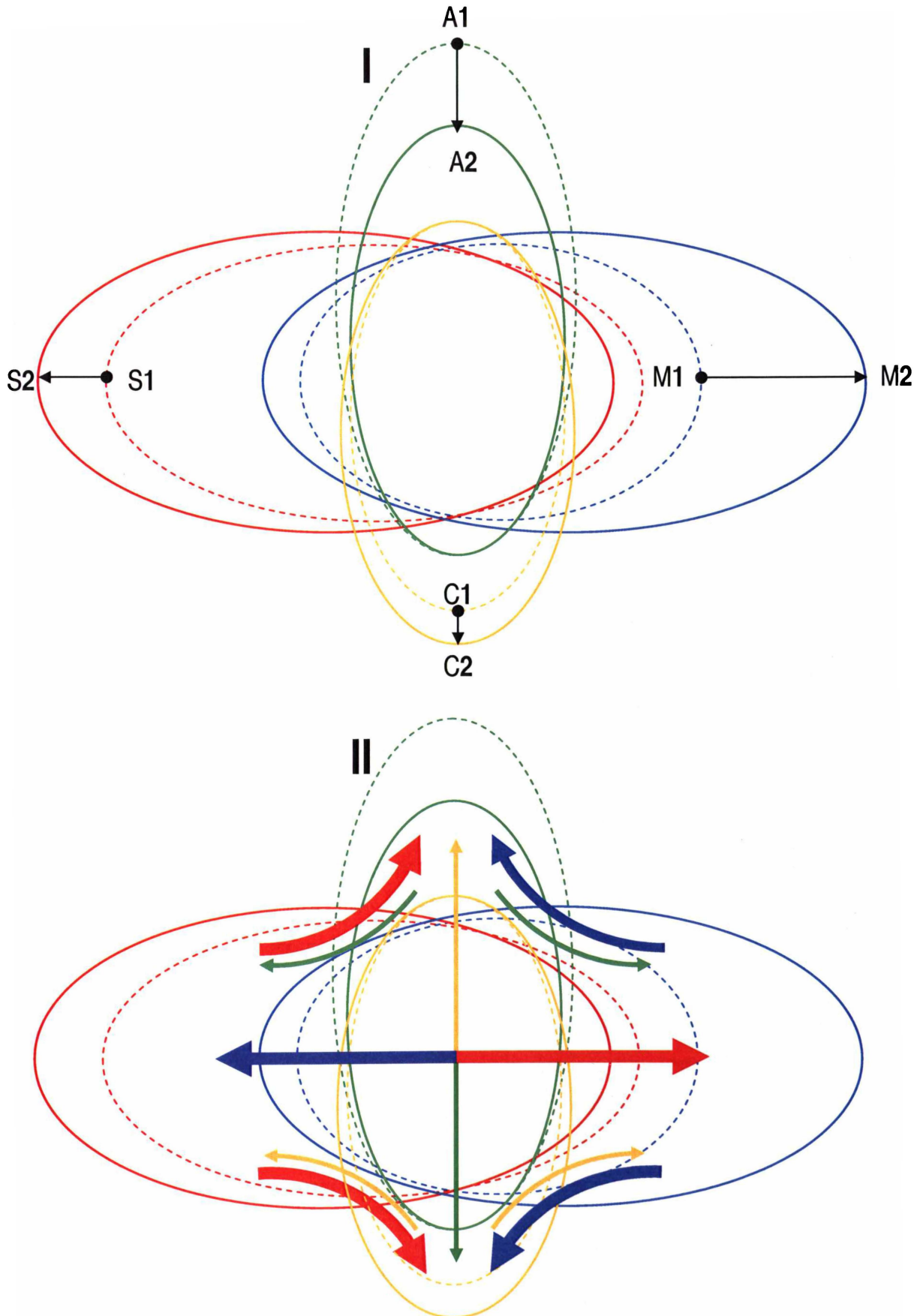
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<sup>142</sup>Participants were shown Figure 7.5 in interviews.

<sup>143</sup>The feedback on which this analysis is based is given in chapter 8; s. 8.36 (A) & (C). Quotations are repeated here where they contribute to the analysis.

<sup>144</sup>See s.7.37 for an explanation of the three alternative scenarios.

Figure 8.4: Mapping shifts in power-influence within the complex I & II



increases in their capacity to affect and effect environmental regulation. However, the presently low environmental regulatory-potential of associations, relative to the other modes at least, has its roots in earlier developments.

Part I of Figure 8.4 shows the overall change in the complex; it takes two ‘snapshots’ in time of the overall balance of power. Part II of the figure shows a way of conceptualizing the relative power-influence (p-i) exerted by the modes in regulatory situations; as ‘flows’ or vectors. Vectors are theorized as the influence exerted by one mode upon another mode, the direction of which is indicated by the arrow heads. The varying thicknesses of the lines denote quantitative aspects of p-i, as mobilized in the ‘direction’ indicated. In the science of physics, a vector unifies a force and a direction. This definition serves as the template for the formula shown in Box 8.1:

Box 8.1: Basic vector equation

<b>Vector</b> (of modal p-i) = <b>Force</b> (p-i exerted) + <b>Direction</b> (regulatory intent)
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At present, the idea of a p-i vector is just that, an idea. The model can be used to generate ‘snapshots’ of modal relations, in re-creating and interpreting a story from real-life. The issues of how such situations may have come into being, and by what agents and means have been touched on only briefly. More will be added to the theory aspects as analysis unfolds.

Testing showed clearly that the environmental-regulatory framework is far from being balanced, in the ideal sense of equality of modal p-i. Every participant chose the *state-market* configuration from the three options presented in Figure 7.5, or some variation of it, when asked to comment on present conditions in regulation of the environment in NZ. It is expected that in other regulatory contexts and/or issues that different ‘balances’ between modes will prevail.

This section focusses on enhancing the conceptualization capabilities of the model, in the light of test insights on exercises of power and influence in regulatory systems. The discussion is not intended be comprehensive in terms of categorizing all influences making up the unitary measure of modal p-i. It also glosses over issues of potential agents and processes of change; and we are still a long way from defining and measuring p-i. These issues are explored in subsequent parts of the chapter.

### 8.73 Contextualizing the complex

Testing stressed the importance of maintaining a contextual perspective when working with the model. When seeking to abstract an area of investigation - as might be done by means of a model of a 'regulatory complex' - the context it relates to must be identified and specified in clear terms. The context demarcates and clarifies the area of praxis subject to the theoretical gaze of the model.

Throughout model development, the context of relevance has been regulation of the environment, in particular as practised in NZ. It is not inconceivable that the model could be applied to different contexts; for example, environmental regulation in other countries; or even to other areas of regulation. This extrapolation creates another problem for the model. The issue of what exactly constitutes and describes of 'an area of regulation' may be difficult to define, or be subject to dispute. For example, what differences are there between regulation of the environment, and regulation intended to support sustainable development? Is the former a subset of the latter, or is the idea of an overlap between them more useful? These questions are interesting and further investigation could yield significant results, but they are beyond the scope of the present discussion.

Another important context to bear in mind when using the model is the physical-spatial environment. Practically all regulatory acts are intended to take effect within specific parts of the physical space of the planet. Another contextual dimension is the time over which the regulation is intended to have effect. Use of the model requires careful specification of the spatio-temporal contexts addressed by the regulation under study.

Contexts may therefore be described in both 'real' and 'virtual' senses. Real contextual dimensions are described in terms of physical existence. Virtual contexts are constructed by humans, and are described in terms of institutions, conventions, and concepts; political, economic, cultural and transactional frameworks would all be described as virtual in this analysis (although virtual frameworks usually have or construct physical expressions, eg Parliament; Congress; the physical assets controlled by a corporation).

The nation-state specific bias of the model has already been noted. This convention was chosen so the model could reflect differences in regimes of environmental regulation. Most public-

interest regulation (that done by states at least) is enacted within the boundaries of the 'sovereign' nation-state, as per the structure pioneered in the Westphalia Agreement of 1648 (Wallerstein, 1974). Just as the nation is a constituent part of the inter-national system, so the model must exhibit a larger-scale dimension than that described by the individual complex construct. Figure 8.5 depicts just such a larger dimension. Shown is a conception of a world socio-political macro-system, which is a composite of all constituent complexes. Each complex has an individual structure (determined in this representation by differing distributions of  $p-i$ ), but is related to others in the macrosystem, by different means. At a 'distant' end of inter-complex relations is the mere fact of being mutually recognized as a sovereign nation (eg as defined by membership in the UN), and closer ties are defined in practice by things like; geographical/regional/political commonalities/communities (eg EU); agreements of mutual support (eg trade agreements, military alliances); cultural affinities; and all kinds of transnational business and financial conurbations. These different types of alliance (or relationship) between national-socio-cultural-economic entities are suggested by the numbering 1-4 in Figure 8.5. Inevitably, many sustainability-related issues are best viewed from the macro-level of human society; and incidentally, it is also from this vantage point that the enormity of the coordination problem facing large-scale efforts directed to issues of sustainability is clearest. A fourth layer - that of the macro-complex - is therefore added to the model. The overall structure as developed so far is outlined in Figure 8.6. This is the most highly abstracted conception so far, and is only intended as a basic sketch, the detail of which will be addressed later.

Here ends the illustrative part of the analysis of the structural-model. Through discussions on the mapping capabilities of the model and on its structure, important concepts, devices and abstractions are developed. Discussion focussed on clarifying the following model components and/or conventions: the *complex*; the *overlap*; *power-influence*, the *vector* (of  $p-i$ ); the *regulatory form*; and the composite *macro-complex*. This sort of analysis is called 'illustrative' for two reasons. The first one is the way pictures form an integral part of theory-building. The second reason is the particular way the analysis uses the model to interpret and 'make visible' events and processes observable in phenomenal contexts. In informal terms then, an illustrative analysis carefully, 'fills in the spaces', and 'joins the dots' of the model analyzed, and should ideally be well-grounded in empirically-generated insights.

Figure 8.5: Contextualizing the complex: A global macrosystem

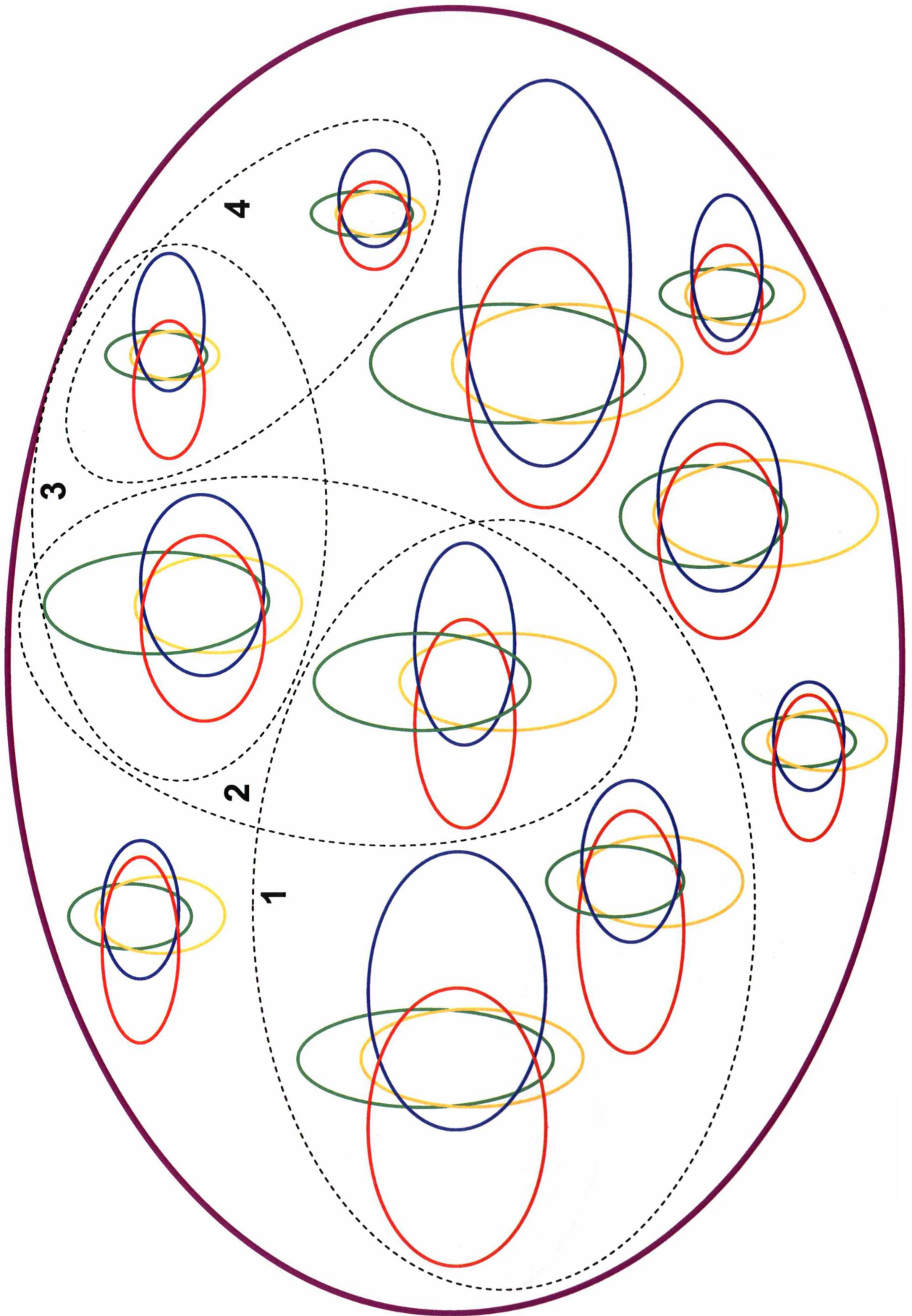
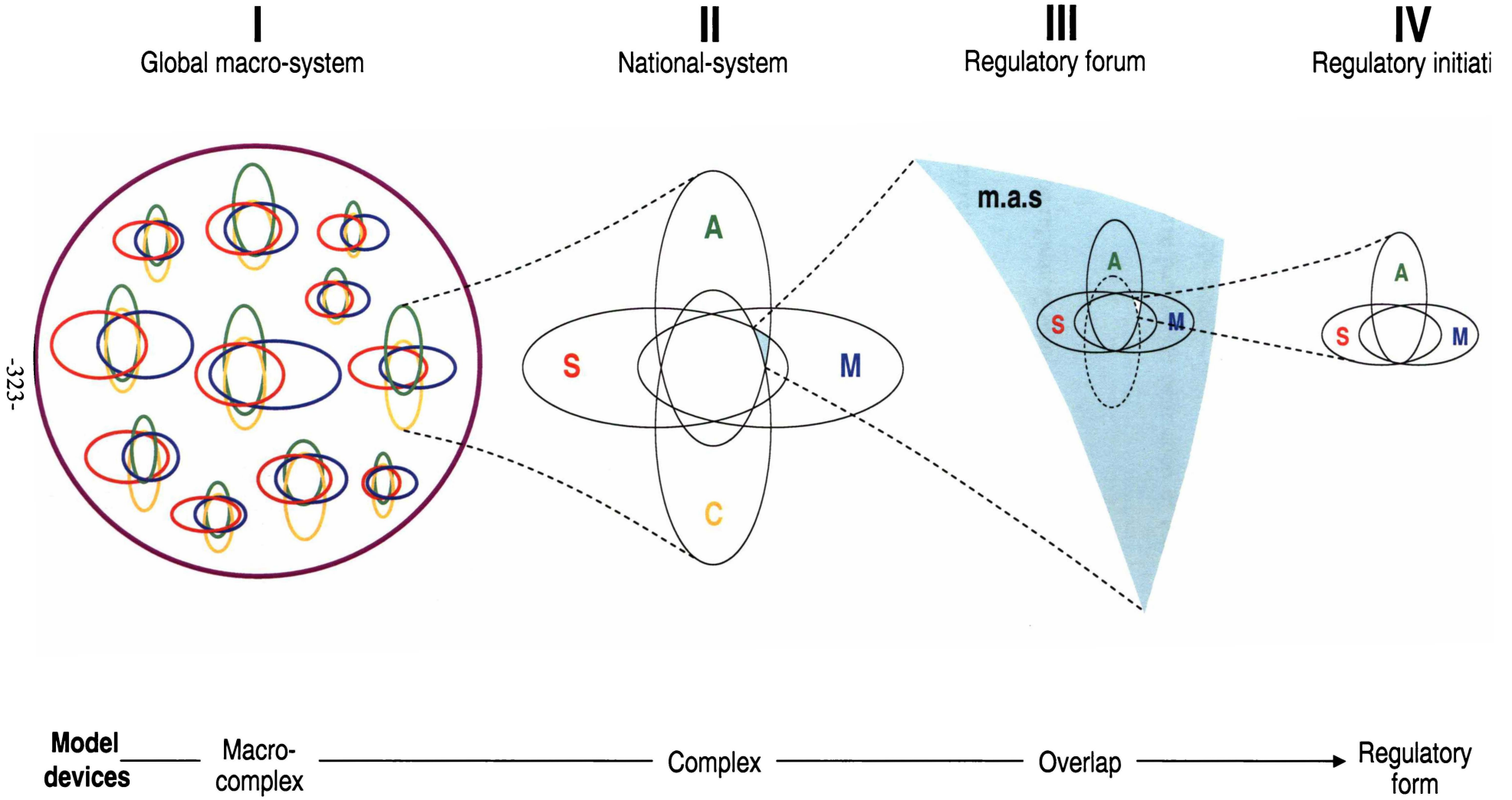


Figure 8.6: A fourth level of representation in the structural model



The analysis also pointed to areas of model conception and convention which require further attention if model development is to proceed in a properly logical and thorough manner. Further theorizing on the model aims to fill in conceptual gaps in the model, and also to promote its overall evolution. It is argued that to achieve those aims, the theorizing must become more inventive and conjectural, and unafraid to create constructs to assist in theorizing. Just such an approach is found in the speculative analysis developed for this thesis. Speculation is used to make ‘conceptual leaps’ and is more suggestive (and perhaps more normative too) in terms of theory evolution. The speculative part of the edification of the structural-model follows in sections 8.74 through 8.76.

#### 8.74 Speculating on regulatory relations

The conception of regulatory relations is at the heart of the model. The complex is only important insofar as it serves to create the idea of the overlap. The overlap is important only insofar as it provides a way of examining different ways actors interact and regulate. Hence it is important to reflect on how test insights might contribute to the evolution of the relation concept, and the way it is represented in the model.

In earlier model development, the regulatory relation was described mainly in terms of actor interactions.<sup>145</sup> In this account, acts of regulation are elongated ‘transactions’ which are engaged in to enable certain actor-preferred outcomes - determinable by reference to the mode to which they most closely identify or represent - to be manifested in the regulatory context. Regulation is facilitated and driven by the negotiation and exchange, between actors, of ‘packets’ of ‘power-information’. These packets are defined by actor interest; expectation; intent; power; authority; and so on. The manner in which regulation is enacted was theorized as a simple linear formula, expressed in Box 8.2.

#### Box 8.2: ‘Skeletal’ dimensions of the relation concept

recognize → interact → formulate → transmit → receive → negotiate → implement → monitor → enforce

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<sup>145</sup>This *precis* is based on the original analysis in s.7.21 & s.7.33-7.36.

Analysis of results from testing showed that the relation concept, at its current level of development, is limited in its capacity to account for the richness of regulation as actually practised. It is too simplistic; it is overly mechanical; it is too reliant on hidden, or assumed processes (ie. 'black boxes'); it is too focussed on 'acts' of regulation, and not focussed enough on contexts and devices (for example); and it glosses over the fact that it is humans who engage in social regulation, and as such are not easily described (or compartmentalized) by labels such as 'market-actor', 'state-actor' (and so on). These problems definitely restrict the development potential of the relation concept, and of the model overall.

The first step in developing the idea of relations is to expand and more clearly define what things must be accounted for in the development and use of the concept. Test findings suggest an enormous variety in the 'things' and 'events' making up actual regulatory contexts; including 'real' things (eg institutions, tools, people), and more 'virtual' things (eg modal discourses/ideologies). The understandings making up the relation concept must reflect - to the highest possible degree - the verities of practice if it is to model them in meaningful ways.

Testing illustrated the simplistic nature of skeletal understandings of regulatory relations. A process of strengthening the model's underlying understandings of relations is commenced below. Informed by test findings, it starts with an investigation into the different aspects of practical relations that should be recognized in theorization and model development. These aspects are introduced in parts A-K below, and used as a backdrop against which to assess the quality of the skeletal 'relation' concept. The discussion subsequently suggests directions that might be taken in improving model conceptions of relations.

## A *Actor*

Any theory of social regulation must have at core an understanding that the subjects and objects of regulation are humans and their actions. Regulation starts and ends with humans; first as participants in the construction of regulatory forms, and then as 'subjects' of said forms. Analysis of test results shows limitations in skeletal abstractions of the 'human element' in relations. It also showed that the descriptor 'actor', while convenient, must be used carefully. Humans are the constituent parts of institutions, groups and movements, which could all be said to 'act'. The individual human in the material world is inevitably a much more complex entity than the robot 'modal actor' allows. The motivations, values and interests of a *person* are

individual and visible only through observation of that person's choices and actions. However, the model cannot deal with a person. Some level of aggregation and classification is necessary to abstract and theorize. It is important therefore for any concept of relations to reflect the essential humanity of the 'actor(s)' at its centre.

## B *Discourse*

The skeletal model uses a discourse concept to help inform thinking on regulatory relations. The first important aspect of the discourse is its essentially communicative and composite nature; it is a mix of values, beliefs, narratives, ideologies, goals, behavioural patterns etc. The second important aspect is its derivative and mode-specific nature; discourses weave together the ideas and values which characterize specific modes (ie. there are four modal discourses in the complex). The third important aspect of the discourse is its relationship with the actor. In specific regulatory contexts, actors are assumed to identify with (or is principally informed by) one type of modal discourse over others, and are thus perceived as 'representatives' or 'agents' of a mode.

Testing showed the usefulness of the discourse convention in helping identify and classify messages that flow into regulatory contexts. Participants readily used terms and labels commonly identified with specific modes - terms like 'liberalizing', 'voluntary' (market); 'prescription', 'compliance' (state); and 'activism' (community). Test findings warn against too reflexive an approach to discourse. Care should be taken in classifying discourses; for example, economic values are not the sole preserve of the market. In addition, testing indicated that under certain circumstances, modal discourses may lack coherence. An example of this was found in participant feedback on inconsistencies in interpretations and applications of the RMA (1991) by different branches of the NZ government. A third lesson from testing is to take care to avoid over-identifying the discourse of the actor with that of the mode. While persons may accept (more-or-less deeply) certain modal discourses, they are generally much more flexible in this than the mode as a collective, and may choose any combination of discourse that suits them, according to their own internal (and invisible) values and motivations.

## C *Intent*

The model, in skeletal form, says little explicitly about the intent of the actor in regulation, but it is tacitly assumed to be present in the act of regulation. Intent is the motivation, or purposive

will underwriting the action of the actor in regulatory contexts. While it is important for a theory of regulation to account for intent, it, like discourse varies from person to person, it is difficult to determine directly, and must be discerned from action(s). Test findings warn of the danger of overly concretizing linkages between modal intent (eg state = control; market = property rights/profit; community = individual interest/culture; association = alliance/coordination) and the intent driving individual actors.

#### D *Meeting*

The skeletal model emphasizes transactional facets of regulation. Testing showed there is more to relations in practice than just negotiation of interests and exchange. As noted above, the regulation of social affairs is a quintessential human act. While the idea of transaction explains much of the content of relations, there is invariably much more to it than that. It is argued that the idea of *meeting* may better inform the model on how actors come together to regulate than that of 'interaction'. To 'meet' means to converge or come together at a point in the space-time continuum. Some understanding of the idea of coming together is obviously a key aspect of a good theory of regulation.

#### E *Action*

Action refers to the translation of thought and intent into tangible instruments, tools and initiatives. Earlier illustration showed areas of regulatory action - in the form of outputs from the regulatory process (ie. initiatives) - examined using the skeletal model. The model has less to say however, about the actions that lead to regulatory forms; that could be called 'relational acts'. These may be classified according to where (or when) they occur in regulatory processes; eg pre-form (eg building intent; negotiation) and post-form (eg compliance, monitoring). Or it may be classified in any number of other ways. What is important is that a theory of regulation should not tie itself to simplistic understandings of action.

#### F *Device*

The skeletal understanding of relations says little about the means by which regulation is enacted. Testing hinted at a wide range of enabling devices used to (a) conduct relations; (b) to create regulatory initiatives; and to (c) administer and control regulation. The first group of such devices

includes the following; structures for the purpose of creating and replicating modal discourses (eg research, think-tanks, communicative capacity); organizational resources (eg institutions, expertise/knowledge); and physical resources (eg meeting-spaces; financial capacities). The second group includes all means of inputting to and participating in regulatory processes; and all types of institutions/forums of regulation. And the third group of devices includes all structures and means to administer and control regulation, such as enforcement bureaucracies; and tools to measure compliance/conformance.

## G *Space*

The model, in skeletal form, assumes a type of regulatory ‘space’, which is denoted by the ‘overlap’. The overlap is currently a fairly loose conception, and thus unable to account fully for the variety of regulatory ‘sites’ found in testing. Testing showed a number of dimensions to the ‘places’ and contexts where relations between participants in regulatory processes may be conducted. Such places may be formalized and physical (eg Parliament; Courts); formalized and virtual (eg Hearings conducted via correspondence or by electronic means); informal and physical (eg Off-the-record meetings between interested parties to regulation; NIMBY activism); or informal and virtual (eg Development of worldwide environmental movements via the World Wide Web). Meetings between actors have temporal aspects also. For example, the types of meeting conducted prior to the creation of the regulatory expression (eg negotiation) will differ from those conducted afterwards (eg compliance). The time dimension of regulation is discussed further below.

## H *Quality*

In chapter 6, the idea that regulation might be affected by the bias or ‘quality’ of modal relations was introduced (see s. 6.33). Quality was understood as affected by the bias, conceptions, goals, intent and power carried into, and exercised in regulatory situations by actors. Four categories of quality were developed: accepted legitimacy; modification seeking; conflictual; and colonizing. Analysis of test results provides some evidence for asymmetric exercises of p-i in regulation, and bias (toward, for example, certain discourses, and/or regulatory goals) is evident in many types of regulatory relation. Both p-i and bias are indicators of relational quality. Quality (in the sense meant here) is a subjective assessment, and in the skeletal model is rather too mechanistic and dependent on perspective and interpretation. What may be a ‘colonizing’ act to one, may be seen

as merely efficient to another; and the boundary between ‘modification’ and ‘conflict’ may depend on whether one’s perceived interests are being served or not.

### I *Power-influence*

Earlier analysis covered the importance to the model of accounting for exercises of power and influence in regulatory situations, and the means by which p-i is exerted. The discussion in this section indicates some gaps in theorizing about p-i. This issue should be addressed in further development of the relations concept.

### J *Time*

The temporal dimension of relations is not well-treated in the skeletal model. While the mapping function can show developments over time, it relies on ‘freeze-frames’ of general or specific conditions. In analysis, the skeletal model aggregates all parts of the regulatory relation, and thus tends to assume a coincidence with regard to issue and to time. The relation concept is also ahistoric, in terms of accounting for factors giving rise to particular regulatory conditions and relations between actors. Analysis of test results shows scope for improvement.

### K *Form*

The skeletal model incorporates a well-developed understanding of regulatory form, and is able to show in great detail what types of initiative might be expected in specific situations. However, test analysis indicates room for improvement in how the relation concept accounts for form. One important area requiring development is the way(s) in which relational aspects contribute to the production of certain forms, and not others, in the face of apparently equally viable choices. Another area to better understand is the roles of fashion and preferences established at the level of the mode in the prevalence, or otherwise, of certain forms.

Table 8.3 outlines how the skeletal concept of relations meets the challenges outlined above. Each of the boxes in the table indicates how well components (of the skeletal relation concept) address the new issues raised in the analysis above; darker shading = addresses in detail; light shading = addresses simplistically; no shade = little or no correspondence.

Table 8.3: Assessing how well the skeletal relation concept addresses test questions

	Dimensions	recognize	interact	formulate	transmit	receive	negotiate	implement	monitor	enforce
A	Actor									
B	Discourse									
C	Intent									
D	Meeting									
E	Action									
F	Device									
G	Space									
H	Quality									
I	P-I									
J	Time									
K	Form									

It can be seen that the skeletal concept of relations informs the model strongly in *meeting*, *action*, and *device*, which are all supported by findings on mapping. The concept accounts fairly but simplistically for *space* (again due mostly to the mapping analysis); *quality*; *p-i*; and *form*. And it only weakly supports theorizing on *actor*, *discourse*; *intent*; and *time*. There is therefore a need to upgrade model understandings of relations. The discussion turns now to suggest a refined set of three framework principles to guide the development of the relation concept.

The first principle is the primacy of the *human* in thinking about relations. All regulation deals with humans and human action, and mechanistic ideas go only so far in accounting for living, thinking, feeling humans. This requires a shift in thinking about the place and role of humans in regulatory relations from ‘actor’ to ‘participant’. Important messages are conveyed by the idea(l) of participation; among them; (a) an understanding of equality between participants; and (b) relations as ‘conversations’, in which discourses, intents are shared, and alternative viewpoints and goals are considered and balanced.

The second principle is *harmony*. Harmonization of difference is essential for the creation and maintenance of order in a society characterized by enormous diversity. Harmony is important in relations to enable, inform and strengthen commonalities in relations, or to be ‘in-phase’ with others. A minimum of harmonization between actors is necessary for them to even recognize and communicate with one another. Regulatory relations also depend on co-incidences and coordinations (in space-time, issue, context and action) which can also be seen as forms of harmony. The concept of harmony - as developed in this analysis - has two main aspects, which are introduced below;

- (a) Discourse: Relations are best built on clear communications and mutual understandings between participants. While individual participants may be informed by discourses chosen from a wide range, the ability of a collective to produce regulation suiting all participants is dependent on the degree to which each understands the other. Hence, it is suggested that relations will be enhanced and strengthened as discourses are aligned (harmonized), and hindered as discourses become dissonant (inharmonious).
  
- (b) Ends: One of the characteristics of the regulatory environment is the diversity of ends sought by participants. A number of theoretical devices and distinctions have been developed in the literature to help identify and categorize such ends (eg private/public interests). However, at a macro-level of analysis, all diversity in ends converges to unity. This is imposed by the unity of the common good. The collective interest in sustainability, as an example of a common good goal, is such that all ends/goals which may impact on overall world-sustainability of society should be harmonized and brought into alignment. In other words, individual interests or desires cannot be permitted to override macro-system stability.

A third principle to help guide the evolution of the concept of relations is a time dimension. In actual contexts, time is an important demarcation of regulation. The discussion above showed skeletal understandings of relations to be simple, bounded and linear. Analysis of test results showed that most forms of regulation incorporate feedback mechanisms to facilitate performance/conformance assessment and learning. From a theoretical perspectives this implies a cyclical aspect in relations; ie a regulatory *cycle*. The cyclical nature of relations can be illustrated by reference to the above discussion on practical dimensions of relations. Eleven dimensions (points A-K) were raised, starting with ‘actor’. The focus in regulation processes

shifts 'downward' in a more-or-less orderly fashion through subsequent dimensions, culminating in the production of the regulatory 'form'. As the form comes to impact the behaviour and/or interests of the actor-participant, the cycle may be seen to come back to its starting point.

This section covers a number of problematic issues for the skeletal understanding of relations. It ends by suggesting principles that might be used to develop the relation concept at the heart of the model. The following sections consider how the model might be upgraded in the light of that analysis, starting with the concept of the overlap.

### 8.75 Developing the overlap concept

The overlap serves as a conceptual home for relations. In skeletal development, the important quality of the overlap was the 'meeting space' it represents, and the maps that might be drawn using it. This analysis draws a more detailed theoretical picture of the overlap, and speculates on how the concept might be developed in the light of the above discussion on relations.

Two important aspects of the model are *mode*, and *participant*. These ideas come together in the overlap. The former is a collective, while the latter is an individual. Testing showed that in regulatory contexts, participants tend to align themselves with the mode most closely coincident with their personal values and interests. This is a type of harmonization - of the collective discourse with that of the individual. As participants in regulation come to closely identify with a particular mode (discourse), they may take formalized 'positions' within the context (eg resource users; bureaucratic administrators; etc), and may thus be conceptualized as 'representatives' of that mode. In some contexts, identification of the individual with a mode is less clear-cut, and he or she may only participate in regulatory processes in more 'distant' or 'latent' senses. This understanding prompts a number of new questions for the model; how are modal discourses transmitted into the overlap space?; how do 'relations' occur in the overlap? and what differentiates a 'participant' from a non-participant? These questions and others are addressed below.

The starting point for this analysis is to speculate about the ways that modal discourses motivate participants in regulatory relations. A useful way of thinking about this problem is to see modal discourse as a type of informational 'wave'. Modes could be seen as containing an inner 'core', in which is sublimated all discursive elements common to that mode. This core would serve as

the source of modal 'rationale', and also of difference (to other modes). It could also be posited that from the core, modal discourses emanate and are 'broadcast' into the shared parts of the complex - that is, the overlap system. The means and media by which such transmissions are made would include, for example, language(s); institutions; networks; and initiatives to disseminate messages about standards of behaviour; ideology and ethics. The two conceptual components discourse and wave could combine to form a type of *discursive wave*, specific to the mode. This could be thought of as a sort of 'tone' sounded by the mode through the complex. Overlaps, in this way of thinking, hold space for different combinations of discursive wave. The composite tone supported by the overlap, would in turn assist in informing the construction of regulatory forms. Figure 8.7 depicts this convention, using overlap m.a.s as an example. As a general rule, interactions of modal discourse-waves occurs through the attitudes and actions of human actors engaged in regulatory relations. How the idea of discursive waves might inform thinking about how participants behave in regulatory contexts is considered next.

If relations are approached in a temporal manner, they can be seen as having beginning, middle and end-stages. In the beginning of the process, regulatory contexts, issues, and participants are defined and clarified; in the middle stage, meetings, actions and exchanges assist (or obstruct) development of the regulatory form; and the end stage is characterized by production and administration of the final form.

Modal discourses can be seen as critical to the process, particularly at beginning and middle stages. In the first part of the process, modal discourse helps shape and define the issue (eg environment), its characteristics (eg public/private; civil/criminal); its parameters (eg physical surroundings within national/economic boundaries), and its object (eg sustainable management of resources). Discourse also helps determine who, out of those potentially interested and/or affected by regulation, take part in actual relations. A way of thinking about this is explored in the sequence depicted in Figures 8.8 and 8.9. Part I represents an overlap (m.a.s) as 'housing' (in a virtual sense), or defining a pool of people/actors who are potentially interested in a regulatory issue. These people-representations have affinities with various modes, but in early stages of regulation, in 'latent' and unexpressed ways. The level of participation changes from potential to actual as latent modal identifications become 'activated' by discursive waves. In other words, people's latent sympathies determine which modal discourse they are more likely to 'receive', and act upon. This 'tuning-in' is seen as harmonizing the values, perceptions and actions of individual participants with those of particular mode-collectives. This idea can be visualized as

Figure 8.7: The internal structure of the overlap & resultant regulatory form/initiative

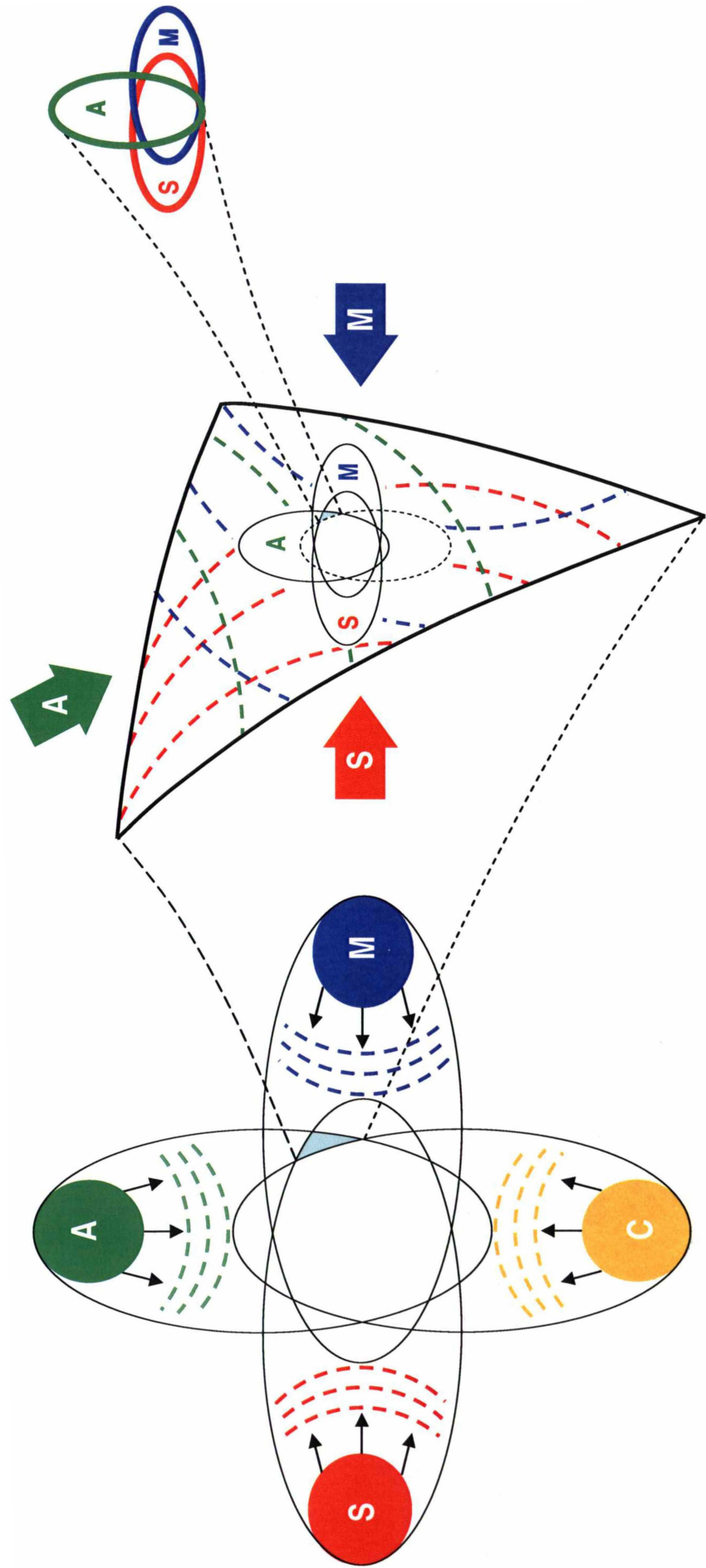


Figure 8.8: A sequential visualization illustrating aspects of relations [I & II] using overlap m.a.s

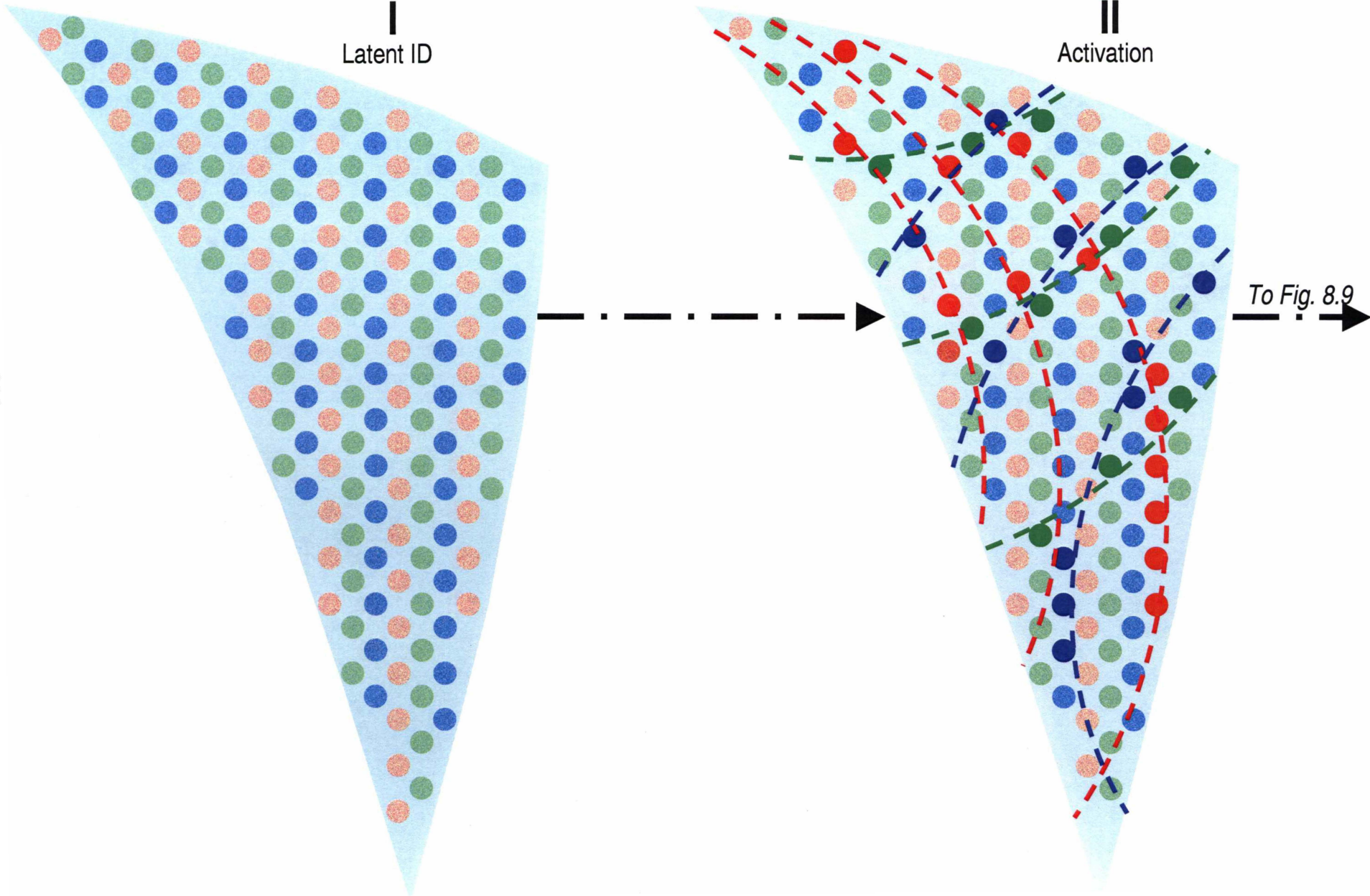
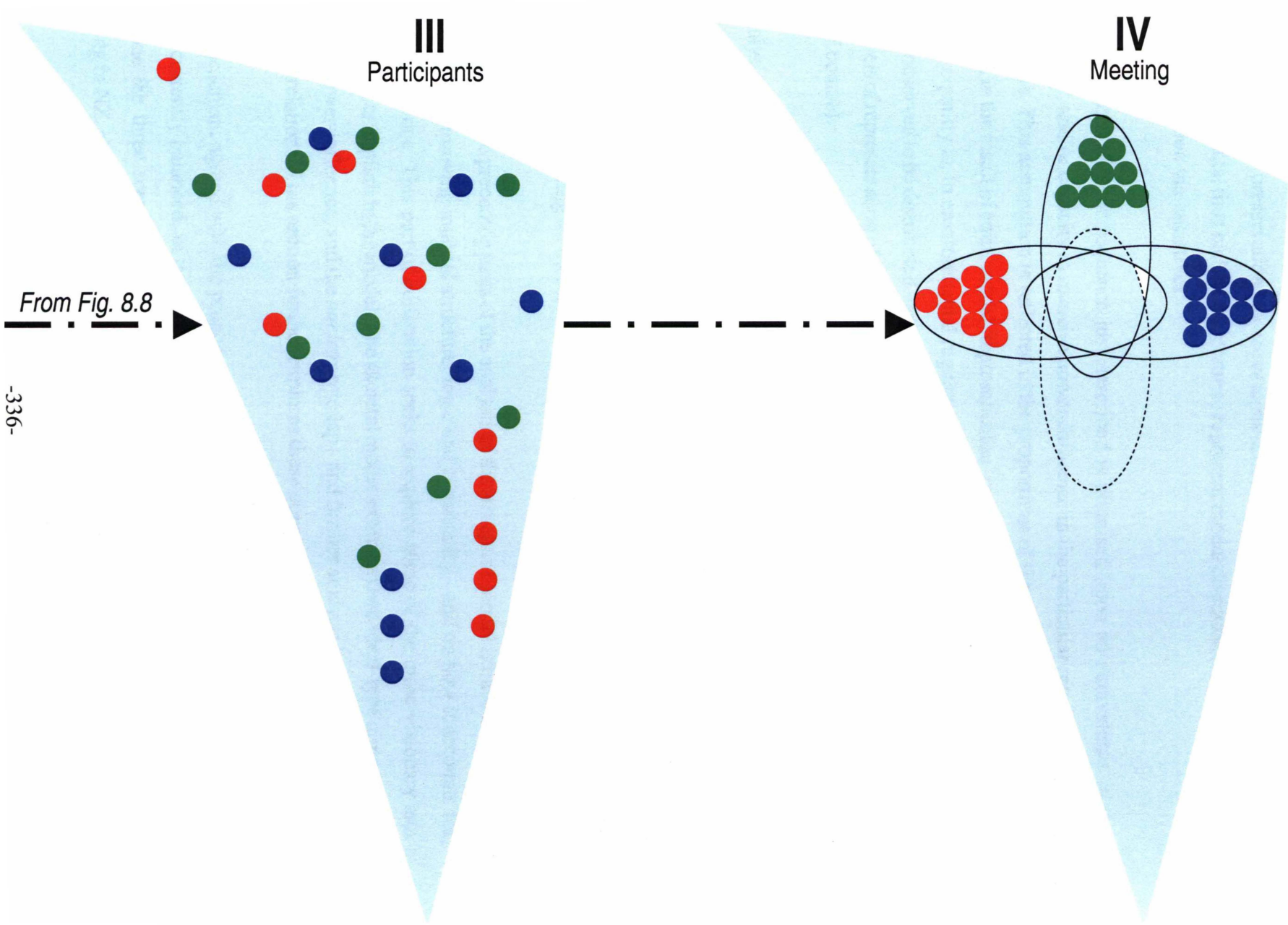


Figure 8.9: A sequential visualization illustrating aspects of relations [III & IV] using overlap m.a.s



shown in Part II. The 'activation' convention covers a wide range of ways and means by which participants are motivated to participate, including formal authority (eg bureaucratic administration); private interest in resource use (eg corporate management); community/cultural interest in eco-system preservation (eg movement/activism). Parts III and IV of the sequence shows how participants, thus picked out, come to represent modal discourses in meetings aimed at enacting regulation via initiatives.

It should be noted that the sequence just described is premised upon an equivalence in the distribution of, and/or capacity to exercise power-influence in the particular regulatory context under analysis. This assumption is reflected in the proportions of the modes, in the shape of the overlap, and in the result of equal modal 'representation' in meeting(s). The research showed that this sort of equality is, in environmental regulation, an ideal rarely achieved. In most contexts, p-i can be observed to be distributed unequally, which will have the effect of generating relatively higher levels of representation of the more influential modes in participant meetings (among other things of course).

The analysis of this section used ideas from the earlier discussion on relations to improve the concept of the overlap. Harmonization is proving to be a versatile and useful concept. The discussion considers next how understandings of the more idealistic suggestions of the model may be developed.

#### 8.76 Speculating on theoretical regulatory ideals

The theorizing of the preceding parts of the analysis of the structural-model is turned inward; that is, focussed on improving internal structure, logic and consistency - and on how it accounts for relations in practice. This part of edification seeks to explore some of the more visionary and idealistic aspects implicit in the model. The skeletal model exhibited two ideal-type dimensions - *balance* in power-influence, and the *nucleus* overlap - and further analysis has produced a third: *harmony* in relations. This section further explores these conceptions.

No test participant agreed with the proposition that the overall environment-regulatory context in NZ is currently balanced, in terms of modal potential to exercise influence. When asked to match one the three scenarios of system imbalance presented in interviews, to conditions prevailing in NZ, all chose option 1, or some variant of it. To some participants, this situation is

desirable and efficient; but others saw differential exercise of power in public interest regulation as unconscionable. One thing was clear however; the ability of participants in regulation to access and mobilize p-i is a crucial aspect of relations.

The structural-model, even in skeletal form, provides a means by which to explore alternate scenarios in balances of power. An ideal of balance is outlined in an abstract way in Part I of Figure 8.10. The dependent variables in this representation are; (1) mode *size* or area; and (2) p-i *vector*. 'Size' is a static representation, relating to modal potential to exercise p-i in given regulatory contexts. Vector is a dynamic measure, referring to actual exercises of p-i. Conceptually speaking, balance therefore implies equality of p-i in both static and active senses. History shows the impermanence of social regulation based on asymmetric possession and exercise of power (ie. force). It is argued that long-term stability in relations between different parts of society requires attention to balancing powers to regulate.

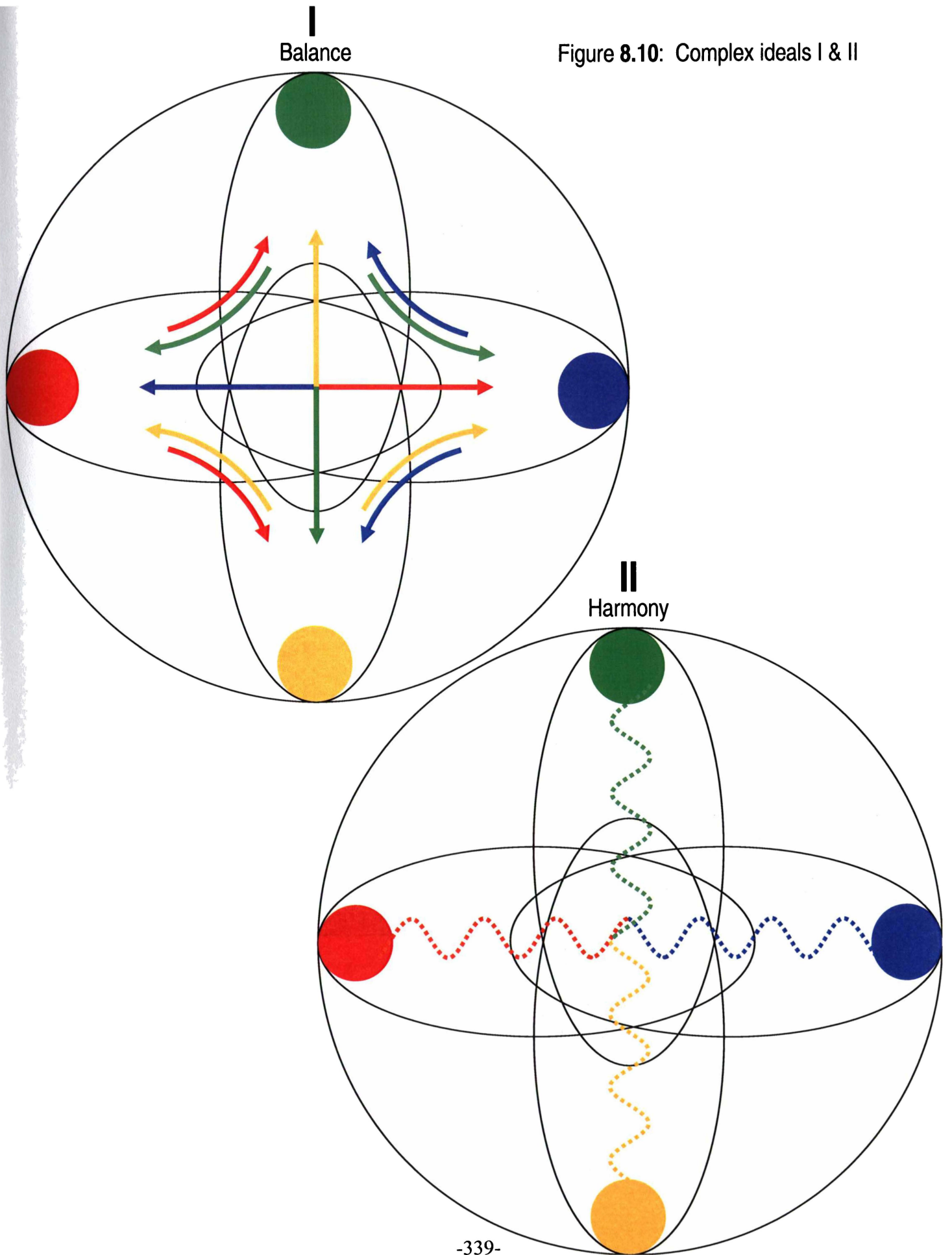
The idea(l) of harmony was introduced earlier, and refers to alignments and compatibilities in language, discourse and ends in regulatory relations. Key qualities of harmony are synthesis and integration of views. It is argued that alignment/harmonization of all mode-related 'tones' in relations is a principal determinant of the capacity of regulatory forms to meet the goals of all participants in relations. This is especially important in the regulation of social goals which have public and private dimensions. Hence, a good theory of regulation should be capable of reflecting the quality of harmony inherent in relations, since, as suggested above, relations will be enhanced and strengthened as discourses are aligned or resonant (harmonized), and hindered as discourses become dissonant (inharmonious). Part II of Figure 8.10 is intended to aid in visualizing a 'harmonic' system.

The model, thus developed, suggests that the quality of relations may be seen as related to, or a function of, balance and harmony (see Box 8.3).

Box 8.3: Combining balance and harmony in a relational equation

$$\mathbf{Relations} = \text{fn} [\text{modal Vector (p-i)} + \text{Discursive wave (tone/frequency)}]$$

Figure 8.10: Complex ideals I & II



Model ideals coalesce in the concept of the nucleus. The nucleus is the overlap formed through the overlap of all modes. It thus implies participation in relations of representatives from all four modes. Participants in testing were intrigued by the concept, and some support was found for several regulatory initiatives being seen as manifestations of the nucleus in practice (eg standards produced by a ‘balanced committee’; some applications of the RMA, 1991). However, the existence of imbalances in regulatory contexts/issues indicates a need for more precision in nucleus definitions. A start is made below, which emphasises three key aspects;

- 1 *Full participation.* All modes are represented in the regulatory forum;
- 2 *System balance.* Implies equality in potential and actual exercise of modal p-i in relations;
- 3 *Harmony in relations.* Implies optimal commonalities in discourse and ends.

This understanding raises a new problem: are nucleus-type relations possible in the absence of any of the above aspects? The model produces four answers (A-D) as shown in the bottom line of Table 8.4.

Table 8.4: Necessary conditions for nucleus-relations

<i>N</i> -aspect/Scenario	A	B	C	D
1 - Participation	✗	✓	✓	✓
2 - Balance	✓	✗	✓	✓
3 - Harmony	✓	✓	✗	✓
<i>Resultant Nucleus-type</i>	NOT POSSIBLE	WEAK NUCLEUS	WEAK NUCLEUS	STRONG NUCLEUS

A principal nucleus-requirement in regulatory relations is (by definition) full participation. Hence, no nucleus is possible under scenario A. The absence of balance or harmony in ‘full-participation’ relations produces a ‘partial’ or ‘weak-form’ nucleus in relations. A regulatory situation as characterized in scenarios B and C may produce initiatives ‘involving’ participants from all modes. But due to biases in overlap-relations, such forms will exhibit - to greater-or-

lesser extents - either imbalances, or internal dissonances, both of which may result in problems in application and potential difficulties in achieving regulatory goals.

The ideal of the nucleus (ie. 'strong-form') therefore assumes *participation*, *balance*, and *harmony* in overlap-relations. This is a simple statement; but with important ramifications for the theory. The concept of the strong-form nucleus suggests a logic of determinacy;

- (a) the regulatory form is an outcome of, and is determined by relations;
- (b) relations are determined by 'overlap conditions' (ie. aspects 1-3 above);
- (c) overlap conditions are determined by those prevailing in the complex; and
- (d) complex conditions are determined by general conditions in the macro-system.

These assertions are so ingenuous and straightforward that under other conditions they might be seen as banal. However, in the simplicity lies an essential truth. That is; the form (of regulation) is the product of the whole (the complex/macro-system). The form thus reflects the whole of the system. The theoretic assertion is, in naturalistic terms, that the form exists in a symbiotic relationship - or mutual interdependency - within the overall regulatory system or structure.

It should be noted that the 'idealism' in the model arises not from moral, ethical or ontological propositions, but from the logic of the construct. The construct suggests ideas and relations, and by exploring symmetries and patterns in thinking, theoretical ideals are outlined. The task is assisted by the geometric tools provided by the model, which expands the analytic qualities of the model by incorporating an aesthetic dimension. In taking this approach to ideals, the analysis avoids a trite and excessively normative analysis.

#### 8.77 Concluding comments on model edification

The edification carried out in this section adds considerably to the logic and detail of the skeletal structural model of regulation developed in earlier parts of the thesis. The capacity of the model to illustrate the wide range of regulatory initiatives which involve the EMS approach was reinforced. The usefulness of the model as a tool for tracking the development of EMS-related and other voluntary initiatives was enhanced; as was the capability of the model to map shifts in regulatory contexts arising from, for example, exercises of power and influence. The theory underlying the model was also expanded. Multiple levels of representation (*Global/system-*

*Context/system-Site- Initiative*) were built into the model, which allowed new understandings to emerge - for example, better explanations of why some types of initiative, and not others, are favoured in certain regulatory contexts.

A significant part of the analysis was devoted to exploring the conception of *regulatory relations*, which forms the core of the model. A much more sophisticated idea of 'relations' (compared with that of the skeletal version) was developed through an evolution of the overlap concept, among other things. It is now a much more detailed and refined conception, although some aspects require further reflection; for example, the model does not account well for motivations and intents of individual participants in regulation; and the 'quality' dimension of relations is not well specified.

In exploring the implications of the test for the model, and expanding it, the analysis introduced some new ideas, and highlighted others which require further research and development. The definitions of some of these concepts are still a little vague; for example, the idea of modal discourse (and/or ideology) clearly needs further development, in terms of exploration of origins, the roles they play, and importance in shaping actor choices; attention should also be paid to clarifying and quantifying the concept of power-influence, and related ideas, such as 'vectors' of p-i. Another idea requiring elucidation is the 'regulatory forum'; clearly, regulation is an outcome of negotiations between people who meet somehow, but how might a forum be defined, and what happens in them? The model, at this stage of development has little to say about these issues.

There are other questions the discussion raises but does not answer. For example, it models, and comments on the formation of regulatory structures and institutions, but does not say much about how and why some types form, to the possible exclusion of others. The roles that various institutions play in the development and operation of initiatives is not addressed so well, and the issue of the historical causes of regulatory conditions (eg, distributions of power, authority to regulate, actor/modal credibility, etc), is not explicitly examined either. These questions are beyond the scope of the present project, but it is expected that further development will address them.

It is found that the edified model exhibits desirable qualities in description and analysis. The theory of the model, coupled with its strong aesthetic/communicative qualities, make it particularly useful for telling stories about regulatory structures, dynamics, and scenarios. It also

shows promise as a multi-purpose tool - with some development, it may be useful in the analysis of voluntarism in other areas of public-private mediation. The emergence in the analysis of powerful, aspirational 'regulatory ideals' - *participation, balance and harmonization* - is also worthy of note. These increase the potential usefulness of the model in supporting conceptualization and implementation of initiatives directed toward challenging and multifaceted social problems; such as the balance between use and preservation of the global environment, and sustainable development.

#### 8.8 Contribution of the edified model to a better understanding of the research issue

The skeletal model was constructed in an effort to develop a deeper understanding of the potential of self-regulation to address private and public interests in environmental regulation. The model and supporting analysis suggests that the potential of voluntarism is significant, and assists an appreciation of how widespread and diverse voluntary applications are, in environmental regulation worldwide. The model acknowledges that state-governments (for example) are but one type of player in 'games' of regulation, and that coercion via legislative-prescriptive initiatives has inherent limits in its capacity to generate behavioural change by social actors. It is recognized that some actors - for example, corporations, movements, and associations - possess sufficient interest, influence and expertise to generate their own self- and semi-self regulatory initiatives. The way that the model explains the dynamism and range of initiatives produced by the interplay of actors in practice is a key contribution to addressing the research question.

The model explores the role played by discourses shaped at the level of the modes in informing actor perceptions and preferences. Actors representing market-related causes, for example, are seen typically (but not always) to seek to maximize the benefits of regulation to private interests. Added to this analysis was an examination of the results of relative imbalances in power (and/or ability to participate) in regulatory relations and the formation of regulatory initiatives. The acceptance of particular discourses among participants (ie. 'strength'), allied with exercises of power, are seen in the model as key determinants of the structure and purpose of initiatives. The model suggests that as certain discourses come to dominate relations - which is usually accompanied by exercise of power - the capacity of an initiative to integrate potentially incongruent objectives (such as public and private interests) is reduced, with the result that one (or a few) becomes 'preeminent' and others 'marginalized'.

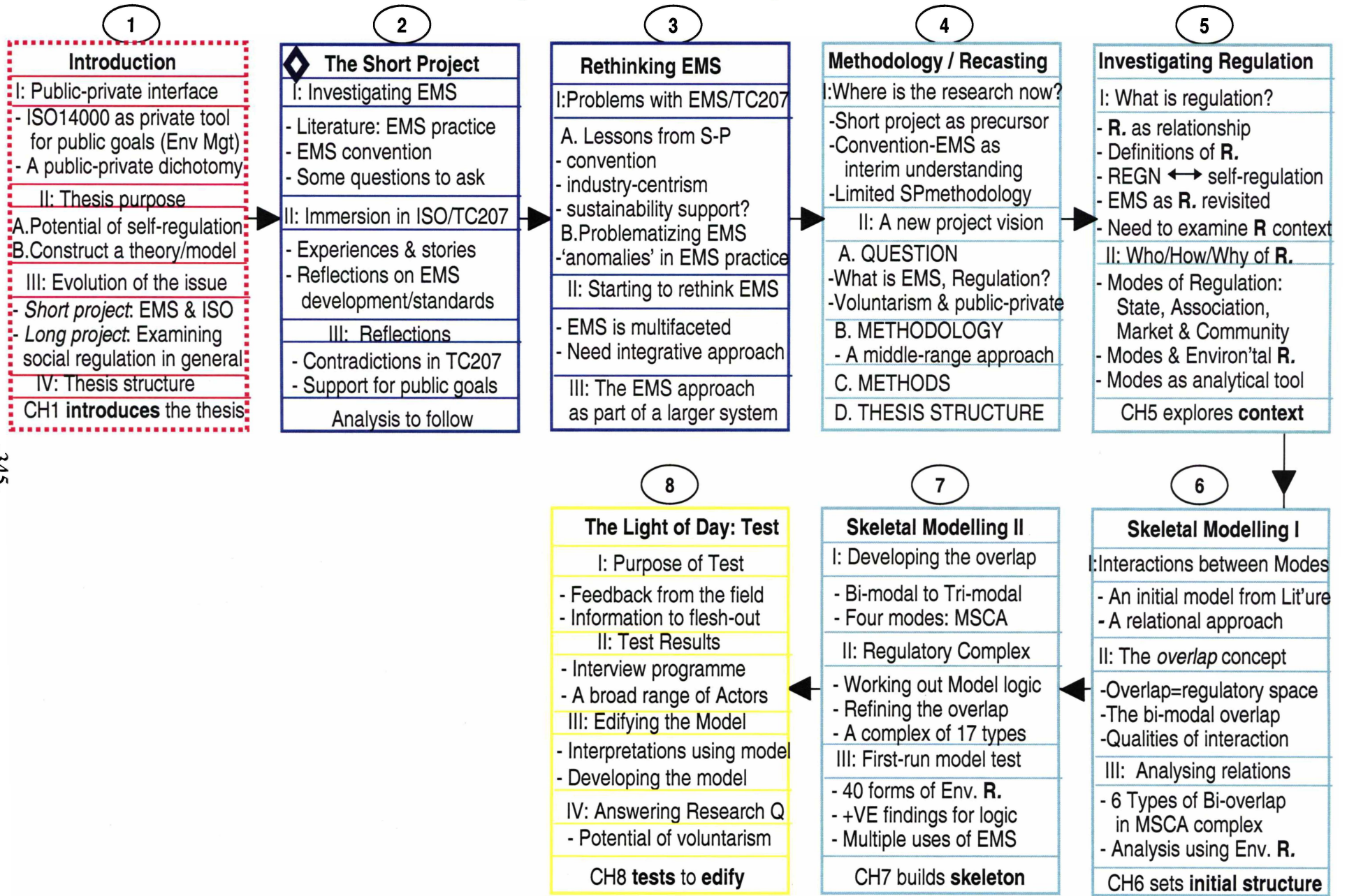
The analysis suggests strongly that the contribution of voluntarism to addressing private and public goals in regulation increases as relations in an initiative approach the ideal of the 'nucleus'. The nucleus is a theoretical ideal which represents the synergy of full *participation* (by all 'types' of actor), *balance* (in exercise of modal p-i), and *harmony* (optimization of discourse and ends).

While the model gives some important insights into the research issue, it only lightly touches on important issues of 'how' regulation may be conducted so as to maximize the contributions of self-regulation to public and private goals. Associated issues are: how does regulation work (ie. what sorts of things are *done* to regulate?); how do mode/actor views find expression in regulatory initiatives?; how does regulation change and develop over time?; what actions and roles are important in the production and maintenance of regulation?, and; how is authority and/or power to regulate produced and maintained? It is clear that further attention to the mechanics of regulation will enhance the capacity of the model to address the research question.

## 8.9 Summary of the chapter

This chapter overviewed and discussed the test of the skeletal 'structural' model of regulation developed in previous chapters, and used the results to flesh out or 'edify' the model. Test participants found much to commend in the model, and gave valuable feedback. The model, as edified, was found to possess strengths in; cartographic analysis of regulatory contexts; in modelling regulatory dynamics; in scenario generation and analysis; and in supporting theorizing about 'ideals' and ends in regulatory relations. Overall, the main contribution of the structural model is to lay out the groundwork for a new understanding of regulation, which permits a novel analysis of an old problem. The model suggests new ways of thinking of and visualizing regulation, and 'pictures' multiple pathways available to set, mediate, regulate and achieve social goals. It shows some promise as a model and indicator of evolution and progress in regulatory relations and structures (if the 'ideals' are accepted, that is). At its current stage of development however, model does not give much in the way of guidance on how practice may be improved to maximise the potential strengths of voluntarism. A way to address this omission is found and explored in the following chapter.

Figure 8.11: The thesis at a glance



**Key**

■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
Introduction	Part I: EMS	Part II: Modelling	Part III: Edification

## CHAPTER 9: Developing a process approach to regulation

### 9.0 Introduction

The model tested and edified in the previous chapter approaches the issue of the potential of self-regulation to address private and public interests in environmental regulation in an unconventional way. It is used in the previous chapter to produce an analysis that suggests that the potential of voluntarism is significant, and may be enhanced through fostering participation, balance and harmony in regulatory contexts. It was also noted that the model says relatively little about the issue of *how* the potential of voluntarism might be accessed or improved in practice. The analysis of this chapter takes a processual approach to thinking about regulation to explore ways this issue may be addressed.

### 9.1 Purpose and structure of the chapter

The purpose of this chapter is to add to the understandings developed over the course of this thesis by considering the process dimension of regulation.

The chapter is structured in four parts. The first part starts by arguing that some attention to regulatory process is needed to help cast light on how the suggestions made using the newly-edified structural model of regulation might be implemented in practice. A cyclical ‘process approach’ to regulation is developed, and is employed to reflect on aspects of the ISO/TC207 initiative in EMS-based self-regulation. It is suggested that the process approach might yield further insights for improving the praxis of voluntarism.

The second part of the chapter seeks to evaluate the potential value of the process approach by using it to frame an investigation into the development process of ISO/TC207, and in particular the strategic revisioning exercise undertaken in the period 2001-2003. My own experience as a participant in the work of the TC207 *Future Vision Task Force* (FVTF) is used as an empirical basis for this research. The process approach is found to have usefulness in supporting research into the development of EMS and TC207, and it is suggested that the approach be further developed to improve its capacity to support analysis of regulatory issues more generally.

The third part of the chapter further develops the process approach. The discussion seeks to

'edify' the approach in much the same way as in the previous chapter. Two main areas are explored in edification; the ways in which the approach informs and supports participation in ISO/TC207 FVTF processes; and how the approach is used to inform thinking about regulatory processes in general. As a result of this analysis, the process approach is developed sufficiently to classify it as a model in its own right - ie. a 'process model'.

The final part of the chapter considers what the new model adds to the overall analysis developed in the research, and in particular, how it contributes to a better understanding of the research issue.

## 9.2 Gaps in the structural model

The structural model focuses on structural and contextual aspects of regulation. This means that the model is useful to conceptualize and characterise overall structures of regulation; to study outputs of regulatory processes (ie initiatives); to analyse the development paths of initiatives; and to speculate about the sorts and 'shapes' of conditions that might be expected to promote regulation which can simultaneously achieve public and private goods.

The model says less however, about how regulation is produced and reproduced, and how the ideals it suggests may be achieved in practice. The structural model leaves a number of questions unanswered which are important in addressing the potential of the EMS approach and self-regulation in environmental regulation. Some key issues that it does not address, or only touches on lightly are noted below:

- 1 - How does regulation work, ie what sorts of things are *done* to regulate?
- 2 - How are mode/actor views and objectives expressed, negotiated and framed in regulatory initiatives?
- 3 - What actions and roles are important in the production and maintenance of regulation?
- 4 - How is authority and/or power to regulate produced and maintained?
- 5 - What is a 'regulatory forum' and what happens in one?
- 6 - How might a regulatory initiative be managed so as to contribute to the ideals of the structural model?
- 7 - How do regulatory structures and institutions form, what sorts of roles do they play, and what factors are important in the process?

- 8 - Which factors most affect the dynamics and development of regulatory contexts?  
9 - What sorts of things can be *done* to enhance the potential of voluntarism in practice?

A model confined to a structural analysis is an unsuitable tool for examining these issues. Yet clearly, an answer to the research problem requires their study. It is necessary therefore to pay some attention to processes and procedures of regulation to help fill the gap in the present analysis.

#### 9.21 A process approach to regulation

The research reported in previous chapters indicates a number of aspects to regulatory processes.<sup>146</sup> Power(s) to regulate are seldom conferred permanently. Similarly, regulatory mechanisms rarely stand unmodified over the longer term. And the aims and objectives of regulation evolve with societal expectations. Regulation must therefore be based on iterative processes to ensure that; (a) the form of the regulation is a proper representation of the intent of the regulator; (b) the regulation is constituted (eg components, means) in such a way to achieve its objectives; (c) the conduct and situations to which the regulation will apply are properly specified; (d) achievement of regulatory goals (eg compliance) is assessed (monitored, proved) on some regular basis; (e) the regulation/instrument itself is assessed for its continuing efficacy, and; (f) constituencies, as the 'givers of mandate/authority', must be satisfied that the regulation continues to meet their expectations (see, for example, Ogus, 1994). A simple, cyclical regulatory process is implied, and shown in Box 9.1:

#### Box 9.1: A basic regulatory process

*Authority → Initiative → Regulated party/Activity → Compliance → Report to Authority*

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<sup>146</sup>In addition to the literature-based research of chapters 2, and 5-7, and the empirical testing of chapter 8, the work of this section also uses results from a research project undertaken at *Environment Waikato* during the period 1997-98. The project investigated the potential role/s of the EMS approach (and other voluntary, self-regulatory and market-based instruments - VSM). Part of the project involved an investigation into regulatory processes. See Allen (1997; 1998).

A simple practical example of a regulatory cycle is found in the Plan-Do-Check-Act model used as the basis for the ISO14001 EMS standard. This was first introduced in chapter 2, and is shown again in Figure 9.1. This general model is widely used in management theory because of its simplicity and suitability in multiple situations, but it is less evident in the literature on regulation. Earlier discussion indicated that it has some promise in helping analysing regulation more generally.

Figure 9.1: EMS/PDCA model used in ISO14001

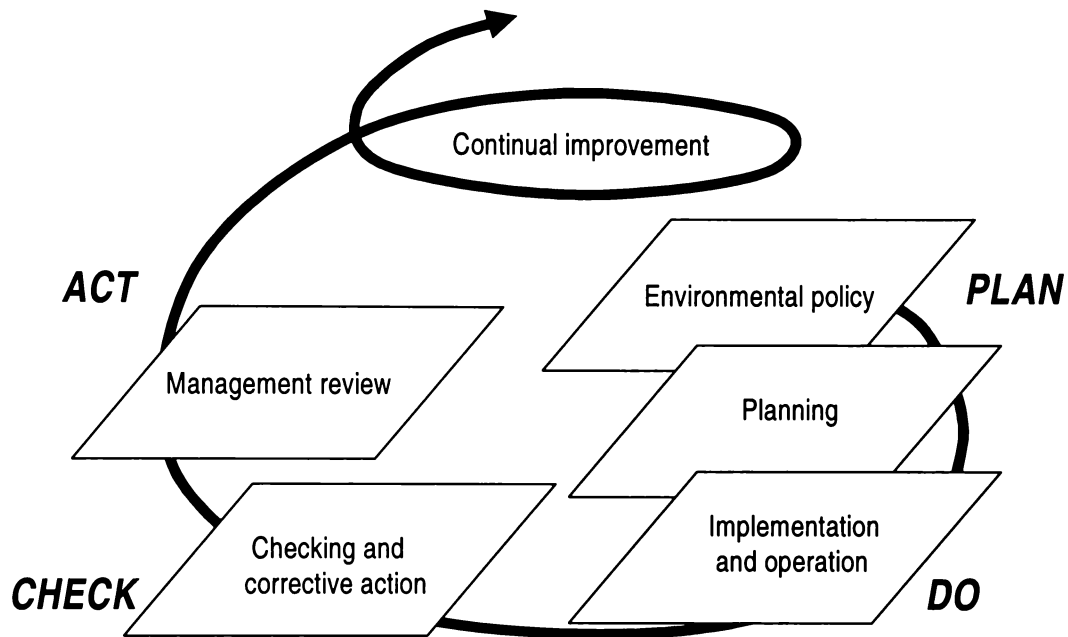
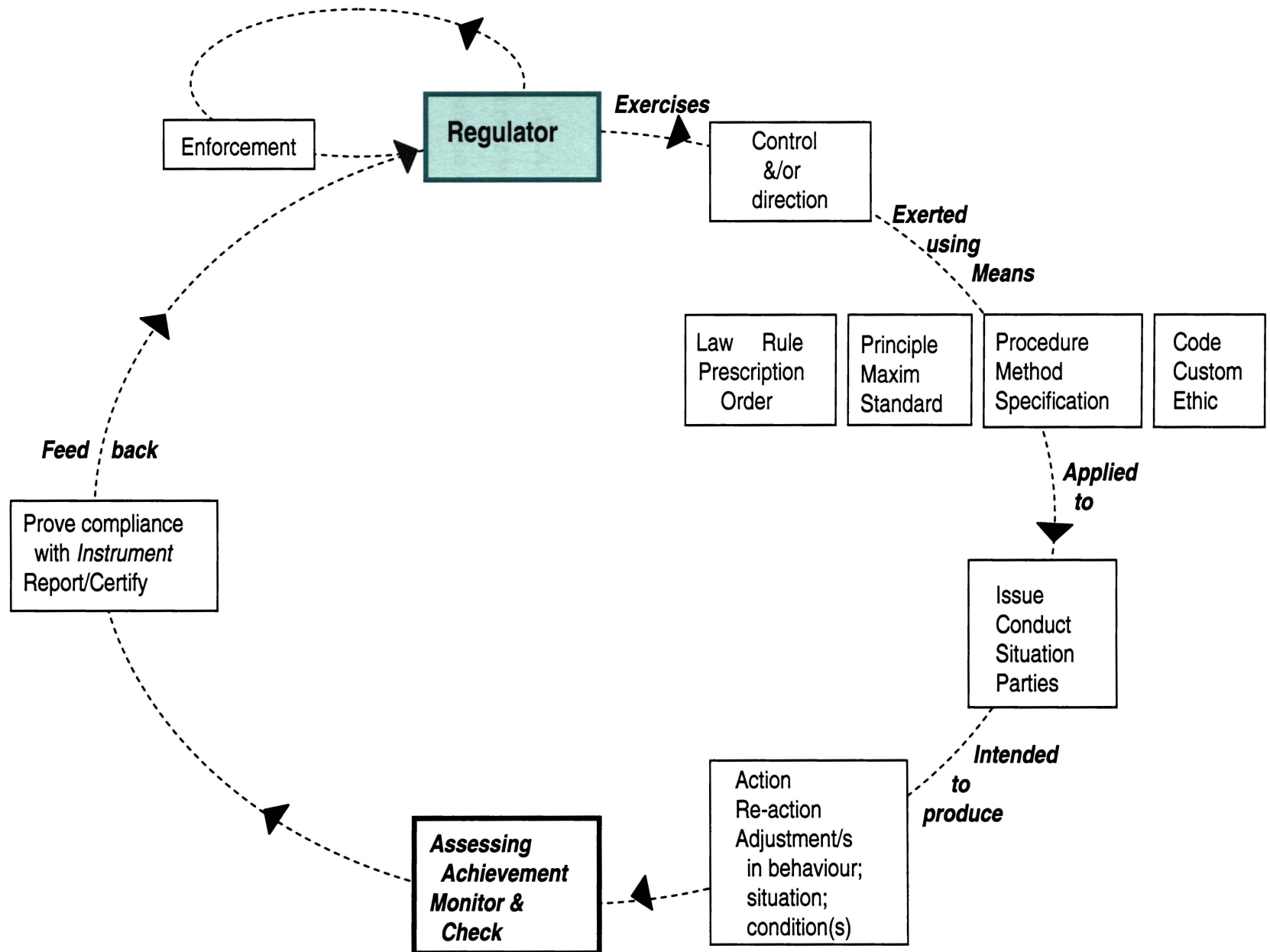


Figure 9.2 shows a more all-purpose version of the PDCA model, which is derived to explore its applicability to regulatory processes more generally. The first step in the process is the act of regulation by the *regulator* (top of circle). Powers to regulate may be bestowed by social mandate (eg based on public interest) and vested in executive and legislative structures, such as Parliaments, Constitutions and Bills of Rights (eg ‘the Crown’ in the NZ context). Alternatively, conferment of such powers may be seen as not limited to formal social mandate (ie. via electoral processes), but more informally through rights of property, custom or tradition, and vested in other social structures, such as Boards of Directors, Trusts or organisational Charters. Such powers and structures *determine* and *legitimate* the purpose(s), aim(s), and scope of regulation, and *confer* powers to regulate upon specific regulator(s).<sup>147</sup>

<sup>147</sup>The *regulator* in this sense may be seen as tangible, as in for example an agency or bureaucracy, or more virtual, as in ‘the invisible hand of the market’.

Figure 9.2: Regulation as a generic cyclical process – *short cycle*



Moving clockwise through the figure, the second major step (positioned at '3 o'clock') involves the regulator (or regulatory mechanism) seeking to exercise *control* and/or *direction* over specified issues, conducts, situations, and parties by *means* of rules, laws, procedures, codes, and customs in order to produce certain actions or adjustments in behaviour on the part of those to be regulated.

Thirdly, various *assessment* procedures and enforcement mechanisms, such as monitoring and measurement (seen at '6 o'clock') are employed, as regulators seek to ensure compliance with the requirement-specification (as in the saying, 'the letter of the law') and intent of the regulation (ref. 'Feedback I' in Figure 9.2). In some cases, enforcement action on the part of the regulator will be called for. This completes the 'loop' back to the regulator, who in turn engages in second, third and subsequent cycles, each time making greater-or-lesser modifications in the composition, emphasis, focus, intent, and/or goals of the regulation, in the light of feedback gathered from regulated parties (with regard to, for example, compliance, or its lack, voluntary actions undertaken by the regulated, costs of regulation, and so on).

#### 9.22 The need for an additional cycle in a general process approach

While the PDCA model has potential for informing a more general study of the production of, and compliance with regulatory initiatives, it does not address the question of how the efficacy of the regulation itself is assessed - that is, does it have the *effect intended?* - and how it is adapted in the light of this feedback. Feedback of this kind is often overlooked in the more functionalistic literatures on regulation (for expansion on this point, see Anderson, 1994, Ortolano, 1997; Lane, 1994). However, it is important to this analysis. Power to regulate is contingent on the continuing legitimacy of the regulator. Regulated parties will not easily accede to influence based on weak claims to authority. Regulators failing to honour, or pursue goals not in accordance with mandate-givers will, sooner or later, find themselves without that authority. In the case of the state (eg Parliament, regulatory agencies, Ministries etc), authority to regulate derives from, among other things, a public interest rationale and responsibility for macro-economic management, and flows from a mandate to govern as determined by electoral processes (in democratic systems) (Ogus, 1997; Fisher, 1997). By referring to the effects produced by the regulation (eg protected/improved environment), regulators can report to mandate givers, ie *constituencies*, on the success (or otherwise) of its actions, and thereby secure continuing mandate. This process is often complex and information from many sources is needed to

determine if regulatory legitimacy and established initiatives should remain unaltered.<sup>148</sup>

Figure 9.3 shows how this second feedback loop might be conceived of, in relation to the shorter (PDCA-based) cycle. In contrast to the first, 'shorter' cycle, the emphasis in the longer regulatory cycle - shown at the far left of the diagram as 'Feedback II' - is on monitoring and refreshing the ongoing 'life' of the initiative itself. Both cycles combine to form a general 'process approach' of regulation. The process approach is used in the discussions below to explore how the issues raised in the section above on 'problems with the structural model' may be addressed.

### 9.23 Referring the process approach back to ISO/TC207

The purpose of this section is to make a preliminary assessment of the applicability of the process approach to a real-life regulatory initiative. Figure 9.4 shows a reference diagram of the process approach as applied to ISO/TC207, and its ISO14001 standard. The figure shows both cycles as comprised of discrete steps: the short-cycle comprises steps 1-8; and the long-cycle incorporates steps 9-13. The focus in the short-cycle is on the application of initiatives by users (*step 1* in Figure 9.4). The policy is the driver of the management control process (*step 2*), which is exerted via appropriate means (*step 3*), to relevant activities (*step 4*), in order to produce the outcomes desired by the developers of the initiative (*step 5*). The main focus of the short-cycle is on how users implement and comply with the requirements of an initiative. Compliance is enabled by periodic conformance assessment, audit and policy updates (*steps 6-8*), the results of which inform subsequent 'cycles of regulation' (repeat *steps 1-8*). The process approach thus describes regulatory processes as iterative cycles. The performance of users *vis a vis* the requirements of the regulation/initiative might be expected to improve as the number of iterations increases. In the language of EMS, this process is called *continual improvement*.

The focus in the long-cycle is on the 'life' and overall development of a regulatory initiative, rather than the regulation(s) it produces. Steps 9-12 of Figure 9.4 summarises how long-cycle thinking can be applied to TC207. TC207 itself is not concerned with monitoring and assessing how individual users apply the ISO14000 standards. Instead, it must focus on its ability to meet

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<sup>148</sup>And sometimes also, the legitimacy of the regulator; the relative desirability of the aims of regulation; preferred means of regulation; types of action to be produced by regulation; etc.

Figure 9.3: Regulation as a generic cyclical process – long cycle

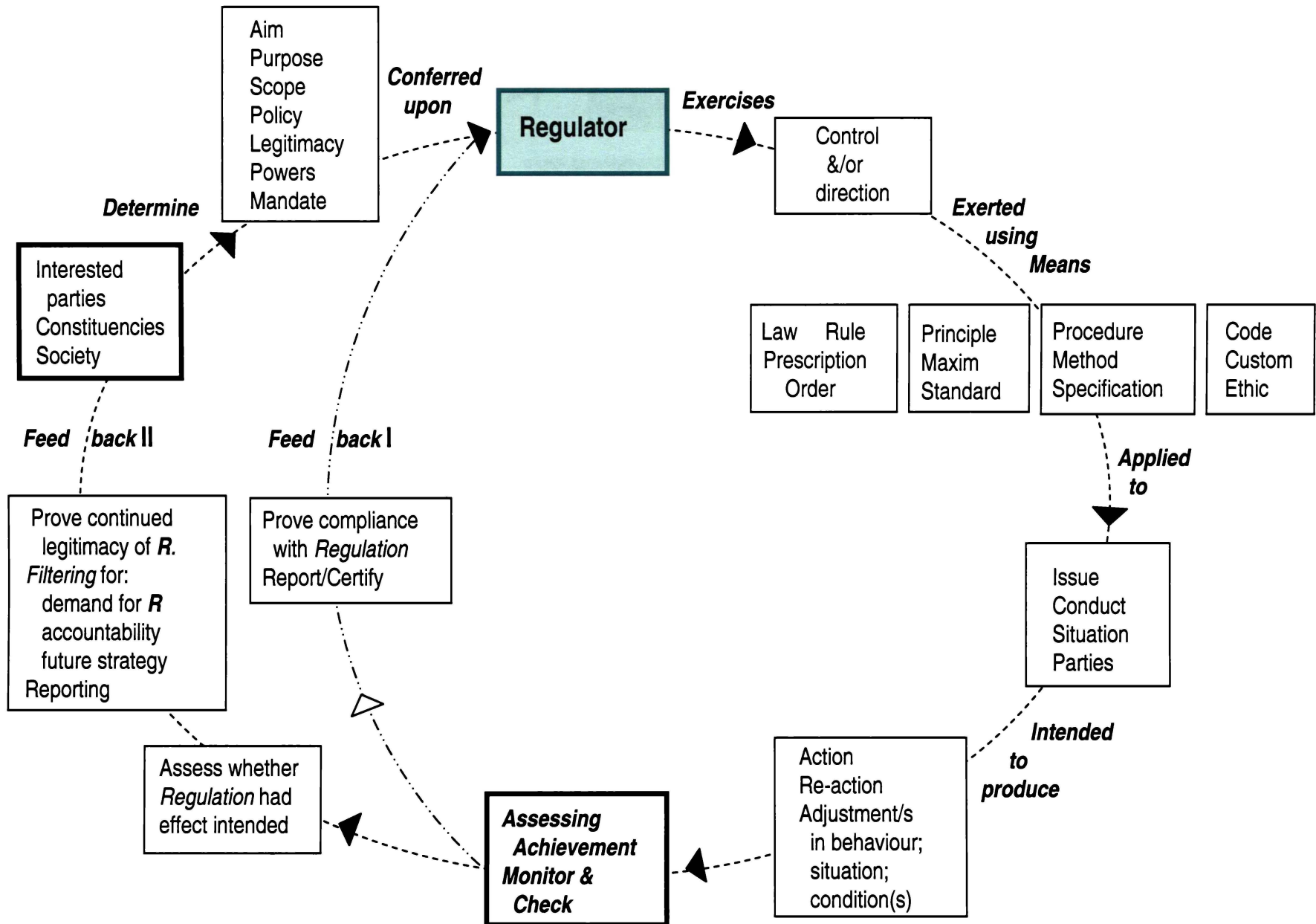
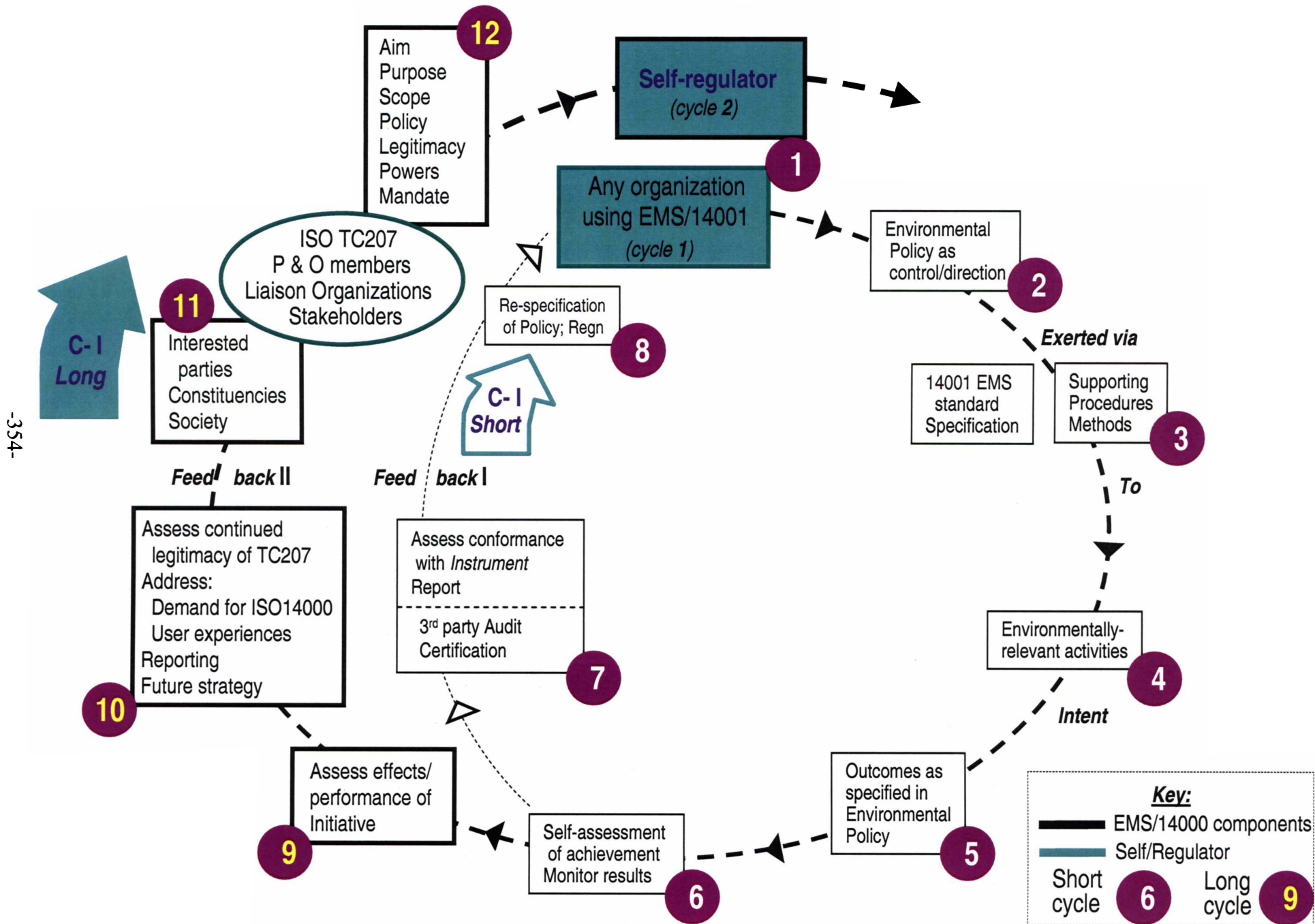


Figure 9.4: Modelling ISO/TC207 activities using the process approach



its goals, on an ongoing basis. The process approach suggests that it is crucial to assess the effects or results produced by the initiative. This might be assessed, for example, by examining changes in the behaviour of users, or measuring the achievement of the outcomes desired by the drafters and sponsors of the initiative (*step 9*). It might be expected that in the case of TC207, a 'long-cycle' assessment would consider the degree to which its stated objectives had been achieved.

The next long-cycle step (*10*) aggregates actions related to reinforcing the acceptance and legitimacy of the initiative. The process approach suggests that as part of a performance appraisal, the management of an initiative should consider how well it meets the needs of users and stakeholders, and how it might be improved in the light of experience. This information could be reported to relevant parties and/or publics, and should be used as a basis from which to develop future strategies and visions to guide the initiative in the future. It is suggested that steps 9 and 10 correspond to the *check* phase of the EMS PDCA cycle - which is about monitoring the operation of a system and the fit between intended and actual results - but focussed on the management of an initiative overall, rather than on individual users.

The following long-cycle step, as proposed in the process approach (*11*) refers to the need, in any regulatory initiative, to report to parties with an interest in its achievements. This may include, for example, those to whom initiative management is responsible, its backers and/or sponsors, constituencies, and sometimes in the case of initiatives with a broad mandate and/or effect, society in general. In the case of ISO/TC207, it might be expected that at a minimum, reports would be channelled to the ISO Secretariat; P and O Members; Liaison organizations, standards user groups, and to stakeholders. The satisfaction of accountability demonstrated by accurate reporting is vital to the ongoing mandate and authority of an initiative.

Step *12* of the long-cycle refers to the need in an initiative for periodic renewal of its mandate and 'powers' to regulate. This may also cover the need for a reaffirmation - and in some situations, re-specification - of the purpose of the initiative, its aims, and scope. In the case of TC207, it could be argued that its mandate is contingent on its capacity to meet the objectives desired by its membership and its users. The process approach suggests also that a complicating factor is the effect produced by TC207's intent to address both private and public goals. This wide scope potentially affects a body of stakeholders much larger than ISO14000 users and TC207 members. This is a significant point and will be taken up again in later discussion.

## 9.24 The desirability of further development of the process approach

The process approach is seen above to have relevance to the study of a practical regulatory initiative. The new approach, particularly the long-cycle conception, raises important issues about the evolution of the EMS approach, and further development may yield further insights on the use of voluntarism in environmental regulation.

## 9.3 Using the process approach to analyse EMS-standardization and ISO/TC207 FVTF

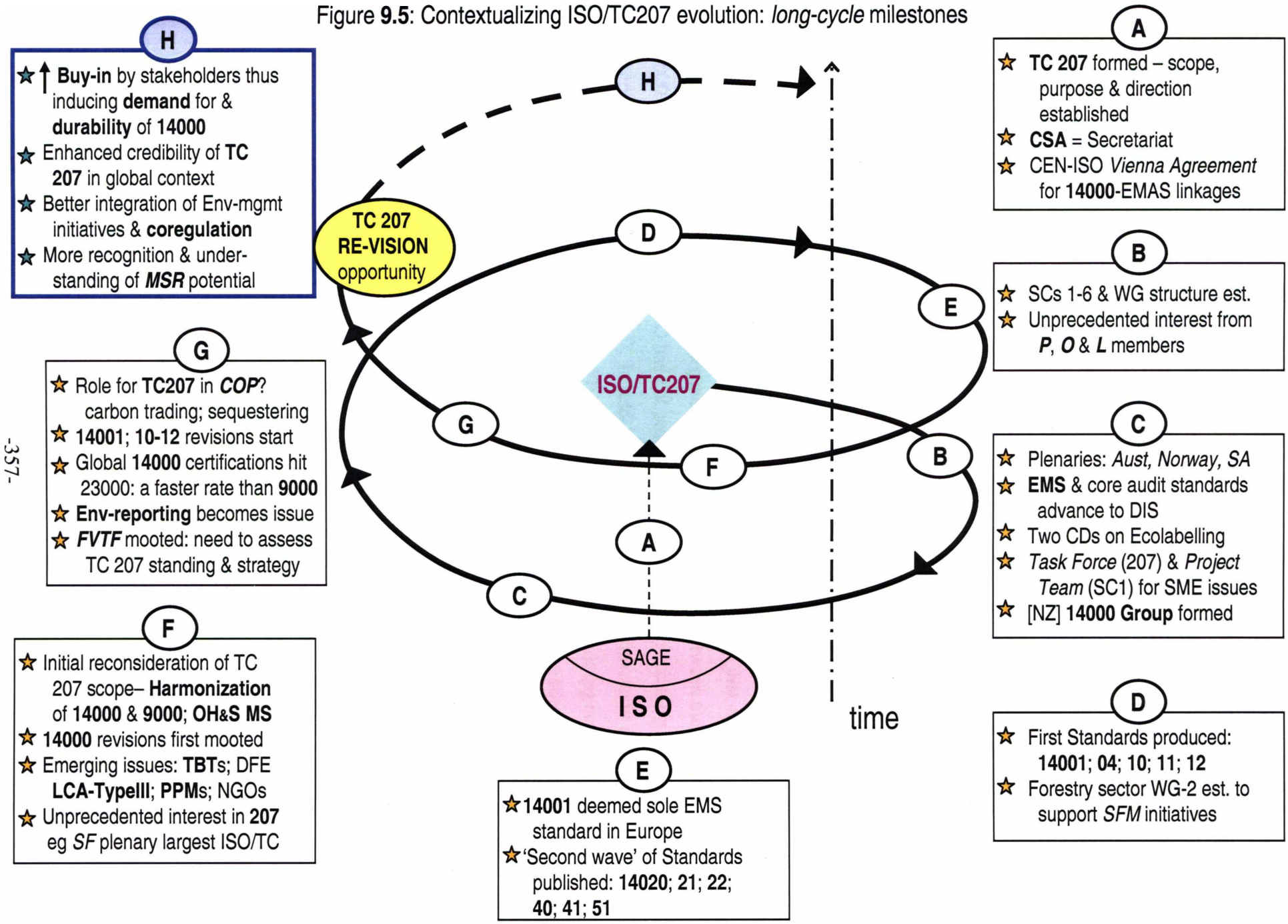
The analysis of this section makes a start in evaluating the potential relevance and value of the process approach to regulation by using it to frame research into the development process of ISO/TC207. Of particular interest is the strategic revisioning exercise undertaken by ISO/TC207 in the period 2001-2003. The process approach is used in this part of the evaluation to review, analyse and critique the process and outputs of the TC207 Future Vision Task Force (FVTF).

The discussion starts by using the process approach to frame an historical overview of ISO/TC207, the issues it has faced, and its outputs. The approach is then used to inform an investigation into the work of the FVTF, using my experience as an empirical base. A critique of FVTF processes and the TC207 strategic revision of 2001-2003 is developed subsequently.

### 9.31 A brief review of ISO/TC207 history using the process approach

The process approach is used in this section a device to track and to help contextualize the historical development of ISO/TC207. Figure 9.5 shows the results of this application. Eight stages of development are shown (A-H), beginning with the deliberations of ISO's Strategic Advisory Group on the Environment (SAGE) in 1992-4. In 1994, TC207 was formed, and the Canadian Standards Association (CSA) appointed as the Secretariat. Stage B indicates the point at which the structure of TC207 was set (1994), and notes that the TC very quickly became the largest in ISO. Stage C covers the period 1995-6, where much of the foundational work for the core ISO14000 standards was done. During this period, the key standards for EMS and environmental auditing advanced to Draft International Standard (DIS) stage. One important issue in this period was the usefulness of a 'generic' EMS standard to small and medium size organizations (SMEs). Also, during this period, Standards NZ (SNZ) formally established the NZ 14000 Standards Steering Group (NZSSG).

Figure 9.5: Contextualizing ISO/TC207 evolution: *long-cycle milestones*



Stage D in the 'first' ISO/TC207 long-cycle marks the production of the ISO14001 instrument, along with several other core standards. Using the PDCA logic, stages A-C could be described as 'Plan', since all TC207 work up to the end of 1996 was oriented toward the publication of these standards. Stage D, covering 1996-97 is the point of first production and falls into the definition of 'Do'. Stage E (1997-99) could also be classified as a 'Do' step, since it covers (i) the production of several more standards (in Environmental Labelling and Life Cycle Assessment, for example); and (ii) the negotiated withdrawal of all competing EMS standards in Europe, in line with the ISO agreement with the European standards body CEN, which arises from the EMAS requirement for a single standard for EMS.<sup>149</sup>

Stage F marks the beginning of a 'Check' phase of a long-regulatory cycle. The emphasis in a check phase is to review the results produced in the use/development of an initiative and to use this information to improve the organizations'/initiatives' performance in subsequent cycles of conformance/development. In 1999, planning began within ISO/TC207 for a revision of the ISO14001 standard. A central consideration was the needs of standards users; in many corporations, EM is managed in conjunction with quality management (QM), and Occupational Health and Safety (OH&S). It was argued by some that differences between the ISO14000 and 9000 series (and the fact that ISO has not produced OH&S standards) created problems which needed to be addressed by TC207. In addition, at about the same time, new and potentially contentious issues were raised in TC207; such as technical barriers to trade (eg how TC207 might assist with World Trade Organization efforts to harmonize international trade rules); design for the environment; and the role(s) to be played by NGOs in TC207 work.

Stage G refers to events during the period 2000-2002, and is seen as a continuation of the 'Check' phase of the long-cycle; ie monitoring and reflecting on actions/initiatives produced, and starting to think about problems to be addressed in the future. In this period, several large issues were raised in TC207. One was its potential to assist in creating rules for international trading of 'carbon credits', as proposed in the Convention of the Parties (COP), popularly known as the 'Kyoto Protocol'. Another was the role of TC207, if any, in creating rules to coordinate corporate environmental reporting. There was also occasion for self-congratulation in TC207 at this time; certifications to the flagship ISO14001 reached 23,000 in 2000, and at a faster rate of growth than ISO9000, ISO's previous best performer.

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<sup>149</sup>Key events discussed here are also referred to in chapter 2; esp. s.2.32-33; 2.62.

At its 9<sup>th</sup> Plenary in July 2001, ISO/TC207 decided it was appropriate to review TC207 achievements and resolved to undergo a comprehensive strategic planning review (ISO/TC207 Resolution 34/2001). The formation of a *Future Vision Task Force* was proposed at this meeting whose role would be to undertake this review, and to draft a new strategic plan for TC207. Members were to be drawn from TC207 'P' (Participating) membership and Liaison Groups. The group was constituted in September 2001.

The responsibilities of the FVTF is encompassed by both the 'Check' and 'Act' phases of a long PDCA cycle. This is represented by the appellation 'TC207 Re-vision opportunity' in Figure 9.6. The model suggests some actions that might be appropriate for the FVTF to consider. These are: (i) report to parties with an interest in its achievements to satisfy a duty of accountability to mandate-givers, and (ii) to take steps to renew its 'powers', or ability to regulate, by for example, reaffirmation and/or re-specification of the purpose of the initiative, its aims, and scope. The process approach therefore suggests that the re-vision opportunity afforded by the formation of the FVTF might be oriented toward the achievement of the following goals (noted in stage H of Figure 9.5);

- *Review and demonstrate achievement of ISO/TC207 objectives;*
- *Demonstrate responsiveness to the needs of the givers/sources of TC207's mandate;*
- *Enhance the continuing credibility of TC207 and the ISO14000 standards;*
- *Increase, or at least maintain demand levels for the ISO14000 series;*
- *Increase worldwide acceptance of self-regulatory instruments (such as ISO14000).*

The discussion in this section shows the usefulness of the process approach in a historical overview of ISO/TC207. It is suggested that key events in the evolution of the TC207 initiative can be classified sequentially according to the long-run cycle suggested by the process approach. The formation of the FVTF is seen as consistent with a need to periodically reflect on the achievements and direction of the regulatory initiative itself (in contrast to the 'short-cycle' emphasis on compliance or conformance with the instrument/s produced by the initiative). The next part of the assessment exercise uses the process approach to shape an investigation into the strategic revision of TC207.

### 9.32 Using the process approach to inform an investigation of ISO/TC207 FVTF

A significant part of the empirical content of this thesis is grounded in my involvement with ISO/TC207 over a period of several years. My experiences as a member of the FVTF, which was active from September 2001 to its report to TC207 in July 2003, forms the empirical basis for this part of the research.<sup>150</sup> The process approach was used in preparations for my involvement, in descriptive ways (eg to overview and contextualize the ISO/TC207 initiative, and a possible role for the FVTF), and inferential ways (eg to suggest possible lines of inquiry/investigation for the research).

This section discusses how the process approach was used to inform an investigation of the FVTF. It is has already been noted that through the lens of the process approach, the formation of the FVTF is interpreted as part of the ‘long-cycle’ requirement that an initiative periodically revise its focus and direction. The approach is interrogated further, in the discussion below, for suggestions about how an initiative revision might be approached, the issues and questions that should be addressed, the process(es) that it might employ, the actions it could take, and for insights into the purpose and role of the FVTF in the ongoing life of ISO/TC207. This analysis is used to frame an investigation of the FVTF itself, the conduct and discussion of which is discussed in a subsequent section.

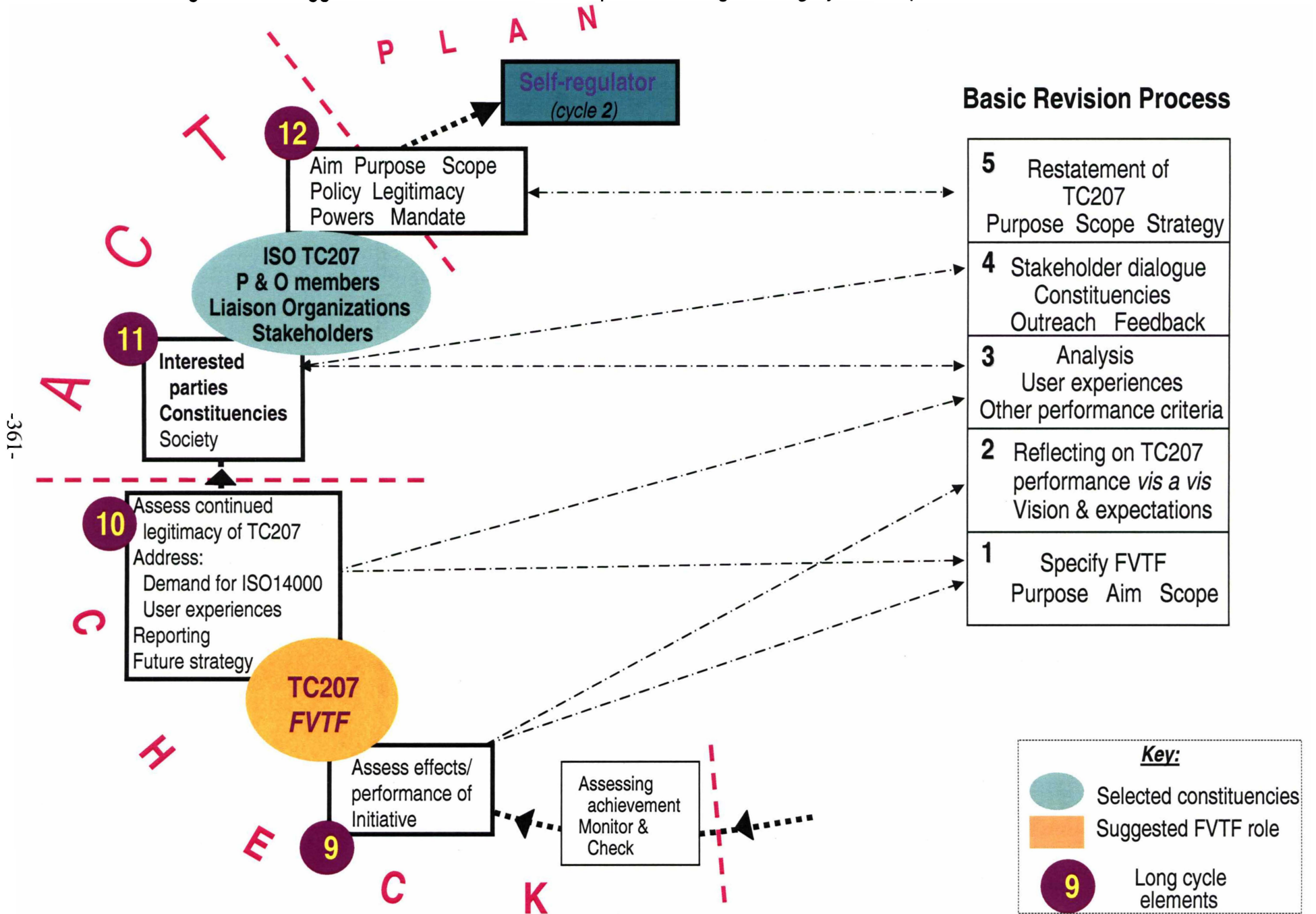
The process approach suggests that an ISO/TC207 revision exercise should start with an assessment of the effects produced by the ISO14000 initiative, and to evaluate its performance, *vis a vis* the overall aims set for it. The output from this investigation will produce information useful for building an updated strategy, and for reporting to interested parties and stakeholders in TC207.

Figure 9.6 supports the discussion following by focussing and expanding on relevant parts of the process approach. The long-cycle part of the process approach is shown on the left, with a suggested TC207 revision process given on the right. The arrows show how each of the long cycle elements relate to the suggested revision. The five parts of the suggested revision process are introduced below.

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<sup>150</sup>I was invited to be a part of the group after sending a paper based on this part of the research to the TC207 Secretariat in August 2001.

Figure 9.6: Suggestions on ISO/TC207 FVTF process using the *long-cycle* component of the model



## 1: Specify FVTF Purpose, Aim and Scope

The process approach suggests that a major revision exercise be informed by a clear statement of purpose, aim and scope. This is shown as part 1 of the *Basic Revision Process* shown in Figure 9.6. Also indicated is the necessity for this part of the process to be informed by stage 9 of the process approach (examples of issues that might be seen as important are: specification of how achievement/performance of the initiative should be evaluated; indicators of achievement/performance; means of measuring and assessing achievement/performance), and stage 10 of the long cycle (key concerns could be: maintaining or improving current levels of acceptance of the initiative; which parties are relevant for the purposes of evaluation of achievement/performance, eg users, stakeholders, NGOs etc). At the inception of a review, discussion within the review panel/group about its purpose and scope might be expected.

## 2: Assessing performance *vis a vis* expectations of the Initiative

The process approach suggests that a key focus of a revision exercise should be to consider the performance of an initiative, relative to its stated intent and vision, and the specific objectives set for it (stage 2 in the figure). It will be recalled that the four key objectives for ISO/TC207 are found in its Vision (1994), and are : (i) the worldwide acceptance and use of ISO14000 standards; (ii) to improve the environmental performance of organizations and products; (iii) to facilitate world trade; and (iv) to contribute to sustainable development.<sup>151</sup> The goals are ambitious, and as noted earlier, have both public and private good aspects. The degree to which these key goals are achieved are obvious criteria for assessing the achievements of TC207. However, the goals are not discrete, and are related. For example, an act which has the effect of improving environmental conditions, if done on an ongoing basis, will also be good for sustainability; and ISO14000 standards are clearly being used to coordinate activities of transnational corporations, so facilitating world trade. To take the goals as unproblematic would be a mistake however. TC207 is in a complicated context and pursues some challenging goals.

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<sup>151</sup>These objectives are found in the ISO/TC207 Vision Statement, and are discussed first in chapter 2; esp. s.2.64 & Table 2.3.

### 3: Analysis

A third focus in a revision exercise should be, it is suggested, on generating relevant information, from credible and pertinent sources, sufficient to enable an accurate analysis and evaluation of ISO/TC207 performance (see part 3 of the *Revision Process* in Figure 9.6). Using the criteria above, several suggestions can be made regarding potential types and sources of useful information:

#### (i) *Acceptance and use of ISO14000 standards;*

Information on this criterion is potentially the most straightforward to gather and to report. Suggested indicators include, but are not limited to the following:

- Number of certifications to ISO14000 standards;
- Usage of standards by key and/or targeted industry/user groups, eg those which present the greatest potential for either impact reduction and/or improvements in performance (large organization; hazardous operations; environmentally-sensitive industries, etc);
- Number of countries where standards are recognized and/or supported (including special regulatory arrangements for ISO14000-certified organizations);
- Number of supplier agreements/arrangements referencing ISO14000 standards;
- Trends in usage and rates of growth.

Sources for this information include; national standards bodies; ISO annual reports; government agencies; user experiences, case studies, feedback from user groups (eg industry associations); and also from EM consultancies.

#### (ii) *Improvement of organizational/product environmental performance;*

Suggested indicators include, but are not limited to the following:

- Improvements in organizational/site impacts and/or performance attributable to the use of ISO14000 standards (indicators vary widely, but examples include; emissions to air, land, water; better control of hazardous materials/processes; reductions in use of hazardous materials/processes; reductions in accident/incident rates and/or severity;

resource usage efficiency, etc);

- Improvements in environmental performance of products, as measured from a life-cycle perspective,
- Comparison of industry benchmarks, performance, practices pre- and post-ISO14000,
- Correlation of publication and use of ISO14000 standards with performance.

Sources for this information include; government agencies; user experiences; case studies; feedback from user groups (eg industry associations); industry and other research; personal experience; and environmental NGOs. This type of information can be very sensitive and difficult to source. However, the resources exist within TC207 to gather this information, given a sufficient commitment to the task.

(iii) *Facilitate world trade;*

Indicators and/or proxies could include:

- Number of trade barriers attenuated/moderated by ISO14000 standards (eg via recognition by, or integration with/mentions in free trade agreements, WTO rules);
- Volume of world trade connected with and/or produced by ISO14000-certified organizations (and trends in same);
- Volume of world trade labelled using rules in ISO14000 standards (and trends in same);
- Improvements in market access for products/organizations using ISO14000 standards.

Sources for this information include; government, and inter-governmental agencies; ISO; user experiences; feedback from user groups (eg industry associations); industry and other research; environmental and trade-related NGOs. This type of information is by its nature aggregated, and there may be difficulties in teasing out the degrees to which ISO/TC207 might be a key driver.

(iv) *Contribution to SD;*

Achievement of this goal will be difficult to assess. Information on this criterion is more likely to require qualitative and interpretive analysis than other criteria, and rely more on proxies. Suggested indicators include, but are not limited to the following:

- Degree of consistency/harmonization of ISO14000 standards with principles of sustainability, eg as enshrined in International Agreements on sustainability (eg UNCED, 1992; WSSD, 2002)
- Degree of consistency/harmonization of ISO14000 standards with principles of corporate social responsibility/social accountability;
- TC207s responsiveness to public good issues;
- Degree of increase in capacity to embrace SD practices and/or achieve SD goals as a result of use of ISO14000 standards by organizations.

Sources for this information include; government, and inter-governmental agencies; ISO; user experiences; feedback from user groups (eg industry associations); industry and other research; environmental and trade-related NGOs; SD-related NGOs; and International SD conventions.

Information on this criterion is probably the most difficult to obtain, and most subject to interpretation. However, commitment to sustainability is a major plank in TC207's strategy, and it should not shirk from its responsibility to gather and report on this type of information.

*(v) Other effects produced by ISO/TC207;*

It is also suggested that a self-assessment might also include some reflection on other effects created by the initiative.

#### 4: Stakeholder dialogue

The process approach indicates that a fourth stage in a long-cycle revision should be on reporting the information generated in the previous part of the process to those interested parties, stakeholders and constituencies to whom an initiative is related and responsible (see part 4 of the *Process* at the left of Figure 9.6). In the case of ISO/TC207, it is suggested that this part of the process should first work to identify key stakeholders; that is, those with an interest in its actions and outputs, and also those who have an interest in the use and application of the ISO14000 initiative; and its constituencies; ie, those parties and groups upon whom TC207 relies for credibility and authority to act, and/or whose connections with TC207 facilitate or enhance its regulatory capacities. A second consideration is determination of their interest in TC207/ISO14000. And third, TC207 should ascertain and report on how it currently does, or

aims to meet such interests. The underlying purpose of these actions is to renew the authority and credibility of TC207 sufficiently to support its mandate to promulgate regulation in a subsequent long-cycle iteration.

## 5: Restatement of Initiative Purpose, Scope and Strategy

An initiative revision exercise, in the view of the process approach, culminates in a new statement of purpose and vision which drives the initiative into the following long-cycle, and supports future regulatory activity (see part 5 of the *Process* at the left of Figure 9.6). The focus in this part is on plotting the future course of the initiative, based on the information about past performance (generated in parts 2 and 3) plus feedback on the interests and desires of its constituencies (part 4). It is important therefore for ISO/TC207 to develop future strategies which are designed to enhance the legitimacy of the initiative, and which allow it to respond to developing societal expectations.

It is suggested parts 3 and 4 are the most important aspects of a revision process. Part 1 is important of course, but *purpose* is determined largely at the inception of an initiative. Part 5 is a crucial output phase, but reports arise out of analysis in earlier parts. The intermediate parts, where the investigative framework is developed and evidential material for performance evaluation and goal re-specification is gathered, forms the foundation for the understandings which inform all future actions by the initiative.

### 9.33 Conducting an investigation into the process and outputs of the ISO/TC207 FVTF

The discussion above outlines the framework for the investigation of the FVTF that was conducted in the period 2001-2003.<sup>152</sup> This investigation is discussed below in three main parts; (A) the FVTF and its role in ISO/TC207 is introduced; (B) the processes followed by the FVTF

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<sup>152</sup>The experience of my early immersion in ISO/TC207 (1994-7) helped in the planning and conduct of this part of project empirics. In the empirical review of the process approach, I participated in the activities of the FVTF at a distance; I received all documentation, and engaged in email correspondence within the group, but was not able to attend either of the two FVTF meetings (held in April and June of 2002). Only formal documentation is directly quoted in this part of the discussion, and the confidential nature of intra-FVTF communication means that only my impressions and interpretations of events are noted in addition to these documents.

are discussed and; (C), key outputs of the FVTF are reviewed. The process approach is found to have usefulness in supporting research into the development of EMS and TC207, and it is suggested that the approach be further developed to improve its capacity to support analysis of regulatory issues more generally.

#### A The purpose of the FVTF

As already noted, the FVTF was established in 2001 to undertake the first major review of ISO/TC207, its achievements and the trends affecting it, with the overall aim of drafting a new strategic plan;

At its 9<sup>th</sup> Plenary...ISO/TC207 resolved to undergo a comprehensive planning review. The task of undertaking this review, and of providing a draft strategic plan, was given to the... FVTF (ISO/TC207 N591 rev1, 2003:1).<sup>153</sup>

The review was intended to address a number of dimensions; to reconsider the Vision and Scope of ISO/TC207 in the light of its achievements, and events of the previous 10 years; to analyse relevant major trends, developments and influences, and how these may affect TC207 in the future; and to recommend a set of strategic goals and a plan for their implementation and/or achievement (*ibid*).

A second key objective of the FVTF was to generate material for a report on how ISO/TC207's actions have contributed to the achievement of the sustainable development goals outlined by the UN Conference on Environment and Development (UNCED, 1992). This was to be presented at the World Summit on Sustainable Development (WSSD - known colloquially as 'Rio+10') in Johannesburg, SA in late 2002;

ISO/TC207 should take action to ensure that ISO presents in oral and written form to the Rio+10 conference how the ISO14000 series of standards has contributed to the achievement of the Rio 1992 agenda and ISO's competence and readiness to respond to new developments (ISO/TC207 N503, 2001:3).

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<sup>153</sup>See also Resolution 207-34/2001.

Participating ('P') member countries were invited in late July 2001 to submit nominations for the FVTF, and the group membership was announced in early September of that year. The group consisted of 16 members, and was co-chaired by 3 experienced technical experts from Holland, Brazil and the US.<sup>154</sup> It was recognized in ISO/TC207 that the broad ambit of the FVTF brief required an unusually range of skills and perspectives from its members. The recommendations on the selection of FVTF members by the Chairs' Advisory Group (CAG) reflected this;

The membership of the CAG Force [ie FVTF] should be based on the following principles:

- The members should have a very good overview of strategic developments in international business and governmental organizations and of global environmental and related developments;
- The membership should reflect the broad variety of regions and stakeholders involved (*ibid*:1).

The intent motivating ISO/TC207 to establish the FVTF was to reinforce its position as a credible, but essentially conservative developer of international standards in the area of environmental management;

The aim of this strategic planning should be that ISO/TC207 is seen as the authoritative, competent and responsive body to serve real societal needs in the field of environmental management systems and tools. The aims should not be to pre-design products on basis of perceived societal needs. The result of this process should be the (visionary part of the) strategic plan (*ibid*:1).

## **B** FVTF process

This part of the discussion reviews aspects of the process followed by the FVTF. Guidance on the process to be followed by the FVTF in its strategic planning was given in 2001 by the Chair's Advisory Group (CAG);

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<sup>154</sup>See Appendix y for a list of FVTF members.

This strategic planning process should comprise of [*sic*] the following steps:

- a. *review* of the current situation and achievements of ISO/TC207 until now;
- b. identification of *external developments and influences*;
- c. *assessment* of how these external developments and influences may impact on the current and potential future activities of ISO/TC207;
- d. develop a policy and identify mechanisms [ie *strategy*] for ISO/TC207 and ISO in general to be competent and responsive to these external developments and to serve real societal needs in an adequate and expeditious manner;
- e. *communicate internally* and *externally* the strategic plan (policy and response mechanisms) to show the competence and readiness of ISO/TC207 to be responsive to new societal needs for new standards (ISO/TC207 N503, 2001:1; emphasis added).

The CAG had a clearly defined process in mind, which was more-or-less sequentially constructed. While this was generally followed in practice, the FVTF leadership allowed the members some leeway to input their thoughts about process, especially at the beginning stages. In the first report of the FVTF to ISO/TC207 in April 2002, for example, it was noted that;

The activities [of the FVTF] started on 1 October when the leadership requested input from the FVTF members on [the] following questions:

1. How should the strategic plan look like?
2. How should it be developed?
3. What is a realistic framework?
4. What should ISO present at Rio+10?

This resulted in a lively E-mail debate in the 2<sup>nd</sup> half of 2001 with input from most FVTF members (ISO/TC207 N549, 2002:1).

The responses to these questions helped shape the direction of FVTF deliberations. Feedback from the group on question 2 above, for example, highlighted the necessity of reviewing the achievements of ISO/TC207; indicated a need to examine key trends in the 'field of environmental management'; and advocated a 'review of what stakeholders or constituencies of TC207 think and expect [from TC207] and what their concerns are on subjects that they think are related to the scope of TC207' (ISO/TC207 FVTF N8, 2001:2).

The 'debate' referred to in the first report of the FVTF involved a fair amount of free-form discussion and exchange of ideas among members. The debate for the first year (approximately) of the 'life' of the group was notable for its flexibility and ebullience. Some very forward-looking views emerged from this flexible approach to process (the discussion on vision and scope below notes this trend in early revisions). While definitely engaging and interesting, this approach was less successful however, in achieving coherent, structured policy recommendations in the timeframe expected by the CAG and ISO/TC207. As the pressure to produce tangible results mounted, the discussions moved from the contemplative, progressive and aspirational, to the more mundane and pragmatic.

An important facet of the recommendations regarding strategic planning from both the process approach and the ISO/TC207 leadership (eg CAG) was research to support a situation analysis and review of the achievements of TC207. The actual research performed within the group relied extensively on informal liaison with personal contacts. One report to ISO/TC207 illustrates this;

On the occasion of the TC207 CAG meeting at Billund [December, 2001] the leadership of the FVTF... decided to approach a few organizations outside ISO to get feedback on the following issues:

- 1) usefulness of the current ISO14000 series and the ongoing activities of ISO/TC207;
- 2) important trends that these organizations see in the field of environmental management or in another way related to the activities of ISO/TC207;
- 3) potential roles for international standardization related to these trends (ISO/TC207 N549, 2002:1).

Not all research was as ad hoc as this quote might suggest; for example, the situation analysis of the group relied heavily on liaison work done by one member with extensive contacts among leading NGOs. While research of this kind provided valuable information, it was not nearly as in-depth and/or extensive as that suggested in the process approach. No precise measurements and/or assessments as indicated in the 'research' part of the discussion on suggested revision process above were made. And worryingly, little effort was made to generate objective, quantitative and verifiable assessments of the achievements of ISO/TC207 with regard to its key objectives - namely, a) improvements in the environmental performance of standards users, b) the quality of its facilitation of world trade, and c) its contributions to sustainable development. The research that was done tended to be qualitative in nature and was based almost exclusively

on anecdotal evidence.

Some of this failure to address research in a thorough (and dare I say it) academic manner may be put down to the time constraints imposed by the ISO/TC207 leadership, and the pressure to produce its report and new strategic plan in a 'timely manner'. It should be noted that the FVTF in its final report suggests that much more voluminous and detailed programme of research be done in the future on a part of an ongoing strategic planning process (ISO/TC207 N591 rev1, 2003). It is something of a pity that such research was not done to support the updated strategy produced in 2003.

## C FVTF outputs reviewed

This part of the discussion of the test reviews selected outputs of the FVTF. The first section of the review examines the evolution of the ISO/TC207 vision statement, the second overviews the evolution of the scope statement, the third introduces the recommendation for a programme of 'continual planning' in TC207, and the fourth section covers the recommendation for controlling new work.

### (1) Evolution of ISO/TC207 Vision

Discussion in the FVTF on the first of the initial questions asked by the FVTF chairs - *1. How should the strategic plan look like?* (see ISO/TC207 N549, 2002:1) - focussed largely on a need to examine the intent, purpose and scope of ISO/TC207 in the light of its achievements, and changes in the internal and external conditions. Much of the discussion over the life of the FVTF centred on the ISO/TC207 vision and scope statements. For example, the need to update the vision, with regard to the nature of TC207's achievements, and stakeholder expectations was discussed at length. Another strand of debate sought to explore the limitations a standards developing body faced, and the degree of proactivity that might be allowed it; while another line of discussion sought to bring clarification on the issue of the relevance of new developments, such as emerging standards for Corporate Social Responsibility (CSR) to TC207, environmental reporting and sustainable development (ref. for example ISO/TC207 FVTF N8, 2001:1).

This part of the section examines the reconsideration of the vision statements of ISO/TC207 by the FVTF by showing how they evolved from the original 1993 versions to the new ones accepted

by TC207 in 2003. *Vision* is discussed first, and *scope* second.

*Original Vision, 1993*

Our vision is the worldwide acceptance and use of the ISO14000 series of standards which will provide an effective means to improve the environmental performance of organizations and their products, facilitate world trade and ultimately contribute to sustainable development (ISO/TC207, 1993).

This statement was reviewed and critiqued in chapter 2 of this thesis. It was noted there that the primary theme of the statement is rooted in the commercial imperative of ISO to promote and sell its products. It was argued further that the potential contributions made by ISO14000 standards to ‘environmental performance’ and sustainable development are largely assumed and at the inception of ISO/TC207 had little or no evidential foundation. In addition, it was averred that the potential for contradiction between the aim of facilitating ‘world trade’, and the stated environmental and sustainability objectives was overlooked by the original drafters of the vision. Lastly, the order of mention seemed to imply a ranking of importance - (1) environmental performance, (2) trade, (3) SD. To be fair though, TC207 was one of the first international business/industry bodies to attempt to respond to the issues raised by UNCED (1992); some imperfections should be expected in a first attempt at a vision. It might be expected that a review might seek to address those imperfections.

In its first revision of the ISO/TC207 vision statement, the FVTF shifted the thematic emphasis from the ‘acceptance and use’ of its standards, to a far more inspirational goal;

*16 April 2002*

The vision of ISO/TC207 is to *be the leading world-forum* for the development of standards that *contribute to sustainable development, world trade and improvement of environmental performance* of organizations and their products and services (ISO/TC207 FVTF N16, 2002:2; emphasis added).

This version makes a major leap from the original. The key focus here is on ISO/TC207 achieving world-leading performance in a demanding arena: the development of internationally accepted standards that collectively contribute to SD, trade, and environmental performance of standards users simultaneously. The nature of what that the ‘contribution(s)’ might be is

unspecified, but a significant one is hinted at by the singular goal to be ‘the leading world-forum...’.

The difficulty faced by ISO/TC207 is *how does one make and defend* such as assertion in a context where an increasing number of international standards setters now challenge ISO claims to leadership in related areas. Sustainable development measurement and reporting, corporate social responsibility, climate change, and environmental accounting are examples of fields where competitors to ISO/TC207 have developed high-quality and widely-accepted standards.

The potential difficulty in substantiating a monumental claim was recognized by the FVTF at an early stage in its deliberations. The second iteration of the vision statement gave the central claim the flavour of a quest;

*28 May 2002*

*ISO/TC207 seeks to be the leading world-forum* for the development of international standards that contribute to sustainable development, world trade and improvement of environmental performance of organizations and their products and services (ISO/TC207 FVTF N16rev, 2002:1; emphasis added).

The focus shifts in this version to ‘seeking’, rather than ‘being’. The progressive spirit is retained, whilst recognizing perhaps that there is some distance between reality and the aspiration. There was an attempt in the previous revision, which carries forward to this one, to reexamine the overall role of ISO/TC207 in a more idealistic light. This is reflected also in the implied ranking of importance of end outcomes: TC207 is to contribute to (1) SD, (2) trade, (3) environmental performance of users of its products.

As discussion in the FVTF evolved, the progressive quality of group outputs gradually gave way to a more pragmatic, commercially-oriented tone. This shift is reflected in the third iteration of the vision statement which is noted below.

*24 July 2002*

*ISO/TC207 is seen by users as the leading world-forum* for the development of international standards that contribute to sustainable development, facilitate world trade and lead to improvement of environmental performance (TC207 FVTF N16 rev1, 2002:1;

emphasis added).

This version dramatically limits the aspirational goal of ISO/TC207 compared with the previous iteration; moving its focus from ‘seeking to be the leading world-forum...’, to fostering a positive perception of TC207 among the users of its products. Quite clearly, the emphasis on public-relations in its key inspirational goal is questionable for as far-reaching an initiative as TC207. It was recognized that the pragmatic impulse within the group needed to modify its expression.

*12 December 2002*

ISO/TC207 *is recognized* as a leading world-forum for the development of international standards that contribute to sustainable development, facilitate world trade and lead to improvements in environmental performance (ISO/TC207 FVTF N16 rev 3, 2002:1; emphasis added).

The limitation in the vision statement that was imposed by an exclusive user-orientation was removed in the subsequent version noted above. The focus now is on how ISO/TC207 is perceived generally. The choice of the word ‘recognized’ in this iteration reflects subtle reasoning. The term widens the audience TC207 acknowledges as relevant, while not requiring the explicitness and discipline of a goal which requires it ‘to be’, or ‘seek to be’ a (or *the*) leading world forum. This version strengthens the emphasis on creating and maintaining a perception, rather than on the achievement of some objective goal.

All that is needed to satisfy this vision is to be ‘recognized’ by certain (unspecified) parties. Exactly what ISO/TC207 is to be recognized for is changed in this version too: it seeks recognition as ‘*a* leading world-forum...’, instead of the rather less realistic ‘*the* leading...’ which was introduced in previous iterations. Some progressive impetus remains in the implied ranking of outcomes to be contributed to by TC207, which remains unchanged from earlier versions.

*4 March 2003*

ISO/TC207 is recognized as a leading world-forum for the development of international standards that lead to *improvements in environmental performance* of organizations and their products, facilitate *world trade* and contribute to *sustainable development* (ISO/TC207 FVTF N16 rev 4:1, 2003; emphasis added).

The emphasis on creating 'recognition' received general approval in the FVTF, particularly the leadership, and others involved in the management of ISO/TC207 (eg CAG). It was therefore retained in this iteration. While this group of people were happy with a vision statement which elevated a desire to create and maintaining a perception to the level of an organization-wide aspirational vision, they were less pleased with potential issues raised by the implied ranking of end outcomes; ie (1) SD; (2) trade; (3) environmental improvement.

It was feared that a primary focus on SD could be used as a 'back door' to introduce into ISO/TC207 proposals not properly belonging there, and have the effect of expanding its scope beyond that wished by its members. As a result, this iteration of the vision statement restores the ranking and emphasis of end outcomes to that found in the original 1993 version: TC207 standards are intended to (1) *lead to* improvement in environmental performances of users; (2) *facilitate* trade; (3) *contribute* to SD. The iteration above was the final one produced by the FVTF, and was accepted as the new vision of ISO/TC207 at its 2003 plenary (see below).

#### **FINAL 3 July 2003**

ISO/TC207 is recognized as a leading world-forum for the development of international standards that lead to improvements in environmental performance of organizations and their products, facilitate world trade and contribute to sustainable development (ISO/TC207 N591 rev1, 2003:1).

Some important points are raised in this review, and a couple will be explored briefly. A problematic one is the usage of the term 'recognize', and its relationship with an objective reality of 'being' a leading world-forum in the sense specified. The vision is unclear as to *whose* recognition is sought, nor is much said about *what* must be done to gain the desired recognition. Recognition might be expected upon the actual achievement of 'being' a 'leading world-forum...', but opinions may vary on whether or not this has happened, depending on who was asked. However, the fact that some 'recognition' is achieved does not necessarily make the underlying goal a fact.

A second point is that the review portrays a steady weakening of the aspirational quality of suggestions for the vision statement as development proceeded. It could be said that the story of the development of the vision restatement was one of emergent idealism worn down by habitual and entrenched conservatism. On the other hand, it might be argued that the idealism expressed

early on was tempered through realism and adherence to traditional ISO principles. Either way, it depends on where one sits.

## (2) Evolution of ISO/TC207 Scope

The second major task of the FVTF was to reassess the scope of ISO/TC207 in the light of the achievements of the initiative, and changes in the internal and external conditions and the expectations of its stakeholders. The first of the initial questions asked by the FVTF chairs - *1. How should the strategic plan look like?* (see ISO/TC207 N549, 2002:1) - generated lively debate on the adequacy of the original statement of scope, which is noted below:

### *Original Scope, 1993*

Standardization in the field of environmental management tools and systems, excluding test methods for pollutants, setting limit values and environmental performance levels and standardization of products (ISO/TC207, 1993).

The debate centred on the following issues: Is the original scope too narrow? Should it be broadened? What is the opinion of the constituencies of TC207? How are actual developments (such the debate on CSR) related to the TC207 scope? (ref. for example ISO/TC207 FVTF N8, 2001:1). FVTF members were wary of expanding the original scope in early discussion, preferring to concentrate on other elements, such as the rewrite of the TC207 vision, and to see how these might impact on the scope statement. For this reason, no formal suggestions were made to modify the scope until mid-2002.

### *16 April 2002*

Standardization in the field of environmental management tools and systems, excluding test methods for pollutants, setting limit values and environmental performance levels and standardization of products (ISO/TC207 FVTF N16, 2002:2).

### *28 May 2002*

Standardization in the field of environmental management tools and systems, excluding test methods for pollutants, setting limit values and environmental performance levels and standardization of products (ISO/TC207 FVTF N16 rev, 2002:4).

By July of 2002, the thought that ISO/TC207 should play a major role in the promotion and implementation of SD initiatives had taken hold in the minds of the group, and that this should be strongly stated. A first attempt was made to formalise this in a new draft of the scope, which is shown below:

*24 July 2002*

Standardization in the field of environmental management systems in *support of sustainable development, primarily focused on environmental management tools and systems*, excluding setting of performance levels and standardization of products (ISO/TC207 FVTF N16 rev 1, 2002:4; emphasis added).

It is important to note the change; the overarching reason for ISO/TC207 ‘standardization in the field of environmental management systems’ is to support SD. TC207 exists to support SD. This represents an enormous leap from the original scope, and firmly places SD at the centre of TC207’s consciousness.

*12 December 2002*

Standardization in the field of environmental management systems in support of sustainable development, primarily focused on environmental management tools and systems, excluding setting of performance levels and standardization of products (ISO/TC207 FVTF N16 rev 3, 2002:4).

In the last iteration, shown below, the FVTF sought to address the somewhat clumsy wording of the previous iteration.

*4 March 2003*

Standardization in the field of environmental management systems and tools in support of sustainable development, excluding setting of performance levels and standardization of products (ISO/TC207 FVTF N16 rev 4, 2003:2).

It should be noted that this rewrite also had the effect of tightening the scope. Whereas the previous version included the proviso that standardization was to be limited to ‘primarily... environmental management tools and systems’, the final iteration, and the one accepted at the ISO/TC207 plenary in 2003, firmly limits the initiative to activities in the field of EMS only. A

key concern among members of the FVTF that a ‘loose’ scope might be used to expand the ambit of issues/proposals brought to TC207 (such as ‘corporate social responsibility’, and climate change)<sup>155</sup> had the effect of tightening up the scope.

**FINAL 3 July 2003**

Standardization in the field of environmental management systems and tools in support of sustainable development excluding setting of performance levels and standardization of products (ISO/TC207 N632, 2003:3).

It must be said however, that the new scope differs from the original in that it states more clearly an ISO/TC207 commitment to ‘support’ SD. The scope and vision statements are important outputs from the deliberations of the FVTF. Together they outline the ambitions of ISO/TC207, and outline the boundaries of the field within which the initiative sees itself as having the mandate to act. Their close relationship is noted by TC207; ‘to fulfil its vision within its scope of work...ISO/TC207 should set itself to achieve... [its] strategic goals (ISO/TC207 N591 rev1, 2003:2). This makes clear that the vision and scope statements are meant to closely interrelate; the vision expresses the overall goals to be aspired to within the domain expressed in the scope.

The reviews above reveal a curious asymmetry between the scope and vision statements. In the scope statement, the central justification for ISO/TC207 standardizing activity is declared to be to ‘support SD’. However, SD comes third and last in the outcomes to be sought by TC207 as envisaged in the vision statement, behind improving the environmental performance of user organizations and products, and facilitating trade. Further, the vision statement employs the weak imperative *contribute* (to give, supply something) in association with SD, as opposed to the scope’s less ambiguous use of *support* (to promote, uphold; act as a foundation).

The process approach suggests that vision and scope together with the goals that flow from them, frame the ‘Plan’ segment of the overall cycle of a regulatory initiative. Ensuring their achievement is encompassed by the ‘Do’ segment. In the case of TC207, The Strategic Plan generated by the FVTF develops a set of strategic goals and makes some detailed suggestions for how its goals are achieved. It is beyond the scope of this research to judge this plan. However, the research does have as an objective to examine the suggestion, made in the process approach,

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<sup>155</sup>This was noted in the discussion of the evolution of the vision statement above.

that a regulatory initiative should have in place a formal programme to assess the achievement of its overall goals, ie the 'Check' phase, and how this information informs updates in the strategies of the initiative ('Act').

(3) A 'continual planning' proposal for ISO/TC207

One of the key outputs of the FVTF was a proposal for implementing a programme of 'continual planning' within ISO/TC207;

the [Strategic Plan] calls on TC207 to establish and maintain a process of continual (strategic) planning, very much in line with the Plan-Do-Check-Act model that is the foundation of ISO's management system standards (ISO/TC207 N591 rev1:1).

By 'continual planning' the FVTF intends a process derived from the advice the CAG had given it in 2001. The process is meant to comprise the following steps;

1. Reviewing the achievements of ISO/TC207 in specific areas;
2. Identifying external developments and influences;
3. Assessing how these... influences may impact on current and potential future activities of ISO/TC207 or existing standards;
4. Developing plans and identify mechanisms for ISO/TC207 to be competent and responsive to those external developments in an adequate and expeditious manner;
5. Communicating internally and externally these policies and response mechanisms to show the competence and readiness of ISO/TC207 to be a leading world-forum for the development of international environmental management standards supporting sustainable development (*ibid*:4).

This proposal was seen by the FVTF as important to ensure planning is better systematized/controlled, and to bring the PDCA model into ISO/TC207 processes thus bringing about some consistency with the design philosophy inherent in the ISO14000 standards.

(4) Recommendations for controlling new work

Associated with this continual planning process was a proposal for controlling the way

ISO/TC207 handles new work items. The scope and vision statements play a major role in the framework for deciding the subjects which will be addressed by TC207 deliberations and standards. However new, or 'horizon' issues often require some interpretation of their fit with these statements, and the taking on of new items carries with it the possibility of either purposely or unintentionally extending the scope of the subjects TC207 will deal with. New items of work have traditionally arisen through, 'external pressures or market needs... [and] have surfaced [in TC207] through the CAG, the NSBs [National Standards Bodies], the SCs [Subcommittees] or ISO's policy bodies' (*ibid*:4). The new work item evaluation process is important for a second reason; in order to be 'responsive' to its stakeholders and developments/trends, TC207 must thoroughly evaluate each proposal for new work. Formal control was therefore deemed important enough for the FVTF to make a detailed recommendation for the process of evaluating new work:

- Identification of horizon issues for new standardization (can be done by a NSB, the secretariat, a liaison organization, etc)
- Establishment of sub-group to assess TC207's role in setting that area, including:
  - ◦ Act as enquiry point for external parties with an interest in new areas of standardization
  - ◦ Act as a focal point for NSBs, liaison organizations, TC207 subsidiary bodies with interest in new areas of standardization
  - ◦ Oversee activities involving TC207 members in further development of ideas;
- • Actively liaise with relevant external bodies; external meetings/conferences relevant to the area in order to learn more/consider implications for TC207
- • Host workshops during TC207 Annual Meetings to give external and internal parties an opportunity to consider issue
  - Respond to inquiries
  - Outline options/issues
  - Compile register of interested parties (possible future liaisons)
  - Propose process for moving forwards [*sic*]
- • Work with interested parties on the development of new work item proposal and drafting of formal justification study
- • Work with interested parties to consider and respond to comments on NWIP
  - (If NWIP approved) Establish SC/WG for the development of the standard (*ibid*:5).

A notable feature of the NWIP process is the importance placed on the management of

ISO/TC207's relations with stakeholders/external parties. The arrows above show areas where TC207 is encouraged to engage closely with interested parties. The FVTF (and others) recognizes that TC207 addresses issues which involve a large group of stakeholders, and undertakes actions in contexts which grow increasingly complex.

#### 9.34 Lessons from applying the process approach

The process approach was developed to help start an exploration of how the suggestions made using the structural model of regulation might be achieved in practice. The process approach was applied to the case of EMS-standardization by ISO/TC207 to assess its relevance and potential usefulness. Lessons from this exercise are summarized below.

##### *Usefulness in analysing ISO/TC207*

The process approach was shown to have a high degree of relevance for an examination of ISO/TC207. While the approach was originally developed from a review of EMS (eg ISO14001) and its implementation (ie. the 'short-cycle' of regulation), it proved to be just as helpful in supporting an analysis of TC207 itself. One of the first things noted about the process approach was the way it provided, through the 'long-cycle' conception, an integrated conceptual framework to assist in studying TC207. A historical review related past actions of TC207 with more recent and possible future actions, in a continuous 'strand' of development. Examination of this strand/sequence showed a pattern consistent with the process approaches' long-cycle 'PDCA' analysis. The process approach interpreted the inception of the FVTF as a necessary 'Check' exercise for TC207 to reflect on its achievements and to feed information into a following 'Act' programme where recommendations for future action can be made.

##### *Support for participation in strategic planning*

As noted above, I participated in the work of the FVTF. The process approach strongly supported this participation. It was used to help contextualise the FVTF in the long-run development of TC207 and to highlight key problems and issues that the group was to address. An important facet of the support given by the process approach was a suggested framework for FVTF process. It was found that this process was followed in practice, albeit in more of an *ad hoc* fashion than that indicated by the process approach itself. However, some important aspects of the projected

process were not pursued with the vigour suggested by theory - research and stakeholder outreach in particular were weakly performed by the FVTF - which will have the effect of increasing the urgency of this task in the proposed 'continual planning programme'.

*Lessons from reviewing the work of the ISO/TC207 Future Vision Task Force*

This part of the analysis reviewed key outputs of the FVTF. Examination of the evolution of the ISO/TC207 vision and scope statements showed the difficulty the group had with balancing progressive views (on, for example, the relative importance of sustainable development to TC207) with the traditionally conservative bias of TC207. An important aspect of the review concerned the highest aspiration of TC207, as expressed in the vision statement. The final version emphasized a desire for 'recognition' of TC207's efforts to be a 'leading world-forum', rather than, for example, seeking the objective reality of actually achieving that end. The review also revealed odd inconsistencies between the vision and scope statements. For example, while the scope was widened significantly (compared with the original 1993 version) in explicitly noting SD as the main justification for TC207 actions, the vision is strangely muted in its commitment to SD.

The key FVTF recommendations for a programme of 'continual planning' in ISO/TC207, and for controlling new work were examined and found to be generally consistent with the suggestions of the process approach. Overall, the review showed a clear intent on the part of the FVTF and TC207 leadership to not stray too far from its original intent and plan. Some gaps were found between the promise of the strategic planning exercise and the actuality, and the final report of the FVTF was found to be long on recommendations and policies, and short on explicit definitions (of for example, constituencies and stakeholders) and measurement (of for example, TC207 achievements and stakeholder views).<sup>156</sup>

Overall, a high degree of robustness was found in the support given by the process approach in a demanding empirical situation. It is therefore suggested that the approach be further developed

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<sup>156</sup>It should be noted that this analysis is not intended to be a critique of the leadership and/or members of the FVTF. In its deliberations, novel and progressive ideas were proposed and discussed, but the ability of the group to make innovations was constrained by member perceptions of what ISO/TC207 as a group would accept. One aspect the analysis does not investigate in depth is the political dimension of a standards developing body.

to improve its capacity to support analysis of regulatory issues more generally.

#### 9.4 Edifying the process approach

This part of the chapter considers ways in which the process approach may be built up and improved in the light of results of the investigation reported above, using the edification method illustrated in the previous chapter. The ‘edification process’ focusses on the *descriptive* qualities of the process approach; its capacity to be *adapted* following acquisition of new information; its conventions and structure; its *communicative* capacities; its usefulness in *projecting* scenarios, developments and ideals; and the *aesthetic*, ‘look & feel’ of the approach.

The section starts with a re-introduction to aspects of the broader context within which ISO/TC207 is situated. ISO is a major player in international voluntary regulation, and the actions of TC207 affect an increasing number and variety of parties. This leads into a development in the long-cycle convention of the process approach. The discussion uses that contextualization to start an analysis of relationships between TC207 and its stakeholders. The section following explores the implications that the work of the FVTF has for the cyclical theory at the heart of the process approach, and the cycle convention is given greater definition and depth.

The final part of the discussion synthesises the lessons of edification by exploring three principles which underpin the ‘process approach’ way of thinking about regulation in general. It is considered that following edification, the process approach has been developed sufficiently to be seen as a model in its own right.

##### 9.41 Contextualizing ISO/TC207

As noted in previous discussion, ISO/TC207 can be seen as sitting at a key point of convergence of public and private policy issues. This convergence has a number of facets, which are introduced below, and summarized in Figure 9.7. In no order of importance they are;

(1) a proliferation worldwide in voluntary and self-regulatory initiatives. Established and emerging initiatives employ a wide range of techniques - such as labelling, codification, standardization, certification, reporting and communication formats - to help regulate a growing number of public and private issues; notable examples are international trade, the environment,

and sustainability.

(2) Parallel to this trend is a movement, observable in practice and noted increasingly in the literature, which advances causes of 'social responsibility' in conjunction with corporate governance. This broad movement is aimed at developing and promoting instruments, processes, assessments/audits, and reporting to reinforce best practices and corporate citizenship (see, for example, Gray, 1998; Gray, Owen & Maunders, 1987; GRI, 2002).

(3) Over the past two or three decades, industries globally have faced increased exposure to environment-related risks, including stricter liability laws; potential loss of reputation; and the growth of competition based on environmental qualities and/or awareness. Contributing to this issue is an increasing concern within communities and states about environmental improvement and sustainable development

(4) This concern has manifested as more and stricter environmental laws, a proliferation of environmental/sustainability initiatives, and increasingly militant popular movements. An ongoing inquiry by governments as to how best to recognize and encourage responsible voluntary self-management balances this pressure on companies somewhat.

(5) The internationalization of rule-systems has accelerated in the past ten years, via institutions such as the World Trade Organization (WTO) and ISO. This movement has led some commentators to argue that a process of *disestatization* - an erosion of the authority and rule making scope of individual states in international contexts - has been underway for some time and is accelerating (see, for example, Jacobs, 1994).

(6) The same limitation in the power of the nation-state - a single state finds it extremely difficult to set and enforce laws in a global context - that leads to an erosion of their authority has also led to a the emergence of global initiatives to address macro-problems, for example, the Rio Convention (UNEP, 1992); the Kyoto Protocol/Framework Convention on Climate Change (FCCC); and the World Summit on Sustainable Development (WSSD, 2002).

Figure 9.7: Major influences on ISO/TC207 development and evolution

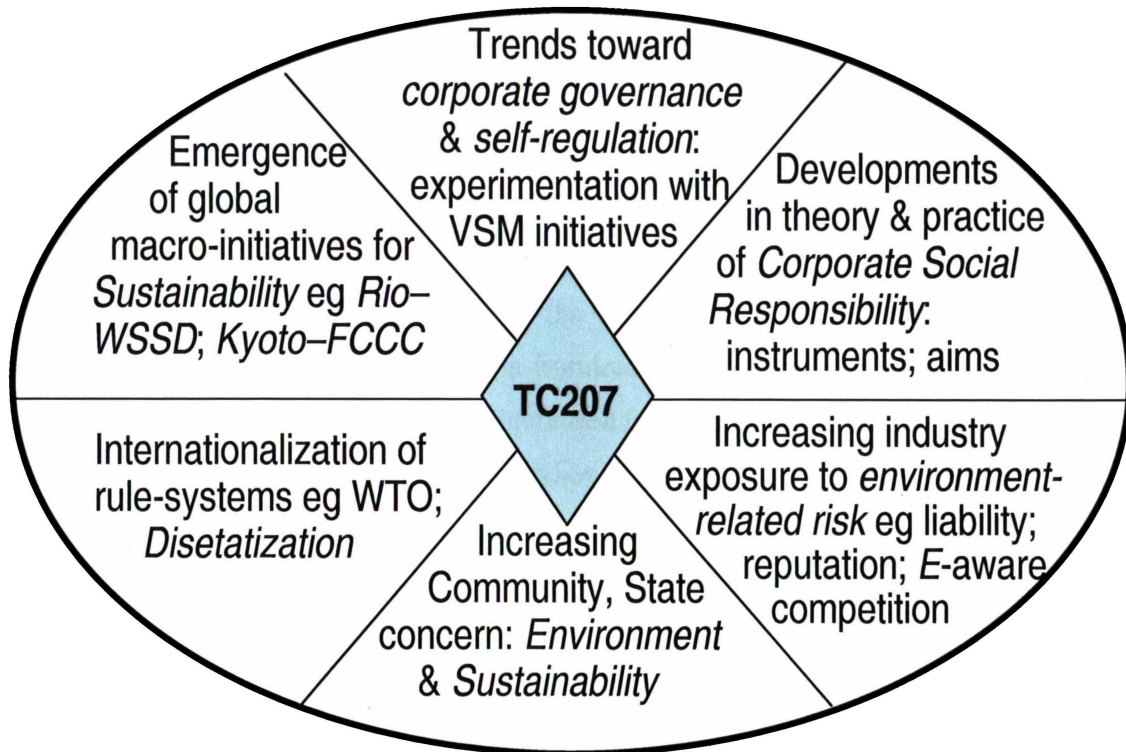
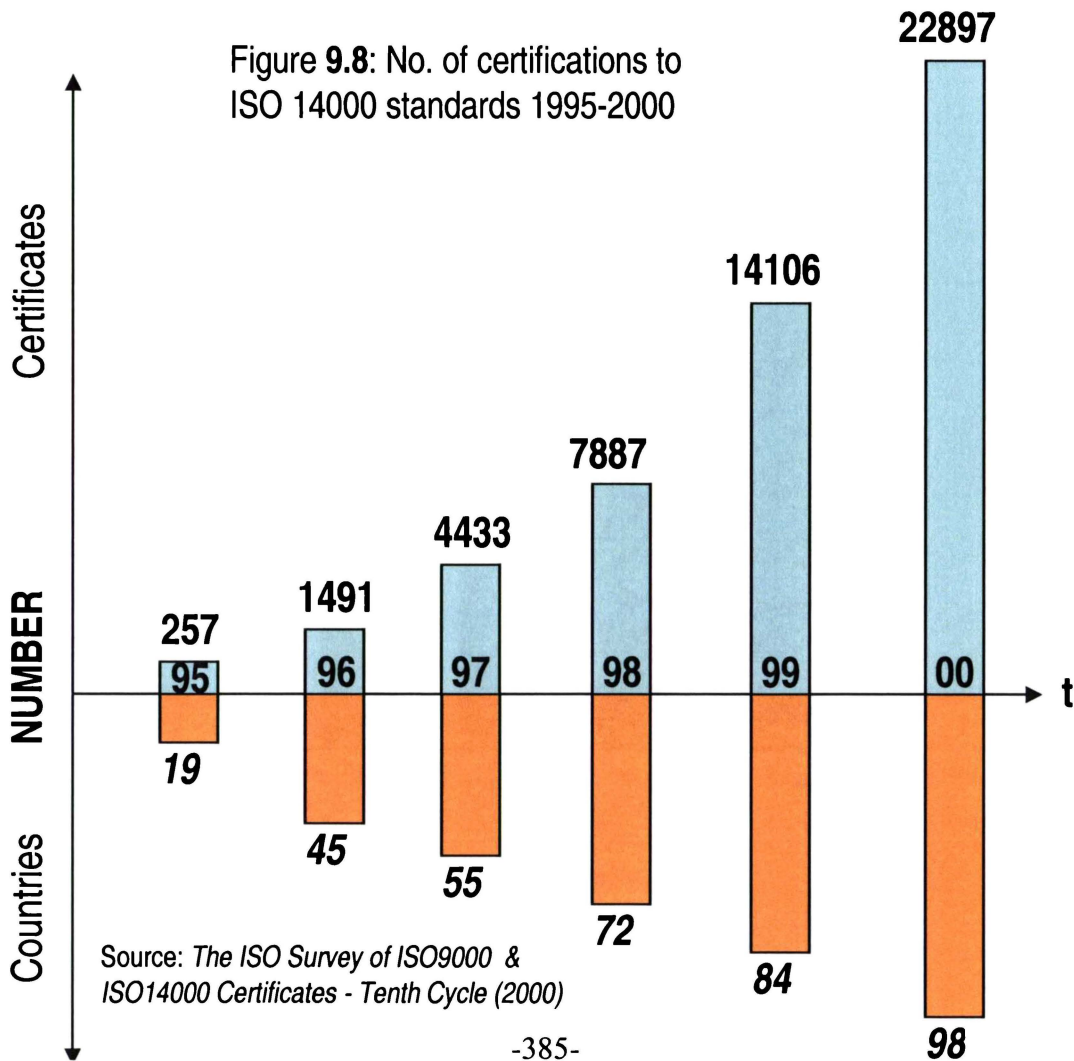


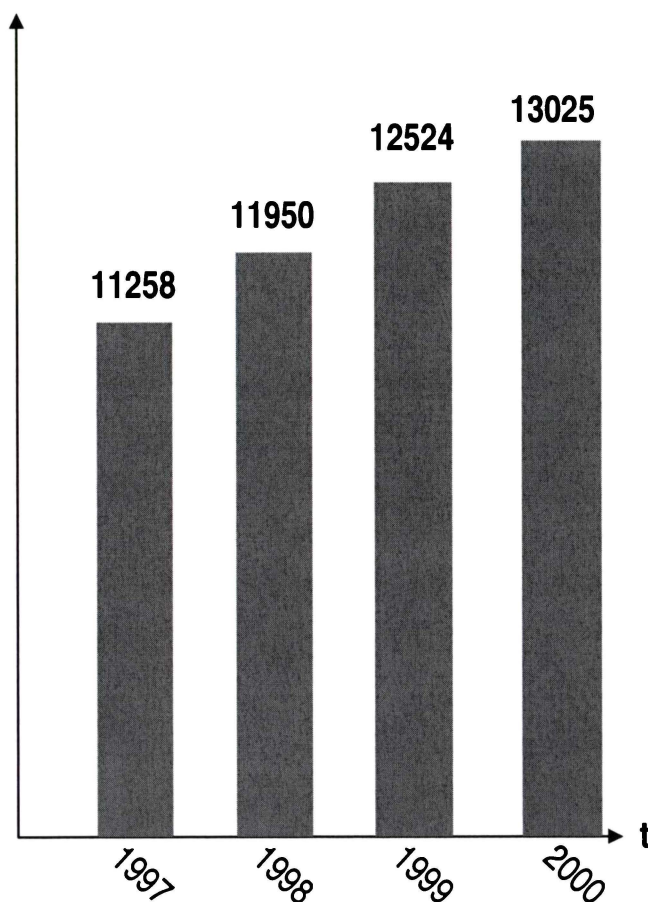
Figure 9.8: No. of certifications to ISO 14000 standards 1995-2000



## 9.42 Problems of *responsiveness* and *constituency*

As ISO/TC207 struggles to respond to these and other issues, the number of people affected by its decisions and outputs (ie. its stakeholders) continues to increase. The drive toward closer integration in world economies, polities, and communities makes global rule-setters, like ISO more influential. ISO is clearly a major player in international voluntary regulation, and the actions of TC207 affect an increasing number and variety of parties. Figures 9.8 and 9.9 show how the influence of TC207 has grown: over the years 1995-2000 the number of certifications to ISO14000 standards increased nearly a hundredfold; the number of countries in which certifying organizations had their home increased from 19 to 98; and as at the year 2000, over 13000 ISO standards were in force. This qualifies as global reach.

Figure 9.9: No. of current ISO standards 1997-2000



Source: ISO Annual Reports

The picture painted in the research of the role and responsibility of ISO/TC207 reveals complex linkages and a wide ranging accountability. It is an influential initiative, but must navigate a context that grows more complex almost by the minute. The overview above signals the deceptively problematic nature of the important ISO requirement for TC207, 'to demonstrate credibly its responsiveness to new and future developments' (ISO/TC207 N503, 2001:3). The FVTF was given the job of developing a plan that would enable TC207 to demonstrate responsiveness. Just how potentially problematic that task was is shown in the discussion below, which starts with an analysis of the issues that must be addressed to meet the requirement.

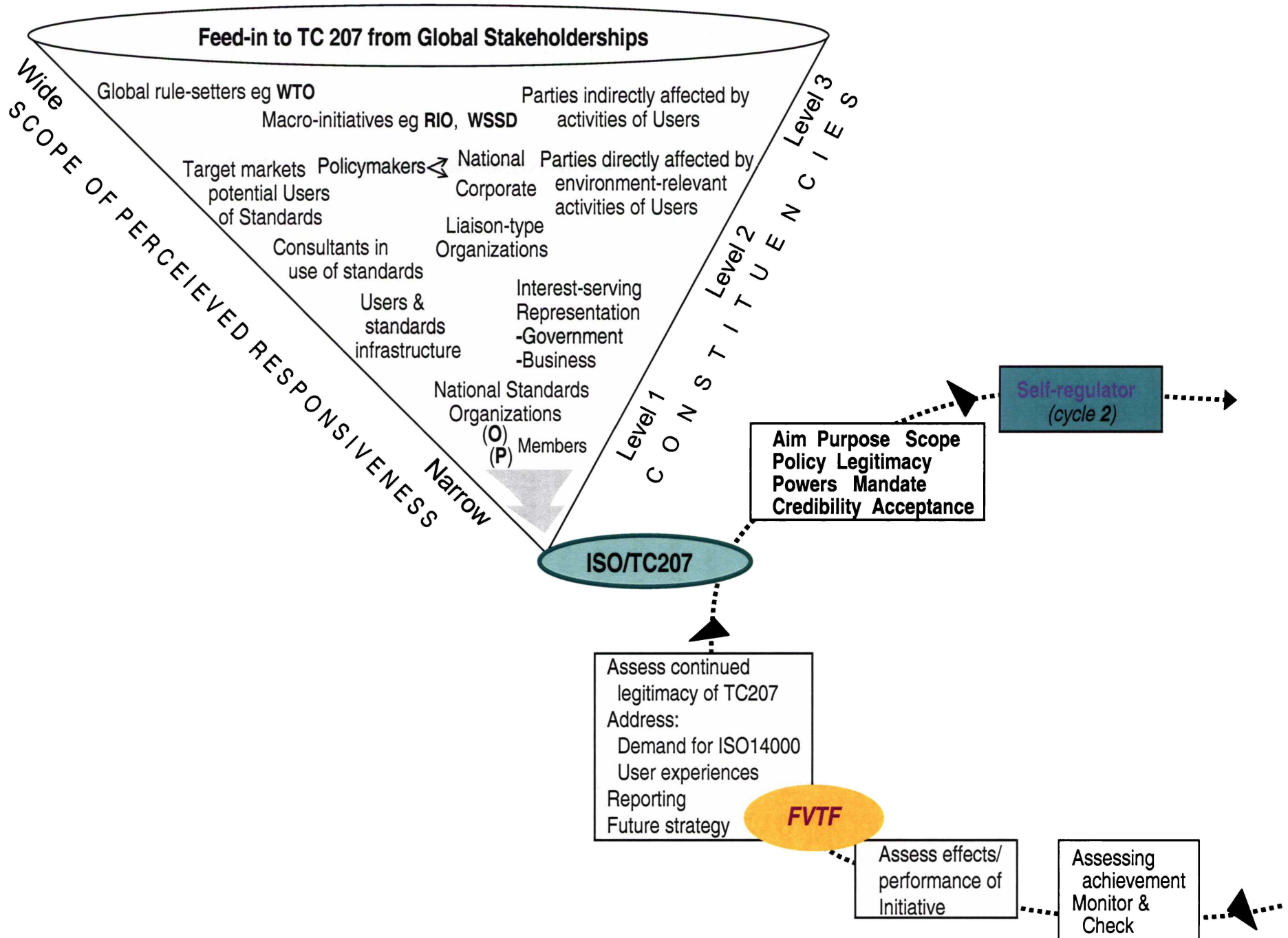
The first issue ISO/TC207 must clarify is - *to whom* is it to be responsive? Obviously, it must respond to the needs/expectations of its core, or founding industry and business-based constituencies, and those with a financial interest in efficient international trade. However, the public interest nature of TC207's focus (ie. environmental management) and an expansion of its scope to include 'sustainable development', means it now affects an extremely large group of stakeholders. Exactly to whom is it to be responsive? A potential starting point might be to explicitly define and rank its stakeholders and constituencies.

A second problem lies in assessing *to what issues/trends/influences* is ISO/TC207 to be responsive? As noted above, TC207 lies at a conjunction of issues and trends not all of which are readily compatible. A starting point would be to identify relevant trends, and rank them in some way, according to their relative importance. The achievement of this task will rely on knowledge of the vision and justification of TC207, a deep understanding of the contexts within which it operates, and an awareness of the character and limits of its mandate to act.

A third matter to be clarified by ISO/TC207 is *how does it demonstrate/prove its responsiveness?* This might be covered by assessment/measurement of its achievements, consultation with stakeholders on their views, and by reporting and feedback internally and externally.

The process approach was used to develop the line of questioning developed above. It is further developed in the following discussion to help frame an exploration of how stakeholders and their interests are recognized in ISO/TC207 planning processes. Figure 9.10 illustrates this development. Shown on the right-hand side is the revision component of the process approach long-cycle. Shown on the left is a graphical representation of how information about constituencies and stakeholders feeds into TC207. Noted first is the way this 'feed-in' is

Figure 9.10: Using the process approach to explore how stakeholder issues 'funnel' into ISO/TC207



constructed; some stakeholders are shown 'closer', and others 'further' from TC207. This convention reflects the fact that certain parties, by virtue of their closer involvement and/or participation in the initiative have a greater say in the thinking and activities of TC207 (eg Participating and Observing members; industrial/commercial interests; and providers of standards infrastructures - such as conformance verifiers and EM consultants). Other parties less closely identifiable as constituencies are shown as 'further' from TC207 (eg national policymakers; parties indirectly affected by the activities of users of an initiative).<sup>157</sup>

It is argued that the degree and type of responsiveness shown by ISO/TC207 to the interests and desires of stakeholders is subject to its own interpretation of whom its stakeholders actually are. Such interpretation will be coloured by the agendas of the most influential members, and of those most able to shape attitudes and thinking in the initiative. Since TC207 is a representative body, it might therefore be expected that those most active in the specification of the purpose of TC207, and those managing the initiative will be those perceived as 'closest', and therefore most clearly recognized as constituencies to whom it should be responsive. Those viewed as more 'remote' from the core of TC207 will, by the same logic, be seen as due correspondingly less responsiveness. The research found some evidence for this assertion. For example, in the original, *short project*, it was argued that the dominance in TC207 of a narrowly self-regarding mindset regarding its mission, role and responsibility engendered a serious weakness in its ability to address issues outside of 'traditional' industry and trade-serving agendas. It is significant that a low awareness of the existence of this problem, and its possible implications, was found within TC207.

The most important implication of an initiative's perceptions of responsiveness is this: responsibility is the primary determinant of the credibility of a regulatory initiative and its authority to regulate. The process approach suggests that the scope of an initiative's mandate is related to depth and breadth of constituency support. Narrowly defined responsiveness can only support limited authority and powers. It follows that assumption of extended/broad powers to regulate without securing a similarly broad basis of stakeholder support will inevitably lead to an erosion in the relevance and credibility of an initiative. Approaches to responsiveness, and

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<sup>157</sup>This is a diverse group and might be defined as those affected by generalized environmental externalities arising from production (eg pollution; loss of biodiversity, climate change, etc.)

relationships with constituencies will therefore determine, to a large extent, the ongoing viability of an initiative.

In view of this analysis, ISO/TC207 faces something of a problem. On one hand, it has made commitments to addressing macro-issues with significant public-good dimensions (ie. environment and sustainability); but on the other, it seems to be attempting to do so within its traditional paradigm of recognising and serving primarily private, industrial and trade-related interests and constituencies. In addition, it has developed instruments which are being used in ways that affect a much larger set of stakeholders than this paradigm includes. It is argued that this is an untenable situation. The theory of the process approach suggests that the choice made in the current long-cycle revision exercise regarding the scope of TC207's responsiveness to constituencies is key in determining its capacity to address social macro-issues and the concerns of wider society.

The authority of an initiative - that is, its ability and/or powers to exert regulatory effect - is founded on the nature and ambit of the authority granted to it by those who sponsor or otherwise support it. Thus, a regulatory initiative is dependent for its mandate on the ongoing support of its constituencies. One implication of the process approach is that mandate requires periodic assessment and renewal, usually by reporting to constituencies and seeking their approval for future plans. In western-democratic systems of state-regulation, mandate renewal is achieved by means of periodic general elections.

In the case of self-regulatory initiatives, mandate renewal can be a little more problematic. The process approach suggests that the basic principle is the same for voluntary regulatory initiatives. The ability to self-regulate rests on perceptions of initiative credibility among those who accept its jurisdiction. This includes those to whom it applies - ie users of its programmes and instruments - and those whose acceptance of an initiative lend it force - ie constituencies and stakeholders. Support from these key groups is necessary for the continued acceptance and legitimacy of an initiative. If a self-regulatory initiative fails to secure ongoing constituency and stakeholder approval, their 'buy-in' to it collapses, leading to a drop in the incentive for organizations to use initiative programmes, which softens demand, and an evaporation in the 'market' for the initiative. Therefore, key tasks in a revision exercise are to consider whether the initiative (in action) produced the effect/s desired by its constituencies, and whether it gained the acceptance of stakeholders.

As indicated above, this task can be broken into three parts: (a) identify key stakeholders (those interested actions, outputs, uses and applications of an initiative) and constituencies (those upon whom an initiative relies for credibility and authority to act, and/or whose connections with it facilitate or enhance its regulatory capacities); (b) determination of their interest in the initiative, and how this interest is reflected within the initiative; (c) ascertain and report on how the initiative currently satisfies, or aims to meet such interests.

The FVTF was tasked with the responsibility of completing the long-cycle revision of ISO/TC207. It was found that compared with the analytical framework implied by the process approach, the FVTF took a selective, qualitative, and largely *ad hoc* approach to stakeholder input into the review process. The process generally lacked rigour; stakeholders were not specifically identified, limited sources of information were used to define stakeholders and their interests, and the constituencies of TC207 (to whom it must be responsive) remained unclarified. The final report of the FVTF did however contain a comprehensive review of trends and influences relevant to TC207.

#### 9.43 Developing the *cycle* convention

The long-cycle convention is a key component in the process approach. The long-cycle is differentiated from the short-cycle mainly by its focus on events in the ongoing life of the initiative, rather than on the activities of those subject to a regulation. The long-cycle was employed to explore the multifaceted role played by the FVTF in the evolution of the TC207 initiative; including assessment of past achievement, internal and external reporting, and future strategy-setting. The long-cycle convention also suggests that a subtler rationale might underlie the FVTF. That is, the FVTF review-planning process can be seen to be of help in enhancing the future viability, credibility and legitimacy of TC207; and indeed to support the broader ISO project of promoting voluntary management-system based self-regulation globally.

Conceptually, the strategic planning process of FVTF was found to be analogous to the long-cycle requirement for review of the achievements of the TC207 initiative. The process approach was used to make suggestions as to processes that could be followed, and issues that might be addressed in the conduct of strategic planning. Analysis showed that the actual processes employed by the FVTF fell short of recommendations in many areas. For example, the report on the achievements of TC207 were only weakly supported by research. In addition, the quality and

contributions made by TC207 to desired end outcomes - those specified in the vision statement for example - were not assessed and/or measured objectively. A programme of stakeholder outreach was suggested, but not implemented in the time available to the FVTF, and (as noted above) constituencies were never clearly clarified. The FVTF failed to address some key issues, and deferred many of them to a suggested programme of continual planning (see ISO/TC207 N591). Thus, it could be argued that the FVTF went only part of the way toward fulfilling a ‘complete’ revision exercise, according to the logic of the long-cycle.

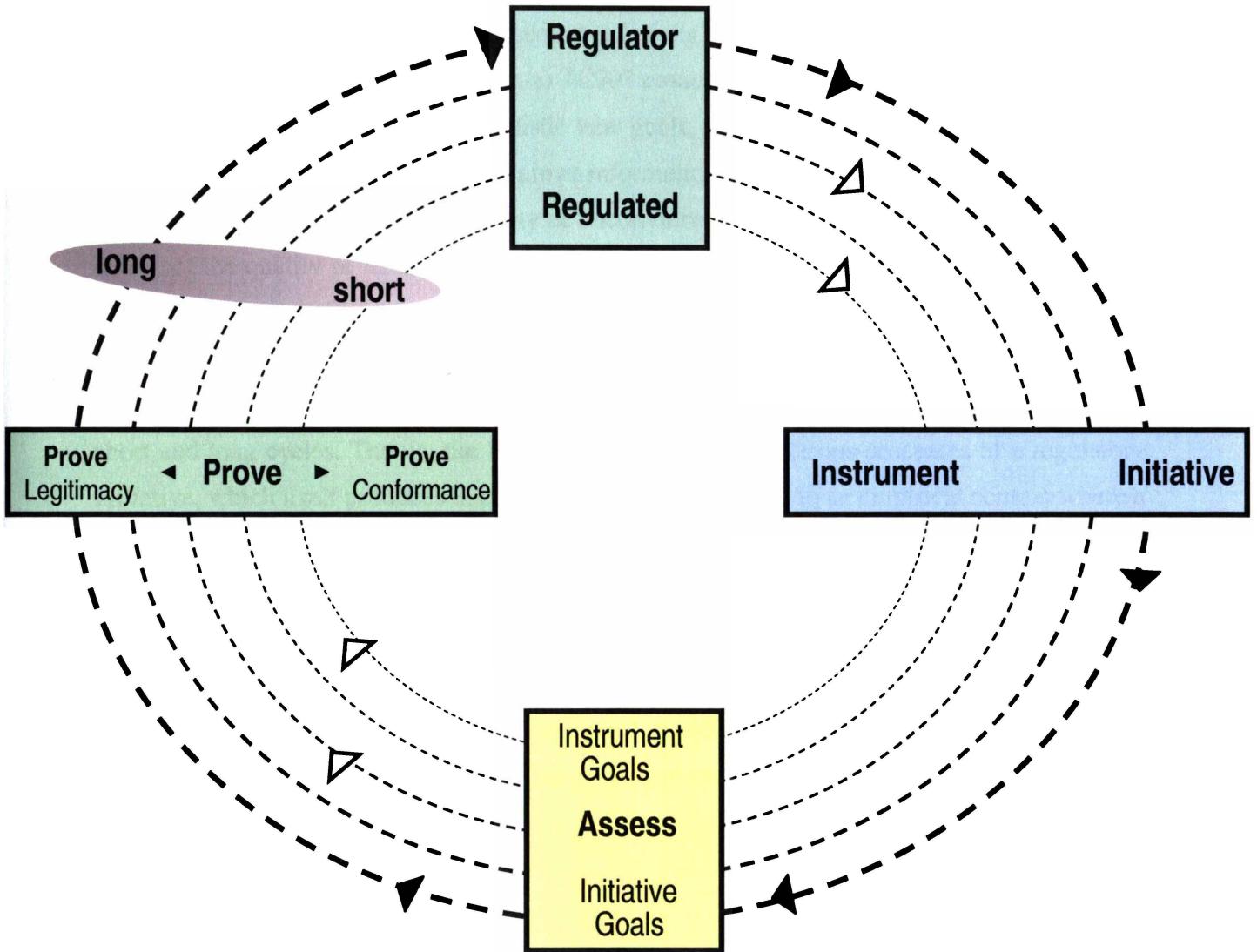
This result suggests that a hard-and-fast division between short and long cycles, as indicated in Table 9.1, may not be so useful in analysis of real life situations.

Table 9.1: Different emphases in Long and Short regulatory cycles

	<i>SHORT</i>	<i>LONG</i>
<b>PURPOSE</b>	Assess conformance with conditions/ requirements specified in <i>Instrument</i>	Assess achievement of <i>Initiative</i> objectives and its effects Research constituency satisfaction with Initiative
<b>FOCUS</b>	Users of <i>Instrument</i>	Drafters of <i>Instrument</i>
<b>EVALUATION</b>	By the regulating party [either ‘external’ or ‘self’]	By Initiative Management By Constituencies; Stakeholders
<b>PROVE</b>	a. Performance assessment/audit b. Achievement of conformance	a. Achievement of Initiative Purpose b. Continuing relevance c. Ongoing Legitimacy
<b>OUTCOME</b>	Continual improvement in capacity to conform/comply	Modifications to overall Purposive direction/Strategy of Initiative Renewal of Mandate & Authority

Figure 9.11 illustrates the how the cycle convention might be developed as a result of this finding. The FVTF action can be explained in terms of interim or *graduated* cycles between the short and long types. The emphasis at each stage of the regulatory cycles shifts with cycle ‘length’. For example, as cycles get longer, the focus is more on the initiative/regulator (‘Regulator’), whether

Figure 9.11: Graduations between Short and Long regulatory cycles

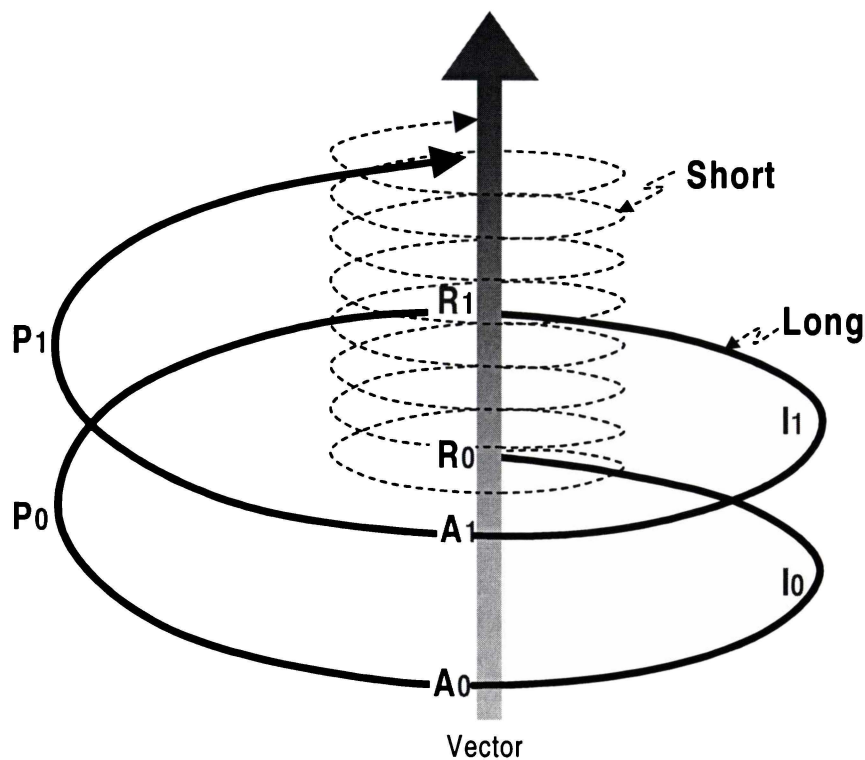


its goals have been achieved ('Assess initiative goals'), and how it proves it has ongoing relevance and legitimacy among its constituencies and stakeholders, and is thus worthy of continued mandate to regulate. Shorter cycles emphasise the behaviour of regulated parties, the instrument used to enact the regulation, assessment of the achievement of the goals of the instrument, and proof of conformance with the requirements of the instrument.

The work of the FVTF in practice can be seen in this light as a 'longer' cycle, but because of 'missed' elements, it cannot be classed as a 'strong' long-cycle revision. Several possible consequences of this can be suggested: a) TC207 could be flying blind' in terms knowing what it is achieving, and thus setting unrealistic new goals, as a result of incomplete assessment of initiative achievements; b) stakeholders in an information vacuum and/or unable to give feedback on the performance of the initiative may be unconvinced of the its ongoing legitimacy, and as a result, c) the quality of its mandate renewal might be seen to be rather weaker than if it had completed a 'strong-form' revision.

The process approach, as developed thus far, assumes a more-or-less perfect fit between related short and long cycles. That is, the long cycle represents the actions/processes of a regulatory initiative, which itself produces instruments, which are applied to an empirical context where a regulated party conforms or complies with its requirements. In the process approach, this is called 'cycle coherence', and is represented in Figure 9.12. The long cycle starts with the first effort by an authoritative initiative to specify a vision and regulatory goal(s) - 'Regulate' (R<sub>0</sub>). I<sub>0</sub> denotes the production of an Instrument by the initiative. Assessment of initiative performance is made at A<sub>0</sub>, and it seeks to demonstrate, or Prove its continuing relevance and legitimacy to constituencies and stakeholders at P<sub>0</sub>. The cycle then recommences: {R<sub>1</sub>, I<sub>1</sub>, A<sub>1</sub>, P<sub>1</sub>.....}.

Figure 9.12: Coherence of short and long cycles



A key function of a regulatory initiative is to support regulated parties' efforts to apply and conform with the requirements of the regulatory instrument. An initiative should also keep a close track of how the instrument is used in practice. In earlier part of the research it was noted that ISO14000 standards were being used in ways not envisaged by ISO/TC207 when they were being developed originally (eg integrated into legal systems, used in semi-regulatory international agreements, used in court judgements, etc). There is an obvious need for an initiative to recognize and respond to variability in usage of an instrument. In the language of the process approach, this is called 'coherence'. Long and short cycles must be synchronous to ensure that, a) the initiative continues to support regulated parties' efforts to apply the regulatory instrument, and b) the use and application of regulatory instrument continues to support the goals expressed by the initiative. If the long and short cycles of an initiative get out of synch, then the initiative risks becoming perceived as irrelevant by users and stakeholders, and anomalous results may be achieved instead of the goals desired.

This potential problem was raised in the deliberations of the FVTF. However, the recommendation made in the Report of 2003 seems strangely weak in view of the potential consequences; ISO/TC207 should, 'Monitor... use of standards by courts, jurisdictions,

agreements and memoranda of understanding' (ISO/TC207 N591 rev1, 2003:3). This is hardly a call for adaptation to sometimes profound divergence between conventional understandings of EMS and the 'regulatory' applications of ISO14001 increasingly found in practice. Figure 9.13 conceptualizes the cycle 'divergence' implied by 'stories' of voluntary EMS-standardization, and the variations seen in some applications. The FVTF-led revision is represented as a 'steady-as-she-goes' strategic direction with no material change from the original development vector established by SAGE, while the use of the ISO14000 instrument (especially 14001) is seen as trending into 'new' and different areas.

A final enhancement of the cycle conception arises from a further consideration of the problem of initiative responsiveness to its constituencies and stakeholders. The influences, issues and parties an initiative should be responsive to are specified either explicitly or implicitly in the statements it makes about its objectives, principles, goals, vision(s), scope, authority and mandate. These statements form the framework for subsequent reviews and assessments of the performance, relevance, acceptance and legitimacy of the initiative and its instruments/outputs. Similarly, at the level of the short cycle, the instrument specifies the outcomes to be achieved by the user/regulator, plus the penalties for non-conformance (eg loss of certification, or in the case of legal instruments, enforcement action).

Figure 9.14 shows how the issue of responsiveness is integrated into the process approach. In the terminology of the process approach, the first half of the regulatory cycle (long and short) is focussed on specifying the character of the responsiveness to be attained, and putting into place the means of meeting said responsibilities. The second half of the cycle is oriented more toward demonstrating the fulfilment of the responsibilities specified in the first half. The term *accountability* is used to describe the feedback/'prove' function.

Figure 9.13: Coherence in ISO/TC207: I (ideal) & II (divergent)

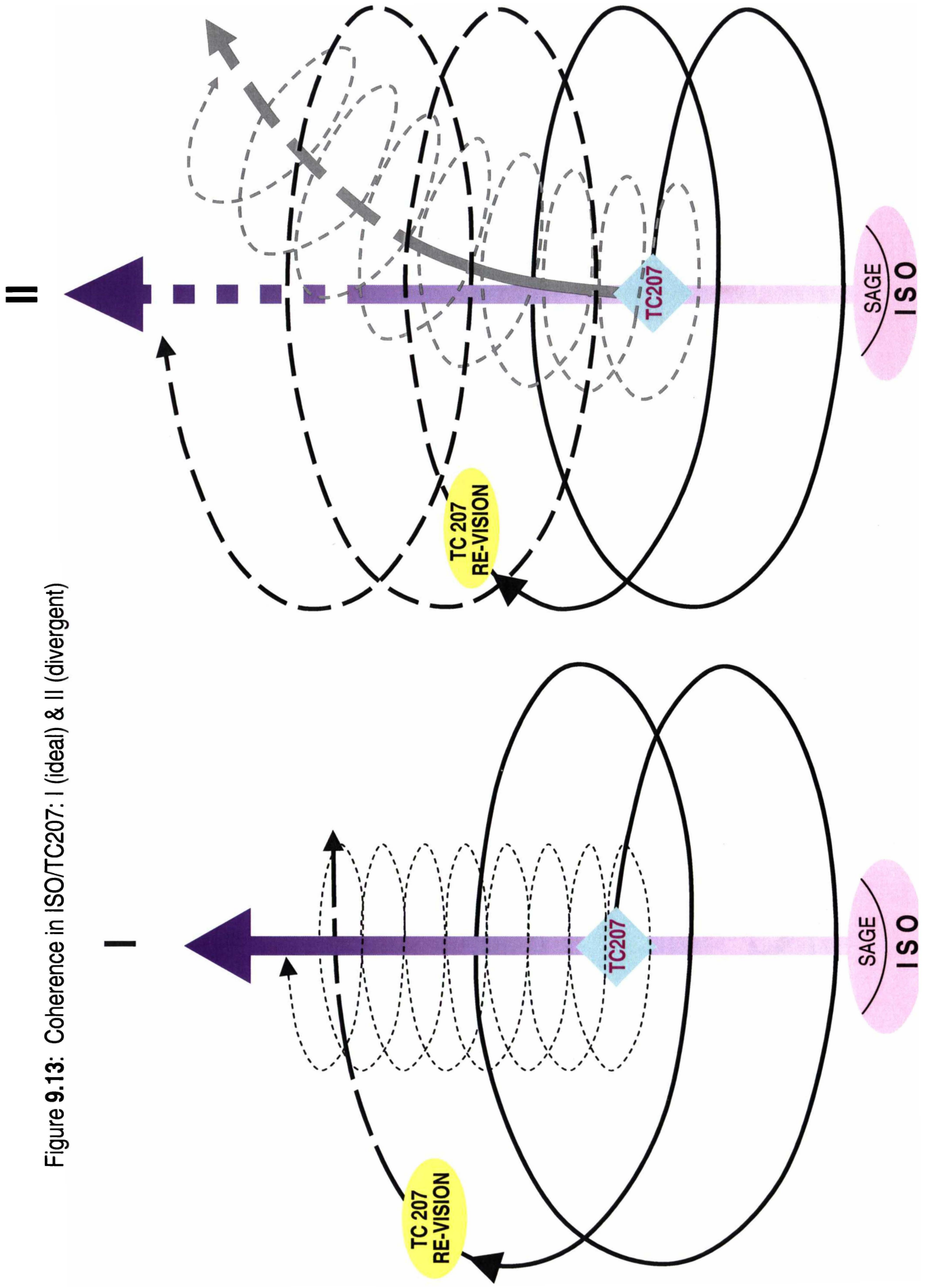
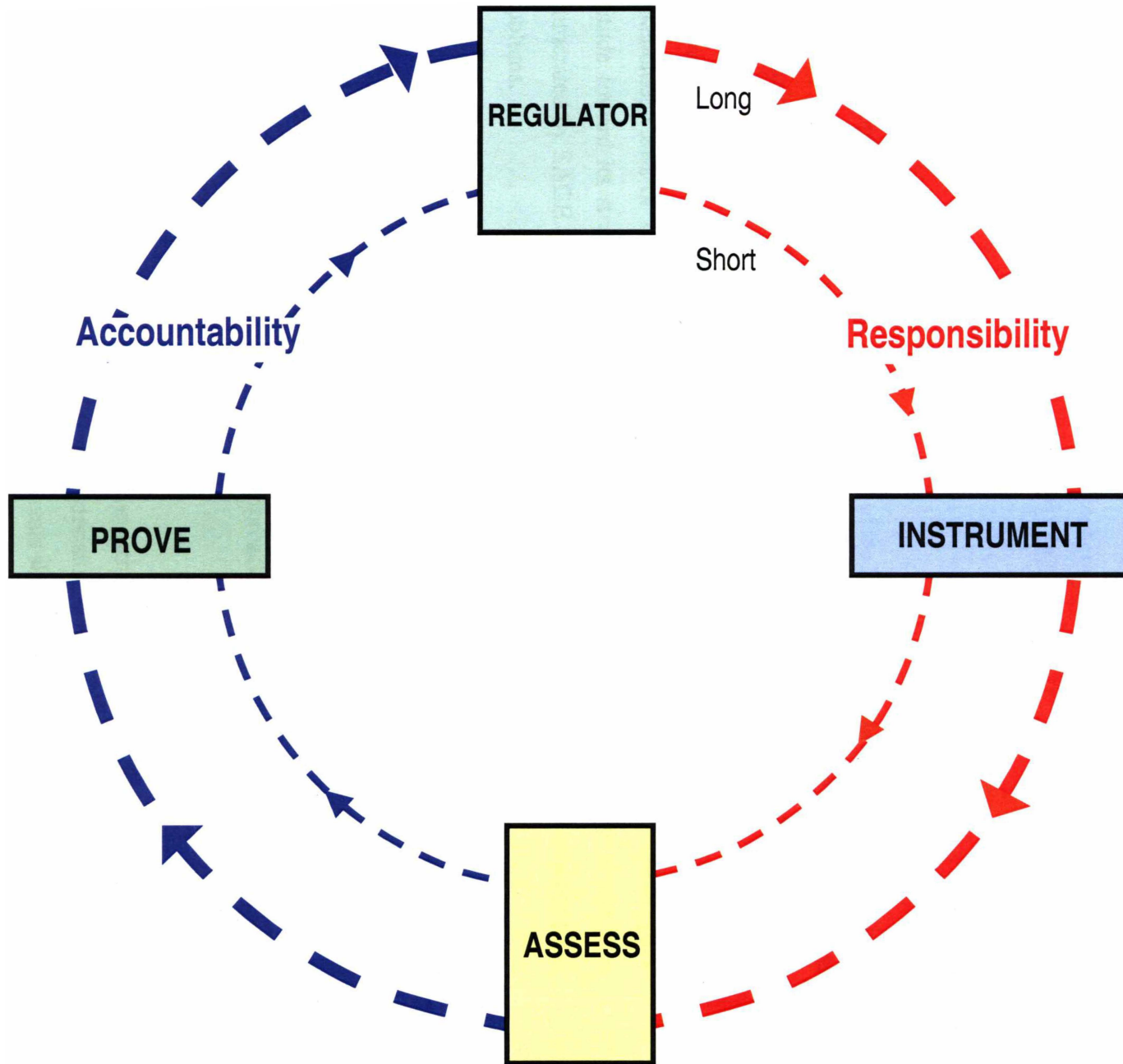


Figure 9.14: A cyclical approach to responsibility and accountability in regulation



## 9.44 Three new principles of regulatory process

The final part of the discussion seeks to improve the conceptual basis of the process approach. It synthesises the lessons of edification into three principles which underpin a new way of thinking about regulatory process. These are, the *motivation* which energizes the initiative; the *vision* which inspires and informs it; and its overall *coherence*. These principles are discussed and expanded with reference to the research into ISO/TC207.

### A Motivation

The process approach was used to critique aspects of the ISO/TC207 initiative, and especially its recent revision exercise. As a result of the analysis, it was argued that the FVTF did not assess the performance of TC207 in achieving its goals in an objective and verifiable manner; did not acknowledge the breadth of parties potentially affected by the actions of TC207; only weakly acknowledged the fact that ISO14000 is being used in innovative ways; deferred research into stakeholder views of TC207 performance; and promoted an essentially 'steady-as-she-goes' attitude toward its strategic direction with no material change from the original intent as enumerated by SAGE. The analysis did not comment in much depth on the reasons for these problems.

It is suggested that an answer can be found in the motivation of ISO/TC207. *Motivation* is the purpose, the reason for existence - the *raison d' être* - of a regulatory initiative. It combines the intent which induces and drives an initiative, and the justifications underpinning certain types of action. It is motivation that creates the impetus for an initiative, and starts off the whole regulatory process (as described in the process approach). Understanding the motivation of an initiative requires an analysis take into account

- the membership base, or *constituency* mandating and/or legitimizing the initiative;
- the perceptions of key intra-initiative decision-makers of the constituencies being served, their interests, and how those interests should be pursued;
- the hands in which influence or power is vested;
- the interests affected by the initiative;
- the ideologies and worldviews informing the initiative, and;
- its place and role(s) within broader social contexts.

A picture of the motivation of an initiative can be built up from statements made for or by the initiative (eg of purpose, strategy and/or mission); from actions within the initiative (by, for example, developers/drafters, managers), and those made in its operation (eg regulating behaviour).

The research found an industry-favouring conservatism in ISO/TC207. The prevailing motivation was found to be: to serve TC207's traditional business and industry constituencies. Analysis of the outputs of the FVTF-led strategic revisioning showed that the originating motivation has a strong effect on the life of an initiative. It is suggested that the strength of the traditional motivation in ISO/TC207 influenced the thinking of many in the FVTF group to such an extent that the problems identified in this research were difficult to recognize.

## **B** Vision

A key finding of the investigation into the ISO/TC207 FVTF was that the updating of the 'vision statement' (narrowly) missed an opportunity to redefine the aspiration of TC207 in an explicitly progressive way. It is argued that there are two reasons for this. The first is the prevalence of a narrow interpretation of the purpose and potential of self-regulation in the areas of environmental management and sustainability; and second, a paucity of analysis of how private and public goals can be integrated and balanced by the initiative. It is argued that TC207 suffers from a lack of imagination and a backward-looking *vision*.

*Vision* is the spark; the thought; the ideal that inspires, informs and energizes an initiative. Vision gives it an end and a meaning. A key qualitative characteristic of vision is imagination; a regulatory initiative is brought into being to achieve goals that currently are not being, achieved, or only imperfectly so. Hence, the ends to be pursued by the initiative, the context within which it exists, and the means to be employed, are conceptualized, theorized and kept *in mind* by those responsible for pioneering and guiding it. The degree and quality of imaginativeness required in the management of an initiative varies with its purpose and scope. A simple initiative focussed on well-defined technical issues and acting within a well-established context does not require profound imagination and insight. Imagination and expansiveness in thought is very much more important for an initiative which seeks to innovate in any area; for example, in addressing ill-defined, and sometimes difficult issues; in using new instruments; and especially in any forward-looking, or long-range regulatory project.

It is concluded from the research that in the construction and operation of voluntary regulatory initiatives, special attention should be paid to clarifying the vision and ideals that enliven them. This is particularly important in cases where an initiative aims to address goals with both public and private dimensions.

## C Coherence

The research found in the work and outputs of the ISO/TC207 FVTF a reluctance to integrate information about the use of initiative instruments in practice into the strategic planning process. It was suggested that in some cases, the application of TC207 instruments in practice deviates considerably from conventional thinking within the initiative. This ‘deviation’ in practice was not explicitly acknowledged in the long-cycle review by the FVTF.

The concept of coherence was introduced above to describe the link between the long and short cycles of a regulatory initiative; ie the degree of alignment between the management and development of an initiative and the way it is applied and used in practice. Coherence is crucial to ensure that, a) the initiative continues to support regulated parties’ efforts to apply the regulatory instrument, and b) the use and application of regulatory instrument continues to support the goals expressed by the initiative was emphasised. In the language of the process approach, this is called *internal* coherence.

The research also found an asymmetry between the private-interest-serving motivation and values driving ISO/TC207 and those needed to support its stated public interest aims. In the language of the process approach, this is called *external* coherence. The importance of maintaining external coherence increases with scope of the initiative; that is, where the scope is limited to private goals (such as purely technical standardization), then coherence with macro-social values may not be seen as a high priority. However, as an initiative comes to affect the actions and interests of a wider range of users, stakeholders, and publics, or claims to support users capacity to conform with social macro-goals (such as sustainability), the need for external coherence increases.

The key qualitative characteristic of coherence is harmony, or harmonization. It is argued that a regulatory initiative must pay special attention to coherence to ensure its ongoing relevance to users and wider society.

#### 9.45 Concluding edification of the process approach

The edification carried out in this section adds considerably to the process approach to regulation developed earlier in the chapter. The edification proceeded in three parts. First, through an exercise of contextualizing ISO/TC207, the importance of acknowledging and analysing the variety of stakeholders and their relationship to a regulatory initiative was demonstrated. The model was augmented with a ‘funnel’ conception and stakeholder interests were represented as ‘flowing’ into an initiative. It was argued that this recognition process is most important at the time the initiative seeks to assess its performance and goal achievement, and feeds this information into its legitimacy/mandate renewal process.

The second part of edification focussed on improving the cycle conception at the heart of the model. The analysis of the test found that the FVTF had generally followed the pattern specified by the model for a strategic review, but that the process was problematic and strangely incomplete. This finding was used to suggest the idea of *graduations* between short and long cycles. As cycles get longer, the importance of taking steps to renewal of mandate and authority increases. The importance of maintaining a high degree of *coherence* between the cycles created by an initiative, and between the stated objectives and actual achievements was emphasised also. The third augmentation of the cycle concept involved using it to explore the differences and relationship between the *responsibility* and *accountability* of an initiative.

The analysis concludes with a discussion of three principles synthesized from the edification - motivation, vision and coherence - which underpin the process approach to regulation. It was seen the process approach has definite strengths in analysing voluntary forms of regulation. The underlying cyclical ‘logic’ gives a framework for understanding how regulation is produced and maintained, and does so without being tied to any particular type of regulatory regime (eg state-legislative). The potential for the process approach to be applied to other, more prescriptive forms of regulation was not assessed, so issues like enforcement and/or ‘striking down’ of initiatives/instruments cannot be commented upon at this stage. Overall, it is considered that following the edification above, the process approach has been developed sufficiently to be seen as a ‘model’ of regulation in its own right.

## 9.5 Contribution of the process model to the theoretical development of this thesis

It has been observed already that the term ‘regulation’ can be understood to mean both the outputs of a regulatory system (ie. initiatives), and the processes involved in creating and applying those outputs. While the structural model addresses the former emphasis, the process approach assists thinking about the latter. This chapter began with an observation that the structural model failed to address some key issues which need to be dealt with if a better understanding of the potential of the EMS approach and self-regulation in environmental regulation is to be generated. The process model, and the research accompanying its development, was intended to fill in some of the gaps in the analysis of the structural model. It was found to be particularly useful in addressing issues 1-6 as raised in section 9.2 above. Exactly how each issue is addressed is commented upon below:

### *The mechanics of regulation*

Through the lens of the process model, regulation is seen as based on cyclical processes, with different emphases, and involving different parties, depending on the cycle type. It differentiates between processes of (a) proving conformance with regulatory instruments; and (b) proving achievement of overall regulatory objectives. The model helps illustrate the broad range of instruments and initiatives that can be defined as ‘regulation’.

### *The recognition and integration of model/actor objectives in regulatory initiatives*

The process model highlights roles played by main parties/actors in the creation and maintenance of regulation (ie. regulator; regulated, stakeholders; constituencies, society at large). While it makes recommendations for conduct in each role, and indicates their relative significance in the ongoing life of an initiative, the research conducted with the ISO/TC207 FVTF showed that not all such recommendations will be followed in every regulatory initiative.

### *The production and maintenance of regulation*

The model gives a framework for studying the development of individual regulatory initiatives, and makes specific suggestions for actions that are appropriate for each stage

in the short and long cycles.

### *Authority and/or power to regulate*

The process model highlights the importance of feedback to the regulator (ie. the long-cycle conception) to help ensure (a) the initiative achieves its objectives; (b) the regulation continues to be supported by users, constituencies and stakeholders; and (c) that the initiative is updated/improved with information gathered from involved parties.

### *The 'regulatory forum'*

Through the lens of the process model, a regulatory forum can be almost any avenue through which stakeholder interests are recognized, negotiated and integrated into an initiative. Obviously, some forums are of more importance in shaping the initiative, relative to others. It was found in the research conducted with the FVTF, for example, that the face-to-face meetings were more important for decision-making than the exchanges via email and documentation.

### *Managing a regulatory initiative*

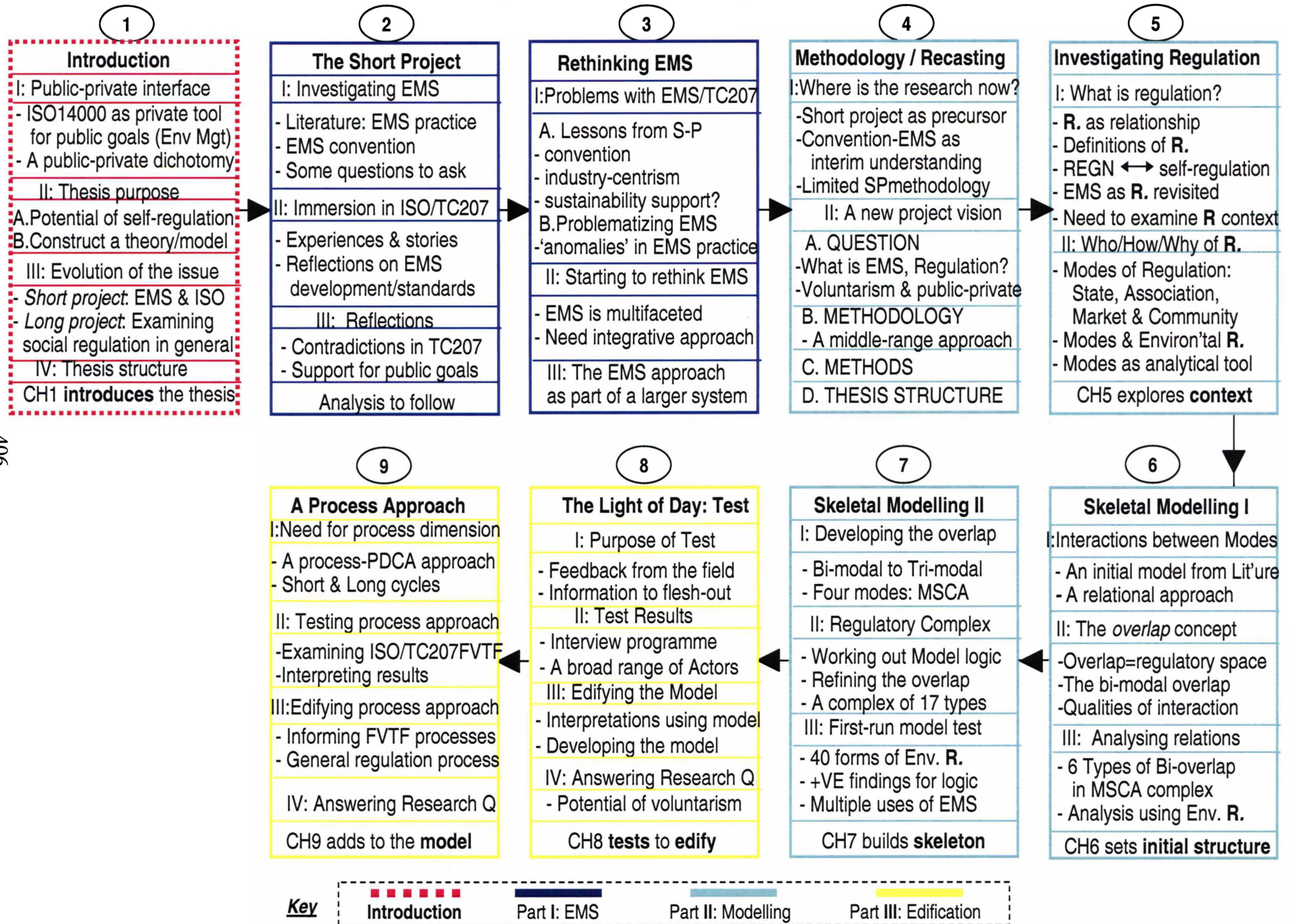
The process model gives a coherent overview of the elements that make up an initiative, and shows the relationships between these elements and tasks. It provides guidance for the operation and revision of initiatives. Periodic renewal is seen in the model as a normal part of managing an initiative. It provides a template which shows how stakeholder interests are integrated (or otherwise) into the construction and re-construction of the regulation (ie. aim, purpose, scope, policy, instruments etc). And the process model illustrates the importance of maintaining coherence between stakeholder expectations and regulator behaviour.

Issues 7-9, as noted in section 9.2 above - *Formation of regulatory structures and institutions; Dynamics of regulatory contexts, and Enhancing the potential of voluntarism in practice* - were not addressed in the development of the process model to the same extent as those noted above. The discussion in the next and concluding chapter explores the potential of the process and structural models, taken together, to cast more light on the these issues.

## 9.6 Summary of the chapter

This chapter explored ways of investigating how the potential of voluntarism might be accessed or improved in environmental regulation. A cyclical, processual approach to regulation was developed, and employed to reflect on the 'life' of the ISO/TC207 initiative, and in particular, the strategic revisioning exercise of 2001-2003. As the process approach was edified, it was found to strongly support an analysis of TC207 - albeit in an unconventional way - and to be of value in studying self-regulatory initiatives more generally. It is determined that the process approach adds significantly to the theory being built in this thesis, especially in terms of, understanding regulatory mechanics; how mode/actor expectations are built into initiatives; and issues in managing regulatory initiatives. Chapter 10 considers how the process and structural models, taken together, answer the research question.

Figure 9.15: The thesis at a glance



Key

Introduction

Part I: EMS

Part II: Modelling

Part III: Edification

## **CHAPTER 10: Lessons of the research**

### 10.0 Introduction

The key research question of this thesis is: what is the potential of self-regulation in fields where private and public interests converge? An extensive investigation into the use of the EMS approach in environmental regulation was undertaken to help develop an understanding of this potential. This thesis took a two-pronged approach to the research problem. The first probed the nature of self-regulation, via an investigation of the EMS approach. The second involved an in-depth examination of environmental regulation, which culminated in two theoretical approaches to regulation - one structural and another processual. The chapters above relate the detail of these two developments, and on exploring implications. This chapter seeks to bring the thesis to a fruitful conclusion by considering the 'answers' produced in the course of the research, and by reflecting on the theoretical, methodological and practical contributions of the research.

### 10.1 Aims and structure of the chapter

The aim of this chapter is to consider how the thesis addresses the question posed at its beginning, and to report on the overall contributions of the research.

The chapter has five parts. The first part considers the lessons from the investigation into the EMS approach. It was found that EMS-based initiatives are sophisticated and multifaceted forms of social regulation. This finding rests on an analysis of theories of EMS/standardization; an inquiry into the multiple ways EMS is used in practice, and research into the application of the EMS approach by ISO/TC207.

The second part of the chapter considers the insights produced in the research into environmental regulation. Two theoretical approaches to regulation were developed in this thesis; one which models structures of regulation; and another which focusses on regulatory processes. It is suggested that the two models are in fact complementary, and that together, they can make a strong contribution to addressing the research question.

The third part of the chapter summarizes the answers produced by the thesis on the question of the potential of self-regulation in fields where private and public interests converge. It is argued

that voluntarism has not only very high potential in mediating the public and private, but is an essential tool for addressing problems where the public and private interests traditionally clash; such as in the new breed of large and pressing global ‘macro-problems’ (such as widespread environmental degradation, climate change and sustainability) now facing humanity. This thesis has produced a novel theoretical approach to regulation. The structural aspect of the model of regulation embodies a novel way of looking at regulatory contexts and relations. It is used to suggest certain regulatory configurations and vectors of development that might be expected to enhance the potential of self-regulation. The process aspect of the model casts new light on how the potential of voluntarism might be accessed or improved in practice. It is used to make suggestions for the conception, creation and management of self- and semi-self regulatory initiatives in areas of possible public-private dichotomy.

The fourth part of the chapter assesses the contributions made by the thesis. Theoretical developments in the areas of EMS, voluntarism and regulation are discussed first, followed by a consideration of the methodological and stylistic aspects of theory-building that were developed in the course of the research. The final part of the chapter reflects on the meaning of the research, and speculates on what really has been learned.

## 10.2 Lessons from the investigation into the EMS approach

The following discussion considers lessons from the investigation into the EMS approach, based mainly on the findings of the *short project*. The very first question addressed in this research was, *what is EMS-standardization?* The answer constructed in the research was far more complex and problematic than acknowledged in conventional accounts. EMS-standards are used in a wide variety of applications, and convention is hard-pressed to explain many of the permutations seen in practice. It was argued that EMS-based initiatives are sophisticated and multifaceted forms of social regulation; however, research into the application of the EMS approach by ISO/TC207 showed that this complexity goes generally unrecognized in practice.

### 10.21 A multifaceted form of social regulation

It was confirmed that in accordance with conventional understandings, EMS is a systematic, voluntary, private-sector technique for organizations to control and manage their responses to environmental issues. This view was insufficient however, to explain the diversity found in EMS

practice, and to account for some effects of international standardization by ISO. The findings of the initial phase of research prompted the development of a view of EMS-standardization as a sophisticated and multifaceted form of social regulation. As a starting point, six interpretations were developed in chapter 3 (see Table 10.1), and it was argued that any explanation of EMS-standardization should be capable of explaining and integrating all six of them.

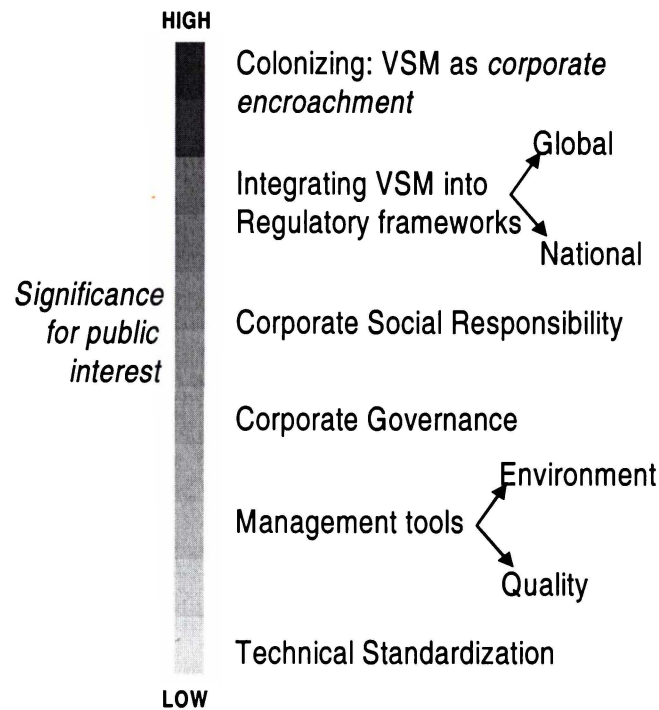
Table 10.1: Six interpretations of EMS-standardization

<i>EMS as...</i>
A voluntary technical management tool for self-regulation
A voluntary industry contribution to social macro-level objectives
An emergent ‘private’ environmental law
A mechanism for corporate governance and legitimation
A corporate <i>Firewall</i>
A policy-regulatory instrument

In subsequent theoretical and empirical work, the idea of *EMS-standardization as regulation* was deepened. It was found also that the institutional frameworks used in EMS-based initiatives have not only close structural and processual similarities to frameworks more commonly associated with regulation (eg ISO bureaucracies and verification networks vs state-based bureaucracies), but often rely on said frameworks in their implementation and operation.

A wide variety was seen in EMS practice. It was found that EMS capacity to affect public interests varied largely with the applications to which it was put. Simple technical standardization and ‘management tool’ practices are typical ‘private-interest’ applications of EMS, and tend to impact little on broader public interests. However, as EMS comes to be used in initiatives reaching into areas of corporate governance and social responsibility, and becomes integrated into more formalized and prescriptive regulatory frameworks, the public interest significance of EMS increases (see Figure 10.1).

Figure 10.1: Public interest significance of voluntary regulatory initiatives



## 10.22 EMS development by ISO/TC207

The research shows that EMS-standardization (and VSMs in general) is an innovative approach to environmental management. In principle, it is a voluntaristic, systems based, market-oriented type of regulation, which can be used to help mobilize industry resources to achieve private and public goals.

In practice though, EMS was found to be a good deal more complex than convention indicates. EMS is used in a wide variety of applications, with the result that a diverse range of stakeholders become involved in the creation and implementation of EMS-standards based initiatives, within a variety of institutional frameworks. This kind of complication was seen, for example, in state-based environmental regulatory systems (eg the *Accredited License* scheme in Victoria, Australia; US EPA *Project XL*); in cross-state semi-compulsory systems (eg EU *EMAS*); in industry self-regulatory systems (eg *Responsible Care*); and in industry-associative alliances (eg *Forestry Stewardship Council*).

It was found in the research that simple understandings of EMS were preferred in ISO/TC207. There was found a general reluctance to expand such understandings. The primary reason for this reluctance, it was argued, is because a narrow view of EMS-standardization suits the intent of a large and influential bloc of ISO/TC207 participants to promote self-regulation without transparency, oversight, or responsibility to stakeholders. The industry-favouring conservatism found in ISO/TC207 has resulted in a simple and narrowly focussed initiative which

- (a) the focussed and pragmatic historical mission of ISO;
- (b) the fluid and highly politicized nature of TC207, which results in a bias in decisionmaking toward *ad hoc*, contingent, satisficing and often short-term solutions to challenging issues;
- (c) the commitment in the forum to the principle of political pluralism, where interests effectively compete to be reflected in initiative thinking and outputs - in these conditions, powerful interests *win*, and less well-promoted interests *lose*;
- (d) the way creativity and imagination are discouraged in the initiative, especially in terms of envisaging goals other than those supported by tradition.

It was found that the purpose/s to which an EMS-initiative is put is an important factor in EMS-standardization. EMS itself is only a tool - a means to achieving some end. It was argued that the end seen as most important in ISO/TC207 is industry self-regulation in environmental management (ie. 'private' interest). The research showed that this purpose was reflected extensively in TC207 conventions, rules, deliberations/negotiations and outputs. However, it was also indicated also that ends sought by an initiative can contain potentially contradictory elements;<sup>158</sup> can come to be altered by different interpretations of participants at key points of development of an EMS-initiative; or modified, as an EMS-standard becomes integrated into larger schemes and/or initiatives. For example, it was shown that as an EMS-initiative becomes more closely integrated into state-based regulatory systems, the ends desired by that state will become more influential in the configuration and operation of that initiative. Similarly, with the involvement of other stakeholders (such as communities, customers, and associations) at different stages of EMS development and implementation, their purposes and priorities will come to be

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<sup>158</sup> *Our vision is the worldwide acceptance and use of the ISO14000 series of standards which will provide an effective means to improve the environmental performance of organizations and their products, facilitate world trade, and ultimately contribute to sustainable development (ISO/TC207, 1993).*

reflected in the overall purpose of the resultant 'composite' regulation.

Overall, it was found that while EMS-standardization is indeed innovative in practice, that innovation is mainly occurring outside of the control of EMS-developers like ISO/TC207, and to all intents and purposes, despite them.

### 10.3 Insights produced by the research into environmental regulation

The discussion now considers the insights produced from the research into environmental regulation. Two theoretical approaches to regulation were developed in this thesis; one which models structures of regulation; and another which focusses on regulatory processes. It is suggested that the two models are in fact complementary, and that together, they can make a strong contribution to addressing the research question.

#### 10.31 Insights from the analysis of regulatory structure

This model was used to illustrate analyse the wide range of regulatory initiatives which involve the EMS approach, and analyse their development, and the applications to which they were put. The model showed that regulation in practice is very complex - especially in environmental regulation - and often involves numerous parties with multiple and sometimes conflicting interests.

The model portrays the development and implementation of social regulation as evolving out of 'relations' in which actors or participants 'meet' and exchange discourses within a 'regulatory space' with the 'intent' of bringing about some sort of 'action', which is embodied in a regulatory initiative or 'form'. While there is often imbalance in the 'power-influence' which is mobilized by actors, it is suggested that regulation will be more effective if the relations have the character of negotiation and accommodation, or in the language of the model, are 'harmonious' and 'balanced'. Using this analysis, EMS-standardization is seen as no different to any other form of regulation, voluntary or not. This finding holds for both the development phase of EMS-standards (eg, as observed in ISO/TC207), and their implementation (eg as used/applied by organizations, governments and stakeholders).

It is suggested that the structural-model has particular value in helping conceptualize regulatory

contexts and the development of initiatives; and in supporting thinking about potential regulatory pathways, scenarios and ideals. At the heart of the model is a conceptual map. The map provides a framework for several levels of representation of regulatory initiatives and contexts; for example, (a) the mix of ideological/modal types encoded in an initiative; (b) the kinds of participants active in and subject to an initiative; (c) the relative influence exercised within an initiative or context, and by whom; (d) the types of initiative that might be expected under specific conditions; and (e) the development tracks that are or might potentially be taken in the evolution of an initiative.

Multiple maps can be generated to produce dynamic series' of 'snapshots', or scenarios using certain of dimensions and/or parameters. Some examples are; different areas of regulation (*subjects*); different regulatory regimes, countries, or groupings of regimes, such as uni- and multi-lateral situations (*contexts*); and even expected, imagined, or ideal regulatory outcomes, in terms of modal balances, and/or the development of initiatives (*projections*).

The emergence in the analysis of powerful, aspirational 'regulatory ideals' - *participation, balance and harmonization* - is also worthy of note. These increase the potential usefulness of the model in supporting conceptualization and implementation of initiatives directed toward challenging and multifaceted social problems; such as the balance between use and preservation of the global environment, and sustainable development.

### 10.32 Insights from the analysis of regulatory process

The process model was developed to help address the issue how the potential of voluntarism might be accessed or improved in practice. The starting point was a management-systems based process approach, and a model was built out of a combination of theoretical propositions, and research into the ISO/TC207 Future Vision Task Force.

The model focusses on acts of regulation; that is, how regulation is produced and reproduced. It gives a way of analysing how visions and intents of legitimating constituencies and stakeholders are mediated and translated into instruments designed to produce specific actions and outcomes in phenomenal reality. At the core of the process-model is a cyclical conception of regulatory process - development and implementation of instruments, monitoring, and 'proving' their efficacy. The generic cycle - *vision-instrument-monitor-prove* - is shown to be iterative, reflexive

and self-sustaining.

The process model gives a coherent overview of the elements that make up an initiative, and shows the relationships between these elements and tasks. It provides guidance for the operation and revision of initiatives. The roles played by main parties/actors in the creation and maintenance of regulation are highlighted, and their relative significance in the ongoing life of an initiative is indicated.

The model shows the importance of acknowledging and analysing the variety of stakeholders and their relationship to an initiative. The model shows this recognition process is most important at the time the initiative reviews its performance, in terms of; (a) achievement of its overall goals; (b) the degree of support for an initiative and its instruments among users, constituencies and stakeholders; and (c) its responsiveness to changes in the expectations of stakeholders.

The process model is found to have definite strengths in analysing voluntary forms of regulation. The cyclical logic gives a framework for understanding how regulation is produced and maintained, and does so without being tied to any particular type of regulatory regime (eg market-voluntary; state-legislative). The process model also produced aspirational 'regulatory ideals' - *motivation, vision and coherence*. Like those produced in the structural analysis, these ideals potentially increase the usefulness of the model in supporting conceptualization and implementation of initiatives directed toward challenging and multifaceted social problems. The issue of just how useful is explored in the section below on 'answers to the research question'.

### 10.33 Unifying the models

The term 'regulation' is often used to connote outputs of a regulatory system, and also the processes involved in creating those outputs. The structural model was developed to explore the former point, while the process model focusses on the latter. It is suggested that the two models are complementary, and that together, they can make a strong contribution to addressing the research question. The discussion following explores their potential complementarity.

The starting point for this excursus is the observation that both models focus on different aspects of the same phenomenon. The structural-model is a theory of regulatory structures. It is a way of conceptualizing regulatory systems and the ways initiatives develop within those systems. It can

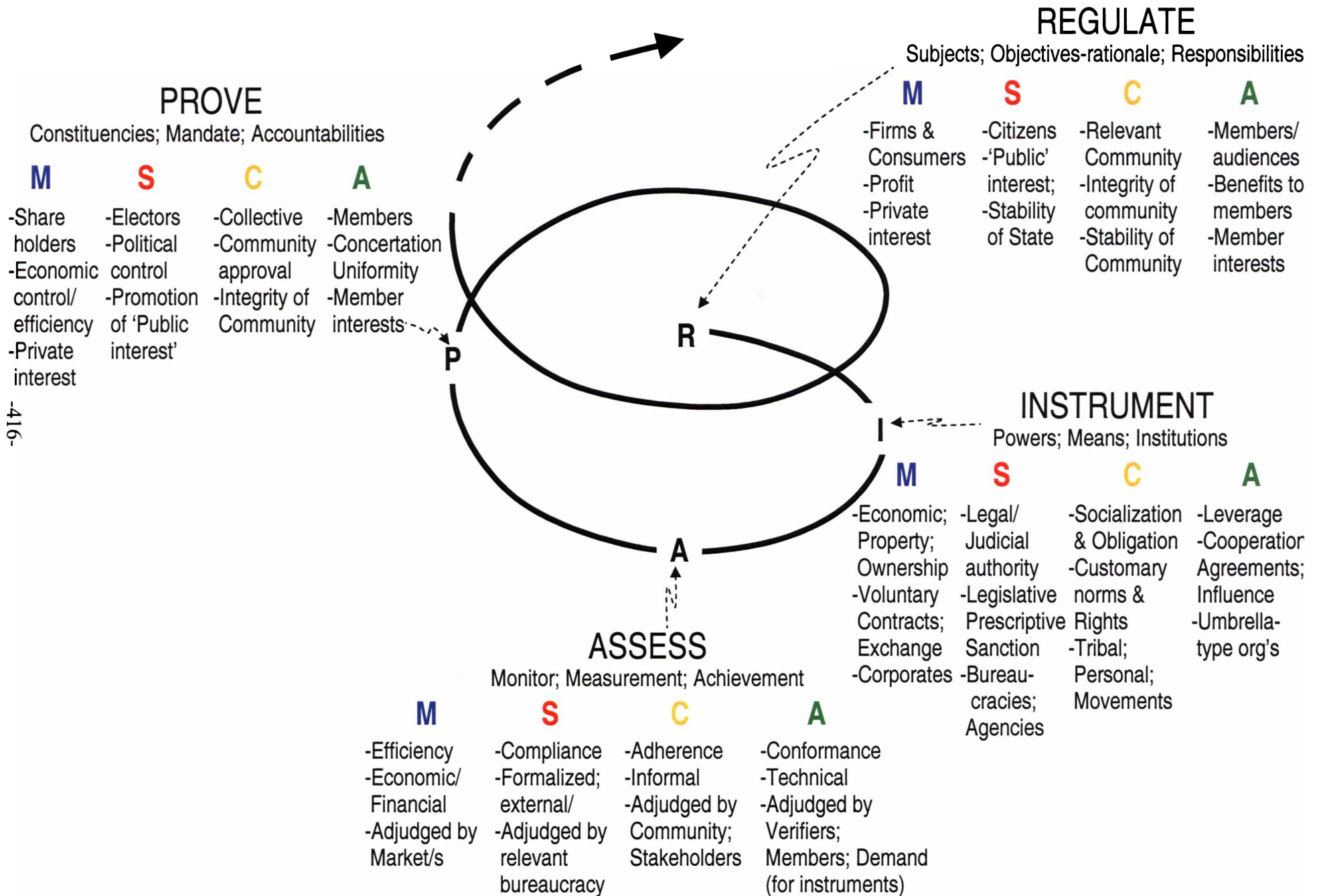
also be used to describe how systems evolve. It represents aspects of the ways the *body social* is organized. The process-model is a theory of process. It is a way of analysing how regulatory intent is translated into initiatives designed to produce changes in behaviour. At the core of the process-model is a concept of the regulatory cycle. This cycle - *vision-instrument-monitor-prove* - is iterative and self-sustaining, and could be said to represent in a very simple way the *consciousnesses* that play critical roles in shaping the body social. It is suggested that a logical step in theory evolution is to search for commonalities in the models, to see if they could be unified.

The first point of commonality between the models is found in the *mode-specificity of regulatory cycles*. Essential similarities between regulatory processes were noted early in the research, and the process-model was built up using thinking along these lines. An argument was made for seeing the process-model as generic; that is, applicable to any type of regulatory process. While the ways regulation is thought of and practised varies among modes (along with goals, mandates, instruments, mechanisms, measurements, and accountabilities), it is argued that the basic cyclical structure outlined in the process-model may be used to account for all formats. The research argued that many differences in regulatory practises can be explained by reference to 'modal' differences in thinking and structures. For example, state-based regulation is founded on the mandate given to governments by electors to promote the public interest. State powers to promulgate and enforce regulation are founded on a legal monopoly over the means of coercion (such as the judiciary and police), and bureaucratic agencies are responsible for the implementation and monitoring of compliance with generally prescriptive instruments. Market-based regulation, by contrast, is oriented generally toward protecting and promoting interests in private property. Regulatory means are seen as more-or-less voluntaristic, and based on exchange and contract. The constituencies typically served by market-regulation - eg shareholders; property-owning interests - are not as broad as for the state, but are in many cases no less powerful. The process-model is used to illustrate some basic differences in mode-specific approaches to regulatory process in Figure 10.2. This diagram contains four tables which use three aspects of each of the key stages of the process-model - Regulate; Instrument; Assess; and Prove<sup>159</sup> - to highlight key characteristics in regulatory approach as employed in/by the modes. An important point of differentiation in regulatory process is therefore the natures of the initiating/constituting modes themselves.

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<sup>159</sup>As developed in the previous chapter.

Figure 10.2: Mode-specific differences in key components of regulatory cycles



A second point of commonality is the compatibility of the two independently developed concepts of *harmonization*. In the process-model, an idea of harmonization is used to indicate the coherence (or otherwise) of an initiative with the needs and desires of the body social as a whole. In the structural-model, a concept of harmonization is developed to help flesh out understandings of mediating difference in regulatory relations. Harmonization, in both models, means to integrate diverse impulses and endeavours to produce actions consistent with ends desired at the level of a whole system. *Dissonance* is its opposite. The two views of harmony can be used to help inform each other. Figure 10.3 illustrates one way this could be thought of. In parts IA and IB of the figure, dissonance is visualised, as for example, dysfunctional relations, or goal divergence on the parts of different participants, or participants getting too far out of synch with each other. Each situation could be theorized as mode-informed discourses, intents, actions, participants etc, coming to work at cross-purposes. The result is that differences are magnified instead of ameliorated. Achievement of shared views on regulatory ends and means is very unlikely under such circumstances. Harmonization in regulatory relations - ie agreed, mediated, integrated, and shared means and ends - is by contrast conceptualized as a congruence in cycle/process, where difference is harmonized via negotiation and integration. Colloquially, this might be seen as 'being on the same wavelength'. Part II of Figure 10.3 illustrates this interpretation of the harmony concept. Both models contain a harmonic ideal; it is seen as a crucial determinant of relations at micro/individual and also macro/systemic levels.

A third point of commonality between the models is suggested by the second. The cycle of the process-model, when mapped against the passage of time, is represented as a *spiral*. This spiral strand has four main nodes (Regulate, Instrument, Assess and Prove) where information is integrated and/or produced, to help determine the intent, form, content and direction of a regulatory initiative. Different initiatives will be described by different spirals. It has been established that while particular spirals will differ in significant ways, key similarities will always exist; for example, in the cyclical nature of the regulatory process, and between initiatives having common origins in the modes. The spiral strand can therefore be viewed as somewhat analogous to the strands of biological information in the helical strands found in the deoxyribonucleic acid (DNA) which govern the development of all life forms. The spiral strand is a type of code which incorporates key aspects of an initiative and tells a story about its development. Thus, an important result of the unification of the process and structural models is the beginnings of a concept of *modal DNA*. Figure 10.4 illustrates the theory - each of the modes are seen as capable of generating strands of particular 'hues'; overlaps represent 'spaces' for various forums, within

Figure 10.3: Integrating the structural and process models I & II

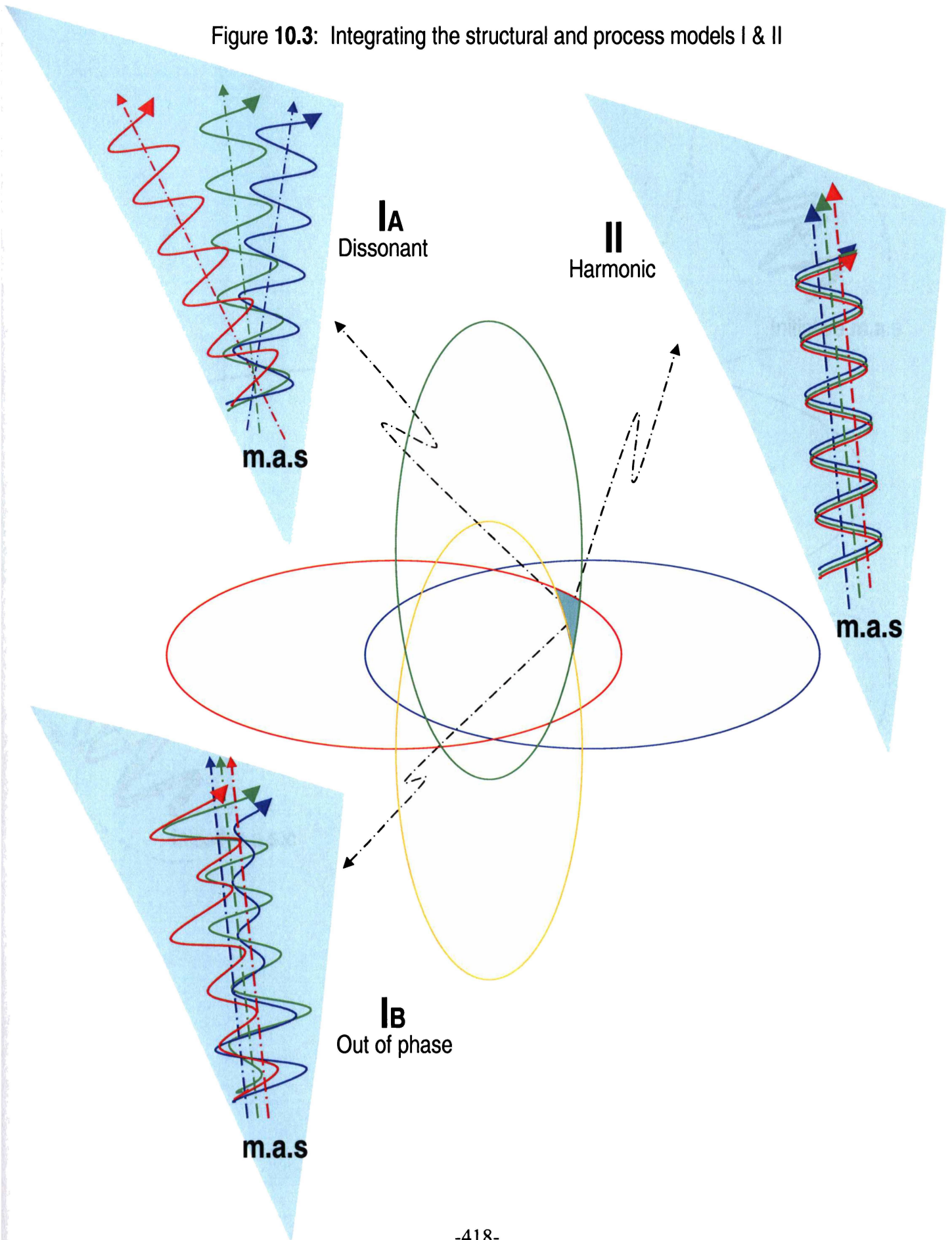
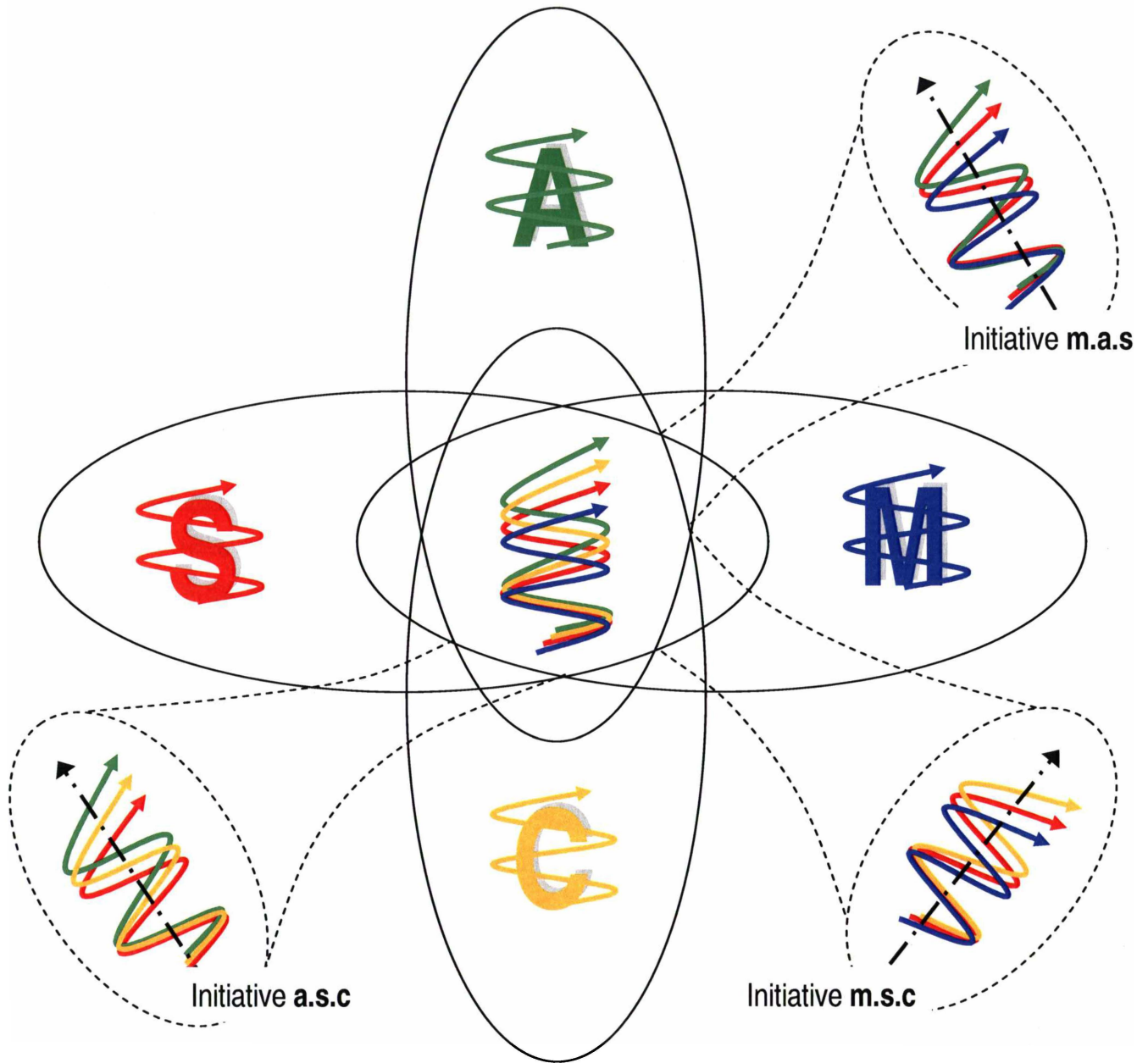


Figure 10.4: A unified model: Examples of *modal DNA* in different initiatives



which strands come together to inform and reinforce each other, to facilitate the creation and/or evolution of new regulatory forms, or initiatives. Of course, the most complex form (and potentially most stable) would arise from the *nucleus*.

An outline of the overall structure of a unified model can now be determined. Figure 10.5 shows the breadth of the new theory. It comprises six levels, stretching from the ‘very small’, to the ‘very large’. Shorter cycles of regulation relate to the creation of and compliance with initiatives, and this part of the model can provide conceptual resolution down to the level of the behaviour of individual subjects of regulation. The global-systemic level of the model relates to large-scale regulatory issues and/or contexts, and can help illuminate the ways that the largest organizations and structures address social macro-issues. Between these two points of extremity, the theoretical structure of the model is integrated and seamless.

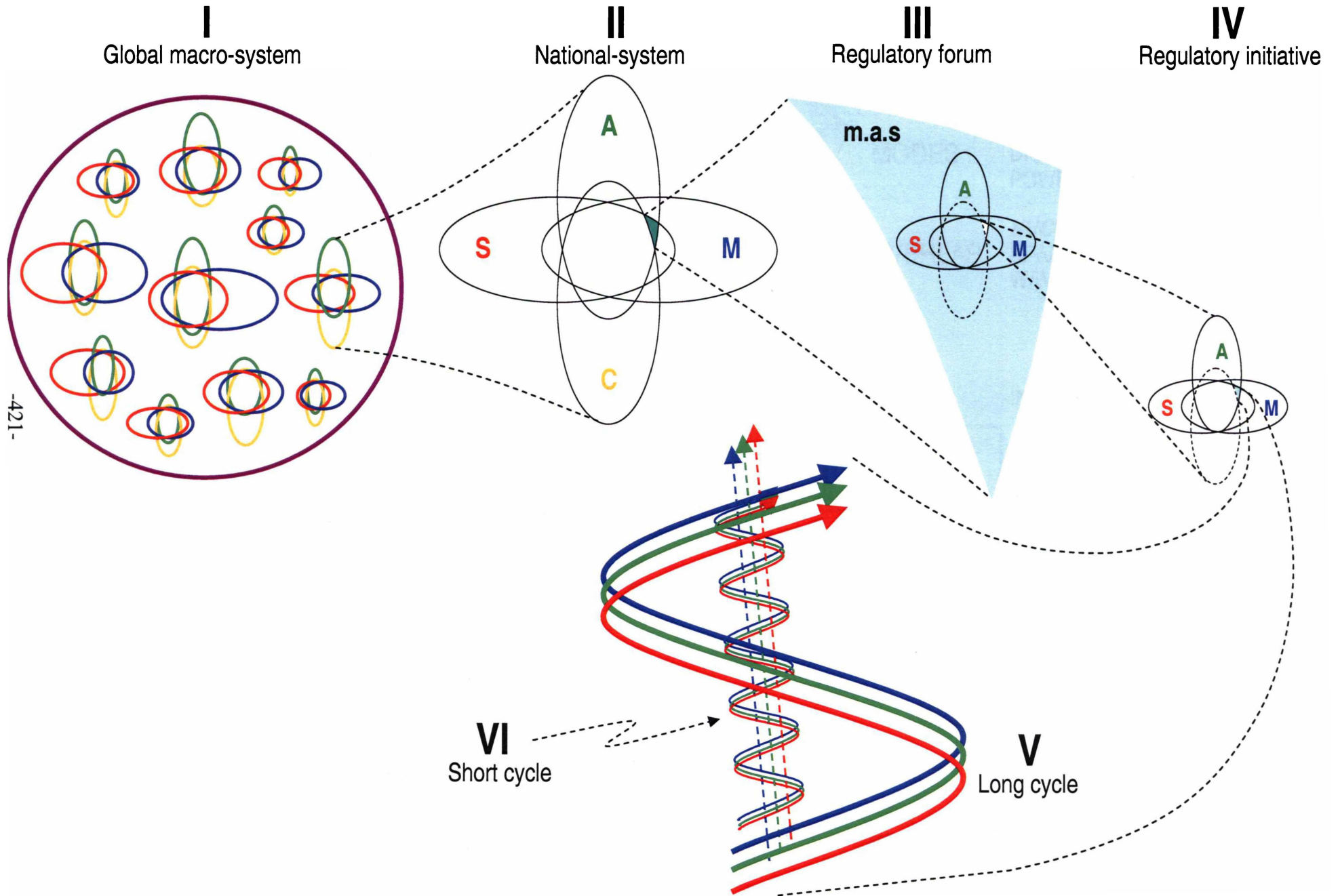
The structured nature of the unified theory can be clearly seen in the reference diagram shown in Figure 10.6. This gives an overview of the key concepts and conventions tying the theory together. On the left of the diagram, the graphical logic developed over the course of the thesis is used to symbolize and link the six key theoretical elements, or ‘levels’<sup>160</sup> which connect the ‘top’ (structural) with the ‘bottom’ (process) of the theory. On the right of the diagram is listed - in a way corresponding to their relationship to each of the six levels - the *primary* and *secondary/supporting* concepts as crystallized and worked through in the thesis.

It is found that the unified model exhibits desirable qualities in description and analysis. The theory underlying the model, coupled with its strong aesthetic/communicative qualities, make it particularly useful for telling stories about regulatory structures, dynamics, and scenarios. It also shows promise as a multi-purpose tool - with some development, it may be useful in analysing regulation in other areas of public-private mediation.

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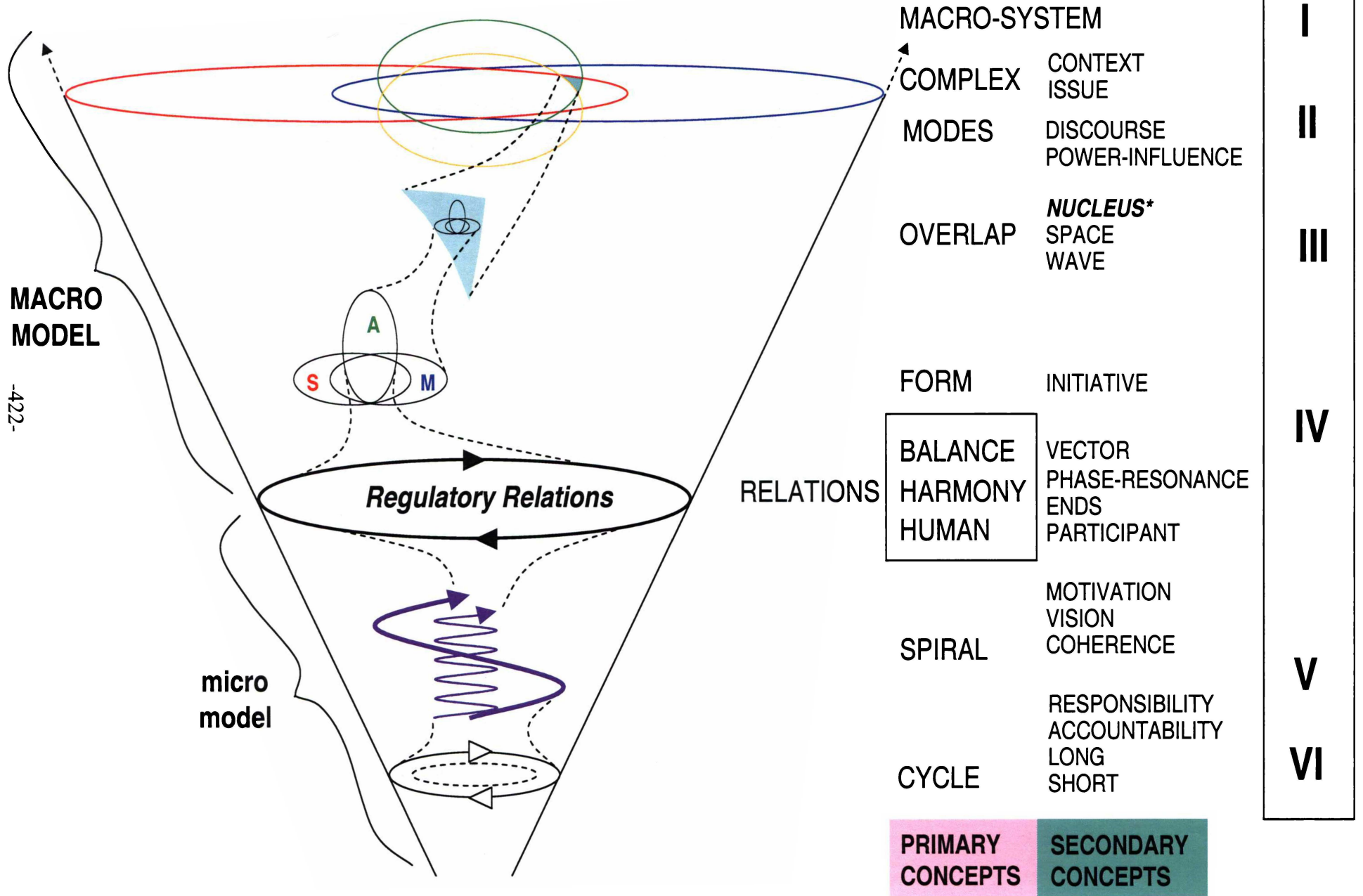
<sup>160</sup>These are: (1) Macro-system; (2) National-system; (3) Regulatory forum; (4) Regulatory initiative; (5) Long regulatory cycle; (6) Short regulatory cycle.

Figure 10.5: Six levels in the unified model



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Figure 10.6: Key concepts and correlations in a unified Theory of Regulation



## 10.4 Answering the research question

This part of the chapter summarizes the answers produced by the research into the question of the potential of self-regulation in fields where private and public interests converge. The discussion considers first how the unified theory addresses the question, and suggests a new way of looking at how public and private interests may be merged. It concludes with an analysis of the lessons generated in the course of the research for practice at the level of the modes of regulation, and for the management of an individual voluntary initiative.

### 10.41 Developing 'answers' to the research question using the unified theory

This thesis has produced a novel theoretical approach to regulatory contexts and relations. The structural analysis of environmental regulation showed the diverse range of voluntary applications already in place which address public and private interests. It was found that state-governments (for example) are but one type of player in regulation, and that coercion (via legislative-prescriptive initiatives) has inherent limits in its capacity to generate the range of behavioural adaptations required to address complex social goals. It was recognized that some types of actor - corporations, movements, and associations, for example - possess sufficient interest, influence and expertise to generate their own self- and semi-self regulatory initiatives. The theory models the dynamism and range of initiatives produced by the interplay of actors in practice.

The theory highlights the important role played by the informing 'modal' discourses in shaping actor perceptions and preferences. Actors representing market-related causes, for example, were seen typically (but not always) to seek to maximize the benefits of regulation to their own private interests. Added to this analysis was an examination of the results of relative imbalances in power (and/or ability to participate) in regulatory relations and the formation of regulatory initiatives. The pervasiveness of certain discourses among participants, allied with exercises of power, are seen as key determinants of the structure and purpose of regulatory initiatives. The model suggests that as particular discourses come to dominate relations - which is usually accompanied and/or facilitated by exercises of power - the capacity of an initiative to integrate potentially incongruent objectives (such as public and private interests) is reduced, with the result that one (or a few) becomes 'preeminent' and others 'marginalized'.

It is used to suggest certain regulatory configurations and vectors of development that might be

expected to enhance the potential of self-regulation. The analysis suggests strongly that the contribution of voluntarism to addressing private and public goals in regulation increases as an initiative approaches the ideal of the 'nucleus'. The nucleus is a theoretical ideal which represents the synergy of full *participation* (by all 'types' of actor), *balance* (in exercise of modal p-i), and *harmony* (optimization of discourse and ends).

The processual analysis of regulation was used to suggest that the support lent by voluntaristic initiatives to addressing private and public goals is related to the motivation of its drafters and how they perceive their constituencies and their interests. Motivation combines an intent which induces and drives an initiative, and the justifications underpinning certain types of action. A motivation anchored in a determination to protect the private interests of a narrowly defined constituency - those whose interests are served directly - is unsuitable to underpin an initiative which aims to address public good aims. It is argued that the narrower and more exclusive the perception of constituency held in an initiative, the weaker the credibility and relevance of the initiative to parties outside this group. An initiative which aims to pursue private interests and the broader public good must be informed by an inclusive, expansive and forward-looking mindset.

The analysis showed how *vision* is a key quality in a regulatory initiative. Vision is the thought of the ideal that inspires and energizes the initiative and gives it meaning. Vision assists the movement into the future by showing us where we are going, and the roads that might be taken. The ends to be pursued by the initiative, the context within which it exists, and the means to be employed by it, are conceptualized by those responsible for pioneering and guiding it. The degree and quality of vision required in the management of an initiative varies with its purpose and scope. A simple initiative focussed on well-defined technical issues and acting within a well-established context does not require profound imagination and insight. Imagination and expansiveness in thought is very much more important for an initiative which seeks to innovate in any area; for example, in addressing ill-defined, and sometimes difficult issues; in using new instruments; and especially in any forward-looking, or long-range regulatory project. It is concluded therefore that in the construction and operation of voluntary regulatory initiatives, special attention should be paid to clarifying the visions and ideals that enliven them. This is particularly important in initiatives which aim to address goals with both public and private dimensions.

The principle of *coherence* was developed to explain the importance of maintaining consistency between the goals and actions of an initiatives and the expectations of those who ‘use’ it (ie. regulatees), and between the values and goals embedded in the initiative and those characterising regulatory contexts (social, economic, political, cultural, biophysical). These two aspects were called *internal* and *external* coherence. It was argued that in the construction and operation of voluntary regulatory initiatives, there is a need for clarity and self-reflexivity on the goals and values driving the initiative, and an equal requirement for honest assessment of the degree to which the initiative supports the needs of users, stakeholders and wider publics. As a general rule, as the scope and potential influence of an initiative increases, so does the importance of maintaining coherence with the general good.

The unified model provides a way of illustrating the relationships and connections between the ‘micro-level’ of initiative management and processes, and the ‘macro-level’ of regulatory contexts and systems. The strength of this approach is that it shows how the actions and relations involved with the creation and operation of initiatives collectively shape overall regulatory systems. It shows how the ways that private and public interests are thought of and addressed are woven into initiatives at multiple levels. The research illustrated the adaptability of voluntary regulatory approaches, and the variety of ways that motivations and visions may be integrated into initiatives. The desirability of starting an initiative with a vision of merging private and public goals and building in proper capacity to achieve such goals was indicated in the research. However, it was also shown that even failing this there are avenues through which such vision and capacity may be ‘grafted on’.

#### 10.42 A new perspective on integrating public and private: a *common good*?

The research found that integration of private and public goals is problematic in theory and in practice. It is argued that a root cause of this problem is that public and private conceptions of ‘good’ are usually posed as opposites, rather than as complementary. During the course of the research, as ideas of fusion were explored (expressed for example as ‘overlaps’ in the structural-model, and ‘coherence’ in the process-model), a new approach to unifying typically antagonistic ideologies began to take shape. This approach emphasizes a ‘weaving together’ of often disparate interests, perspectives and goals to form, as far as is possible a unitary, ‘common’ good.

The meaning of what is *good for all* is multifaceted and elusive - especially in an intellectual

atmosphere where competitive self-interest is seen as the core ordering principle of human motivation and interaction. The idea of the common good, as developed in the research, has a number of elements; briefly, they are as follows. The common good is, first and foremost, an *ideal*; an inspirational archetype. As such, it requires a stretch of imagination to conceive of, and an unusual vision to lay out pathways toward achievement of common good goals. It is *holistic*. Contemplation of the common good requires an expansive worldview - a 'big picture' - capable of resolving at the level of individual 'component' parts, and also at the level of the composite, *unified* system created by their integration. The idea of the common good is therefore other-regarding, and by its *inclusive* nature, transcends barriers. Private interests, in this view, are seen inescapably as *subsets* of a much broader common good.

Thinking about the common good requires a realization that in the 'whole systems' formed by macro-boundaries - such as 'human society', or 'the biosphere' - all residents/participants are partners in the destiny of the whole. Therefore, the ideal of *harmony* must lie at the heart of the concept of the common good. If we are all partners in the destiny of the world-system, then at the level of that system, there is a basic commonality of interests; no single interest (or grouping of interests) can be allowed to prevail over others to the detriment of the whole. Balancing interests and enhancing the complementarity of initiatives is important for the *stability* of the whole system. Thinking about, and planning for whole-system stability necessarily involves a *long-run* perspective. Finally, any and all thinking about the common good is ultimately fruitless if it is not consciously chosen as an outcome; in a system informed - conceptually and practically - by competitive self-interest, fortuitous happenstance is the most likely way for common good goals to be achieved. Evaluating, approaching and achieving common good goals requires *intent* and *will*, particularly on the part of those responsible for the regulation of the commonality.

It is argued that voluntarism has not only very high potential in mediating the public and private, but is an essential tool for addressing problems where the public and private interests traditionally clash; such as in the new breed of large and pressing global 'macro-problems' (such as widespread environmental degradation, climate change and sustainability) now facing humanity. Some guidance on how this task might be approached is given in the following section.

#### 10.43 Lessons for practice at the level of the modes

The discussion below considers implications of the research for the praxis of each of the four

modes in turn.

## A State

State institutions are generally perceived as having a monopoly on social regulation, and especially public interest-type regulation. This perception is endemic in the literature and in practice. In the minds of virtually all participants in the research, for example, it was found that the term 'regulation' is exclusively associated with the exercise of state power to compel action. A major and undesirable effect of this interpretation is the creation of a 'demarcation mentality', where the interests of people and organizations are divided - often quite arbitrarily - into *private good* and *public good* categories. In theory and in practice, this demarcation is rigidly enforced; the public good may be regulated (by government), and private interests and affairs are energetically protected from the attentions of state agencies. This mentality creates very clear lines between what is seen as a proper role for private parties - for example, to extract optimal rates of profit from owned property - *vis a vis* responsibilities of states - such as protecting the public interest in, for example, general welfare and preservation of the environment. The convention of demarcation of interests and responsibilities encourages a fractured view of the social structure, and promotes a perverse system of responsibility avoidance. For example, this system rewards consumption of essential and life-giving elements of the biosphere, while encouraging a passing off of responsibility for rectifying instabilities thus created onto second and third parties, (eg 'affected parties'), and the state. This type of action is built on the fiction that the pursuit of one interest has no effect on others. The state, for its part, is in a compromised position. On one hand, a key role of the state is to foster conditions conducive to economic activity; while on the other, there is an expectation that it will act to mediate the effects this activity has on the general welfare. With the escalation of macro-problems, the essential contradictions and results of widespread demarcation-based mentalities and practices have become clearer, and the need for their resolution more pressing.

It is suggested above that seeing an overall societal system as a commonality may assist in moving past the demarcation problem. A problem for states is how to respond to the emergence and proliferation of novel environmental regulatory initiatives. States have two broad options in such cases; either ignore and/or oppose emergent initiatives, or to recognize them. The latter is recommended. By lending support to appropriate 'alternative' regulators and regulation, the state can encourage self-responsibility on the part of businesses, communities and individuals, and can

learn from their perspectives and practices. The proliferation of 'new' initiatives brings potential problems in (re)definition of responsibilities and accountabilities in regulation. By seeing its role as a 'power of last recourse' in regulation - ie as it possesses a monopoly over legal means of coercion - the state has an important role in determining the proper applications of and limits to emergent regulatory forms. It is suggested that a key function of the state in this context is as a 'quality controller', using institutional resources and experience to assist in the creation of robust new initiatives that have broad support in the social commonality. Another potential role for the state is to use its knowledge and experience to advise on the construction and practice of regulation (eg in policy; administration; institutional checks and balances etc). The result of these sorts of actions will be to increase the range of regulatory forms available and able to address social macro-problems.

## B Market

Market actors are not generally regarded as regulators. However, recent developments show a greater desire among businesses and industry to self-regulate. The logic of this movement is simple and persuasive: corporations alone possess the technical expertise necessary to efficiently ameliorate the impacts of their actions in wider environmental and social contexts; therefore self-regulation is to be preferred over interference by external actors with limited knowledge. The research found that in practice, much more than technical understandings are required to support self-regulatory initiatives; especially ones aiming to address complex macro-issues. It was found also that the logics commonly used to justify self-regulation are often partial, and can be invoked disingenuously to help conceal more ideologically motivated and self-serving aspects of market-favouring initiatives.

The logic of corporate self-regulation does have merit however. Significant resources are in corporate hands, and coercive regulation - by the state, for example - is unlikely to be effective in the long run, as it breeds at best a calculative compliance-mentality and an erosion of integrity at worst. In addition, innovation and creativity are needed to meet the challenge of macro-problems, and it is clear that these qualities are found in abundance in the private sector. Markets have tremendous potential to contribute to the achievement of the common good, and that experimentation in self-regulation is to be promoted. The theory suggests that crucial to the success of the market in regulatory initiatives is credibility in the eyes of wider society. It is argued that a key to generating much-needed credibility will be found in how well the ideals of

self-responsibility and accountability to wider groups of stakeholders are integrated into initiatives. Regulatory partnerships with actors and institutions representative of other modes are likely to play key roles in enhancing the contribution of the market to the achievement of common good goals.

## C Association

Associations play increasingly important roles in social regulation, especially in international arenas. Some larger associative bodies now boast resources and influence greater than many governments, and are capable of deploying an impressive array of regulatory instruments. The research found vast differences in size, structure and purpose among associations. Even among associative initiatives with an environment-related focus, there was enormous variety observed, and some potential for conflict was seen (eg business-promoting NGOs v conservation-oriented groups). The diversity found among associations reflects their appeal to a wide range of memberships. This is simultaneously the source of their great collective strength and also a fundamental weakness.

The achievements of many progressive social movements - environmentalism, the labour movement, human rights, are examples - have often been supported through associative action. The association is now a tool of choice for promoting non-mainstream interests and innovative ideas. The proliferation of associations found in the research is interpreted as an indication that very many interests are neglected by conventional systems of regulation.

However, despite a widespread perception of independence from more established and institutionalized regulatory systems, there was observed a tendency for associative initiatives to be shaped by the interests and desires of often single-minded memberships. In the case of ISO/TC207, it was shown how a single-issue approach to a multi-dimensional problem can lead to shortfalls in promised outcomes. The diversity found among associative initiatives is a sign also of a loose and undefined conceptual basis for the form. It is suggested that the currently immature state of theoretical understandings of associations is a key cause of the *ad hoc* ways in which they tend to develop, and a reason for the uncertainties surrounding the proper roles of associative initiatives in established regulatory orders.

It is suggested that the new theory of regulation has some potential to help inform a new

understanding of initiatives with a basis in the associative mode. For example, the theory posits an essential equality in the theoretic validity of each of the modes. Therefore, associations are seen as legitimate regulators. Another way the theory may inform thinking about associative action is through the relation conception. At the heart of the structural-model is an idea of regulation as a type of relationship or partnership between people to achieve agreed-upon goals. It also sees that the importance of inclusiveness increases with the scope of regulation. It is argued that more traditional regulators (eg states, and to a lesser extent market institutions) have much to learn from the experience of many types of association with partnerships and inclusiveness.

#### D Community

Much like associations, communities are generally not seen as regulators. However, community and cultural forms of regulation predate virtually all formalized formats. Some types of community-based initiative are still used in many contexts, and evidence was found for a resurgence in popularity in initiatives with their basis in community; ‘grassroots’ and popular movements, for example. It was also found that many types of regulatory initiative, particularly those commonly connected with associations, have their origin in the community mode.

Through the lens of the new theory of regulation, community and cultural means of regulation are seen as valid forms in their own right. In some cases, those managing more complex initiatives might be well advised to consider these means in forming regulatory partnerships. It was found in the research that a major barrier to community involvement in regulation is often a lack of knowledge and technical capacity. This can affect (a) the abilities of communities to have meaningful input into initiatives affecting them; (b) competence in communities in evaluating claims made for initiatives, and; (c) in assessing the adequacy of the responsibility and accountability mechanisms built into an initiative.

In highly institutionalized regulatory contexts, community-based initiatives are often disregarded as ‘serious’ options - and in view of the resources needed to address some problems, this view has some validity. However, what is often forgotten in the process is that the wider community is the ultimate well-spring of all legitimacy to regulate. Conventional institutions ignore community at their peril.

Throughout the theoretical development in this thesis, it has been assumed that social systems can be described by a conceptualization of four modes - market, state, community and association. While this convention is accepted widely in theory and in practice, it relies on often arbitrary distinctions, and problematic categorizations (of, for example, actors, ideologies, initiatives, institutions, theoretical constructs, etc). It is conceivable that a four-mode system is, or might become inadequate to describe and analyse complex regulatory situations. Further theoretical and empirical development may be needed to assess the continued usefulness of a conceptual framework ordered by four main elements. The model developed here may be capable of accommodating more than four modes, or even different types of modes/categorizations, but this is a challenge for the future.

#### 10.44 Lessons from the ISO/TC207 experience for voluntary regulatory initiatives

In the literature and in practice there was found a strong underlying assumption that the ability of voluntary regulatory initiatives to address private and public interests is not only possible but unproblematic in practice. However, the findings of the research into ISO/TC207 contradicted this view. A strong bias toward private interests was shown in EM standards development, and a deep ignorance of the ways public interests were potentially affected by the initiative was found. TC207 has thus far found it difficult to address private and public interests in such a way that the former does not dominate the latter.

The vision of ISO/TC207 was found to be problematic also. Research findings supported the argument that the vision prevailing in TC207 is one of industry exempt from external control; free to self-regulate in an increasingly broad range of issues; free to specify what interests and objectives should be pursued; and relieved from the demands of societal accountability and public scrutiny.

To some extent, it is unsurprising that TC207 has addressed potential public-private dichotomies by assuming them away. ISO's experience lies in the development of industrial-technical standardization to help facilitate trade and the development of markets, and the core ideology of the market - an ontological proposition that self-interest is the fundamental organizing principle in society - gives little guidance as to what actions might be consistent with the achievement of public goals.

This position is untenable in the long-term, if the initiative has aspirations to make strong contributions to common good goals - such as environmental management and sustainable development - and expects others to accept this on its face. In the short-run, ISO/TC207 may perceive benefits in adopting narrow perspectives. However, one lesson of the research is that success in implementation of (self)regulatory initiatives - especially ones having potentially large impacts on the public interest - depends on its acceptance by a broad range of stakeholders and interested parties. It is far from clear that TC207 has been able to generate broad acceptance, and it is doubtful that it will, given an apparent ignorance of such a need within the group.

If left unattended, the failure to credibly address the private-public dichotomy may contribute to an erosion in confidence in not only ISO/TC207, but also in future ISO initiatives having a similarly broad focus. This attitude will contribute greatly to a future where ISO initiatives risk being seen as irrelevant, and even inimical to the interests of any but a small group of private, industry interests.

Contributing to the problems of motivation and vision is the finding that ISO/TC207 has failed to explicitly take into account the diversity in implementation of its instruments, and the implications of this variety in practice. In the language of the model, the internal logic of TC207 lacks coherence. That is, TC207 and the discourse, assumptions and values being used to develop ISO14000 standards are out of touch with the ways they are used in practice. The consequence of this, it is argued, is downward trend in the relevance of the initiative to users of, and stakeholders in the initiative.

It is also argued that ISO/TC207 has a problem in terms of external coherence. The research found a dissonance between its focus on serving the short-term preferences of industry, and the expectations in the wider society of an initiative which claims to address longer-term and 'public' goals. It is argued that as the scope of an initiative widens from narrow goals (eg technical standardization), to broader ones (such as sustainability), its informing values and concepts must themselves be broadened. It is far from clear that this is recognized in TC207.

Overall, the prevailing motivation in ISO/TC207 was found to be to serve the short-term interests of its traditional business and industry constituencies. It is suggested that this narrow motivation provides only weak support for present and future credibility of this initiative, and other public-interest related activities of ISO. The simplest solution to these problems would be for TC207

to avoid them altogether; that is, to lay aside any claim to address public interest goals, and for ISO to refocus on its core business (ie. the production of technical specifications to support the efficient operation of industry). This is probably seen by ISO as an unattractive option, as it would remove a significant part of the rationale for TC207 and the ISO14000-series of standards, and also weaken possible future ISO initiatives affecting extra-industry interests.

There is potentially much to recommend in the 'ISO/TC207 approach' to self-regulation in the service of private and public goals in environmental regulation. ISO is a well-resourced and very well-connected global organization. It is enmeshed in world-wide networks of production and trade. This gives it considerable advantages in terms of the ability to motivate and coordinate the actions of business and industry. ISO has long experience in the use of voluntary instruments. It can mobilize and consult with significant expertise from industry, governments, and academia. It has extensive connections with the regulatory apparatuses of many governments and (through the national standards bodies, for example), and NGOs, which helps ensure that its products are recognized worldwide. And its instruments are used in support of many regulatory initiatives, and cross-referenced extensively in others. Clearly, international standardization is a potent and influential regulatory force.

Given these strengths and experience, it seems surprising that ISO/TC207 has underestimated the challenges of developing an initiative that achieves its own stated goals. The research showed that TC207 has, over its 10 year history, underplayed the complexity of the problem of regulating in areas of such strong public interest, underestimated the breadth and variety of parties interested in environment and sustainability, undervalued the importance of demonstrating its responsibility to communities wider than immediate users (and often not even this far!), and has consistently avoided assessing whether it has achieved the goals set out in its Vision. It should be remembered however, that its standardization of the EMS approach is its first foray into an area of such strong public interest, and its performance could be expected to improve over time. Just how much time is available to it is an open question. This is not just a problem of 'public responsibility'. It is also a matter of simple market logic. If a self-regulatory initiative fails to gain sufficient constituency and stakeholder approval, their buy-in to it suffers, incentives for organizations to uptake the initiative fall away, the durability of demand erodes, and the initiative risks failure in the marketplace.

In conclusion, the lessons from the ISO/TC207 experience in self-regulation in pursuit of private

and public goals can be related in a few lines: an initiative of this type should foster an expansiveness of vision commensurate with its goals; it should integrate as broad a range of stakeholder views as are affected by its actions; it should not be bound by the motivations and interests of a powerful few; and it should remember that the mandate to self-regulate, in a well-informed polity, relies on responsibility and accountability to all parties affected by its actions. It is suggested that adherence to these principles, and the other ideals expressed in this thesis, will greatly enhance the ability of self-regulatory initiatives to meet private and public goals.

## 10.5 Contributions of the thesis

This part of the chapter reviews and assesses the contributions made in this thesis. Theoretical developments in the areas of EMS, voluntarism and regulation are discussed first, followed by a consideration of methodological and stylistic aspects of theory-building developed in the course of the research. The analysis notes the 'organic' manner in which different research elements were merged with creative conceptualizations in an integrated approach to theory-building.

### 10.51 Theoretical and conceptual contributions

This thesis makes original contributions to theory in the areas of EMS, environmental regulation, and voluntarism. In each of these areas, the research sought to build on, and then go beyond conventional theory. In the investigation of EMS, the research found significant limitations in conventional theory. The research found problematic aspects in conventional assumptions about EMS (for example, EMS is a value-neutral technical tool; EMS is purely voluntary; EMS development is an apolitical process), and developed a new analysis which expanded the definition of EMS, and illustrated the variety of EMS applications in practice. The research explored new ways of thinking about the EMS development process, and recommended adaptations to this process.

The research explored the theory and practice of environmental regulation to illustrate the variety in application of EMS-based initiatives in regulatory systems. Conventional approaches to theorizing about regulation were found to be problematic in their treatment of voluntary and semi-voluntary instruments. A novel theory which combined an analysis of regulatory systems and initiatives was developed. The theory is unusual in that it does not differentiate between different forms of regulation on the conventional bases of state or market (etc) affiliation, or

whether initiatives are coercive, voluntary or semi-voluntary. One result of this approach is that the model is capable of uncommon comprehensiveness in analysis. The theory is also notable for its theoretical ‘ideals’, which are used to suggest pathways for the management and evolution of regulatory initiatives, and overall systems.

The research took an original approach to assessing the potential of voluntarism in the service of public goals. Conventional thinking about self-regulation was criticized as reductive and overly simplistic, and found to lack explanatory power. A new analytical approach, derived from the theory noted above, was developed instead. This approach promotes a ‘unified’ view of the interconnections which make up regulatory systems. Being able to grasp key aspects of a context in a ‘snapshot’ promotes an understanding of the ways constituent parts come together to form ‘whole’ regulatory systems. It is also argued that the capacity to see a system as unified aids understanding of how it may evolve, *as a whole*, better than reductive and/or interest-bound perspectives.

Running through the new model are a set of theoretical ideals which, it is argued, have potential to inform the evolution of social regulation. These are noted in Table 10.2:

Table 10.2: Theoretical ideals and their implications for regulatory praxis

<i>Participation</i>	<i>Motivation</i>
Implies openness and encourages unity of purpose in regulation. Sharing is an important principle.	Shapes the intent and consciousness of an initiative. Important in defining the interests and legitimacy of an initiative.
<i>Harmony</i>	<i>Vision</i>
Emphasises the importance of listening, communicating, negotiation, and the melding of discourse and action.	Crystallizes the ideal end and meaning of an initiative. Shapes choices of ends and means. Imagination is crucial.
<i>Balance</i>	<i>Coherence</i>
Emphasises the importance of maintaining a dynamic equilibrium of interests, power and influence in regulation. Dominance of single interests and/or discourse is undesirable.	Implies regulatory goals of initiative are shared by stakeholders and wider society. Helps ensure ongoing relevance and acceptance of initiative.

## 10.52 Methodological and stylistic contributions

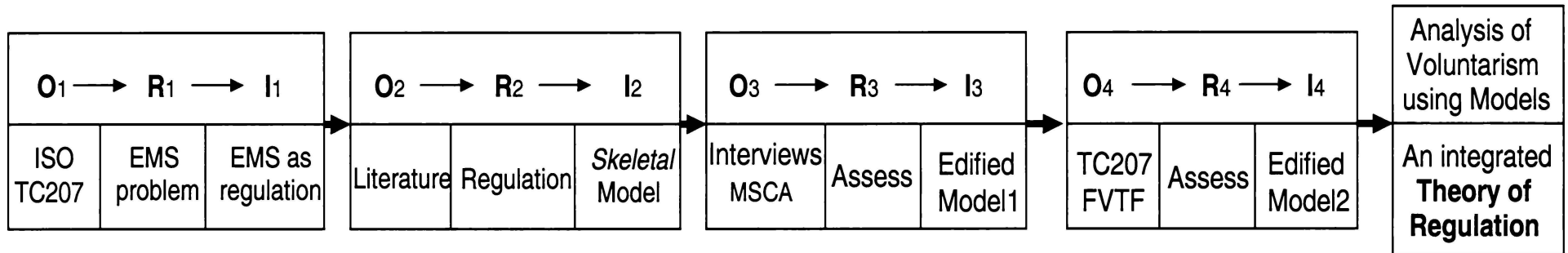
The work reported in this thesis employs novel approaches to research and theory-building. This section reflects on the contributions made in the thesis to research methodology and style.

The methodological basis for the thesis was found in the theory of the ‘middle-range’. This approach was chosen for its fit with project objectives and the way the research evolved; specifically (a) its emphasis on model-building; (b) its suggestions for an iterative-skeletal approach to integrating empirical programme(s) with theorizing; and, (c) its endorsement of flexibility and originality in theory development (Laughlin, 1995; 1997). It is noted that all expectations of research support from this methodological framework were met.

A particularly attractive aspect of the middle-range methodological approach was its amenability to adaptation, in terms of research variables, such as empirical sites, researcher involvement and prior theoretical development. Several adaptations were made to the general approach in ‘fitting’ it to the needs of this research. The first and most important of these was the development of a *cyclical-iterative* manner of building up integrating theory with empirics. The cycle can be described in three stages, beginning with *observing* (ie. exposure of the researcher to contexts external to him/her); the second is *reflection* (ie. assimilation of data by the researcher - transformation into information); and the third is *interpretation* (ie. classification, generating insights, integrating information into existing conceptual frameworks, creation of new ones). Speaking in general, the output of the cycle could be called more-or-less developed theory, and in the case of multiple cycles, the output of one inputs into and helps shape the parameters of the next.

Theory development proceeded in the project through a process involving four *Observation* → *Reflection* → *Interpretation* cycles. The process is explained below, and is outlined in Figure 10.7. The first cycle focussed on the work of ISO/TC207, and found several problems with conventional understandings of EMS. The interpretation generated was that EMS was a regulation of some kind (chapters 2 and 3). This led to a ‘crisis of theory’ in the research, and prompted a second *O* → *R* → *I* cycle (chapter 4). This cycle generated insights on regulation from the literature, and resulted in the construction of a skeletal model (chapters 5-7). This model became the subject of a subsequent *O* → *R* → *I* cycle. The observations were based on a programme of interviews. Reflection aimed to assess the models, in terms of its explanatory powers, and the

Figure 10.7: Four iterations in theory development in the course of the research



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CHAPTERS

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**KEY**

OBSERVATION → REFLECTION → INTERPRETATION

interpretive stages concentrated on edifying the model (chapter 8). The model was found to have a number of strengths in analysis, and suggested directions for the development of voluntarism, but did not address how they might be achieved. Thus a fourth  $O \rightarrow R \rightarrow I$  cycle was initiated, intended to cast light on regulatory process (chapter 9). The observations were based on participation in ISO/TC207's strategic revision programme, and on reflection and interpretation aimed to improve the capacity of the process model to address the research question. The final act in the project was to integrate the two models of regulation to form a new, more comprehensive theoretical approach to regulation (chapter 10). This theory may itself be the focus of further iterations.

The path of the thesis, mapped out in this way, gives a template to show how a similarly iterative process might be developed for other research situations. This approach has potential to contribute to practices of research.

Another adaptation of 'basic' middle-range methodology was found to integrate material and insights from different contexts - generated using different methods - to form a 'meta-theory'. After the initial  $O \rightarrow R \rightarrow I$  cycle, the project faced a crisis. It was averted by expanding the scope of the research to include the 'meta-subject' of *regulation*. While this move created several new problems (which are explained in chapter 4), it allowed research to be continued in ISO/TC207, and opened up a new arena of research into structures of regulation.

This project was assisted by a number of original developments. An important one is the graphical *style* of conceptualization. The graphics are an integral part of the theorizing processes employed in the research. It is fair to say that the unified theory would not be nearly so comprehensive if not for this stylistic adaptation. The graphics symbolize things and ideas about things, and using them allows an analysis to portray in easily understandable ways (a) objects, subjects, participants, residents, constituents of *phenomenal contexts* (eg actors and sets of actors; institutions; systems); (b) dynamical *relations* between actors, institutions, and systems; (c) *processes* used to mediate and structure relations; (d) the *effects* produced when variables and assumptions are changed; and (e) *projections* of potentials and possible avenues of change.

The symbolic conventions used in this thesis are intended to convey meaning via analogues, metaphors, and in more complex configurations, as graphical shorthand. They are intended to assist understanding of the ideas being dealt with in the discussion by re-presenting ideas and

assumptions, in much the same way as a words can be seen as representative. They are also used to help manipulate and explore ideas in ways not readily available through the use of words (so might be seen as a sort of precursor to another type of 'language'). Being graphical, the 'symbolic script' has the added advantage of visual impact when used to portray different layers of theory, to demonstrate the effects of shifts in theoretical supposition, and to suggest avenues for development. It should also be noted that the pictures made possible by a diagrammatic approach to communication of theory greatly supported a two-way discourse - between myself and participants in the research - in the empirical parts of the research. It was found that even rudimentary graphics helped participants understand quite complex ideas (although of course, I was seeking to explain 'their' worlds), and often had the effect of inspiring participants to think about their situations in new ways. And participants frequently used the graphics shown to them as tools to assist in communicating and illustrating their commentaries.

'Picturing', or re-presenting ideas symbolically makes them more amenable to conceptual manipulation, and enables both deductive and intuitive jumps to be made, to create new understandings and/or propositions. These can then be tested, and the results used to further develop theory. Although care has been taken to link the graphical tools strongly to the words/script, it might be an interesting exercise to be more adventurous in adapting discursive formats so that graphics can take a more prominent place, and themselves be supported by a minimum of commentary.

In completing this thesis, I learned to combine traditional intellectual-rational tools with an imaginative-creative expression, to produce an academic, technical work which is at the same time elegant and aesthetically attractive. I approached theory-building as part intellectual exercise, part empirical groundwork, and part artistic interpretation.

## 10.6 Final reflections on the meaning of the research

It is all very well to think of new goals for society. But of equal importance is the need to think and converse about the best ways these new goals might be achieved. The great and pressing problems of our time have no regard to human perceptions of their private or public natures. Environmental degradation, a seemingly permanent state of war, widespread social instability, and the problem of sustainable development, are all complex and intertwined issues that impact on private interests and property - and also exhibit strong public good aspects. In our

interconnected global society, we are *all* affected parties. It follows that to continue to demarcate regulatory praxis aimed at addressing such 'macro-problems' arbitrarily along the lines of *private* (ie. the preserve of market and corporate initiative) and *public* (ie. rightly addressed by governments and the state-bureaucracy) seems facile, not to mention futile, in the face of such enormous challenges.

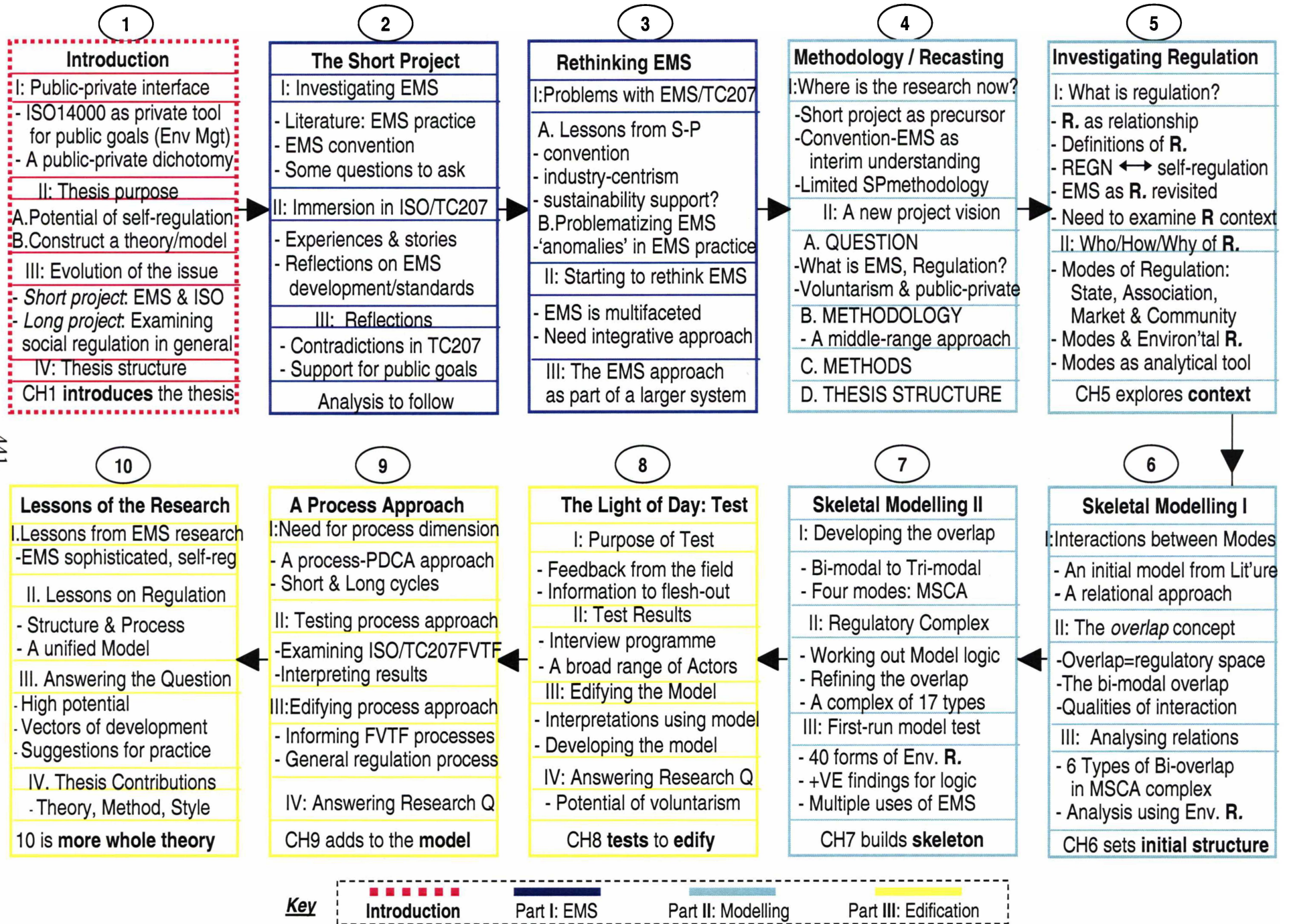
The research, and the analysis based upon it showed that, at a certain level of resolution, all interests are 'my interests'. At a meta-level, separation - of interests, of goals, of modes, and of contexts - is illusory. The theory problematizes demarcations in regulation, and suggests that the biggest challenge in the resolution of public-private dichotomies is to realize that in the long-run, and from a macro-view, a dichotomy is a state of mind.

While the new theory can be used to make recommendations for action, it is mainly intended to show how fresh thinking can be utilized to arrive at new possibilities and opportunities for change. It is increasingly clear that many old ways of thinking - mechanistic, reductive, separative, rigid, and cynical - have limitations in informing responses to complex new problems. Instead, it may be more appropriate to learn to think in new ways - I suggest that organic, holistic, dynamic, visionary, bold, and idealistic ways would be good places to start. Buckminster Fuller argued that;

In order to change anything, don't struggle to change the existing model. Create a new model that makes the old one obsolete (1975).

I'm not sure that anything has been made obsolete by this thesis, but I think I did create a new interpretation.

Figure 10.8: The thesis at a glance



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## Appendices

### A The empirical programme of the Short Project

#### I *Interview Schedule 1: Aust/NZ participants* (Wellington, 1994; 1995; Surfers Paradise, Australia, 1995; Oslo, Norway, 1996)

Purpose: To obtain a more complete understanding of the TC 207 participation process and to explore the roles and attitudes of key Aust/NZ participants

Employer and Position held:

Any special arrangements with employer to enable participation in TC 207/QR11:

Affiliations with other groups (eg Industry Associations, Interest groups etc):

Do you represent any interests other than your own or those of your employer in TC 207/QR11:

What benefits are there for your employer or sponsor organisation in your participation in TC 207/QR11?:

How came to be involved in TC 207/QR11:

Any history of involvement in organisations with similar objectives or interests:

What are your expectations of involvement in TC 207/QR11:

#### II *Interview Schedule 2: International participants* (June 1995, Surfers Paradise, Australia; Oslo, Norway, 1996)

Purpose: To get a more in-depth idea of whats happening

As you see it, what is the main objective of TC 207/QR11:

- market efficiency
- harmonising international standards to enable increased efficiencies in trade
- environmental improvement/sustainable development
- industry efforts to pre-empt/prevent legislation
- formation of first-world trading bloc
- establishment of monopoly over environmental regulation/specification by ISO

How will it achieve these objectives?

What pressures/forces are TC 207/QR11 responding to:

- economic

- legislative
- service to industry
- national self-interest (north)
- industry self-interest (economic/competitiveness and legal pressures)
- popular concerns
- ISO self-interest; increasing political-economic influence of ISO
- facilitation of sustainable development

How reflected?

Role of the state in EMS/standardization?

### III Information about the interview participants & programme

Respondent #	Organization, Title	Date Interviewed
1	Worley Consultants, Senior Manager (NZ)	10.95; 06.96
2	Standards New Zealand, Manager	10.95; 06.96
3	Standards New Zealand, General Manager, EHS	11.94; 06.95
4	ICI Australia, Regional Manager	6.95
5	BP Australia, Manager, Environment	6.95
6	Standards Australia, QR/11 Convenor	6.95
7	Scandpower A/S, Principal (Norway)	6.95
8	Grant Thornton, REM (US)	6.96
9	SCS, President & CEO (US)	6.96
10	American National Standards Institute, Program Administrator	6.96
11	CSIR Environmental Services, Product Manager (SA)	6.96
12	National Commission for the Environment (Chile), Manager	6.96

Electronic copies of interview transcripts were lost in computer failure (07.1998).

**B** The interview programme used to test the Structural Model

**I** Information about the interviews participants & programme

Participant #	Organization, Title	Date interviewed
1	Environment Waikato, Deputy Chief Executive	3.12.2000
2	Office of the Auditor-General, Senior Manager	19.12.2000 20.06.2001
3	Office of the Auditor-General, Audit Manager	19.12.2000
4	Member of Parliament, Green Party	15.05.2001
5	Ministry for the Environment, Deputy Chief Executive	18.12.2000
6	Price Waterhouse Coopers, Senior Manager, Global Risk Management Solutions	18.12.2000
7	Standards New Zealand, General Manager, Strategy	22.12.2000
8	Standards New Zealand, Chief Executive	22.12.2000
9	Victoria University of Wellington, Professor of Policy Studies	01.02.2002
10	Standards New Zealand, Chief Executive	26.07.2001
11	Standards New Zealand, General Manager, International	26.07.2001
12	NZ Government, Minister for the Environment	31.01.2002
13	NZ Defence Force, Manager, Environment	18.12.2000
14	NZ Commissioner for the Environment (Retired)	18.12.2000
15	Price Waterhouse Coopers, Auditor	18.12.2000
16	Chemical Industry Council (NZ), Chief Executive	19.12.2000
17	SGS ICS Consultants (NZ), General Manager	20.11.2000
18	Lev Developments, General Manager	20.12.2000
19	KPMG Peat Marwick, Director, Environmental Consulting Unit	22.01.2001
20	Carter Holt Harvey, Manager, Environment, Health, Safety & Risk	17.02.2001
21	Ministry for the Environment, Principal Analyst	18.12.2000