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## Chapter 6

# CONCLUSION: Governmentality and EU Environmental Norm Export

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Environmental evangelism—the desire to spread EU environmental norms abroad—is not an inconsequential facet of European external action, but rather appears as a significant feature of contemporary EU trade policy. Indeed, the European Commission’s DG-Trade Management Plan for 2014 sets out two ‘general objectives’ for the year, in which environmental norm export plays a conspicuous role:

1. “Contribute to European smart, inclusive and sustainable growth by ensuring the best trade conditions and opportunities for EU operators, workers and consumers”; and
2. “Foster sustainable economic, social and environmental development, in particular for developing countries.”<sup>1</sup>

The idea that international and transnational economic policy is a tool for doing environmental work abroad is a relatively recent one, and one that has come to particular prominence in the EU. Throughout the EU’s external policy, economic instruments are employed to encourage the spread of environmental norms in third states. Bilateral trade agreements, the GSP+ program, multilateral environmental and trade conventions, unilateral import bans, environmental tax regimes, sustainability impact assessments, benchmarking and best practices initiatives, expert analyses and corporate social responsibility programs are all employed in various ways to oblige, incentivize, and encourage conformity to the EU’s global environmental vision.<sup>2</sup>

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<sup>1</sup> European Commission, *Management Plan 2014: Directorate-General for Trade* 6-7 (2014).

<sup>2</sup> For an extended discussion of the instruments the EU uses to effectuate its environmental norm export policies, see Chapter 4, Section 2.

The EU's environmental norm export activities have not been uncontroversial. States, individuals, and organizations have challenged the EU's various trade/environment policies, arguing that they are coercive, unfair, over-reaching, or inefficient. Meanwhile, these policies also raise a number of questions from the perspective of legality and political theory. Scholars have assessed the conformity of this behavior with EU and international law, investigated its democratic legitimacy, and examined the effectiveness of EU policies in contributing to environmental protection and trade liberalization.<sup>3</sup>

This dissertation has taken a different track. Rather than asking what the law says about the EU's behavior, whether the EU should or should not engage in environmental norm export, or whether the particular mix of policy instruments the EU has employed are the best means of accomplishing its goals, the dissertation has turned its attention back on the EU itself. Its primary research question is not normative, but instead a reflexive one: What does the practice of EU environmental norm export tell us about the way the EU perceives the role and limits of government, the means and ends of politics, and the drivers of human and institutional behavior?

In order to answer this question, the dissertation turned to Foucauldian governmentality studies. Taking advantage of the recent translation into English of Foucault's lectures from the late 1970s and early 1980s,<sup>4</sup> and the subsequent renewal of interest and attention to his theories of governmental power (particularly in international relations circles), the dissertation has used the governmentality method as a 'toolbox' from which it drew a number of research themes and questions. In doing so, it adopted a three-part schema for exploring the 'art of government' or 'conduct of conduct' (how, when, and where power directs the behavior of individuals and other actors) in the EU's environmental norm export policies, focusing in turn on:

1. *Rationalities of government*: the logics or truth regimes according to which government happens;
2. *Technologies of government*: the means or instruments by which government happens; and
3. *Subjectivities*: the subject-positions or identities (of both the governed and the governing) that government creates and by which it is sustained.

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<sup>3</sup> For more on the current landscape of scholarship regarding environmental norm export, see Chapter 1, Section 2.

<sup>4</sup> In particular, Michel Foucault, *Security, Territory, Population: Lectures at the College de France, 1977-1978* (Graham Burchell trans. 2007); Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France, 1978-1979* (Graham Burchell trans. 2008).

Each of these ‘themes’ emphasizes a different aspect of how power structures behavior along particular lines. However, they are all inter-related in a fundamental sense, and are actually inseparable from one another. For example, it is because subjects accept particular regimes of truth that they conform their conduct to them, and this conforming behavior affirms the belief that particular types of interventions are appropriate for governing those subjects.<sup>5</sup>

In investigating the interplay of these three themes, the first task that this dissertation set itself was to map the field of practice of EU environmental norm export from a governmentality perspective. In order to do so, it examined the legal and political discourse of the EU and those affected by its policies. By studying legal cases, statements by officials, legislative documents, press releases, and other representative documents, the dissertation was able to identify a number of themes that revealed the rationalities, technologies, and subjectivities that underlie contemporary EU activity in this area.<sup>6</sup>

This mapping project resulted in the claim that there appear to be two broad political logics that structure EU environmental norm export: a rights rationality and a market rationality. The rights rationality draws on older themes of *raison d’État* governmentality. It conceives of society as made up of rights-bearing citizens and government as the business of balancing these rights against those of other actors and strengthening the forces of the state. Market rationality, by contrast, draws on newer governmental forms of liberalism and neoliberalism. It conceives of society as made up of stakeholders who act in pursuit of their interests, and government as the business of efficiently managing the social and economic environment such as to produce the competitive market. These rationalities coexist within contemporary EU governmentality (which this dissertation, following Nikolas Rose, termed ‘advanced liberalism’).<sup>7</sup> This means that both regimes of knowledge about human and institutional behavior are held to be ‘true’ simultaneously: government is about law and rights, *and* it is about efficient management of the marketplace.

These rights and market rationalities are not monolithic, but instead contain within them numerous variations or ‘ideal-typical’ positions that have different orientations with respect to such themes as the problematic of security, freedom, and the international. In particular, Chapter 3 set out four ‘ideal-typical’ positions that appear in the legal and political discourse

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<sup>5</sup> For an in-depth discussion of Foucault’s theory and these three themes, see Chapter 2, Sections 2 and 3, respectively.

<sup>6</sup> Here it is important to emphasize once more that these rationalities, technologies, and subjectivities are entirely contingent—they are a product of their own historical, geographical, and sociological moment. Other governmentalities have existed in the past, and others will no doubt develop in the future.

<sup>7</sup> The term ‘advanced liberalism’ is used instead of ‘neoliberalism’ to reflect the fact that the current paradigm is not univocally neoliberal, but also contains the legacies of older paradigms.

surrounding EU environmental norm export. Within rights rationality, the *sovereigntist* strand emphasizes the autonomy of the subject, while the *cosmopolitan* strand emphasizes the need to protect the common good and the wellbeing of citizens. Within market rationality, similarly, the *free market* orientation emphasizes the freedom of actors within the market sphere, while the *human capital* orientation emphasizes the need to protect and improve the competitive market and those who act within it.

Rationalities of government are important because they delimit the perceived range of possibility of governmental action. That is, they make certain actions and responses seem viable, reasonable, and likely to produce desirable effects, and others seem absurd, unreasonable, or ineffectual. At the same time, as seen in more detail in Chapters 4 and 5, they are critical in determining the technologies and subjectivities that structure the EU's governmental relationships, suggesting particular methods of governing in relation to the management of particular types of subjects.

In order to illustrate the functioning of the market and rights rationalities and their ideal-typical positions in practice, Chapter 3 provided an extended discussion of the EU's ongoing program of establishing an emissions trading scheme (ETS) for the airline industry, demonstrating how all four of the ideal-typical positions were on display in the discourse surrounding the EU ETS. From a *sovereigntist* perspective, for example, the EU argued that it was its legitimate right to regulate as it saw fit within its borders, given that "the legislation does not contain any provisions contrary to international law, nor does it infringe any sovereign rights of third countries."<sup>8</sup> From a *cosmopolitan* perspective, the EU argued that the ETS was meant to contribute to the common good of humanity by fighting climate change, and that its goal was to spur global action through EU leadership. From a *free market* perspective, the EU argued that the wide net of the ETS was necessary to prevent distortions of the market by 'cheaters' that would impede free competition, and that it would seek "to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner."<sup>9</sup> From a *human capital* perspective, the EU argued that its ETS scheme contributed to sustainable development, was based on "the latest scientific findings,"<sup>10</sup> and would address

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<sup>8</sup> International Civil Aviation Organization, Summary Minutes of the Second Meeting, 194<sup>th</sup> Council Session, C-MIN 194/2, 2 November 2011, at para. 26.

<sup>9</sup> Directive 2008/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, 2009 OJ (L 8) 3, at Recital 1.

<sup>10</sup> *Id.*, at Recital 3.

“serious risk to ecosystems, food production and the attainment of the Millennium Development Goals, as well as to human health and security.”<sup>11</sup>

This analysis of the ETS generated two important conclusions. First, it demonstrated how neither the market nor the rights perspective is necessarily correlated with specific policy positions, but can rather support a number of concurrent positions on a given political question. In order to illustrate this, Chapter 3 identified not only pro-EU ETS positions from each of the four ideal-typical variants, but also challenges to the EU’s scheme from within each of these rationalities. For example, *sovereigntist* rights rationality could just as easily be used to oppose the EU ETS (because it seeks to regulate the behavior of non-citizens) as to support it (because of the EU’s right to regulate within its borders). This demonstrates that these rationalities of government are not political programs: they are beliefs regarding the ‘truths’ that underlie individual and governmental behavior. When the EU argues from a *human capital* perspective that the ETS is based on scientific evidence, for example, it implicitly asserts that conformity with scientific expertise is the appropriate metric for judging the legitimacy of legislation. When it argues from a *sovereigntist* perspective that the ETS does not violate international law, it implicitly asserts, by contrast, that legal right is the appropriate criteria for judging the legitimacy of legislation. These underlying ‘truths’ can lead to multiple political outcomes—‘science’ or ‘law’ can support various goals. However, they also make fundamentally different claims about why and how power functions, and structure argumentation along different pathways of power and resistance.

Second, the analysis of the ETS demonstrated that despite the fact that rights and market rationalities stem from fundamentally different assumptions about the appropriate role and limits of government, they coexist *simultaneously* in the EU’s environmental norm export discourse. The EU presented the ETS as legitimate based on *both* sovereign right *and* scientific necessity; as properly designed *both* because of its conformity with international law *and* because of its efficiency and effectiveness; and as appropriate *both* because of the need for global leadership *and* the need to prevent market distortions. This coexistence is important, as demonstrated in Chapters 4 and 5, because it permits a legally and politically productive *polyvocality* within EU discourse.

Following its discussion of the ETS, the dissertation went on to argue in Chapter 4 that market and rights rationalities are associated with particular sets of technologies that make up the material side of governmental practice. It described rights technologies as including the

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<sup>11</sup> *Id.*

‘traditional’ tools of *government*: law, policing, and bureaucracy. Market technologies, by contrast, it associated with the ‘modern’ tools of *governance*: scientific expertise, benchmarking, incentives, and self-management. Whereas rights technologies tend to be centralized in hierarchical states, formally expressed in law, and manifestly ‘political’; market technologies tend to be de-centralized across state and non-state institutions, de-formalized and expressed in ‘best practices’ documents and through flexible mechanisms, and appear as a-political ‘science’ or ‘good governance’ principles.

These technologies conform to the underlying ‘truths’ implied by rationalities of government. Legal and bureaucratic instruments are appropriate tools for a rights rationality that sees the role of the state as building its forces and protecting its own rights and the rights of its citizens. Similarly, scientific expertise and flexible market-based mechanisms are appropriate tools for a market rationality that sees governing as concerned with enhancing freedom in the marketplace and protecting the competitive environment.

In order to demonstrate how rights and market technologies operate in the EU’s environmental norm export policies, Chapter 4 examined the trade/environment mechanisms of the EU–Colombia Peru FTA, a recent EU trade agreement with a prominent ‘sustainable development’ chapter. Through this study, it identified both rights instruments (such as the treaty format, policing by customs officials, and affirmations of each country’s ‘right to regulate’), and market instruments (such as the use of Sustainability Impact Assessments, stakeholder participation, and expert panels) at work in the text of the agreement.

Tracing the functioning of these rights and market mechanisms led to the dissertation’s third important conclusion: that the simultaneous presence of rights and market rationalities and techniques in the EU–Colombia Peru FTA permits a polyvocality in EU discourse, and that this polyvocality (while uneasy) is legally and politically productive. In the context of the EU–Colombia Peru FTA, for example, it allows the EU to assert at the same time that it both is and is *not* acting in order to protect the environment in Colombia and Peru, appeasing civil society groups and the European Parliament with the FTA’s environment chapter, while reassuring those concerned with the infringement of sovereign authority that little legally enforceable regulation is occurring, and all the while maintaining its image as a normative global actor. The use of rights technologies permits the belief that the treaty’s trade and environment provisions are ‘consensual’, that they respect ‘sovereignty’, that there is no ‘extraterritorial government’ occurring, and that each party retains full ‘regulatory sovereignty’. From this perspective, the EU is a sovereign entity that respects the division of

rights and authority between itself and other sovereign entities—in this case Colombia and Peru—in the international community.

On the other hand, the use of market technologies permits the EU to argue that the treaty's trade and environment provisions require 'good governance' and will set the basis for "structural reforms" in Colombia and Peru by promoting "internationally agreed best practices while securing a transparent, non-discriminatory and predictable environment for operators and investors via a mediation mechanism designed to address non-tariff barriers and—if necessary—an advanced bilateral dispute settlement mechanism."<sup>12</sup> Here, the EU–Colombia Peru FTA is seen as a powerful tool that will not only deregulate trade between the parties, but will also lead to 'structural reform' and contribute to sustainable development and good governance in Peru and Colombia. At the same time, these 'structural reforms' are not seen as unacceptable extraterritorial action because they are simply 'apolitical' good governance, which, 'objectively' speaking, all states should conform to in any case—not out of legal obligation, but out of 'common sense'. Fundamentally, this allows *government* to take place behind the screen of *governance*, obscuring the workings of power.

This simultaneous construction of the EU's environmental norm export activities as both conforming to international law norms and respecting sovereignty, *and* as leading to structural reform and good governance in third states is enabled by the polyvocality of the EU's discourse. This polyvocality opens up a complex arena of governmental play that creates opportunities for strategic political action as the EU and other actors jump back and forth between these discourses to justify particular outcomes.

Following this examination of the EU–Colombia Peru FTA, Chapter 5 went on to discuss the subjectivities associated with the rights and market technologies identified in Chapters 3 and 4. It defined two broad categories of subjectivity (of individuals, organizations, states, and other actors) that exist within EU political discourse: the *citizen* (the subject of rights) and the *stakeholder* (the market subject). The *citizen* is reminiscent of the classical concept of the individual subject; the actor imbued with rights and duties; the contractarian citizen who forms a government by ceding some of 'his' rights for the purpose of the common good. The *stakeholder*, by contrast, is a rational interest-maximizer; the entrepreneur seeking to increase

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<sup>12</sup> On the occasion of the signature of the agreement, EU Trade Commissioner Karel de Gucht stated that: "The agreement establishes a foothold for European business in this rapidly growing area and an anchor for further structural reforms in both countries." European Commission, "EU Signs Comprehensive Trade Agreement with Colombia and Peru," 26 June 2012, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=810> (last accessed 15 August 2014).



its (human) capital; the stakeholder who needs government to facilitate the competitive environment.

These subjectivities are both produced by and in turn justify the rationalities to which they are related. For example, if it is 'true' that subjects are rights-bearing citizens, then they will act in order to exercise and protect their rights, and the objective of the state to which they have ceded some of these rights should be to help them do so, by providing courts, securing borders, and so on. Similarly, these subjectivities suggest which governmental technologies will be useful and appropriate, and which will not. If it is 'true' that subjects are interest-maximizing stakeholders, then management can proceed by means of information campaigns, labeling initiatives, and incentivizing socially beneficial behaviors—more formal policing techniques are unnecessary and inefficient.

Chapter 5's discussion emphasized in particular the complex nature of subjectivity. First, it pointed out that subjectivity is multiple and multi-level, existing within and across different 'levels' of society and government. In the EU context, one might point to the individual, the Member States, different branches of EU government, or the EU as a whole in the international sphere. At each level, *citizen* and *stakeholder* subjectivities are at play, shaping 'knowledge' about government and individuals, and thus action as well. Second, it pointed out how the production of these multi-level subjectivities involves processes of division and 'othering'. The 'others' to the subject's 'self' can be geographical, cultural, or temporal, among other things. For example, when the EU defines itself as a 'leader' in the global environmental field, it is by definition defining others as 'laggards' or 'pupils' who need the leadership it provides. Third, the chapter discussed how the deployment of subjectivities to 'others' is itself part of a discursive struggle, as the 'others' may accept or contest their characterization. Opponents of EU environmental norm export may, for example, portray *themselves* as the 'real' leaders on sustainable development issues, challenge the EU's right to define 'progress', or adopt the subjectivity of 'efficient managers' in order to define the EU as an 'inefficient populist'.

In order to demonstrate how rights and market subjectivities function in EU environmental norm export policies, the dissertation examined the EU's ban on the import and trade in seals and seal products, in particular in the context of the recent *EU–Seals* dispute before the WTO. Through this study, it identified the simultaneous operation of both *citizen* (for example, the EU as the democratic protector of its citizens' rights to their moral choices) and *stakeholder* (for example, the EU as efficient manager of scientifically justified market corrections) subjectivities in the EU's discourse. It also spelled out the ways in which these

subjectivities ‘othered’ the EU’s opponents in the seals dispute as ‘barbaric’, ‘backward’, ‘over-reaching’ into the EU’s sphere of rights, and ‘unscientific’ in their approach.

This examination brought the dissertation to its fourth and final conclusion regarding the operation of governmentality in EU environmental norm export: that the multiplicity and polyvocality of EU discourse also provides opportunities for ‘the governed’ to act strategically, challenging the EU’s activities, its use of particular technologies, and its identity from both within and between market and rights rationalities. With respect to the *EU–Seals* case, the EU’s opponents contested the EU’s characterizations of itself as *good citizen* and *rational stakeholder*, and its characterizations of Norway and Canada as *bad citizens* or *irrational stakeholders*. Though they used similar discourse, variously referencing sovereignty, indigenous rights, science, and the free market, they were able to inhabit multiple positions within the rights and market paradigms that allowed them to justify their own political behavior.

The dissertation referred to this type of contestation as the “tactical reversal” of mechanisms of power. Governmentality structures our understandings of ourselves and our government in deep and significant ways. However, this does not mean that it is monolithically determinate. If power is understood relationally, and as historically contingent, then resistance is always already a part of every power structure. Internal relational struggles can be instrumentalized to perpetuate or contest particular configurations of power relations. When the EU engages in environmental norm export, therefore, it is not a given that it will be successful either in attaining its immediate political goals or in transmitting governmental norms to third states and their citizens. There will always be space for contestation and resistance from within and between its rationalities, technologies, and subjectivities.

To return to the dissertation’s primary research question, then: What does the practice of EU environmental norm export tell us about the way the EU perceives the role and limits of government, the means and ends of politics, and the drivers of human and institutional behavior? It tells us that the contemporary EU is a complex actor driven by two simultaneously held yet fundamentally distinct sets of beliefs regarding the ‘true’ role of government, the ‘best’ instruments for accomplishing its goals, and the ‘true’ drivers of subjects’ behavior. The first holds that society is an accumulation of rights-bearing citizens, and that government’s role is to protect the common good by securing those rights through law, policing, and bureaucracy. The second holds that society is made up of entrepreneurial stakeholders, and that government’s role is to manage the competitive marketplace in which they function through incentivizing proper behavior, preventing market failures, and assisting in the production of human capital.

As the market and rights paradigms interact with one another, they produce an interesting combination of effects. The EU's environmental norm export policies generate not just 'environmental protection' or 'liberalized trade rules', but also the limits, rationalizations, means, and subjects of governmental activity. The rationalities the EU, governors, and the governed inhabit limit the perceived field of political possibility by designating certain behaviors and effects as reasonable, justifiable, and comprehensible, and designating others as unreasonable, illegitimate, and nonsensical. At the same time, the complexity of the simultaneously rights- and market-oriented governmentality of the EU is politically productive, providing opportunities to leverage the coexistence of market and rights regimes in order to obscure the operation of political power. As it is deployed in practice, the EU's behavior also produces 'others', and encourages third states and their inhabitants to adopt the same governmental rationalities, subjectivities, and technologies. However, just as it produces opportunities for the EU, the complexity of advanced liberal governmentality also produces opportunities for resistance and contestation by those with whom the EU interacts.

With respect to contemporary debates in EU policy, this means that—contrary to some common themes in scholarly writing—the EU can neither be summed up as 'just a market' looking to extend its reach through the imposition of neoliberal norms, nor as 'just a federal sovereign' seeking to protect global and/or European rights. Rather, the Foucauldian governmentality analysis in this dissertation shows that the evangelical EU draws on multiple sets of rationalities, technologies, and subjectivities in forming and justifying its policy choices. And as a corollary, that other actors draw on multiple governmental logics in accepting and contesting the EU's activities and assertions. This dissertation sets out a more complicated and nuanced picture of the EU's vision of itself and its goals; one that ultimately seeks to provide a better understanding of the functioning of power in this area. Though the discussion here has been limited to the field of EU environmental norm export, the same governmentality toolkit could usefully be applied to investigate other areas of EU policymaking. Indeed, it is not difficult to imagine that there are many realms in which the EU, its subjects, and its others find themselves immersed in multiple discourses, neither entirely classical nor entirely neoliberal, but rather speaking, acting, and knowing *between* rights and market.