Private Authority and Public Policy Interactions in Global Context:

Governance Spheres for Problem Solving

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ABSTRACT

Private organizations play a growing role in governing global issues alongside traditional public actors like states, international organizations, and subnational governments. What do we know about how private authority and public policy interact? What are the implications of answering this question for understanding support for, and effects of, policy development generally? The purpose of this paper is to reflect on these questions by introducing, and reviewing, a special issue that challenges explicit claims, and implicit methodologies, that treat private and public governance realms as distinct and/or static. We do so by advancing a theoretical and conceptual framework with which to explore how the contributions to this special issue enhance an understanding about governance interactions across a range of empirical, sectoral, and regional domains. We specifically introduce the concept of governance spheres to capture the proliferation of issue domains denoted by highly fluid interactions across public and private governance boundaries.

Keywords: private authority, public policy, governance spheres, interactions, transnational governance
INTRODUCTION

For more than thirty years, students of social and environmental governance have devoted considerable attention to identifying the ways in which support for, and institutionalization of, private governance schemes might occur, and how they might succeed in ameliorating the myriad problems for which they were created. This development has coincided with remarkable transformations in global governance. Whereas states were once the primary rule makers, presently, many of the formal and informal institutions through which humans manage complex global environmental, social, and economic problems are created both by and for non-state actors (Scherer et al. 2016; Scherer & Palazzo 2011; Cashore 2002; Moon, Crane & Matten 2011).

Amongst these non-state initiatives are a range of novel multistakeholder coalitions that include public officials, transnational environmental and social activist organizations, and the business interests which are often responsible for, but seek to attenuate, environmental and social challenges.

However, non-state actors do not operate in a public policy vacuum. Scholars increasingly recognize that to understand the broader impacts of private authority, attention must be turned from assessing its distinctive legitimacy and authority dynamics (Scherer & Palazzo 2011; Cashore 2002) and regulatory capacity (Locke 2013), to examining its interactions with traditional state-led governance and public policy-making processes (Eberlein et al. 2014; Knudsen & Moon 2017; Matten & Moon 2008, 2020; Moon 2002; Schrempf-Stirling 2016; Cashore & Nathan 2020; Cashore 2016). Key questions remain concerning the nature and consequences of private authority-public policy interactions. Does private authority inherently compete with public policy for political authority? When can such interactions yield desired
governance outcomes? And to what extent can patterns of interaction be generalized across different political and business contexts?

In this special issue, our overarching goal is to make a timely intervention into a debate that has polarized around two divergent visions of private governance and public policy interactions. On the one hand, some scholars assert the functional potential of private governance in filling gaps in public policy around critical governance challenges and serving as a laboratory for governance experimentation (Börzel & Risse 2010; Overdevest & Zeitlin 2014; 2018). Scholars within this tradition argue that private authority can substitute for missing or inadequate public regulation (Jackson & Apostolakou 2010), and that it can also play a complementary role to public policy (Campbell 2007; Matten & Moon 2008). Conversely, other scholars identify countervailing impacts wherein private authority constrains public policy. It can for example, assume a competitive role in which it undermines or forestalls public policy (Bartley 2005; Kaplan 2014).

To be clear, we are not the first scholars to address public-private interactions in global governance. Others have done so through investigations of transnational business governance interactions (Eberlein et al. 2014), sustainability standards (Lambin & Thorlakson 2018), and homegrown versus transnational governance (Sun & van der Ven 2019). Our approach is more targeted in the sense that we consider interactions expressly as they exist between private authority and public policy, as opposed to the considerable body of research that focuses on private-private interactions (Auld 2014; Dingwerth & Pattberg 2009; Eberlein et al. 2014; Fransen & Conzelmann 2015; Fransen et al. 2018; van der Ven 2019). Our approach is broader in the sense that we expand the population of empirical cases under consideration, moving outside of transnational business governance and the well-trodden realms of forestry and
fisheries certification (Cashore & Stone 2014; Gulbrandsen 2014). In doing so, our aim is to increase the generalizability of our analytic framework to diverse realms of public policy.

While most extant scholarship has focused on how private authority impacts public policy, we expand the research agenda to explore the inverse relationship as well. We find two distinct challenges with many existing approaches: they either treat private and public governance as interacting, but independent, realms; or they downplay distinct private and public authority dynamics by treating them as simply two different places in which governance emerges. Both approaches inadvertently place less attention on how different actors might simultaneously shape each arena and challenge the authority and legitimacy of either of them; and downplay how public and private actors may consciously or unconsciously “divvy up” different aspects of a policy mixes designed to address specific challenges (Levin et al, 2009; Cashore 2016; Cashore & Stone, 2012). To identify a middle ground framework more consistent with empirical results in this special issues, we introduce, propose, and detail, the term “governance spheres” to capture the variety of ways that state and non-state actors seek influence. In so doing we make specific propositions regarding conceptual, normative and strategic implications of this proposal.

This approach, which emerged deductively from the theoretical justification for the SI, but also inductively from the specific contributions, moves beyond a simple conceptualization of public policy and private authority as either competitive or complementary by mapping a fuller suite of mechanisms through which public and private governance interact. We contend that there are sub-categories of interaction that have not yet been adequately captured in existing scholarship. In particular, within the complementary category, we distinguish between: ‘collaboration’, ‘coordination’, and ‘isomorphism.’ Within the competitive category we distinguish ‘substitution’
and ‘cooptation’. In addition, we introduce a third main conceptualization of public policy and private authority, that of *coexistence*, in which we distinguish between ‘layered institutions’ and ‘chaos’. In our conceptualization, the co-existence of public policy and private authority is in the same putative governance spheres which may have historically, or potentially witness interaction. Whilst at first glance these cases of coexistence may not be deemed forms of explicit interaction, we submit that they may represent implicit forms through either Bachrach and Baratz notion of “covert power” in that they may work to help limit the types of external conflicts to those relatively inoccuous to powerful interests, or, as Lukes (1974) posited, as arenas of legitimation such that the actors, organizations and classes – such as in our case social and environmental organizations for example - are not even aware of their own underlying (structural) interests.

Finally, in respect to these varied interactions within governance spheres, we suggest a development from a static conception of interactions towards a more dynamic one that allows for variation in the nature of interactions over time. Such dynamics may reflect, for example: changing legitimation imperatives, whether arising from the exigencies of globalization (Matten & Moon 2008) or a strengthening and re-formulation of social expectations for business more broadly (Matten & Moon 2020; Bernstein & Cashore 2007); changing capacities of national public regulatory authorities (Locke 2013); or changing amounts of private governance in a given area, its relevance to public policy objectives, or its transparency about outcomes and impacts (Gulbrandsen 2014). This approach is also capable of incorporating the multitude of
ways in which governments can intervene to shape private regulations, including standard setting, procedures, supply chain signaling, and compliance incentives (Renckens 2020).

What is clear is that, taken together, the articles in this SI present a picture of public-private governance interactions as processes in which outcomes change over time, thereby introducing temporal factors to account for whether, when, and how interactions are likely to be competitive, complementary or coexistent. Moreover, it isn't simply that temporal factors may explain competitive, complementary or coexistent interactions, but that some factors unleash change trajectories. This is important as it focuses attention on whether competing or coexistent interactions at Time-1 might be converted to complementary impacts at Time-2. In fact, all of the contributions to this SI show how “agency” matters through their review of strategic decisions taken by key stakeholders at Time 1 that play a role in either fostering, or undermining, Time-2 complementarities. At the same time, previous research on private governance has attempted to generalize conclusions, when competitive, complementary or coexistent can also occur simultaneously depending on the problem definition in question, or whether, owing to covert or latent power dynamics across private and public governance spheres, some problems never see the light of day. Hence, there is also a fundamental need for scholars to be much more precise about what they are characterizing, since what may come across as complementary for purposes of evaluating authority or legitimacy may come at the expense of ameliorating, in any significant way, actual problems “on the ground”. This requires that future research reflects on the nature of the problem structure itself (such as reproducing long-term sustainability of economically beneficial fish species), from the negative effects that might result (such loss of ecologically sensitive biodiversity). It also requires assessing how changes in behavior required to ameliorate sit independently of, but can be influenced by, choices about private/public innovations, and by
our expectations about how the problem might evolve over time (Cashore & Bernstein 2020). Recognition of these distinctions leads us to offer a framework for analysis that can be used by scholars and practitioners from different disciplinary traditions in the service of developing this important shared research agenda relevant for theory and practice. The diverse empirical contexts in this SI allow us to tease out such insights that, together, capture various types of public-private governance interactions and their change over time within distinct governance spheres.

WHY IS A SPECIAL ISSUE ON PRIVATE AUTHORITY AND PUBLIC POLICY INTERACTIONS RELEVANT?

The study of interactions is central to an analysis of private or public governance impacts. Notwithstanding the voluminous scholarly literature on private governance and its impacts, much is incomplete or misleading by not simultaneously accounting for private governance impacts on traditional forms of global governance and public policy. Put more simply, we cannot know whether a corporate social responsibility (CSR) initiative or certification scheme has had a positive impact on its target area without also considering its relationship to extant or emergent public policy in the same area. Does the initiative, for example, replace or change existing public regulation? Critics of CSR have argued, for example, that it may weaken or replace public regulation (Reich 2007). This could be part of the reason why, despite its significant promise, many of the social and environmental problems for which private governance innovations emerged are discernibly worse than they were thirty years ago.

As an example, consider the eco-labeling and certification programs supported by the World Wide Fund for Nature (WWF), such as the Forest Stewardship Council (FSC) and the
Marine Stewardship Council (MSC) as well as the competing programs offered by industry associations. While hundreds of articles and dozens of books have focused on these organizations, including targeted research on evaluation and effectiveness that tend to view positive impacts or draw “design lessons” to improve uptake, less attention has been directed to assessing why so many of the global challenges they purport to address are becoming more acute over time. This has resulted in limited attention to countervailing effects at play, such as cases in which business support for private governance is directly related to its efforts to relax public regulations (Cashore et al. 2004a, 2004b) or cases in which support for an authoritative form of private governance is directly related to a larger and countervailing phenomenon that leads to the inversion of governance objectives.

Take, for example, instances of broad support for MSC fisheries certification in Alaska (Marine Stewardship Council 2000). At face value, uptake of MSC certification in the Alaskan salmon fishery provided a positive story that led to enthusiasm among private governance scholars about the potential for a global sustainably certified salmon fishery. However, a deeper dive into this case leads to a more complicated research agenda and expectations (Gulbrandsen & Auld 2016; Auld 2014). We know that MSC certification of wild Alaskan salmon emerged at the same time as the proliferation and exponential growth of the farmed salmon industry, which, as biologists have since discovered, poses a significant and sustained threat to the structure and function of natural marine ecosystems (Naylor et al. 2000). Hence, there was a simultaneously exponential growth in an environmentally degrading form of salmon production that provided cheap protein to millions of consumers – that would themselves come to seek other forms of certification (Blythman 2006) - and the emergence of a high priced wild salmon “eco-label” for those that could afford it.
How then, might scholars of “positive” MSC certification assess, based on these broad trends, that this apparent success might actually be viewed more plausibly as a “relief valve” that was owing, or directly related, to broader increases in consumption that account for the farmed salmon industry? These are important conceptual and nuanced questions, but they are rarely explored in targeted evaluation research on “support” for certification, or “before and after” effects on certified and non-certified crops. The paucity of research into this broader interaction is problematic when one considers that so much of the work on private governance is now focused on scaling up so-called “positive cases” when a broader and more complete analysis would question whether this might simply diffuse consumption and commodity practices over ecological integrity.

Such a broader research agenda would also need to incorporate more systematically those cases, such as Alaskan wild salmon fisheries achieving MSC certification (Foley & Hebert 2013), when public policies played dominant roles in explaining the desired behavioral change. And even here, a Time 1, Time 2 analysis would not imply that these are necessarily negative trajectories. For example, simply supplying certified products – even if they do not change existing practices – could help produce supply consistent with the “chicken and egg” logic for diffusing certified products which, could at T2 and depending on institutional approaches (Auld, 2014), foster enhanced market demand and access that might, subsequently at T2, ameliorate firm level impacts, and/or even shape future public policy trajectories (Cashore & Stone 2014).

This means that the next generation of private governance impacts research must undertake two steps when justifying their conclusions or recommendation for action: deliberative assessments of public-private interactions and, based on this, the broader
implications of this for ameliorating the actual problem(s) for which the private governance program was created in the first place.

**CONCEPTUALIZATIONS OF PRIVATE AUTHORITY AND PUBLIC POLICY**

Some conceptual ground-clearing is necessary to delineate on which types of interaction this paper and other SI contributions focus. We define public policy and public governance broadly as authoritative actions taken by governments or their delegates – at whatever level – to steer someone or something towards “public ends” (Bernstein 2010; Ruggie 2014). Public ends are those that affect a great variety of people and interests, as opposed to private ends that involve providing a rule, good, or service for the private benefit of members of a target group (Bernstein 2014). Public policy entails the creation of rules, law, and regulations, but also “softer” forms of governance such as information provision and capacity building (Andonova et al. 2009). We can think of public policy as comprising the “conventional” or “traditional” way of governing in most liberal democracies, that is, through the promulgation of rules and distribution of resources by elected or appointed officials.

By contrast, we conceptualize private authority as the performance of functions traditionally associated with national governments and inter-governmental organizations – rule-setting, dispute resolution, and public good provision – by private actors (Andonova et al. 2017). We use “private” here to refer both to businesses as well as to non-profit and civil society organizations with no formal ties to state authorities. Private forms of governance are those that are not managed by elected officials or their delegates, or that are not exclusively funded by public revenue sources. By and large, these are governance initiatives that were initially created
by non-state actors.\textsuperscript{1} We recognize that this expansive definition we vary, in practice, owing to the agendas and resources of private organizations from multi-national corporations to small social enterprises to non-profit environmental and social “civil society” organizations. At the same time we note that all of these organizations do not fit within conventionally understood “public” bodies in terms of authority, legitimacy, accountability. Regardless of the nature of the private organization, there is some analytic value in grouping ‘private’ organizations together because, in the absence of a broad based electorate, they derive their political authority from a different legitimation community than do governmental authorities in democratic systems (Cashore 2002).

To this point, private authority differs in a number of significant ways from conventional forms of public policy. For one, it tends to operate in the absence of formal hierarchical arrangements, hence it relies more heavily on non-compulsory “steering” to modify the behavior of its targets. Second, and related to the last point, the political authority of private governance depends upon perceptions of legitimacy amongst the governed and relevant communities of external stakeholders (Bernstein & Cashore 2007; Bernstein 2011; Bernstein & van der Ven 2017; Cashore, 2002; Mena & Palazzo 2012). In order to govern effectively, private authority has to be viewed as expected and appropriate by those affected by it (Cashore 2002). This broad definition leaves lots of conceptual room for what constitutes private governance. Most obviously it combines for-profit and non-profit actors with their respective characteristic modes of markets and networks (Moon 2002). It can encompass sustainability standards created by professional standard-setters, corporate social responsibility (CSR) schemes created by private

\textsuperscript{1} Although there are rare cases where a governance initiative was started by state authorities and subsequently privatized. For example, “ECOLOGO” product certification was started by the Government of Canada and subsequently delegated to UL Environment, a private standard-setter.
businesses, guidelines of best practice created by NGOs, or multistakeholder initiatives comprising a mix of these actors.

PRIVATE AUTHORITY AND PUBLIC POLICY IN GOVERNANCE SPHERES

For all these reasons it seems much more useful to treat private authority and public policy not as two separate entities interacting with each other, but rather as both operating within sectoral or problem focused governance spheres. To advance this approach, we treat governance spheres as having three key features: an actor population, a regulatory character, and a problem orientation. They are populated by actors from the private and public sectors, who, in turn, advance, and administer particular modes of regulation to govern their behavior that, together, identify responsibilities (claimed or attributed) for addressing specified issues and problems.

This approach allows scholars to assess how these spheres are being constantly reshaped by the strategic actions of actors with a variety of motivations, whether seeking, averting or re-configuring substantive governance changes, or achieving some type of organizational advantage. It specifically allows for, and requires, attention to the ways in which private authority and public policy are mutually connected i.e. what happens in one affects the other. This includes attention to assessing whether actors simultaneously navigate these spheres in tandem such as firms pushing for private regulations while undermining more authoritative public policy, or more subliminally through diffusion processes, such as private norms governing building standards being adopted by municipalities. To be sure previous research sought to understand the authority through which private governance was achieved (Cashore 2002, Cashore et al. 2004), and subsequent interactions with traditional Westphalian authority. The governance spheres concept advances and extends these efforts by acknowledging that
actors, be they businesses, environmental groups, or social activists, will often seek to shape *both*
private authority and public policy depending on how doing so might shape their own primary
organization interests, be it capital accumulation, environmental conservation, or social cohesion.
Recognition of this is also critical for public and private governance scholars. For example,
students of climate governance have noted that some US firms and associations successfully
lobbied to derail much of Obama’s (modest) climate legislation, but actively supported a range
of private authority efforts, in general, and markets that provide economic incentives, in
particular (Mildenberger 2020; Meckling 2011). It would therefore be a conceptual mistake to
treat these empirical results separately, since one is directly related to the other. Yet, treating
them separately is exactly what so many existing disciplines and subdisciplines do, including
those that specialize in public policy, comparative policy analysis, or international relations. Not
only is this problematic for adequate theory building, but it can also lead to overly sanguine
assessments of the “proactive” nature of the private sector compared to slow intergovernmental
processes.

Governance spheres are problem-centric insofar as they comprise all governance efforts
to address a common problem, e.g., reducing the social and environmental externalities of global
value chains. Tension arises within a governance sphere from different institutional logics and
sites of political authority that can lead to drastically different understandings of the nature of the
problem to be solved. In the aforementioned example, a private business may understand the
problem as being reducing social and environmental externalities enough to prevent coercive
state intervention through regulation. By contrast, a government may understand the problem as
reducing social and environmental externalities enough to safeguard the health and safety of their
citizens.
How might we get beyond the fixed divisions between two separate entities of governance – private authority and public policy? Grodzins (1960), convincingly challenged the hierarchical and dichotomous ‘layer cake’ metaphor of federalism (which we could equally apply to today’s “multi-level” governance) by advancing instead a “marble cake” metaphor that highlights the interpenetrating combinations of powers and resources characterized by ‘an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls’ (Grodzins 1960: 70).

For all these reasons we suggest that our concept of governance spheres offers a distinctive and significant framework for analysis of new forms of regulation, how they are made, and how they engage with problems. Certainly the concept of governance spheres shares a focus on public and private policy-making interactions with such cognate concepts as: ‘issue networks’ (Heclo 1978), ‘policy networks’ (Marsh & Rhodes 1992) and ‘policy communities’ (Richardson 2000), these tend to be oriented around national governmental organizations. However, whilst they recognize that private organizations participate in the respective networks and communities, they tend to under-estimate the regulatory authority that private organizations have acquired – whether in business or in civil society. Moreover, issue networks, policy networks and policy communities tend to under-estimate the international nature of the roles of private authority and public policy interactions. Issue networks also tend to under-emphasize the relevance of outcomes themselves for the problems at hand, other than their abstract conclusions that they often produce incremental change.

Governance spheres also share the ‘epistemic communities’ (Haas 1992) concept’s focus on transnational policy-making. However, this literature tends to emphasize the creation and
translation of knowledge and advice to public policy authorities; in contrast to the governance sphere’s core emphasis on policy-making and enactment.

Governance spheres is consistent with (Raustala & Victor 2004)’s “regime complex” as “a loosely coupled set of specific regimes” that permits greater conceptualization and research into regulatory overlap and fragmentation amongst states and international organizations (Keohane & Victor 2011). However, whereas the regime complex field looks at tension in formal legal instruments for addressing global challenges, the governance spheres conceptualization expands attention to overlap among an array of relevant public and (often less legalistic) private regimes.

Similarly, the concept of governance spheres incorporates an interest in the scope of ‘organizational fields’ (DiMaggio & Powell 1983) but also confronts the tendency of this literature to stress the international scope at the expense of the national, and private actors at the expense of public ones. Likewise our conceptualization differs from ‘experimentalist governance’ (Oderdevest & Zeitlin 2014) which narrows its focus to particular process qualities of some policy-making environments and to assessing them in recursive systems of provisional goal-setting and revision. Finally, governance spheres differs from ‘governance triangles’ (Abbott & Snidal 2009) whose stress on the international levels of governance and the roles of private actors (be they business or non-governmental organizations, and multi-stakeholder initiatives), tend to underplay the role of national governments in governance.

To be sure, these literatures help shed light on specific parts of the governance spheres. For instance, regime complexes and organizational fields literatures simultaneously place attention on a vast array of international and domestic actors who overlap and occasionally conflict over how to address similar policy issues. However, these literatures do not formally
reflect on the different institutional logics that guide the development of specific policy instruments, nor do they distinguish the distinct parts of the regime complex or organizational fields in which particular regulatory instruments are developed. As a result, the unique authority developing logics for non-state market driven governance certification (Cashore 2002) are underplayed vis-a-vis public policy and international relations. Likewise ‘governance triangles’ are functionally derived and hence underplay these distinct logics that distinguish a range of private and public efforts.

Our governance spheres concept goes in the opposite direction. It targets analytic attention to first understanding how the authority and legitimation logics are distinct among various efforts that purport to address a particular problem. It also recognizes that agents and actors can simultaneously work to influence, or undermine, particular interventions, both public and private, over others. And these then focuses attention on on assessing the unique ‘causal logic’ that a specific intervention might have by disentangling interaction effects . The governance spheres concept also goes beyond simply recognizing public/private interactions to identifying the range of instutitional/instrumental projects, and the actor, regulatory and problem orientation 'colours' running through the marble cake. This approach sets the stage for careful theorizing about empirical events today, and implications for future strategic interventions, regarding the extent to which governance spheres are a function of private authority-public policy interactions, or vice versa. As the empirical chapters in the SI demonstrate, both can occur, often simultaneously.

PRIVATE AUTHORITY AND PUBLIC POLICY INTERACTIONS: A TYPOLOGY
How might scholarship be conducted on actor populations, regulatory character and problem orientation as the three key governance spheres components? We address this question by incorporating, but expanding beyond, Eberlein et al. (2014) to distinguish three forms, and subtypes, of public/private interactions: ‘complementary’, ‘competitive’, ‘coexistent’, (Table 1).

First, there are *complementary* forms of interaction, defined as those that occur when public and private governors work together “in a more synergistic fashion by building upon and reinforcing, rather than substituting for, one another” (Andonova et al. 2017: 256) and by combining their different resources and talents, whilst avoiding transactional costs of more adversarial relationships (Moon 2002). Further distinctions can be made within this category based on whether the public and private parties are aware of each other’s efforts and consciously working together towards a mutual governance outcome.

We use the term *collaboration* to describe active, voluntary and conscious partnership between public and private governance. In cases of collaboration, partnerships are established through direct communication and co-creation of governance objectives. Illustrative examples of collaborative interactions include: the creation of public-private partnerships, hybrid governance, or multi-stakeholder organizations involving public regulators and private officials (Andonova 2010; Pattberg et al. 2012). Conscious collaboration is evident in the Brazilian coffee sector, where a mutual recognition agreement enables coffee producers certified under the Brazilian government’s sustainability scheme to sell their coffee with the private UTZ eco-label (ISEAL Alliance 2017). Collaboration thereby involves a degree of consent on behalf of both parties and some degree of recognition of mutual political authority. The absence of a clear hierarchy is therefore a necessary condition for a collaborative interaction.
Coordination, which must be conceptually disaggregated from collaboration, often occurs when public and private authorities both exist independently, but strive towards similar goals. This often leads to a “policy entrepreneur” to identify ways to coordinate their activities such that improve impacts and resource use might occur. Tzankova’s (2021) contribution to this special issue provides an uncommon instance of coordination wherein industry actors in both fisheries and electricity generation become advocates for progressive environmental policy in the United States after witnessing the shortcomings of private governance in these sectors. In both cases the goals of the public and private actors overlap. More broadly, a vibrant literature on coordination has been advanced through research assessing the role of state and international organizations in steering or “orchestrating” the actions of private governance initiatives (Abbott et al. 2015; Abbott & Snidal 2010). Deploying another musical metaphor jazz, Knudsen and Moon (2017) also note that private and public authorities may not be orchestrated, but responsive and accommodating to one another: sometimes leading and sometimes responding. They illustrated this in the case of regulation of resources sector payments to host governments by the Extractive Industries Transparency Initiative and by the US and EU corporate governance regulators (on the concept of jazz, see also Speth 2004: Chapter 1).

This literature is closely tied to research on the ‘delegation’ of political authority to private actors (Green 2013). Coordination may involve hierarchy but does not necessarily involve coercion on the part of public authorities. Coordination may alternately inform, educate, guide, or tacitly approve or disapprove private governance. Amongst the many tools that public policy-makers use to steer private governance systems are aspirational targets like the
Sustainable Development Goals (SDGs). A growing number of private sustainability standards and certification systems are aligning themselves explicitly with the SDGs to aid businesses in making progress towards the 2030 agenda (ISEAL Alliance 2017). This distinction points researcher to assess, in areas where robust state-led governance already exists, how aligning private governance missions with internationally agreed-upon goals might play vital roles in the legitimation process (Dingwerth 2017). Across multiple areas of global governance, we have also seen a secular trend towards the growing usage of “best practices” as a metaphor to frame modes of governance (Bernstein & van der Ven 2017). Best practices have featured prominently in private sustainability governance because they tend to emphasize procedural matters over specific substantive criteria, thereby allowing them to govern a diverse range of private sustainability standards. (However, this label has also led these to be criticized, following Lukes, for allowing firms to imply, incorrectly, that they are “practicing” in a way that improves the problem at hand).

This raises a broader challenge: the literature on coordination, orchestration and jazz, and delegation emphasizes the potential for positive outcomes when governance objectives are shared between public and private authorities, but they rarely make these conclusions based on careful interrogation of the problem at hand. This is problematic because, as the results in this volume show, many of the large scale trends that private governance was created to address are accelerating (IPCC 2018; IPBES 2019). Hence, we prefer to treat these conclusions as hypotheses that required as much scrutiny as given to the innovations in question. Failure to do so renders the real possibility that a private public governance innovation may be both legitimate in ‘input’ terms but also ineffective – or illegitimate in ‘output’ terms – Mena & Palazzo 2012).
Doing so would allow governance spheres researchers to disentangle coordination, orchestration, and delegation that appear more likely to produce Lukes oriented “false positive” conclusions, from those that could, indeed, be fruitful in helping address “on the ground” practices and problems. For example, past research has found that firms rank higher on compliance on audits for private labor standards when they operate in countries with strong national regulatory institutions (Distelhorst et al. 2015). Similarly, participation in mostly private forms of transnational climate governance tends to increase when strong national policies exist on climate change (Andonova et al. 2017). The presence of enforceable government regulation in the background has been labeled “the gorilla in the closet” (Verbruggen 2013). Hence, the distinction between collaboration and coordination lies in where public and private authorities agree and cooperate. Coordination implies agreement on the outcomes of governance only whereas collaboration implies agreement on, and engagement in, the processes of governance as well.

The third sub-type of complementary interaction is isomorphism defined as when public and private governance take similar forms without conscious coordination or communication within an extant governance sphere. Recognition of this phenomenon reinforces the need for conceptual and empirical research on the conditions through which isomorphism supports complementary dynamics when governance efforts evolve and adapt in response to one another, or when a nascent “sameness” makes it easier for the targets of governance to be steered towards some kind of end. For example, isomorphism has been observed in transnational sustainability governance organizations that share a set of core features due to the emergence of an organizational field of transnational rule-making that evolved through social interactions amongst rule-making organizations (Dingwerth & Pattberg 2009). Significantly, the emulation in
this type of interaction is not as conscious or direct as it is in coordination (e.g., through the dissemination of best practices) but in contrast to Lukes’ negative impacts, may, in some cases, lead to shared governance outcomes and mechanisms.

In contrast to complementarity, competitive interactions exist when there is antagonism or competition for limited governance space between public and private governors. Competition is an umbrella category that can be conceptually disaggregated into a number of sub-types. Perhaps the most widely theorized of these sub-types is substitution, or displacement whereby a relatively lenient form of private governance displaces a more trenchant form of public regulation (Bartley 2005; Esbenshade 2004; Locke 2013). Concerns about substitution effects transcend disciplines, reflecting the growing role of business in the provision of public goods. Marques and Eberlein (2021) argue that the literature has ignored a political perspective that “focuses on competing interests and contestation in the relationship between governments and transnational norms and schemes that are pushed through global value chains onto domestic contexts” (this volume: 7). Their focus is on disentangling whether Global South governments respond to private regulation from the Global North through rejecting, adopting, repurposing or replacing interventions). Likewise, Dauvergne and Lister have cautioned that corporate environmentalism provides the appearance of governance while doing little to address the structural sources of transnational environmental challenges (like unchecked consumerism and lengthening global value chains) (Dauvergne 2016; Dauvergne & Lister 2013). Others caution that the privatization or the individualization of responsibility for environmental outcomes may give moral license to individuals, businesses, or governments to continue business as usual while bypassing more impactful forms of collective action (Maniates 2001). As former US Secretary of Labor Robert Reich puts it: “the soothing promise of responsibility can deflect public attention
from the need for stricter laws and regulations or convince the public that there’s no problem to begin with” (Reich 2007: 170).

It is for these reasons that our framework explicitly advance a focus on the problem orientation that has been given scant attention to date, so that researcher can assess the conditions through which, rather than assume, that competitive interactions are associated with adverse governance outcomes or the inability to address particular problems. This is important since some researchers have assessed private governance as a plausible substitute to public policy by filling governance gaps when public authorities are unwilling or unable to do so. For example, in areas of limited statehood where public regulatory authorities are too weak to adopt and enforce binding rules, some find that private governance can serve as the functional equivalent to the state (Börzel & Risse 2010). Even in areas of more complete statehood, substitution of public resources effort by various forms of private provision may also be welcome, though in strictly fiscal terms this may not be so substantial (Moon 2002).

Likewise the opposite condition can also occur in which public authorities can and do encroach on areas under the governance of private actors, both to the benefit and detriment of governance outcomes. We label this sub-type of competitive interaction cooptation’. Cooptation occurs when the state “publicizes” nominally private forms of governance. This trend has been documented with the transformation of private organic standards into public regulation in the US and EU (Arcuri 2015). This may equally be the case in forest legality verification, where some have argued that growing public authority may crowd out private regulatory space for forest certification schemes (Bartley 2014). In some cases, public regulatory authorities may stop short of actual cooptation, but use the threat of cooptation to induce changes in private governance. As others have noted, private governance often occurs “in the shadow of hierarchy” where private
authorities are threatened with state intervention should they fail to achieve certain goals (Héritier & Lehmkuhl 2008; Steurer 2013). Renckens (2020) shows that even in instances where the EU has “co-opted” private governance such as in the cases of organic agriculture and biofuels production, the EU’s interventions do not in the end lead to the EU imposing its sovereign authority in a way that undermines or threatens private governance as a regulatory institution. The EU merely imposes minimum baselines while still deferring to private governance. According to Renckens (2020: INSERT) “the EU’s interventions have enhanced private governance’s authority and legitimacy by retaining considerable private governance space.”

At the intersection of complementary and competitive dynamics lies at third form of interaction: coexistence. Coexisting forms of public policy and private governance are those that can be qualified as neither entirely competitive nor complementary, instead they occupy a middle-ground characterized by contingency. Coexistence occurs when both public and private governance exist in a particular issue-area, but when governors adopt divergent goals and modes of governance. The decision to co-exist is still in an interaction insofar as public and private governors have chosen to co-inhabit a governance sphere without actively competing or complementing each other’s efforts. The decision to co-exist is still in an interaction insofar as public and private governors have chosen to co-inhabit a governance sphere without actively competing or complementing each other’s efforts. In this sense, the decision not to interact is a form of interaction in and of itself. A condition of institutional layering may exist whereby different governors create regulatory institutions that address different components of the policy cycle (Bovenkamp, Stoopendaal & Bal 2017). In some cases, layering may result in a functional division of labor between public and private governors. As Amengual (2010: 406) notes:
“instead of displacing state labor regulation or causing state institutions to atrophy, private regulation relieves pressure on scarce state resources and complements state action.” Institutional layering plays a central role in Ponte, Noe, and Mwamfupe’s (2021) contribution to this special issue, where the authors find a clear division of labor and responsibility between private NGOs and public village and district councils on community-based forest management.

However, coexistence may equally reflect confusion about proper sources of authority, leading to fragmentation of global governance and the creation of “regime complexes,” loosely coupled sets of overlapping (and sometimes conflictual) governance arrangements (Biermann et al. 2009; Raustiala & Victor 2004). In contrast to coexistence through institutional layering, there may also be less benign configurations of coexistence captured in Eberlein et al.’s (2014) term ‘chaos’. Here the interactions are ‘unpredictable, undirected… sensitive to perturbations and displaying no clear pattern (Eberlein et al. 2014:12). The nature of coexistence is thereby neither entirely complementary nor competitive. It may reflect some institutional layering – acknowledged or unacknowledged by the respective actors, or it may reflect chaos.

As this brief overview demonstrates, the nature of public-private governance interactions is far more nuanced and complex than previously theorized. Moreover, while the terms ‘complementary’ and ‘competitive’ are often used with distinct normative assumptions vis-à-vis their anticipated governance outcomes, a brief survey of the literature shows that these assumptions should be treated cautiously. Competition can lead to stronger governance, as in cases where public authorities threaten cooptation or private governance. Similarly, complementarity can lead to weak governance outcomes, as in cases when public and private governors collude with one another. Coexistence, which could be a precursor to or successor of either of the other forms, has been a relatively neglected form of interaction but one redolent
with potential for change as indicated in regulation of payments in the extractives industry (Knudsen & Moon 2017)

**PHASES OF PRIVATE AUTHORITY AND PUBLIC POLICY INTERACTIONS**

We are also interested in “phases” of interaction between private authority and public policy (Cashore and Bernstein 2007; Cashore and Stone, 2014). It is possible that phase 1 (the process of initial engagement) could be a complementary interaction and phase 2 (a temporary result) could be a competitive interaction. In one of the articles in this SI, Renckens (2021) shows that in the EU *a collaborative process* of public and private interaction led to a form of *competition* (‘cooptation’ i.e. the EU “publicized” private standards in that public policy now provides a minimum baseline for private standards). There is a broader issue here in that there is a range of interaction effects in which the independent variable affects the dependent variable, and then changes in the dependent variable affect the independent variable. In short, a competitive interaction can lead to a complementary interaction at a future point in time and vice versa. We note that the state of an interaction is often temporary and that interactions are therefore better conceived as processes. For example, a substitution process in which a private actor filling a regulatory void (e.g. individual companies in the Global North engaging in protecting labor rights in supplier factories in the Global South) could over time develop into a wider collaborative result with national public authorities (e.g. the ETI – initiated and supported by the UK government – Knudsen & Moon 2017). Leitheiser demonstrates how differing domestic environments shape approaches to CSR in the form of private governance in host countries.

Moreover, this illustrates a key feature of the governance spheres concept – that organizations can, for self-interested, instrumental, or power-based reasons, emphasize one type
of interaction over another. This, in turn, can lead to changes in institutional design that, over
time, may blur the identities of actors within a governance sphere. Nominally ‘private’
organizations may come to resemble public authorities in appearance and interests and vice
versa. As we indicate below, in their different ways the other contributions to this SI illustrate
such governance spheres, interactions and dynamics.

**DISCUSSION**

We have highlighted three key features of interaction between private authority and public
policy: the governance spheres in which these interactions take place; the collaborative,
competitive and coexistent forms of interaction (and their variants); and the temporal dynamics
of interaction. We now turn to some initial thoughts on the factors that might lead to a particular
type of interaction or change the nature of an interaction over time. We focus on two issues
which we think have been under-theorized in the related literatures of governance that we have
touched on: the tension in private authority-public policy interactions between the task of solving
problems and the requirements of democratic legitimacy; and the clouding of fundamental
differences in the definitions of policy problems that private authority-public policy interactions
seek to address.

**The tension between problem solving and democratic legitimacy**

One factor that might alternately create competition or complementarity within a governance
sphere is organizational strategy, specifically, how the myriad private and public governance
interventions navigate between functional problem solving and democratic legitimacy. In many
governance spheres, it is unclear whether private governance is being developed to help address
enduring environmental and social challenges, as many initiators have urged, or whether it is
designed to create new deliberative spaces through which problem definition and decisions can
be made (Auld, Renckens, & Cashore 2015; Crane et al. 2014; Reich 2007; Tucker 2017).
(Cashore and Nathan, 2020) On the one hand, private governance needs to build legitimacy
through democracy, participation and inclusionary norms, but on the other it needs to be seen as
instrumentally beneficial in ameliorating specified problems for which programs were first
created, especially in order to maintain the support of primary stakeholders and ‘core audiences’
(Cashore 2002).

The tension between inclusion and problem-solving effectiveness explains much of the
conflict within private governance systems over the last thirty years, as engaged actors have seen
different rationales, and motivations, for participation. It also explains why the actors within
governance spheres create an increasing number of complex innovations whose institutional
apparatus cuts across public policy and private authority, from supply chain tracking (Mayer &
Gereffi 2010) to legality compliance (Locke 2013) to non-state actors enforcing public
environmental protections (Vogel 2008), to states providing capacity resources for market-driven
certification systems (Bartley 2007). In all these issue areas, uncertainties and disagreements
about legitimacy have been prominent and raise questions about what combinations of ‘input’
and ‘output’ legitimacy (Scharpf 1999; see also Mena & Palazzo 2012) may serve their
governance spheres.

**Differences surrounding problem definitions**

A second variable that might lead to either complementarity or competition within a governance
sphere is variation in how a governance problem is defined. An under-asked question in the
literature is: what types of environmental and social problems are actors in governance spheres attempting to address and what is their influence upon these problem definitions? This is important because underneath the apparent universalism of the Brundtlandesque ‘sustainability’ goals, reinforced recently by the apparent authority and legitimacy of the UN Sustainable Development Goals, is an uneasy tension among economic, environmental and social challenges that is far from synergistic (Bernstein 2017; Cashore & Nathan 2020). Indeed, those who conceive of the principal governance problem as promoting poverty alleviation through neoliberal economic policy may see private governance as a productive way of maintaining environmental and social stewardship without undermining the principal goal of economic development. Those promoting biodiversity conservation may see both private governance and public policy, and the complex initiatives that have emerged owing to hybrid innovations, as undermining concerns about conservation and the preservation of local cultures in favor of social welfare. Hence, it may be that depending on the problem definitions, what one group of practitioners views as primarily self-interested activity the other views as primarily of functional value. Therefore we suggest that there is a need to ground theories of institutional and policy dynamics – what practitioners increasing refer to as “theories of change” (Brest 2010)- for public-private interactions within these governance spheres with a careful understanding of the contestation over how problems are framed.

Doing so will need to distinguish, in the first instance, those policy tools and approaches that, if implemented, carry immediate long-term economic benefits (such as being careful not to harvest beyond a resource’s reproduction rate) from those rules and requirements that, owing to them limiting the negative effects of commodity production (be it ecological degradation or working conditions which do not meet basic human and labour rights) cause short and long-term
economic costs. The former categories may benefit from certification by improving coordination among utility enhancing interests, but the latter requires much more purposeful and concrete economic incentives if they are to counter the costs of compliance. Much of the literature to date on standards tends to conflate utility enhancing and environmental differences (e.g. McDermott, Cashore & Kanowski 2010; Lennox & Nash 2003). This is problematic since recent research making these distinctions on standards (Judge-Lord, McDermott & Cashore 2020) and impacts (Grabs 2020) has revealed fundamental differences about whether compliance would be expected to lead to increased, or reduced, environmental degradation and economic opportunities. Unpacking these differences is important if students of public-private interactions are to generate meaningful conclusions about their problem solving potential. For example, problems such as endangered species caused by the commodification of nature, or anti-slavery norms, require that they be prioritized, rather than undermined by an emphasis in improving long-term economic utility. This means that public and private policies, and their interactions, would need to be adjudicated for their potential countervailing effects in making some problems worse precisely because the made some problems better. Likewise interactions within governance spheres over these issues would need to assess how powerful actors might work to shift problem definitions away from those that were originally targeted (Cashore & Bernstein 2020), or simply from some specific problems over others. For instance, in the Alaskan salmon fisheries case, environmental activists were concerned that, the MSC helped to erode more stringent public policy regulations they had previously successfully lobbied for to address the Alaskan pollock fishery (Auld 2014).

Similarly, the science of the problem, such as that on the climate crisis or species extinctions, often requires granting a distinctive status to the problem in order to realistically
attempt to resolve it. Simply put, in these cases public and private governance innovations result in policy and behavioral change that is either i) consistent with what the science requires (IPCC 2018; IPBES 2019), such as achieving temperature increases that lead to no more than 1.5 degrees warming, or required habitat conservation to allow species viability, or ii) which means that the problem cannot be solved. Real world examples include the US Endangered Species Act that requires not only the listing of threatened and endangered species based on science of viability regardless of economic considerations, but that the relevant federal agencies develop a plan to maintain the species in question. These distinctions are important because we often implicitly shift across them without recognizing the profound impact these conceptualizations have on how we think about effectiveness and problem-solving capacity. Put more concretely, it may be that some types of private authority, such as fisheries certification, might help improve long-term economic sustainability of a particular fish species, but undermine not only other efforts to sustain other fish species, but broader questions of ecological integrity generally. Or, in the climate case, private governance initiatives might result in CO2 emissions reductions through energy efficiency measures that enhance a firm’s economic utility function, but which may be not near enough to reduce what scientists project is needed to avoid catastrophic ecological collapse of an increasingly warming planet.

For these reasons failure to carefully unpack difference in impacts among most private governance research has worked to undermine theory building, conceptual formation, and knowledge generation that would be required to make inferences from our research on strategy and problems.
The papers in this special issue begin to overcome this gap by paying more attention to these variables and their attendant impacts on interactions between governors. Each illustrates different types of interaction, proposes novel hypotheses for why particular interactions occur and, either explicitly or implicitly, highlights the utility of the ‘governance sphere’ concept. Grabs, Auld and Cashore (2021) begin on a metatheoretical note by observing that the study of public and private governance interactions is replete with ontological assumptions. These assumptions are derived from six particular theoretical traditions that have been actively used to study private governance since its inception. The authors point out that these underlying ontological assumptions condition the nature of the governance interaction under examination in a way that may lead two scholars studying the same private authority – public policy phenomenon to diametrically opposed conclusions about the “on the ground” impacts of that phenomenon.

Ponte, Noe, and Mwamfupe (2021) find evidence of both complementary and competitive interactions in the case of community-based natural resource management in Tanzania. Underlying the complementary interactions is a clear division of labour between various stakeholders and institutions and an equal division of material resources, both of which suggest a functionalist explanation of public-private interactions. Where these qualities are absent, the authors find competitive interactions in the form of institutional duplication and cooptation by central governments. The authors also point out that the public and private realms in Tanzania are blurred across nested layers and multiple scales in ways that belie a clear distinction between ‘public’ and ‘private’ but reinforce the concept of a governance sphere.

Tzankova (2021) uncovers complementary dynamics at the heart of public-private interactions in fisheries and electricity governance. Taking a functionalist approach, the paper
highlights how shortfalls in the capacity of private governance to achieve environmental outcomes can drive Baptist-Bootlegger alliances of NGOs and industry groups to support progressive environmental public policy. In doing so, she presents an alternative to the conventional narrative that private governance emerges to fill a vacuum left by inadequate public policy. In this case, the inverse is true. As with other papers in this issue, Tzankova acknowledges the contingency of this interaction on certain issue and sector specific dynamics and the potential for dynamism across time.

In juxtaposition to functionalist accounts, Marques and Eberlein (2021) adopt a political strategic-perspective that explains variation in public-private governance interactions as a product of nationally-determined political dynamics. They empirically ground their account in the responses of Global South governments to transnational business governance schemes originating in the Global North. States in the Global South may choose to substitute, reject, replace, repurpose or adopt foreign transnational business governance schemes depending on the capacity of the state and how those schemes align with the government’s strategic interests. The paper offers a parallel conceptual framework to the special issue while providing novel insight into the causes and consequences of competitive interactions between public and private governors.

Renckens (2021) shows how multiple types of governance interactions can exist in relation to a single public authority. His contribution disaggregates the EU’s interaction with private organic agriculture and biofuel governance into four distinct realms: standard setting, procedural aspects, supply chain signaling, and compliance incentives. Renckens finds that each of these realms has distinct forms of interaction and that the nature of interactions between the EU and private standard setters vary over time. Across these realms, Renckens finds that many
interactions can be explained by self-interest and strategic bargaining on the part of private standard setters seeking to safeguard their governance space. The overall tendency towards ‘co-existence’ between the EU and private standard setters is a product of strategic and self-interested lobbying on the part of private standard setters to stave-off wholesale cooptation by public authorities.

Leitheiser’s (2021) research seeks to understand how differing domestic contexts shape approaches to CSR in the form of private governance in host countries. She explores this question though a comparative case study of competing governance initiatives in the post-Rana Plaza Bangladesh garment industry, uniquely conceived to govern company practice rather than certify products. By explicating linkages between international private governance and its domestic context as well as between the comparative CSR and private governance literatures, this study extends our understanding of how and why international private governance practices and preferences vary for firms originating from different domestic contexts.

Taken together, these empirical cases reinforce the need for a significant transformation in the way private authority research has been conducted to date. They also serve as a clarion call for those scholars who continue to focus solely on public policy arenas and who have therefore missed arguably the most important trend in global governance today: the emergence of governance spheres that act as sites of contestation and problems solving and through which legitimacy, authority and problem solving are produced, and affect, both in positive and negative ways, the ability of governance in general to address enduring environmental and social challenges.

References


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<table>
<thead>
<tr>
<th>Interaction Type</th>
<th>Sub Type</th>
<th>Characteristics</th>
<th>Example</th>
</tr>
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<tbody>
<tr>
<td>Complementary</td>
<td>Collaboration</td>
<td>- Active, voluntary &amp; conscious partnership towards a shared goal - Direct communication - Mutual recognition of political authority</td>
<td>- Public support (i.e., financial or administrative) for producers complying with private sustainability standards</td>
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<td></td>
<td>Coordination</td>
<td>- Overlapping goals or outcomes - Absence of direct communication or partnership - Independent interventions towards a shared goal</td>
<td>- Alignment of public environmental policy objectives with private governance priorities</td>
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<tr>
<td></td>
<td>Isomorphism</td>
<td>- Goals or objectives need not be aligned - Similar use of governance mechanisms or instruments - Unconscious or independent emulation between governance efforts</td>
<td>- Reliance on best practice sharing as an instrument to achieve multiple governance objectives</td>
</tr>
<tr>
<td>Competitive</td>
<td>Substitution</td>
<td>- Private efforts to subvert, displace or pre-empt public regulation - Deliberate efforts by private actors to monopolize political authority</td>
<td>- Industry self-regulation intended to displace or pre-empt public regulation</td>
</tr>
<tr>
<td></td>
<td>Cooptation</td>
<td>- Public efforts to subvert, displace or pre-empt private governance - Deliberate efforts by public actors to monopolize political authority</td>
<td>- Government standards intended to replace or compete directly with private standards</td>
</tr>
<tr>
<td>Coexistence</td>
<td>Institutional layering</td>
<td>- Divergent governance goals and strategies - Proliferation of regulatory institutions across different phases of the policy cycle - Division of labor on certain issues</td>
<td>- Private environmental standards and public labour standards within the same sector</td>
</tr>
<tr>
<td></td>
<td>Chaos</td>
<td>- Divergent governance goals and strategies - Overlapping and incoherent regulatory institutions - Duplication and unpredictability</td>
<td>- Regime complexes with contradictory objectives (i.e. trade and environmental protection).</td>
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