Engaging the Public and the Private in Global Sustainability Governance

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Negotiators preparing for Rio+20 are missing an important opportunity. Reforming the institutional framework for sustainable development is a central part of the Rio+20 agenda. In the run-up to Rio+20, negotiators have extensively discussed institutional reforms, but have focused almost exclusively on inter-governmental organizations such as UNEP and the CSD. At the same time, however, private sustainability governance is flourishing. Since 1992, numerous organizations created by business, civil society groups, multi-stakeholder coalitions and other private actors, as well as diverse public-private partnerships, have adopted important regulatory standards and implemented significant operational programs, including financing, project support and information dissemination. Rio+20 negotiators remain almost wholly disengaged from these innovations.

This public-private engagement gap[1] is both puzzling and troubling. Private sustainability governance (PSG) has arisen primarily in response to the inadequacies of inter-state negotiations, institutions and policies; it provides momentum on many environment and development issues while inter-state negotiations are stalled. Embracing PSG would bring this valuable engine of activity into the international system. Indeed, public engagement would be even more beneficial than a "comparative statics" analysis suggests: supportive engagement would enhance the ability of PSG – and thus of the international system – to address the daunting challenges of sustainability.

This paper first contrasts the inter-state focus of Rio+20 preparations (Section 1) with the growth of PSG (Section 2). Section 3 examines the public-private engagement gap in practice and in scholarship. Section 4 considers why the inter-state system has been loath to engage actively with PSG. Section 5 identifies a number of benefits that greater public engagement could achieve. Finally, section 6 outlines workable mechanisms to strengthen public engagement, moving towards truly global sustainability governance.

1. The Inter-State Focus of Current Policy Debates

A major theme of the 2012 United Nations Conference on Sustainable Development (Rio+20) is enhancing the institutional framework for sustainable development (IFSD).[2] The IFSD agenda grows out of the 2002 Johannesburg World Summit on Sustainable Development (WSSD). The Johannesburg Plan of Implementation (JPOI)[3] set ambitious goals for improving the IFSD (¶¶ 137-170), including strengthening institutions and implementing "good governance" practices at international, regional, national and local levels. The IFSD agenda also has a broad substantive scope, as it encompasses the three "pillars" recognized at Johannesburg: economic and social development as well as environmental protection (¶139 (b)).

The JPOI focused heavily on state-based institutions. It recommended enhancing the effectiveness of the General Assembly, ECOSOC, CSD, UNEP, UNDP and other inter-state bodies; and enhancing coordination among UN agencies, the Bretton Woods organizations, WTO and regional institutions. To be sure, consistent with the participatory nature of WSSD itself, the JPOI also called for participation in governance by the public, civil society, business and other stakeholders, especially the Major Groups (e.g., JPOI ¶¶ 139 (g), 140 (f), 164, 168-70). Nonetheless, those provisions were secondary to the focus on state-based institutions.

Preparations for Rio+20 have maintained this focus.[4] Consultations on reform of international environmental governance (IEG) began in 2006, well before serious consideration of the broader IFSD;[5] some early recommendations for incremental change were promptly implemented by UNEP. In 2009, UNEP initiated ministerial consultations on IEG; this process first identified functional objectives, such as "developing a global authoritative and responsive voice for environmental sustainability," and then considered institutional options for achieving them. In 2011, the UNEP Governing Council agreed to focus on three options: enhancing UNEP; establishing a specialized agency such as a world environment organization; and reforming and streamlining present structures. At that point, however, many states concluded that further discussions should proceed within the larger context of sustainable development, addressing regional, national and local as well as international issues.

Discussions of IFSD thus moved center stage, although consideration of specific reforms has only recently begun in earnest.[6] At the initial meetings of the Rio+20 preparatory committees, the "vision on IFSD was still blurred."[7] That focus was sharpened by the July 2011 High-level Dialogue on IFSD in Solo, Indonesia, attended by representatives from more than 70 states, international organizations (IGOs) and Major Groups. A Rio+20 Secretariat paper suggested a range of options for consideration.[8] These closely followed the JPOI, concentrating on reforming state-based institutions. The options included:

- for the environment, strengthening UNEP or creating a new international environmental organization;
- for sustainable development, enhancing the effectiveness of CSD, elevating CSD to a high-level segment of ECOSOC, or establishing a new organization such as a UN Sustainable Development Council;[9] and
- for the UN system, creating an interagency committee to coordinate the work of UN agencies, the Bretton Woods institutions and WTO.[10]

The "Solo Message," the operative portion of the chair's summary of the Dialogue, noted several emerging areas of agreement: a need to strengthen UNEP (with growing interest in converting UNEP into a specialized agency); a need for an organization to integrate the three pillars of sustainable development (with growing interest in a Sustainable Development Council); and a strong need to coordinate international support for national sustainable development plans, so that sustainable development can proceed in country-led fashion.[11]

The Solo Message will feed into subsequent preparatory committee sessions and regional meetings leading up to Rio+20. While the chair's summary noted generally that participants supported engagement between governments and Major Groups, the Solo Message itself did not address relations with non-state actors. Ten years after WSSD, then, little trace remains of the earlier emphasis on non-state actor participation. Final preparations for Rio+20 will almost surely focus on inter-state institutions and their relations with national governments.

2. The Rise of Private Sustainability Governance

In sharp contrast to the state-centric focus of current policy debates, the practice of governance has been dramatically reshaped since Rio 1992 by an explosion of private sustainability governance (PSG), part of a broader "transnationalization"[12] of environmental governance. The field of climate change illustrates the extent and diversity of PSG.[13]

Private norms and institutions

Private actors have established numerous organizations to address climate change; these operate with little if any direct participation by states, IGOs or other public authorities.

- Many *business* firms have voluntarily committed to reduce their carbon footprints and adopt good environmental management practices. Business associations are also active. For example, the International Emissions Trading Association collaborated with the World Economic Forum, World Business Council for Sustainable Development (WBCSD) and The Climate Group to develop the Verified Carbon Standard (VCS) for offset credits. The Global Sustainable Electricity Partnership (GSEP), an association of electricity companies, promotes sustainable energy through project development and capacity-building.
- *Civil society groups* operate schemes such as the Gold Standard, which like VCS certifies offset credits for voluntary and compliance carbon markets.[14] The William J. Clinton Foundation's Climate Initiative funds demonstration projects and convenes stakeholders to develop new approaches.
- Many significant schemes are *business - civil society collaborations*. For example, the World Resources Institute and WBCSD developed the Greenhouse Gas Protocol, the leading carbon accounting standard. A consortium of business and environmental organizations founded the Climate Disclosure Standards Board, which works to harmonize and strengthen carbon reporting standards. The multi-stakeholder Forest Stewardship Council (FSC), founded after Rio 1992, sets standards for sustainable forest management.[15]

The actors that constitute PSG schemes like these are important influences on performance. Actors of different types contribute characteristic strengths and weaknesses.[16] Business, for example, contributes material resources, managerial authority and expertise. However, self-regulatory business standards are typically less demanding than those emanating from civil society or public authorities. NGOs, in contrast, are independent of business, but have other problems of representativeness and legitimacy; they contribute fewer material and operational resources. NGO standards are typically more demanding, but must offer significant benefits to induce firms to adhere.

PSG schemes take on widely varying governance tasks:

- Some promulgate regulatory standards,[17] especially for business. PSG standards are formally voluntary, but may be backed by economic or social incentives. Most climate change standards, including VCS and the Gold Standard, regulate offset credits; several of these, such as the Climate, Community and Biodiversity Alliance, promote offset projects that generate social and environmental co-benefits.
- Other schemes sponsor operational programs. The Asian Cities Climate Change Resilience Network (ACRN), a Rockefeller Foundation project, seeks to "test and demonstrate a range of actions to build climate change resilience in cities; build a replicable base of lessons learned, successes and failures; and assist cities in the development and implementation of a climate change resilience-building process."[18] The Chicago Climate Exchange (CCX) operated a carbon exchange until 2010.
- Numerous organizations share information and support member activities; examples include the International Emissions Trading Association and ACRN. Their impact is difficult to assess, although some play significant roles in disseminating knowledge and promoting effective action. The Carbon Disclosure Project (CDP) gathers emissions data from firms and other organizations, and disseminates it to investors and the public.

Public-Private Partnerships

PPPs involve direct participation by public agencies, but are still important elements in PSG: through PPPs, "the political authority of nonstate actors has been extended. Instead of influencing global governance through lobbying, nonstate actors are directly involved in political steering, and co-govern along with state actors." As PPPs have proliferated, moreover, they "have become a central research topic for the discipline of International Relations (IR) … [as] an expression of the ongoing reconfiguration of authority in world politics…"[19]

The rise of international PPPs was part of a fundamental shift in UN-private actor relations beginning in the 1990s. The best-known sustainability PPPs are the "Type II" partnerships created around the WSSD.[20] Nearly 350 Type II partnerships have registered with CSD; many are PPPs.[21] Type II partnerships are intended to focus on implementing Agenda 21, JPOI and related norms;[22] most therefore engage in informational and operational activities rather than standard-setting.[23] For example, the Renewable Energy and Energy Efficiency Partnership (REEEP) promotes appropriate regulations and business models in developing countries, convenes policy networks and disseminates information.[24]

The UN Global Compact (UNGC) – formally governed by UN agencies – operates as a PPP: signatory firms participate in governance and collaborate on projects and learning activities with stakeholders and UN officials. Under the UNGC Caring for Climate initiative, co-sponsored by

WBCSD, firms agree to act against climate change and cooperate with governments and civil society on low-carbon policies.

3. The Public-Private Engagement Gap

PSG has emerged in decentralized fashion, as groups of actors create specific schemes and determine their goals and approaches with limited state involvement. In many cases, moreover, perceived failures of public governance are the founders' primary motivations. A variety of interactions do cross the public-private boundary, "entangling" public and private institutions,[25] but these are largely ad hoc, not systematic.

Private Authority

Private actors have gained substantial agency through PSG – they have increasing influence on outcomes, even on global issues such as climate change. To a large extent, moreover, their agency exists "beyond the state and its international organizations."[26] Private actors and schemes have also gained substantial authority – public and private actors increasingly defer to their claims of a right to govern, adhering to or ratifying their standards, participating in their programs, and joining collaborative schemes.[27]

Scholarship in International Relations (IR) both reflects and reinforces the growing gap between private authority and inter-state governance. Most IR scholars focus exclusively on inter-state developments; the literature on international environmental politics and governance is vast. A growing number of scholars now study PSG – but mainly as a distinct phenomenon. The majority of studies analyze specific PSG schemes, classes of schemes such as PPPs,[28] or schemes within an issue area.[29]

Some scholars focus broadly on the nature and consequences of the shift to private authority, especially business authority. In most issue areas, business schemes dominate PSG – certainly if individual firm commitments are included. Business can dominate in this way because of its "go-it-alone power": business expertise, resources and managerial authority allow firms and industry associations to adopt and implement business-friendly standards, preempt stricter public or private regulation and respond to strong standards with moderate alternatives. The same capabilities give business "inclusion power:" other actors find it difficult to organize effective schemes without business participation.[30]

Many scholars view business as driving PSG, leading it to emphasize market-based approaches and self-regulation and to focus on areas that can produce "win-win" outcomes.[31] Even where PSG is collaborative, business offsets "green" participants, limiting contributions to sustainability.[32] Neo-Gramscian scholars see PSG as part of a broad ideological shift towards the market, structured and legitimized by a "global framework of domination" led by elites from business, civil society and public authorities.[33] To others, however, PSG does not reflect an increase in business power, but merely a longstanding level of power manifested in new forms.[34]

Business is the most common target of private standards as well as their most common sponsor. The need to attract voluntary business adherents imposes great pressure on standards schemes created by civil society and multi-stakeholder coalitions. Voluntary schemes can succeed only if they provide sufficient benefits to induce target firms to adhere;[35] potential benefits include helping firms distinguish themselves from competitors, gain access to markets, reduce transactions costs and preempt regulation. The need to provide such benefits raises significant questions about the scalability and sustainability of PSG. At the same time, however, PSG schemes must gain approval and legitimacy from public and private stakeholders and "legitimacy communities." While business can influence such perceptions, so too can civil society: for example, by publicly "benchmarking" competing schemes, NGOs can generate a ratcheting dynamic that incentivizes all schemes to become more public interest-oriented.[36]

Public-Private Interactions

PSG is frequently a response to inadequacies of public governance. In sustainable forestry and greenhouse gas accounting, for example, norm entrepreneurs turned to PSG precisely because inter-state action had failed. In these cases, moreover, private actors exercised "entrepreneurial authority," free of direct governmental involvement.[37]

Yet many fear that PSG may weaken public governance: the shift to private authority may undercut public authority; the existence of private standards may reduce pressure for public regulation; and the rise of private organizations may threaten traditional ideas and mechanisms of democracy.[38] To be sure, these effects are not certain, and may even run in the opposite direction: for example, PSG may strengthen public authority by helping states address difficult transnational problems. Especially where business dominates, however, it remains an open question whether PSG can be harnessed to serve the public interest, or whether it must be more strongly embedded in public authority.[39]

More concrete links between public authorities and private schemes also exist. PPPs, most obviously, are hybrid public-private organizations.[40] Even apart from PPPs, Falkner argues that much PSG is not "purely" private, but instead is "mixed."[41] At one extreme, states sometimes codify private standards (e.g., ISO 14000 environmental management standards). States and IGOs sometimes delegate authority to private schemes: the EU does so frequently, and the WTO Technical Barriers to Trade Agreement incorporates ISO technical standards. And public authorities sometimes allow regulatory requirements to be satisfied through PSG: the EU Timber Regulation accepts participation in private certification schemes such as the FSC as evidence of "due diligence" in controlling illegal logging.[42] At the other extreme, public authorities "tolerate, and even encourage" private standard-setting, which relieves them of regulatory burdens.[43]

More recent interactions fall between the extremes of delegation and mere toleration. Some IGOs have convened, endorsed, financed and otherwise supported private and public-private sustainability schemes, without explicitly delegating authority or ratifying standards.[44] UN bodies actively supported Type II partnerships. UNEP, acting primarily through its Division of

Technology, Industry and Economics (DTIE), helped create and supports the UNGC – and its sustainability offshoots Caring for Climate and CEO Water Mandate – as well as the UNEP Finance Initiative, Global Reporting Initiative (GRI) and other PSG schemes. The World Bank has also initiated collaborations with private actors.[45]

New Governance theory views such arrangements as largely desirable, because they decentralize authority. Decentralization reallocates elements of authority to the actors best able to exercise them; it also draws on the resources and capacities of private actors and reduces the burden on the state. In this view, decentralization need not constitute a retreat by the state, but rather allows the state to enlist private actors as partners in the pursuit of public goals, while enhancing stakeholder participation and voice.[46]

The Public-Private Engagement Gap

While public-private interactions are significant, the gap between PSG and the preparations for Rio+20, as well as other areas of international policy-making, remains substantial. Scholars have begun to highlight this gap,[47] often finding PSG relatively more successful. This view is best captured by the "tale of two Copenhagens," which compares the contentious, unproductive inter-state negotiations at the Bella Center with the cooperative, business-like meetings of private carbon market participants at nearby hotels.[48] Cole's view is even more dramatic: "participants in the global roving cocktail party known as the 'COP' seem to be under the misapprehension that they alone make climate policy," ignoring other forms of governance.[49]

Yet scholars have simultaneously begun to call for governance approaches that would widen the public-private gap, or at least render it more difficult to bridge. In particular, many scholars now recommend the deployment of multiple, distinct agreements and institutions, public and private, to deal with complex issues such as climate change. Keohane & Victor argue that multiple (public) regimes can better address the varied sub-issues within climate change and respond to the differing interests of states than can a comprehensive international agreement.[50] Hulme recommends a bottom-up approach relying primarily on freestanding national initiatives.[51] Falkner, Stephan & Vogler call for assembling a climate regime from distinct institutional "building blocks," with only modest coordination.[52] Moving beyond purely public arrangements, Orts argues for multiple "climate contracts," from treaties and national regulations to PPPs and private schemes.[53] Cole calls for multiple centers of authority, public and private, at different scales.[54] To the extent these recommendations would further separate public and private governance, they would widen the engagement gap; to the extent they would further decentralize governance on either side, they would increase the difficulty of bridging the gap.

Yet scholars rarely focus sharply on ways to enhance the effectiveness of a highly decentralized system, especially one involving public and private institutions. Falkner, Stephan & Vogler merely express hope that embedding partial agreements in some political framework will produce a coherent architecture; Orts suggests coordinating decentralized initiatives only as challenges arise; Hoffman[55] merely calls for "leadership." I return to this issue in Section 6.

4. Barriers to Bridging

Why are states and international bodies so reluctant to engage actively with PSG? I speculate on possible explanations under two headings: why states – and inter-state negotiations like those on IEG and IFSD – might not engage with PSG, and why IGOs might not do so.

States

Inter-state processes are bound by path-dependence: the long history of inter-state negotiations leading to inter-state commitments tends to narrow the inter-state agenda. To be sure, in recent decades negotiations on sustainability have been dramatically opened to civil society, yet civil society input is external and merely advisory; political decisions remain the province of states.[56] Even if states did focus on PSG, it would be difficult for them to authorize increased engagement: state interests are now so strongly divided – especially on sustainable development, where there is "little evidence of a shared vision" – that agreement would be difficult to reach.[57]

States also have reason to be suspicious of engagement. PSG is led by civil society and private sector actors and directly addresses private targets, albeit through voluntary norms. Thus PSG has the capacity to bypass state control of social and economic activities within national borders, creating "sovereignty costs." In addition, the advocacy, standard-setting and operations central to PSG increase political, societal and cognitive pressures on governments, if only indirectly. Both effects are strengthened when international actors such as UNEP and the World Bank support PSG.

IGOs

IGOs have limited autonomy; they are agents of state principals.[58] Nonetheless, IGO secretariats and other organs possess some leeway for action. States often grant modest autonomy to enable IGOs to perform the functions states desire.[59] IGO secretariats gain further influence through their legal authority, focality and expertise.[60] And multiple principals – including multiple states – cannot collectively monitor and discipline every action taken by their agents. The strong interest disparities among states on sustainable development make collective oversight even more difficult: it is as challenging for states to block IGO engagement with PSG as to approve it.

Some IGOs already engage supportively with PSG; UNEP is a leading example. But UNEP support has been led by DTIE, which – located in Paris, not Nairobi – maintains some autonomy even from the UNEP secretariat. Such independence raises troublesome issues: IGOs have well-known "pathologies," including pursuit of organizational goals rather than substantive missions,[61] and varied "democratic deficits."

5. Advantages of Engagement

Notwithstanding the significant barriers to action, I argue that states and especially IGOs should more broadly and actively support (and steer) PSG. I consider six potential benefits of public engagement, which stem from the decentralization and fragmentation of PSG and from its voluntary character.

Pursuing Sustainability Missions

Engaging with PSG is a particularly important strategy for IGOs because it enables them to carry out their sustainable development missions more effectively. Even when political support from member states is strong, IGOs possess only modest governance tools: for example, virtually no IGOs are authorized to adopt binding regulations without individual state consent or to adopt binding rules applicable to private targets. PSG schemes act as "force multipliers" for IGOs,[62] adopting complementary standards and administering complementary programs. These effects are clearly visible in climate change, where private schemes and PPPs provide the regulatory, financial and operational infrastructure for voluntary (and even some mandatory) carbon markets, while supporting pilot projects, informational programs and other activities that support the work of IGOs and help states and other actors fulfill their commitments. Active public support for PSG amplifies these effects.

Engagement with PSG is equally beneficial when dissension among governments prevents inter-state agreement and state support for IGO action. UNEP, CSD and specialized agencies such as FAO have been assigned long-term systemic mandates and granted indefinite organizational lives. As a result, they have independent responsibilities to promote environmental protection and sustainable development within the terms of their charters; those responsibilities continue even when governments refuse to act or to authorize IGO action. In these situations, supporting and steering PSG schemes are essential tools of governance. To be sure, engagement can create sovereignty costs, but far less than more aggressive actions. States may even welcome IGO engagement, recognizing that sustainable development is in their long-term interest, even if political exigencies prevent them from acting in the near term.

Finally, engagement with PSG embeds IGOs in a social context of committed actors. These relationships discipline IGOs, keeping them attuned to their substantive missions and constraining organizational aggrandizement and other pathologies. Engagement with PSG leads to greater transparency, and thus broader accountability. And engagement with private actors and schemes at least partially addresses the democratic deficit (discussed further below).

Improving the Distribution of PSG

PSG has undergone a "Cambrian explosion:"[63] a "proliferation of organizations, rules, implementation mechanisms, financing arrangements and operational activities."[64] Most of these schemes have been created on a decentralized basis; PSG as a system has evolved with little if any central oversight. The resulting array of institutions is highly diverse. Some schemes are private, others are PPPs; each group includes varied constellations of actors. Schemes pursue varied activities, including rule-making, project development, financing, information-sharing and advocacy. And PSG schemes take diverse forms, from loose networks to formal organizations, and from simple decision-making procedures to complex representative structures.

One way to assess the resulting distribution of schemes is to consider the motivations for their creation. In the IR literature, "demand-side" explanations suggest that PSG schemes take the forms they do because they are purposively designed to address specific policy problems. However, scholars have found that many Type II partnerships did not address areas with significant gaps in governance.[65] This casts some doubt on the assumption that the creation of PSG schemes is problem-driven.

A related demand-side approach argues that PSG schemes require specific suites of "competencies" to deal with particular problems. Expertise, operational capabilities, resources and other competencies are in the first instance contributed by participating actors. This explains why actors pool their competencies in PPPs and other collaborative schemes, and suggests the superiority of such arrangements.[66] In most areas, however, schemes involving a single actor type (e.g., industry or NGO schemes), or even a single actor (e.g., company codes of conduct) are more numerous than collaborative schemes.[67]

Similarly, scholars note that "situation structures" such as Prisoners Dilemma and Coordination call for different forms of cooperation, and argue that such structures may help explain institutional variation in PSG.[68] Keohane & Victor likewise observe that distinct problems require different institutions. They argue that concrete issue-specific problems – such as, for climate change, mitigation, adaptation, financial transfers and scientific assessment – have distinctive features, administrative problems and political constituencies, and so require appropriate institutions.[69] PSG schemes deal with a equal range of issues; however, even schemes dealing with the same problem – e.g., certifying offset credits – involve different actor constellations and take varying forms, weakening support for this approach.

Supply-side approaches, in contrast, suggest that PSG institutions are established in situations and in forms that serve the interests of their founders. Keohane & Victor argue that the interests of disparate actors naturally lead to the creation of diverse institutions; actors' power helps determine which ones are actually formed. Andonova & Levy find that Type II partnerships were more closely aligned with the interests of donor countries and IGOs (both leading PPP participants) than with demands for governance.[70] In general, then, supply side theories suggest that a set of actors will create a PSG scheme when each sees participation as producing benefits for itself.

Actor interests may be public-oriented: an IGO may initiate a PPP to enlist the competencies of private actors in pursuit of its public mission; an NGO may collaborate with an industry group on a sustainability standard to gain business buy-in and wider adherence. However, actor interests may instead be private-oriented: an IGO may participate to justify expansion of its budget; an NGO to gain public attention that may lead to donations; a business firm to forestall regulation or create a socially responsible public image; and a technical expert to institutionalize opportunities for consulting and certification relationships.[71]

Abbott and Snidal view the creation of private schemes as moves in a bargaining game, with actors seeking to control the "regulatory space" in line with their private or public interests and values.[72] For example, a business group may establish a self-regulatory scheme to preempt public regulation or create a lower-cost alternative to a strong private scheme; business's "go-it-alone power" makes such strategies feasible. An NGO may establish a scheme with demanding norms and inspection requirements not only to attract firms favoring strong standards, but also to influence the regulatory discourse, set a benchmark for competing schemes or enhance its own reputation. Both may join a collaborative scheme to achieve greater business support than a pure NGO scheme and greater legitimacy than a pure business scheme. For better or worse, motives like these influence the creation, and thus the distribution, of PSG schemes.

Analysis in terms of interests strongly suggests that the distribution of PSG schemes is suboptimal. If nothing else, business-dominated schemes are probably more numerous than is desirable, collaborative schemes less so. In addition, schemes formed to further private interests may not address the most pressing issues. Public engagement could ameliorate these problems.

Casting the Shadow of the State

The IR literature identifies the "shadow of the state" as a major driving force behind PSG. Collective action theory and considerable evidence suggest that private actors are unlikely to provide collective goods such as rules, demonstration projects or financing without the state's shadow: only if actors believe that "the state" (including IGOs and inter-state arrangements) is likely to act will they have sufficient incentive to cooperate or to comply with voluntary rules. This is especially true of business, the target of most PSG standards.[73]

However, private governance does emerge in "areas of limited statehood,"[74] and in transnational contexts where the shadow of the state is faint. On many issues, consumer demand provides an alternative impetus. "Non-state market driven" governance is designed to respond to consumer demand.[75] Certification and labeling programs such as FSC and Fair Trade communicate to consumers that producers, and often their suppliers, comply with recognized production standards. Carbon offset certification schemes such as the Gold Standard similarly communicate that purchased offsets are of high quality. In other areas, broad public expectations – e.g., that firms should "go green" – may also be influential.

Both forces, however, have serious reliability problems. Consumers and the public must typically be "activated" to demand particular behaviors: they must be made aware of an issue, the actors involved, and the mechanisms through which they can demand change. The involvement of NGOs or other norm entrepreneurs is thus essential: NGO campaigns targeting firms and industries have been major factors inducing participation in PSG.[76]

Yet NGO pressure, like consumer and public demand, is often uneven. NGOs pursuing organizational interests emphasize high-profile issues and target the most vulnerable firms; consumers focus on appealing issues and familiar industries. NGO, consumer and public attention may be fleeting, frequently moving to new issues. Because the public and consumers are diffuse and disorganized, their demands are often very general ("go green"), leaving firms and other targets substantial leeway to design self-serving responses.[77] Voluntary schemes have also found it difficult to shape or satisfy public and consumer demand: few environmental or social labels strongly influence consumer behavior.[78]

In sum, creating and sustaining strong and focused consumer, public and civil society pressure poses a challenging collective action problem. In a wholly decentralized system, the difficult of sustaining such pressure seriously constrains the potential of PSG. Public engagement, however, could enhance and focus public and consumer pressure, in addition to casting a stronger direct shadow.

Managing Fragmentation

The proliferation of PSG schemes has produced a complex and fragmented "governance complex" with public, private and hybrid elements. Each PSG scheme, in addition to its individual performance, influences the performance of this larger system. The governance complex for sustainability produces certain widely recognized problems, but also creates significant opportunities.

The most salient problem is fragmentation. The decentralized establishment of PSG schemes has created both gaps and significant overlaps in issue coverage: numerous schemes focus on brand-based consumer sectors, where NGOs have greater leverage and firms can gain greater reputational benefits, but other industries are ignored. Idiosyncrasies in the interests of NGOs, firms and the public have a similar effect: multiple schemes are devoted to certifying carbon offsets, each with a somewhat different focus, but few address adaptation.

The sheer number of PSG schemes also creates problems. Multiple schemes increase information and compliance costs for target producers. In areas such as food production, the targets are small firms or farmers in developing countries, for whom such costs are material; the result may be to shift the benefits of PSG to large producers.[79] In addition, such costs can heighten trade barriers, as developing countries have complained in the WTO. Multiple schemes create confusion among consumers and the public, weakening their demand for adherence and compliance. Finally, overlapping schemes (many business-led) allow firms to select which schemes to adhere to; the resulting competition for adherents puts downward pressure on the stringency of schemes.

At the same time, multiplicity and diversity can yield significant benefits. Many PSG schemes supplement traditional forms of international regulation, notably by targeting private actors rather than states; the cumulative effect of these diverse approaches exceeds that of either approach alone. PSG can more easily produce schemes fine-tuned for specific sectors or issues; these may be more effective than uniform international norms. Because the barriers to entry for new PSG schemes are low, concerned actors can more easily develop new approaches to persistent problems.

Studies of "regime complexity" – most of which focus on inter-state regimes – suggest other potential benefits. Alter & Meunier note that the existence of multiple regimes enables cross-institutional learning and reduces the adverse effect of failure by any one institution.[80] Keohane & Victor argue that fragmented systems with low barriers to entry allow actors favoring strong action to move forward on their own, without having to bring less enthusiastic actors along with them. Fragmented regimes may also be more flexible over time, as situations and knowledge change.[81] Public engagement with PSG could enhance these benefits while reducing the costs.

Promoting Experimentation

A particular strength of a fragmented, diverse governance complex is its potential for experimentation and learning. Experimentalist governance is "a recursive process of provisional goal-setting and revision based on learning from comparison of alternative approaches to advancing these goals in different contexts."[82] In a highly institutionalized experimentalist system, "central" authorities set initial goals (in consultation with "local" units and stakeholders), authorize local units (which can include private organizations or PPPs) to pursue those goals as they see fit, and require local units periodically to report on progress and engage in structured peer review. In its recursive phase, the authorities consider these reports and reviews, and reframe their goals and approaches for the next period based on lessons learned.[83]

Some benefits of experimentalism can be realized with far less formalization. Instruments such as Agenda 21 and the JPOI already set systemic goals for sustainability. PSG schemes, along with inter-state institutions and national programs, act as "local" units, introducing and testing diverse governance approaches. Even without structured reporting, peer reviews or other formal modes of evaluation, NGOs, other norm entrepreneurs and scholars can publicly "benchmark" competing schemes;[84] schemes also criticize and learn from one another. These decentralized processes have helped "ratchet up" standards in sectors such as forest protection.[85] Participatory international conferences such as Rio+20 provide periodic opportunities for states and stakeholders to rethink goals and approaches. Nonetheless, public engagement could significantly enhance the experimentalist character of the system: "The most successful [experimentalist] arrangements combine the advantages of decentralized local experimentation with those of centralized coordination…"[86]

Enhancing Participation and Democracy

PSG provides unprecedented opportunities for societal participation in sustainability governance; it may thus have a significant beneficial impact on the development of global democracy. To be sure, this claim is the "most vexing normative implication" of private governance,[87] largely because participation in PSG does not conform to accepted notions of representative democracy. Deliberative democracy provides a superior rationale.

For individual schemes, input legitimacy in a deliberative framework depends primarily on stakeholder participation in deliberation and decision-making, along with appropriate procedures for transparency and accountability.[88] PSG schemes provide significant opportunities for participation and engagement, yet participation remains uneven. At one extreme lies the inclusive structure of the Roundtable on Sustainable Biofuels, with membership chambers representing commercial operators at different stages of the supply chain (e.g., farmers, retailers), NGOs with different substantive concerns (e.g., environment, labor rights, indigenous peoples), governments and IGOs;[89] at the other extreme lie the exclusive structures of individual firm schemes. Schemes also vary widely in their incorporation of Southern voices.

For sustainability governance as a system, Dryzek & Stevenson argue that deliberative democracy requires (a) a public space where diverse views interact; (b) an empowered space where authoritative decisions are made; (c) channels through which discourse in the public space can influence the empowered space; (d) a realistic opportunity for deliberation to affect outcomes; and (e) mechanisms for transparency and accountability of the empowered space to the public space.[90]

The public space for sustainable development has long been open and diverse; PSG has further enriched that space, attracting new participants, engaging consumers and the public in new ways, and providing new forums for discourse. PSG also creates new empowered spaces: private and public-private institutions that engage directly in standard-setting and other governance activities. Many (though not all) PSG schemes are highly transparent; some (though not all) have developed meaningful procedures for internal and external accountability. However, not all PSG schemes are equally participatory or deliberative, nor are they equally consequential for outcomes. Public engagement could support and empower deliberative and accountable schemes and steer the system of sustainability governance towards greater deliberation and democracy.

6. Towards Global Sustainability Governance

Strengthening engagement between the inter-state institutions that dominate official deliberations and the expanding universe of PSG would significantly enhance sustainability governance. States are unlikely to grant IGOs or other inter-state bodies strong hierarchical authority; what is needed are "light coordination mechanisms."[91]

Two modes of public-private engagement are especially promising for IGOs:[92]

- "*Regulatory cooperation*," in which IGOs engage directly with firms, industry groups and other private actors (and perhaps with sub-state agencies) to influence their behavior;
- "*Orchestration*," in which IGOs engage with intermediaries – e.g., civil society or multi-stakeholder PSG schemes – to help them influence the behavior of the ultimate targets.

A model for regulatory cooperation is UNEP's engagement with business.[93] Since the 1980s, UNEP has promoted company codes of conduct and "benchmarked" corporate environmental reports for continuous improvement. Annual business dialogues encourage high-level environmental commitments. UNEP cooperates with industry to develop sector-specific standards, such as the Finance and Tour Operators Initiatives. Some IGOs have stronger leverage than UNEP's persuasion. The International Finance Corporation requires client firms to accept wide-ranging Performance Standards that require environmental management systems, environmental and social impact assessments, and public reporting. The EU Eco-Management and Audit System (EMAS) leverages market benefits rather than direct financing: companies may display the EMAS logo, distinguishing themselves in the marketplace, if they maintain verified environmental management systems and issue public reports.

Through regulatory cooperation, IGOs can stimulate and focus public demand and (modestly) strengthen the shadow of the state. IGOs can reduce fragmentation by promoting industry-wide standards. They can encourage business schemes to become more participatory and deliberative and to address overlooked issues. And they can facilitate learning across firms and industries.

A model for orchestration is UNEP's engagement with GRI. UNEP helped found GRI in cooperation with CERES, an environmental NGO. UNEP publicly endorsed GRI, made it a "collaborating center," and built government support for it. It also provides modest financial contributions. While UNEP still sits on its board, GRI is now an independent multi-stakeholder organization.

Orchestration joins the capabilities of IGOs with those of PSG schemes and their participants. Through orchestration, IGOs can improve scheme distribution, e.g., by catalyzing establishment of schemes (like GRI) that combine essential competencies or fill significant governance gaps. By singling out and promoting schemes with effective standards and programs, IGOs can increase the benefits of fragmentation – complementarity, innovation, fine-tuning, flexibility and learning – while reducing its costs. By catalyzing, endorsing and supporting well-structured PSG schemes, IGOs can create new "empowered spaces" and disseminate superior approaches; by conditioning their support, IGOs provide incentives for participatory decision-making, transparency and deliberation, and observance of public norms. It is worth noting that these forms of support and steering were virtually absent from the Type II partnership process, contributing to its well-documented weaknesses.

Finally, IGOs and other public institutions could strengthen the experimentalist nature of sustainability governance. Current governance "experiments" are decentralized and ad hoc; public authorities could use orchestration and regulatory cooperation to initiate more directed and diverse experimentation, promoting innovative action in issue areas, institutional forms, regions and scales where PSG is weak. Public authorities could then provide opportunities for structured evaluation and learning, e.g., by promoting, conducting and publicizing inter-scheme comparisons and sponsoring voluntary forums for peer review.

In the recursive phase, public authorities could engage private schemes and participants to redefine global goals in terms of explicit complementarity and collaboration among PSG, inter-state agreements and national implementation. Since some orchestration and regulatory cooperation already take place, initial steps might include establishing a clearing-house for PSG schemes; sponsoring cross-IGO consultations on lessons learned from engagement with PSG; enlisting PSG schemes, private participants and targets to identify lessons from their perspectives; and disseminating the resulting knowledge.

Conclusion

Public engagement with private sustainability governance remains almost wholly off the political agenda for Rio+20. This represents an opportunity missed. PSG is rapidly coming of age, and can provide much-needed dynamism in the international system. Modest and feasible forms of engagement, based on orchestration and regulatory cooperation, can enhance PSG and with it the larger system of sustainability governance. The essential first step, for policy-makers and scholars alike, is to recognize that PSG is not a distinct and isolated phenomenon, but an essential component of global sustainability governance.

NOTES

[1] The public-private distinction is troublesome. It describes neither where governance authority is nor where it should be located. Private and public authority are deeply entangled (Porter 2009) – and this article suggests even greater entanglement. Nonetheless, "the distinction between public and private is a crucial ordering device in social life and it continues to shape much of the current debates…." Philipp Pattberg & Johannes Stripple, 'Beyond the public and private: remapping transnational climate governance in the 21st century', *International Environmental Agreements: Politics, Law and Economics* 84(4), 2008, pp. 367-388. I draw the distinction in terms of actors: states, international organizations and inter-state arrangements, on one hand, and individuals, civil society organizations and business groups, on the other.

[2] UNGA Resolution 64/236. The second theme is building a green economy. http://www.uncsd2012.org/rio20/index.php?menu=61

[3] Johannesburg Plan of Implementation, http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm

[4] For a review of goals and options considered, see Steven Bernstein with Jutta Brunnée, 'Options for broader reform of the institutional framework for sustainable development (IFSD): structural, legal, and financial aspects', Background Paper for UN Conference on Sustainable Development, 2012, http://www.uncsd2012.org/rio20/index.php?menu=63.

[5] For a summary of the consultations, see 'Discussion paper, high level dialogue on institutional framework for sustainable development', Solo, Indonesia (n.d.), at 8-12, http://www.uncsd2012.org/rio20/content/documents/SOLO%20DISCUSSION%20PAPER_TEXT.pdf

[6] Jan-Gustav Strandenaes (Stakeholder Forum), 'Sustainable development governance towards Rio+20: framing the debate', http://www.uncsd2012.org/rio20/content/documents/SD%20Governance%20-%20JG%20Standenaes.pdf

[7] 'Rio+20: Making It Happen', Newsletter of United Nations Conference on Sustainable Development, Special Issue on "Institutional Framework for Sustainable Development," Volume 2, Issue 14, 29 July 2011, at 1.

[8] 'Discussion paper'

[9] Discussions contemplate the General Assembly creating a Council without Charter amendment, as with the Human Rights Council.

[10] The paper proposed further study of regional institutions before developing specific proposals.

[11] Chair's Summary, High Level Dialogue on Institutional Framework for Sustainable Development, http://www.uncsd2012.org/rio20/content/documents/Chairs%20Summary%20from%20Solo%20meeting.pdf. Participants also expressed interest in a sustainable development fund.

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[14] William Boyd & James Salzman, 'The curious case of greening in carbon markets', *Environmental Law* 41, 2011, pp. 73-94

[15] Benjamin Cashore, Graeme Auld & Deanna Newsom, 2004, *Governing through markets: forest certification and the emergence of non-state authority* (New Haven: Yale University Press, 2004); Philipp Pattberg, 'What role for private rule-making in global environmental governance? Analyzing the Forest

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[17] Abbott & Snidal, Governance triangle; Kenneth Abbott & Duncan Snidal, 'Strengthening international regulation through transnational new governance: overcoming the orchestration deficit", *Vanderbilt Journal of Transnational Law* 42, 2009, pp. 501-578

[18] http://www.rockefellerfoundation.org/what-we-do/current-work/developing-climate-change-resilience/asian-cities-climate-change-resilience

[19] Marco Schäferhoff, Sabine Campe & Christopher Kaan, 'Transnational public-private partnerships in international relations: making sense of concepts, research frameworks, and results', *International Studies Review* 11(3), 2009, pp. 451-474, at 452-53

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[22] ECOSOC Res 2003/61, 25 July 2003

[23] UN Commission on Sustainable Development, 'Partnerships for Sustainable Development: Report of the Secretary-General', 2 March 2006 at 11

[24] http://www.reeep.org/513/what-we-do.htm; http://www.reeep.org/2850/diplomatic-activities.htm

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[29] Abbott, 'Transnational regime complex'; Hoffmann, 'Climate governance'

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