

*The following review essay originally appeared in the Fall 2003 issue of the Journal, "Governance: The Balance Between Development and Stability." In the original printing, a production error caused the endnotes to be omitted. The entire corrected text appears below. The editors express regret for this error.*

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## GOVERNANCE THROUGH PRIVATE AUTHORITY: NON-STATE ACTORS IN WORLD POLITICS

Tim Büthe

### **Private Authority and International Affairs**

*Edited by A. Claire Cutler, Virginia Haufler and Tony Porter*  
Albany: State University of New York Press, 1999. 398 pages

### **The Emergence of Private Authority in Global Governance**

*Edited by Rodney Bruce Hall and Thomas J. Biersteker*  
New York: Cambridge University Press, 2002. 248 pages

After stagnating in the 1980s, the numbers and activities of international non-governmental organizations (NGOs) and other non-state actors have grown again throughout the 1990s, contributing to renewed scholarly interest in the nature and influence of non-state actors in world politics.<sup>1</sup> This new international relations (IR) literature is going beyond the earlier debates over *whether* non-state actors matter, shifting the analytical focus to *how* they matter. Yet, the very notion of non-state actors remains conceptually problematic. It is a residual category, comprising any actor that is not a state, including international governmental organizations (IOs), NGOs, multinational corporations, formal and informal transnational networks of government bureaucrats, general public (opinion), international professional associations and commercial lobbying groups, as well as international criminal and terrorist networks. These often collective actors are socially constructed, interact with other non-state actors as well as governments, operate for profit or provide public goods and in so doing may support or undermine the state system. Can any single analytical framework accommodate and explain the genesis, activities and impact of such a diverse set of actors?

Two recent edited volumes seek to overcome this problem by focusing more narrowly on private authority in international politics, where private is defined as "neither states, state-based, nor state-created" and authority is defined as "institutional-

ized forms or expressions of power” that are legitimate in the sense that “there is some form of normative, un-coerced consent or recognition of authority on the part of the regulated or governed.”<sup>2</sup> The editors and contributors of both volumes seem to agree that authority relationships can be examined empirically only in “recognizable issue domains”—issue areas—and they are therefore careful to specify the particular issue domain for each of their hypotheses and findings.<sup>3</sup> Yet, the chapters within each volume also seek broader and common insights. The chapters in Cutler, Haufler and Porter’s *Private Authority in International Affairs* share an interest in the causes and consequences of the attainment of legitimate power by private actors that directly or indirectly work for profit: firms, business lobbies, industry associations and other “corporate actors.” Hall and Biersteker’s *The Emergence of Private Authority in Global Governance* takes a broader approach and seeks to provide a comparative examination of private authority beyond the realm of international political economy. The book includes analyses of governance through non-governmental social and religious movements in “moral” domains and the private authority of “illicit” actors whose activities violate domestic or international legal norms, such as transnationally organized crime. Both books make significant contributions to what is still a rather new literature.

## PRIVATE GOVERNANCE OF THE INTERNATIONAL ECONOMY

Cutler et al. begin from the observation that there is a large and growing realm in which “the framework of governance for international economic transactions increasingly is created and maintained by the private sector and not by the state or interstate organizations.”<sup>4</sup> The authors explicitly aim for both a positive and a normative analysis of such private authority, raising a series of questions for each. How does private authority differ from other forms of influence or power? How does it come about? Why is it considered legitimate? Who is governed by it? How does it operate? Does private international authority reinforce state policies or undermine them? Does it exacerbate or ameliorate interstate conflict? And more theoretically: “Can private authority be reconciled ... with the state-centric approaches that dominate the discipline of international relations?”<sup>5</sup>

The empirical chapters are divided into three sections. The first contains four chapters that cover private authority in realms where the groups or individuals who participate in the governance arrangement and those governed by it are thought to be mostly identical. These chapters cover rules and norms for internet commerce, oligopolistic behavioral norms in markets or networks of firms (in minerals and metals, information technology (IT) and health care) and the setting of international standards for telecommunications and IT. The four chapters in the second empirical section analyze private authority where the identity of those governed by the private governance institutions largely differs from the identity of those who create the

norms, set the rules, make the decision, i.e., from those who provide governance in the particular issue domain. These chapters cover bond ratings, insurability of political and environmental risks, the internationalization of intellectual property rights norms, and conflict and cooperation between transnational issue networks and multinational firms seeking oil exploration in the Ecuadorian Amazon. A third empirical section contains two chapters that analyze the historical evolution of private authority and its relationship to public authority in the issue domains of maritime transport and intellectual property rights, the latter vis-à-vis technological development.

In the framework chapters, the editors discuss the above questions theoretically and try to derive general answers by abstracting from the empirical chapters. The central causal argument assumes that all economic activity requires a system of governance that provides a set of rules and procedures governing property rights, and their exchange and enforcement. This creates a demand for authority. But why *private* authority? First, in issue domains of novel economic activity, public authority may not (yet) exist. This creates a void that private actors can fill. Second, under conditions of increased technological complexity, lack of the requisite expertise or increased costliness of maintaining or acquiring that expertise, the state may not seek to or may no longer be willing to provide public authority, leading either to the aforementioned void or to the explicit delegation of authority to private actors. Third, ideological change (the rise of neoliberal economic ideas is their main example), may undercut the presumption of, and normative justification for, public provision of governance, again making room for private governance.<sup>6</sup>

Cutler et al. begin their theoretical exploration of why private authority comes about in international economic affairs with a review of the literature on the creation of institutions.<sup>7</sup> Thinking about the creation or emergence of private authority as a case for the creation or emergence of governance institutions is fruitful because it reminds us that both the demand and supply of institutions must be explained.<sup>8</sup> Providing and maintaining governance institutions requires resources—supply is costly—and compliance with governance institutions requires a certain amount of “surrendering of individual judgment” that at least occasionally might yield higher utility.<sup>9</sup> In other words, demand and compliance are also costly.

In economic issue domains, the editors suggest, private authority is provided predominantly through various forms of cooperation among firms, which have an incentive to provide governance if they can reap the benefits from the resulting gains in efficiency or market dominance.<sup>10</sup> But why do the governed comply with such private authority or even consider it legitimate? Six causal mechanisms emerge from the theoretical discussion and the empirical chapters. Private authority may be seen as an agent of public authority due to the explicit delegation of certain functions by the state to specified private actors. Implicit delegation in the form of failure of the state to provide the public goods in question may similarly legitimate private authority, as can the recognition of special expertise, the impartial provision of demanded authority (e.g.

mediation) or tradition.<sup>11</sup> Finally, neoliberal ideology might explain both the demand for private authority and compliance based on the perception that it is legitimate.

This leaves the question: What is the role of the state in this empowerment of private actors? And can states take back the authority thus granted to private actors? Cutler et al. criticize IR realism and other state-centric theories for treating states as the dominant actors, often to the exclusion of all others. Yet, except for the attribution of private authority to the rise of neoliberal ideology, which is not particularly favored by the editors, their argumentation seems to be fully compatible with the realist position that states could provide such authority if they so wished, would dominate private authority if public and private sources simultaneously tried to establish authority and could—at a cost—replace private authority after the latter is established. But could they? Does the increase in private authority have a lasting effect on the role of states in international governance?

### **PRIVATE AUTHORITY BEYOND THE ECONOMIC SPHERE**

The volume edited by Hall & Biersteker, which was able to build upon the work of Cutler et al., goes further in addressing these questions, explicitly and implicitly. The volume is organized around a differentiation of three ideal types of authority—market, moral and illicit—and the argument is correspondingly differentiated. Common to all three types is that authority involves consent, which may be based on persuasion, trust or apathy. Apathy plays a role in all three types of authority, though one might ask whether acquiescence and consent should be equated. Persuasion appears to be particularly important to the rise of market authority, and is examined empirically in chapters on the internationalization of markets for goods, technology and finance, as well as on the geographic structure of economic activity. Here, the authors and editors suggest that the transfer of governance functions such as financial regulation and standards setting to private economic actors depends on states becoming convinced that such delegation would lead to gains in efficiency. Trust—in the expertise of certain private actors and their use of that expertise in the common or “public” interest—appears to be especially important to the establishment of moral authority, which is examined in a chapter on the role of non-commercial private, social actors in the establishment of regulation at the international level and in Mark Juergensmeyer’s chapter, “The Global Dimension of Religious Terrorism.” Finally, not just apathy but often outright impotence of the state appears to underpin whatever authority—rather than just coercive power—transnational organized crime and private security firms have acquired.

To the questions about the role of the state in the emergence of private authority and its reversibility, the volume does not so much arrive at definitive answers as offer debates of these central questions among the contributors. Louis Pauly, for instance, suggests that states are consciously complicit in the creation and increase of private

authority in international finance, not least because such privatization allows a de-politicizing shift in responsibility for painful adjustments. Such delegation is reversible—indeed, it is likely to be at least partly reversed in bad times, as citizens articulate demands vis-à-vis politicians who are still (s)elected primarily in a nation-state context. By contrast, Stephen Kobrin, in his chapter on the globalization of product markets and on research and development (R&D) argues that states only begrudgingly allow private authority to arise when faced with a stark choice between benefiting from the efficiency gains that accompany the emergence of private authority or retaining sovereign authority at the cost of economic and technological marginalization. As internationalization of economic activity and authority leads to the creation of new institutional structures while old ones decay or are even abolished, a reversal of the internationalization of authority becomes ever more costly over time and arguably impossible.

Of special current interest may be Juergensmeyer's chapter on transnational or international religious networks and their use of violence, as well as Bernedette Muthien and Ian Taylor's piece on private military forces. Muthien and Taylor's chapter focuses on privatization of security in the weak states of sub-Saharan Africa, but an observer of private security forces in public spaces in Europe or gated communities in the US might equally relate to their concern that "security has been transformed from being a service provided by the state for all citizens, to being a market good for those who can afford it."<sup>12</sup> The parallels they show between recent developments and the use of mercenaries in the colonization of Africa is particularly striking, though it remains unclear whether the operation and effectiveness of these private military forces is really due to legitimate authority rather than raw power.

By contrast, establishing (or challenging) authority in the sense of *legitimate* power is central to the operation and the activities of the religious networks analyzed by Juergensmeyer based on interviews that he conducted with violent religious activists and their supporters. As he points out, in recent years religiously motivated terrorism has occurred "in virtually every part of the world and in association with every major religious tradition," ranging from abortion clinic bombings by Christian extremists in the US to the subway poison gas attack by a religious cult in Japan and bombings of public and private places by Muslim extremists in Africa and Europe.<sup>13</sup> Although most religiously motivated terrorist acts are local, the non-state actors that carry them out often rely on transnational networks of sympathizers for funding and legitimizing moral support. Many also have a common political agenda, motivated by a combined "fear of globalization" and "fear of America," since they see the ills of modern secular pop culture as closely linked to US military, economic and cultural dominance.<sup>14</sup> However, Juergensmeyer argues that it is a particular religious tradition that underpins authority within each of the religious networks. Hence, these groups often have ties across borders, but rarely across religions, even though different violent religious groups

often share a common “enemy.” Although many have visions of a global order, “slightly beyond the frame of mortal history,” they rarely have concrete proclaimed goals for the construction of authority.<sup>15</sup> Rather, their political agendas consist mostly of undermining and challenging authority, though not randomly or aimlessly. The religiously derived status of the leaders inspires followers’ uncoerced consent and recognition; and religious beliefs—which are “transcendent” and independent of any state, and usually widely shared—provide an ethical justification for violence, giving it an air of legitimacy. At the same time, these actions assault the Weberian modern state’s monopoly on the legitimate use of violence. In making this religious motivation public, the groups undermine—more symbolically than practically—the authority of the state, which they see as having failed them and many others around them.

## **NORMS AND STANDARDS**

A common theme of many of the empirical chapters from both volumes is the role of private actors in creating norms. Two chapters—Ronnie Lipschutz and Cathleen Fogel’s “Global Civil Society and the Privatization of Transnational Regulation” in Hall and Biersteker, as well as Liora Salter’s “The Standards Regime for Communication and Information Technologies” in Cutler et al.—directly analyze the explicit and institutionalized development of standards as a political process of norm-creation. The two chapters offer strikingly contrasting perspectives, but both illustrate that standards, often misunderstood as purely technical, play a central role in international governance and warrant much further study.

Lipschutz and Fogel examine the attempts of non-profit non-state actors, such as transnational networks of environmentalists, to establish standards and regulations at the international level, where the social, economic and environmental externalities of economic activity—addressed at the national level when economic activity was predominantly national or local—are not addressed by most existing intergovernmental international agreements such as the World Trade Organization (WTO). The authors note that firms, too, have an interest in having a single, common set of international standards and rules rather than many different national ones, but they focus on non-profit social actors, who ostensibly have a broader constituency.<sup>16</sup> This makes it more likely that these actors will seek to minimize the social costs of externalities. Lipschutz and Fogel argue that international standards and regulations, until recently, have largely been drawn up without input from non-profit private actors and have largely shied away from addressing these externalities. Recent developments in this realm, however, are novel in both scope and quality. A number of non-profit groups have used their moral authority to appeal to consumers, seeking to get them to demand that products comply with standards of environmental friendliness. Some such campaigns have indeed been fairly successful, though Lipschutz and Fogel caution not to overestimate the promise of relying on consumer-based market strategies to address

externalities. More effective, they suggest, is truly transnational or supranational regulation. Non-commercial actors are increasingly organizing transnationally to match the economic activity of commercial actors at the international level. Private authority, when it includes all stakeholders in the decision-making, thus may make a truly novel contribution to global governance, though many developments are too recent to assess them quite yet.

Salter examines the interaction of firms, states and formal institutions in the setting of standards for telecommunications and information technology. She notes a shift toward private governance of standards, but cautions that rather than having changed from a strictly public regulatory regime to an exclusively private one, there has been a more modest increase in the level and openness of participation by private industry with a “hybrid” public-private arrangement. Most important, she argues, has been the change in expectations and rhetoric. The spread of the expectation that it should be firms rather than governments that develop standards for firms, combined with the inherent association of “standards” with technically superior and widely accepted norms, is endowing private actors and the products of their cooperation with heightened authority. This privatization of authority matters for international governance because it has taken place simultaneously with the increasing shift of standardization from the domestic to the international level. Salter does not see this simply as a case of globalization, though. Rather, real internationalization of standardization activity is combined with the continued importance of many national-level institutions and the continued use of divergent national standards as non-tariff barriers to trade. She also cautions that references to the “international” or “global” character of standards or standardization often euphemistically mask the predominance of the US, Europe and Japan, and that recent changes—such as in the institutional structure of the International Telecommunications Union (ITU) in the 1990s—have further reduced rather than increased the substantive influence of developing countries.

The non-commercial non-state actors that are central for Lipschutz and Fogel are barely mentioned in Salter’s account of international standardization. Differences in issue area and institutions may explain this seeming contradiction. The telecommunications and IT industries produce few of the traditional, clearly visible negative externalities of industrial production, making poorly organized consumers the only obvious group with a stake in international standardization in this area. Yet, as Mattli and Büthe’s analysis of the internationalization of product standards shows, organizational capacity and the complementarity between domestic and international institutions can be essential to the ability of non-state actors to influence technical coordination at the international level.<sup>17</sup> Hence, consumers left to their own devices should not be expected to become effective participants in international standardization.

## AN AGENDA FOR FURTHER RESEARCH

Three sets of issues warrant further discussion and point the way for further research. First, more theoretical work is needed on the causes and consequences of governance through private authority. Cutler et al. in particular build their discussion around several typologies and note a large number of possible explanatory factors and causal mechanisms. That is an important starting point, but more could and should be said about the relationship between the different possible causes and consequences. Do the sources of private authority matter for its operation and its resistance to attempts by governments or public international organizations to (re)appropriate authority in a given issue domain? Does the issue domain matter?

A second theoretical issue is that governance often involves the provision of public goods and hence raises collective action problems. A number of historical studies of the increasing provision of public goods at the national level in the 19th and early 20th centuries suggest that the state is exceptionally well-suited to facilitate collective action, because it has, or can easily acquire, the capacity to provide or regulate the provision of public goods such as education, infrastructure, social insurance and market regulation in a uniform and relatively efficient manner throughout its territory. It can also collect mandatory contributions from all beneficiaries.<sup>18</sup> The analyses in the books reviewed here suggest that there may now be a reverse trend from public to private authority as the needed public goods, or actors efficiently able to provide them, have become international, and no longer coincide with the territorial boundaries of states. Yet, if so, what enables private actors to overcome free-riding and other collective action problems to establish lasting forms of cooperative provisions of governance? The chapters in the present volumes provide a number of well-researched illustrations of replacement of public by private authority, but it is difficult to ascertain from these studies whether they capture a general trend and what conclusions to draw regarding how to overcome collective action problems in the provision of governance. Is private authority possible only where those who provide the public goods can either capture material benefits well beyond costs or attain gains in power that allow them to achieve other socio-political objectives, such as the spread of certain religious beliefs, without distributional problems impeding provision? If so, this imposes strict limits on the range of viable issue domains for private forms of governance. More systematic analyses of such questions are warranted.

A final and related issue is the normative assessment of a private provision of governance, explicitly raised by the editors and contributors of both volumes. Is private governance a good idea? In some issue domains, such as the internet commerce analyzed by Deborah Spar in Cutler et al., the exercise of private authority may be too novel to allow a definitive normative assessment.<sup>19</sup> Moreover, some elements of such an assessment are case-specific, such as whether the private benefits that usually moti-

vate the provision of governance by private actors add to the general welfare or come at its expense. But international governance through private authority also raises more general and complex normative questions, most centrally the question of accountability. From the perspective of traditional democratic theory, democratic public authority offers the best system of governance. Private authority, which is not accountable in the same way, seems inherently problematic and inferior. But what if the realm of needed governance does not coincide with existing structures of public authority, for instance due to the internationalization of economic activity? Simply insisting on the primacy of national-level public authority might then mean foregoing real participation in governance for the appearance of autonomy. Yet if such international governance is provided through the cooperation of public authorities in traditional international organizations, it may better serve the interests of a smaller number of militarily and economically powerful states than when it is provided through the cooperation of private actors.<sup>20</sup> To complicate things further, NGOs with specialized scientific expertise and knowledge of local conditions may be crucial not just for making public authority work, as emphasized in some chapters in these volumes, but also for holding public authorities accountable on issues such as environmental protection and economic development. However, we might also ask to whom these NGOs are accountable in turn.

The research presented in these two volumes makes significant progress towards answering the intriguing theoretical, empirical and normative questions raised by private international governance. It also shows how much work is yet to be done.

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## NOTES

<sup>1</sup> Bob Reinalda, "Private in Form, Public in Purpose: NGOs in International Relations Theory," in *Non-State Actors in International Relations*, Bas Arts, Math Noortmann and Bob Reinalda, eds. (Burlington: Ashgate, 2001), 16; and Daphné Josselin and William Wallace, eds., *Non-State Actors in World Politics*, (New York: Palgrave, 2001), 1f.

<sup>2</sup> Hall and Biersteker.

<sup>3</sup> Hall and Biersteker, 6; Robert A. Dahl, "The Concept of Power," *Behavioral Science* 2 (June 1957): 210-215.

<sup>4</sup> Cutler et al., 3.

<sup>5</sup> Cutler et al., 17.

<sup>6</sup> Cutler et al., 4f, *passim*.

<sup>7</sup> Cutler et al., 336ff.

<sup>8</sup> See Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (New York: Cambridge University Press, 1999).

<sup>9</sup> Cutler et al., 334.

<sup>10</sup> Cutler et al., 336ff.

<sup>11</sup> Cutler et al. especially note the "historical role of the private sector participants" in some issue areas, 4.

## Errata

<sup>12</sup> Muthien and Taylor, "The Return of the Dogs of War? The Privatization of Security in Africa," in Hall and Biersteker, eds., 186.

<sup>13</sup> Juergensmeyer in Hall and Biersteker, eds., 142.

<sup>14</sup> Juergensmeyer in Hall and Biersteker, eds., 147.

<sup>15</sup> Juergensmeyer in Hall and Biersteker, eds., 153.

<sup>16</sup> Lipschutz and Fogel, "Regulation for the Rest of Us? Global Civil Society and the Privatization of Transnational Regulation," in Hall and Biersteker, eds., 119.

<sup>17</sup> Walter Mattli and Tim Büthe, "Setting International Standards: Technological Rationality or Primacy of Power?" *World Politics* 56: 1 (October 2003):1-42.

<sup>18</sup> Tim Büthe, "The State as Facilitator of Collective Action," *Mimeo*, (Columbia University, 2000); Abram de Swaan, *In Care of the State: Health Care, Education and Welfare in Europe and the USA in the Modern Era* (New York: Oxford University Press, 1988); Peter Swenson, *Fair Shares: Unions, Pay, and Politics in Sweden and West Germany* (Ithaca, NY: Cornell University Press, 1989).

<sup>19</sup> Deborah Spar, "Lost in (Cyber)space: The Private Rules of Online Commerce," in Cutler et al., eds., 47f.

<sup>20</sup> Stephen D. Krasner, "Global Communications and National Power: Life on the Pareto Frontier," *World Politics* 43:3 (April 1991): 336-366; Mattli and Büthe, (2003).