

Critical Perspectives on Global Governance
Panel VI: Privatizing Global Governance
Comment by
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This panel tackles the current trend of increasingly privatized forms of Global Governance, where private actors contribute to global standard setting, norm diffusion, policy implementation and the arbitration of conflicts (litigation). The three papers approach this trend from different theoretical perspectives and with different research interests. *Stephanie von Hayek* is interested in the policy implications of PPPs and is particularly concerned with their extent of legitimacy. *Lars Brozus et al.* set out to explain the spread of new governance arrangements in which PPPs emerge. *Robert Wai* explores whether transnational litigation of private law claims in national courts constitutes a new form of Global Governance, in which both public and private actors have a voice. Rather than further elaborating on the specific contribution of each paper (and hence ignoring some of the papers' assets) I will try to discuss and compare the papers with regard to three questions: what do they contribute to the discussion on PPPs and new forms of Governance? Which critical perspective do they offer? Where do we go from here?

1. The contribution to the debate on GG and PPP

Although *Wai* is less explicit on his governance terminology, all papers share the common understanding that new forms of Global Governance are characterized by:

- The mix of actors which are involved (multi-stakeholder approach, involving IOs, national courts, governments, NGOs, firms),
- Formal as well as informal forms of cooperation and regulation,
- A multi-level approach to problem-solving (involving the local, national, regional, global level),
- Less hierarchical forms of cooperation (arguing, soft law...).

The empirical illustrations all match this definition, providing us with further evidence for the very existence of such new governance structures. Interestingly, all papers point out that the public domain somehow remains dominant. *Von Hayek* demonstrates that the World Bank plays the leading and structuring role in most partnerships; *Wai* emphasizes the role of

national courts in litigating private law disputes; *Brozus et al.* observe that private actors may even increase the power of states (i.e. governmental agencies). It could be most fruitful to further explore the relationship between private and public actors in multi-stakeholders partnerships, since this aspect has been widely ignored (to my knowledge) so far.

Yet, there is an additional, fifth characteristic of new forms of governance. Brozus and his colleagues spell it out most clearly in the paper: new forms of political regulation have to be developed, in order to achieve both *effective* and democratically *legitimate* governance (p. 5). This assumption leads us straight into the current empirical and theoretical debate. Does the inclusion of private actors make GG more effective and legitimate? The papers themselves do not really provide us with an answer. *Von Hayek* refers to the successful case of the “Riverblindness-PPP”, but similarly warns us not to conceive of all PPPs as efficient. Furthermore she concludes that it is yet too early to determine the efficiency of PPPs, since only very few projects have been concluded so far. The Darmstadt group does not elaborate further on this issue; *Wai* refers to the litigation as a tool, but does not share concrete examples with us. What about legitimacy? With regard to input-legitimacy von Hayek is pretty sceptical. There is an obvious North-South divide with regard to access to PPPs, developing countries from the South lack representation and participation on the private side. Secondly, one can hardly speak of transparent networks. “Information on governance structures and their functioning”, so *von Hayek*, “is hardly available”. It has not been the aim of the other papers, however, it would be of utmost importance to further investigate into questions of legitimacy and efficiency of PPPs.

2. Critical Perspectives

While each paper’s contribution to the general debate on PPPs and GG is quite obvious, the one on Critical Perspectives is a little less clear to me. This is due to the fact that the empirical cases do not yet speak to the very same critical questions as the authors raised them. As already mentioned, *Brozus et al.* basically raise the important question of legitimacy and efficiency, casting doubt as to whether PPPs really fulfil their function, but do not further follow up on this. *Von Hayek* sets out to answer the question on legitimacy. She shows that international organizations are well equipped to control, oversee and safeguard public principles in PPPs, while at the same time they neither ensure the principle transparency nor inclusion. *Wai* points out that transnational litigation could address international regulatory

gaps, but does not provide us with the evidence that this is yet the case. His paper raises several other critical questions: Can litigation maintain the introduction of external (public?) norms into the lives and practices of business actors? Whose interests and values are incorporated in private law, whose are left out? Is transnational litigation globally applicable (*Wai* raises the question of close association with the legal system of the United States)? One might add: who can access transnational litigation and who is left out?

3. Where do we go from here?

In sum, all three papers bear a lot of critical potential. What I miss is not so much a theoretical treatment on further possible critical perspectives but an empirical analysis on the questions as the papers themselves raised them.

There is only one additional set of questions, which I would like to draw our attention to: the role of power. It struck me in the paper by *Brozus* and his colleagues that the idea of sustainable development has been so successful in such different settings. And not only this, the authors identify a universal spread of similar patterns and goals of governance. Given that even actors with diverging interests were found to regularly invoke the notion of sustainable development, it is questionable whether this global isomorphism is indeed the product of non-hierarchic arguing processes. Does power play any role at all in the global discourse? Are there resources attached to a policy of opening up towards private actors? Do public actors have a choice if they do not want to cooperate with the private sector?