***Rethinking Private Authority in Modern Governance – A Philosophical Account***

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The growing influence of multinational corporations and the increasing role of private firms in public policy highlight the changing dynamics in global governance. The distribution of power among actors in this sphere is a key concern from multiple perspectives. This paper focuses on two aspects: the rise of the private sector as a political actor and the “privatization of the public sphere”. We propose using the lens of political philosophy to address this issue, as it helps translate the debate into a more fundamental question about the relationship between the private and public spheres.

We will delve into the study of business power and its influence in governance settings through the concept of “private authority” as developed in the literature (Hall and Biersteker 2002; Cashore et al. 2021; Ahlquist and Mosley 2021). One important feature of this concept is its ability to carry within it the notion (even if not spelled out) of *legitimacy*. Since Weber, power and legitimacy form an uncontournable relational dyad. A central question then becomes: what is legitimate about business influence on public policy formation? Theorists of private authority seem to tip-toe around this question privileging a more pragmatic approach concerning how private actors *de facto* influence both global and domestic policy-making. However, some important studies offer an exception trying to outline a theory of private authority emergence and its legitimacy conditions.

In their influential work, Hall and Biersteker (2002) address the ways in which non-state actors have become authoritative figures in global governance, focusing on how non-state actors contribute to the production and regulation of global norms, rules, and practices. The central tenet of their work is that private authority has become a prominent force in world politics, constituting a shift in the nature of authority from being solely a state-centered phenomenon to one that includes non-state actors. This shift has significant implications for how power and influence are understood in the global political economy.

At a minimal level, private authority refers to the ability of non-state actors to exercise governance functions that were traditionally associated with states. This implies a form of recognition of those outside formal governmental structures as legitimate participants in rule-making processes. An important aspect, stressed also by Jessica Green (2014), concerns the fact that this is not just a question of influence; private authority involves a recognition that non-state actors possess the capacity to create binding rules or standards that others adhere to.

Therefore, according to Hall and Biersteker, private authority necessitates to arise two key ingredients: legitimacy and recognition from other actors. The appeal to *legitimacy,* however, seems to prelude to a circular argument where new actors would need to *presuppose* a quality they cannot claim by status. Unlike social formations such as states, private actors’ ontology does not provide them with a legitimacy they ought to provide as legitimate governance actors. As we will later see, this brings us to the key problem of private authority, legitimacy and public governance.

Private actors exercise authority not just because they have the capacity to exert pressure or shape outcomes, but because other actors (i.e., States, firms, or civil society groups) accept their right to do so. This recognition makes private authority an integral part of global governance.

Despite their relevant analysis, we contend that this approach can only take us thus far. The major limit of this theory lies in the inability of shedding light on the very *grounds* on which such recognition and acceptance by other actors should be elicited and obtained. This is what a deliberative theory of governance sets out to explore. The central shift, from our perspective, is not therefore as much on actors but on the *reasons*, *motivations, narratives* and *justifications* such actors carry and by which are reflexively defined.

Another influential theory of private authority is the one offered by Claire Cutler, Virginia Haufler and Tony Porter (1999). They distinguish between market authority (economic actors) and moral authority (civil society actors) and identify in globalization a primary driver behind the rise of private authority. As they argue, globalization opens the door for private actors to step in and fill governance gaps, especially in transnational issues where state jurisdiction is limited.

Globalization has created governance voids that private actors are able to occupy, whether through the creation of industry standards, certifications, or ethical norms. Cutler and co-authors rise especially concerns regarding the accountability and legitimacy aspects that inevitably grow when private actors assume governance roles.

In a nutshell, unlike States, which are accountable to citizens through democratic processes, private actors are often accountable only to their stakeholders, shareholders, or donors, raising concerns about how they exercise power on the global stage.

Starting from this analysis, we study the broader dynamic of privatization of governance functions and the major normative implications from a governance perspective as well as for the conceptualization of power in governance.

We start from Cutler’s theory, that draws on international regime theory, to delineate the study of a set of normative conventions that can be extended to non-state actors. Consistently with regime theory as developed by Robert Keohane and others, regimes in international relations allows to perceive the emergence and the influence on non-traditional political actors on governance outcomes beyond states and public actors. The emergence of private international regimes has been explained through various approaches, including market-based incentives, power dynamics of dominant firms, and broader historical trends like globalization and technological change.

Clearly, under conditions of increased modern complexity, all of the above have to some degree contributed to explain the emergence of inter-firm as well as government-nonstate actors cooperation regimes. We discuss the normative implications this move represents from the perspective of auhtority, normativity and legitimacy, as the very concept of private authority presents significant challenges to democratic and representative theories.

Finally, we discuss another relevant perspective in the analisys of “private” forms of power in shaping public policies and global regulations, offered by Doris Fuchs, who analyzies business power as part of a wider process of “privatization of the public sphere”. Also inspired by a critical theoretical approach, Fuchs provides a step forward toward the creation of a more complete framework for analysis of corporate power in global governance and its implications for sustainabilty and social justice (Clapp and Fuchs 2009).

We contend that the understanding of business power and private authority in global governance has largely focused on the study of how corporations influence policy-making. On the contrary, the legitimacy conditions of such power has been rather overlooked. We argue that the debate on the legitimacy of private actors in global governance necessitates new concepts, such as the one of “societal authority”, mediating between companies’ private and public roles (Mende 2023). Ultimately, our claim is that a better understanding of the *sources* of legitimacy of private actors is key is designing more effective forms of transnational regulation and accountability.