

There is no global public: the idea of the public and the legitimation of governance

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Scholars of global governance have made much use of the public–private distinction in their exploration of the power of non-state actors and the constitution of authority beyond the state. But is this distinction analytically adequate? We subject the public–private distinction to analytical scrutiny and argue that it does not hold when analysing phenomena beyond the domestic setting. State actors are universal at the domestic level, but they are particularistic at the global level, being responsible primarily to its territorially defined constituency. The difference between public and private actors qua participants in global governance is thus overstated. We differentiate between public as a category of analysis and a category of practice. As a category of analysis, public denotes a particular configuration of accountability and capacity, which can, in principle, be found at the global level. As a category of practice, public is a claim to universality and responsibility that different types of actors use to legitimize what they do. We illustrate the added value of this conceptualization through a discussion of possibly emerging global public actors, and of how actors' claim to 'publicness' in an incomplete public sphere serves to conceal their particularistic character, thereby undermining 'publicness' at the global level.

Keywords: global governance; public-private distinction; global public; authority; accountability; public sphere

Introduction¹

In order to account for the character, role, and power of different types of actors, scholars of global governance have moved beyond statist assumptions in the study of world politics. A key part of this research

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agenda has been the question of the role of private authority in world politics (Hall and Biersteker 2002; Cutler 2003; Ougaard 2008). There is much analytical leverage to be gained by moving beyond a statist framework and to explore the relative power and authority of public and private actors (Rosenau 2002; Held and McGrew 2002). In doing so, however, one must take care to retain a clear conception of what constitutes 'public' (and by implication, 'private'), and what 'public' may mean beyond the level of the state. Differentiating between different meanings of the term public and specifying its area of validity is of central importance for an effort to better understand some of the fundamental issues at stake in global governance, such as the source and institutionalization of political authority, the justification for the exercise of such authority, and accountability mechanisms for different forms of global governance. To see more clearly what is distinct about public actors, both domestically and internationally, and to identify emergent public actors internationally, we need a clear conception of what 'publicness' amounts to that is analytically distinct from the state, and that allows empirical assessments of different types of actors at the global level.

We argue that analysts have largely failed in this task and that claims about the respective identity, operations, and accountability of public and private actors in global governance are unfounded. Our overall argument is made up of three distinct moves. First, at the domestic level, a public actor – the state – is universal, in the sense that it has overall responsibility for what goes on inside its territory. However, when state actors partake in global governance, they represent and have responsibility for their particular and territorially defined constituency. Therefore, at the international level, both states and private actors are particularistic, and none has overall responsibility. The use of the category 'public' to describe the role of states in global governance thus imports more 'publicness' to state actors than is warranted. Second, there may be emergent global public actors, such as international organizations (IOs) with universal membership; however, this is an empirical question to be assessed against clear criteria of 'publicness', not something to be asserted *a priori*. Third, that while 'public' is problematic as a category of analysis, it is consequential as a category of practice: Those that engage in global governance often invoke – directly or indirectly – 'publicness' in order to justify particular governance arrangements, or to lay claim to representation of broader groups (e.g. 'international community'). Our task as analysts of global governance should be to account for the content of these claims to 'publicness' and their possible effects.

We proceed as follows: We first situate our analysis in the context of the literature on global governance. Next, we discuss the concept of public in

some detail and formulate a definition with accountability and capacity as core features. We argue that the definition of ‘publicness’ must be distinct from the state and that it is the particular configuration of accountability and capacity that determines whether an actor is public or not. Armed with this definition, we proceed to analyse the public at the domestic and global level and conclude that while there are elements of a global public there is properly speaking no global public actor. We proceed on this basis to argue that the use of the *idea* of a global public, as used by those engaged in global governance to legitimize their actions in a global public sphere, is critically important and something that we as analysts should be able to account for. We argue that such appeals to ‘publicness’ takes place in a global public sphere that is incomplete, for two reasons. First, the capacity and opportunity to participate is more unevenly distributed at the global than at the domestic level. Second, and more importantly, this public sphere is not linked to a public actor who can act on demands made in this global public sphere and be held to account by those affected. The result is that the *idea* of a global public applied in an incomplete public sphere serves to legitimize global governance arrangements that are not public: actions are justified with claims to universals or to generalizable reasons, but these justifications are targeted towards various particularistic constituencies, while the interests and views of those affected by the actions that are thereby justified are often excluded. In short, there is a mismatch between the realm of justification and the realm of implementation.

The public and the private in global governance literature

Early studies of global governance targeted the dominance of realist and rationalist approaches by arguing against the view that world politics is only or predominantly about the strategic interaction between states and powerful states, in particular. They drew on the early work on transnational relations by Keohane and Nye (1971) and others, which were in turn inspired by pluralist theories of the state, and sought to replace the category of the state with one that looked at its constituting parts (Dahl 1971). Transported to the study of politics beyond the state, this pluralist tradition invited work that did not assume from the outset that states were the only, or the dominant, actors in world politics (Holsti 1992; Rosenau 1992).

James Rosenau argued, for example, that the study of world politics had to come to grips with the ‘the disaggregation of the loci of governance’, suggesting that states are strategically important rather than necessarily dominant in what he called ‘spheres of authority’ (1992, 2006, 116). For Rosenau, as for later works on global governance, such

‘spheres of authority’ have in the main been defined in actor-centric terms, noting that ‘spheres of authority’ are ‘either governments, or, in the literal sense of the term, nongovernmental organizations’ (Rosenau 2004, 2).

It is thus not surprising to find that analyses of global governance focus to a considerable degree on the relative power of different types of actors, be they corporations, civil society organizations, IOs, expert groups, or advocacy networks. This literature typically asks whether, how, and under what conditions non-state actors can shape policy outcomes (Keck and Sikkink 1998; Price 2003; Avant *et al.* 2010; Comp. Sending and Neumann 2006). Reviewing this literature, Risse notes that ‘There is a growing consensus’ about the fact that non-state actors make a difference in world politics, and that ‘Scholars have collected evidence that advocacy networks, epistemic communities and other TNAs (transnational actors) can have a substantial impact on state policies, on the creation of international norms, and on the diffusion of these norms into domestic practice’ (Risse 2002, 263–4). Others have found that a global civil society represents a powerful check on state behaviour, and that civil society organizations form a basis for democratic legitimacy of governance beyond the state (Steffek 2003; Scholte 2004). The core of this research agenda revolves precisely around the relationship between state- and non-state actors, with assertions of their differences thriving on an implicit or explicit distinction about what is public and what is not.

However, the bulk of the literature on the role of public and private actors in global governance does not discuss what the term public means when applied at the global level. For instance, building on Wapner’s (1995) earlier argument about a ‘world civic politics’, Ruggie (2004) asserts that there is a ‘new global public domain’ in the making, consisting of ‘an increasingly institutionalized transnational arena of discourse, contestation, and action concerning the production of global public goods, involving private as well as public actors’ (2004, 504). Here, the term ‘public actors’ apparently refers to states. At the same time, Ruggie proceeds to argue that, ‘private governance’ by and through corporations and civil society organizations together produce a new ‘domain’ that is distinctively global *and* public. Ruggie notes that:

“In sum, civil society organizations have managed to implant elements of public accountability into the private transactional spaces of transnational firms. By and large, this process of defining new social expectations has evolved [...] entirely apart from the sphere of states” (2004, 514).

Thus, he argues that the fact that firms are (to some extent) held accountable by civil society organizations means that there is a global public. Here ‘publicness’ is defined in terms of accountability, without a

specification of the kind of accountability involved. However, while civil society organizations can hold both states and private companies to account by monitoring and publicizing what they say and do, these accountability mechanisms are not public in the same way as states sense of being universal and enforceable. Similarly, corporate social responsibility and other market-based regulations that companies establish to cater to the concerns of their customers and shareholders, do not constitute *public* accountability in the sense of being universal (within a given realm) and enforceable. It is public only in the sense of being on display in the public sphere.

Hall and Biersteker introduce their edited volume on the emergence of ‘private authority’ in world politics by noting that ‘a growing number of actors – actors other than the state – appear to have taken on authoritative roles and functions in the international system’ (2002, 4). They distinguish the ‘private’ by using the ‘public’ (state) as the yardstick, so that the ‘sphere of the private can be defined in terms of what is *not* in the realm of the public’ (ibid: 5. Emphasis in original).² In discussing the increased role of private actors in global governance, Biersteker argues that there are ‘significant concerns about the democratic accountability of these new forms of agency’ and that there are also ‘serious, normative questions about the accountability of non-governmental organizations’, since these private actors are ‘accountable to their members, but have influence over (and make claims on behalf of) a far broader range of potential subjects’ (Biersteker 2002, 171). Thus, in contrast to Ruggie, Biersteker emphasizes the limitations of existing accountability mechanisms for non-state actors. However, Biersteker does not problematize the public character of states at the global level.

The literature on private authority in world politics – especially in international political economy – theorizes and historicizes the public–private distinction head on. A case in point is Cutler’s (2003) discussion of the emergence of transnational merchant law and its implications for private and public authority. Cutler maintains that the distinction between public and private is ‘in empirical decline as processes of juridification, pluralisation, and privatization blur the separation between private and public authority’ (2003, 32). This is based on her identification of the role and power of a global ‘mercatorcy’ – a global corporate elite and its ideological and political helpers – which involves ‘a complex mix of public and private authority’. This mercatorcy and the law and governance arrangements that

² The authors are cautious to stress that they seek to avoid a reification of a distinction between public = state and private = markets, seeking instead to transcend the (liberal) idea that the private concerns markets and individual freedom, while public concerns state authority.

it furthers is said to be ‘deeply implicated in the ordering of state-society relations because they operate to recast ‘public’ concerns as ‘private’ and thus are not subject to democratic modes of scrutiny and review’ (Ibid: 5). The term ‘public’ is here – and we think rightly so – invoked as a reference for universality and responsibility, being contrasted with ‘private’. Given Cutler’s explicit focus on *global* processes, however, it is problematic to invoke ‘public’ as a foundation for a normative critique without interrogating how the meaning of the term public is transformed when applied as an analytical lens at the global level.

Finally, a more recent body of literature has addressed the character and role of so-called public–private partnerships (PPPs). PPPs have come to occupy a central place in studies on global governance, as they are said to capture the changing foundation and contours of political authority in an era of globalization. Börzel and Risse (2005) ask whether and how PPPs can help address global governance challenges, and focus on PPPs’ possible contribution to increased effectiveness and legitimacy. They define transnational PPPs as:

“institutionalised cooperative relationships between public actors (both governments and international organisations) and private actors beyond the nation-state for...the making and implementation of norms and rules for the provision of goods and services that are considered to be binding by members” (2005, 198).

While nuanced in their assessment of what PPPs are, and how they may contribute to increased legitimacy and effectiveness of global governance, their analysis rest on a conception of the ‘public’, which includes both states and IOs, without discussing whether or in what sense these qualify as global public actors. Similarly, Bexell and Mörth (2010) explore how the ‘public-private distinction shapes conceptions of where democratic values reside’. They argue that ‘public’ refers to states since there is a ‘claim to be responsible for the general interest of a politically organized collective, as opposed to ‘private’, merely particular, interests’. They proceed to argue that partnerships between public and private actors can help increase legitimacy by expanding accountability between those that govern and those that are governed:

“partnerships can provide an opportunity for extending deliberative democratic practices, as they allow for the representation of affected interests, a context of relative equality among partners, and an ambition to obtain common understandings and long-term learning” (Ibid: 13).

In doing so, the authors replicate a domestic-level conception of public to the global level, as if a ‘public’ actor as defined by the

authors – ‘responsible for the general interest’ – exists at the global level, without discussing what ‘publicness’ would mean at this level. This review of the literature suggests that there is a need to sharpen the analytical tools used to discuss what constitutes ‘publicness’ at the global level. In the next section, we discuss in more detail the concept of the public and its applicability at the global level, arguing that it must include an element not only of universality, but accountability and capacity.

Public and private, national and global

We may distinguish between two aspects of the term ‘public’ that are relevant for how we should assess the claim that there is an emerging global public:

1. the idea of the public as *a sphere of deliberation and discussion*, a place in which issues are freely discussed, and where policies are justified and legitimized through appeals to common interests and/or universal principles. This sphere is related to the state in the sense that issues under discussion typically pertain to state policies that in principle affect all citizens. The public sphere is not a part of the state. It is defined as a space outside the state, constituting a site from which state policies may be assessed and criticized.
2. the idea of the public as *collective entity of self-determination* and decision making. This idea of the public, related to ideas of citizenship and participation, is based on the principle of popular sovereignty, and on the unity of ruler and ruled, where the people govern themselves and are subject only to rules of their own making. It presupposes that those who rule and act on behalf of others are accountable towards those on whose behalf they (claim to) act. It also presupposes that decisions made on behalf of the public are implemented by institutions with adequate capacity.

The first sense of the term public – public sphere – is much less problematic as an analytical tool that spans the divide between the national and the global (Mitzen 2005); however, as we discuss below there are important differences here as well. Our main focus is on the second sense of the term ‘public’.

Thus, our definition of ‘publicness’ is made up of two elements. First, *accountability*: those who rule and act on behalf of others must be accountable towards those on whose behalf they (claim to) act. Second, *capacity*: decisions must be implemented by institutions with adequate capacity (Fraser 2007). Further, the relationship between accountability

and capacity must be of a specific kind. To be truly public, the space over which a given organization or network has the capacity to govern must coincide with the space towards which it is accountable. Note that at the national level, this space is territorial. At the global level, this space may be issue specific: an IO may have both accountability and capacity over a particular issue area, such as criminal law or trade, over which it is universally responsible.

The existence of a public *sphere* does not imply the existence of mechanisms by which those who make decisions are held accountable, either by those on whose behalf they claim to act or by those that are affected by their decisions. Thus, the emergence of a public in the first sense (a public sphere) does not necessarily imply the emergence of a public in the second sense (accountability and capacity). While effective accountability presupposes a public sphere, a public sphere in the sense of a space where arguments are presented and policies are legitimized may exist, with or without accountability and capacity. Using these distinctions, we now turn to a discussion of what ‘public’ can be said to mean at the domestic and global level, respectively.

Public and private at the domestic level

Modern states are based on a separation between state and society (Giddens 1985; Jessop 1990; Cohen and Arato 1992; Weintraub, 1997). The state, whose actions are seen as identical to those of the people, must also be separated from the people on whose behalf it acts. Moreover, states are based on a specific conception of *how* state and society should be separated. A private sphere (society), consisting of the economy on the one hand, and immediate social relations on the other, is constituted and protected by the state, through the institutionalization of a set of rights (Brubaker 1992). This sphere is at the same time ‘outside’ and ‘under’ the state (Ferguson 2006). The state stands above society, defining the rules that apply and having overall responsibility for society as a whole. Thus, there is a hierarchical relation between the state and society. While the precise nature of and control over state institutions can and will be open to struggle and debate, it is presupposed that these institutions, regardless of what form they take, constitute the highest political authority. The question of *where* to draw the boundary between the state and society is likely to be among the most central political issues. However, if it is recognized that such a boundary should be drawn, and that the state must decide where to draw it, state authority is affirmed, regardless where and how the boundary is actually drawn.

Since the state is responsible for society as a whole, its policies must be justified in public by reference to generally accepted claims and arguments.

Such justifications are presented in the public sphere, and must be given a universal form, in the sense that they must be presented as serving the citizens' common interests. Thus, the particular interests emerging from the private sphere must be transformed into policies that are seen as legitimate in the sense of being in accordance with the public interest, however defined. Through the application of general rules or norms in particular situations, the states are seen to ensure that the common interest is served (Cohen and Arato 1992; Habermas 1992). While there is never a complete fit between the universal and the particular in the formulation of state policies (since private interests may often be in conflict with each other), state policies must always be based on the *idea* of such a transformation. Therefore, an important element of politics is the competition between different notions of what constitutes the common good.³

States are accountable to citizens in two distinct ways. On the one hand, states act on behalf of citizens representing them. The state is the institutional expression of a society's collective freedom and autonomy. It represents a unity of the ruler and the ruled, of the subjects and objects of government, and the actions of the state express the collective will of citizens. On the other hand, state actions and policies affect citizens, who can hold it responsible precisely because the state represents them. States are accountable to those that they represent and act on behalf of, namely their citizens. With Robert Keohane (2002, 2006), we can say that their internal (those that they act on behalf of) and external (those affected by their actions) constituencies are identical.

Thus, states stand above the society, are universal in the sense of being responsible for promoting the common interest, for formulating the laws that all actors must follow, and for guaranteeing the autonomy of civil society by upholding a set of rights that makes it possible for non-state actors to gain autonomy, including the right to express opinions and to challenge state policies in public. Therefore, at the domestic level, states are public in both of the above senses. They act on behalf of and are accountable towards their citizens and they justify their policies in a public sphere, in which other actors can challenge it.

Private actors, by contrast, are particularistic. They are not responsible for society as a whole, and to the extent that they are accountable, it is

³ Whether a state in practice promotes the common interest in a substantive sense is an empirical question. All policies emerge as the outcome of a political process, in which different actors attempt to yield influence. Therefore, the content of state policies will depend on the relative power of different actors, and on the degree to which all groups in society have access to the public sphere on relatively equal terms. But regardless of the content, policies must always be justified by presenting them as being in the common interest.

to a more narrowly defined constituency (shareholders in the case of corporations, members in the case of non-governmental organizations (NGOs), etc.). And while they act on behalf of their constituencies, their actions invariably affect actors that are not part of their constituency and thus cannot hold them accountable. In Keohane's terms, there is a disjunction between internal and external accountability (Ibid.).

Public and private at the global level

While the conceptual pair of private and public is central to an understanding of politics at the domestic level, it conceals more than it reveals at the global level. To see why, consider what it means to transport this conceptual pair to the global level. The meaning of the term 'private' remains the same. The roles, responsibilities, and potential power of 'private' actors are formally identical at both levels: they are *particularistic*, both domestically and internationally. Non-profit actors – such as civil society organizations – are internally accountable to their members and to those that fund them, regardless of whether they operate at the domestic or the global level. They are also accountable to the state in countries where they operate, whose laws they have to abide by. While they may seek to present themselves as representing or acting on behalf of a 'public' as a means for legitimation by claiming to speak on behalf of humanity in general, and oppressed groups in particular, they are not accountable towards those on whose behalf they claim to act (Hopgood 2009). Similarly, private for-profit actors are directly accountable to their shareholders, and indirectly to the states where they operate.

The term public, by contrast, is much more complicated, and changes once we move to the global level. There are two elements to this. First, there is the question of whether the state (which can but need not be public at the domestic level), is to be considered a public actor when acting at the global level. Second, there is the question of whether there is a global public actor. We address each in turn.

Domestically, states are ideal-typically public in that they have responsibility, are accountable towards those affected, and have the capacity to act within a territorially defined realm. When acting at the global level, states are still accountable to their own citizens. The main purpose of state action in the international sphere is to promote the interests of 'its' society and citizens, for which it is responsible.⁴ States may cooperate or

⁴ In this respect, we agree with realists: the international realm is characterized by conflicts of interest and 'anarchy'. However, the realist view is limited. It wrongly assumes that states always pursue their own national interests, and it does not recognize the importance of non-state actors and the need to analyse the interlinkages between states and other actors.

compete with other actors, and they are bounded by international law, but their main responsibility *qua* states is to promote their national interests (however defined), and they remain primarily accountable towards their territorially defined constituencies. This means that at the global level, states are *particularistic* rather than universal. Those on whose behalf states act are not identical to those who are the objects of their actions. This does not imply that states are *identical* to private actors *qua* participants in global governance; states have a special status, being empowered to negotiate and enter into treaties with other states and to implement them at the national level. But they are nonetheless particularistic, inasmuch as their primary constituency and reference point for action is the territorially defined society over which they rule.

States, of course, often promote what they see as or claim to be ‘universal’ interests or certain conceptions of the common good. The content of states’ policies can span the spectrum from pure self-interests to the advancement of collective or universal ones.⁵ But since these policies are advanced by states, they are particular to each state. Even when they are universalistic in content, and thus have an element of ‘publicness’, these policies are not linked to capacity and accountability: States are primarily accountable towards their own citizens, and the condition of possibility for advancing global collective interests is that the state’s policies and decisions are seen as legitimate by those to whom they are primarily accountable. Thus, states remain particularistic in the sense that the main source of their legitimacy and authority, and the main lines of accountability, is found at the domestic level, in the state’s relations with its citizens. Moreover, they lack the capacity to enforce such universal values or interests.

To the extent that the substance of any given state’s policy advances common goods or universal interests, it is an empirically contingent expression of universal values as expressed by its citizens, to whom the state in question is accountable. Indeed, the convergence of states’ interests around a set of shared values or programmatic objectives should not be confused with ‘publicness’: As we discuss below, the formation of public interest presumes an element of reasoned debate about the common good, which is distinct from the convergence of individually constituted interests.

Beyond a convergence of interests, states may hold each other accountable at the global level, either through international legal obligations or through more informal peer pressure. Such horizontal accountability is important, since it can be said to constitute a collective of individual states

⁵ We thank one of the reviewers for pushing us to clarify this point.

that are bound together in a certain way to make up a 'public' actor (Mitzen 2013). Whether such accountability between states, when acting together, make up a public actor or entity depends, as we discuss below, on the configuration of capacity to enforce decisions and sanction behaviour, and on the type of accountability mechanisms at work, both internally and externally.

There are forms of horizontal accountability that emerge from states' commitment to pursue certain goals together globally. The efficacy of such mechanisms depends on the degree of consensus about the concerned norms, and on the capacity vested in an IO or entity to monitor and evaluate state behaviour. For example, states have jointly committed to the Millennium Development Goals (MDGs) and monitor progress towards their attainment. In the case of the MDGs, the horizontal accountability is diffuse, since individual states' specific contribution to reach these goals is not monitored. In other cases, this accountability between states is specific, as in the case of the OECD's Development Assistance Committee (DAC), where a state's commitment to a certain level and type of aid is monitored and regularly evaluated by other states. In such forms of global governance, the degree of 'publicness' in question increases. As shown by Wolf (1999), however, increased horizontal accountability between states at the global level creates a 'democratic deficit' in that it weakens the states' accountability towards citizens and replacing it with accountability to other states. In that sense, horizontal accountability between states may weaken the vertical accountability between states and citizens. More importantly, for our focus here, a possible loss of vertical accountability at the domestic level is not compensated by more vertical accountability at the *global* level: States' convergence around certain principles and attendant actions do not make up a public actor, inasmuch as the configuration of capacity and accountability through which states can be held responsible is lacking.

However, it does not follow from this that there can be no 'publicness' at the global level in the absence of a global state. Accountability mechanisms whereby those affected by decisions made in international forums can hold decision makers accountable can in principle exist without a global state. This can happen in at least two ways. First, states may agree to give IOs, such as the United Nation (UN), the authority to govern on behalf of the community of states. In that case, the IO would be accountable to states, for instance, through the general assembly, where all states have an equal voice. This would not be a global state, since it would be up to the states themselves to decide whether they want to give the IOs such authority. And while some sovereignty can be ceded to a global body on specific issues, thus creating elements of a global public,

this is distinct from a global state, because it is issue specific rather than overarching, and, most importantly, because IO's authority to govern can be revoked by states. Below we discuss some significant IOs and assess their 'publicness' against the criteria set out above.

The UN General Assembly has universal membership and follows the principle of one state, one vote. But the General Assembly does not have the capacity to enforce decisions, having to rely on individual member states for enforcement. The UN Security Council has a particular mandate to make binding decisions and to establish sanctions to enforce them, but it has limited membership and thus also accountability. Neither of these UN bodies can thus be said to be global public actors. What about other IOs? Two significant examples worth considering in some detail are the International Criminal Court (ICC) and the World Trade Organization's (WTO's) Dispute Settlement Understanding.

The ICC is arguably one of the closest approximations of a global public actor in that the Court has, through the Rome Statutes, the capacity to prosecute individuals for crimes against humanity, war crimes, and genocide. While it is designed to supplement individual states' prosecution, it is the ICC rather than the states concerned that determines whether the ICC is to open a case against an individual. While many (important) states have either not signed or ratified the Rome Statutes – the United States, China, India, Israel, and Russia being cases in point – the ICC is a hard case for our argument since it demonstrably has both capacity and accountability through states' commitment to the Rome Statutes, which gives the ICC independence to prosecute. On closer inspection, however, the ICC represents a configuration of capacity and accountability that is not public. The ICC can prosecute individuals in three cases: where the accused individual is a citizen of a state party to the ICC, where the UN Security Council refers a case to the ICC, and when a crime over which the ICC has jurisdiction is committed on the territory of a state party to the Rome Statute. The ICC clearly has capacity in the sense that it can enforce decisions that given states' signing and ratification of the Rome Statutes. We have already noted the lack of accountability of the UN Security Council, and given its role in referring cases to the ICC, this also has implications for the ICC's 'publicness'. More significant, however, is that the ICC has jurisdiction to prosecute individuals also from states that are *not* party to the ICC, if the alleged crime(s) took place on a party state's territory. Thus, citizens from states who are not parties to the ICC are nonetheless bound by the court's decisions. This means that the ICC lacks external accountability.

The other example is the WTO. While not including all states (it has 153 member states at the time of writing), the WTO is based on a treaty

that all its members have ratified. The WTO also has a Dispute Settlement Board (DSB) that is authorized to by WTO members, in treaty form, to make final and binding decisions on trade disputes between states. Thus, there is both internal and external accountability. Since there is both internal and external accountability, coupled with the capacity to make binding decisions, the WTO can be said to come very close to being a global public actor. However, note that the WTO is issue specific and that the DSB can only make decisions that are binding for the parties to a trade dispute. Legal scholars disagree on the extent to which the member states have an obligation to comply with decisions made by the DSB. Bello argues, for example, that the WTO ‘relies upon voluntary compliance’ and that ‘any WTO member may exercise its sovereignty and take action inconsistent with the WTO Agreement, provided that it compensates adversely affected trading partners or suffers offsetting retaliation’ (Bello, 1996, 417). Whether DSB rulings make up an ‘obligation to comply’ or an ‘option to “buyout”’ (Jackson 2004) is an important question, because it turns on the ‘publicness’ of the WTO, in terms of whether member states in fact are bound by a decision of the DSB to comply with this decision and bring their policy into conformity with it, or whether they can refuse to comply and accept counter-measures taken by other states that are authorized by the DSB (buyout). In the so-called ‘beef hormone case’ between the European Union (EU) and the United States and Canada over the former’s ban on beef treated with hormones, the EU opted to ‘buyout’, and refused to comply with the DSB’s ruling in favour of the United States and Canada. This resulted in the DSB authorizing the United States and Canada to impose duties on goods from the EU equivalent to their loss of sales resulting from the EU’s import ban. In short, the EU chose to pay rather than to comply.

Thus, although most IOs have degrees of ‘publicness’, it would require substantial reform of these institutions for them to become genuinely public. As noted, the UN General Assembly’s ‘publicness’ is undermined by a lack of capacity, and the UN Security Council has the capacity to act, but it is not accountable. And while there may be horizontal accountability between states – grounded in international law – there is no direct link between such accountability and capacity.

Therefore, our contention is that existing forms of global governance are only public in a weak sense. This is not because ‘public’ equals state, and that absent a world state, there can be no ‘publicness’ at the global level. Rather, it is because a public presupposes a particular configuration of capacity and accountability, which is lacking in existing forms of global governance. In one sense, this is a matter of degree, since there may be different degrees of capacity and accountability in different areas of

global governance, as discussed above. Thus, if states give IOs more authority and more resources, they may become more 'public' in that they will have more capacity. However, in another sense, there is a qualitative difference in the forms of governance between the national and the global level. This is because decision makers in global governance are primarily accountable, not towards those affected by their decisions, but towards their respective particularistic constituencies, which may or may not be territorially defined. There is what we, following Keohane, referred to above as the disjunction between internal and external accountability.

Against this backdrop, the argument that the lack of accountability of private actors in global governance is the main problem is, we think, misleading. Haufler (2001), for example, charges that accountability is a thorny issue when private actors become involved in global governance, and Kingsbury *et al.* (2005) suggest that the emergence of (proto-) global administrative law can amend some of the accountability problems in global governance by imposing due process rules. Mattli and Büthe (2005) further develop the focus on administrative law and apply principal-agent analysis to a case of private self-regulation – accounting standards – to suggest that procedural rules may not be effective in filling the accountability gap, the implication being that the problem is the role of private actors. Similarly, Bernstein and Cashore (2007) ask whether non-state actors can establish legitimate global governance arrangements. Our contention is that these concerns apply to states as well when they engage in global governance, since they too are accountable to their particularistic constituencies (citizens) but make claims to 'publicness' at the global level to justify their role in shaping the lives of subjects beyond their borders (Grant and Keohane 2005).

To summarize, there is no global public actor. States are particularistic at the global level, and IOs are either insufficiently accountable (UN Security Council, World Bank) or lack capacity (UN General Assembly). The strongest elements of 'publicness' are found in institutions where the horizontal accountability between states is codified in international law, and where such rule-based accountability is matched with the capacity to make binding decisions, as the case of the WTO illustrates. This is obscured in many accounts of global governance, because the term 'public' is used in an imprecise way. One may use the terms 'public' and 'private' as synonymous with state and non-state, but it is important to recognize the difference in what 'public' means at the international level. With Bartelson, we may say that this distinction has so much 'statist baggage to make [it] unsuitable for descriptive or explanatory purposes' for things global (Bartelson 2006, 385).

Global governance and the public sphere

Theorists of global governance typically stake their call for more democratically accountable global governance arrangements on a global civil society, and on the transparency said to be produced by a global public sphere. The public sphere is the space where policies are discussed and justified. In the global public sphere, various actors participate in debates about how governing beyond the state should be organized. In this sphere, justifications for different policies and practices must be given a universal form, and be presented as compatible with the common good. Consequently, states, IOs, and other actors justify their policies and practices by claiming to act in the interest of a global public, or humanity as a whole.

Theorists of global governance link the existence of a global public sphere to an emergent cosmopolitanism. Archibugi, for example, cites Habermas and others to argue that ‘there is an emergent international public sphere’ and links this to calls for ‘public action’: ‘the feeling of belonging to a planetary community and taking public action for the global commonwealth is ... growing’ (Archibugi 2004, 445). Castells similarly argues that ‘The global public sphere could facilitate public debate to inform the emergence of consensual global governance’ (Castells 2008, 176). And for Scholte, ‘civil society associations do indeed offer significant possibilities to increase democratic accountability in global regulatory arrangements’ (Scholte 2004, 213).

Attributing these functions of control, accountability, and transparency to civil society actors presumes that the character of the public sphere at the global level is of a particular kind, both in terms of its own properties and in terms of its relationship with political institutions. However, the existing global public sphere has severe limitations, both in terms of capacity to influence policy and in terms of legitimacy (Fraser 2007; Scheuerman 2009).

In terms of capacity to influence policies, the global domain lacks the link between debates in the public sphere and political decision making in an overarching institution with responsibility for the common interest. This is ensured at the domestic level by the existence of channels of participation (parties, elections, etc.) through which citizens can have influence on the state and by the fact that states are accountable towards citizens. At the global level, by contrast, there is no overarching institution that participants in the global public sphere can hold accountable, and to which they can address their demands. While there is a global public sphere where issues are debated and arguments can be put forward and criticized, the institutions in which decision making takes place are particularistic rather than overarching.

In contrast to what is the case in what Fraser describes as weak public spheres (Fraser 1990, 75), participants in the global public sphere are not decoupled from decision making and governance practices. On the contrary, many of the key participants in the global public sphere, such as state representatives, NGOs, advocacy groups, and IOs, are also key decision makers in global governance. But nor is it a strong public sphere in Fraser's sense, as 'publics whose discourse encompasses both opinion-formation and decision-making ... [with] a body representing it [which] is empowered to translate such "opinion" into authoritative decisions' (Fraser 1990, 75). This is so because the global public sphere is not embedded in an overarching institution that can take action and to which this discourse is directed. Therefore, a key difference between public spheres at the domestic and the global level is the character of the decision-making institutions with which debates in the global public sphere are linked, that is, their particularistic nature and the absence of overarching institutions with both responsibility and capacity for implementation. To put it differently, the global public sphere is strong in the sense that it is dominated by actors who take part in decision making in global governance, but it is weak in the sense that it is not tied to *public* decision making.

While the above argument has to do with the qualitative difference between public spheres at the domestic and the global level, there are also differences of degrees in that the ability to participate in the global public sphere is more limited than in the domestic setting: It is biased towards specific states and also classes (Calhoun 2002; Fraser 2007). This is important: recall that a crucial component of the public sphere as a social space for the mediation between state and society and the formation of consensus on the common good is the collective use of reason, which presupposes that participants are engaged on a fairly equal footing. As argued by Fraser, 'in order to have a public sphere in which interlocutors can deliberate as peers, ... it is a necessary condition that systemic social inequalities be eliminated' (Fraser 1990, 65).

Although participants in the global public sphere may present themselves as speaking on behalf of the common good of humanity and in terms of universal principles, they do so without authorization from, and accountability towards, those on whose behalf they claim to speak. This character of the global public sphere is captured well in Nanz and Steffek's discussion of the World Trade Organization (WTO): 'A central problem in having more inclusive deliberation on world trade is a manifest 'unequal opportunity' amongst actors. Representatives and stakeholders coming from developing countries, for example, experience major disadvantages that prevent them from participating effectively in debates on world trade' (2004, 331).

This inequality of access and lack of representativeness means that the global public sphere is likely to be a space where, to use Habermas' terminology, there is 'systematically distorted communication' (Habermas 1986).

Thus, the global public sphere is limited in two crucial ways. First, it is not linked to decision making in global institutions that represent and are accountable to a global public, even if the ambiguity of the term 'public' makes it easy to assume that this is the case. Second, it is biased – and arguably more so than in most domestic settings – in terms of access and inequality among participants.

This means that at the global level, in contrast to the domestic setting, there is a mismatch between the realm of legitimation/justification and the realm of implementation: The activities of global governance networks depend for their legitimation on one set of constituencies, whereas the impact of their activities is often felt on other constituencies. This mismatch follows from two features of the global realm: First, the incompleteness of the global public sphere (the realm of legitimation) means that some voices have a better chance of being heard than others. While, as shown by Habermas, Fraser and others, this is the case at the domestic level as well, it is even more so at the global level. This means that justifications of and debates about global issues take place in a setting where most of those affected (or their representatives) are unable to participate fully. Second, in the realm of implementation, the fact that decision makers are accountable, not towards those affected by their decisions, but towards their various particularistic constituencies, means that there is no public actor at the global level, with responsibility for the global common good and capacity to enforce and implement decisions. This is what we referred to above as the disjunction between internal and external accountability.

The idea of a global public and its effects

As argued above, all actors in global governance networks are particularistic in the sense that they are accountable internally, to those on whose behalf they act, but not externally, to those affected by their actions. But while there is, strictly speaking, no global public actor, policies are justified with reference to the idea of such a public. These claims and justifications, which are made in the global public sphere, often succeed in creating support for specific policies.

The *idea* that a global public exists has significant effects on how actors behave, and must be recognized as an important empirical fact. This idea has become what Balakrishnan (2004) calls 'an objectively operative fiction' – an idea that forms the basis for policies, even if it does not

correspond to reality. The practices that are made possible in this way, in turn, have effects on the nature of global governance. Thus, while the concept of the global public is misleading as an analytical category, it is highly consequential in practice. At the empirical–political level, then, the appeal to ‘the public’ enables actors participating in global governance to claim that they act in the public interest, or that they represent the global public. This means that although the idea of the ‘global public’ is far from being an actual description of current practices of global governance, it still profoundly shapes them.

The combination of analytical weakness and practical impact makes it reasonable to treat the idea of a global public as an important empirical fact rather than as a tool of analysis. The analytical challenge is to incorporate the idea of the public as used by the actors involved in global governance, without reproducing and accepting at face value those ideas for analytical purposes – to distinguish clearly between public as a category of analysis and a category of practice.⁶ The fact that the idea of the global public is invoked to justify certain policies is just as important as the fact that ‘actually existing’ global governance contradicts the idea of the public, which is used to justify it. We must analyse the effects that such ideas have in particular cases, and uncover what kinds of practices they make possible (Abrams 1988; Mitchell 1991; Eriksen 2011).

As a category of practice, the idea of a global public is used by participants in the global public sphere to legitimize various policies and practices. The distinction between public and private can therefore ‘help justify a distinct set of practices and institutions of global governance’ (Bartelson 2006, 386), thus being a central category from which different actors seek to draw legitimacy. When these practices are established, their existence becomes a basis for claims that a global public exists, despite the fact that the practices justified in this way undermine or contradict global ‘publicness’.

This has important implications. Different actors who participate in various forms of global governance claim to promote common interests and act on behalf of ‘the international community’. The definition and promotion of the interests that typically define global governance in specific issue areas has been overwhelmingly shaped by rich industrialized countries. The fight against corruption by Transparency International, the World Bank, the UN, and state agencies, for example, is not presented as

⁶ As argued by Bourdieu (1987), an epistemological break is required, through which the social scientist distances himself/herself from the concepts and worldviews of those studied, while at the same time recognizing that their concepts and ideas are a constitutive part of social reality.

following from one among many possible political positions on how the boundary between state and society should be drawn, and how political and economic activity should be organized. Rather, it is presented as something universally good and undeniable, lowering the bar to succeed in claiming authority to speak on behalf of the international community (cf. Hindess 2005).

For example, in defining its approach to, and rationale for, state building efforts, the OECD's DAC – consisting of 34 advanced industrialized countries – asserts that 'Human rights constitute a unique, internationally shared and accepted normative framework, reflecting global moral and political values' (OECD 2007, 2), and that 'Human rights are at the heart of effective states, democratic governance and empowered citizens' (Ibid: 3). International NGOs such as Human Rights Watch and Amnesty International similarly seek to present themselves as speaking on behalf of a global common interest and thus of mankind as a whole (Hopgood 2006). When presented in an incomplete and fragmented global public sphere, such claims to universality are more easily left unchallenged. Berry and Gabay (2009, 339) contend, for example, that Oxfam deploys a 'liberal-cosmopolitan' interpretation of globalization to legitimize their work, in which Oxfam's 'universalist pretensions ... mask more local or parochial concerns and identities'. Similarly, the UN Global Compact – the hub for civil society and business to support UN-led activities – states that 'Civil society organizations ... are critical actors in the advancement of universal values around human rights, the environment, labour standards and anti-corruption'.⁷

Because of the lack of a global public actor and the exclusive and particularistic character of the global public sphere, existing forms of global governance may in fact contribute to making institutions *less* public, even if the policies and justifications of these institutions' practices may be based on moral values about autonomy and freedom, as in the case of human rights. Therefore, paradoxically, the emergence of a global public sphere, which would appear to improve the possibility for global accountability, may have the opposite effect. Because of the exclusiveness and unrepresentativeness of the global public sphere, it has become possible to present particularistic policies, practices, and institutions as universal and as promoting common interests. In this way, the existing global public sphere has served to legitimize particularistic forms of global governance. Rather than representing a move towards greater universalization, the fact that participants in global

⁷ http://www.unglobalcompact.org/ParticipantsAndStakeholders/civil_society.html. Accessed May 25 2012.

governance can appeal to a global public and claim to act on its behalf conceals the particularistic character of the actors involved in global governance, by giving their practices an appearance of universality. In other words, the global public sphere is ideological in the classical sense: It serves to legitimize particularistic policies and practices by presenting them as universal.

This means that the idea of a global public is both misleading and indispensable. It is misleading in the sense that it suggests that a truly global public with universal accountability and capacity is present or emerging. At the same time, it is indispensable in the sense that it is an important source of legitimacy for actors engaged in global governance, who can appeal to it to establish a position of authority and to justify their actions in the global public sphere. In other words, it is important as a category of practice, even if (or perhaps because) it is misleading as a category of analysis.

Conclusion

The analysis of global governance in terms of the power and operations of non-state actors compared with that of states has produced a wealth of new insights about changes in the cast of actors involved in governing beyond the state, and also about the attendant reconfiguration of the state. However, there are considerable analytical costs. The private/public distinction is used without discussing its applicability or the transformation of its meaning when applied to the global level. The discussion of whether private actors have emerged with authority relative to public ones in the international realm rests on a flawed conception of public actors as retaining their status as 'public' once they move from the domestic to the global level. In a nutshell, the difference between public and private actors in the international realm is one of degree, since both types of actors are 'particularistic' in a way that the state is not at the domestic level. As a result, the effort to establish a new perspective on world politics through identifying the existence of global private authority, or of global civil society, has left the character and functioning of global public authority untheorized.

We have argued that in order to understand global governance, we have to start by reflecting more critically on what constitutes the global and on what 'public' means at this level. Four conclusions can be drawn: First, while we do not deny the existence of proto-public institutions at the global level, the claim that there is a global public is misleading. Second, the reason why there is no global public is that those 'public' actors that we can observe – states – are no less particularistic than private actors

when they take part in global governance. This is because the universality of responsibility and representation that characterizes the state domestically disappears in the space outside the state. Third, the idea that there is such a public is nevertheless important because of its effects on practices of global governance. To the extent that the idea of a global public is taken up by actors and used to justify different forms of global governance, this idea has political effects, even if no global public exists. Fourth, the practices made possible by the idea of the global public have contributed to affirming the impression that there is such a thing as a global public. In this way, existing forms of global governance help reinforce the idea that a global public exists, and to legitimize particularistic forms of governance.

While our argument has focused on criticizing the analytical purchase of the concept of public at the global level, our central objective is to invite analyses of global governance that distinguish the content of universal claims made by different actors as they debate and engage in global governance, from the ‘publicness’ of the institutions that may be established in their name. When we say that the *idea* of a global public (sphere and actor) may help produce institutions that are not public, this is not necessarily a normative critique of the contents of the values and principles thereby advanced. Rather, it is a critical examination of the process through which these values and principles have been made dominant through claims to universality in an incomplete global public sphere, implemented through institutions and actors that are not public. The power relations involved in this *procedural* aspect of global governance is one that deserves more critical attention by scholars of global governance, as it turns on the question of how some actors are in a position to present the particular as universal, and to claim to speak on behalf of others that are often not heard, and who are affected by these very same governance practices. This is a question that goes beyond analyses of the relative power of, say, states, business, NGOs, or IOs, which has thus far dominated this literature. Instead, it directs attention towards those features of the global realm that make possible the establishment and perpetuation of governance practices that privilege some rather than others in the name of universality and ‘publicness’. This global realm is neither anarchic (cf. Hurd 1999) nor defined by a global public.

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